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**The Latvian State imposes autocephaly by law
on the Orthodox Church in Latvia ***

ABSTRACT: The article analyzes the recent Latvian Law by which the State unilaterally declares the autocephaly of the Latvian Orthodox Church. The latter was previously under the Patriarchate of Moscow and all Russias. In addition, the study illustrates the changes made to the Law of Latvia, on the legal status of this Church. Much emphasis is put on the violation of the principle of separation, enshrined in art. 99 of the Latvian Constitution, further addressing the tendency to change the ecclesiastical policy of the European Union as a result of the war in Ukraine.

SUMMARY: 1. The State proclaims by law the autocephaly of the Latvian Orthodox Church - 2. Birth and development of the Latvian Orthodox Church - 3. The Religious Freedom Law and its amendments - 4. The Law on the Latvian Orthodox Church and the amendments made by the Saeima in 2019-2022 - 5. State legislative intervention, separatism and the Constitution - 6. Separatism, secularism and neo-jurisdictionalism in the European Union.

1 - The State proclaims by law the autocephaly of the Latvian Orthodox Church

On 8 September, the Saeima (the Latvian Parliament) accepted a proposal made by the President of the Latvian Republic on 8 July 2019 and adopted a law amending the existing framework on the Latvian Orthodox Church¹.

* Unreviewed paper - Contributo non sottoposto a valutazione.

¹ Latvijas Pareizticīgās Baznīcas likums, [Law on the Latvian Orthodox Church], Likums Saeimā pieņemts 2008.gada 13 novembrī ir īsgaliojimo 3 decembrī 2008, (<http://licodu.cois.it/?p=4767:%20%2011&lang=en>)

The President accompanied the presentation of the measure with a Statement in which he explained the reasons for the initiative. See: Balsošanas motīvs: Grozījumi Latvijas Pareizticīgās Baznīcas likumā [On the Bill "Amendments of Latvia "On the Law of the Orthodox Church] (1593/Lp13), 2. lasījums, steidzams (https://titania.saeima.lv/LIVS13/SaeimaLIVS2_DK.nsf/Voting?ReadForm&parentID=cba7d0ad-4c86-4912-a69e-ef26bf12a331).



The new law establishes the complete independence of this Church, with all its dioceses, parishes and institutions, from any ecclesiastical authority located outside Latvia. Most importantly, it also grants the Latvian Orthodox Church (Latvijas Pareizticīgā Baznīca), henceforth LPB, the status of an independent (autocephalous) Church². In order to finalise this decision under Orthodox canon law, the Latvian State turned to Kirril, Patriarch of the Russian Orthodox Church, the Church of reference of the Latvian Orthodox Church, with a letter signed by the Ministry of Justice. It sent the document to both the Moscow Patriarchate and the Russian State through diplomatic channels and the Latvian Ambassador in Moscow, informing them of the Latvian Parliament's decision and requesting the status of autocephaly³.

In the letter the Latvian Government, supports the validity of its measure. Indeed, it points out that on 11 August 1992 reinstated Patriarch Tikhon's decision of 1921 on the complete autonomy and independence of the LPB, and attributed the ancient denomination to the Orthodox Church in Latvia⁴. On 22 December 1992, Patriarch Alexis II of Moscow and All

² In Latvia, out of a population of 1,902,000, most believers are Lutherans (556,000, according to 2003 data, or 24.3% of the population). There are fewer Catholics (429,675, or 18.8%) and Orthodox (350,000, or 15.3%). The Latvian Orthodox Church is small, but important in the country's history for the links it provides with Russian spirituality and culture.

³ In the minutes of the meeting of the Council of Ministers of 20 September 2022, No. 48, it is stated that, pursuant to paragraph 4 of § 58, of the Rules of the Council of Ministers, the Minister of Justice informed that he had sent a letter signed by Jānis Bordāns, the holder of the department, drafted on 20 September 2022, to His Holiness the Patriarch of Moscow, registered under No. 1-21/2858, for official publication in the "Latvijas Vēstnesis". *Par Ministru kabineta sēdes protokola izpildi*, Laidiens: 22 September 2022., Nr. 184, Oficiālās publikācijas Nr.: 2022/184.3 (<https://www.vestnesis.lv/op/2022/184.3>).

⁴ This refers to Decision No. 1026 of July 1921, by which Patriarch Tikhon granted independence to the Latvian Church, maintaining only a spiritual and canonical link with the Mother Church - the Moscow Patriarchate. At the time, the measure was necessary because in the midst of the Russian Revolution, the Russian Orthodox Church saw its freedoms and powers progressively reduced, while in Latvia, after the Treaty of Riga of 11 August 1920, the work of the Constituent Assembly was underway and the independent Latvian state began its journey. This would survive until 1934 as a parliamentary republic. It then seemed to the Russian Orthodox Church that granting independence and autonomy to the Latvian Orthodox Church would better guarantee its survival, considering that the mother Church was unable to provide any protection. Proof of this is that at the same time a similar measure was taken for the Churches of Estonia (1920) and Finland (1921).



Russias handed over the Tomos to the Orthodox Church of Latvia, in which he reconfirmed the decision taken in 1921.

Further clarifications are needed. The approved law ensures the right to self-government and self-determination, enshrined in the Church Statutes, approved by the State, and recognises the Church's right 'to shape its internal affairs in accordance with the canons, including its organisational structure and mission, the problem of finalising the attribution of autocephaly under canon law still remains open'⁵. Indeed, it requires a *verdict* made by the synodal bodies of the LPB formulating the request for the granting of autocephaly. The request should then be addressed to the Patriarchate of Moscow, in compliance with the procedures established by Orthodox canon law: this circumstance does not appear to have taken place⁶.

Indeed, the letter sent by Ministry of Justice Jānis Bordānus to Patriarch Kirril should soon be supplemented by a resolution of the Holy Synod of the Latvian Church: it is expected to contain an explicit request for the granting of autocephaly. In the current situation, the Moscow Patriarchate has consistent motifs to assert that the canonical rules for requesting autocephaly have been violated. The Moscow Patriarchate is also in the position of claiming that the Church benefits anyhow from an overall administrative and economic autonomy: since it is a self-administered Church as the Statute of the Russian Orthodox Church

⁵ For amendments to the Presidential Bill: Par likumprojektu "Grozījumi Latvijas Pareizticīgās Baznīcas likumā"[On the Bill "Amendments to the Law on the Latvian Orthodox Church], 05.09.2022. Publicēts: Latvijas Vēstnesis, 172, 06 September 2022. OP numurs: 2022/172.1 (<https://likumi.lv/ta/id/335219-par-likumprojektu-grozijumi-latvijas-pareizticigas-baz-nicas-likuma>); Grozījumi Latvijas Pareizticīgās Baznīcas likumā [Amendments to the Law on the Latvian Orthodox Church], Publicēts: Latvijas Vēstnesis. 175A, 09 September 2022. N. OP (2022/175A.1 <https://likumi.lv/ta/id/335376-grozijumi-latvijas-pareizticigas-baznicas-liku-ma>).

⁶ This is the reflection made by Professor Inese Runce, lecturer in cultural and religious studies at the Faculty of Humanities of the University of Latvia. He reports that "the amendments to the law were developed in consultation with the Latvian Orthodox Church, but this is a great precedent that has never happened in Latvia." *Eksperte brīdina par sekām, ja Latvijas Pareizticīgā baznīca neatbalstīs atdalīšanos no Maskavas patriarhata*, [Expert warns of consequences if the Latvian Orthodox Church does not support separation from the Moscow Patriarchate] (<https://jauns.lv/raksts/zinas/521052-eksperte-bridina-par-sekam-ja-latvijas-pareizticiga->).



stipulates⁷, the Latvian Parliament therefore 'behaved like the Byzantine emperors'⁸.

Commenting on the law on behalf of the Patriarchate, Patriarch Kirill's advisor contested the method and the substance of the Latvian side's claims. He pointed out that the aforementioned Tomos of 1921 granted administrative and economic autonomy to the Latvian Church, in accordance with the Moscow Patriarchate's adopted scheme of relations with the Churches that belong to it, but it operated in State entities other than the Russian Federal Republic. Additionally, he stated that the Russian Orthodox Church does not grant autocephalies, because it considers itself united from a theological and dogmatic point of view. The decisions taken in 1992, and repeatedly reiterated by the Holy Synod and the Patriarchs, on the unity of the Russian Orthodox Church should be read in the same way⁹.

After noting, with a certain sarcasm, that:

«The secular parliament is invited to take charge of resolving the internal issues of the ecclesiastical organisation of Orthodoxy in the country, the exponent of the Muscovite Patriarchate asks - arguing on the point of law - how this *modus operandi can be* reconciled with the content of Article 99 of the Constitution of the Republic of Latvia, which states verbatim: "The Church is separate from the State"? How does it relate to the international human rights acts that Latvia has signed? And the answer is: "No way. And this is not particularly surprising to anyone in the atmosphere of legal nihilism that embraces our western neighbours. What matters is only momentary political expediency, as understood by the country's leaders or the

⁷ *Устав русской православной церкви 2017* [Statute of the Russian Orthodox Church 2017] (<http://licodu.cois.it/?p=11573>).

