

Final Edition

1

Alþingi
Erindi nr. P 125/139
komudagur 15.11.1999

The Right to Freedom of Religion and Religious Associations

A Survey with Recommendations

Örtu- og fjölhúsnámsráð / www.cbsc.dk
Mannréttisfullmálefing
Ole Enginn
publ. 1.3.1999

1 March 1999

TABLE OF CONTENTS	Page
1. Introduction	7
2. International Human Rights Instruments	9
3. Definition of Terms	14
3.1 "Religion"	14
3.2 "Practice of Religion"	15
3.3 "Tolerance" and "Freedom"	16
4. The Legal Status of Religious Associations	17
4.1 The Right to Association	17
4.2 Definition of a Church	17
5. The Right to Freedom of Religion and Religious Associations in the CBSS Member States	18
5.1 DENMARK	19
5.1.1 The Right to Freedom of Religion and the Relationship between State and Church	19
5.1.1.1 State and Church	19
5.1.1.2 Freedom of Religion	20
5.1.2 Rules for Registration of Religious Associations on State (Federal) and/or Local Level	21
5.1.3 The Legal Status of Religious Associations	23
5.1.4 Authorisation to Perform Marriage of Civil Validity	23
5.1.5 Financing by the State of the Activities of Religious Associations	24
5.1.6 Tax regulation	24
5.2 ESTONIA	26
5.2.1 The Right to Freedom of Religion and the Relationship between State and Church	26
5.2.1.1 State and Church	26
5.2.1.2 Freedom of Religion	26
5.2.2 Rules for Registration of Religious Associations on State (Federal) and/or Local Level	27
5.2.2.1 Definitions of a Church, a Congregation and a Religious Association	27

5.2.2.2 Registration of Religious Associations	27
5.2.3 The Legal Status of Religious Associations	28
5.2.4 Authorisation to Perform Marriage of Civil Validity	28
5.2.5 Financing by the State of the Activities of Religious Associations	28
5.2.6 Tax regulation	28
5.3 FINLAND	29
5.3.1 The Right to Freedom of Religion and the Relationship between State and Church	29
5.3.1.1 State and Church	29
5.3.1.2 Freedom of Religion	30
5.3.2 Rules for Registration of Religious Associations on State (Federal) and/or Local Level	31
5.3.3 The Legal Status of Religious Associations	32
5.3.4 Authorisation to Perform Marriage of Civil Validity	32
5.3.5 Financing by the State of the Activities of Religious Associations	32
5.3.6 Tax Regulations	33
5.4 GERMANY	34
5.4.1 The Right to Freedom of Religion and the Relationship between State and Church	34
5.4.1.1 State and Church	34
5.4.1.2 Freedom of Religion	36
5.4.2 Rules for Registration of Religious Associations on State (Federal) and/or Local Level	36
5.4.3 The Legal Status of Religious Associations	37
5.4.4 Authorisation to Perform Marriage of Civil Validity	38
5.4.5 Financing of Churches	38
5.4.6 Tax Regulations	39
5.5 ICELAND	40
5.5.1 The Right to Freedom of Religion and the Relationship between State and Church	40
5.5.1.1 State and Church	40
5.5.1.2 Freedom of Religion	40
5.5.2 Rules for Registration of Religious Associations on State (Federal) and/or Local Level	41
5.5.3 The Legal Status of Religious Associations	42
5.5.4 Authorisation to Perform Marriage of Civil Validity	42
5.5.5 Financing of Religious Associations	42
5.5.6 Tax Regulation	42

5.6 LATVIA	43
5.6.1 The Right to Freedom of Religion and the Relationship between State and Church	43
5.6.1.1 State and Church	43
5.6.1.2 Freedom of Religion	45
5.6.2 Rules for Registration of Religious Associations on State (Federal) and/or Local Level	46
5.6.2.1 Definitions of Religious Associations, Groups and Organisations	46
5.6.2.2 Registration of Religious Organisations	46
5.6.2.3 The Consultative Council for Religious Affairs of the Ministry of Justice	48
5.6.2.4 Transitional Provisions	49
5.6.3 The Legal Status of Religious Associations	49
5.6.3.1 Rights and Conditions of Activity	49
5.6.3.2 Termination of Activity	51
5.6.4 Authorisation to Perform Marriage of Civil Validity	51
5.6.5 Financing by the State of the Activities of Religious Associations	51
5.6.6 Tax Regulation	52
5.7 LITHUANIA	53
5.7.1 The Right to Freedom of Religion and the Relationship between State and Church	53
5.7.1.1 State and Church	53
5.7.1.2 Freedom of Religion	54
5.7.2 Rules for Registration of Religious Associations on State (Federal) and/or Local Level	56
5.7.2.1 Definitions of Religious Associations, Groups and Organisations	56
5.7.2.2 Recognition and Registration of Religious Associations	56
5.7.2.3 Transitional Provisions	57
5.7.3 The Legal Status of Religious Associations	58
5.7.3.1 Rights and Conditions of Activity	58
5.7.3.2 Termination of Activity	59
5.7.4 Authorisation to Perform Marriage of Civil Validity	59
5.7.5 Financing by the State of the Activities of Religious Associations	59
5.7.6 Tax Regulation	60
5.8 NORWAY	61
5.8.1 The Right to Freedom of Religion and the Relationship between State and Church	61
5.8.1.1 State and Church	61
5.8.1.2 Freedom of Religion	62

5.8.2 Rules for Registration of Religious Associations on State (Federal) and/or Local Level	63
5.8.3 The Legal Status of Religious Associations	64
5.8.4 Authorisation to Perform Marriage of Civil Validity	65
5.8.5 Public Financing of the Activities of Religious Associations	65
5.8.6 Tax regulation	66
 5.9 POLAND	 67
5.9.1 The Right to Freedom of Religion and the Relationship between State and Church	67
5.9.1.1 State and Church	67
5.9.1.2 Freedom of Religion	69
5.9.2 Rules for Registration of Religious Associations on State (Federal) and/or Local Level	70
5.9.3 The Legal Status of Religious Associations	71
5.9.3.1 Rights and Conditions of Activity	71
5.9.4 Authorisation to Perform Marriage of Civil Validity	71
5.9.5 Financing by the State of the Activities of Religious Associations	72
5.9.6 Tax Regulation	72
 5.10 RUSSIA	 73
5.10.1 The Right to Freedom of Religion and the Relationship between State and Church	73
5.10.1.1 State and Church	73
5.10.1.2 Freedom of Religion	75
5.10.2 Rules for Registration of Religious Associations on State (Federal) and/or Local Level	76
5.10.2.1 Definitions of Religious Associations (Groups and Organisations)	76
5.10.2.2 Registration of Religious Organisations	77
5.10.2.3 Transitional Provisions	79
5.10.2.4 Foreign Religious Organisations	80
5.10.3 The Legal Status of Religious Associations	80
5.10.3.1 Rights and Conditions of Activity	80
5.10.3.2 Prohibition of Activity	81
5.10.3.3 Control of the Implementation of the "Law on Freedom of Conscience and on Religious Associations"	82
5.10.4 Authorisation to Perform Marriages of Civil Validity	82
5.10.5 Financing by the State of the Activities of Religious Associations	82
5.10.6 Tax Regulation	82
 5.11 SWEDEN	 83

5.11.1 The Right to Freedom of Religion and the Relationship between State and Church	83
5.11.1.1 State and Church	83
5.11.1.2 Freedom of Religion	85
5.11.2 Rules for Registration of Religious Associations on State (Federal) and/or Local Level	86
5.11.2.1 Definitions of Religious Associations, Groups and Organisations	86
5.11.2.2 Registration of Religious Associations	87
5.11.3 The Legal Status of Religious Associations	88
5.11.3.1 Rights and Conditions of Activity	88
5.11.3.2 Termination of Activity	89
5.11.4 Authorisation to Perform Marriage of Civil Validity	89
5.11.5 Financing by the State of the Activities of Religious Entities	89
5.11.6 Tax Regulation	90
6. CONCLUSION AND RECOMMENDATIONS	91
6.1 State and Church	91
6.2 Rules for Registration of Religious Associations on State (Federal) and /or Local Level	96
6.2.1 Findings of the Survey	96
6.2.2 Conclusions and Recommendations	98
6.3 The Legal Status of Religious Associations – Control of Internal Rules by Public Authorities	101
6.3.1 Findings of the Survey	101
6.3.2 Conclusions and Recommendations	102
6.4 Authorisation to Perform Marriage of Civil Validity	102
6.4.1 Findings of the Survey	102
6.4.2 Conclusions and Recommendations	103
6.5 Public Financing of the Activities of Religious Associations and Tax Regulation	103
6.5.1 Findings of the Survey	103
6.5.2 Conclusions and Recommendations	105
Annex 1: General Comment No. 22 of the UN Human Rights Committee to Article 18 of the International Covenant on Civil and Political Rights, 20 July 1993	106

1. Introduction

Working on my survey on "The Right of Freedom of Association", which was completed in November 1997, I realised that freedom of religion in general, and freedom of religious associations in particular, constitute special problems in several member states. I therefore decided to study these issues in more detail in a separate survey.

The right to freedom of thought, conscience and religion is one of the fundamental human rights enshrined in many international human rights documents.

As stated by the European Court of Human Rights "it is one of the foundations of a 'democratic society' ... It is, in its religious dimension, one of the most vital elements which makes up the identity of believers and their conception of life, but it is also a precious asset for atheists, agnostics, sceptics and the unconcerned. The pluralism indissociable from a democratic society, which has been dearly won over the centuries, depends on it. While religious freedom is primarily a matter of individual conscience, it also implies, *inter alia*, freedom to "manifest [one's] religion". Bearing witness in words and deeds is bound up with the existence of religious convictions".²

The right to freedom of religion is closely connected with other fundamental human rights, such as the right to freedom of expression, the right to freedom of association, the right to marry and to found a family, and the right of parents to ensure the education and teaching of their children in conformity with their own religious and philosophical convictions.

Freedom of thought, conscience and religion is, in principle, an absolute right and not subject to any limitations. The provisions on these rights in international and national human rights documents are to be considered a protection from state interference. However, *manifestations* of religion or belief can, under certain circumstances, be subjected to limitations by the state.

The State also has certain responsibilities in actively protecting religious associations from private offences. The European Commission of Human Rights observed for example in 1980 that a campaign of harassment of a church or a religious group instigated by private individuals could entail State responsibility if the authorities tolerate this behaviour³.

The question of freedom of religion and religious associations, in a broader sense, implies in practice such issues as:

- a. The relationship between state and church
- b. Rules for registration of religious associations
- c. The legal status of religious associations
- d. Authorisation to perform marriages of civil validity
- e. Financing by the state of activities of religious associations
- f. Tax regulation

In the CBSS member states the relationships between the state and the religious associations (churches) are very different and the general legal framework varies considerably.

Those member states whose governing systems for decades have been secular in principle, are now experiencing a revival of religious life, and some of them feel a need to elaborate the rules regarding religious associations. In all member states the missionary activities of foreign religious movements presents a challenge to the traditional religious associations (churches) in the country and to the state authorities. Furthermore, several of our countries are markedly less homogeneous from a religious point of view than they were a few decades ago.

The purpose of this survey is to examine the implementation of the right to freedom of religion and religious associations in the legislation of the member states. I do not intend to specify concrete or alleged violations of international conventions or national legislation. I have instead decided to focus on the structure of the national legislation and this legislation's relation to international obligations in order to see how discrimination as well as unnecessary and hindering bureaucratic measures can be avoided in the field of freedom of religion. Especially seen in the context of our changing societies our common aim should be to ensure that legislative norms and their practical implementation respect the freedom of religion, also under these new circumstances.

2. International Human Rights Instruments

Under international human rights law, the right to freedom of religion, as mentioned above, is considered a fundamental human right.

This right is embodied in the Universal Declaration of Human Rights of 1948 in its Article 18 which stipulates:

Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance.

The European Convention on Human Rights of 1950 in its Article 9 stipulates:

1. Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in worship, teaching, practice and observance.

2. Freedom to manifest one's religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for protection of public order, health or morals, or for the protection of the rights and freedoms of others.

Thus, the ECHR introduced a provision concerning the possibility of limiting the freedom to manifest one's religion.

The UN International Covenant on Civil and Political Rights of 1966 in its Article 18 furthermore introduced a provision on non-coercion in connection with the freedom of religion:

1. Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of his choice and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching.

2. No one shall be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice.

3. Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others.

The Covenant in its Article 20 (2) also prohibits religious discrimination:

Any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law.

Art. 27 of the Covenant concerns, i.a., persons belonging to religious minorities:

In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language.

In 1993 the UN Human Rights Committee prepared a General Comment (no. 22) to these articles with an extensive interpretation of their content and meaning (see annex 1 to this survey). I address especially the relationship between the state and a particular church or religion. Thus in its paragraph 2 it states, i.a., that

Article 18 is not limited in its application to traditional religions or to religions and beliefs with institutional characteristics or practices analogous to those of traditional religions. The Committee therefore views with concern any tendency to discriminate against any religion or belief for any reasons, including the fact that they are newly established, or represent religious minorities that may be the subject of hostility by a predominant religious community.

Paragraph 9 of the General Comment states, i.a., that

The fact that a religion is recognised as a State religion or that it is established as official or traditional or that its followers comprise the majority of the population, shall not result in any impairment of the enjoyment of any of the rights under the Covenant, including articles 18 and 27, nor in any discrimination against adherents of other religions or non-believers.

Paragraph 10 of the General Comment states the following:

If a set of beliefs is treated as official ideology in constitutions, statutes, proclamations of the ruling parties, etc., or in actual practice, this shall not result in any impairment of the freedoms under article 18 or any other rights recognised under the Covenant nor in any discrimination against persons who do not accept the official ideology or who oppose it.

Finally, the General Comment in its paragraph 8 states, i.a., that

The Committee observes that the concept of morals derives from many social, philosophical and religious traditions; consequently limitations on the freedom to manifest a religion or belief for the purpose of protecting morals must be based on principles not deriving exclusively from a single tradition.

The UN Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief of 1981 in its Article 1 repeats the wording of Article 18 of the Covenant, the only change being that “[T]his right shall include freedom to have a religion or *whatever* belief of his choice ...”. In Article 6 the Declaration states that “[T]he right to freedom of thought, conscience, religion or belief shall include, *inter alia*, the following freedoms:

- (a) *To worship or assemble in connection with a religion or belief, and to establish and maintain places for these purposes;*
- (b) *To establish and maintain appropriate charitable or humanitarian institutions;*
- (c) *To make, acquire and use to an adequate extent the necessary articles and materials related to the rites or customs of a religion or belief;*
- (d) *To write, issue and disseminate relevant publications in these areas;*
- (e) *To teach a religion or belief in places suitable for these purposes;*
- (f) *To solicit and receive voluntary financial and other contributions from individuals and institutions;*
- (g) *To train, appoint, elect or designate by succession appropriate leaders called for by the requirements and standards of any religion or belief;*
- (h) *To observe days of rest and to celebrate holidays and ceremonies in accordance with the precepts of one's religion or belief;*
- (i) *To establish and maintain communications with individuals and communities in matters of religion and belief at national and international levels.”*

The UN Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities of 1992 establishes their right “*to enjoy their own culture, to profess and practice their own religion, and to use their own language, in private and in public, freely and without interference or any form of discrimination*”.

In the Document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE of 1990 the participating states reaffirm in Article 9.4. the right of everyone to freedom of thought, conscience and religion, underlining that “[T]he exercise of these rights may be subject only to such restrictions as are prescribed by law and are consistent with international standards”.

The freedom of the individual to profess and practice religion or belief is provided for in such instruments as, the Conference on Security and Co-operation in Europe (CSCE): The Final Act, Helsinki of 1975, Article VII of which stipulates that “*the participating states will recognize and respect the freedom of the individual to profess and practice, alone or in community with others, religion or belief, acting in accordance with the dictates of his own conscience*”, and in The Concluding Document of the Vienna Meeting of 1989, which stipulates in its Article 16 that “*in order to ensure the freedom of the individual to profess and practice religion or belief, the participating States will, inter alia,*

- grant upon their request to communities of believers, practicing or prepared to practice their faith within the constitutional framework of their States, recognition of the status provided for them in their respective countries;
- respect the right of these religious communities to:
 - establish and maintain freely accessible places of worship or assembly;
 - organize themselves according to their own hierarchical and institutional structure;
 - select, appoint and replace their personnel in accordance with their respective requirements and standards as well as with any freely accepted arrangements between them and their State;
 - solicit and receive voluntary financial and other contributions".

The Parliamentary Assembly of the Council of Europe, following a debate in the Assembly on religious tolerance in a democratic society on 2 February 1993, adopted Recommendation 1202 (1993) on this subject. The Recommendation states, inter alia, the following:

...
7. It is a matter of concern that in numerous countries there has been a renewed occurrence of xenophobia, racism and religious intolerance.

...
14. The universal importance of religious freedom, enshrined in Article 18 of the Universal Declaration of Human Rights and guaranteed in Article 9 of the European Convention on Human Rights, has to be reaffirmed. This freedom is rooted in the dignity of man and its realisation implies the realisation of a free, democratic society.

15. The secular state should not impose any religious obligations on its citizens. It should also encourage respect for all recognised religious communities and ease their relations with society as a whole.

A year earlier, in February 1992, The Parliamentary Assembly had adopted Recommendation 1178 (1992) on sects and new religious movements, stating, inter alia, the following:

5. [The Assembly] considers that the freedom of conscience and religion guaranteed by Article 9 of the European Convention on Human Rights makes major legislation on sects undesirable, since such legislation might well interfere with this fundamental right and harm traditional religions.

6. It considers, however, that educational as well as legislative and other measures should be taken in response to the problems raised by some of the activities of new religious movements.

7. To this end, the Assembly recommends that the Committee of Ministers calls on the member states of the Council of Europe to adopt the following measures:

v. Existing legislation concerning the protection of children should be more rigorously applied. Additionally, those belonging to a sect must be informed that they have the right to leave;

vi. Persons working for sects should be registered with social welfare bodies and guaranteed social welfare coverage, and such social welfare provision should also be available to those deciding to leave the sects.

The right to freedom of thought, conscience and religion is enshrined in the most important international human rights instruments. As mentioned above, these rights are not subject to any limitations, while manifestations of religion or belief - as appears from several provisions quoted above - can be subjected to limitations by the state under two circumstances, i.e. if they are prescribed by law and if they are necessary in a democratic state in the interests of public safety etc.

So far, there are no legally binding international human rights instruments especially elaborated to deal with the right to freedom of religion. However, the UN has reached a high level in the setting standards concerning the right to religious liberty with the adoption of the above quoted Declaration on the Elimination of All Forms of Intolerance and through the Discrimination Based on Religion or Belief of 1981 and the General Comment of the Human Rights Committee of 1993 to the International Covenant on Civil and Political Rights of 1966.

Furthermore, the scope of Article 9 of the European Convention on Human Rights has been clarified by the European Commission of Human Rights through a number of its decisions, whereas the decisions of the European Court of Human Rights only play a minor part as a source of interpretation with regard to Article 9.⁴

3. Definition of Terms⁵

3.1 "Religion"

It is important to underline that there is no generally accepted definition of the concept of "religion" or "belief". Neither do international human rights instruments offer any definition of the term. However, the concept has been clarified to some extent through interpretation by international human rights bodies.

The United Nations Special Rapporteur on Religious Intolerance, Elizabeth Odio Benito, has in a study from 1989⁶, refrained from attempting to define "religion" but has pointed out that "religion" can be described as "an explanation of the meaning of life and how to live accordingly".

In its General Comment to the ICCPR, Article 18, the UN Human Rights Committee states in para. 2 that "Article 18 protects theistic, non-theistic and atheistic beliefs, as well as the right not to profess any religion or belief. The terms belief and religion are to be broadly construed. Article 18 is not limited in its application to traditional religions or to religions and beliefs with institutional characteristics or practices analogous to those of traditional religions".

The Human Rights Commission and Court of the Council of Europe have seldom discussed the nature and scope of the terms "conscience" and "belief" under Article 9 of the European Convention on Human Rights, nor have they ever addressed any difference between the two terms. The Strasbourg organs generally accept an applicant's representation that a given idea or intellectual position is a matter of "conscience" or "belief" for that individual applicant. Thus, in a decision of 1978, the Commission found that pacifism as a philosophy falls within the ambit of Article 9.

Applicants to the European Human Rights Court have invoked the "religion" clause of Article 9 more often than the "thought, conscience or belief" clauses, and the Court has declared the importance of Article 9 generally and freedom of religion in particular as crucial to democratic society as envisioned by the Convention, and as stated in the judgement quoted in the introduction to this survey.

The Strasbourg organs have not specifically addressed the attributes of "religion" for Article 9 purposes, nor does the case-law clarify what those attributes might be.

3.2 "Practice of Religion"

As appears from the international standards quoted in chapter 2, the right to freedom of religion includes freedom to have whatever religion or belief of choice, and freedom, either individually or in community with others and in public or private, to manifest religion or belief in worship, observance, practice and teaching.

It has, however, been debated whether the term "practice" covers every act motivated or influenced by religion or belief. In the "pacifism" case mentioned in chapter 3.1, the European Human Rights Commission, while recognising pacifism to be protected under Article 9 of the ECHR, stated that "[T]he term "practice" as employed in Article 9 (1) does not cover each act which is motivated or influenced by a religion or a belief. It is true that public declarations proclaiming generally the idea of pacifism and urging the acceptance of a commitment of non-violence may be considered as a normal and

recognised manifestation of a pacifist belief. However, when actions of individuals do not actually express the belief concerned, they cannot be considered to be as such protected by Article 9 (1), even when they are motivated or influenced by it".⁷ In other words, the applicability of Article 9 requires that the opinion which is expressed reflects the belief or conviction of the person who puts this opinion forward.

It is obviously necessary to draw this distinction between actions expressing the belief concerned and actions influenced or motivated by this belief, but it is difficult to see where this line should be drawn.

