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## CHURCH AUTONOMY IN ESTONIA

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### I. BACKGROUND

Today's religious picture in Estonia is a mosaic of different faiths and denominations. Along with traditional Christian churches, which have existed in Estonia for centuries, many new religious movements have appeared.

In Estonia the right to freedom of religion is protected by the Constitution of 1992 and by international instruments that have been incorporated into Estonian law. Starting with protection from international instruments, § 3 of the Estonian Constitution stipulates that universally recognised principles and standards of international law shall be an inseparable part of the Estonian legal system. Section 123 states that if Estonian Acts or other legal instruments contradict foreign treaties ratified by the *Riigikogu* (parliament), the provisions of the foreign treaty shall be applied. Estonia is party to most European and universal human rights documents. By section 3 of the Estonian Constitution the universally recognised principles and standards of international law are adopted into the Estonian legal system and do not need further transformation. They are superior in force to national legislation and binding for legislative, administrative and judicial powers.

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The Estonian Constitution provides express protection to freedom of religion. Section 40 sets out that:

“Everyone has freedom of conscience, religion and thought. Everyone may freely belong to churches and religious associations. There is no state church.

Everyone has the freedom to practise his or her religion, both alone and in community with others, in public or in private, unless this is detrimental to public order, health or morals.”

Section 40 of the Constitution is supplementary to § 45 concerning the right to freedom of expression, § 47 concerning the right to assembly and § 48 concerning the right to association. Section 9 paragraph 2 of the Constitution states that “The rights, freedoms and duties set out in the Constitution shall extend to legal persons in so far as this is in accordance with the general aims of legal persons and with the nature of such rights, freedoms and duties.”

The Churches and Congregations Act (hereinafter CCA) deems churches, congregations and associations of congregations to be legal persons and stipulates the legal bases for their activities. Churches, congregations and associations of congregations must be registered by Ministry of Internal Affairs in the Estonian Registry of Churches, Congregations, Associations of Congregations. Churches, congregations and associations of congregations are considered to be non-profit organisations. The activities of religious societies are not regulated by the CCA but rather by the Non-profit Organisations Act and they must be registered by a court in the Register of Non-profit Organisations and Foundations. The Ministry of Internal Affairs has written a draft Act on Churches and Congregations (hereinafter the draft Act), according to which the Estonian Church Register and its respective functions are delegated to the courts. The law does not regulate the activity of religious organisations which are not registered. The main obstacle for these entities is the fact that they cannot present themselves as legal persons.<sup>2</sup>

Section 40 of the Constitution states *inter alia* that “*there is no state church*“. The 1920 Constitution of the Estonian Republic set out that „*there should be no state religion*“. The 1920 statement followed the principle of the separation of state and church more clearly. It was stated that all religious organisations had to be equally protected and that none of them could receive preferential treatment from the state. All religious organisations, including churches, had equal status with other private legal

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<sup>2</sup> Compatibility of Estonian Law with the Requirements of the European Convention on Human Rights. Council of Europe, April 1997, p. 88.

persons.<sup>3</sup> The 1938 Constitution stipulated that “*there is no state church*” but added that the “*state can grant status in public law to large churches*”.

Estonia is re-establishing its legal order on the principle of restitution, taking into account the legal situation before the Soviet occupation, as well new developments and obstacles and the principles of European and International Law. Nevertheless, the question of the autonomy of the churches (religious organisations) is debatable in Estonia and finding a solution will take time.

## II. FUNDAMENTAL UNDERSTANDING OF CHURCH AUTONOMY

The term “autonomy” is difficult to define and, as a result, the question of autonomy in Estonia is more than unclear. Legal theorists from the past and the present have different opinions. Autonomy in administrative law and theory is generally understood as the right to self-government and the right to issue regulations.<sup>4</sup> Both of these components have to be present for autonomy. Nevertheless, the essence of church (religious organisation) autonomy is debatable in Estonia.<sup>5</sup> The right to issue regulations means the delegation of legislation.<sup>6</sup> The opinions stem from different interpretations of the Constitution. Maruste and Truuväli are of the opinion that the Constitution of Estonia does not allow delegated legislation. According to them, state administration and autonomous corporations in public law have right to adopt only *intra legem* regulations (*Durchführungsverordnungen*) on the basis of a special delegation of authority.<sup>7</sup> In theory, researchers are of the opinion that *intra legem* regulations may only specify the regulation of areas, which are regulated by law.<sup>8</sup> The delegation rule must precisely specify the content of the corresponding authority and the intended purpose and scope of the regulation. The Supreme Court also supports this position.

