



The norms that prohibit newly established congregations from establishing a religious association (church) before the registration period of ten years expires or if one church has already been registered in the respective denomination are incompatible with Article 99 and Article 102 of the *Satversme*

On 26 April 2018, the Constitutional Court passed the judgement in 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 Constitution 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 Contested Norms

Section 7(2) of the Law on Religious Organisations: “Ten (or more) congregations of one denomination which are registered in the Republic of Latvia may establish a religious association (church). This provision shall not apply to the religious organisations referred to in Section 8, Paragraph four of this Law.”

Section 7(3) of the Law on Religious Organisations: “Congregations of one denomination may establish only one religious association (church) in the State.”

Section 8(4) of the Law on Religious Organisations: “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, shall re-register in the registration institution (hereinafter – re-registration) each year for a period of the first ten years. When re-registering a religious organisation, the registration institution shall repose 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.”

The Norms of Higher Legal force

Article 91 of the *Satversme*: “All human beings in Latvia shall be equal before the law and the courts. Human rights shall be realised without discrimination of any kind.”

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

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

The Facts of the Case

The case was initiated on the basis of an application by the Supreme Court. The Supreme Court is examining a case regarding the right of the religious community Latvian Autonomous Orthodox Church (*Latvijas Pareizticīgā Autonomā Baznīca*) to establish a religious association (church). Allegedly, the contested norms prohibit the community from doing it.

The Supreme Court holds that the contested norms, insofar they deny ten (or more) newly established congregations¹ the right to establish a church, setting for them a re-registration period of ten years and providing that within the framework of one denomination only one religious association (church) can be established, unfoundedly restrict the rights of a religious organisation to freedom of religion and association guaranteed in the *Satversme*. Moreover, it is maintained that the restriction established in the law that allows establishing only one church in the framework of one denomination is contrary to the principle of equality. The contested norms are said to place in an unequal situation various religious communities within the framework of one denomination since they allow only one of these communities to establish a religious association (church); moreover, only the one which does it first.

¹ Congregations, which commence their activities in the Republic of Latvia for the first time and are not affiliated with the religious organisations (churches) that have already been established in the state in accordance with the terminology of Section 8 (4) of the Law on Religious Organisations

The Court's Findings

On examining the constitutionality of the contested norms

The Constitutional Court found that two permanent restrictions followed from the contested norms for the religious organisations – congregations, which had been established and registered as legal persons of private law, to establish a religious association (church). The Constitutional Court examined each of these restrictions separately. [15.]

First of all, the Constitutional Court examined, whether the restriction established in Section 7(2) and Section 8(4) of the Law on Religious Organisations, which envisaged for the newly established congregations a re-registration period of ten years, during which they could not establish a religious association (church), was compatible with the *Satversme*. Following that, the Constitutional Court examined the constitutionality of the restriction established in Section 7 (3) of the Law on Religious Organisations, which allowed establishing only one religious association (church) within the framework of one denomination [15.]

On the scope of Article 99 and Article 102 of the *Satversme*

Religious conviction, in the meaning of Article 99 of the *Satversme*, must be given a broad interpretation. Freedom of religion is, mainly, a matter of individual belief; however, it also comprises the right to “demonstrate religion” individually and together with others, publicly, and together with those who share the same belief. The believers’ right to the freedom of religion, which comprises also the right to a collective demonstration of one’s religion, envisages that the believers may unite freely and the State may not interfere into this right without grounds. [18.]

Article 102 of the *Satversme* protects various forms in which the freedom of association is manifested. If the freedom of religion did not protect the organisational life of religious communities then also all other aspects of religious freedom would be undermined. [18.]

Hence, the Constitutional Court found that the right of a religious organisation to freedom of associations of a nature of religious activity fell within the scope of both Article 99 and Article 102 of the *Satversme*. [18.]

On the restriction established in Section 7(2) and Section 8 (4) of the Law on Religious Organisations for the newly established congregations to establish a religious association (church)

On the restriction on the right to association for exercising the freedom of religion

The Constitutional Court recognised that the restriction on the right to association for exercising the freedom of religion comprised not only the refusal to grant the status of a legal person. It is constituted also by regulation that hinders religious communities from using also other organisational forms to exercise the right of association for exercising the right to freedom of religion. [19.]

Pursuant to 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 contested norms restrict also the right of religious organisations – congregations – to unite in a religious association (church) and, thus, by this acquire common representation. Therefore the Constitutional Court found that the respective contested norms restricted the right of a religious community to association for exercising the right to the freedom of religion; i.e., they restricted the fundamental rights of newly established congregations defined in Article 99 and Article 102 of the *Satversme*. [19.]

On compliance of the restriction with Article 99 and Article 102 of the Satversme

The Constitutional Court found that the restriction on fundamental rights that followed from the respective contested norms was established by law. [21.1.]

The Constitutional Court recognised that the requirement to re-register had been set to prevent abuse of the status of a religious association (church) and unlawful activities that would jeopardise public security and public order. Thus, the restriction that is included in the contested norms has a legitimate aim; i.e., protecting the rights of other persons and public security. [21.2.]

