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Smorgunova, V. Yu.; Dorskaia, A. A.; Tolstukhina, T. V.

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LEGAL REGIME
FOR CHURCH PROPERTY
IN RUSSIA
AND THE BALTIC STATES

V. Yu. Smorgunova¹
A. A. Dorskaia¹
T. V. Tolstukhina²



In this article, we carry out a comparative analysis of the legal regimes for church property in the Baltic States and in Russia after the demise of the USSR. We stress the significance of this problem for the newly established relations between the state and the religious organisations, for the conclusion of agreements between these actors, and for the development of the ideas of interdenominational peace and intergovernmental relations. In this study, we aim at identifying the similarities and differences between the legal regulation of the state/denomination relations regarding church property, as well as the economic component of these relations. We analyse the regulatory documents of Russia, Latvia, Lithuania, and Estonia that enshrine the transfer (return) of the church property, which was seized illegally in the first Soviet years in Russia and during the incorporation of the Baltic republics into the USSR, to the religious organisations. We compare the restitution, which was carried out in the Baltics, with Russia's moderate approach to the transfer of religious objects to religious organisations. We conclude that the international factor affects the resolution of the church property issue and that the economic benefits of the property transfer are unclear. The transfer of the church property is associated with additional expenditure incurred by the state. In conclusion, we consider the reasons why the complete transfer (return) of the church property seized in the Soviet period is impossible.

¹ Herzen State Pedagogical University of Russia,
48 Moika Emb., St. Petersburg,
191186, Russia.

² Tula State University,
92 Lenin Prospekt, Tula, 300012, Russia.

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Introduction

During the past three decades, almost all modern states that once were the republics of the Soviet Union have faced problems relating to church or religious organisation property seized under the Soviet rule.

During the last years of the USSR, without any directive from Moscow, local authorities started to restitute church property. The turning point was the year of 1988 when the millennium of the Baptism of Rus' was celebrated with unexpectedly grand festivities. To a great degree, that was a way to compensate for the grim fate of the religious organisations' property. In the RSFSR only, 9,574 religious buildings were not used for their proper purpose. Of them, 3,984 were abandoned and falling gradually into disrepair, 3,656 were repurposed as service and utility buildings and 1,934 as cultural venues [1].

Local authorities saw the celebration of the millennium of the Baptism of Rus' as an important landmark in the relations between the state and the Church and initiated a transfer of religious property. According to later estimates, over 4,000 immovable properties and over 15,000 museum items were transferred to religious organisations over the ten years from 1988 to autumn 1998 [2, p. 55].

This new state of affairs required a special legal framework. The work on the law of the USSR 'On the Freedom of Conscience and Religious Organisations' was launched in 1990. The Russian Orthodox Church formulated its position on the issue at a local council the same year. The council issued a communique requesting the transfer of the immovable property used for religious purposes to the Church represented by religious communities and other church institutions [3, p. 71].

Chapter II of the 1990 law of the USSR 'On the Freedom of Conscience and the Religious Organisations Recognised in the Soviet Union' contained a classification of the religious organisations recognised in the Soviet Union.

According to Article 7, a number of institutions were recognised as religious organisations, Firstly, these were the religious associations established voluntarily by citizens for collective expressions of faith and other religious purposes. It was not obligatory to report the creation of such organisations to the authorities. Secondly, among the recognised religious institutions were the branches and centres acting upon a charter that did not contravene the current law. Thirdly, these were monasteries and convents, congregations, missionary societies, and the associations comprised of religious organisations represented by branches and centres.

Article 13 of this Law was of pivotal importance. It read: 'A religious organisation shall be deemed to be a legal entity immediately upon the registration of the charter of such an organisation.'

‘As a legal entity, a religious organisation shall have the rights and obligations according to the charter of such an organisation and the law.’ This Article abrogated the rule that denied religious organisations the rights of legal entities. This rule had been in force for 72 years.

