

## Religion and the Secular State in Finland

### I. SOCIAL CONTEXT

The majority of the Finnish population (5,451,270) belongs to the Evangelical-Lutheran Church of Finland (75.3 percent in 2013). The second largest religious group in Finland is the Finnish Orthodox Church (just over 1 percent with 58,609 members). The criteria for belonging to a religious denomination vary to some extent according to the traditions of each denomination.

The Christian churches and religious communities count their members using the criterion of baptism. Most churches recognize a baptism carried out in another church. Thus, the transfer of membership from one church to another requires only the person's own declaration and participation in the teaching offered by the new religious community. The minority denominations that do not accept infant baptism (e.g., Baptists and several Pentecostal churches) require adult baptism, conditional upon a personal religious confession, from their members. The number of Muslims in Finland is currently estimated at around 60,000 – and rapidly growing. To begin with, few of them organized themselves into registered religious groups. However, their registrations have clearly increased in the early twenty-first century (1990: 810; 2000: 1,199; and 2013: 11,125).

In Finland, it is today (and in fact since 1922<sup>1</sup>) according to the new Freedom of Religion Act (170/2002 vp), *possible to distinguish* between *three different types of religious communities* whose different status under public law also regulates their sources of income and the financial support they receive from the State. According to the new Freedom of Religion Act (2003), such religious communities are (1) the Evangelical Lutheran Church, (2) the Orthodox Church and, as prescribed by the Freedom of Religion Act, (3) the registered religious communities.

When regulating the legal status of religious bodies in Finland, attention must be paid not only to matters of religious freedom but also to the religio-political realities. The most important of these are the *historical legacy* – on the one hand the significance of Lutheranism in the history of Finland, and on the other hand the influence of the state church in the Scandinavian tradition more generally – and the *religious distribution* of the population.<sup>2</sup>

Since almost the whole population of Finland once belonged to the Lutheran Church, and the Orthodox Church had a stronghold in Ladoga Karelia, Olonets Karelia, and Russian Karelia, Syväri and Petsamo, these two churches have through the course of history gained a special position in relation to the State.

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1. In the old Freedom of Religion Act of 1922, a completely new type of legal person was defined in addition to the Evangelical Lutheran Church and the Orthodox Church, i.e., the “religious community,” currently the registered religious community.

2. Emeritus Archbishop *John Vikström* has criticized that, in discussion of Church-State relations, it has from time to time been thought that the distribution of the population by religion should not be taken into account in decision-making. “In support of the idea it has been suggested that the majority of church members are only nominally so, without any genuine religious conviction. Membership of the Lutheran Church, so the critics say, should not be assigned any real significance.” Vikström emphasizes that behind this train of thought is not always concern for the strengthening of the religious convictions of church members, but it is thought to open the doors to altering the Church’s social status in a way that restricts its freedom of movement. John Vikström, “Mihin suuntaan Suomen evankelis-luterilaisen kirkon ja valtion suhteita olisi kehitettävä?” [In what direction should relations between the Evangelical Lutheran Church of Finland and the State be developed?] Teologinen Aikakauskirja 1992, 50.

Finnish membership of registered religious denominations [communities] in 1990, 2000, and 2013 was respectively<sup>3</sup> as shown in Table 1, below.

Table 1. Membership of registered religious denominations in Finland, 1990, 2000, 2013

	1990	%	2000	%	2013	%
<b>Total population</b>	4,998,478	100	5,181,115	100	5,451,270	100
Evangelical Lutheran Church	4,389,230	87.8	4,408,381	85.1	4,106,025	75.3
Other Lutheran Churches	2,588	0.1	2,228	0.1	1,269	0.0
Greek Orthodox Church of Finland	52,627	1.1	55,692	1.1	58,609	1.1
Other Orthodox Churches	800	0.0	1,088	0.0	2,999	0.0
Jehovah's Witnesses	12,157	0.2	18,492	0.4	18,697	0.3
Free Church in Finland	12,189	0.2	13,474	0.3	15,064	0.3
Roman Catholic Church	4,247	0.1	7,247	0.1	11,994	0.2
Islamic congregations	810	0.0	1,199	0.0	11,125	0.2
Adventist Churches	4,805	0.1	4,316	0.1	3,413	0.1
Pentecostal Church in Finland	-	-	-	-	7,826	0.1
Church of Jesus Christ of LDS	2,883	0.1	3,307	0.1	3,282	0.1
Baptist congregations	2,565	0.1	2,395	0.0	2,310	0.0
Methodist Churches	1,251	0.0	1,260	0.0	1,400	0.0
Jewish congregations	1,006	0.0	1,157	0.0	1,170	0.0
Others	712	0.0	920	0.0	1,407	0.0
No religious community	510,608	10.2	650,979	12.7	1,203,687	22.1

Between 1980 and 2000 the membership of the Lutheran Church increased considerably; however, due to the increase in total population, its relative share has decreased (1980: 90.2 percent and 2013: 75.3 percent). The Orthodox Church, Jehovah's Witnesses and the Free Church of Finland are among those whose membership has grown. The number of members of the Catholic Church has more than tripled (1980: 3,051 and 2013: 11,994), yet it is still a relatively small community. The membership of the Pentecostal congregations is at approximately the same level as the Orthodox Church; however, all Pentecostals are not registered as a religious community. The number of registered Pentecostals was 7,826 members in 2013. Because of this, large quantities of its members appear in the statistics with those who do not belong to any religious community. Its total number has more than tripled (1980: 372,640 and 2013: 1,203,687).

## II. THEORETICAL AND SCHOLARLY CONTEXT

### A. Actual Situation of Scholarly Context – University Law Schools and Theological Faculties

Looking at the actual situation of theoretical and scholarly context, how religion and state should relate to each other, it must be stated that on the part of *the legal sciences the Finnish universities* and institutions of higher education *have not shown very organized research on the relations between state and church*. The relations between state and church (religious communities) have been taught in faculties of law – in Helsinki, Turku, and Rovaniemi, as well as the Universities of Tampere and Eastern Finland (Joensuu) – mainly as an issue belonging to domain of constitutional law (the position of the church according to constitutional law), an issue of administrative law (the Church Act, the

3. *Statistical Yearbook of Finland 2013* (Statistics Finland, 21.3.2014). See more closely [http://www.stat.fi/til/vaerak\\_2013\\_2014-03-21\\_tau\\_003\\_fi.html](http://www.stat.fi/til/vaerak_2013_2014-03-21_tau_003_fi.html). (30.3.2014).

Administrative Procedure Act) or from the viewpoint of freedom of religion, and then specifically within the basic rights and liberties. The faculties of law have not had any professorship on church-state relations. Thus, *there has not been the corresponding systematic teaching, not to mention schools of thought, or major views, how religion and State should relate to each other.*

Neither have the theological faculties (Helsinki, Turku) had professorship concentrating on church-state relations. In the theological faculties church-state relations have been studied and taught both belonging to the domain of ecclesiastical law/theology of law and from the perspective of freedom of religion. More than in the case of Germany, in Finland the research on ecclesiastical law carried out in the theological faculties has already, since the nineteenth century, been connected first to the domain of Practical Theology and in recent decades to some extent also Church History, although the history of Finnish jurisprudence does also include several distinguished jurists who were well acquainted with ecclesiastical law. *The research on ecclesiastical law carried out in Finland has, since the days of Frans Ludwig Schauman<sup>4</sup> (1810–1877), achieved its best result precisely in the field of historical research.<sup>5</sup> If one can speak of any school of research in ecclesiastical law, then on the part of the theological research it has been the cherishing of the spiritual heritage represented and marked out by Schauman.* From this one can already deduce the almost complete lack in Finland of the dialogue on theology of law, so characteristic of progress in the Central Europe, in which also solutions differing from the existing system of ecclesiastical law would be discussed.

In the Church Law of 1869<sup>6</sup> Schauman's main definition of policy concerning the division between state and church was that the [Evangelical Lutheran] Church should have its own legislative body, the General Synod. Concerning purely ecclesiastical matters the sovereign [at the present time parliament] had only the right of approval or rejection of legislation. However, both social and ecclesiastical elements were contained in state legislation. *One may state that there has been no change so far in this basic policy in Finland.* The General Synod has retained its position as a source of ecclesiastical jurisprudence. The setting up of the Church's own decision-making body and its canonical right to initiate legislation in matters of Church Law, and its right to issue statements on church-state issues, created the basic pillars on which state-church relations (for part of the Evangelical Lutheran Church) still function today in Finland.

It has been typical of the Finnish dialogue on ecclesiastical law to hold to F.L. Schauman's judicial and theological principles which had been highly epoch-making in their own age. *Another* characteristic that has emerged clearly in the last decades is the same as in other Nordic countries; the Church Act has been gradually adjusted to the reforms of a society undergoing a process of democratization. Both ecclesiastical and university jurists, as well as university theologians, have actively participated in this process. Thus, for instance in the preparation of the proposal drafted by the Committee of the Freedom of Religion (1998–2001) for a new Freedom of Religion Act and for an entirely new Burial Act, the Faculty of Theology of the University of Helsinki played a significant role. *Juha Seppo*, professor of Church History, served as the committee's vice president and the Faculty of Theology provided a statement of its own concerning the committee's report which was completed in the winter of 2001. After receiving statements concerning the report the Ministry of Education began the preparation of the final

4. *Frans Ludwig. Schauman* was Professor of Practical Theology at the University of Helsinki 1847–1865 and Bishop of Porvoo 1865–1877. He was also a member of the Finnish Diet 1863–1872.

5. In the domain of ecclesiastical law some of the most recent Finnish jurisprudential studies are Eeva-Kaarina Nurmiraanta's doctoral dissertation "Pappi Tuomiolla" [*The clergyman on Trial*, 1998] and Pekka Leino's doctoral dissertation "Laki kirkosta" [*The Church Act or an Act concerning the Church*, 2002]. Leino's study, pertaining to church administrative law, has as its theme the Evangelical Lutheran Church of Finland's system of ecclesiastical law. He particularly examines the relationship between the provisions of the Church Act and the provisions of general legislation from the point of view of administrative law.

6. In the 1860s the Finnish Senate set up a committee to reform church law. Schauman became a member of the committee and his proposals formed the basis of new ecclesiastical legislation.

Government bill. Afterwards, the Government passed the bill for a new Freedom of Religion Act and Burial Act entered into force on 1 September 2003. A *third* and most recent phase is undoubtedly represented by the challenges brought by the EU's integration process to state-church relations.

### B. *The Parliamentary Clarification Work on Church Policy*

When speaking of research on state-church relations in the Finnish context one must also not forget the parliamentary clarification work on church policy begun in the early 1970s. Besides church jurists, university theologians and researchers of the theory of law also participated in it as experts. The broadly-based parliamentary assembled Church and State Committee worked from April 1972 until June 1977, that is, for over five years.<sup>7</sup> *The Committee's report*<sup>8</sup> explained almost all the containing surfaces between state and church and took a stand on the developing of various areas. With its plentiful facts the report is no doubt a basic document when examining state-church relations in Finland 1980s and 1990s.

