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# State and Church in the European Union

Third Edition



**Nomos**

# State and Church in Latvia

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## *I. Social Facts*

Latvia's current (2018) population numbers around 2 million inhabitants in an area of 64,589 sq. km. Of these nearly 60 % are Latvians, and Russians (approximately 30%) are the largest other nationality. Latvia is a multi-confessional country, where the three largest denominations are Protestantism, Catholicism and Orthodoxy. Unfortunately, the census does not ask about religious beliefs. The unreliability of the data provided to the State is vividly revealed by information about the number of Muslims in Latvia. The registered Muslim congregations in their report to the Ministry of Justice give a total of 300, whereas in publicly accessible sources of information the number of Muslims is between one thousand and ten thousand believers. The case of Muslims is also interesting because religious organisations tend to exaggerate the number of their adherents.

The role of the church in the internal national processes in Latvia should not be underestimated. Public polls show that 70 per cent of Latvian citizens and 60 per cent of non-citizens trust the churches. Information provided by religious organisations<sup>1</sup> indicates that among two million inhabitants there are (2019):

Evangelical Lutherans	700,000
Roman Catholics	423,176
Orthodox	180,000
Orthodox Old Believers	46,482
Charismatic Christians	7,885
Baptists	6,449
Seventh-Day Adventists	3,818
Mormons	996
Latvian pagans (Dievturi)	530

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1 As required by section 14(7) of the Law On Religious Organisations.

Jehovah's Witnesses	2,216
Methodists	554
Jews	216
Krishna followers	158
Muslims	198
Buddhist	120
Hindu	21

Information from sociological surveys is more credible, showing that religious affiliations of the population are: Lutherans 25%, Roman Catholics 21%, Orthodox 25%, Old Believer Orthodox 2.7%, Adventists 0.4%, and Jews 0.1%. About 20% of the Latvian population do not belong to any religion – some of those consider themselves to be believers without identifying themselves with any particular denomination, while others declare themselves to be atheists. This breakdown in percentage terms is approximate, because the State does not have at its disposal reliable statistics.

Based on data from the Ministry of Justice, the number of biggest religious organisations registered in Latvia is following (2019):

293	Lutheran
278	Catholic
136	Orthodox
95	Baptist
64	Old Believer Orthodox
60	Pentecostal
51	Seventh Day Adventist
63	Evangelical Christians
34	Jehovah's Witnesses
15	Muslims
11	Latvian pagans (Dievturi)
13	Methodist
12	Jewish
4	Buddhist

## II. Historical Background

Before the German invasion in the 12<sup>th</sup> century, the territory of Latvia was inhabited by many kindred Baltic tribes (zemgali, kurschi, latgali). The most widespread religion among these tribes was a kind of paganism, '*Dievturība*'. Latvia was under German control until the 18<sup>th</sup> century. Under the influence of German landowners the Lutheran doctrine spread, and later provided good soil for other branches of Protestantism. 1524 is considered as the year of the foundation of the Latvian Evangelical Lutheran Church.

After Sweden lost the Nordic War, Latvia became part of the Russian Empire. Russia tried to convert its newly acquired lands to the 'Tsar's faith'. Orthodoxy did not become popular among Latvians; however, a certain number of them adhered to it. In the second half of the 17<sup>th</sup> century, Old Believers became active in Latvia. Despite Latvia being part of the Russian Empire, the Old Orthodox believers had found a haven in Latvia due to the distinctive and more liberal religious policy implemented in this region compared with others. Latvian Old Orthodox believers are the world's biggest group of the Old Believer Orthodox denomination.

The Republic of Latvia was founded on 18 November 1918. The proclamation of an independent democratic Latvia became possible largely through the promise of the founders of the state (ev.lutherans), for people from Latgale region (traditionally Roman Catholics territory) to sign an agreement with the Holy See in the country. Thus, the territorial unity of the Latvian State depended on religious tolerance towards Catholics. The State's history is split into two periods: the first 1918-1940 and the second, starting in 1990. The normal development of Latvia as a state was violently interrupted by the Soviet occupation in 1940. The second independence period began with the declaration on the restoration of independence of the Republic of Latvia on **4 May 1990**. This document recognizes the fact of occupation as a legal fact for the first time.

## III. Legal Sources and Basic Categories of the System

The current Latvian legal regulation and the prevailing legal principles in the relationship between the State and the Church are close to the approach that dominates in the Central European countries. Latvia is a Member State of the European Union and the Charter of Fundamental Rights of the European Union is binding upon it, and the State has acceded to the European Convention for the Protection of Human Rights and Funda-

mental freedoms. Religious freedom prevails in Latvia, and there is no official state Church. In Latvia, separation of the Church from the State has been established at a constitutional level.

### 1. Constitutional provisions on religion

The Constitution of Latvia is a laconic basic law. Article 91 establishes equal treatment and prohibits any kind of discrimination. Article 99 provides:

“Everyone has the right to freedom of thought, conscience and religion. The church shall be separate from the State.”

Each of these sentences defines the nature and content of the relationship between the State and religion. The first sentence is “the clause of the freedom of religion”; the second sentence is “the clause of separation of the Church from the State.” Article 116 of the Constitution envisages the possible restriction of fundamental rights, among which the freedom of religion is listed, to protect the rights of other persons, the democratic state order, public safety, welfare and morals.

As the Constitutional Court (hereinafter – CC) has recognised<sup>2</sup>, freedom of thought, conscience and religious belief is one of the most significant values in a democratic society. This freedom encompasses various religious, non-religious and atheistic views, as well as the right to convert to another religion or not to adhere to any religion. The freedom of religion should, in the opinion of the CC, be interpreted broadly. The CC has recognised that the freedoms included in Article 99 are important in shaping the identity and life-views of a religious person. In examining this Article in interconnection with Article 116, the CC drew the distinction between the internal aspect of religious belief (*forum internum*) and the right to external manifestation of religion (*forum externum*). Although the freedom of religion primarily is a matter of a person’s internal consciousness, it also includes the right to devote oneself to one’s religion or to express one’s religious beliefs. The expression of religious beliefs comprises, *inter alia*, worshipping, the performance of religious and ritualistic ceremonies

and preaching of doctrine. The internal expressions of religion may not be restricted.<sup>3</sup>

### 2. The Latvian Law on Religious Organisations

There are two dates of equal significance in the statehood of Latvia. These two dates are marked in the Preamble to the Constitution and are those of the founding of the State and the restoration of statehood. The State of Latvia was founded on 18 November 1918 and was restored on 4 May 1990. The prolonged Soviet occupation left a deep impact upon the State, its people and, naturally, also the religious organisations. Following the restoration of statehood in 1990, and in the course of a single year, Parliament adopted a new Constitution, acceded to 51 international documents in the field of human rights and hastily adopted 140 laws.<sup>4</sup> One of these laws – “Religious Organisations Law”<sup>5</sup> ensured the right of believers to association, the right to worship, and defined the procedure for establishing religious organisations and their registration. A year later, the law “On Restitution of the Property of Religious Organisations”<sup>6</sup>, was adopted. Although the Soviet Union had allowed believers to keep some of the church buildings for worship, it had divested the churches of many properties, turning former sacral buildings into planetariums, houses of culture, concert halls, sports halls, and even warehouses.