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<sup>3</sup> E. Maddison, *Usuühingute ja nende liitude õiguslik iseloom* [Legal Character of Religious Societies and their Associations], in: *Eesti Politseileht*, no. 11 (221), 1926, pp. 161-162.

<sup>4</sup> A regulation is viewed as a generally binding precept issued in a definite form which governs an abstract number of cases and impersonally creates rights and duties. A regulation is therefore substantive law.

<sup>5</sup> See M. Kiviorg, *Religiooniõigus. Individuaalne ja kollektiivne usuvabadus* [Law on Religions. Individual and Collective Freedom of Religion], Tartu, 2000.

<sup>6</sup> K. Merusk, *The Right to Issue Regulations and its Constitutional Limits in Estonia*, in: *Juridica International. Law Review University of Tartu*, vol. I, 1996, p. 42.

<sup>7</sup> R. Maruste, E.-J. Truuväli, *Teooria ja praktika probleeme seondvalt põhiseaduslikkuse järelevalvega* [Problems of Theory and Practice Concerning Constitutional Review], in: *Juridica*, no. 7, 1995.

<sup>8</sup> K. Merusk, *Op. cit.*, p. 38.

However, the Supreme Court has not said anything about regulations issued within internal competence. The prevailing position is that the internal matters of an administrative organisation may be subject to *praeter legem* regulations on the basis of the general delegation of authority. Regulations of this type are not substitutes for laws in a specific area and their effect only extends to the point at which regulation by law commences. Autonomous subjects have the right to issue *praeter legem* regulations (*gesetzesvertretende Verordnungen*) on the basis of a general delegation of authority.<sup>9</sup> The right to issue *praeter legem* regulations is in theory restricted with the autonomy of the subject. The regulations adopted within such autonomy do not have to be in accordance with regulations of the Government or ministries, but they must be in accordance with the Constitution and with the principles of the delegating law and laws which regulate similar questions. Under the authorisation of the law State can delegate some of its functions to autonomous subject. For fulfilment of these functions, the State pursuant to the law, delegates to autonomous subject the authority to issue regulations. These regulations have to be in accordance with regulations of the Government or ministries, because they are issued outside the scope of autonomy. The fulfilment of mentioned functions belong to supervision and co-ordination by the administration of the State.<sup>10</sup> These additional responsibilities can, for example, be the registration of marriages of civil validity by churches, social care, etc. The preferred position is that the competence of Government and autonomous subjects must be clear in order to avoid conflicts.<sup>11</sup> But sometimes it is difficult to identify what is the autonomous sphere of the subject and what is beyond the autonomy and belongs to State supervision.

### III. THE NORMATIVE FRAME OF CHURCH AUTONOMY

#### 1.

Subsection 10 (2) of the Churches and Congregation Act (CCA) states that boards of churches and associations of congregations have the right to adopt instruments which regulate their activities. It should firstly be mentioned that, from a linguistic point of view, this is a badly drafted provision. It

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<sup>9</sup> K. Merusk, *Kehtiv õigus ja õigusakti teooria põhiküsimusi* [Current Law and Main Issues in the Legislative Act Theory], Tartu, 1995.

<sup>10</sup> Ibid.

<sup>11</sup> Ibid.

leaves unanswered the question of whether these boards have the right to regulate their own or religious organisation activities. This is a matter of the inaccuracy of the legislator and, in practice, that provision has been interpreted as the right to regulate the activities of a church or association of congregations. Subsection 10 (2) excludes the boards of congregations (both congregations of churches and so-called single congregations) and religious societies from the aforementioned right. Section 2 of the CCA gives legal definitions of the following:

“(1) A church is a congregation or association of congregations which has episcopal structure and is didactically bound by three common church confessions, functioning on the basis of statutes under the elected or appointed leadership of a board and registered as provided by law.

