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THE RECENT DEVELOPMENTS OF LATVIAN MODEL OF CHURCH AND STATE RELATIONSHIP: CONSTITUTIONAL CHANGES WITHOUT REVISING OF CONSTITUTION

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***Annotation.** The article offers a concise view on the problems related to the Church and State relationship in Latvia. The article presents the author's hypothesis that under the new circumstances when special legal provisions apply to traditional churches, it must be discussed whether the rest of religious organizations could be classified as religious societies, operating in accordance with the Law on Societies and foundations. The author also holds an opinion that it is important for every country to follow the principle of separation of church from state; however, it must be combined with religious freedom. Nevertheless, the article reveals that the task is difficult to follow in practice, in Latvia and in other EU member states alike.*

***Keywords:** freedom of religion, Church, religious organizations, implementation of human rights, relations between the State and Church, traditional religious organizations, Vatican, the Holy See, international agreement with the Holy See, agreements with traditional Churches, separation of the State and Church.*

Introduction

In the Constitution of the Republic of Latvia (*Satversme*) religion/church is mentioned only in Article 99, where the state declares that: “Everyone has the right to freedom of thought, conscience and religion. The Church shall be separate from the State.” This provision was included in the Constitution of 1998, when the Constitution was supplemented with a new section on human rights. The principle on freedom of religion is established in the Law on Religious Organizations from 7 September, 1995. The purpose of the Law in accordance with the Article 2 is to grant the inhabitants of Latvia the right to freedom of religion, including the right to freely state one’s attitude towards religion, to adhere to some religion, individually or together with others, or not to adhere to any religion, to change freely one’s religion in conformity with the existing legislative acts. The Law on Religious Organizations, in compliance with the Constitution, as well as international agreements concerning human rights in the sphere of religion, regulates social relations established through exercising the right to freedom of consciousness and through engaging in the activities of the religious organizations. The state must protect the legal rights of religious organizations as prescribed by the law. The state, municipalities and their institutions, non-governmental and other organizations are not authorized to interfere with the religious activities of religious organizations.

In practice, Latvia is a partial separation state, where constitutionally declared separation of church and state does not really work. Latvia does not associate itself with any specific religion, and question is not about religious tolerance, but about interpretation of the article about church and state separation in the Constitution because there is no clear opinion about where the borderline between the state and church should be strictly drawn. The state and the Church are separate; however, if we speak about main conditions that ensure the Church separation from the state, then practically none of these conditions exists in Latvia. It is understandable, taking into account that the Republic of Latvia is still relatively young. It is not possible to achieve a perfect balance of theory and practice at once. It requires time to adopt appropriate legislative norms in certain social environment.

Therefore, the churches under Article 51 of the Civil Law that have a right to marry persons are called “traditional”. These are Lutheran, Catholic, Orthodox, Old Believer, Methodist, Baptist, Seventh Day’s Adventist and Jewish religious communities (churches). For each of them (except for the Catholic Church, which has an international agreement protection), Latvian parliament has passed a specific Law.

The Recent Developments of Latvian Model of Church and State Relationship

Nowadays when asked a question whether “In a democratic country, should a Church own property, should the people have the right to believe in what they want to believe and express their beliefs, and should parents be entitled to educate their children

on their own beliefs?” most Latvians would definitely answer – “Yes”. To be honest, a positive answer is normal for a citizen of the EU Member State who since his very childhood has lived in a society where human rights of every individual, including the religious freedom, are respected. It must be admitted that those who are over their thirties remember that it has not always been so in Latvia. Exactly 21 years passed since 8 April 1989, when the newspaper of the Latvian Creative Unions “*Literatura un Maksla*” published the Declaration of Vienna Meeting, and Human and National Rights in Latvia of the Joint Plenum of the Creative Unions of the Latvian Soviet Socialistic Republic. At that time, the document was forwarded by telegrams to all States of the Conference on Security and Co-operation in Europe. It was also sent to the Soviet government. Among other rights craved by the Soviet intellectuals, the requests for freedom of religion were also included in the Declaration: “True freedom of conscience and rights to adopt a religion, rights to freely promulgate religious opinions as well as atheism must be ensured. Churches and religious organizations shall become subjects of property law. By respecting parents’ rights, a moral and religious upbringing of children based on their persuasions must be ensured, allowing the religious organizations to open educational establishments” (paragraph 11 of the Declaration).

