



CONSTITUTIONAL COURT OF THE REPUBLIC OF LATVIA

JUDGEMENT

on Behalf of the Republic of Latvia

in Case No. 2017-18-01

Riga, 26 April 2018

The Constitutional Court of the Republic of Latvia comprised of: the Chairperson of the court hearing Ineta Ziemele, Justices Sanita Osipova, Aldis Laviņš, Gunārs Kusiņš, Daiga Rezevska, Jānis Neimanis and Artūrs Kučs,

having regard to an application by the Supreme Court,

on the basis of Article 85 of the *Satversme* of the Republic of Latvia and Para 1 of Section 16, Para 9 of Section 17 (1), Section 19¹ and Section 28¹ of the Constitutional Court Law,

on 27 March 2018 examined in written procedure the case

“On Compliance of Section 7(2) and Section 8(4) of the Law on Religious Organisations with Articles 99 and 102 of the *Satversme* of the Republic of Latvia and on Compliance of Section 7(3) of the Law on Religious Organisations with Articles 91, 99 and 102 of the *Satversme* of the Republic of Latvia”.

The Facts

1. Section 7 (2) of the Law on Religious Organisations provides that ten (or more) congregations of one denomination which are registered in the Republic of Latvia may establish a religious association (church) and that this provision does not apply to the religious organisations referred to in Section 8 (4) of this Law.

2. Section 8 (4) of the Law on Religious Organisations stipulates that congregations, which commence activities for the first time in the Republic of Latvia and do not belong to any religious associations (churches) already registered in the State, must re-register in the registration institution (hereinafter – re-registration) each

year for a period of the first ten years and that when re-registering a religious organisation, the registration institution must rely on the opinion provided by the Ministry of Justice regarding the conformity of the activities of the religious organisation in the previous period with the requirements of regulatory enactments.

Section 7 (3) of the Law on Religious Organisations, in turn, provides that congregations of one denomination may establish only one religious association (church) in the state.

2. The Applicant – the Supreme Court (hereinafter – the Applicant) – notes that in the administrative case No. A420410213 the matter of the right of a religious community to establish a religious association has to be examined. Allegedly, the contested norms prohibit it.

The religious community “The Latvian Autonomous Orthodox Church” (hereinafter – the Latvian Autonomous Orthodox Church) had turned to the Enterprise Register of the Republic of Latvia, requesting to be registered in the register of religious organisations and institutions thereof. However, the Enterprise Register of the Republic of Latvia rejected this request. Consequently, the aforementioned religious community submitted an application to the administrative court requesting the issuance of a favourable administrative act – entering it into the register of religious organisations and institutions thereof.

The Latvian Autonomous Orthodox Church had been denied the status of a church and, accordingly, also the status of a legal person, because it, allegedly, did not meet the requirements of the Law on Religious Organisations. A religious organisation, though, is allowed to operate as a group of congregations but congregations are said to be formations that are territorially restricted. Allegedly, for congregations that constitute a religious community without the status of a church united action in the name of the church is hindered, and also essential expressions of the religious freedom are denied. Hence, the refusal to register the Latvian Autonomous Orthodox Church is said to restrict its rights that have been guaranteed in Article 99 and Article 102 of the *Satversme* of the Republic of Latvia (hereinafter – the *Satversme*).

Allegedly, religious communities do not have the obligation to get registered in the register of religious organisations and their institutions, therefore the date of their initial registration may not coincide with the actual date when they commence their activities. Re-registration is possible only following the initial registration. This is said to mean that the term of re-registration defined in Section 8 (4) of the Law on Religious Organisations can begin only after the religious community has exercised its right and has become registered as a congregation. Thus, congregations have the duty

to re-register during the first decade following the initial registration but during this period they cannot establish a church.

It is not contested that Section 7 (2) and Section 8 (4) of the Law on Religious Organisations have been adopted in compliance with the procedure established in regulatory enactments, have been promulgated and are publicly accessible in compliance with the requirements set in regulatory enactments, and have been worded with sufficient clarity. Hence, the restriction included in this norm has been established by law.

The restriction that prohibits from establishing a church prior to the expiry of the re-registration period is said to have a legitimate aim – ensuring public order, by verifying, whether the congregations that establish a church abide by regulatory enactments and are stable and able to exist for a prolonged period of time.

However, the Applicant holds that measures chosen by the State for reaching the legitimate aim are not proportionate. Allegedly, the legitimate aim could be reached by less restrictive measures. It is possible to verify whether a religious organisation abides by the requirements of regulatory enactments within a much shorter period. The waiting period and re-registration of ten years are said to be unnecessary, in particular, with respect to religious communities that are already well known in the world and in Latvia. Moreover, compliance with regulatory enactments could be controlled by measures that are less restrictive. Whereas doubts concerning the stability of a religious organisation could be substantiated only in the case of new and unknown religious organisations. The inconvenience that a religious organisation suffers during this decade is said to outweigh the public benefit that is gained. Hence, the restriction that prohibits the congregations from establishing a church prior to the expiry of the ten-year-long registration period is said to be disproportionate and incompatible with Article 99 and Article 102 of the *Satversme*.

Section 7 (3) of the Law on Religious Organisations sets one more restriction on establishing a religious association, i.e., the congregations of one denomination may establish only one religious association (a church). Since a religious association (a church) of the Orthodox denomination has already been registered in Latvia, in this particular case, it is prohibited to register another religious community as a church. It is not contested that this norm had been adopted in compliance with the procedure established in regulatory enactments, had been promulgated and is publicly accessible in compliance with the requirements set in regulatory enactments, and has been worded with sufficient clarity. Hence, the restriction on fundamental rights has been established by law. Likewise, this restriction might have a legitimate aim – ensuring public order, as well as simplifying the State's relationship with the representatives of

a religious denomination. However, also this restriction on the religious freedom should be necessary in a democratic society and proportionate.

The restriction that provides that only one church can be established within the framework of one denomination is said to not be necessary and proportionate. The State should be neutral and should not interfere in religious matters by making all religious groups united and be subject to one governing body or by prohibiting them to unite in organisational structures according to the discretion of the believers themselves. It is alleged that the State has the obligation to ensure that several religious organisations were able to co-exist peacefully. Moreover, it should be taken into consideration that there are also such religious trends, which historically have never had a united hierarchic structure.

The fact that the State has granted various privileges (for example, the rights envisaged in Section 51 of the Civil Law) to various denominations, assuming that the respective denomination has only one governing body, may not deprive a religious organisation from the right to acquire the status of a legal person so that it would be able to exercise its freedom of religion adequately. Allegedly, there are less restrictive measures for creating relationships with religious organisations. The State even should ensure equal access to the privileges that currently have been envisaged only for some denominations.

By allowing the congregations of one denomination to establish only one church, harm is inflicted upon the remaining congregations, and it is said to outweigh the benefit that the society gains from this restriction. Moreover, the State is said to give preference, without grounds, only to one religious association within one denomination by allowing it to acquire the status of a church.

Hence, the restriction, pursuant to which the congregations of one denomination may establish only one church is said to be disproportionate and incompatible with Article 99 and Article 102 of the *Satversme*.

Section 7(3) of the Law on Religious Organisations is also said to place various religious groups within one denomination in an unequal situation because it allows granting the status of a religious association (a church) only to one of these groups, i.e., the first one which wishes it, but later denying this possibility to all other religious groups. In view of the considerations presented above, this restriction is said to cause differential treatment of groups, which are in comparable circumstances, and this differential treatment is said to lack objective and reasonable grounds. Thus, this restriction is said to be incompatible with Article 91 of the *Satversme*.

3. The institution, which issued the contested act, – the Saeima – notes in its written reply that Section 7 (2) and Section 8 (4) of the Law on Religious

Organisations comply with Article 99 and Article 102 of the *Satversme*, whereas the legal proceedings should be terminated with respect to the compliance of Section 7 (3) with Article 91, Article 99 and Article 102 of the *Satversme*. If legal proceedings are not terminated in this part then Section 7 (3) of the Law on Religious Organisations should be recognised as being compatible with the *Satversme*.

Each religious organisation acquires the status of a legal person from the moment when it is registered on the register of religious organisations and the institutions thereof. The procedure of re-registration is said to not restrict the rights of the religious organisation to act as a legal person and to enjoy all rights that the law envisages for congregations. The legal status of religious organisations that need to re-register and that of permanent religious organisations is said to differ only in two aspects – the religious organisations that need to re-register must carry out the annual administrative re-registration procedure and they may not establish a religious association (a church).

The religious association (a church) is said to take a higher rank in the hierarchy of forms of religious organisation compared to a congregation, and this status is said to confirm the long-term existence of a certain totality of congregations, uniting in a large entity and succession in rights. Therefore the legislator has also defined special rights of the religious organisations (churches): only the registered religious associations (churches) have the right to establish institutions of education for the ecclesiastics, convents, missions and diaconal institutions.

The activities and existence of a religious association (a church) is said to be inseparably linked to the activities of congregations constituting it and the stable long-term existence of a certain minimal number of congregations. Therefore the legislator has established that congregations that have the status of a permanent religious organisation should be among the founders of a religious association (a church).

The case under review is said to be different from the cases heard by the European Court of Human Rights that the Applicant refers to. In these, the aspect of restriction on the freedom of religion, mainly the refusal to grant the status of a religious organisation and, thus, also the status of a legal person to an unregistered religious community, prohibiting, prior to the registration, to enjoy in full the freedom of religion and the rights linked to the status of a legal person had been examined.

The prohibition to acquire a higher rank in the hierarchic structure of the religious organisations of the Republic of Latvia and, hence, also the status of one (united) legal person restricts the possibilities of the congregations that need to re-register to act on behalf of one subject and to exercise the freedom of religious belief in such aspects, in which this freedom can be exercised only by a registered religious association (a church). Therefore, the prohibition for congregations to establish a

religious association (a church) with the status of a legal person during the first decade following the initial registration restricts the fundamental rights enshrined in Article 99 and Article 102 of the *Satversme*.

Section 7 (2) and Section 8 (4) of the Law on Religious Organisations had been adopted in the procedure established by the *Satversme* and the *Saeima* Rules of Procedure, had been promulgated in the procedure established by regulatory enactments, and it is publicly accessible and worded with sufficient clarity.

The choice of a religious community to establish a congregation that is autonomous from the existing religious associations (churches) is said to attest to its denominational difference. A newly established congregation should be seen as a new entity, unknown to the State. The legislator has a valid wish to assess such religious organisations within a longer period. A newly established congregation, which has successfully performed its duty of re-registration thus also confirms that its teaching complies with the requirements of Article 9 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter – the Convention) – is “indisputable, serious, united and important”.

The aim of the duty to re-register is said to be the protection of society against, possibly, the harmful impact by new congregations unknown to the State, to not permit abuse of the status of a religious organisation and unlawful activities. The European Court of Human Rights has recognised that the State has the right to verify, whether a religious movement (a group), in the framework of its religious activity, does not take actions that pose a threat to society and public security.

The restriction that prohibits the congregations that need to re-register to establish a religious association (a church) is said to protect the State and society from deceit, fraudulent and criminal activities. This restriction is said to be aimed at preventing that a religious association (a church) were established by congregations, about the activities of which the State has not gained sufficient assurance yet. Allegedly, this restriction has a number of legitimate aims enshrined in Article 116 of the *Satversme* – protecting the rights of other persons, the democratic state order, public security, welfare and morals. The restriction is said to be appropriate for reaching these aims.

In choosing to set the obligation to re-register for the term of ten years, the legislator has made considerations regarding expedience that fall within its jurisdiction and had adopted a decision of law policy nature. Such a legislator’s decision of law policy nature, which has been adopted on the basis of considerations regarding the expedience in connection with setting the term for applying the restriction, allegedly, cannot be reviewed by other institutions, the Constitutional Court included.

Allegedly, the activities of a religious organisation cannot be verified within a shorter period of time or without re-registration. A newly established congregation should be regarded as a new and unknown religious organisation, notwithstanding the fact that the name of a denomination that is known to the State has been included in its title. Moreover, establishing different periods of re-registration, depending on the prevalence and recognisability of the religion, would place various religious organisations in an unequal situation. Likewise, differential treatment of congregations, depending on the recognisability of the religion that they practice, would not reach the legitimate aim of the restriction, since it is important to assess the activities of the particular congregation.

In view of the scope of rights and protection granted to the registered congregations, the restriction on the rights of a congregation that needs to re-register should be recognised as being minimal. A congregation that needs to re-register must submit to the Ministry of Justice an annual report about its activities. However, within the period of re-registration, ceasing its activities is simpler for it compared to the congregations that have acquired the status of a permanent religious organisation.

It is said to be proportionate to gain the assurance regarding the congregations' compliance, stability and sustainability prior to granting to the congregations the right to act in a united way and in one name in external relations. The State had chosen to grant the right to establish institutions and convents with the status of a legal person only to associations of congregations, which have acquired a stable status. It is important that all institutions established by a religious association (a church) were trustworthy, stable and sustainable since the functions of the State can be delegated to them.

The restrictions that prohibit ten congregations from establishing a church before the ten year period of re-registration has expired has not caused such adverse consequences, the elimination of which would be more important than ensuring the interests of the State and society.