On October 25, 1990, i. e. immediately after its Union-level counterpart, the law of the RSFSR ‘On the Freedom of Belief’ was adopted. Article 18 of the law was dedicated to the rights of the legal entity of a religious organisation. ‘A religious association of adult citizens that consists of at least ten people shall have the rights of a legal entity immediately upon the registration of the charter of such an organisation, according to the procedure referred to in Article 20 of this Law.

‘A religious association that has the rights of a legal entity shall be entitled to establish another religious association with the rights of a legal entity.’

A comparative analysis of the Union and Russian laws demonstrates that each had its advantages and disadvantages. Nevertheless, they marked a new state in the relations between the state and the church.

The first problem was the transfer of religious property to religious organisations. Article 9 of the Union law, which regulated the property matters of religious organisations, draw a fair line between the donations and the other incomes of religious organisations exempted from taxation, on the one hand, and the incomes of the enterprises established by these organisations subject to taxation as the enterprises of non-profit organisations, on the other.

On December 29, 1990, the Council of Ministers of the USSR issued Order No. 1372 ‘On the Procedure for the Transfer of State-Owned Religious Buildings, Structures, and other Religious Property to Religious Organisations’. It enshrined the principle of gratuitous transfer of property to religious denominations. ‘1. To establish that the transfer of state-owned religious buildings, structures, and other religious property is carried out gratuitously, according to the procedure of the transfer of property to non-profit organisations, specified in the Oder of the Ministers of the USSR of October 16, 1979 No. 940 “On the Procedure for the Transfer of Enterprises, Associations, Organisations, Institutions, Buildings, and Structures”.’

Thus, by the time when the USSR disintegrated, there was a ready regulative and legal framework for the transfer of the religious property seized under Soviet rule, to religious organisations.

Each of the newly established states was solving this problem its own way. Of interest are the cases of the Baltics and the Russian Federation, since their approaches to the restitution of religious property differed significantly at first. However, eventually, all these states faced the same problems.



Methodology

The legal regulation of the property relations of religious organisations has aroused both theoretical and practical interests internationally in the aftermath of very different events. Firstly, many studies have focused on the uses of religious land in the US according to the Religious Land Use and Institutionalized Persons Act of 2000 (RLUIPA) [4, p. 41—93; 5, p. 1—54; 6, p. 195—267]. Secondly, much attention has been paid to the regulation of the Muslim endowment funds in England and Wales [7, p. 281—295]. Thirdly, a number of studies have addressed the Biblical doctrine of land as applied to the South African restitution, which is being opposed by the landowners, the former metropolises, and large corporations [8, p. 685—707]. Fourthly, the treasure found in Padmanabhaswamy Temple in Thiruvananthapuram, the state of Kerala, in 2011 launched a long discussion on the ownership of temple assets. The ensuing court proceedings reached the Supreme Court of India [9, p. 841—865]. Fifthly, a number of studies have examined the land holdings of the Orthodox Patriarchy in Jerusalem [10, p. 383—408]. Sixthly, the researchers have analysed the court cases relating to church property [11, p. 443—494].

Although the legal regulation of the property relations of religious organisations in the Baltics was given a legislative framework as early as the 1990s, this problem has not received much attention from the academic community. The few exceptions are the works of Christopher Hill [12, pp. 420—423], Mikko Ketola [13, pp. 225—239], Robertas Pukenis [14, p. 114—128], and Mirand Cruz [15, pp. 479—504].

In Russia, the legal regime of religious property has been attracting increasing attention recently. In effect, a new school of thought is emerging. The history of the legal regulation of the property relations of religious organisations in Russia and the economic component of these organisations' activities have been addressed by canon lawyers (V. A. Tsy-pin, A. Nikolin, and others), historians (M. I. Odintsov, S. L. Firsov, S. G. Zubanova, P. Vert), and lawyers (A. A. Vishnevsky, E. V. Garanova, E. V. Anilova, O. A. Ivanyuk, O. P. Kashkovsky, A. V. Konovalov, I. A. Kunitsyn, Yu. S. Ovchinnikova, L. V. Porvatova, V. B. Romanovskaya, T. V. Soyfer, N. N. Kharitonov, M. V. Khlystov, M. O. Shakhov, and others). Several PhD theses have focused on this issue — particularly, those by M. A. Kulagin, V. V. Bagan, and R. V. Tupikin.

