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*Haroldas Šinkūnas**

 <https://orcid.org/0000-0001-8090-1009>

*Indrė Isokaitė-Valužė***

 <https://orcid.org/0000-0003-4596-2695>

RELATIONS BETWEEN THE HOLY SEE AND LITHUANIA: A 100-YEAR HISTORY

Abstract. The Article provides the analysis of the relations of the Holy See and the Republic of Lithuania from the beginning of the State's independence until the current period. At the outset, the authors give an overview of different stages and key legal issues of the development of the said relations. Further, the research deals with typical provisions and specific features of a concordat as an international agreement. The following part of the article is devoted to the analysis of the provisions of current four agreements between the Holy See and Lithuania, adding comparison with the treaties concluded by the Holy See with other two Baltic States, namely Latvia and Estonia. The research focuses on key legal issues of the cooperation between the Holy See and Lithuania with minor aspects of the intersection of the historical, political, international, and religious context. The authors conclude that in the complex international political landscape, the Holy See has remained one of the most credible partners for Lithuania and a moral authority for the nation, dominated by Catholics. The recognition of Lithuania as a State shortly after its Independence Declaration of 1918 as well as non-recognition of its 50-year occupation significantly contributed to the restoration of the State's independence in 1990. Although the reestablishment of the independent State of Lithuania being based on the continuation of the State's identity opened door for securing the validity of the Concordat concluded by the Holy See and the Republic of Lithuania in 1927, it was no longer capable of reflecting new realities, and new fundamental changes required the conclusion of new treaties between the parties. In 2000, the Agreement concerning Juridical Aspects of the Relations between the Catholic Church and the State, the Agreement on Cooperation in Education and Culture, and the Agreement concerning the Pastoral Care of Catholics Serving in the Army were concluded between the Holy See and the Republic of Lithuania, while in 2012, the Agreement on the Recognition of Qualifications Concerning Higher Education occurred. These bilateral agreements reflect typical provisions of concordats arising from their unique nature of combining both political (legal) and ecclesiastical matters and securing autonomy of both parties: they regulate the legal status of the Catholic Church and numerous issues, encompassing institutional matters, religious freedom, religious education, family life, cultural heritage, pastoral care, and many others. These

* Dean of the Law Faculty of Vilnius University, Public Law Department, haroldas.sinkunas@tf.vu.lt

** Law Faculty of Vilnius University, Public Law Department, indre.isokaite@tf.vu.lt



provisions are also similar in the agreements concluded by the Holy See and other two Baltic States, all having no state religion. However, the treaties of the Holy See concluded with Lithuania and Latvia have more common and more elaborated provisions than the agreement with Estonia, while some issues are relevant and, therefore, regulated in respect of merely a particular state.

Keywords: the Holy See, concordat, international agreements of Lithuania, treaty, international legal personality

STOSUNKI MIĘDZY STOLICĄ APOSTOLSKĄ A LITWĄ: STULECIE HISTORII

Streszczenie. W artykule zanalizowano stosunki między Stolicą Apostolską a Republiką Litewską od początku niepodległości państwa do dnia dzisiejszego. W pierwszej kolejności autorzy dokonali przeglądu etapów rozwoju tych relacji oraz głównych kwestii prawnych. Następnie w artykule dokonano analizy typowych postanowień konkordatu jako umowy międzynarodowej. Kolejna część artykułu poświęcona jest omówieniu postanowień dotychczasowych czterech umów między Stolicą Apostolską a Litwą, uzupełniając je o porównanie z umowami Stolicy Apostolskiej zawartymi z pozostałymi dwoma krajami bałtyckimi – Łotwą i Estonią. Badanie objęło kwestie prawne współpracy między Stolicą Apostolską a Litwą oraz niektóre aspekty przeplatającego się kontekstu historycznego, politycznego, międzynarodowego i religijnego. Autorzy konkludują, że w złożonym międzynarodowym kontekście politycznym Stolica Apostolska była i pozostaje jednym z najbardziej wiarygodnych partnerów Litwy i jest autorytetem moralnym dla Narodu, którego większość stanowią katolicy. Uznanie Litwy jako państwa wkrótce po ogłoszeniu niepodległości w 1918 r. i nieuznanie jego pięćdziesięcioletniej okupacji znacząco przyczyniły się do przywrócenia niepodległości państwa w 1990 r. Chociaż odrodzenie niepodległego państwa litewskiego oparte na kontynuacji tożsamości państwowej stworzyło przesłanki do obowiązywania od 1927 r. konkordatu zawartego przez Stolicę Apostolską i Republikę Litewską, nie odzwierciedlał on już nowych realiów, ponadto zasadnicze zmiany skłoniły strony do zawarcia nowych umów międzynarodowych. W 2000 r. Stolica Apostolska i Republika Litewska zawarły Umowę o prawnych aspektach stosunków między Kościołem katolickim a państwem, Umowę o współpracy w dziedzinie edukacji i kultury oraz Umowę o katolickim duszpasterstwie wojskowym, a w 2012 r. Umowę o uznawaniu kwalifikacji związanych z wyższym wykształceniem. Te dwustronne porozumienia zawierają postanowienia typowe dla konkordatów, co wynika z ich specyfiki łączenia spraw politycznych (prawnych) i kościelnych oraz zachowania autonomii stron: regulują status prawny Kościoła katolickiego oraz wiele kwestii, w tym instytucjonalne, dotyczące wolności wyznania, edukacji religijnej, życia rodzinnego, ochrony dziedzictwa kulturowego, duszpasterstwa i wiele innych. Postanowienia te są podobne do postanowień zawartych w umowach Stolicy Apostolskiej z dwoma innymi państwami bałtyckimi, Łotwą i Estonią, z których żadne nie ma religii państwowej. Jednak umowy międzynarodowe Stolicy Apostolskiej zawarte odpowiednio z Litwą i Łotwą zawierają więcej bardziej ogólnych i szczegółowych postanowień niż umowa z Estonią; ponadto niektóre kwestie dotyczą tylko konkretnego kraju i dlatego są regulowane jedynie w odniesieniu do niego.

