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*The State and Religious Communities:
Their Relationship and Its Development in Estonia after 1991*

ABSTRACT

In the academic debates on the relationship between the State and religious communities in Estonia there are two standpoints. The first one emphasizes the role of religious communities, particularly the Christian ones, in the formation of Estonian statehood as well as the history of the country. The activity of the churches in the sphere of charity and social welfare is perceived positively. At the same time, academics draw attention to the fact that Estonians are not very religious, thus, all forms of privileging religious communities are considered debatable. The second approach also emphasizes the historical significance of religious communities, but simultaneously approves of their increased activity, especially in the context of rebuilding Estonian identity after the era of Soviet domination.

The goal of this article is to analyse the main assumptions of religious policy in Estonia after 1991, as well as the main factors that determined the current solutions. The conducted research is supposed to answer the question: why does the government of a country with one of the longest traditions of separation of state and religion in the region make many symbolic acts towards churches and religious associations? Furthermore, it will enable the verification of the hypothesis which assumes that the religious policy of contemporary Estonia is influenced by the conviction about the role of churches and religious associations in the history of the country, as well as by the recognition of religion as a factor in building the identity of the post-Soviet state.

The text is divided into three parts. In the first part there will be analysed the issues of changes in the denominational structure of Estonia. The second part will present the results of the research on the historical conditions of Estonia's denominational policy. The last part will analyse the legal solutions in Estonia concerning the state-religious community relations.

Keywords: State, religious communities, law, secularization, Estonia, religious policy

INTRODUCTION

Against the background of Central and Eastern European countries, Estonia is unique when considering religious issues. The vast majority of the population identify themselves as non-believers or atheists. Less than 40% are religiously affiliated, predominantly with Christian denominations and confessions, among which leading position is held by the Estonian Evangelical Lutheran Church (*Eesti Evangeelne Luterlik Kirik*) and two Orthodox churches – the Estonian Apostolic Orthodox Church (*Eesti Apostlik-Õigeusu Kirik*) and the Estonian Orthodox Church of the Moscow Patriarchate (*Moskva Partiarhaadi Eesti Õigeusu Kirik*). Simultaneously, Estonia is an example of a State that introduced liberal solutions for the functioning of religious communities, permitting cooperation with the State institutions. Religion and issues relating to religious life have also remained among the most important topics in the public debate.

In the academic debates on the relationship between the State and religious communities in Estonia there are two standpoints. The first one emphasizes the role of religious communities, particularly the Christian ones, in the formation of Estonian statehood as well as the history of the country. The activity of the churches in the sphere of charity and social welfare is perceived positively. At the same time, academics draw attention to the fact that Estonians are not very religious, thus, all forms of privileging religious communities are considered debatable. The second approach also emphasizes the historical significance of religious communities, but simultaneously approves of their increased activity, especially in the context of rebuilding Estonian identity after the era of Soviet domination. As Merilin Kiviorg points out, this second approach is less visible in the discussions, but it corresponds more closely to the practice of political life in Estonia [Kiviorg 2010: 262–263].

The goal of this article is to analyse the main assumptions of religious policy in Estonia after 1991, as well as the main factors that determined the current solutions. The conducted research is supposed to answer the question: why does the government of a country with one of the longest traditions of separation of state and religion in the region make many symbolic acts towards churches and religious associations? Furthermore, it will enable the verification of the hypothesis which assumes that the religious policy of contemporary Estonia is influenced by the conviction about the role of churches and religious associations in the history of the country, as well as by the recognition of religion as a factor in building the identity of the post-Soviet state.

The text is divided into three parts. In the first part there will be analysed the issues of changes in the denominational structure of Estonia. Special attention will be paid to two predominant denominations represented by the Estonian Evangelical Lutheran Church (*Eesti Evangeelne Luterlik Kirik*) and two Orthodox churches – the Estonian Apostolic Orthodox Church (*Eesti Apostlik-Õigeusu Kirik*) and the Estonian Orthodox Church of the Moscow Patriarchate (*Moskva Partiarhaadi Eesti Õigeusu Kirik*). The second part will present the results of the research on the historical

conditions of Estonia's denominational policy. In this part, the relations between the changing authorities and their attitude towards religious communities will be indicated. The last part will analyse the legal solutions in Estonia concerning the state-religious community relations.