(2) A congregation is a voluntary association of natural persons confessing the same faith, functioning on the basis of statutes under the elected or appointed leadership of a board and registered as provided by law.

(3) An association of congregations is a voluntary association of at least three congregations confessing the same faith, functioning on the basis of statutes under the elected or appointed leadership of a board and registered as provided by law.”

Section 3 of the CCA states that:

“A religious society has only partly the same characteristics as a congregation. Religious societies are voluntary associations of natural persons and the bases for their activities shall be regulated by the Non-profit Organisations Act.”

It is not hard to see that these legal definitions are problematic. They cause problems of interpretation and implementation, as well as the practical determination of religious organisations. The interpretation of terms and phrases like “didactically bound by three common church confessions”, “episcopal structure”, “partly the same characteristics as congregation” etc. are difficult for lawyers and theologians alike. For example, there was case in administrative practice where the Ministry of Internal Affairs refused to register the Estonian Christian Church because the name seemed to be too general and there was no mention of an episcopal structure in the statutes. After the church renamed itself the Estonian Christian Pentecostal Church and established a *pro forma* episcopal structure in its statutes, the ministry registered it.

The term “kirik” (*church, Kirche*) has been traditionally used for Christian organisations. The term “kogudus” (congregation) has been traditionally used for congregations of a church. Before the adoption of the CCA in 1993, there was a debate as to whether the extension of term “kogudus” (congregation) to other faiths would be insulting for them. According to the CCA, congregation means not only the church congregation but also the so-

called single congregation. The single congregation in terms of the CCA can be association of natural persons confessing the Christian faith or any other religion. It could be concluded that the CCA defines term “congregation” in contradiction to the tradition.

The 1993 CCA was extensively based on the 1934 Churches and Religious Societies Act. Section 15 of the 1934 Churches and Religious Societies Act stated that deliberative organs of churches and associations of religious societies had the right to issue regulations within the own sphere or competence of a church or association of religious societies. That kind of right was not given to single religious societies or to congregations of the church.<sup>12</sup> But the 1934 Act did not try to give legal definitions of different religious organisations. It was up to each religious organisation to decide whether it wanted to be a church, religious society or association of religious societies and organise itself accordingly. The 1934 Act set out special provisions for churches. Churches were given additional rights but also restrictions, which will be discussed further. The 1925 Religious Societies and their Associations Act simply divided all religious organisations into two categories: religious societies and associations of religious societies. Under that law, churches were associations of religious societies.<sup>13</sup> In the draft of the new CCA, one more legal definition has been added – “convent”.

On the basis of the above, the legal definitions in present Estonian law seem to be unreasonable, and unfair to congregations and religious societies. (It has to be mentioned that the exclusion of church congregations from the right to regulate their own activities may be justified within the structure of the church, but the exclusion of single congregations and religious societies is questionable.)

The purpose of the legal definitions of the 1993 CCA was explained as educational. As Estonia had been a so-called atheist country for fifty years, people had forgotten the basic terms and it was necessary to educate them with the help of the law. It should be said that this is problematic. The purpose of legal definitions in the draft law is to protect the mentioned terms (church, congregation etc.). The former could mean that terms “church”, “congregation”, “association of congregations” and “religious societies” are used in their historically and culturally developed meanings. Neither the present nor the proposed law provide sufficient protection and some of the

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<sup>12</sup> A.-T. Kliimann, *Kehtiv Haldusõigus* [Current Administrative Law], Tartu, 1934, p. 57.