Słowa kluczowe: Stolica Apostolska, konkordat, litewskie umowy międzynarodowe, traktat międzynarodowy, międzynarodowa podmiotowość prawna

1. INTRODUCTION

The world's history knows unique examples of statehood, and both the Holy See and the Republic of Lithuania are among them. Having declared independence in 1918, Lithuania was under 50 years of Soviet occupation.¹ The restoration of Lithuania's independence in 1990 based on the continuity of the State as well as its legal identity and statehood had respective implications on other related legal matters, including recognition and treaties, both also relevant in the history of the relations between the Holy See and Lithuania.

The history of the cooperation between the Holy See and Lithuania reflects both different stages of Lithuania's statehood and the significance of the moral authority of the Holy See for a small state which has always turned to international justice and diplomatic means instead of (and in the face of) political power and military force.

This article aims to provide both an overview of the development and the analysis of key legal issues of the relations between the Holy See and Lithuania as reflected in four agreements concluded between the parties. First, the authors present different stages of development of the said relations and key legal issues in the 100-year history of cooperation between the parties. The next part of the article deals with specific features of a concordat as a treaty. Further, the research focuses on the analysis of the provisions of the four treaties concluded by the Holy See and Lithuania, encompassing the comparison of these international agreements with the agreements (concordats) concluded by the Holy See with other two Baltic States, namely Latvia and Estonia.

The main sources of the current article are the agreements with the Holy See and also legal doctrine (scientific articles). Other legal documents relevant to Lithuania's statehood as well as domestic legislation and some international legal documents are also referred to. The authors do not aim at encompassing the interpretation of religious freedom and other relevant issues in the case law of national and international courts. The research is based on a systematic analysis; historical and comparative research methods are applied as well, at times referring to some aspects of the intersection of the historical, political, international, and religious contexts.

2. THE STAGES OF DEVELOPMENT AND THE MAIN LEGAL ASPECTS IN THE CENTURY-LONG RELATIONS BETWEEN THE HOLY SEE AND LITHUANIA

The international legal personality of the Holy See and cooperation with states well reflect how law, history, politics, international relations, and religion combine. The 100-year history of the relations between the Holy See and

¹ The 1941–1944 German Nazi occupation.

Lithuania represents unique legal character of both parties and the exercise of their international legal capacity.

From the Declaration of Independence of the Republic of Lithuania under the Act of 16th February, 1918 (Constitutional Court of the Republic of Lithuania, Lithuania's Independence Acts: Act of 16 February), the Vatican has become one of the most significant and reliable international partners of Lithuania – the source of credible partnership for the State and moral authority for the Lithuanian Nation, dominated by Catholics.² In the complex political landscape of independent Lithuania and also complex international landscape of the 20th century, the relations with the Holy See were always promising. Despite the changing role of the Holy See in the world, it has secured its firm standing in international relations, and despite several complexities in the relations with Lithuania, it has retained its moral authority and significance for Lithuania and its nation. It is noteworthy that the Catholic clergy played an important role in the restoration of Lithuania's independence.³

The Holy See recognised the independence of Lithuania among the first states – the appointment by Vatican of a separate envoy to Lithuania in 1921 actually meant the recognition of Lithuania *de facto*, while in 1922, the Holy See recognised the Republic of Lithuania *de jure* (Kasparavičius 2003, 303).⁴ In the same decade, diplomatic relations between Lithuania and the Holy See have experienced two significant moments: firstly, on 4th April, 1926, Pope Pius XI published the bull *Lithuanorum gente*, on the basis of which the Ecclesiastical Province of Lithuania was founded and the Catholic Church became directly subject to the Roman curia (Kasparavičius 2003, 328); secondly, on 27th September, 1927, a concordat between Lithuania and the Holy See was signed.

The importance of the conclusion of a concordat for the State and the Catholic community may be summarised in the following assessment. “Concordat consolidated the community of Lithuanian Catholics, expanded its rights and freedoms in the State. The Catholic Church became equal institution in the organisational structure of the State, (...) it had a positive impact on the political development of the Republic of Lithuania, (...) and stimulated Lithuania's relations

² According to the data of the 2021 Statistical Survey, 80.2% of the Lithuanian population attributed themselves to religious communities and associations. Roman Catholics accounted for 74.2% of the total population of the country (2 million 85 thousand). The second most abundant religious community is the Orthodox, which made up 3.8% (105.6 thousand) of the country's population (Official Statistics Portal, Population by Religion 2021).