TRANSFORMATIONS OF THE CONFESSITIONAL STRUCTURE OF ESTONIA

Contemporary Estonian society is recognized as one of the most secular. The 2011 census revealed 29% of Estonians identify themselves as religious, 54% are not religious, and 17% refuse to disclose their religious preferences [2019 Report on International Religious Freedom...]. The predominant church is the Estonian Evangelical Lutheran Church (13.8%), but the largest religious group is composed of Orthodox believers gathered in two churches: the Estonian Apostolic Orthodox Church (2.3%) and the Estonian Orthodox Church of the Moscow Patriarchate (13.1%). Members of the Roman Catholic Church, and the Union of Free Evangelical and Baptist Churches of Estonia collectively comprise 1% of the population. Other Christian communities (including Jehovah's Witnesses, Methodists, Baptists, Old Believers) represent 1.1% of population. The largest non-Christian faith tradition is Islam. The believers of Islam are mostly ethnic Tatars and Azeris, who came to the territory of contemporary Estonia at the end of the 19th century and the beginning of the 20th century. Their lifestyle, like that of most Estonians, is quite secular [Kiviorg 2010: 261; Poleschuk 2009: 76]. Indigenous religions are mainly represented by the House of Taara and Native Religions. Estonia is also home to a small Jewish community (approx. 2,000 people), Buddhist and Hindu congregations as well as the Bahá'í movement [2019 Report on International Religious Freedom]. Selected examples of religious communities are listed in Table 1.

Table 1. Selected examples of religious communities and the number of their believers according to their own data

Name	2000	2005	2007	2012
The Estonian Apostolic Orthodox Church (<i>Eesti Apostlik-Õigeusu Kirik</i>)	18,000	25,000	25,000	27,000
The Estonian Evangelical Lutheran Church (<i>Eesti Evangeelne Luterlik Kirik</i>)	177,233	180,000	180,000	180,000
The Estonian Christian Pentecostal Church (<i>Eesti Kristlik Nelipühi Kirik</i>)	3,500	4,500	4,500	4,500
The Charismatic Episcopal Church of Estonia (<i>Eesti Karismaatiline Episkopaalkirik</i>)	—	300	300	464
The Estonian Conference of Seventh-Day Adventists (<i>Advent Koguduste Eesti Liit</i>)	1,868	1,723	1,711	1,589
The United Methodist Church in Estonia (<i>Eesti Metodisti Kirik</i>)	1,880	1,80	1,737	1,642

Name	2000	2005	2007	2012
The Estonian Orthodox Church of Moscow Patriarchate (<i>Moskva Partiarhaadi Eesti Õigeusu Kirik</i>)	–	170,000–200,000	170,000	170,000
The Roman-Catholic Church in Estonia (<i>Rooma-Katoliku Kirik</i>)	3,500	5,745	6,000	6,000
The Union of Free Evangelical and Baptist Churches of Estonia (<i>Eesti Evangeeliumi Kristlaste ja Baptiste Koguduste Liit</i>)	6,092	5,952	5,974	6,293
The Union of Congregations of Jehovah's Witnesses in Estonia (<i>Eesti Jehoova Tunnistajate Koguduste Liit</i>)	3,846	–	4,248	–
The Union of Estonian Old Believer Congregations (<i>Eesti Vanausuliste Koguduste Liit</i>)	5,000	–	15,000	–
The Estonian Islam Congregation (<i>Eesti Islami Kogudus</i>)	1,467	1,400	1,400	1,400
The Jewish Congregation in Estonia (<i>Eesti Juudiusu Kogudus</i>)	80 families	–	2,500	2,500
The Baha'i Community (<i>Eesti Bahá'í Koguduste Liit</i>)	150	–	142	–
The House of Taara and Mother Earth People of Maavalda (<i>Taarausuliste ja Maausuliste Maavala Koda</i>)	–	200	–	–
The Krishna Congregation (<i>Krishna Teadvuse Eesti Kogudus</i>)	100	–	150	–

Source: *Statistiklisi Andmeid, seisuga 01.01.2013*, <https://www.siseministeerium.ee> (access: 15.06.2021); Poleshchuk [2009: 74].

Several religious communities have registered themselves as non-profit organizations, while others operate without legal status. The exercise of religious freedom does not require legal status in Estonia, but it is associated with a lack of eligibility for tax law benefits.

The religious structure of contemporary Estonia differs significantly from the religious trends that emerged after the declaration of independence in 1918. According to data from the census of 1934, 78% of Estonians declared themselves Lutherans, 19% – Orthodox, and almost 1% did not identify with any religion [Schihalejev 2014]. Such a phenomenon has its roots in the history of the state and the social perception of religious communities, which has significantly influenced their position.

