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The Right of Patient and Physician to Express their Religious Beliefs during Medical Treatment

Summary of the Doctoral Thesis for obtaining
the scientific degree “Doctor of Science (*PhD*)”

Sector Group – Social Sciences

Sector – Law

Sub-Sector – Civil Rights

Rīga, 2024



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Abbreviations used in the Thesis

Author	The Author of the Doctoral Thesis – Laura Šāberte
MTL	Medical treatment law
Register of Medical Practitioners	Register of Medical Practitioners and Medical Support Persons
UN	United Nations
Biomedical Convention	Convention on the Protection of Human Rights and Dignity in Biology and Medicine – Convention on Human Rights and Biomedicine
Cantab.	Graduate of Cambridge University
LL	Labour Law
<i>Dr. iur.</i>	Doctor of Law
ECPHRFF	European Convention for the Protection of Human Rights and Fundamental Freedoms
ECHR	European Court of Human Rights
CE	Council of Europe
EU	European Union
CFREU	Charter of Fundamental Rights of European Union
CJEU	Court of Justice of European Union
Latvia	Republic of Latvia
TEU	Treaty on European Union.
TFEU	Treaty on the Functioning of the European Union

Regulations on the Service of Chaplains	Regulations of the Cabinet of Ministers of February 15, 2011 No. 134 “Regulations the service of chaplains”
CM	Cabinet of Ministers
p.	page
<i>PhD</i>	doctor of science
Prof.	professor
Classifier of professions	Regulations of the Cabinet of Ministers of May 23, 2017 No. 264 “Regulations on the Classifier of Professions, basic tasks corresponding to the profession and basic qualification requirements”
LRP	Law on the Rights of Patients
LRO	Law on Religious Organisations
Constitution	Constitution of the Republic of Latvia
Senate	The Supreme Court of the Republic of Latvia, in composition of the Department of Administrative Affairs, the Department of Civil Affairs and the Department of Criminal Affairs
see	see
the right to freedom of religion	the right to freedom of thought, conscience and religious belief
etc.	and others

Introduction

In cases where a patient or a physician exercise their right to freedom of religion and express their religious beliefs during medical treatment process, legal conflict situations may arise that require solutions to balance the right to freedom of religion with other rights that must be respected in medical treatment. In the event of legal conflict situations, the right to freedom of religion interacts with such rights in medical treatment as the right to achieve the highest attainable standard of health, the right to receive medical treatment appropriate to the state of health, the right to information, the right to the prohibition of differential treatment, the right to self-determination. This is clearly illustrated by the following examples.

A legal conflict situation may arise, for example, if the patient refuses the method of medical treatment or treatment in general because of religious beliefs. For example, a patient who is a Jehovah's Witness may refuse a blood transfusion due to his religious beliefs because the Bible contains instructions to avoid blood, eating blood, and any other form of blood entering the human body.¹ If in such a situation there is no alternative solution to medical treatment, e.g. medical treatment under conditions of artificial blood circulation is not possible, which would be compatible with the patient's religious beliefs, and the current regulatory framework does not

¹ Curlin, F.A., Roach, C.J., Gorawara-Bhat, R., Lantos, J.D., Chin, M.H. 2005. When Patients Choose Faith Over Medicine: Physician Perspectives on Religiously Related Conflict in the Medical Encounter. *Arch Intern Med*. Retrieved from: <https://jamanetwork.com/journals/jamainternalmedicine/fullarticle/486343> [viewed 01.06.2022] See for example: [3.Leviticus 17:14] "The life of every creature is in the blood, while they in him, and I have said to the children of Israel: do not eat any blood, because blood is the soul of everybody, everyone who eats it will be cut off!" [Acts of the Apostles 15: 28; 15:29] "It has pleased the Holy Spirit and us not to impose any other burden on you than this necessary: to abstain from sacrifices to idols, from blood, from the flesh of strangled animals, and from fornication; if you guard against all these, you will do well. Be well!" Bible with deuterocanonical books. 2019 Riga: Latvijas Bībeles biedrība, 201., p. 2402.

provide for measures to resolve the situation, it can be problematic to implement the patient's right to achieve the highest attainable standard of health.

A legal conflict situation can also arise if, for example, a physician refuses to terminate pregnancy due to his or her religious beliefs, when there are no medical reasons for doing so. For example, according to the Catholic doctrine, abortion is not permitted, which is justified by faith in a practical syllogism derived from the Bible: the killing of human life forms is forbidden; a foetus is a human life form; the killing of a foetus is prohibited.² If, in such a situation, a pregnant woman cannot access pregnancy termination services in time from another physician because of the laws and regulations of the country and the organisation of health care, there is a legal conflict situation between the physician's desire to protect the foetus and the pregnant woman's right to self-determination and the right to timely access to health care.

A legal conflict situation may also arise, for example, where the exercise of the right to opt out on the grounds of religious belief has a potential impact on the protection of public interests. For example, if a physician, on the basis of his religious beliefs, refuses to administer a Covid-19 vaccination that is mandatory for the performance of his professional duties. In such a situation, there is a conflict between interests of public health protection,³ and a physician's right to exercise religion based opt-outs.

² See for example John-Stewart, G. Abortion. The Internet Encyclopedia of Philosophy. Retrieved from: <https://iep.utm.edu/abortion/> [viewed 17.03.2023].

³ According to Section 1, paragraph 8 of the Epidemiological Safety Law, epidemiological safety is the system of prophylactic, also hygienic, counter-epidemic, medical treatment and organisational conditions and measures the objective of which is to reduce the threat to public health caused by infectious diseases and the harmful effects of environmental factors affecting health. According to Section 3, part one, paragraph 3 of the Epidemiological Safety Law, provision of immunobiological preparations and population vaccination are included in the scope of epidemiological safety. Epidemiological Safety Law of the Republic of Latvia, paragraph 8 of Section 1, paragraph 3 of the first part of Section 3. *Latvijas Vēstnesis*, 342/345, 30.12.1997; Latvijas Republikas Saeimas un Ministru Kabineta Ziņotājs, 3, 05.02.1998. Adopted:

A legal conflict situation may also arise, for example, when it is necessary to restrict the right to express religious beliefs in order to protect other rights. For example, one of the ways of expressing religious belief is by wearing religious symbols or religious clothing. For Christians it is a religious symbol – the cross;⁴ for Orthodox Jews it is the kippah or the traditional Jewish cap for men;⁵ for Muslims, it is a head covering that covers face or only eyes, for example, the hijab or niqab,⁶ or a religious garment that covers the whole body and face – burka;⁷ for Sikhs it is the turban,⁸ etc. A legal conflict situation can also arise when, for example, a physician refuses to wear pants in the operating theatre, insisting that the Bible⁹ forbids her to wear pants, although for epidemiological safety reasons the inpatient treatment facility must ask her to wear a medical overall covering all parts of the body.¹⁰

Likewise, the form of expression of religious belief can also be the performance of a religious activity. For Hindus, for example, these are prayers and meditations at certain times, as well as various ceremonies in which

11.12.1997. In force: 13.01.1998. Retrieved from: <https://likumi.lv/ta/id/52951-epidemiologiskas-drosibas-likums> [viewed 26.06.2023.].

⁴ See for example Hill, D., J., Whistler, D. 2013. *The Right to Wear Religious Symbols*. London: Palgrave Macmillan, pp. 2, 3, 23, 3, 26, 27, 68, 78, 95, 108.

⁵ Ibid, pp. 65, 67, 69.

⁶ Ibid., pp. 2, 3, 26, 78, 95.

⁷ See, for example, Rudusāne-Simiča, V. Sieviešu lakats tiesību mezglā. *Jurista Vārds*, 09.02.2016., Nr. 6 (909). Retrieved from: <https://juristavards.lv/doc/268053-sieviesu-lakats-tiesibu-mezgla/> [viewed 02.02.2023.].

⁸ See, for example, Cobb, M., Puchalski M., C., Rumbold, B. 2012. *Oxford Textbook of Spirituality in Healthcare*. Oxford University Press, New York, p.91.

⁹ See, for example: [Deuteronomy 22:5] “The wife shall not wear her husband's garments, and the husband shall not wear his wife's garments, for the Lord your God is an abomination to anyone who does so.” Bible with deuterocanonical books. 2019 Rīga: Latvijas Bībeles biedrība, p. 333.

¹⁰ Hill, D.J., Whistler, D. *The Right to Wear Religious Symbols*. Palgrave Macmillan, UK, 2013, p 3.

incense is used to show respect and gratitude to the deities;¹¹ for Catholics, it is the sacrament of the sick, or the priest's prayer and anointing of the patient with holy oils;¹² for Muslims it is praying several times a day using a prayer mat,¹³ etc. In medical treatment, there may be situations where it is necessary to limit the expression of religious beliefs, for example, to ensure the right of other patients to health protection. In such situations, in order not to create a risk of infringement of the rights of others, it is necessary to find a balance between the expression of religious beliefs and the protection of rights of others, seeking the most lenient means possible. A restriction on the right to express one's religious beliefs may, for example, lead to a violation of the prohibition of discrimination, if the restriction does not have an objectively justified goal for the achievement of which the means selected are not proportionate.¹⁴

¹¹ See, for example Queensland Health. 2011. Health Care Providers' Handbook on Hindu Patients. Division of the Chief Health Officer, Queensland Health. Brisbane, pp. 8., 13. Retrieved from: https://www.health.qld.gov.au/__data/assets/pdf_file/0024/156255/hbook-hindu.pdf [viewed 02.02.2023.].

¹² See, for example, Slimnieku sakraments. 2014. *Portal. Katolis.lv*. Riga Archdiocese portal. Retrieved from: <https://katolis.lv/slimnieku-sakraments/> [viewed 02.02.2023.].

¹³ See, for example Queensland Health and Islamic Council of Queensland. 2010 Health Care Providers' Handbook on Muslim Patients Second Edition Division of the Chief Health Officer, Queensland Health, Brisbane. Retrieved from: https://www.health.qld.gov.au/data/assets/pdf_file/0034/155887/islamgde2ed.pdf [viewed 02.02.2023.].

¹⁴ According to the second part of Section 3 of the Law on the Rights of Patients, when ensuring the patient's rights, differential treatment is prohibited depending on a person's (...) religious, political or other beliefs (...) or other circumstances. Differential treatment includes direct or indirect discrimination against a person, insulting a person, or an instruction to discriminate against a person. According to the third part of Article 3 of the Law on the Rights of Patients, differential treatment in connection with any of the conditions mentioned in the second part of this section is allowed only if it is objectively justified by a legal goal, the means for achieving which are proportionate. Law on the Rights of Patients: Law of the Republic of Latvia. The second and third paragraph of Section 3. *Latvijas Vēstnesis*, 205, 30.12.2009. Adopted: 17.12.2009. Enters into force: 01.03.2010. Retrieved from: <https://likumi.lv/ta/id/203008-pacientu-tiesibu-likums> [viewed 20.05.2022.].

These and other conflict situations that may arise when a patient or a physician expresses his religious beliefs during medical treatment must first be analysed in the light of human rights. The right to freedom of religion is a first-generation human right protected by several human rights instruments.¹⁵ For example, UN legislation protecting the right to freedom of religion includes Article 18 of the UN Universal Declaration of Human Rights¹⁶ and Article 18 of the UN International Covenant on Civil and Political Rights.¹⁷ The right to freedom of religion is protected by Article 9 of the ECHR adopted by the Council of Europe.¹⁸ Within the EU, the right to freedom of religion is protected by Article 10 of the ECHR, which, with the entry into force of the Treaty of Lisbon, has the status of a primary source of law¹⁹ as well as with the general principles of EU law, which is

¹⁵ Renucci, J. F. *The Council of Europe 2005. Article 9 of the European Convention on Human Rights. Freedom of Thought, Conscience and Religion*, p.6. Retrieved from: <https://book.coe.int/en/human-rights-files/3201-article-9-on-the-european-convention-on-human-rights-freedom-of-thought-conscience-and-religion-human-rights-files-no-20.html> [viewed 02.02.2023.].

¹⁶ United Nations. Universal Declaration of Human Rights. Proclaimed by the United Nations General Assembly in Paris on 10 December 1948 (General Assembly resolution 217 A. Article 18. Retrieved from: <https://www.un.org/en/about-us/universal-declaration-of-human-rights> [viewed 02.02.2023.].

¹⁷ United Nations. International Covenant on Civil and Political Rights. Article 18. Adopted: 16.12.1966. Enters into force: 14.07.1992. *Latvijas Vēstnesis*, Nr.61, 23.04.2003. Joined: 14.04.1992. Retrieved from: <https://likumi.lv/ta/lv/starttautiskieligumi/id/705> [viewed 02.02.2023.].

¹⁸ The Council of Europe. European Convention for the Protection of Human Rights and Fundamental Freedoms. Article 9. *Latvijas Vēstnesis*, 143/144, 13.06.1997. Retrieved from: <https://likumi.lv/ta/lv/starttautiskieligumi/id/649> [viewed 02.02.2023.].

¹⁹ European Parliament, Council and Commission. 2016. Charter of Fundamental Rights of the European Union. Article 10. *Official Journal of the European Union*, 2016/c 202/02. Retrieved from: <https://eur-lex.europa.eu/legal-content/LV/TXT/PDF/?uri=CELEX:12016P/TXT&from=ES>; Treaty of Lisbon amending the Treaty on European Union and the Treaty establishing the European Community. Clause 1 of Article 6. *Official Journal of the European Union*, OJ C 306, 17.12.2007, 1./271. p. Retrieved from: <https://eur-lex.europa.eu/legal-content/LV/TXT/?uri=celex%3A12007L%2FTXT> [viewed 09.02.2023.].

one of the sources of EU fundamental rights.²⁰ Article 6(3) of the TEU stipulates that the fundamental rights guaranteed by the ECHR and arising from the common constitutional traditions of the Member States are the basis of the general principles of the EU.²¹ CJEU judgment in case of *J. Nold, Kohlen- und Baustoffgroßhandlung v. Commission of the European Communities* has stated that fundamental rights are an integral part of the general principles of EU law, the observance of which is ensured by the CJEU. In protecting these rights, the CJEU is obliged to be inspired by the constitutional traditions of the EU Member States, and it cannot approve measures that are incompatible with the fundamental rights defined and guaranteed in the constitutions of these Member States.²² Latvian legal system is characterised by “openness to international law.”²³ The “incorporation” of the right to freedom of religion in the Latvian legal system, revealing nature and content of these rights, results from the international obligations that Latvia has assumed with Article 89 of the Constitution, which stipulates that “the state recognises and protects fundamental human rights in accordance with this Constitution, laws and international treaties

²⁰ The judgment of the European Union Court of December 17, 1970 in case no. 11-70. *Internationale Handelsgesellschaft mbH pret Einfuhr- und Vorratsstelle für Getreide und Futtermittel*. Clause 4. Retrieved from: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:61970CJ0011> [viewed 12.08.2023.].

²¹ Treaty on European Union. Official Journal of the European Union. OJ C 326, 26.10.2012. Clause 3 of Article 6. Retrieved from: <https://eur-lex.europa.eu/legal-content/LV/TXT/PDF/?uri=OJ:C:2012:326:FULL&from=IT> [viewed 12.08.2023.].

²² The judgment of the Court of the European Union of May 14, 1974 in case no. 4-73. *J. Nold, Kohlen- und Baustoffgroßhandlung pret Eiropas Kopienu Komisiju*. Clause 2. Retrieved from: <https://eur-lex.europa.eu/legal-content/lv/TXT/?uri=CELEX:61973CJ0004> [viewed 12.08.2023.].

²³ The dissenting opinions of the judges of the Constitutional Court of the Republic of Latvia Sanita Osipova and Ineta Ziemele in the judgment of the Constitutional Court of May 13, 2016 in case no. 2015-19-01, paragraph 5. Retrieved from: https://www.satv.tiesa.gov.lv/web/viewer.html?file=/wp-content/uploads/2015/08/2015-19-01_Atseviskas_domas.pdf#search= [viewed 02.02.2023.].

binding on Latvia.”²⁴ By assuming international obligations, in Latvia, the right to freedom of religion is protected by Article 99 of the Constitution.²⁵

All mentioned human rights instruments mentioned above distinguish between two forms of expression of the right to freedom of religion: 1) *forum internum* (from Latin) or the internal expression of the right to freedom of religion – the right to freely change and adopt the religious belief or faith of one’s choice; 2) *forum externum* (from Latin), or the external expression of the right to freedom of religion – the right to express the religious belief.²⁶

The right to freely change and adopt the religious belief or faith of one’s choice is an absolute right, meaning that it may not be restricted. The state has no right to intervene and take coercive measures to change these views. For example, to include in the legislation a condition that any physician must accept a particular religious belief in order to work in one of the public hospitals.²⁷ The state may not determine a person’s religious affiliation, impose obligations on him or her, or use any form of coercion, punishment, force or benefits to make a person change his beliefs. Similarly, the State may not conduct an investigation

²⁴ Constitution of the Republic of Latvia: Law of the Republic of Latvia. Section 89. *Latvijas Vēstnesis*, 43, 01.07.1993; *Latvijas Republikas Saeimas un Ministru Kabineta Ziņotājs*, 6, 31.03.1994; *Valdības Vēstnesis*, 141, 30.06.1922; *Diena*, 81, 29.04.1993. Adopted: 15.02.1922. Enters into force: 07.11.1922. Retrieved from: <https://likumi.lv/ta/id/57980-latvijas-republikas-satversme> [viewed 11.05.2022.].

²⁵ Constitution of the Republic of Latvia: Law of the Republic of Latvia. Section 99. *Latvijas Vēstnesis*, 43, 01.07.1993; *Latvijas Republikas Saeimas un Ministru Kabineta Ziņotājs*, 6, 31.03.1994; *Valdības Vēstnesis*, 141, 30.06.1922; *Diena*, 81, 29.04.1993. Adopted: 15.02.1922. Enters into force: 07.11.1922. Retrieved from: <https://likumi.lv/ta/id/57980-latvijas-republikas-satversme> [viewed 11.05.2022.].

²⁶ See, for example, Vermeulen, B., Roosmalen, M. 2018. *Chapter 13. Freedom of thought, conscience, and religion. Article 9. // Theory and practice of the European Convention on Human Rights. Fifth edition.* Djik, P., Hoof, F., Rijn, A., Zwaak, Leds. Cambridge: Intersentia, pp.738–746.

²⁷ Šāberte, L., Tarasova, D., Palkova, K. 2021. “Ārstniecības personas tiesības paust savu reliģisko pārliecību darba tiesiskajās attiecībās”. p. 191. *Socrates* : Electronic journal of legal scientific articles of the Faculty of Law of Riga Stradiņš University, Riga: RSU, 2021, No. 2 (20), Retrieved from: <https://doi.org/10.25143/socr.20.2021.2.188-211> [viewed 21.08.2022.].

to discover a person's inner faith, nor may it impose sanctions to diminish or change a person's religious beliefs.²⁸

The right of a person to express his religious belief includes the right of a person to devote himself to his religious belief by worshiping, performing religious or ritual ceremonies and preaching (from English, *worship, teaching, practice, and observance*).²⁹ A person's right to express his religious beliefs includes such actions such as wearing religious symbols and observing a religion-based lifestyle, – observing holidays and rest days, eating habits and using a particular language,³⁰ as well as exercising the right to conscientious objection based on religious beliefs in medical treatment, for example, refusing medical treatment entirely due to one's religious beliefs.³¹ The right of a person to express his religious belief also includes the right to choose a place of worship.³² Considering that the expression of religious beliefs is an active activity that can influence others, the right to express religious beliefs can be

²⁸ D'Almeida Ribeiro, A., Amor, A., Jahangir, A., Bielefeldt, H. Rapporteur's Digest on Freedom of Religion or Belief. Excerpts of the Reports from 1986 to 2011 by the Special Rapporteur on Freedom of Religion or Belief Arranged by Topics of the Framework for Communications. *United Nations Human Rights Council*. Retrieved from: <https://www.ohchr.org/Documents/Issues/Religion/RapporteursDigestFreedomReligionBelief.pdf> [viewed 14.08.2022.].

²⁹ Tahzib, G.B. 1996. *Freedom of Religion or Belief: Ensuring Effective International Legal Protection*. Hague: Martinus Nijhoff Publishers, p. 70.

³⁰ *Ibid.*, p. 70.

³¹ José Valero, M. 2022. Freedom of Conscience of Healthcare Professionals and Conscientious Objection in the European Court of Human Rights. *Religions*, 13 (6), 558. DOI: <https://doi.org/10.3390/rel13060558> [sk. 14.08.2022.].

³² D'Almeida Ribeiro, A., Amor, A., Jahangir, A., Bielefeldt, H. p.2. Rapporteur's Digest on Freedom of Religion or Belief. Excerpts of the Reports from 1986 to 2011 by the Special Rapporteur on Freedom of Religion or Belief Arranged by Topics of the Framework for Communications. *United Nations Human Rights Council*. Retrieved from: <https://www.ohchr.org/Documents/Issues/Religion/RapporteursDigestFreedomReligionBelief.pdf> [viewed 06.06.2021.].

limited in accordance with the procedure established by legislation.³³ This is related to the fact that a democratic constitutional state must be able to ensure the coexistence of different religions. In ECHR practice, it has been established, that in a democratic society where several religions or several variants of the same religion coexist within a society, it may be necessary to limit this freedom in order to reconcile the interests of different groups and to ensure respect for each belief. In exercising its regulatory power in this area and in its relations with different religions, beliefs and denominations, the State must be neutral and objective, preserving pluralism and the proper functioning of democracy.³⁴

The internal and external expression of the right to freedom of religion is closely related to other human rights that must be protected in medical treatment. The right to health protection, the protection of human dignity, the right to inviolability of private and family life, which includes the right to autonomy and self-determination over one's body and the inviolability of the body without consent or physical integrity, the right to information and the prohibition of discrimination are the basis of those human rights that become relevant in cases where religious beliefs are expressed in medical treatment.³⁵ These human rights, as well as religious freedom, are protected

³³ Mits, M. 2021. *3.1.10. Reliģijas brīvība. // Cilvēktiesības pasaulē un Latvijā. The second updated edition.* The team of authors Ph.D. (Cantab.) In the scientific edition of I.Ziemele. Riga: Tiesu namu aģentūra, p. 116–117.

³⁴ In the judgment of the European Court of Human Rights of September 15, 2009, *Miroļubovs and others v. Latvia*. Application no. 798/05. paragraph 80, subparagraph “e”. Retrieved from: <https://hudoc.echr.coe.int/fre#%7B%22fulltext%22%3A%5B%5D%2C%22documentcollectionid%22%3A%5B%22GRANDCHAMBER%22%2C%22CHAMBER%22%5D%2C%22itemid%22%3A%5B%22001-94026%22%5D%7D> [viewed 02.02.2023.].