⁸ The Latvian Parliament's decision has drawn criticism from the Moscow Patriarchate, which has drawn attention to the serious interference of secular authorities in Church affairs. As archpriest Nikolai Balashov noted, with this decision the Latvian authorities 'have gone beyond the Middle Ages'. Cf.: **N. BALASHOV**, *Комментарий советника Патриарха Московского и всея Руси протоиерея Николая Балашова в связи с заявлением президента Латвийской Республики* [Commentary by Archpriest Nikolai Balashov, Adviser to the Patriarch of Moscow and All Russias, to the statement of the President of the Republic of Latvia] (<https://pravoslavie.ru/148126.html>).

⁹ The high prelate had spoken articulately on the history of the Estonian Orthodox Church, extending his analysis to the history of the Orthodox Churches in the Baltic Republics at the *international online historical and theological conference 'The Estonian Orthodox Church: 100 Years of Autonomy'*. Cf.: *Автономия Эстонской Православной Церкви: страницы истории*, [Autonomy of the Estonian Orthodox Church: pages of history], (<https://pravoslavie.ru/135677.html>).



curators behind them. What such decisions will bring to the Latvian people is entirely irrelevant"».

For its part, on 8 September 2022, the LPB commented the measure as follows:

“On the initiative of Mr Egils Levits, President of Latvia, the Saeima of the Republic of Latvia has made amendments to the Law of the Orthodox Church of Latvia. This decision is of a legal nature and the changes made concern the legal status of the Church. The State has determined the autocephalous status of our Church. The State has determined that the Orthodox Church of Latvia is legally independent of any church centre located outside Latvia, maintaining spiritual, prayer and liturgical communion with all canonical Orthodox Churches in the world. The change of status does not change the Orthodox faith, dogmas, liturgical life of the Church, calendar style, sacred liturgical language, rituals, traditions and inner life of the Church.

The Synod of the LPB lovingly invites the clergy and laity to maintain a peaceful spiritual state of mind, to preserve the unity of our Church, strictly observing the laws of our Latvian state. By living in spiritual and prayerful unity with the entire Orthodox world, we will preserve the purity of our faith and strengthen Holy Orthodoxy in the land of Latvia. We ask all believers to pray diligently and sincerely for our Holy Church, that the Merciful Lord will protect it in peace and prosperity”¹⁰.

From the text of the communiqué it is possible to state that the Church takes in the account the decisions of the political authority. None theless, it is only concerned to invite the believers to calm, while reassuring them, but it absolutely does not take any position on a measure that severely affects its autonomy. It is also significant that it does not make the State's request its own by not making any request for autocephaly to the Mother Church.

2 - Birth and Development of the Latvian Orthodox Church

¹⁰ The text of the communiqué issued by the LPB is available in: *Revolucionara tieslietu ministra Bordana vestule Makavas patriarham. Ko Letvijas valdiba pieprasa no Krievijas baznīcas?* The letter of the revolutionary Justice Minister Bordana to the Patriarch of Moscow, that includes what the Latvian Government is asking to the Russian Church, is available at: <https://jauns.lv/raksts/zinas/521544-revolucionara-tieslietu-ministra-bordana-vestule-maskavas-patriarham-ko-latvijas-valdiba-pieprasa-no-krievijas-baznīcas>.



In order to clarify the open dispute between the Latvian State and the Moscow Patriarchate it is useful to retrace, albeit briefly, the history of the LPB. Indeed, since 1836 the Latvian Orthodoxy has been subordinated to the Moscow Patriarchate, to which the Riga Vicariate of the Eparchy of Pskov and since 1850 the Eparchy of Riga belonged. In July 1921, the then Patriarch of Moscow Tikhon granted the Latvian Orthodox Church autonomy - as we have mentioned - thanks to the direct relations between him and the Archbishop of Riga Jānis (Pommer). In this regard, it is relevant to consider the Tomos by which the Eparchy's independence was recognised in economic, administrative and civil matters, but not in spiritual and canonical ones: translations of the Holy Scriptures, structure of liturgical services and all those matters pertaining to spiritual and dogmatic matters¹¹. This pattern of relations between the Moscow Patriarchate and the Orthodox Churches of nations other than Russia responds to the particular vision that this Patriarchate has of its Church. In particular, the Church is considered universal, and it represents the 'third

¹¹ Tomos No. 1026 of 6 (19) July 1921 on the Autonomy of the Latvian Orthodox Church 6/19 July 1921, № 1026: "To His Grace John, Archbishop of Riga and Mitau. With the blessing of His Holiness the Patriarch, the Holy Synod and the Supreme Council of the Church, in a united presence, have issued a judgement on granting independence to the Orthodox Church in Latvia in the ecclesiastical-economic, ecclesiastical-administrative, ecclesiastical-educational and ecclesiastical-civil affairs spheres. Taking into account the fact that the Orthodox Church in Latvia is located within the borders of an independent state, resolved to guarantee the independence of the appointed Church in all matters relating to ecclesiastical-economic, ecclesiastical-administrative, scholastic-educational and ecclesiastical-civil affairs, of which to notify Your Eminence, instructing you as regards the calendar, to give your permission to use the new style at your discretion".

Русский мир и Латвия: Православие в Латвии в документах эпохи: Архиепископ Иоанн (Поммер) в Латвии - 1921 год. Сборник документов / Под. ред. С.Мазура. Рига, 2016. Издание общества Seminarium Hortus Humanitatis. Вып. 43. С. 39. [Russian world and Latvia: Orthodoxy in Latvia in the documents of the time: Monsignor John (Pommer) in Latvia - 1921. Collected documents / Sub. ed. S. MAZURA. Riga, 2016. Publication of the Society Seminarium Hortus Humanitatis, Issue 43, p. 39].

For a reconstruction of the history of the Latvian Orthodox Church and the magisterium of John Pommer, see: **К. АРИСТОВА**, *Дипломатическая деятельность священномученика Иоанна (Поммера) по сохранению статуса Латвийской православной церкви в межвоенный период*, [Diplomatic activities of hermartire John (Pommer) to preserve the status of the Latvian Orthodox Church in the interwar period] (<https://interaffairs.ru/jauthor/material/2552>).

An authoritative part of Latvian ecclesiastic doctrine sees in this document the legal foundation of the autonomy of the Latvian Church. In this sense, see: **M. DRĒĢERIS**, *Par Latvijas Pare Latviizticīgās Baznīcas tiesisko statusu*. [On the legal status of the Latvian Orthodox Church], "Jurista Vārds," 15 October 2019, Nr. 41 (1099).



Rome' (heir of Rome and Byzantium) within Orthodoxy. It attributes itself the role of representing Orthodox Christianity, as a Church that is more numerous and governed by a Patriarchate endowed with an effective canonical territory. Differently, the Ecumenical Patriarchate is not supported by a state authority and it is in fact virtual¹². This choice differentiates the Moscow Patriarchate from other Patriarchates because it does not apply traditional Orthodox doctrine on the subject of autocephaly, proof of which is that in Article 1 of its Statute it defines itself as a "multinational local autocephalous Church, which is in doctrinal unity, prayer and canonical communion with other local Orthodox Churches"¹³. Some of its Churches are self-administered, which means that they enjoy administrative and economic, but not doctrinal and theological autonomy. In addition, their activity is regulated - as far as the Latvian Church is concerned - by Chapter XII of the aforementioned Statute¹⁴.

This was the legal status of the LPB already in 1919, so much so that anti-Russian political forces attempted to create a 'Baltic Church' that would unite the Orthodox Churches of Latvia, Estonia, Finland and Lithuania¹⁵. This project was politically opposed by Archbishop Jānis

¹² To this ecclesiological vision of pan-Orthodox relations, the current Patriarch Kirill has superimposed *Russophony*, drawing the boundaries of the Russian Church's operation with the presence of Russian-speaking populations, when it is convenient, as in the case of Ukraine, but ready to derogate from it when geostrategic reasons on the presence of the Russian Patriarchate in the world require it as in the case of the creation of the Exarchate of North and South Africa. **V. PARLATO**, *Recenti controversie sulla giurisdizione territoriale nell'Ortodossia: l'esarcato moscovita per l'Africa*, in *Stato, Chiese e pluralismo confessionale*, Telematic Review (<https://www.statoechiese.it>), Issue no. 12 of 2022, pp. 67-83. In doing so, the Russian Orthodox Church considers itself de facto universal, on a par with the Catholic Church.

¹³ *Устав русской православной церкви 2017* [Statute of the Russian Orthodox Church 2017], <http://licodu.cois.it/?p=11573>, was adopted by the Council of Bishops in 2000 and updated to 2017. For a commentary on the Statute, see **A. KLUTSCHEWSKY, T.M. NEMETH, E. SYNEK**, *Das Statut der Russischen Orthodoxen Kirche, "Kamon!"*, no. 19 of 2006, pp. 41-72.

¹⁴ Strong criticism has been advanced with specific reference to the status of the Latvian Church by Orthodox canonists close to the positions of the Patriarchate of Constantinople, **G. PAPATHOMAS**, *Problème d'une absorption ecclésiastique dans une Eglise nationale: Églises orthodoxes d'Estonie et de Lettonie. Quelle altérité? Quelle communion?*, *L'Année Canonique*, 2006, pp. 125-133.

¹⁵ On 1st September 1919, the Department for Spiritual Affairs was set up under the Ministry of the Interior of Latvia, which worked hard, at the suggestion of J. Seksis, Latvian Minister resident in Estonia and Secretary of the Department of the Baltic States,



(Pommer) who, elected to the Latvian Parliament, managed to prevent it from being realised thanks to his role as a politician and religious primate at the same time¹⁶.