The “Religious Organisations Law”, like other laws of the period, was poorly drafted, and in 1995 the law “On Religious Organisations”<sup>7</sup> (hereinafter – ROL) was adopted, a much better draft in which contradictions have been eliminated, the definitions of the terms made clearer, and the procedures for registering religious organisations better developed. The law both reflects the general public attitude towards new religious movements and is manifestly more stringent towards them. During the parlia-

<sup>2</sup> Judgment of 18 March 2011, Case No.2010-5-03; Judgement of 26 April 2018, Case No. 2017-18-01.

<sup>3</sup> Ibid.

<sup>4</sup> Balodis R., Kārklīņa A., Danovskis E. Latvijas konstitucionālo un administratīvo tiesību attīstība pēc neatkarības atjaunošanas. Latvijas Universitātes Žurnāls. Juridiskā zinātne No 3. Latvijas Universitāte 2012.

<sup>5</sup> Par reliģiskajām organizācijām: LR AP likums (11.9.1990). *Latvijas Republikas Augstākās Padomes un Valdības Ziņotājs* [Report of the Supreme Council and Government of the Republic of Latvia; hereinafter LRAP] No 40, 10 October 1990..

<sup>6</sup> LRAP No 22/23, 19 June 1992.

<sup>7</sup> Reliģisko organizāciju likums. (7.9.1995). *Latvijas Vēstnesis* [Official Gazette, hereinafter LV]. No 146, 26 September 1995.

mentary debates about the law, concern was voiced that Latvia was being inundated by the invasion of foreign, previously unknown, religious or pseudo-religious movements. The majority of the new movements are not only totally foreign to the Latvian mentality but also are often engaged in unlawful or even anti-state activities. The legislator, satisfying the public demand, reinforced the State's control over religious organisations. For example, to register a Church, instead of the previous 3 congregations 10 congregations were required, whereas new religious organisations, upon commencing their activities, had to reckon with a moratorium on registration for 10 years. The new law also prohibited the registration of more than one association within one denomination. The last restriction was based on the legislator's wish not to create chaos in the process of denationalisation of property.

### 3. *The agreement between the Republic of Latvia with the Holy See and the resulting special status of the Roman Catholic Church*

In Latvia, the Roman Catholic Church stands out among all other religious organisations both as to the type of recognition by the State and as to the level of that recognition. Since 12 September 2020, the status of the Roman Catholic Church in Latvia has been regulated by an agreement between Latvia and the Holy See, which was created upon the initiative of the Holy See. Pursuant to the provisions of the agreement, the Catholic Church is the only Latvian Church that has been recognised as the subject of public law, and it acquired this status with no need to report to the registration authority; moreover, the Church, unlike all other religious organisations, instead of registering congregations has only to inform the registration authority of their existence. The Chancery of the President of Latvia announces the names of bishops appointed by the Catholic Church. Despite active efforts by other churches (for example, the Evangelical Lutheran Church), only the Roman Catholic Church, with the support of the Holy See, has been able to achieve this status. One may conclude that the Catholic Church is guaranteed a higher degree of autonomy than any other religious organisation. A number of essential issues (for example, registration and the chaplaincy service) the activities of the Catholic

Church are regulated both by ROL and the agreement between Latvia and the Holy See.<sup>8</sup>

### 4. *The Special Church Laws, adopted on the basis of agreements concluded by the government*

Following the agreement with the Holy See, in 2004, the government made agreements with six Christian Churches and in 2006 with the Jewish Congregation, on the basis of which in the period from 2007 to 2008 seven laws were adopted (hereinafter – the Special Church Laws): Seventh-day Adventist Latvian Congregation Union Law, Latvian Baptist Congregation Union Law, Latvian United Methodist Church Law, Latvian Orthodox Church Law, Latvian Old Believers Pomorie Church Law, Latvian Orthodox Church Law and Riga Jewish Congregation Law.<sup>9</sup> Section 5(7) was added to ROL, which provided that the relationships between the State and some Churches could be regulated by special laws. The seven special laws enshrine the status of a traditional religious organisation for each of the aforementioned religious bodies, although the State did not grant to any of them the status of a legal person of public law.

### 5. *A comparative view on the rights established*

The following Table presents a comparison of rights in the Special Church Laws and in the Agreement with the Holy See, with references to specific sections. The general right to autonomy of the Roman Catholic Church granted by Articles 1 to 4 of the Agreement covers some rights not expressly referred to in the Agreement.

8 Agreement between the Republic of Latvia and the Holy See: LV No 137(2712), 25 September 2002.

9 Seventh-day Adventist Latvian Congregation Union Law, LV No 93(3669), 12 June 2007; Latvian Baptist Congregation Union Law, LV, No 86(3662), 30 May 2007; Riga Jewish Congregation Law, LV No 98(3674), 20 June 2007; Latvian United Methodist Church Law, LV No 91(3667), 7 June 2007; Latvian Old Believers Pomorie Church Law, LV, No 98(3674), 20 June 2007; Latvian Evangelical Lutheran Church Law, LV No 188(3972), 3 December 2008; Latvian Orthodox Church Law, LV No 188(3972), 3 December 2008.