³⁵ José Valero, M. 2022. Freedom of Conscience of Healthcare Professionals and Conscientious Objection in the European Court of Human Rights. *Religions*, 13 (6), 558. DOI: <https://doi.org/10.3390/rel13060558> [viewed 14.08.2022.].

by the UN Universal Declaration of Human Rights,³⁶ UN International Covenant on Civil and Political Rights,³⁷ ECHR,³⁸ EP Social Charter³⁹, ESPH,⁴⁰ and the Constitution.⁴¹ Likewise, these human rights are protected by the Biomedical Convention,⁴² a special international legal treaty protecting human rights in biology and medicine. The principles established in the Biomedical Convention, its additional protocols, and non-binding legal sources of the Council of Europe, such as recommendations and declarations, influence the content of

³⁶ United Nations. Universal Declaration of Human Rights. Proclaimed by the United Nations General Assembly in Paris on 10 December 1948 (General Assembly resolution 217 A. Preamble, Article 1., 7., 12., 19., 25. Retrieved from: <https://www.un.org/en/about-us/universal-declaration-of-human-rights> [viewed 14.08.2022.].

³⁷ United Nations. International Covenant on Civil and Political Rights. Preamble, Article 17, Article 19, Article 26. Adopted: 16.12.1966. Enters into force: 14.07.1992. *Latvijas Vēstnesis*, Nr.61, 23.04.2003. Joined: 14.04.1992. Retrieved from: <https://likumi.lv/ta/lv/starttautiskie-ligumi/id/705> [viewed 14.08.2022.].

³⁸ The Council of Europe. European Convention for the Protection of Human Rights and Fundamental Freedoms. Preamble, Articles 8, 10, 14. *Latvijas Vēstnesis*, 143/144, 13.06.1997. Retrieved from: <https://likumi.lv/ta/lv/starttautiskie-ligumi/id/649> [viewed 14.08.2022.].

³⁹ The Council of Europe. European Social Charter. Adopted: 18.10.1961. Enters into force: 02.03.2002. *Latvijas Vēstnesis*, Nr.183, 18.12.2001. Joining: 31.01.2022. Retrieved from: <https://likumi.lv/ta/lv/starttautiskie-ligumi/id/1045> [viewed 09.04.2023.].

⁴⁰ European Parliament, Council and Commission. 2016. Charter of Fundamental Rights of the European Union. Preamble, Articles 7, 11, 21, 35. *Official Journal of the European Union*, 2016/c 202/02. Retrieved from: <https://eur-lex.europa.eu/legal-content/LV/TXT/PDF/?uri=CELEX:12016P/TXT&from=ES> [viewed 14.08.2022.].

⁴¹ Constitution of the Republic of Latvia: Law of the Republic of Latvia. Introduction, Article 91, Article 96, 100, 111. *Latvijas Vēstnesis*, 43, 01.07.1993; *Latvijas Republikas Saeimas un Ministru Kabineta Ziņotājs*, 6, 31.03.1994; *Valdības Vēstnesis*, 141, 30.06.1922; *Diena*, 81, 29.04.1993. Adopted: 15.02.1922. Enters into force: 07.11.1922. Retrieved from: <https://likumi.lv/ta/id/57980-latvijas-republikas-satversme> [viewed 02.02.2023.].

⁴² The Council of Europe. Convention on the Protection of Human Rights and Dignity in Biology and Medicine – Convention on Human Rights and Biomedicine. *Latvijas Vēstnesis*, 205, 30.12.2009. Retrieved from: <https://likumi.lv/ta/lv/starttautiskie-ligumi/id/1410> [viewed 02.02.2023.].

ECHR and thus, in a sense, also serve as protection mechanisms for patients in their specific and individual situations.⁴³

Religious values are essential for Latvian society. According to the report of the Ministry of Justice “On the activity reports of religious organisations submitted to the Ministry of Justice in 2021”, which was published in 2022,⁴⁴ the total number of church members listed in the reports of religious organisations was 1 334 315,⁴⁵ which is a considerable part of Latvian society, considering that the population of Latvia at the beginning of 2021 was 1 893 223.⁴⁶ In 2021, 996 congregations of religious communities (churches) and dioceses and 133 congregations of a single denomination were registered in Latvia,⁴⁷ which is almost twice as many as at the initial stage of the restoration of independence Latvia in 1990, when 693 congregations of a single denomination were registered in Latvia.⁴⁸ One of the reasons for the increase in the number of churches registered in Latvia is the growing trend of migration in the conditions of today’s globalisation. In the field of health care, this applies

⁴³ Slokenberga, S., Olsena, S. 2022. *Ievads*. Textbook. S.Slokenberga and a team of authors, scientific editing S.Olsena. Riga: Tiesu namu aģentūra, p. 24.

⁴⁴ At the time of submission of the Thesis, the report of the Ministry of Justice “on the reviews of religious organisations on their activities in 2022 submitted to the Ministry of Justice” and the report of the Ministry of Justice “on the reviews of religious organisations on their activities in 2023 submitted to the Ministry of Justice” has not been published yet.

⁴⁵ Ministry of Justice. 2021. Review of activities of religious organisations of the Ministry of Justice for the year 2021. <https://www.tm.gov.lv/lv/2021-gada-publikie-parskati> [viewed 02.02.2023.].

⁴⁶ Official statistics portal. Official statistics of Latvia. Population and its changes. Retrieved from: <https://stat.gov.lv/lv/statistikas-temas/iedzivotaji/iedzivotaju-skaitis/247-iedzivotaju-skaitis-un-ta-izmainas> [viewed 02.02.2023.].

⁴⁷ Ministry of Justice. 2021. Review of the activities of religious organisations of the Ministry of Justice for the year 2021. <https://www.tm.gov.lv/lv/2021-gada-publikie-parskati> [viewed 02.02.2023.].

⁴⁸ Official statistics portal. The number of religious congregations registered in the country by denomination at the end of the year - Confession and Time period. Retrieved from: https://data.stat.gov.lv/pxweb/lv/OSP_PUB/START__IZG__KU__KUR/KUR010/table/tableViewLayout1/ [viewed 02.02.2023.].

both to patients in the context of cross-border healthcare and to medical personnel in the context of professional mobility. As a result, Latvia has to pay attention to many religions and cultures that are common in other parts of the world. In Latvia, the Church is involved in dialogue during the legislative process, including in matters related to medical treatment. According to Article 99 of the Constitution, the Church in Latvia is institutionally separate from the State, but not from the processes taking place in the State.⁴⁹ This means that, although the opinion of the Church in Latvia does not have the exclusive right to decide on legislation, it is nevertheless heard as an important opinion leader representing a certain part of society.⁵⁰

PhD (Cantab.) Ineta Ziemele has admitted that “Latvia’s practice shows that in cases where an international document provides for certain rights, but Latvian legal act does not provide for such rights or contradicts them, the implementation of international obligations is difficult (...). If the legislator and the state administration carefully follow the processes in society, i.e. people’s

⁴⁹ Balodis, R. Alienation (separation) of the church from the state. Retrieved from: http://home.lu.lv/~rbalodis/Publikacijas/Baznicu%20ties%20gramata/Balodis%20R_V&_attiecveidi_atdal.pdf [viewed 20.04.2021.].

⁵⁰ The church’s opinion has been heard in the legislative process in Latvia in the context of medical treatment, for example, in connection with the issue of euthanasia legalisation. Levits, E. 2022. State and Church in the Constitution. *Jurista vārds*, 13.12.2022. No. 50 (1264). Retrieved from: <https://juristavards.lv/doc/282462-valsts-un-baznica-satversme/> ; See March 3, 2021 meeting of the Saeima Mandates and Ethics Commission. The collective submission of Latvian citizens “For a good death - legalisation of euthanasia”. Retrieved from: <https://titania.saeima.lv/LIVS/SaeimasNotikumi.nsf/webSNbyDate?OpenView&count=1000&restrictToCategory=03.03.2021> ; March 10, 2021 session of the Saeima Mandates and Ethics Commission. The collective submission of Latvian citizens “For a good death - legalisation of euthanasia”. Retrieved from: <https://titania.saeima.lv/LIVS/SaeimasNotikumi.nsf/webSNbyDate?OpenView&count=1000&restrictToCategory=10.03.2021> ; Saeima of the Republic of Latvia. March 25, 2021 session of the Saeima Mandates and Ethics Commission. Regarding the further progress of the collective submission of 10 505 Latvian citizens “For good death - legalisation of euthanasia”. Retrieved from: https://titania.saeima.lv/LIVS13/saeimalivs_lmp.nsf/webSasaiste?OpenView&restricttocategory=608/Lm13 [viewed 29.04.2021.].

needs, so that they can develop freely, and properly fulfil their functions by adopting the necessary legislation and implementing it, then their actions should not usually cause significant violations of human rights.”⁵¹ In this context, it should be noted that in recent years, cases concerning the right to express religious beliefs in medical treatment in Latvia have tended to be presented in a negative light. Thus, for example, on October 29, 2020, the CJEU issued its judgment in the case of *A. v. Ministry of Health*.⁵² The case was brought on the basis of the Senate’s request to the CJEU for a preliminary ruling in connection with the administrative case No. A420281216, the ongoing dispute about whether it is legitimate for the Latvian authorities and courts to refuse to grant prior authorisation for the reimbursement of cross-border health care expenses when effective medical treatment is available in Latvia, but the medical treatment method used does not correspond to the patient’s religious beliefs, and whether this does not result in a different medical treatment, which is indirectly based on the patient’s religious beliefs.⁵³ In the specific case, the national authorities and courts had not paid sufficient attention to assessing whether, in presence of a specific cross-border health care system financing model, prohibition of discrimination on the basis of the patient’s religious beliefs is not violated.⁵⁴ Based on the judgment of the CJEU dated October 29, 2020 in the case *A. against*

⁵¹ Ziemele, I. 2021. 8.cilvēktiesību aizsardzības mehānismi Latvijā. // 2021. *Human rights in the world and in Latvia*. The second updated edition. Scientific editing of Ph.D. (Cantab.) I. Ziemele. Riga: Tiesu namu aģentūra. pp. 442–443.

⁵² Judgment of the European Court of Justice of October 29, 2020 in case No. C-243/19. *A v. Ministry of Health*. Retrieved from: <https://curia.europa.eu/juris/document/document.jsf?text=&docid=233023&pageIndex=0&doclang=LV&mode=lst&dir=&occ=first&part=1&cid=3644894> [viewed 13.08.2022.].

⁵³ Decision of the Department of Administrative Affairs of the Senate of the Republic of Latvia of March 8, 2019 in case No. A420281216 (SKA-143/2019). Retrieved from: <https://manas.tiesas.lv/eTiesasMvc/lv/nolemumi> [viewed 11.11.2023.].

⁵⁴ Judgment of the European Court of Justice of October 29, 2020 in case No. C-243/19. *A v. Ministry of Health*. Retrieved from: <https://curia.europa.eu/juris/document/document.jsf?text=&docid=233023&pageIndex=0&doclang=LV&mode=lst&dir=&occ=first&part=1&cid=3644894> [viewed 13.08.2022.].

the Ministry of Health, the Senate cancelled the judgment of the Administrative District Court dated February 10, 2017 in case No. A420281216 and remanded the case to the appellate court.⁵⁵ On the other hand, with the decision of the Administrative Regional Court of April 26, 2021 in case No. A420281216 the proceedings in the case were terminated on the basis of a settlement concluded between the parties.⁵⁶

In some cases, neglect of the patient's religious needs and unsuccessful resolution of conflict situations, disregarding the patients' rights, have also contributed to the problems affecting the right to express religious beliefs in medical treatment. For example, in 2018, the physician on duty at the Intensive Therapy and Reanimation Department of SLTD "Pauls Stradiņš Clinical University Hospital" claimed that he was God in the hospital, and did not allow a clergyman invited by the patient's relatives to perform a religious ritual. As a result, the clergyman performed a religious ritual through the window.⁵⁷ In connection with the aforementioned, the question was widely discussed in the society and in the media, whether the actions and communication of the physician on duty of the Intensive Therapy and Reanimation Department of SLTD "Pauls Stradiņš Clinical University Hospital", who restricted the performance of the religious ritual, were correct in the context of the patient's

⁵⁵ Judgment of the Department of Administrative Affairs of the Senate of the Republic of Latvia of November 27, 2020 in case no. A420281216 (SKA-18/2020). Retrieved from: <https://manas.tiesas.lv/eTiesasMvc/lv/nolemumi> [viewed 11.11.2023.].

⁵⁶ The decision of the Administrative District Court of April 26, 2021 in case no. A420281216 (AA43-0381-21/15). Retrieved from: Archive of the Administrative District Court [viewed 11.11.2023.].

⁵⁷ See, for example, Šaberte, L. Is the doctor in hospital God? *Jurista Vārds*, 29.05.2018, no. 22 (1028). Retrieved from: <https://juristavards.lv/doc/272789-vai-arsts-slimnica-ir-dievs/> [viewed 13.08.2022.].

right to express his religious beliefs.⁵⁸ At the same time, it should be noted that the Health Inspectorate⁵⁹ has received submissions in a number of cases concerning the quality of health care, in which the submitters have indicated, among other things, that the attitude of medical personnel may have been influenced by the fact that the submitter belongs to a specific religious organisation. This includes a submission in 2023, where the patient was refused healthcare services because of his religious beliefs. The refusal to provide health care services was based on the fact that the patient had withdrawn from the religious organisation of Jehovah's Witnesses, to which the medical practitioner belonged.⁶⁰ The Ombudsman of Latvia, having assessed the circumstances of the above-mentioned complaint, found a violation of the prohibition of discrimination, which was expressed in the different medical treatment of the patient by the medical practitioner due to his religious beliefs.⁶¹

⁵⁸ See, for example, the Patient needs to meet God, the doctor on duty says, - in hospital the God is him! Confessions are made through the window of the hospital. Portal *zinas.lv*. Retrieved from: <https://skaties.lv/zinas/latvija/sabiedriba/slimniekam-nepiecesams-tikties-ar-dievu-dezurarsts-saka-slimnica-dievs-esot-vins-greksudziveic-caur-slimnicas-logu/> ; At Stradiņa hospital, the priest is shown the door and is not allowed to meet the seriously ill patient. Portal *skaties.lv*. Retrieved from: <https://skaties.lv/beztabu/stradina-slimnica-macitajam-parada-durvis-un-nelauj-tikties-ar-smagi-slimo-pacientu/komentari/#komentari> [viewed 13.08.2022.].

⁵⁹ The Health Inspectorate is an institution whose operational purpose in the country is to implement functions of state administration under the supervision and control of the health sector in order to ensure compliance with and fulfillment of the requirements of the legal acts regulating the aforementioned fields for quality and qualified health care, as well as a safe and healthy living environment. Regulations of the Cabinet of Ministers of July 9, 2019 No. 309 "Regulations of Health Inspection", paragraph 2. *Latvijas Vēstnesis*, 139, 11.07.2019. Adopted: 09.07.2019 Enters into force: 12.07.2019. Retrieved from: <https://likumi.lv/ta/id/308072-veselibas-inspekcijas-nolikums> [viewed 28.05.2022.].

⁶⁰ July 27, 2023 application no. 6-1/392 "On a possible violation of the prohibition of discrimination due to religion", registered with the Health Inspectorate under No. 20586. Available in the archives of the Health Inspectorate.

⁶¹ Opinion of the Ombudsman of the Republic of Latvia dated October 20, 2023 in inspection case No. 2023-32-26AE "On violation of the prohibition of discrimination on the basis of religion", registered in the Health Inspectorate with No. 29252. Available in the archives of the Health Inspectorate.

Inadequate and ill-considered national regulatory framework and actualisation of the aforementioned legal conflict situations in Latvia have prompted the Author to focus on the study of the right of the physician and the patient to express their religious beliefs in medical treatment, in order to contribute to Latvian legal science and development of legal opinion on the chosen topic, as well as to put forward proposals for improvement of national regulatory framework.

Aim of the Thesis

The aim of the Thesis is to study and analyse the legal framework in order to identify current legal problems when a capable adult patient and a certified physician, who is also the attending physician, have the right to express freedom of religion and its interaction with other rights in the field of health care, as well as to identify problems in the national legal framework and submit proposals for improving the national legal acts.

Tasks of the Thesis

In order to achieve the aim of the Thesis, the following tasks have been set:

1. To find out what kind of constitutional protection should be ensured regarding the right of patients and physicians to express their religious beliefs, considering Latvia's international obligations contained in the CE and EU legal sources.

2. To investigate what protection is provided to the patient in the national legislation regarding the right to express his religious beliefs during medical treatment, as well as to identify problems of the national regulatory framework and to make proposals for its improvement.

3. To investigate what protection is provided to the physician in the national legislation regarding the right to express his religious beliefs in medical

treatment, as well as to identify the problems of national regulatory framework and to make proposals for its improvement.

4. To find out how the rights of the patient and the physician to express their religious beliefs in medical treatment are balanced, and whether the balancing of these rights is appropriate in the context of a person's right to self-determination and the right to achieve the highest attainable standard of health, considering the constitutional protection provided and to be provided. In the event that the balance between the rights of patients and physicians to express their religious beliefs in medical treatment is not adequate in the context of a person's right to self-determination and the right to achieve the highest attainable standard of health, provide proposals for improvement of the national legal framework.

The object of the study is the legal relationship between the patient and the physician, who express their religious beliefs in medical treatment.

The subject of the study is the legal regulation of the rights of patients and physicians to express their religious beliefs during medical treatment.

Research questions

1. What constitutional protection should be provided in the area of protecting the rights of patients and physicians to express their religious beliefs?

2. What protection is provided to patients in the national legislation regarding the right to express their religious beliefs during medical treatment, what problems exist in the legal framework and how should the national regulatory framework be improved?

3. What protection is provided to physicians in the national legislation regarding the right to express their religious beliefs in medical treatment, what problems of the legal framework exist and how should the national regulatory framework be improved?

4. How are the rights of patients and physicians to express their religious beliefs in medical treatment balanced, and whether the balance of these rights is appropriate in the context of the individual's right to self-determination and the right to achieve the highest attainable standard of health, considering constitutional protection provided and to be provided, and how should the national legal framework be improved, if the balance is not appropriate?

Within the scope of one Thesis, it is impossible to study all the problematic issues related to the right to express religious beliefs in medical treatment, therefore the Author has set **the boundaries of the research**.

In her Thesis, the Author examines the right of a capable adult patient to express his religious beliefs during medical treatment. Due to the limited scope of the Thesis and specifics of the legal framework, the Author does not study the rights of minor patients and adult patients who are unable to decide on their own medical treatment to express their religious beliefs in medical treatment.

In her Thesis, the Author studies the right of a certified physician, who is also the patient's attending physician, to express his religious beliefs in medical treatment.⁶² In analysing the legal conflict situations, the Author

⁶² So, for example, the Law "On Regulated Professions and Recognition of Professional Qualifications" includes a series of regulated professions of medical personnel (medical assistant (paramedic); pharmacist's assistant; biomedical laboratory technician; dental technician; dental hygienist; physiotherapist; occupational therapist, doctor, dentist, pharmacist, nurse, physician's assistant, midwife, etc.), while in the regulations of the Cabinet of Ministers of June 6, 2006 no. 460 "Rules on the List of Specialties, Subspecialties and Additional Specialties for the Regulated Professions" specifies the specialties, subspecialties and additional specialties of the regulated professions (for example, medical profession has a total of 89 specialties, additional specialties and subspecialties). See, for example, the Law "On Regulated Professions and Recognition of Professional Qualifications". *Latvijas Vēstnesis*, 105, 06.07.2001; Latvijas Republikas Saeimas un Ministru Kabineta Ziņotājs, 15, 09.08.2001. Adopted: 20.06.2001. Enters into force: 20.07.2001. Retrieved from: <https://likumi.lv/ta/id/26021-par-reglamentetajam-profesijam-un-profesionalas-kvalifikacijas-atzisanu>; Regulations of the Cabinet of Ministers of June 6, 2006 No. 460 "Rules on the list of specialties, subspecialties and additional specialties for the regulated professions". *Latvijas Vēstnesis*, 90, 09.06.2006. Adopted: 06.06.2006.

focuses on the physician, who is considered an employee in the sense of the Labour Law, i.e. a person who, on the basis of an employment contract, performs certain work under the guidance of an employer, medical institution, in return for a hired salary.⁶³

Due to the limited scope of the Thesis, the Author focuses in her Thesis on the source of national law and on the study of external international obligations covering the sources of CE and EU law. In her Thesis, the Author studies in depth only the sources of CE and EU law and observes that the sources of UN law are a fundamental basis for the formulation of human rights. Among them, the UN Universal Declaration of Human Rights is a cornerstone in the development of the right to freedom of religion, because after several centuries of religious conflicts and human rights violations against individuals based on their religious beliefs, it was recognised that world peace is based on peace between religions.⁶⁴ Article 1 of the UN Universal Declaration of Human Rights states that all people are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.⁶⁵ According to Article 18 of the UN Universal Declaration

Enters into force: 10.06.2006. Retrieved from: <https://likumi.lv/ta/id/137108-noteikumi-par-specialitasu-apaksspecialitasu-un-papildspecialitasu-sarakstu-reglamentetajam-profesijam> [viewed 14.08.2022.].

⁶³ Labour Law of the Republic of Latvia. Section 3. *Latvijas Vēstnesis*, 105, 06.07.2001; Latvijas Republikas Saeimas un Ministru Kabineta Ziņotājs, 15, 09.08.2001. Adopted: 20.06.2001. Enters into force: 01.06.2002. Retrieved from: <https://likumi.lv/ta/id/26019-darba-likums> [viewed 20.06.2023.].

⁶⁴ H. Morgan, R. Peace Among Religions: Hans Küng's Analysis of Christian and Muslim Paradigms of Social Justice in Search of a Global Ethic. *Journal of Academic Perspectives*. Volume 2011 No. 1, p.1. Retrieved from: https://www.journalofacademicperspectives.com/app/download/969951331/Morgan_R.pdf [viewed 01.10.2019.].

⁶⁵ United Nations. Universal Declaration of Human Rights. Proclaimed by the United Nations General Assembly in Paris on 10 December 1948 (General Assembly resolution 217 A. Article 1. Retrieved from: <https://www.un.org/en/about-us/universal-declaration-of-human-rights> [viewed 01.10.2019.].

of Human Rights, everyone has the right to freedom of thought, conscience and religion, and this right includes the 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.⁶⁶ The aforementioned legal norms, which were included in the UN Universal Declaration of Human Rights, for the first time established respect for human moral values, human reason and conscience, on the basis of which a person can have inner convictions based on religion.⁶⁷ The basic principles established in the UN Charter and the UN Universal Declaration of Human Rights were also included in the later developed UN human rights instruments, the most important of which are the UN International Covenant on Civil and Political Rights adopted on 16 December 1966⁶⁸ and the 25 November 1981 UN Declaration on the Elimination of All Forms of Intolerance and Discrimination Based on Religion or Belief.⁶⁹

In her Thesis the Author explores the right to freedom of expression of religious beliefs in relation to other human rights, such as the right to health protection, the protection of human dignity, the protection of autonomy and integrity, the right to information and prohibition of discrimination, which are

⁶⁶ United Nations. Universal Declaration of Human Rights. Proclaimed by the United Nations General Assembly in Paris on 10 December 1948 (General Assembly resolution 217 A. Article 18. Retrieved from: <https://www.un.org/en/about-us/universal-declaration-of-human-rights> [viewed 01.10.2019.].