In its General Comment to the ICCPR, Article 18, the UN Human Rights Committee states in paragraph 2 that the freedom to manifest religion or belief in worship, observance, practice and teaching encompasses a broad range of acts. Thus, e.g., "the practice and teaching of religion or belief includes acts integral to the conduct by religious groups of their basic affairs, such as, *inter alia*, the freedom to choose their religious leaders, priests and teachers, the freedom to establish seminaries or religious schools and the freedom to prepare and distribute religious texts and publications".⁸

3.3 "Tolerance" and "Freedom"

In connection with the right to freedom of religion the term "tolerance" often occurs. The meaning of the terms "freedom" and "tolerance" has been discussed within the framework of the United Nations and the Council of Europe on several occasions, and it has been accepted that the term "tolerance" means acceptance by individuals of the rights of other individuals to hold different views. On a higher level, the question of tolerance between religions plays a significant role. Thus, in an Explanatory Memorandum, Mrs Fischer, the President of the Parliamentary Assembly of the Council of Europe stated: "It may seem surprising, it is certainly sad, but the most difficult area in which to find room for religious tolerance is between the religions themselves".⁹ Therefore, the Parliamentary Assembly in its Recommendation 1202 (1993) on religious tolerance in a democratic society stressed that "[T]he question of tolerance between religions has to be further developed", and that "[T]he three monotheistic religions (Judaism, Christianity and Islam) should be encouraged to give greater emphasis to those basic moral values that are essentially similar and tolerant".

Recommendation 1202 (1993) also states the following: "The universal importance of religious freedom, as enshrined in Article 18 of the Universal Declaration of Human Rights and guaranteed in Article 9 of the European Convention on Human Rights, has to be reaffirmed. This freedom is rooted in the dignity of man and its realisation implies the realisation of a free, democratic society". - "The secular state should not impose any religious obligations on its citizens. It should also encourage respect for all recognised religious communities and ease their relations with society as a whole".

The term "freedom" involves the state, placing responsibilities on it, especially the obligation to guarantee religious liberty and to ensure that any discrimination on religious grounds is proscribed by domestic law, satisfying the provisions of international law. As Mrs Fischer put it in the above mentioned Memorandum: "The secular and democratic state is essentially a neutral instrument. It is neither for nor against any particular religion or non-religion. It can ensure fair play, simply by redressing abuse, or it can intervene, restrictively or positively".¹⁰

4. The Legal Status of Religious Associations

4.1 The Right to Association

A very important aspect of the right to freedom of religion is the right for a group to organise as a church or as a religious community and to be recognised, *de facto* or *de jure*, as such by others, especially public authorities. This right, which can be seen as part of the right to manifest one's religion in community with others, is not explicitly mentioned in the international human rights provisions on freedom of religion; it is connected with the right to freedom of association.

The right to freedom of association has been given the following definition by the European Commission on Human Rights: "A general capacity for the citizens to join without interference by the state in associations in order to attain various ends".

An indication of the interrelationship between the right to freedom of religion and the right to freedom of association has also come from the European Court of Human Rights which has treated the freedoms set forth in Article 9 of ECHR as elements of Article 11 (on the right to freedom of assembly and association). The Court also found that a violation of Article 9 constituted an additional argument for the finding of a violation of Article 11.¹¹

4.2 Definition of a Church

A church is an organised religious community based on identical or at least substantially similar views.¹² The right to freedom of religion has not only an individual but also a collective character. Thus it is important to note that a church has its own right to manifest its religion.¹³

It has been debated whether a church can lodge petitions under the European Convention on Human Rights. According to the European Commission of Human

Rights, it is artificial to make a distinction between a church and its members, since churches act on behalf of their members. In consequence of this it has accepted that a church body or an association with a religious or philosophical object is capable of possessing and exercising the rights contained in Article 9 (1) of the ECHR in its own capacity as representative for its members. This entails that a church can lodge complaints under the ECHR.¹⁴

5. The Right to Freedom of Religion and of Religious Association in the CBSS Member States

The situation in the member states is examined with regard to the following issues:

1. The Right to Freedom of Religion and the Relationship between State and Church
2. Rules for Registration of Religious Associations on State (Federal) and/or Local Level
3. The Legal Status of Religious Associations
4. Authorisation to Perform Marriages of Civil Validity
5. Financing by the State of the Activities of Religious Associations
6. Tax Regulation

5.1 DENMARK

5.1.1 The Right to Freedom of Religion and the Relationship between State and Church

In Denmark the right to freedom of religion is protected by virtue of the Constitution and international instruments.

The general provisions of the Danish Constitution of 1849 as amended in 1953 concerning the right to freedom of religion are Articles 67, 68 and 70. These provisions are supplementary to the protection implied in Article 77 concerning the right to freedom of expression, Article 78 concerning the right to freedom of association and Article 79 concerning the right to freedom of assembly. Furthermore, the Constitution contains provisions which establish and regulate the Danish Folk Church (Art. 4, 6 and 66).

5.1.1.1 State and Church

Article 4 of the Constitution states that the Evangelical Lutheran Church is the Established Church (the Folk Church) and that, as such, it shall be supported by the State. According to Article 6, the King (or the Queen) must be a member of the Evangelical Lutheran Church.

Article 66 contains a clause, which stipulates that the constitution of the Established Church is to be laid down by Statute. This clause was set out in the first Danish Constitution in 1849, but until this date there is no special constitution for the Folk Church. The relationships of the church are regulated in various administrative acts. The aim of Article 66 was to establish a constitution and a regulation of the Folk Church, which separates it from the rest of the public administration. This was seen as an important part of the establishment of religious liberty. However, the proposed autonomy of the Folk Church has never been established, and it is in many ways still closely linked to the state. Because of its special status, i.e. the legality of its administration being based on Article 66 of the Constitution, it has never been under and is still outside the control of the Danish Parliament. This is of course, with the tacit consent of the Parliament.

Neither has the matter of religious communities, dissenting from the Folk Church, been regulated by law, as prescribed in Article 69, the promissory clause which was also set out in the 1849 Constitution. The conditions of religious minorities have been regulated through administrative acts and by administrative practice of various authorities without proper title in law and without parliamentary control. This has resulted in a rather incoherent regulation of the conditions of religious minorities, which suffers from non-transparency.

5.1.1.2 Freedom of Religion

Freedom of religion is guaranteed by Article 67 of the Constitution concerning the freedom of worship:

The citizens shall be entitled to form congregations for the worship of God in a manner consistent with their convictions, provided that nothing at variance with good morals or public order shall be taught or done.

The expression "citizens" is to be understood as covering both Danish and foreign citizens. The expression "congregations" covers a special right to freedom of association as well as freedom of assembly. Article 67 precludes not only a ban against religious associations but also a prohibition of bans against assemblies of religious associations. "The worship of God" is not to be understood only as Christian worship, but also e.g. Islamic worship, and there can be little doubt that it must be interpreted so as to comprise both monotheistic and polytheistic worship. On the other hand, it is clear that anti-religious associations are not protected by this provision.

According to Article 68 of the Constitution:

No one shall be liable to make personal contributions to any denomination other than the one to which he adheres.

Members of the Danish Folk Church pay a tax to the church, which is collected by the state. People become members of the Folk Church when they are christened there, but membership can be renounced by forwarding a form of renouncement to the clergyman in the parish of residence. However, the church tax provides only part of the money used to support the Folk Church. The rest is paid by the state budget. Thus, "personal" in this Article is interpreted in such a way as to not include the income taxes, paid by everybody. Thus all taxpayers thus indirectly contribute to the Folk Church even if they are not members.

In 1996, the church tax provided 78.5% of the total income of the Folk Church, while the state subsidies granted in the annual state budget made up 12% of its income. The major part of the state subsidies are used to pay 40% of the wages of the ministers of the Folk Church.

The right to freedom of religion is also elaborated in Article 70 of the Constitution:

No person shall for reasons of his creed or descent be deprived of access to complete enjoyment of his civic and political rights, nor shall he for such reasons evade compliance with any common civic duty.

Article 70 secures that the state does not deprive any individual of his civic and political rights due to his religious conviction. On the other hand it states that the individual cannot be exempted from his civil duties due to his religious conviction. However, Article 70 does not exclude the legislative power from making exemptions from civil duties, when a duty is in conflict with a person's religious conviction, e.g. exemption from compulsory military service being conditional on the individual's participation in alternative civil service.

Pertinent to the protection of the right to freedom of religion is Article 71,1 of the Constitution concerning personal integrity:

Personal liberty shall be inviolable. No Danish subject shall in any manner whatever be deprived of his liberty because of his political or religious convictions or because of his descent.

5.1.2. Rules for Registration of Religious Associations on State (Federal) and/or Local Level

As appears from par. 5.1.1.1 there are no laws directly concerning the registration or recognition of religious associations. However, in the period from the adoption of the first Constitution in 1849 until 1969, the Ministry of Ecclesiastical Affairs held the practice of officially recognising some religious communities – though far from all. This was done by way of a Royal Decree.

The legal effect of this recognition was that the state commits itself to give the ministers of these religious communities authorisation - on application in each case - to perform ecclesiastical acts, such as christenings and marriages of civil validity. They were authorised to keep the church register, which was and still is the official register of all births and deaths in Denmark, irrespective of whether the person in question is or is not a member of the Folk Church.

The religious communities recognised by Royal Decree are the following:

The Roman-Catholic Community

The Jewish Community

The Reformed Community in Fredericia

The French Reformed Community in Copenhagen

The German Reformed Community in Copenhagen

The Methodist Community

The Baptist Community

The Orthodox Russian Church Community in Copenhagen

The Norwegian Community at the Church of King Haakon in Copenhagen

The Swedish Gustav Association in Copenhagen
 The Community at St. Alban's English Church in Copenhagen.

In 1969 the practice of recognition was abandoned. The Ministry of Ecclesiastical Affairs no longer found it necessary to uphold this practice, as a new Marriage Act was adopted according to which church weddings having civil validity can take place not only in the Folk Church and the recognised communities, but also "in other religious communities when one of the parts belongs to the religious community, and the religious community has ministers who are authorised by the Minister of Ecclesiastical Affairs to celebrate weddings".

Since then the recognition by the Ministry of Ecclesiastical Affairs of an assembly or a community as a religious community has taken place by giving one of the ministers of the religious community authorisation to celebrate weddings with civil validity.

The definition of a religious community is to be found in the *travaux préparatoires* of the Marriage Act: "... that it is a genuine religious community in the normal sense of this word, i.e. not only a religious "movement" or a religious or philosophical society, but an association or assembly (a religious community), whose primary aim is worship of God (cult) according to an elaborated teaching and rite".

When determining whether a religious community was a genuine religious community, the Ministry of Ecclesiastical Affairs would submit the question to its consultant, the Bishop of Copenhagen. This practice was criticised in March 1998, and the Minister of Ecclesiastical Affairs established a commission to advise him in these matters. There are four members in this Commission: a professor of the history of religion (chairman), a senior lecturer on sociology of religion, a senior lecturer on theology, and a professor of jurisprudence.

As of July 1997, the Ministry of Ecclesiastical Affairs, in pursuance of the Marriage Act had given or promised to give authorisation to celebrate weddings to ministers of 52 non-recognised religious communities and thereby implicitly approved these as religious communities. Among them are Islamic communities, Jehovah's Witnesses, the Mormons, communities of the Pentecostal Movement, the Seventh Day Adventists, the Buddhists and the Krishna Movement.

5.1.3 The Legal Status of Religious Associations

As mentioned in par. 5.1.1.1, neither the Folk Church nor other religious communities have had their matters regulated by unified laws; however, some fields of the activities of the Folk Church are regulated by legislation, e.g. the Law on Parish Councils. The consequence of this is that their general legal status is somewhat uncertain.

In principle the Danish Constitution prohibits legislative and administrative interference in the organisation, financing and rites of a religious community. It was the original intention that matters other than these were to be regulated by law. According to the *travaux préparatoires* of Article 69 of the Danish Constitution (on religious bodies dissenting from the Folk Church) the envisaged law was to be based on the principle of religious liberty and was to contain provisions about the criteria for obtaining official recognition. Furthermore, it was to contain provisions guiding the legal status of recognised religious minorities and their duties towards the state. As mentioned above this envisaged legislation was never concluded.

5.1.4 Authorisation to Perform Marriage of Civil Validity

While all marriages performed by ministers of the Folk Church are of civil validity, different criteria must be satisfied in order for a non-recognised religious minority group to obtain authorisation to perform such marriages.

As mentioned above, a precondition for authorisation to ministers of non-recognised religious communities is that the community is a genuine religious community whose primary aim is the worship of God according to an elaborated teaching and rite. However, in practice it has proven difficult in some cases to define a genuine religious community, one problem being that some religious communities do not have ministers.

The Ministry of Ecclesiastical Affairs is also responsible for ensuring that nothing is taught or done in the religious community, which is contrary to morals or public order.

In the Ministry's exercise of its discretion it also examines the structure of a community applying for authorisation in order to determine whether there are lawfully elected representatives within the community who, on behalf of the community, can legally apply for the authorisation. The Ministry will also make inquiries to the police to determine if there exists any disadvantageous information exists about the conduct of the minister in question.

Furthermore, the Ministry of Ecclesiastical Affairs demands that ministers of non-recognised communities are able to read and write in Danish - or are able to obtain assistance from persons knowing Danish - due to the compulsory requirement that reports of performed marriages be submitted to the public authorities.

Finally, on the basis of several cases considered in the Ministry it can be concluded that religious communities are required to be of a certain size. Religious communities which have less than 150-200 members are not able to receive permanent authorisation, as there will be only few weddings, though they may get an ad hoc authorisation.

5.1.5 Financing by the State of the Activities of Religious Associations

In Denmark only the Folk church is entitled to financial assistance from public funds, see above 5.1.1.2. While the expenses of the Folk church are covered in the greater part by state funds and by a special church tax, no state funds are provided for the support of other religious communities.

5.1.6 Tax Regulation

The religious communities, which have been recognised by the authorities and those, which have been authorised to perform marriages according to the Marriage Act are in practice treated equally with regard to taxation. This means e.g. that real estate used for religious purposes is exempted from real estate tax.

Donations to religious associations are tax-deductible according to the Danish tax legislation. This rule only applies to religious associations, which have been approved by the Minister of Taxation. The only precondition for approval of a religious community is that it is domiciled in Denmark. If the religious association is a subdivision of a world-wide religious association having its domicile abroad, it is a condition for approval that the major part of the governing bodies of the Danish branch and its main office are domiciled in Denmark.

According to the Danish tax legislation, a religious association is a religious community, an association of religious communities, or an organisation, created by one or several religious communities and existing independently of these. It may also be an organisation created by a group of members of a religious community. A religious community is defined as a society whose primary purpose is worship of God according to an elaborated teaching. In cases where this definition is not clear, the Ministry of Ecclesiastical Affairs can be consulted. In any case, the religious association or community must be a legal person, and not just an informal association of a few people. However, there are no demands on the basis of population, number of members, number of donors, or on economic grounds, as is the case for other non-profit making organisations. The only requirement is that religious associations provide the Ministry of Taxation with annual information on the total sum of donations and their use.

5.2 ESTONIA

5.2.1 The Right to Freedom of Religion and the Relationship between State and Church

In Estonia the right to freedom of religion is protected by virtue of the Constitution of 1992 and by international instruments.

The general provision of the Estonian Constitution concerning the right to freedom of religion is Article 40 which is supplementary to Article 45 concerning the right to freedom of expression, Article 47 concerning right to assembly, and Article 48 concerning the right to association.

5.2.1.1 State and Church

Article 40 of the Constitution states, inter alia, that "[T]here shall be no state church". The relationship between the state and the religious associations is regulated by the Churches and Congregations Act of 1993 which is being amended at present. A new Churches and Congregations Act has been elaborated by the Ministry of Internal Affairs, and it is expected to be discussed by the Parliament and adopted in the fall of 1998. The draft act has not yet been made public.

5.2.1.2 Freedom of Religion

Article 40 of the Constitution states the following:

Everyone shall have freedom of conscience, religion and thought.

Everyone may freely belong to a church or a religious association. There shall be no state church.

Everyone shall have the freedom, either alone or in community with others and in public or private to practise his or her religion, unless it endangers public order, health or morals.

In Article 41 of the Constitution it is stated that no one may be coerced to change his or her opinions and persuasion.

Furthermore, the Constitution states the following in Article 12:

All persons shall be equal before the law. No one may be discriminated against on the basis of nationality, race, color, sex, language, origin, creed, political or other persuasions, financial or social status, or other reasons.

Finally, according to Article 9 of the Constitution, “[T]he rights, liberties and duties of everyone and all persons, as listed in the Constitution, shall be equal for Estonian citizens as well as for citizens of foreign states and stateless persons who are present in Estonia”.

5.2.2 Rules for Registration of Religious Associations on State (Federal) and/or Local Level

5.2.2.1 Definitions of a Church, a Congregation and a Religious Association

According to information from the Estonian Ministry of Foreign Affairs:

A church is, in the context of present legislation, a voluntary association of at least three congregations didactically based on an Episcopal structure and confession of a common church, functioning on the basis of a statute under an elected or appointed leadership of a board and registered as provided by law.

A congregation is, in the context of present legislation, a voluntary association of natural persons confessing the same faith, functioning on the basis of statute under elected or appointed leadership of a board and registered as provided by law.

A religious association is, in the context of present legislation, a voluntary association of natural and legal persons, the basic activities of which are the confessional or ecumenical moral, ethical, educational, cultural, deacon, and social rehabilitative activity; in addition to the ritual forms characteristic to the church or congregation, not necessarily connected with a certain church, a union of congregations or a congregation.

Religious associations are entered into the registry of non-profit making organisations and foundations as provided in the act on non-profit making organisations of 1996.

5.2.2.2 Registration of Religious Associations

By virtue of Section 11:2 of the Churches and Congregations Act of 1993, the Ministry of Internal Affairs registers the statutes of churches, congregations and congregation unions. The rules for keeping the Estonian Church Registry are provided by the Government of the Republic decree No. 123 of 2 May 1996.

The Ministry of Internal Affairs has elaborated a draft Act on Churches and Congregations, according to which the Estonian Church Registry and respective registry functions are delegated to the administrative remit of the courts.

5.2.3 The Legal Status of Religious Associations

According to legislation the churches, congregations and religious associations are recognised as private legal persons. This is also expected to be the case, when the new Churches and Congregations Act is adopted.

5.2.4 Authorisation to Perform Marriage of Civil Validity

As of today no church or congregation functioning in Estonia has the right or authorisation to register marriages. The Ministry of Interior Affairs in conjunction with the Ministry of Justice and the Council of Estonian Churches has initiated principal negotiations on the feasibility of granting authorisation.

5.2.5 Financing by the State of the Activities of Religious Associations

As private legal persons the churches, congregations and religious associations should be principally self-supporting organisations. However, keeping in mind the fact that sacral buildings being administered by the churches in terms of historic, artistic and cultural value, are the treasure of all people, the state aspires, at least to some extent to support the churches. For instance, funds are set apart from the state budget, for the Council of Estonian Churches funding (in the 1998 state budget EEK 2 million = 250.000 DM), which is a private legal juridical person and non-governmental organisation. Thus, it decides according to its own statute which churches or congregation unions it admits to membership. Members of the Council are the following churches: The Evangelical Lutheran, The Roman Catholic, The Pentecostal, The Baptist, the Methodist, and the Armenian Apostolic; the Orthodox Church applied for membership in 1993, but did not get a positive answer.

The Government of the Republic also strives to find means to support single projects, for instance the renovation of organs etc.

5.2.6 Tax Regulation

According to section 20 of the Churches and Congregations Act, the churches, congregations and congregation unions are non-profit making organisations. On the basis of the income tax law and with a regulation in 1996, the Estonian Government established the order, which regulates the list of non-taxable organisations. All religious organisations, acting in Estonia, which have applied for registration in the list of non-taxable organisations, are registered in that list.

5.3 FINLAND

5.3.1 The Right to Freedom of Religion and the Relationship between State and Church

In Finland the right to freedom of religion is protected by virtue of the Constitution Act of Finland (17.7.1919/94) and by international instruments.

The general provisions of the Finnish Constitution concerning the right to freedom of religion and religious communities are Articles 9 and 83. Articles 10 and 10a concerning the right to freedom of speech, assembly and association supplement these provisions. The Finnish Constitution does not contain any provisions on the secularity of the state. Article 83 of the Constitution mentions the Evangelical Lutheran Church as such, stating that provisions on its organisation and administration shall be prescribed in the Church Code.

On 1 October 1998 the Finnish government established a committee which shall propose new draft legislation on freedom of religion before 30 September 2000. The committee's mandate is broad and reforms within several areas can be envisaged. The following will only relate to the present legislation.

5.3.1.1 State and Church

The relationship between the State and the two largest religious communities, the Evangelical Lutheran Church (app. 4,4 million members) and the Orthodox Church (app. 57,000 members), have been regulated in special laws; the Church Code (26.11.1993/1054) concerning the Evangelical Lutheran Church and the Law on the Orthodox Church Community (8.8.1969/521) as well as the Law on Freedom of Religion (10.11.1922/267) concerning all religious communities.

Article 83 of the Constitution contains provisions on religious communities:

Provisions on the organisation and administration of the Evangelical Lutheran Church shall be prescribed in the Church Code.

Other existing religious communities shall be governed by the provisions enacted or to be enacted on these communities.

New religious communities may be established in the manner prescribed by Act of Parliament.

The Evangelical Lutheran Church and the Orthodox Church have relatively close relations to the State. The President of the Republic appoints the bishops of these churches, and a representative appointed by the State Council takes part in the Synods.

During the last years the state relationship to the Church has been raised to Constitutional level. In the Church Code of 1964 on the Evangelical Lutheran Church it was stated that the leadership of the Church in the whole country belongs to the Government. This provision was cancelled when the new Church Code was implemented at the beginning of 1994, but a corresponding provision is still to be found in the Law on the Orthodox Church Community.

