

## Religion and the Secular State in Estonia

### I. SOCIAL CONTEXT

The Lutheran Church has been the largest religious institution in Estonia since the sixteenth century. During the first independence period, which lasted from 1918 to 1940 (before the Soviet occupation), Estonia was more or less religiously homogenous. Most of the population, roughly 76 percent, belonged to the Estonian Evangelical Lutheran Church.<sup>1</sup> The second largest church was the Estonian Apostolic-Orthodox Church. When Estonia was occupied by the Soviet Union (1940–1942 and 1945–1991), the religious life of the country was oppressed and religious freedom was almost non-existent. At the beginning of the 1990s, after regaining independence, Estonia experienced what can be called a “return of the religious,” which was quite common in all Eastern European post-communist societies. This was partly an expression of national identity and partly a reaction to the suppression of individual freedom by the Soviet regime. But the religious enthusiasm caused by independence ended quickly and the extensive growth of membership of religious organizations stopped.

Estonia can be considered a highly secularized country today. According to the last population census from 2011, 54% of the adult population (those aged 15 and above, or 1,094,564 from a total population of 1,294,455) declared that they do not adhere to any particular creed. Only 29% considered themselves to adhere to any creed. Specifically, about 10% declared themselves to be Lutheran, the majority of whom are ethnic Estonians. The largest religious tradition in Estonia currently is the Orthodox Church, with 16% of the population considering themselves to be Orthodox.<sup>2</sup> Since the last census (2000), the Orthodox community has grown in number and has become bigger than the historically dominant Lutheran Church.<sup>3</sup> The Orthodox community in Estonia is divided between the Estonian Apostolic Orthodox Church and the Estonian Orthodox Church of Moscow Patriarchate. The relations between the two Orthodox churches, one under the canonical jurisdiction of the Ecumenical Patriarchate and the other under the canonical jurisdiction of the Moscow Patriarchate, are complicated due to historical and legal/canonical reasons.

Adherents to all other Christian and non-Christian religious communities constitute approximately 3% of Estonia’s adult population. The largest religious communities among these are Roman Catholics, Old Believers, Baptists, Pentecostals, and Jehovah’s Witnesses. There are several Jewish organizations in Estonia, and a new synagogue was opened in 2007. There is a small Muslim community in Estonia. Muslims have lived on the Estonian territory since approximately the 18th century. The majority of Muslims are

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1. According to the 1934 national census, there were 874,026 Evangelical Lutherans in Estonia of a total population of 1,126,413. See <http://www.estonica.org/en/Culture/Religion/Lutheranism/> accessed 31 March 2014.

2. Population and Housing Census 2011, <http://www.stat.ee/phc2011>, accessed 1 August 2013. Additional information about current membership of religious organizations is based on data from the Ministry of Internal Affairs, available at <https://www.siseministerium.ee/36748/>. It must be mentioned that religious organizations are not obligated to provide the Ministry of Internal Affairs with statistical information of their membership. Religious organizations have voluntarily informed state officials about the number of their adherents. Although presented figures leave considerable room for any kind of interpretation, it is hoped that they reflect to some extent the objective reality of religious life in Estonia.

3. For more detailed account on this issue see Merilin Kiviorg, *Law and Religion in Estonia* (Leiden: Kluwer Law International, 2014).

ethnic Tatars. So far there has been only a limited number of new arrivals. The Estonian indigenous religious tradition is represented by the House of Taara and Earth believers. In one way or another, some practices of indigenous religious tradition are popular and important for many in Estonia. Statistical surveys have shown relative coolness to institutional forms of religion and indicate that religion is both an individual and a private matter in Estonia. These surveys also indicate that the majority of the Estonian population is not hostile to religion.<sup>4</sup>

## II. THEORETICAL AND SCHOLARLY CONTEXT

When the Estonian Constitutional Assembly held heated discussions over each provision and meaning of the draft Constitution of the Republic of Estonia at the beginning of the 1990s, there was no real discussion (theoretically or scholarly) about the provisions relating to freedom of religion or belief or the state and church relationship. In the process of rebuilding the Estonian Republic after the collapse of the Soviet Union, there were more urgent issues to be dealt with.<sup>5</sup> However, a few general theoretical observations can be made. The Estonian Constitution is perceived to be a liberal constitution based on natural and inalienable individual rights.<sup>6</sup> At the same time, the preamble of the constitution states that the idea behind strengthening and developing the state is to guarantee the preservation of the Estonian nation, language, and culture through the ages.<sup>7</sup> The latter is a reflection of the classical German constitutional model, which presupposes the prior existence of a people, united by cultural, language, and ethnic ties.<sup>8</sup> However, it seems that in a (legal) scholarly interpretation of the constitution the emphasis is on individual rights. Moreover, the Estonian Constitution recognizes collective religious freedom and provides protection for cultural and religious minorities and for their autonomy.<sup>9</sup>

There are a limited number of scholarly works which provide in-depth analysis of the relationship between religion and state in Estonia.<sup>10</sup> One of the reasons for this could be that although there are occasional disputes, the relationship between religious communities themselves<sup>11</sup> and the state is generally amicable and cooperative. Thus, it has attracted limited academic response. Another possible reason is that Estonia has not been a country for extensive immigration. The questions faced by many European states in regard to the growing numbers in the Muslim community and other groups have not become an issue in Estonia yet.<sup>12</sup> However, one can detect two major areas of

4. The results of the latest statistical survey, conducted under the auspices of the Estonian Institute of Human Rights, are available at <http://www.eihr.ee/usuvabadus-2013/>, accessed 31 March 2014.

