



# Religious Freedom in the European Union

*Edited by*

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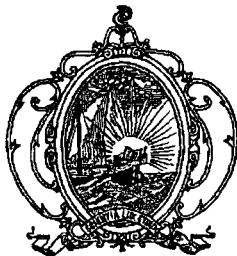
**RELIGIOUS FREEDOM IN THE  
EUROPEAN UNION:**

**The Application of the European Convention on  
Human Rights in the European Union**

**Proceedings of the 19th Meeting of the European  
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## THE APPLICATION OF THE FREEDOM OF RELIGION PRINCIPLES OF THE EUROPEAN CONVENTION ON HUMAN RIGHTS IN LATVIA

### Introduction

The second period of Latvia's independence began on 4 May 1990, when the Supreme Council of the Latvian Soviet Socialist Republic (SC) approved a declaration on the restoration of the independence of the Republic of Latvia.<sup>1</sup> The authority of the Latvian Constitution (*Satversme*) was re-established after 4 May. However, since *Satversme* did not include a chapter on human rights at that moment, human rights in the Latvian State have become effective through constitutional Law. On 10 December 1991, the Latvian Parliament approved a law called "Human and Civil Rights and Obligations".<sup>2</sup> This was an important law from the perspective of human rights, but it was also somewhat questionable from the perspective of constitutional law.<sup>3</sup> The situation was clarified in October

<sup>1</sup> *LR Saeimas un MK Ziņotājs*, No. 20, 17 May 1990.

<sup>2</sup> *LR Saeimas un MK Ziņotājs*, No. 4, 30 January 1992.

<sup>3</sup> The law might appear to be a constitutional law if one reads its title, but it does not satisfy the formal criteria to be declared truly constitutional. On the other hand, it did fill up the previously empty niche of human rights all the way until October 1998, when a new human rights section in the Constitution took effect. Supreme Court Senator Jaurīte Briede has written that the constitutional nature of the law is questionable because the norms that are in it cannot be seen as higher in the legal hierarchy. What is more, the Latvian Constitution, unlike the Soviet Latvian legal system, does not even define the category of constitutional laws. Some authors have argued, not without reason, that legislators at that time were often confused and incompetent. The bottom line here is that legislators were not particularly consistent vis-à-vis constitutional principles and the occupation regime of the Soviet Union. This created some confusion, and there were even proposals to formally repeal the Constitution of the Latvian SSR. See J. BRIEDE, 'LATVIJAS Nacionālā Cilvēktiesību Likumdošana Eiropas Cilvēktiesību Konvencijas Kontekstā' (Latvian National Laws in the Area of Human Rights in the Context of the European Human Rights Convention), in T. Jundzis, (ed.), *Baltijas Valstis Likteņgriežos. Politiskas, Ekonomiskas un Tiesiskas Starptautiskās Sadarbības Problēmas uz XXI gadsimtu sliekšņa Rakstu Krājums* (The Baltic States and their Destiny: Issues Related to Political, Economic and Legal Co-operation at the International Level on the Threshold of the 21<sup>st</sup> Century (1998), p. 276. See also M. Mīrs, 'Satversme Eiropas Cilvēktiesību Standartu Kontekstā' (The Constitution in the Context of European Human Rights Standards),

1998, when Satversme was supplemented with a new section on human rights. This eighth section, called "Fundamental Rights of the Individual" mentions religion/church only in Article 99, declaring that: "Everyone has the right to freedom of thought, conscience and religion. The Church shall be separate from the State." The principle of freedom of religion was defined by the Law on Religious Organisations<sup>4</sup> on 7 September 1995.<sup>5</sup>

The European Convention on Human Rights was ratified by the Saeima on 4 June 1997. One year after acceding to the European human rights convention and signing the association agreement with the EU, Latvia approved a law on a new Human Rights Bureau,<sup>6</sup> and another on a new Constitutional Court.<sup>7</sup> In the case when the Human Rights Bureau has the same complaints about religious freedom violations, the Constitutional Court rules (as in its first case on 28 April 1997).<sup>8</sup> Nevertheless, until 2007, it has never solved issues connected with religious freedom.

## I. Issues on Religious Freedom in Latvia as Viewed by International Observers

The State Department of the United States in its 1997 report on religious freedom criticised Latvia for violation of religious freedom.<sup>9</sup> On the contrary, later on, according to the International Religious Freedom Report of 2006, published by the Bureau of Democracy, Human Rights, and

Cilvēktiesību Žurnāls, 1999, pp. 42-43, I. BIŠERS, 'Satversmes Reforma' (Reform of the Constitution). Materials of the expert seminar "Constitutional Reform in Latvia: Pros and Cons", 15 June 1995. Rīga: Sociāli ekonomisko pētījumu institūts "Latvija" (1995), p. 12.