⁶⁷ Bielefeldt, H., Ghanea, N., Wiener, M. 2005. *Freedom of Religion or Belief. An International Law Commentary*. Oxford University Press, New York, p. 261.

⁶⁸ United Nations. International Covenant on Civil and Political Rights. Adopted: 16.12.1966. Enters into force: 14.07.1992. Latvijas Vēstnesis, Nr.61, 23.04.2003. Joined: 14.04.1992. Retrieved from: <https://likumi.lv/ta/lv/starttautiskie-likumi/id/705> [viewed 01.10.2019.].

⁶⁹ United Nations. Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief. Proclaimed by General Assembly resolution 36/55 of 25 November 1981. Retrieved from: <https://www.ohchr.org/en/instruments-mechanisms/instruments/declaration-elimination-all-forms-intolerance-and-discrimination> [viewed 01.10.2019.].

most frequently invoked in the conflict situations analysed by the Author. Also, in order not to make the research scope of the Thesis overly broad, the Author focuses in the thesis primarily on the rights of a patient or a physician to express religious beliefs in inpatient medical institutions – hospitals.

Also, due to the limited scope, the Author in her Thesis focuses on the research of the interaction between the rights of patients and physicians to express religious beliefs in the context of the right to achieve the highest attainable standard of health, the right to receive medical treatment appropriate to the state of health, the right to information, the right to the prohibition of differential medical treatment, the right to self-determination. Due to the specificity of legal framework, the Author has left the study of the interaction of the right of patient and physician to express religious beliefs with the legal framework in the field of data protection, as well as with the legal framework that is actualised in the process of conducting clinical research and clinical training, transplantation, euthanasia and medical treatment at the end of the patient's life, and aspects of law that affect legal aspects of implementation of the will expressed during the patient's life and legal problems regarding handling of the patient's tissues and organs after death, including performance of the pathoanatomical examination. In her Thesis, the Author also does not study the right of patients who are in prisons and physicians who perform their professional activities in prisons and prison medical institutions to express their religious beliefs in medical treatment. The Author has also left the study of the right of patients and physicians to express religious beliefs in historical sources

in theological context outside the scope of the research.⁷⁰ The Author provides examples of the nature and understanding of religion only to the extent that they relate to the legal conflicts analysed, which have arisen as a result of the right to express religious beliefs in medical treatment and have been mentioned in judicial practice.

Further research is possible on all the issues mentioned.

Novelty, theoretical significance and practical application

The Thesis is the first study in Latvian legal science that examines the right of patients and physicians to express their religious beliefs in medical treatment. Although the Thesis is a theoretical study and is aimed at the formation of legal theory in Latvia, it also has practical significance. The conclusions and proposals made in the Thesis can be used in the development of legal thought

⁷⁰ Relationship between the patient and the doctor is one of the oldest in the world, which is reflected in, for example, the medical papyri of Ancient Egypt, historical sources of Phoenicia, China and Islamic countries. Likewise, one of the first historical sources in the world is the Bible, which includes importance of the doctor's profession before God and importance of the patient's and the doctor's faith in God in healing the disease. Cobb, M., Puchalski M., C., Rumbold, B. 2012. Oxford Textbook of Spirituality in Healthcare. Oxford University Press, New York, pp. 3-11. Likewise, one of the first historical sources in the world is the Bible, which includes importance of the doctor's profession before God and importance of the patient's and the doctor's faith in God in healing the disease. See, for example: [The Book of Sirach's Wisdom. 38: 1-4 Disease and medicine.]. "Respect the doctor - he is needed, the Lord has created him too: healing is from the Most High - you receive gifts from the ruler. The doctor walks with his head held high because of his skill, and because of it he is admired by the great. Medicines are created from the earth by the Lord. No sane person got angry about them. Was it not then the tree from which the water became sweet, that the power of the tree might be revealed? So also the Lord has given the cloud to people, so that he may be honored in them because of his miraculous works, with which he can heal and relieve pain, from which the apothecary prepares a mixture. Endless are the works of the Lord. In him there is peace on earth." Bible with deuterocanonical books. 2019 Rīga: Latvijas Bībeles biedrība, p.1981 See, for example: [The Book of Sirach's Wisdom. 38. 13-14. Disease and medicine.]. "There are moments when a successful outcome depends on the hands of doctors, because they too pray that the Lord will make both rest and life-saving treatment successful." Bible with deuterocanonical books. 2019 Rīga: Latvijas Bībeles biedrība, p. 1981.

and awareness of the application of the right to freedom of religion in medicine, as well as in the improvement of the national regulatory framework. The Thesis in general may be relevant for the legislator, lawyers, patients, medical personnel, teaching staffers, students and other persons interested in in-depth information about the topic of the Thesis.

Research methodology

The following **scientific research methods** were used: analytical method, deductive method, descriptive method, empirical research method – survey, hermeneutic method.

1. **Analytical method** is used in the Thesis to analyse the content of researched legal acts, legal literature, scientific articles, court practice and other sources, to draw conclusions, and to express reasonable proposals for the elimination of gaps in legal acts.

2. **Deductive method** was used to draw specific conclusions from the theses identified within the research and to provide proposals for improvement of national regulatory framework.

3. **Descriptive method** is used to reveal the content of researched legal acts, legal science literature, scientific articles, court practice and other sources in the Thesis.

4. **Empirical research method – a survey** was used to obtain information on the right of patients and their relatives to receive mental care, implementation procedure and performance of religious activities in inpatient medical institutions in Latvia.

5. **Hermeneutic method** is used to analyse the meaning of terms and concepts contained in legal norms and to draw conclusions about the content of legal norms.

The Senate has recognised that “(..) Legal norms must be interpreted using the generally known methods of interpretation in legal theory. (..)

Interpretation of legal norms not only grammatically (philologically), but also considering the system of legal norms, historical circumstances and meaning and purpose, is not only allowed, but also facilitated by the legislator. On the other hand, interpretation using only the grammatical method can lead to an illegal result.”⁷¹ Therefore, the Author comprehensively uses the following **interpretation methods of legal norms** in her Thesis: grammatical (philological) interpretation method, systemic interpretation method, teleological (meaning and purpose) interpretation method, historical interpretation method.

1. **Grammatical (philological) method of interpretation** is used to clarify the meaning of legal norms from a linguistic point of view.

2. **Systemic method of interpretation** is used to clarify the meaning of legal norms in relation to other legal norms.

3. **Teleological (meaning and purpose) method of interpretation** is used to clarify the meaning of legal norms, based on a useful and just goal to be achieved by the relevant legal norms.

4. **Historical method of interpretation** is used to clarify the meaning of legal norms, considering circumstances on the basis of which they were created.⁷²

Analytical approach in the interpretation of CE and EU legislation

In the interpretation of the fundamental rights of the Constitution, in accordance with Article 89 of the Constitution, in order to recognise and protect fundamental human rights, including the right to freedom of religion, four interrelated basic principles must be observed: 1) the principle of legal interpretation; 2) the principle of minimum guarantees; 3) the principle of legal

⁷¹ Decision of the Department of Administrative Affairs of the Senate of the Republic of Latvia of March 10, 2020 in case No. A420206815 (SKA-159/2020). Retrieved from: <https://www.at.gov.lv/downloadlawfile/6141> [viewed 11.05.2022.].

⁷² Administrative Procedure Law: Law of the Republic of Latvia, Section 17, Part One. *Latvijas Vēstnesis*, 164, 14.11.2001.; *Latvijas Republikas Saeimas un Ministru Kabineta Ziņotājs*, 23, 13.12.2001. Adopted: 25.10.2001. Enters into force on 01.02.2004. Retrieved from: <https://likumi.lv/ta/id/55567-administrativa-procesa-likums> [viewed 11.05.2022.].

effectiveness; 4) the principle of evolutionary interpretation.⁷³ According to the principle of legal interpretation, if an international treaty ratified by the *Saeima* contains different provisions than the national legislation, the provisions of the international treaty shall apply. A state may not invoke its domestic legal norms to justify its failure to fulfil its international obligations.⁷⁴ According to the principle of minimum guarantees, the norms of Chapter VIII of the Constitution are only minimum guarantees – they are the necessary minimum that the State must necessarily observe and provide. Nothing prevents or forbids state institutions, especially the legislature, from granting more extensive guarantees to persons under Latvian jurisdiction than those provided for by the Constitution.⁷⁵ According to the principle of legal effectiveness, all fundamental rights guaranteed by the Constitution, laws and international treaties must always be interpreted and applied in such a way that they are real and effective and not illusory or established only for the sake of appearance.⁷⁶ On the other hand, according to the principle of evolutionary interpretation, the Constitution is a living instrument that can be interpreted and applied in accordance with modern

⁷³ Rudevskis, J. 2011. *Satversmes 89. panta komentāri. // Latvijas Republikas Satversmes komentāri. VIII nodaļa. Cilvēka pamattiesības*. Team of authors, scientific edition R.Balodis. Rīga: Latvijas Vēstnesis, p. 39.

⁷⁴ Rudevskis, J. 2011. *Satversmes 89. panta komentāri. // Latvijas Republikas Satversmes komentāri. VIII nodaļa. Cilvēka pamattiesības*. Team of authors, scientific edition R.Balodis. Rīga: Latvijas Vēstnesis, p. 39; Law “On International Treaties of the Republic of Latvia”: Law of the Republic of Latvia. Section 13. *Latvijas Vēstnesis*, 11, 26.01.1994.; *Latvijas Republikas Saeimas un Ministru Kabineta Ziņotājs*, 3, 10.02.1994. Adopted: 13.01.1994. Enters into force: 09.02.1994. Retrieved from: <https://likumi.lv/ta/id/57840-par-latvijas-republikas-starptautiskem-ligumim> [viewed 11.05.2022.].

⁷⁵ Rudevskis, J. 2011. *Satversmes 89.panta komentāri. // Latvijas Republikas Satversmes komentāri. VIII nodaļa. Cilvēka pamattiesības*. Team of authors, scientific edition R.Balodis. Rīga: Latvijas Vēstnesis, p. 39; p. 40

⁷⁶ *Ibid.*, p. 43.

realities and modern understanding of the standard of fundamental rights to be protected.⁷⁷

In the practice of the Constitutional Court, it has been established that, according to Article 89 of the Constitution, legal norms contained in the Constitution must be interpreted in such a way as to achieve mutual harmony between these legal norms and international human rights norms.⁷⁸ International human rights norms at the level of constitutional law are a means of determining the content and scope of fundamental rights and at the same time are directly applicable in Latvia to the extent that they are legally binding on the State.⁷⁹ The Supreme Council, in adopting the Declaration “On the accession of the Republic of Latvia to international legal documents on human rights issues”,⁸⁰ recognised as binding a number of international legal acts in the field of human rights.⁸¹ The norms of international treaties concluded and ratified in Latvia are part of the

⁷⁷ Rudevskis, J. 2011. *Satversmes 89.panta komentāri. // Latvijas Republikas Satversmes komentāri. VIII nodaļa. Cilvēka pamattiesības*. Team of authors, scientific edition R.Balodis. Rīga: Latvijas Vēstnesis, p. 45.

⁷⁸ Judgment of the Constitutional Court of the Republic of Latvia of August 30, 2000 in case No. 2000 - 03 - 01. Paragraph 5. Retrieved from: https://www.satv.tiesa.gov.lv/wp-content/uploads/2016/02/2000-03-01_Spriedums.pdf [viewed 11.05.2022.].

⁷⁹ Judgment of the Constitutional Court of the Republic of Latvia of July 2, 2015 in case No. 2015-01-01. Retrieved from: https://www.satv.tiesa.gov.lv/wp-content/uploads/2016/02/2015-01-01_Spriedums.pdf [viewed 11.05.2022.].

⁸⁰ Declaration of the Supreme Council of the Republic of Latvia “On the accession of the Republic of Latvia to international legal documents on human rights issues”: Law of the Republic of Latvia. 1990 *Latvijas Republikas Augstākās Padomes un Valdības Ziņotājs*, 21, 24.05.1990.; *Ciņa*, 102, 12.05.1990. Adopted: 04.05.1990. Enters into force: 22.05.1990. Retrieved from: <https://likumi.lv/ta/id/75668-par-latvijas-republikas-pievienosanos-starttautisko-tiesibunbspdokumentiem-cilvektiesibu-jautajumus> [viewed 11.05.2022.].

⁸¹ Judgment of the Constitutional Court of the Republic of Latvia of August 30, 2000 in case No. 2000-03-01. Paragraph 2 of the conclusions. Retrieved from: https://www.satv.tiesa.gov.lv/wp-content/uploads/2016/02/2000-03-01_Spriedums.pdf [viewed 11.05.2022.].

national legal system.⁸² This is related to the doctrine of monism existing in the Latvian legal system. “In monist countries, international law together with national law forms a single legal system, in which international law usually has a priority character.”⁸³ Section 13 of the Law “On Treaties of the Republic of Latvia” stipulates that if an international treaty ratified by the *Saeima* contains different provisions than the national legal acts, the provisions of the international treaty shall apply.⁸⁴ Thus, if there are doubts about the content of legal norms contained in the Constitution, the legal interpretation corresponding to the international obligations must be applied as far as possible, since the State may not oppose national law and the international obligations it has undertaken.⁸⁵ In the practice of the Constitutional Court, it has been established that the Constitution does not provide for a lesser scope of provision or protection of fundamental rights, as stipulated by international human rights obligations, but the State can guarantee an even broader scope of these rights and a higher

⁸² Rudevskis, J. 2011. *Satversmes 89.panta komentāri. // Latvijas Republikas Satversmes komentāri. VIII nodaļa. Cilvēka pamattiesības*. Team of authors, scientific edition R.Balodis. Riga: Latvijas Vēstnesis, p. 27.

⁸³ Mits, M. 1997. Status of the European Convention on Human Rights and Fundamental Freedoms in the Latvian legal system. Application of the Convention at the national level. *Latvijas Vēstnesis*. Retrieved from: <https://www.vestnesis.lv/ta/id/29472> [viewed 06.06.2021.].

⁸⁴ Law “On International Treaties of the Republic of Latvia”: Law of the Republic of Latvia. Section 13. *Latvijas Vēstnesis*, 11, 26.01.1994.; *Latvijas Republikas Saeimas un Ministru Kabineta Ziņotājs*, 3, 10.02.1994. Adopted: 13.01.1994. Enters into force: 09.02.1994. Retrieved from: <https://likumi.lv/ta/id/57840-par-latvijas-republikas-starptautiskem-ligumim> [viewed 11.05.2022.].

⁸⁵ Ziemele I. 2017 lecture at the XVII Congress of the Conference of European Constitutional Courts in Batumi, Georgia. *Constitutional Court of the Republic of Latvia*. Retrieved from: <http://www.satv.tiesa.gov.lv/articles/satversmes-tiesas-prieksedetajas-inetas-ziemeles-priekslasijums-eiropas-konstitucionalo-tiesu-konferences-xvii-kongresa-batumi-gruzija/> [viewed 11.05.2022.].

standard of protection in its laws.⁸⁶ Thus, when interpreting a norm of international law, if it is concluded that the Constitution guarantees a broader protection of the relevant fundamental right, it is not permissible to limit oneself only to the application of the norm contained in international human rights acts, and it is necessary to apply a norm of the Constitution.⁸⁷ In the hierarchy of legal force, the legal acts in force in Latvia, insofar as they operate in the areas covered by human rights, mainly in public legal relations between the State on the one hand and private persons on the other hand, must be compared with the human rights norms contained in the Constitution, international treaties and laws. Human rights guaranteed by the Constitution and international legal instruments have the highest rank. Thus, lower-ranking norms, as well as administrative acts and actual actions, must always be in accordance with human rights norms.⁸⁸

Treaties or international written agreements between countries governed by international law, regardless of whether these agreements are contained in one or more internationally related documents, and regardless of their specific purpose, must be interpreted in accordance with the UN Vienna Convention on the Law of Treaties.⁸⁹ In accordance with Article 31

⁸⁶ Decision of the Constitutional Court of May 23, 2018 on termination of proceedings in case No. 2017-20-0103. Paragraph 17. Retrieved from: [https://www.satv.tiesa.gov.lv/web/viewer.html?file=/wp-content/uploads/2017/08/2017-20-0103_Lemums_izbeigšana.pdf#search=\[viewed 11.05.2022.\]](https://www.satv.tiesa.gov.lv/web/viewer.html?file=/wp-content/uploads/2017/08/2017-20-0103_Lemums_izbeigšana.pdf#search=[viewed 11.05.2022.]).

⁸⁷ Judgment of the Constitutional Court of September 14, 2005 in case No. 2005-02-0106. Paragraph 10. Retrieved from: https://www.satv.tiesa.gov.lv/wp-content/uploads/2016/02/2005-02-0106_spriedums.pdf [viewed 11.05.2022.].

⁸⁸ Levits, E. 2021. *7.4. Cilvēktiesību konstitucionālais rangs. 7.4. Cilvēka tiesību un pamatbrīvību aizsardzības konvencija. // Cilvēktiesības pasaulē un Latvijā. Otrās papildinātais izdevums.* Second updated edition. The team of authors Ph.D. (Cantab.) scientific editing I.Ziemele. Rīga: Tiesu namu aģentūra, p. 404.

⁸⁹ United Nations. Vienna Convention on the Law of International Treaties. Adopted. 23.05.1969 Enters into force. 03.06.1993 Section 2, paragraph 1, subparagraph "a". *Latvijas Vēstnesis*, Nr. 52, 03.04.2003. Joined 04.05.1993. Retrieved from: <https://likumi.lv/ta/lv/starttautiskie-ligumi/id/1> [viewed 11.05.2022.].

of the UN Vienna Convention on the Law of Treaties, an agreement, which is considered to be an international written agreement between States, shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the agreement in general and according to its object and purpose. For the purpose of interpreting the agreement, together with the text, including preamble and appendix, the following shall also be taken into account: 1) any agreement relating to the contract made between the participants in connection with conclusion of the contract; 2) any document drawn up by one or more participants in connection with conclusion of the contract and accepted by other participants as a document related to the contract. Along with the above, the following must also be observed: 1) any subsequent agreement between the participants regarding interpretation of the contract or the application of its provisions; 2) the practice of applying the contract, introduced by the agreement of the participants regarding its interpretation; 3) any norms of international law applicable in relations between participants. The provision is of particular importance if it is established that it is determined that the participants had such an intention.⁹⁰ According to Article 32 of the UN Vienna Convention on the Law of Treaties, supplementary means of interpretation may be used, including the preparatory work of the treaty and the circumstances of its conclusion, in order to confirm the meaning resulting from the application of Article 31, or to determine the meaning when the interpretation according to Article 31: (a) leaves the meaning ambiguous or obscure; or (b) leads to a result which is manifestly absurd or unreasonable.⁹¹ On the other hand, Article 33 of the UN

⁹⁰ United Nations. Vienna Convention on the Law of International Treaties. Adopted. 23.05.1969 Enters into force. 03.06.1993 Section 31. *Latvijas Vēstnesis*, Nr. 52, 03.04.2003. Joined 04.05.1993. Retrieved from: <https://likumi.lv/ta/lv/starttautiskieligumi/id/1> [viewed 11.05.2022.].

⁹¹ *Ibid.*, Section 32.

Vienna Convention on the Law of Treaties stipulates that when a treaty has been authenticated in two or more languages, the text is equally authoritative in each language, unless the treaty provides or the parties agree that, in case of divergence, a particular text shall prevail. A version of the treaty in a language that is not designated as authentic shall be considered as an authentic text only if the treaty so provides or if the parties so agree. It is presumed that the terms of the treaty have the same meaning in each authentic text. Except where, according to the first part, a particular text is prevailing, if the comparison of authentic texts reveals differences which cannot be eliminated by application of Articles 31 and 32, then the meaning that best matches the texts is used, considering object and purpose of the treaty.⁹²

According to Article 2(1)(f) of the UN Vienna Convention on the Law of Treaties, a State which has consented to be bound by the treaty, whether or not the treaty has entered into force, is considered to be a “contracting State”.⁹³ ECHR is an international treaty to which only CE Member States can accede.⁹⁴ The ECHR has been signed by the governments of the CE Member States, which are High Contracting Parties to the ECHR.⁹⁵

⁹² Apvienoto Nāciju Organizācija. Vīnes konvencija par starptautisko līgumu tiesībām. Pieņemts. Adopted. 23.05.1969. Enters into force. 03.06.1993. Section 33. *Latvijas Vēstnesis*, Nr. 52, 03.04.2003. Joined 04.05.1993. Retrieved from: <https://likumi.lv/ta/lv/starttautiskie-ligumi/id/1> [viewed 11.05.2022.].

⁹³ Apvienoto Nāciju Organizācija. Vīnes konvencija par starptautisko līgumu tiesībām. Pieņemts. Adopted. 23.05.1969 Enters into force. 03.06.1993. Article 2, Clause 1, subparagraph “F”. *Latvijas Vēstnesis*, Nr. 52, 03.04.2003. Joined 04.05.1993. Retrieved from: <https://likumi.lv/ta/lv/starttautiskie-ligumi/id/1> [viewed 11.05.2022.].

⁹⁴ Mits, M. 2021. *2.3.Eiropas cilvēktiesību aizsardzības sistēma. 2.3.1. Cilvēka tiesību un pamatbrīvību aizsardzības konvencija. // Cilvēktiesības pasaulē un Latvijā*. Second updated edition. The team of authors Ph.D. (Cantab.) I. Under scientific edition of I.Ziemele. Riga: Tiesu namu aģentūra, p. 74.

⁹⁵ European Convention for the Protection of Human Rights and Fundamental Freedoms. Preamble, Article 1. *Latvijas Vēstnesis*, 143/144, 13.06.1997. Retrieved from: <https://likumi.lv/ta/lv/starttautiskie-ligumi/id/649> [viewed 11.05.2022.].

The ECHR imposes an obligation to ensure all the rights and freedoms that a Member State of the European Union that is a High Contracting Party to the ECHR has recognised as binding, not only for the residents of that country or residents of other Member States of the European Union, but for any person under the jurisdiction of that Member State of the European Union. If a Member State of the European Union, which is a High Contracting Party to the ECHR, violates a person's rights protected by the ECHR, the victim has the right to compensation, which is one of the fundamental principles of human rights. In case of any violation of rights, the "guilty" Member State of the CE, which is a High Contracting Party to the ECPHRFF, must give the person concerned the opportunity to apply to the institutions and obtain effective protection of their rights. If a person believes that a Member State of the European Union, which is a High Contracting Party to the ECPHRFF, has failed to ensure effective protection of his rights under its legal system with regard to any of the rights established by the ECPHRFF, then he can submit a complaint to the ECHR.⁹⁶

The judgments of the ECPHRFF play an important role in the interpretation of the ECHR and its additional protocols. The task of the ECHR is to control implementation of the ECPHRFF in the Member States of the CE, which are High Contracting Parties to the ECPHRFF.⁹⁷ The ECHR, in its

⁹⁶ Mits, M. 2021. *2.3. Eiropas cilvēktiesību aizsardzības sistēma. 2.3.1. Cilvēka tiesību un pamatbrīvību aizsardzības konvencija. // Cilvēktiesības pasaulē un Latvijā. The second updated edition.* The team of authors Ph.D. (Cantab.) I. Under scientific edition of I.Ziemele. Riga: Tiesu namu aģentūra, pp. 76-77. The Council of Europe. European Convention on the Protection of Human Rights and Fundamental Freedoms. Articles 1, 13, 35. *Latvijas Vēstnesis, 143/144, 13.06.1997.* Retrieved from: <https://likumi.lv/ta/lv/starttautiskie-ligumi/id/649> [viewed 11.05.2022.].