<sup>13</sup> W. Meder, *Ülevaade Eesti kirikuõigusest* [Overview of the Estonian Church Law (Staatskirchenrecht)], in: *Õigus*, no. 1, p. 14.

terms are used in contradiction to the tradition. Furthermore, it can be argued that the legal definitions set forth in the 1993 CCA are in contradiction to the 1992 Constitution. The scope of Constitutional notions “church” and “religious society” is much broader in Constitution than in the CCA. Therefore, the first questions which arise on the basis of Estonian legislation are:

1. Is there justification for not granting some religious organisations the right to autonomy (the right to self-government and the right to issue regulations on their own affairs)?
2. Is it possible to define different religious organisations legally?
3. Do the legal definitions make any sense?
4. If the legal definitions do make sense, on what grounds should religious organisations be separated?

## 2.

Section 10 of the 1993 CCA is problematic from another aspect as well. It is stated that boards of churches and associations of congregations have right to adopt instruments which regulate their activities. A literal interpretation leaves it open as to what kind of instruments these boards are entitled to issue: single acts or regulations (*praeter legem and intra legem*) or both. It is also not clear whether “their activities” means activities within the autonomy of mentioned religious organisations or all the activities of the church or association of congregations. *Sensus verborem est anima legis*. Of course, on the basis of systematic interpretation, the issuing regulations outside the autonomy can contradict the general principle of the rule of law and the principle of reservation of law (*Gesetzvorbehalt*). Subsection 6 (3) of the draft Act states that a board of a church, congregation, association of the congregations or their agency and the head of a convent has the right to adopt instruments concerning the activities of the religious organisation in accordance with the statutes. The draft Act expands the right to issue instruments to congregations (church congregations and single congregations) and to the heads of convents.

In the draft Act there is an attempt to define the limits to autonomy more clearly. Subsection 6 (3) states that the aforementioned boards may issue instruments in accordance with the statutes. The competence to issue instruments (regulations) will be determined by the statutes. Subsection 6 (1) of the draft Act determines the main activities of churches, congregations,

associations of congregations and convents. These main activities are: confession and manifestation of their own faith primarily in the form of services, religious meetings and offices; confessional or ecumenical moral, ethical, educational, cultural and diaconal activities, social rehabilitation and other activity outside the characteristic confessional offices or services of churches and congregations. Subsection 2 (4) of the present CCA states that the main activities of churches and congregations are: confession and manifestation of their faith primarily in the form of services, religious meetings and offices. The above-mentioned provisions can be interpreted as attempt to identify the sphere of autonomy of religious organisations (except religious societies). The real scope of autonomy is determined together with other acts and regulations, administrative and court practice.

The other aspect is that the delegation of authority to issue regulations must in theory set out the content of authority (i.e. the issues to be governed by a regulation), its purpose (i.e. the purpose to be served by a regulation), and its scope.<sup>14</sup> The issue is whether these three may be set out in the statutes of religious organisations or if law itself must expressly provide them.

The further questions which arise on the basis of present and proposed Estonian law and legal theory are:

1. Is it possible to set exact scope of autonomy in law?
2. Is it necessary to set exact scope of autonomy in law or are they so obvious (i.e. traditionally or on the basis of experience) that further determination is unnecessary?
3. If it is necessary to set exact scope of autonomy, should it be set out in the Constitution, in Acts or by other legislation?
4. If it is necessary to determine the scope of autonomy, how precise can it be without restricting the activities of the religious organisation?

### 3.

As was stated at the beginning of this paper, autonomy consists of two main components: self-government and the right to issue *praeter legem* regulations. A narrow interpretation of self-government can mean the right of a church (or other religious organisation) to determine the internal structure of the organisation. The legal definitions in § 2 of the CCA try to determine the general structure of churches, congregations and associations

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<sup>14</sup> K. Merusk, Ibid., p. 41.

of congregations, but fail for the same reasons as that stated in point 1 of this paper. Section 12 of the CCA sets out that the statutes of a church, congregation or association of congregations shall include: the name, the location of the board, the structure and competence of the executive, the order of formation of the executive, the term of the authority of the executive, the status and hierarchy of the clergy, rules for the adoption and amendment of the statutes and termination of activity, obligatory offices, etc. Subsection 15 (1) of the CCA states that a person who has the right to vote at local government elections and who is not punished pursuant to the Criminal Code may be a member of the board of a church, congregation or association of congregations, and a member of the clergy. This requirement is not applied to members of boards of religious societies registered pursuant to the Non-profit Organisations Act. Despite of that, internal structure and management of religious organisations is mainly left to their sphere of autonomy. Many basic requirements for democracy within the church and congregation are mandatory: openness of membership, existence of an elected executive, equality of members before the law, right to participate in elections to the executive and for official posts, right to leave the church or congregation by notifying the church or congregation executive beforehand.