<sup>4</sup> Law "On Religious Organisations", which was approved on 11 September 1990, and replaced with a similarly titled law on 7 September 1995. The first law was adopted in 1992, but was found unsatisfactory. Therefore, in 1995 the Parliament of Latvia issued a new law. However, this law is also admitted to have its flaws, and since its adoption it has been amended 5 times already, and most likely there will be successive amendments in the future. Religious organisations in Latvia are not obliged to register with the Board of Religious Affairs, however, they obtain rights and relieves available to religious organisations only upon the receipt of a registration certificate.

<sup>5</sup> LATVIJAS VĒSTNESIS, No. 146, 26 September 1995.

<sup>6</sup> Latvijas Vēstnesis, No. 221, 17 December 1996.

<sup>7</sup> Latvijas Vēstnesis, No. 103, 14 June 1996.

<sup>8</sup> E. RADZIŅŠ, 'Ko tas Nozīmē Latvijas tiesu Sistēmai?' (What Does That Mean for Latvia's Courts?), in *Karavāna Tuvojas – Kam? Satversmes Tiesas Pirmais Spriedums* (The Caravan is Approaching – What? The First Ruling of the Constitutional Court), (Rīga, 1998), p. 17.

<sup>9</sup> On account of Latvia's refusal to register Jehovah's Witnesses.

Labour,<sup>10</sup> “...considerable violations of human rights have not been observed in Latvia in the field of religious freedom....” The 2007 Report includes similar statements: “...There was no change in the status of religious freedom by the Government during the period covered by this report, and government policy continued to contribute to the generally free practice of religion; however, bureaucratic problems persisted for some minority religious groups. [...] There were no reports of forced religious conversion, including of minor U.S. citizens who had been abducted or illegally removed from the United States, or of the refusal to allow such citizens to be returned to the United States”.<sup>11</sup>

## **II. Issues on the Condition of Religious Freedom in Latvia: The Government’s Responsibility for the Co-ordination of State’s Policy on Religious Affairs**

The Board of Religious Affairs is a governmental institution under the supervision of the Ministry of Justice. The Cabinet of Ministers ratifies its Regulation. Within the competences set by laws and other normative acts, the Board of Religious Affairs ensures fulfilment and co-ordination of State’s policy on religious affairs. In addition, it deals with issues connected with mutual relations between the State and religious organizations, it monitors the effectiveness of the State’s legal regulation on practicing religion, and it proposes measures to be taken to avert violations of human rights guaranteed in the Constitution of the Republic of Latvia and in the international agreements on religious sphere, as well as conditions promoting them.

It is interesting to notice that the institution which is responsible for the State – Church relations in Latvia, the Board of Religious Affairs of the Republic of Latvia, does not respond to the question about carrying out and observing the rights included in the European Convention on Human Rights Article 9 (Convention). Instead, it forwards the question to other state structures.<sup>12</sup> On the other hand, in the 2007 report on religious freedom of the United States State Department we can find that in

<sup>10</sup> Latvia/ US State department/ International Religious Freedom Report 2006 <http://www.state.gov/g/drl/rls/irf/2006/71390.htm>

<sup>11</sup> Latvia/ US State department/ International Religious Freedom Report 2007 <http://www.state.gov/g/drl/rls/irf/2007/90183.htm>

<sup>12</sup> Letter No. 2.1-51 of I. Romanovska, Chief of the Board of Religious Affairs of the Republic of Latvia to R. Balodis, Head of Constitutional Law Department, Faculty of Law of the University of Latvia.