As a reader can observe from report, *the demands* of the late 1960s and the early 1970s radicalism to change the foundations of Freedom of Religion Act and *to implement radical changes in the relations between the state and church did not receive sufficient political support*. Only minor adjustments were made to the Freedom of Religion Act, mainly concerning the procedure of secession from the church. Demands for massive changes to the Freedom of Religion Act and for "the separation of church and state" at the parliamentary level remained as occasional bills, which later miscarried.

However, the pressures for change in religious and church policy did not vanish entirely, but were absorbed into both state and church-related committee work. The government's Church and State Committee of the years 1972-1977 had the widest and most significant impact. Its policy for change was rather cautious. *The committee did not seek to clearly bring apart State and Church, but rather to strengthen the inner independence of the Churches.*<sup>9</sup>

Afterwards, during the years 1978 and 1979, the Ministry of Education procured a large collection of advisory opinion on the Church and State Committee's report. Later on a relatively large summary of it was also drawn up.<sup>10</sup> With the help of the summary one can get a rather clear picture of how Finnish society reacted to proposals for developing state-church relations three decades ago. Also, in April of 1981 the Ministry of Education appointed a church and state working group whose assignment was to make the necessary practical suggestions for action.

Although the immediate legislative changes in the relations between the state and the churches remained non-existent, *the Church and State Committee did initiate within the Evangelical Lutheran Church of Finland a preparatory process which in three decades has led to gradual changes*. The organizational and administrative links between state and church have been revoked little by little and particularly in 1990s in such a way that state authorities have gradually given up functioning as decision-makers in church-related issues.

### C. *The EU-integration process, the new Constitution of Finland (2000), the New Law on Religious Freedom (2003) and their Impact on Current State-Church Relations*

7. The committee's president was Aarne Lauriala, former archbishop Mikko Juva was its vice president and Juha Seppo and Lauri Tarasti served as secretaries.

8. See more closely Kirkko ja valtio-komitean mietintö: Komiteamietintö 1977:21 [The Report of the Church and State Committee: Committee Report 1977:21].

9. Kirkko ja valtio-komitean mietintö: Komiteamietintö 1977, 9-11 [The Report of the Church and State Committee: Committee Report 1977:21]. Juha Seppo, "Church and State in Finland 1999," *European Journal for Church and State Research [Revue Européenne des Relations Églises-État]* 7 (2000): 213.

10. Juha Seppo, "Lausunnot Kirkko ja Valtio-Komitean Mietinnöistä," *Opetusministeriö* 1980 [The Advisory Opinion Statements Concerning the Report of the Church and State Committee. Ministry of Education 1980].

Since Finland joined the European Union (in 1995), the issue of state-church relations has in a new way become a matter of topical interest in Finland. The deepening integration of the European Union, the associated intergovernmental co-operation, and the development of legislation, have raised in particular the question of the importance of freedom of religion and of the position of the churches and religious bodies in the Finland of the future.

In religiously uniform Scandinavia and Finland there has earlier been no urgent need to re-evaluate church-state relations. In the Nordic countries, political and social development has taken place without abrupt crises in the position of the churches. A fixed state church system has gradually disintegrated in most Nordic countries.<sup>11</sup> In comparison with Norway and Sweden<sup>12</sup>, Finland can be regarded as a good example of a country where traditional church-state relations have been dismantled in stages without complete separation between church and state.

The Evangelical Lutheran Church of Finland today is clearly a separate institution from the State, with its own legal status. Nevertheless, in Finland there has been constant debate as to whether and in what sense Lutheran church is a “state church.” The Lutheran Church has certain links with the state, and in Finland has retained certain features of the state church. The special position of a state church is clearly shown by certain features of our ecclesiastical legislation, such as the legal status of the Church; until 1995, the state’s obligation to maintain the diocesan chapters; until 2000, the President’s right to nominate bishops, many economic ties to the government, the right to levy church tax, the employment of chaplains (army, prison and for the blind and deaf), etc. In the true sense of the word the Evangelical Lutheran Church of Finland has not, however, been a state church since the Church Law of 1869 and the Constitution of 1919. The Finnish State is neutral in matters of religion, and the church is legally and administratively very independent in relation to the state.

In social debate the concept of a state church has often been given a negative ideological shade of meaning. It has been suggested that the majority church, because it is a state church and enjoys certain privileges, is a threat to genuine freedom of religion and the status of religious minorities. An alternative expression to state church that is often mentioned, and a softer one with regard to the social position of the Evangelical Lutheran Church of Finland, is *folk church*.<sup>13</sup> The Evangelical Lutheran Church of Finland has emphasized for decades that it is first and foremost a folk church. In fact the same status is

11. In this connection, for the sake of clarity, it should be explained that what is called the state church is a model of church-state relations in which church and state are almost identical. From the Nordic perspective the essential features of the state church system are: (1) *commitment by the state to a particular confession*, and (2) *a particular national church being an integral part of government*. The absolute state church system, where the state religion can be defined as a kind of official ideology, is represented by Norway, in whose constitution “the Evangelical Lutheran religion” is defined as the “public,” that is, official religion of the realm (“Statens offentlige Religion § 2a). However, citizens and communities have freedom of religion. The king must profess the Evangelical Lutheran religion and “uphold and protect it.” The king is also administrative head of the Church of Norway. In practice this leadership belongs to the government and the Ministry of Ecclesiastical Affairs. The organization of the Church is regulated by the Storting, the Norwegian Parliament.

12. In the Nordic countries the pace of development in religious and ecclesiastical policy has been the fastest in Sweden. In our western neighbour, freedom of religion was implemented much more slowly than in Finland, for in Sweden the law of freedom of religion was only enacted in 1951. In Sweden, however, at the end of the 1950s there commenced a study of ecclesio-political conditions, making preparations for change. This work has continued up to the present day. During this process it has, on the one hand, been attempted to “realize” complete separation of church and state and, on the other hand, the administrative independence of the church and its readiness for the possible separation has been increased. The latest stage in the Swedish church-state debate was spring 1994 with publication of the committee report *Staten och trossamfundet* (the state and the community of faith). From the beginning of the year 2000 these changes came into effect that meant the separation of church and state in Sweden.

13. The unusual English expression “folk church” is often used by Finnish theologians when they refer, in English, to Finland’ (Lutheran) national church, wishing to emphasize its nature as the church of the people, as opposed to a mere governmental body. This English concept has been derived from its Swedish and German equivalents (S. “folkkyrka”, G. “volkskirche” in Finnish. “kansankirkko”). In the Finnish language, the word “kansa” can stand for “people,” “nation,” and “folk.”

enjoyed in Finland by the Orthodox Church. *With the shift to folk church the traditional state church has been assigned to history.* However, the concepts of state church and folk church express different things. The concept of folk church is indefinite, from the legal point of view, because its legal basis can be organized in very different ways in different countries. To clarify, the concept of state church is mainly to do with ecclesiastical law, while the concept of folk church has more to do with sociology. The concept of folk church illustrates the historical significance of the the Evangelical Lutheran Church and the way in which this church understands its position and vision in relation to the people. The church is always a community within a country, and its members are citizens of that country. In planning its activities the Evangelical Lutheran Church of Finland has always emphasized the idea of a folk church which serves the whole people.<sup>14</sup>

Actually, only as recently as the 1990s did the human rights documents of the Council of Europe (CE) and the Organization for Security and Cooperation in Europe (CSCE, now OSCE) and European integration *genuinely force the Nordic churches to evaluate the organization of church-state relations on the basis of the principle of freedom of religion,*<sup>15</sup> albeit, from quite a new perspective.

On the one hand, in the 1990s church-state relations were evaluated in human rights documents primarily from the point of view of the religious freedom of the individual. Does the close relationship between church and state infringe the religious freedom of the individual – or to what extent does the privileged position of one or two churches in a country encroach upon the rights and freedom of other religious bodies? In this connection it needs to be emphasized that, for example, one of the eccentricities of the Finnish system is that two churches, the Lutheran and Orthodox, to this day occupy a

14. In addition to this idea, largely due to the ecumenical (bilateral) dialogues of recent decades – which have helped The Evangelical Lutheran Church to rediscover its roots – there has been a tendency to emphasize the historical continuity of Lutheranism. The Evangelical Lutheran Church of Finland considers that it represents not only the nations but also more widely the continuity of Lutheranism in Finland. It has never seen itself as a modern local alternative to Roman Catholicism but as the representative in Finland of the whole of western Christendom. Bishop of Helsinki *Eero Huovinen* aptly defines the identity of our Evangelical Lutheran Church as a “Lutheran folk church which lives between East and West and is deeply rooted in both early Christian tradition and the discoveries of the Lutheran Reformation.” *Lutheran World Information* 3/1996.

15. Finland is a party to several international human rights treaties which are of relevance for the protection of religious freedom, notably the European Convention of Human Rights, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, and the Convention on the Rights of the Child and the Convention for the Elimination of Discrimination against Women. As a rule, these treaties also form part of applicable domestic law as they have been incorporated into Finnish Law through a treaty-specific Act of Parliament.

In common with the other Nordic countries, Finland has adopted basically a dualistic model with regard to the relationship between international agreements and the country’s internal legislation. The principles laid down in the Constitution and the established practices arising from these oblige the Finnish Parliament both to approve international agreements that are binding upon Finland and to grant them force of law to the extent that they contain provisions that “are of a legislative nature.” If an agreement does not contain provisions that are of a legislative nature it may be brought into force simply by means of a statute. If, on the other hand, the discrepancy between the provisions of the agreement and the existing Finnish legislation is of a constitutional nature, it will need to be brought into force by means of a constitutional act of parliament passed with a two-thirds majority (Finnish Constitution § 95: 2). See closely Matti Pellonpää, *Euroopan Ihmisoikeussopimus*, 4th ed. (European Convention on Human Rights, Helsinki, 2005), 54.

The provisions of most treaties and other international obligations are brought into law in Finland in the form of “blanket laws” which state that they “shall come into force in the manner agreed upon.” The approval of such a blanket or hybrid law (and/or statute) implies “incorporation” of the agreement into the internal legislation of Finland, but in addition to this it is possible and quite common for specific alterations to be made to existing legislation in the same sphere, i.e. this incorporation is supplemented with “transformation.” If all the relevant legislation has been altered prior to approval of the international agreement, it is possible to incorporate the agreement by means of a blanket statute alone. It is nevertheless important in the case of human rights agreements, which have an immediate impact on the legal status of the individual, that these should always be incorporated by means of a law.

Once an agreement has been brought into force in the manner described above it is part of Finnish law and applicable in principle in the same manner as any other part of the legislative code. [Pellonpää at 54]

Finland has also subordinated itself to all existing international control mechanisms under the treaties in question above.

legal and economic position differing from other churches and religious communities. While other religious bodies are required to register on the basis of the law of freedom of religion, the status of the Lutheran and Orthodox churches is based on specific regulations. The formulation of church policy, as presented in the new Finnish Constitution 2000 (maintaining the *status quo* and thus support the relevant section § 76 concerning the Lutheran Church), does not, however, suggest that the state has adopted a more favorable attitude towards the Lutheran Church in particular. The judicial position of the Church does not reveal the profound nature of relationship between the state and the Church, not to mention the overall value attached to religious values in Finnish society.<sup>16</sup>

On the other hand, the whole discussion of church-state relations has altered in nature. The old-fashioned idea of “freedom from religion” and an ideological antithesis between church and state is losing ground, and similarly the antithesis between Christian values and the values of society. They have been replaced by a positive interpretation of freedom of religion that has been in high profile in international documents on the subject of freedom of religion since the Second World War. *Citizens have the right to religion and its communal practice* and not only the right to be unattached to anything to do with religion.