A) THE EVANGELICAL LUTHERAN CHURCH

In the independent Estonia, members of the Evangelical Lutheran Church were the predominant religious community. The confession was declared by ethnic Estonians, but also Germans, Swedes and Latvians. The Baltic Germans had dominated the structure of the Evangelical Lutheran Church until 1918, as a consequence of the right of patronage. The democratization of the Church took place gradually, beginning in 1917, when the First Congress of Representatives of Estonian Protestant-Augsburg

Parishes passed a resolution demanding the introduction of representatives of national minorities to the collective bodies. The right of patronage was abolished in 1919. Later that year, the Second Congress of Representatives of Estonian Evangelical-Augsburg Parishes was held, and the Church's constitution was adopted. The governing body became a consistory, formed by clergy and laity, and the office of superintendent was abolished. Jakob Kukk (an Estonian), was elected as the new bishop, whereas as no German was included into the new consistory, German parishes began to demand the formation of independent structures and the election of a German member to the consistory. Germans achieved an independent position in the Lutheran Church with the establishment of the Association of German Parishes [Topij 1998: 272].

Transformations within the church and attempts to make it more Estonian resulted in a conflict with the German clergy over the right to the use of church buildings. The controversy focused mainly on Tallinn Cathedral, which was the headquarters of a German parish. Already in 1921, Bishop Kukk requested the right to hold services in the cathedral, and failing to reach a satisfactory agreement with the German clergy, he turned to the Minister of the Interior. The Minister issued the decision that was surprising to both parties, according to which the cathedral and all its belongings became the State property. The Ministry's decision indicated that in the future the cathedral would become the seat of the Estonian bishopric, while retaining the usage rights of the German parish. The solution caused indignation among the German minority, which tried to influence the decision through the courts, but failed. The amicable transfer of the cathedral was planned to be completed in February 1927, but the building was eventually taken over by force. A compromise on the use of the building by the German parish could not be reached either. Furthermore, the new residents attempted to remove all traces of the cathedral's German past, which resulted in a reaction from the Ministry of Education and the return of German symbols to the cathedral [Topij 1998: 27–273].

The functioning of the Evangelical Lutheran Church changed with the adoption of Estonia's Constitution in 1920. The principal consequence of the new legal order, which introduced the separation of State and church, was the loss of subsidies, which came from mandatory taxes. This meant the necessity of maintaining religious activities solely from the contributions and donations from believers. From the second half of the 1920s the clergy kept registers of births and deaths, and in addition, as civil servants they gained the right to register marriages. In the interwar period, secularization tendencies became evident in Estonian society, which was reflected in a decrease in the number of baptisms and confirmations by approximately one third [*A Short History of the Estonian Evangelical Lutheran Church*].

B) THE ORTHODOX CHURCH

In independent Estonia, the Orthodox represented a minority religious group, dispersed throughout the country and ethnically diverse. In this regard, Estonia differed from Poland, Lithuania, and Finland, where Orthodox adherents were quite ethnically

homogeneous and resided in specific regions only. In the interwar period, Orthodoxy in Estonia was practiced by three main ethnic groups. The first was the migrants from other parts of the Russian Empire, who reached Estonia before 1917. They were mostly merchants, clerks, and soldiers, and in later periods, members of the “white” movement and refugees. While the number of Russians arriving in Estonia increased regularly, until the last decade of the 19th century they were a relatively minor group. The situation changed with the progressive industrialization in the Baltic republics and a more favorable economic situation compared to other parts of the Empire, which encouraged Russians to migrate [Melvin 1995: 28]. They settled in the south-eastern part of Estonia and Russia in the areas bordering Estonia (mainly in the Pskov region, including the town of Pechory). The Setu are still regarded as an ethnographic Estonian minority, speaking the Seto language (Southern Estonian dialect), having their own flag, anthem, *Peko* epic poem, and – as the only minority group in Estonia – a separate congress as their political representation [Jääts 2000: 651]. Against the background of the dominant Lutheran Church, the religion of the Setu people was distinguished not only by its beliefs, but also by its quite superficial character.¹ As Felix J. Oinas notes, the Setu folk religion is syncretic in nature, mixing the Orthodox with the elements of pagan beliefs and practices. For Setu, there is no contradiction in the worship of icons traditionally placed in churches and the simultaneous worship of pagan deities (e.g. *Peko*) whose figurines were kept in homes for good fortune or wealth [Oinas 1974: 18]. The third group were converts who were originally Lutherans but started converting to the Orthodox Church in the middle of the 19th century [see: Rimestad 2012: 303; Lewandowski 2002: 124–125, 139–140; Dudra, Król-Mazur, Maj 2018: 106–109]. This process began in 1845 in the Livonian province, and gradually spread to other territories settled by Estonians. An encouraging factor for Estonians to change their religion was the conviction that adoption of the tsar’s religion would guarantee the farmers land and exempt them from serfdom. The second wave of conversions began in the 1880s, but it was not significant. The popularity of conversion declined when it became apparent that it provided neither economic nor social benefits. Many converts wanted to return to the Lutheran Church, but this was formally impossible as a result of the legislation in force and the establishment of a State Church within the Russian Empire [Engelhardt 2015: 24].