⁹⁷ Mits, M. 2021. *2.3. Eiropas cilvēktiesību aizsardzības sistēma. 2.3.1. Cilvēka tiesību un pamatbrīvību aizsardzības konvencija. // Cilvēktiesības pasaulē un Latvijā. Second updated edition.* The team of authors Ph.D. (Cantab.) I. Under scientific edition of I.Ziemele. Riga: Tiesu namu aģentūra, p. 77.

judgment in the case of *Jeronovičs v. Latvia*, has indicated that the ECHR functions include explanation, protection and development of the norms contained in the ECPHRFF, thereby promoting compliance with the obligations that the CE Member States, which are High Contracting Parties to the ECPHRFF, have undertaken. Therefore, the competence of the ECHR is to decide public and political issues in the public interest, raising general standards of human rights protection and developing human rights in all CE Member States that are High Contracting Parties to the ECPHRFF.⁹⁸

According to Article 34 of the Eleventh Protocol to the ECPHRFF, which restructures the control mechanism established by this Convention, the ECHR may receive submissions from any natural person, public organisation or group of individuals who complain that one of the Member States of the CE, which is a High Contracting Party to the ECPHRFF, has violated their rights under the ECPHRFF or its Protocols. Member States of the CE, which are High Contracting Parties to the ECPHRFF, undertake not to hinder in any way effective exercise of these rights.⁹⁹ Article 35(2)(a) and (b) of the above-mentioned ECPHRFF Protocol provides that the ECHR shall not consider any individual application submitted in accordance with the conditions of Article 34 of the above-mentioned ECPHRFF Protocol, if it is anonymous or essentially identical to a case already examined by the ECHR or submitted to another international examination or settlement procedure and does not contain any

⁹⁸ The judgment of the European Court of Human Rights of July 5, 2016 in the case *Jeronovičs v. Latvia*. Application no. 44898/10 . Clause 109. Retrieved from: <https://hudoc.echr.coe.int/eng#%7B%22fulltext%22:%5B%22Jeronovi%C4%8Ds%22%2C%22documentcollectionid%22:%5B%22GRANDCHAMBER%22%2C%22CHAMBER%22%2C%22itemid%22:%5B%22001-165032%22%5D%7D> [viewed 13.04.2023.].

⁹⁹ The Council of Europe. European Convention for the Protection of Human Rights and Fundamental Freedoms. The Eleventh Protocol, which restructures the control mechanism established by this Convention. Article 34. *Latvijas Vēstnesis*, 143/144, 13.06.1997. Retrieved from: <https://likumi.lv/ta/lv/starttautiskie-ligumi/id/649> [viewed 11.05.2022.].

substantial new information.¹⁰⁰ In accordance with Article 35(3) of the above-mentioned ECPHRFF Protocol, the ECHR declares inadmissible for examination any individual application submitted in accordance with the conditions of Article 34 of the above-mentioned ECPHRFF Protocol, which it considers to be incompatible with the provisions of the ECPHRFF or its Protocols, to be clearly ill-founded or to constitute an abuse of the right to apply.¹⁰¹ On the other hand, in accordance with Article 35(4) of the ECPHRFF Protocol, the ECHR shall reject any application that it considers inadmissible under the provisions of this Article. It may do so at any stage of the court proceedings.¹⁰² In the context of the above-mentioned ECHR, applications that are “manifestly unfounded” can be rejected. Manifestly unfounded applications can be, inter alia, those where, upon examination, it is clear beyond doubt that the ECHR will not be found to have been violated.¹⁰³ For example, in the ECHR decision *Dahlab v. Switzerland*, the claim of the applicant, a Muslim, for a ban on wearing Islamic headscarf and clothing in the workplace was found to be manifestly unfounded. In the opinion of the applicant, the ban on wearing the head covering and clothes typical of the Islamic faith in the workplace was equivalent to discrimination based on gender in the meaning of Article 14 of the ECPHRFF, because Muslim men do not have to wear such clothing and thus they can work in the workplace without any

¹⁰⁰ The Council of Europe. European Convention for the Protection of Human Rights and Fundamental Freedoms. The Eleventh Protocol, which restructures the control mechanism established by this Convention. Article 35, paragraph 2, subparagraphs “a” and “b”. *Latvijas Vēstnesis*, 143/144, 13.06.1997. Retrieved from: <https://likumi.lv/ta/lv/starttautiskie-ligumi/id/649> [viewed 11.05.2022.].

¹⁰¹ *Ibid.*, Section 35, paragraph 3.

¹⁰² *Ibid.*, Section 35, paragraph 4.

¹⁰³ Alves Pinto, T. 2020. An Empirical Investigation of the Use of Limitations to Freedom of Religion or Belief at the European Court of Human Rights. *Religion & Human Rights*, p.102. Retrieved from: <https://doi.org/10.1163/18710328-BJA10005> [viewed 13.04.2023.].

restrictions.¹⁰⁴ In the aforementioned decision, the ECHR stated that the ban on wearing the Islamic headscarf and clothing at work was not directed against the applicant as a representative of the female gender, but was proportionate to the stated goal of protecting the rights and freedoms of others, public order and public safety, and was therefore “necessary in a democratic society”.¹⁰⁵

When dealing with cases, the ECHR must respect the principle of subsidiarity. According to the principle of subsidiarity, the main responsibility for ensuring the rights and freedoms stipulated in the ECPHRFF and its protocols rests with the Member States of the CE, which are High Contracting Parties to the ECPHRFF. They enjoy freedom of action under the supervision of the ECHR established by the ECPHRFF.¹⁰⁶ Article 1 of the ECPHRFF stipulates that the High Contracting Parties shall secure to everyone within their jurisdiction the rights and freedoms defined in Section I of the ECPHRFF.¹⁰⁷ As the ECHR has held, for example, in *Grzęda v. Poland*, the principle of subsidiarity imposes a shared responsibility between the CE Member States, which are High Contracting Parties to the ECPHRFF, and the ECHR. Institutions and courts of the Member States of the CE, which are High Contracting Parties to the

¹⁰⁴ In the decision of the European Court of Human Rights of February 15, 2001, *Dahlab v. Switzerland*. Application no. 42393/98 . Retrieved from: [https://hudoc.echr.coe.int/#{%22fulltext%22:\[%22Dahlab%20v.%20Switzerland%22\],%22itemid%22:\[%2201-22643%22\]}](https://hudoc.echr.coe.int/#{%22fulltext%22:[%22Dahlab%20v.%20Switzerland%22],%22itemid%22:[%2201-22643%22]}) [viewed 11.11.2023.].

¹⁰⁵ Ibid.

¹⁰⁶ European Convention for the Protection of Human Rights and Fundamental Freedoms. Preamble, Article 1 of Protocol 15. *Latvijas Vēstnesis*, 143/144, 13.06.1997. Retrieved from: <https://likumi.lv/ta/lv/starttautiskie-ligumi/id/649> [viewed 11.05.2022.]; Protocol No. 15 amending the Convention on the Protection of Human Rights and Fundamental Freedoms. Strasbourg. 26.06.2023 Retrieved from: https://www.echr.coe.int/documents/protocol_15_eng.pdf [viewed 11.05.2022.].

¹⁰⁷ European Convention for the Protection of Human Rights and Fundamental Freedoms. Article 1. *Latvijas Vēstnesis*, 143/144, 13.06.1997. Retrieved from: <https://likumi.lv/ta/lv/starttautiskie-ligumi/id/649> [viewed 11.05.2022.].

ECPHRFF, must interpret and apply national legislation in such a way as to fully implement the ECPHRFF.¹⁰⁸

Considering different legal and cultural traditions, the CE Member States, which are High Contracting Parties to the ECPHRFF, have a margin of appreciation with regard to the expression of religious beliefs.¹⁰⁹ Thus, for example, Article 9 of the ECPHRFF regulates legal basis of the right to freedom of religion, which every Member State of the CE, which is a High Contracting Party to the ECHR, must respect. As the ECHR has stated, for example, in *Leyla Şahin v. Turkey*, “when it comes to issues that concern the CE Member State, which is a High Contracting Party to the ECPHRFF, and religious relations, and on which opinions can reasonably differ significantly in a democratic society, the role of the decision-making body of the CE Member State, which is a High Contracting Party to the ECPHRFF, should be given special importance (..). It is not possible to see a common understanding of the importance of religion in the society throughout Europe, and the meaning or impact of expressing religious beliefs may vary depending on time and context (..). Therefore, regulations in this area will differ in different countries depending on the traditions and requirements of the Member State of the CE, which is a High Contracting Party to the ECPHRFF, determined by the need to protect the rights and freedoms of others and maintain public order.”¹¹⁰ This may concern, for example, restriction of the right to express religious beliefs, when it is necessary to assess whether the restriction is necessary in a democratic society, whether the restriction is established by law or on the basis

¹⁰⁸ The judgment of the European Court of Human Rights of March 15, 2022 in the case of *Grzęda v. Poland* . Application no. 43572/18 . Paragraph 324. Retrieved from: <https://hudoc.echr.coe.int/fre#%7B%22itemid%22:%5B%22001-216400%22%5D%7D> [viewed 14.04.2023.].

¹⁰⁹ Ahlm, E. 2020. *EU Law and Religion*. Uppsala: Uppsala Universitet, p. 51.

¹¹⁰ The judgment of the European Court of Human Rights of November 10, 2005 in the case of *Leyla Şahin v. Turkey*. Application no. 44774/98. Clause 109. Retrieved from: <https://hudoc.echr.coe.int/fre#%7B%22itemid%22:%5B%22001-70956%22%5D%7D> [viewed 06.06.2021.].

of the law, whether the restriction has a legitimate purpose and whether the restriction is proportionate. In such a context, the role of the ECHR is to monitor Member States of the CE, which are High Contracting Parties to the ECPHRFF actions, but not to replace the national assessment. Whether a restriction is necessary must be decided on a case-by-case basis concerning the conduct of a CE Member State that is a High Contracting Party to the ECPHRFF.¹¹¹ It follows from Article 1 of the ECPHRFF that the Member States of the CE, which are High Contracting Parties to the ECPHRFF, must ensure to everyone under their jurisdiction the rights and freedoms set out in Section I of the ECPHRFF.¹¹² The task of the ECHR is to monitor whether there are effective and adequate means of protection of the rights guaranteed by the ECPHRFF in a Member State of the CE, which is a High Contracting Party to the ECPHRFF.¹¹³ Member States of the CE, which are High Contracting Parties to the ECPHRFF, are obliged to fulfil positive and negative obligations in the implementation of the ECPHRFF. Positive obligations include measures taken by the CE Member State, which is a High Contracting Party to the ECPHRFF, to ensure respect for and compliance with the rights guaranteed by the ECPHRFF. They include, inter alia, the development of appropriate national regulatory framework. On the other hand, the negative obligations include refraining of the Member State of the CE, which is a High Contracting Party to the ECPHRFF, from unlawful and arbitrary interference with

¹¹¹ Ahlm, E. 2020. *EU Law and Religion*. Uppsala: Uppsala Universitet, p.53.

¹¹² The Council of Europe. European Convention for the Protection of Human Rights and Fundamental Freedoms. Preamble, Article 1. *Latvijas Vēstnesis*, 143/144, 13.06.1997. Retrieved from: <https://likumi.lv/ta/lv/starttautiskie-ligumi/id/649> [viewed 11.05.2022.].

¹¹³ McBride, J. 2021. The Doctrines and Methodology of Interpretation of The European Convention on Human Rights by The European Court of Human Rights, p.17. Council of Europe. Retrieved from: <https://rm.coe.int/echr-eng-the-doctrines-and-methodology-of-interpretation-of-the-europe/1680a20aee> [viewed 11.05.2022.].

the rights guaranteed by the ECPHRFF.¹¹⁴ In this context, the ECHR examines whether the Member State of the CE, which is a High Contracting Party to the ECPHRFF, has implemented all necessary measures to prevent illegal and arbitrary interference with the rights and freedoms guaranteed by the ECPHRFF.¹¹⁵ The ECHR also verifies the quality of the national regulatory framework for protection of rights guaranteed by the ECPHRFF. Legislative acts must be properly accessible and comprehensible to all citizens of a CE Member State that is a High Contracting Party to the ECPHRFF, including the consequences of the legislative acts.¹¹⁶

Regarding Latvia's international obligations in the field of human rights, it should be considered that "Latvia is legally bound only by the judgments of the ECHR in cases where Latvia is the defendant, but nothing prevents Latvia from timely considering the case law of the ECHR in cases against other countries in order to avoid violations."¹¹⁷ In other words, ECHR judgments constitute case law. If the ECHR has found a violation of the ECPHRFF in one case, it is likely to do the same in similar cases against other countries. This means that the country should review its legal norms, case law and administrative practice following important judgments of the ECHR.¹¹⁸

ECHR in the case *Soering v. United Kingdom* and in *Kjeldsen, Busk Madsen and Pedersen v. Denmark* has established that "when interpreting the ECPHRFF, one must consider its special nature as a treaty on the collective

¹¹⁴ McBride, J. 2021. *The Doctrines and Methodology of Interpretation of The European Convention on Human Rights by The European Court of Human Rights*, p. 27. Council of Europe. Retrieved from: <https://rm.coe.int/echr-eng-the-doctrines-and-methodology-of-interpretation-of-the-europe/1680a20aee> [viewed 11.05.2022.]

¹¹⁵ Ibid, p. 21.

¹¹⁶ Ibid., p. 18.

¹¹⁷ Rudevskis, J. 2011. *Satversmes 89.panta komentāri. // Latvijas Republikas Satversmes komentāri. Chapter VIII. Basic human rights*. Team of authors, scientific edition R.Balodis. Riga: Latvijas Vēstnesis, p. 30.

¹¹⁸ Ibid.

exercise of human rights and fundamental freedoms. Thus, the object and purpose of the ECPHRFF as an individual human protection instrument is for its provisions to be interpreted and applied in such a way as to make guarantees of the ECPHRFF practical and effective. Moreover, any interpretation of the rights and freedoms guaranteed must be consistent with the “general spirit” of the ECPHRFF. The ECPHRFF is an instrument aimed at maintaining and promotion of ideals and values of a democratic society”.¹¹⁹ This also applies to the protection of right to freedom of religion. As recognised in ECHR case law, for example in *Refah Partisi (the Welfare Party) and Others v. Turkey*, the right to freedom of religion is one of the foundations of a democratic society and in such a society the State must be able to ensure coexistence of different religions within the framework of religious pluralism.¹²⁰ In order to achieve the above, the interpretation of the ECPHRFF must always be able to achieve a balance between the rights and freedoms guaranteed therein and other competing rights and interests. When restricting the rights guaranteed by ECPHRFF, the procedure for restriction must be strictly followed. Article 9(2) of the ECPHRFF stipulates that the 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 the protection of public

¹¹⁹ The judgment of the European Court of Human Rights of July 7, 1989 in the case of *Soering v. the United Kingdom*. Application no. 14038/88 . Clause 87. Retrieved from: <https://hudoc.echr.coe.int/eng#%7B%22fulltext%22:%5B%22Soering%22%2C%22documentcollectionid%22:%5B%22GRANDCHAMBER%22%2C%22CHAMBER%22%2C%22itemid%22:%5B%22001-57619%22%5D%7D> ; The judgment of the European Court of Human Rights of December 7, 1976 in the case *Kjeldsen, Busk Madsen and Pedersen v. Denmark* . Application no. 5095/71; 5920/72; 5926/72 . Clause 53. Retrieved from: <http://hudoc.echr.coe.int/fre#%7B%22itemid%22:%5B%22001-57509%22%5D%7D> [viewed 11.05.2022.].

¹²⁰ In the judgment of the European Court of Human Rights of February 13, 2003 in the case *Refah Partisi (the Welfare Party) and Others v. Turkey*. Application no. 41340/98, 41342/98, 41343/98 and 41344/98. Clause 91. Retrieved from: <https://hudoc.echr.coe.int/eng#%7B%22itemid%22:%5B%22001-60936%22%5D%7D> [viewed 11.05.2022.].

order, health or morals, or for the protection of the rights and freedoms of others . In this context, in determining whether the specified limitation of the right to manifest one’s religious belief or devotion to one’s religion or belief is recognised as legitimate, it is necessary to evaluate: (1) whether it is determined by law or on the basis of law; (2) whether it has a legitimate purpose; (3) whether it is proportionate. If, as a result of the evaluation, it is recognised that the norm establishing the limitation to the expression of religious beliefs, does not meet at least one of the above criteria, it must be recognised that this norm also fails to meet the principle of proportionality and is illegal.¹²¹

Interpretation of the ECPHRFF as a whole must be practical and effective. As established by the ECHR in *Tyrer v. in the United Kingdom*, ECPHRFF is a “living instrument”.¹²² The ECPHRFF is to be interpreted in the light of “modern standards”, which must be shared to some extent between the Contracting States. It is irrelevant what the respondent CE Member State, which is a High Contracting Party to the ECPHRFF, (whether in institutional or public opinion) considers to be an acceptable standard in a given case. This applies in particular to cases where practice of the respondent CE Member State, which is a High Contracting Party to the ECPHRFF, does not meet generally accepted standards of the CE.¹²³ Within this framework, interpretation of the ECPHRFF as a whole must be dynamic, considering changing circumstances and presence or absence

¹²¹ McBride, J. 2021. The Doctrines and Methodology of Interpretation of The European Convention on Human Rights by The European Court of Human Rights, p.48. *Council of Europe* . Retrieved from: <https://rm.coe.int/echr-eng-the-doctrines-and-methodology-of-interpretation-of-the-europe/1680a20aeen> [viewed 11.05.2022.].

¹²² Judgment of the European Court of Human Rights of April 25, 1978 in the case *Tyrer v. the United Kingdom*. Application no. 5856/72. Clause 31. Retrieved from: <https://hudoc.echr.coe.int/fre#%7B%22itemid%22%3A%5B%22001-57587%22%5D%7D> [viewed 11.05.2022.].

¹²³ Letsas, G. 2012. The ECHR as a Living Instrument: Its Meaning and its Legitimacy. Retrieved from: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2021836 [viewed 08.06.2023.].

of a European consensus regarding the extent of discretion with regard to the human rights enshrined in the ECPHRFF.¹²⁴

The ECHR may take into account drafting materials (in French, *travaux préparatoires*) of the ECPHRFF when interpreting the ECPHRFF¹²⁵ and refer, as appropriate, to other international instruments and judgments or rulings of international regional human rights bodies.¹²⁶ As stated by the ECHR, for example, in *Hassan v. the United Kingdom*, “the CPHRFF must not be interpreted ‘in a vacuum’ and should, as far as possible, be interpreted in accordance with the other norms of international law of which it is a part.”¹²⁷ For example, the ECHR can take into account the legal framework contained in the Biomedical Convention.¹²⁸ For example, in the *Somorjai v. Hungary* judgment, ECHR has indicated that the ECHR does not have competence to decide on the application and interpretation of EU legislation. The task of interpretation and application of EU law is within the competence of the CJEU in connection with

¹²⁴ McBride, J. 2021. The Doctrines and Methodology of Interpretation of The European Convention on Human Rights by The European Court of Human Rights, p. 38. *The Council of Europe*. Retrieved from: <https://rm.coe.int/echr-eng-the-doctrines-and-methodology-of-interpretation-of-the-europe/1680a20aen> [viewed 11.05.2022.].

¹²⁵ The Council of Europe *Travaux Préparatoires* to the Convention. Retrieved from: https://www.echr.coe.int/documents/library_travPrep_table_eng.pdf [viewed 11.05.2022.].

¹²⁶ McBride, J. 2021. The Doctrines and Methodology of Interpretation of The European Convention on Human Rights by The European Court of Human Rights, p.43. *The Council of Europe*. Retrieved from: <https://rm.coe.int/echr-eng-the-doctrines-and-methodology-of-interpretation-of-the-europe/1680a20aen> [viewed 11.05.2022.].

¹²⁷ The judgment of the European Court of Human Rights of September 16, 2014 in the case of *Hassan v. the United Kingdom* . Application no. 29750/09 . Clause 77. Retrieved from: <https://hudoc.echr.coe.int/fre#%7B%22itemid%22:%5B%22001-146501%22%5D%7D> [viewed 07.08.2023.].

¹²⁸ The Council of Europe. Convention on the Protection of Human Rights and Dignity in Biology and Medicine - Convention on Human Rights and Biomedicine. *Latvijas Vēstnesis*, 205, 30.12.2009. Retrieved from: <https://likumi.lv/ta/lv/starptautiskieligumi/id/1410> [viewed 11.05.2022.].

a request for a preliminary ruling. The courts of the Member States of the CE, which are High Contracting Parties to the ECPHRFF, must interpret and apply national law, where necessary, in accordance with EU law, and the ECHR's role in that case is limited to ascertaining whether the consequences of such a trial are compatible with the CPHRFF.¹²⁹

The task of giving preliminary rulings on the interpretation of EU law lies with the CJEU.¹³⁰ In interpretation of EU law, it should be borne in mind that the protection of fundamental rights was not provided for in the early days of the EU.¹³¹ Protection of fundamental rights in the EU has been promoted by the CJEU.¹³² In the case of *Internationale Handelsgesellschaft mbH v. Einfuhr- und Vorratsstelle für Getreide und Futtermittel*, the CJEU has recognised that the protection of fundamental rights, inspired by constitutional traditions, must be common to all EU Member States.¹³³ On the other hand, in the case of *J. Nold, Kohlen- und Baustoffgroßhandlung against the Commission of the European*

¹²⁹ McBride, J. 2021. The Doctrines and Methodology of Interpretation of The European Convention on Human Rights by The European Court of Human Rights, p.43. *The Council of Europe*. Retrieved from: <https://rm.coe.int/echr-eng-the-doctrines-and-methodology-of-interpretation-of-the-europe/1680a20aen> ; In the judgment of the European Court of Human Rights of November 28, 2018 in the case *Somorjai v . Hungary. Clause 57*. Application no. 60934/13. Retrieved from: <https://hudoc.echr.coe.int/fre/#{%22fulltext%22:%22Somorjai%20v.%20Hungary%22,%22documentcollectionid%22:%22GRANDCHAMBER%22,%22CHAMBER%22,%22itemid%22:%22001-185311%22}}> [viewed 09.02.2023.].

¹³⁰ Toebe, B., Hartlev M., Hendriks A., O Cathaoir K., Rothmar Herrmann J., Sinding Aasen H. 2022. *Health and Human Rights, 2nd edition. Global and European Perspectives*. United Kingdom: Intersentia, p. 164.