Relations between the State and the Evangelical Lutheran Church of Finland went through a degree of change during the years 1993 to 2000. In the field of politics as well as in the Church, there is now greater independence of the Church on the one hand and the State on the other. For this reason, in 1993 Lutheran Church law was divided into two parts: a Church Code passed by the State regulates the relations between Church and State, while a Church Ordinance passed by the Church regulates the Church itself – its doctrines as well as its life. The latest stage in the Finnish Church Code -work represents two appointed committees: *The Church Act 2010 Committee*<sup>17</sup> (2005) and *The Codification of Church Law Committee*<sup>18</sup> (2007).

During the years 1997 to 2000, new relationships between State, bishops and cathedral chapters have been put into place. This has brought to an end the old tradition dating from the sixteenth century. The status of bishops has been transformed from state official to church servant. As a sign of this, elected bishops are not now nominated by the Head of State, the President of Finland. Instead, bishops are elected and receive a formal letter of appointment to the bishopric from the cathedral chapter. In addition, the stipends of bishops and the funding of cathedral chapters are now the responsibility of the Church, not the State.

The new Constitution of Finland was passed in 1999. In this Constitution, the freedom of the individual has been emphasized. Because of this, the Law on Religious Freedom (1922) has been updated; a new Law on Religious Freedom was passed in 2003. This Act deals with various issues relating to state and church. *The new Law will make all Christian churches and other religious communities more equal in society. Also the dominant status of the Evangelical Lutheran Church of Finland has decreased.* A sign of this is that exemption from Lutheran religious education no longer requires a request by the family of pupils who are not members of the Evangelical Lutheran Church of Finland. Instead they are automatically exempt unless the family wishes to sign up for education in the Lutheran religion. In addition, teachers belonging to other religions are now permitted to teach Lutheran religious education. Another sign of the equality of all Christian churches and other religious communities is that seceding from a church or religious community has been made easier.

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16. For the position of churches in the Finnish constitution, see more closely Juha Seppo, “Church and State in Finland 1997,” *European Journal for Church and State Research [Revue Européenne des Relations Églises-État]* 5 (1998): 125-127.

17. See Appendix 1.

18. See Appendix 2.

#### D. *The EU Strategies of the Churches and Religious Communities of Finland*

EU integration is still such a new matter in Finland that most churches and registered religious communities of Finland have so far not produced a detailed EU strategy, nor taken a stance on the ideological goals that the churches want the EU to represent. However, a concrete demonstration of the present open ecumenical atmosphere was a historic incident when representatives of the churches in Finland (Lutheran, Orthodox and Roman Catholic, Finnish Free Church Council and the Finnish Ecumenical Council) together approached the President of Finland at the end of 1995 and suggested that the Finnish delegates take more religio-political initiative at the intergovernmental conference in 1996. During their visit the representatives of the Finnish churches expressed their entire agreement with the efforts of the German Evangelical Church (EKD) and German Catholic Episcopal Conference to have a statement on religious communities appended to the founding document of the European Union. This initiative was repeated a year later at the intergovernmental conference in Amsterdam in June 1997, when it was decided to include in the agreement of the European Union (Maastricht II) a declaration (not article) on the status of churches and religious communities (present Article 17, in The Lisbon Treaty).

The first step forward to direction of detailed EU strategy was taken (and suggested by archbishop Jukka Paarma) on 30 May 2001, when *The Advisory Board on EU Affairs* was established under the Church Board. Its task was to create an EU strategy for Evangelical-Lutheran Church of Finland and to seek to monitor the effects of activities of EU institutions on ecclesiastical life. The Consultative Committee – which *includes a strong academic representation* – functions: (1) as an advisory expert organ in matters related to the EU, (2) participates in the discussion on EU policy towards the Church, (3) related to this, makes proposals to the Church Board, and (4) promotes cooperation with Church and State and local authority organs responsible for EU matters as well as with non-governmental organizations. Related to this, in 2002, the Evangelical Lutheran Church of Finland created its own EU strategy which took a stand on what kinds of ideological goals the Church would want the EU to represent.<sup>19</sup>

The second milestone, producing a detailed EU strategy for churches, was carried out when Finland held the Presidency of the European Union from 1 July to 31 December 2006. In June, on the eve of the start of the Finnish EU-Presidency, Finnish Churches published a brief document *Finnish Churches and the Finnish EU-Presidency 2006*, which was drafted in cooperation with the Finnish Ecumenical Council. It was handed over to Prime Minister *Matti Vanhanen* by representatives of the Church Council and to Foreign Minister *Erkki Tuomioja* at the traditional CEC/COMECE Presidency Meeting in the end of June.

The common objective of the churches for the Finnish EU-Presidency was to generally present their perspectives and to tell more widely about their work on both a national, ecumenical and international level in issues that are of importance for the churches.

The churches wished to support the public administration in issues related to the Presidency. Here Finnish churches' work in EU affairs has a strong ecumenical dimension. According to the ecumenical declaration *Charta Oecumenica*, signed 2001, the churches support the integration of the European continent and on the basis of the Christian faith work towards a humane, socially conscious Europe in which human rights and the basic values of peace, justice, freedom, tolerance, participation and solidarity

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19. Document in English see closely Matti Kotiranta, "The Influence of the 18<sup>th</sup> and 19<sup>th</sup> Centuries' Theory Formation in Ecclesiastical Jurisprudence on the Finnish Ecclesiastical Legislation – The Transition from Caroline Church Statutes to Schauman's Church Act," in *The Teaching and Study of Church-State Relations in the Nordic Countries, in the U.K. and Ireland* (Church-State Studies in the European Union. Proceedings of the meeting, Oviedo, November 27-30, 2003, Actes du Colloque, Oviedo, 27-30 Novembre 2003) (Leuven: Peeters, 2005), 148-152.



prevail.<sup>20</sup>

The aim of Finnish churches was also a regular dialogue especially with the Government Secretariat of EU Affairs in issues which are of importance for the Churches and in which they can give added value to the general debate.

In the document *Finnish Churches and the Finnish EU-Presidency 2006*, the Churches emphasized certain key issues, which they felt ought to be prioritized during the Finnish EU-Presidency.

These key issues were:

- \* Strengthening the value dimension of the Union and keeping the discussion about the future of the Union alive.

- \* The need for inter-religious dialogue based on mutual tolerance and respect and knowledge of one's own identity and conviction.

- \* Enhancing the social and environmental dimension of the Union, combating human trafficking and promoting a consequent and human immigration and refugee policy.<sup>21</sup>

The latest stage in the detailed EU strategies represents the document *The Church and the EU – active participation and commitment to common values* (2009), which perceives aims and priorities of the Evangelical-Lutheran Church of Finland in the field of EU affairs.<sup>22</sup> One of the priorities of Church's work in the field of EU affairs is to take part in the debate about the value dimension of the Union (as was already in 2002 document) and its strengthening. The 2009 document emphasizes the importance that Treaty of Lisbon stipulates respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights – including the rights of persons belonging to minorities – as the founding values of the European Union. According to the Treaty, the Member States are characterized by pluralism, non-discrimination, tolerance, justice, solidarity and equality between women and men. According to document the Evangelical-Lutheran Church is strongly committed to these jointly defined values. It wishes to enhance the value dimension within all policy areas and affirms that these values need to be implemented in practice.

The Evangelical-Lutheran Church is also of the opinion that the Lisbon Treaty strengthens the character of the European Union as a community of values, promotes the monitoring and enforcement of human rights and supports the development of the Union's social dimension. "In addition, the Treaty creates better possibilities for participatory democracy. For the churches this culminates in the Union's commitment to maintain an open, transparent and regular dialogue with them (Article 17). The Lisbon Treaty confirms that Church and State relations are to be defined on the national level also in the future. The Treaty also recognizes the specific contribution of churches."<sup>23</sup>

We can only guess what the relationship between the Churches of Finland and the (federal) State will ultimately be like in integrating Europe in the twenty-first century. *If some conclusions can be drawn from Finnish debate in recent years, the most significant is undoubtedly the change in the general atmosphere of the debate, which is seen as openness to deal with church-state relations in a new way.*

Traditional considerations, implementation of freedom of religion (positive freedom of religion) and the religious neutrality of the State, are to be interpreted in a way appropriate to the civil society of a modern democratic state, when it is genuinely felt that the State, the Church and religious communities must work together because it is ultimately a question of the same citizens.

20. *Finnish Churches and the Finnish EU-Presidency 2006*, 1.

21. *Id.* at 2–4.

22. See [http://evl.fi/EVLen.nsf/Documents/79D92BD6D45C541CC22575CA0038BEA7/\\$file/ATTF8EBK.pdf](http://evl.fi/EVLen.nsf/Documents/79D92BD6D45C541CC22575CA0038BEA7/$file/ATTF8EBK.pdf).

23. *The Church and the EU – active participation and commitment to common values* (2009), 6.

## III. CONSTITUTIONAL CONTEXT

A. *The Current Constitutional Provisions and Principles Governing the Relations between State and Religion*<sup>24</sup>

The fundamental freedoms recognized by the EU are to a great extent consistent with those laid down in the constitutions of its member states and in the provisions of international human rights agreements.<sup>25</sup> The relevant section of the Finnish Constitution of 2000 dealing with Freedom of religion and conscience, Section 11, mirrors the provisions of § 9 of the European Convention to a considerable extent, stating that

*(1) Everyone has freedom of religion and conscience, implying the right to profess and practice a religion, the right to express one's convictions and the right to be a member of or decline to be a member of a religious community. (2) No one shall be under any obligation to participate in the practice of a religion against his or her conscience.*<sup>26</sup>

Supplementing Section 11, the general clause on equality and non-discrimination in Section 6 includes a prohibition against discrimination on account of religion, conviction or opinion.

In the course of the total reform of the Constitution, four separate instruments, each with constitutional status, were replaced by a single Constitution. *Partly as a result of this structural change but partly also reflecting changes in society, the constitutional recognition of the special status of the Lutheran Church is less prominent in the framework of the Constitution than formerly.* Nevertheless, both the traditional special status and the constitutionally protected autonomy of Lutheran Church are still reflected in Section 76 of the new Constitution, which reads:

Section 76 – The Church Act

*Provisions on the Organization and administration of the Evangelical Lutheran Church are laid down in the Church Act.*

The legislative procedure for the enactment of the Church Act<sup>27</sup> (or Church Code, which is the “Constitution” of the Lutheran Church) and the right to submit legislative proposals relating to the Church Act are governed by specific provisions in that Act.

According to Chapter 2, Section 2, only the General Assembly of the Lutheran Church may propose amendments to the Church Act, and *the role of the President and of Parliament is limited to either approval or disapproval of proposals submitted by the Assembly.* As in the old constitutional framework, *this clause in the Constitution includes a restriction on the sovereignty of the legislator,* to the effect that the procedure for amendment of the Church Act is prescribed by the Church Act itself.