Nr.	Regulatory act	Agreement with Holy See	Special Church Laws				
			H	A	B	E	M
1.	Traditionalism		2	2	2	2	2
2.	Protection of name		3	3	3	3	3
3.	Funereal ceremonies in cemeteries		8	6	6	7	6
4.	Right to property		5	5	5	5	5
5.	Recognition of full autonomy	1-4	–				
6.	Rights to marry	8	7	8	8	6	7
7.	Right of confessional secrecy and protection of pastoral conversations	7	9	9	9	8	8
8.	Military service		10	10	10	9	9
9.	Relations with employees		13	13	12	11	11
10.	Relations with clergy (priests, bishops)		–	–	–	–	–
11.	Right to interpret scriptures		3	3	–	3	–
12.	Public law status		–				
13.	Relations with foreign centres	3	–				
14.	Legal status of sacred sites	6	–	–	–	–	–
15.	Tax credits for sacred sites	12	–				
16.	Funding of religious festivals		–	–	–	–	–
17.	Immunity of places of worship		–				
18.	Right to educate own employees, clergy (pastors)		14	14	–	12	12
19.	Right to finances for educational institutions	19	–	14	–	–	–
20.	Autonomy of educational institution with regard to the content of education and learning process	18	–	14	–	–	–
21.	Major Seminary	20	–				
22.	Right to Access to mass media	9	–				
23.	Financing of the Military Ordinariate	29	–				
24.	Access to prisons	30	Elsewhere				

#### 6. The Judgment of the Constitutional Court of 26 April 2018

The principle “one denomination – one Church” as the safeguard of stability that prevents property-related internal quarrels within a denomination became anachronistic over time, and restricted the freedom of religion. However, notwithstanding valid objections made by the responsible state

institutions<sup>10</sup> and scientific publications<sup>11</sup>, this discriminatory rule was deleted from ROL only as recently as 2018. The CC recognised the principle in ROL “one denomination – one Church” and the procedure for registering new religious organisations as being incompatible with Article 99 of the Constitution.<sup>12</sup> To a large extent, the decision by the CC in the case was influenced by the considerations examined in the ruling by the European Court of Human Rights in the Case of *Metropolitan Church of Bessarabia*<sup>13</sup>.

#### 7. “Traditionalism” and the positive neutrality that follows from it

For decades, the principles of the relationship between the State and Churches have not changed and are based on the principle of religious freedom, the separation between the State and the Church, and the concept of “traditionalism”. The Agreement with the Holy See and the Special Church Laws, in which the traditionalism of a number of religious organisations has been recognised, have brought Latvia closer to the Italian and Spanish model.<sup>14</sup> The state has recognised, supports and finances a certain number of Churches, the Catholic Church and those covered by the Special Church Laws. The “recognition” by the State must be differentiated from “registration”, which religious organisations obtain by being registered. The Muslims and the representatives of other religious denominations are not included in the circle of State-recognised religions because in Latvia these are not large in numbers. Until 2018, the policy of positive neutrality could be also characterised as “the monopoly status” of some denominational centres. With the judgment by the CC of 26 April 2018, the State has changed this situation by reinforcing the freedom of religion and the believers’ right to found new denominational centres. Hence, the sepa-

10 Balodis R, “The Application of the Freedom of Religion Principles of the European Convention on Human Rights in Latvia” in *Religious Freedom in the European Union: The Application of the Freedom of Religion Principles of the European Convention on Human Rights in the European Union* (Peeters, 2009) p. 238.

11 Balodis R, “Church and State in Latvia” in *Law and Religion in Post-Communist Europe* (Ed. Silvio Ferrari, W. Cole Durham). (Peeters, 2003).

12 Case No. 2017-18-01.

13 *Metropolitan Church of Bessarabia v Moldova* (No. 45701/99).

14 Balodis R, “Las Relaciones entre el Estado de Letonia y las Organizaciones Religiosas de la Realidad Soviética al Modelo de España y Italia” in *Revista General de Derecho Canónico y Derecho Eclesiástico del Estado* 21 (2009) [https://www.iustel.com/v/2/revistas/detalle\\_revista.asp?id\\_noticia=408366&d=1](https://www.iustel.com/v/2/revistas/detalle_revista.asp?id_noticia=408366&d=1).

ration of the State and the Church has been reinforced even more. However, in view of the delegation of the State's functions and the State's support to Churches in Latvia, in practice strict separation does not exist, but rather a partial separation from the state, the limits of which are not strictly demarcated.<sup>15</sup>

#### IV. Legal Status of Religious Communities

The legal status of legal entities is defined by the Civil Law, but the status and the registration of religious organisations are regulated by the ROL of 7 September 1995. Although the Government does not require the registration of religious groups, the Law accords registered religious organisations certain rights and privileges, such as status as a separate legal entity for owning property or other financial transactions, as well as tax benefits for donors. Registration also eases the rules for public gatherings. According to ROL article 13, first paragraph, religious organisations acquire legal personality through registration. The authorised representative of a religious organisation must submit an application for the registration in the Register of Enterprises. In addition, the ROL article 7, first paragraph states that legally registered religious organisations may form institutions that do not have a profit-making purpose. Such institutions are spiritual educational institutions, monasteries, missions, diaconate institutions and similar organisations. According to the ROL article 13, first paragraph, the legal status of those institutions is determined by religious union (church) or diocese.

It follows that according to the current regulatory framework four legal forms may be identified, three of which are religious organisations (churches, religious associations (church) and the diocese), but one is a body that may be formed by a religious association (church) or diocese for the attainment of individual goals. According to the ROL, twenty adult persons registered in the Latvian Citizens Register and sharing one confessional affiliation, may establish a religious organisation. Ten or more congregations of the same denomination with permanent registration status may form a religious association. As provided by the ROL, religious organisations (church congregations, religious communities and dioceses), seminaries, monasteries and diaconal institutions may be registered. Only

15 Balodis R, "Church and State in Latvia" in *State and Church in the European Union* (2<sup>nd</sup> edn, Nomos, Baden-Baden, 2005), p 259.

churches with religious association status may establish theological schools or monasteries.

According to first paragraph of article 8 of the ROL, religious organisations and institutions are registered in the register of religious organisations and its institutions maintained by the Register of Enterprises. According to Article 18 of Law on the Register of Enterprises, religious organisations and institutions are registered in the Public Organisations and Mass Media Registration Department of Riga Region of the Register of Enterprises.<sup>16</sup>

The Constitutional Court<sup>17</sup> and the Senate of Supreme Court have repeatedly recognised<sup>18</sup> that the state notary in considering registration applications checks for a formal compliance of document with the requirements of law, but does not evaluate actual decision-making facts. However another feature of the registration process is the preparation of an opinion by the MoJ which may in turn use the law enforcement authorities to determine whether the establishment of a religious organisation was in accordance with laws and regulations as well as any other information that would lead to a negative opinion. Article 18, second paragraph, of Law on the Register of Enterprises sets out grounds on which the state notary may postpone a decision or upon which the application must be refused.