In Latvia, in the same year, Archbishop Jānis (Pommer), continuing his work on the organisation of the LPB, convened the first assembly of the Church in which the Statutes were adopted on the basis of the document signed by Patriarch Tikhon. The canonical regulations of the Church and the Statutes of the congregations were prepared and registered with the Ministry of the Interior on 26 March 1924, under protocol number 170597¹⁷. Article 1 of the Statutes provided that "the Orthodox Church of Latvia, which is located within the borders of the sovereign state of Latvia, has canonical autonomy [...]"; article 6 states that "in the LPB, the highest legislative, administrative, judicial and controlling power belong to the local Saeima Church".

to convene a conference to be held in Finland to concretise the initiative, which was to take place in the period from 1921 to 1922. In response to this request, on 14 November 1921, signed by the Deputy Minister of the Interior of Latvia and the Director of the Department for Religious Affairs, a letter was sent to the Latvian Ministry of Foreign Affairs on letterhead headed "confidential" with the following content: "In the foreseeable future, Latvia will not be able to take any steps, for the Latvian Orthodox parishes and, in fact, their representatives at the Synod are not entirely exempt from Russophilia, and the Moscow candidate for the position of bishop of the Latvian Orthodox Church, John (Pommer), cannot be considered exempt from Russophilia due to his activities". On the Department's role in the Latvian government's church policy, see **G. CIMBALO**, *Confessioni e comunità religiose nell'Europa dell'Est, pluralismo religioso e politiche legislative degli Stati*, in *Stato, Chiese e pluralismo confessionale*, cit., no. 8 of 2019, (<https://www.giovannicimbalo.it/wp-content/uploads/2022/05/Cimbalo.M.Pluralismo.pdf>), pp. 16-18.

¹⁶ Having failed in this attempt, the same political-religious forces urged the intervention of the Patriarch of Constantinople Meletius (Metaksakis), who gave birth to the Orthodox Metropolia of Estonia with a Tomos issued on 7 July 1923, which is the residual effect of this project, in fact violating Orthodox canon law by installing bishops in the canonical territory of another Church. On this subject and in support of the positions of the Ecumenical Patriarchate, see: G.D. PAPATHOMAS, M.H. PALLI (Eds.), *The Autonomous Orthodox Church of Estonia. L'Eglise Autonome Orthodoxe D'Estonie. Approche historique et nomo-canonique*, Bibliothèque Nomocanonique, Vol. XI, Athenes, Epektasis, 2002, pp. 59-60.

¹⁷ Latvijas Republikas Uzņēmumu reģistra reliģiskās organizācijas "Latvijas Pareizticīgā Baznīca", vienotais reģistrācijas Nr. 90000085869, reģistrācijas lieta. [Registration file of the religious organisation "Latvijas Pareizticīgā Baznīca", single entry No 90000085869 in the Commercial Register of the Republic of Latvia].



Thus, on 8 October 1926, pursuant to Article 81 of the Constitution of the Republic of Latvia of 1922, the 'Regulations on the State of the Orthodox Church'¹⁸ was adopted, providing what follows:

"1) The Orthodox Church in Latvia enjoys the right of self-government and self-determination provided for in its canons in the issuance of canonical regulations and legal norms, ecclesiastical administration, ecclesiastical court and ecclesiastical leadership" (Article 2);

2) In the regulations the head who is in charge of the Orthodox Church is independent (Article 5);

3) All the rights and things of the local Orthodox Church, in accordance with the laws of Latvia, which belonged to the hierarchs of the Church, synods, consistories and other institutions, organisations and officials of the latter during its dependence on the All-Russian Orthodox Church, were recognised as belonging to the LPB, its ruling hierarchs, synods and other institutions, organisations and officials according to canonical affiliation (Art. 6)".

This complete autonomy and independence of the Church was recognised by the State, determining the legal status of the Church as completely independent in its relations with the institutions of the Latvian State¹⁹.

Thanks to the role played by Archbishop John (Pommer) in Latvia between the Wars, the LPB was *'de facto'* independent, but not *'de jure'* in the sense that it was canonically subordinate to the Moscow Patriarchate, but in spite of this, this Church managed to maintain its canonical status of wide autonomy for almost the entire inter-war period, and this was due to the far-sighted and independent stance of its primate²⁰, who managed to maintain control of the Orthodox parishes in Latvia until his tragic death

¹⁸ "Noteikumi par pareizticīgās baznīcas stāvokli", [Regulations on the Status of the Orthodox Church], Valdības Vēstnesis, 11 October 1926, Nr. 228.

¹⁹ Hermanis Albats, Minister of Foreign Affairs at the time and a well-known jurist argued in his lectures that the Church 'enjoys the right to self-determination and self-government [...] and that the Virsgan is the head of the Church and the Church is independent of other Churches', **H. ALBATS**, *Baznīcu tiesības*, Rīga, Latvijas Universitāte, 1930, p. 50.

²⁰ Using and skilfully interpreting the Tomos of 1921, the archbishop managed to prevent the severing of canonical ties with the Moscow Patriarchate until his death. The Orthodox Churches of Poland, Finland and Estonia were unable to do so and, under pressure from their respective governments, came under the jurisdiction of Constantinople.



caused by unknown persons in October 1934²¹. To prove this, the Church hierarchy decided to transfer the LPB under the jurisdiction of the Patriarchate of Constantinople after his death²². This initiative was part of repeated attempts by the political power of Latvia to place the Estonian Orthodox Church under the jurisdiction of the Patriarchate of Constantinople, removing it from the jurisdiction of the Moscow Patriarchate²³.

However, this choice was contested by the clergy and the majority of the laity, and with the development of the political situation and the subsequent outbreak of war, the conditions were created for the gradual return of the Church under the jurisdiction of the Moscow Patriarchate and the reconstruction of the hierarchy were created. Following the end of the War and the incorporation of Latvia into the USSR, the LPB organically became part of the structure of the Russian Orthodox Church²⁴. When the country regained its independence as a result of the

²¹ In 1925, Archbishop John (Pommer) was elected to the Republican Saeima, where he defended the equality and freedom of the Latvian Orthodox Church as well as other religious denominations in Latvia. On the night of 11-12 October 1934, Archbishop John was burnt alive in his suburban dacha. The investigation into his murder was inconclusive: both the Latvian special services and agents of the Soviet Union were suspected.

²² On 9 and 10 March 1936, the Latvian Parliament declared the Latvian Orthodox Church autocephalous with Metropolitan Augustin (Peterson) (1873-1955) as its head. At the same time, changes were made to the Statutes, which were registered at the Ministry of the Interior on 7 September 1936 with No. 140503. Cf.: **M. DRĒĢERIS**, "Būt karā" jeb pusceļā uz jaunu Latvijas Pareizticīgās baznīcas statusu, ["To be at war" or halfway to a new status of the Latvian Orthodox Church]. "Jurista Vārds", 13 Septembris 2022 /NR. 37 (1251).

²³ On the repeated attempts of the Patriarchate of Constantinople to attract the Orthodox Churches of the Baltic countries into its political orbit with the intention of containing and opposing the Patriarchate of Moscow, see **К. АРИСТОВА**, *Дипломатическая деятельность священномученика Иоанна (Поммера) cit. , as well as прот. НИКОЛАЙ БАЛАШОВ, С.Л. КРАВЕЦ* Православие в Эстонии (Том 1) [Orthodoxy in Estonia], Москва, Церковно-науч. центр "Православная энцикл.", 2010, ch. III, in particular; available online, (https://azbyka.ru/otechnik/Istorija_Tserkvi/pravoslavie-v-estonii-tom-1/4_8).

²⁴ After the end of World War II, the autonomous status of the Latvian Orthodox Church was not restored; it was part of the Russian Orthodox Church and was led by the Latvian-Riga Eparchy of the Russian Orthodox Church, which was subordinate to the Moscow Patriarchate and registered in the 'Latvijas Pareizticīgā Baznīca' with the unique registration number 90000085869.



"singing revolution" though²⁵, the Synod of the Moscow Patriarchate adopted simultaneous measures to grant self-administration to the countries that had become independent²⁶.

As far as the Latvian Church was concerned, the Statutes of the Eparchy of Riga and Latvia as a whole (in Latvian: *Rīgas un visas Latvijas metropolīts*) were amended and approved by Patriarch Alexis II of Moscow and all Russia. They were then registered on 28 March 1991 under law no. 360 at the Department for Religious Affairs of the Ministry of Justice. Subsequently, on 11 August 1992, a decision of the Holy Synod of the Russian Orthodox Church reinstated Patriarch Tikhon's 1921 decree on the autonomy and independence of the LPB, as well as its former name, and on 22 December 1992, Patriarch Alexis II of Moscow and all Russias handed over the Tomos to the Orthodox Church of Latvia. On that occasion, Alexis II emphasised the service of the Church in the territory of an independent state and confirmed, in the first point, that:

"Henceforth, the LPB, according to its statutes approved by us and the Holy Synod, is independent in ecclesiastical-administrative, ecclesiastical-economic, ecclesiastical-educational and ecclesiastical-civil cases, while remaining under the canonical jurisdiction of the Moscow Patriarchate and maintaining only a spiritual and canonical link with the Mother Church the Moscow Patriarchate"²⁷.

²⁵ Lithuania, Latvia and Estonia move towards independence through the so-called 'Singing Revolution', C. THOMSON, *The Singing Revolution: A Political Journey Through the Baltic States*, Penguin Michael Joseph, London, 1991.