B. *Freedom of Religion and Conscience under the Finnish Constitution*

The committee responsible for preparing the new law on the freedom of religion

24. For a brief outline of the political history of Finland regarding the relations between State and religion [from the Reformation in Sweden-Finland in the 1520s to the time of the Finnish independence], see more closely Markku Heikkilä and Jyri Knuutila, “State and Church in Finland,” in *State and Church in the European Union*, 2nd ed., ed. Gerhard Robbers (Baden-Baden: Nomos Verlagsgesellschaft, 2005), 520-523; Matti Kotiranta, “Kirche, Staat und Religionsfreiheit in Finland,” *Zeitschrift für Evangelisches Kirchenrecht* 45 (2000): 240-247 [For English translation, see Appendix 3].

25. Although, admittedly, there are some differences between the EU legislation and other systems in the development of the civil rights dimension.

26. The corresponding § 9 of the European Convention on Human Rights runs:

1. Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief and freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance.

2. Freedom to manifest one's religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others.

27. Act 1054 of 1993.

which came into force on 1 August 2003 (453/2003) discussed in its report the question of freedom of religion as a fundamental civil right and the freedom of religion and conscience as laid down in § 11 of the Finnish Constitution, and concluded that this latter provision should form the basis for all legislation in Finland that concerns freedom of religion and conscience. If the issue of freedom of religion and conscience is linked to the *principle of equality before the law*, enshrined in § 6 of the Constitution, as the committee proposes, the latter can be interpreted as implying an obligation on the public authorities to treat all religious and philosophical associations on an equal footing. Within this ancient category in the genealogy of fundamental rights, the committee's interpretation places particular weight not only on individual religious freedom but also on freedom *as a right pertaining to religious groups*. The external manifestations of the classic fundamental rights of the individual in this respect are specifically expressed in the Constitution, § 11 of which states that every person shall enjoy freedom of religion and conscience, which includes *the right to profess and practice a religion, the right to express one's convictions and the right to be a member of or decline to be a member of a religious community. No one shall be under any obligation to participate in the practice of a religion against his or her conscience.*

Nothing new was actually added in the reform of 1995 to the fundamental rights expressed in the old Constitution, but rather it was possible in the course of legislation to arrive at the same conclusions as on the basis of the earlier provisions. The freedom to pursue a cult was also regarded as belonging to the concept of religious freedom, and the work of preparing a new law on the freedom of religion placed emphasis on the system of human rights as a whole, e.g. in that it attached great importance to the other fundamental rights provided for in the Constitution, e.g. freedom of expression (§ 12), freedom of assembly and association (§ 13) and the right of exemption from military service on grounds of conscience (§ 127), in the practical implementation of the freedom of religion and conviction.

Given the more precise characterization of the “negative dimensions of religious freedom” in the last sentence of § 11 clause 2 of the Finnish Constitution, this sentence may be said to imply a fundamental freedom in view of the position of the majority church under public law, in that it states that no one is obliged to engage in the religious observances against his own convictions. This is in fact the same issue that is raised in the provisions for the range of application of the law on equality, where it is stated that “this law shall not apply to activities connected with the practice of religion within the Evangelical-Lutheran Church.”<sup>28</sup>

The new law on religious freedom sets out as before from recognition of the freedom of religion and conscience guaranteed to all under the constitution, and its purpose remains to create suitable conditions for individuals and communities to execute their right to religious freedom, but at the same time a modern interpretation of religious freedom *specifically as a positive right* has gradually appeared in Finland through the approval of international agreements. As general justifications for this, the fundamental human right of freedom of religion and conscience as laid down in the law on religious freedom and certain other related laws has been seen in the context of the prohibition of discrimination on the grounds of religion or conviction providing for in § 6, clause 2, of the constitution to imply among other things an obligation on the public authorities to ensure impartial treatment for all religious communities and ideological persuasions.

In accordance with this line of argument, *the acceptability of the “state church” system is dependent on the state approving other religious beliefs as well and honoring the right of individuals to decide whether or not they wish to belong to a state church.*

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28. According to Niklas Bruun and Pirkko K. Koskinen, *Tasa-arvolaki [The Law of Equality]*, 3rd ed. (Helsinki: Lakimiesliiton Kustannus, 1997), 39: “This law should not be taken as applying to the Evangelical-Lutheran Church, for legislative reasons at least, since it is clear from § 31.2 of the Parliament Act and § 15.2 of the Ecclesiastical Law that ‘the right to proposed laws that concern the Church’s internal affairs rests exclusively with the Church Assembly.’”

IV. LEGAL CONTEXT - LEGAL STATUS OF RELIGIOUS BODIES  
ACCORDING TO THE NEW FREEDOM OF RELIGION ACT

When studying churches and religious bodies as legal persons in Finland the new Freedom of Religion Act approved by Parliament on February 11<sup>th</sup>, 2003 (HE 170/2002 vp) is its basis in administrative law. Although the purpose of the Freedom of Religion Act is primarily to ensure the freedom of religion enshrined in the constitution (HE 731/1999), the law contains provisions that concern membership of religious associations, the procedure when joining or leaving a religious association, the oath and affirmation, and application of the law of assembly to the public practice of religion.<sup>29</sup> To put it more precisely, the Freedom of Religion Act enacts in detail and exhaustively the legal status and foundation, rights and obligations of churches and registered religious associations.

According to subsection 2 of the Freedom of Religion Act, the reference to religious associations in the law indicates the Evangelical Lutheran Church, the Orthodox Church and religious associations registered in accordance with subsection 2. Religious activities can also be practiced in the form of an ideological association or entirely without organizing in the form of a legal person. Under the new Freedom of Religion Act the Evangelical Lutheran and Orthodox Churches are also religious associations in the sense intended in the act, concerning associations for which additional special ecclesiastical laws are enacted. However, as concerns registered religious associations, the procedure is that they themselves accept their order of association, and then it must be approved by the authorities, i.e. the National Patent and Register Board, provided it is not illegal.

In the Finnish context three different types of legal person can be distinguished in religious associations: (1) The status of the Evangelical Lutheran Church under public law is ensured in the constitution. (2) In the new constitution there is no direct provision for the Finnish Orthodox Church to regulate its position in society.

In this respect the legislative status of the Orthodox Church differs from that of the Lutheran Church. The Orthodox Church is the subject of the new law concerning the Orthodox Church, 2007 (HE 985/2006). (3) In Finland a registered religious association is, however, a special type of community. Its foundation and legal status are enacted in subsection 2 of the Freedom of Religion Act. Such a religious body gains the status of a legal person, that is, it can acquire property, enter into commitments and be a litigant in court and with other authorities once it is entered in the register of religious associations. In this respect the regulation observes the principle otherwise observed in Finnish community law, whereby the community achieves legal capacity once it is entered in the register of associations kept by the authorities, in this case the National Patent and Register Board.<sup>30</sup> Next I shall briefly examine each type of religious body.

*A. The Evangelical Lutheran Church as a Legal Person*

Differing from the general European ecclesiastical context, the status of the Evangelical Lutheran Church of Finland under public law is still ensured in the new constitution that came into force on 1 March 2000 (731/1999).<sup>31</sup> This strong constitutional status is derived historically from the fact that the legal system of the Evangelical Lutheran Church of Finland, based on the constitution, is older than the 1917 constitution of the Republic of Finland, because Schauman's Church Act (1869) was enacted by the Finnish Diet during the period of Finnish autonomy, the Swedish constitution of 1772 being positive law. Because the church legal system is based on the constitutional principle in existence before the first constitution of the Republic of Finland, this has given the continuity of the system a strong position in later constitutional reforms.

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29. The Act also includes some changes to regulations concerning religious and moral education in basic education and in high schools.

30. In the Finnish system all legal persons – associations, trusts, corporations, limited partnership companies and various bodies – need ratification by the state authorities in order to gain legal status and legal capacity.

31. See <http://www.eduskunta.fi>. = In English/The Constitution of Finland.

The main hallmarks of the status of the Evangelical Lutheran Church of Finland under public law are considered the special mention of Church Law in the constitution (PL § 76).<sup>32</sup> From the point of view of the Evangelical Lutheran Church, the most important is the order of enactment of Church Law (CL 2:2 subsection 1), which includes the exclusive initiative of the General Synod and non-interference by government legislative bodies in the content of ecclesiastical bills introduced by the General Synod. In practice this means that the Church's own organ, the General Synod, has power to introduce bills enacting and changing Church Law. Parliament, which finally enacts the law, only has the right to approve or reject an ecclesiastical bill.<sup>33</sup>

The Evangelical Lutheran Church of Finland and its parishes is under public law a self-administered body like the municipalities. Legislatively, church administration is mainly organized with Church Law provisions, but provisions concerning church administration are also contained in other ecclesiastical laws, in general administrative laws and in ecclesiastical statutes with the authority of Church Law.

### *B. The Finnish Orthodox Church as a Legal Person*

When comparing the legislative status of the Orthodox Church with the Lutheran Church, one must recognize that the Orthodox Church was affected until 2006 by the Orthodox Church Act (521/1969) and its supplementary statute (179/1970) and in addition the Freedom of Religion Act, and other general administrative legislation. Problems of application between the Orthodox Church Act and Statute and by other regulations in society hardly ever occur, because the Orthodox Church Act was government-enacted law and its content when enacted more clearly as a skeleton law was already adapted to general legislation.<sup>34</sup> According to statute 171 (521/1969) concerning the Church, the task of the General Synod was to introduce bills to the government on laws and statutes concerning the Church.

Thus, the initiative for new regulations most often came from the Orthodox Synod. The government was not, however, bound to the content of the bill, but the provisions concerning the Orthodox Church could be given in the form desired by the government. Thus the Orthodox Church could not influence the enacting of laws concerning itself with a similar bill procedure as in the case of the (Evangelical Lutheran) Church Lawsystem. Legislation concerning the Orthodox Church usually arises in the process of preparation and enactment. Then it remains at the discretion of the government as to whether during the preparation of the law there was willingness to listen to the Orthodox Church.

The new law concerning the Orthodox Church (to the extent of subsection 125) came into force at the beginning of 2007. In the new law the Orthodox Church remained basically as before with special status under public law. According to the bill, the Orthodox Church adopts a church constitution which provides more precise stipulations

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32. PL 76 reads as follows: "In church law is enacted the constitution and administration of the Evangelical Lutheran Church. As concerns the order of enactment of church law and the initiative concerning church law, that which is in force is laid down in the aforementioned law separately." Subsection 76 of the present constitution corresponds to the special mention of church law in the old constitution before 2000 (Const. 83 subsection 1 § 1 and Parliament Act (PA 31 subsection 2 § 2). The new constitution does not contain special provisions corresponding to constitution 83 subsections 2 and 3, which apply to other religious associations than the Evangelical Lutheran Church. It was considered unnecessary to include the regulation concerning the right to found new associations in the constitution, because regulation 13 of the constitution concerning freedom of association also applies to the founding of religious associations (PeVM [Report of the Constitution Committee] 10/1998 vp [Parliament]).

33. When the 1917 constitution was in preparation the older church law principle was accepted of the exclusive initiative of the General Synod, although it remained in formal conflict with the constitution and parliamentary order.