The methodology for studying the legal regulation of the property relations of religious organisations has several important features.

A study in this field should not be limited to positive law, since each denomination has its own normative system — canon law, church law, religious law, etc. When studying the legal regulation of religious organisations' property relations, it is necessary to take into account the correlation between public and private law elements. The constitutional and civil law approaches can be considered only in combination.

The state structures and the religious organisations of the countries that once were part of the Russian Empire and, later, the Soviet Union have to embrace the fact that the estimates of church assets were rough at best in any historical period.

Research into the problems of religious organisations' property rights is complicated by the absence of a legislative definition of the legal content of this widely used term. Whereas the situation is more or less clear when it comes to the liability property rights of religious organisations, their inheritance rights and special rights lack a clear definition.

An important function of religious organisations is their social missions. Thus, each case of the transfer of religious property should be handled individually. If an illegally expropriated religious building houses a hospital, an educational, or a social welfare institution, the religious organisation may withdraw its claim for the public good.

The civil law aspects of the functioning of religious organisations require the same discretion and objectivity as the other aspects of relations among the state, religious organisations, society, and individuals. They should not encroach on the feelings of either the believers or the atheists. The transfer of religious property to religious organisations makes sense only if it contributes to the spiritual betterment of society.

Results

Most former republics of the Soviet Union did not hurry to solve the problems of the religious property and the legal regulation of freedom of consciousness [16, pp. 90—98]. However, this did not hold true for the Baltics.

The law of the Republic of Latvia 'On Restitution to Religious Organisations', which was adopted on May 12, 1992, contained the following provisions.

Article 1 abrogated all the regulative and legal documents on the alienation of the property of religious organisations, adopted between July 21, 1940, and October 13, 1990. The only exception was the lands that were allocated for permanent use to individuals and the objects that were sold to innocent purchasers (individuals) based on a notarized agreement.

Article 3 provided that, if restitution was impossible, the religious organisation was eligible for compensation. The exception was the objects



lost in World War II or those passed into the ownership of legal entities and individuals. The right of restitution was granted only to the religious organisations registered with the Department of Churches and Denominations of the Ministry of the Interior of the Republic of Latvia, those reinstated as legal entities, and the successors to the religious organisations functioning before 1940 (Article 6).

The right to apply for restitution was valid for 18 months after the law had come into force. If the former owner of a religious building or its successor never applied, the building was transferred to the state while maintaining the status of religious property.

However, this law did not solve a range of problems, many of which persist to this day. For instance, in 2009—2012, a pressing issue was compensations for the property that had been owned by Latvia's families and organisations before World War II. The law of the Republic of Latvia did not provide such compensations since a considerable part of the Hebrew religious objects were either destroyed on purpose by the Nazis or ruined by war, whereas many of the owners and their successors were murdered. Nevertheless, Latvia's Jewish community started negotiations with the Government on the compensation for both types of property with the intention to spend the money obtained on helping the Holocaust survivors [17, p. 114].

In 2015, this problem reached a new level. Latvia's Jewish community claimed 270 buildings. In 2016, the Saeima adopted the law on the restitution of five buildings. This was only the beginning of a complicated process. Opinions clashed in both the Parliament and the Jewish community [18].

A serious discussion was sparked off by the amendments to the Latvian law on the restitution of property to religious organisations. Adopted in September 2009, these changes fuelled discontent among the religious organisations, which condemned the dissolution of the Department of Religious Affairs. Among other things, the Department officially corroborated the continuity of religious organisations' functioning. No similar structure was established instead. Finally, it was decided that this information would be provided by Latvia's Company Registry and Ministry of Justice [19].