¹³¹ Slokenberga, S. Problematika ar ES pievienošanos Eiropas Cilvēktiesību konvencijai. *Jurista Vārds*, 19.05.2015., Nr.20 (872). Retrieved from: <https://m.juristavards.lv/doc/266644-problematika-ar-es-pievienosanos-eiropas-cilvektiesibu-konvencijai/> [viewed 09.02.2023.].

¹³² Schütze, R., Tridimas, T. 2018. *Oxford Principles Of European Union Law: The European Union Legal Order: Volume I*. Oxford University Press, Oxford, p. 385.

¹³³ The judgment of the European Union Court of December 17, 1970 in case no. 11-70. *Internationale Handelsgesellschaft mbH pret Einfuhr- und Vorratsstelle für Getreide und Futtermittel*. Clause 4. Retrieved from: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:61970CJ0011> [viewed 12.08.2023.].

Communities, the CJEU has recognised that “international treaties for the protection of human rights, on which the Member States have collaborated or of which they are signatories, can supply guidelines which should be followed within the framework of Community law”.¹³⁴

According to Article 21(1) of the TEU, the EU’s international action shall be guided by the principles which have inspired its own creation, development and enlargement, and which it seeks to advance in the wider world, namely democracy, the rule of law, the universality and indivisibility of human rights and fundamental freedoms, respect for human dignity, the principles of equality and solidarity, and respect for the principles of the United Nations Charter and international law.¹³⁵ The second consideration of the preamble to the TEU provides that the cultural, religious and humanist inheritance of Europe has been the basis for the formation of the universal values of inviolable and inalienable rights of the human person, freedom, democracy, equality and the rule of law.¹³⁶ Thus, it can be said that “inspiration for the self-portrait of EU law has been drawn, among other things, from the religious heritage, as well as from the cultural and humanistic heritage, from which human rights, freedom, democracy, equality and the rule of law have been developed in the EU”.¹³⁷

The ECPHRFF has a special place in the EU legal system. Article 6(3) of the TEU stipulates that fundamental rights, as guaranteed by the ECPHRFF and arising from the constitutional traditions common to the EU Member States are

¹³⁴ The judgment of the Court of the European Union of May 14, 1974 in case no. 4-73. J. Nold, Kohlen- und Baustoffgroßhandlung pret Eiropas Kopienu Komisiju. Clause 2. Retrieved from: <https://eur-lex.europa.eu/legal-content/lv/TXT/?uri=CELEX:61973CJ0004> [viewed 09.02.2023.].

¹³⁵ Consolidated version of the Treaty on European Union. Clause 1 of Article 21. *Official Journal of the European Union*. OV C 326, 26.10.2012. Retrieved from: <https://eur-lex.europa.eu/legal-content/LV/TXT/PDF/?uri=OJ:C:2012:326:FULL&from=IT> [viewed 02.02.2023.].

¹³⁶ *Ibid.*, second recital of the preamble.

¹³⁷ Ahlm, E. 2020. *EU Law and Religion*. Uppsala: Uppsala Universitet, p.36-39.

the basis of the general principles of EU law.¹³⁸ The EU has not acceded to the ECPHRFF, and the ECPHRFF is not officially an instrument of EU law. However, all EU Member States have signed the ECPHRFF¹³⁹ and the protection of fundamental rights of the EU as a legal entity as a basis of general principles derives from the constitutional traditions of the EU Member States.¹⁴⁰

As the Author stated above, the right to freedom of religion is protected *expressis verbis* by Article 10 of the CFREU, which, with the entry into force of the Lisbon Treaty, has the status of the primary source of law.¹⁴¹ The same applies to the general principles of EU law, which is one of the sources of EU fundamental rights,¹⁴² and the protection of these rights must be inspired by the common constitutional traditions of the EU Member States.¹⁴³

¹³⁸ Consolidated version of the Treaty on European Union. Clause 3 of Article 6. *Official Journal of the European Union*. OJ C 326, 26.10.2012. Retrieved from: <https://eur-lex.europa.eu/legal-content/LV/TXT/PDF/?uri=OJ:C:2012:326:FULL&from=IT> [viewed 02.02.2023].

¹³⁹ Ahlm, E. 2020. *EU Law and Religion*. Uppsala: Uppsala Universitet, p.26.

¹⁴⁰ *Ibid.*, p. 66.

¹⁴¹ European Parliament, Council and Commission. 2016. Charter of Fundamental Rights of the European Union. Article 10. *Official Journal of the European Union*, 2016/c 202/02. Retrieved from: <https://eur-lex.europa.eu/legal-content/LV/TXT/PDF/?uri=CELEX:12016P/TXT&from=ES> ; Treaty of Lisbon amending the Treaty on European Union and the Treaty establishing the European Community. Clause 1 of Article 6. *Official Journal of the European Union*, OJ C 306, 17.12.2007, 1./271. p. Retrieved from: <https://eur-lex.europa.eu/legal-content/LV/TXT/?uri=celex%3A12007L%2FTXT> [viewed 09.02.2023].

¹⁴² The judgment of the European Union Court of December 17, 1970 in case no. 11-70. *Internationale Handelsgesellschaft mbH pret Einfuhr- und Vorratsstelle für Getreide und Futtermittel*. Clause 4. Retrieved from: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:61970CJ0011> [viewed 12.08.2023].

¹⁴³ The judgment of the Court of the European Union of May 14, 1974 in case no. 4-73. *J. Nold, Kohlen- und Baustoffgroßhandlung pret Eiropas Kopienų Komisiju*. Clause 2. Retrieved from: <https://eur-lex.europa.eu/legal-content/lv/TXT/?uri=CELEX:61973CJ0004> ; Treaty on European Union. *Official Journal of the European Union*. OJ C 326, 26.10.2012. Clause 3 of Article 6. Retrieved from: <https://eur-lex.europa.eu/legal-content/LV/TXT/PDF/?uri=OJ:C:2012:326:FULL&from=IT> [viewed 12.08.2023].

In this regard, it should be noted that the content of the CFREU has been influenced by the general principles of law and the principles of EU law developed in the practice of the CJEU, the fundamental rights enshrined in the constitutions of EU Member States and international legal instruments for the protection of human rights, in particular the ECPHRFF.¹⁴⁴ According to the preamble of the CFREU, “this Charter reaffirms, with due regard for the powers and tasks of the Union and for the principle of subsidiarity, the rights as they result, in particular, from the constitutional traditions and international obligations common to the Member States, the European Convention for the Protection of Human Rights and Fundamental Freedoms, the Social Charters adopted by the Union and by the Council of Europe and the case-law of the Court of Justice of the European Union and of the European Court of Human Rights. In this context the Charter will be interpreted by the courts of the Union and the Member States with due regard to the explanations prepared under the authority of the Praesidium of the Convention which drafted the Charter and updated under the responsibility of the Praesidium of the European Convention.”¹⁴⁵ The rights contained in the CFREU correspond to the rights guaranteed by the CPHRFF, to the extent that their meaning and scope are the same as those defined by the CPHRFF. This provision does not prevent the EU from providing for more extensive protection.¹⁴⁶

¹⁴⁴ Gailītis, K., Markus, K. 2020. 6. § *Eiropas Savienības tiesību avoti. I. Primary sources of law. // European Union law. Part I. Institucionālās tiesības. The second updated edition.* Scientific edition K.Gailišs, A.Buka, C.Schewe Riga: Tiesu namu aģentūra, p. 220.

¹⁴⁵ European Parliament, Council and Commission. 2016. Charter of Fundamental Rights of the European Union. Preamble. *Official Journal of the European Union*, 2016/c 202/02. Retrieved from: <https://eur-lex.europa.eu/legal-content/LV/TXT/PDF/?uri=CELEX:12016P/TXT&from=ES> [viewed 02.02.2023.].

¹⁴⁶ European Parliament, Council and Commission. 2016. Charter of Fundamental Rights of the European Union. Clause 3 of Article 52. *Official Journal of the European Union*, 2016/c 202/02. Retrieved from: <https://eur-lex.europa.eu/legal-content/LV/TXT/PDF/?uri=CELEX:12016P/TXT&from=ES> [viewed 02.02.2023.].

General legal principles play an important role in EU law. They are especially applied in the practice of the CJEU, where they are used as a means of interpreting legal norms and as a means of correcting deficiencies found in the EU legal system, i.e. filling legal gaps.¹⁴⁷ In the system of sources of EU law, a distinction is made between the principles of EU action and the “classical” general principles of law which apply in EU Member States and which are in most cases enshrined in constitutions.¹⁴⁸

The principles on which EU operates are: (1) the principle of conferral of competences; (2) the principle of subsidiarity; (3) the principle of proportionality; (4) the principle of loyal cooperation; (5) the principle of solidarity. According to the principle of conferral of competences, the EU may only issue legislation or take actual action if it is directly authorised to do so.¹⁴⁹ The principle of subsidiarity applies to areas that are not within the

¹⁴⁷ Gailītis, K., Markus, K. 2020. *6. § Eiropas Savienības tiesību avoti. I. Primary sources of law. // European Union law. Part I. Institucionālās tiesības. The second updated edition.* Scientific edition K.Gailītis, A.Buka, C.Schewe Rīga: Tiesu namu aģentūra, p. 222.

¹⁴⁸ Ibid., p. 222.

¹⁴⁹ Buka, A, Schewe, C., Strazdiņš, G. 2020. *§ 3 Fundamentals of European Union law. III. Operating principles of the European Union. // European Union law. Part I. Institucionālās tiesības. The second updated edition.* Scientific edition K.Gailītis, A.Buka, Rīga: Tiesu namu aģentūra, p. 89; Consolidated version of the Treaty on European Union. Clauses 1 and 2 of Article 5. *Official Journal of the European Union.* OV C 326, 26.10.2012. Retrieved from: <https://eur-lex.europa.eu/legal-content/LV/TXT/PDF/?uri=OJ:C:2012:326:FULL&from=IT> [viewed 05.02.2023.]. Regarding the case where protection of the right to freedom of religion contained in Article 10 of the CFREU can be brought up in the context of the EU legal regulation in the field of treatment, it should be taken into account that there is a complementary and shared assignment of competences in the field of EU health protection. According to Article 168(1) of the TFEU, a high level of human health protection must be ensured when defining and implementing all EU policies and activities. EU action complements the policies of EU member states and aims to improve public health, prevent disease and prevent threats to physical and mental health. This action also includes combating the diseases that threaten health most by promoting research into their causes, spread and prevention, as well as health information and education, and monitoring, early warning and combating serious cross-border health threats. According to Article 168(2) of the TFEU, the EU

exclusive competence of the EU. According to Article 5(3) of the TEU, under the principle of subsidiarity in areas that do not fall within its exclusive competence, the EU shall act only if and in so far as the objectives of the proposed action cannot be sufficiently achieved by the Member States, either at central level or at regional and local level, but can, by reason of the scale or effects of the proposed action, be better achieved at the EU level.¹⁵⁰ Article 5(4) of the TEU stipulates that, according to the principle of proportionality, the content and form of EU action is proportionate to what is necessary to achieve the goals of the TEU and TFEU. EU institutions apply the principle of proportionality, which is defined in the Protocol on the application of the

promotes cooperation of the EU member states in the areas mentioned in this article, supporting their actions if necessary. In particular, it promotes cooperation of EU member states to improve the mutual complementarity of healthcare service systems in cross-border regions. According to Article 168(4) of the TFEU, the shared competence allows EU to adopt legal acts concerning high quality and safety standards for organs and substances of human origin, as well as blood and blood preparations; veterinary and phytosanitary measures, the direct purpose of which is protection of public health; measures that set high quality and safety standards for medicines and medical devices. Pursuant to Article 168(5) of the TFEU, the European Parliament and the Council, in accordance with the ordinary legislative procedure and after consulting the Economic and Social Committee and the Committee of the Regions, may also provide for promotional measures to protect and improve human health and, in particular, to combat major cross-border threats to health (...). Ašņevica-Slokenberga, S., Gusarova, A. 2015. *Chapter 2. Healthcare and the European Union. // Medical Law*. Team of authors. Scientific editing S. Ašņevica-Slokenberga Rīga: Tiesu namu aģentūra; Consolidated version of the Treaty on European Union. Article 168(1), (2), (4), (5). *Official Journal of the European Union*. OV C 326, 26.10.2012. Retrieved from: <https://eur-lex.europa.eu/legal-content/LV/TXT/PDF/?uri=OJ:C:2012:326:FULL&from=IT> [viewed 05.02.2023.].

¹⁵⁰ Buka, A., Schewe, C., Straziņš, G. 2020. § 3 *Fundamentals of European Union law. III. Operating principles of the European Union. // European Union law. Part I. Institucionālās tiesības. The second updated edition*. Scientific edition K.Gailišs, A.Buka, Rīga: Tiesu namu aģentūra, p. 94; Consolidated version of the Treaty on European Union. Article 5(3). *Official Journal of the European Union*. OV C 326, 26.10.2012. Retrieved from: <https://eur-lex.europa.eu/legal-content/LV/TXT/PDF/?uri=OJ:C:2012:326:FULL&from=IT> [viewed 05.02.2023.].

principle of subsidiarity and the principle of proportionality.¹⁵¹ In accordance with the principle of loyal cooperation, the EU and the EU Member States, with genuine mutual respect, help each other to carry out the tasks defined in the Treaties. EU Member States take all necessary general and specific measures to ensure fulfilment of obligations arising from the Treaties or from the acts of the EU institutions. EU Member States contribute to the fulfilment of EU tasks and refrain from any measures that could threaten achievement of EU goals.¹⁵² On the other hand, in accordance with the principle of solidarity, the EU Member States act in solidarity together in accordance with what they have committed to with the TEU “in an effort to strengthen the solidarity of their peoples, while respecting their history, culture and traditions”.¹⁵³

“Classical” general principles of law or principles of law arising from constitutional law are: (1) principles of the protection fundamental rights (e.g. the principle of non-discrimination; the principle of the right to a fair trial *ne bis in idem*); (2) principles of administrative law (e.g. the principle of rule of law,

¹⁵¹ *Buka, A, Schewe, C., Strazdiņš, G. 2020. § 3 Fundamentals of European Union law. III. Operating principles of the European Union. // European Union law. Part I. Institucionālās tiesības. The second updated edition. Scientific edition K.Gailiņš, A.Buka, Rīga: Tiesu namu aģentūra, p. 96; Consolidated version of the Treaty on European Union. Article 5(4). Official Journal of the European Union. OV C 326, 26.10.2012. Retrieved from: <https://eur-lex.europa.eu/legal-content/LV/TXT/PDF/?uri=OJ:C:2012:326:FULL&from=IT> [viewed 05.02.2023].*

¹⁵² Līguma par Eiropas Savienību konsolidētā versija. 4. panta 3. punkts. *Eiropas Savienības Oficiālais Vēstnesis*. OV C 326, 26.10.2012. Retrieved from: <https://eur-lex.europa.eu/legal-content/LV/TXT/PDF/?uri=OJ:C:2012:326:FULL&from=IT> [viewed 05.02.2023].

¹⁵³ *Buka, A, Schewe, C., Strazdiņš, G. 2020. § 3 Fundamentals of European Union law. III. Operating principles of the European Union. // European Union law. Part I. Institucionālās tiesības. The second updated edition. Scientific edition K.Gailiņš, A.Buka, Rīga: Tiesu namu aģentūra, p. 99; Consolidated version of the Treaty on European Union. Preamble. Official Journal of the European Union. OV C 326, 26.10.2012. Retrieved from: <https://eur-lex.europa.eu/legal-content/LV/TXT/PDF/?uri=OJ:C:2012:326:FULL&from=IT> [viewed 05.02.2023].*

the principle of legal certainty, the principle of openness of information and the principle of good governance).¹⁵⁴

Provisions of the CFREU, which include the principles, can be implemented by legislative and executive acts adopted by EU institutions and bodies, and by acts of EU Member States when they implement EU law through their respective powers. EU regulations are only applicable in court when interpreting such acts and deciding on their legality.¹⁵⁵ According to Article 51(1) of the CFREU, provisions of the CFREU apply to EU institutions and bodies, observing the principle of subsidiarity, and to EU Member States only if they implement EU legislation.¹⁵⁶ In relation to the mentioned CJEU, it has been recognised in practice that the CFREU applies only to those situations which are affected by CJEU law. Namely, in the judgment in the case *Åklagaren v. Hans Åkerberg Fransson*, the CJEU has established that “fundamental rights guaranteed in the EU legal system must be applied in all situations regulated by EU law, but not outside such situations”.¹⁵⁷ Also, in the mentioned case, the CJEU stated “as confirmed in Article 6, Paragraph 3 of the TEU, the fundamental rights guaranteed by the ECPHRFF are the basis of general principles of EU law, and if Article 52(3) of the CFREU stipulates an obligation to give the same meaning to the rights contained in it and scope as the corresponding rights

¹⁵⁴ Gailītis, K., Markus, K. 2020. 6. § *Eiropas Savienības tiesību avoti. I. Primary sources of law. // European Union law. Part I. Institucionālās tiesības. The second updated edition.* Scientific edition K.Gailīšs, A.Buka, C.Schewe Riga: Tiesu namu aģentūra, pp. 222. – 223.

¹⁵⁵ European Parliament, Council and Commission. 2016. Charter of Fundamental Rights of the European Union. Article 52(5). *Official Journal of the European Union*, 2016/c 202/02. Retrieved from: <https://eur-lex.europa.eu/legal-content/LV/TXT/PDF/?uri=CELEX:12016P/TXT&from=ES> [viewed 02.02.2023.].

¹⁵⁶ *Ibid.*, Article 51(1).

¹⁵⁷ The judgment of the Court of the European Union of February 26, 2013 in case no. C- 617/10. *Åklagaren pret Hans Åkerberg Fransson*. Clause 19. Retrieved from: <https://curia.europa.eu/juris/document/document.jsf?text=&docid=134202&pageIndex=0&doclang=LV&mode=lst&dir=&occ=first&part=1&cid=1013969> [viewed 11.02.2023.].

guaranteed by the CPHRFF, however, this latter convention, until the EU has acceded to it, is not a formal legal instrument integrated into the legal system of the Union. Consequently, EU law does not regulate relationship between the ECPHRFF and the legal systems of the Member States, nor does it determine the conclusions to be drawn by the national court in the event of a conflict between the rights guaranteed by this Convention and a national legal norm.”¹⁵⁸ Therefore in the meaning of Article 51(1) of the CFREU, the CFREU is applicable only in situations where EU Member States implement EU law.¹⁵⁹ Legislation can be, for example, regulations, which are directly applicable and legally binding legislation, and directives, which EU Member States transpose into their own legislation.¹⁶⁰

The term “Member State” in the sense of Article 51(1) of the CFREU “refers to State institutions, regional and local bodies and public law entities when they implement EU law”.¹⁶¹ In other words, the concept of implementation of EU law within the meaning of Article 51(1) of the CFREU covers all situations in which an EU Member State fulfils an obligation provided for by EU law.¹⁶²

¹⁵⁸ The judgment of the Court of the European Union of February 26, 2013 in case no. C- 617/10. *Åklagaren pret Hans Åkerberg Fransson*. paragraph 44. Retrieved from: <https://curia.europa.eu/juris/document/document.jsf?text=&docid=134202&pageIndex=0&doclang=L V&mode=lst&dir=&occ=first&part=1&cid=1013969> [viewed 11.02.2023.].

¹⁵⁹ Lenārtss, K. (*Lenaerts, K.*), Gutjers-Fonss, H. A. (*Gutiérrez-Fons, J. A.*). 2022. *Eiropas Savienības tiesas interpretācijas metodes*. Translated from French Scientific editing Ineta Ziemele, Rīga, Tiesu namu aģentūra, p. 177.

¹⁶⁰ Official website of the European Union. Types of legislative acts. Retrieved from: https://european-union.europa.eu/institutions-law-budget/law/types-legislation_lv [viewed 11.02.2023 .].

¹⁶¹ Lenārtss, K. (*Lenaerts, K.*), Gutjers-Fonss, H. A. (*Gutiérrez-Fons, J. A.*). 2022. *Eiropas Savienības tiesas interpretācijas metodes*. Translated from French Scientific editing Ineta Ziemele, Rīga, Tiesu namu aģentūra, p. 121.

¹⁶² Ibid.

According to Article 19(1) of the TEU, the CJEU ensures that the rule of law is observed in the interpretation and application of the TEU and the TFEU.¹⁶³ The CJEU has established the basic principles of interpretation of EU law. For example, the CJEU has stated that all EU language versions are equally authentic and that part of the method of interpreting legislation is to compare the language versions. EU law uses its own terminology, which means that legal terms in EU law will not always have the same meaning as in national law. The context in which legal norms are interpreted and the development of EU law in an EU Member State are also crucial.¹⁶⁴ In *Amministrazione delle Finanze dello Stato v. Simmenthal SpA*, the CJEU has stated that the national courts of EU Member States are obliged to apply EU law, in particular when it comes to protection of rights it confers on individuals. The court of an EU Member State may not apply any national law that would be in conflict with EU law, regardless of whether it was adopted before or after EU law. The court of an EU Member State, which, according to its competence, must apply the provisions of EU law, is obliged to ensure the full effect of these norms, if necessary – on its own initiative, not to apply a conflicting provision of national law, even if it has been adopted later, and the court does not have to request or wait for such a provision to be abolished first by legislative or other constitutional means.¹⁶⁵

According to Article 267 of the TFEU, the CJEU has a competence to issue preliminary rulings on: the interpretation of the TEU and the TFEU and on

¹⁶³ Consolidated version of the Treaty on European Union. Article 1(3), Article 19(1). *Official Journal of the European Union*. OV C 326, 26.10.2012. Retrieved from: <https://eur-lex.europa.eu/legal-content/LV/TXT/PDF/?uri=OJ:C:2012:326:FULL&from=IT> [viewed 05.02.2023.].

¹⁶⁴ Ahlm, E. 2020. *EU Law and Religion*. Uppsala: Uppsala Universitet, p. 24.

¹⁶⁵ See, for example, the judgment of the Court of the European Union of March 9, 1978 in case no. C-106/77 *Amministrazione delle Finanze dello Stato v Simmenthal SA*. Clause 21. Retrieved from: <https://curia.europa.eu/juris/document/document.jsf?text=&docid=89693&pageIndex=0&doclang=LV&mode=lst&dir=&occ=first&part=1&cid=1233199> [viewed 11.05.2022.].

the validity and interpretation of legal acts of EU institutions or bodies. If such a matter is brought before a court of an EU Member State, that court may, if it considers that a decision by the CJEU on the matter is necessary for that court to give a judgment, request that the CJEU rules on the matter. If such a question is raised in a case before a court of an EU Member State against whose decisions there is no judicial remedy under national law, that court of the EU Member State must refer the matter to the CJEU.¹⁶⁶ According to the CJEU judgment in *Foto-Frost, Ammersbek [Ammersbek], v. Hauptzollamt Lübeck-Ost*, a court of any instance is obliged to refer to the CJEU if it considers it necessary to declare EU legislation invalid.¹⁶⁷

In order to find out whether an EU Member State is implementing EU law, the CJEU must assess the scope of EU law, connection with that law and national obligation in question.¹⁶⁸ Namely, “Article 51(1) of the CFREU confirms case law of the CJEU, insofar as the actions of EU Member States must comply with the requirements arising from the fundamental rights guaranteed in the EU legal system, because this case law is in accordance with Article 6, Clause 1 of the TEU and Article 51, Clause 2 of the CJEU, the purpose of which is to

¹⁶⁶ See, for example, the judgment of the Court of the European Union of March 9, 1978 in case no. C-106/77 *Amministrazione delle Finanze dello Stato v Simmenthal SA*. Clause 21. Retrieved from: <https://curia.europa.eu/juris/document/document.jsf?text=&docid=89693&pageIndex=0&doclang=LV&mode=lst&dir=&occ=first&part=1&cid=1233199> [viewed 11.05.2022].].