The Synod of the Evangelical Lutheran Church has the right to take the initiative in amending the Church Code. The Government can refrain from submitting an amendment to the Parliament (Riksdagen). If an amendment is submitted to the Parliament it will either adopt the amendment in an unchanged version or reject it. The Synod makes decisions on the internal affairs of the Church, i.e. on the Church Ordinance. The Orthodox Church also has the right to propose amendments.

The internal administration of the Churches is independent. From the beginning of 1997 the chapters, functioning as regional administrations of the Evangelical Lutheran Church, were transferred from the State to the Church.

5.3.1.2 Freedom of Religion

Freedom of religion is guaranteed by Article 9 of the Constitution:

Everyone shall have freedom of religion and conscience.

The right to freedom of religion and conscience includes the right to profess and practice a religion, the right to express one's convictions and the right to belong to or not belong to a religious association. No one is obliged to take part in practising religion against one's conviction.

This provision is to be seen in connection with the provision on prohibition of discrimination on account of religion and the conviction embodied in Article 5 of the Constitution, which also implies an obligation to treat all religious associations and "Weltanschauung" movements equally when exercising public authority.

According to the "travaux préparatoires", the "freedom of conscience" in Article 9 of the Constitution covers the religious convictions of other "Weltanschauungen". Article 9 also implies the right to freedom of religious associations and the possibilities of all religious associations in taking decisions on their own religious ceremonies.

The right to freedom of religion is further elaborated in the Law on Freedom of Religion, which states in Section 1:

Everyone has the right to practise his religion in public and in private unless the law is infringed and it is morally unacceptable.

5.3.2 Rules for Registration of Religious Associations on State (Federal) and/or Local Level

As mentioned above, the Law on Freedom of Religion concerns all religious communities. However, the Evangelical Lutheran Church in Finland and the Orthodox Church Community in Finland with regard to legislation differ from other religious communities with regard to legislation, by the fact that their status has been defined by special legislation.

Other religious communities in Finland acquire the official recognition stated in the Law on Freedom of Religion when entering the register of religious communities in the way provided for in Chapter 2 of this law.

If a group wants to get legal personality, i.e. to acquire rights in the name of the community, to enter into obligations and to bring cases before the courts, it can be registered according to this law. The group shall consist of persons residing in Finland, and on the establishment of the Community, their written notification to the Ministry of Education must be signed by at least 20 persons. It is a precondition for registration that the statutes of the community have been worked out in accordance with the provisions of the Law on Freedom of Religion, and that the creed of the community and the way of practising its religion, as indicated in the notification, do not infringe the law and good custom (Section 16 of the law). Decision on registration of the statutes of a religious community is taken by the Ministry of Education. The Population Register Centre registers the community and its parishes in its register of religious communities. A refusal to register can be appealed to the Supreme Administrative Court.

Section 15 of the Law on Freedom of Religion states that “[T]he majority of the members of the governing body of the community shall be Finnish citizens. The Ministry of Education can, however, make an exception if the majority of the members of the community are other than Finnish citizens”.

For the time being, there are 45 registered religious communities in Finland. Furthermore, in Finland there are other religious communities (i.a. the Pentecostal communities) which have chosen not be registered as such. These are like non-religious associations entered in the Associations Registry maintained by the Patent and Registry Agency.

5.3.3 The Legal Status of Religious Associations

According to Section 16 of the Law on Freedom of Religion, religious communities registered by the Ministry of Education have legal standing, i.e. they have the right to acquire property, make commitments and appear in court as plaintiff and defendant.

According to Section 17 of the Law on Freedom of Religion, "[T]he Ministry of Education shall have the right, where necessary, to inspect religious communities by appointing an inspector".

Section 30 of the Law on Freedom of Religion states the following on dissolution of a religious community:

If the community has infringed the law or acted in a morally unacceptable way or against its aims set out in the community rules, the court can on the demand of the public prosecutor or a member of the community declare the community dissolved, or when the infringement has been less severe, give a warning to the community. The provisions on associations shall apply on the dissolution of the community.

This provision corresponds to the provisions in Finnish legislation on dissolution of non-religious associations.

5.3.4 Authorisation to Perform Marriage of Civil Validity

According to Article 14 of the Marriage Act (16.4.1987/411), marriage can be celebrated either as a church wedding or as a civil marriage. Church weddings are celebrated in the Evangelical Lutheran Church or the Orthodox Church Community or in other religious communities, which have been granted the right to celebrate weddings by the Ministry of Education. Not all registered religious communities have the right to perform marriages. Most of these have not applied to obtain this right.

5.3.5 Financing by the State of the Activities of Religious Associations

All companies in Finland contribute through their taxes to the Evangelical Lutheran Church and the Orthodox Church Community. Until year 1999 3 per cent of the taxes levied on companies have been reserved for activities of these two religious communities, and there after this part will be reduced to 2 per cent. According to the church legislation the parishes must use this income exclusively in order to carry out its ecclesiastical duties. Furthermore, members of these churches pay income based church tax.

5.3.6 Tax Regulations

According to Article 21 of the Income Tax Law, the Evangelical Lutheran Church, the Orthodox Church Community and other religious communities and their congregations

pay tax to the municipality. However, they only have to pay tax on income from economic activity and on income from real property or part of real property having been used for other purposes than common or non-profit making purposes. These communities are not obliged to pay value-added tax for activities considered non-profit making. According to the Law on Freedom of Religion, registered religious communities are not obliged to pay tax for the purposes of the Evangelical Lutheran Church and the Orthodox Church Community. Private persons who are not members of these churches do not have to pay taxes either.

5.4 GERMANY¹⁵

5.4.1 The Right to Freedom of Religion and the Relationship between State and Church

In Germany the right to freedom of religion is protected by virtue of the Constitution (Basic Law) of 1949, incorporating also provisions of the Weimar Constitution of 11 August 1919 (WRV) on religion and religious communities, as well as by international instruments.

The general provisions of the Basic Law concerning the right to freedom of religion and freedom to form religious communities are Articles 4 and Article 140 of the Basic Law, the latter incorporating, *inter alia*, Articles 136 and 137 of the WRV. These provisions are supplemented by the protection implied in Article 5 of the Basic Law concerning the right to freedom of expression, Article 8 concerning freedom of assembly, and Article 9 concerning freedom of association.

5.4.1.1 State and Church

Contrary to most CBSS member states, the religious situation in Germany is characterised by the fact that there are two big Churches which are nearly equal in size and importance. Thus, Gerhard Robbers informs us of the following: "Of the German population of about 80 million, the Catholic Church has about 28.2 million members, while the Evangelical Church has 29.2 million members.¹⁶ The Evangelical Church consists of numerous separate territorially based "Landeskirchen", each of these Churches being an independent unit. Together they form the Evangelical Church of Germany. There are also a number of smaller Evangelical Churches that have chosen to stay outside this federation; they are known as the "Freikirchen" (Free Churches). The Evangelical Churches are either Lutheran or Reformed Churches, some follow a unified confession, shaped in various ways from these two creeds."

Thus, Robbers underlines that even today the religious situation in Germany is strongly influenced by the Reformation of 1517 which resulted in the establishment of the Evangelical Lutheran "Landeskirchen", as well as by the Religious Peace of Augsburg of 1555 according to which the Lutheran and Catholic confessions were recognised as essentially equal.

The WRV of 1919 resulted in the establishment of a separation of Church and State, stating in Article 137, now incorporated into the Basic Law, that "[T]here shall be no state church" (137 (1)). Thus, state and church are separated. Nevertheless, the Weimar Constitution recognised and permitted the existence of co-operation in certain fields, such as religious education in the public school system, church tax and military chaplaincy.

Furthermore, Robbers draws attention to the following with regard to the relations between the State and the religious associations:

“Large parts of Church-State relations in Germany are assigned to the competence of the Bundesländer. The detailed arrangements of the constitutional foundation for a Church-State system are established in numerous regulations in the legal provisions in the Basic Law.

The Federal Republic of Germany and its Bundesländer have established many concordats and Church-State treaties with the churches in Germany. In relation to the Catholic Church, the “Reichskonkordat” of 1933 is an essential basis. Church-State treaties with the Evangelical Church and those made with Catholic dioceses are *sui generis* but are treated as being in a category similar to that of international treaties. Treaties or agreements also exist with a whole range of other small religious congregations. The subject matter of such Church-State treaties include the co-operation between the State and the bishops, the guarantees and arrangements of religious education in public schools, the theological faculties, the military chaplains and the position of the Church in the public sphere, such as the financing of religious parishes.”

According to Robbers, Art. 137 (1) of the WRV, in conjunction with Art. 140 of the Basic Law means that the State should not be identified with a Church, that there is to be no Established Church, and that the State is not allowed to have any special inclination to a particular religious congregation or to judge such a congregation’s particular merits or ideologies as true. Finally, the State is not allowed to take decisive action in the affairs of religious communities; this is made particularly clear in Art. 137 (3) WRV, 1st period:

Every religious community shall regulate and administer its affairs independently within the limits of the law valid for all. ...

Robbers underlines that this right of self-determination is valid regardless of the legal status of the religious congregation.

5.4.1.2 Freedom of Religion

Freedom of religion is guaranteed by Article 4 of the Basic Law:

(1) Freedom of faith, of conscience as well as freedom of creed, religious or ideological, are inviolable.

(2) The undisturbed practice of religion shall be guaranteed.

(3) Nobody may be forced against their conscience into military service involving armed combat. Details shall be the subject of a federal law.

Furthermore, Article 136 of the Weimar Constitution, incorporated into the Basic Law, states the following:

(1) Civil and political rights and duties shall be neither dependent on nor restricted by the exercise of religious freedom.

(2) Enjoyment of civil and political rights and eligibility for public office shall be independent of religious denomination.

(3) Nobody shall be obliged to disclose their religious convictions. The authorities may not enquire about their membership of a religious community except where rights and duties depend on such information or a statutory statistical survey makes such enquiry necessary.

(4) Nobody may be compelled to perform any religious act or ceremony or to participate in religious practices or to use a religious form of oath.

Finally, Art. 137 para 2 (WRV) guarantees the freedom to form religious communities, adding that "the uniting of religious communities within the territory of the Reich¹⁷ shall not be subject to any restrictions".

5.4.2 Rules for Registration of Religious Associations on State (Federal) and/or Local Level

Gerhard Robbers informs us, that "every religious community, upon application to the responsible federal state (Land), will receive the status of a public corporation, when they can prove through their bye-laws and the number of their members that they are indeed a permanent community (Art. 137 (5) WRV). Other religious communities receive their legal capacity as a result of civil law. They will at least be private registered societies."

5.4.3 The Legal Status of Religious Associations

According to Robbers, "[T]he religious communities with large memberships in Germany, but also a considerable number of the smaller religious communities, have the status of public corporations. Under various diverse individual arrangements, Church parishes, dioceses, "Landeskirchen" and Church federations are considered public corporations".

Article 137 (7) WRV which contains the provisions on the legal status of religious associations also states, that “associations which foster non-religious beliefs (Weltanschauungen) shall have the same status as religious communities”.

The right to self-determination according to Art. 137 (3) WRV is considered by Robbers to be “the central reference point for the legal and social existence of religious communities in the Federal Republic of Germany. Every religious community independently regulates and administers its own affairs within the boundaries of the laws that are valid for all. Every religious community can then, regardless of its legal status, independently regulate its own affairs. This right of self-determination covers such things as religious dogma and teaching, making official appointments, religious services, the organisation of charitable activities, matters concerning the important parts of the relationship between employer and employees, and data protection.”

Furthermore, Robbers underlines that “[A] Church’s right of self-determination is not restricted to a narrowly-drawn field of specifically “ecclesiastical” activities. The idea of freedom of religious practice extends to preserve the right of self-determination in other areas that are also based or founded upon religious objectives, such as the running of hospitals, kindergartens, retirement homes, private schools and universities.”

In this respect Art. 138 para. 2 WRV states that “[T]he right to own property and other rights of religious communities or associations in respect of their institutions, foundations and other assets intended for purposes of worship, education or charity shall be guaranteed”.

Robbers stresses that “[I]n very substantial ways, the large Churches in Germany provide social services, particularly in the form of the Caritas of the Catholic Church and the Diaconical Works of the Evangelical Church”.

Finally, Robbers points to the fact that the various religious institutions “have a right to conduct religious assistance in hospitals and for prisoners. The religious activities within the police and the military forces are particularly regulated by contracts”.

5.4.4 Authorisation to Perform Marriage of Civil Validity

The Churches in Germany have no authority in the areas of marriage and family law. Marriage according to the German legal system is wholly a civil affair; it is conducted in the register office. On the other hand, everyone is free to have a religious wedding service.

5.4.5 Financing of Churches

On the financing of churches Robbers informs us, i.a., of the following:

“As a result of repeated secularisation of Church property in the past, the Churches in Germany have only a small amount of property. As compensation for the secularisation following the “Reichsdeputationshauptschluss” of 1803, a series of government benefits were to guarantee funds for the Churches. They are guaranteed by Art. 138 para. 1 WRV. An important example is the fact that the local authorities must discharge public duty to contribute to the up-keeping of Church buildings. Likewise, on the basis of contractual terms, there are some obligatory contributions to be made by the State to the Church, such as subsidies to the salaries of Church officials.”

“Approximately 80 per cent of the entire Church budget, however, is covered by the Church tax, guaranteed by Art. 137 para. 6 WRV in conjunction with Art. 140 of the Basic Law. On the basis of the civil tax lists, in accordance with the law of the Länder, the religious communities which are public corporations are allowed to levy taxes. The large Churches have made ample use of this opportunity but also smaller religious communities with the status of public corporation have done likewise, such as the Jewish communities. Only members of the particular Church justified in levying the Church tax are obliged to pay.”

“The rate of Church tax is between 8 and 9 per cent of one’s wage and income tax liability. Other tax standards may also be used; such is the case with the Jewish communities which have tied the Church tax to property tax. Although this concept is not a requirement, in most cases, the Church tax, as a result of an arrangement with the State, is collected by the State tax authorities for the larger Churches. For this service, the Churches pay in compensation between 3 and 5 per cent of the tax yield to the State.”

“Those desiring to be free of the tax may achieve that result by leaving the Church with civil legal results. The withdrawal from the Church is done by de-registering with the proper State officials ...”.

“A further important source of income for some Church institutions is being part of general public financing systems. Church-run hospitals do in some parts of Germany make up the majority of the available hospital beds. In this way they are a part of the publicly-run financing systems for hospitals, that are supported foremost by money paid out of the medical insurance for the number of beds filled. Further, many Churches receive allocations from the State for activities in the same way as other publicly funded events, it is a part of the idea of State neutrality that Church activities are not to be put in a worse position than that of State funded local athletic clubs.”

5.4.6 Tax Regulations

Robbers informs that:

“Churches also receive a certain number of tax exemptions. The Church tax and charitable donations to the Church may be deducted from income tax, as applies equally to donations to non-profit organisations. Churches are also not required to pay certain taxes and duties.”

5.5 ICELAND

5.5.1 The Right to Freedom of Religion and the Relationship between State and Church

The Constitution of the Icelandic Republic from 1944 contains the basic rights for freedom of religious association. In 1995 the two chapters of the Constitution containing provisions on religious freedom and human rights were revised, and there are now three paragraphs, §§ 62-64, containing provisions regarding religion.

These provisions are supplemented by the protection implied in § 72 concerning the right to freedom of expression, § 73 concerning the right to freedom of association, and § 74 concerning the right to freedom of assembly.

5.5.1.1 State and Church

§ 62 of the Constitution states that the Evangelical Lutheran Church is the State Church of Iceland, and that the State shall as such support and protect it. This may be altered by law.

The Icelandic State Church is, according to § 1 of the Act no.78/1997 on the structure, organisation and working methods of the State Church, an independent religious association, and the state is obliged to protect and support it. Thus, state and church are not separated.

Over 90% of the population belong to the Evangelical Lutheran Church while another 7% belong to other religious groups, such as the Roman Catholic congregations, the Seventh Day Adventists, the Pentecostals and the Plymouth Brethren.

The President of Iceland is the supreme authority of the Church. He delegates his powers to the Minister of Justice and Ecclesiastical Affairs who along with the Parliament governs the Church in non-religious matters. In religious affairs the Church is governed by the Bishop of Iceland, the Synodical Conference, the Church Assembly (of laymen and ministers), and by the Executive Council of the Church Assembly.

5.5.1.2 Freedom of Religion

§ 63 of the Constitution states that everyone has the right to establish communities for the worship of God in conformity with their individual convictions. However, nothing may be preached or practised which is prejudicial to good morality and public order.

Thus, the Constitution guarantees equality of all religious associations before the law. Furthermore, as is evident from the practice of registering religious associations, "the

worship of God" is not be understood only as Christian worship; among the registered religious associations are, e.g., The Moslem Association of Iceland and The Icelandic Buddhist Movement.

§ 64 of the Constitution states that no person may lose his civil or national rights because of his religion, nor may he refuse to perform any civic duty because of it.

Everyone is free to stand outside religious communities. No person is obliged to contribute personal dues to any religious worship other than his own.

If a person is not a member of any recognised religious community he shall pay to the University of Iceland those dues he should otherwise have paid to his religious community. This may be altered by law.

5.5.2 Rules for Registration of Religious Associations on State (Federal) and/or Local Level

The legal situation of religious associations is mainly governed by the Law on Religious Associations no. 18 of 1975 which was elaborated using the relevant Norwegian law as a model.

In § 11 the establishment of religious associations is secured, and there is no obligation to report either the establishment or the activities to the governmental authorities.

A religious association may wish to be registered according to § 12. In which case it must apply to the Ministry of Justice and Ecclesiastical Affairs for registration. The rules are that the applicant must be a religious association, based on religious beliefs, and not some other type of association. Not all applications have been accepted.

Registration will as a rule include the right of an authorised person to carry out the necessary rights and duties according to the law. This includes baptism, performing marriages, burials and filing and keeping records in that context.

In October 1997 the Minister of Justice appointed members to a commission to revise this law and to submit a draft legal text in late 1998.

Today 20 religious associations have been registered.

5.5.3 The Legal Status of Religious Associations

As mentioned in paragraph 5.5.2, the legal position of religious associations is mainly governed by the Law on Religious Associations no. 18 of 1975. An authorised person

of a registered religious association has the right to carry out baptism, to perform marriages, burials and filing and keeping records in that context.

5.5.4 Authorisation to Perform Marriage of Civil Validity

All those religious associations which have been registered have authorisation to perform marriages and other acts with civil validity.

5.5.5 Financing of Religious Associations

All persons of 16 years of age and above have to pay a due to the religious association to which they belong, or to the University of Iceland if they choose to be outside all such associations. This due amounts to a little over 400 Icelandic crowns per month (approx. 10 DM). The State collects these dues along with taxes, and the State Accountancy distributes them to the respective associations or the University of Iceland. In September 1997 there were 4.701 individuals, 16 years or above, out of a due-paying population of 203.485, who did not belong to a religious association.

5.5.6 Tax Regulation

Religious associations are exempt from paying taxes.

5.6 LATVIA

5.6.1 The Right to Freedom of Religion and the Relationship between State and Church

In October 1998 the Constitution (Satversme) of the Republic of Latvia of 1922 was amended. In Section 8 on "Fundamental Human Rights" the right to freedom of religion was for the first time enshrined together with other individual rights and freedoms: "... Everyone has the right to freedom of thought, conscience and religious conviction". The right to freedom of religion is furthermore protected by The Constitutional Law on "The Rights and Obligations of a Citizen and a Person" adopted by the Supreme Council of Latvia on 10 December 1991. Furthermore, international instruments protect the right to freedom of religion.

The general provision of the above mentioned Constitutional Law concerning the right to freedom of religion is Article 35 which is supplementary to Article 30 (the right to freedom of expression), Article 31 (the right to form public organisations), and Article 32 (the freedom of assembly). These provisions are situated in Section III of the law "Rights and Obligations of a Person".

5.6.1.1 State and Church

Article 35 of The Constitutional Law on "The rights and Obligations of a Citizen and a Person", amended on 2 October 1997, states the following:

The State is separate from the church.

The freedom of one's religious belief may be limited only in accordance with the procedure established by the law and in the amount to ensure public security, maintain social peace, protect health, morality or rights and freedoms of other people.

Persons or their unions hold right to practice their religion or belief alone, as well as together with other persons, in public or in privacy, adhering cultic rites, religious or ritual ceremonies and preaching a religious doctrine.

Nobody may be forced to adhere to cultic rites, perform religious or ritual ceremonies and preach a doctrine as well as study religion.

Religious or ideological motivation does not exempt anybody to fulfil one's obligations towards the state and the necessity to follow the law.

Thus, Latvia has no state church. State and church (religious associations) are separated.

The relationship between the state and religious associations is regulated by the "Law on Religious Organisations" adopted on 7 September 1995 which "regulates interrelationships in society when freedom of conscience is realised and religious

organisations perform their activities” (Art. 2 (1)), referring, inter alia, to “international agreements concerning human rights in the religious realm”. According to Article 2 (2), the purpose of the law is “to guarantee rights of religious freedom to the residents of Latvia, which includes freedom to determine one’s religious opinions, to individually or collectively convert to a religion or not to convert to anything at all, freedom to change one’s religious convictions and express such in compliance with enacted laws, and perform religious activities”. The law was amended by the Parliament in June 1996.

Article 5 of the Law on Religious Organisations “Interrelationship principles between the state and religious organisations” states, inter alia, the following:

(1) The church is separate from the state in the Republic of Latvia. State institutions are secular by nature, whereby religious organisations can accomplish state functions, only in circumstances which are provided by law.

(2) The state upholds rights provided by law for religious organisations. The state and its various branches and institutions, social as well as other organisations, are not permitted to interfere in religious activities performed by religious organisations.

(5) Religious organisations may request clarification of issues pertaining to the interrelationship between the State and religious organisations. This shall be resolved by the Ministry of Justice which will provide assistance in resolving judicial, organisational, and other related issues.

(6) State institutions monitor and control activities of religious organisations so that they conform to enacted laws.