2005 the Board of Religious Affairs had again proposed amendments to the Law on Religious Organizations that would abolish restrictions on single association registration. Nevertheless, the State Department added that neither the Ecclesiastical Council nor the Government had acted on this recommendation by the end of the reporting period.<sup>13</sup>

The Ministry of Justice which supervises the above-mentioned Board and the religious policy of the State considers that the normative regulation in the field of religion complies with Article 9 of the Convention and that there are in fact no problems with that application in practice.<sup>14</sup>

#### IV. Issues on the Condition of Religious Freedom in Latvia: The Latvian Ombudsman

The opinion of the Ombudsman of the Republic of Latvia is somewhat different. According to the Ombudsman, it is necessary to assess the conformity of several provisions of the Religious Organizations Law (ROL) to the provisions of the Convention. However, the assessment of the provisions should start after the Saeima passes the laws which regulate the relations with particular Churches.<sup>15</sup> The agreement between the

<sup>13</sup> Latvia/ US State department/ International Religious Freedom Report 2007 <http://www.state.gov/g/drl/rls/irf/2007/90183.htm>

<sup>14</sup> Letter No. 1-7.8/2116 of 16 May 2007 of M. Bičevskis, State Secretary of the Ministry of Justice of the Republic of Latvia to R. Balodis, Head of Constitutional Law Department, Faculty of Law of the University of Latvia.

<sup>15</sup> From a comparative point of view, W. COLE DURHAM (United States of America) notes<sup>15</sup> that there exist three models of churches in the world states, which characterize the regimes of the states: Cooperationist Regimes; Accommodationist Regimes; Separationist Regimes. W.C DURHAM. *Perspectives on Religious Liberty: A Comparative Framework/ Religious Human Rights in Global Perspective/* Ed. by J. D. VAN DER VYVER and J. WITTE JR; (Netherlands Kluwer Law International. – 1996), p. 20-21). After the first specific Law of the Latvian Baptist Community Association was passed in May 2007, Latvia became a state of Cooperationist Regimes. Consequently and without doubts, by the end of 2007, the Latvian Evangelical Lutheran Church, the Roman Catholic Church, the Latvian Orthodox Church, the Latvian Old Believers Church, the Latvian Associated Methodist Church, the Latvian Baptist Community Association, the Seventh Day Adventist Latvian Community Association, the Riga Jewish Religious Community will have their own laws, which will be state proclamations of traditionality. These processes began with the agreement of Churches. The Holy See Latvian Government agreement was signed on 9 October 2000, and was ratified on 12 September 2002, continuing with another (except Jewish) denomination Government agreement on 8 June 2004. Because of the decision of the Parliament, those agreements have been converted into Laws (R. BALODIS, 'Lygiateisiškumo Principas ir Religijos Laisvė Baltijos Valstybėse/Jurisprudencija Mokslo Darbai Mykolo Romerio Universitetas 2006 12 (90) p. 103-106)). In fact, all the aforementioned are confessions included in Article 51<sup>15</sup> of the Civil Law, which gives the right to solemnize the marriages of the members of a Church.

Ombudsman and the Saeima Human Rights and Social Affairs Committee, regarding this direction of events, has been reached. The Ombudsman is ready in case of necessity to ask the Saeima to make amendments to the ROL.<sup>16</sup>

## V. Complaints about Ensuring Religious Freedom in Practice

Although State institutions assert that there are hardly any problems, the Representative of the Cabinet of Ministers of the Republic of Latvia in the International Human Rights Institutions (CM Representative),<sup>17</sup> whose responsibility is to represent the interests of the CM in the European Court of Human Rights, gives the information that up to May 2007 the Bureau has had 6 complaints to the European Court of Human Rights (ECHR) about alleged violation of Article 9 of the convention. Four of them are connected with the rights of arrested persons to religious freedom. One is connected with the limitation of religious freedom by the decision of the immigration authority, yet another one has been submitted in connection with alleged violations of the re-registration of one religious organization. Two of the 6 complaints have been rejected. Four of the six complaints were in connection with the rights of arrested persons to religious freedom. One case, *Balabanovs v. Latvia, judgment of 15 March 2007, application No. 76856/01*, was excluded from the list of the cases to be heard in the Court, because the applicant of the complaint had stopped responding to the letters of the Court, wherewith the Court considered there were grounds to conclude that the applicant did not wish to maintain his claim. On the other hand, the case *Burcevs v. Latvia, judgment of 29 March 2007, application No. 11249/03* was excluded from the list of the cases to be heard in the Court, because the applicant himself had revoked his claim. One case actually ended with the applicant's victory.

According to the Ombudsman,<sup>18</sup> there are a few complaints about ensuring religious freedom in practice. From 1996 to 2006 including,

<sup>16</sup> Letter No. 3-2-2/1075 of R.Apsītis, the Ombudsman of the Republic of Latvia, to R. Balodis, Head of Constitutional Law Department, Faculty of Law of the University of Latvia.

<sup>17</sup> Letter No. 03/198-3945 of 7 May 2007 of I. Reine, the Representative of the Cabinet of Ministers of the Republic of Latvia in the International Human Rights Institutions to R. Balodis, Head of Constitutional Law Department, Faculty of Law of the University of Latvia.