Thus a huge step was made; an idea of directly and immediately operating human rights has become a norm in a judicial consciousness of the modern Latvian society and respectively in the legal order. It is not important how thorough human rights norms are elaborated in regulatory enactments, the understanding of universalism and absolutism of basic rights is what matters. It has to be understood that at the end of the eighties of the last century, while legal orders of a number of European countries was improved by the case-law of the European Court of Human Rights, a totalitarian regime reigned over Latvia whose main task was to form a communistically atheistic society which was based on ideas of materialism. To put it mildly, in Latvia there was a distinctive view on implementation of human rights. It was typical for the soviet judicial point of view that the human rights norms should be “put in motion” with other regulatory enactments (laws, instructions etc.) because they were too abstract. Constitutions of the Soviet Union, as well as of Soviet Republic of Latvia can be seen as good examples. They provided many freedoms, which in real life were not functioning, for the reason that there was no constitutional control institute. Persons implementing and exercising these rights considered the constitutional norms only high sounding declarative announcements without real contents.¹ Freedom to exercise religious worship, as well as *freedom of antireligious propaganda* was formally declared for all citizens. For that reason, at that time the intelligentsia wanted to bring these dead constitutional norms into reality through regulatory enactments.

Another opinion currently predominates in Latvia, which is more corresponding to the opinion of the Founding Fathers of the USA Constitution: *no expanded enumeration of freedoms and rights is sufficiently exhaustive and in case of need it can be*

1 E.g., the Article 96 of the Latvian Soviet Republic Constitution of 25 August 1940, which established the freedom of conscience and separation of state and church, as well as separation of school and church.

expanded anyway (Alexander Hamilton). The rights to freedom of conscience cannot be transferred, and authority of a lawmaker can prevail only over those areas of human activities, which should be restricted with the purpose of preventing the individual from harming the life and work of the others (Tomas Jefferson). Everything else is only a matter of interpretation at the moment. In the case of Latvia, even if the constitution did not contain the article establishing the freedom of religion, respective principles would be naturally reached by interpreting the contents of the concept of democratic republic, as defined in the constitution² or on the basis of the insight provided in the case-law of the European Court of Human Rights, which is obligatory for Latvia.

The second period of independence was introduced by the Declaration of Restoration of Independence of the Republic of Latvia, issued by the Supreme Council of the Latvian Soviet Socialist Republic on 4 May 1990.³ Legal continuity of the State was recognized at the highest level. The State of Latvia founded on 18 November 1918 was restored on 4 May 1990. Although from the aspect of the constitutional law of Latvia, the State of Latvia regained its independence in 1991 and was not founded anew,⁴ in reality the relations between State and Church had to be continued as from the date of restoration and not from the year 1940. It is impossible to speak about continuity in this area for the following three reasons.

Firstly, the first period of independence cannot be evaluated as such a period, which could be “continued” by regulatory enactments... In 1934, the democratic development of Latvia was ended by an authoritarian period, which also changed a direction of relations between the Republic (State) and religious organizations (Church). Such relations (and respectively, the legal order), were not only in practice, but even in theory unfit for a new model of relations between State and Church while restoring the Republic at the beginning of the nineties of the last century.⁵

Secondly, the restored Republic of Latvia was deformed by the atheistic regime of the USSR: property was nationalised, clergymen were intimidated and many were frightened and controlled by the USSR repressive structures, the believers were unorganized, the machinery of government was atheistically oriented, and etc. Therefore, that legal and social environment was consistently passive for accepting any innovations. Furthermore, as already mentioned above, legal restoration for the Republic of Latvia was practically impossible, as evidenced also by the attitude of the Holy See

2 See Clause 4 of the conclusive part of the judgment by the Latvian Constitutional Court of 26 June 2001 in the case No. 2001-02-0106.