The law does not explicitly state that all religious organisations are equal before the law, and in Article 6 “Religious organisations and education” it states that in state and municipality schools the Gospel can be taught by teachers of the Evangelic Lutheran, Roman Catholic, Orthodox, Old Believer and Baptist denominations. These are the only religions explicitly mentioned in the law which otherwise focuses on the question of registration of religious organisations.

5.6.1.2 Freedom of Religion

Freedom of religion is implicitly guaranteed by The Constitutional Law on “The Rights and Obligations of a Citizen and a Person” of 1991 as may be seen in the quotation above. Article 12 of this law further states:

All persons in Latvia are equal under the law regardless of race, nationality, sex, language, party affiliation, political and religious persuasion, social, material and occupational standing and origin.

The protection of this equality is further elaborated in the "Law on Religious Organisations", Article 4 "Residents have the same individual rights regardless of their opinion of religion":

(1) It is forbidden directly or indirectly to restrict rights or give privileges to residents, as well as to insult them or create hatred on the basis of their religious opinions. Violators will be persecuted according to the law.

(2) No person has the right to transgress laws on the basis of their religious convictions.

(3) Information pertaining to religious opinions or personal religious affiliations shall not be recorded in personal documents submitted to the state.

(4) It is forbidden for the state and its various branches and institutions, social organisations, employers and employment agencies, to request information pertaining to religious opinions or religious affiliations from employees or other personnel.

Furthermore, The Constitutional Law on "The Rights and Obligations of a Citizen and a Person" of 1991 in Article 30 states that "no one may be forced to express his/her political, religious, ethical or other views, as well as his/her party affiliation".

Neither The Constitution, The Constitutional Law, the Law on Religious Organisations nor the military legislation contain provisions on the right of the citizens to alternative service if military service is inconsistent with their convictions and religious beliefs.

5.6.2 Rules for Registration of Religious Associations on State (Federal) and/or Local Level

5.6.2.1 Definitions of Religious Associations, Groups and Organisations

According to Art. 3 (1) of the Law on Religious Organisations, religious organisations are "congregations, religious associations (churches) and their convents registered as such in the law". The same article states in para. 2 that "[A] congregation is formed on

the basis of freedom of choice by adherents of a certain religion or confession in order to accomplish religious activities as well as other types of activities in compliance with enacted laws“, and that “a religious confederation (church) includes all single denominational congregations that are registered according to the law”.

5.6.2.2 Registration of Religious Organisations

The Law on Religious Organisations not only contains rules of registration of religious organisations; prior to these, it also prescribes the procedure for establishing religious organisations (Art. 7 (1)): “The parish constituent assembly must consist of no less than ten members who are either citizens of Latvia or persons registered as permanent residents, and at least 18 years old. ... Every resident of Latvia has the right to join a congregation and to be an active member of it”. However, except for pastoral staff, only Latvian citizens may be elected to office in the congregation. Furthermore, Art. 7 (2) states that “[T]en or more single confessional congregations, which are registered in the Republic of Latvia, can form a religious confederation (church)”. This provision does not apply to religious organisations already registered in Latvia. Finally Art. 7 (4) states that single denominational congregations can form only one religious confederation (church) in the country (3), and that a cloister can be created by a religious confederation (church) by adopting a decision to do so.

According to Art. 8 of the Law on Religious Organisations, congregations, religious confederations (churches), cloisters as well as ecclesiastical educational institutions must be registered with the Ministry of Justice in order to obtain the rights of a legal person.

To be registered a congregation shall submit the following documents with the application (Art. 9 (2)):

- 1) statutes (constitution, regulations);
- 2) a list of the founding members (full name, residence, personal code and signature);
- 3) a brief written summary of the protocol of the congregation’s founding meeting, the ratification of the statutes (constitution, regulations), a list of members of the board of administration and of the auditors.

If the congregation belongs to a faith recognised in Latvia, that must be stated in the application for registration and confirmed by the religious association (church). If the congregation does not wish to be a member of an existing religious association (church), that must also be indicated in the statutes. This requirement does not apply to those confessions whose canonical regulations do not allow autonomous congregations.

A religious association (Church) shall submit the following documents with the application (Art. 9 (3)):

- 1) statutes (constitution, regulations);
- 2) list of congregations - founders of the religious association (church) as approved by the leaders of the congregations;
- 3) a brief written summary of the protocol of the conference (synod) on the foundation of the religious association (church), ratification of the statutes (constitution, regulations), a list of members of the board of administration and of its auditors.

Furthermore, a person empowered to represent the religious organisation (congregation, association) must be named and authorised to act on behalf of the organisation.

Art. 9 also contains a list of documents to be submitted by a monastery or an ecclesiastical educational institution for registration. This list is similar to the above-mentioned.

Art. 10 prescribes in detail the information which the statutes of a religious organisation must include, e.g. the commitment of the religious organisation to observe the laws and Constitution of Latvia, and the teachings, description of religious ceremonies, goals and purposes of religious activities.

The Ministry of Justice shall examine the submitted documents within one month. However, for congregations which start operating in Latvia for the first time and which do not belong to a religious association (church) registered in Latvia, the Ministry of Justice may prolong this period by an extra month and must inform the applicant accordingly (Art. 8 (2)). These religious organisations may be registered for a period of one year and must re-register with the Ministry of Justice each year for the first 10 years, in order that the Ministry of Justice is assured of their loyalty to the state of Latvia and that their activities comply with legislative acts (Art. 8 (4)).

The decision to register or the denial to register a religious organisation shall be made by the Minister of Justice (Art. 8 (3)).

According to Art. 11, a religious organisation is not registered unless all required documentation is provided, if the work of the organisation or its teachings, aims and objectives are contrary to the judicial norms of the Republic of Latvia, or if the activities of the organisation constitute a threat to State security, public peace and order, and to the health and morality of other persons, or if the organisation propagates ideas of religious intolerance and hatred or in other ways contradicts the Constitution and laws of Latvia.

The decision to deny registration of a religious association shall include an explanation of the reasons for denial (Art. 11 (2)). The decision for registration of a religious

organisation or the denial of registration may be appealed against in court within 10 days after receiving such decision (Art. 12).

According to information from the Ministry of Justice of Latvia and some human rights reports, there have been cases of refusal of registration of religious organisations which did not fulfil the requirements of the Law on Religious Organisations. Some have been registered after their compliance with the reasons for the refusal, while others have still not been registered.

As of 1 July 1998 1022 religious congregations were registered in the Latvian Ministry of Justice, the largest being the Lutheran (307), Roman Catholic (235), Orthodox (116), Baptist (81) and Old-Believer (65) congregations.

5.6.2.3 The Consultative Council for Religious Affairs of the Ministry of Justice

The Consultative Council for Religious Affairs is an independent institution composed of representatives of Latvia's traditional (historical) religious confessions. It was established in accordance with the directive of 15 October 1996 from the Ministry of Justice. The aim of the Council's work is to foster mutual understanding amongst members of different confessions and supporters of various religious orders. The duties and rights of the Consultative Council also include:

1. the expression of views to the Ministry of Justice on religious activities in the State;
2. the expression of views to State institutions in cases where the rights and duties of confessions and religious organisations are involved;
3. the expression of views in the process of the legal regulation of the work of religious organisations;
4. the preparation of proposals to State institutions on the education of people and the strengthening of moral and ethical values;
5. the fostering of co-operation between the State and religious organisations.

The Consultative Council arrive at their decisions by using the principle of consensus. Membership of the Council includes representatives of the traditional (historical) confessions, i.e., the Evangelical Lutheran, Roman Catholic, Orthodox, Old Believer, Baptist, and Jewish faiths, as well as representatives of the Ministry of Justice.

5.6.2.4 Transitional Provisions

The Law on Religious Organisations states as transitional provisions, that the religious congregations, associations (churches) and monasteries which had registered with the Ministry of Justice before the law came into force, shall maintain their legal status. Furthermore, all existing religious organisations, regardless of the time of their registration, must ensure the compatibility of their statutes (constitution, regulations)

with the law by 1 January 1997 and, if necessary alter and adopt statutes (constitution, regulations), alter the structure of the organisation and the form of its administrative and accounting boards, and change the name of the organisation, the abbreviation of the name and insignia.

In the transitional provisions it is also stated that the rights granted by the law shall also apply to the Congregation of Nature Worshippers (the Dievturi congregation) and the Riga Jewish congregation.

Finally, it is required that the Department of Religious Affairs within the Ministry of Justice is re-established by 1 October 1995.

5.6.3 The Legal Status of Religious Associations

5.6.3.1 Rights and Conditions of Activity

From the moment of their registration in the Ministry of Justice religious organisations acquire the status of a legal person. Before the law, the rights of religious organisations are identical with those of other legal persons. In accordance with the Civil law, Articles 1406 and 1407, of the Republic of Latvia, the rights of legal persons in matters of justice are normally identical with those of the civil rights of the person. Only registered religious associations (churches) have the right to establish monasteries and ecclesiastic educational institutions (Art. 13).

Religious organisations can be involved in religious activity in hospitals, retirement homes, penitentiaries, and national defence units, where help is desired by the persons in these institutions. Religious activities within a National defence unit must be executed according to the regulations enacted by the Ministry of Defence. The activities of a religious organisation or of a believer can be restricted only under those circumstances when the laws and Constitution of the Republic of Latvia are violated (Art. 14).

If religious organisations intend to perform activities of a religious nature outside their buildings and their land, they must receive permission from the local self-government authority (Art. 14). This is also provided in the Law on Meetings, Demonstrations and Pickets of 16 January 1997.

Only religious organisations can invite foreign clergy or missionaries to Latvia for the accomplishment of religious activity, and then only if residence permits have to be obtained according to the law (Art. 14).

Finally, Article 14 states that a religious organisation must annually, and not later than 1 March, provide a report of its activities to the Ministry of Justice. The report must be

prepared in accordance with the specified requirements of the Cabinet of Ministers. Members of the religious organisations and journalists are entitled to become familiar with the report and the decisions taken by the organisations. The State Income Service, the Police and local governments monitor the activities of the organisations and ensure that they are within the law. However, State and local government institutions as well as other organisations, do not have the right to interfere with the religious work of the organisations.

Furthermore, in accordance with the Law on Religious Organisations (Art. 15) and the Law on Entrepreneurship of 13 December 1990, a religious organisation is entitled to undertake commercial and entrepreneurial activity, to found companies and to purchase commercial shares. A religious organisation may own property and goods. If the income from commercial activity in a period of one calendar year exceeds by 500 times the minimum monthly salary set by the Cabinet of Ministers, the religious organisation must found a company which must be registered in the Company Register of the Republic of Latvia.

However, if the spiritual centre of a religious organisation registered in Latvia is situated in a foreign country, it cannot own the immovable property of this organisation, nor any property recognised as a monument of culture. (Art. 16).

5.6.3.2 Termination of Activity

A congregation or a religious organisation may be dissolved in accordance with its statutes, or as a result of a legal process. Furthermore, a religious association (church) is dissolved if the number of congregations within it in a period of one year is smaller than ten (Art. 17).

If the religious organisation acts in a way which is contrary to the Constitution and laws of the Republic of Latvia, the State Prosecutor or the Minister of Justice may initiate the process of dissolution of the organisation. A court may terminate the work of the religious organisation, if it:

- 1) propagates ideas of religious intolerance or hatred;
- 2) violates the law or encourages others to do so;
- 3) violates or disregards its own statutes (constitution, regulations);
- 4) by means of its activities (teachings) becomes a threat to national security, public peace and order or the health and morality of other persons. (Art. 18 (4)).

The court ruling on dissolution of the organisation may be appealed against in accordance with the Civil law process.

5.6.4 Authorisation to Perform Marriage of Civil Validity

Article 53 of the restored Civil Law of 1937 of the Republic of Latvia provides for persons to be married in the registry office or by a priest. Article 51 of the Section of Family Rights of the Civil Law states that, if the persons to be married belong to confessions of Lutherans, Catholics, Orthodox, Old Believers, Baptists, Adventists, Reformats, Moses Believers and wish to be married by the priest of their confession, who has the permission of the administration of the respective confession, that the announcement takes place according to the rules of the confession, and that after the announcement the priest performs a marriage ceremony. This list of denominations in the Civil Law may be changed only by relevant amendments to the existing legislation.

5.6.5 Financing by the State of the Activities of Religious Associations

From information received from the Latvian Ministry of Foreign Affairs it appears that the state does not give direct financial support to religious associations, but supports them indirectly by way of certain tax exemptions and reductions.

5.6.6 Tax Regulation

In accordance with the law "On taxes and duties" of 2 February 1995, a religious public organisation must pay

- social tax, if it or its company employs paid workers;
- company income tax, value added tax, natural resources tax, lottery and gambling tax as other companies do.

In practice, however, religious organisations enjoy some tax exemptions and reductions. Thus, the Law on Real Estate Tax, which entered into force on 1 January 1998, provides that this tax is not imposed on the real estate of religious organisations, i.e. land, building, structures, irrespective of, whether the real estate will be used for religious activities or other purposes.

Furthermore, when enterprises (corporations) donate sums to religious organisations, which have received permission from the Ministry of Finance to receive donations, 85% of the donated sum will be deducted from the calculated amount of the income tax of these enterprises. Individuals can have donations deducted from their taxable income before the income tax is imposed. These donations may not exceed 20% of the income subject to income tax.

Finally, value added tax is not imposed on religious and ritual services, and other services performed by registered religious organisations without the aim to gain profit. However, value added tax is imposed on the commercial activities of religious organisations.

5.7 LITHUANIA

5.7.1 The Right to Freedom of Religion and the Relationship between State and Church

In Lithuania the right to freedom of religion is protected by virtue of the Constitution and international instruments.

The general provision of the Lithuanian Constitution of 1992 concerning the right to freedom of religion is Article 26. This provision is supplementary to the protection implied in Article 25 on the right to freedom of expression, Article 35 on the right to freedom of association, and Article 36 on the right to freedom of assembly. Furthermore the Constitution contains provisions on churches and religious organisations (Art. 43). Finally, the Seimas adopted in 1995 a "Law on Religious Communities and Associations of the Republic of Lithuania", also containing provisions on the right to freedom of religion.

5.7.1.1 State and Church

Article 43 of the Constitution states the following:

The State shall recognise traditional Lithuanian churches and religious organisations, as well as other churches and religious organisations provided that they have a basis in society and their teachings and rituals do not contradict morality or the law.

Churches and religious organisations recognised by the State shall have the rights of legal persons.

Churches and religious organisations shall freely proclaim the teaching of their faith, perform the rituals of their belief, and have houses of prayer, charity institutions, and educational institutions for the training of priests of their faith.

Churches and religious organisations shall function freely according to their canons and statutes.

The status of churches and other religious organisations in the State shall be established by agreement or by law.

The teachings proclaimed by churches and other religious organisations, other religious activities, and houses of prayer may not be used for purposes which contradict the Constitution and the law.

There shall be no state religion in Lithuania.

Thus, Lithuania has no state church. State and church (religious organisations) are separated.

The relationship between the state and churches and religious organisations is regulated by the "Law on Religious Communities and Associations of the Republic of Lithuania"

of 1995 which “shall establish the legal relations of religious communities and associations and the State of Lithuania, and shall implement the human right of freedom of religion consolidated by the Constitution of the Republic of Lithuania, other laws and international documents and agreements” (Article 1).

Article 5 of the law states that “the state recognises nine traditional religious communities and associations existing in Lithuania, which comprise a part of the historical, spiritual and social heritage of Lithuania: Roman Catholic, Greek Catholic, Evangelical Lutheran, Evangelical Reformed, Russian Orthodox, Old Believer, Judaistic, Sunni Muslim and Karaite”.

Other (non-traditional) religious associations may - according to Article 6 - be granted state recognition as part of Lithuania’s historical, spiritual and social heritage, if they are backed by society and their instruction and rites are not contrary to laws and morality, and provided they have been registered with the Ministry of Justice (see below).

The “Basic Principles of State and Religious Community and Association Relations” are described in Article 7 of the law:

Religious communities and associations shall not fulfil state functions, while the state shall not fulfil the functions of religious communities and associations.

Religious communities and associations shall have the right to freely organise in accordance with their hierarchic and institutional structure, and manage their inner life according to its canons and statutes, as well as other norms.

All religious communities and associations possessing legal person rights may obtain state support for culture, education and charity, in accordance with the procedure established by laws.

5.7.1.2 Freedom of Religion

The right to freedom of religion is guaranteed by Article 26 of the Constitution:

Freedom of thought, conscience, and religion shall not be restricted.

Every person shall have the right to freely choose any religion and, either individually or with others, in public or in private, to manifest his or her religion or faith in worship, observance, practice or teaching.

No person may coerce another person or be subject to coercion to adopt or profess any religion or faith.

A person’s freedom to profess and propagate his or her religion or faith may be subject only to those limitations prescribed by law and only when such restrictions are necessary to protect the safety of society, public order, a person’s health or morals, or the fundamental rights and freedoms of others.

Parents and legal guardians shall have the liberty to ensure the religious and moral education of their children in conformity with their own convictions.

These provisions are repeated in Article 2 of the "Law on Religious Communities and Associations" with the little supplement that every person has the right to freely choose any religion or faith, *and to also change his choice ...* Article 2 also prescribes that "every individual within the Republic of Lithuania" has the above mentioned rights.

Furthermore, Article 2 states that "a crime or failure to implement laws may not be excused by the religion or faith practised by an individual", repeating Article 27 of the Constitution.

In Article 2 it is also stated that "believers shall have the right to freely join religious communities and associations, and also to establish religious organisations", reflecting Article 35 of the Constitution about the right to freedom of association.

Finally, Article 2 states that "every individual may on the basis of his religious convictions choose an alternative (labour) service in lieu of the obligatory military service" which corresponds to Article 139 of the Constitution. According to information from the Ministry of Justice of the Republic of Lithuania, this provision has been implemented.

According to Article 3 of the "Law on Religious Communities and Associations" "[A]ll individuals, regardless of the religion they profess, their religious convictions or their relationship with religion, shall be equal before the law. It shall be prohibited to limit their rights and freedoms directly or indirectly, or to apply privileges. An individual's religion shall not be indicated in documents issued by state institutions and organisations". This corresponds to Article 29 of the Constitution on the equality of all people before the law which states that "a person may not have his rights restricted in any way, or be granted any privileges on the basis of his or her sex, race, nationality, language, origin, social status, religion, convictions or opinions".

Article 25 of the Constitution on freedom of expression states, i.a., that "freedom to express convictions, ..., may not be restricted in any way other than as established by law, when it is necessary for the safeguard of the health, honour and dignity, private life, or morals of a person, or for the protection of constitutional order. Freedom to express convictions ... shall be incompatible with criminal actions - the instigation of national, racial, religious, or social hatred, violence, or discrimination, the dissemination of slander or misinformation".

Finally, Article 40 of the Constitution states that "state and local government establishments of teaching and education shall be secular. At the request of parents, they shall offer classes in religious instruction".

5.7.2 Rules for Registration of Religious Associations on State (Federal) and/or Local Level

5.7.2.1 Definitions of Religious Associations, Groups and Organisations

According to Article 4 of the “Law on Religious Communities and Associations”, a religious community is comprised of a group of individuals seeking to implement the aims of the same religion. It may be a local subdivision of a corresponding religious association. Religious associations are unions of church and uniform religious organisations, namely communities striving to implement the aims of the same religion. An association shall be comprised of no fewer than two religious communities, which are subject to mutual leadership. Religious centres are the higher governing institutions of religious associations.

Article 5 of the law explicitly mentions the nine traditional religious communities and associations of Lithuania which are recognised by the state (see above), thus introducing one more term.

5.7.2.2 Recognition and Registration of Religious Associations

As mentioned above, non-traditional religious associations may be recognised by the state. According to Article 6 of the Law on Religious Communities and Associations, state recognition is granted by the Parliament (Seimas), and means state backing of the spiritual, cultural and social heritage of religious associations.

Religious associations may request state recognition following the elapse of a period of no less than 25 years from the date of their initial registration in Lithuania. If a request is denied, it may be resubmitted, following the elapse of 10 years from the day the request was denied. The Seimas shall deliberate the resubmission upon receipt of a concluding summary from the Ministry of Justice. However, the initial registration is considered to have taken place, provided that the religious association acted legally (was registered) in Lithuania after February 16, 1918 (Article 6).

According to Article 43 of the Constitution, churches and religious associations recognised by the State shall have the rights of legal persons.

The granting of legal rights to other religious communities and associations is prescribed in Article 11 of the law. These rights shall be dependent upon registration of their statutes or the documents corresponding to them. To be registered a religious community shall comprise a membership of no fewer than 15 adult citizens of Lithuania, while a religious association shall comprise no fewer than two religious communities.

In order to effect registration of the statutes or a corresponding document of a religious community/association, a written application shall be submitted together with the initial meeting protocol and membership list. The statutes or a corresponding document must indicate:

- 1) name and main office of the religious community/association;
- 2) principles, activity directions and aims of professed religious instruction;
- 3) organisational structure and authorities of the religious community/association;
- 4) procedure of management, use and sale of property belonging to the religious community/association;
- 5) procedure for closing of the religious community/association and distribution of property remaining following liquidation.

The statutes or a corresponding document shall not be registered if:

- 1) the above mentioned information is not included;
- 2) the activity of the religious community/association violates human rights and freedoms or public order;
- 3) statutes or a corresponding document of the religious community/association of the same name have already been registered.

A refusal to register the statutes or a corresponding document of the religious community/association may be appealed in court.

According to the Department of Statistics of Lithuania, in 1998 Roman Catholics have 691 religious communities in Lithuania; Church of Old Believers - 57; Evangelical Lutherans - 54; Orthodox Church - 44; Evangelical Reformats - 11; Greek Catholics - 5; Moslems - 5; Jews - 5; Karaims - 1.

5.7.2.3 Transitional Provisions

According to article 10 of the Law on Religious Communities and Associations, traditional religious communities and associations, having the rights of a legal person, shall inform the Ministry of Justice hereof. Newly established (re-established) traditional religious communities and associations shall acquire the rights of a legal person, pursuant to a report in writing of their establishment (re-establishment), to the Ministry of Justice by their authorities. The continuity of a specific community or association is established by taking into account its canons, statutes and also other norms.