If a religious association (a church) wishes to establish congregations that need to be re-registered, as it is in the particular administrative case, then the first favourable pre-requisite for issuing a favourable administrative act has not been met. Therefore there are no grounds to verify, whether other pre-requisites for issuing a favourable administrative act have been met. Section 7 (3) of the Law on Religious Organisations would not be applicable in the administrative case, upon which the application is based, even if the Constitutional Court were to recognise the obligation to re-register as being incompatible with the *Satversme*, since, in the particular case, the Ministry of

Justice had not provided its opinion in accordance with Section 8 (2) of the Law on Religious Organisations.

Allegedly, neither does Section 7 (3) of the Law on Religious Organisations violate the prohibition to determine the denominational affiliation of a religious community. The denominational affiliation is defined by the congregation itself in the registration documents in the procedure of submitting thereof, either by integrating into an already registered religious association or by requesting granting of an autonomous status. The concept of “domination” has to be filled with content in each particular case.

4. The summoned person – the Ministry of Justice – notes that Section 7 (2) and Section 8 (4) of the Law on Religious Organisations 7, as well as Section 7 (3) of the Law comply with the *Satversme* and upholds the substantiation provided in the written reply by the *Saeima*, and considers that the legal proceedings regarding compliance of Section 7 (3) of the Law on Religious Organisations with Article 91, Article 99 and Article 102 of the *Satversme* should be terminated.

The aim of re-registration is said to be the protection of public interests and security. The State is said to have the right to envisage pre-requisites for registering legal persons and to set different pre-requisites for various religious organisations. The wish to verify the activities of religious organisations that commence their activities within the state is said to be valid. It is done for public security, to protect persons from, possibly, negative or harmful influence, as well as to take preventive measures to not allow unlawful activities by newly established religious organisations. Verification of newly established religious organisations’ loyalty to the fundamental values of the State and the compliance of their activities with regulatory enactments is said to be substantiated.

The form a religious organisation and the fact that for a certain period of time congregations may not establish a religious association (a church) is said to not restrict the right to the freedom of religious belief enshrined in the first sentence of Article 99 of the *Satversme*.

Upon registering a religious organisation in the register of religious organisations and institutions thereof, a religious organisation is said to acquire the status of a legal person and, upon receiving it, may perform all activities that other legal persons have the right to perform.

The legislator has also established special privileges that are applicable to religious organisations. The congregations that are subject to re-registration are said to enjoy all privileges granted to religious organisations, except for the right to register a

religious association (a church). The procedure of re-registration is said to be a proportionate measure for ensuring the national security, public peace and order, as well as the health of other persons and morals.

Every State is said to have the right to develop such a model of relationship between the State and religious organisations that is compatible with its legal system, historical development, and cultural values. A religious association (a church) is said to be a separate type of religious organisation – the highest organisational form. A totality of persons is said to have the right to exercise its right to the freedom of religion by establishing religious organisations – congregations. It is alleged that a person does not have the subjective right to demand the establishment of a religious organisation of a particular form.

Section 7 (3) of the Law on Religious Organisations cannot be regarded as such that places disproportionate restrictions on a person's right to the freedom of religion. Problems could arise in practice with respect to the interpretation of this norm and entering of the respective names of denominations in the state public register so that they could be distinguished between; it is maintained, however, that this is no sufficient grounds for contesting the compatibility of this norm with the *Satversme*.

Section 7 (3) of the Law on Religious Organisations is not applicable in the administrative case, on which the case under review is based. If one of the pre-requisites for issuing a favourable administrative act is not met there is not need to verify, whether other pre-requisites for issuing thereof have been met.

5. The summoned person – the Ombudsman – notes that Section 7 (2) and Section 8 (4) of the Law on Religious Organisations place disproportionate restrictions on the rights of religious organisations established in Article 99 and Article 102 of the *Satversme*, whereas Section 7 (3) could not be recognised as being compatible with Article 99 of the *Satversme* if examined in interconnection with Article 102 and Article 91 of the *Satversme*.

In a democratic society, where a number of religions and a number of trends of the same religion exist, it might be necessary to restrict the freedom of religion to harmonise the interests of various groups and ensure respect for each faith. However, the State, in exercising its regulatory power in this field and in its relationships with various religions, beliefs and faith, should be neutral and objective. It should maintain pluralism and due functioning of democracy.

Except for special cases, the Convention guarantees the right to the freedom of religion, without allowing the State to assess the legality of a religious belief and the form of practising it. If the State prefers a certain leader of a religious community or

exerts pressure on this community to subject it, against its will, to one governing body, then the religious freedom is said to be violated. In a democratic society, there is no need for the State to ensure that religious communities are subject to one governing body. A sufficiently high standard of proof should be set for the State; i.e., the State should be able to justify that the restrictions chosen by it are necessary for reaching the legitimate aim and are not applicable in a way that could be recognised as being discriminatory.

The contested norms are said to restrict the rights of religious communities established in Article 99 of the *Satversme* in interconnection with the right included in Article 102 of the *Satversme*.

The states have the right to verify, whether a particular religious community, in the name of reaching its religious aims, is not engaged in activities that are harmful to the public security or public order. In view of this, it can be established that the envisaged restrictions have a legitimate aim. In general, such restrictions allow the State to monitor the activities of the newly established congregations for a prolonged period of time. Hence, the measures chosen by the State are appropriate for reaching the legitimate aim. However, in the particular case, they are not proportionate.

In defining the limits of the State's discretion in its relationships with religious communities, the need to preserve a genuine religious pluralism, which is characteristic of a democratic society, should be considered.

The required number of the founders of a congregation is said to be comparatively low, and the fact that no less than ten congregations have the right to establish a church should not be recognised as being a disproportionate restriction on rights and falls within the State's discretion to set pre-requisites for registering new religious organisations. Likewise, the obligation to re-register, *per se*, is not contrary to the human rights provisions, if the obligation of the State's neutrality is met in the application thereof.

The State is said to have the right to set a period of re-registration for new religious organisations prior to the acquisition of the status of a church, even as long as the one in the case under review. In the majority of cases, the contested norms would not cause doubt regarding their compliance with the *Satversme*. However, since the restoration of the independence of the State, the legal norms that regulate the registration of religious organisations in the Republic of Latvia not always have been equally neutral towards all religious organisations. Those religious organisations, which were prohibited from establishing autonomous congregations until 2009 because, according to law, the canonical rules of the respective denomination did not allow it, encountered additional obstacles in commencing the period of re-registration.

These obstacles, allegedly, continue to influence the right of the respective organisations to apply for acquisition of the status of a church within a reasonable term. The Ombudsman also underscored that the re-registration period of ten years prior to granting the right to establish a church, in fact, could be longer than ten years because the aforementioned term was counted from the moment when the most recently registered congregation was registered. In view of these circumstances, the contested norms that envisage a ten-year period of re-registration cannot be recognised as being sufficiently flexible. They do not prevent a situation, where the period of time until the association of religious organisations may acquire the status of a church is incompatible with the requirement of setting a reasonable term.

The opinion expressed by the *Saeima* regarding the content of Section 7 (3) of the Law on Religious Organisations respects an essential element in observing the autonomy of religious communities in accordance with Article 9 of the Convention, which does not provide for a State's role in determining the denominational affiliation of religious communities. However, the Ombudsman doubts, whether the text of this contested norm should be interpreted as broadly as interpreted by the *Saeima* in its opinion. This contested norm is said to not be worded with sufficient precision to exclude doubt, whether it is being applied in accordance with the case law of the European Court of Human Rights. The European Court of Human Rights already had identified a violation, noting that the applicants had not been able to foresee the consequences of their activities objectively, since the practice of the member state in interpreting and applying the legal norm had been contradictory.

The explanation provided by the *Saeima* regarding the content of Section 7 (3) of the Law on Religious Organisations, essentially, is said to cause an impression that the norm was declarative and actually did not impact the procedure of registering a church. Moreover, no information had been provided in the written reply on the Latvian case law that would prove that the aforementioned norm was applied in the way indicated by the *Saeima*. Quite to the contrary, the Applicant had noted that the aforementioned norm could be the grounds for refusing registration of a church in the administrative case under review. The Ombudsman also believes this to be the most probable possibility in the particular case.

The circumstances indicated by the Applicant allow applying the findings included in the judgement by the European Court of Human Rights in the case "*Metropolitan Church of Bessarabia and Others v. Moldova*" to the case under review. The Ombudsman upholds the Applicant's opinion regarding the incompatibility of Section 7 (3) of the Law on Religious Organisations with the *Satversme*.

6. The summoned person – a religious association (a church) “THE LATVIAN ORTHODOX CHURCH” (hereinafter – the Latvian Orthodox Church) – notes that Section 7 (2) and Section 8 (4) of the Law on Religious Organisations comply with Article 99 and Article 102 of the *Satversme* and Section 7 (3) of the Law on Religious Organisations complies with Article 91, Article 99 and Article 102 of the *Satversme*, and requests termination of legal proceedings regarding compliance of Section 7 (3) of the Law on Religious Organisations with the *Satversme*.

Regarding the matter of compliance of Section 7 (2) and Section 8 (4) of the Law on Religious Organisations with Article 99 and Article 102 of the *Satversme*, the Latvian Orthodox Church upholds the arguments presented in the written reply by the *Saeima*.

Whereas, in examining the compliance of Section 7 (3) of the Law on Religious Organisations with Article 91, Article 99 and Article 102 of the *Satversme*, the fundamental values, the traditions of organisational structure of the denomination, i.e., the Orthodoxy, as well as the history of the Latvian Orthodox Church and the canonical law should be taken into consideration.

Every person and every religious organisation, which wishes to exercise its right to preach the Orthodoxy, may do that only if they abide by and accept the “characteristics” that are typical of and inalienable of the Orthodoxy as a denomination. Certain traditions of the organisational structure are said to be typical of the Orthodoxy, and its priests are subject to a strict hierarchy. In creating the Orthodox churches the territorial, rather than the national principle is abided by. In a particular territory, only one autocephalous Orthodox Church may operate, which is governed by a legitimate archpastor, approved by the Council of the autocephalous church. Whereas the autocephalous church itself, existing in the particular territory, may consist of territorial administrative entities, managed by metropolitans, archbishops or bishops. Although there are some exceptions to the aforementioned order – they have evolved as the result of historical events and are linked to restrictions on the activities of the church in some countries and in some periods of history and cannot be linked to the functioning of the Orthodox Church in accordance with its canons.

If a religious organisation does not recognise the traditional organisational structure of the Orthodox Church then it, allegedly, cannot belong to the Orthodox denomination. For example, the denomination of Old Believers, currently a globally recognised denomination, has evolved in this way. The acceptance of and abiding by the traditional organisational structure of the Orthodox Church, the canonical law and various religious rites, as well as “baptising” of a person in accordance with the

canonical law of the Orthodox Church is said to be decisive pre-conditions. A religious organisation, which does not abide by it, cannot be recognised as belonging to the Orthodox denomination and may not link its religious activities to the Orthodoxy. Otherwise, the human rights of those persons who want to practice their religion in the framework of the Orthodox denomination would be infringed upon.

If a congregation wants to belong to a denomination existing in the territory of the state it should receive the consent of the leadership of the church of the particular denomination. Moreover, a religious organisation, which does not act in accordance with the canonical rules of the respective denomination is not recognised as belonging to this denomination.

Hence, the restriction established in Section 7 (3) of the Law on Religious Organisations, which envisages that the congregations of one denomination in the state may establish only one religious association (a church), is compatible with the canonical rules of the Orthodox denomination. If this legal norm were recognised as being incompatible with the *Satversme* and if, in Latvia, a possibility would be allowed to establish one more autonomous Orthodox Church, the canonical law of the Orthodox denomination would be violated. That would mean that the State interferes into the religious activities of religious organisations, actually organising the internal self-governance thereof and determining its hierarchic structure contrary to the canonical church law.

The State of Latvia has clearly committed itself to refrain from any actions that could be considered as interference into the right of self-governance of the Latvian Orthodox Church, *inter alia*, its right to establish its organisational structure.

The restriction set in Section 7 (3) of the Law on Religious Organisations is said to be significant also due to the reason that the Latvian regulatory enactments grant particular rights to priests of denominations, who, in turn, have to be “authorised” by the governing bodies of the respective denominations.

7. The summoned person – The Latvian Autonomous Orthodox Church – notes that Section 7 (2) and Section 8 (4) of the Law on Religious Organisations are incompatible with Article 91, Article 99 and Article 102 of the *Satversme* and Section 7 (3) of the Law on Religious Organisations is incompatible with Article 91, Article 99 and Article 102 of the *Satversme*. Moreover, the Latvian Autonomous Orthodox Church requests establishing the fact of the continuity of the existence of the Orthodox Church, which operated prior to Latvia’s occupation and to register the Latvian Autonomous Orthodox Church into the register of religious organisations and institutions thereof as a legal person.

It is maintained that the Latvian Autonomous Orthodox Church can expect that its rights, pursuant to the legal act of 7 September 1936, Article 2 of the *Satversme* and the principle of state continuity, will be retained and exercised. Allegedly, the legislator, including the discriminating sections in the Law on Religious Organisations, had disregarded the principle of state continuity. The Latvian Autonomous Orthodox Church is said to have the right to restore the legal status it had before the state was occupied.