3 LPSR AP deklarācija par Latvijas Republikas neatkarības atjaunošanu. [Declaration of the Independence]. LR Saeimas un MK Ziņotājs. 17 May, 1990, No. 20.

4 Balodis, R. Evolution of Constitutionality of the Republic of Latvia from 1918-2006. *Jahrbuch des öffentlichen Rechts der Gegenwart. Neue Folge-band*. Häberle, P.; Siebeck, M. (eds.), 2008, p. 269-278.

5 During the first period of the independence, the laws on specific denominations were adopted – both in form of laws, as well as regulations in accordance with the procedure set forth in the Article 81 of the Constitution. However, it was legally quite impossible to adopt them (same as other normative acts) when restoring independence in 1991. That is because in 1934 the Latvian Parliament (*Saeima*) was dismissed; as an authoritarian regime came to power and the leader of the regime Karlis Ulmanis as the President of the State and the Prime Minister (the legislator and the executive power in one person) adopted and proclaimed the laws by himself.

towards the Concordat. The Latvian Catholics chose to conclude a new one, instead of continuing the old one.

Thirdly, in reality the State lacked true understanding and conception/strategy/plan in this particular area,⁶ apart from adoption of several legal norms of the first independence period,⁷ lobbying efforts of the main traditional Churches in the lawmaking process,⁸ an activity of a pro-church party The First party (*Pirmā partija*) in the Parliament, and a competition amongst traditional Churches. Since the restoration of independence, judging from frequent and chaotic reorganizations of the structure supervising the Churches (currently – the Board of Religious Affairs, before the 21st century, a name and status of the institution was changed four times), the unclearness of the State policy is quite obvious.... It should be mentioned that at first there was a division of the Ministry of Justice and a separate Department of the Ministry of Justice (Religious Affairs Division and Religious Affairs Department 1991-1996), the department which in addition to registering religious organizations, also had functions of registering political organizations, trade unions, public organizations, and coordinating national minorities (Public and Religious Affairs Department – 1997-1999), then there was a separate administrative institution under supervision of the Ministry of Justice engaged exclusively with religious matters (the Board of Religious Affairs), and finally a model where the functions of registering religious organizations separated between the Register of Enterprises and the Ministry of Justice was established.

The particular reality, including also the legal one, is created by interconnecting external and internal processes into one. It has to be understood that the legal order of Latvia in church affairs has been influenced by external factors; however, this impact was only in a way of voluntary reception (adoption). A rapid strengthening of the human rights catalogue had been commenced already before convocation of the first *Saeima* of the restored State. Actually, just after adopting the Declaration of Independence, Latvia acceded to 51 international documents in human rights area. Although in the case of Latvia we can speak mostly from the perspective of an analysis and implementation of foreign practice, the external impact must be mentioned. The USA should be mentioned as the first, the European Union as the second, and Vatican as the third influencing authority. Impact of the United States of America is natural, as it is currently the most powerful country in the world, which in particular takes care of observance of human rights at a global level. The concept of the freedom of religion was developed in the USA, which recognised it already in the end of the 18th century. Ten years ago, the US

6 That's true that there was no plan in any field of supervision by the State and due to the above reason it cannot be considered that Churches are somehow especially unfairly treated. Thus, these relations started to form in the restored Republic of Latvia and it can be asserted for certain that it was neither formal, nor substantive continuation of the practice of the relations between State and Church during the first independence period.

7 When drafting new legal acts, the reception of the provisions of law of the first independence period was due not to a well-considered idea of continuity or nationalism, but because of the lack of foreign language skills.

8 The principle "one denomination – one Church" can be added for the merit of lobbyists (see the Article 7 Part 3 of the Religious Organizations Law – Congregations of one denomination may establish only one religious association (Church) in the country).