5.7.3 The Legal Status of Religious Associations

Upon registration religious communities and associations acquire the rights of legal persons.

5.7.3.1 Rights and Conditions of Activity

The freedom to perform religious rites is prescribed in article 8 of the law, which states that religious rites and cult ceremonies should be freely performed within cult premises and in their vicinity, in the homes and flats of citizens, funeral homes, cemeteries and crematoriums. Furthermore, religious rites shall be performed in hospitals, social care facilities and places of detention, as well as in military units, pursuant to request by believers. According to information from the Lithuanian Ministry of Justice, these provisions concern all religious communities and associations, having the rights of a legal person and operating in Lithuania.

The rites of traditional and other state recognised religious communities and associations which are not contrary to the secular school concept, may be performed in state education and training institutions upon request by students who are believers and by their parents. Religious communities and associations having the rights of legal persons may have their own denominational cemeteries.

According to Article 9 of the law, religion of traditional and other state recognised religious communities and associations may be taught in state education institutions upon request by parents.

According to Article 13, religious communities, associations and centres have the right of ownership to property required for their activities. Religious communities, associations and centres also have the right to establish and maintain general education schools as well as other institutions of instruction (Art. 14). Furthermore, they can engage in charity (Art. 14), publishing, production and economic activity (Art 15).

Most income from religious communities, associations and centres and their clergy is exempted from tax, but their enterprises shall be subject to taxation in accordance with the laws (Art. 16).

5.7.3.2 Termination of Activity

If a religious community, association or centre should fail to act according to the registered statutes, or if their activity should violate the Constitution or the "Law on religious communities and associations ...", the Ministry of Justice shall inform the religious community, association or centre and indicate the period of time during which violations must be rectified. Failure to rectify said violations shall result in a court appeal by the Ministry of Justice for suspension of activity of the religious community, association or centre. The term of suspension shall not exceed 6 months. Should

violation cited by the court fail to be rectified during this term, the activity may be ceased by court decision (Art. 20).

Apart from this, the activity of a religious community, association or centre may be terminated by its own decision and the activity of a religious community or association may also be terminated by decision of its higher governing institution.

5.7.4 Authorisation to Perform Marriage of Civil Validity

According to Article 38 of the Constitution, the State registers marriages, births, and deaths. The State also recognises all marriages registered by the traditional and state recognised churches operating in the Republic of Lithuania.

5.7.5 Financing by the State of the Activities of Religious Associations

With reference to the Act of the Restitution of the Republic of Lithuania adopted in 1990, the religious communities and associations which suffered from the Soviet occupation obtain financial support of the State.

According to Article 7 of the Law on Religious Communities and Associations, all religious communities and associations possessing legal person rights may obtain state support for culture, education and charity, in accordance with the procedure established by laws.

According to Article 14 of the same law, educational institutions of traditional and other religious communities, associations and centres having the rights of a legal person, and schools of such religious communities, associations and centres, that provide the education prescribed by the state, shall receive financial and other support from state and local government budgets, according to procedure established by laws and other normative acts.

On 4 February 1998 the Lithuanian Government decided to give 5 million litas (1.2 million \$) to the nine traditional churches of Lithuania. The churches will receive money proportionally to the number of believers.

5.7.6 Tax Regulation

According to Article 16 of the Law on Religious Communities and Associations, the income, namely contributions, resulting from the sale of property acquired through charitable means, of all religious communities, associations and centres (higher governing institutions), shall not be taxable, provided they are intended for construction, repair or restoration of a house of prayer, charity, culture and education.

The income received by the clergy of religious communities, associations and centres, assistants at religious rites and service staff (except individuals performing construction, repair and restoration work), from the previously indicated funds shall not be subject to the taxes levied on the income of Lithuanian nationals. Religious necessities and literature brought across the border into the Republic of Lithuania, through the authorisation of religious communities, associations and centres having the rights of a legal person, shall not be subject to customs tax.

Enterprises (organisations) established by religious communities, associations and centres shall be subject to taxation in accordance with the laws.

5.8 NORWAY¹⁸

5.8.1 The Right to Freedom of Religion and the Relationship between State and Church

In Norway the right to freedom of religion is protected by virtue of the Constitution and international instruments.

The general provision of the Norwegian Constitution of 1814 with subsequent amendments concerning the right to freedom of religion is Article 2. This provision is supplemented by Article 100 concerning the right to freedom of expression. The Norwegian Constitution has no provisions on the right to freedom of association nor on the right to freedom of assembly. However, legal theory holds that the freedom of association is constitutionally protected, based on unwritten constitutional principles and other constitutional provisions. Furthermore, the Constitution contains provisions which establish and regulate the Church of Norway (Art. 2, 4, 12, 16 and 27).

5.8.1.1 State and Church

Article 2 of the Constitution states that the Evangelical-Lutheran religion shall remain the official religion of the State, and that those professing it are bound to bring up their children in the same faith. According to Article 4 the King shall at all times profess the Evangelical-Lutheran religion, and uphold and protect the same. According to Article 12 "more than half the number of members of the Council of State (the Government) shall profess the official religion of the state"; this provision is to be seen in connection with Art. 27, para 2, which states that "a member of the Council of State who does not profess the official religion of the State shall not take part in proceedings on matters which concern the State Church".

Thus, State and Church are not separated, and as the Church of Norway is a state church; it can be considered to be part of the public administration. Moreover, according to Article 16 of the Constitution "the King ordains all public church services and public worship, all meetings and assemblies dealing with religious matters, and ensures that public teachers of religion follow the norms prescribed for them". It is generally accepted that this article deals only with the State Church of Norway. If other religious activities are to be regulated, they should be regulated by law. Article 16 expresses that the King is the Head of the State Church. Besides appointing people and making other administrative decisions, he is the one who shall interpret the symbolic books of the Church, e.g. if it is maintained that a minister or a bishop has set aside the right teaching. In such cases the opinion of theological experts is always obtained, for use as a guideline. The King can also issue general provisions on ecclesiastical affairs, e.g. on church ceremonies, but he cannot decide that a church ceremony shall be legally binding, e.g. that marriage can only be contracted by a church wedding; that belongs to

the sphere of normal legislation. In practice, it is the general opinion that the King's authority according to Art. 16 does not comprise establishing rules for the external organisation of the State Church. The provisions about this are to be found in the law on the organisation of the Church of Norway dated 7 June 1996. Within the limits drawn by Art. 16 of the Constitution, the authority of the King is exclusive. The Parliament cannot interfere through legislation.

Membership of the Church of Norway, as of any other religious association, is voluntary. According to the census of 1980, 88% of the population were members of the Church of Norway.

The question of separating State and Church was considered by a public commission in the 1970's. The majority of its membership concluded that there are good reasons for revoking the State Church system in favour of transforming the Church of Norway into an autonomous folk church of the same status as other religious organisations. This would imply corresponding amendments to the Constitution. However, a majority of the Parliament, when discussing the report of the commission, favoured maintaining the State Church system, but suggested the introduction of reforms giving more freedom and independence to the Church. Consequently, amendments have been made to the law on the organisation of the Church of 1996. A Synod has been established as a central representative body of the Church of Norway, that shall express its opinion on important amendments to ecclesiastical laws. The Synod can also decide on rules for church activities.

5.8.1.2 Freedom of Religion

Freedom of religion is guaranteed by Article 2 of the Constitution to which the following provision was introduced by an amendment in 1964 as a new first paragraph:

All inhabitants of the Realm shall have the right to free exercise of their religion.

This freedom of religion is universal. The right to free exercise of one's religion implies not only the right to worship God in one's own way, but also the right to establish religious organisations, arrange religious meetings and the right to proselytise. In 1966 the Foreign Policy and Constitution Committee of the Norwegian Parliament expressed the opinion that Article 2 should also be interpreted as comprising a view of life; Article 2 could thus be seen as an expression of freedom in the sphere of religion for followers of religion as well as for its opponents.

When exercising one's religion, inhabitants must act in accordance with Art. 100 of the Constitution on freedom of expression which both regulates the freedom of expression and makes it possible to limit this freedom in case of blasphemy. The article states the following:

There shall be liberty of the press. No person may be punished for any writing, whatever its contents, which he has caused to be printed or published, unless he wilfully and manifestly has either himself shown or incited others to disobedience to the laws, contempt of religion, morality or the constitutional powers, or resistance to their orders, or has made false and defamatory accusations against anyone. Everyone shall be free to speak his mind frankly on the administration of the State and on any other subject whatsoever.

The right to free exercise of one's religion does not imply a claim for special treatment with regard to legislation regulating the behaviour of citizens in non-religious affairs. Conscientious objectors to military service are exempted from this service, but are then obliged to alternative civil service. However, the basis for such claims is not defined within the Constitution.

The right to freedom of religion is further elaborated in the "Law on religious associations and miscellaneous" adopted in 1969. According to Article 1 of this law "everybody has the right to perform religious activities alone or together with others and to create religious associations as long as it does not offend law and common decency". Religious associations (other than the State Church of Norway) are thus equal before the law.

However, according to Article 7 of this law, a person neither being citizen of Norway nor resident in the country cannot belong to a Norwegian religious association.

5.8.2 Rules for Registration of Religious Associations on State (Federal) and/or Local Level

The "Law on religious associations ..." does not give any definition of a religious association. Neither does it contain any provision on a minimum membership necessary to found an association.

All religious associations have the right to register before the county's governor as long as their faith is not "offending law and common decency" (Art. 13). To be registered, a religious association outside the Church of Norway shall submit an application to the governor supplying him with the following information (Art. 14):

- 1) name and address
- 2) confession and teaching
- 3) organisation, activities and dissemination
- 4) name of every chairman
- 5) name and sphere of activity of every priest and leader

6) provisions on the purpose of the association, on demands for being a member, on voting rights, on spokesmen, officials, on changing rules, on dissolution etc.

The Ministry of Education, Research and Church Affairs can establish the form and content of rules on application for registration and their form and content.

In the law itself there are no terms for considering an application for registration and no provisions on denial of registration. In the comments to the draft law, however, various considerations are mentioned. In general, the association should be of positive value to society.

It should be underlined that a religious association does not need to register in order to exist and in order to be a legal person. However, if it is registered it will enjoy certain rights and obligations prescribed by law. These rights are the right to perform marriage of civil validity, ("Law on marriages", 4 July 1991, no. 47, section 12), the possibility of receiving contributions to alternative religious education of children, ("Law on religious associations and miscellaneous...", section 20), and the possibility for the association to have its own graveyard, section 18.

5.8.3 The Legal Status of Religious Associations

The "Law on religious associations ..." (Art. 13) implies that registered religious associations enjoy the rights of a legal entity. The registration itself is not a condition for whether a religious association is a legal person or not. Several religious associations decide to remain unregistered. They can in either case be legal persons and enter into contracts, open bank accounts etc.

According to Article 21 of the "Law on religious associations ..." registered religious associations can be deprived of their registration by the county's governor, if the conditions for registration are no longer fulfilled. In that case the governor should give the religious association a warning in writing, and if the problems have not been solved within four weeks, the governor can decide to strike the religious association off the register. In the case of serious violations of the conditions for registration, the governor can strike the association off the register without warning.

The decision by the county's governor concerning registration, can be appealed to the Ministry of Education, Research and Church Affairs.

5.8.4 Authorisation to Perform Marriage of Civil Validity

According to "Law on Marriages" (July 4, 1991, section 12), a minister in any officially registered religious association is authorised to perform marriages, provided

that he has been given a specific right to perform public authority on behalf of the religious association. Such authorisation is granted by the county governor.

5.8.5 Public Financing of the Activities of Religious Associations

According to the "Law on religious associations ...", Article 19, any officially registered religious association may apply for an annual contribution from the state. The sum of all contributions shall be approximately equivalent to the official budget for The Church of Norway and shall be allocated to the associations according to their number of members.

When an association is granted a state contribution, it may also apply for a contribution from the municipality where its adherents are living (cf. Art. 19). The municipality bases its contribution on the sum of local expenditures to The Church of Norway and allocates in the same way as the state.

By an amendment of the above-mentioned law (1969) the same rules apply to non-registered religious associations, cf. Article 19a.

According to Article 20 officially registered religious associations may apply to the municipality for contributions for alternative religious education of children.

State contributions are administered by the county's governor. Regulations are laid down by the Ministry of Justice (1988) and were from 1 January 1998 executed by the Ministry of Education, Research and Church Affairs.

Any association of adherents to non-religious philosophies or views of life may also apply for contributions from the state and/or from the municipality as long as the activities of the association do not "offend law or common decency", cf. "Law on contributions to associations of adherents to non-religious philosophies or views of life" (June 12, 1981, no. 64).

Religious associations outside The Church of Norway, as well as voluntary organisations within the Church, may apply for state contributions for the erection of new church buildings. The contribution is granted in accordance with a normative number of square meters and is a fixed amount.

5.8.6 Tax Regulation

Official contributions to religious associations are not subject to taxation. The associations are, however, subject to the same general and special rules of taxation as any other legal body under Norwegian jurisdiction.

5.9 POLAND

5.9.1 The Right to Freedom of Religion and the Relationship between State and Church

In Poland the right to freedom of religion is protected by virtue of the Constitution and the Act on Guarantees of Freedom of Conscience and Belief referring explicitly to a number of international instruments.

The general provision of the Polish Constitution of 1997 concerning the right to freedom of religion is Article 53. This provision is supplementary to the protection implied in Article 54 concerning the right to freedom of expression, Article 57 concerning the right to freedom of assembly, and Article 58 concerning the right to freedom of association. Furthermore, the separation of state and church is stated in Article 25 (3). Finally, the Preamble of the Constitution states that believers and non-believers are equal.

5.9.1.1 State and Church

Article 25 (3) of the Polish Constitution of 1997 sets forth that:

The relationship between the State and churches and other religious organisations shall be based on the principle of respect for their autonomy and the mutual independence of each in its own sphere, as well as on the principle of co-operation for the individual and common good.

The separation of State and churches and other religious organisations is explicitly stated in Article 9 (2.1) of the Act on Guarantees of Freedom of Conscience and Belief which was adopted on 26 June 1997 and entered into force on 30 May 1998. Article 10 (1) of this Act states that:

The Republic of Poland is a secular state, neutral in questions of religion and convictions.

And Article 11 (1) of this Act states that:

Churches and other religious associations are independent from the state in performing their religious functions.

Among the guarantees of freedom and conscience according to Article 9 (3) of the Act is the following:

Equality of rights of all churches and other religious associations regardless of the form of regulation of their legal situation.

The Concordat between the Holy See and the Republic of Poland of 28 July 1993 was ratified 24 April 1998. In its Article 1 it states that:

The Republic of Poland and the Holy See confirm that the State and the Catholic Church are - each one within its competence - independent and autonomous and commit themselves to full observance of this principle in mutual relations and in joint action for the development of the human being and for the common good.

According to the Preamble of the Concordat, the Holy See and the Republic of Poland, inter alia, take into consideration "the fact that the Catholic religion is professed by the majority of the Polish society", and underline "the mission of the Catholic Church, the role played by the Church in the millennial history of the Polish State, as well as the significance of the Pontificate of His Holiness Pope John Paul II for the contemporary history of Poland". The Parties also state that they are "guided by ... the universal principles of international law, including the norms concerning the observance of human rights and fundamental freedoms as well as the elimination of all forms of intolerance and discrimination based on religion".

The Concordat regulates the relationship between the Holy See and the Polish Republic which recognizes the Roman Catholic Church and its institutions as legal persons in Poland and - respecting the right to freedom of religion - guarantees the Catholic Church a free and public fulfillment of its mission. It does not replace the law of 1989 on the relationship between the Polish State and the Catholic Church in Poland. After the ratification of the Concordat, the Parliament has amended the family code, the civil procedure code, the law on civil status acts and others with special regard to marriage (see chapter 5.9.4).

During the last ten years, the Parliament has adopted laws on the relationship between the State and a range of churches, including other Catholic Churches than the Roman Catholic, the Adventists, the Orthodox Church, the Baptists, the Evangelical Lutheran, the Methodists, the Evangelical Reformed Church, the Pentecostal Church, the Karaimian Religious Association and the Jewish communities. The relationships between the State and the Muslim Religious Association and the Old Believers in Poland is still regulated by laws adopted in the inter-war period.

In the Preamble of the Constitution, believers and non-believers are mentioned in the following way:

... We, the Polish Nation - all citizens of the Republic, both those who believe in God as the source of truth, justice, good and beauty, as well as those not sharing such faith but

respecting those universal values as arising from other sources, ..., recognising our responsibility before God or our own consciences, hereby establish this Constitution ...

Article 25 of the Constitution states the following:

- 1. Churches and other religious organisations shall have equal rights.*
- 2. Public authorities in the Republic of Poland shall be impartial in matters of personal conviction, whether religious or philosophical, or in relation to outlooks on life, and shall ensure freedom of expression within public life.*

Thus, Poland is a secular state with no formal role attributed to any religious denomination. Churches and other religious organisations exercise, under the principle of equality of right, their freedom to fulfil religious functions.

5.9.1.2 Freedom of Religion

Freedom of religion is guaranteed by Article 53 of the Constitution:

- 1. Freedom of faith and religion shall be ensured to everyone.*
- 2. Freedom of religion shall include the freedom to profess or to accept a religion by personal choice as well as to manifest such religion, either individually or collectively, publicly or privately, by worshipping, praying, participating in ceremonies, performing of rites or teaching. Freedom of religion shall also include possession of sanctuaries, and other places of worship for the satisfaction of the needs of believers as well as the right of individuals, wherever they may be, to benefit from religious services.*
- 3. Parents shall have the right to ensure their children a moral and religious upbringing and teaching in accordance with their convictions. (...)*
- 4. The religion of a church or other legally recognised religious organisation may be taught in schools, but other peoples' freedom of religion and conscience shall not be infringed thereby.*
- 5. The freedom to publicly express religion may be limited only by means of statute and only where this is necessary for the defence of State security, public order, health, morals or the freedoms and rights of others.*
- 6. No one shall be compelled to participate or not participate in religious practices.*
- 7. No one may be compelled by organs of public authority to disclose his philosophy of life, religious convictions or belief.*

These provisions are further elaborated in Articles 1-6 of the Act on Guarantees of Freedom of Conscience and Belief, which also states the right of citizens to establish religious associations with the purpose of professing and spreading religious faith, and having their own constitution, doctrine and rites (Art. 2). Article 3 states the right to apply for alternative service on grounds of religious conviction. Article 4 states that the right to manifest one's religion also belongs to persons serving in the army or in the civil defence, persons in health institutions, children and young persons in camps organised by state institutions, and persons in penal institutions. Finally, the Act states that foreigners and stateless persons staying in Poland enjoy the same freedom of conscience and belief as Polish citizens (Art. 7).

5.9.2 Rules for Registration of Religious Associations on State (Federal) and/or Local Level

According to Articles 30 and 31 of the Act on Guarantees of Freedom of Conscience and Belief, the right to found churches and other religious associations is exercised through submitting an application to the Minister of Internal Affairs and Administration, and subsequent registration by the Minister in the Register of Churches and other Religious Associations. A church or religious association, having a minimum of 100 Polish citizens, has the right to submit such an application. This means that non-citizens do not have the right to form a church or a religious association.

The declaration should contain, inter alia, the following:

- 1) A list of names of the applicants, their dates of birth, abode, number and stamp of identity document and signatures;
- 2) Information on hitherto existing forms of religious life and methods of activity of the church or religious association in Poland; i.e. masses, reverences, ceremonies with participation of believers of church or association. The declaration should indicate the period of practising.
- 3) Information on the basic features, sources and doctrinal principles, and on religious rites;
- 4) The Statute.

Registration can be denied if the declaration contains resolutions not in accordance with the provisions of law protecting security and public order, health, public morals, authority of parents or fundamental rights and freedoms of other persons. The decision to register should be taken within three months, and a denial can be appealed to the Administrative Court.

5.9.3 The Legal Status of Religious Associations

5.9.3.1 Rights and Conditions of Activity

Article 34 (2) of the Act on Guarantees of Freedom of Conscience and Belief states that a church or another religious association from the moment of registration as a whole acquires the status of a legal person from the moment of registration and enjoys all the powers and is subject to the obligations laid down in the laws.

According to Article 19 of the Act on Guarantees of Freedom of Conscience and Belief, churches and other religious associations have the freedom to fulfil religious functions. They can, inter alia, give religious service to persons serving in the army or in the civil defence, persons in health institutions, children and young persons in camps organised by state institutions, and persons in penal institutions. Furthermore, they can purchase, own and sell real estate and other property and administer it, teach religion and educate children and young persons in religion in the schools in accordance with their parents' choice, and conduct charity activities.

The activities of churches and other religious associations can be terminated by their own decision, and the Minister of Internal Affairs and Administration can strike them from the register if they do not fulfil the demands of registration. The Ministerial decision can be appealed to the Administrative Court. Churches and religious associations whose legal status, inclusive of property ownership, has been regulated in a special law, can also be struck from the register

5.9.4 Authorisation to Perform Marriage of Civil Validity

As mentioned above (chapter 5.9.1.1), following ratification of the Concordat, the Parliament has amended the family code, the civil procedure code, the law on civil status acts and other laws with special regard to marriage. The amendments aim to give civil validity to marriages conducted according to the internal rules of a church or another religious association, where this is defined in a ratified international agreement (i.e. the Concordat) or a law on the relations between the State and a church or another religious association. Thus, according to Article 10 of the Concordat and subsequent amendments to the Polish Family Code, which came into force on 15 November 1998, the canonical marriage shall have the same legal status as civil marriage. This amendment applies to churches or religious associations other than the Catholic Church. To have a civil validity, the canonical marriage must be registered in the Birth, Marriage and Death Register. The priest, who may dispense a marriage, issues a document confirming the marriage. This document must be submitted to the Births, Marriages and Death Register Office within 5 days. If it does not happen, the marriage will only be recognized as canonical (except of *vis maior*). In case of divorce, only civil marriage may be dissolved. Decisions of a state court of law have no canonical validity.