After 1918, the majority of Orthodox believers in Estonia were under the jurisdiction of the Diocese of Riga, which was part of the Russian Orthodox Church. The dependency on foreign church structures, but also the public perception of the Orthodox Church as a non-native confession (in contrary to Lutheranism, which was considered as a native confession), initiated disputes over the autonomy and Estonization of the Orthodox Church. In 1920, Moscow Patriarch Tikhon agreed to

¹ According to Karol Piasecki, this was a result of the disregard of the Setu by the Russians and the clergy. One effect of this approach was a much lower level of education among the Setu. See more: Piasecki [2014: 17].

divide the Diocese of Riga into Estonian and Latvian parts, while appointing Alexander Paulus as Metropolitan of Tallinn and all of Estonia. However, the Estonian Orthodox Church considered these changes as not sufficient and in 1923, by *tomos* of the Patriarch of Constantinople Meletius IV, the majority of Orthodox believers in Estonia came under the jurisdiction of the Ecumenical Patriarchate, and the Estonian Orthodox Church became *de facto* autocephalous. The reforms also affected the internal life of the Church, including the introduction of liturgy in Estonian, changes in liturgical chants and the introduction of the Gregorian calendar. The most challenging issue was the change of the calendar, which resulted in a conflict between the church authorities and the Russian Orthodox minority. Generally, Estonians introduced the Gregorian calendar in February 1918, but some churches and other organizations remained with the “old calendar”. The right to use the new calendar was already granted by Patriarch Tikhon in 1920, and both State and church authorities supported the change. The declaration was met with protests from the Russian minority in the Estonian Orthodox Church. The Russians claimed that the Russian Orthodox Church was the only repository of the orthodoxy, and the change of the calendar by the Estonian Church only confirms this fact. Church authorities had insufficient authority to influence Russian parishes to accept the calendar change [Rimestad 2012: 309–312; *Calendar reform*].

HISTORICAL BACKGROUND OF STATE-RELIGIOUS COMMUNITY RELATIONS IN ESTONIA

Merilin Kiviorg identifies four stages in the development of Estonian religious policy and law: (1) the first stage, from 1918 to the late 1920s; a Constitution of the Republic of Estonia and the principle of separation of State and religion were adopted over this period; (2) the second stage, covering the 1930s, was characterized by radicalization of state policy and unequal treatment of religious organizations; (3) the third, encompassing the years of Soviet occupation; throughout this period, State policy was directed toward the atheization of society and the marginalization of religious communities; and (4) the fourth, which began in 1991, with Estonia’s independence [Kiviorg 2010: 263–264].

Estonia adopted the radical model of religious policy, introducing – as the first country in the region – the principle of separation of State and religion. This general rule of religious policy was contained in § 11 of the Constitution passed in 1920. The Estonian Constitution established freedom of conscience and religion, emphasizing either the individual dimension (lack of obligation to participate in religious life, membership in a religious organization or affiliation with a religious organization) or the collective dimension of this principle (freedom of religious worship as long as it was not in violation of the law). Paragraph 11 also contained the most important principle, according to which there was no State religion in Estonia (“Riigiusku

Eestis ei ole") [*Eesti Vabariigi Põhiseadus, Asutava Kogu poolt 15. juunil 1920 a. vastuvõetud...*]. The constitutional regulations were subsequently specified in religious laws. The first of these, passed in 1925, introduced the equal status of all religious organizations, regardless of the number of their members or the length of their activity. Religious affairs were placed under the jurisdiction of the Minister of the Interior, who was also responsible for registering new religious organizations [Ringvee 2008: 181–182].

Further radicalization of religious policy resulted from the entrance of Estonia into a period of authoritarian rule, which also occurred in other Central and Eastern European countries. The changes in religious policy were a reflection of the new legal order, especially the new constitution passed in 1934, which extended the prerogatives of the "Riigivan" ("Elder of the State"). In March 1934, Konstantin Päts had signed a law regulating religious organizations, which replaced the 1925 law. Under the terms of the new law, churches (this term appeared for the first time in the Estonian law), religious associations and unions of religious associations came under increased State control. The statutes of the most numerous religious associations, with more than 100,000 members, were subject to parliamentary approval, while the statutes of less numerous organizations, as well as of religious associations and denominations, required the approval of the Minister of Interior. The President became empowered to require the replacement of a nominee for the office of head of a particular church, religious association, or union of associations if the nominee raised objections [Ringvee 2008: 182]. In addition, the Minister of the Interior could dismiss clergymen who did not fulfill the duties imposed on them by the law (e.g. keeping civil registry books), and could prohibit the activities of those religious associations whose doctrine or worship was considered a threat to State security.