Congress adopted the U.S. International Religious Freedom Act of 1998,⁹ which makes international religious freedom a part of its foreign policy. Every year, the US Department of State must submit reports on the condition of religious freedom in different countries (except for the USA itself) to the Congress. The Act empowers the US President to take action in case this principle is violated in any of the countries. The report does not necessarily contain recommendations for the Congress, but it is intended as a factual basis for the congressmen that can serve as a basis for imposing any sanctions on a particular country. Although since the year 1998 or the date of the first report, the Department of State reported on Latvia, the impact of the USA on the reality of the relations between State of Latvia and Church is relative. The legal order and practice of Latvia in church affairs has not been significantly impacted by the USA. Of course, another issue is the USA's striving to popularize the US State-Church relationship model in Latvia; however, taking into account that the traditionalism of Latvia¹⁰ is not acceptable for Americans due to understanding of the First Amendment to the US Constitution,¹¹ a certain confrontation of opinions will always exist. However, it must be added that in this aspect Latvia is very similar to other EU Member states...

Impact of the European Union only conditionally may be considered "external" because upon the accession of Latvia to the European Community after 2003, the regulations of Europe can be deemed to be "ours" as well. However, speaking about the EU impact, first of all, the European Convention for the Protection of Human Rights and Fundamental Freedoms and its interpretation by the European Court of Human Rights have to be mentioned. Of course, there is also the legal impact of Europe and the practice of the European Community, which in general is as a test for the legal order and practical implementation of the religious freedom of Latvia. However, in the European countries, there is a number of models¹² and Latvia has not received any instructions,

9 *U.S. International Religious Freedom Act of 1998*, 22 USC 6401. [interactive]. Public Law No. 105–292, 112 Stat. 2787, as amended by Public Law No. 107–228, 116 Stat. 1408 [accessed 2009-08-10]. <<http://us-info.state.gov/usa/infousa/laws/majorlaw/intlrel.htm>>.

10 Although the concept of traditional churches in Latvia has been discussed for more than ten years, it was introduced in 2007 by special church laws. In this aspect, please see the Article 2 of the Special church laws, establishing that the Latvian State recognises the existence and prevalence of the respective traditional religious organizations in the territory of Latvia. (For instance, see Law on Latvian Association of Seventh-day Adventist Congregations: LR likums. *Latvijas Vēstnesis*. 12 June 2007, No. 93 (3669); Law on Latvian Union of Baptist Churches: LR likums. *Latvijas Vēstnesis*. 30 May 2007, No. 86 (3662); Law on Riga Jewish Religious Community: LR likums. *Latvijas Vēstnesis*. 20 June 2007, No. 98 (3674); Law on the Latvian United Methodist Church: LR likums. *Latvijas Vēstnesis*. 6 July 2007, No. 91 (3667); Law on Latvian Old-Believers Pomor Church: LR likums. *Latvijas Vēstnesis*. 20 June 2007, No. 98 (3674).

11 It follows from the viewpoint of Americans that the church laws or agreements are impossible, as they are in contradiction with the concept, while in Europe (e.g., Spain, Italy, Germany, Hungary, Estonia, Poland, and etc.) they are practised and not viewed as contradicting the constitutions.

12 On the grounds of degree of state cooperation with religious organizations, countries may be divided into six groups: (1) States excluding church (e.g., former USSR); (2) States having a model of full separation of the church and the State, e.g., USA, France. Those are states where a distinction between the state and the church is drawn. Both are separated. The state identifies itself with none of religions. (3) States having a model of partial separation of the church and the state (e.g., Germany). In such a State, a constitutionally declared separation of Church and the State may exist. (4) Church states (theocracies). Such model of the State and Church is mostly common in Islamic countries and some other Third World countries. In such a

which of them to choose. It would also be peculiar, as none of them is deemed to be perfect – each of them has its own pluses and minuses.

The impact of Vatican should be considered as the most serious external influence. Such assertion is based on the agreement concluded in 2000 between the Republic of Latvia and the Holy See, and the consequences brought about by the agreement. In the countries, which have concluded an agreement with the Holy See, there is almost the same practice:

- 1) international agreement with the Holy See;
- 2) agreements with traditional Churches;
- 3) special laws bringing the issues agreed upon in the agreements into real life.