¹⁶⁷ The judgment of the European Union Court of October 22, 1987 in case no. 314/85. *Foto-Frost, Ammersbek [Ammersbek], v. Hauptzollamt Lübeck-Ost*. Clause 20. Retrieved from: <https://curia.europa.eu/juris/document/document.jsf?text=&docid=94312&pageIndex=0&doclang=LV&mode=lst&dir=&occ=first&part=1&cid=1221779> [viewed 05.02.2023.].

¹⁶⁸ Lenārtss, K. (*Lenaerts, K.*), Gutjeress-Fonss, H. A. (*Gutiérrez-Fons, J. A.*). 2022. *Eiropas Savienības tiesas interpretācijas metodes*. Translated from French, Scientific editing Ineta Ziemele, Rīga, Tiesu namu aģentūra, p. 120.

ensure compliance with the principle of competence in the interpretation of the CFREU”.¹⁶⁹

The CJEU and the courts of the EU Member States interpret the CFREU in accordance with the Explanations relating to the CFREU.¹⁷⁰ Explanations relating to the CFREU¹⁷¹ do not have any legal force, but are intended to explain the provisions of the CFREU.¹⁷² Explanations relating to the CFREU contain, *inter alia*, articles which have the same meaning and scope as particular articles of the ECPHRFF, and also contain articles of the CFREU which have the same meaning as articles within the scope of the ECPHRFF, but with a broader scope. According to the Explanations relating to the CFREU, the scope of the right to freedom of religion, except for the provisions governing the right to opt out based on religious belief, the CFREU is in line with the framework set out in the ECPHRFF. The right of opt-out based on belief is consistent with the constitutional traditions of the respective countries and development of the laws

¹⁶⁹ Lenārtss, K. (*Lenaerts, K.*), Gutjeress-Fonss, H. A. (*Gutiérrez-Fons, J. A.*). 2022. *Eiropas Savienības tiesas interpretācijas metodes*. Translated from French, Scientific editing Ineta Ziemele, Rīga, Tiesu namu aģentūra, p. 21.

¹⁷⁰ European Parliament, Council and Commission. 2016. Charter of Fundamental Rights of the European Union. Preamble. *Official Journal of the European Union*, 2016/C 202/02. Retrieved from: <https://eur-lex.europa.eu/legal-content/LV/TXT/PDF/?uri=CELEX:12016P/TXT&from=ES> [viewed 02.02.2023.].

¹⁷¹ European Parliament, Council and Commission. Explanations of the European Union Regarding the Charter of Fundamental Rights. See Explanation on Article 10 – Freedom of Thought, Belief and Faith. Explanation on Article 52 – Application and interpretation of rights and principles. Paragraph 1. *Official Journal of the European Union, OJ C 303, 14.12.2007, 17/35 p.* Retrieved from: [https://eur-lex.europa.eu/legal-content/LV/TXT/?uri=CELEX:32007X1214\(01\)](https://eur-lex.europa.eu/legal-content/LV/TXT/?uri=CELEX:32007X1214(01)) [viewed 02.02.2022.].

¹⁷² Lenārtss, K. (*Lenaerts, K.*), Gutjeress-Fonss, H. A. (*Gutiérrez-Fons, J. A.*). 2022. *Eiropas Savienības tiesas interpretācijas metodes*. Translated from French, Scientific editing Ineta Ziemele, Rīga, Tiesu namu aģentūra, p. 177.

of the respective countries in this matter,¹⁷³ and in accordance with Article 52(1) of the CFREU, any restrictions on the exercise of rights and freedoms recognised by the CFREU must be: (1) specified in legal acts; (2) compatible with the principle of proportionality.¹⁷⁴

Regarding the application of EU law in Latvia, the priority of application of EU law in relation to Latvian law should be taken into account, according to which, in case of conflict, EU law has primacy over Latvian law, including regulations of the CM and the binding regulations of local governments.¹⁷⁵ EU law has primacy over the law of Member States. Declaration 17 of the TEU concerning primacy of EU legislation states that, according to the established case law of the CJEU, the Treaties and the legislation adopted by the EU on the basis of the Treaties have a higher force than the legislation of the Member States, subject to the conditions established by the relevant case law.¹⁷⁶ At the national level, the fact that EU law has primacy over national regulatory

¹⁷³ European Parliament, Council and Commission. Explanations of the European Union Regarding the Charter of Fundamental Rights. See Explanation on Article 10 – Freedom of Thought, Belief and Faith. Explanation on Article 52 – Application and interpretation of rights and principles. Paragraph 1. *Official Journal of the European Union*, OJ C 303, 14.12.2007, 17/35 p. Retrieved from: [https://eur-lex.europa.eu/legal-content/LV/TXT/?uri=CELEX:32007X1214\(01\)](https://eur-lex.europa.eu/legal-content/LV/TXT/?uri=CELEX:32007X1214(01)) [viewed 02.02.2022.].

¹⁷⁴ Lenārtss, K. (*Lenaerts, K.*), Gutjeress-Fonss, H. A. (*Gutiérrez-Fons, J. A.*). 2022. *Eiropas Savienības tiesas interpretācijas metodes*. Translated from French, Scientific editing Ineta Ziemele, Rīga, Tiesu namu aģentūra, p. 132.

¹⁷⁵ Buka, A, Schewe, C., Strazdiņš, G. 2020. § 3 *Fundamentals of European Union law. IV. Supranationalism. // European Union law. Part I. Institucionālās tiesības. The second updated edition*. Scientific edition K.Gailiņšs, A.Buka, Rīga: Tiesu namu aģentūra, p. 116.

¹⁷⁶ Consolidated version of the Treaty on the Functioning of the European Union – Declarations annexed to the Treaty of Lisbon signed on 13 December 2007, adopted by the Intergovernmental – A. Declarations concerning provisions of the Treaties – 17. Declaration concerning primacy. *Official Journal of the European Union*. 115, 09/05/2008. p. 0344 – 0344. Retrieved from: <https://eur-lex.europa.eu/legal-content/LV/TXT/?uri=CELEX%3A12008E%2FAFI%2FDCL%2F17> [viewed 12.08.2023.].

enactments is justified by regulatory acts such as the Constitutional Court Law,¹⁷⁷ Law on Official Publications and Legal Information,¹⁷⁸ Administrative Procedure Law,¹⁷⁹ Civil Procedure Law,¹⁸⁰ and Criminal Procedure Law.¹⁸¹ However, at the same time, it should be taken into account that there is a conflict in national law, which refers to the case when the Constitutional Court recognises an international treaty as inconsistent with the Constitution and the treaty continues to apply until relevant changes are made, the implementation of which depends on other parties to the treaty. The Constitutional Court Law does not grant the Constitutional Court the right to declare an international treaty null and void, which may complicate the application of the provisions of the Constitution and the relevant international treaty in Latvia.¹⁸²

¹⁷⁷ Constitutional Court Law: Law of the Republic of Latvia. Sections 16, 17, 32. *Latvijas Vēstnesis*, 103, 14.06.1996.; *Latvijas Republikas Saeimas un Ministru Kabineta Ziņotājs*, 14, 25.07.1996. Adopted: 05.06.1996. Enters into force: 28.06.1996. Retrieved from: <https://likumi.lv/ta/id/63354-satversmes-tiesas-likums> [viewed 12.08.2023.].

¹⁷⁸ Law on Official Publications and Legal Information: Law of the Republic of Latvia. Section 9. *Latvijas Vēstnesis*, 96, 20.06.2012; Adopted: 31.05.2012. Enters into force: 01.07.2012. Retrieved from: <https://likumi.lv/ta/id/249322-oficialo-publikaciju-un-tiesiskas-informacijas-likums> [viewed 12.08.2023.].

¹⁷⁹ Administrative procedure law: Law of the Republic of Latvia. *Latvijas Vēstnesis*, 164, 14.11.2001.; *Latvijas Republikas Saeimas un Ministru Kabineta Ziņotājs*, 23, 13.12.2001. Adopted: 25.10.2001. Enters into force on 01.02.2004. Retrieved from: <https://likumi.lv/ta/id/55567-administrativa-procesa-likums> [viewed 12.08.2023.].

¹⁸⁰ Civil Procedure Law: Law of the Republic of Latvia. Section 5. *Latvijas Vēstnesis*, 326/330, 03.11.1998.; *Latvijas Republikas Saeimas un Ministru Kabineta Ziņotājs*, 23, 03.12.1998. Adopted: 14.10.1998. Enters into force: 01.03.1999. Retrieved from: <https://likumi.lv/ta/id/50500-civilprocesa-likums> [viewed 12.08.2023.].

¹⁸¹ Criminal Procedure Law: Law of the Republic of Latvia. Section 2. *Latvijas Vēstnesis*, 74, 11.05.2005.; *Latvijas Republikas Saeimas un Ministru Kabineta Ziņotājs*, 11, 09.06.2005. Adopted: 21.04.2005. Enters into force: 01.10.2005. Retrieved from: <https://likumi.lv/ta/id/107820-kriminalprocesa-likums> [viewed 12.08.2023.].

¹⁸² See details Buka, A., Schewe, C., Strazdiņš, G. 2020. § 3 *Fundamentals of European Union law. III. Operating principles of the European Union. // European Union law. Part I. Institucionālās tiesības. The second updated edition.* Scientific edition K.Gailiņš, A.Buka, Rīga: Tiesu namu aģentūra, pp.115–118.

Literature used in the study

The right of a patient and a physician to express their religious beliefs during medical treatment has not yet been studied in depth in Latvian legal science.

Latvian legal scholars have mostly conducted studies on the right to freedom of religion as part of the human rights included in the catalogue of fundamental rights. For example, *Dr. iur.* Professor Ringolds Balodis has extensively researched the right to freedom of religion, including the right to manifest one's religious beliefs, as part of the fundamental human rights catalogue in Latvia, who is the scientific editor of the monograph "Commentaries on the Constitution of the Republic of Latvia". Chapter VIII. Fundamental human rights¹⁸³ and author of the Commentary on Article 99 of the Constitution,¹⁸⁴ as well as author of the monograph "Baznīcu tiesības"¹⁸⁵. Likewise, the right to freedom of religion, including the right to express one's religious beliefs, by analysing historical origin, content, limits and legal aspects of application of these rights in the monographs "Cilvēktiesības pasaulē un Latvijā"¹⁸⁶ and "Cilvēktiesības pasaulē un Latvijā. Second Supplemental Edition", researched by Ph.D. (Cantab.) Ineta Ziemele and *Dr. iur.* Mārtiņš Mits.¹⁸⁷

¹⁸³ Team of authors. 2011. *Comments on the Constitution of the Republic of Latvia. Chapter VIII. Basic human rights.* Scientific editing Prof. R.Balodis Rīga: Latvijas Vēstnesis.

¹⁸⁴ Balodis, R. 2011. *Satversmes 99. panta komentāri. // Latvijas Republikas Satversmes komentāri. Chapter VIII. Basic human rights.* Team of authors, scientific edition R.Balodis. Rīga: Latvijas Vēstnesis, pp.319–337.

¹⁸⁵ Balodis, R. 2002. *Baznīcu tiesības.* Rīga: SIA "Apģāds Mantojums".

¹⁸⁶ See, Team of authors. 2000 *Cilvēktiesības pasaulē un Latvijā.* Scientific editing I. Ziemele. Rīga: SIA "Izglītības soļi".

¹⁸⁷ Mits, M. 2021. *3.1. Pilsoniskās un politiskās tiesības. 3.1.10. Freedom of religion. // Human rights in the world and in Latvia.* Second updated edition. The team of authors Ph.D. (Cantab.) scientific editing I. Ziemele. Rīga: Tiesu namu aģentūra.

In the literature and research works in the field of medical law, studying the rights and obligations of the patient and the physician and their interaction, it has been emphasised, among other things, that exercise of the right to express one's religious beliefs during medical treatment may affect other rights that must be respected in the medical treatment process. Among the sources of legal literature in the field of medical law, in the development of which the Author has also participated, should be mentioned the publication "Medical Law",¹⁸⁸ "Medical Law. Second Supplemental Edition".¹⁸⁹ and the "Commentary on the Law on the Rights of Patients".¹⁹⁰ The mentioned literature sources provide examples of interaction of the right of patients and physicians to express their religious beliefs in medical treatment with other human rights and fundamental rights, which are actualised in medical treatment as a result of the right to express religious beliefs. Among them, the patient's right to refuse medical treatment due to his religious beliefs and not allowing medical treatment against the patient's will in this regard,¹⁹¹ as well as not allowing prohibition of differential medical treatment towards a patient or a physician because of their religious beliefs, etc.¹⁹² Among others, Author in the publication "Commentary on the Law on the rights of patients" and "Medical Rights. Second Supplemental Edition" has studied the right of the patient and his relatives to receive mental care from the chaplain of a medical treatment institution, established in Section 3,

¹⁸⁸ Team of authors. 2015. *Medicīnas tiesības*. S. Scientific editing S. Ašņevica-Slokenberga Rīga: Tiesu namu aģentūra.

¹⁸⁹ Team of authors. 2022. *Medicīnas tiesības. The second updated edition*. Scientific editing S.Slokenberga and S.Olsena Rīga: Tiesu namu aģentūra.

¹⁹⁰ Team of authors. 2019. *Pacientu tiesību likuma komentāri*. LL.D. Scientific editing S. Slokenberga Rīga: Latvijas Vēstnesis.

¹⁹¹ See, for example, Slokenberga, S., Olsena, S. 2022. *Chapter 5. Pacientu tiesības. Medicīnas tiesības*. Textbook. S.Slokenberga and a team of authors, scientific editing S.Olsena. Rīga: Tiesu namu aģentūra, p. 189–190.

¹⁹² See, for example, Šaberte, L. 2019. *Article 3: General provisions. // Comments on the Law of Patients' Rights*. Team of authors LL.D. Scientific editing S. Slokenberga Rīga: Latvijas Vēstnesis, pp. 31–34.

Paragraph five of the LRP, and the procedure for implementation of these rights.¹⁹³ In the Thesis, the Author has studied in depth the right to receive mental care included in Section 3, Paragraph five of the LRP, considering that it is the only legal norm in the LRP that directly addresses the patients' right to express their religious beliefs. Among the sources of scientific literature in the field of medical law, the monograph developed by *Dr. iur.* Rihards Poļaks should be mentioned – “Tiesības uz nāvi. Eitanāzijas krimināltiesiskie, medicīniskie un ētiskie aspekti”,¹⁹⁴ in which he has reflected results of his interdisciplinary research, which prove that the patient's rights in the context of receiving certain health care services may be in conflict with the basic principles of the medical practitioner's professional activity, which may be related to the exercise of the right to freedom of religion. On the other hand, among the scientific studies in the field of medical law should be mentioned *Dr. iur.* Līga Mazure's Thesis “Pacienta griba un tās civiltiesiskā aizsardzība”, in which the author, among other things, focused on the influence of the patient's religious beliefs on the expression of the patient's will in medical treatment in a historical perspective.¹⁹⁵

In her Thesis, the Author has used, among other things, the sources of the above-mentioned national-level monographs and scientific literature, as well as insights from her own publications in the process of approbation of the Thesis. Other sources used by the Author in her Thesis are mainly scientific monographs and publications of foreign authors who have contributed to the development of the right to freedom of religion, including the right to express one's religious

¹⁹³ Šaberte, L. 2019. *Article 3: General provisions. // Comments on the Law of Patients' Rights*. Team of authors LL.D. Scientific editing S. Slokenberga Riga: Latvijas Vēstnesis, pp. 31–34.

¹⁹⁴ Poļaks, R. 2016. *Tiesības uz nāvi. Eitanāzijas krimināltiesiskie, medicīniskie un ētiskie aspekti*. Rīga: Tiesu namu aģentūra.

¹⁹⁵ Mazure, L. 2011. *Doctoral thesis. Pacienta griba un tās civiltiesiskā aizsardzība*. Riga: Faculty of Law of the University of Latvia. Retrieved from: https://dspace.lu.lv/dspace/bitstream/handle/7/5100/20560-Liga_Mazure_2011.pdf?sequence=1&isAllowed=y [viewed 11.05.2022.].

beliefs, and who have studied interaction of these rights with the rights related to the patient and the physician in medical treatment.

Selection of sources of scientific literature, legal acts, legislation and legal practice analysed in the Thesis was made using resources and data available in Latvian libraries and archives of the Saeima, the library of the Faculty of Law of Uppsala University in the Kingdom of Sweden, and the library of the Venice institution “The Global Campus of Human Rights” in Italy, as well as publicly available databases of legislative and legal practice sources and rulings.

In her Thesis, the Author has researched CE and EU law sources, national regulations and legislative documents available in the Saeima archive. Also, in her Thesis, the Author has researched ECHR rulings, which are available in the ECHR case law database “HUDOC”¹⁹⁶ and CJEU case law rulings, which are available in the CJEU case law database “InfoCuria”.¹⁹⁷ In her Thesis, the Author has also studied the rulings of national courts, which are available in the case law database of the Constitutional Court,¹⁹⁸ in the Supreme Court Senate case law archive,¹⁹⁹ as well as on the e-services website *manas.tiesas.lv* of Latvian court portal.²⁰⁰

With the aim of developing precise proposals for the improvement of national regulatory framework, the Author has made a request for information to the Department of Terminology and Legal Translation of the State Language

¹⁹⁶ “HUDOC” case law database of the European Court of Human Rights. Retrieved from: [https://hudoc.echr.coe.int/eng#{%22documentcollectionid%22:\[%22GRANDCHAMBER%22,%22CHAMBER%22\]}](https://hudoc.echr.coe.int/eng#{%22documentcollectionid%22:[%22GRANDCHAMBER%22,%22CHAMBER%22]}) [viewed 11/05/2022.].

¹⁹⁷ “InfoCuria” database of the case law of the Court of the European Union. Retrieved from: <https://curia.europa.eu/juris/recherche.jsf?language=lv#> [viewed 11.05.2022.].

¹⁹⁸ Constitutional Court of the Republic of Latvia. Case law database of the Constitutional Court. Retrieved from: <https://www.satv.tiesas.gov.lv/cases/> [viewed 11.05.2022.].

¹⁹⁹ Senate of the Supreme Court of the Republic of Latvia. Archive of case law rulings. Retrieved from: <https://www.at.gov.lv/lv/tiesu-prakse/judikaturas-nolemumu-arhivs> [viewed 11.05.2022.].

²⁰⁰ Latvian court portal, e-services website. Retrieved from: <https://manas.tiesas.lv/eTiesasMvc/lv/nolemumi> [viewed 11.05.2022.].

Centre, which, based on the presentation of the problematic issues indicated by the Author, has confirmed that the Author's proposed amendments to Section 3, Paragraph five of the LRP are correct from the point of view of terminology, (see Annex 1 of the Thesis "Correspondence with the State Language Centre"). During the development of the Thesis, the Author has also conducted a survey in inpatient medical institutions in Latvia in order to find out whether and in what manner the right of patients and relatives of patients to receive mental care established in Section 3, Paragraph five of the LRP is implemented there, and in what manner religious activities are implemented in inpatient medical institutions (see the Annex 2 of the Thesis "Procedure for the implementation of the right of the patient, the patient's relatives and medical personnel to receive mental care and performance of religious activities in inpatient medical institutions in the Republic of Latvia").

The Author has brought up certain problematic issues identified in the Thesis by leading the working group established by the Order of the Minister of Health No. 15 of January 31, 2022 "On the working group for improvement of observance of patients' rights" and preparing the report of May 9, 2022 "On the proposals put forward by the working group for improvement of observance of patients' rights" No. 1.3.-5./4025, which is available in the archives of the Health Inspectorate and the Ministry of Health (see Chapter "Publications and reports on the topic of the Thesis").²⁰¹

²⁰¹ A report of May 9, 2022, titled "On the proposals put forward by the working group for improvement of observance of patients' rights" No. 1.3.-5./4025, presented by the working group created in accordance with the order No. 15 "On the working group for improvement of observance of patients' rights" of January 31, 2022, issued by the Minister of Health of the Republic of Latvia. Available in the archives of the Ministry of Health and the Health Inspectorate.

In her Thesis, the Author has generally analysed literature and legal sources that became available until December 13, 2023, or until the submission of the to the RSU doctoral department.

The Thesis consists of an introduction, four chapters and a conclusion. Each chapter of the Thesis starts with an introductory section, outlining the main issues addressed in the chapter, followed by a discussion. At the end of each chapter, intermediate conclusions are drawn from the content of the chapter, which form the basis for the conclusions and proposals at the end of the Thesis.

The introduction explains the relevance of the Thesis, research boundaries and research problems, objectives and tasks, research object and subject, research questions, research methods, analytical approach to research, and information on the use of terminology and sources.

In the first chapter of the Thesis, the Author examines what constitutional protection should be ensured regarding the right of a capable adult patient and a certified physician, who is also the attending physician, to express their religious beliefs, considering Latvia's international obligations as enshrined in the legal sources of the Council of Europe and European Union.

In the second chapter of the Thesis, the Author examines what legal protection is provided to a capable adult patient regarding the right to express his or her religious beliefs in medical treatment, identifies problems in the national legal framework and makes proposals for its improvement.

In the third chapter of the Thesis, the Author examines what legal protection is provided to a certified physician, who is also the attending physician, the right to express his or her religious beliefs in medical treatment, identifies problems in the national legal framework and makes proposals for its improvement.

In the fourth chapter of the Thesis, the Author examines how the rights of a capable adult patient and certified physician, who is also an attending

physician, to express their religious beliefs, are balanced. Considering the constitutional protections provided and which need to be provided, the author analyses whether the balancing of the right of a capable adult patient and certified physician, who is also an attending physician, to express their religious beliefs, in the context of the individual's right to self-determination and the right to the highest attainable standard of health, is adequate. The Author also makes proposals in the fourth chapter of the Thesis for the improvement of the national legal framework.

At the end of the Thesis, conclusions have been drawn and proposals put forward for the improvement of the national legal framework regarding the right of capable adult patient's and the certified physician's, which is also attending physician, right to express freedom of religion in medical treatment.