<sup>18</sup> Letter No. 3-2-2/1075 of 25 May 2007 of R.Apsītis, the Ombudsman of the Republic of Latvia, to R. Balodis, Head of Constitutional Law Department, Faculty of Law of the University of Latvia.

the Latvian National Human Rights Office (LNHRO) had received 50 applications concerning this issue. Furthermore a big part of them were connected with the internal conflict of one congregation. In general, describing the content of the above-mentioned complaints, the Ombudsman pointed out that the applications were connected with such issues as registration of new religious organizations, alternative service and religious education at schools.<sup>19</sup> In 2007 the Office of the Ombudsman received 9 applications about the discrimination on the grounds of religious orientation. Seven of them are connected with the cartoon in the newspaper *Diena*, which according to the applicants offended their religious feelings. Nevertheless, after an evaluation of the state of affairs, the Ombudsman found that the newspaper *Diena* had not violated the limits of freedom of speech and prohibition of discrimination. The two remaining applications concern the question whether nuns may use passport photographs, where they are with head covering. This case is still pending.<sup>20</sup>

## VI. Provisions of the Religious Organizations Law and their Applicability in the Convention

In the conclusion it is necessary to return to the Ombudsman's determination to discuss in future about the incompliance of the ROL with the Convention. First of all, it is necessary to note that the difference of opinions is in essence about Articles 7 and 8 of the ROL.<sup>21</sup> A few years

<sup>19</sup> Annual reports of Latvian National Human Rights Office can be found on the Internet at <http://www.vcb.lv/eng/index.php?open=publikacijaseng&this=031103.92>.

<sup>20</sup> Letter No. 3-2-2/1075 of 25 May 2007 of R. Apsītis, the Ombudsman of the Republic of Latvia, to R. Balodis, Head of Constitutional Law Department, Faculty of Law of the University of Latvia.

### <sup>21</sup> Article 7. Procedure of establishing religious organisations

(1) Congregation may be established by at least 20 citizens of Latvia or persons who have been registered in the Population Register and have reached 18 years of age. The same person shall be entitled to be the founder of only one congregation. Every inhabitant of Latvia shall have the right to join a congregation and to be its active member. Young persons under 18 may become congregation members only with a written consent of their parents or guardians.

(2) Ten (or more) congregations of the same denomination that are registered in the Republic of Latvia may form a religious association (Church). This provision shall not apply to religious organisations referred to in Article 8, Paragraph 4 of this Law.

(3) Congregations of the same denomination may establish only one religious association (Church) in the country.

(4) A religious association (Church) may establish a diocese by making a relevant decision.



ago, the predecessor of the Ombudsman – the Latvian National Human Rights Office (LNHRO) had asked the Parliament to amend Sections 2 and 3 of Article 7 of the ROL, as well as Section 4 of Article 8. In connection with the abovementioned articles, in the opinion of LNHRO, there have not been any problems with Section 2 of Article 13.<sup>22</sup>

**Article 8. Registration of religious organisations, educational institutions for the ecclesiastics, monasteries, missions and deaconate institutions**

(1) Religious organisations shall be registered with the Board of Religious Affairs. Educational institutions for the ecclesiastics, monasteries, missions and deaconate institutions also shall be registered with the Board of Religious Affairs.

(2) The Board of Religious Affairs shall within one month examine the documents submitted for registration. When examining the documents submitted by congregations of those denominations and religions which begin functioning in the Republic of Latvia for the first time and which do not belong to the religious associations (Churches) already registered in the country, the Board of Religious Affairs may extend the term of examining the documents for one month, notifying the applicant thereof.

(3) The decision on registration or re-registration of the religious organisation or the institution of the religious organisation as well as the decision to refuse the registration or re-registration is made by the Chief of the Board of Religious Affairs.

(4) The congregations of those denominations and religions which begin functioning in the Republic of Latvia for the first time and which do not belong to the religious associations (Churches) already registered in the country shall re-register with the Board of Religious Affairs each year during the first ten years so that the Board may ascertain that these congregations are loyal to the State of Latvia and that their activities comply with legislative acts. Documents for re-registration of the religious organisation must be submitted to the Board of Religious Affairs one month prior the date indicated in the decision on registration or re-registration of the religious organisation.

(5) Any amendments in the Charter (Constitution, Regulations) of a religious organisation, as well as information about any changes in their leadership and the membership of the Audit Committees shall be submitted to the Board of Religious Affairs within two weeks.