²⁶ The Ukrainian Orthodox Church is self-governing with the rights of a wide autonomy (Chapter X of the Statute); the Belarusian Orthodox Church constitutes an Exarchate with jurisdiction over the entire national territory (Chapter XIII); the Orthodox Churches of Moldova, Latvia, Estonia (Chapter XII) are self-administered Churches within the Moscow Patriarchate; the Chinese Orthodox Church and the Japanese Orthodox Church are self-governing (Chapter XI), and there are two Metropolitan Districts, those of the Republic of Kazakhstan and Central Asia; the exarchates of North Africa and South Africa have been recently added to these structures.

²⁷ After the restoration of the independence of the Republic of Latvia, the relevant status of the Church was restored in negotiations between the Minister of Justice of the Republic of Latvia Viktor Skudra and the representative of the Moscow Patriarchate of the Russian Orthodox Church, Metropolitan Juvenalius. The parties agreed to: "Include in the Statutes of the Eparchy the reference to the basis of the autonomy and independence of the Church in accordance with the 1921 decision of Patriarch Tikhon, as well as the canonical subordination of the Latvian Orthodox Church to the Moscow Patriarchate of the Russian Orthodox Church".



3 - The Religious Freedom Act and its amendments

The consolidation of the new political order created after the country regained its independence from the USSR led the Parliament to distance from the Soviet model of relations between the State and the Churches, and from that adopted by Poland and Estonia. This system favoured a regime of equal treatment between cults so as not to turn the matter into an opportunity to divide the nation²⁸.

In 1995 the Religious Freedom Act was adopted and amended several times²⁹. Section 1 clarifies the meaning of the terminology used in the measure. Section 2 indicates the aim of the measure, which is to ensure religious freedom, and therefore gives a definition of religious denominations, identifying their constituent bases according to the principle of equality. It also defines their role in education, identifying the procedures for the establishment of religious organisations, their registration and the documents, requirements and conditions necessary to obtain it. The amendments made to the law in 2008 abolished some protections through administrative appeal against the refusal of registration. To compensate for the effects of this amendment, the guarantees for the rights of religious denominations are increased in Article 13.

²⁸ The Office for Relations with Religious Denominations became the Religious Department at the Ministry of Justice in 1996. Following a further reorganisation of government structures, the Department assumed the name of 'Religious Affairs' and took the name of 'Department for Public and Religious Affairs' on 2 January of the following year. Further changes were made with the approval of the "Amendments to the Religious Organisations Act", adopted on 6 May 1992, when the Minister of Justice approved the Statute of the Department of Religious Affairs. He specified that the Department also had the function of promoting the role of religious organisations, increasing the moral education of society, environmental protection, cultural, conservation of historical and artistic values, as well as charitable charity and promotion movements. The regulation approved by the Department on 28 November 1997 stipulated that it should 'promote mutual understanding and pluralism between different religions and confessional organisations, believers and other open-minded people', **G. CIMBALO**, *Confessioni e comunità religiose nell'Europa dell'Est, pluralismo religioso e politiche legislative degli Stati*, in *Stato, Chiese e pluralismo confessionale*, cit., no. 8 of 2019, p. 17.

²⁹ *Law On Religious Organisations*. The law was passed in 1995 and subsequently amended on 17 June 1996, 27 February 1997, 19 February 1998, 15 June 2000, 12 September 2002 and 18 December 2008. The text commented on here is the consolidated text, in the version prepared by the Tulkošanas Valsts valodas centrs (State Language Centre) (<https://www.google.com/search?client=firefox-b-d&q=Latvian+Law+on+Religious+Organizations%2C+September+7%2C+1995%2C+as+amended+in+2002>).



The law then deals with the regulation of the activities of religious denominations and regulates the use of foreign clergymen and religious personnel and then establishes controls on economic and entrepreneurial activities, as well as on their profits.

The procedures for the liquidation and reorganisation of religious associations were much debated, and this is witnessed by the repeated amendments. The 2008 changes focus on the causes and consequences of the cessation of the activities of a religious organisation and its institutions, while addressing in the country the effects of the proliferation of the activities of associations affiliated with the so-called 'new religions' and the rights of their employees.

The transitional provisions do not affect the legal statutes of those congregations, associations (churches) and religious monasteries that have already been registered within the Ministry of Justice. By 1 May 1998 though, all existing religious organisations, regardless of the period of their registration, should harmonise their statutes with the law and, if necessary, according to legal requirements, they should modify and adopt statutes in conformity with the law, change their structure and establish management and control institutions, change their names, name abbreviations and emblems³⁰.

4 - The Law on the Latvian Orthodox Church and the amendments made by the Saeima

All the conditions for the LPB to adapt its statutes to State law are established.

This is what happened on 13th November 2008 with the approval of the LPB Law³¹. After giving a definition of the legal terms used, and warning that are equal to those in the Law on Religious Organisations, unless otherwise specified, the law lists the names of the Confession's ecclesiastical personnel. It sets out the purpose and tasks of the measure, identifying them as the promotion of "the development of an open, legal

³⁰ *Ibidem*.

³¹ Latvijas Pareizticīgās Baznīcas likums. Latvijas Vēstnesis, 03 December 2008, Nr. 188 (<https://likumi.lv/ta/id/184626-latvijas-pareizticigas-baznicas-likums>). The law has been amended twice. Both amendments to the law were made by the 13th Saeima, on 6 June 2019 and 8 September 2022, respectively; both the 2019 and 2022 amendments can be considered of substantial relevance, while strictly adhering to the boundaries of the separation of Church and State as defined by Article 99 of the Constitution.



and harmonious society, as well as of the cultural environment". The text of the law then reaffirms its compliance with Article 99 of the Constitution of the Republic of Latvia³², respecting the existence over time and

"the spread of the Church as a traditional religious organisation in Latvia, recognising its contribution and rich experience in the fields of physical and mental health, education, culture, social welfare of society and other areas",

taking into account the fact that the cultural and artistic heritage of national importance is in the possession of the Church. It reiterates that the purpose of the law is to "regulate the legal relations between the State and the Church and determine the common tasks of the State and the Church in the social, legal, educational and cultural fields (Art. 2)".

Particular attention is devoted to the recognition of the Church's status as a legal person and the rights arising therefrom, in accordance with the normative acts. It is noted that in carrying out its activities, the Church respects the Constitution of the Republic of Latvia, this Law, the Law on Religious Organisations, the Law On the Protection of Cultural Monuments and other normative acts regulating the activities of religious organisations, as well as the Church Statutes. The Church is self-governing and self-determining, as set forth in its Statutes, and the State grants it this right, along with the right to "interpret the Holy Scriptures of the Bible, to formulate its teaching (doctrine) and preach it, to shape its inner life according to the canons, including its organisational structure and mission". It stipulates that the name of the Church is 'Latvijas Pareizticīgā Baznīca', which may only be used by it, its congregations, as well as the institutions founded by it. The law protects its denomination and ensures the Church's right to exercise jurisdiction over its internal life, and it considers the appeal for abuse and the appeal for confidentiality to be illegitimate.

Article 4 is devoted to the Head of the Church who represents the Church in relations with the State and may authorise other persons to act on behalf of the Church "in relations with the State, in the cases and in the manner specified in the Church Statutes". This article was amended in 2019, enumerating the requirements for appointed candidates of the Church's spiritual staff, stipulating that only Church clergy and Latvian

³² "Ikvienam ir tiesības uz domas, apziņas un reliģiskās pārliecības brīvību. Baznīca ir atdalīta no valsts", [Art. 99: Everyone has the right to freedom of thought, conscience, and religious belief. The Church is separate from the State], Latvijas Satversmes Sapulces 1922, gada 15. februāra kopsēdē planet (<http://licodu.cois.it/?p=4704>).



citizens whose permanent residence has been in Latvia for at least 10 years may hold ecclesiastical positions³³.

The law protects the (movable and immovable) property of the Church and requires the written consent of the Head of the Church for the purchase, expropriation, mortgaging and other encumbrances on immovable property, even though the State reserves the right to resort to the law "On the compulsory expropriation of immovable property for state or public needs"³⁴. Yet, Churches and cemeteries owned by the Church may not be expropriated by force. There is an obligation for congregations to inform the Head of the Church of purchases, expropriations and the taking of mortgages, but places of worship and ritual objects may not be mortgaged or subject to collection at the request of creditors. The Church maintains supervision of places of worship, chapels, cemeteries and ceremonies held there. The installation or construction (reconstruction, renovation, even demolition) of places of worship, chapels, Church cemeteries, takes place with the written authorisation of the Church hierarchies. The Church controls its cemeteries and the ceremonies held there in accordance with the procedure established by the Church, but may hold religious ceremonies in municipal cemeteries³⁵.