5.9.5 Financing by the State of the Activities of Religious Associations

In general, the rule is that the state neither finances, nor financially supports activities of churches and religious associations (Art. 10 (2) of the Act on Guarantees of Freedom of Conscience and Belief). In all acts regulating relationships between the State and churches in Poland it is guaranteed by a standard provision that:

“National, self-government and church institutions co-operate in the protection, conservation, accessibility and dissemination of monuments of church architecture and sacred art, (...) which are the ownership of church and constitute the important part of cultural heritage.” The Catholic Church does not have special privileges in this matter.

5.9.6 Tax Regulation

According to Article 13 of the Act on Guarantees of Freedom of Conscience and Belief the property of churches and other religious associations and their income are subject to general tax regulations with exceptions laid down in separate tax regulations.

The non-profit making activities of legal Associations of churches and other religious associations are exempted from taxation. Their economic activities are exempted from the payment of taxation where this income was invested for activities listed in the Act, e.g. in educational, scientific and cultural activities, in charity, and in conservation of monuments etc.

5.10 RUSSIA

5.10.1 The Right to Freedom of Religion and the Relationship between State and Church

In Russia the right to freedom of religion is protected by virtue of the Constitution and international instruments.

The general provision of the Russian Constitution of 1993 concerning the right to freedom of religion is Article 28. This provision is supplementary to the protection implied in Article 29 concerning the right to freedom of thought and speech, Article 30 concerning the right to association, and Article 31 concerning the right to assembly. Furthermore, the Constitution contains provisions on the separation of the state and religious associations (Article 14).

5.10.1.1 State and Church

Article 14 of the Constitution states the following:

1. *The Russian Federation is a secular state. No religion can be established as a state or compulsory one.*
2. *Religious associations are separated from the state and equal before the law.*

Thus, Russia has no state church. State and church (religious associations) are separated.

Article 14 is to be seen in connection with Article 13, which states that "ideological diversity is recognised in the Russian Federation". It also states that "public associations are equal before the law", and prohibits the establishment and activity of public associations whose objectives and activities are directed to, i.a., kindling of religious strife.

The relationship between the state and religious associations has recently been regulated by the "Law on Freedom of Conscience and on Religious Associations", which was signed by the President on 26 September 1997. The first version of the law adopted by the State Duma and approved by the Federation Council was vetoed by the President and much debated. One of the questions debated was its compliance with the Constitution and Russia's international obligations.

According to the Preamble of the law, the legislators are "recognising the special role of Orthodoxy in the history of Russia and in the establishment and development of its spirituality and culture", and "respecting Christianity, Islam, Buddhism, Judaism and

other religions constituting an integral part of the historical heritage of the people of Russia”.

These are the only religions mentioned explicitly in the law, which otherwise divides religious associations into “religious organisations”, meaning traditional religions, and “religious groups”, meaning non-traditional religions or “sects”. This has aroused criticism on the part of other traditional religions claiming that they have contributed to the development of Russia’s spirituality and culture and thus form an integral part of the historical heritage of the people of Russia. The division of religious associations into organisations and groups will be described in further detail below.

Article 4 of the law, repeating the wording of Article 14 of the Constitution, defines the relationship between the state and the religious associations:

- *The state shall not interfere in the citizen’s determination of his/her attitudes to religion;*
- *The state shall not entrust religious associations with functions of state authorities, other state agencies, state institutions, and bodies of local government, and it shall not interfere in the legal activities of religious associations;*
- *The state shall guarantee the secular character of education in state and municipal educational establishments;*
- *The state shall regulate the granting to religious organisations of tax exemptions and other privileges and shall provide financial, material and other types of assistance to them for restoration, maintenance, and protection of buildings and objects that constitute monuments of history and culture; the state shall also ensure the teaching of general subjects in educational institutions established by religious organisations in accordance with the legislation on education;*
- *A religious association shall be established and conduct its activities in accordance with its own rules;*
- *A religious association as such shall not participate in state or local elections nor in the activities of political parties and movements, whereas its members are free to do this as well as to take part in governing;*
- *Upon the request of religious organisations, state authorities shall be entitled to declare religious holidays to be non-working (holiday) days on their territories.*

The concepts of “religious organisation” and “religious group” and their corresponding rights and conditions of activity are further described in detail in the law, which also sets up rules for registration of religious *organisations*. Religious groups are not registered and subsequently not considered juridical persons.

5.10.1.2 Freedom of Religion

Freedom of religion is guaranteed by Article 28 of the Constitution:

Every person is guaranteed freedom of conscience, freedom of religion, including the right to profess, either alone or together with others, any or no religion, to choose freely, have and disseminate religious and other convictions and to act in accordance with them.

This provision is repeated in Article 3, para 1 of the "Law on Freedom of Conscience ..." with a minor supplement that everyone has the right to "... choose freely *and change* ... religious and other convictions ...". The law also states in Article 3, para 1 that foreign citizens and stateless persons, living legally in Russia shall enjoy the same right to freedom of conscience and religion as Russian citizens, and that they bear the same responsibility to comply with the legislation on freedom of conscience and religion and on religious associations.

According to Article 19 of the Constitution, all are equal before the law and the court, and the equality of the rights and freedoms of individuals and citizens are guaranteed by the state irrespective of, inter alia, attitude to religion and convictions. It further states that any limitation to the rights of citizens, including religion, are prohibited.

According to Article 3, para 2 of the "Law on Freedom of Conscience ...", the above mentioned rights can only be limited by federal law to the extent considered necessary to protect the basis of the constitutional order, morality, health, rights and lawful interests of man and citizen, and for ensuring the defence of the country and the security of the state.

Article 3, para 3 states that discrimination on the grounds of religious affiliation shall not be permitted. Article 3, para 4 states that citizens of the Russian Federation are equal before the law in all areas of civil, political, economic, social, and cultural life regardless of their attitude to religion. Furthermore, citizens have the right to alternative service if the performance of military service is inconsistent with their convictions or religion.

Article 29 of the Constitution guarantees the freedom of thought and expression and states that "no person can be compelled to express his views and convictions or to denounce them". This provision is elaborated in the "Law on Freedom of Conscience ...", Article 3, para 5 which states that "[N]obody shall be obliged to provide information about his/her attitude to religion nor may be forced to determine his/her attitude to religion, profess or refuse to profess religion, ...".

According to Article 29, para 2 of the Constitution, "propaganda and agitation instigating social, racial, national or religious hatred and strife are not allowed. The propaganda of social, racial, national, religious or language superiority is prohibited".

The “Law on Freedom of Conscience ...” in Article 3, para 6 states inter alia that “... intentional offence of citizens with regard to their attitude to religion, by propaganda of religious supremacy, destruction of or damage to property or threat thereof, shall be prohibited ...”.

Finally, the “Law on Freedom of Conscience ...” guarantees the secrecy of confession.

The Constitution also guarantees the right to association (Art. 30) and the right to assembly (Art. 31).

5.10.2 Rules for Registration of Religious Associations on State (Federal) and/or Local Level

5.10.2.1 Definitions of Religious Associations (Groups and Organisations)

Article 6, para 1 of the “Law on Freedom of Conscience ...” defines a religious association as a voluntary association of citizens or other persons, permanently and legally residing in Russia, formed for the purposes of collective confession and dissemination of faith and manifesting the following characteristics:

- confession of faith;
- performance of religious services and other religious rites and ceremonies;
- instruction in religion and religious education of its adherents.

A religious group is defined (Art. 7) as a voluntary association of citizens formed for the purposes of collective confession and dissemination of faith, functioning without state registration and without the acquisition of the legal status of a juridical person. Religious groups have the right to perform religious services and other religious rites and ceremonies and to conduct religious instruction and religious education of its adherents. Furthermore, Article 7 states that citizens having formed a religious group with the intention of transforming it into a religious organisation shall notify of local government bodies about its formation and commencement of activities.

As will be seen below, religious groups can only become religious organisations and obtain legal status after they have been registered with the local interior department for fifteen years. In practice, this means that apart from the so-called traditional religious associations mentioned in the Preamble of the “Law on Freedom of Conscience ...”, a great number of other religious communities will be categorised as religious groups, and will thus only enjoy limited rights in comparison with the religious organisations. It is noteworthy that a religious group cannot be established by “other persons, permanently and legally residing in Russia”.

A religious organisation is defined (Art. 8) as a voluntary association of citizens or other persons, permanently and legally residing in Russia, formed for the purposes of collective confession and dissemination of the faith and being registered as a juridical person.

Depending on the “territorial sphere of their activities”, religious organisations are divided into “local” and “centralised” entities. A “local religious organisation” should have no fewer than ten “participants” residing in the same location. A “centralised religious organisation” should in accordance with its own charter comprise at least three local religious organisations.

A religious organisation must submit an annual report to the agency which registered it, about the continuation of its activities, and provide information to be included in the single state register of juridical persons. Failure to do so in the course of three years, permits the registering agency to file a suit in court to establish the religious organisation as having ceased its activities.

Religious organisations should have charters of their own which meet the requirements of the civil legislation. The statutes should indicate, inter alia, the name of the organisation, its goals, purposes and basic forms of activities, and sources of funding.

5.10.2.2 Registration of Religious Organisations

According to Article 11 of the “Law on Freedom of Conscience ...” centralised religious organisations comprising local religious organisations in two or more constituent entities of the Russian Federation are registered by a federal body of justice, while local as well as centralised religious organisations comprising local religious organisations in a single constituent entity of the Russian Federation are registered by a body of justice of the respective constituent entity.

Registration is effected in accordance with the civil legislation procedures of the Russian Federation and the Law on Freedom of Conscience. This means that religious organisations acquire the rights of a legal person.

For state registration of a local religious organisation the founders shall submit the following to an appropriate juridical body:

- an application for registration;
- a list of persons creating the religious organisation indicating their nationality, place of residence, and date of birth;
- charter of the religious organisation;
- records of the constituent meeting;

- document confirming the existence of the religious group in the given territory for a period of no less than 15 years, issued by a local self government body, or confirming its membership in a centralised religious organisation, issued by its directing centre;
- information on the fundamental beliefs of the religion and its practices, including the background of the religion and the given association, about the forms and methods of its activities, its attitude to family, marriage, and education, about its specific attitude towards the health of adherents of the given religion, restrictions for members and officials of the organisation with regard to their civil rights and duties;
- document confirming the legal address of the organisation.

If a higher directing body (centre) of the religious organisation to be established is located outside Russia, the charter or another founding document of the foreign religious organisation, certified by a state authority of the host state, shall also be presented.

The basis for state registration of centralised religious organisations and religious organisations formed by centralised religious organisations comprise the following documents:

- application for registration;
- list of founders of the religious organisation;
- charter of the religious organisation;
- document confirming the legal address of the organisation;
- notarised copies of the charter and the state registration certificate of the founder(s);
- appropriate decision of the authorised body by the founder(s);

Applications for state registration of religious organisations shall be considered within one month after the day of submission of all necessary documents: However, “in some cases” the registering agency has the right to extend this term to six months to conduct “a state expert analysis by religious scholars”, the procedure of which is established by the Russian Government.

According to Article 12, a religious organisation may be denied registration if:

- its purposes and activities contradict the Russian Constitution and legislation (then reference is made to the relevant articles of the laws) ;
- the organisation is not recognised as a religious one;
- the charter and other documents submitted do not meet the requirements of the Russian legislation or contain false information;

- an organisation with the same name was previously entered into the State register of juridical persons;
- the founder(s) does not have legal status.

In case of denial of registration of a religious organisation, the applicant(s) shall be notified about the decision in writing stating the grounds for denial. Denial of registration may be appealed against in court.

5.10.2.3 Transitional Provisions

According to Article 27 (Concluding provisions) of the “Law on Freedom of Conscience ...” charters and other constituent documents of religious organisations created before the introduction of the law, shall be brought into accordance with the law.

Art. 27 also states that re-registration of religious organisations, which are liquidated or prohibited according to Art. 14(2) of the law (see paragraph 5.10.3.2), will not take place. In that case the registering authority shall refer the case to the court.

Finally, Art. 27 states that religious organisations without certification of their existence in the respective locality for at least 15 years shall enjoy the rights of a juridical person, but subject to their annual re-registration until the 15 year period expires. During this period they do not enjoy the legal rights of religious organisations as follows:

- to serve alternative military service (Art. 3(4));
- to create educational establishments and to teach religion in state and municipal educational establishments (Art. 5(3&4));
- to host a mission of a foreign religious organisation (Art. 13(5));
- to conduct religious rites in sanatoria and hospital institutions, orphanages, rest homes, and penitentiary institutions (Art. 16(3));
- to manufacture, acquire, export, import, and distribute religious literature, printed, audio-visual materials and other religion-related objects, and to establish organisations publishing liturgical literature and manufacturing religion-related objects for religious use (Art. 17(1&2));
- to establish educational institutions and mass media (Art. 18(2));
- to establish institutions for training of ministers and religious personnel (Art. 19);
- to invite foreign citizens to engage in professional religious activities, including preaching (Art. 20(2)).

5.10.2.4 Foreign Religious Organisations

Foreign religious organisations can be granted the right to open their missions in Russia (Art. 13). However, they are not allowed to engage in religious activities and they shall not have the status of a religious association according to the "Law on Freedom of Conscience ...". Art. 13 also states that a Russian religious organisation shall be entitled to host a mission of a foreign religious organisation.

According to Regulations on Registration, "Opening and Closing of Representations of Foreign Religious Organisations in the Russian Federation," issued by the Russian Government on 2 February 1998, a representation will not be a juridical person, and it will be registered for a three year period which can be prolonged by further three year periods.

5.10.3 The Legal Status of Religious Associations

Registered religious organisations have the rights of legal persons, while this is not the case for religious groups.

5.10.3.1 Rights and Conditions of Activity

Registered religious organisations, in existence for more than 15 years, but not "religious groups", enjoy a whole range of rights many of which were listed above (See 5.10.2.3).

Generally, religious organisations have the right to establish their own cult buildings etc. and to conduct religious rites and ceremonies in them and in a number of other places, as well as in sanatoria and hospital institutions, orphanages, rest homes, and in penitentiary institutions. The military authorities shall not prevent servicemen from participating in services and other religious rites and ceremonies. (Art. 16).

Religious organisations have the right to manufacture, acquire, export, import and distribute religious literature, printed and audio-visual materials, and other religion-related objects, and to establish organisations publishing liturgical literature and manufacturing religion-related objects (Art. 17).

They also have the right to engage in charitable activities and to create educational organisations and establish mass media. The state will support their charitable activities and any socially significant cultural and educational programs and events (Art. 18). This provision corresponds to the provision in Article 17 of the Law on Public Associations of 1995, according to which the state provides support for the activities of such associations and can give them tax exemption and other privileges; the state support can consist of financing "publicly useful programmes" of the associations. Furthermore, religious organisations can establish institutions of professional religious education which are to be registered as independent religious organisations and which

receive a state license to conduct their activity. Students of such institutions shall be entitled to deferment from conscription under the legislation on military service, and to other privileges (Art. 19).

Finally, religious organisations have the right to maintain international contacts and to invite foreign citizens to engage in professional religious activities. (Art. 20). They also have the right of ownership (Art. 21 and 22) and of engaging in entrepreneurial activities (Art. 23).

5.10.3.2 Prohibition of Activity

According to Article 14 of the “Law on Freedom of Conscience ...”, religious organisations may be liquidated, and the activities of religious organisations and groups can be prohibited for a range of reasons, among them being:

- coercing the break-down of a family unit;
- damage, as defined by the law, to morality and the health of citizens, including the worship-related use of narcotic drugs and psychotropic substances, of hypnosis, and performance of debauched or other illegal acts;
- rejections of medical care for persons whose life and health are threatened;
- coercion of members and adherents of a religious association and other persons into alienation of their property in favour of the religious association;
- prevention of a person from leaving the religious association under threat of harm to life, health or property, if the threat or danger of the use of force are real;

The question of liquidation of a religious organisation or prohibition of the activities of a religious organisation or religious group can be brought before the court by the Public Procurator’s bodies, by the authority in charge of registration of religious organisations as well as by bodies of local government.

5.10.3.3 Control of the Implementation of the “Law on Freedom of Conscience ...”

Supervision over enforcement of the legislation on freedom of conscience, freedom of religion and on religious associations shall be exercised by the Prosecutor’s Offices. The authority that registered a religious organisation shall control observance of its charter regarding the purposes and procedure of its activities (Art. 25). Violation of the legislation on freedom of conscience, freedom of religion and on religious associations shall incur criminal, administrative, and other penalties (Art. 26).

5.10.4 Authorisation to Perform Marriages of Civil Validity

Religious associations are not authorised to perform marriages with civil validity.

5.10.5 Financing by the State of the Activities of Religious Associations

As mentioned above in paragraph 5.10.3.1, the state shall support charitable activities and socially significant cultural and educational programs and events (Art. 18 (3) of the Law on Freedom of Conscience).

Furthermore, according to Article 4 (3) of the Law on Freedom of Conscience, the state shall provide financial, material and other types of assistance to religious organisations for restoration, maintenance, and protection of buildings and objects that constitute monuments of history and culture, as well as in ensuring the teaching of general subjects in educational institutions established by religious organisations, in accordance with the legislation of the Russian Federation on education.

5.10.6 Tax regulation

According to Article 4 (3) of the Law on Freedom of Conscience, the state shall regulate the granting to religious organisations of tax, duty and other privileges.

5.11 SWEDEN¹⁹

5.11.1 The Right to Freedom of Religion and the Relationship between State and Church

In 1995 the Swedish Parliament decided in principle to change the relationship between the state and the Church of Sweden and to separate the state and the church. To implement the reform, which will enter into force on 1 January 2000, a number of Swedish laws have to be amended, and the Constitution has to be changed. Changes in the Constitution will have to be adopted by two decisions of the Parliament with a mid-way election. The first proposal to Parliament was made in December 1997. Additionally, a law on the Church of Sweden and a law on religious associations will have to be adopted.

In the following the main focus will be on a description of the relevant aspects of the reform.

At present - and as will be the case after the introduction of the reform - the right to freedom of religion is protected by virtue of the Constitution and international instruments.

The general provisions of the Swedish Constitution, with subsequent transitional provisions concerning the right to freedom of religion, is in Chapter 2 "Fundamental Rights and Freedoms". This Chapter also guarantees the freedom of expression, the freedom of assembly, and the freedom of association. These provisions of the Constitution are not going to be changed in connection with the reform.

5.11.1.1 State and Church

The Church of Sweden is not mentioned in the Constitution proper, but in the Transitional Provisions of 1974 where it is stated in para. 9 that "fundamental provisions concerning the Church of Sweden as a religious congregation and concerning the General Assembly of the Church as an assembly of elected representatives of the Church of Sweden shall be laid down in an Act concerning the Church of Sweden". A law on the Church of Sweden was adopted in 1992 according to which the Church of Sweden is defined as an Evangelical Lutheran religious association. This law is going to be replaced by a new law on "The Church of Sweden".

In a report from the Government to the General Assembly of the Church of Sweden on the fundamental relationship between the state and the religious associations (1997), the present relationship between the State and the Church of Sweden are described as the result of a long historical development. It is further said that the long common

history justifies that the State can indicate in a separate law, the framework within which the Church of Sweden will function in the future. Finally, the report underlines that the regulation of the identity and fundamental character of the Church of Sweden must correspond to the view of the Church of Sweden of itself, and that the Church of Sweden should regulate its own affairs within the framework of the law.

The draft law on "The Church of Sweden as a Religious Association" states that the Church of Sweden is an Evangelical Lutheran religious community (Art. 1); it is an "open folk church" which carries on nation-wide activities through a co-operation between a democratic organisation and the clergy (Art. 2). Art. 3 states that the Church of Sweden as well as its parishes and dioceses are legal persons. The law also contains provisions on the organisational structure of the Church of Sweden and the tasks of parishes and dioceses, on the General Assembly of the Church of Sweden, on church taxes and property, on access to information, on church archives, and on information for registration (see below).

Thus, the State and the Church of Sweden will in principle be separated from 1 January 2000, provided that the changes of the Constitution take place and that the law on the Church of Sweden is adopted.

However, in its report the Government does not propose any changes to the so-called demand for confession of faith of the Head of State to which Art. 14 of the Transitional Provisions of 1974 refers. Article 2 of the Constitution of 1809 will remain in force which means that the King, as Head of State, will still have to adhere to the Church of Sweden. According to the Government, this question is not dependent on the changed relationship between the State and the Church of Sweden proposed by the Government.

In the report from the Government to the General Assembly of the Church of Sweden on fundamental questions of the relationship between the state and the religious associations, it is stated that the purpose of legal regulation of religious associations must be to create good working conditions and as equality for different religious associations. All religious associations should have the opportunity to act as such both formally and legally. As this is not defined in the Swedish legal system, a special form of association should be created for religious associations.

The draft law on religious associations states in Art. 1 that provisions on freedom of religion are to be found in the Constitution and the European Convention for the Protection of Human Rights and Fundamental Freedoms. As the law itself also contains similar provisions, the Law on Freedom of Religion of 1951 is superseded. However, it is stated that nobody is obliged to belong to a religious association; a provision which reflects the provisions of the Constitution, Chapter 2, Article 2.

The draft law introduces a new form of association, namely a registered religious association. Consequently, it has provisions on registration of religious associations and their organisational bodies, referring, i.a. to the Church of Sweden, which is considered to be a registered religious association. In its report the Government underlines that the aim of the proposed regulation is that the great majority of religious associations active in Sweden at present, should be able to apply the new form of association to their activities. The regulation should, however, not curtail the activities of religious associations not using the new form of association. In this connection it should be underlined that non-registered religious associations are also to be considered legal persons, provided they have statutes with provisions regarding the purpose of the association, its decision-making, and a board of directors or governors.

5.11.1.2 Freedom of Religion

Freedom of religion is guaranteed by Chapter 2, Article 1 of the Constitution:

All citizens shall be guaranteed the following in their relations with the public administration:

...