Another reason why the legal problems of religious property have the international significance is the conclusion of agreements between a state and the religious centres. On November 8, 2000, the Republic of Latvia signed an agreement with the Holy See. In Article 10, the Latvian state guaranteed that it would restitute the illegally alienated property to the Catholic Church based on a permission from a relevant authority and the Conference of the Catholic Bishops of Latvia.

Latvia was historically a country of a Lutheran majority. Today, the Lutherans account for 55 %, Catholics for 24 %, and Orthodox Christians for 9 % of the country's population [20]). However, Article 22 of the Agreement of November 8, 2000, proclaimed the cultural and artistic heritage of the Catholic Church an important part of the national assets. The state and the Catholic Church were to share financial responsibilities for the protection of the Catholic cultural and artistic heritage.

In his analysis of this Agreement, R. V. Tupikin classified Latvia as a country where the presence of the Roman Catholic Church is the strongest [21, p. 13].

The Republic of Lithuania adopted the law 'On the Procedure for the Restitution of the Rights of Religious Communities to the Surviving Property' on March 21, 1995. The provisions of the law rested on the following principles:

1) July 21, 1940, was established as the reference point, i. e. the right to restitution was granted to the religious communities that had existed prior to that date.

2) The restitution did not cover land, inland waters, forests, and parks, as well as the objects constituting the exclusive property of the states according to Article 47 of the Constitution of the Republic of Lithuania.

3) The right to the restitution of the immovable property was granted to the religious communities, which were recognised as the successors to the pre-1940 associations.

4) The right to the immovable property could be restored in two ways — either by the restitution of the immovable property or by the purchase of the property by the state (transfer of the property in question or property of similar type and value to the community, compensation, assistance in renovation, lease of land at auction).

According to P. A. Shashkin, the measures taken in Lithuania were not radical. The restitution was selective and the Russian Orthodox Church was one of the beneficiaries [22]. In 2008, when describing the governmental and denominational relations in Lithuania, representatives of the Moscow Patriarchy emphasised that 95 % of the temples and the other church buildings had been restituted [23].

Testimony to the efficiency of the Lithuanian approach is the reaction from the Old Believers living in Lithuania. In particular, G. V. Potashenko stresses that the Old Believers' communities became autonomous and regained their property. Moreover, they were entitled to annual financial assistance [24].

Just like Latvia, Lithuania signed an agreement with the Holy See — the Agreement of May 5, 2000, on cooperation in education and culture.

Although the proportion of the Catholics has always been more considerable in Lithuania than it was in Latvia, the Agreement adopted a very balanced approach that suited the interests of both the state and the church. Particularly, Article 2 stated that the archives of the Roman Catholic Church, which had been expropriated between June 15, 1940, and March 11, 1990, and kept at the State Archive, remained intact and the authorised churches had gratuitous access and publishing rights to these materials.

The Agreement emphasises that the purchase, management, use, and disposal of religious property are carried out by the church legal entities in accordance with the canon law and the laws of the Republic of Lithuania (Article 10, Clause 1).

In Estonia, the Law on Churches and Parishes was adopted by the Riigikogu on May 20, 1993. However, soon the dramatic events followed, which are resonating to this day. In 1996, part of the parishes of the Estonian Orthodox Church was transferred to the Constantinople Patriarchy, which registered as successor to the pre-war Orthodox Church. The parishes that remained under the jurisdiction of the Moscow Patriarchy agreed to the arrangement but sought to the same status. However, they did not succeed.