Under the 1925 Religious Societies and their Associations Act, the internal management of churches was based on decentralisation and liberal democratic principles, but under the 1934 Churches and Religious Societies Act it was based more on principles of authoritarianism and centralisation. In accordance to some estimations the new law made possible to avoid internal conflicts inside the churches (mainly inside the Estonian Evangelical Lutheran Church).<sup>15</sup> The 1934 Act set out special and detailed provisions for church management. For example: the bodies of the church, the competence of the bodies and clergy, the process of adoption and implementation of acts, the competence of the church courts, the enforcement of court decisions, etc. The authority of the administration of other religious organisations was not so limited.<sup>16</sup>

The questions so far are:

1. Is it necessary to regulate church (religious organisation) structure?
2. If it is necessary, then to what extent?

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<sup>15</sup> *W. Meder*, Op. cit., p. 26.

<sup>16</sup> *W. Meder*, Ibid.

3. If it is necessary, where should be they regulated: in the Constitution, an Act, other legislation, the statutes or in contracts or agreements with the church or other religious organisation?

#### IV. RESTRICTIONS ON AUTONOMY

##### 1.

Section 15 of the Estonian Constitution states that everyone has the right of recourse to the courts if his or her rights or freedoms have been violated. Any person whose case is being tried by a court of law is entitled to demand the determination of the constitutionality of any relevant law, other legal act or procedure.

The 1993 Code of Administrative Court Procedure set out that everyone who believes that his or her rights have been violated by an act or activity of a body or official of a non-profit organisation is entitled to bring a case before a court. The body which, pursuant to law, has supervisory obligations over the activities of bodies or officials of non-profit organisations was entitled to submit a protest to the courts. Section 3(1) of the new Administrative Court Procedure Code defines the competence of the administrative court more clearly – only the resolutions of disputes in public law fall within the competence of the administrative court.<sup>17</sup> The acts which can be proceeded in administrative courts are single acts not acts which regulate an abstract number of cases and impersonally create rights and duties (including *intra legem* and *praeter legem* regulations). Positive law does not provide a clear answer what type are the acts or instruments of religious organisations. It also leaves open the possibility to contest them. Nevertheless it is always possible to bring civil or criminal cases before the ordinary courts. Section 48 of the Estonian Constitution states that everyone has the right to form non-profit associations and unions; the termination or suspension of the activities of an organisation, union or political party and the penalisation thereof may only be invoked by a court, in cases in which the law is violated.

Section 16 of the 1934 Churches and Religious Societies Act stated that instruments of a church or association of religious societies should be sent before publishing to the Ministry of Internal Affairs. The Ministry of Internal Affairs could suspend enforcement of the instrument if it found the

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<sup>17</sup> RT I 1999, 31, 425.

instrument to contravene the law or regulations or the statutes of the church or association of religious societies. The Ministry of Internal Affairs had the right to veto acts of these religious organisations. Today, the entry into force of regulations of churches or other religious organisations no longer depends on previous approval by a state official.

## 2.

Section 6 of the General Part of the Civil Code Act divides legal persons into legal persons in private law (non-profit organisations, foundations and profit-making organisations) and legal persons in public law (state and local government). Section 36 of the Code states that legal persons may be founded pursuant to Acts. Although the Code does not mention any legal persons in public law other than state and local governments, they can be founded and many of them are founded pursuant to an Act.

