

A RELIGIOUS ORGANIZATION IN THE LATVIAN STATE: ITS RIGHTS AND OBLIGATIONS

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The freedoms and rights of religious organizations have been the focus of western lawyers for a good deal of time. There are many cases of quasi-religious groups seeking the rights and privileges granted to established, "legitimized" religious organizations, a phenomenon that creates resentment because of the benefits and tax breaks all religious groups receive. In fact, a widespread explanation for the development of sects in Western countries since World War II is the large tax allowance provided these organizations. Sect proliferation parallels the general status that religious organizations receive in a given society; the misuse of benefits and privileges granted by the state to legitimate religious groups actually hinders the possibility that the state will continue or liberalize these policies. I believe that the allocation of benefits to questionable religious groups will likely cause the state to reverse its policy and restrict or deny rights to all religious groups in the future.

In my discussion of religious rights in Latvia, my assumption is that citizens deserve freedom of religion based upon God-given inalienable human rights. Individuals join such organizations to exercise these rights.

Freedom of Religion and Its Limits

In Europe the concept of "freedom of religion" implies individual as well as collective religious freedom. Religious organizations register as legal entities. The International Academy for Freedom of Religion and Belief, established in 1985 consists of university professors engaged in theological and legal issues from the most developed nations. This distinguished body considers freedom of belief as the "cornerstone" of all freedoms, and yet England is seeking to re-formulate the concept

of "freedom of religion" in the national constitutions and legislation. In 1997 Michael Bordeaux, founder of the prestigious Keston Institute, had meetings with the representatives of the Saem Commission of Human Rights and Public Affairs, the Ministry of Justice Department of Public and Religious Affairs, and the Bureau of Defense of Human Rights wherein he advised them to refuse registration rights to Scientologists. It is the misuse of tax advantages and other benefits granted to legitimate religious groups that is causing the Academy to rethink definitions.

The freedom to organize needs to be distinguished from individual freedoms. A religious organization registers as a legal entity, and thereby is granted all the privileges of a legal entity. After registration, the religious organization distinguishes its responsibility from the responsibility of its founders or members. A right of juridical personhood is granted by the state. Now it must comply with the state legal code.

What distinguishes religious organizations from other forms of legal organizations in a civilized country? Myrtle Langley addresses six aspects of religious organizations: (1) doctrinal, (2) mythological, (3) ethical, (4) ritual, (5) survival, and (6) social aspects. All of these aspects are inter-connected and help to explain the cultural context of the group: members' behavior, format of worship, etc. The survival aspect results from all the other aspects. Langley believes that the social aspect is actually what we are most concerned with. The social aspect of the relations between the state and the church includes the institutional organization of a religious body. From the scientific standpoint, upon establishment of a religious organization, the qualitative state of legal entity is defined and an organization comes into being with a regulated inner structure. This is a specific kind of association of individuals, with a peculiar inner management model.

The basis for registering an organization is to achieve legitimate recognition of the State to which it is supposedly loyal. The organization operates within the state legislation framework, and consists of individuals associated within a defined structure, registered to exercise effectively their freedom of belief.

When one considers the privileges granted a religious organization, one often thinks of the rights that set it apart from other organizations. Latvia's constitutional law, "Rights and Obligations of a Person and Citizen," supplement the scope of

human rights of the Satversme, Clause 35 Section 4. This includes a provision that "religious or ideological causes shall not release anybody from the obligations to the state and the necessity to observe the laws." In emergency cases, the state is empowered to interfere with the rights of religious organizations to enforce observance of the laws. Thomas Jefferson, the initiator of the American Bill of Rights, was the first to formulate the right of a state to interfere in the activities of a religious organization:

We have never given away to anyone our rights to the freedom of conscience; most probably we cannot give them away. We are responsible for them to God. The state's powers shall cover only such actions by which others are offended. But I am not offended by the fact that my neighbor admits that 220 gods exist or just none. It would not make my purse thinner or my leg would not break due to that.

The person's freedom to believe and share his beliefs may be restricted by law but only when it is necessary to secure public order, public security, health, morals and other basic human rights and freedoms. Instances of non-observance or violation of the law cannot be excused on the grounds of the religion or belief practiced by the person. When a religious organization violates the Satversme or laws of the Republic of Latvia, the Procurator-General or Minister of Justice can raise a question in court as to possible termination of said religious organization. The court is empowered to terminate a religious organization if the latter declares ideas of religious intolerance or hostility, negates the laws or calls others to do so, or threatens the national security, public peace or health and morals of others. A court decision to terminate a religious organization can be appealed in the manner and time as envisaged in the laws of civil procedure. Upon termination, a religious organization forfeits the rights of "legal entity."