6. freedom of worship: the freedom to practice one's own religion either alone or in company with others.

Furthermore, Article 2 of Chapter 2 of the Constitution states the following:

All citizens shall be protected in their relations with the public administration against all coercion to divulge an opinion in any political, religious, cultural or other similar connection. They shall furthermore be protected in their relations with the public administration against all coercion to participate in any meeting for the formation of opinion or in any demonstration or other expression of opinion or to belong to any political association, religious congregation or other association for opinions of the nature referred to in the first sentence.

According to Art. 22 of Chapter 2 of the Constitution, foreigners within the Realm shall be considered equal Swedish citizens in the above mentioned respects; in other words: all residents of Sweden enjoy freedom of religion.

Article 13 of Chapter 2 of the Constitution states that

freedom of expression and freedom of information may be restricted having regard to the security of the Realm, the national supply, public safety and order, the integrity of the individual, the sanctity of private life, or the prevention and prosecution of crime ... Freedom of expression and freedom of information may otherwise be restricted only where particular important reasons so warrant.

In judging what restrictions may be made by virtue of the preceding paragraph particular regard shall be paid to the importance of the widest possible freedom of expression and freedom of information in political, religious, professional, scientific and cultural matters.

...

As to freedom of assembly and freedom of association, Article 14 of Chapter 2 of the Constitution states the following:

Freedom of assembly and the freedom to demonstrate may be restricted for the purpose of preserving public safety and order at the meeting or demonstration, or having regard to the circulation of traffic. These freedoms may otherwise be restricted only out of regard for the security of the Realm or for the purpose of combating an epidemic.

Freedom of association may be restricted only in respect of organisations whose activities are of a military nature or the like, or which involve the persecution of a population group of a particular race, skin colour, or ethnic origin.

It should be underlined that none of the above mentioned provisions are going to be changed in connection with the reform.

5.11.2 Rules for Registration of Religious associations on State (Federal) and/or Local Level

5.11.2.1 Definitions of Religious Associations, Groups and Organisations

In the draft law on religious associations, a religious association is defined as a "community for religious activity which comprises the holding of services" (Art. 2). In its commentaries to the draft law the Government states that "service" in this context should be understood in a wider sense, so that, e.g., meetings for common prayer and meditation would normally be included.

Article 5 of the draft law states that the term "registered religious association" refers to the Church of Sweden and to other religious associations registered according to the law. As mentioned above, in the draft law on the Church of Sweden, it is defined as an Evangelical Lutheran religious community (Art. 1), and as an "open folk church" which carries on nation-wide activities through a co-operation between a democratic organisation and the Clergy (Art. 2).

5.11.2.2 Registration of Religious Associations

The draft law on religious associations introduces a new type of association; the registered religious association. Churches can choose either to remain in the present form of association, or to apply for a registration.

According to Article 7 of the draft law, a religious association can apply for registration with the authority appointed by the Government, if it has:

1. statutes containing provisions on its aim, and on how decisions are made in its affairs;
2. a board or corresponding body.

Furthermore, a religious association can only be registered if its name differs from that of other religious associations and does not contradict good morals or public order.

These demands are similar to the demands of an "ideal" association, meaning a non-profit making or charitable association. According to the Government report, the teachings of a religious association will not be examined in connection with registration, as this will contradict the freedom of religion. Formal consideration of an application for registration will be equal to the considerations applied when registering a limited company.

The registration shall include (Art. 8):

1. the name and postal address of the religious association;
2. the statutes of the religious association;
3. name, postal address and civil registration number (or date of birth) of members of the board or corresponding body or other persons authorised to represent the religious association.

These demands are similar to the demands to limited companies and economic associations in Sweden.

According to the draft law on the Church of Sweden, it should inform the register referred to in Article 7 of the draft law on religious associations about:

1. statutes;
2. division into parishes, church communities and dioceses;
3. name, postal address and civil registration number (or date of birth) of members of the board or corresponding body or other persons authorised to represent the Church of Sweden. Corresponding information should be given on parishes, church communities and dioceses.

Finally, Article 13 of the draft law on religious associations also states that also independent organisational parts of religious associations can be registered provided they meet the demands of Article 7. As for the Church of Sweden, Article 13 states that its parishes, church communities and dioceses are registered as organisational parts of the Church of Sweden.

The Government Report proposes that religious associations should be registered by the department of the Ministry of Finances (Kammarkollegiet) which already deals with some matters concerning the Church of Sweden and other religious associations. Decisions of the registering body according to the law on religious associations can be appealed to an administrative court.

5.11.3 The Legal Status of Religious Associations

5.11.3.1 Rights and Conditions of Activity

A registered religious association may have rights and take upon itself obligations and conduct a case before a court or other authorities. The same provision is found in the draft law on the Church of Sweden (Art. 3).

In the draft law on religious associations there are no general provisions for their activities, except for the reference to holding of services as mentioned above. In the draft law on the Church of Sweden, it is only stated that its activities are nation-wide (Art. 2), and that the basic aim of the parish is to hold services, conduct education and to understand welfare and missionary work (Art. 4).

In the Government report it is underlined that the activities of a registered religious association are not sanctioned by the state by the registration: "The registration itself is not a quality stamp on the activity". It is also underlined that no specific rights are connected with the registration in itself.

5.11.3.2 Termination of Activity

According to the draft law on religious associations the registration authority can decide that a religious association shall go into liquidation if:

1. the demands for registration are no longer satisfied;
2. its statutes require it to go into liquidation; or
3. the association has been judged bankrupt but has indicated a surplus.

Liquidation is made according to the relevant provisions of the law on economic associations.

In the draft law on the Church of Sweden there are no provisions on the termination of its activity.

5.11.4 Authorisation to Perform Marriage of Civil Validity

In the Government report it is anticipated that the state shall assign administrative tasks to registered religious associations, including the Church of Sweden, and their registered organisational parts. As an example of such authority the report mentions the conducting of marriages.

Therefore, the Government proposes an amendment to the Constitution, Chapter 11, Article 6, part 3: Administrative functions may be entrusted to a company, an association, a community, a foundation, *a registered religious association*, or a private individual. If such a function involves the exercise of public authority, it shall be entrusted to such a body or person by law.

5.11.5 Financing by the State of the Activities of Religious Entities

According to the draft law on the Church of Sweden, Article 7, persons belonging to the Church of Sweden shall pay local and regional church taxes. In Article 16, the draft law on religious associations states that the Church of Sweden has the right to obtain help from the state to collect church taxes from persons belonging to the Church of Sweden, and that such help also can be given to other registered religious associations. This help should be given by the state free of charge, but where religious associations other than the Church of Sweden are concerned, the state should decide and prescribe conditions in each case. This means that the help is not directly linked to the registration.

5.11.6 Tax Regulation

According to the draft law on religious associations the tax-regulations will be limited for registered religious associations, including the Swedish Church, just as is the case for non-profit, voluntary associations. The form of association is in other terms neutral concerning tax-conditions and should therefore not influence the associations choice to register or not. The priests' salaries will be exempted from taxes during a period of transition lasting until year 2010. This period can be prolonged by the Parliament.

6. Conclusions and Recommendations

The purpose of this survey is to examine the implementation of the right to freedom of religion and religious associations in the legislation of the CBSS member states. The right to freedom of thought, conscience and religion is one of the fundamental human rights enshrined in most international human rights documents. The right to freedom of religion, including the freedom to manifest one's religion, is guaranteed in the constitutions of all CBSS member states.

International Human Right Conventions state that while the freedom of religion should not be subject to any limitations, the manifestation of religion or belief can be subjected to limitations by the state under certain circumstances. Article 9 of the European Convention on Human Rights states that limitations are permitted if they are prescribed by law and are necessary in a democratic state in the interest of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others.

The survey has shown that it is not the legal guarantee of the individual freedom of religion or manifestation of religion in itself, which constitute a problem in the CBSS countries. However, problems may occur in some member states if the relationship between the State and a specific Church (or a number of traditional Churches) or religion(s), constitutes a discrimination towards adherents of other religions and their religious associations. Discrimination can also take place in other relations.

6.1 State and Church

Among the international human rights statements on freedom of religion, only the General Comment No. 22 of the UN Human Rights Committee to article 18 of the International Covenant on Civil and Political Rights, 20 July 1993, seems to address the relationship between the state and a particular church or religion (see annex 1). In its paragraph 2 it states, i.a., that:

Article 18 is not limited in its application to traditional religions or to religions and beliefs with institutional characteristics or practices analogous to those of traditional religions. The Committee therefore views with concern any tendency to discriminate against any religion or belief for any reasons, including the fact that they are newly established, or represent religious minorities that may be the subject of hostility by a predominant religious community.

Paragraph 9 of the General Comment states, i.a., that:

The fact that a religion is recognised as a State religion or that it is established as official or traditional or that its followers comprise the majority of the population, shall not result in any impairment of the enjoyment of any of the rights under the Covenant, including articles 18 and 27, nor in any discrimination against adherents of other religions or non-believers.

Paragraph 10 of the General Comment states the following:

If a set of beliefs is treated as official ideology in constitutions, statutes, proclamations of the ruling parties, etc., or in actual practice, this shall not result in any impairment of the freedoms under article 18 or any other rights recognised under the Covenant nor in any discrimination against persons who do not accept the official ideology or who oppose it.

The existence of a state church is not a violation of the freedom of religion in itself. It is not contrary to e.g. Article 9 of the European Convention on Human Rights (see e.g. the Darby case, mentioned below). A condition for compatibility with article 9 is, however, that membership is not compulsory. An opportunity for withdrawal must be available for all members. This possibility exists in all member countries with state churches. Full compatibility would probably also mean that no duties towards the state church should be forced upon persons not adhering to it.

State churches exist in Denmark, Iceland, Norway and Sweden.

In Denmark and Norway the King/Queen shall profess the Evangelical Lutheran religion of the State Church. In Sweden the Swedish State and church will be separated after the entering into force of the church reform on 1 January 2000. The King/Queen shall, however, continue to profess the Evangelical Lutheran religion. In Norway the King is Head of the State Church and has some powers in ecclesiastical affairs. In Iceland the President is the supreme authority of the State Church delegating his powers to the Minister of Justice and Ecclesiastical Matters who along with the Parliament governs the Church in non-religious matters. ?

In the constitutions of Estonia, Germany, Latvia, Lithuania, Poland, and Russia the church and the state are separated.

In Finland special legislation gives the State some powers in relation to the Evangelical Lutheran Church and the Orthodox Church. It is not known whether the committee established by the Finnish government on 1 October 1998 will propose new draft legislation concerning this specific relation. The following will therefore only relate to the present legislation.

In Germany there are two big Churches, which are nearly equal in size and importance, the Evangelical and the Catholic, and although state and church are separated according to the Constitution (Basic Law), there is still a constitutionally secured form of co-operation between them.

In legislative acts of Finland, Latvia, Lithuania, Poland, and Russia, the traditional churches of these countries are mentioned. In Estonia representatives of traditional churches, with the exception of the Orthodox, which has not been granted membership, are members of the Council of Estonian Churches.

The findings in this survey has, however, shown that contrary to the General Comment No. 22 of the UN Human Right Committee, traditional and new churches as well as religious associations cannot be considered to be equal before the law in most member states.

In Denmark religious associations other than the State Church are discriminated against in the field of public financing. All taxpayers indirectly contribute to the Folk Church even if they are not members of it and therefore pay no specified church tax. The church tax provides only part of the money used to support the Folk Church. The major part of the state subsidies is used to pay 40 % of the wages of the ministers of the Folk Church. This can be seen as a violation of international Human Right instruments, as it has been made obligatory to finance the preaching of a religion which may not be that of the taxpayer. In Estonia the state budget sets apart small funds only for the Council of Estonian Churches. In Finland the Evangelical Lutheran Church and the Orthodox Church are partially financed by the state, through a special obligatory company tax. In Iceland the state only supports the state church. Taxpayers have to pay an amount equal to the church tax to the university if they choose not to be members of any religious association. In Latvia the Consultative Council for Religious Affairs of the Ministry of Justice is only composed of representatives of the traditional religious confessions of the country; moreover, new religious associations have to register annually for a period of 10 years in order to achieve their final registration. In Lithuania there is a complicated system of registration and recognition of new religious associations, which means that in the worst case it could take them 35 years to achieve the same recognition and status as the nine traditional religious communities and associations of the country. Other religious associations, both registered and non-registered, can apply for a contribution per annum from the state and municipalities. In Norway resources are granted to the State Church from the State budget, but money is also given to other religious associations as well as to adherents to non-religious philosophies. In Poland, at least 100 Polish citizens shall submit an application in order to be registered as a religious association. In Russia religious organisations without documentary confirmation of their existence in the relevant territory for a minimum of 15 years, must re-register annually until reaching the 15-year term before acquiring legal status.

During this period they do not enjoy the whole range of rights of registered religious organisations.

In light of the findings in the survey, I express the hope that persons responsible within the fields of religion and politics engage in deliberations as to whether there in their countries exist any discriminatory measures on the part of the state and/or traditional church(es), of adherents of other religions and their associations, and whether these ought to be eliminated in accordance with the existing international human right conventions and standards.

I make the general recommendation that direct as well as indirect contributions to a church's spiritual ministrations, should not be mandatory for persons or companies not wishing to make such contributions unless contributions are allotted in a non-discriminatory way. This recommendation is of special relevance for Denmark and Finland.

My recommendation is first of all based upon the consideration that it seems unjust to force anybody to contribute to the promotion of a belief which is not his or her own. The question of the incompatibility with Article 9 of requiring associations to pay church tax was raised before the European Commission on Human Rights in the case of Kustannus Oy Vapaa Ajatteliija AB, Vapaa-Ajattelijain Liitto – Freethinkers League r.y. and Kimmo Sundström against Finland (Application No. 20471/9, Decision of April 15, 1996, D. & R. 85-A (1996) pp. 29-46). Although the Commission did not pronounce itself directly on this question, the problem may still be reflected in its decision. The applicants – representing an umbrella non-profit association and a dependent company – alleged that Article 9 was violated because the company was obliged to contribute to churches through a company-tax according to Finnish law, even though the purpose of the company was to sell books and other material promoting the aims of freethinkers. The application was rejected as manifestly ill-founded because the applicants were found to have chosen to organise themselves in a company with limited liability, which cannot rely on the rights referred in Article 9, and because the company was not found to have been prevented from carrying out its commercial activities through the umbrella association – thus avoiding the obligation of paying church tax. They did in other words have the opportunity not to be forced to pay the church tax.

The issue of tax-regulations' incompatibility with Article 9 is also reflected in the Darby Case, No. 11581/85, Peter Darby v/Sweden. The applicant, a Finnish citizen, employed by the Swedish State Railways in Sweden, could not benefit from the Dissenter Tax Act which allows for exemption from part of the church tax due to the fact that he was not registered as resident in Sweden. The applicant rented a flat in Sweden, but spent the weekends with his family in Finland. The European Commission on Human Rights expressed in its opinion that the right stated in the first limb of

Article 9 § 1 protects everyone from being compelled to be involved directly in religious activities against his will without being a member of the religious community carrying out those activities (Commission's report of 9 May 1989, Series A no. 187). Under the specific circumstances of the case, the paying of taxes to a church for its religious activities must be seen as such an involvement. The Commission furthermore stated that the Article 9 §1 requires that a State respects the religious convictions of those who do not belong to the church, for instance by making it possible for them to be exempted from the obligation to make contributions to the church for its religious activities.

The Commission also concluded that Article 14 of the Convention in conjunction with Article 9 had been violated. The applicant had been discriminated against as a Finnish citizen. If he had been registered as living in Sweden he would not have paid full church tax. The system of exemption, on grounds of religion, from part of the church tax must not be discriminatory²⁰.

In Denmark, all physical and legal persons have a duty to pay taxes which are partly being used for functions of the state church. They do not have the possibility of avoiding this contribution. One of the church functions is the administration of the Church Register which is an official register in Denmark. On behalf of the State the Danish Folk Church registers all births and deaths in Denmark. This administrative task does of course imply some expenses for the Folk Church. As a minimum, I recommend, that the Danish State should make an estimate of the expenses for administrating the church register, and that only these expenses should be covered by the general taxes. I find it, however, unfortunate that one specific religious association exercises civil duties on the part of the State. This system forces people from all other religions and people not belonging to any religion to address themselves to a religious association to which they may not adhere.

More specific recommendations will follow based on the concrete findings within the areas I have chosen to focus on in this survey. All four areas are important to the question of freedom of religion and religious associations.

1. Rules for registration of religious associations
2. The legal status of religious associations – control of internal rules by public authorities
3. Authorisation to perform marriage of civil validity
4. Public financing of the activities of religious associations and tax regulation

Other subjects than the four mentioned could have been relevant, i.a. religious education and foreigners' right to freedom of religion. I have, however, selected the issues, which seemed to be most relevant for all CBSS member countries and the ones where I could gather sufficient comparative information.

The issues chosen are, just as the relations between state and church, deeply rooted in the history of our countries. While respecting history it should be noted that in the last decades we have witnessed important changes in our societies. More and more people live in countries which are not of their own origin and with cultures and religions, which are different from their traditional ones.

It is my hope that relevant authorities, governmental- and non-governmental organisations as well as private persons involved with the right to freedom of religion will find inspiration in my survey for reconsidering the present legislation in this field. In my findings and recommendations I have attempted to put focus on some of the crucial problems within our region.

6.2 Rules for Registration of Religious Associations

6.2.1 Findings of the Survey

Denmark

The first Danish Constitution of 1849 introduced a clause on establishing a law on the Danish Folk Church. This clause was repeated in Article 66 of the Constitution of 1953, but it has never been implemented. The same is the case for Article 69 of the Constitution (1953) concerning regulating by law the conditions for religious communities other than the Danish Folk Church, which also was set out in the Constitution of 1849. The affairs of the State Church are instead regulated in separate administrative acts. The conditions for religious minorities are also regulated through separate administrative acts as well as by the administrative practices of various authorities.

Thus, there are no laws directly concerning the registration or recognition of religious associations. Recognition of religious associations is effected implicitly by authorising one of the ministers of a religious association to perform marriages with civil validity. The Ministry of Ecclesiastical Affairs may also authorise ministers from non-recognised communities to perform marriages of civil validity, but is not obliged to do so. Authorisation can be permanent or ad hoc. Denial of such authorisation does not in itself infringe the right to religious freedom, but it may constitute discrimination on grounds of religion.

The Ministry also examines the structure of a community applying for authorisation in order to determine whether lawfully elected representatives exist within the community who can apply legally for the authorisation on behalf of the community.

Finland

In order for a religious association to be registered in Finland it shall consist of persons residing in Finland. On the establishment of the Community, their written notification to the Ministry of Education must be signed by at least 20 persons. The Law on Freedom of Religion states that the majority of the members of the governing body shall be Finnish citizens. The Ministry can, however, make an exception to this rule.

Latvia

The Latvian Law on Religious Organisations not only contains rules of registration for religious organisations; it also prescribes the procedure for establishing a congregation and a church. A congregation should be established by no less than 10 persons, and a religious confederation (church) should be formed by no less than 10 congregations. Furthermore it states that the statutes of a religious organisation must include, i.a., a commitment by the religious organisation to observe the laws and Constitution of Latvia. Finally, according to the law, new religious organisations may be registered for one year and must then for the first 10 years re-register with the Ministry of Justice annually in order to ensure the Ministry their loyalty towards the State of Latvia, and that their activities comply with legislative acts.

Lithuania

The Lithuanian Law on Religious Communities and Associations prescribes a system of recognition and registration of (non-traditional) religious associations other than the nine traditional religious communities and associations in the country, which already are recognised. To be registered a religious community shall unite no fewer than 15 members, who are adult citizens of Lithuania. A religious association shall unite no fewer than two religious communities. Upon registration, religious communities and associations are granted the rights of a legal person. Religious associations may be granted state recognition by the Parliament no less than 25 years after their initial registration provided, i.a., they are considered to be part of Lithuania's historical, spiritual and social heritage and are backed by society. However, if the request for recognition is denied, it may only be resubmitted after 10 years.

Poland

The Polish rules for registration of a church or other religious associations prescribe that at least 100 Polish citizens shall submit an application, whereas a minimum of 15 people is required in order to establish a secular registered association in Poland.

Russia

The Russian Law on Freedom of Conscience and on Religious Associations divides religious associations into religious groups and local or centralised religious organisations, having different rights and conditions of registration. Thus, a religious group does not have the standing of a legal person, while religious organisations do. Furthermore, a religious organisation is a voluntary association of citizens of Russia or other persons permanently and legally residing in Russia, whereas a religious group can only be established by citizens. Finally, a religious group may found a local religious organisation if it possesses a certificate of existence issued by a local government body, or if it can demonstrate proof of its relationship within the structure of a centralised religious organisation of the same religion. Religious organisations without documentation certifying their existence in the respective locality for at least 15 years shall only enjoy the rights of a juridical person on the condition that they re-register annually until reaching the 15 year term. During this period they do not enjoy the same rights as religious organisations.

Sweden

The Swedish draft law on religious associations provides the simplest rules for registration. A religious association can apply for registration provided it complies with the criteria for registering a non-profit making association. The Government disallows examination of the teachings of a religious association in connection with registration, as this will contradict the freedom of religion. The consideration of an application will be of a formal nature and similar to the considerations taken into account when registering a limited company.

6.2.2 Conclusions and Recommendations

The issue of registration of religious associations, including fixed terms and other conditions for being registered and for acquiring the rights of a registered religious association, is not regulated in international human rights conventions. The requirement for the religious association to register is therefore not in itself a violation of international standards. However, the complicated and in some cases non-transparent rules for registration of religious associations of some member states seem to contradict the generally accepted provisions on the freedom of religion.

The UN Declaration on the Elimination of All Forms of Intolerance and of Discrimination based on Religion or Belief, Article 6 on freedom of religion, comprise a number of freedoms. The majority of these concern the right to exercise ones freedom of religion together with other persons - in religious communities (see chapter 2). The Concluding Document of the CSCE Vienna Meeting, states in its Article 16 that the participating states will "grant upon their request to communities of believers, practising or prepared to practice their faith within the constitutional framework of their State, recognition of the status provided for them in their respective countries",

and “respect the right of these religious communities to establish and maintain freely accessible places of worship and assembly (...)”.