34. It is interesting to note that in this the legislative arrangement of the Finnish Orthodox Church is in some sense reminiscent of the arrangement adopted in the Church of Sweden in the sense that after the reform of the Church of Sweden at the beginning of 2000 (whereby State and Church were separated and the Church gained the status of an independent legal person) it is affected, in addition to legislation on other faiths, only by a brief skeleton law.

for church activities and administration. The church constitution is given by the General Synod. The status of the central and diocesan administration of the Orthodox Church is altered more independent of the State so that its expenses are no longer paid directly from state funds. The Church's economic activities are ensured, however, by a corresponding amount of state aid. Some internal affairs and administrative matters which were previously the responsibility of the Ministry of Education are transferred to the Church's own organs. Several changes are carried through the regulations concerning church and parish administration. The basic structure of church administration remains, however, largely as before. The Orthodox Church and parishes shift to one type of employment relationship so that the civil servants of the Central Church Board and parish clergy shift to a contract relationship. The terms of the personnel employment relationship are negotiated with a collective bargaining agreement.

In church administration a procedure of claim for rectification is adopted in which the obligatory preliminary stage of a complaint is to be a claim for rectification to the Central Church Board. Application for alteration to the decision taken by the Central Church Board can be made by complaining to administrative law.

### C. Registered Religious Associations as Legal Persons

In Finland a registered religious association has its own special type.<sup>35</sup> A registered religious association is a type of independent special legal subject, like a registered association, corporation, co-operative or trust. In subsection 2 (7–28) of the Freedom of Religion Act is created a legislative framework for the founding and activities of registered religious associations.

Subsection 7 § 1 lays down the purpose of a registered religious association, which distinguishes registered religious associations from the other aforementioned legal subjects. According to the subsection, "the purpose of a registered religious association is to organize and support individual, corporate and public activities pertaining to religious profession and religious observance, based on confession of faith, Scriptures or other individualized established sacred activities." The bases of the activities of a registered religious association should thus be individualized, established and regarded as sacred by the community.

A registered religious body may be founded and registered as a religious association only if its purpose is in accordance with subsection 7 § 1. A body founded for other purposes, even though it may include religious activities, can be registered, for example, as an association under the law of associations. The right to profess and practice religion or the right to express one's convictions *per se* are not dependent on whether the body in question is registered as a religious association. For some religious bodies the requirement of a basis of faith has been an obstacle to registering as a religious association under the Freedom of Religion Act, because a basis of faith is considered to be contrary to the religious principles of the organization. Not in all religious bodies are activities based on a confession of faith nor is there always a desire to formulate a basis of faith beyond the Scriptures. The purpose of a registered religious association does not, however, require that activities be based on a religious confession. It suffices that the bases of established religious activities can otherwise be sufficiently individualized. Confession, however, is mentioned in subsection 1 as one kind of basis of established activity.

Registration as a religious association does affect, however, among other things, the right to receive religious education.<sup>36</sup> In addition, registration has an effect on taxation,

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35. Historically the term "registered religious association" goes back to the 1923 Freedom of Religion Act, which defined a specific type of legal person or "religious association." By nature it is a community under civil law and a legal person under civil law, with a great number of features of an ideological association.

36. The organizer of instruction also has the responsibility to arrange *confessional* religious education for other than pupils of the Evangelical Lutheran or Orthodox Churches. This obligation arises if the guardians of at least three pupils of the same faith who are exempted from religious education demand it. Religious education must on the aforementioned terms be arranged in accordance with the basis of faith of a religious association

penal protection and the possibility of applying for the right to solemnize matrimony. From this point of view, assessment of the purpose and types of activity of the organization are important for the authorities (the National Patent and Register Board).<sup>37</sup>

Some bodies engaging in religious activities have not organized as registered religious associations but as ideological associations, for example. The largest group are Pentecostal assemblies, which in 1999 had approximately 49,000 baptized members, and if children are included a total of approximately 55,000 members. At present the Pentecostal movement is, however, organizing as religious bodies. From the beginning of 2002 the Ministry of Education received notification concerning the founding of two Pentecostal religious associations.<sup>38</sup>

If the religious association (or any other body) is not registered, it cannot receive competent legal person status nor gain rights and obligations. Persons acting on behalf of such an unregistered body are responsible for all their commitments personally.

There are no regional differences in the legal status of religious bodies as far as registration is concerned, because in Finland there is not a federal system.

## V. THE STATE AND RELIGIOUS AUTONOMY

The Finnish State is neither nondenominational nor denominational. However, there are close institutional and legislative links between the State and the Lutheran Church, and the public school system which is run primarily by the municipalities and partly financed by the State, makes nondenominational religious instruction on the majority religion a part of the curriculum. Additionally, the Orthodox Church has a special institutional status, while the Constitution and secular laws secure the freedom of religion and the rights of religious and non-religious minorities.

Members of minority religions and persons not belonging to any religious community have a constitutional right to be exempt from participation in religion. Within the school system this means separate education in the minority religion concerned, or education on ethics, or total exemption.<sup>39</sup>

The Finnish State is neutral in matters of religion, and the Lutheran Church is legally and administratively very independent in relation to the State. However, the Church Act of the Lutheran Church is an Act of Parliament despite the fact that neither the President nor Parliament is allowed to change the wording agreed by the General Assembly of the Church. *The Church Act includes provisions with a clear denominational character.*<sup>40</sup>

## VI. RELIGION AND AUTONOMY OF THE STATE

In Finland any particular religion is not given some power to control other religious communities under the State law.

*registered* under subsection 13 of the Freedom of Religion Act. Confessional religious education need not, however, be arranged on the basis of the teachings of other registered or unregistered religious associations. A pupil from a religious association for whom his or her own religious education is not arranged, may be taught moral education at the request of the guardian.

37. On notification of foundation to the register of religious associations, see in more detail in the appended table page 2.

38. Registration of a religious association was decided before the new Freedom of Religion Act was approved by the Ministry of Education.

39. The formulation used in the relevant laws is neutral: Based on the law of religious freedom (453/2003) and the current school laws, every student in comprehensive and upper comprehensive schools has a right to religious teaching according to his or her own confession. The communal school system is responsible for its Organization and funding. Students who do not belong to a church or religious community participate in world view studies (ethics). In the matriculation examination, it is possible to take either a test of one's own religion or of world view studies. See closer Section VIII, Religious Education of the Youth. About Historical Overview of the Finnish education system see closer <http://www.oph.fi/english/education/overview>.

40. See Section IV, C, above, The Evangelical Lutheran Church as a Legal Person, which includes a short formulation of the confession of the Lutheran Church.

Actually, the Freedom of Religion Act (2003) enacts in detail and exhaustively the legal status and foundation, rights and obligations of churches and registered religious associations. See above more closely Sections III and IV.

VII. STATE FINANCIAL SUPPORT FOR RELIGION

Approximately 81 percent of the Finnish population belongs to the Evangelical Lutheran Church, approx. 1.1 percent to the Orthodox Church and approximately 1.1 percent to registered religious associations. Membership of registered religious associations can be seen in more detail in the appended table.

The most important source of income of Evangelical Lutheran and Orthodox parishes is church tax, which is levied from parishioners on the basis of taxable income in municipal tax. The levy of tax is carried out by the state tax authorities, but parishes pay a proportion of the expenses involved.

In addition, parishes receive a share of the proceeds of corporation tax. In connection with the reform of corporation taxation that came into force at the beginning of 1993 parishes' share of corporation tax was replaced by the previous obligation of associations to pay church tax. Behind the obligation of associations to pay church tax was the fact that the Church did not from the outset make a distinction in taxation between natural and legal persons. Later the obligation of associations to pay church tax and parishes' share of corporation tax began to be justified by the fact that parishes provide a wide variety of social services. As far as burials are concerned, parishes' share of corporation tax is linked to the responsibility of Evangelical Lutheran parishes for the maintenance of public cemeteries, also in the preliminary work of the new Cemeteries Act.

Parishes' present share of the proceeds of corporation tax has been altered several times during the time that the Income Tax Act has been in force. At present parishes' share is 1.94 percent. The adjoined table sets out the amount of corporation tax income received by parishes. Parishes' share is divided between Evangelical Lutheran and Orthodox parishes so that Evangelical Lutheran parishes receive 99.02 percent and Orthodox parishes 0.08 percent.

**Parishes' corporation tax income by payment, mill. euros<sup>41</sup>**

(source: VM, corrected to 2003 value on the basis of the cost of living index)

Year	1993	1994	1995	1996	1997	1998	1999	2000	2001	2002	2003	
<i>Average corporation tax income</i>	39	59	85	106	149	144	130	127	93	89	89	101

The expenditure of the central and diocesan administration of the Orthodox Church is paid principally from state funds. In addition, the government has supported some Orthodox parishes and institutions with state aid. The 2005 budget of the Central Church Board assigns to activities 1.787 million euros and, to the aforementioned aid, 152,000 euros.

On 9 May 2005 the Ministry of Education's "State aid to registered religious associations" working group delivered its report on the extension of state financial aid to include not only the Evangelical Lutheran and Orthodox Churches but also registered religious associations. The working group introduced a proposal to put the system into practice. From the beginning of 2008 the registered religious associations have received financial aid from government to support their activities. Associations had earlier funded their activities principally through donations, membership fees and their own fund-raising activities. According to the State Aid Act, state aid is received by registered religious

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41. After the year 2003, there is no Table available where parishes' corporation tax income would be corrected on the basis of the cost living index. Source: VM, corrected to the 2003 value on the basis of the cost of living index.



associations on a numerical basis according to the number of members. State aid is not to be granted to associations with fewer than one hundred members and not to associations that in fact do not have any or have very few activities. The goal has been to provide clear criteria concerning aid so that as little assessment-based discretion as possible is required.

The state aid to registered religious associations does not require special regulation. The amount of state aid is decided in connection with the annual government budget. The starting-point is the amount of corporation tax income received by Evangelical Lutheran parishes with burial expenses deducted. Then the amount of state aid is approximately EUR 3.39 (2013) per member of the association.

### VIII. CIVIL LEGAL EFFECTS ON RELIGIOUS ACTS

In Finland secular law recognizes legal effects to acts performed according to religious law. Matrimonial and family law are worth mentioning here.

On the subject of matrimonial and family law,<sup>42</sup> the interests of Church and society have always been widely disparate in Finnish history. Only under Swedish rule did the Finnish Church obtain the right to conduct marriages for its members (with effect under secular law as constituting a marriage) by the Swedish Law of 1734. Because of the close connection between the kingdom and the church, the church wedding became in practice the only official form of marriage. This situation continued under Russian rule until the beginning of the twentieth century. Orthodox marriage was seen as an exception (the Orthodox Church was also granted an official right to perform marriages).

After the independence of Finland in 1917 the register office wedding became an alternative to the church wedding through the Laws on Civil Marriage of 1917, on the Freedom of Religion of 1922 and on Marriage of 1929. The State also granted several church and religious communities, which had been given equal standing by the Law on the Freedom of Religion, the right to conduct marriages for their adherents. According to these laws, marriage by a church or religious community represents a more natural form of marriage, whereas civil marriage was an alternative for certain special cases. These are where the bride and bridegroom are not members of a church or religious community; bride, bridegroom, or both belong to a religious community that does not have the right to conduct the marriages of its members; or bride and bridegroom simply prefer to have a register office wedding. In addition to this, the various churches and religious communities have their own preconditions for church marriages.