A religious organization can also forfeit its status of "legal entity" by liquidating itself in the manner stipulated in its articles of organization. Liquidation may also be adopted when the community reorganizes by affiliating with another organization, or by creating new communities. A cloister or theological educational institution may be terminated when the relevant religious association (church) decides to terminate in accordance with its articles of organization. A religious association

(church) may be liquidated if the number of parishes it comprises is less than ten during the period of one year.

The Tax Allowance Benefit

The basic benefit of a registered religious organization is the tax allowance. In compliance with the law "On Property Tax" Clause 4 Article 6, the property tax is not applied to the property of religious organizations, i.e. buildings, construction, incomplete construction objects, transport vehicles, other fixed assets and church inventory. The law "On Real Estate Tax" which has been valid since January 1, 1998 has replaced the laws "On Land Tax" and "On Property Tax."

The Ministry of Finance grants significant privileges to religious organizations. In accordance with the Cabinet of Ministers September 26, 1996 Regulation No. 367 permission is granted to collect donations. In the law "On Company Income Tax" Clause 20, the company income tax is allowed to deduct 85 percent of the sum donated as long as it does not exceed 20 percent of the company income tax sum total (Clause 20 section 3).

In accordance with clause 15 of the Law on Religious Organizations, religious organizations are entitled to carry out economic activities. However, when the income during one calendar year exceeds 500 times the minimum monthly wage, the organization must establish its enterprise and carry out economic activities in compliance with the law "On Business Activities." One provision offers an interesting nuance for distinguishing a religious organization from a legal entity of another kind: movable property and real estate may be owned, but the churches and ritual objects cannot be mortgaged or pledged or penalized at the request of creditors. This becomes even more interesting in light of the fact that, considering the diversity of religious movements in Latvia, a "church" (e.g. "The New Generation", "Christian Science", "ELKANKAR" or "Sukjo Mahikari") can take place in a gym or a residence.

Unfortunately, the Parliament of Latvia did not support legislation that would include a list of traditional religions to distinguish them from non-traditional or new religious movements. The distinction between traditional and nontraditional ideas could demonstrate not which movement is "more true" or "less true," but which movement should be granted tax allowances and which ones should not. When 90 percent of a residence is used for living and 10 percent for public worship, then the

full religious tax allowance would seem to be a malicious use of the state favor status. The same is true with the clearing in the woods used by adherents of the religious organization known as "Sinti." (Gypsy)

Religious practices are not engaged in only to meet individual needs, but also for the common good. The task of organizations granted religious benefits should be to defend these rights. I fear that the malicious use of state favors by new religious movements might result in the reduction of tax allowances granted by the state.

In accordanced with the Law on Humanitarian Aid (adopted August 10, 1995), religious organizations are entitled to receive humanitarian aid. Such humanitarian cargoes are not subject to taxes or duties. Religious organizations which may receive humanitarian aid are designated in Regulation No. 58 "Regulations of the public organizations, foundations, partnerships and other institutions entitled to receive humanitarian aid" and later Regulations No. 58 and 61 concerning acceptable content.

According to the law "On value added tax", monetary contributions and donations are not subject to the value added tax. Though the religious organization in Latvia, as in the other Baltic states, are not commercial in nature, nevertheless the law on religious organizations and the December 13, 1998 law "on business activities" stipulated that a religious organization is entitled to carry out economic and business activities, to establish enterprises (business companies), and to acquire interest or shares in enterprises.

Registration Provisions

The Department of Public and Religious Affairs Division of the Ministry of justice is in charge of the registration process and maintains a register of religious organizations and theological educational institutions. A religious organization shall not be registered unless all the documents have been submitted in compliance with the law. Registration will be refused if the activity of the religious organization or its doctrine, aim and tasks as fixed in the articles of organization of the religious organization contradict the legal norms currently in force in Latvia, or if the religious organization threatens national security, public peace and order, or the health and morals of other persons through its activity (doctrine), or if it declares ideas of

religious intolerance or hostility. The decision to reject registration must state the reasons for rejection.

For the purposes of Latvian legislation, religious organizations are construed as religious communities, associations (churches) and cloisters. Believers of one and the same religion become associated into a community on a voluntary basis, in order to carry out religious or other activities within a definite residential territory. A religious association (church) unites communities of the same religion properly registered as envisaged by legislation. Aims and tasks of religious organizations are fixed in their articles of organization. According to the Law of Religious Associations as amended on July 3, 1996, no less than 10 Latvian citizens or persons registered with the Register of residents, not younger than the age of 18, should be among the founders of a community. Only Latvian citizens can be elected to the elective bodies of the communities, except for ecclesiastics. Ten (or more) communities which are registered in the Republic of Latvia and consequently are legal entities, can establish one religious association (church) in the country. The rights to establish cloisters and clergy educational institutions shall be granted only to such registered religious associations.