8. The summoned person – the religious association (the church) “THE LATVIAN EVANGELIC LUTHERAN CHURCH” (hereinafter – the Latvian Evangelic Lutheran Church) – upholds the substantiation presented in the written reply by the *Saeima* and holds that Section 7 (2) and Section 8 (4) of the Law on Religious Organisations comply with Article 99 and Article 102 of the *Satversme* and that legal proceedings regarding the compliance of Section 7 (3) of the Law on Religious Organisations with Article 91, Article 99 and Article 102 of the *Satversme* should be terminated. If the legal proceedings in this part are not terminated, then Section 7 (3) of the Law on Religious Organisations should be recognised as being compatible with Article 91, Article 99 and Article 102 of the *Satversme*.

The terms, in which investigatory activities are carried out in the framework of criminal proceedings and cases are heard in courts, are said to exclude the possibility to verify, whether a religious organisation complies with the requirements of regulatory enactments within a much shorter period of time.

The assertion that the waiting and the ten-year re-registration period is unnecessary, in particular with respect to religious organisations that are well known in the world and in Latvia is said to not withstand criticism, because a religious organisation, which has ceased its activity as part of a religious association (church) of its denominations should be considered as being a totally different subject of law – it no longer has any links with the denominational centre, which preaches the Gospel and protects its teaching in accordance with the creeds of faith and the tradition of the church.

It is alleged that Section 7 (3) of the Law on Religious Organisations does not restrict a person’s right to freedom of thought, conscience and religious belief since every person has the right to choose to be affiliated with a congregation, in which believers of the same religion or denomination have united. The benefit that society gains from the restriction established in Section 7 (3) of the Law on Religious Organisations is said to guarantee the preservation of not only the Christian values that constitute the Latvian identity but also of the national cultural-historical heritage.

The formation of several churches of the same denomination within one state might be explained only by people's ambitions. Allegedly, it does not promote social cohesion and serves neither for the benefit of the people nor for reaching the aims defined by the church. The fragmentation of a denomination is said not to facilitate the civic and religious cohesion either but is said only to divide society. Hence, no public benefit can be discerned that society would gain if the contested restrictions on the registration of religious organisations were revoked.

The State may not interfere in the internal matters of a church and define affiliation with a certain denomination. Section 7(3) of the Law on Religious Organisations is said to ensure only that another church, which is the same as the one already registered, cannot be registered – with the same name, teaching and aim, the same rights or the succession therein.

9. The summoned person – the religious community “The Latvian Evangelic Lutheran Church Abroad” (hereinafter – the Latvian Evangelic Lutheran Church Abroad) – notes that Section 7 (2) and Section 8 (4) of the Law on Religious Organisations are incompatible with Article 99 and Article 102 of the *Satversme* and that Section 7 (3) of the Law on Religious Organisations is incompatible with Article 91, Article 99 and Article 102 of the *Satversme*. Moreover, the Latvian Evangelic Lutheran Church Abroad holds that Section 7 (2) and Section 8 (4) of the Law on Religious Organisations are incompatible with the principle of equality enshrined in Article 91 of the *Satversme* and that the Constitutional Court should examine the possibility to broaden the limits of reviewing the constitutionality of the contested norms and examine the compliance of the contested norms with the Declaration of the Supreme Council of the Latvian SSR of 4 May 1990 “On the Restoration of Independence of the Republic of Latvia” (hereinafter – the Declaration of Independence) and the principle of state continuity.

The Latvian Evangelic Lutheran Church Abroad, by operating outside the borders of occupied Latvia, had ensured the continuity of the Constitution of 1928 of the Latvian Evangelic Lutheran Church, its traditions and basic administrative principles.

The Latvian Evangelic Lutheran Church Abroad cannot be registered in Latvia as a religious association (church) because the duty to re-register is applied to it, and one religious association belonging to the Evangelic Lutheran denomination has already been registered. Hence, the Latvian Evangelic Lutheran Church Abroad has been deprived of the possibility to exercise a number of significant rights. In view of the above, it should be recognised that the regulation included in the contested norms

restricts not only the rights of the Latvian Evangelic Lutheran Church Abroad to be registered as a religious association (a church) and to exercise the rights that follow from the status of a religious association but also the rights of those congregations that wish to secede from the Latvian Evangelic Lutheran Church of 1946, and the rights of those persons who are or wish to be affiliated with the Latvian Evangelic Lutheran Church Abroad.

In view of the fact that the Latvian Evangelic Lutheran Church Abroad and the congregations thereof have been prohibited from uniting in the form of religious organisation which is on a higher hierarchical level and that the possibility to exercise essential rights linked to the freedom of religion is restricted by this ban, it can be concluded that the contested norms restrict the fundamental rights enshrined in Article 99 and Article 102 of the *Satversme*.

Section 7 (2) and Section 8 (2) of the Law on Religious Organisations are applicable to protect the interests of the State and society, i.e., to avoid registering such religious associations, with respect to the activities of congregation included in them the State has not gained sufficient assurance. However, the chosen measure is said either to be inappropriate for reaching this legitimate aim because it restricts also such persons, which the legislator had not wished to restrict, or the aim could be reached by less restrictive measures.

Section 7 (3) of the Law on Religious Organisations, allegedly, does not impose on religious communities the duty to choose a certain denominational affiliation. However, it prefers one leader of a split religious community and is aimed at uniting a religious community against its will. Thus, the right to freedom of religion is infringed upon.

The restriction of rights established in Article 99 and Article 102 of the *Satversme* included in Section 7 (3) of the Law on Religious Organisations is said to be disproportionate to the legitimate aim to simplify the relationship between the State and religious organisations and to ensure public order. In this case, the State is said to fail to comply with neutrality and plurality as required by the Convention and demanded by the case law of the European Court of Human Rights.

In a democratic society, there is no need for the State to regulate the denominational affiliation of religious organisations, making it dependent on joining one leader.

The reference made by the *Saeima* to differences of the canonical teaching within the framework of the Lutheran denomination is said to be misplaced. The Lutheran denomination, allegedly, does not have principal dogmatic rules on one church lead by one leader. The restriction established by Section 7 (3) of the Law on Religious

Organisations is said to be an expression of the will of the Latvian State, which is not based on the basic principles of the canonical teaching of religions or denominations and is said to infringe disproportionately on the right to the freedom of religious belief.

The contested norms are said to prohibit the entity, which unceasingly continued the activities of the Latvian Evangelic Lutheran Church of 1928 to register as a religious association (a church) belonging to the Lutheran denomination and to place in a privileged position other churches of the Lutheran denomination. This is said to be incompatible with the Declaration of Independence and the principle of state continuity.

10. The summoned person – the Catholic Church – notes that it upholds the statements presented in the written reply by the *Saeima* regarding the compliance of Section 7 (2) and Section 8 (4) of the Law on Religious Organisations with Article 99 and Article 102 of the *Satversme* and believes that these legal norms, insofar they establish such restriction that only at least ten congregations have the right to establish a church and sets a ten-year period of re-registration, comply with Article 99 and Article 102 of the *Satversme*. Likewise, Article 7 (3) of the Law is also said to be compatible with Article 91, Article 99 and Article 102 of the *Satversme*.

By this restriction, those congregations, to which the ten-year-long duty of re-registration applies, are said not be inflicted such harmful consequences, the prevention of which would be more important than securing the interests of the State and society. The ten-year-long period of re-registration should be recognised as being a minimal restriction and the inconvenience caused to a religious organisation is said to not outweigh the benefit that society gains. During the period of re-registration, the congregations are able to exercise the rights that the registered religious organisations have.

The State of Latvia has clearly committed itself to refrain from any actions that could be considered as interference into the right of self-determination of the Latvian Orthodox Church, including the right to determine its own organisation structure.

In envisaging the restriction on fundamental rights set in Section 7(3) of the Law on Religious Organisations, the State has abided by neutrality and ensured protection against targeted activities that could lead to a schism in the Church.

11. The summoned person – the religious association (the church) “THE LATVIAN OLD BELIEVERS POMORIE CHURCH” (hereinafter – the Latvian Old Believers Pomorie Church) – notes that the contested norms comply with the *Satversme*.

The current status of the Latvian Old Believers Pomorie Church in Latvia is said to be favourable for the development of this Church. The basic documents of the State that regulate the relationship between the Church and the State do not infringe upon the operation of the Old Believers' canonical rules and traditions. It is alleged that there are no acute disputes, misunderstandings or unfavourable treatment between the State and the Church. The relationship between the State and the Church is said to be stable, and this stability guarantees peace and concord in society.

The restriction established in Section 7 (3) of the Law on Religious Organisations is said to be the one to guarantee a stable relationship between the Latvian Old Believers Pomorie Church and the State of Latvia. If the principle established in this norm were broken through an artificially-created process, discord and schisms could occur within the framework of one denomination, as well as legal disputes regarding the immovable property.

12. The summoned person – the professor of the Department of State Law of the Faculty of Law, the University of Latvia, *Dr. iur.* Ringolds Balodis – notes that the contested norms do not infringe on the fundamental rights established in Article 102 of the *Satversme*, Section 7 (3) of the Law on Religious Organisations is incompatible with Article 91 and Article 99 of the *Satversme*, whereas Section 7 (2) and Section 8(4) of the Law on Religious Organisations comply with Article 99 of the *Satversme*; however, the term of re-registration set in these norms should be re-examined.

If the Applicant is not requesting registration of a religious organisation but rather the recognition of the rights of a long-existing religious organisation then the norms of the Law on Religious Organisations are not applicable. A dispute of this nature should be resolved at a court of general jurisdiction that would apply other legal norms instead of the ones contested in the case under review.

The origin of Section 7 (2) of the Law on Religious Organisations should be examined in the interconnection with the first sentence of Section 8 (4). Initially, in the draft Law on Religious Organisations, the “procedure of re-registration” of three years had been established instead of the “procedure of prior application” of three years, substantiating it by the fact that the old procedure had been meaningless since it did not allow controlling the registration of newly established religious organisations. During the reading of the draft law, the legislator had replaced the period of three years by the period of ten years. No discussions of this had been held, the opinion expressed during the sitting of the *Saeima* is an evidence of the legislator's wish to intensify the control over religious organisations significantly and, to this end, use re-registration.

An analogous development had been seen with respect to the restriction that prohibited the newly established religious organisations to establish a church within the ten-year-long moratorium or re-registration period. The legislator had had no questions or different opinion regarding the restricting provision “a church of one denomination”, and the initial wording had been only slightly specified.

Although in some cases Article 102 of the *Satversme* provides additional guarantees, in the particular case, an incompatibility of Section 7 (3) of the Law on Religious Organisations with this Article of the *Satversme* cannot be discerned since the fundamental rights established in Article 99 of the *Satversme* have not been infringed upon.

The restriction established by Section 7 (3) of the Law on Religious Organisations is said to have a legitimate base and, at the moment of adoption, had had a legitimate aim, since the legislator had wanted to protect religious organisations against schisms and disputes regarding the division of property. This contested norm should be examined in close interconnection with the denationalisation process. The legislator’s task had been to create such regulation that would reinstate the historical justice. In the process of recovering property, causing of chaos had been inadmissible, therefore the principle “one denomination – one church” had been introduced in 1991. This principle had been expedient and valid; however, at present, it is no longer justifiable. It is said to point to an excessive and exaggerated interest of the State in the internal matters of churches. All churches, which could regain their nationalised properties, have regained them, and the State no longer has the grounds for regulating the internal matters of some denominations. This contested norm, i.e., Section 7 (3) of the Law on Religious Organisations, already has reached its legitimate aim and the restriction set by it is no longer necessary. The principle “one denomination – one church” no longer can be substantiated by the interests of national security, the need to protect the democratic state order or the public security.

Hence, R. Balodis upholds the Applicant’s opinion that the restriction established in Section 7 (3) of the Law on Religious Organisations is not proportionate. By allowing the congregations of one denomination to establish only one church, harm is inflicted on the other congregations and, allegedly, it outweighs the benefit gained by society.

However, in deleting this norm from the Law on Religious Organisations, the legislator will have to look for solutions that would maintain the already established model of relationships and not to allow that the only just registered churches, by using

the situation that has occurred, would claim to register marriages on behalf of the State or to teach faith at schools.

R. Balodis upholds the Applicant's view that Section 51 of the Civil Law cannot serve as a justification for Section 7 (3) of the Law on Religious Organisations and that less restrictive measures exist that the State could use to develop relationships with religious organisations.

If the Constitutional Court were to recognise Section 7 (3) of the Law on Religious Organisations as being incompatible with the *Satversme*, it should envisage a transitional period so that the legislator could amend Section 51 of the Civil Law and Section 6 (3) of the Law on Religious Organisations.

R. Balodis upholds the opinion presented in the written reply by the *Saeima* regarding the compliance of Section 8 (4) of the Law on Religious Organisations with Article 99 of the *Satversme* and believes that the first sentence of this norm complies with Article 99 of the *Satversme*, whereas Section 7 (2) should be examined in interconnection with Section 8 (4). Moreover, R. Balodis notes that the legislator, taking into account the considerations regarding expedience and proportionality, should re-examine the length of re-registration period established in these norms.

13. The summoned person – Dr. iur. h. c., assessor iur. Egils Levits – notes that not granting the status of a legal person *per se* cannot be a restriction on the freedom of religion established in Article 99 of the *Satversme*. This aspect of religious freedom would overlap with the aspect of the freedom of association established in Article 102 of the *Satversme*, therefore the concept developed in connection with Article 102 of the *Satversme* could be used in the interpretation of Article 99 of the *Satversme*, without examining separately the possible violation of Article 102.