The Estonian Constitution of 1938 introduced a different status for religious organizations. The provision for the absence of a state religion was retained (§ 14), while adding the possibility of the largest churches being granted a status in public law [Kiviorg 1999: 96–97]. In accordance with § 84(1) of the Constitution, the heads of the Estonian Evangelical Augsburg Church (*Eesti Evangeelne Luterlik Kirik*) and the Estonian Apostolic Orthodox Church (*Eesti Apostlik-Õigeusu Kirik*), the two largest religious organizations in Estonia, became *ex officio* members of the upper house of parliament. This special right is often mistakenly identified with the concept of a State church [Kiviorg 2003: 103; Maj 2018: 276–281].

With the Soviet aggression against Estonia in 1940 and the German occupation, the circumstances of religious organizations changed radically. The foundation of State-religious relations was the Soviet decree of 1918, which introduced the separation of state and school from church. In the opinion of Kiviorg, under the Soviet system it is difficult to speak of separation, especially considering the total State control of the work of religious organizations [Kiviorg 2003: 63–64]. Religious organizations lost their legal personality, as well as their right to ownership of buildings, including church buildings. In Tartu, the only theological faculty where Orthodox

and Lutheran clergy were educated was abolished, and all religious publications were stopped until 1982. The Soviet authorities prohibited the functioning of certain religious associations, such as the Salvation Army, the YMCA/YWCA, the Moravian Brethren, and indigenous movements (including the followers of Taar and the “Hiis” association they founded in 1931), arguing that several of them were subordinate to organizational structures located outside the USSR, while others were sources of nationalist activity [Ringvee 2008: 182, 192].

Furthermore, in 1944, the top-down unification process of Evangelical Christians and Baptists was initiated in the USSR, and in the following years other churches joined them: the Pentecostals (1945), the Free Churches (1946), the Christians in the Apostolic Spirit (1947) and the Mennonites (1963), eventually forming the Union of Evangelical Christians-Baptists [Pełczyński 2014; Pełczyński 2017: 73–91].

Anxious about the persecution from the Soviet Union, approximately 70,000 citizens emigrated from Estonia in 1944, amongst them the bishop of the Estonian Evangelical Lutheran Church, Johann Kõpp. Supported by the clergy of the Church of Sweden, he developed church structures abroad and participated in the establishment of international church organizations: World Council of Churches (WCC) and the Lutheran World Federation (LWF). The Estonian Evangelical Lutheran Church in Exile consequently became a member of the LWF in 1947 and also of the WCC in 1948.

Since 1949, the Estonian Evangelical Lutheran Church was headed by Archbishop Jaan Kiivist. Archbishop Kiivist was involved in inter-confessional cooperation which resulted in the establishment of the Conference of European Churches [Maj 2016: 47–49]. In the early 1960s, the Estonian Evangelical Lutheran Church became a member of the WCC (1962) and the LWF (1963).

Similarly, also the situation of the Orthodox Church was relatively difficult. After the annexation of Estonia to the USSR in 1940, the Estonian Apostolic Orthodox Church, which had functioned on the principle of autocephaly since 1923, was incorporated into the Russian Orthodox Church. After the invasion of German troops to Estonia in 1941, the structures of the Estonian Apostolic Orthodox Church were reactivated, and the Church was recognized as the single legitimate jurisdiction of the Orthodox Church in the Estonian territory, which, in turn, started the persecution of the Russian believers and clergy, ending in 1943. During this time, a division of the Orthodox Church into two churches emerged: the Estonian, under the jurisdiction of Metropolitan Alexander (Paulus), and the Russian, ruled by Exarch Sergius. As a result of the re-occupation of Estonia by the USSR in 1945, the Estonian Orthodox Church was dissolved and its believers came under the jurisdiction of the Moscow Patriarchate. The Church’s activities were limited, also in the field of charity. The Soviet confessional policy was aimed at restricting religious life, which was manifested by closing churches and liquidating the parishes.