On February 12, 2002, the Republic of Estonia adopted the new law 'On Churches and Religious Communities'. The major changes were as follows. Firstly, the religious associations were to be supervised by the judicial authority instead of the executive authority. Secondly, the concepts of 'Church', 'monastery or convent', 'community', and 'parish' were defined. Thirdly, the Estonian Orthodox Church of the Moscow Patriarchy was deprived of the right to claims to religious property. The situation has not been resolved. The Bishops' Council of the Russian Orthodox Church of February 4, 2011, issued the ruling 'On the Internal Affairs and External Relations of the Russian Orthodox Church'. Clause 10 of the ruling expressed regret about the persisting inequality in the property situation of the communities of the Estonian Orthodox Church of the Moscow Patriarchy as compared to the communities of the Constantinople Church.

In Russia, the normative and legal regulation of the transfer of religious property to religious organisations was a long process of the gradual adoption of a common position that would satisfy the state, society, and the denominations.

The turning point was the adoption of the Constitution of the Russian Federation on December 12, 1993. According to Article 8, Russia recognised private, public, municipal, and other forms of property (the Constitution of the Russian Federation (adopted by popular vote on Decem-

ber 12, 1993, with the amendments introduced through the laws of the Russian Federation of December 30, 2008 No. 6-FKZ, of December 30, 2008, No. 7-FKZ, of February 5, 2014, No. 2-FKZ, and of July 21, 2014, No. 11-FKZ). One of these forms of property was religious property. In 1994, Part 1 of the Civil Code of the Russian Federation was adopted. According to Article 50, religious organisations are classified as non-profits. Pieces of subordinate legislation regulating the property of religious organisations were constantly adopted. These included the Order of the President of the Russian Federation of April 23, 1993, No. 281-rp 'On the Transfer of Religious Buildings and Other Property to Religious Organisations', the Regulation of the Government of the Russian Federation of March 14, 1995, No. 248 'On the Procedure for the Transfer of the Federal-Owned Religious Property to Religious Associations', the Decree of the President of the Russian Federation of March 14, 1996, No. 378 'On the Measures for the Rehabilitation of the Clergy and the Believers who Fell Victim to Groundless Repressions', etc.

On September 26, 1997, the federal law of the Russian Federation No. 125-FZ 'On the Freedom of Conscience and Religious Associations' was adopted. Article 21 of the law contained several provisions on religious property. Firstly, the buildings, lands, industrial, social welfare, charity, cultural, educational, and other facilities, religious objects, funds, and other properties, including historical and cultural monuments were recognised as religious properties. The property rights of religious organisations were extended to the property purchased or created at their own costs, donated by individuals and organisations, transferred to religious organisations by the state, or acquired by any other legal way. Thirdly, the transfer of public or municipal property to religious organisations was to be gratuitous.

Only on November 30, 2010, the President of the Russian Federation signed the Federal Law of the Russian Federation No. 327-FZ 'On the Transfer of Public or Municipal Religious Property to Religious Organisations'. The law came into force on December 14 the same year. Although small in volume (only 12 articles), the Law contained a number of innovations. Firstly, it introduced a list of religious properties, which included non-religious facilities used for religious purposes. Secondly, it specified only the gratuitous use rather than ownership of the unalienable state or municipal property constituting part of a building or structure that was not classified as religious property.

Alongside the federal efforts, rule-making was carried out in the regions of the Russian Federation. According to V.V. Bagan's estimates, the regions adopted 116 regulations relating to the property relations between the state and religious organisations [25].

The religious situation differs from region to region. For instance, the law of the Kaliningrad region of October 28, 2010, No. 502 ‘On the Gratuitous Transfer into the Ownership of the “Kaliningrad Diocese of the Russian Orthodox Church (Moscow Patriarchy)” centralised religious organisation’ specified the transfer of 15 objects. Due to the historical reasons, many of these buildings and structures belonged earlier to the Protestant communities [26, p. 44].

The transfer of religious property in the Russian Federation and the Baltics has always had an economic facet.