5. So far the longest lasting Estonian Constitution was adopted by the referendum of 28 June 1992.

6. Raul Narits, "About the Principles of the Constitution of the Republic of Estonia from the Perspective of Independent Statehood in Estonia," *Juridica International* XVI (2009): 56.

7. Id. at 58. See also the Preamble of the Estonian Constitution.

8. See also Julie Reingelheim, "Minority Protection and Constitutional Recognition of Difference," in *The Framework Convention for the Protection of National Minorities: A Useful Pan-European Instrument?*, eds. Annalies Verstichel et al. (Antwerp: Intersentia, 2008).

9. § 50, Estonian Constitution.

10. See e.g. supra n.3; Merilin Kiviorg, "The Mutual Roles of Religion and State in Estonia," in *The Mutual Roles of Religion and State in Europe*, ed. Balázs Schanda (ECCSR, 2014); Ringo Ringvee, "Regulating Religion in a Neoliberal Context: The Transformation of Estonia," in *Religion in the Neoliberal Age: Political Economy and Modes of Governance*, ed. François Gauthier and Tuomas Martikainen (Farnham: Ashgate, 2013); Ringo Ringvee, *Religion in Post-Soviet Estonia* (Doctoral Thesis, University of Tartu, 2012); Merilin Kiviorg, "State and Church in Estonia," in *State and Church in European Union*, 2nd ed., ed. Gerhard Robbers (Baden-Baden: Nomos-Verlagsgesellschaft, 2005), 95-114.

11. For example, the Council of Estonian Churches (established in 1989) has amongst its members the Estonian Evangelical Lutheran Church, Roman Catholic Church, both Orthodox churches (despite their historical and legal disputes), the Estonian Methodist Church, the Estonian Christian Pentecostal Church, the Armenian Apostolic Church, and also the Charismatic Episcopal Church of Estonia.

12. Because of the aging population and outward-migration, there is a shortage of skilled labor. This has triggered discussions on policy reviews to relax immigration and citizenship rules.

academic/public debate: (1) the role of major churches in Estonia and (2) equal treatment of religions.<sup>13</sup> In this regard, there seems to be at least two different or even opposing views on how Estonia should be modelling its relationship between state and religion. The first one recognizes the historical importance of Christian churches in shaping Estonian culture, values, and identity. However, this view takes into account the fact that Estonia is one of the least religious countries in Europe. This view also places emphasis on individual and collective freedom of religion or belief and sees the privileged position of churches as debatable in Estonian society. However, cooperation between religious organizations and the state on mutual fields of interest is recognized.

The second view is also based on the historical importance of Christian churches in Estonia. Under this view, however, the more active role and privileged position of the churches is seen as necessary to shape Estonian statehood and perhaps its post-soviet identity. This latter view is not so dominant in academic circles, but rather reflects current policy choices and strong symbolic gestures of the key political figures in support of major churches. These two contradicting views were most visible in the relatively recent quarrel over the liberty statue, which was erected to commemorate the Estonian independence war against Bolshevik Russia and *Landeswehr* (1918–1920), but also to symbolize Estonian independence generally. A major feature of the liberty statue is a cross, which triggered heated public debate over its symbolic meaning and value in contemporary Estonian society. The religious dimension of the debate was fuelled by the fact that the head of the selection commission (established by the decision of the Estonian Government) was the Archbishop of the Estonian Evangelical Lutheran Church. At the time of the writing of this report, even the Estonian President mentioned in an interview with a major newspaper that unfortunately the Estonian public had not received a clear answer (from the commission) as to what the cross symbolized in order to assess the proposed idea for the design of the statue.<sup>14</sup> It is justified to say that whatever it symbolizes, it does not symbolize the unity of Estonian society on religious matters.

Generally religion is not perceived as a problem in Estonia as long as it remains in the private sphere. The debates about the role of religion and specifically of the major churches in the public sphere in Estonia are ongoing.