As regards Section 7 (3) of the Law on Religious Organisations, E. Levits notes that it should be established, whether and insofar the State may ascertain the denominational affiliation of a religious group to subject it, then, to the provisions of the said norm. Thus, the State would have to interpret the concept “denomination”, used in the Law; however, that is said to be impossible otherwise than by analysing substantially the content of the religion preached by the respective religious group. Hence, it might happen that the State, in order to determine, which religious group belongs to which denomination, would have to determine the “correct” content of the religion practised by the respective denomination. Such actions of the State would be contrary to the freedom of religion because what is understood by the concepts of “religion”, “denomination”, “worldview” or “point of view”, and the content with which these concepts are filled depend only upon the individual himself, whereas the

principle that the congregation or the church defines the content of its religion is to be derived from this principle. The State should refrain from interfering in the internal relationships of canonical law and dogmatic relationships, or the internal structure and hierarchy of a denomination. The determining factor regarding the affiliation of a certain religious group with a certain denomination is its self-understanding. The State, basically, should accept the denominational affiliation that a religious organisation has defined for itself.

However, the religious freedom is said to not prevail over the legal order of the State. Therefore the State might, in an exceptional case, examine such a self-defined denominational affiliation. First of all, it could be examined insofar as it would be necessary to prevent abuse of rights. Secondly, the State might examine the self-determined content of the religion of a religious group to verify that it is not contrary to law and public order.

At the time, when the law was adopted, the legitimate aim, possibly, was linked to the fact that the State was denationalising the property of churches that the occupational power had deprived them of, and it was easier for the State to see only one church in each denomination as a subject that had the right to regain property. Thus, the fragmentation and schisms of churches because of property disputes had been indirectly averted. The current situation is said to be totally different. Therefore the aim, which initially, perhaps, was legitimate, no longer can justify the restriction on rights. Thus, the theoretically possible legitimate aims of Section 7 (3) of the Law on Religious Organisations can no longer be considered as being such that could justify this restriction. Hence, it is not necessary to examine the compliance of this norm with Article 102 and Article 91 of the *Satversme*.

With respect to the restriction established in Section 7 (2) and Section 8 (2) of the Law on Religious Organisations, E. Levits, in turn, notes that religious conviction may collide with the laws of the state and the public order, thus inflicting harm on a believer's personality. An undesirable phenomenon like that can be identified sooner and prevented more effectively if the respective new, yet unknown religious community is subject to intensified supervision, which is ensured by the duty to re-register. Moreover, this rule is said to indirectly show greater trust in the churches already registered in Latvia, since their newly registered congregations are not subject to the re-registration procedure. Regretfully, this also means that any new religion, which enters (or occurs anew) in Latvia is viewed with suspicion and the objective reasoning capacity of its supporters is, to a certain extent, questioned. This might be contrary to the regulatory fundamental assumption of liberal democracy regarding a human being as a free, self-responsible being, having the ability to reason. E. Levits is

not providing his opinion on the correct solution to this issue, yet he notes that his personal recommendation would be the following: assuming that currently the Latvian society might have become mature enough to assess critically new religious and pseudo-religious offers, i.e., better than at the time when the contested regulation was adopted, to recognise that the annual re-registration for the term of ten years complies with the interests of public security but places excessive restriction on the religious freedom and that a more lenient restriction could be established.

The aim of Section 8(4) of the Law on Religious Organisations is said to be the protection of society against possible harmful influence by the congregations of new and unknown in the state denominations, disallowing the abuse of the status of a religious organisation and unlawful activities. However, the Lutheran and the Orthodox denominations are not new and unknown in Latvia. The said aim could be recognised as being legitimate only with respect to denominations that are new and unknown in Latvia. By applying an auxiliary method of interpretation complying with the constitution, teleological reduction of this norm should be conducted, not applying it to the denominations that are known in the state.

The legal identity of the Latvian Orthodox Autonomous Church and the Latvian Evangelic Lutheran Church Abroad could be identified in two ways – at the court of general jurisdiction or by a special decision of the State (a law or another legal act), in the context of eliminating the consequences of occupation. In both cases, the Declaration of Independence, the *Satversme* and the principle of state continuity would be applicable. To resolve the basic case in full, the Constitutional Court could examine also this issue.

The State has the discretion to choose particular churches that it considers its partners, which it is going to cooperate with and support, to which certain rights will be granted within the framework of the model of the relationship between the State of Latvia and the church. However, this choice needs to be reasonably grounded, it may not be arbitrary. It is a matter of free political choice by the State. In this respect, the limits of the State's discretion are defined only by the Preamble to the *Satversme*. Whereas Article 91 of the *Satversme* is said to be inapplicable in this context. Allegedly, the State is not obliged to treat similarly or equally the churches (or congregations) of all denominations. Section 51 of the Civil Law should not be automatically rephrased in an abstract form, granting the right to marry to all registered churches. The special laws on the respective churches should not be reviewed either. However, the legislator should re-examine this matter and should reflect fairly and in good faith on the situation, which would arise if in the future several churches could exist within the framework of one traditional denomination.

The Findings

14. The Constitutional Court must examine the matters of procedural nature before assessing the constitutionality of the legal norms on their merits (*see Judgement of 10 February 2017 by the Constitutional Court in Case No. 2016-06-01, Para 17*).

The summoned person – the Latvian Autonomous Orthodox Church – has requested the Constitutional Court to recognise the fact of its legal continuity as of a religious organisation that had been registered prior to Latvia's occupation and to enter it into the register of religious organisations and institutions thereof as a legal person. The summoned person – the Latvian Evangelic Lutheran Church Abroad – holds that the Constitutional Court should broaden the limits of reviewing the constitutionality of the contested norms and assess the compatibility thereof with the Declaration of Independence and the principle of state continuity.

The summoned person E. Levits notes that the continuity of the status of a religious organisation can be established at the court of general jurisdiction or by a special decision of the State in the context of abolishing the consequences of occupation. Moreover, E. Levits holds that the Constitutional Court can examine this issue so that the basic case could be fully resolved. Whereas the summoned person R. Balodis notes that the norms of the Law on Religious Organisations are not applicable in recognising the continuity of a legal person's status. Matters of this nature should be dealt with at a court of general jurisdiction and other legal norms rather than the contested ones would be applicable in resolving it.

The Constitutional Court notes that, pursuant to Para 2 of Section 22(2) of the Constitutional Court Law, the summoned persons have to present to the Court only the opinion regarding the matter to be examined in the case. A summoned person does not have the right to express procedural requests. However, in the particular case, the Constitutional Court finds it necessary to provide a brief response to the considerations expressed by the summoned persons.

The Constitutional Court has recognised that the Preamble to the Declaration of Independence specifies the principle of state continuity and imposes an obligation upon the institutions of state power to abide by this principle and to not deviate from it (*compare: Judgement of 29 November 2007 by the Constitutional Court in Case No. 2007-10-0102, Para 64.2., and Judgement of 13 May 2010 in Case No. 2009-94-01, Para 14.2.*).

Thus, the continuity of a religious organisation's status can be established, abiding by the principles included in the *Satversme*, *inter alia*, the principle of state continuity, by examining the matter of establishing a legal fact. Pursuant to Section 288 of the Civil Procedure Law, the examination of a matter like this falls within the jurisdiction of a court of general jurisdiction. In exceptional cases, when a closely interconnected dispute of administrative law is heard, the establishment of a legal fact may also fall within the competence of an administrative court (*see the Decision by the Chairpersons of the Supreme Court Departments of 18 October 2017 Sitting*). The examination of a matter like this, insofar the continuity of the legal status has not been recognised by a regulatory enactment, pursuant to Article 85 of the *Satversme* and Section 1 and Section 16 of the Constitutional Court Law, does not fall within the jurisdiction of the Constitutional Court.

Moreover, it should be taken into consideration that in the administrative case, which must be heard by the Applicant, the continuity of the religious organisation's status is not examined on its merits.

Whereas the granting of the status of a legal person is the function of the competent institution of national registers and can be re-examined by an administrative court only in the case of a dispute. Hence, this claim is not subject to examination by the Constitutional Court, insofar the dispute that needs to be resolved pertains only to the application of law, not the issues regarding the constitutionality of the legal regulation.

15. The Applicant contests Section 7 (2) and Section 8 (4) of the Law on Religious Organisations, as well as Section 7 (3) of this Law. The Constitutional Court finds that these legal norms comprise restrictions for newly established congregations to create a religious association (a church). These rules are applicable to religious organisations – congregations –, which are established and registered as legal persons of private law.

Section 7 (2) and Section 8 (4) of the Law on Religious Organisations provide that ten (or more) congregations of the same denomination that are registered in the Republic of Latvia may establish a religious association (a church) and that this rule does not apply to congregations, which have commenced their activities for the first time in the Republic of Latvia and do not belong to the religious associations (churches) registered in the state, and that during the first ten years they must re-register annually at the institution of registration. Whereas Section 7 (3) of this Law provides that congregations of one denomination may establish in the state only one religious association (a church).

Since two independent restrictions on the rights of religious organisations to establish a religious association (a church) are contested in the application, the Constitutional Court will examine each of these restrictions separately. As the Applicant indicates, in the administrative case it has to review regarding the issuing of a favourable administrative act, the matter, whether the religious organisations – congregations, which have turned to the administrative court, have been denied the right to establish a religious association (a church) because the ten-year-long re-registration period is applied to these congregations must be examined first and foremost. Following that, it should be verified, whether these congregations have been denied the right to establish a religious association (a church) because one religious association (a church) already has been registered in the same denomination, which is indicated by the congregations.

Hence, the Constitutional Court will examine first and foremost, whether the restriction that envisages a ten-year-long period of re-registration for newly established congregations, during which they may not establish a religious association (a church) is compatible with the *Satversme*, and following that it will examine, whether the restriction that allows establishing only one religious association (a church) in one denomination complies with the *Satversme*.

16. The Applicant contests Section 7 (2) and Section 8 (4) of the Law on Religious Organisations, which provide that newly established congregations, which have to re-register annually during the first ten years following registration at the institution of registration, may not establish a religious association (a church), because the Applicant holds that this restriction is not proportionate and is incompatible with Article 99 and Article 102 of the *Satversme*. The Constitutional Court finds that this restriction follows from the contested norms – Section 7 (2) and Section 8 (4) of the Law on Religious Organisations – in interconnection thereof.

The Applicant has not contested the general provision established in the first sentence of Section 7 (2) of the Law on Religious Organisations that ten (or more) congregations of one denomination that are registered in the Republic of Latvia have the right to establish a religious association (a church). Hence, the Constitutional Court does not have to examine its constitutionality separately.

Hence, in this case, the Constitutional Court must examine the contested norms – Section 7 (2) and Section 8 (4) of the Law on Religious Organisations – as a united legal regulation, insofar it restricts the rights of newly established congregations, by prohibiting them from establishing a church before the ten-year-long period of re-registration has expired.

17. The Applicant, the *Saeima*, as well as the summoned persons – the Ombudsman, R. Balodis and E. Levits – hold that the period of re-registration, established in Section 7 (2) and Section 8 (4) of the Law on Religious Organisations, restricts the congregations’ rights to the freedom of religious conviction established in Article 99 of the *Satversme*. Whereas the Ministry of Justice holds that the form of a religious organisation and the fact that congregations may not establish a religious association (a church) for a certain period of time do not restrict the right to the freedom of religious conviction enshrined in Article 99 of the *Satversme*.

There is no consensus among the participants of the case and the summoned persons as to whether the restriction that prohibits congregations from establishing a church before the ten-year-long period of re-registration has expired cause an infringement on the rights established in Article 102 of the *Satversme*. The Applicant, the *Saeima* and the Ombudsman hold that the fundamental rights established in Section 99 and Section 102 of the *Satversme* have been restricted in their interconnection. R. Balodis, in turn, is of the opinion that Article 102 of the *Satversme* provides additional guarantees; however, that the restriction that prohibits the newly established congregations from founding a church before the ten-year-long period of re-registration has expired does not infringe the rights envisaged in the aforementioned Article of the *Satversme*.

Thus, the Constitutional Court must establish, first of all, the scope of Article 99 and Article 102 of the *Satversme* and whether the restriction on newly established congregations, defined in Section 7 (2) and Section 8 (4) of the Law on Religious Organisations, infringes on the fundamental rights included in both norms of the *Satversme*, the compatibility with which is contested, i.e., Article 99 and Article 102 of the *Satversme*.

18. Article 99 of the *Satversme* provides: “Everyone has the right to freedom of thought, conscience and religion. The church shall be separate from the State”.

The freedom of religious conviction established in Article 99 of the *Satversme* comprises various religious, non-religious and atheistic views, as well as the right to adopt a religion or to not be affiliated with any religion. The religious belief, in the meaning of Article 99 of the *Satversme*, is to be interpreted broadly. The dimension of freedoms included in Article 99 of the *Satversme* is an important element that shapes the identity and views on life of religious persons. In examining this Article in interconnection with Article 116 of the *Satversme*, it can be concluded that the internal aspect of religious conviction (in Latin – *forum internum*) is differentiated from the

right to worship or the right to express religious conviction as the external manifestations of the right to religious freedom (in Latin – *forum externum*). Although the freedom of religion is, primarily, the matter of a person’s internal consciousness, yet it also applies to the right to freely practice one’s religion or to express one’s religious conviction. The expression of religious conviction includes, *inter alia*, worshipping, performing religious and ritualistic ceremonies and preaching the teachings. Only the expression of religious conviction may be restricted. The internal manifestations of religious conviction may not be restricted (*compare: Judgement of 18 March 2011 by the Constitutional Court in Case No. 2010-50-03, Para 7.1.–7.2.*).