The Thesis is accompanied by information about publications and reports on the topic of the Thesis, information about the gratitude expressed, and a list of used literature sources and two annexes: annex 1 "Correspondence with the Department of Terminology and Translation of Legal Acts of the Latvian State Language Centre"; Annex 2 "The right of the patient, the patient's relatives and medical practitioners to receive mental care and right to perform religious activities in the in-patient medical treatment institutions in the Republic of Latvia".

1 The main research results in Chapter 1 of the Thesis “Protection of the right of patients and physicians to express their religious beliefs from a human rights perspective and interaction with other rights in medical treatment”

Constitutional protection that Latvia must provide for the right of patients and physicians to express their religious beliefs must derive from the international obligations that Latvia has assumed with Article 89 of the Constitution.²⁰² The CE's right to freedom of religion is protected by Article 9 of the ECPHRFF.²⁰³ Within the EU, the right to freedom of religion is protected by Article 10 of the CFREU, as well as by the general principles of EU law, which are one of the sources of EU fundamental rights, and by the common constitutional traditions of the EU Member States, which are the basis of the principles of EU general law.²⁰⁴ According to these legal sources, the right to freedom of religion includes internal expression (*forum internum*), which is an absolute right and must not be restricted, and external expression (*forum externum*), or the expression of religious beliefs, which may affect the legal interests of other persons and may be restricted.²⁰⁵

²⁰² Constitution of the Republic of Latvia: Law of the Republic of Latvia. Section 89. *Latvijas Vēstnesis*, 43, 01.07.1993; *Latvijas Republikas Saeimas un Ministru Kabineta Ziņotājs*, 6, 31.03.1994; *Valdības Vēstnesis*, 141, 30.06.1922; *Diena*, 81, 29.04.1993. Adopted: 15.02.1922. Enters into force: 07.11.1922. Retrieved from: <https://likumi.lv/ta/id/57980-latvijas-republikas-satversme> [viewed 24.11.2023.].

²⁰³ The Council of Europe. European Convention for the Protection of Human Rights and Fundamental Freedoms. Article 9. *Latvijas Vēstnesis*, 143/144, 13.06.1997. Retrieved from: <https://likumi.lv/ta/lv/starttautiskie-ligumi/id/649> [viewed 24.11.2023.].

²⁰⁴ Treaty on European Union. Official Journal of the European Union. OJ C 326, 26.10.2012. Clause 3 of Article 6. Retrieved from: <https://eur-lex.europa.eu/legal-content/LV/TXT/PDF/?uri=OJ:C:2012:326:FULL&from=IT> [viewed 12.08.2023.].

²⁰⁵ See, for example, Vermeulen, B., Roosmalen, M. 2018. *Chapter 13. Freedom of thought, conscience, and religion. Article 9. // Theory and practice of the European Convention on Human Rights*. Fifth edition. Djik, P., Hoof, F., Rijn, A., Zwaak, L eds. Cambridge: Intersentia, pp.738–746.

The right to freedom of religion is protected at the constitutional level by Article 99 of the Constitution.²⁰⁶ Latvia has a constitutional obligation arising from its international obligations to refrain and with effective mechanisms of rights protection to prevent other persons and institutions from interfering in the internal expression of patient's or physician's right to freedom of religion. Interference with the internal expression of the right to freedom of religion may result in a violation of the prohibition of proselytising, and in a violation of other rights that must be protected in medical treatment. For example, the patient's right to self-determination in medical treatment is violated if the physician intervenes and asks the patient to renounce his religious beliefs in favour of medical treatment. Likewise, in the case of a violation of prohibition of discrimination, if a physician is asked to renounce his religious beliefs in order to work in a medical institution where membership of a certain religious organisation is not required for the performance of his duties.

Expression of the religious beliefs of the patient and the physician may include, for example, the wearing of religious clothing and symbols, and the observance of a religion-based lifestyle, as well as the exercise of the right to refuse based on religious beliefs, which may have an impact on the legal interests of others in medical treatment. One of the external manifestations of the right to freedom of religion is the right of refusal based on religious beliefs, which can apply to both the patient and the physician. A patient can exercise the right of refusal based on religious beliefs, for example by refusing medical treatment in whole or in part. The patient's right to refuse medical treatment must be respected even if the treatment may be dangerous to patient's health and life. A physician can exercise the right to refuse

²⁰⁶ Constitution of the Republic of Latvia: Law of the Republic of Latvia. Section 99. *Latvijas Vēstnesis*, 43, 01.07.1993; *Latvijas Republikas Saeimas un Ministru Kabineta Ziņotājs*, 6, 31.03.1994; *Valdības Vēstnesis*, 141, 30.06.1922; *Diena*, 81, 29.04.1993. Adopted: 15.02.1922. Enters into force: 07.11.1922. Retrieved from: <https://likumi.lv/ta/id/57980-latvijas-republikas-satversme> [viewed 24.11.2023.].

medical treatment based on religious beliefs of a patient only if the physician's right to refuse based on religious beliefs is provided for in the national legislation. If a physician refuses to treat a patient because of his religious beliefs, but the national legislation does not regulate the right of refusal and procedures according to which a physician may refuse to treat a patient, the imposition of religious beliefs on the patient can be identified. Expression of religious beliefs of the patient and the physician may interfere with other rights that must be protected in medical treatment, for example, with the right to the inviolability of private and family life, the prohibition of discrimination, the right to information, etc.

Latvia is not obliged, but it is also not forbidden to regulate the right to express religious beliefs in medical treatment. However, Latvia has an obligation to balance the right to express religious beliefs, if this right is exercised, with other rights that Latvia has to protect, both in relation to the patient's right to legal interests in medical treatment, and in relation to the physician's rights and legal interests in the field of employment in a medical institution. The aforementioned is also applicable to the patient's rights in the context of cross-border health care and to physicians who carry out temporary professional activities in Latvia with documents certifying education and professional qualifications obtained in an EU Member State or a Member State of the European Free Trade Association.

When protecting the right to freedom of religion, Latvia is obliged to observe the principle of precaution and to take measures to identify and prevent adverse effects of the patient's or physician's expression of religious beliefs in a timely manner, without waiting until the damage has been done, and to ensure a fair balance between various competing interests.

One of the most important measures that, in the Author's opinion, Latvia can implement in general is to conduct a timely and thorough analysis of the judgments of the ECHR and the CJEU, in order to improve national legislation in a timely manner and avoid violations in the field of the right to freedom of religion.

2 The main research results in Chapter 2 of the Thesis “The patient’s right to express his religious beliefs during medical treatment”

In the national legislation, it is possible to distinguish general and special protection of the patient’s right to express his religious beliefs during medical treatment.

The patient’s rights included in the LRP, such as the right to choose a physician and medical treatment facility, the right to information, the right to the prohibition of differential medical treatment, the right to quality medical treatment appropriate to one’s state of health, the right to self-determination in one’s own medical treatment and the patient’s obligation to cooperate in one’s own medical treatment, include the general right of the patient to express his protection of religious beliefs in medical treatment.²⁰⁷

The Author, within the framework of the second chapter of her Thesis, has found out that the protection of the patient’s right to express his religious beliefs in medical treatment contained in the national legislation, in some cases, is not ensured effectively enough. As a result, Latvia runs the risk of failing to fulfil its international obligations in respect of the principle of legal effectiveness, so that it can be recognised that the protection of the patient’s right to express religious beliefs is the right to freedom of religion guaranteed in the context of Article 99 of the Constitution²⁰⁸ is real and effective and not illusory. In order to

²⁰⁷ Law on the Rights of Patients: Law of the Republic of Latvia. Sections 3, 4, 5, 6, 8. *Latvijas Vēstnesis*, 205, 30.12.2009. Adopted: 17.12.2009. Enters into force: 01.03.2010. Retrieved from: <https://likumi.lv/ta/id/203008-pacientu-tiesibu-likums> [viewed 24.11.2023.].

²⁰⁸ Constitution of the Republic of Latvia: Law of the Republic of Latvia. *Latvijas Vēstnesis*, 43, 01.07.1993; *Latvijas Republikas Saeimas un Ministru Kabineta Ziņotājs*, 6, 31.03.1994; *Valdības Vēstnesis*, 141, 30.06.1922; *Diena*, 81, 29.04.1993. Adopted: 15.02.1922. Enters into force: 07.11.1922. Retrieved from: <https://likumi.lv/ta/id/57980-latvijas-republikas-satversme> [viewed 24.11.2023.].

strengthen fulfilment of Latvia's international obligations in the field of protection of the right to freedom of religion and to achieve a balance between the patient's right to express his religious beliefs during medical treatment and other rights that must be respected during the patient's medical treatment, the Author offers proposals within the framework of the chapter, which especially affect protection of the patient's right to information and the right to self-determination issues of interaction with the right to express religious beliefs in medical treatment. In the Author's opinion, the order in which the patient can express his will in advance regarding the consideration of decisions based on his religious beliefs in medical treatment should be especially strengthened. As part of this, both the institution of authorisation and the patient's obligation to provide information to the attending physician should be strengthened, as well as the patient's right to confirm his decisions based on his religious beliefs in the unified electronic information system of the health sector, and the order in which the patient's will is taken into account in medical treatment. Likewise, understanding of importance of patient's religious values and professional communication in working with patients who express their religious beliefs during medical treatment should be improved among medical personnel. Considering that in the field of protection of the right to express religious beliefs, there is an extensive case law of the ECHR and CJEU in cases against other countries, the legislator should evaluate it and improve the legal framework. In order not to create potential risks of human rights violations and to raise the standards of human rights protection, the regulatory framework in the field of the right to freedom of religion should be strengthened, both at the level of existing external regulatory enactments and at the level of internal regulatory enactments of medical institutions. Strengthening the aforementioned national regulatory framework would prevent the risk of unjustified interference with the patient's

right to freedom of religion, including potential violations of prohibition of proselytism.

The specific right of the patient to express his religious beliefs is contained in Section 3, Paragraph five of the LRP, which provides that a patient and his or her relatives have the right to receive mental care which, in accordance with the regulatory enactments regulating activity of chaplain services and religious organisations, shall be provided by the chaplain of a medical treatment institution.²⁰⁹ The regulatory framework for the procedure of implementation of the right to receive mental care contained in Section 3, Paragraph five of the LRP is incomplete and legislator has not developed an appropriate regulatory framework for the protection of the right to receive mental care contained in Section 3, Paragraph five of the LRP. Normative regulation regarding medical institutions is unambiguous only to the extent that they must be able to organise a working regime in order to be able to ensure patients and patients' relatives the same right to receive mental care. The legislator has left too much leeway for the medical institution to ensure the order of professional health care chaplain. Among them, in the regulatory acts, the legal status of the professional health care chaplain is regulated inconsistently. Within the mentioned framework, in most hospitals in Latvia, the right of patients to receive mental care, established in Section 3, Paragraph five of the LRP, is not implemented.

Likewise, the situation that, according to the national regulatory framework, several religious organisations are prevented from nominating a chaplain for the position, is risky from the point of view of human rights in matters affecting proportionality, legality and equality, and the state's obligation to observe neutrality and objectivity in relation to religious groups. Evaluating

²⁰⁹ Law on the Rights of Patients: Law of the Republic of Latvia. *Latvijas Vēstnesis*, 205, 30.12.2009. Adopted: 17.12.2009. Enters into force: 01.03.2010. Retrieved from: <https://likumi.lv/ta/id/203008-pacientu-tiesibu-likums> [viewed 24.11.2023.].

this issue in the light of human rights, it should be noted that it is not objective to establish such a formal ban without at the same time defining specific criteria which a religious organisation registered under the law must meet in order to be able to promote for the position of chaplain. If a religious organisation is registered and recognised as meeting the requirements of regulatory acts, there should not be prima facie doubts about the correctness of activities of its representatives. In addition, Latvia, which is a member of the European Parliament and a High Contracting Party to the ECPHRFF, is obliged to check whether persons representing a particular religious community do not carry out activities that harm public safety. Within this framework, in the opinion of the Author, it is not necessary to unreasonably limit the right of religious unions to nominate professional health care chaplains for the position, but to implement measures controlling activities of medical support persons in accordance with the current regulatory enactments. In order to improve the mentioned situation, within the framework of the chapter, the Author offers potential improvement opportunities for the national regulatory framework.

The LRO protects the right to perform religious activities, including in hospitals and most inpatient treatment facilities where religious activities are allowed, which is supported by the results of the Author's empirical research.

The right to restrict expression of religious belief is included in Section 14, Paragraph six of the LRO, which stipulates that activities of religious organisations and believers are limited only in cases where the Constitution and laws are violated.²¹⁰ The Author, within the framework of the second chapter of her Thesis, has found that Latvia, in the context of Section 14, Paragraph six of

²¹⁰ Law on religious organisations: Law of the Republic of Latvia. Section 14, part six. *Latvijas Vēstnesis*, 146, 26.09.1995; *Latvijas Republikas Saeimas un Ministru Kabineta Ziņotājs*, 21, 02.11.1995. Adopted: 07.09.1995. Enters into force: 10.10.1995. Retrieved from: <https://likumi.lv/ta/id/36874-religisko-organizatizu-likums> [viewed 24.11.2023.].

the LRO, risks not to fulfil precautionary principle arising from its international obligations. In the opinion of the Author, Section 14, Paragraph six of the LRO in its current version should be applied with caution. Its grammatical application may give prima facie impression that offense should be already identifiable in nature in order for the religious activity to be restricted.

Referring to the precautionary principle, which must be followed by Latvia, it should be noted that it is not permissible to wait until the patient has been harmed due to religious activity. In that case, it could be concluded that the legislator did not take sufficient measures to be able to find a balance between the right to express religious beliefs and protection of other rights in medical treatment. In order to improve the mentioned situation, the Author, within the chapter, proposes to improve legal basis for the restriction of religious activity included in Section 14, Paragraph six of the LRO, in order to be able to predict risks in time and prevent potential threats, without waiting until damage to other persons in the medical institution has already been done.

3 The main research results in Chapter 3 of the Thesis “The patient’s right to express his religious beliefs during medical treatment”

National legislation set high legal requirements for the professional competence of a physician. The physician is bound by both the rights and obligations arising from the MTL and from the LRP, and by the regulatory enactments that regulate extent of physician’s theoretical and practical knowledge to be acquired in the medical education program, as well as the physician’s professional ethics documents.

The strict legal requirements set for the medical profession contained in the national regulatory enactments are basically aimed at protecting the patient’s right to receive quality and qualified health care services within the scope of his medical treatment. According to the national regulatory enactments, a physician has professional freedom. Within the framework of professional freedom, a physician has, among other things, the right to refuse the patient’s medical treatment. Among them, a physician may refuse to perform an abortion due to his religious beliefs. However, it should be taken into account that the physician’s professional freedom must be aimed at protecting the patient’s rights and legitimate interests. Within the framework of professional freedom, the physician may not try to aim that the patient conducts medical treatment in accordance with the physician’s religious values and convictions, or that the patient changes his religious convictions. Physician must respect the patient’s religious values and choice in medical treatment, including respect for the patient’s autonomy and integrity, and perform medical treatment in accordance with regulatory enactments. Therefore, regardless of the fact that a physician has professional freedom, he must not use it to satisfy his religious values in medical treatment, guided by his beliefs and system of values.

The Author, within the third chapter of her Thesis, has found out that fulfilment of Latvia's positive obligations to effectively protect the patient's right to express his religious beliefs while physician is performing his professional duties is unsuccessful, due to the fact that a sufficiently effective legal regulation has not been developed. Namely, knowledge and skills contained in the national legislation, which physician must acquire in the field of patient rights and in the field of ethics and deontology, are not sufficient for the physician to be able to act in cases where there are legal conflict situations in medical treatment, which are related to situations when a patient or a physician expresses his religious beliefs in medical treatment. As a result, there is a risk that conflict situations of a legal nature may be unsuccessfully resolved, which may lead to violation of fundamental rights. Thus, it is necessary to improve national legislation and determine that physician has knowledge and skills in medical law and theoretical knowledge and practical skills when dealing with a patient who expresses his religious beliefs during medical treatment and when the physician has the right to refuse to treat a patient because of his religious beliefs. Also, regulatory acts must stipulate an obligation for physicians to regularly improve their professional qualifications and educate themselves in the field of patient rights and professional ethics and deontology. The Author, within the third chapter of her Thesis, offers a solution for improvement of legal framework to ensure that persons who learn profession of a physician develop knowledge and skills in matters related to communication during medical treatment with patients and relatives of patients who express religious beliefs in medical treatment, which affect handling of situations in cases, when a physician has the right to refuse to treat a patient due to his religious beliefs, and which concerns cooperation with the chaplain of professional health care to resolve conflict situations of a legal nature. In the opinion of the Author, improvement of regulatory enactments, by including in the physician's medical education program acquisition of

appropriate knowledge, skills and competences for communication with patients with specific religious beliefs and for cooperation between the physician and the patient with the professional health care chaplain, will contribute to implementation of culturally competent and human rights-based health care.

The physician's right to express religious beliefs in medical treatment includes exercise of the right to refuse medical treatment. In Latvia, a physician can exercise the right to express his religious beliefs, for example by refusing to terminate a pregnancy if there are no medical reasons for it. As part of the third chapter of her Thesis, the Author has found out that in order to comply with international obligations in the field of human rights, it is necessary to find a balance between the right of patients and physicians to express their religious beliefs. As part of this, Latvia, as a Member State of the CE, which is a High Contracting Party to the ECPHRFF, has the obligation to provide the patient with an effective rights protection mechanism, according to which he can access health care services elsewhere in a timely manner. This means that the physician's right to refuse to terminate pregnancy if there are no medical reasons for it should not be only declarative, practical implementation of this right must be ensured. Otherwise, Latvia runs the risk of failing to comply with its international obligations to protect the right to freedom of religion and other rights interrelated with the right to freedom of religion in medical treatment. Among them, as a result of exercising the physician's right of refusal based on his religious beliefs, the patient's right to health protection may be violated.

The right to receive the support of a chaplain during medical treatment in inpatient medical institutions contained in paragraph 19 of the Regulations on chaplain service, which concerns a physician, cannot be considered effective

enough to protect the physician's right to express his religious beliefs.²¹¹ Basically, it is not possible for physicians in inpatient medical institutions to receive support of a professional healthcare chaplain. The support of a professional healthcare chaplain in a physician's work can be equally important, both for the physician to receive the spiritual and moral support he needs, and in order for the chaplain to provide support in his work with patients. Within the framework of the chapter, the Author offers a solution for the improvement of the legal framework, so that the right of the physician to receive mental care is regulated in the regulatory enactments, as well as for measures to be taken in the medical institutions, which would promote cooperation of the physician and a professional health care chaplain in medical treatment.

National legislation neither regulates nor prohibits the right of a physician to perform religious activities in a medical institution. Medical institution, as the physician's employer, can determine communication standards for patient-physician contact, including involvement of a professional healthcare chaplain, as well as determine the procedure for the physician's actions if the patient refuses medical treatment, and the procedure for the physician's right to perform religious activity and to wear religious clothing and symbols in a medical institution. The physician must agree with the medical institution as his employer about the right to perform religious activities in the medical institution and the procedure of their implementation, e.g. about wearing religious clothing and symbols in the medical institution, about the possibility of praying, about observing different working hours, and the procedure of implementation of these rights. Medical institution is responsible for determination of limits of protection of the physician's right to perform religious activities, so that the interests of

²¹¹ Regulations of the Cabinet of Ministers of February 15, 2011 No. 134 "Regulations on the service of chaplains". *Latvijas Vēstnesis*, 32, 25.02.2011. Adopted: 15.02.2011. Enters into force: 26.02.2011. Retrieved from: <https://likumi.lv/ta/id/226332-noteikumi-par-kapelanu-dienestu> [viewed 24.11.2023.].

other persons in the medical institution are not violated. In the third chapter, the Author has concluded that the means selected by the medical institution, as the physician's employer, and their proportionality, are essential in determining the limits of the protection of the right to perform religious activities. When assessing the above issue in the light of human rights, it should always be considered whether the benefit to patients or other persons in the medical institution will be greater than the damage caused to the rights of medical person by imposing a restriction on the physician's expression of religious beliefs. If the means selected to restrict the expression of the physician's religious beliefs are not proportionate, then a violation of the prohibition of differential medical treatment can be identified against the physician, which is marked by the findings expressed in the practice of both the ECHR and the CJEU, especially in cases concerning wearing of religious clothing and symbols.

4 The main research results in Chapter 4 of the Thesis “Balancing the right of the patient and the doctor to express their religious beliefs and the challenges of such balancing”

Latvia has an obligation to balance the right to express religious beliefs with other rights, which Latvia must protect in relation to the patient’s right to legal interests in medical treatment, as well as in relation to the physician’s rights and legal interests in the field of employment in a medical institution. Neither Latvia nor its society may limit the right of patients and physicians to express their religious beliefs without legal basis contained in the procedure specified in the regulatory acts. However, at the same time, neither the patient nor the physician, expressing their religious beliefs, should harm either Latvia or its society.

Protection of the patient’s and the physician’s right to express religious beliefs must be such that other rights that must be protected in medical treatment are not violated. The balance between the right of patients and physicians to express religious belief and other rights that must be protected in medical treatment can be effectively ensured by national regulatory enactments, regulating procedure for expressing religious belief and its restriction in both ordinary and extraordinary procedures.

In order for the restriction of the patient’s or physician’s right to express religious beliefs to be justified, it is necessary to assess whether the restriction is established by law or on its basis, whether the restriction has a legitimate purpose and whether it is necessary in a democratic society, that is, whether the restriction is socially necessary, whether it meets and is proportionate to this need. In all cases, when limiting the right of a patient or physician to express his or her religious beliefs, it must be assessed whether the goal cannot be achieved by less restrictive alternative means, and whether the benefit to be gained by patients or

other persons in the medical institution will be greater than the restriction imposed on the patient or physician.

The Author, within the framework of the fourth chapter of her Thesis, has established that in some cases balancing the rights of the patient and the physician in the context of individual's right to self-determination and the right to achieve the highest attainable standard of health, considering constitutional protection provided and to be provided, is not considered to be adequate. As a result, obligation to balance the right to express religious beliefs with other rights, which Latvia must protect, is not effectively fulfilled in this regard. The national regulatory framework, which refers to the right of the patient and physician to express their religious beliefs in medical treatment in the context of the right to self-determination and the right to achieve the highest attainable standard of health, should be evaluated critically. Although international obligations in the field of human rights are clear, both regarding protection of the right to freedom of religion, as well as the right to self-determination and protection of the patient's dignity, and regarding protection of the right to achieve the highest attainable standard of health, national regulatory framework includes significant shortcomings. As the Constitutional Court has stated, Legislator is obliged to regularly consider whether the relevant regulatory framework is still effective, appropriate and necessary and whether it could be improved in some way.²¹² Despite this, neither the insights expressed in the ECHR's practice nor the CE's guidelines, which the CE Member States, which are High Contracting Parties to the ECPHRFF, have to follow in cases where the right of refusal based on religious belief is implemented, have contributed to the elimination of shortcomings of the national regulatory framework.