### III. CONSTITUTIONAL CONTEXT

#### A. *Brief Political History*

The history of the law on religion in the Republic of Estonia may be divided into four main periods. The first started with the formation of the independent state in 1918<sup>15</sup> and with the adoption of the 1920 Constitution, which set forth the principle of a strict separation of state and church.<sup>16</sup> This was followed by the 1925 Religious Societies and their Associations Act, which reaffirmed the principle of equal treatment of all religious organizations, and the separation of state and church.<sup>17</sup>

The second period (the 1930s) saw significant political changes in Estonian society, which were characterized by the centralization of state administration, the concentration of power, a decline of democracy, and the expansion of state control. In 1934, the Churches and Religious Societies Act was enacted, not by Parliament but by decree of the State Elder (President).<sup>18</sup> This Act established different legal treatment for churches and for other religious societies. The status of some churches, especially large ones, was to a

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13. Additionally, religious education was the hotly disputed issues for some years. It seems that some compromise has been achieved on this matter.

14. Postimees 01.09.2007.

15. Prior to the 1917 revolution in Russia, Estonia was part of the Russian Empire.

16. RT 1920, 113/114, 243.

17. RT 1925, 183/184, 96.

18. RT 1934, 107, 840.

certain extent similar to the status of a state church. According to section 84(1)(b) of the 1938 Constitution, the leaders of the two largest and most important churches gained *ex officio* membership of the *Riiginõukogu* (Upper House of Parliament).<sup>19</sup> The government of all churches was subjected to control by the state.

The third period began with the Soviet occupation of Estonia. The law on religions in the Soviet Union was based on the 1918 Leninist decree on the separation of church from state and school from church. The bizarre fact is that the separation of state and church (religious organizations) was actually a non-separation because the state controlled all the aspects of religious organizations, including their leaders and sometimes even their members. Estonia became part of the USSR in 1940 and had little legislative independence during the occupation. USSR law dictated the laws on freedom of religion for the entire occupation period.

The fourth period began with the regaining of independence at the beginning of the 1990s and with the adoption of the 1992 Constitution.<sup>20</sup> Estonia started to rebuild its legal order on the principle of restitution, while at the same time acknowledging the changes over time in European legal order and thinking.

### B. Constitutional Provisions and Principles

The Estonian Constitution provides express protection to freedom of religion. Article 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 practice his or her religion, both alone and in a community with others, in public or in private, unless this is detrimental to public order, health or morals.

Article 40 is deemed to protect a wide variety of beliefs. Even during a state of emergency or a state of war, rights and liberties in Article 40 of the Constitution may not be restricted (Article 130 of the Estonian Constitution).<sup>21</sup> Article 41 on the freedom of belief and Article 42 on the privacy of one's religion and belief add strength to the commitment to freedom of religion. In addition, other constitutional provisions compliment basic freedom of religion. For example, Article 45, concerning the right to freedom of expression; Article 47, concerning the right to assembly; and Article 48, concerning the right to association, all provide specific protection for different aspects of religious freedom.

The right to freedom of religion in Estonia is also protected by international law. Article 3 of the Estonian Constitution stipulates that universally recognized principles and standards of international law shall be an inseparable part of the Estonian legal system. By Article 3 of the Estonian Constitution, the universally recognized principles and standards of international law have been incorporated 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. It should be noted that Article 3 incorporates into the Estonian legal system both international customary norms and general principles of law. International treaties (ratified by Parliament) are incorporated into the Estonian legal system by Article 123(2) of the Constitution. Article 123 states that if Estonian legal acts or other legal instruments contradict foreign treaties ratified by the Riigikogu (Parliament), the provisions of the foreign treaty shall be applied. Estonia is a

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19. RT 1937, 71, 590.

20. Eesti Vabariigi Põhiseadus [The Constitution of Estonian Republic] (Tallinn: Riigi Teataja Toimetuse Väljaanne, 1994).

21. However, it is not clear whether Article 130 of the Estonian Constitution offers absolute protection to the manifestation of freedom of religion (*forum externum*).

party to most European and universal human rights documents.<sup>22</sup> Estonia is also a member of many international organizations, including the United Nations, Council of Europe, and Organization of Security and Cooperation in Europe, and has ratified key conventions protecting freedom of religion or belief.

At the beginning of the 1990s, the Estonian state clearly expressed its desire to join the European Union. Estonia joined the European Union on 1 May 2004.<sup>23</sup> The law of the European Union takes precedence over Estonian law, as long as it does not contradict the Estonian Constitution's basic principles.<sup>24</sup>

The Estonian Constitution encompasses a few important principles determining freedom of religion and the relationship between the state and religious communities:

### 1. Neutrality

The principle of neutrality is not *expressis verbis* mentioned in the constitution. Article 40 of the Constitution stipulates the principle of institutional separation of the state and religious associations ("There is no state church"). However, this has not been interpreted as a rigorous policy of non-identification with religion. Although the cooperation between the state and religious associations is not *expressis verbis* mentioned in the constitution, it is an established practice today that state and religious associations can cooperate in areas of common interest. Thus, the principle "there is no state church" is not interpreted as being similar to disestablishment in the United States or the principle of *laïcité* in France. The Estonian Constitution does not make any reference to secularism as a constitutional principle. The stipulation "There is no state church" has been interpreted as a stipulation of the principle of neutrality. The principle of neutrality in the Estonian Constitution is a reflection of the neutrality and impartiality principle adopted by the European Court of Human Rights, which should be understood as an obligation of the state to be a neutral and impartial organizer of various beliefs. There have been heated debates over preferential treatment of Christian churches in Estonia. Judge Maruste has rightly observed that under the Estonian Constitution the state needs to be careful when giving preference to one religious community over another – it has to have objective and reasonable justification, especially when financial subsidies or public services are in question.<sup>25</sup> In this regard, he makes special reference to the equality principle. It is probably fair to say that the meaning of the principle of neutrality in Estonian constitutional theory and practice regarding religion is under development.

### 2. Equality

The religious freedom guarantee of Article 40 of the constitution has to be interpreted in conjunction with the other articles of the constitution as one reflects on the relations between state and church (or, more precisely, the state and religious communities). The principle of equality is anchored in the first sentence of the first paragraph of Article 12 of the Estonian Constitution, which states that all persons shall be equal before the law. The second paragraph of article 12 of the constitution sets forth the principle of non-discrimination, prohibiting discrimination *inter alia* on the basis of religion or belief.

22. *Inter alia*, the European Convention for the Protection of Human Rights and Fundamental Freedoms (1950); The International Covenant on Civil and Political Rights (1966); European Convention on Human Rights and Fundamental Freedoms (adopted 4 Nov 1950, entered into force 3 Sept 1953) 213 UNTS 221 (ECHR); and International Covenant on Civil and Political Rights (adopted 16 Dec 1966, entered into force 23 Mar 1976) 999 UNTS 171 (ICCPR).

23. Treaty of Accession, RT II, 2004, 3, 8.

24. Raul Narits has drawn attention to the fact that although fundamental principles are the new standard for legality, it is not entirely clear what these principles of the constitution are, which cannot be overridden by EU law. Raul Narits, *supra* n. 6 at 59.

25. Rait Maruste, *Konstitutsionalism ning Põhiõiguste ja –Vabaduste Kaitse [Constitutionalism and Fundamental Rights and Freedoms of Others]*. (Tallinn: Juura, 2004), 522.

As the constitution protects both the individual and collective freedom of religion, these principles have to be applied to religious communities as well. In the constitutional interpretation, both direct and indirect discrimination are prohibited.<sup>26</sup> There have been debates over preferential treatment of Christian churches in Estonia.

### 3. Self-determination/Autonomy

The general right to self-determination of persons (both individuals and groups) stems from Article 19 of the Estonian Constitution. Article 19 (1) of the constitution states that “all persons shall have the right to free self-realization.” The right to religious (church) autonomy is also considered to be an essential part of collective freedom of religion protected by Article 40 of the Constitution and also by Article 48, Article 19 (1), and Article 9 (2).<sup>27</sup>

Autonomy of religious associations means also the right to self-administration in accordance with their own particular religious laws and prescriptions.<sup>28</sup>

### 4. Limits to Freedom of Religion or Belief

Article 40 itself states that freedom of religion, “alone or in community,” is assured “unless it endangers public order, health, or morals.” Additionally, the Constitution contains four general limitation clauses: the first sentence of Article 3(1),<sup>29</sup> Article 11, Article 13(2),<sup>30</sup> and Article 19(2). Article 11, however, is the central and most important limitations clause, stating that “[r]ights and liberties may be restricted only in accordance with the constitution. Restrictions may be implemented only insofar as they are necessary in a democratic society, and their imposition may not distort the nature of the rights and liberties.” Thus, every case of restriction of rights and liberties has to be justified and pass the test of proportionality. Article 19(2) constitutionalizes the common sense idea that, in exercising their rights and liberties, all persons must respect and consider the rights and liberties of others (“and observe the law”).<sup>31</sup> However, it is not entirely clear what standard or level of rigor/scrutiny the courts need to apply in regards to freedom of religion or belief. The current case law leaves an impression that the level of scrutiny fluctuates.

## IV. LEGAL CONTEXT

### A. Legislation

The religious freedom clauses in the 1992 Constitution were followed by the 1993 Churches and Congregations Act.<sup>32</sup> On 1 July 2002, the 1993 law was entirely replaced by the new Churches and Congregations Act (CCA).<sup>33</sup> The 2002 CCA expressly states that the Non-profit Associations Act and the 2002 CCA are related as general and special legislation.<sup>34</sup> The law gives considerable room for religious associations to organize themselves in accordance with their own teachings and structure. “The statutes of a

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26. Ülle Madise et al., eds., *Eesti Vabariigi Põhiseadus. Kommenteeritud Väljaanne [Commentaries on the Estonian Constitution]* (Tallinn: Juura, 2012).