³ Among the twenty signatories of the Act of Independence were four Catholic priests. Catholic priest Justinas Staugaitis held the position of chairman or vice-chairman in the Constituent Seimas and in the Seimas, which were later elected. Catholic priests have also served as ministers in many Lithuanian governments.

⁴ The very first relations between Lithuania and the Holy See trace back the 13th century when by mandate of Pope Innocent IV the first Lithuanian King Mindaugas was crowned in 1253 (Embassy of Lithuania to the Holy See and to the Order of Malta, Lithuania and the Holy See 2021).

with the neighbouring States, first of all, Poland and Germany” (Kasparavičius 2003, 296).

The parties’ relations during the second half of the 20th century faced a tremendous test of retaining them during the period of foreign occupation. The position of the Holy See contributed to the international non-recognition of Lithuania’s occupation and strengthened Lithuania’s decades-long fight for independence. Lithuania’s restoration of independence based on the Act of the Supreme Council of the Republic of Lithuania of 11th March, 1990 (Constitutional Court of the Republic of Lithuania, Lithuania’s Independence Acts: Act of 11th March) is a unique example of the State’s restoration of statehood after an extremely long period of the suppression of sovereign powers. The fundamental principle *ex injuria non oritur ius* mean that the state succession doctrine for Lithuania’s restoration of independence was inapplicable; it was based on the continuation of a state’s legal identity. “During five decades of the Soviet rule in Estonia, Latvia, and Lithuania, the State continuity doctrine undermined the legality and legitimacy of the Soviet rule in the Baltic States” (Mälksoo 2022, 44). Therefore, all three Baltic States regained their sovereignty (Aust 2013, 329).

Under the Act of 11th March, 1990, on the Re-establishment of the Independent State of Lithuania, “The Supreme Council of the Republic of Lithuania, expressing the will of the nation, decrees and solemnly proclaims that the execution of the sovereign powers of the State of Lithuania abolished by foreign forces in 1940 is re-established, and henceforth Lithuania is again an independent state” (Constitutional Court of the Republic of Lithuania, Lithuania’s Independence Acts: Act of 11th March). These provisions “make it clear that the restoration of the independence of the State of Lithuania was grounded on the continuity of the State of Lithuania, which means that the aggression that the USSR began against the Republic of Lithuania on 15th June, 1940 (*inter alia*, the occupation and annexation of the territory of the Republic of Lithuania) abolished neither the State of Lithuania as a subject of international law nor its sovereign powers; due to the occupation of the territory of Lithuania and demolition of its state institutions, the implementation of the sovereign powers of the State of Lithuania, *inter alia*, its international rights and obligations, were suspended; the annexation of the territory of the Republic of Lithuania perpetrated by the USSR on 3rd August, 1940, as a continuation of the aggression, was an act null and void, thus, from the viewpoint of international law, the territory of the Republic of Lithuania was occupied by another state and it was never a legal part of the USSR” (Constitutional Court of the Republic of Lithuania. Rulings of 22nd February, 2013, and 18th March, 2014).

The restoration of Lithuania’s independence in 1990 had impact on other legal issues, including the treaties concluded by Lithuania in the interwar period and also the recognition. Declarations of recognition announced thereafter expressed the recognition of a new government of the Republic of Lithuania, but not a new

State, as it was established already in 1918 and recognised by international community in the following years of the same decade. “Most – although not all – States in 1991 recognised the claim of the Baltic States to be identical with the pre-1940 Baltic States” (Mälksoo 2022, 50). Accordingly, treaties concluded by independent Lithuania in the interwar period may have retained their validity. However, the majority of them were no longer capable of reflecting new realities. The Concordat of 1927 was also invalid *de facto* due to fundamentally changed political and historical conditions and related material changes, including territory and population, but not due to the Concordat’s annulment by the Soviet Union on 15th June, 1940, which was never recognised by the Vatican. The policy of non-recognition of the occupation and annexation of Lithuania as well as consequences arising therefrom demonstrated by the Holy See and many states contributed to the Lithuania’s independence movement. For example, the Legation of the Republic of Lithuania to the Holy See remained operational throughout the period of post-World-War-II Soviet occupation (Embassy of Lithuania to the Holy See and to the Order of Malta, 2021).

The Lithuanian ecclesiastical province established in 1926 has remained throughout the 20th century and even the 50-year long occupation and has been reformed only after the restoration of Lithuania’s independence, i.e. at the end of 1990 (Kasparavičius 2003, 296). In December 1991, when two ecclesiastical provinces – Vilnius and Kaunas – were established by the Holy See in Lithuania and their boundaries with the borders of the Lithuanian State aligned, the time came ripe for amending the treaties between the Holy See and Lithuania. Bishop Erwin Josef Ender was first named Nuncio for the three Baltic States with residence in Vilnius (Salo 2002, 291).