In spite of the initial resistance, the opponents of the agreement from other traditional Churches are forced to recognise the positive effect of the concordat.¹³ It was the international agreement concluded in 2000, ratified in 2002, which was the cause for the agreements concluded by the Cabinet of Ministers of the Republic of Latvia with other traditional Churches in 2004, which is disputable from the legal aspect. It was the agreement of 2000 concluded by the Republic of Latvia with the Holy See, which is the only explanation why the relationship principles set out in the agreements are included in a number of special laws passed in 2007. Agreement of Latvia with the Holy See is not related to separation of the Church and the State or religious freedom and other Churches; however, it forced the Latvian government to solve an issue on equal attitude towards traditional Churches.

Currently speaking on religious organizations in the Republic of Latvia, we must speak not only about their registration, but about special recognition of particular religious organizations by the State, which is not related to the registration institute. In my opinion, depending on the form of recognition by the State, the religious organizations in Latvia may be divided into two groups:

- 1) traditional religious organizations;
- 2) others.

Traditional religious organizations are divided into the Roman Catholic Church, as its status is based on an international agreement, and other traditional religious organizations, which by adoption of special laws in respect of them have gained special recognition by the State. Others are religious organizations registered pursuant to the Law on Religious Organizations.¹⁴

country, there is a religious dictate and the state identifies itself with one religion. (5) State church countries (e.g., Denmark, Greenland, England). These are countries wherein the State religion is proclaimed or the State Church is set. (6) Formal separation countries where Church can be formally separated from the State, but actually is not (Latvia, Israel).

13 The case Latvian Baptist Association is implied, which at the end of the last century addressed the Latvian government of that time by officially specifying the reasons why such agreement is not acceptable for the State. It is unlikely that the current experience of the State and Church could please secularists, atheists or followers of the American State and Church relationship model.

14 Religious organizations, which are registered as unions or commercial structures, or are not registered at all, cannot be construed as religious organizations that would have rights to appeal for religious freedom.

In years 2007 – 2008 the Latvian parliament adopted seven special church laws on Evangelical Lutheran Church, Latvian Association of Seventh-day Adventist Congregations, Union of Baptist Churches, Riga Jewish Religious Community, Latvian United Methodist Church, Latvian Old-Believers Pomor Church, and Latvian Orthodox Church.

Although in these church laws the lawmaker has included some of the issues which require to be regulated, actually we may say that since then, a model of Latvia has been shaped and it more resembles a model of Italy or Spain. It is true that there is a certain distinction in the constitutional structure. Let us have a look at the practice of Spain and Latvia. Although the constitutions of both states establish the separation of State and Church, it is expressed with different level of assertiveness. Reading "Church shall be separate from the State" (Article 99 of the Constitution of the Republic of Latvia) and "None of Churches are State Churches" (Article 16 of the Constitution of Spain), an impression is made that there is strict separation in Latvia, which is misleading, if we look at our practice. In reality the practice of Latvia is similar to that of Spain, where the central role is played by the principle of religious neutrality (*aconfessionalidad*). Unlike the US State Church Establishment Prohibition Clause, instead of denying any cooperation or supporting particular Churches, the principle of religious neutrality recognises it; obviously on a condition that religious freedom of other Churches is not restricted. The best solution seems to be adopting the practice of Spain and passing from the separation clause to the religious neutrality clause, as the latter includes separation of Church and the State, however, is not so categorical. Respectively the provision "Church shall be separate from the State" should be transformed to "None of the Churches shall be the State Church".

Another difference in the constitutional structures of relationship models between State and Church in Spain and in Latvia is a reference to a possibility of an agreement. In case of Latvia, agreements are not mentioned not only in the Constitution, but even in the Law on Religious Organizations, while Article 16 of the Constitution of Spain sets forth that relationships with the Churches are developed on the basis of *cooperation*, implying the religions which are common to the society. Moreover, in the Law on Religious Organizations (Article 7, Paragraph 1) the cooperation between Church and the State acquires a specific legal form. The aforementioned provision of law establishes that taking into account the prevalence of specific religions in the society, the State concludes cooperation agreements (conventions) with legally registered Churches, religious denominations or religious communities having positive and considerable role in the Spanish society.¹⁵ The agreements must be confirmed by the parliament.¹⁶ Agreements have been concluded with Roman Catholics, Protestant Unions (incl. also Lutherans,

15 Ley Orgánica 7/80 del 5 de julio de 1980 de Libertad Religiosa. [Spanish Law on Religious Freedom]. [interactive]. [accessed 2008-08-17]. <<http://www2.misha.fr/flora/doc/ILEGI/sp800705.pdf>>.