³³ The purpose of these amendments to the law, adopted as a matter of urgency in consultation with representatives of the Church and the Ministry of Foreign Affairs, was to strengthen its autonomy and ability to isolate it from potential outside influences. See the annotation of the bill 'Grozījums Latvijas Pareizticīgās Baznīcas likumā' anotāciju. [Amendment to the Law of the Latvian Orthodox Church' (<https://titania.saeima.lv/LIV/S13/saeimalivs13.nsf/0/19BC262F578C1E1AC225840A002E6C67?OpenDocument>) [aplūkota 7 September 2022.]]. However, the 2019 amendments to the LPB law took place - according to the government - in agreement with the Church hierarchies, whereas in the case of the draft law, the initiative is unilateral and its purpose, as well as the proposed amendments, although in line with the previous amendments, tend to avoid possible interference in the autonomy of the religious organisation by a foreign State. This purpose has been recognised by the ECHR as an indispensable component of pluralism in a democratic society (cf. ECHR, *Case of Hasan and Chaush v. Bulgaria*, Application no. 30985 of 1996, Strasbourg, 26 October 2000, paragraph 69 and paragraph 81 ECHR, *Case of Miroļubovs and Others v. Latvia*, Application no. 798 of 2005, (Section III), Strasbourg, 15 September 2009. However, the protection of confessional autonomy is implemented through an intervention of authority by another entity outside the confession: the Latvian state, in so doing, in turn violates the autonomy of the confession.

³⁴ Sabiedrības vajadzībām nepieciešamā nekustamā īpašuma atsavināšanas likums, "Latvijas Vēstnesis," 174, 3 November 2010.

³⁵ For an analytical review of cemetery legislation in Eastern European countries, see: **G. CIMBALO**, *Alla ricerca delle identità perdute: la crescente domanda di cimiteri privati e*



Art. 8 states that the Church undertakes to protect the cultural monuments in its possession in accordance with the regulations and to ensure their accessibility in accordance with the laws protecting them, receiving financial support from the state for their conservation and restoration. The municipalities have the right to participate in the conservation and restoration of cultural monuments of local importance that are not economically usable, as well as in the conservation and restoration of cultural monuments of national importance in the sacred place of Valgunde, which is specifically protected by Articles 7 and 16 of the Act³⁶.

Interestingly, if authorised by the Church, the text of the law recognizes the right of priests to marry: in order to do so, they should be registered on the list of clerics eligible for marriage; this list is filed in accordance with the Ministry of Justice. Ministers of religion are exempt from interrogations, from taking part in trials and have the right to maintain confessional secrecy, to be recruited by officials or institutions.

The right to religious assistance in the armed forces and exemption from military service for seminarians, who are assigned to non-armed duties in the event of general mobilisation, is enshrined. Church chaplains work in the national armed forces³⁷, in airports, harbours, land transport stations, health care institutions, medical care, social welfare institutions, prisons and other places where ordinary clergy assistance is not available, under the supervision of the Church.

The Church may aid asylum seekers if it fears persecution on account of the person's Orthodox convictions during the asylum-granting process and may express opinions on the possible persecution of the asylum seeker on account of his or her Orthodox convictions at the request of the State. The rights of those who work for the Church and their right to establish relations in accordance with the rules of mainstream organisations are guaranteed. The working relationships of priests depend exclusively on the Church hierarchy (Art. 14).

In educational institutions founded and run by the Church, the content of education and the course of studies are determined by it. The

religiosamente gestiti nei paesi dell'Est Europa, in *Il Diritto ecclesiastico*, 2017, Issue 3/4, pp. 703-729.

³⁶ Kultūras pieminekļu uzskaites, aizsardzības, izmantošanas un restaurācijas noteikumi, [Rules for the accounting, protection, use and restoration of cultural monuments], Rīgā 2021, gada 26, oktobrī (prot. Nr. 72 paragraph 41.8).

³⁷ Nacionālo bruņoto spēku likums, [National Armed Forces Law] Latvijas Republikas Saeimas un Ministru Kabineta Ziņotājs, 24, 30 December 1999.



licensing and accreditation of these institutions and their educational programmes is carried out in accordance with the applicable legal acts. The Church has the right to educate its clergy at the Riga Theological Seminary and other educational institutions for the Church's spiritual staff; its educational institutions may receive financial support from the State. The Church has the right to teach the Christian faith in state and local educational institutions in the manner specified by this law.

The Church prepares a report on the use of the funds from the state budget allocated to it in the manner provided for in the Budget and Financial Management Act and forwards it to the Ministry of Finance. Finally, the Church transmits in writing to the Ministry of Justice a list of those persons who fulfil the status of members of the clergy and who are legitimately entitled to carry out the activities provided for in this Act, as well as information on these persons. The Council of Ministers shall determine the amount of information to be transmitted to the Ministry of Justice, the manner and time limits for its transmission and updating. The Church shall notify the Ministry of Justice while making changes to the information provided in the first part of this Article within two weeks. The information transmitted to the Ministry of Justice is publicly available (Art. 18). This provision testifies the depth of the controls exercised by the State, which obtained the lists of the clergy and their hierarchy on 1 July 2009.

After this law, the Church harmonised its statutes with this law, making the relevant amendments, approving them in the new version and submitting them to the Ministry of Justice for registration in the register of associations, in the manner provided for religious bodies. Already in 2019 - according to the legislator, as already mentioned - the purpose of the amendments to the law was to strengthen the autonomy of the LPB, while safeguarding it from potential external influences.

This same motive would be at the basis of the law of September 2022 and of the LPB's unilateral declaration of autocephaly (one should more properly speak of acephaly). This is not only due to the request not originating from the Church, but because this request is imposed by an external subject - the State - on a Church that seems to accept it supinely and with resignation.

To proof this fact, the State reassures believers and invites them to calm and live with serenity, carefully avoiding to make a pronouncement on the merits³⁸. Above all, what is different in this case is the purpose of

³⁸ See: footnote 10.



autocephaly, which is required in the intentions and interests of the requesting State. In fact, it calls itself a separatist State and should, strictly speaking, respect the autonomy of the Church. Moreover, the majority religion is not the Orthodox one and therefore the State could not receive support and legitimacy from the establishment of a symphonic relationship with the confession, a purpose it does not actually pursue.

In this context, acephaly assumes a defensive role for the interests of the State and declaredly responds to a need to protect oneself from outside influences that could occur through a Church: indeed, under a scheme of separation between state and confession, interferences have no reason to exist. Moreover, the securitarian purposes of the legislative intervention are therefore evident and declared, and attribute anti-national intentions to the faithful citizens of this Church for the mere fact of being faithful to it. For this reason, the legislative power derogates, from the separatist constitutional principle, adopting instruments typical of *jurisdictionalism* through the imposition of acephaly on the Church.

The Government's letter to the Patriarch of the Russian Church - the Orthodox Patriarchate of Moscow, recognising its jurisdiction and power to grant autocephaly to the LPB, thus strictly adhering to the canons governing Orthodoxy, was formulated with the intention of remedying this obvious contradiction. In order to argue its request, the Latvian Government argues that the roots of the requested autocephaly are already contained in the Tomos of 1921 and in that of 1992. In addition, this would not be a matter of starting *ex novo* a path that follows the canonical procedures passing through the initial request by the Synod of the Latvian Church. Instead, this would be a matter of transforming a *de facto* situation into a canonically defined autocephaly. To this request, the Moscow Patriarchate objects that this is not a matter of autocephaly in the cited Tomos, but of self-administration, in accordance with Article 10 of the Statute of the Moscow Patriarchate. This is true because the Russian Orthodox Church is and considers itself a united Church, on the theological and dogmatic levels, united by a single rite that finds its place in the hierarchy of the Orthodox Patriarchates, organised hierarchically in autonomy. It also considers its mission achievable only by guaranteeing and maintaining its hierarchical and canonical unity³⁹.

³⁹ N. BALASHOV, *Комментарий советника Патриарха Московского и всея Руси протоиерея Николая Балашова в связи с заявлением президента Латвийской Республики*. [Comment by Archpriest Nikolai Balashov, Advisor to the Patriarch of Moscow and All Russias, on the statement of the President of the Republic of Latvia] (<http://www.patriarchia.ru/db/text/5957221.html>). For comments from the Russian press, see A.



Therefore, even if the Church with the Synod of Bishops - to which it belongs the exclusive power to make such a request, were to agree to make such a request, it would place itself outside of the relationship with the Russian Church, whose Statutes they don't foresee it. For this reason, the request - which, moreover, has not been made - is an integral part of the process of perfecting the request for autocephaly. On the one hand, even if it were to be made, it would be canonically unacceptable, because it is contrary to the Statute of the Russian Orthodox Church. On the other hand, the problem does not currently arise, because a formal decision on the separation from the Moscow Patriarchate must be taken by the Synod of the Latvian Church.

The State of Latvia could request or recommend that the Synod make such a decision, but what the State has changed is only the legal regulations, which contradict Orthodox traditions and canonical norms:

"If the President and the Saeima know that the Archbishop and the LPB Synod are ready to vote for secession, then the situation will develop in a normal direction. However, if the Synod refuses and is unable to make such a decision, then the State will enter into legal conflict with the Church and this situation will stall for a while"⁴⁰.

It is quite clear that the President of the Republic and the Saeima acted to protect the Latvian State from Russian influence, but there are canonical ties that are outside the competence of the State and the actions of its institutions are being questioned. At the moment, it is difficult to

ЧАУСОВ, *Латвия присваивает Русскую православную церковь*, [Latvia takes over the Russian Orthodox Church], 'Взгляд', 5 октября, 2022 (<https://vz.ru/>); *Виталий Леконцев*, *Посягнули на святое. Латвийскую православную церковь власти перевели в статус "автокефальной"*, [Invaded the sacred. The authorities transferred the Latvian Orthodox Church to "autocephalous" status], 26 September 2022 (https://www.stoletie.ru/rossiya_i_mir/posagnuli_na_svatoje_912.htm).