The relations between the Holy See and the Republic of Lithuania have been re-established by concluding three treaties between the Republic of Lithuania and the Holy See on 5th May, 2000: the Agreement concerning Juridical Aspects of the Relations between the Catholic Church and the State (hereinafter – “Holy See-Lithuania Agreement”), the Agreement on Cooperation in Education and Culture (hereinafter – “Education and Culture Agreement”) and the Agreement concerning the Pastoral Care of Catholics Serving in the Army (hereinafter – “Pastoral Care Agreement”). In addition, the fourth treaty, Agreement on the Recognition of Qualifications Concerning Higher Education, was concluded between parties on 8th June, 2012 (hereinafter – “Recognition of Qualifications Concerning Higher Education Agreement”). Before analysing their provisions (and comparing them with the treaties concluded by the Holy See with other two Baltic States), it is relevant to address the unique nature of a concordat as a treaty and its typical (though peculiar) provisions.

3. CONCORDAT AS A TREATY – KEY ASPECTS

Not less unique example than the international legal personality of the Holy See or Lithuania's contribution to the statehood-related issues in international law is a concordat as a specific type of treaty.

The Vatican City as a particular subject of international law is still regarded as a State and thus disposes of all major rights and duties inherent in international legal capacity under international law, including the conclusion of treaties. Among the treaties to which the Holy See is a party is the 1969 Vienna Convention on the Law of Treaties (United Nations Treaty collection, Chapter XXIII 2023) and thus the conclusion and related issues of the concordats – including interpretation, entry into force, validity, suspension, and termination – are governed by this convention.

The peculiarity of concordats lies in the specific nature and purpose of this type of a treaty. Their conclusion is a practice from the Middle Ages, although their aim remains the same, i.e. to agree on the issues of mutual interest, primarily the legal status of the Roman Catholic Church in the State's Party's territory. Concordat is "based on the paradigm of religious and political dualism, which is original for the European culture" (Krukowski 2014, 46). The specific aim of concordats stipulates their bilateral nature, unlimited validity, some procedural provisions, and also unique material provisions.

One should highlight the subject matter of this type of treaties. Despite differences in titles,⁵ the form of conclusion and the number of documents comprising such treaties,⁶ concordats aim at "the mixture of political and ecclesiastical matters" (...) and "also touch on educational, civil (...) matters" (Maluwa 1987, 161, 164). Usually, the material provisions fall under the following typical areas: juridical issues of the Catholic Church (status, representatives, institutions, etc.), rights of the Catholic Church (ranging from freedom of communication and religious education to property rights and taxation issues), freedom to regulate ecclesiastical life and carry out its mission, pastoral care at military service, religious education and social issues (marriage), the protection of religious cultural heritage, etc. Some provisions may reflect peculiarities related to a particular state.

The comprehensiveness of a concordat (in terms of its provisions and even the number of agreements concluded) seems to be affected by the status of the Catholic religion in a particular state: when a nation is dominated by Catholics (or Catholic religion is a state religion), this is usually emphasised in the preamble

⁵ Usually international agreements concluded by the Holy See with States do not bear a title of a "concordat", as this is a general term used to define this type of treaties.

⁶ A concordat may be concluded in the form of exchange of diplomatic notes, signed on behalf of parties by their due representatives or other manner; its entry into force is subject to the parties' agreement and shall not contradict international law, domestic legislation, and the Canon Law.

as well as the Catholic Church's contribution to a nation's moral and spiritual development as well as impact on the social, educational, and cultural field; then the regulation is usually more elaborate. In any case, the autonomy and sovereignty of both parties is retained: all rights and duties of the Catholic Church carrying its mission are subject to the laws of the state, although in some fields the role of an act of a state is merely nominal (e.g. the citizenship of the receiving state may be required for a priest to be appointed as a Bishop, although the Holy See usually merely informs the state out of courtesy (e.g. the President) of the appointment of a diocesan Bishop). Above all, the Concordat is "a legal act between two entities that mutually recognise each other's sovereignty in their respective domain and that are both designed to serve the human person" (Carulli 2011, 437–438).

The mixed political-legal-ecclesiastical nature of the concordat's material provisions has impact also on the typical procedural provisions. For example, parties rely on amicable resolution of disagreements out of the interpretation or application of concordats (e.g. negotiation or joint commission, etc.). Still, parties seem to follow usual procedures applicable to the conclusion of treaties: they usually submit their international agreements concluded with the Holy See for registration and publication at the United Nations, where the Holy See has a status of a permanent observer.⁷ Concluded on parties' free will by their due representatives and under international law, duly announced, registered and published, concordats become binding and confer rights on parties.

Despite differences in domestic legal systems, concordats as international agreements have supremacy over national law. Part (and even a greater part) of their provisions requires implementation at the domestic level: the establishment of institutions (legal persons), religious education, consequences of marriage celebrated at the Catholic Church, pastoral care, the protection of religious cultural heritage, exemption from taxation, etc. Other provisions may also have constitutional regulation (e.g. parents' or representatives' right to choose their child's religious education, etc.)