27. This was expressly stated in the Presidential veto to the 2002 Churches and Congregations Act in RTL, 03.07.2001, 82, 1120.

28. *Id.*

29. “State power shall be exercised solely on the basis of the constitution and such laws which are in accordance with the constitution”.

30. “The law shall protect all persons against arbitrary treatment by state authorities.”

31. See Robert Alexy, “Põhiõigused Eesti Põhiseaduses [Fundamental Rights in the Estonian Constitution]” *Iuridica* (2001), *Eriväljaanne [the special issue]*, 3-98.

32. Churches and Congregations Act, RT I 1993, 30, 510.

33. Churches and Congregations Act, RT I 2002, 24, 135.

34. *Id.*, art. 5 (1).

religious association may prescribe differences from the provisions of the Non-profit Associations Act concerning membership and management if such differences arise from the historical teaching and structure of the religious association.”<sup>35</sup> It also provides specific legal status for religious organizations, declaring “[a] religious association is a legal person in private law...” Transformation of a religious association into a legal person of a different type is prohibited.<sup>36</sup> This provision is a result of the debate over granting public legal personality to the two largest churches in Estonia.

The 2002 CCA differs from the earlier law principally in the manner in which the government registered religious organizations. Previously, under the 1993 CCA, religious associations were registered by the Ministry of Internal Affairs. According to the 2002 law, religious associations are registered by the registration departments of county and city courts.<sup>37</sup> The legal capacity of a religious association commences at the time the religious association is entered into the register of religious associations. The law does not prohibit activities of religious associations which are not registered. Rather, the main disadvantage for these unregistered entities is that they cannot present themselves as legal persons and, therefore, cannot exercise their rights or seek protections accorded to a religious legal entity. Nevertheless, they still enjoy their constitutionally protected collective freedom of religion as a religious group.

Under the 1993 CCA, legal authorities could refuse registration of a religious organization only if, upon review by the authorities, its internal statutes were not in accordance with the law. According to Article 14(1) of the 2002 CCA, in order to determine compliance of a religious association with the requirements provided by law, the registrar may now suspend proceedings to request the opinion of the ministry with responsibility for those issues relating to religious associations,<sup>38</sup> or alternatively the registrar may request an expert opinion from another competent agency.<sup>39</sup> One possible interpretation of this provision is that the legislature has tried to expand the potential for *ex ante* control over religious organizations. However, there have been no cases charging an abuse of power on the basis of this provision.

In current law, there is no difference in registration of emerging religious entities and historical majority churches. In this sense, there have been no major problems in practice either. Nevertheless, just before the adoption of the 2002 CCA by the Estonian parliament, the Estonian Council of Churches sent a letter to the parliamentary commission asking it to take measures in the new law to limit the activities of “non-constructive religious communities.” Fortunately, these proposals were not enacted into law. The Council’s intention was probably a good faith attempt to avoid harmful experiences for individuals and raises questions about proselytism. Yet, raising this issue created alarm when seen in the Eastern European context, where many countries had obstructed activities of minority groups. There is also one recent case where registration was refused to the Congregation of Satanist.<sup>40</sup>

## B. Case Law

There is very limited Estonian case law regarding religion or belief. Thus, it is difficult to make any general observations about the case law or trends in the judicial reasoning. The Estonian Supreme Court has passed judgment on only three cases dealing with freedom of religion. The first case concerned constitutionality of the Non-profit

35. *Id.*, art., 5 (2).

36. *Id.*, art., 5 (3).

37. *Id.* art. 17 (3).

38. Currently the Estonian Ministry of Internal Affairs is in charge of issues relating to the relationship of the state to religious communities (more specifically, within the ministry, the department of Religious Affairs), <https://www.siseministeerium.ee/36748/>, accessed 31 March 2014.

39. Churches and Congregations Act, art. 14 (1).

40. Tartu Ringkonnakohus (Tartu District Court), Civil case no 2-13-24298. The congregation’s appeal to the Supreme Court failed.

Associations Act;<sup>41</sup> the second, conscientious objection to military service.<sup>42</sup> In the latter, the court found that Article 40 (freedom of religion or belief) of the Constitution did not include the right to refuse alternative service. It was concluded that all persons in accordance with Article 124(2) of the Constitution, who refuse service in the Defence forces for religious or ethical reasons, are obliged to participate in alternative service. The third case concerned a claim of the native religious community (Taara and Earth believers) that local detailed planning laws violated *inter alia* their freedom of religion.<sup>43</sup> The court found it unnecessary to establish whether there was a violation of the religious community's freedom of religion. However, the case was decided in favor of the community, as the court found that the local planning decisions were not properly motivated and thus illegal.