16 *State and Church in the European Union*. Robbers, G. (ed.). European Consortium for State and Church research. Baden – Baden: Nomos Verlagsgesellschaft, 2005, p. 144.

Baptists), Islam Community,¹⁷ and Jewish Community.¹⁸ In Spain, similarly to Latvia, the honour of the first level organization deserves the Roman Catholic Church, which is provided with an extensive organisational freedom, based on 5 international contracts. Amongst the second level organizations are Churches which have entered into cooperation agreements with the State, which adopted respective laws later. Other religious organizations are deemed to be the third level religious organizations.

If we compare the Spanish practice with ours, it is evident that the possibility of concluding agreements with Churches is missing. There is no reference to such possibility in the Constitution or the Law on Religious Organizations. Therefore, the Legal Affairs Committee of the Latvian Parliament came to conclusion that agreements of 2004 with Churches are "to be put aside" and to be considered as "legally non-binding", although the laws were sufficiently grounded.¹⁹ This view can hardly be agreed with, as the legal order of individual Churches based on the particular church law substantially differs from what is established in an agreement. Furthermore, the church laws do not contain a reference to the expiration of the validity of the agreements that is necessary to render them void. The advantages (to be correct – peculiarities) set out in the agreements currently have been introduced in some laws as special provisions of law. However in practice, let us consider an example of exemption from the State duty on registration of ownership rights in the Land Register established in agreements, harmonization of regulatory enactments, covering maintenance costs of national historic landmarks, protection of cult places, financing educational establishments, procedure for amending the agreement, and etc., which should be evaluated as disputable. If Churches wanted to sue for infringement of contractual provisions, I suppose the State would not win such court proceedings. The new church laws say nothing about the agreements and thus it can be inferred that they are effective in parallel with the laws. I believe that avoiding recognition of the agreements is an erroneous approach, which should be also critically evaluated from the legal aspect. Although the Law on Religious Organizations speaks only about special laws, which regulate the relations between the State and religious associations (Churches), and does not mention the agreements, it should be noted that some time ago it was the Human Rights and Public Affairs Committee of the Latvian Parliament, which rejected the logical and understandable proposal by the government

17 *Spanish Legislation on Religious Affairs*. De la Hera, A.; De Codes, R. M. M. (eds.). Madrid: Ministerio de Justicia Centro de publicaciones, 1998, p. 17.

18 It is understandable that the Catholic agreement unlike the others has an authority of an international agreement, which in order to be in force does not require that its contents would be included in the law. Spain has concluded 5 agreements with the Holy See. If we look at the agreement of Latvia and the Holy See, it should be noted that the number makes no difference, as almost all issues agreed in these agreements are set out in the agreement of Latvia with the Holy See. (See *State and Church in the European Union*, p. 143.)

19 See annotations of the draft laws stating that the draft laws are based on the principles included in the cooperation agreements signed by the Cabinet of Ministers of the Republic of Latvia on 8 June 2004. Furthermore, it is indicated in the annotations that they are drafted with the purpose of regulating the relations of the Republic of Latvia and the respective religious centre, specifying its legal condition and status, as well as on the grounds of a long-term existence and prevalence in the territory of the Republic of Latvia. Inclusion of the issue on a possible impact of the law on public and national economy growth implied that the Draft law will favour socialization of the society and implementation of the freedom of religious persuasion.