4. CONCORDATS OF THE HOLY SEE WITH LITHUANIA, LATVIA, AND ESTONIA – A COMPARATIVE ANALYSIS

Among the above presented features of concordats is their unlimited period of validity, and many European States have had concordats with the Holy See in force for many decades if not even a century. "In modern times, concordats are mostly concluded in important moments in the history of the given nation, towards which the Church fulfils its mission. Such situation came into existence in

⁷ Many examples of such bilateral treaties among all treaties the party to which is the Holy See may be found in the United Nations Treaty Series Online search database.

Poland and neighbouring countries at the end of the 20th century in the context of sociopolitical transformation from the communist regime to the liberal democracy and the restoration of cultural and political sovereignty by enslaved nations of the East-Central Europe” (Krukowski 2014, 46). This is also confirmed by the conclusion of the international agreements of the Holy See with Lithuania, Latvia, and Estonia, as all three Baltic States share the history of a half-century long occupation, and after the restoration of independence the time was ripe for the conclusion of such treaties (concordats). The role of the religion and the relations with the Holy See were also promising as reflecting national identity and the freedom of expression suppressed during the Soviet occupation.⁸

The freedom of religion is safeguarded by international agreements and national constitutions. It exists despite the model of State–Church relations. There is no state religion or a state Church in either of the three Baltic States; the Lithuanian and Latvian nations are dominated by Catholics and the treaties concluded by the Holy See with these two (four agreements with Lithuania⁹ and the Agreement between the Holy See and the Republic of Latvia of 2000, hereinafter – “Holy See-Latvia Agreement”) are more exhaustive than the one concluded with Estonia (Agreement between the Republic of Estonia and the Holy See on juridical status of the Catholic Church in Estonia of 1999, hereinafter – “Holy See-Estonia Agreement”).

In addition to Catholics, there are other religious communities in all Baltic States, different in their representation, recognition, and/or legal status. The Republic of Lithuania recognises nine traditional religious communities and associations existing in Lithuania, which comprise a part of Lithuania’s historical as well as spiritual and social heritage: Roman Catholic, Greek Catholic, Evangelical Lutheran, Evangelical Reformed, Eastern Orthodox, Old Believer, Judaist, Sunni Muslim, and Karaite (Law on Religious Communities and Associations, Art. 5). Catholics constitute the largest community among them. “In Latvia, the Roman Catholic Church stands out among other religious organisations, both as to the type of recognition by the State and as to the level of that recognition” (Balodis 2019, 302). Only the Catholic Church is recognised as a subject of public law; separate laws regulate the status of other traditional religious organisations (Balodis 2019, 303). However, there are around 25 religious confessions in Latvia, of which Evangelical Lutheran, Roman Catholic, and Russian Orthodox are the largest ones (European Commission, Eurydice: Latvia. 1. Political, social and economic background and trends, 2022). In Estonia, there are many different faiths and denominations along with centuries-old Christian

⁸ For example, the Preamble of the Agreement of the Holy See and Latvia of 2000 expressly stipulates that “in 1922 a Concordat was signed between the Holy See and the Republic of Latvia, which, given the changes that have occurred at both the national and international levels, should be now replaced by a new international Agreement”.

⁹ Listed in Part 2 of this article.

churches, and the state is rather secular.¹⁰ Larger religious groups are Lutherans and Orthodox, while the number of Evangelical Christians and Baptists is almost equal; smaller religious groups are Methodists, Adventists, Raskolniki, Jehova's Witnesses, Roman Catholics, Jews, and others (European Commission, Eurydice: Estonia. 1. Political, social and economic background and trends, 2022). Still, various authors recognise the role of the religion in the context of the restoration of independence as "a "return of the religious," which was quite common in all Eastern European post-communist societies" (Kiwior 2010, 261).

All international agreements concluded by the Holy See with each of the Baltic States share the typical aim of a concordat – to establish a juridical status of the Catholic Church in a state, their provisions encompass spiritual, ecclesiastical, and secular matters, including educational, cultural, family, and social issues. The preambles of the Holy See–Lithuania Agreement and the Holy See–Latvia Agreement refer to the special role of the Catholic Church in strengthening the moral and spiritual values of the nation and its reintegration. The treaties also aim at regulating the collaboration in education and culture as well as pastoral care at the military.¹¹ The agreements of the Holy See concluded with Lithuania and Latvia resemble many common provisions, while the Holy See–Estonia Agreement contains some similar provisions (although formulated in a rather condensed manner).

Both, the Holy See and a state are sovereign, and the autonomy of each party within its field is established in the agreements with the Baltic States. The Holy See carries out its mission through the Catholic Church and the Canon Law applies. However, the activities are subject to the laws of a state – reference to national legislation is dominating in the agreements.

The agreements of the Holy See with each of the Baltic States also share the following main similar provisions: juridical personality of the Catholic Church and its institutions; the freedom of regulation of ecclesiastical life, including the establishment, recognition, and modification of ecclesiastical juridical public persons (Art. 2 of all agreements, Art. 5, the Holy See–Estonia Agreement) as well as the appointment of Bishops (Art. 6, the Holy See–Lithuania Agreement and the Holy See–Estonia Agreement, Art. 5, the Holy See–Latvia Agreement), freedom to profess and practise the Catholic religion (Art. 7, the Holy See–Lithuania Agreement, Art. 4 – Latvia, Art. 1 – Estonia), the freedom of communication between the Holy See and the Catholic Church (Art. 3 of all agreements), and

¹⁰ 29% of people in Estonia are estimated to be affiliated with a religion. The proportion of people who do not feel an affiliation to any religion has increased – from 54% in 2011 to 58% in 2021. The most prevalent religion in Estonia is Orthodox Christianity (Statistics Estonia, Population census 2021).