#### V. Religious Communities within the Political System

During the first period of Latvia's independence (1918 – 1940), religious organisations were forced to become involved in politics in order to resist the State's activities regarding re-distribution and requisitioning of the Churches' property. During the second period of independence (1990 – till the present day), religious organisations have a minor impact on politics. Rather, it can be observed that politicians involve religious organisations

16 Art 18 and 19 of Law on the Registrar of Enterprises set out the detailed rules governing decisions as to registration by the state notary of the Register, with rights of appeal to the Chief State Notary and onwards to the courts, including a final appeal to the department of administrative cases of the Senate of the Supreme Court.

17 About compliance of article 59 of Credit Institutions Law with the article 1 and 105 of Constitution: Decision of the Constitutional Court of case No 2010-71-01, LV No 167(4565), 21 October 2011.

18 Senate of the Supreme Court 28 January, 2004, case No SKC-31; 15 February 2005, case No SKA-27; 19 February 2007, case No SKA-5/2007; 14 February 2008, in case SKA 30/2008; decision 18 March 2010, case SKA-69/2010.

in their activities to attract a larger number of voters. It is possible to speak about direct participation in political processes by some religious organisations and individual priests, which is manifested as support for some political organisations and in Parliament. As regards indirect participation in political processes, the priests of some denominations are actively involved in national events together with politicians (for example, the Church Service on the Festive Day of the Founding of the State of Latvia on 18 November, the Presidents' inauguration ceremonies, etc.). There are currently no grounds to speak about the impact of any religious organisation or religion on political processes. None of the parties currently represented in the Parliament has made campaign promises related to religion. Section 22 of the "Pre-election Campaign Law"<sup>19</sup> establishes restrictions on the placing of campaign materials in public spaces. Pre-election materials may not be placed in a public outdoor area (signs, stands, posters, blackboards, mobile billboards, placards, advertising in window displays and other similar advertisements) not only in buildings of the state and local government institutions but also in church buildings.

Calendar disputes regarding the celebration of Christmas occur every year in the Parliament.

#### VI. *The State of Latvia and the Preservation of the Cultural Objects Owned by Churches*

In Latvia, the church has been an integral element of both rural and urban cultural environment for centuries. Approximately 800 historic churches are located mainly in the centres of cities and villages. In contrast to the castles of nobility, which were burnt down during the revolution of 1905, the churches have remained intact throughout both world wars and currently are an indispensable part of the architecture, landscape and cultural environment of these places. The sacral architecture of Latvia reflects the evolution of art styles, beginning with the Romanesque and Gothic styles up to the Art Nouveau of the beginning of the 20<sup>th</sup> century and contemporary architecture. The government, responding to the request of the traditional churches, examined the preservation of the cultural historical heritage owned by the Church and developed appropriate legislative initia-

tives. In 2017, Parliament adopted the law "On Financing the Preservation of Sacral Heritage"<sup>20</sup>. The purpose of this Law is defined as

"to ensure the preservation for the future generations the existing cult buildings that have the status of a protected cultural monument of national and local importance, including Latvian churches, convents, chapels, houses of prayer and religious cult objects (hereinafter — the sacral heritage) as part of cultural heritage of national importance."

In view of the fact that the total amount of money needed to implement in full the programme covered by the law is 170 million euros, it was decided to resolve the particular matter within a cycle of at least 30 years, investing annually approximately 4 million euros into the preservation and restoration of churches. Since all demands cannot be satisfied, the State grants the money to the traditional religious organisations (basically, Roman Catholics, Evangelical Lutherans, and the Orthodox) in accordance with the principle "a little to all", allocating part of the sums requested. The law provides that also the local governments may allocate money for the purpose. The money is allocated by the Council of Sacral Heritage, on which the Ministry of Culture, the State Inspectorate of Heritage Protection and religious organisations are represented. Three sacred sites must be noted in particular, and separate laws have been adopted with respect to these. These are (1) The Aglona Roman Catholic Basilica;<sup>21</sup> (2) Riga Dom Cathedral owned by the Lutherans; and (3) The Orthodox Church's Valgunde convent.<sup>22</sup>

#### VII. *Labour Law within the Religious Communities*

The employment relationship is mentioned only twice in the ROL. First, Article 19 provides that in case of termination of a religious organisation's activity, this organisation terminates its work relationship with all its employees in accordance with the Latvian Labour Law (hereafter – LL).<sup>23</sup> Secondly, Article 14 provides that a religious organisation may appoint or elect and dismiss their ministers in accordance with its own statutes, and employ and dismiss other employees in accordance with the applicable

20 LV No 238, 27 January 2000.

21 LV No 162, 21 October 1995.

22 Law on the Latvian Orthodox Church, LV No 188 (3972), 3 December 2008.

23 LV No 105, 6 July 2001.

19 LV No. 199, 19 December 2012.



labour legislation. The current LL does not address the particular problems of religious organisations, which means that religious organisations are subject to the same legal rules as any other public or commercial company. However, LL Article 29(10) permits differential treatment in a religious organisation. Based on the religious beliefs of a person, differential treatment is permitted if a specific type of religious belief is an objective and substantiated pre-requisite for the relevant employment, taking into account the ethos of the organisation. An employer is prohibited from discriminating against its employees on religious grounds; however, the norms of labour law allow discrimination in religious organisations if they dismiss a minister who does not comply with certain denominational criteria. The case law<sup>24</sup> holds that two types of employment in a religious organisation can be identified: a minister and an employee. The first one occupies an ecclesiastical position, doing work directly linked to the denomination, whereas the other is an individual, who might be defined as a technical staff member, one of the service staff, and whose competence does not include religious, denominational duties.