regarding the agreements on the basis of which the laws are adopted.²⁰ Moreover, the agreement with the Riga Jewish Religious Community also shows that the agreements were not concluded by mistake. Due to various reasons, no agreements with the Jewish religious community were concluded in 2004. In order to adopt a special law also with this community, on 13 June 2006 an agreement between the Republic of Latvia and Riga Jewish Religious Community was signed. As it is already known, the law was adopted²¹ and it is the best confirmation of the practice that at the beginning there is an agreement and only then a law is adopted. Making analogy with Spain, exactly the same approach guarantees formal equality for every religious community, which is wishing to act in the territory of the State²² because it would be impossible to reject any religious organization claiming for an analogous status in accordance with the law: "Sorry, you do not correspond to our traditional understanding of your impact and role."²³ Respectively, the Church willing to have an analogous status in Latvia would be required to enter into an agreement with the government; and in addition to that, this issue has to be considered in the Parliament. Of course, this practice is not perfect either;²⁴ however, some order would be established instead of an impulsive, discontinuous practice.

A very important reorganization was implemented on the end of 2008. According to the Amendments to the Law on Religious Organizations adopted by the Latvian Par-

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- 20 The recommendation adopted by the Cabinet of Ministers and forwarded to the parliament on 26 October 2000, which "was pending" in the responsible committee for two years and was adopted in an amended way reading as follows: "(7) The Cabinet of Ministers shall have the right to conclude an agreement with a religious association (Church) regarding issues related to the religious association (Church) and affecting its interests and interests of adherents of the respective denomination. (8) Relationship of the State and particular religious associations (Churches) can be regulated by special laws." As it is evident, the recommendation was only partially incorporated in the law; and a delegation of conclusion of contracts and special law basis is lost.
- 21 Law on Riga Jewish Religious Community: LR likums. *Latvijas Vēstnesis*, 20 June 2007, 98(3674).
- 22 Bloš, L.; Weiler, J. H. *European Law of Religion-organizational and Institutional Analysis of National Systems and their Implications for the Future European Integration Process*. Jean Monnet Working Paper, 13/03 2003.
- 23 Martínez-Torrón, J. *Church Autonomy and Religious Liberty in Spain. Spanish Report to the Second European/American Conference on Religious Freedom*. Trier, 28-29 May 1999, 9 et seq.
- 24 The Spanish model, referring to Spanish experts of the State and churches, could not be considered as the most successful model of relations between State and Church. Special church laws in Spain have been adopted formally, using the legislation prerogative of the parliament, as the bilateral agreements of the government and Church became laws without any amendments. Obviously due to the aforementioned reason the Spanish law scholars themselves are unequivocal in this respect. For instance, professor Ivan C.Ibans is critical when analysing the legal nature of the laws. He notes that the freedom of action of the Spanish lawmaker allowing unilateral amendment of these laws can be valued as highly arguable. Although it has not been implemented yet, the church laws contain a clause on formation of a joint commission (State and Church) within whose competence is agreeing on contents of the respective amendments. On the other hand, there are experts who irrespective of individual problems believe that the Spanish model has stabilised the relations between State and Church, and has not influenced the temporal (secular) status of the State; and the professor of the Madrid University Rosa Maria Martinez de Codes admits that Spain has established itself as a pluralistic, non-denominational country. (*State and Church in the European Union*, p. 144-145; De Codes, R. M. M. The Contemporary Form of Registering Religious Entities in Spain. *Fides et Libertas. The Journal of the International Religious Liberty Association*. 1998, 85; Proeschel, C. *Historical survey: Spain*. [interactive]. [accessed 2009-08-27]. <[http://www.eurel.info/EN/index.php?RuBintialeSS=Historical highlights&intrubrique=Historical survey&pais=21&rubrique=175&nompais=Spain](http://www.eurel.info/EN/index.php?RuBintialeSS=Historical%20highlights&intrubrique=Historical%20survey&pais=21&rubrique=175&nompais=Spain)>).