¹¹ In the case of Lithuania, separate agreements have been concluded in these areas (see the last paragraph of Part 2 of this article); Holy See–Estonia Agreement does not deal with pastoral care at the military.

civil effect of marriages celebrated at the Catholic Church (Art. 8, the Holy See–Latvia Agreement and the Holy See–Estonia Agreement, Art. 13 – Lithuania). In addition, the following provisions are common (at least in several agreements of the Holy See and respective Baltic States): the Catholic Church’s right to access and possess mass media (Art. 4, the Holy See–Estonia Agreement, Art. 9, the Holy See–Latvia Agreement, Art. 12, Education and Culture Agreement between the Holy See and Lithuania), the inviolability of places of worship (Art. 7, the Holy See–Estonia Agreement, Art. 6, the Holy See–Latvia Agreement), the inviolability of the secrecy inherent in sacramental confession (Art. 8, the Holy See–Lithuania Agreement, Art. 7, the Holy See–Latvia Agreement). and other issues inherent in the mission of the Catholic Church and the respective role of a state to accommodate it (e.g. pastoral care, access to prisons and hospitals, exemption from taxes of property used for pastoral, charitable, social, educational, and cultural purposes, the protection and preservation of cultural heritage, religious education, etc.)

Despite similarities, there are also provisions reflecting peculiarities of the bilateral nature of the relations between the Holy See and a particular state, and thus separate agreements contain specific provisions. For example, the Holy See–Lithuania Agreement lists the feast-days and Sundays as public holidays (Art. 9). Preservation on the cultural and historical patrimony of the Catholic Church as important part of the national heritage is elaborated in the Education and Culture Agreement, including the specific provisions on the archives and cultural treasures expropriated between 15th June, 1940, and 11th March, 1990 (Art. 13). The Education and Culture Agreement also contains provisions on the recognition of the diplomas and academic qualifications granted by the Faculty of Theology within the Inter-diocesan Seminary in Kaunas in 1940–1991 (Para 3 of Art. 10). In the case of Latvia, the Holy See–Latvia Agreement also elaborates on the protection and preservation of cultural objects: “the cultural and artistic heritage of the Catholic Church is to be considered as an important part of the national heritage of the Republic of Latvia” (Section 2, Art. 22). The Shrine of Angola is part of the cultural and historical heritage of the Republic of Latvia and as such is protected under the Latvian law (Art. 11). There are also provisions on the restoration of the unlawfully alienated property guaranteed by the Republic of Latvia to the Catholic Church (Art. 10) as well as provisions in specific institutions in the field of religious education (Sec. 3, The Major Seminary of Riga, Sec. 4, the Faculty of Theology at the University of Latvia).

Further, we shall analyse pastoral care at the military, religious education, the preservation of cultural heritage, and the recognition of qualifications concerning higher education – all elaborated in separate agreements between the Holy See and Lithuania.

The principle of freedom of conscience and religion established in the Preamble and reiterated in Art. 1 of the Education and Culture Agreement

represents one of the individual rights established in international universal and regional human rights treaties and national constitutions. This Agreement regulates the freedom as encompassing the following main aspects: religious education, the use of religious symbols, and religious heritage.

One should recognise the role of education as its “specific mission” for “the integral formation of a human person”, as emphasised in the Circular Letter on religious education in schools (Congregation for Catholic Education, Circular Letter to the Presidents of Bishops’ Conferences on Religious Education in Schools). In addition, it recognises that “education today is a complex task, which is made more difficult by rapid social, economic, and cultural changes”, and stresses the need that “children and young people must be guaranteed the possibility of developing harmoniously their own physical, moral, intellectual, and spiritual gifts, and they must also be helped to develop their sense of responsibility, learn the correct use of freedom, and participate actively in social life” (Congregation for Catholic Education, Circular Letter to the Presidents of Bishops’ Conferences on Religious Education in Schools, 2009).

The Education and Culture Agreement establishes the natural right of parents to provide their children with religious education and, accordingly, the State’s duty to create the same conditions for teaching the Catholic religion in all state and municipal schools of general education (Art. 1). The possibility of spiritual religious education at universities (higher education) is subject to agreement with such institutions (Art. 5). Freedom of conscience allows the choice between religion or ethics, which is exercised by parents and guardians until the age established by the Lithuanian law (Art. 2). Certain authorisation is required for teachers and a qualifying certificate must be obtained for teaching the Catholic religion (Art. 3).