Article 102 of the *Satversme* provides: “Everyone has the right to form and join associations, political parties and other public organisations.”

The concept “everyone”, included in Article 102 of the *Satversme*, comprises all persons who may be the subject of fundamental rights: natural persons, associations of persons, and legal persons of private law. The concept “association”, included in this Article, has autonomous content. It comprises all public organisations in the broadest way. *Inter alia*, this concept includes also religious organisations. The freedom of association forms a system together with other fundamental rights established in the *Satversme* and serves as an additional guarantee for them [*comp. see: Neimanis J. 102. panta komentārs. Grām.: Balodis R. (zin. red.) Latvijas Republikas Satversmes komentāri. VIII nodaļa. Cilvēka pamattiesības. Rīga: Latvijas Vēstnesis, 2011, 395.–412. lpp.*].

Moreover, Article 102 of the *Satversme* protects various ways in which the right to association is manifested (*compare: Judgement of 23 April 2014 by the Constitutional Court in Case No. 2013-15-01, Para 8*). The Constitutional Court has recognised that the freedom of association is one of the pre-requisites of a democratic state order. It ensures to persons the possibility to defend their legal interests, by uniting to reach common aims (*see Judgement of 10 May 2013 by the Constitutional Court in Case No. 2012-16-01, Para 17*).

In revealing the content of Article 99 and Article 102 of the *Satversme*, the international human rights documents and the practice of applying thereof must be taken into consideration because Article 89 of the *Satversme* clearly points to the aim of the constitutional legislator to achieve harmony between the norms of human rights established in the *Satversme* and the international norms of human rights (*compare: Judgement of 18 October 2007 by the Constitutional Court in Case No. 2007-03-01, Para 11*).

A norm that is similar to Article 99 of the *Satversme* has been included in Article 9 of the Convention. The European Court of Human Rights has noted that the

freedom of religious conviction that is enshrined in Article 9 of the Convention is one of the cornerstones of a democratic society. It constitutes one of the most essential elements of the believers' identity and understanding of life but is also important for the atheists, agnostics, sceptics, and the indifferent. Pluralism, which has been attained through hardship over the centuries, is essential for the whole of society. I.e. this freedom means the freedom to belong or to not belong to any religion, to practice or to not practice it. Predominantly, the religious freedom is the matter of an individual's faith; however, it also includes the freedom to "manifest religion" individually and privately or together with others, publicly, and together with those sharing the same faith. The believers' right to the freedom of religion, which includes also the right to manifest one's religion collectively, provides that the believers may freely join in associations and the State may not interfere into this right without grounds. The autonomy of religious communities is an irreplaceable element of pluralism needed in a democratic society, and therefore it is the basis for the guarantee included in Article 9 of the Convention (*see Judgement of 15 September 2009 by the European Court of Human Rights in Case "Miroļubovs v. Latvia", Application No. 798/05, Para 80*).

A norm that is similar to Article 102 of the *Satversme*, in turn, has been included in Article 11 of the Convention. The European Court of Human Rights has recognised that issues that pertain to the organisation of a religious community should be examined in the context of Article 11 of the Convention, which protects religious associations from unfounded interference by the State. If the freedom of religion did not safeguard the organisational life of religious communities, all other aspects of the individual's freedom of religion also would become weakened (*see Judgement of 26 April 2016 by the Grand Chamber of the European Court of Human Rights in Case "İzzettin Doğan and Others v. Turkey", Application No. 62649/10, Para 93*).

The Council of Europe Commission "Democracy through Law (the Venice Commission) also has recognised that the right to freedom of religion is closely linked to the freedom of association and should be specified in their interconnection [*see Opinion of the Council of Europe Commission "Democracy through Law (the Venice Commission)" of 19 March 20102 CDL-AD(2012)004 on Para 19 of the Church Act of Hungary of 2011*, available at: <http://www.venice.coe.int>].

In view of the arguments provided above, the Constitutional Court finds that the uniting of a religious organisation to express the religious conviction falls within the scope of both Article 99 and Article 102 of the *Satversme*. The right of a religious organisation to the freedom of religion in the external manifestation thereof is safeguarded by values, which protect also the right to freedom of association.

Therefore the right to the freedom of religion in the external manifestation thereof should be specified in the context with the right to freedom of association.

Hence, the right of a religious organisation to the freedom of association with the nature of religious activity falls within the scope of Article 99 and Article 102 of the *Satversme*.

19. The European Court of Human Rights, in interpreting Article 9 of the Convention, has recognised that the refusal to grant the status of a legal person to a religious organisation is a restriction on the freedom of religion (*see, for example, Judgement of 13 December 2011 by the European Court of Human Rights in Case “Metropolitan Church of Bessarabia and Others v. Moldova”, Application No. 45701/99, Para 105*).

The Applicant notes that with the refusal to grant to religious organisations – churches – the status of a church they are also, accordingly, denied the status of a legal person. Whereas the *Saeima* explains that a religious organisation, also – a congregation, as of the moment when it is registered in the register of religious organisations and institutions thereof acquires the status of a legal person and may perform all those activities that a legal person has the right to perform.

The Constitutional Court finds that, in accordance with Section 13 (1) of the Law on Religious Organisations, religious organisations, including congregations, acquire the status of a legal person, as validly pointed out by the *Saeima*, as of the moment of registration thereof. However, it follows from the norms of the Law on Religious Organisations that this status is granted only temporarily. I.e., pursuant to Section 8 (6) of the Law, part of the religious organisations have to submit re-registration documents to the institution of registration at least two months before the term for re-registration expires. Whereas in accordance with Section 18 (4) of the Law, *inter alia*, in the case if a religious organisation has not submitted the documents within the term set in Section 8 (6) of the Law, the institution of registration adopts a decision on excluding the religious organisation from the register on the day following the expiry of the re-registration term.

The *Saeima* has noted that the prohibition to acquire the status of one (united) legal person restricts the possibilities of the congregations subject to re-registration to take united actions on behalf of one subject (a church) and to exercise their freedom to religious conviction in such aspects, in which this freedom can be exercised only by a registered religious association (a church).

The Constitutional Court recognises that the restriction on the right to association to exercise the freedom of religion is constituted not solely by the refusal of the status

of a legal person. It is constituted also by such regulation that hinders religious communities from exercising the freedom of association to exercise the freedom of religion also in other organisational forms.

The Venice Commission has recognised that the right to acquire the status of a legal person with suitable flexibility is an indispensable element of the right to express one's religious conviction, applied to various organisational types of religious communities. It is equally important that an entity organised in this way should be able to perform all religious activities and activities that are usually performed by registered non-governmental legal persons [see *Opinion of the Council of Europe Commission "Democracy through Law (the Venice Commission" of 19 March 20102 CDL-AD(2012)004 on Para 39-40 of the Church Act of Hungary of 2011*, available at: <http://www.venice.coe.int>]. The European Court of Human Rights has also recognised that the State has a positive duty to introduce a system of recognition that makes it easier for religious communities to acquire the status of a legal person (see *Judgement of 8 April 2014 by the European Court of Human Rights in Case "Magyar Keresztény Mennonita Egyház and Others v. Hungary"*, Applications No. 70945/11, 23611/12, 26998/12, 41150/12, 41155/12, 41463/12, 41553/12, 54977/12, 56581/12, Para 90).

Hence, in accordance with Section 13 (1) of the Law on Religious Organisations, a religious community acquires the status of a legal person already at the moment when it is registered as a congregation; however, this status of a legal person is granted only temporarily. The respective legal norms restrict also the right of religious organisations – congregations – to unite in a religious association (a church) and, thus, acquire a common representation. Therefore the Constitutional Court finds that the respective contested norms restrict the right of religious communities to association to exercise the freedom of religion, i.e., they restrict the rights of the newly established congregations, established in Article 99 and Article 102 of the *Satversme*.

20. In those cases when the freedom of association of a religious community is restricted, the European Court of Human examines the restriction of rights established in Article 9 and Article 11 of the Convention in interconnection thereof, recognising that the right to act collectively in a field of mutual interest is one of the most important elements in the freedom to association, in the absence of which this right would be deprived of any meaning (see *Judgement of 31 July 2008 by the European Court of Human Rights in Case "Religionsgemeinschaft der Zeugen Jehovas and Others v. Austria"*, Application No. 40825/98, Para 61–62).

The summoned person E. Levits has also noted that the right to the freedom of religion overlaps with the right to freedom of association established in Article 102 of

the *Satversme*, therefore Article 102 should be used to specify Article 99 of the *Satversme*.

Since the right of a religious organisation to the freedom of association with the nature of religious activity falls within the scope of both Article 99 and Article 102 of the *Satversme*, the restriction on fundamental rights established in the *Satversme* must be examined in accordance with a united methodology. Hence, the Constitutional Court will examine the compliance with these norms of the *Satversme* by considering the rights guaranteed in them simultaneously and in interconnection.

21. The right to association to exercise the freedom of religion, included in Article 99 and Article 102 of the *Satversme*, may be restricted. In the case of a restriction on fundamental rights, the Constitutional Court must assess, whether the said restriction on rights is justifiable, i.e., whether:

1) it has been established by law;

2) it has a legitimate aim;

3) it is proportionate (*see, for example, Judgement of 18 March 2011 by the Constitutional Court in Case No. 2010-50-03, Para 9.–12., and Judgement of 10 May 2013 in Case No. 2012-16-01, Para 25*).

21.1. To assess the compliance of the restriction included in Section 7 (2) and Section 8 (4) of the Law on Religious Organisations with Article 99 and Article 102 of the *Satversme* it must be verified, first and foremost, whether the restriction on fundamental rights has been established by law adopted in due procedure, i.e.:

1) whether the law has been adopted in accordance with the procedure envisaged in regulatory enactments;

2) whether the law has been promulgated and is publicly accessible in accordance with the requirements of regulatory enactments;

3) whether the law has been worded with sufficient clarity so that a person would be able to understand the content of rights and obligations following from it and would be able to foresee the consequences of application thereof (*see, for example, Judgement of 2 July 2015 by the Constitutional Court in Case No. 2015-01-01, Para 14*).

The participants of the case and the summoned persons are of the same opinion and neither does the Constitutional Court has doubts that Section 7 (2) and Section 8 (2) of the Law on Religious Organisations have been adopted in the procedure established in regulatory enactments, have been promulgated and are publicly accessible in accordance with the requirements of regulatory enactments.

The restriction included in the respective contested norms has been worded with sufficient clarity. A person is able to understand the content of this restriction and to foresee the consequences of application thereof.

Thus, the restriction on fundamental rights has been established by law.

21.2. Any restriction on fundamental rights must be based on circumstances and arguments regarding its necessity, i.e., the restriction must be established in important interests and with a legitimate aim (*see, for example, Judgement of 22 December 2005 by the Constitutional Court in Case No. 2005-19-01, Para 9.*).

Article 116 of the *Satversme* provides that the rights included, *inter alia*, in Article 102 of the *Satversme*, may be restricted in cases provided for by law, to protect the rights of other persons, the democratic state order, public security, welfare and morals. Moreover, Article 116 of the *Satversme* provides that, on the basis of grounds referred to in this Article, the expression of religious conviction also may be restricted.

If restrictions on rights have been established, then in the legal proceedings before the Constitutional Court, the duty to present and substantiate the legitimacy of the restrictions first and foremost rests with the institution, which issued the contested act, in the particular case – the *Saeima* (*see, for example, Judgement of 11 December 2014 of the Constitutional Court in Case No. 2014-05-01, Para 18.*).

The *Saeima* states that the aim of the re-registration duty is to protect society from, possibly, harmful influence of new congregations, unknown in the state, disallowing abuse of the status of a religious organisation and unlawful activities. The potential threat can be prevented if the State has the possibility to verify the activities of the newly established congregations during the period of re-registration and to prohibit them from establishing a religious association (a church) of a hierarchically higher organisational level and the status of a permanent religious organisation. Thus, the restrictions envisaged by the contested norms have a number of legitimate aims enshrined in Article 116 of the *Satversme* – protecting the rights of other persons, the democratic state order, public security, welfare and morals. The Ministry of Justice also upholds this opinion.

The Applicant notes that the legitimate aim of the restriction that prohibits from establishing a church before the period of re-registration has expired is ensuring public security, by verifying that the congregations that establish the church abide by regulatory enactments, are stable and are able to exist for a prolonged period.

E. Levits, in turn, notes that this aim could be recognised as being legitimate only with respect to denominations that are new and unknown in Latvia, but not with respect to the Orthodox and the Lutheran denomination. This restriction established in

the law is said to be too extensive in scope because this restriction covers also cases, where it has no legitimate aim.