After the restoration of Estonian independence, there were attempts to establish an autonomous church, but due to objections from the Moscow Patriarchate, this was impossible. In 1991, the Moscow Patriarchate granted autonomy to the Esto-

nian Orthodox Church, but this solution was protested by part of the clergy and the State authorities. In 1993, the Estonian Apostolic Orthodox Church was established, independent from the Moscow Patriarchate. In 1996, the Patriarch of Constantinople issued a *tomas* which restored the 1923 decision. The conflict between the two jurisdictions of the Orthodox Churches in Estonia began in 1996, in part due to the rivalry between Moscow and Constantinople for supremacy in the Orthodox world.

At this point, it is worth noting the concept of “canonical terrain”, or rather “Russian canonical terrain”. The concept of “canonical terrain” is one of the most controversial in modern Orthodox theology, especially in the context of the Moscow Patriarchate and its relations with the Churches in the former Soviet Union, or the rivalry between the Moscow Patriarchate and the Patriarchate of Constantinople for supremacy among local Churches. The modern concept of the “canonical terrain” was developed by Metropolitan John (Snychev) of St. Petersburg and Ladoga, who held the office in 1990–1995. This theory combines the issues of the sovereignty of the Moscow Patriarchate and claims to the Kiev Metropolia, as well as the concept of the “Third Rome”, which states that Russia is the only Orthodox State. The Statute of the Russian Orthodox Church, adopted in 2000, refers to this theory. Article I.3 of the document states that

the jurisdiction of the Russian Orthodox Church should include persons of the Orthodox faith residing in the canonical territory of the Russian Orthodox Church in the Russian Federation, Ukraine, the Republic of Belarus, Moldova, the Republic of Azerbaijan, the Republic of Kazakhstan, the People’s Republic of China, the Republic of Kyrgyzstan, the Republic of Latvia, the Republic of Lithuania, the Republic of Tajikistan, Turkmenistan, the Republic of Uzbekistan, the Republic of Estonia, Japan, as well as Orthodox Christians residing in other countries. [Statute of the Russian Orthodox Church adopted by the Council of Bishops in 2000...]

According to Marek Ławreszuk, the term “Russian canonical territory” is nowadays used in the context of three problems: the Roman Catholic Church’s missionary activity in Russia, the administrative and jurisdictional boundaries of local churches, and the attempts of local churches to gain independence and autocephaly [Ławreszuk 2009: 91–92; see also: Sobczak 2018: 8].

The Estonian situation in 1996 is considered by the Moscow Patriarchate as a violation of its “canonical terrain”. Because of difficulties in registering the structures of the Estonian Church of the Moscow Patriarchate, the matter of the rights of the Russian minority in Estonia became an international problem. This issue was dealt with in 2001 by the Committee of Ministers of the Council of Europe. At the international forum, the issue was presented as an example of violation of the rights of the Russian minority in Estonia. Finally, the problem was resolved with the adoption of the Law on Churches and Congregations in 2001. This law became the basis for the registration of the Estonian Church of the Moscow Patriarchate in 2002.

LEGAL CONDITIONS OF THE RELATIONSHIP BETWEEN STATE AND RELIGIOUS COMMUNITIES AFTER 1991

The transformation processes that took place in post-socialist countries affected the position of churches and religious associations. The laws regulating their functioning have changed, including property rights and non-religious activities. The present legal solutions are a consequence of the transition from the anti-freedom religious legislation of the USSR period to a model based on democratic-liberal standards [Pietrzak 2005: 85]. In this model, the State adopts a non-religious status, which is confirmed in the constitution or law by the principle of the absence of a State religion or a State church occupying a privileged position in relation to other religious communities. Specifying the forms of the separation system, Krzysztof Orzeszyna classified Estonia as a “secular State with a friendly separation between state and church without an explicit recognition of the legal position of one of the churches” [Orzeszyna 2007: 171]. Under such circumstances, the institutions of the State and the religious communities are separated, but simultaneously the role of the State is to “create the appropriate climate” for cooperation between the State and religious organizations.

A) CONSTITUTIONAL PROVISIONS

Estonia is classified as a country under the separation system. The Constitution of the Republic of Estonia confirms the fact in § 40, according to which “the State church does not exist” [The Constitution of the Republic of Estonia]. In the same paragraph there are, however, a number of regulations relating to religious freedom, especially the guarantee of freedom of conscience, faith and thought, the voluntary participation in churches and religious communities and the practice of faith, publicly or privately on an individual or collective basis. According to the Estonian Constitution religious convictions can neither provide grounds for discrimination nor incitement to hatred, violence or discrimination (§ 12). Furthermore, the Estonian Constitution guarantees freedom of opinion and belief (§ 41). However, the exercise of these rights may not violate public order, health and morals (§ 40) and justify exceeding the provisions of existing law (§ 41).