⁴⁰ Speaking of what it means to be in ties with the Moscow Patriarchate, the researcher emphasised that Moscow has developed a spiritual centre with spiritual leadership over the centuries, but this does not automatically imply a deeper connection to political or administrative affairs. The Latvian Orthodox Church is autonomous: it has its own administration, a synod, and the Latvian Orthodox Church has been able to take care of all relevant matters on its own. "Spiritually, the Orthodox Church is outside the national borders, and the fact that the Orthodox Church of Latvia has spiritual ties with the Moscow Patriarchate means that the Church is only symbolically in its spiritual defence or care", *Eksperte bridina par sekam, ja Latvijas Pareizticiga baznica neatbalstis atdalisanos no Maskavas patriarhata* [The expert warns of the consequences if the Latvian Orthodox Church does not support separation from the Moscow Patriarchate] (<https://jauns.lv/raksts/zinas/521052-eksperte-bridina-par-sekam-ja-latvijas-pareizticiga->).



predict how this circumstance will further develop and what the reaction of the LPB hierarchy and believers will be.

In our opinion, the Synod will take its time, entrenching itself behind silence, waiting for tensions to subside, but it will certainly not ask another Patriarchate or historical centre of Orthodoxy to welcome it into its spiritual care. The historical, cultural, spiritual and theological ties with Moscow are too strong. Therefore, we agree with those who stated that:

"What the Latvian state has done has a deeply symbolic significance. With this, it shows that it has no ties with Russia, even in the sphere of the LPB's activities. It wants to show that the LPB can have another spiritual centre"⁴¹.

5 - State legislative intervention, separatism and the Constitution

The law passed by the Latvian Parliament is certainly the result of the ongoing war in Ukraine⁴², but it is also part of a tendency on the part of the Latvian State to establish control over religious denominations. The reform made in 2019 to the LPB law is a good example of this circumstance, as it demonstrates a will of anchoring each denomination to the nation in which it operates. With regard to the Orthodox confession, we are faced with an unprecedented version of *philetism*⁴³, because it is not

⁴¹ The Latvian political authorities are aware of the difficult situation, as evidenced by the statement of the President of the Republic on whether the Latvian Orthodox Church should turn to the Ecumenical Patriarchate to obtain autocephaly: "[...] It is the business of the Latvian Orthodox Church to establish ties with the Patriarchate of Constantinople", TM: likumprojekts par Latvijas Pareizticīgās baznīcas neatkarību nepārkāpj Satversmi, 5 Septembris 2022 (<https://www.tonet.lv/7599018/tm-likumprojekts-par-latvijas-pareizticigas-bazniskas-neatkaribu-neparkapj-satversmi>).

⁴² There is no doubt that on the part of Putin's opponents there is an attempt to bring the Ecumenical Patriarchate into the dispute, (RUS.LSM.LV), *Tā vēl nav baznīcas atdalīšanās - teologs Kurajevs par Latvijas Pareizticīgās baznīcas statusu* [It is not yet a separation of the Church - theologian Kurajevs on the status of the Latvian Orthodox Church] (<https://www.lsm.lv/raksts/zinas/latvija/ta-vel-nav-bazniskas-atdalisanas--teologs-kurajevs-par-latvijas-pareizticigas-bazniskas-statusu.a473945/>).

⁴³ Philetism is the principle of the exaltation of nationality applied in the ecclesiastical sphere that was used by the Bulgarian clergy to demand and justify autocephaly from the Patriarchate of Constantinople. This doctrine identifies the Church with the nation and is well represented by the Greek term ethnophyletismos, which posits the idea that the existence of a local autocephalous Church should be based not on a local criterion, but on an ethnophilosophical, national or linguistic one. This doctrine was condemned by the Holy Synod of the Ecumenical Patriarchate on 10 August 1872 as a form of 'ecclesiastical



claimed by the Church, but imposed by the State, which manifests itself in its own form and with its own characteristics: the confession's identity and/or political role are exalted, opting for its national dimension, even though it is a minority cult in the country. However, this requirement does not arise from within the Church, but it is imposed by the State to the detriment of ecumenical and ecclesiastical relations⁴⁴.

In essence, the symphonic relationship between the State and the Orthodox confession is reinterpreted in a new key: relations of cooperation with institutions are established regardless of the majority role of the Orthodox confession in the State, imposing the adaptation of the confession to the needs of the State. The consequence is the abandonment of the pattern of separatist-type relations envisaged by article 99 of the Latvian Constitution, with considerable consequences for the secularism and neutrality of the institutions⁴⁵.

racism', or 'ethnophiletism', arguing from a theological point of view that advocating this thesis introduced ethnic interests into Church affairs, using religion as a political weapon. In this case, the differences lie in the fact that the Latvian State's neo-philetism is a State choice, not an ecclesiastical one, and defensive in character in that it seeks to demarcate borders and defend the identity of the Latvian nation and ethnicity at the price of violating the separatist character of the Latvian State.

⁴⁴ The demand for autocephaly characterises the states with an Orthodox majority in southern Europe, in search of support for the fragility of their institutions and in need of legitimisation, but these are state structures in which the symphonic relationship with the majority Church among the population can play an objective function of supporting institutions, **G. CIMBALO**, *Autocephalia vo' cercando ch'è si cara*, in *Stato, Chiese e pluralismo confessionale*, cit., no. 19 of 2020, pp. 24-61. The Latvian case is a defensive one, because in the context of this specific State, the LPB is a minority Church.

⁴⁵ Mārtiņš Drēģeris, Legal Advisor to the Minister of Foreign Affairs of the Republic of Latvia, attempts to legally justify this choice. He states, with regard to article 99 of the Latvian Constitution, that it requires compliance with the canons of the LPB, which determine the internal functioning of the Church. However, in his opinion, "the canons and historical precedents stipulate that the decision to change the status of the Orthodox Church is a matter for the secular authorities. It is not a matter of faith, and it is not interference in the affairs of the Church. With the law of September 2022, the Latvian State correctly applies the rights granted by the Church canons. Such historical precedents have occurred, for example, in Greece, Serbia, Romania, Bulgaria and elsewhere". Moreover, "At the same time, the separation of the Church from the State under article 99 of the Constitution does not in any way mean that there is no connection or interaction between the Church and the State, that freedom of religion absolutely prevails over considerations of security and public order. Both Church and State are subject to the rule of law, they are bound by mutual rights and obligations under the law; the State may delegate certain public tasks of State power (e.g. the right to marry) to the Church. Stating that the state should never make decisions that affect the church trivialises this nuanced relationship and creates the false impression that church and state



On the one hand, the application of this pattern of relations is the loss of confessional autonomy. There is no doubt that this contamination seems to suit the confessions that at the very least suffer it, and it does not only concern the Orthodox Church, evidence of which can be seen in the assonance with the content of the 2010 Concordat with the Catholic Church and the tendency to enhance the role of the Bishops' Conferences, which are bodies of a national character⁴⁶.

On the other hand, this tendency seems to be shared by the Churches, since they are thus better able to transfuse their values into the concrete workings of public institutions and to be more incisive in influencing identity choices. This does not mean, however, that it will be easy for the Latvian State to induce the Latvian Orthodox Church to pronounce on separation from the Russian Autocephalous Orthodox Church. It is for this reason that, aware of these difficulties, the Latvian Government has taken the initiative to make the request for autocephaly official, while waiting for it to be completed by a pronouncement of the Latvian clergy and its statutory bodies, which, however, is long overdue. It is worthwhile in this case to have reinterpreted the Tomos of 1921 and 1992 in an autocephalic key, because in those documents they do not speak of autocephaly, but of self-administration, in strict accordance with the Statute of the Russian Orthodox Church⁴⁷.

The Government invokes article 9 of the European Convention on Human Rights to claim that it does not oblige countries to create a specific model of relations with the Churches in that country, as the European Human Rights Committee recognised in 1989. Nonetheless, if the existing system is a model of the State's relationship with the Church that guarantees a person's right to freedom of religion, ensuring that no one is forced to join a Church and that no one is prevented from leaving the

exist in isolation", **M. DRĒĢERIS**, "Būt karā" jeb pusceļā uz jaunu Latvijas Pareizticīgās baznīcas statusu, ["To be at war" or halfway to a new status for the Latvian Orthodox Church], *Jurista Vārds*, no. 37 (1251), 13 Septembris 2022.

⁴⁶ Agreement between the Holy See and the Republic of Latvia, ratified on 25 October 2002, (<http://licodu.cois.it/?p=1176>). On the Role and Function of Episcopal Conferences: **G. GEORGICĂ**, *L'autonomie ecclésiastique selon la législation canonique actuelle de l'Église orthodoxe et de l'Église catholique. Etude canonique comparative*, G&B Press, Rome, 2011, p. 217 ff.

⁴⁷ Устав русской православной церкви 2017, Statute of the Russian Orthodox Church 201, cit.



Church, then such a system in itself is not contrary to the requirements of Art. 9 of the Convention⁴⁸.

The clause on the separation of Church and State powers contained in Article 99 of the Constitution, second sentence, contains an important principle if jointly interpreted with Article 9 of the Convention: "the State must treat its citizens equally, as well as the Churches, without distinguishing them by denominational affiliation". This is also the prevailing position taken by constitutional scholars.

The practice of both the Constitutional Court and the European Court of Human Rights on the right to freedom of religion is characterised by the recognition of the State's duty to observe neutrality in its relations with faith communities, i.e. there is a duty of the State to refrain from assessing the legitimacy of religious views⁴⁹. The State should also abstain from favouring one or another leader of the religious community or from attempting to force the religious community against its will to submit to a single leader.