In assessing the proportionality of the restriction, the Constitutional Court found that the measure chosen by the legislator was appropriate for reaching the legitimate aims. However, it also recognised that the legitimate aims of the restriction included in the contested norms could be reached, at least in the same quality, by measures that were less restrictive on an individual's rights. I.e., other norms of the Law on Religious Organisations establish the obligation to supervise, whether the religious organisations do not breach the requirements of regulatory enactments and, by their activities, do not jeopardise the democratic state order, public peace, order, the health and morals of other persons. Such a measure for preventing threats to other persons' rights and public security is an alternative to the duty of annual re-registration; moreover, it is effectively individualised and applicable exactly to those religious organisations that pose a threat to other persons' rights and public security. [21.3.1., 21.3.2.]

The Constitutional Court found that Section 7 (2) of the Law on Religious Organisations, insofar it did not provide for the right of newly established congregations to establish a religious association (church) before the re-registration period of ten years expired, and Section 8(4) of the Law on Religious Organisations that defined the requirements, period and procedure of this re-registration, was incompatible with the principle of proportionality and, thus, also incompatible with Article 99 and Article 102 of the *Satversme*. [21.3.2.]

On the restriction set in Section 7 (3) of the Law on Religious Organisations on establishing a religious association (church)

On the restriction on the right to association for exercising the right to the freedom of religion

The Constitutional Court recognised that the restriction that prohibited newly established congregations from acquiring a higher ranking in the hierarchic structure of religious organisation – that of a religious association (church) and, thus, also the prohibition for religious congregations to unite for the expression of religious conviction, thus, acquiring common representation, restricted the rights of religious organisations – congregations – to association for exercising the right to the freedom of religion. [24.]

On compliance of the restriction with Article 99 and Article 102 of the Satversme

The Constitutional Court found that the restriction on fundamental rights that followed from the respective contested norm had been established by law. [25.1.]

The Constitutional Court recognised that the restriction, which prohibited congregations from registering within the framework of one denomination more than one church had been established to decrease the schism within religious organisations and, thus, possibly, promote protection of the members of society against deception regarding the affiliation of a new organisation with an already existing religious association (church). [25.2.]

One of the fundamental values of a democratic state governed by the rule of law is respect towards a person's freedom to follow his or her conscience, opinions, and beliefs. The concept of "denomination" is closely linked to a person's religious conviction. The Constitutional Court found that, pursuant to the *Satversme*, the State had no right to refuse registration of a religious association (church) to a religious community, which identified itself with a denomination, within a framework of which a legal person of private law – a religious association (church) – had already been registered in the state.. [25.2.]

The legislator has already ensured in other norms of the Law on Religious Organisations that a religious organisation, upon registering, cannot deceive society regarding its affiliation with another religious organisation, *inter alia*, a religious association (church). Hence, the Constitution Court held that the respective restriction, established by the contested norm, *per se* was not necessary either for the protection of other persons' rights

or public security. A restriction like this has no legitimate aim in a democratic state governed by the rule of law and, thus, it is incompatible with Article 99 and Article 102 of the *Satversme*. [25.2.]

On compliance of the restriction with Article 91 of the Satversme

The Constitutional Court found that it was not necessary to examine the compliance of Section 7 (3) of the Law on Religion Organisations with Article 91 of the *Satversme* since the contested norm already had been recognised as being incompatible with Article 99 and Article 102 of the *Satversme*. [26.]

On the date as of which the contested norms become void

The Constitutional Court found that the Latvian legal system that determined the relationship between the State and religious organisations in various aspects, for example, the right to marry, to teach faith in schools, to provide chaplains' services, envisaged that such rights could be exercised by particular denominations. The references to particular denominations in the legal norms are understood as the only churches thereof that have been registered in the particular denominations. Hence, the rights of existing churches already had been established by law and this legal order would not be affected if the contested norms were to become void as of the day when the judgement is published. In view of the above, the Constitutional Court recognised that there was no need for the contested norms to remain in force. [27.]

The Constitutional Court noted that the State has the right to delegate to particular religious organisations some tasks of the state power. The fact that the contested norms have been declared void does not prohibit the legislator from reviewing, in the future, the procedure of such delegation and the circle of those religious organisations to which the State has delegated the right to marry, to teach faith or to provide chaplains' services. [27.]

Therefore the Constitutional Court held:

1. To recognise Section 7 (2) of the Law on Religious Organisations, insofar it does not envisage to the congregations, which are commencing their activities in the Republic of Latvia and are not affiliated with the religious associations (churches) that are already registered in the state, the right to establish a religious organisation (church) before the re-registration term of ten years has expired, 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 of the Constitutional Court is final and not subject to appeal, it enters into force on the day of its publication.

The text of the Judgement [in Latvian] is available on the homepage of the Constitutional Court:

http://www.satv.tiesa.gov.lv/wp-content/uploads/2017/07/2017-18-01_Spriedums.pdf

The press release was prepared with the aim to facilitate understanding of the actual facts of the case. It shall not be regarded as part of a ruling and is not binding to the Constitutional Court. The judgements, decisions and other information regarding the Constitutional Court are available at the homepage of the Constitutional Court www.satv.tiesa.gov.lv.

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