Although in fact employees of religious organisations used to work without employment contracts, the courts in Latvia do not recognise the existence of legal employment relationship unless a written employment contract has been agreed between the employee and the employer.<sup>25</sup> If a labour contract has been concluded, then the court treats religious organisations as any other employers.<sup>26</sup> The courts recognise as an indubitable right of a religious organisation to decide on the number of its employees and their duties, at the same time recognising the right of a religious organisation also to involve volunteers.<sup>27</sup> As regards the ministers of registered religious organisations, the autonomy of the church in establishing these

legal employment relationships is recognised.<sup>28</sup> The court differentiates between the status of a minister and other employees, both by recognising the autonomy of Churches to act on the basis of their by-laws and ecclesiastical law, recognising, however, the priority of the Labour Law.<sup>29</sup> The court has recognised that the prohibition by ecclesiastical courts to perform such office that can be taken by a narrow circle of persons cannot be recognised as an infringement upon fundamental rights.<sup>30</sup> Even there have been other relevant cases<sup>31</sup>, the ones referred to above are the most significant, since they outline the case law in Latvia.

28 Panel of Civil Cases of Vidzeme Regional Court of 15.11.2008, Case No. C39047308 (Lutheran minister dismissed by congregation, with agreement of College of Bishops, for professional incompetence; although the minister had an employment contract that did not alter the fact that he was an ecclesiastic, and subject to the provisions of a special law, Section 1(4) of ROL which as a special law had higher legal force than the LL.).

29 Panel of Civil Cases of Riga Regional Court of 28.10.2008, Case No. C27222609, CA-3174-10/26 (part-time secretary of a Lutheran congregation dismissed on the ground that he had acted contrary to moral principles and such action was incompatible with the continuation of employment legal relationship, relying on Article 3 in the Law of the Latvian Evangelical Lutheran Church that gives the right to the Church to establish and change employment relationships on the basis of a person's religious affiliation, readiness and ability to act in good faith and in loyalty to the teachings of the Church. The court found in his favour as under the LL notice had to be given within one month of alleged violation becoming known, as what not the case. Although the norms of the Law of the Evangelical Lutheran Church could apply alongside the norms of the LL, the LL had primacy).

30 Para 107 of the Statute of the Orthodox Church of Latvia provides that the priests, deacons and psalmists are appointed, removed and transferred by the Primate. A decision by the Ecclesiastical Court of the Orthodox Church of Latvia on removing someone from clerical orders depends on a special procedure in accordance with the canons of the Church, and cannot be challenged in the regular courts as it turns on qualifications and personal character traits that cannot be verified in court. That the decision is taken by a narrow circle of persons does not amount to an infringement of fundamental rights (Judgment by the Senate of the Supreme Court of 9.1.2008 in Case No. SKC-94/2008.).

31 For example, in 2014 Rabbi Menachen Barkahan submitted a claim to court against the Riga Jewish Religious Congregation, the Council of Latvian Jewish Congregations and Communities and a number of natural persons for injuring his dignity and respect because his rabbi's site of prayer had been liquidated and his status as a rabbi had been contested.

24 The Department of Civil Cases of the Senate of the Supreme Court, 9.3.2011. SKC-762/2011.

25 Panel of Civil Cases of Riga Regional Court of 17.1.2005, Case No. CA 1975/21 (claim against a religious organisation for compensation for overtime work, unused leave, and compensation for using a private vehicle).

26 Jelgava Court of 2.11.2011, Case No. C15295911 (accountant of a congregation of the Orthodox Church dismissed, because the accountancy unit of the congregation was closed).

27 Valmiera District Court of 23.5.2008, Case No. C39047408 and Judgment by the Panel of Civil Cases of Vidzeme Regional Court of 28.10.2008 in Case No. C39047308 (minister dismissed and his wife declared redundant from her post as minister's secretary. Different considerations applied to the two dismissals).

VIII. *The Legal Status of Priests and Members of the Religious Orders*

According to the Ministry of Justice in 2016<sup>32</sup> clergy were serving in many of the religious organisations registered in Latvia. They included:

204	Lutheran
186	Catholic
102	Baptist
1	Jews
89	Orthodox
76	Pentecostal
35	Seventh Day Adventist
14	Old Believer Orthodox
304	Jehovah's Witnesses
7	Muslims
-	Buddhist

According to Article 1 of the ROL officials of religious organisations are members of elected bodies (councils, boards and audit committees), including clergy. Under the legislation currently in force in Latvia, no privileges attach to the possession of spiritual or administrative office in a religious organisation. The only exception relates to military service. Under Article 21(1)(7) of the Compulsory Military Service Law, ordained clergy affiliated with any approved religious organisation and persons studying for ordination are not liable to compulsory active military service. Exemption from discharging military service due to religious reasons, and any attempt to use military rank to impose religious conviction is prohibited. Persons liable to military service objecting to its performance by reason of their opinions, conscience or religious conviction, may perform an alternative form of service.

*The Seal of the Confessional.*

In accordance with Article 7 of the Agreement between Latvia and the Holy See, the seal of the confessional is recognised as inviolable. Nobody may ever question a Catholic priest on matters connected with a confes-

sional secret, even if that priest appears as a witness or party before a civil tribunal. However, this right of priests is not secured by the existing Criminal Procedure Law (hereafter – CPL).<sup>33</sup> While the CPL has been amended many times, it was adopted in the Soviet era. At present a new code has been prepared in which the seal of the confessional is fully recognised. In the new draft of CPL, which has received its first reading in Parliament, Article 121 named "Professional secrets protected under criminal procedure" is included. Clause 1(1) of the Article provides that there shall be no restrictions imposed on the right of clergy to refuse to give evidence about what is heard during confession, and to refuse to disclose any personal notes regarding such matters. There have been no cases in the courts and there has been no discussion of an issue which has proved controversial in other countries as to the boundary between a mere conversation between an accused and a priest on the one hand and the making of a confession in a sacramental sense on the other; or whether a particular church regards confession in a sacramental sense. The seal of the Confessional is also protected in the Special Church Laws for the traditional religious organisations.

IX. *Finances of Religious Communities*

The taxation that applies to Churches is not regulated by a single law. Under Section 15 of the ROL, these have the right to engage in business activities. If their revenue exceeds a certain amount, the religious organisation has to establish a company and perform its activities in accordance with the law "On Entrepreneurship". This provides that religious organisations have the right to engage in business activities, establish companies, and acquire shares in companies; pursuant to Section 16 of the ROL, religious organisations may own movable and immovable property; however, they are prohibited from mortgaging church buildings or ritual artefacts, and creditors may not foreclose on the same.