The Estonian Constitution contains both a provision stipulating the absence of a State church and the right to participate in religious life. The constitutional regulation potentially created the possibility of different interpretations of the principle of separation and could consequently result in a clash between various concepts of separation of the state and religious communities [Casanova 2005: 109–110]. These ideas, which postulate different degrees of separation between the State and religious

organizations, as well as define differently the role of the State and its institutions in cooperation with religious entities, are situated between two extremes, one of which refers to the idea of strict separation between the State and religious communities, and the other refers to the principles of Caesaropapism. The first concept, which assumes strict separation, rejects state aid, also financial, given to religious communities, while, at the same time, there is no government control over religious entities. The idea of friendly separation, referring to the positive functions performed by religion, requests that religious communities should be supported by the State, but prevents any form of State control. The opponents of this approach, based on the premises of the secularization theory, advocate State control over religion, particularly by means of legislation, while, at the same time, ruling out State assistance to religious communities. The proponents of the latter approach, with reference to the solutions characteristic of Caesaropapism, postulate both State support for the activities of religious communities and placing them under State control [Casanova 2005: 109–110].

The constitution establishes the separation of State and religious organizations, which, however, does not exclude cooperation between them in socially important areas. Religious organizations do not receive direct funding for their activities, but in cooperation with State institutions they can receive grants for the protection of historical and cultural heritage or social welfare. The chaplaincy in the army and prisons is financed from the public budget [Ringvee 2008: 184; see also: Ciechanowska, Szwed 2018: 110–112]. Exceptions to this are the annual grant awarded to the Estonian Council of Churches and the subsidization of magazines published by the Estonian Evangelical Lutheran Church. This raises questions about the constitutionality of these subsidies on the one hand and the principle of equal status of religious organizations on the other [Kiviorg 2010: 269].

B) LEGAL ACTS RELATING TO RELIGION

The other issues concerning the relationship between the State and religious communities are regulated by specific laws. The content of the laws and the conditions they create for the functioning of religious communities demonstrate the State's liberal attitude to religious issues. According to Ringo Ringvee, the legal order reflects the spirit of liberal reforms in the economic and social sphere, including the introduction of free-market principles in relation to religion. According to the researcher, this is not only consistent with Estonian individualism, but also with the high degree of secularization [Ringvee 2008: 186].

The first Churches and Congregations Act was passed in 1993. Because of changing circumstances, in particular Estonia's accession to the European Union, it was essential to pass a new law, which was passed in 2002. The new law regulates in detail the right of individuals to religious freedom, guaranteeing the right to choose, profess and proclaim religious beliefs, to remain silent on religious matters or to be

buried according to religion [Churches and Congregations Act 2002]. The 2002 law distinguishes several types of religious entities: churches, congregations, associations of congregations, monasteries, and religious associations. The activities of religious organizations are supposed to focus on religious practices, especially worship, religious meetings and rituals, and other activities. Their main purpose, however, should not be profit-making. The law introduces an equal status for religious organizations by granting them legal personality in private law based on the law on non-profit organizations. The change of legal personality to other types is prohibited by law.

C) BILATERAL AGREEMENTS

The specific legal act regulating the sphere of relations between the State and religious communities is the Convention concluded with the Holy See in 1999 on the legal status of the Catholic Church and the principles of its functioning on state territory [*Conventio iter Apostolicam Sedem et Rem Publicam Estoniae* 1999]. The Estonian Concordat, due to the fact that Catholics are a religious minority in this country, is a kind of an exception, although a similar solution was also adopted by Albania (2002 and 2008), Kazakhstan (1998) and Latvia (2003) [Krukowski 2010: 99]. The proposed document regulating relations with the Catholic Church in Estonia was sent as a *nota verbale* to the Secretariat of the Holy See in December 1998 and was accepted by the Holy See in February 1999. The document consists of 10 points, which define the legal status of the Catholic Church in Estonia. In terms of its subject matter, the Concordat regulates the following issues:

- (a) the legal personality of the Church and its institutions (Art. 2),
- (b) the autonomy of the Church and its entities (Art. 3 and 4),
- (c) the guarantees of religious freedom in the institutional dimension (Art. 1),
- (d) the structure of the Church and the implementation of changes to it (Art. 5 and 6),
- (e) the protection of marriage and the family (Art. 8),
- (f) school matters (Art. 7),
- (g) the Church's property rights (Art. 9) [Krukowski 2010: 105–109].