In the twentieth century, marriage by the Lutheran Church, the largest religious community with the right of marriage, was the most popular form of marriage. Every member of a religious community who has had a civil wedding may if he or she so desires obtain a church blessing on the marriage. A bride and bridegroom belonging to two different communities are married (constituting the legal marriage) in the Church in which the banns have been called, then the other Church – for instance the Roman Catholic Church which regards marriage as a sacrament – blesses the marriage according to its own practice.

The Law on Marriage of 1929 also governs the preconditions of marriage (e.g. capacity to marry, the banns), the legal position of family members, and divorce, which has been possible in Finland since the end of the sixteenth century. These rules clearly reflect a Christian point of view. In spite of the changes in matrimonial law introduced in the twentieth century (the last important amendment being made in 1987) the basic principles have remained the same throughout the process of social development. All the amendments represent a retreat from traditional Christian concepts of marriage and family in favor of new concepts in society especially in the last decades of the twentieth century, for instance, in the equality of man and woman and a more generous definition of the term

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42. The section, "Matrimonial and Family Law," written by Jyrki Knuutila, appears in the chapter by Matti Heikkilä and Jyri Knuutila, "Church and State in Finland," *supra* n. 24 at 530-532.

“family.”

Matrimonial and Family Law was the subject of lively discussion at the turn of the twenty-first century on two counts, both touching on relations between State and church.

Because cohabitation has become widespread, many new problems have become apparent. For example, cohabiting partners do not have the same right to inherit as do married partners. A working party has been set up by the Finnish Ministry of Justice to consider how the inheritance of cohabiting partners who are widowed should be remedied. When the same legal right to inherit is given to cohabiting and married partners, society will be seen and understood to consider marriage and cohabitation as equal. This is not in accordance with the Lutheran doctrine of marriage: the Evangelical Lutheran Church of Finland does not, for example, sanction clergy cohabitation.

Cohabitation of persons of the same sex was agreed by the Finnish Parliament in 2001 to have the same legal status as marriage. In accordance with this law, persons of the same sex can formalize the relationship by contracting a civil marriage. This has given rise to much discussion especially in the Evangelical Lutheran Church of Finland as to the extent to which the Church can approve of this kind of partnership. Some bishops, pastors and laypersons would like to bless such a partnership. On other hand, some bishops, pastors and laypersons would deny this kind of blessing because they do not approve of homosexuality and homosexual partnerships at all.

#### IX. RELIGIOUS EDUCATION OF THE YOUTH

The communal system of comprehensive schools carries the main responsibility for providing compulsory education in Finland. Compared with the total number of schools, the proportion of licensed private schools is small. The English school in Helsinki is a Catholic foundation. Licenses have also been granted for a few comprehensive schools which are based on religious confessions.

According to the current law, every child under school-age has a right to day care arranged by the municipality. Religious and ethical teaching is a statutory part of the day care. In order to enable the participation of as many children as possible, religious education is broadly Christian in scope. As the variety of children's nationalities and cultures increases, there are more and more children in day care whose religious and cultural background differs from the Finnish tradition. This creates further challenges for religious education in day care.

Based on the law of religious freedom (453/2003) and the current school laws, every student in comprehensive and upper comprehensive schools has a right to religious teaching according to his or her own confession. The communal school system is responsible for its Organization and funding. Students who do not belong to a church or religious community participate in world view studies (ethics). In the matriculation examination, it is possible to take either a test of one's own religion or of world view studies. The increasing number of the students representing different cultures has created a need to train teachers for Muslim religious education.

The introduction of a new law on religious freedom in Finland in 2003 meant above all the removal of certain restrictions, which has so far ensured that no cases of infringements of the First Supplementary Protocol to the European Convention on Human Rights (§ 2)<sup>43</sup> with respect to education in accordance with one's religion and convictions have yet been brought before the Supreme Court. The new law differs in many respects from its predecessor, passed in 1922.<sup>44</sup>

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43. Article 2 provides for the right not to be denied an education and the right for parents to have their children educated in accordance with their religious and other views.

44. It is very similar in structure, however, being divided into four main sections, the first containing provisions of a general nature, mostly connected with the individual's freedom of religion and the use to be made of it, the second dealing with registered religious communities, their purpose, foundation procedures and forms and conditions of activity, the third containing regulations for application of the law on public assembly to the practice of religion and setting out sanctions for infringements of the law on requiring communication of

The new law and the consequent changes to the compulsory education law and the law on upper secondary schools<sup>45</sup> mean a considerable strengthening of the position of the teaching of religion in schools and a clarification of its nature and purposes. This is very clearly reflected not only in the laws themselves but also in the statement issued by the Parliamentary Education Committee and the report of the Constitutional Committee. It may be concluded from these and from the discussions held in Parliament that a very large majority of representatives were extremely favorably disposed towards pupils receiving teaching in their own religion.<sup>46</sup>

In the first place, the right to instruction in religion or the philosophy of life had been clearly defined in the Constitution, so that the receiving of such instruction could be seen to be in agreement with the Constitution. Secondly, a distinction was made between instruction in one's own religion and religious observance as referred to in the Constitution. Those who emphasized the nature of religious instruction as a form of religious observance during the preparation of the new law were of the opinion that teaching of this kind should be made optional, with the alternative of teaching in the philosophy of life, or even that it should be replaced by a form of teaching on the world's religions that would be common to everyone. The minimum requirement was the right to opt out if the teaching contained events or rituals of a kind that could be regarded as religious observances.<sup>47</sup>

Parliament nevertheless established firmly that *religious instruction should not be equated with religious observance* and quashed all interpretations to that effect. This also brought years of wrangling on the subject to an end and removed the uncertainty experienced on this point in schools. It is important that no one among those obliged to attend classes in religious instruction should be able to demand exemption on the grounds of it taking on the nature of religious observance.<sup>48</sup>

Parliament also laid down that all syllabi should be examined upon the new law coming into force to ensure that they met the requirement for instruction in the pupils' own religion in an impartial manner, and also to ensure that the religion and philosophy of life syllabi for the upper secondary school contained "the foundations of the major religions of the world to the extent required for a good general education." This latter aim has now clearly been taken into account, at least as far as instruction in the majority religion is concerned.<sup>49</sup>

The new law is also clearer than its predecessor from a material point of view, in that it transfers the regulations applying to individual detailed issues from the law on religious freedom to the relevant points in the general legislation. In places this tendency towards clarification has created a need for entirely new legislation as far as the church is concerned, the most notable example being the legislation on burials (457/2003).

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data on the membership of religious communities to the authorities, and the fourth containing details of when and how the law should come into force and transition regulations.

45. § 13 of the law on compulsory education and § 9 of the law on upper secondary schools contain both old and new provisions on the rights of individuals and certain groups to receive instruction in their own religion or philosophy of life. As heretofore, the instance responsible for arranging compulsory education is obliged to ensure that those belonging to the majority religious group receive appropriate instruction. A new feature, however, is the provision that pupils or students who do not belong to any religious community shall attend classes in the majority religion only if they so desire, as indicated by their parents in the case of compulsory schooling or the students themselves at the upper secondary school.

Teaching in their own religion shall also be guaranteed to minority groups of at least three pupils belonging to either the Evangelical Lutheran Church or the Orthodox Church, while corresponding teaching shall be arranged for groups of at least three pupils belonging to some other religious group only on application from a parent or guardian or from the students themselves at the upper secondary school. The upper secondary school legislation grants students entering that level of schooling the right to choose between religious instruction or teaching in the philosophy of life. Juha Seppo, *Uskonnonvapaus 2000-Luvun Suomessa [Religious Freedom in Finland in the 2000s]* (Helsinki: Edita, 2003), 183.

46. Seppo supra n. 45 at 182-183.

47. Seppo supra n. 45 at 183.

48. Id.

49. Id.

## X. RELIGIOUS SYMBOLS IN PUBLIC PLACES

In Finland citizens are free to wear religious symbols in public places. There are two exceptions to this rule. The first comes from safety regulations. The labor law obliges employer and employees to follow safety instructions. It is possible for instance, that such instructions would not allow an employee to tie a scarf, if that person is working with machinery and this may be injurious to health.

The second exception considers hurting one's religious feelings. The current penal provisions no longer protect God's honor, but rather religious convictions and feelings and religious peace. Religious peace means religious order, related to the general category "law and order." This means for instance that is not allowed to be dressed in insulting way, which affronts openly one's religious conviction.

XI. FREEDOM OF EXPRESSION AND OFFENSES AGAINST RELIGION<sup>50</sup>

As was mentioned above, the current penal provisions no longer protect God's honor, but rather religious convictions and feelings and religious peace. The offence of breach of the sanctity of religion was reformed in 1998. The provisions have been placed in Chapter 17 on Offences against public order (563/1998), which means that these provisions have finally lost their position as the opening chapter of the penal code, as well as their separate nature as offences with a religious content. The specific offence of violation of the sanctity of religion requires intent on the part of the perpetrator, meaning that as the requirement of culpability one form of so-called *dolus* must be present.<sup>51</sup>

The provisions (see below) distinguish between public blasphemy against God and publicly defaming or desecrating what is held to be sacred by a church or religious community. This structure arose because parliament, at a very late stage, amended the government bill by reintroducing God as a figure into the provision. The original proposal, which was prepared as part of a larger law reform project, had not provided for such a distinction – the idea being that protection of the Christian God would fall under a single formula. Both the law committee and the constitutional committee of parliament shared this view. The law committee was explicit in mentioning that the penal legislation also needed to be acceptable from the point of view of those who do not share a belief in God (see, Report of the Law Committee, 3/1998; Report of the Constitutional Committee 23/1997).

With regard to blasphemy against God, no specific form of intent is required. No intent to offend needs to be present, whereas in other instances, such purposive intent is required. This difference indicates that the protection of God against blasphemy covers a wider range of actions than the second act description. The point is that in the case of deliberately offensive action even those not sharing the religious belief itself will regard the action as offensive, namely hurting the religious feelings of the community. For this reason, efforts have been made to abolish the special clause on blasphemy against God, but the legislature has not yet been persuaded to do so.<sup>52</sup>

Chapter 10 – *Breach of the sanctity of religion* (563/1998):

A person

who (1) publicly blasphemes against God or, for the purpose of offending, publicly defames or desecrates what is otherwise held to be sacred by a church or religious community, as referred to in the Act on the Freedom of Religion (267/1998), or

(2) by making a noise, acting threateningly or otherwise, disturbs worship,

50. This section is from Kimmo Nuotio, "Religion in the Criminal Law of Finland," in *Religion and Criminal Law-Religion et Droit Pénal*, ed. Matti Kotiranta and Norman Doe (Leuven: Peeters 2013), 63-75.

51. Id. at 66.

52. Id.

ecclesiastical proceedings, other similar religious proceedings or a funeral, shall be sentenced for a *breach of the sanctity of religion* to a fine or to imprisonment for at most six months.

It seems that there is no case law involving Finland as a respondent state at the ECtHR as concerns alleged violations of ECHR Article 9.