Pursuant to Section 2 (1) of the law "On Accounting"<sup>34</sup> and Section 15 (5) of ROL, religious organisations, just like all other legal persons, must organise their accounting, prepare reports, and pay taxes. Religious organisations also must report annually on their activities. The personal income tax, the real property tax, the value added tax, and the customs duty

32 Ministry of Justice <https://www.tm.gov.lv/lv/ministrija/gada-parskati/2016-gada-ubliskie-parskati>.

33 LV No 74, 11 May 2005.

34 LRAP No 44/45, 12 November 1992.

on imports apply to religious organisations. Unlike commercial companies, religious organisations do not have to pay the company income tax.

### 1. Religious organisations as public benefit organisations.

In accordance with Section 4 of “Public Benefit Organisation Law”<sup>35</sup> (hereafter – PBOL), the public benefit organisations (hereafter – PBO) have the right to receive tax rebates specified by law. According to Section 3 of the PBOL, PBO are associations and foundations, the aim of which is public benefit activities, as well as religious organisations or the institutions thereof, which perform public benefit activities if such associations, foundations and religious organisations have been granted public benefit organisation status. The status of PBO is granted by the Ministry of Finance, on the basis of the statement by the Public Benefit Commission. The religious organisations that have been granted the status of PBO, in compliance with the Section 20 of the Law “On Enterprise Income Tax,” may receive donations allowing a donor to reduce his or her income tax liability. It must be noted that religious organisations may choose not to apply for this status.

Religious activity *per se* is not recognised as an activity of public benefit, and it often happens that they are deprived of the PBO status because the money has been spent on maintaining the building of the church or restoring icons. This is recognised by the State Revenue Service, which has noted that the PBO status is usually revoked exactly because religious organisations spend the money for religious activities. The law provides that the a public benefit activity is an activity, which provides a significant benefit to society or a part thereof, especially if it is directed towards charitable activities, protection of civil rights and human rights, development of civil society, education, science, culture and promotion of health and disease prophylaxis, support for sports, environmental protection, provision of assistance in cases of catastrophes and extraordinary situations, and raising the social welfare of society, especially for low-income and socially disadvantaged person groups. (Section 2(1) of PBOL). To a certain extent, it must be admitted that the fact that religious activities had not been included in this enumeration is evidence of the rather secular attitude towards religion taken by the state.

A religious organisation with employees has the usual obligations of an employer under the law “On State Social Insurance”.<sup>36</sup>

### 2. The personal income tax.

Under the law “On Personal Income Tax”, (hereafter – PIT)<sup>37</sup>, religious organisations must deduct the personal income tax from the remuneration disbursed to their employees.

### 3. Immovable property tax.

Under the law “On Immovable Property Tax”<sup>38</sup>, the tax is not applied to immovable property of religious organisations that is not used in commercial activities. The use of such property for charity and social care, as well as for registered institutions of education for the clergy is not considered to be commercial activity. The exception is residential buildings owned by religious organisations. Para 4 of Section 1 (2) of the Law provides that the objects of religious organisations and the land for the maintenance thereof is subject to the immovable property tax if they are rented or leased out.

### 4. The value added tax.

Pursuant to “Value Added Tax Law”<sup>39</sup> and other regulatory enactments pertaining to the activities of a religious organisation, value added tax is applied in the usual way. However, the supply of services, and the supply of goods closely linked thereto, to the members in their common interest in return for a subscription fixed in accordance with their rules by non-profit-making organisations with aims of a political, trade-union, religious, patriotic, philosophical, philanthropic or civic nature, provided that this exemption is not likely to cause distortion of competition. Hence, such transactions are exempt from the value added tax.

36 LV No 274/276, 21 October 1997.

37 LV No 32, 6 July 1993.

38 LV No 145/147, 17 June 1997.

39 LV No 197, 14 December 2012.

35 LV No 106, 7 July 2004.

### 5. Customs duty on imports.

Cabinet Regulation of 25 October 2016 No. 681, issued in accordance with the Customs Law, "Procedure, in which the goods imported by institutions and organisations are exempt from the customs duty on imports" (hereinafter – the Cabinet Regulation No.681) establishes a procedure, in which the goods imported by institutions and organisations of public benefit are exempt from the customs duty on imports.

### X. Religious Assistance in Public Institutions

The work of religious organisations at public institutions is mainly carried out through the chaplaincy service. A definition of chaplains is included in the ROL and the Cabinet Regulation issued on the basis of that law. The Cabinet Regulation makes provision, without creating an obligation, for state institutions to introduce a chaplain's office or chaplaincy service. Article 5 of the Regulation lists a number of religious organisations, the Orthodox, Evangelical Lutheran, Old Believer, Methodist, Adventist, Baptist, Pentecostal churches and Latvian pagans (*dievturi*), which may propose candidates for a chaplain's office. Until now the Muslims have not asked to participate in the activities of chaplaincy services, but the Jewish denomination has declined this opportunity. In both cases this is linked to the small number of believers who could be eligible for services by chaplains of these denominations. The right to have representation of priests of their domination in the chaplaincy service is guaranteed to those belonging to the Catholic Church by the Agreement with the Holy See but the rights of six traditional churches of Latvia (Orthodox, Evangelical Lutheran, Old Believer, Methodist, Adventist, Baptist) in Special Church Laws.

The rights of the Roman Catholic Church have been enshrined in the Agreement with the Holy See. Pursuant to Article 9 of the Agreement, the Roman Catholic Church is guaranteed the right of access to hospitals, prisons, orphanages and all other institutions of social or medical assistance, in which the presence of Catholics justifies the occasional or permanent pastoral presence of the authorised representatives of the Catholic Church.

The list of churches which may propose candidates for chaplaincy is broader in the Cabinet Regulations that regulate operations of the chaplaincy service, compared to the one defined in the law. This is because in practice some religious organisations (for example, Pentecostal) are so active in the field of chaplaincy that the State, which does not finance chaplaincy services, has had to reflect that on regulatory level.

### 1. Chaplaincy in the Armed Forces

The Cabinet Regulation on Chaplaincy Service (Para 6) provides that

"a chaplain is employed by the Commander of the National Armed Forces or the Head of Prison Authority, or the administration of an airport, a port or a station of road transport, or the administration of a medical treatment or social care institution (hereinafter – the respective institution). A chaplain is enrolled in professional service by the Minister for Defence or a commander (head) authorised by him."