In this regard, the practice of the European Court of Human Rights identifies four areas in Church-State relations in which the State should pay particular attention: recognition or non-recognition of a form of faith in national legislation; respect for the Community element of the right to freedom of religion; teaching the faith to children and young people. The fourth area, i.e. issues relating to the State's action on the appointment and dismissal of church officials, should be referred to the law adopted on 8 September, but it is clear from the law that the selection of church officials remains the exclusive responsibility of the LPB. According to this provision, the Latvian State fully respects the autonomy of the LPB in the selection of spiritual leaders and it does not interfere in the internal affairs of the Church, in order to prevent the situation that was the basis of the ECHR jurisprudence.

Particularly important in the evaluation of the amendments adopted on 8 September 2022 is the State's obligation under Article 9 of

⁴⁸ E.J. PLEPA, PASTARA un ILZES PLAKANES grāmata, *Konstitucionālās tiesības*, [Constitutional Law]. "Latvijas Vēstneša," Rīga, 2022, pp. 598-600, English version (<https://lv.lv/lv/aktualitates/popularaka-muslaiku-gramata-par-latvijas-valststiesibam-tagad-ari-anglu-va-loda-un-brivpieeja>).

⁴⁹ Judgment of the Constitutional Court of 26 April 2018 in Case No. 2017-18-01, 25. 2. a paragraph; Judgment of the European Court of Human Rights, *Case of Hasan and Chaush v. Bulgaria*, Memorandum No. 30985 of 1996, Strasbourg, 26 October 2000, paragraph 78; Judgment of the European Court of Human Rights, *Case of Miroļubovs and Others v. Latvia*, Application no. 798 of 2005, Strasbourg, 15 September 2009, para. 80, let. f).



the Convention to act, if necessary, to guarantee the right of everybody to freedom of religion. The annotation of the Act recalls the State's obligation to protect the rights of religious organisations laid down in the Act (Article 5, Part 2 of the Act on Religious Organisations), which undoubtedly includes the State's duty to act so that the LPB can operate independently, without external threats and pressure, in accordance with the Constitution and laws of Latvia. The Government argues that even in the fulfilment of this duty the law respects the autonomy of the LPB and does not interfere with canon law⁵⁰.

6 - Separation and secularism in the European Union

The European Union has been increasingly shaken by the economic and social crisis resulting from the state of war, by the ethnic and cultural changes in the composition of populations⁵¹, by the assertion of sovereignist and nationalist policies. These factors are massively determining differences in the approach to the Community *acquis* constructed over time, and national policies prevail with regard to State-Church relations. Due to securitarian and geo-strategic reasons, the acceleration of the entry of new countries in the EU challenges the beneficial effects of the gradual convergence between the legal systems of the new states and the founding nucleus of the Union. The latter has been built through a progressive sedimentation of comparisons, relations and experiences. Moreover, the creative work of the European jurisprudence made the Union a living body capable of self-regeneration and creation of new balances.

⁵⁰ The violation of Article 9 of the Convention was the action of state institutions, Judgment of the European Court of Human Rights, *Case of Miroļubovs and Others v. Latvia*, Application no. 798 of 2005, Strasbourg, 15 September 2009 [Section III].

⁵¹ Uncertainties about the future arise not only from the deepening economic crisis affecting the European Union, already severely tried by the still unsolved Covid-19 pandemic, but from the massive emigration partly suffered, partly necessary because of the demographic crisis. In fact, in addition to emigration from the outside that brings populations belonging to non-traditional religious groups into the territories, there is also internal displacement into the territories of populations of the Orthodox religion and tradition, resulting in a patchy distribution of religious communities. Hence an increasing need for a unified and agreed approach to cult relations, which is counterbalanced by the emergence of a national approach that seems to prevail at the moment, **G. CIMBALO**, *Le Chiese ortodosse e gli Stati in Europa: problemi e prospettive*, in *Laicidad y libertades, Escritos jurídicos*, 2022 (forthcoming).



The risk is the regression towards an exclusively economic, defensive and securitarian aggregate that responds exactly to that idea of the *Europe of the homelands or nations*⁵². This idea seemed to have consistently waned with the rise of sovereignty in the political field, which pushes the Union to live exclusively under the umbrella of subordination within the North Atlantic alignment. Not only Latvia, but also the other two Baltic Republics seem to be moving towards this direction.

Earlier than May, in Lithuania, the Lithuanian Orthodox Church (in Lithuanian *Vilniaus ir Lietuvos arkivyskupija*)⁵³ requested greater autonomy from the Moscow Patriarchate, justifying its request on the grounds that all decisions on the management of LOC parishes are already taken in Lithuania. Metropolitan Innokenty (Vasiliev) has publicly stated that he disagrees with Patriarch Kirril's political views on the so-called special operation in Ukraine. In order to formulate a response to the request, the Russian Orthodox Church has set up a Commission that will have to pronounce on the expansion of the powers of the Lithuanian Church.

The Lithuanian Government, for its part, banned Patriarch Kirill from entering the Baltic country at the end of June and sent a letter to the Ecumenical Patriarch Bartholomew, in which it called for the transfer of the Vilnius-Lithuania diocese of the Moscow Patriarchate under the jurisdiction of Constantinople, promising to support this process in every possible way. In September, Bartholomew met with Lithuanian Deputy Foreign Minister Mantas Adomenas in Istanbul, accompanied by Lithuania's Ambassador to Ankara, Mr Ričardas Degutis, and Ms Galina Vasckenkaite, the Prime Minister's Advisor, to discuss the request⁵⁴. The

⁵² The expression 'Europe of the homelands' indicates a peculiar vision of the European integration process that was held by Charles De Gaulle, who placed the individual states at the basis of the constitutive process of the Union, as the only subjects to be the expression of 'a common national feeling' that has the support of the citizens. In this view, the European Community should be seen as a simple functional aggregation of the different states and not as an autonomous supranational order, a tendency that has found a plastic realisation in the Brexit.

⁵³ *Vilniaus ir Lietuvos arkivyskupija* is a small Church in communion with the Moscow Patriarchate. Founded in 1839, it has a membership of just 4% out of a population of 2,800,000 residents, with heavy emigration. Hence the intervention of the state to gain control of it for purely political purposes. The State is separatist and secular; relations with religious denominations are regulated by Article 43 of the 1992 Constitution.

⁵⁴ *Patriarch Bartholomew receives Lithuanian politicians seeking to subject Church to Constantinople, Istanbul, September 20, 2022* (<https://orthochristian.com/148334.html>); *The Ecumenical Patriarch met with the Lithuanian Vice-Minister of Foreign Affairs, September 20,*



Ecumenical Patriarchate pledged its interest, while the Primate of the Lithuanian Orthodox Church expressed his concern about State intervention in the internal affairs of the religious group.

From these facts it seems plausible to deduce that the Lithuanian Church is attempting to take on the concerns of the Lithuanian State by accentuating its autonomy, but remaining within the framework of the Moscow Patriarchate, aware of the risk of forcibly losing its communion with Moscow through the state-supported construction of a competing Orthodox confession under the auspices of the Ecumenical Patriarchate.

Similar pressures are exerted towards the Estonian Orthodox Church (Estonian: *Moskva Patriarhaadi Eesti Õigeusu Kirik*)⁵⁵. In the Baltic country, the situation is made more complex by the presence of the Estonian Orthodox Apostolic Church (in Estonian: *Eesti Apostlik-Õigeusu Kirik*), which is obedient to the Patriarchate of Constantinople⁵⁶. Intervening in the matter, the Estonian Government stated that the residence permit of the Metropolitan of Tallinn and Estonia as a whole, Yevgeny (Reshetnikov) can be cancelled as the bishop is not an Estonian citizen and has held this position only since 2018, in accordance with EU decisions on issuing visas to persons with Russian citizenship. The bishop was summoned to the Ministry of the Interior and, absent from the country, sent his representatives, who were handed a list of questions concerning the Church's stance on the war in Ukraine. On the one hand, Metropolitan Evgeny (Reshetnikov) did not support Russia; on the other hand, he did not officially condemn it, but in August he denounced numerous attacks against the Church by the media⁵⁷.

The Governments of the two States possess a strong element of pressure to condition the Churches: they are still in possession of much of

2022 (<https://orthodoxtimes.com/the-ecumenical-patriarch-met-with-the-lithuanian-vice-minister-of-foreign-affairs/>).

⁵⁵ The Moskva Patriarhaadi Eesti Õigeusu Kirik is a small Church that belongs to the Moscow Patriarchate. Out of a population of 1,500,000, there are only 143,000 Orthodox, the vast majority of whom are ethnic and Russian-speaking. On its birth and role, see G. **ΠΑΡΑΘΟΜΑΣ**, *Problème d'une absorption ecclésiastique*, cit.

⁵⁶ The *Eesti Apostlik-Õigeusu Kirik* is a Church recognised in 1923 by Constantinople and brings together a limited number of believers mainly of Hexon language and ethnicity. It is at the centre of a long-standing dispute between the Moscow and Ecumenical Patriarchates.

⁵⁷ **ВИКТОР НЕДЕЛИН**, *Побуждение к расколу: латвийских православных пытаются отделить от Москвы* [Latvian authorities intervene in relations between churches] (<https://iz.ru/1393310/viktor-nedelin/pobuzhdenie-k-raskolu-latviiskikh-pravoslavnykh-pytaitsia-otdelit-ot-moskvy>).



the ecclesiastical property confiscated during the membership of the USSR and especially of the Churches' properties expropriated during the Soviet period. They are particularly careful not to return them. As a result, the confessions have to rent or ask the State to allow the use of their places of worship, which can condition the activities of the confessions, shifting the availability of temples between the different denominations⁵⁸.