When reviewing documents submitted by a religious organization, the Department of Public and Religious Affairs is required to consult the Advisory Council for Religious Affairs or the Advisory Council for New Religious Movements. These two bodies are distinct. The latter is formed in order to coordinate and research new religious movements, whereas the Advisory Council for Religious Affairs is an advisory body representing six traditional (historical) religions continuously present in Latvia. It comprises the spiritual leaders or representatives of the traditional (historical) religions: Evangelical Lutherans, Roman Catholics, Orthodox, Old-Believers, Baptists and "Mosaic believers" [sic, presumably Jews], who are appointed by the Ministry of Justice, and additional persons appointed by the ministry. The other religions submit their views and positions to the state contact person - in particular to the Ministry of Justice. The Council adopts position statements based on the principle of unanimity (consensus). Its scope of competence includes: (1) to speak to the Ministry of Justice and to other government authorities on issues associated with the activities of religious organizations in the country; (2) to

address the military authorities on issues related to religion or religious organization, or to the rights and obligations of believers; (3) to respond to pending legislation related to religious organizations; (4) to work out propositions and express views to the government authorities on the restoration of moral and ethical values for the good of society; (5) to carry out and to improve cooperation between the Latvian state and religious organizations. The state authorities shall supervise and control compliance of the religious organizations with the legislation on religion. State and local government are not entitled to interfere with the religious activities of religious organizations. The Council is merely an attempt to seek dialogue between the state and the church, which has been realized quite successfully.

Role in Society

Clause 6 of the Law of Religious Organizations provides for the teaching of religious dogmas in the schools. Christian dogma may be taught in public and private schools by the teachers of religion of Evangelical Lutherans, Roman Catholics, Orthodox believers, Old-Believers and Baptists. The church administration proposes, and the Ministry of Education & Sciences state inspectorate approves the teachers named. The qualifications of Christian teachers are stipulated by Clause 56 of the Law on Education, and Regulation No. 78 of the Education Ministry. Religious dogmas are taught at schools, when the number of pupils of the relevant religion is not less than 10. Ethics courses may be proposed as an alternative to teaching Christian dogma at schools. In state schools for the minorities living in Latvia, the religious dogmas characteristic to each particular national minority may be taught, as stipulated by the Ministry of Education and Science.

Religious organizations, as legal entities, also carry out public activities. As an association established for the realization of human rights, they are entitled to express their views publicly. A properly registered religious organizations must obtain permission from the relevant local authority, if it wants to conduct activities of a religious nature outside its worship premises. A local authority shall decide on the activities of a religious organization within its territory, governed by the legislation on religion and "On Meetings, Processions and Pickets". Typically such issues are considered by a standing committee of said local authority, whose overall competence

includes social, health, educational, cultural, sport and public order issues. The local authority must face a penalty of a minimum fine of 10 months wages or a public reprimand, should it refuse such a request if the refusal violates the legitimate religious rights of believers thereby. On the other hand, if a religious organization carries out its public activity without coordination with local government, then the Ministry of Justice may give notice, and is empowered to bring legal action to terminate the religious organization.

Termination of the ALegal Entity" of religious groups

The decision to terminate a religious organization is initiated by the court, but such a decision may be appealed (Latvian Civil Code of Practice Section 24a). Religious movements that are not registered with the Ministry of Justice (as religious organizations), or with the Companies Register (as public organizations), may carry out their activities as an interest group, a status which does not entail the rights of a legal entity. Since January 16, 1997 the Republic of Latvia law "On Meetings, Processions and Pickets" applies to such groups and mandates that they must properly coordinate their arrangements with the relevant local governments, provided that these are not carried out in the premises or estates belonging to religious organizations. The events may be arranged on private estates, and may be carried out upon consent of the owner.

Such arrangements are to be registered with the annual reports of religious organizations. According to the September 7, 1995 Law of Religious Organizations Clause 14, religious organizations must submit reports on their activities to the Ministry of Justice, each year not later than March 2. It is interesting that no Latvian religious organization to date has submitted its report by March 2, 1998. This demonstrates the view of lawyers that only the existence of the State repressive machinery will secure observance of the laws, as no sanctions are mandated for the refusal to submit such reports.

In conclusion I would like to emphasize that only through an amalgamation of Latvian and international experience could a conceptual standpoint on church-state affairs acceptable to us be created. Let us remember that the one who gains a person's conscience, shall also bring a relevant ballot-paper - the question is not a

question of religion (in whom to believe or not to believe), but a question of the political power of the state. Real progress comes only when the society gains the opportunity to create reasonable laws that correspond to human nature. Such laws would only be complete when the citizens are educated in the laws, and the state is strong enough for a tolerant dialogue on the wishes and needs of its citizens.