The Constitutional Court finds that already the law adopted by the Supreme Council “On Religious Organisations” (which was in force until 9 October 1995) comprised a restriction that prohibited religious communities to register for three years after submitting the respective application to the Department of Religious Affairs, to verify, *inter alia*, compliance of activities thereof with regulatory enactments (*see Section 5 (3) of the law “On Religious Organisations” in the wording that was in force from 13 June 1991*). The restriction on registration for a period of three years was established by the law of 13 June 1991 “On Amendments and Supplements to the Law of the Republic of Latvia “On Religious Organisations””. The amendments were submitted by the Advisory Council on Religious Affairs of the Supreme Council. It had noted in the substantiation of the amendments that new congregations were being created in the Republic of Latvia, which did not recognise the already established and officially registered centres of the existing denominations, were, contrary to law, organising teaching of religious nature at institutions of education, missions and were attempting to create alternative governing institutions alongside the already existing centres of denominations. Such activities of the aforementioned congregations were openly aimed at creating schisms among the believers and interfering in the activities of other religious organisations. It was said that also various religious groups that were untraditional for Latvia and were extra-denominational, which, immediately upon establishing themselves, demanded to be immediately recognised and granted the status of a legal person (*see Case Materials, Vol. 5, p. 66*).

It is noted in the document included in the preparatory materials for the said amendments – “Substantiation of the Necessary Amendments and Supplements to the Law of the Republic of Latvia “On Religious Organisations”” – that it was necessary to gain an insight into the denomination affiliation, aims of activities, objectives and the actual content of the new religious organisations. It was stated that a certain period of time was required to establish the orientation of such unions and their compliance with the national mentality, traditions. Such considerations were said to be reinforced by complaints submitted regarding unlawful activities of some untraditional religious unions (*see Case Materials, Vol. 5, p. 31*).

In the course of drafting the Law on Religious Organisations, initially a legal norm taken over from the law “On Religious Organisations” had been included in it, it envisaged a three years long period of re-registration to verify its loyalty to the State and the compliance of its activities with regulatory enactments (*see Case Materials, Vol. 3, pp. 1 –10*). During the discussions of this draft law, the wording of this norm

was amended. First of all it was envisaged that a religious organisation – a congregation – may be registered but a three years long period of re-registration had to be set to verify its loyalty to the State and the compliance of its activities with regulatory enactments (*see Case Materials, Vol. 3, pp. 23 –33*). Finally, a proposal to set a ten-year-long period of re-registration was submitted and approved (*see Transcript of the Sitting of the 5th Saeima of 6 and 7 September 1995*). The proposal was substantiated by the argument that a religious organisation could declare for three years its loyalty to the State, the law and society but afterwards engage in openly anti-social activities.

The respective contested norms provide that as of the moment of first registration of each newly established religious organisation – a congregation – the compliance of its activities with the requirements of regulatory enactments is assessed. Such supervision and the waiting period until the religious organisation may acquire the right to establish a religious association (a church) do not include the right to assess the aspects of the religious organisation’s faith. Hence, the Constitutional Court finds that the fact, which denomination affiliation has been indicated by a religious organisation in its articles of association, does not impact the legitimate aim of the aforementioned supervision.

The European Court of Human Rights has recognised that the states have the right to verify whether a particular community, in the name of reaching its religious aims, is not engaged in activities that are harmful to public security or public order (*see Judgement of 13 December 2011 by the European Court of Human Rights in Case “Metropolitan Church of Bessarabia and Others v. Moldova”, Application No. 45701/99, Para 113*).

The Constitutional Court holds that the re-registration requirement has been set for the newly established congregations to prevent an abuse of the status of a religious association (a church) and unlawful activities that would jeopardise public security and public order. Hence, the restriction included in the contested norms serves such legitimate aims referred to in Article 116 of the *Satversme* as the protection of other persons’ rights and public security.

Hence, the restriction on fundamental rights has legitimate aims.

21.3. In examining the proportionality of a restriction on fundamental rights, the Constitutional Court must verify:

1) whether the chosen measures are appropriate for reaching the legitimate aim or if the legitimate aim can be reached by the chosen measure;

2) whether such actions are necessary or whether the legitimate aim could not be reached by measures that are less restrictive upon a person's rights;

3) whether the restriction is appropriate or whether the benefit gained by society outweighs the harm inflicted upon a person's rights.

If in the assessment of a legal norm it is recognised as being incompatible with even one of these criteria then it is incompatible with the principle of proportionality and is unlawful (*see, for example, Judgement of 16 May 2007 by the Constitutional Court in Case No. 2006-42-01, Para 11, and Judgement of 21 December 2015 in Case No. 2015-03-01, Para 25*).

21.3.1. The measures chosen by the legislator are appropriate for reaching the legitimate aim if this aim is reached by the particular regulation (*see, for example, Judgement of 7 October 2010 by the Constitutional Court in Case No. 2010-01-01, Para 13*).

The period of ten years, during which every year prior to the re-registration, on the basis of an opinion by the Ministry of Justice, the activities of the congregation in the previous year is assessed, ensures regular supervision on whether the congregation complies with the requirements of regulatory enactments, as well as averts the use of the public trust in bad faith by religious organisations. A period of registration like this is an appropriate measure for reaching the legitimate aim of the restriction on fundamental rights – protection of other persons' rights and public security.

Hence, the measure chosen by the legislator is appropriate for reaching the legitimate aims.

21.3.2. A restriction on fundamental rights is necessary if there are no other measures that would be as efficient and the choice of which would be less restrictive upon persons' fundamental rights. The Applicant and the summoned persons E. Levits and the Latvian Evangelic Lutheran Church Abroad note that the legitimate aims of the restriction could be reached by measures that would be less restrictive upon a person's fundamental rights.

A more lenient measure is not just any other measure but only such measure, by which the legitimate aim could be reached in at least the same quality (*see, for example, the Judgement of 7 October 2010 by the Constitutional Court in Case No. 2010-01-01, Para 14*). Verification, whether alternative measures that would restrict persons' fundamental rights established in the *Satversme* do not exist, falls within the jurisdiction of the Constitutional Court (*see, for example, Judgement of 24 November 2017 by the Constitutional Court in Case No. 2017-07-01, Para 19*).

The *Saeima* explains in its written reply that setting of a particular term, unless it is obviously disproportionate, is an issue of a law policy decision. The respective law policy decision by the legislator, which had been adopted on the basis of considerations of expedience linked to the setting of the term for applying the restriction, is not subject to review by other institutions, *inter alia*, the Constitutional Court. Therefore, allegedly, there are no alternative more lenient measures and the restriction established by the contested norms should be considered as being the most lenient measure. The *Saeima* cannot uphold the Applicant's view that it would be possible to verify the activities by religious organisations that are already well known in the world and in Latvia within a shorter period of time and without registration.

Promoting the protection of persons' fundamental rights is the task of the Constitutional Court. Therefore assessment of the proportionality of the restriction on fundamental rights established by the legislator falls within its competence. Hence, the Constitutional Court rejects the *Saeima*'s argument that the contested period of re-registration of religious organisations is not subject to review by the Constitutional Court.

The summoned person – the Ombudsman – holds that the contested norms, which envisage a ten-year-long re-registration period, are not sufficiently flexible. The Ombudsman substantiates his opinion by the fact that, on 10 November 2009, the Constitutional Court terminated legal proceedings in Case No. 2009-13-0106, which had been initiated with respect to the compliance of third sentence of Section 10 (3) of the Law on Religious Organisations, which in certain cases disallowed registration in a denomination autonomous congregations, with Article 99 of the *Satversme* and Article 9 of the Convention. The Constitutional Court had terminated the legal proceedings because the *Saeima* with the law of 29 October 2009 “Amendments to the Law on Religious Organisations” excluded the contested norm from the Law on Religious Organisations. The Court had concluded that the dispute in the case had been eliminated since after the amendments came into force it was possible to register an autonomous congregation also in the case if the canonical rules of the respective denomination prohibited it. The Ombudsman argues that, thus, the ten-year period of re-registration with respect to particular autonomous congregations is not proportionate.

The Applicant and the summoned person the Ombudsman underscore that the restriction, which envisages a ten-year period of re-registration, is not proportionate also because, pursuant to the contested norms, this period is counted from the moment of registration of a congregation, moreover, of the most recently registered congregation.

Whereas the *Saeima* notes that the establishment of different re-registration periods, depending upon the prevalence and recognisability of the religion, would place various religious organisations in an unequal situation. The differential treatment, depending upon the recognisability of the religion practised by the congregation, would not reach the legitimate aim, since it is important to assess the activities of the particular congregation. The *Saeima* holds that this differential treatment would not be justifiable and compatible with the role of the State as a neutral and unbiased organiser of the practising of various religions, faiths and convictions.

It has been recognised in the case law of the European Court of Human Rights that it is possible to judge about the level of democracy in the respective state by the way in which the national legal acts regulate the freedom of association and the way this freedom is exercised (*see Judgement of 1 February 2007 by the European Court of Human Rights in Case "Ramazanova and Others v. Azerbaijan", Application No. 44363/02, Para 54*).

The European Court of Human Rights notes that all states have the obligation, derived from Article 9 of the Convention, to decrease, to the extent possible, the time that a religious organisation has to wait before it is granted the status of a legal person. Hence, a waiting period applied to a religious union, which already has been granted the status of a legal person, before it can acquire the status of a more stable religious organisation, must be assessed with utmost care, since the State has the obligation in the field of religious freedom and in relations with various religions, denominations and faiths, to exercise its power in a neutral and objective way (*see Judgement of 31 July 2008 by the European Court of Human Rights in Case "Religionsgemeinschaft der Zeugen Jehovas and Others v. Austria", Application No. 40825/98, Para 79 and 97*).

In the respective contested norms, the legislator has set a ten-year-long period of re-registration, which must be counted from the moment of first registration, for all newly established religious organisations – congregations –, to verify every year prior to re-registration, on the basis of an opinion provided by the Ministry of Justice, whether the religious organisation complies with the requirements of regulatory enactments. However, the Constitutional Court holds that it is possible to supervise, whether a religious organisation complies with the requirements of regulatory enactments, also by other measures, moreover, by interfering less into the sphere of a person's freedom.

Section 5 (6) of the Law on Religious Organisations provides that law enforcement institutions supervise the compliance of activities of religious organisations with regulatory enactments and inform the Ministry of Justice about the

violations of regulatory enactments identified in the activities of religious organisations. In view of the regulation of the Law on Religious Organisations, the Ministry of Justice, predominantly, needs this information to be able to provide an opinion on the compliance of the activities of religious organisations with the requirements of regulatory enactments. The Constitutional Court, however, underscores that, pursuant to the legal norm referred to above, law enforcement institutions, in addition to the provision of information, have the duty to supervise the compliance of the activities of religious organisations with regulatory enactments. This obligation follows from the basic functions of law enforcement institutions – to protect the interests of persons, society and the state.

Additionally, pursuant to Section 18 (2) of the Law on Religious Organisations, the activity of a religious organisation can be terminated, on the basis of a court's ruling, *inter alia*, if: 1) if it is in conflict with the *Satversme*, other regulatory enactments or articles of association (constitution, by-law); 2) if a religious organisation invites others not to observe the law; 3) if a religious organisation threatens the democratic structure of the State, public peace and order as well as the health and morals of other persons with its activities (teachings).

Pursuant to the third part of the aforementioned Section, in any case like this, an application may be submitted to the court by the Prosecutor General. Moreover, in accordance with the fifth part of this Section, a court, taking into account the severity and consequences of the violation committed by a religious organisation, as well as in evaluating the aim of the religious organisation and its activities as a whole, may express a warning to the religious organisation without terminating the activities thereof.

This measure for preventing threats to other persons' human rights and public security is an alternative to the obligation of annual re-registration, moreover, is effectively individualised and applicable exactly to those religious organisations that pose a threat to other persons' rights and public security.

In view of the obligation, established in other norms of the Law on Religious Organisations not the contested ones, to supervise, whether a religious organisation does not violate the requirements of regulatory enactments and, by its activities, does not pose a threat to the democratic state order, public peace, order, the health and morals of other persons, it can be established that the legitimate aims of the contested restriction may be reached in at least the same quality if the respective obligations, set by law, are fulfilled. Hence, the Constitutional Court holds that the legitimate aims of

the contested restriction may be reached in at least the same quality by measures that are less restrictive on a person's rights.

Since the Constitutional Court recognises the obligation to re-register as being disproportionate, the requirement regarding the opinion by the Ministry of Justice for this re-registration, which is included in the second sentence of Section 8 (4), becomes legally meaningless.

Hence, Section 7 (2) of the Law on Religious Organisations, insofar it does not provide for the right of the newly established congregations to establish a religious association (a church) before the ten-year-long period of re-registration has not expired, as well as Section 8 (4) of the Law on Religious Organisation, which establish this requirement, period and procedure of re-registration, is incompatible with the principle of proportionality and, thus, also with Article 99 and Article 102 of the *Satversme*.

22. The Applicant contests also the compliance of Section 7 (3) of the Law on Religious Organisations with Article 91, Article 99 and Article 102 of the *Satversme*.