At the domestic level, the aforementioned provisions of the Education and Culture Agreement are regulated in the Constitution of the Republic of Lithuania and laws. Parents and guardians shall, without restrictions, take care of the religious and moral education of their children and wards according to their own convictions (Para. 5 of Art. 26 of the Constitution).¹² The Law on Education of the Republic of Lithuania establishes and elaborates on the right to study religion (Art. 31), which shall be an optional part of moral education (the latter shall be a part of primary, basic, and secondary education). The State’s obligations in providing the religious education encompass certain aspects of pedagogue’s qualification, the approval of curriculum, etc.

Under the Education and Culture Agreement, educational establishments and institutions shall guarantee respect for religious convictions, symbols, and values

¹² A learner in a school shall have the right at the age of 14 to choose one of the following subjects of compulsory moral education: religion of a traditional religious community or association or ethics; under that age this choice belongs to parents (guardians, curators).

(Para. 3 of Art. 1). There is also a recognition of the contribution of the Catholic Church to the education of youth, and respective provision on the State's support of Catholic youth organisations (Art. 4). Other provisions refer to the preparation and publication of materials for teaching the Catholic religion (Art. 6), contents, and methods (Art. 7); the right of the Catholic Church to establish educational establishments (Art. 8); the establishment of diocesan and inter-diocesan seminaries for the preparation of candidates for the priesthood (Art. 11); the State's subsidies for schools preparing teachers of the Catholic religion (Art. 10); and support for Catholic seminaries (Art. 11).

The Education and Culture Agreement also establishes mutual recognition of diplomas and other academic qualifications in education at the university level (Art. 10) and these issues are regulated in a separate agreement. The Recognition of Qualifications concerning the Higher Education Agreement¹³ aims at the improvement of the transparency for the competent authority of the other party of secondary education and higher education qualification obtained in the institutions belonging to Lithuania's higher education institutions and the Holy See's higher education institutions (the Ecclesiastical Universities and Faculties which have been canonically erected or approved by the Holy See, Art. 1).

The Education and Culture Agreement also establishes the preservation of the cultural and historical patrimony of the Catholic Church, the administration and safe-keeping of the archives, and ensuring the availability of cultural heritage to the public (Art. 13). This is elaborated in domestic legislation. For example, the Law on the Protection of Immovable Cultural Heritage of the Republic of Lithuania lists sacral objects among the protected ones and establishes basic principles of protection and public access to such objects.

In Latvia, the issues of education and culture are regulated in the Part II of the Holy See–Latvia Agreement under the title “The Catholic Church and Institutions of Education”. Similar provisions are established as in the above-analysed Education and Culture Agreement (the right of parents and other legal representatives and children to choose religious education, the certification of qualifications and approval of the curriculum, the establishment of educational institutions, etc.), with some sections on particular educational institutions and the protection of cultural and artistic heritage of the Catholic Church (as mentioned in the beginning of Part 4 of this article).¹⁴ The Holy See–Estonia Agreement provides for the Catholic Church's right to establish and manage its own schools

¹³ The conclusion of this agreement (as stated in its Preamble) was also encouraged by the 1997 UNESCO Convention on the Recognition of Qualifications concerning Higher Education in the European Region and the obligations arising out of the Bologna Process.

¹⁴ In Latvia, Christian teaching is established in accordance with the curriculum approved and taught by teachers of the Evangelic Luteran, Roman Catholic, Orthodox, Old Believers, and Baptist denominations, while others denominations may be taught at private schools only (Balodis 2019, 322–323).

and the guarantee for the Catholic students of a possibility to study religious subjects appropriate for their denomination (Art. 7).

The Pastoral Care Agreement aims at the provision of a continuous pastoral care of Catholics Serving in the Army of the Republic of Lithuania. Addressing the religious needs of persons serving in the military is not accidental: the exercise of the right of conscience and religion of such individuals may be subject to difficulties due to specific nature of the military (its hierarchical structure), and the religious liberty issues are of a high importance for the members of armed forces, knowing their mission and the environment they serve in. Not all safeguards in the field applicable to civilians are easily adaptable in the military context: “the military’s hierarchical nature also presents unique challenges for religious liberty issues” (Lynn 2010, 15).

The Military Ordinariate to be established by the Holy See shall be responsible for pastoral care of the Catholics serving in the Army (Art. 1). There are provisions on the appointment of as well as the rights and duties of the Military Ordinary, Vicar General, and Military Chaplains. The Military Ordinary has rights and duties of a diocesan Bishop and is a member of the Conference of Lithuanian Bishops. In co-ordination with the Minister of Defence, the Military Ordinary shall appoint a Vicar General who is at the same time the Head Chaplain of the Army (Art. 3). Military Chaplains shall be appointed or dismissed from office by the Military Ordinary in agreement with the local Bishop (Art. 4) and they shall report to the Military Ordinary regularly in their activities (Art. 9). The duties of Military Chaplains are the following: visiting military units, celebrating Mass and presiding at other acts of worship, administering the sacraments, teaching religion and morals, arranging talks on the topics of religion, moral managing and caring for the church property entrusted, and performing other pastoral activities (Art. 8).