The Ministry of Defence states that the Chief of Chaplains cooperates with the bishops of Christian denominations, who have authorised individual clergyman to perform a chaplain's duties. Thus, a chaplain has been authorised by a church, and the church may revoke his mandate. The Chief of Chaplains is an official of the army, and evaluation of the compliance of chaplains' activities falls within his competence. Para 11 – 15 of the Regulation deal only with the issues of chaplains of the National Armed Forces, envisaging that chaplains may be private persons or military persons not bearing weapons. Para 15 of the Regulation provides that "Chaplains of the National Armed Forces in administrative issues shall be subordinated to the head of the military structural unit (commander of the unit), in issues that are related to chaplains' activities to the Chief of Chaplains of the National Armed Forces, but in religious issues to the respective religious association (church)."

Article 25 of the Agreement with the Holy See guarantees to the Catholic members of the National Armed Forces the possibility of receiving adequate catechetical instruction and of participating in Eucharistic Celebrations on Sundays and on Holidays of obligation.<sup>40</sup> The Agreement guarantees to chaplains of the Catholic Church canonical subordination to the Military Ordinariate.

### 2. Chaplaincy in Hospitals (historically, status, appointment, revocation, funding etc.)

According to Para 20 of the Cabinet Regulation on Chaplaincy Service, the financial, material and technical provisions for chaplains' work is ensured

40 Upon the condition that this cannot hinder performing urgent duties of military service.

by the respective state or local government institution from the budget resources allocated to it or a company, with which the chaplain has legal employment relationship. However, there remain hospitals and social care institutions which refuse to establish a post of chaplain, using as the pretext a lack of financing, lack of interests among patients and sufficiently good cooperation with the local clergy. Thus, hospitals in Latvia may be divided into three groups: (1) hospitals with equipped chapels and chaplains on the staff; (2) hospitals with equipped chapels, but without chaplains; (3) hospitals without chapels and without chaplains. Hospitals which have chapels and chaplains on their staff constitute approximately one-third of all hospitals. At the hospitals chaplains, who come from Catholic, Lutheran, Orthodox and Baptist churches, not only provide spiritual care to the patients and co-operate with social workers, but also are spiritual care givers to the medical staff.

### 3. *Chaplaincy in the Penitentiaries*

The work of chaplains in penitentiaries is organised by the ecumenical chaplaincy service of the Prison Administration. Currently it is managed by a representative of Pentecostal congregation, who has a particular service rank with the Prison Authority.<sup>41</sup> Currently spiritual care to inmates of penitentiaries is provided by: 5 representatives of the Latvian Evangelical Lutheran Church; 1 from the Roman Catholic Metropolitan Curia of Riga, 4 from the Association of Latvian Baptist Congregations, 3 from the Association of Latvian Seventh-Day Adventist Congregations, and 3 representatives of the Latvian Association of Pentecostal Congregations of the International Pentecostal Church of Christ.

41 The establishment and basic principles of Prison Authority chaplaincy services have been defined in the Sentence Execution Code of Latvia, the Law on the Procedures for Holding under Arrest, and the United Nations Minimum Standard Rules for the Treatment of Prisoners (adopted in 1955); Cabinet Regulation No. 134, Cabinet Regulation of 30 May 2006 No 423 "Internal Regulations of an Institution for Deprivation of Liberty", Cabinet Regulation of 27 November 2007 No 800 "Internal Regulations of a Remand Prison" and the internal regulatory enactments of the Prison Administration.

### 4. *Chaplaincy in the Other Public Institutions*

Due to the negative attitude by the Ministry of Education and Science towards chaplaincy service, this service has not been established and is not envisaged in institutions of education. Likewise, the institutions of the Ministry of Interior (border-guard and police) have neither chapels, nor chaplains, because of the same attitude. It was argued that the staff members of these institutions have access to care provided by regular ministers. A strong chaplaincy service had operated at the airport since the beginning of the 1990s; however, with the change of the airport's management a couple of years ago, the institution's view on the expediency of this institution changed as well. Currently there are no chaplains at the airport, only the chapel remains. This particular case is a vivid example, showing that the development of chaplaincy service to a large extent depends upon the particular situation and not upon political strategy.

A chapel has been set up at the Latvian parliament, but there is no chaplain. A scheduled service at the Saeima's chapel is announced on the parliamentary webpage at the beginning of the week, informing about the religious denomination to which the priest conducting the service belongs. The worship conducted by a minister is held on Thursdays, half an hour before the weekly plenary session. Only the members and employees of the Parliament are invited, since a parliamentary pass is required to enter the chapel. No chapels have been set up in local government buildings. At present Muslim clergy cannot be employed as chaplains, although they may be allowed to provide spiritual care in the relevant public institution.

### XI. *Matrimonial and Family Law*

The right of religious organisations, referred to in Section 51 of the Civil Law, to conduct marriages has been defined in the Special Church Laws, all of which include a standard section worded as follows: "Those priests of the Church, to whom the Church has given the permission and who have been included in the list of priests who have the right to marry, have the right to marry in the procedure established in the Civil Law and other regulatory enactments."

Data provided by the Civil Registry Department of the Ministry of Justice, show that approximately one-sixth of registered marriages are conducted in Churches. In the majority of cases persons chose to be married at a Civil Registry Department.

Year	The total number of entries in the register of marriage	Including marriages registered in a Church
2005	12579	2549
2006	14610	2894
2007	15473	3014
2008	12904	2638
2009	9905	1848
2010	9205	1792
2011	10841	1930
2012	11565	2039
2013	11641	1871
2014	12735	1966
2015	13927	2150
2016	13403	2111
2017	13206	1898

The information at the disposal of the Registry provides an indication of the number of marriages conducted in each denomination.

Denomination	Year							
	2010	2011	2012	2013	2014	2015	2016	2017
Roman Catholics	594	657	687	653	676	722	613	544
Evangelical Lutherans	602	821	938	943	972	1,095	1122	968
Orthodox	212	321	302	183	5	9	92	6
Old Believers	8	9	5	5	4	6	5	3
Seventh-day Adventists	5	10	14	9	14	13	12	6
Baptists	118	152	86	92	119	137	144	112
Methodists	2	5	6	6	6	8	6	4

It must be noted that the same-sex marriage has not been recognised in Latvia, therefore all the data pertain to a marriage between a man and a

woman. Divorce is granted only by the court, or a notary if both spouses have reached a consensus regarding the divorce.