## Appendix 1

### THE CHURCH ACT 2010 COMMITTEE

On 25 October 2005, the Church Council of the Evangelical Lutheran Church of Finland appointed a committee whose task was – by 31 December 2006 – to: (a) inspect the basic principles of Church Law with special attention to that part of the material field of the Church Act that would also in the future be necessary to enact according to the order prescribed for the enactment of the present Church Act, and (b) to delineate an elemental solution about the regulatory level and the order of enactment to be used for the rest of the norms concerning the Church.

The committee named itself the Church Act 2010 Committee and submitted its report *Kirkkolaki 2010, Kirkkolainsäädännön perusteita ja kirkkolain alaa tutkineen toimikunnan mietintö* [Church Act 2010, the report of the committee investigating the basic principles of Church Law and the legal field of the Church Act] on 20 December 2006.<sup>53</sup>

According to the proposition of the committee, attention in Church Law codification work must in addition to the regulatory level be paid to the systematic development of the regulations with an aim to reach as harmonious a system of regulations as possible. The Church Act, the Church Order and the Order of Church Elections must be structured so that there is a better chance than thus far to make use of a harmonized set of norms about Church administration at all levels. Such norms concern especially the principles and procedures of administration and the different church elections. This way it would also be possible to make use of new laws enacted after the Church Act, such as the general laws and regulations concerning administration, the Municipal Law and the Election Law. Furthermore, the regulations should be written in as general a form as possible with an aim to avoid an overly casuistic regulation.

In its final report, the committee emphasized the fact that the codification work could be realized according to the order of enactment prescribed for the present Church Act.

## Appendix 2

### THE CODIFICATION OF CHURCH LAW COMMITTEE

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53. Suomen Ev.Lut. Kirkon Keskushallinto. Sarja C 2006:9 [The Central Administration of the Evangelical Lutheran Church of Finland. Series C 2006:9]. In its summary of the field of the Church Act, the committee took the view that the Church Act should contain regulations on seven thematic fields. In this context, it is worth pointing out the first four of these; the first three of them are closely linked to the new Constitution of Finland (2000):

1. The basic principles concerning the constitution and administration of the Church as stated in subsection 76 of the Constitution. This means that minor regulations and details supplementing the Church Act could follow the order of enactment of the Church Order and the Order of Church Elections. Also the autonomy of a religious community included in subsection 11 of the Constitution supports a wider norm introduction authority for the Church.

2. The regulations in the field of the Church Act that require the level of law as prescribed in section 2 of the Constitution about civil liberties.

3. The regulations concerning the basic principles of the rights and responsibilities of individuals as prescribed in subsection 80 § 1 of the Constitution.

4. The basic issues about the Church-State relations that are not regulated by a separate law.

In its plenary meeting on 27 February 2007 the Church Council appointed a committee with a task to make a proposal on the codification of Church Law according to the guidelines set by the Church Act 2010 Committee. This committee was to submit its proposal by 31 December 2008.

The report proposes that a new Church Act be enacted for the Evangelical Lutheran Church of Finland to replace the presently effective Church Act passed in 1993. The proposal suggests a total codification of Church Law with an aim to reach a Church Act that is structurally more logical than the present law and clearer from the perspective of those who exercise it. It takes into consideration the amendments required by the Constitution and other legislation and, in particular, the regulatory level of the Church Act and the Church Order as prescribed by the Constitution. Because of the codification nature of the proposal, no changes in the church-state relations are included in the report. The proposal is primarily related to the technical legislative procedure.

It is proposed that the Church Order be renewed in a similar fashion. The Church Order should be passed in the same way as at present by the General Synod within the authority given to it by the Church Act. The Church Order should include the regulations concerning the constitution, administration and function of the Church that are below the level of general law. The Church Order should as far as possible follow the same structure and division as the Church Act. There would be no need to enact a separate Order of Church Elections, but the regulations concerning church elections that are below the level of law would be included in section 3 of the Church Order.

The proposal also contains suggestions about the content of the law. The Church administration should be streamlined by dissolving certain subordinations. The subordination obligation of the parishes when alienating real property should be restricted in planned zones. In addition, the submission obligation should be abandoned with respect to the cemetery plan, the cemetery land use plan, and the changes in the starting times of church services. The regulations concerning church elections take into consideration the development of the general Election Law and the decisions of the General Synod.

The archive services of the Church should be developed by incorporating new and more extensive regulations about church archives in the Church Act and in the Church Order. To the appropriate extent, the Church should follow the general legislation concerning archives.

The proposal contains the technical reform of the regulations concerning the liability of an individual parish member to pay parish taxes. This should be done by repealing the law concerning the official buildings and funds of the Evangelical Lutheran parishes and by enacting a new law concerning the liability of the members of Evangelical Lutheran parishes to pay taxes to their parish. At the same time the law concerning the legal basis of certain payments to the parishes should be abrogated. It is also proposed that the law passed on the Church Central Fund should be repealed. The required regulations concerning the Church Central Fund should be included in the Church Act and the Church Order. The proposal also contains technical readjustments to the law concerning the Collective Bargaining Contract of the Workers of the Evangelical Lutheran Church and the Evangelical Lutheran Church Pensions Act.

The committee completed its work on 20 April 2009 by submitting its report. The proposal was intended for the spring 2010 General Synod, which could accept it during its term. This way the new Church Act and the rest of church legislation could take effect no later than the beginning of 2013.

For further planning, opinions on the committee proposal have been requested from the various administrative parties of the Church as well the Ministries of Education, Justice and Finance.

### Appendix 3

(Matti Kotiranta, "Kirche, Staat und Religionfreiheit in Finland," 2000.  
English translation from pages 240-247.)

## THE HISTORICAL DEVELOPMENT OF CHURCH-STATE RELATIONS IN FINLAND

The historical roots of church-state relations in Finland are in the great social, religious and ecclesiastical change caused by the Reformation in Sweden-Finland in the 1520s. With the coronation of Gustav Vasa in 1523, and the Diet of Västerås in 1527, Sweden broke with Rome. The connection with the supranational Papacy, with its independence of the State and its legal system, was now severed, and in its place a national church was born. Its position was regulated by new ecclesiastical regulations and social legislation. While in Sweden the mediaeval Catholic Church was affected by both internal canon law and the external ecclesiastical code contained in contemporary provincial laws, with the Reformation canon law did not entirely disappear but its sphere was considerably reduced.<sup>54</sup> In practice the Reformation was introduced by state decisions. At the Synod of Uppsala in 1536 the Church of Sweden became a national evangelical church. At the Diet of Västerås in 1544 Sweden declared itself an evangelical kingdom. The important church constitution of *Laurentius Petri*<sup>55</sup> (1561) was published with approval by the king in 1571. With the Reformation in Sweden-Finland, as in other Lutheran countries, the Church became an integral part of the State. From the legal point of view the change was very considerable.

The Reformation created the doctrine of the secular and spiritual realms in which the secular power was responsible for maintaining peace and order and thus protecting the Church (*officium circa sacra*), but it was not permitted to interfere in doctrinal matters and the life of the Church (*in sacris*). When we speak of Luther's doctrine of the two realms, this was not part of his political and social program of reformation, as is often thought. The matter of the two realms goes to the center of Luther's biblical theology. Above all Luther wanted to fight for the purity of the Gospel, which he thought had been obscured because the medieval Catholic Church had attempted to extend its authority to all areas of life and make the Church all-dominating. This was apparent in the demand that the secular sword (authority) be subjugated to the spiritual. Although Luther was naturally unacquainted with the modern democratic system of government, and although his doctrine of two realms was not in the slightest a political and social program, it had a significant political and social dimension and influence.

This was apparent in two things, first in the changed attitude towards secular authority, and second in the changed attitude towards secular vocation. When Luther and later Lutheranism, on the basis of the idea of two realms, emphasized that both secular and spiritual government were God-created reality, this was likely to emphasize, in contrast with the past, the intrinsic value of secular authority, not subordinate to the spiritual sword but alongside it and independent of it. The goal of the secular realm was also love, but by means of legislation and, if necessary the sword, to protect the weak. Thus the realms are related but different. Accepting secular authority as "the actions of God's left hand," and thus justified, made possible the growth of all secular authority, an increase in the power of the princes, the birth of national monarchies, which historians regard as the hallmarks of the beginning of the modern period. All these are, however, factors which have created tensions within the Lutheran state church system, as can be seen in the later history of the system.

The development of church-state relations initiated by Gustav Vasa became settled with the Church Law of 1686, during the reign of King Charles XI. It obliged all citizens of the realm to hold to the Lutheran Confession (so-called "compulsory confession"). In this period of ecclesiastical discipline and order, population registers began to be kept.

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54. See Heikki Ylikangas, *Suomalaisen Sven Leijonmarckin Osuus Vuoden 1734 Lain Naimiskaaren Laadimassa: Kaaren Tärkeimpien Säännöstöjen Muokkautuminen 1689–1694* (Helsinki: Suomen Historiallinen Seura, 1967); Hans-Olof Kvist, *Recht und Ethik im Wechsel der Interpretationsperspektiv – die Finnische Situation* (manuscript, 1988).

55. *Laurentius Petri* (1499–1573) was the first Lutheran archbishop of Sweden (from 1531). The 1541 Swedish Bible translation was largely his work. He also drew up the 1572 church constitution and wrote a two-part book of homilies.

Lutheranism had become a state religion at the Synod of Uppsala<sup>56</sup> in 1593, and this principle was also written into the constitution of 1634. In it the Lutheran Church and its doctrine (*Confessio fidei*) was given secure status in the constitution. Although freedom of religion in the full sense of the word was not recognized, after the Peace of Stolbova in 1617 religious minorities – Orthodox, Reformed and Anglican – were, due to the pressure of circumstances, given concessions and granted the right to private religious observance.<sup>57</sup> The importance of religious uniformity with its cohesive influence on the State was clearly stated in the constitution of 1634, in the words “Unanimity in faith and right worship are the strongest foundation of worthy, harmonious and enduring government.” These words were later repeated in all constitutions up until Finnish independence in 1917.

The 1686 Church Law signified in principle the end of the Church’s independence and the concentration of power in the hands of the king. This was apparent, for instance, in the sovereign’s right to influence the appointment of bishops. The roots of our church’s present-day taxation rights and the right of the sovereign (now president) to nominate bishops derive from this period. Due to compulsory confession, membership of Church and State became the same thing. Church Law was in fact regulation of actions of State in ecclesiastical form.

As a state institution, during the period of autocracy (early eighteenth century) the Church exercised influence through the State. The clergy formed one of the four estates of the Finnish Diet, along with the aristocracy, the bourgeoisie and the peasants. A step in the direction of a more independent church was taken in 1723 with the privileges granted to the clergy. These set certain limits to the power of the sovereign.

### *Development towards Freedom of Religion*

#### 1. Finland’s Religious Policy during the Period of Autonomy

Finland’s centuries-long state connections with Sweden were severed in 1809, and Finland was incorporated into the Russian Empire as an autonomous Grand Duchy. The 1686 Church Law was still in force and thus became part of the legislation of the Grand Duchy of Finland. The Orthodox Czar of Russia became head of the Lutheran Church of Finland. However, there was no change in the legal status of the Church. The Evangelical Lutheran Church of Finland retained its doctrine and order in accordance with the decree issued by Czar Alexander I at the Diet of Porvoo.