The Parliamentary Assembly of the Council of Europe in its Recommendation 1178(1992), quoted in chapter 2, noted that the freedom of conscience and religion guaranteed by Article 9 of the ECHR makes major legislation on sects undesirable, since such legislation might well interfere with this fundamental right and harm traditional religions.

In my survey on “The Right to Freedom of Association”, from January 1998, I recommended that the legislative norms and their practical implementation should secure and facilitate exercise of the right of association and not set up additional obstacles restricting associations’ activities. I wish also in this survey to underline the importance of avoiding the creation of de facto barriers for exercising the right to freedom of association and religion.

It is contradictory that despite the pronounced wish to protect the freedom of religion and the freedom to manifest it in community (religious associations), there exist more bureaucratic barriers to be overcome by religious associations than what is generally the case for secular associations. No objective reasons seem to exist which could warrant this state of affairs and often it leads to discriminatory treatment of certain associations compared to others without any acceptable justification.

In general, I recommend simplifying rules for registration of religious associations to a reasonable minimum comparable to those concerning secular associations, as it is for example envisaged in the Swedish draft law. We should aim at establishing transparent and non-discriminatory systems of registration which as far as possible precludes the use of bureaucratic, sometimes locally inspired, procedures making the establishment of religious associations difficult or impossible.

The European Court of Human Rights has pronounced itself on this issue in the Manoussakis case. The Court ruled on the compatibility of a conviction of Jehovah’s Witnesses for having set up and operated a place of worship without the authorisation of the Minister of Education and Religious Affairs. According to the Court the right to freedom of religion excludes any discretion on the part of the State to determine whether religious beliefs or means used to express such beliefs are legitimate. The authorisation requirement was consistent with Article 9 only insofar as it was intended to allow the Minister to verify whether formal conditions laid down in the relevant enactments were satisfied. The Court observed that the State tended to use this requirement to impose rigid, or indeed prohibitive, conditions on practise of religious beliefs by certain non-orthodox movements²¹.

In Latvia, Lithuania and Russia 10 year or 15 year rules for registration are in use. Russian religious groups which cannot certify their existence in Russia for the necessary 15 years, do not enjoy the same rights as religious organisations. This can be considered to contradict Article 3 of the Russian Law on Freedom of Conscience and on Religious Associations stating that imposition of privileges, restrictions, or other forms of discrimination on the grounds of religious affiliation shall not be permitted.

This means that religious associations cannot be considered to be equal before the law as they should be according to the Constitution and the Law on Freedom of Conscience and on Religious Associations. Neither are foreigners equal to the citizens before the law, as they should be according to this law (Art. 3 (1)): according to Art. 9 only citizens can be founders of a local religious organisation.

I recommend Latvia, Lithuania and Russia to abolish, or to ease and simplify, their specific rules of registration (compared to non-religious associations), as they risk impeding religious associations from functioning before final registration.

Provisions on a specific minimum number of people necessary in order to establish a religious association does not facilitate the manifestation of the right to freedom of religion. It should be left to the individuals and associations themselves to decide how many members they need in order to function. I recommend that member states refrain from setting up a requirement on how many persons are necessary for establishing a religious association.

We should aim at a system where authorities do not have to examine whether viewpoints and activities of an organisation are "religious" or not. Firstly because there is no generally accepted definition of religion. Secondly, such examinations and conclusions might in themselves infringe the freedom of religion. Such a system would be achieved if the general rules regarding associations would be applied as recommended above. That is, there should be common rules for all associations regarding registration, privileges etc., distinguishing probably only between profit- and non-profit-making entities. The present systems can lead to difficult and sometimes protracted investigations in the member countries about whether associations, such as the Scientology "Church" for example are religious associations or not.

6.3 The Legal Status of Religious Associations – Control of Internal Rules by Public Authorities

6.3.1 Findings of the Survey

In some member states, the state authorities can dissolve an association if the activity of the religious association does not conform to its own statutes.

This is the case in Finland, where the court, on the demand of the public prosecutor or a member of the community, can declare the community dissolved, i.a., if it acted against the aims as set out in its own community rules. When the infringement is less severe, the court can give a warning to the community.

In Latvia the State Prosecutor or the Minister of Justice may initiate the process of dissolution of the organisation, and a court may terminate the activities of the religious organisation, if it, i.a., violates or disregards its own statutes. This provision seems to be in conflict with Art. 5 (2) of the Law on Religious Organisations concerning non-interference on the part of the state, in religious activities performed by religious organisations.

In Lithuania, the Ministry of Justice shall inform a religious community, association or centre, i.a., if it should fail to act according to its registered statutes and shall indicate the term of time during which violations must be rectified. Ultimately, this may lead to the termination of its activity by court decision.

In Russia a religious organisation may be liquidated by a court judgement, i.a., if it systematically engages in activities contradicting the purposes for which it was created (charter goals). The registering authority shall control observance of its charter regarding the purposes and procedure of its activities. This seems to be in conflict with the provision of Article 4 of the Law on Freedom of Conscience, from which it follows that the state shall not interfere in the activities of religious associations when they do not contradict the existing law. It also seems to contradict with the provisions of Article 15 of the Law on Freedom of Conscience, stating that the state shall respect the internal regulations of religious organisations if the said regulations do not contradict the legislation of the Russian Federation.

6.3.2 Conclusions and Recommendations

The responsibility for observing whether a religious association respects its own internal rules should in principle solely belong to the board, steering committee or the general assembly of the association. It ought also be the elected organs which decide on the consequences of an eventual failure to comply with the internal statutes and principles.

I recommend that the state authorities only interfere in internal affairs of religious associations if it shows disrespect of own statutes to such a degree that it constitutes a violation of public regulations or publicly fixed conditions, e.g. regarding tax exemptions.

6.4 Authorisation to Perform Marriage of Civil Validity

6.4.1 Findings of the Survey

In Estonia, Germany and Russia churches or other religious associations have no authority to perform marriage with civil validity. In Iceland, Lithuania and Norway all registered religious associations may perform marriages.

In Denmark all marriages performed by ministers of the State Church and religious communities recognised by Royal Decree are of civil validity. Recognition of a religious association gives ministers an authorisation to perform marriages with civil validity. This is also the case with regard to authorised ministers from religious associations which are not in themselves recognised. According to the Danish matrimonial legislation it is necessary to have the conditions of marriage tried at the local civil authorities before any "religious" marriage can take place. (These rules, of course, make it necessary for the authorities to decide whether an association is a religious one or not).

In Finland, the two principal churches and some, but not all, registered religious communities have been granted the right to perform marriages with civil validity.

In Latvia a priest of the traditional confession can marry persons belonging to these confessions of the country. This marriage has civil validity. New confessions may be added by legislation.

In Poland marriages performed by the Roman Catholic Church as well as other registered churches shall have the same validity as civil marriage.

In Sweden, it is foreseen that also after the separation of church and state it shall be possible by law to authorise associations to perform marriages and other public functions, under some kind of supervision by public authorities.

6.4.2 Conclusions and Recommendations

The issue of performing church marriages with civil validity is not mentioned in the international human rights documents. However, the granting by the states of this right to some religious associations and not to others may be considered to violate international provisions on non-discrimination, e.g. Article 2 (1) of the UN Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief which states that "[N]o one shall be subject to discrimination by any State, institution, group of persons or person on the grounds of religion or other beliefs".

To avoid the discriminatory nature of granting the right to perform church marriage with civil validity only to some religious associations and not to others, a solution would be to demand that all marriages should be entered into before civil authorities – of course with the possibility of a ceremony or blessing in a church. For historical and other reasons this may be difficult to achieve. I shall limit myself to recommend that all efforts be made to avoid what might be felt as undue discrimination. One possibility would be to follow the proposed Swedish model described above.

6.5 Public Financing of the Activities of Religious Associations and Tax Regulation

6.5.1 Findings of the Survey

On the basis of the available information it is rather difficult to compare and to draw conclusions on the regulations of the member states on public financing and taxation with regard to churches and other religious associations. This specific aspect of freely and equally exercising the right to freedom of religion could be further elaborated at a later stage. However, attention should already now be drawn to the following facts.

In Denmark all tax payers contribute indirectly to the State Church even if they are not members of it and as such are paying a church tax. Furthermore, only the Folk Church is entitled to financial assistance from public funds. While the expenses of the Folk Church are covered in the greater part by state funds and by the special church tax, no state funds are provided for the support of other religious communities.

In Estonia funds are set apart from the state budget for the Council of Estonian Churches, which includes representatives of the traditional churches, except the Orthodox Church, which was not admitted when it applied for membership in 1993.

In Finland all companies contribute through their taxes to the Evangelical Lutheran Church and the Orthodox Church Community. Until year 1999, 3 per cent of the taxes levied on companies are reserved for activities of these two religious communities, and thereafter this part will be reduced to 2 per cent. According to the church legislation the parishes must use this income exclusively in order to carry out its ecclesiastical duties. Furthermore, members of these churches pay income based church tax.

In Germany the local authorities must discharge public duty to contribute to the upkeep of Church buildings. Likewise, on the basis of contractual terms, there are some obligatory contributions to be made by the State to the Church, such as subsidies to the salaries of Church officials.

In Iceland a person not being member of any recognised religious community shall pay to the University of Iceland those dues he should otherwise have paid to his religious community.

In Lithuania religious communities and associations, which suffered from the Soviet occupation obtain financial support from the State. All religious communities and associations may obtain state support for culture, education and charity.

In Norway the Church of Norway is granted money from the state budget. Any officially registered religious associations may apply for an annual contribution from the state. The same rule applies to non-registered religious associations. The sum of all contributions shall be approximately equivalent to the official budget for the Church of Norway and be allocated to the associations according to their number of members.

When the association is granted state contribution, it may also apply for a contribution from the municipality where the adherents live.

In Poland the State may support conservation and restoration of sacred facilities of the Catholic Church.

In Russia, the state shall regulate the granting to religious organisations of tax, duty and other privileges.

In Sweden, the tax-regulations will be limited for registered religious associations, including the Swedish Church, just as is the case for non-profit, voluntary associations.

6.5.2 Conclusions and Recommendations

In several member states there seems to be differential treatment of religious associations with regard to public financing of their activities and to taxation. Such differential treatment may be considered to be in conflict with the non-discrimination provisions of international human rights documents mentioned in paragraph 6.3.2.

I recommend abolishing the existing differential treatment of religious associations. If the CBSS countries wish to support religious associations, they should aim at granting state funds to these based on objective and non-discriminatory criteria.

Annex 1:**GENERAL COMMENT NO. 22 OF THE UN HUMAN RIGHTS COMMITTEE TO ARTICLE 18 OF THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS, 20 JULY 1993**

1. The right to freedom of thought, conscience and religion (which includes the freedom to hold beliefs) in article 18 (1) is far-reaching and profound; it encompasses freedom of thought on all matters, personal conviction and the commitment to religion or belief, whether manifested individually or in community with other. The Committee draws the attention of States parties to the fact that the freedom of thought and the freedom of conscience are protected equally with the freedom of religion and belief. The fundamental character of these freedoms is also reflected in the fact that this provision cannot be derogated from, even in time of public emergency, as stated in article 4 (2) of the Covenant.

2. Article 18 protects theistic, non-theistic and atheistic beliefs, as well as the right not to profess any religion or belief. The terms belief and religion are to be broadly construed. Article 18 is not limited in its application to traditional religions or to religions and beliefs with institutional characteristics or practices analogous to those of traditional religions. The Committee therefore views with concern any tendency to discriminate against any religion or belief for any reasons that may be the subject of hostility by a predominant religious community.

3. Article 18 distinguishes the freedom of thought, conscience, religion or belief from the freedom to manifest religion or belief. It does not permit any limitations whatsoever on the freedom of thought and conscience or on the freedom to have or adopt a religion or belief of one's choice. These freedoms are protected unconditionally, as is the right of everyone to hold opinions without interference in article 19 (1). In accordance with articles 18 (2) and 17, no one can be compelled to reveal his thoughts or adherence to a religion or belief.

4. The freedom to manifest religion or belief may be exercised 'either individually or in community with others and in public or private'. The freedom to manifest religion or belief in worship, observance, practice and teaching encompasses a broad range of acts. The concept of worship extends to ritual and ceremonial acts giving direct expression to belief, as well as various practices integral to such acts, including the building of places of worship, the use of ritual formulae and objects, the display of symbols, and the observance of holidays and days of rest. The observance and practice of religion or belief may include not only ceremonial acts but also customs as the observance of dietary regulations, the wearing of distinctive clothing or headcoverings, participation in rituals associated with certain stages of life, and the use of a particular

language customarily spoken by a group. In addition, the practice and teaching of religion or belief includes acts integral to the conduct by religious groups of their basic affairs, such as, *inter alia*, the freedom to choose their religious leaders, priests and teachers, the freedom to establish seminaries or religious schools and the freedom to prepare and distribute religious texts or publications.

5. The Committee observes that the freedom to "have or to adopt" a religion or belief necessarily entails the freedom to choose a religion or belief, including, *inter alia*, the right to replace one's current religion or belief with another or to adopt atheistic views, as well as the right to retain one's religion or belief. Article 18 (2) bars coercions that would impair the right to have or adopt a religion or belief, including the use of threat of physical force or penal sanctions to compel believers or non-believers to adhere to their religious beliefs and congregations, to recant their religion or belief or to convert. Policies or practices having the same intention or effect, such as for example those restricting access to education, medical care, employment or the rights guaranteed by article 25 and other provisions of the Covenant are similarly inconsistent with article 18 (2). The same protection is enjoyed by holders of all beliefs of a non-religious nature.

6. The Committee is of the view that article 18 (4) permits public school instruction in subjects such as the general history of religions and ethics if it is given in a neutral and objective way. The liberty of parents or legal guardians to ensure that their children receive a religious and moral education in conformity with their own convictions, set forth in article 18 (4), is related to the guarantees of the freedom to teach a religion or belief stated in article 18 (1). The Committee notes that public education that includes instruction in a particular religion or belief is inconsistent with article 18 (4) unless provisions is made for non-discriminatory exemptions or alternatives that would accommodate the wishes of parents or guardians.

7. According to article 20, no manifestation of religions or beliefs may amount to propaganda for war or advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence. As stated by the Committee in its General Comment 11 [19], States parties are under the obligation to enact laws to prohibit such acts.

8.1 Article 18 (3) permits restrictions on the freedom to manifest religion or belief only if limitations are prescribed by law and are necessary to protect public safety, order, health or morals, or the fundamental rights and freedoms of others. The freedom from coercion to have or to adopt a religion or belief and the liberty of the parents and guardians to ensure religious and moral education cannot be restricted. In interpreting the scope of permissible limitation clauses, States parties should proceed from the need to protect the rights guaranteed under the Covenant, including the right to equality and non-discrimination on all grounds specified in articles 2, 3 and 26. Limitations

imposed must be established by law and must not be applied in a manner that would vitiate the rights guaranteed in article 18. The Committee observes that paragraph 3 of article 18 is to be strictly interpreted: restrictions are not allowed on grounds not specified there, even if they would be allowed as restrictions to other rights protected in the Covenant, such as national security. Limitations may be applied only for those purposes for which they were prescribed and must be directly related proportionate to the specific need on which they are predicated. Restrictions may not be imposed for discriminatory purposes or applied in a discriminatory manner. The Committee observes that the concept of morals derives from many social, philosophical and religious traditions; consequently, limitations on the freedom to manifest a religion or belief for the purpose of protecting morals must be based on principles not deriving exclusively from a single tradition. Persons already subject to certain legitimate constraints, such as prisoners, continue to enjoy their rights to manifest their religion or belief to the fullest extent compatible with the specific nature of the constraint. States parties' reports should provide information on the full scope and effects of limitations under article 18 (3), both as a matter of law and of their application in specific circumstances.

9. The fact that a religion is recognized as a State religion or that it is established as official or traditional or that its followers comprise the majority of the population, shall not result in any impairment of the enjoyment of any of the rights under the Covenant, including articles 18 and 27, nor in any discrimination against adherents of other religions or non-believers. In particular, certain measures discriminating against the latter, such as measures restricting eligibility for government service to members of the predominant religion or giving economic privileges to them or imposing special restrictions on the practice of other faiths, are not in accordance with the prohibition of discrimination based on religion or belief and the guarantee of equal protection under article 26. The measures contemplated by article 20, paragraph 2, of the Covenant constitute important safeguards against infringements of the rights of religious minorities and of other religious groups to exercise the rights guaranteed by articles 18 and 27, and against acts of violence or persecution directed towards those groups. The Committee wishes to be informed of measures taken by States parties concerned to protect the practices of all religions or beliefs from infringement and to protect their followers from discrimination. Similarly, information as to respect for the rights of religious minorities under article 27 is necessary for the Committee to assess the extent to which the freedom of thought, conscience, religion and belief has been implemented by States parties. States parties concerned should also include in their reports information relating to practices considered by their laws and jurisprudence to be punishable as blasphemous.

10. If a set of beliefs is treated as official ideology in constitutions, statutes, proclamations of the ruling parties, etc., or in actual practice, this shall not result in any impairment of the freedoms under article 18 or any other rights recognized under the

Covenant nor in any discrimination against persons who do not accept the official ideology or who oppose it.

11. Many individuals have claimed the right to refuse to perform military service (conscientious objection) on the basis that such right derives from their freedoms under article 18. In response to such claims, a growing number of States have in their laws exempted from compulsory military service citizens who genuinely hold religious or other beliefs that forbid the performance of military service and replaced it with alternative national service. The Covenant does not explicitly refer to a right of conscientious objection, but the Committee believes that such a right can be derived from article 18, inasmuch as the obligation to use lethal force may seriously conflict with the freedom of conscience and the right to manifest one's religion or belief. When this right is recognized by law or practice, there shall be no differentiation among conscientious objectors on the basis of the nature of their particular beliefs; likewise there shall be no discrimination against conscientious objectors because they have failed to perform military service. The Committee invites States parties to report on the conditions under which persons can be exempted from military service on the basis of their rights under article 18 and on the nature and length of alternative national service.

Notes

- ² Kokkinakis judgement of 25 May 1993, Series A no. 260-A, p. 17, para. 31., quoted in Donna Gomien, David Harris, Leo Zwaak, *Law and Practice of the European Convention on Human Rights and the European Social Charter*, Council of Europe Publishing, 1996, p. 267.
- ³ Application No. 8282/78, Dec. 14.7.80, D.R. 21, p. 109.
- ⁴ Hanne Fledelius & Birgitte Juul, *Freedom of Religion in Denmark*, The Danish Center for Human Rights, 1992, p. 19. Domien et al., *op.cit.* pp. 263-271.
- ⁵ This chapter as well as chapter 5.1 are to a high degree based on the publication of Hanne Fledelius & Birgitte Juul, *Freedom of Religion in Denmark*, The Danish Center for Human Rights, 1992.
- ⁶ Study of Elimination of All Forms of Intolerance and Discrimination based on Religion or Belief, UN publication, sales no, E.89. XVI.3.
- ⁷ Quoted in Donna Gomien, David Harris, Leo Zwaak, *Law and Practice of the European Convention on Human Rights and the European Social Charter*, Council of Europe Publishing, 1996, p. 265.
- ⁸ See Annex I to this survey.
- ⁹ PACE Doc. 6732, *Religious tolerance in democratic society*, Strasbourg 1993, p. 13.
- ¹⁰ PACE Doc. 6732, *Religious tolerance in democratic society*, Strasbourg 1993, p. 12.
- ¹¹ See the case of Young, James and Webster (No. 34), judgment of 13 August 1981, A.44 (1981) pp. 23-24.
- ¹² Appl. 7374/76, X v/ Denmark, decision of 8 March 1976, D & R 5 p. 157
- ¹³ P. Dijk and G.H.H. van Hoof, *Theory and Practice of the European Convention on Human Rights*, p. 405
- ¹⁴ Appl. 8118/77, *The Divine Light Zentrum vs. the United Kingdom*, decision of 8 October 1981, D & R 25, p. 105.
- ¹⁵ The chapter on freedom of religion and religious associations in Germany is mainly based on an article by Gerhard Robbers: *State and Church in Germany*, pp. 57-73 in G.Robbers (ed.): *State and Church in the European Union*, Baden-Baden 1996. A copy of this article was received from the German Ministry of Foreign Affairs.
- ¹⁶ Data for 1991/1987.
- ¹⁷ Now meaning the territory of the Federal Republic of Germany.
- ¹⁸ This chapter is based, i.a., on a book by Johs. Andenæs "Statsforfatningen i Norge" (The Constitution in Norway), Oslo 1986, and its chapters on state and church (pp. 292-298) and freedom of religion (pp. 408-414).
- ¹⁹ This chapter is mainly based upon two Governmental documents: Regeringens proposition 1997/98:49, *Staten och trossamfunden - grundlagsfrågor* (Proposal of the Government, The State and the religious associations - constitutional questions); Regeringens skrivelse till kyrkomötet, *Staten och trossamfunden - grundläggande frågor* (Letter of the Government to the General Assembly of the Church, The State and the religious associations - fundamental questions)
- ²⁰ The European Court of Human Rights judged on 23 October 1990, Series A No. 187 that it was not necessary to examine the complaint based on Article 9, as the applicant's grievances relate mainly to allegedly discriminatory effects of the Swedish tax legislation. The Court found it more natural to examine the case under Article 14 taken together with Article 1 of Protocol No. 1 of the Convention, which concerns the peaceful enjoyment of possessions. The Commission did on the other hand conclude that it was not necessary to examine whether there had been a violation of Article 14 in conjunction with Article 1 of Protocol No. 1 to the Convention.
- ²¹ Judgement of 26 September 1996, Reports 1996-IV, Vol. 17, paras 45-53., quoted in P van Dijk and G.J.H. van Hoof, *Theory and Practice of the European Convention on Human Rights*, 1998, p. 555.