There have been several cases in the lower courts concerning Orthodox churches in Estonia.<sup>44</sup> There has been one case concerning the rights of prisoners<sup>45</sup> and one about limiting the manifestation of religion and right to assembly on the grounds of public order.<sup>46</sup> The former case concerned confiscation of candles from a prisoner. Prison authorities justified their act on the grounds of prison security. The prisoner claimed that his religious belief (Buddhism) required using incense candles. He claimed that prison authorities violated his rights under Article 40 of the constitution and undermined his dignity. Interestingly, the District Court gave an opinion on what Buddhism requires. It stated that although candles are an important part of Buddhist rituals, Buddhism does not require a prisoner to burn candles in his cell. With this, it was established that no unreasonable damage to the prisoner was caused. The grounds for restriction or proportionality of the measure were not discussed at all.

The latter case concerned a small group of believers gathered by the Tallinn railway station. They were singing religious songs using microphones and loudspeakers. The organizers of the event did not notify local authorities and did not have permission to carry out this meeting. Although, the religious meeting had a peaceful character, it was established that they were obstructing traffic coming into the railway station and were disturbing people selling flowers at the market nearby. Organizers of the event were asked to stop singing. When they disobeyed, six people were arrested. Their activities were found contrary to Article 7 (1 and 2) of the Public Meetings Act, as they were violating public order and obstructing traffic. Neither Articles 9 nor 11 of the European Convention for Protection of Fundamental Rights and Freedoms or Article 40 or 47 (right to assembly) of the Estonian Constitution were invoked. There was no elaboration on justifications and/or proportionality of the restriction. Most other cases where religious communities have filed complaints are related to land reform and restoration of illegally expropriated property. This has been the dominant issue relating to institutional and corporate religious freedom since regaining independence in the early 1990s.

### C. Bilateral Relations

In Estonia, church-state relations are governed not only by general laws, but also by formal agreements that are negotiated directly between the Government and religious institutions. Some of these agreements are considered to be international treaties, such as the agreement between the state and the Holy See for the Roman Catholic Church. The

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41. Case no. 3-4-1-96, concerning review of the petition by the President of the Republic to declare the Non-profit Association Act unconstitutional.

42. Case no. 3-1-1-82-96 of the Criminal Law Chamber of the Supreme Court.

43. Case no. 3-3-39-07 of the Administrative Law Chamber of the Supreme Court.

44. These cases dealt with registration and the conflict between 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 the other one (subordinated to Moscow Patriarchate) was established with the help of Soviet occupation in 1945, eliminating the EAOC Synod in Estonia. For a more detailed analysis, see Merilin Kiviorg, "Eesti Apostlik-Õigeusu Kirik ja Objektivne Kirikuõigus [Estonian Apostolic Orthodox Church and Law on Religions]," *Juridica* 10 (1997): 518-523.

45. Tartu Ringkonnakohtus, Case No. 3-07-701 (2 May 2007).

46. Harju Maakohus, Case No. 4-05-936/1 (25 October 2006).



agreements between the state and religious organizations may also have the nature of administrative agreements or cooperation agreements under civil law. The purpose of these agreements may vary from coordination and cooperation on issues of public interest to contracting for the specific religious needs of a religious community. The agreements are perhaps becoming an increasingly important source for regulating the relationship between religious communities and the state. As a relatively new way of approaching this relationship in Estonia, it is not without difficulties and controversies – mainly concerning the equal treatment of religious communities.

## V. THE STATE AND RELIGIOUS AUTONOMY

Autonomy of religious associations is generally respected. However, a couple of regulations can be mentioned which exclude autonomy in specific areas. The law sets the requirement that a minister of a religious association has to be a person who has the right to vote in local government elections. Other requirements of the minister are set by the religious association itself. This provision is mitigated by the allowance that the management board of a religious association has the right to invite a minister of religion from outside Estonia and apply for a work and residence permit for the minister of religion who is an alien pursuant to the provisions of the Aliens Act.<sup>47</sup>

The public sector controls funds paid to religious communities. Religious communities do not have exemptions from general accounting obligations and requirements for annual financial reports. Moreover, a review or audit may be called for pursuant to the procedure established in the statutes. The members of the management board and of other bodies shall allow controllers or auditors to examine all documents necessary for conduct of a review or audit and shall provide the necessary information (Churches and Congregations Act Article 26). However, privacy of members is respected. Article 42 of the Estonian Constitution states that “state agencies, local governments, and their officials shall not gather or store information about the beliefs of an Estonian citizen against the citizen's free will.”