The *Saeima* has requested to terminate legal proceedings in this part of the case since the contested norm is not applicable in the administrative case, in which the Applicant has turned to the Constitutional Court. The summoned persons – the Ministry of Justice, as well as the Latvian Orthodox Church – uphold this opinion. However, the *Saeima* notes that also in the case if the Constitutional Court were to recognise the period of re-registration as being incompatible with the *Satversme*, the Applicant would have to conclude that a favourable administrative act cannot be issued in the case, since the opinion by the Ministry of Justice regarding the activities of the religious organisation is missing in the case. If this pre-requisite for issuing a favourable administrative act is not met the administrative court, within the framework of the particular administrative case, would have no grounds for assessing the compliance with the criterion set in Section 7 (3) of the Law on Religious organisations

Pursuant to Para 2 of Section 19¹ (1) of the Constitutional Court Law, courts are the subjects of concrete constitutional review. Therefore they may not submit an application regarding abstract constitutional review to the Constitutional Court. I.e., the court may submit an application and the Constitutional Court, on the basis of the court's application, may examine the constitutionality of only such legal norms, which have been applied or should be applied in the particular case.

The substantiation provided by the Applicant is that the respective contested norm might be applied in the administrative case if the restriction established in

Section 7 (2) and Section 8 (4) of the Law on Religious Organisations, which prohibits the newly established congregations from establishing a religious association (a church) before the ten-year period of re-registration has expired, were to be recognised as being incompatible with the *Satversme*.

The Constitutional Court rejects the *Saeima*'s argument that in a case like this the administrative court could not decide on issuing a favourable administrative act, because an opinion by the Ministry of Justice, which should be received prior to the registration of a religious association (a church) is missing in the case. The Supreme Court has already recognised that the institution summoned on the defendant's side must make the effort to not hinder objective examination of the dispute in court, and nothing prohibits the Ministry of Justice, during the court proceedings, to independently assess the information needed to provide an opinion on the activities of a religious organisation (to provide an opinion on the merits already in court) [see *Judgement of 17 June 2011 by the Supreme Court in Case No. SKA-505/2011 (A42672807) Para 13*].

Since the Constitutional Court has already recognised the restriction established in Section 7 (2) and Section 8 (4) of the Law on Religious Organisations as being incompatible with the *Satversme* it must examine also the compliance of Section 7 (3) of the Law on Religious Organisations with the *Satversme*.

Hence, the legal proceedings regarding the constitutionality of Section 7 (3) of the Law on Religious Organisations is to be continued.

23. If the compliance of a legal norm with several norms of the *Satversme* is contested then the Constitutional Court, considering the substance of the case under review, must define the most effective approach to assessing this compliance (see *Judgement of 8 March 2017 by the Constitutional Court in Case No. 2016-07-01, Para 14.2*).

It follows from the case materials that the basic question in the case, first of all, applies to the rights included in Article 99 and Article 102 of the *Satversme*. After the compliance of the respective contested norm with Article 99 and Article 102 of the *Satversme* has been examined, it is possible, in turn, on the basis of the findings made, to assess the compliance of the respective contested norm with Article 91 of the *Satversme*.

Hence, the Constitutional Court will, first of all, examine the compliance of Section 7 (3) of the Law on Religious Organisations with Article 99 and Article 102 of the *Satversme*, and following it – the compliance with Article 91 of the *Satversme*.

24. The Applicant contests the compliance of Section 7 (3) of the Law on Religious Organisations with Article 99 and Article 102 of the *Satversme*, since this norm is said to breach the requirement regarding the State's neutrality by making all religious groups belonging to one denomination to unite, to become subordinated to one governing body or by prohibiting to unite in organisational structures at the believers' own discretion.

The Applicant and the summoned person E. Levits hold that the fundamental rights established in Article 99 and Article 102 of the *Satversme* have been restricted in their interconnection. Whereas the summoned person R. Balodis holds that Article 102 of the *Satversme* provides additional guarantees; however, the rights envisaged in Section 102 of the *Satversme*, allegedly, are not infringed upon by the restriction that prohibits the newly established congregations from establishing a church.

In assessing the infringement of the fundamental rights established in Article 99 and Article 102 of the *Satversme* and the constitutionality thereof, the findings made in Para 18-20 of this Judgement should be taken into consideration. I.e., restrictions on the uniting of religious organisations and on registration of various forms of religious communities are to be regarded as an infringement on the fundamental rights established in Article 99 and Article 102 of the *Satversme*, and the Constitutional Court must examine the compliance of this infringement with both aforementioned norms of the *Satversme* in their interconnection.

Section 7 (3) of the Law on Religious Organisations provides that the congregations of one denomination may establish in the state only one religious association (a church). Pursuant to Section 13 (2) of the Law, the scope of rights of a religious association (a church) is broader compared to the scope of rights of a religious organisation – a congregation. I.e., pursuant to the aforementioned legal norm, only the registered religious associations (churches) or dioceses have the right to establish institutions of education for the ecclesiastics, convents, missions and diaconal institutions.

The *Saeima* has also noted that the form of a religious association (a church) is on a higher level of the hierarchy of forms of religious organisations compared to a congregation and that this status proved a long-term existence of a certain totality of congregations, uniting in a larger entity and succession in rights, therefore the legislator has also granted special rights to the religious associations (churches). The *Saeima* also notes that the ban to acquire a higher level in the hierarchical structure of religious organisations of the Republic of Latvia – the religious association (a church) – restricts the congregations' possibilities to exercise the freedom of religious

conviction in such aspects, in which this freedom can be exercised only by a registered religious association (a church).

The Constitutional Court recognises that the restriction that prohibits the newly established congregations from acquiring a higher level in the hierarchical structure of the forms of religious organisations – that of a religious association (a church), and thus, from acquiring a shared representation, restricts the right of religious organisations – churches – to association to exercise the freedom of religion.

Hence, the Constitutional Court must examine, whether Section 7 (3) of the Law on Religious Organisations complies with the right to association to exercise the freedom of religion, which follows from Article 99 and Article 102 of the *Satversme* in their interconnection.

25. As noted above in this Judgement by the Constitutional Court, the rights included in Article 99 and Article 102 of the *Satversme* to association to exercise the freedom of religion may be restricted. Also with respect to this contested norm, the Constitutional Court must examine, whether the restriction on the respective fundamental rights is justifiable, i.e., whether:

- 1) it has been established by law;
- 2) it has a legitimate aim;
- 3) it is proportionate.

25.1. To examine the compliance of the restriction on fundamental rights included in Section 7 (3) of the Law on Religious Organisations with Article 99 and Article 102 of the *Satversme*, first of all it must be verified, whether the restriction on fundamental rights has been established by a law adopted in due procedure, i.e.:

- 1) whether the law has been adopted in accordance with the procedure envisaged in regulatory enactments;
- 2) whether the law has been promulgated and is publicly accessible in accordance with the requirements of regulatory enactments;
- 3) whether the law has been worded with sufficient clarity so that a person would be able to understand the content of rights and obligations following from it and would be able to foresee the consequences of application thereof.

The participants in the case and the summoned persons share the opinion that the contested norm has been adopted in the procedure set out in regulatory enactments, as well as has been promulgated and is publicly accessible in accordance with the requirements of regulatory enactments. However, there is no consensus among the participants of the case and the summoned persons as to the content of the contested

norm, and therefore there is doubt, whether the legal norm has been worded with sufficient clarity.

The summoned person – the Ministry of Justice – notes that problems might arise in practice with respect to interpreting Section 7 (3) of the Law on Religious Organisations and entering the names of denominations in the public register so as to differentiate between them; however, this could not be regarded as a sufficient reason for questioning the compliance of the respective requirement with the *Satversme*.

The *Saeima* notes in its written reply that a congregation determines its denominational affiliation itself, confirming in the process of registration its choice to not become part of an already registered religious association (a church) but to operate in an autonomous status. Section 7 (3) of the Law on Religious Organisations should not be interpreted to mean that it prohibited to congregations that had acquired the status of a permanent religious organisation and had met the legal requirements to establish a religious association – the Latvian Autonomous Orthodox Church.

The summoned person – the Ombudsman – expresses doubts, whether the text of the contested norm can be interpreted as broadly as it is done by the *Saeima*. The explanation of the content of the norm provided by the *Saeima*, in fact, is said to create the impression that this norm is declarative and does not influence the process of registering a church. The contested norm is said not to be worded with sufficient clarity to exclude doubts on whether it is being applied in accordance with the case law of the European Court of Human Rights.

The Constitutional Court finds that the interpretation of Section 7 (3) of the Law on Religious Organisations provided by the *Saeima* should be examined in interconnection with the explanation of the concept “denomination” presented by the *Saeima*.

The *Saeima* and the summoned person – the Ministry of Justice – note that the concept “denomination” should be filled with content in each particular case and historically should be understood to mean that a sign of equality can be put between the nomination and a separate church, in which the teaching of this denomination is preached. Therefore, the Ministry of Justice holds that the choice of a religious community (a group) to establish an autonomous congregation, independent from the existing religious associations (churches) points to its denominational difference from the religious associations (churches) already existing in the state; i.e., to a different understanding (interpretation) of the canonical teaching and to different religious procedures.

The summoned person – the Latvian Evangelic Lutheran Church Abroad – notes that it is unable to become registered in Latvia as a religious association (a church)

because one religious association (a church) already has been registered in the Evangelic Lutheran denomination.

The summoned person – the Latvian Orthodox Church – also holds that the congregations of one denomination can establish only one religious association (a church) in the state.

The Constitutional Court must establish, whether the content of the contested legal norm is sufficiently clear, so that a person would be able to understand the content of the rights and obligations that follow from this norm and to foresee the consequences of applying it.

Pursuant to Para 2 of Section 1 of the Law on Religious Organisations, religious denominations, in the meaning of this Law, are trends of world religions that have their creed of faith, teaching and dogmatics, as well as worshipping traditions.

Para 1 of Section 9 (1) of the Law on Religious Organisations provides that the articles of association of the respective religious organisation (constitution, by-laws) must be appended to the application regarding registration of a congregation. Pursuant to Para 1 of Section 10 (1) of the Law, *inter alia*, the denominational affiliation must be indicated in the articles of association (constitution, by-laws) of a religious organisation. Pursuant to the third part of this Section, if a congregation admits its belonging to any of the denominations existing in the territory of the State, it must be indicated in the application by the congregation, which is approved by the governing body of the respective religious association (a church) or, at the instruction thereby, by the diocese management. Section 3 (3) of the Law on Religious Organisations provides that a religious association unites the congregations of one denomination registered in accordance with the procedure established by this Law.

The Constitutional Court has recognised before that a legal norm cannot be understood outside the practice of application thereof and the legal system, within which it functions (*see, for example, Judgement of 28 June 2013 by the Constitutional Court in Case No. 2012-26-03, Para 12.1., and Judgement of 15 March 2018 in Case No. 2017-16-01, Para 16.2.*).

The Applicant, as the party applying the legal norm in the case pertaining to the rights of religious organisation to be registered as a religious association (a church), notes that the content of the respective contested norm is clear and the Latvian Autonomous Orthodox Church would be denied the right to be registered as a religious association (a church) in the Orthodox denomination because the Latvian Orthodox Church already has been registered in this denomination.

Hence, the concept “denomination” in the contested norm is understood as a concrete trend of a world religion, in accordance with the religious organisations of a

denomination already registered in the Republic of Latvia. The contested norm prohibits from registering several churches of such religious organisations, which have indicated the same denominational affiliation in their articles of association. Since in the case that is the basis for the case under review, the Latvian Autonomous Orthodox Church wants to be registered as a church in the Orthodox denomination, the respective contested norm prohibits the Latvian Autonomous Orthodox Church to be registered as a religious association (a church).

In view of the above, the Constitutional Court finds that the restriction included in the contested norm, due to which only one church may be registered in one denomination (in this case – in the Orthodox denomination), is worded with sufficient clarity. A person may understand the content of the rights that follow from the regulation of the Law on Religious Organisations as a whole, as well as of the respective contested norm, and also can foresee the consequences of applying this norm.

Thus, the restriction on fundamental rights has been established by law.

25.2. The Constitutional Court has already noted above in this Judgement that each restriction on fundamental rights should be based on circumstances and arguments regarding the necessity thereof; i.e., the restriction should be established in important interests and with a legitimate aim, and in the legal proceedings before the Constitutional Court the obligation to present and substantiate the legitimate aim of the restriction on fundamental rights first and foremost rest upon the institution, which issued the contested act, in the particular case – the *Saeima*.

An opinion on this matter has not been expressly stated in the written reply by the *Saeima*.

The Applicant notes that the restriction on rights established by the respective contested norm might have a legitimate aim; i.e., to ensure public order, as well as to simplify the State's relationships with the representatives of a religious denomination.

The summoned person R. Balodis notes that the restriction on rights established by the respective contested norm had had a legitimate aim since the legislator had wished to protect religious organisations against schisms and disputes regarding the division of property. Allegedly, this contested norm should be examined in close connection with the process of denationalisation and the law "On Restitution of the Property of Religious Organisations". Causing chaos in the process of recovering property had to be avoided, therefore the principle "one denomination – one church" had been introduced since 1991. This principle had been expedient and valid for a long time; however, at present, its existence no longer can be justified, as this should be

regarded as an excessive and exaggerated interest by the State in the internal matters of churches.

The summoned person E. Levits also notes that the legitimate aim of the restriction on fundamental rights could have been linked to the particular situation, where the State was denationalising property that the Soviet occupational power had deprived the churches of, and it had been easier for the State to see only one church in each denomination as the subject that had the right to recover the property. By this, fragmentation of and schisms in churches due to property related disputes had been indirectly prevented. The current situation is said to be different. Therefore the aim, which initially might have been legitimate, can justify the respective restriction no longer. Consequently, the respective contested norm has lost its previous, possibly, legitimate aim, and currently its theoretically possible legitimate aims cannot be regarded as being such that would justify the particular restriction.