Section 20 of the CCA states that churches, congregations and associations of congregations are non-profit organisations. The Non-profit Organisations Act and the Churches and Congregations Act are related as *lex generalis* and *lex specialis*. Thus, under Estonian law, religious organisations (including churches) are legal persons in private law. Whether it is possible to consider them or some of them (for example churches or associations of congregations) as corporations in public law or legal persons in public law is not clear. There have been proposed to complement the section 9 of the draft Act with the special provisions for churches and their congregations and convents which existed before 16 July 1940 on the basis of statutes which were approved by decisions of the Estonian Government. The state will enter into **agreements** with these churches recognising them and their congregations and convents as public legal persons. Subsection 2 (1) of the 1934 Churches and Religious Societies Act stated that the statutes of churches with a membership of over 100, 000 would be approved by the decision of the Government. The statutes of churches with a membership of less than 100, 000 and other religious organisations would be approved by Ministry of Internal Affairs. The churches with a membership greater than 100, 000 were the Estonian Evangelical Lutheran Church and the Estonian Apostolic-Orthodox Church. The 1938 Constitution stated that “*the State can grant status in public law only to large churches*”. Large churches were churches with over 100, 000 members. But it is debatable whether the State actually granted them that status.

Subsection 9 (4) of the proposed provision to draft-law states that State may (**but do not have to**) on the bases of proposal of Ministry of Internal Affairs, enter into **co-operation agreements** with churches and associations of

congregations. The content of the co-operation agreements and agreements granting status in public law have not been discussed. It is now unpredictable how the proposed law will affect the autonomy of those religious organisations. The real distinction between the legal treatment of church that will be public legal person and church that will have co-operation agreement with the State is left open. In theory the co-operation agreement can also grant status in public law. With the co-operation agreement the State can delegate public functions and obligations to religious organisations.<sup>18</sup> The main known distinction is that agreements with aforementioned churches have to be signed but entering into the co-operation agreements is the discretion of the Government. According to the one possible interpretation of proposed law, agreements with other religious organisations (single congregations and religious societies) will not be possible. The religious life of Estonia is not anymore so homogeneous than it was before 1940.<sup>19</sup> Today approximately only 17% of the population are officially connected with different Christian Churches.<sup>20</sup> In 1999 the Estonian population has been estimated to be 1 445 580. Official membership of the Estonian Evangelical Lutheran Church is ca 177 233.<sup>21</sup> This number includes both the active and passive members of the Church. For example, 1997 only 54 481 members have paid their annual membership

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<sup>18</sup> In Estonian administrative law and theory it is accepted that under the authorization of the law state may delegate some of its functions to other persons. It is generally understood that one of the conditions of public legal person is fulfillment of the delegated public functions under the supervision of the state. Thus, the conception of public religious corporation is somewhat different from the German conception. Although, the essence of the public religious corporation is arguable in Estonia. See *M. Kiviorg*, *Religiooniõigus. Individuaalne ja kollektiivne usuvabadus* [Law on Religions. Individual and Collective Freedom of Religion], Tartu, 2000.

<sup>19</sup> According to the national census 1934, there were 874 026 Evangelical Lutherans in Estonia of a total population of 1 126 413. See <http://www.einst.ee/society/Soreligion.htm>, 02.02.2000.

<sup>20</sup> See *P. Valk*, *Development of the Status of Religious Education in Estonian School. European and Local Perspectives*. Conference on Law, Religion and Democratic Society. Estonia. University of Tartu, 1999.

<sup>21</sup> Information about current membership of religious organisations is based on data from Ministry of Internal Affairs last up-dated in December 31st, 1999. It has to be mentioned that religious organisations are not obligated to provide Ministry of Internal Affairs with statistical information of their membership and according to the section 42 of the Constitution of Republic of Estonia, no state or local government authority or their officials may collect or store information on the beliefs of any Estonian citizen against his or her will. Religious organisations have voluntarily informed state officials about the number of their adherents.

fee.<sup>22</sup> The Estonian Apostolic-Orthodox Church has 58 congregations and ca 18 000 members.<sup>23</sup> In the context of Estonia it is rather difficult to determine whether the social need or tradition (incl. legal tradition) exist or whether it is enough strong to justify different legal treatment of some religious organisations. The Estonian Constitution sets forth the principle of non-discrimination and equal treatment. The agreements between religious organisations and the State can only be welcomed. But the constitutional principles of equal treatment and non-discrimination have to be taken account. Furthermore the (co-operation) agreements between State and religious organisations are allowed by present Estonian law. So the practical need for further regulation is debatable.