## VI. FINANCING OF RELIGIOUS COMMUNITIES

As mentioned above, one of the main principles underlying the state and community relationship is captured in Article 40 of the Estonian Constitution: there is no state church. However, this does not require strict separation of state and church, or other religious communities. Cooperation with religious communities and financial subsidies by the state for the common good has been accepted; however, the extent of it has been passionately debated and has caused non-Christian communities to express their concerns about equal treatment. These problems have also been pointed out by the Chancellor of Justice in one of his annual reports. He has rightly stated that “many of the issues in this field tend to remain outside the sphere of the constitution and a debate and agreement in society is needed to find an answer to them.”<sup>48</sup>

The Estonian Council of Churches, which consists of ten Christian churches, has been active in determining relations between church and state. The privileged position of the Council is visible, and perhaps most sensitive, in matters of financial support and education. Since the beginning of the 1990s, there has been regular direct financial support to the Estonian Council of Churches by the state. The state does not prescribe how the money has to be used by the Council. In addition, allocations have been made to support the publication of the newspaper of the Estonian Evangelical Lutheran Church. The constitutionality of these allocations and preferential treatment of the Estonian

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47. RT I 2010, 3, 4.

48. The Annual Report 2003-2004 of the Chancellor of Justice of Estonia, available at <http://www.oiguskantsler.ee/files/37.pdf>.

Council of Churches and the Lutheran Church have been questioned by non-Christian religious communities.

The Council has also been treated as a partner in decision making on religious freedom questions in Estonia. On 17 October 2002, the Government and the Estonian Council of Churches signed the Protocol of Common Concerns. Although it has been argued that other religious organizations have in principle the right to seek for the same type of cooperation, no other religious organization has yet been able (or expressly willing) to establish it. However, a step forward was made in 2005 when a commission consisting of state representatives, representatives of Native religion, and various other experts was formed to draft a state program for the protection of 'Groves' and other natural sacral objects.<sup>49</sup>

However, there are also several ways in which the state supports all religious associations. There are several tax exemptions. Religious associations have some privileges under tax law. However, in recent years there have been some small changes that have put religious associations on a more equal footing with all other nonprofit organizations, especially regarding exemptions from income tax. There is no longer an automatic exemption, as was the case before 2011. As of January 2011, religious associations have to apply for inclusion in the list of non-taxable organizations, as do other nonprofit organizations. Religious associations are exempt from land (property) tax. Land tax is not imposed on land under the places of worship of churches and congregations. This exemption does not apply to the properties of secular nonprofit organizations.

Taking into account the fact that sacred church buildings usually have historical, cultural, and artistic value, the state is also obliged, according to law, to find additional finances to support the churches and other religious communities in the preservation of these buildings. In addition to that, on 11 March 2003, the Estonian government approved a policy paper entitled, "Programme for Preservation and Development of Sacred Buildings." It is not law, but it is a basis for several legislative and financial actions to support the development of churches from 2004 to 2013 (the programme has been renewed and revised for 2013-2018). According to this policy, allocations are made every year from the state budget. This paper recognizes the historic, cultural and communal importance of Christian churches. The immediate aim is to restore culturally and artistically important buildings. The majority of churches having historical value belong to the Evangelical Lutheran Church and the Estonian Apostolic Orthodox Church, but some also belong to other minor communities. However, this policy paper has a wider purpose, as it sees Christian churches as partners to the state.

For example, it sees an important role for churches in preserving national identity and cultural heritage, but also in carrying out social work, educating the young, regional development and community life in the countryside with high unemployment, and even in spiritual guidance for people to educate them on religious matters after the vacuum caused by Soviet times and giving them traction in a globalizing world. It definitely raises interesting questions about the general role of today's state in preserving, or shaping,<sup>50</sup> national identity, keeping a coherent society and protecting human rights and rights of minorities in a generally multi-religious and secularized context. There has been a long running debate since the breakup of the Soviet Union about whether Estonia has a concept of the state and church (religious communities) relationship. There has been hesitation on both sides. Even inside the Lutheran Church, there have been conflicting ideas of how much involvement the church must have with the state and to what extent the church can use the tools of the state for the fulfilment of its purpose. In addition to that, it could also be said that no church has really won the hearts of Estonians. Although many may identify themselves as believers, most have remained indifferent to the institutional expression of their convictions.

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49. Estonian Ministry of Culture, Directive of Minister of Culture, 11. 02.2005, No. 49.

50. Especially taking into account that Estonia is a highly secularized country today.

## VII. CIVIL LEGAL EFFECTS OF RELIGIOUS ACTS

Religious communities have autonomy to regulate their own affairs and their membership. As a rule, religious acts do not have a civil legal effect. For example, in accordance with the law, a clergyman who has received authorization from the Minister of Regional Affairs is entitled to perform civil marriages. Thus, the state has not recognized the concept of religious marriage *per se* but, rather, has established the possibility of delegating the obligations of the register office to a clergyman of a church, congregation, or association of congregations.<sup>51</sup> It needs to be mentioned that if held separately, the religious marriage as such can be conducted before the civil registration. But only civil registration has a legal effect. Historically, the possibility to enforce decisions by secular institutions (Ministry of Internal Affairs and the Court) existed under Articles 24 and 25 of the 1934 Act on Churches and Religious Societies.<sup>52</sup> Today this kind of option is not provided by law.