(6) When a religious organisation is registered, a registration certificate shall be issued to its leader or some other authorised person. The Chief of the Board of Religious Affairs approves the specimens of the registration certificates of the religious organisations and the institutions of the religious organisations.

<sup>22</sup> Article 13. Rights of religious organisation

(1) A religious organisation shall gain the rights of a legal entity as of the moment of registration. A religious association (Church) or a diocese determines the legal status of an educational establishment for the ecclesiastics, a monastery, a mission and a deaconate institution.

(2) Only registered religious associations (Churches) or dioceses shall be entitled to establish educational institutions for the ecclesiastics, monasteries, missions and deaconate institutions.

(3) Only registered religious organisations and establishments formed by such organisations shall be entitled to use names and emblems of religious organisation in their official forms and stamps.

### *A. Religious Organizations Law – Section 2 of Article 7*

The Latvian National Human Rights Office has pointed out that these regulations, which impose limitations on the establishment of new religious organisations, obliging the congregations to re-register every year for the first ten years of their activity, disproportionately limit the religious freedom guaranteed in the Constitution and international human rights documents. Therefore, not only are the rights of religious organizations to establish an organisation supervising their activity restricted, but also the rights to open educational institutions for ecclesiastics and monasteries, according to Section 2 of Article 13 of the ROL.

### *B. Religious Organizations Law – Section 3 of Article 7*

In 2003 the Board of Religious Affairs (BRA) drew up amendments in the ROL. It provided for the crossing out of Section 3 of Article 7, considering its discriminative character. The amendments, however, were not supported. The reason mentioned by the Ministry of Justice was “public order security concerns”,<sup>23</sup> but in the opinion of the author of the report, it failed to withstand serious criticism. The Office of the Ombudsman<sup>24</sup> pointed out that the situation where the state allowed congregations of the same denomination to establish only one religious association in the country was contrary to the principle of separation of church and state, included in Article 99 of the Constitution. By determining that there might be only one religious association in the same denomination, the State would interfere in the affairs of church, because it was not considered that the establishment of several religious associations might conform to canonical regulations of the denomination. For justification, responsible officials of the Ministry of Justice concluded by interpreting the provision historically<sup>25</sup> that the provision had not been created just to limit a schism within religious associations

<sup>23</sup> Letter No. 1-7.8/2116 of 16 May 2007 of M. Bičevskis, State Secretary of the Ministry of Justice of the Republic of Latvia, to R. Balodis, Head of Constitutional Law Department, Faculty of Law of the University of Latvia

<sup>24</sup> Letter No. 3-2-2/1075 of 25 May 2007 of R. Apsītis, the Ombudsman of the Republic of Latvia, to R. Balodis, Head of Constitutional Law Department, Faculty of Law of the University of Latvia

<sup>25</sup> Letter No. 1-7.8/2116 of 16 May 2007 of M. Bičevskis, State Secretary of the Ministry of Justice of the Republic of Latvia, to R. Balodis, Head of Constitutional Law Department, Faculty of Law of the University of Latvia

(Churches). Although the aim of the Religious Organisation Law adopted in 1995 had been to ensure the realisation of believers' association liberty, it was also necessary to preclude uncertainties with recovery of property nationalised in 1940.

### *C. Religious Organizations Law – Section 4 of Article 8*

In 2005, the Latvian National Human Rights Office asked the responsible Committee of the Parliament to cross out Section 4 of Article 8 of the ROL. The LNHRO pointed out that these regulations imposing limitations on establishing religious associations and obligation for congregations to re-register every year during the first ten years of their activity disproportionately limit the religious freedom guaranteed in the Constitution and international human rights documents. Section 4 of Article 8 of the ROL provides:

'The congregations of those denominations and religions which begin functioning in the Republic of Latvia for the first time and which do not belong to the religious associations (Churches) already registered in the country shall re-register with the Board of Religious Affairs each year during the first ten years so that the Board may ascertain that these congregations are loyal to the State of Latvia and that their activities comply with legislative acts. Documents for re-registration of the religious organisation must be submitted to the Board of Religious Affairs one month prior the date indicated in the decision on registration or re-registration of the religious organisation'.