## V. SOME AREAS OF COMMON INTEREST OF STATE AND CHURCH

### 1. EDUCATION

According to Section 4 of the Education Act, the study and teaching of religion in general education schools is voluntary and non-confessional. In accordance with the Act of Basic Schools and Gymnasiums religious education is compulsory for the school if fifteen pupils wish to be taught. The principles and topics of religious studies are set out in the curriculum approved by the Ministry of Education. Religious studies in schools is considered as an elective subject, and is a subject where the views and contributions to the development of humanity of various religions are taught, thus providing knowledge of different religions.

Confessional instruction is provided for children by Sunday schools and church schools operated by congregations.

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<sup>22</sup> Although presented figures leave considerable room for any kind of interpretation, they hopefully reflect to some extent the objective reality of religious life in Estonia.

<sup>23</sup> It has been proposed that a major part of Orthodox believers belong to Estonian Orthodox Church. The exact data is missing. The Estonian Orthodox Church, subordinated to Moscow Patriarchate, has not been registered, because it applies for the same name (Estonian Apostolic Orthodox Church) as already registered church. The issue is connected with the conflict between these two Orthodox Churches one of which is descendent *in jure* of the Estonian Apostolic-Orthodox Church of 1923-1940 (subordinated to Ecumenical Patriarchate of Constantinople) and other one (subordinated to Moscow Patriarchate) was established with the help of Soviet occupation in 1945 eliminating the EAOC Synod in Estonia.

Section 33 of the Basic and Upper Secondary Schools Act provides an additional guarantee to parents who do not agree with the school regarding religious studies, enabling them to refer to the school's Board of Guardians and to the person responsible for the state supervision of the school

Today there is no alternative subject in curriculum for pupils who do not attend religious studies lessons. This has been the subject of debates on reorganisation of the voluntary religious education into compulsory.

## 2. PRACTISE OF RELIGION IN PRISONS

The realisation of religious freedom in prisons is regulated by § 5 of the CCA, according to which prisons must ensure that their inmates, if they so wish, may practise their religion according to their religious beliefs, if this does not disturb the prison or the interests of the other inmates, and that the services are organised by a church or congregation which has permission therefor from the local government or authority.

The Code of Enforcement Procedure prohibits hindering the distribution of church or religious publications in prisons, and prisoners may subscribe, at their own expense, to religious publications from outside the prison and receive them in the prison.

Section 171 of the Code is problematic since meetings with the clergy may occur only with the permission of the prosecutor, investigator, or courts. The general rule should be that it is permitted to meet with the clergy unless the investigator, prosecutor or court forbids it in the interest of the investigation. As Estonia is party to the European Convention on Human Rights, Convention practice allows the restriction of the rights of prisoners in prison in the interests of public safety, public order, health and morals and for the protection of the interests and rights of their fellow prisoners.<sup>24</sup>

## 3. TREATMENT OF MINORITY RELIGIONS

In order to promote the exercise of the right to freedom of religion, conscience and thought for national minorities, the religious freedom of minorities is also regulated by the Cultural Autonomy for National Minorities Act.

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<sup>24</sup> Compatibility of Estonian Law with the requirements of the European Convention on Human Rights. Council of Europe, April 1997, p. 89.

According to the Cultural Autonomy for Minorities Act, minorities are Estonian citizens who reside in the territory of Estonia, have long-term or permanent ties in Estonia, differ from Estonians due to their ethnic background, cultural distinctiveness, religion or language, and are driven by the desire to preserve as a group their cultural customs, religions or language as the basis for their common identity.

Section 3 of this Act guarantees a person belonging to a minority the right to preserve “his or her ethnicity, cultural customs, mother tongue and religion”. The Act stipulates a ban on the denigration or prohibition of national cultural or religious customs.