Following the restoration of the independence of the Republic of Latvia, denationalisation of the property nationalised by the Soviet occupational power became one of the first obligations of the State of Latvia. In the framework of it, the legislator provided for the right to recover the property alienated by the Soviet State of the religious organisations, pursuant to their articles of association, constitution or by-laws, of those religious organisations that had not ceased their activities and had restored the status of a legal person, which in 1940 had been registered in the Department of Churches and Denominations of the Ministry of the Interior of the Republic of Latvia or in the Department of Press and Associations of the Ministry of Public Affairs, or those religious organisations that had ceased their activities during the occupation but had renewed them thereafter, and whose succession in rights had been established in a court (*see the law "On Restitution of the Property of Religious Organisations"*, *see also: Lazdiņš J. Īpašuma denacionalizācija Latvijas Republikā. Grām.: Jundzis T. (zin. red.) Nepārtrauktības doktrīna Latvijas vēstures kontekstā. Rīga: Latvijas Zinātņu akadēmijas Baltijas stratēģisko pētījumu centrs, 2017, 360.–383. lpp.*). Thus, at the time when property was denationalised, the regulation that allowed establishing only one centre of governance within each denomination, possibly, had some additional aims and it guaranteed some additional benefits. However, the materials for drafting the respective contested norm do not lead to the conclusion that alleviation of the process of denationalisation had been set as the aim of the respective restriction.

The restriction, which allows religious communities to establish only one centre of governance within one denomination, was included already in the law adopted by the Supreme Council "On Religious Organisations" (*see Section 4 (6) of the law "On*

*Religious Organisations” in the wording that was in force from 13 June 1991). The restriction was established by the law of 13 June 1991 “On Amendments and Supplements to the Law of the Republic of Latvia “On Religious Organisations””. The amendments were submitted by the Advisory Council on Religious Affairs of the Supreme Council, indicating in the substantiation thereto that congregations were established in the state that created alternative governing bodies and that such activities were aimed at creating schisms among the believers and interfering into the activities of other religious organisations, that the congregations of one denomination could have only one religious centre and that the registration of parallel religious centres, without the approval of the existing centres of organisations, was interference into the internal matters of the church (see *Case Materials, Vol. 5, p. 66*).*

It is indicated in the document included in the preparatory materials for the aforementioned amendments “Substantiation of the Necessary Amendments and Supplements to the Law of the Republic of Latvia “On Religious Organisations”” that sometimes the newly established congregations were establishing their own centres and were demanding legal recognition. These issues were said to pertain to the internal activities of religious denominations and could cause schisms or conflicts with the already existing religious organisations (see *Case Materials, Vol. 5, p. 31*).

At the time of drafting the Law on Religious Organisations, a legal norm taken over from the law “On Religious Organisations” was included in its initial draft, which provided that congregations of one denomination could establish only one religious association in the state (see *Case Materials, Vol. 3., pp. 1- 10*). During the discussions of the draft law, only the wording of this norm was specified (see *Case Materials, Vol. 3, pp. 23-41*).

In view of the above, the Constitutional Court finds that the restriction that prohibits congregations from registering more than one church within one denomination was established to decrease schisms between religious organisations and, thus, possibly, also to protect members of the public against deception regarding the belonging of a new organisation to an already existing religious association (a church).

The Applicant holds that the State should abide by neutrality and should not interfere in religious affairs, making all religious communities of one denomination to unite and to become subject to one governing body or by prohibiting religious communities to unite in organisational structures at the believers’ own discretion. Allegedly, it is the duty of the State to ensure that several religious organisations are able to coexist peacefully. Moreover, it should be taken into consideration that some

trends of religion even historically have not had a united hierarchical structure. The summoned person the Ombudsman upholds the arguments provided by the Applicant.

The summoned person R. Balodis also is of the opinion that the State gives preference, without grounds, to only one religious association belonging to a particular denomination, allowing only it to acquire the status of a church.

Whereas the summoned person – the Latvian Orthodox Church – holds that by revoking the restriction established by the respective contested norm the State would interfere into the activities of religious organisations. The summoned person – the Catholic Church – also holds that by maintaining the restriction established by the contested norm, the State would abide by the requirement of neutrality. The summoned person the Latvian Evangelic Lutheran Church Abroad, however, holds that the restriction established in Section 7 (3) of the Law on Religious Organisations is a manifestation of the State’s will, which is not based on the basic principles of religions or the canonical teaching of denominations and disproportionately infringes upon the right to the freedom of religious conviction.

The Constitutional Court holds that respect towards the freedom of a person to follow one’s conscience, views and conviction is one of the basic values of a democratic state governed by the rule of law. The concept “denomination” is closely linked to a person’s religious conviction.

The summoned person E. Levits has noted that what is understood by the concepts of “religion”, “denomination”, “worldview” or “point of view” and the content with which these concepts are filled depend only upon the individual himself. Likewise, the respective congregation or the church determines the content of its religion itself. The determining factor regarding the belonging of a religious group to a denomination is said to be its self-understanding.

The opinion of 26 April 2000 by the Faculty of Theology of the University of Latvia has been annexed to the preparatory materials for the law of 15 June 2000 “Amendments to the Law on Religious Organisations” regarding the use of the term “denomination”. It is noted therein that during the years of Soviet ideology this term replaced the term “faith”, which had been used in Latvia prior to the occupation. With the term “denomination” other religions, without special grounds, are said to be equalled to separate trends of Christianity. In the literature of science of religion this term is no longer used with respect to other religions (*see Case Materials, Vol. 4, p. 27*).

The European Court of Human Rights has recognised that the right to the freedom of religion, except for special cases, excluded the possibility of the State to assess in any way the religious conviction (*see Judgement of 15 September 2009 by the*

European Court of Human Rights “Miroļubovs v. Latvia”, Application No. 798/05, Para 80).

Pursuant to the case law of the European Court of Human Rights, such freedom of religious conviction that complies with the Convention, as a matter of principle, excludes the possibility that the State might assess the legitimacy of religious opinions or the ways of expressing thereof. The Court has recognised that, in a democratic society, there is no need for the State to take measures to ensure that religious unions would be or would continue to be subordinated to one governing body. If a religious community splits, then the State has the obligation to remain neutral and objective and to refrain from any measures as the result of which one or the other leader of a religious community would be given preference or that would be aimed at forcing the religious community to become subject to united governance contrary to its wishes. The State is not expected to prevent the causes of conflict, it may not derogate from pluralism. The State must ensure only that the conflicting religious groups treat one another with tolerance (*see Judgement of 23 March 2017 by the European Court of Human Rights in Case “Genov c. Bulgarie”, Application No. 40524/08, Para 45).*

Pursuant to the findings of the case law of the European Court of Human Rights, the fact that a person is imposed the duty to exercise his freedom of religion within the framework of an already registered religious organisation only because the state institutions are of the opinion that his faith is identical to the faith of this religious organisation, does not seem to be necessary and proportionate with the legitimate aim to allow the society to distinguish between various religious unions (*Judgement of 23 March 2017 by the European Court of Human Rights in Case “Genov c. Bulgarie”, Application No. 40524/08, Para 46).*

In view of the case law of the European Court of Human Rights referred to above, the Constitutional Court finds that, pursuant to the *Satversme*, the State does not have the right to refuse registration of a religious association (a church) to a religious community, which identifies itself with a denomination, in the framework of which one legal person of private law – a religious association (a church) – has already been registered in the state.

The European Court of Human Rights has recognised that the aim to prevent deception of society, which could be possible if several religious organisations with similar names and similar faith existed, is to be recognised as being legitimate (*Judgement of 23 March 2017 by the European Court of Human Rights in Case “Genov c. Bulgarie”, Application No. 40524/08, Para 41).* However, in Latvia, such deception of society already has been prevented by other provisions of the Law on Religious Organisations.

Pursuant to Para 1 of Section 10 (1) of the Law on Religious Organisations, the following must be indicated in the articles of association (constitution, by-laws) of religious institutions: the name of the religious organization, which must differ unambiguously from not only the religious organisations and their institutions registered in the state in the procedure established by laws, as well as religious organisations and their institutions that have applied for registration but also from the names of subjects registered or applied for registration in other registers maintained by other institutions of registration; the name may not comprise misleading information about the legal form of the religious organisation, the aim and type of its activities; the name may not be misleading regarding the belonging of the congregation to a religious association (a church), if the congregation does not recognise its belonging to a religious association (a church) that has been registered in the procedure established by law.

Hence, the legislator has already ensured that a religious organisation, upon registration, cannot mislead the public as regards its belonging to another religious organisation, *inter alia*, a religious association (a church). Hence, the Constitutional Court holds that the restriction established by the contested norm *per se* is not necessary either for the protection of the rights of other persons or for the protection of public security.

The Constitutional Court also finds that the restriction on fundamental rights, established in Section 7 (3) of the Law on Religious Organisations has no legitimate aim in a democratic state governed by the rule of law, which basically unites members of society who are able to reason independently.

Since the restrictions established by the contested norm lacks a legitimate aim, it is not necessary to examine the compliance of this restriction with the principle of proportionality (*compare: Judgement of 12 February by the Constitutional Court in Case No. 2007-15-01, Para 8*).

Therefore the restriction established in Section 7 (3) of the Law on Religious Organisations, which prohibits from registering more than one church in one denomination, lacks a legitimate aim and is incompatible with Article 99 and Article 102 of the *Satversme*.

26. Upon establishing incompatibility of the contested norm with even one Article of the *Satversme*, it must be recognised as being unlawful and void. Since Section 7 (3) of the Law on Religious Organisations has been recognised as being incompatible with Article 99 and Article 102 of the *Satversme*, it is no longer necessary to examine its compatibility with Article 91 of the *Satversme* (*compare:*

Judgement of 21 February 2018 by the Constitutional Court in Case No. 2017-11-03, Para 15).

27. Pursuant to Section 32 (3) of the Constitutional Court Law, a legal norm that has been recognised by the Constitutional Court as being incompatible with a norm of higher legal force must be regarded as being void as of the day when the Judgement of the Constitutional Court is published, unless the Constitutional Court has provided otherwise. Pursuant to Para 11 of Section 31 of the Constitutional Court Law, the Constitutional Court may indicate in its Judgement the date as of which the legal norm (act), which has been recognised as being incompatible with the legal norm of higher legal force, becomes void.

The aforementioned norms of the Constitutional Court Law grant to the Constitutional Court the discretion to decide on the date, as of which a norm, which has been recognised as being incompatible with a legal norm of higher legal force, becomes invalid. In deciding on the date, as of which the contested norm becomes void, not only the applicants' rights and interests but also those of other persons should be taken into consideration. Moreover, recognising the contested norm as being invalid may not cause new infringements on the fundamental rights established in the *Satversme* (see *Judgement of 29 April 2016 by the Constitutional Court in Case No. 2015-19-01, Para 17*).

R. Balodis has noted in his opinion that the Constitutional Court, if it were to recognise the contested norms as being incompatible with the *Satversme*, should envisage a transitional period allowing the legislator to introduce amendments into the legal regulation.

The Constitutional Court finds that the Latvian legal system, which determines the relationship between the State and religious organisations in various aspects, for example, by regulating the right to marry, to teach faith in schools, to provide chaplain service, envisages that these rights may be exercised by particular denominations (see *Section 51 and Section 53 of the Civil Law, Section 10 (2) of the Law on Education and Section 6 (3) of the Law on Religious Organisations*) or particular religious organisations (see *Para 5 of the Cabinet Regulation of 15 February 2011 No. 134 "Regulation on the Chaplain Service"*). The Constitutional Court finds that, by indicating particular denominations in legal norms, only those churches, which until now have been registered in the respective denomination, are understood by it. These churches or religious congregations [in the case of Moses Believers (Judaists)] and their rights to marry, to teach faith or to provide chaplain services have been determined by special laws. Thus, the rights of the churches existing thus far have

been established by law, and this legal order would not be infringed upon if the contested norms were to become void on the day when the Judgement is published. In view of the above, the Constitutional Court recognises that there is no need for the contested norms to remain in force.

Article 99 of the *Satversme* provides that the church is separate from the State. The State has the right to delegate to certain religious organisations some public tasks of the state power. The recognition of the contested norms as being void does not prohibit the legislator to review in the future the procedure of such delegation, as well as the circle of those religious organisations, to which the State has delegated the right to marry, to teach faith or to provide chaplain service.

The Substantive Part

On the basis of Section 30-32 of the Constitutional Court Law, the Constitutional Court

held:

1. To recognise Section 7 (2) of the Law on Religious Organisations, insofar it does not envisage to congregations, who commence for the first time their activities in the Republic of Latvia and do not belong to any religious associations (churches) that have already been registered in the state, the right to establish a religious association (a church) before the expiry of the ten-year period of re-registration, as being incompatible with Article 99 and Article 102 of the *Satversme* of the Republic of Latvia.

2. To recognise Section 7 (3) and Section 8 (4) of the Law on Religious Organisations as being incompatible with Article 99 and Article 102 of the *Satversme* of the Republic of Latvia.

The Judgement is final and not subject to appeal.

The Judgement shall enter into force on the day of its publication.

Chairperson of the court sitting

I. Ziemele