One of the elements of the freedom of religion is the right for an alternative service instead of military service. The Law on Military Service of the Republic of Lithuania provides for “alternative national defence service” as meaning mandatory national defence service for those who due to religious or pacifistic beliefs may not serve under arms (Art. 40). The Holy See–Latvia Agreement Part III “Religious Assistance to the Catholics in the National Armed Forces of the Republic of Latvia” among provisions establishes exemption from military service of the students from Major Seminary of Riga and novices of Religious Congregations (Art. 26).¹⁵

The freedom of religion at the military is addressed in international documents. For example, the Recommendation of the Committee of Ministers to member states on human rights of members of the armed forces among other things establishes the right to freedom of thought, conscience, and religion of

¹⁵ There is also a reference to a Memorandum of Understanding between the Ministry of Defence and the Bishop’s Conference in Latvia (Art. 23).

the members of armed forces (including the right to change religion or belief at any time); possible specific limitations placed on the exercise of this right within the constraints of military life; the prohibition of discrimination on the basis of their religion or belief; alternative service of civilian nature; the procedure for the examination of requests to leave the armed forces for reasons of conscience, etc. (Recommendation CM/Rec(2010)4 2010).

The main duties for a state under the Pastoral Care Agreement are established. The Ministry of Defence shall provide proper material assistance in maintaining the Military Ordinariate and its places of worship as well as other pastoral activities (Art. 7); the Ministry shall also agree with the Conference of Lithuanian Bishops upon specific regulations for the Military Ordinariate concerning practical aspects of the pastoral ministry of Military Chaplains, as well as their terms and conditions within the military structure. Accordingly, on 2nd August, 2022, the parties agreed on the adoption of the Regulations of the Military Ordinariate of the Republic of Lithuania (Understanding between the Conference of Lithuanian Bishops and the Ministry of National Defence concerning the Ordinariate Regulations of the Lithuanian Army, 2022).

5. CONCLUSIONS

The century-long relations of the Holy See and the Republic of Lithuania reflect unique international legal personality of the Holy See and the contribution of Lithuania to the concept of statehood in international law. In the complex international political landscape of the 20th century, the moral authority of the Holy See has always been promising for the State of Lithuania and its nation, dominated by Catholics. In the face of great political and military powers, Lithuania has always turned to international justice, relied on law, diplomacy, and also on religion. The relations with the Holy See were, nonetheless, important from the legal perspective: the recognition of the Republic of Lithuania, the conclusion of the Concordat in 1927, and the non-recognition of the occupation and annexation of Lithuania throughout the whole period of its suppressed sovereignty significantly contributed to the restoration of the independent State of Lithuania in 1990. This remarkable moment in Lithuania's history encouraged the renewal of the relations of Lithuania with the Holy See and regulating them in four international agreements between the parties, as the 1927 Concordat no longer reflected new realities.

A concordat represents a unique type of international agreements concluded by the Holy See with a state. It is subject to the principles and rules applicable to treaties under international law, including the free will of parties, acceptance to be bound, due representation of each party, clauses on entry into force, etc. International law, domestic law of a state, and Canon Law all combine in

application. Such international agreements, generally called concordats – although not necessarily bearing this concept explicitly in their titles – concluded in different forms (and possibly elaborated in several agreements), are characteristic in being bilateral, usually concluded for indefinite period of time, relying on amicable solution of any issues, and, most importantly, unique in their nature. Their purpose and subject matter of the provisions best reflect the peculiar character of this type of treaties. Aimed at the establishment of a juridical status of the Catholic Church in a state, they combine legal (political) and ecclesiastical issues as well as regulate many issues of the Catholic Church's mission, including pastoral activities, areas of social life, education, and culture. The conclusion of concordats is a decades-long or even a centuries-long practice, under contemporary international law used mostly at some peculiar moments of history, as is the case of the concordats concluded by the Holy See with each of the three Baltic States upon the restoration of their independence in 1990–1991.

The agreements concluded by the Holy See with each of the Baltic States have meant more than merely the establishment of the juridical status of the Catholic Church and the regulation of its mission; they also reflected the freedom of conscience and religion as well as the national identity suppressed during five decades of occupation. The importance of the Catholic Church's positive contribution on the moral values and integration of the nation is emphasised, as well as the dominance of the Catholic religion in Lithuania and Latvia mentioned in the agreements with these two states is significant. They resemble many similar provisions and they are more elaborate than those in the concordat with Estonia, which is a rather secular state. Still, none of the three Baltic States have a State Religion, and similar main issues of the relations with the Holy See and the Catholic Church's mission are regulated. Concordats of the Holy See with each of the Baltic States share the following main similar provisions: juridical personality of the Catholic Church and its institutions; freedom of regulation of ecclesiastical life, including the establishment, recognition, and modification, of ecclesiastical juridical public persons and the appointment of Bishops; freedom to profess and practise the Catholic religion; freedom of communication between the Holy See and the Catholic Church; civil effect of marriages celebrated at the Catholic Church, etc. Some also regulate other issues, including the inviolability of places of worship, the inviolability of the secrecy inherent in sacramental confession, pastoral care, religious education, and the preservation of religious cultural heritage. Certain provisions are unique only in respect of a particular state. Pastoral care at the military, religious education, the preservation of cultural heritage, and the recognition of qualifications concerning higher education are elaborated in separate agreements between the Holy See and the Republic of Lithuania.

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