## VIII. RELIGIOUS EDUCATION OF YOUTH

Article 37 of the Estonian Constitution establishes the basis for the entire school system. According to the Estonian Constitution, education is supervised by the state. The Estonian school system consists mainly of public schools (municipal and state schools), thus the main place for religious education would be in public schools. The teachers of religious studies are paid from the state or municipal budget.

There is no explicit mention of religious education in the Constitution. Religious education in Estonia is a voluntary, non-confessional (non-denominational) subject. Unlike other countries with non-confessional models of religious education, in Estonia, religious education is an elective, not a required course. As to the typology of religion education, it is intended to be a mix of teaching about religions and ethics. This type of religious education reflects Estonian constitutional principles of neutrality, non-discrimination, and freedom of religion and belief. However, the type of religious education is also a result of a compromise arising from heated debates over religious education since independence in 1991.

Confessional introduction is provided for children by Sunday schools. Religious organizations can also set up private educational institutions. Religious associations do not enjoy any special privileges or restrictions regarding establishment of educational institutions. The Private Schools Act regulates the establishment of private educational institutions at all school levels (preschool, basic, secondary, vocational, and higher education). These private schools need to obtain licenses from the Ministry of Education and Research. Sunday or Bible schools run by churches and congregations do not need licenses. Private basic schools and gymnasiums have relative freedom as regards curriculum, ethos, admissions, and teaching methods and philosophy. Private schools are allowed to provide confessional religious education. This is a general provision which according to the Private Schools Act<sup>53</sup> applies to all private schools, not just confessional ones. The Private Schools Act further states that confessional religious education is voluntary.

## IX. RELIGIOUS SYMBOLS IN PUBLIC PLACES

Wearing of the headscarf or other religious symbols is not prohibited in Estonia and in fact seems to be well tolerated. Currently there are no reported conflicts regarding

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51. On 7 November 2013, there were 135 persons with the right to conduct religious marriages with civil validity. The information is obtained from the Ministry of Internal Affairs, <http://www.siseministerium.ee>, accessed 31 March 2014.

52. RT 1934, 107, 840.

53. RT I 1998, 57, 859.

wearing a headscarf or other religious symbols in public places. Regarding identification documents, the laws were amended in 2005 to comply with European standards. According to the Identification Documents Act, a person has a right on religious ground to submit a photo with a head covering for identification documents.<sup>54</sup> However, the face from mandible to upper forehead should be uncovered. This applies not only to Muslim women, but also to Christian nuns. There have been no court cases concerning equal treatment or protection of minority religions. However, there have been heated debates about state neutrality and display of other religious symbols in public places.<sup>55</sup>

#### X. FREEDOM OF EXPRESSION AND OFFENSES AGAINST RELIGION

Article 154 of the Penal Code specifically deals with violation of freedom of religion. It lays down the penalty (a pecuniary punishment or up to one year of imprisonment) for interfering with the religious affiliation or religious practices of a person, unless the religious affiliation or practices are detrimental to the morals, rights or health of other people, or violate public order.<sup>56</sup> Compelling a person to join or be a member of a religious association is punishable by a fine or by imprisonment of up to one year.<sup>57</sup> Article 159 of the Penal Code provides more general protection against violations of freedom of association. As some religious communities have chosen to register as ordinary non-profit organizations, this provision provides adequate protection to them as well.

There are no provisions specifically dealing with “blasphemy.” However, activities which publicly incite to hatred, violence, or discrimination on the basis of religion, amongst other grounds, or “results in danger to the life, health or property of a person are punishable by a fine of up to 300 fine units or by detention.”<sup>58</sup> In certain circumstances, it may attract more severe punishment.

“Interference with or violent dispersion of a lawfully organised public meeting is punishable by a pecuniary punishment or up to one year of imprisonment.”<sup>59</sup> There is no provision specifically dealing with proselytizing. Thus, under the law it is considered an offence. General provisions on offences against persons apply to “improper proselytism” (this term is not used by the Penal Code).

#### XI. CONCLUSION

The relationship between state and religious communities has been gradually evolving through the heated debates over religious education, imposition of Christian terminology on non-Christian communities, religious symbols in public places, financial support and property matters. There is also limited but emerging case law to provide some clarification on matters of religion or belief. The future of state and religious communities’ relationship, however, continues to evolve. Estonia is not yet facing any of the challenges related to the growing Muslim communities experienced in other European countries. Changes in the societal attitudes, law and policy regarding religion may occur if Estonia faces significant changes in the religious composition of the population due to migration. Currently there exists the need to conceptualize and learn from other countries’ experiences to prevent and tackle potential future problems.

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54. RT I 1999, 25, 365.

55. See above discussion on the liberty statue, Section II.

56. Penal Code, RT I 2001, 61, 364, § 154.

57. *Id.*, § 155.

58. *Id.*, § 151 (1).

59. *Id.*, § 158.