#### 4. MEDICINE

In Estonia, the area concerning the provision of medical assistance and the freedom of religion and thought is almost completely unregulated. This area includes such issues as mandatory vaccinations and cases where parents refuse for religious reasons to allow an operation on their ill child.<sup>25</sup>

Only § 5 of the CCA regulates the realisation of religious freedom in medical and care institutions. According to the Act, medical and care institutions must make it possible for their residents, if they so wish, to practise their religion according to their religious beliefs, if this does not disturb the order in these institutions or the interests of the other residents.

#### 5. ARMED FORCES

Freedom of religion in the armed forces is regulated by only one provision in § 5 of the CCA, according to which the officer of the unit shall guarantee conscripts the opportunity to practise their religion, if they so wish. It is not clear whether, or how, this freedom is realised in practice.

Alternative service in Estonia is regulated by the Armed Forces Act.<sup>26</sup> Section 10 of the Act stipulates that citizens who refuse on religious or moral grounds to perform military service are required to perform alternative service. Section 89 of the same Act stipulates that fulfilling the obligations of alternative service must not be in conflict with the religious or moral beliefs of those in alternative service, and that they must not be required against their wishes to handle weapons or other firearms, to practise using or

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<sup>25</sup> Ibid.

<sup>26</sup> RT I 1994, 23, 384.

maintain such firearms, or to handle other means and substances which are intended to kill people or to render the enemy harmless.

## 6. TAXATION

According to § 20 of the CCA, churches, congregations and associations of congregations are non-profit organisations. On the basis of the Income Tax Act<sup>27</sup> and by Government of the Republic Regulation No. 89 of 21st March 2000, the Estonian Government established an order that regulates the list of non-taxable organisations.<sup>28</sup> In accordance with the section 11(2) of the Income Tax Act churches, congregations and associations of congregations, which are registered by Ministry of Internal Affairs in the Estonian Registry of Churches, Congregations and Associations of Congregations, are exempted from income tax. Religious societies registered by a court in the Register of Non-profit Organisations and Foundations, have to apply for registration in the list of non-taxable organisations.

Since there is no state church in Estonia, there are no direct church taxes. The State supports the Estonian Council of Churches financially, for example ca 2 million (2 043 900) EEK (250 000 DM) was allocated from the 1999 state budget<sup>29</sup>, 1 945 000 EEK is allocated from the 2000 state budget.<sup>30</sup> The Council decides according to its own statutes which churches it admits. The members of the Council are the following: the Estonian Evangelical Lutheran Church, the Estonian Apostolic Orthodox Church, the Roman Catholic Church, the Estonian Christian Pentecostal Church, the Estonian Methodist Church, the Estonian Union of Evangelical Christian and Baptist Congregations, and the Estonian Congregation of St. Gregory of the Armenian Apostolic Church. The Estonian Apostolic Orthodox Church and the Estonian Union of Seventh-Day Adventists have the status of observers in the Council of Estonian Churches. The Council of Churches decides upon the usage of money by itself. The State does not prescribe how the money has to be used.

Taking into account the fact that sacral church buildings usually have historical, cultural and artistic value, the state intends, at least to some extent, to support the churches and other religious organisations. The Government of the Republic also strives to find means to support single projects, for instance the renovation of organs, etc.

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<sup>27</sup> RT I 1993, 79, 1184.

<sup>28</sup> RT I 1996, 48, 946.

<sup>29</sup> RT I 1999, 3, 49.

<sup>30</sup> RT I 2000, 1, 1.

## 7. AUTHORISATION TO PERFORM MARRIAGE OF CIVIL VALIDITY

Currently, no church or congregation in Estonia has the right or authorisation to register marriages of the civil validity. The Ministry of Internal Affairs in conjunction with the Ministry of Justice and the Council of Estonian Churches has initiated principal negotiations on the feasibility of granting authorisation.<sup>31</sup>

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<sup>31</sup> The Right to Freedom of Religion and Religious Associations. A Survey with Recommendations. Council of the Baltic Sea States. January 1999, pp. 26-28.