According to the provisions of the Concordat, the Church and its institutions created in accordance with canon law acquired legal personality (Art. 2). The Church was guaranteed freedom of correspondence and contact with the Holy See (Art. 3), and was guaranteed access to the mass media, including their possession, in accordance with the laws in force in Estonia (Art. 4). The Catholic Church was guaranteed the freedom to function within the framework of the laws in force in Estonia (Art. 1). Freedom to create new or modify existing administrative units of the Catholic Church, and to appoint bishops and apostolic nuncios was guaranteed. The Catholic Church will inform the State authorities of these decisions, before announcing them (Art. 5). In order to carry out its mission, the Church has gained the right to invite clergy and lay people who do not have Estonian citizenship to Estonia (Art. 6). On behalf

of those persons, the Church gained the right to apply for the right of residence and permission to work in accordance with the principles of Estonian law. The Concordat guarantees the recognition of the legal consequences of a marriage celebrated in canonical form. It is a necessary condition that the marriage so celebrated be entered in the civil register on the basis of a notification made by a clergyman (Art. 8). The Church has acquired the right to establish and operate schools in accordance with the provisions of canon law and national law relating to non-public schools (Art. 7). Students in public and non-public schools, on the other hand, are guaranteed the right to attend religious instruction classes. The Concordat also indicates that in the case of property, economic and fiscal problems, the Church and the relevant State institutions will set up joint commissions to work out mutually satisfactory solutions (Art. 9).

In 1989, Christian denominations established the Estonian Council of Churches (*Eesti Kirikute Nõukogu*, EKN), which is composed of 10 churches and congregations: the Estonian Evangelical Lutheran Church, the Union of Evangelical Christian and Baptist Churches of Estonia, the Estonian Methodist Church, the Roman Catholic Church, the Estonian Christian Pentecostal Church, the Estonian Conference of SDA (Seventh-day Adventists) Church, the Estonian Congregation St. Gregory of the Armenian Apostolic Church, the Orthodox Church of Estonia, the Estonian Orthodox Church of Moscow Patriarchy, and the Charismatic Episcopal Church of Estonia [Estonian Council of Churches]. The Estonian Council of Churches is the main representative of Christian communities in cooperation with state institutions. Indeed, the EKN is the only religious organization with a subvention from the State budget. The State and the EKN signed a protocol on cooperation in 2002 [*Eesti Vabariigi Valitsuse ja Eesti Kirikute Nõukogu ühishuvide protokoll 2002*]. The document established the principles of cooperation between the EKN and the following Ministries: 1) Ministry of Justice (issues of prison chaplaincy, national legislation on religious associations, crime prevention; and rehabilitation work); 2) Ministry of Defence (chaplaincy); 3) Ministry of Culture (clerical broadcasts in the media, issues related to the protection of antiquities); 4) Ministry of Finance (State budget funds); 5) Ministry of Interior (police chaplaincy, national legislation governing religious associations, religious education and training programmes, cooperation with local authorities); 6) Ministry of Social Affairs (establishment of a nationwide network of Christian welfare institutions, chaplaincy in hospitals and chaplaincy in hospitals and care institutions, rehabilitation, shelters, maternity crisis centres, sociology of religion); 7) Ministry of Roads and Communications and Ministry of Economy (chaplaincy in ports, railways and airports); 8) Ministry of Foreign Affairs (contributing to the implementation of national foreign policy by international religious organizations); 9) Ministry of Population (integration). Subsequent agreements were signed in 2019 with the Ministry of Justice and the Ministry of the Interior [Cavegn 2019].

CONCLUSION

Contemporary relations between the State and religious communities in Estonia are determined by the direction of religious policy adopted after the proclamation of independence in 1918. They were aimed, on the one hand, at limiting the influence of Baltic Germans in the Evangelical Lutheran Church and Russians in the Orthodox Church, and on the other hand, at the independence of church structures from external sources of power and the greatest possible Estonization of church administration. Another important factor was the influence of Soviet religious policy, which became apparent after the annexation of the country in 1940. After 1991, the political transformation changed the State's attitude towards churches and religious communities when restrictive laws were abandoned in favour of liberal-democratic solutions.

The research results conclude that the State-religious relations in Estonia are determined by historical and legal conditions. Among the historical factors, both the overall religious policy of the state adopted after the proclamation of independence in 1918 and the long-term domination of Lutheranism in contemporary Estonia are significant.

The direction of religious policy in Estonia is determined by the general principle expressed in the Constitution, according to which there is no State church in Estonia. The lack of dominant religious communities and the liberal laws regulating their functioning are a consequence of the Estonians' low rate of religious affiliation and the high degree of secularization of society. The principle of separation between the State and religious communities does not mean that cooperation in socially important areas is impossible.

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