In the Finnish church, however, there was fear concerning the religious policies of the sovereign of another faith. After Old Finland was annexed to the rest of Finland in 1811, the Orthodox population increased tenfold to approximately 30,000 members. In 1827 an imperial edict opened up military and civil posts in Finland to members of the Orthodox Church. Because the Orthodox professed the “Czar’s faith,” they enjoyed his special protection. All attempts to convert the Orthodox to Lutheranism were forbidden. The confessional Lutheran thaw instantaneously became an Orthodox cold spell in spring. In this altered religio-political situation it was felt that the Finnish Lutheran Church should be given a more independent position. After the Czar gave his approval in the 1860s, the

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56. Knut B. Westmann, *Uppsala Möte och dess Betydelse [The Synod of Uppsala and its Significance]* (Stockholm: Svenska Kyrkans Diakonistyrelses Bokförlag, 1943), 3, 27–29; Hans Gnattingius, *Uppsala Möte [The Synod of Uppsala] 1593* (1942): 135–136; and Hans-Olaf Kvist, “Probleme der Bekenntnisbildung in Schweden-Finland seit der Reformation,” in *Gesellschaft für Niedersächsische Kirchengeschichte* (Blomberg: Rihn, 1991), 219–222.

57. In particular, this affected the Orthodox population of Käkisalme and Ingria. At first attempts were made to convert the Orthodox to Lutheranism, but the pressure exerted on the Orthodox population did not lead to the desired result. In 1658 the Orthodox were granted the right to their own clergy and services according to the Orthodox rite. The general policy was, however, that concessions in the seventeenth and eighteenth centuries solely concerned foreigners residing in the country. In the 1780s freedom of religion was extended to members of all Christian denominations. Jews were also given permission to practice their religion.



Finnish Senate set up a committee to reform Church Law. *Frans Ludvig Schauman*<sup>58</sup> (1810–1877), a professor of theology, became a member of the committee and his proposals formed the basis of new ecclesiastical legislation.

*Schauman*'s main definition of policy concerning the division between Church and State was that the Church should have its own legislative body, the General Synod. Concerning purely ecclesiastical matters the sovereign had only the right of approval or rejection of legislation. However, both social and ecclesiastical elements were contained in state legislation. One may state that there has been no change so far in this basic policy in Finland. The General Synod has retained its position as a source of ecclesiastical jurisprudence. The setting up of the Church's own decision-making body and its canonical right to initiate legislation in matters of Church Law, and its right to issue statements on church-state issues created the basic pillars on which church-state relations still function today.

The Church Law of 1870 meant that once again the Church became a community under public law separate from the State. The new Church Law was also a significant step towards freedom of religion. Compulsory confession was abandoned, and the State's commitment to the Lutheran confession was relaxed. Although the law was enacted solely for members of the Lutheran Church, it recognized that there were members of other faiths than the Lutheran Church living in Finland. Special mention was introduced into the law that citizens could not be tied to membership of the Lutheran Church contrary to their convictions, nor prevent them from leaving the Lutheran Church and joining another denomination. The law did not by any means recognize full freedom of conscience and religion. In the Church Law of 1869 freedom of religion meant primarily freedom of religious observance. A religiously neutral state was still an unknown concept in the 1869 Church Law.

To sum up, Finland's connection with Russia during the Period of Autonomy created, paradoxically enough, the basis for independence for the Church, too.<sup>59</sup> When the Church emphasized the western ecclesiastical tradition in its Nordic form alongside the different church of the Czar, holding that it was the representative of western Christianity in Finland, it was successful in ensuring for itself a new, legally guaranteed status of non-interference. Before the increasing integration of the European Union the Finnish church and the associated co-operation with the State had no need to open this preserve to outsiders in any significant way.

From the point of view of the Finnish Lutheran Church, the aforementioned developments have meant that the Church has not been primarily an instrument and vassal of government religious policy, but with its own *constitution*<sup>60</sup> it has been able to form its own perception of its nature and mission as a servant of the people. In Finland, in the course of history church work has taken on such forms that in spite of the ruler-centered

58. *Frans Ludvig Schauman* was Professor of Practical Theology at the University of Helsinki 1847–1865 and Bishop of Porvoo 1865–1877. He was also a member of the Finnish Diet 1863–1872.

59. This development could not be changed even by the Period of Oppression. The Period of Oppression means the periods of Finnish history 1899–1905 and 1908–1917, when Russia attempted to eradicate the autonomous status of Finland. The first Period of Oppression, known in Finland as the “years of frost,” began with the February Manifesto. The language manifesto of 1900 dictated that Russian was to be the internal language of the central and provincial administration of Finland. In 1901 the law of military service was passed, according to which Finns were required to do military service. Censorship was tightened and freedom of assembly was restricted.

The new Period of Oppression began in 1908 when the Czar subordinated Finnish affairs to the Russian Council of Ministers. In 1910 the Russian Duma approved a law whereby Finnish affairs came under its jurisdiction. Some of the most important controversial issues were those of the “military millions” with which Finland had to compensate for military service, and the 1912 “law of equality” whereby Russians were guaranteed the same rights in Finland as Finnish citizens. The second Period of Oppression ended with the Russian Revolution in March 1917.

60. By the constitution of the Church is generally meant that proclamation of the Word and the administration of the sacraments is organized, there is a parish community, the Church's ordained ministry, the episcopate, the threefold ministry, and parish administration, etc. The purpose of the Church's constitution is to ensure that the Church can function as a community of faith and love.

system democratic elements have naturally become part of our ecclesiastical system from within the situation in which the Church is placed. At the same time the independence of the Church in relation to the State has been sufficiently ensured.

## 2. The Issue of Freedom of Religion during Finnish Independence

The principles of Western democracy include guarantees of religious freedom as one of the basic civil rights. The meaning of freedom of religion becomes clear from its connection with the constitution, with the State's ideas of justice and freedom on the constitutional level. What is essential in freedom of religion as a basic right is that public authority does not interfere in matters of religious conviction nor make distinctions between citizens on the basis of religion or similar convictions (or their lack) when assigning rights or duties. Since the turn of the twentieth century the concept of freedom of religion has usually involved three basic elements: freedom of confession, freedom of worship, and freedom of membership.

In Finland conditions for full freedom of religion were created with the declaration of Finnish independence (1917). The republican constitution of 1919 marked a decisive turning-point in this matter. Paragraph 8 of the constitution guaranteed Finnish citizens freedom of conscience and religion:

Finnish citizens have the right publicly and privately to practice religion, providing that law and good manners are not infringed, and also, as is specifically laid down, freedom to leave the religious community to which he or she belongs, and freedom to join another religious community.<sup>61</sup>

The constitution gives equal civil rights and civil obligations to all, irrespective of whether they belong to a religious community or not. When the constitution was drawn up there was a long debate as to whether the special status of the Lutheran Church in relation to the state should be mentioned in the constitution. The full implementation of the principle of freedom of religion in the Constitution of 1919 meant that the Finnish State became religiously uncommitted and neutral. The 1922 law of freedom of religion laid down detailed regulations on religious freedom. It also confirmed the different status in relation to the State of the Evangelical Lutheran Church and the Orthodox Church as compared with other religious communities.<sup>62</sup>

When the law of freedom of religion came into effect, a population register system was created,<sup>63</sup> which was kept by the Orthodox Church, by other religious communities,

61. *Finnish Constitution*, 17 July 1919, § 8.

62. Because the Finnish State, when accepting the principle of freedom of religion, has chosen to adopt a neutral stance towards the religion of its citizens, the special relationship of the State with two churches demands an explanation. Here I refer to the analysis by Bishop Paul Verschuren, *Katolinen Näkökulma Valtion ja Kirkkojen Suhteisiin [A Catholic View of Church-State Relations]* (TA, 1992), 45, who states that from this state of affairs "one can reach the conclusion that is' often reached abroad, that Finland is a country of two confessions or two churches, which means such a logical 'salto mortale' as is denied to private individuals. Usually it is held that a person cannot have two religious convictions at the same time." Verschuren emphasizes that a distinction must be made between the two directions of the State: on the one hand, in the relation of the State to religion, on the other hand in the relation of the State to a particular church. Both relationships affect the other and are close to the other, but they do not express the same reality. Although the State is religiously neutral on the basis of freedom of religion, it can still have special authority and a special relationship with respect to a particular church. This authority is called internal authority if it concerns the Church's teaching and liturgy, and external authority if it concerns appointments to an office, the Church's constitution or its property. Verschuren points out that in general a state that has recognized freedom of religion does not demand internal authority in the affairs of a particular church. Id. This is not always the case by any means. The religious policy of the Bolshevik Soviet State offers a good example of how formally recognized freedom of religion can assume the most destructive forms from the Church's point of view. See also Roman Rössler and Gerd Stricker, "Die Russische Orthodoxe Kirche im Sowjetstaat (Seit 1917)," in *Die Orthodoxe Kirche in Russland. Dokumente ihrer Geschichte (860-1980)*, eds. Peter Hauptman and Gerd Stricker (Göttingen: Vandenhoeck & Rupprecht, 1988), 617-626.

63. Originally the register produced for the needs of the Lutheran Church developed into a national state

and for others by the district registrar (the so-called civil register). This complex system was reformed in the 1970s, and in 1995 the Central Church Board and the Ministry of the Interior agreed on measures to improve co-operation between church and state.<sup>64</sup>

Religious freedom for the individual and the acceptance of the non-confessional nature of the State did not, however, according to the constitution, require breaking off the relationship between the State and the Lutheran Church. Although the new constitution, on the one hand, restricted the Lutheran Church to being one religious community among many, the so-called “church paragraph” (§ 83) confirmed, on the other hand, the constitution of the Lutheran Church and its special legal status based upon it.<sup>65</sup> The constitution also indirectly confirmed the special legal status of the Orthodox Church, which was based on the statute of 1918 founding a national church.

The most important change compared with the period of compulsory confession and autonomy was the right granted by the law of freedom of religion to leave the Evangelical Lutheran Church without the obligation to join another religious community. The names of these citizens are entered in the civil register, which was established in 1917. As a matter of curiosity, in Finland until recently Finnish Pentecostal assemblies felt unable to register as a religious community under the prevailing law of freedom of religion. They therefore registered under the law of associations. In 1917 the law was changed to allow civil marriage.

In Finland the law of freedom of religion has been in force and in essential respects has remained unchanged for 75 years (in 1997).

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population register.

64. The agreement means a change of emphasis as compared with previous years, when the objective of the Ministry of the Interior was the transfer of responsibility for the population register to civil servants.

65. Section 83 of the 1919 Constitution Act reads: “Provisions on the Organisation and administration of the Evangelical Lutheran Church shall be prescribed in the Church Code. Other existing religious communities shall be governed by the provisions enacted or to be enacted as to those communities. New religious communities may be established in the manner prescribed by Act of Parliament.” Quotation from the Constitution Act is from Constitutional Laws of Finland, Procedure of Parliament, Helsinki 1992; Parliament of Finland, Ministry of Foreign Affairs, Ministry of Justice.