Therefore not only are the rights of religious organizations to establish an organisation coordinating their activity restricted, but also the rights to open educational institutions for ecclesiastics and monasteries, according to Section 2 of Article 13 of the ROL. At the end of the report it should be mentioned that in practice Latvia is a partial separation state, where the constitutionally declared separation of church and state does not work in practice. Latvia does not associate itself with any specific religion. The question is not about religious tolerance, but rather about the interpretation of the article about church and state separation in the Constitution, because there is no clear opinion about where the borderline between the state and church should be strictly marked.<sup>26</sup>

<sup>26</sup> R. BALODIS, 'School – Religion Relations: Republic of Latvia' *Revue Europeenne de Droit Public*, 2005; Vol. 17 (1) spring p. 397 – 408

## VII. Another Case against Latvia, or at least Improvements of Religious Freedoms according to the Convention?

The former Latvian President, Vaira Vīķe-Freiberga, once said that even though much remained to be done in the judicial branch of the government, the Latvian court system had undergone significant improvements. She stated that the courts were moving away from the normative approach to issues that were typical of the Soviet system – a system in which the letter of the law was the key – and were moving, instead, toward a system in which the spirit of the law and the overall principles of the law came to the forefront. She continued supporting that improvements in that area appeared to be an endless process, but new procedural norms had been introduced to make court proceedings faster, more effective and more transparent.<sup>27</sup> The president's statement is very much in line with the way in which the principles of the European Human Rights Convention are brought to life in Latvia, particularly as seen in the case *Igors Dmitrijevs v. Latvia*.<sup>28</sup>

The European Court of Human Rights (ECHR) found in this case that although the Latvian state had been found guilty of violating the norms of the Convention, its admission of that fact represented sufficient compensation in and of itself.<sup>29</sup> That is indeed very much true.

The petitioner, Igors Dmitrijevs, for example, was released from prison five years ago,<sup>30</sup> but his case is still helping Latvia to close up some "loopholes" in the law.<sup>31</sup> In his petition, Dmitrijevs argued that the Convention had been violated in several different ways.<sup>32</sup> Of certain interest is the claim that the prohibition against the petitioner corresponding with

<sup>27</sup> The president made her remarks in her farewell address before the Parliament on 21 June 2007. *Latvijas Vēstnesis*, 22 June 2007.

<sup>28</sup> *I. Dmitrijevs v. Latvia*, judgment of 9 November 2006, application No. 61638/00.

<sup>29</sup> Dmitrijevs had not, in fact, sought any compensation.

<sup>30</sup> According to the representative of the Cabinet of Ministers in relations with international human rights institutions, whose job is to monitor cases at the European court, Igors Dmitrijevs was convicted on 27 February 2001, and sentenced to three years in prison. All appeals were denied, and after completing his sentence, Dmitrijevs was released in 2002. See <http://www.mkparstavis.am.gov.lv/lv/?id=224>.

<sup>31</sup> This specifically applies to norms which regulate the rights of arrested persons. Cabinet of Ministers regulations on internal procedures in prisons can be found in *Latvijas Vēstnesis*, No. 193(3769), 30 November 2007.

<sup>32</sup> He claimed that his correspondence was censored, that his complaint was not submitted to the court, that he was banned from corresponding with his mother and with the court, and that he was barred from taking part in religious processes during his pre-trial incarceration. This would represent a violation of Articles 3, 5.1c, 6.1, 8, 14 and 34 of the Convention.

his mother<sup>33</sup> was based on an instruction,<sup>34</sup> while procedures related to the religious freedoms of people under pre-trial incarceration were not regulated in any legal norm at all.<sup>35</sup> The prohibition, in other words, was not based on a “law” as defined by the Convention.<sup>36</sup> An instruction simply defines the way in which an external normative act or a general principle of the law is to be applied – it is an internal normative act.<sup>37</sup> As already known, the European Court of Human Rights cannot evaluate reasons for a prohibition. Perhaps the reasons were justified, but that has nothing to do with finding the state guilty. That is based on the fact that at the time of the alleged violation in 2000, the Latvian law did not contain specific legal regulations in the relevant areas. When the court hearing was released on 30 November 2006, the relevant regulations were in place, and so this author assumes that the petitioner’s application before the ECHR and his argument that the state was to blame in the specific area were not just a signal, but a rather serious impulse aimed at producing the relevant regulations. The way in which that was done confirms that this was so:

- In 2002, the Cabinet of Ministers approved regulations on a chaplains’ service;<sup>38</sup>
- In 2004, the country’s Punitive Code was amended to create a chaplains’ service at the Prisons Board;<sup>39</sup>
- In 2006, a law on the incarceration of individuals was approved;<sup>40</sup>
- In 2006, regulations concerning the internal procedures of places of incarceration were approved;<sup>41</sup>

<sup>33</sup> On 4 July, the petitioner wrote to his trial judge, asking permission to take part in a religious celebration in the prison chapel. The prison’s administrators told the Rīga Regional Court that they could not “guarantee isolation during a celebration”. In a letter dated 11 July 2000, the judge rejected the petitioner’s request.