Firstly, Max Weber’s classical idea about the role of the religious factors in the development has been evolved and corroborated in recent studies [27, p. 31—44]. Secondly, after regaining independence, all the former republics of the Soviet Union remained secular states. Thus, public authorities encouraged the self-financing and self-support of religious organisations. For example, the Canadian philosopher Charles Taylor emphasises that secularism involves a complex requirement. More than one good is sought in this case. He distinguishes among the three goals that he classifies in the categories of the French revolution. The first one is liberty (no one must be forced in the domain of religion). The second one is equality between people of different faiths or basic beliefs. The third one is fraternity (all spiritual families must be heard, included in the ongoing process of determining what the society is about (its political identity) and how it is going to realize these goals (the exact regime of rights and privileges)) [28, p. 23—34].

However, the case of the Russian Federation shows that the attempts to expedite the transitions of religious organisations to self-financing do not yield the expected result. In 2012—2015, the Russian Orthodox Church received 14 billion roubles from the state. Further 2.6 billion roubles were included in the budget of 2016 [29]. Such considerable sums are needed because many religious objects are classified as cultural heritage [30]. Thus, the owners assume an obligation to preserve these objects, provide access to them, etc. In this case, the state subsidises the maintenance of cultural heritage.

Thirdly, some denominations have become large asset owners. Today, the assets of the Russian Orthodox Church are estimated to be comparable to those of the Russian Railways and Gazprom.

Fourthly, in Russia and the other post-Soviet countries, religious organisations enjoy a wide range of tax exemptions.

Fifthly, the transition of the objects of cultural heritage from the category of museum property to that of religious property may result in the museums, which not only finance themselves but also make significant contributions to the state or the city budget, become subsidised religious

objects and taxpayer burden. In 2017, these considerations led to a major debate relating to the transfer of St Isaac's Cathedral in Saint Petersburg to the Russian Orthodox Church.

Discussion

A comparative analysis of the legal regimes of religious property in the Russian Federation, Latvia, Lithuania, and Estonia demonstrates the following.

The regulations adopted in the Baltics used the term the 'restitution of religious property', whereas the Russian laws use the concept of the 'transfer of religious property'. This means that, in Russia, religious organisations are not privileged subjects of civil law that are eligible for restitution. The term 'restitution of religious property' is used in Russia primarily by the representatives of the Russian Orthodox Church. However, the term does not have wide circulation in the legal community.

As regards the selectivity of the transfer of religious property, Russia seems to be treading the path of the Baltics. An increasing number of objects are being transferred to religious organisations, including the buildings that have housed museums, archives, libraries, educational, and medical institutions since the Soviet times. This is not always economically feasible since new buildings have to be built or the old one repurposed to accommodate the affected cultural or social welfare institutions.

According to the post-Soviet laws, the transfer (restitution) of religious property to religious organisations is carried out only if it is owned by the state or a municipality. Private-owned property is not subject to transfer. This is the only reasonable approach that can prevent social unrest.

The problem of religious property in Russia, as well as in the Baltics, has both a national and an international dimension. For Russia, this aspect was limited to the assumption of the relevant obligations upon the country's accession to the Council of Europe, i. e. to the level of participation in international organisations. For Latvia, Lithuania, and Estonia, the international dimension is associated with the accession to the EU and bilateral relations, particularly, with Israel.

Neither Russia nor the Baltics can return all the religious property lost by religious organisations in 1918 or in the early 1940s respectively. The approach to the transfer of certain property from the state to a religious organisation should be balanced and object-specific.

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The authors

Prof. Valentina Yu. Smorgunova, Dean of Faculty of Law, Head of Department of Theory of Law and Civil-Legal Education, Herzen State Pedagogical University of Russia, Russia.

E-mail: prof_smorgunova@mail.ru

ORCID: 0000-0003-0388-8167



Prof. Aleksandra A. Dorskaia, Head of Department of International Law, Herzen State Pedagogical University of Russia, Russia.

E-mail: adorskaya@yandex.ru

ORCID: 0000-0002-8723-8673

Prof. Tatyana V. Tolstukhina, Tula State University, Russia.

E-mail: tat_tolstuhina@mail.ru

ORCID: 0000-0002-7996-8828

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