### XII. The Criminal Law and Religious Communities

Section 227 of the Criminal Law of the Republic of Latvia (hereinafter – the CL)<sup>42</sup> prescribes a penalty for unlawful activities of religious organisations and their members. For organising or managing a group which teaches or performs religious rituals creating a threat to public security and order, or a person's health, rights or interests protected by law, or for participation in such activities, the penalty can be deprivation of liberty for the period of up to 2 years or a fine..

Section 149 of the CL provides for a fine equal to 30 minimum monthly salaries for violations of the ban against discrimination if such an offence has been committed more than once in a single year. The section speaks of “discrimination related to race or ethnicity” and it does not specifically refer to religion. The key phrase in this section is this: “... or for the violation of discrimination prohibitions specified in other regulatory enactments.” Such enactments include the law “On Religious Organisations”, which states, in Section 4.1, that “the direct or indirect restriction of inhabitant rights or the creation of privileges for inhabitants, as well as violation of the religious sensibilities of persons or incitement of hatred in connection with the opinions of such persons towards religion is prohibited.” This suggests that the norms of Section 149 of the CL apply in this regard, too.

Section 228 of the CL speaks of the desecration of a grave, a funeral urn, or a buried or unburied corpse. The penalty is a prison sentence of up to two till five years, community service, or a fine. The motivation for such criminal offences, including motivation that is based on religion, is irrelevant,<sup>43</sup> but it is clear that if the offence involves such things as Satanism or hooliganism (damaging crosses, for instance), then the offences will be

42 LV No 199/200, 8 July 1998. For a full commentary, see Krastiņš, U., Liholaja, V. and A. Niedre. *Krimināllikuma zinātniski praktiskās komentārs. Nr. 2. Sevišķā daļa* (Scientific and Practical Commentary on the Criminal Law.) (Rīga: AFS, 2007.).

43 The exception here is avarice, when someone desecrates a grave with the purpose of robbing it. Religion, however, has no specific meaning when this criminal offence is investigated. See Krastiņš, U., Liholaja, V. and A. Niedre, op. cit., p. 205.

classified in accordance with Section 228. The same is true when people desecrate graves with anti-Semitic symbols.

The CL has no provisions penalising the celebration of a religious marriage before a civil marriage; proselytising; or female genital mutilation (though this could be prosecuted under other norms in the CL which seek to protect the individual).

The CL and the Administrative Violations Law do not speak specifically of offences that are aggravated by religious motivation. The CL does not speak specifically of blasphemy but punishment for such activities can be based on other, aforementioned sections of the law. If animals are sacrificed as part of religious rituals, the punishment can be based on Section 230 of the CL (Cruel Treatment of Animals). Commentary on the CL focuses on Section 4 of the law on protecting animals, which speaks of mistreatment of animals in terms of organising fights among animals, involving animals therein, crippling or torturing animals, etc., but commentators also note that the rules would apply to the killing of animals as part of a religious ritual.

Section 48 of the CL, which enumerates activities which in Latvia are considered to be aggravating, refers also to criminal offences if these have been committed due to religious, national, ethnic or religious motivation. In Chapter IX of the CL "Crimes Against Humanity and Peace, War Crimes and Genocide", Section 71 mentions religion in the definition of the genocide, as well as in the explanation of Section 71 regarding "a crime against humanity", i.e., if a person has been subjected to inhuman activities on the basis of religious causes. Section 78 of the CL, "Triggering of National, Ethnic and Racial Hatred" sets the penalty for activities aimed at triggering national, ethnic, racial or religious hatred or causing discord at deprivation of liberty for up to three years or short-term deprivation of liberty, or community work, or a fine.

### XIII. Religious Education

Para 1 of Section 6 of the ROL states that everyone has a right to religious education, both individually and together with others in educational institutions of religious organisations. In addition, at both national and local schools, a person, who has expressed the wish in writing, can study the Christian teaching in accordance with the curriculum approved by the Ministry of Education and Science, taught by teachers of the Evangelical Lutheran, Roman Catholic, Orthodox, Old Believers and Baptist denominations. Other denominations may provide religious education in private

schools only. The organisations that have no right to teach religion in schools focus on Sunday Schools

The Christian teaching is taught in schools where at least 10 students have expressed a desire to learn the specific Christian teaching. Ethics is offered as an alternative to religious instruction. At the national minority schools supervised by the state or municipalities, if the students and their parents or guardians wish it, the religion characteristic of the particular national minority may be taught in compliance with the procedures prescribed by the Ministry. Thus, for example, Jews, whose religion is not mentioned in the ROL, can ensure that their children have religious classes.

The law "On Religious Organisations", Para 5 of Section 6 states that the Christian faith and ethics teaching is financed from the state budget, so religious education is paid for by the state. The teachers must be selected by the denomination leaders and approved by the Ministry. They may also be chosen from among secular teachers.

The clause on religious freedom that is included in Article 99 of the Constitution is also relevant, for the right to religious education follows from it, examined in the light of Article 112 (the right to education), because the same Article provides for everyone's the right to education. Article 114 of the Constitution also states that: "Persons belonging to ethnic minorities have the right to preserve and develop their language and their ethnic and cultural identity." It all indicates that every person, including minorities, has an equal right to freely choose his or her religion. It is also declared in Article 2 of the ROL, which states: "The state does not grant any privileges to any religion or confession."

At the University of Latvia, one of the faculties is the Faculty of Theology. Today it is a multi-confessional institution, providing the highest level of theological education.

### XIV. The Protection of Animal Rights and Religion

Section 4 of the Animal Protection Law<sup>44</sup> prohibits the cruel treatment of animals. Cruel treatment of animals is defined to include using animals in religious rituals and lotteries. Section 48(2) of this Law provides that an animal kept for farming purposes may be slaughtered in accordance with the

44 LV No 444/445, 29 December 1999.

traditional methods for meat production of religious communities and the laws and regulations regarding welfare requirements for the protection of such animals. Cabinet Regulation of 27 February 2007 “The Regulations on Marking Meat, Minced Meat, Mechanically Separated Meat, Meat Products and Meat Preparations” as amended defines the labelling required on meat products which have been slaughtered using the traditional methods of religious communities.