liament on 18 December 2008, the Board of Religious Affairs does not exist anymore. From 1 January 2009, religious organizations and their institutions are entered into the Register of Religious Organizations and their Institutions. The Register of Enterprises of the Republic of Latvia (hereinafter – the Register Office) maintains this Register. The Ministry of Justice is in charge of handling relations between the state and religious organizations; within the competence set by laws and other normative acts it ensures elaboration, co-ordination and implementation of State’s policy on religious affairs, and deals with issues connected with mutual relations between the State and religious organizations. A structural unit under authority of the Ministry of Justice deals with religious affairs, on the request of religious organizations provides them with the necessary consultation and assistance. Before registration of a religious organization or its institution, the Register Office must request the opinion of the Ministry of Justice on the compliance of the goals and objectives stated in the Charter (Constitution, Regulations) of a religious organization or its institution with the laws and other normative acts, or whether the activities (teaching) of a religious organization might endanger human rights, democratic structure of the State, public safety, welfare and morals.

Conclusions

To some extent it is the credit of the Holy See that earned the special status of the Roman Catholic Church against other (national) churches by concluding international agreements with individual countries. The exclusivity of the Roman Catholic Church in Spain, Italy, and now also in Baltic States is exactly the reason for the creation of precedent of agreements between the government and the church, based on which legislation has been passed later on. It should be taken into account that legislation of Latvia has been affected by the activities of the Holy See, and not by constitutional regulation (Article 99 of the Constitution of Latvia). Perhaps a better solution would be to follow the practice of Spain (Article 16 of the Spanish constitution) – to proceed from separation of church and state in a less categorical form; namely “church is separated from state” should be changed to “no church is the official church of the state.”

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LATVIJOS VALSTYBĒS IR BAŽNYČIOS SANTYKIO MODELIO RAIDA: KONSTITUCINIAI PAKEITIMAI NEKEIČIANT KONSTITUCIJOS

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Santrauka. Straipsnyje pateikiama glausta problema, susijusių su valstybės ir bažnyčios santykiu Latvijoje, apžvalga. Autorius pristato hipotezę, kad atsižvelgiant į naujai susiklosčiusias aplinkybes, kai tradicinėms bažnyčioms taikomos specialios teisinės nuostatos, būtina diskutuoti, ar kitos religinės organizacijos turėtų būti laikomos religinėmis bendruomenėmis, veikiančiomis pagal Bendruomenių ir fondų įstatymą. Autorius taip pat mano, kad kiekvienai valstybei yra svarbu laikytis bažnyčios atskyrimo nuo valstybės principo, tačiau tai būtina suderinti su religijos laisve. Vis dėlto straipsnyje atskleidžiama, kad praktiškai tai sunku įgyvendinti Latvijoje ir panašiose į ją Europos Sąjungos valstybėse narėse.

Tam tikru atžvilgiu tai Šventojo Sosto nuopelnas, kad sudarius tarptautinius susitarimus su atskiromis valstybėmis, Romos katalikų bažnyčiai suteiktas specialus statusas, paly-

ginti su kitomis (nacionalinėmis) bažnyčiomis. Išskirtinis Romos katalikų bažnyčios statusas Ispanijoje, Italijoje, o dabar ir Baltijos valstybėse buvo priežastis sudaryti susitarimų tarp vyriausybės ir bažnyčios precedentą, o remiantis tokiais susitarimais vėliau buvo priimti teisės aktai. Reikia atsižvelgti į tai, kad Latvijos teisės aktams įtaką darė Šventojo Sosto veikla, o ne konstitucinis reglamentavimas (Latvijos Konstitucijos 99 straipsnis). Galbūt reikėtų vadovautis Ispanijos patirtimi (Ispanijos Konstitucijos 16 straipsnis) – pereiti prie valstybės ir bažnyčios atskyrimo mažiau kategoriško modelio, t. y. „Valstybė yra atskirta nuo bažnyčios“ reikėtų pakeisti „Jokia bažnyčia nėra oficiali valstybės bažnyčia“.

Reikšminiai žodžiai: *religijos laisvė, bažnyčia, religinės organizacijos, žmogaus teisių įgyvendinimas, valstybės ir bažnyčios santykiai, tradicinės religinės organizacijos, Vatikanas, Šventasis Sostas, susitarimai su tradicinėmis bažnyčiomis, valstybės ir bažnyčios atskyrimas.*

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