<sup>34</sup> On 30 April 1994, the interior minister issued Instruction No 113 – “Instructions on the procedures related to suspected, accused and convicted persons residing in the investigatory prisons of the Interior Ministry”.

<sup>35</sup> The law on religious organisations which was approved on 7 September 1995 only speaks about general principles.

<sup>36</sup> The limitation was set by Decree No 113 by the Ministry of the Interior which was based on the Penal Law. The ECHR considered that Article 46<sup>1</sup> of the Penal Law cannot be applied because it is applicable only to the tried ones. Respectively the limitation had to be set by the law. Accordingly Detention Law was adopted in 2006 and the limitation was set by the law.

<sup>37</sup> Section 73 of the Law on National Governance, *Latvijas Vēstnesis*, No. 94(2669), 6 June 2002.

<sup>38</sup> *Latvijas Vēstnesis*, No. 101, 5 July 2002.

<sup>39</sup> The changes took effect on 9 December 2004.

<sup>40</sup> *Latvijas Vēstnesis*, No. 103(3471), 4 July 2006.

<sup>41</sup> *Latvijas Vēstnesis*, No. 32(2607), 27 February 2002.

• In 2007, regulations concerning the internal procedures of the investigatory prison were approved.<sup>42</sup>

### **VIII. Freedom of Religion at Places of Incarceration – The Situation in 2007**

Now let us take a more detailed look at the Latvian law insofar as religious practices in places of incarceration are concerned – the law which is related to the goal stated in Section 1 of the Law on Criminal Procedure<sup>43</sup> is in effect right now, but was not in force at the time when the violations determined by the ECHR were in place.

What follows is a review of those legal subjects to whom legal regulations apply. People who are in places of incarceration are either detained (i.e., people who have been ordered to be under detention by a judge or a court during pre-trial proceedings), or convicted (those who have been sentenced to incarceration as a result of having been found guilty of a crime). The co-ordinator of the religious needs of both categories of people is the chaplain. The chaplain represents people in relations with administrators insofar as issues such as religious diet, religious festivities, etc., are concerned. The chaplain also helps when the incarcerated individual needs to contact a clergyperson of his or her religion. The chaplain must ensure that detained and convicted people enjoy the full right of freedom of religion, offering them moral support and consultations on issues of a religious and ethic nature, and helping them to improve themselves in the moral sense.<sup>44</sup> Chaplains provide spiritual care for detained and convicted people, co-ordinating religious processes in places of incarceration. To clarify, detained and convicted people have different status and regimes, and there are differences in the way they are regulated. The chaplains who work at places of incarceration are regulated by the Prisons Board of the Ministry of Justice.<sup>45</sup>

Detained persons may satisfy their religious needs in accordance with the law on procedures related to incarceration.<sup>46</sup>

<sup>42</sup> Latvijas Vēstnesis, No. 193(3769), 30 November 2007.

<sup>43</sup> Latvijas Vēstnesis, No. 74, 11 May 2005.

<sup>44</sup> Regulations concerning this can be found in Latvijas Vēstnesis, No. 101, 5 July 2002.

<sup>45</sup> There are also chaplains for the National Armed Forces and for other institutions at which ordinary contacts with clergymen are not possible.

<sup>46</sup> Latvijas Vēstnesis, No. 103 (3471), 4 July 2006.

**‘Section 27: Spiritual care for incarcerated persons**

(1) Spiritual care of incarcerated persons shall be the responsibility of the chaplains’ service of the Prisons Board.

(2) The chaplains’ service of the Prisons Board shall organise and co-ordinate the activities of religious organisations in the investigatory prison.

(3) An incarcerated person shall have the right to ask the chaplain to bring in a clergyperson from the faith of the said incarcerated person.

(4) The procedure whereby an incarcerated person is permitted to meet with a clergyperson and/or to take part in the religious activities of religious organisations shall be determined in the internal rules of procedure of the investigatory prison’.