The EU has attempted to respond to this issue with a strengthened interpretation of the "*Declaration on the Status of Churches and Non-Denominational Organisations*"⁵⁹ which has so far resulted in a "strong autonomy of individual states in matters of ecclesiastical policy" *tout court*, and of the internal legislation that relates to it. This autonomy, which would rule out any "community interference" in this field, has met the demands for the preservation of the *status quo* coming from the Catholic Church and the German Evangelical Churches, which are interested in preserving the specific and special legal status they enjoy, especially in Western European countries. Disposition is much supported by the Orthodox Churches⁶⁰.

The main driving force behind this orientation is the jurisprudential production of the ECHR, which has made its case law the point of reference on fundamental rights for the institutions of the Union themselves, as well as the Council of Europe. In this task, it has been joined by the support for national legislative activity in the area of freedom of religion and belief offered to the new European democracies by the OECD (Organisation for Security and Cooperation in Europe) and the European Commission for Democracy through Law, (Venice Commission), through recourse to the consultation and advice of the

⁵⁸ **КССЕНИЯ ЛОГИНОВА**, *Вдолжной вере: в Прибалтике хотят отколоть церкви от Московского патриархата* [With due faith: in the Baltic countries they want to separate churches from the Moscow Patriarchate], 7 октября 2022 (<https://iz.ru/1405994/kseniia-loginova/v-dolzhnoi-vere-v-pribaltike-khotiat-otkolot-tcerkoi-ot-moskovskogo-patriarkhata>).

⁵⁹ This orientation had been noted as inherent in Declaration No. 11 annexed to the Final Act of the Treaty of Amsterdam, through the formula of "non-prejudice and respect for the status under national law of Churches and religious associations or communities in the Member States, **G. CASUSCELLI**, *States and Religions in Europe: Problems and Perspectives*, in *Stato, Chiesa e pluralismo confessionale*, cit., June 2009.

⁶⁰ This trend had long been pointed out in **F. BOLGIANI, F. MARGIOTTA BROGLIO, R. MAZZOLA**, *Chiese cristiane, pluralismo religioso e democrazia liberale in Europa*, Bologna, il Mulino, 2006, p. 21 ff.; **S. FERRARI**, *Integrazione europea e prospettive di evoluzione della disciplina giuridica del fenomeno religioso*, in **VV. AA.**, *Chiese, associazioni, comunità religiose e organizzazioni non confessionali nell'Unione europea*, Vita e Pensiero, Milano, 2002.



Office for Democratic Institutions and Human Rights.

Credit should be recognized to these bodies: they contributed to develop, in association with the Council of Europe, specific Guidelines for the *Revision of Legislation Relating to Religion or Belief*. The latter has a significant impact on the democratic characterisation of a church policy in the candidate countries and particularly in Eastern Europe as “uniform” as possible⁶¹.

This determined in the first twenty years of the century in European legal systems a convergence from the “extreme” models of relations towards the centre. This convergence broadly outlines a theoretical model, later rendered more varied by the political-institutional experience of individual states, characterised by two factors: the acceptance of a certain public dimension of religion, and the selective and graduated support of public powers to religious communities that comply with certain requirements and accept “a certain degree of State control”⁶².

The aforementioned convergence is the result of the weakening in the various European countries of the denominationalist principle and even secularism⁶³ and the consequent intermingling of public and denominational apparatuses. The latter has moved in the direction of favouring forms of excessive involvement of denominations in activities pertaining to the public authorities⁶⁴.

What is nowadays happening in Latvia tells us that systems with

⁶¹ Office for Democratic Institutions and Humans Rights, *Guidelines for Revising Legislation Relating to Religion or Belief*, Edinburgh, 5-9 July 2004, (<https://www.osce.org/files/f/documents/d/b/13993.pdf>), but see also Organization for Security and Co-operation in Europe, *Toledo Guiding Principles on Teaching about Religions and Beliefs in Public Schools*, 27 November 2007 (<https://www.osce.org/odihr/29154>).

⁶² S. FERRARI, *State and religions in Europe: a new centre of gravity for European ecclesiastical policy?*, in *Quaderni di diritto e politica ecclesiastica*, no. 1 of 2008.

⁶³ On secularism in France, see F. MARGIOTTA BROGLIO, *Italian secularism vs French secularism?*, in A. CARDONE and M. CROCE (Eds.), *30 years of State secularism: was it true glory?* (Atti del Convegno di Firenze del 27 e 28 settembre 2019 nel trentennale della s. n. 203/1989 della Corte costituzionale), *Nessun Dogma*, Rome, 2021, pp. 77-92.

⁶⁴ This is the case in Polish legislation on State social intervention, which largely applies the principle of subsidiarity and entrusts the Catholic Church with the management of important personal social services; the same happens in Hungary, but also in Romania, where the State has signed agreements with the Biserica Ortodoxa Romana and the Romanian Bishops' Conference on social intervention, committing itself to prior consultation before legislating on the matter, *Protocol de Cooperare în domeniul incluziunii sociale între Guvernul României și Patriarhia Română* (<http://licodu.cois.it/?p=1355>); *Protocol de Cooperare, în domeniul incluziunii sociale Guvernul României și Conferința Episcopilor din România - CER.*, 2007 (<http://licodu.cois.it/?p=1357>).



one or more State Churches, or a Church established by law, have become increasingly desirable, because the process of secularisation is decreasing in institutions rather than in civil society. As a consequence, religious fragmentation is being brought back through a pattern of strong institutional relations of the Churches with the State apparatus.

This does not result in a strengthening of the principle of secularism, but rather in "friendly and collaborative" cooperation⁶⁵, which is enforced through political systems of participatory democracy. "The tendential separation between civil society and religious society, between State and Churches" no longer constitutes a "common denominator" in the European Union area. Those forms of contractual separation⁶⁶, or collaborative neutrality are emerging even though they seemed not to prevail also due to the emergence of identity and sovereignist policies.

In practice, the separation of the Churches from the State presents different and controversial ways of implementation, allowing for questionable elasticity in the application of the principles established by the Treaties. This occurs even if the European Court of Human Rights and the European Parliament have repeatedly emphasised the existence of inseparable links between democracy, secularity and the separation of the State from the Churches: in this sense, the separation and the secularity of the State increase the democratic rate of any political system.

This is a long-standing choice⁶⁷. As a way of example, in 2002 the European Parliament considered:

"that the European Union, respecting the separation of church and state, should encourage representatives of different religions to develop a policy aimed at increasing tolerance, mutual understanding and respect towards other cultural and religious communities, both inside and outside the European Union";

In the same year it considered that the time had come to state explicitly "that the separation of Church and State is the single most acceptable form of government in a democratic society" so much so that it called on "the Member States to remain neutral with regard to the various

⁶⁵ S. FERRARI, *State and religions in Europe*, cit.

⁶⁶ F. MARGIOTTA BROGLIO, *Il fenomeno religioso nel sistema giuridico dell'Unione europea*, in F. MARGIOTTA BROGLIO, C. MIRABELLI, F. ONIDA, *Religioni e sistemi giuridici. Introduzione al diritto ecclesiastico comparato*, il Mulino, Bologna, 2000, p. 87 ff.

⁶⁷ Paragraph 135, European Parliament, *Resolution on Human Rights in the World*, 2002; European Union's Human Rights Policy, adopted on 4 September 2003 (*Official Journal of the European Union*, 25 March 2004).



religions, to preserve their secular character, and to guarantee the principle of strict separation of Church and State”⁶⁸.

The slow progress of secularism, confessional pluralism, and religious freedom in the concrete experience of Europe as a whole has been challenged by the so called securitarian policies. They have differentiated the legal treatment of confessional organisations within the legal systems of the countries of the Union. Moreover, the religious structures created by migrants have been used as a pretext to develop and expand themselves, thus affecting both the structures of the Muslim cult and those of the Churches of the Orthodox diaspora that have maintained organic relations with their respective Patriarchates.

The emergence of sovereignism has brought proliferation of legislative measures that in individual States tend to favour and foster relations with majority and/or indigenous confessions, understood as an element of identity and constitution of the nation. As it happens in the Latvian case, it culminates in a policy of enfeoffment of confessions to individual states, regardless of whether they are the majority confessions. Thus, a confessional version of neo-jurisdictionalism is born and takes shape *since* 2019, certainly regressive and harbinger of an arrangement of relations between the state and the confessions, which makes the latter a divisive and conflicting element of the social structure, testifying to the end of globalisation and with it of open, dialogical and secular societies.

⁶⁸ European Parliament, *Resolution on Women and Fundamentalism*, 13 March 2002, adopted by a very narrow majority (<https://presidenza.governo.it/usri/confessioni/normativa%20europea/PE%20risoluzione%2013%20marzo%202002.pdf>). Also in its *Resolution on the right to freedom of expression and respect for religious beliefs* of 16 February 2006 (<https://www.rivisteweb.it/doi/10.1440/22954>) the European Parliament reaffirmed that the freedoms of expression, thought, conscience and religion enshrined in Articles 9 and 10 of the European Convention on Human Rights 'constitute a fundamental component of the development of European democracies and of the clear separation between State and religion'.