The regulations referred to in the fourth paragraph of the aforementioned law define the internal procedures of the investigatory prison, addressing such issues as health examinations, sanitation, and the way in which incarcerated persons have the right to take part in educational events:<sup>47</sup>

**‘VII. Educational events and the spiritual care of incarcerated persons**

53. Educational and religious events at the investigatory prison shall take place at specified times of the day and in the presence of representatives of the investigatory prison’s administration. Incarcerated persons shall take part in educational and religious events on a voluntary basis.

54. The administration of the investigatory prison shall inform incarcerated persons about opportunities to take part in educational and religious events.

55. An incarcerated person shall inform the administration of the investigatory prison of his or her desire to take part in educational and religious events or to meet individually with a clergyperson.

56. The director of the investigatory prison or an official authorised by the said director may permit an incarcerated person to attend educational and religious events or to meet individually with a clergymen whilst taking into account all limitations specified by the procedural institution, all requirements vis-à-vis isolation, instructions from medical personnel, and other considerations related to the security of the institution. Where necessary, the request may be refused’.

<sup>47</sup> Latvijas Vēstnesis, No. 193(3769), 30 November 2007.

The regulations also mention about the types of objects and food products which incarcerated persons may keep. These include a plate, a cup, a spoon, clothing that is appropriate for the season, etc. Moreover, incarcerated persons are allowed to have newspapers, magazines and seven books. That also means that they can possess and read legal literature.<sup>48</sup>

Convicted persons can pursue their religious needs on the basis of comparable legal regulations, as those which apply to detained persons (see Section 46<sup>1</sup> of the Punitive Code).<sup>49</sup> The only difference is that the procedure whereby convicted persons are permitted to meet with clergypersons and attend events aimed at moral improvement is regulated by the Cabinet of Ministers Regulation No. 423, 30 May 2006: "Regulations on the Internal Procedures of Institutions of Incarceration".<sup>50</sup> Sections 35 to 39 of these regulations are specifically dedicated to spiritual care:

#### 'VII. Spiritual care of convicted persons

35. In order to provide for the spiritual care of convicted persons, chaplains shall organise the religious activities of religious organisations at institutions of incarceration or conduct same in accordance with norms related to the chaplains' service.

36. All religious activities of religious organisations except for confession shall take place in the presence of an employee of the relevant institution of incarceration.

37. Convicted persons shall meet with clergypersons in accordance with the agenda and rules of the institution of incarceration, as specified by the director of the Prisons Board.

38. Convicted persons who are in punitive confinement shall be visited by a clergyperson only with the express approval of the director of the relevant institution of incarceration. A representative of the administration shall always be present during any such visit.

<sup>48</sup> Appendix 4 to Cabinet of Ministers Regulation No. 800, 27 November 2007.

<sup>49</sup> The code was approved in 1970 and has been in effect since 1971. Section 46.1 speaks about spiritual care in institutions of incarceration, noting that there are chaplains services at such institutions. These are subordinates of the Prisons Board. Chaplains are appointed with the agreement of the Board of Religious Affairs. Legally registered religious, charitable and welfare organisations are allowed to provide services aimed at moral improvement at places of incarceration. The procedure whereby convicted persons are allowed to meet with clergy and take part in moral improvement procedures is regulated in the internal procedures of the relevant places of incarceration.

<sup>50</sup> Latvijas Vēstnesis, No. 32(2607), 27 February 2002.



49. Religious literature shall be distributed at an institution of incarceration by religious organisations referred to in normative acts related to the chaplains' service'.<sup>51</sup>

In conclusion, it can be said that it is important that individuals, not the state, have initiated improvements in the situation by defending their fundamental rights and thus bringing better order to the legal environment, so as to make sure that similar violations do not reoccur. On the other hand, this is not really acceptable. The protection of human rights is one of the most crucial guarantees in a country where the rule of law prevails, while it is specifically the duty of the state to ensure effective protections for anyone whose rights have been violated.<sup>52</sup>

<sup>51</sup> Basic regulations concerning institutions of incarceration include the isolation and supervision of convicted persons with the aim of preventing them from committing additional criminal offences. Convicted persons face various regimes and conditions, depending on the criminal offence they have committed, as well as their personal nature and behaviour. Section 50<sup>4</sup>.9.8 of the Punitive Code, for instance, states that those prisoners who are at the lowest level of the prison regime have the right to attend worship services in the prison chapel and to meet with clergypersons without the presence of any other person.

<sup>52</sup> Ruling of the Constitutional Court of the Republic of Latvia on Case No. 2001-07-0103, *Latvijas Vēstnesis*, 7 December 2001.

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