²¹² Judgment of the Constitutional Court of the Republic of Latvia of June 6, 2012 in case No. 2011-21-01. paragraph 9. Retrieved from: https://www.satv.tiesa.gov.lv/web/viewer.html?file=/wp-content/uploads/2016/02/2011-21-01_Spriedums.pdf#search= [viewed 24.11.2023.].

Legislator has not developed national regulatory framework that allows the physician to make sure whether a patient has freely expressed the decision to refuse medical treatment. Within this framework, physician has no rights protection mechanisms to prevent situations where the patient's decision to refuse medical treatment is influenced by persons whom the patient has invited to provide support in medical treatment. Absence of procedure in the national regulatory enactments, how a physician should act in such situations, can create potential risk of violation of the fundamental rights of the patient. Especially in situations where there is doubt that the patient's decision, such as the decision to refuse a blood transfusion, has been made freely and not influenced by representatives of a religious organisation, and the physician must act urgently to save the patient's life or prevent incomparably greater harm to his health. Further in-depth research should be conducted on the strengthening of the patient's self-determination institute in medical treatment, on the basis of which improvement of national legislation should be carried out.

In the opinion of the Author, educational measures should also be implemented for medical personnel and medical institutions regarding the patient's right to self-determination in medical treatment. It is unacceptable that the patient's religious beliefs prevail over the physician's duty to ensure the patient's quality medical treatment, as it was observed when Covid-19 vaccination was carried out in Latvia. The patient has the right to refuse medical treatment due to his religious beliefs, but the patient's religious beliefs must not contribute to the fact that the patient is provided with a health care service that does not comply with regulatory enactments. Among them, disordered internal regulatory acts of medical institutions should not contribute to this.

The patient's right to achieve the highest attainable standard of health should be critically assessed, in situations where national legislation do not regulate procedure by which the patient can timely access healthcare services

elsewhere, if the physician's religious beliefs have contributed to the fact that he is not allowed to provide healthcare services, or when the physician has refused to treat a patient because of his religious beliefs. The Author is particularly critical of the shortcomings of the national regulatory framework, which affect the physician's right to refuse to perform pregnancy termination and the pregnant woman's right to receive pregnancy termination services elsewhere. Despite the findings expressed in ECHR practice and instructions of the CE, the legislator has not developed a national regulatory framework that would allow pregnant women who wish to have a pregnancy termination to receive timely information that termination of pregnancy will not be possible at a particular physician. Likewise, the procedure by which a pregnant woman is referred to another physician for pregnancy termination services if she has received a refusal to perform a pregnancy termination is not regulated in the national legislation. National laws and regulations in this area must be revised and improved, because otherwise there is a potential risk of violation of fundamental rights.

Conclusions and proposals put forward in the Thesis

The aim of the Author's Thesis "to study and analyse legal framework identifying current legal problems when a capable adult patient and certified physician, who is also the attending physician, has a right to express freedom of religion and its interaction with other rights in the field of health care, as well as to identify problems in the national legal framework and submit proposals for improving the national legal acts" has been achieved and the set of tasks was completed.

In her Thesis, the Author has put forward the following conclusions and proposals.

1. Protection of the right of patients and physicians to freedom of religion derives from the international obligations that Latvia has assumed under Article 89 of the Constitution. The CE's right to freedom of religion is protected by Article 9 of the ECHR. Within the EU, the right to freedom of religion is protected by Article 10 of the CFREU, as well as by the general principles of EU law, which are one of the sources of EU fundamental rights, and by the common constitutional traditions of the EU Member States, which are the basis of principles of EU general law. According to these sources of law, the right to freedom of religion includes internal expression (*forum internum*), which is an absolute right and must not be restricted, and external expression (*forum externum*), or expression of religious beliefs, which may have an impact on the legal interests of other persons and which may be restricted.
2. The right to freedom of religion is protected at the constitutional level by Article 99 of the Constitution. Latvia has a constitutional obligation arising from its international obligations to refrain and with effective mechanisms of rights protection to prevent other persons and institutions from interfering in the internal expression of the patient's or physician's right to freedom of

religion. Interference with the internal expression of the right to freedom of religion may result in the violation of prohibition of proselytising, and in violation of other rights that must be protected in medical treatment. For example, the patient's right to self-determination in medical treatment is violated if the physician intervenes and asks the patient to renounce his religious beliefs in favour of medical treatment. Similarly, it is a violation of the prohibition of discrimination, if a physician is asked to renounce his religious beliefs in order to work in a medical institution where membership of a certain religious organisation is not required for the performance of his duties.

3. Expression of the religious beliefs of the patient and the physician may, for example, take the form of the wearing of religious clothing and symbols, and the observance of a religious lifestyle, as well as the exercise of the right to refuse based on religious beliefs, which may have an impact on the legal interests of others in medical treatment. One of the forms of external expression of the right to freedom of religion is the right to refuse based on religious beliefs, which can apply to both the patient and the physician. A patient can exercise the right of refusal based on religious beliefs, for example by refusing medical treatment in whole or in part. The patient's right to refuse medical treatment must be respected, even in cases where it may be dangerous to his health and life. A physician can exercise the right to refuse medical treatment based on religious beliefs of a patient only if the physician's right to refuse based on religious beliefs is regulated in the national legislation. In the event that a physician refuses to treat a patient because of his religious beliefs, but the right of refusal is not regulated in the national regulations and the order in which a physician may refuse to treat a patient, imposition of religious beliefs on the patient can be identified. Expression of religious beliefs of the patient and the physician may interact

with other rights that must be protected in medical treatment, such as the right to inviolability of private and family life, prohibition of discrimination, the right to information, etc.

4. Latvia is not obliged, but also not prohibited, to regulate the right to express religious beliefs in medical treatment. However, Latvia has an obligation to balance the right to express religious beliefs, when this right is exercised, with other rights that Latvia has to protect, both in relation to the patient's right to legal interests in medical treatment, and in relation to the physician's rights and legal interests in the field of employment in a medical institution. The above also applies to the patient's rights in the context of cross-border health care and to physicians temporarily working in Latvia with documents certifying education and professional qualifications obtained in a Member State of the European Union or of the European Free Trade Association.
5. There must be effective rights protection mechanisms in Latvia, which make it possible to balance the protection of the patient's and the physician's right to express religious beliefs, as well as the protection of other rights in medical treatment, in an equally effective manner. This also applies to the patient's right to cross-border health care and to a physician who performs temporary professional activity in Latvia with documents certifying education and professional qualifications obtained in a Member State of the European Union or of the European Free Trade Association.
6. When protecting the right to freedom of religion, Latvia is obliged to observe the principle of precaution and to take actions to identify and prevent the adverse effects of the patient's or physician's expression of religious beliefs in a timely manner, without waiting until the damage has been done, and to ensure a fair balance between various competing interests.
7. One of the most important measures that, in the Author's opinion, Latvia can implement in general is to conduct a timely and thorough analysis of the

judgments of the ECHR and the CJEU, in order to improve national legislation in a timely manner and to avoid violations in the field of the right to freedom of religion.

8. In national legislation, it is possible to distinguish between general and special protection of the patient's right to express his religious beliefs during medical treatment.
9. The patient's rights included in the LRP, such as the right to choose a physician and medical treatment facility, the right to information, the right to the prohibition of differential medical treatment, the right to quality medical treatment appropriate to the state of health, the right to self-determination in one's own medical treatment and the patient's obligation to cooperate in one's own medical treatment, include the general right of the patient to express his protection of religious beliefs in medical treatment.
10. The Author, within the framework of the second chapter of her Thesis, has found out that the protection of the patient's right to express his religious beliefs in medical treatment contained in the national legislation is not ensured effectively enough in some cases. As a result, Latvia runs the risk of not fulfilling its international obligations in respect of the principle of legal effectiveness, so that it can be recognised that the protection of the patient's right to express religious beliefs is the right to freedom of religion guaranteed in the context Article 99 of the Constitution is real and effective, and not illusory. In order to strengthen fulfilment of Latvia's international obligations in the field of protection of the right to freedom of religion and to achieve a balance between the patient's right to express his religious beliefs during medical treatment and other rights that must be respected during the patient's medical treatment, the Author offers proposals within the framework of the chapter, which especially affect protection of the patient's right to information and the right to self-determination issues of

interaction with the right to express religious beliefs in medical treatment. In the opinion of the Author, the procedure according to which a patient can express his will in advance regarding consideration of decisions based on his religious beliefs in medical treatment should be especially strengthened. As part of this, both institution of authorisation and patient's obligation to provide information to the attending physician should be strengthened, as well as the patient's right to confirm his decisions based on his religious beliefs in the unified electronic information system of the health sector, and the procedure according to which the patient's will is taken into account in medical treatment. Likewise, understanding of importance of patient's religious values and professional communication in working with patients who express their religious beliefs during medical treatment should be improved among medical personnel. Considering that in the field of protection of the right to express religious beliefs, there is extensive case law of the ECHR and CJEU in cases against other countries, legislator should evaluate it and improve regulatory framework. In order not to create potential risks of violation of human rights and to raise the standards of human rights protection, regulatory framework in the field of the right to freedom of religion should be strengthened, both at the level of existing external regulatory enactments and at the level of internal regulatory enactments of medical institutions. Strengthening national legislation in this area would prevent the risk of unjustified interference with the patient's right to freedom of religion, including early prevention of potential violations of prohibition of proselytism.

11. According to Section 8 of the LRP, the patient has the right to choose a physician and medical institution. The patient can make his choice based on his religious beliefs. However, it should be taken into account that the patient's right of choice under Section 8 of the LRP may not be absolute,

especially if the patient is interested in medical treatment based on his religious beliefs. They can be affected by a number of choice restrictions – conditions of the patient’s workplace insurance contract, the patient hospitalisation plan according to which emergency medical assistance team transports patients to inpatient medical institutions in Latvia, the physician’s right to refuse the patient’s medical treatment, etc.

- 11.1. The patient’s right to seek health care services and medical treatment based on his religious beliefs is promoted by Section 4 of the LRP. When exercising the rights contained in Section 4 of the LRP, the patient, based on his religious beliefs, can choose a physician and medical institution, exercise the right to self-determination, make a choice and give consent to medical treatment or refuse it, as well as be aware of the necessary expenses and pay for the health care services received. Within the framework of Section 4 of the LRP, the patient has the right to timely receive information about alternative medical treatment options and availability, and to make a decision regarding his medical treatment, including the impact of the chosen alternative on the medical treatment process and risks, so that the patient can make an appropriate decision.
- 11.2. The right to information is essential in the context of cross-border healthcare. Also, for example, if a patient who is a Jehovah’s Witness needs a surgery and, because of his religious beliefs, he agrees to have it performed only under conditions of artificial blood circulation, he has the right to receive information about the possibilities of receiving this service in Latvia or outside Latvia, and the right to receive information about the payment for surgery procedure in conditions of artificial blood circulation.
- 11.3. Section 4 of the LRP does not include the patient’s right to know the religious beliefs of the attending physician, if the patient, for example,

wants to receive medical treatment from a attending physician who has a certain religious belief, for example, the same religious belief as the patient, nor does it include the patient's right to additionally ascertain identity of the medical practitioner, if the medical practitioner wears religious clothing that covers face and body (for example, a burka, chador, niqab).

- 11.4. Section 4, Paragraph five of the LRP stipulates that information must be provided to the patient in a comprehensible manner, explaining medical terms and considering the patient's age, maturity and experience. In the event that a physician wears a religious garment that covers face and body, it should not be argued that the patient's contact with that physician is not possible simply because the physician wears such a religious garment. The fact that the patient's or the physician's face is covered due to religious beliefs should not be the only reason to claim that the patient did not receive information in an understandable form. In mutual communication with the patient, the physician must always ensure that the patient is able to perceive information and has understood it.
- 11.5. Information may be withheld from the patient only if the physician has information or evidence that the provision of the information would significantly endanger the life or health of the patient or other persons. National regulatory framework does not specify the extent to which a physician must be convinced that the life or health of the patient or the patient's relatives is at risk, as there are no specific criteria for this. Information and facts about the threat to the life or health of the patient or other persons must be available to the attending physician. For example, the physician must have information that the patient will harm his health or life if he learns that there is no alternative medical treatment available, except the one that the patient refuses because of his religious beliefs. A

patient's religious values and perception of death can influence potential suicide. Scientific literature and ECHR practice emphasise that, particularly in cases where there is a risk to the patient's health, it is especially important to inform the patient about it, so that the patient can evaluate situation and make appropriate decisions. Therefore, the right to refuse to provide information to the patient contained in Section 4, Paragraph seven of the LRP is applicable only in very rare cases, possibly until it is safe to disclose information to the patient.

- 11.6. Section 4, Paragraph eight of the LRP, which stipulates that the patient has the right to refuse to receive the information referred to in Section 4 of the LRP, should be critically evaluated. He expresses his refusal orally, in writing, or by actions that clearly demonstrate this. According to it, a patient has the right to refuse to receive absolutely all information related to his medical treatment, including information about payment for health care services. However, this does not exempt the patient from fulfilling the obligations contained in Section 15 of the LRP. For example, if the patient has agreed with the attending physician that specific medications are used in his medical treatment, which are in accordance with his religious beliefs, but the patient has refused to receive information about their payment, he may not later refuse to pay for the received medical treatment if it is more expensive because of its specificity. In the process of policy planning and legislation, a proposal was put forward to separate the patient's right to information about healthcare services and their

providers, and the right to information about health, creating separate legal norms,²¹³ to which the Author adheres.

12. According to Section 3, Paragraphs two and three of the LRP, differential treatment of patients based on their religious beliefs is prohibited. Differential medical treatment of a patient due to his religious beliefs is permissible only if it is objectively justified by a legal purpose, the means for achievement of which are commensurate. So, for example, if a patient refuses medical treatment for the reason that the medical treatment method available in Latvia does not correspond to his religious beliefs, but the medical treatment is necessary to prevent an irreversible deterioration of vital functions or health, the patient must not be refused prior permission for reimbursement of cross-border healthcare expenses, if effective medical treatment is available in this EU Member State, but the method of medical treatment used is incompatible with the patient's religious beliefs, unless such refusal is objectively justified by the legitimate aim of preserving healthcare capacity or medical competence and unless it is an appropriate and necessary measure to achieve this aim.
13. According to Section 5, Paragraph one of the LRP, every person has the right to receive medical treatment corresponding to the state of health, in accordance with the procedure established by the MTL. The patient's religious beliefs can influence his decision-making and attitude towards the choice of medical treatment methods. In this context, it is important that the patient's religious beliefs are taken into account. In this context,

²¹³ A report of May 9, 2022, titled "On the proposals put forward by the working group for improvement of observance of patients' rights" No. 1.3.-5./4025, presented by the working group created in accordance with the order No. 15 "On the working group for improvement of observance of patients' rights" of January 31, 2022, issued by the Minister of Health of Latvia. Available in the archives of the Ministry of Health and the Health Inspectorate, p. 6.

conversation between the patient and the physician is important in order to understand the patient's needs and find a common solution that takes into account the patient's religious beliefs. However, the patient's religious beliefs should not affect the patient in a way of not receiving quality medical treatment appropriate to his health condition.

14. LRP does not require the patient to justify his refusal of medical treatment. This means that the patient may or may not indicate the reason for refusing medical treatment. A patient can refuse medical treatment for any reason, including religious ones.
 - 14.1. Refusal on religious grounds has a strong justification and enjoys special protection under Article 9 of the ECHR. In the event that a physician does not respect a patient's refusal of medical treatment on the basis of his religious beliefs, and nevertheless carries out medical treatment without the patient's consent, the issue is viewed not only in the light of violation of integrity, but also in the light of the patient's right to freedom of religion in the context of human rights as a potential violation of Article 8 of the ECPHRFF and Article 9 of the ECPHRFF.
 - 14.2. In the event of a patient's refusal of medical treatment, the most important thing is to explain to the patient the consequences of his decision and to ensure that the patient has understood this information, as well as to ensure that the patient's perception of information is not impaired, for example, by his state of health, medications and other factors. The patient's decision must be made without influence from other persons or institutions. This means that physician must evaluate whether the "decision is really the patient's decision", including whether there is any influence from religious organisations, which may result in violation of the prohibition of proselytising. Physician must prevent situations where patient shows a desire to refuse medical treatment not because of his own

strong convictions, but because of fear of being influenced by members of a religious group.

- 14.3. Mechanism for protection of patients' rights in which patient's will is enforceable based on the authorisation may be ineffective in matters concerning the patient's previously communicated will, expressed in accordance with the patient's religious beliefs. So, for example, the Unified Electronic Information System of the Health Sector includes a section on "authorization", providing for a section to add a "future authorisation", but it is not possible to add the authorisation agreement itself. The national legislation does not provide for a procedure by which a medical practitioner can verify the content of the authorisation, as a matter of urgency, for example, in an emergency situation where the patient's life must be saved, , since Section 6, Paragraph seven of the LRP only provides for information on the existence of an authorisation in the electronic information system of the health sector, but not on its content.
- 14.4. It is necessary to improve the procedures contained in the Unified Electronic Information System of the Health Sector, in which a patient can refuse medical treatment. The unified electronic information system of the health sector must have a separate section that the patient can complete in good time regarding issues related to the refusal of medical treatment and life-saving measures, indicating the type of medical treatment and the reason for refusal, if it is important for the patient that his religious beliefs are to be considered in the medical treatment.
- 14.4.1. The CM "Regulations Regarding the Unified Electronic Information System of the Health Sector" of March 11, 2014, must be supplemented with Point 6.20¹ by expressing it in the following wording: *"6. Health information system includes the following limited access basic data about the patient: prohibitions regarding medical treatment: 6.20¹*

prohibition to implement any emergency medical assistance measures; 6.20² prohibition of blood transfusion; 6.20³ prohibition of tissue or organ transplantation (specifically specified); 6.20⁴ prohibition of tissue or organ removal for life-saving purposes (specifically mentioning); 6.20⁵ other prohibition (specifically mentioning).”

- 14.4.2. Chapter VIII of MTL “Duties and rights of medical practitioners in medical treatment” should be supplemented with Section 47.¹, expressing it in the following wording: “Section 47.¹ *A medical practitioner is obliged to comply with the patient's prohibitions on medical treatment, if any, established in the unified electronic system of the health sector, in cases where the patient is to receive first aid and emergency medical treatment or in other cases provided for in regulatory enactments, where unplanned treatment of the patient is to be carried out without his/her prior consent.*”
15. Section 15 of the LRP does not oblige the patient to disclose his religious beliefs during medical treatment, including to motivate his decisions by religious beliefs. However, if the patient wishes the medical treatment to be in accordance with his religious beliefs, the patient must actively participate and provide information necessary for the implementation of his medical treatment.
- 15.1. If the patient wants any of the previously given consents and refusals to be taken into account in future medical treatment, it should be stipulated in Section 15, Paragraph two, Clause 3 of the LRP, that the patient must inform about this. Therefore, the Author puts forward a proposal to express Section 15, Paragraph two, Clause 3 of the LRP in the following wording: ... in medical treatment and to provide the attending physician with information within the limits of his or her abilities and knowledge: “(2) If the state of health of the patient allows it, he or she has an

obligation to actively participate in medical treatment and to provide the attending physician with information within the limits of his or her abilities and knowledge: 3) *about previously given consents and refusals regarding medical treatment, as well as information about the reason for consent or refusal, in case the patient wants this reason to be taken into account in future medical treatment.*”

- 15.2. The special right of the patient to express his religious beliefs is contained in Section 3, Paragraph five of the LRP, which provides that the patient and his relatives have the right to receive mental care, which is provided by the chaplain of the medical institution in accordance with the regulatory enactments regulating activity of chaplain services and religious organisations. The regulatory framework for the implementation procedure of the right to receive mental care contained in Section 3, Paragraph five of the LRP is incomplete and the legislator has not developed an appropriate regulatory framework for the protection of the right to receive mental care contained in Section 3, Paragraph five of the LRP. Normative regulation regarding medical institutions is unambiguous only to the extent that they must be able to organise a working regime in order to be able to ensure patients and patients’ relatives the same right to receive mental care. The legislator has left too much leeway for the medical institution to ensure the order of professional health care chaplain. Among them, legal status of the professional health care chaplain is regulated inconsistently in the regulatory acts. Within the mentioned framework, in most hospitals in Latvia, the right of patients to receive mental care, established in Section 3, Paragraph five of the LRP, is not implemented.
- 15.3. The use of terms and concepts in Section 3, Paragraph five of the LRP and in other regulatory acts regulating activities of chaplains and

professional health care chaplains in the field of health care is not in accordance with procedure established in Paragraph 2 of the CM Regulation No. 108 of February 3, 2009 “Regulations on the Preparation of Draft Normative Acts” and the principle of consistency of terminology to be observed in the legislative process. Inconsistency in the use of terms and concepts in regulatory acts creates problems for the application of grammatical interpretation method and, accordingly, for clarifying the meaning of the legal norm from a linguistic point of view.

- 15.3.1. The Author proposes to supplement the LRP with Section 1, Paragraph two, Clause 6 in the following wording: “ (2) The following terms are also used in this Law: 6) *Pastoral care – the activity of a professional health care chaplain in order to provide religious support to patients and patients’ relatives.*”
- 15.3.2. The Author proposes to supplement the PTL with Section 1, Paragraph two, Clause 7 in the following wording: “(2) The following terms are also used in this Law: 7) *Professional health care chaplain – a medical support person who provides pastoral care to patients and their relatives and fulfils the duties in an inpatient medical institution specified in the regulations of the Cabinet of Ministers on chaplain service.*”
- 15.3.3. The Author proposes to express Section 3, Paragraph five of the LRP in the following wording: “ (5) *The patient and his relatives, if the patient is hospitalised in an inpatient medical institution, have the right to receive pastoral care, which is provided by the professional health care chaplain.*”
- 15.3.4. The Author offers Section 10 of the Law of the Old Believers Pomor Church of Latvia, the Law on Union of Baptist Churches of Latvia Section 11, the Law on the Evangelical Lutheran Church of Latvia

Section 11, the Law on the Orthodox Church of Latvia Section 12, the Law of the Union of Seventh-day Adventist Latvian Churches Section 11, The Law of the Methodist Church Section 10, in the following wording: *“(1) The chaplain of the Church shall work in the National Armed Forces, airports, ports, land transport stations, medical treatment institutions, social care institutions, prisons and other places where ordinary clergy care is not available. (2) The pastoral care of Church chaplains shall be supervised by the Church.”*

15.3.5. The Author proposes to express paragraph 6 of Regulation No. 134 of February 15, 2011 of CM “Regulations on the service of chaplains” in the following wording: *“6. The chaplain shall be employed by the Commander of the National Armed Forces or the Director of the Prison Administration, or by the administration of an airport, port or land transport station or social care institution. A chaplain shall be recruited for the professional service by the Minister of Defence or by a commander (chief) authorised by him or her. A professional health care chaplain shall be hired by the head of the medical treatment institution.”*

15.4. Normative regulation regarding medical institutions is unambiguous only to the extent that they must be able to organise a working regime in order to be able to ensure patients and patients’ relatives the same right to receive mental care. The legislator has left wide discretion to medical institutions in determining the job responsibilities of a professional health care chaplain. The current national regulatory framework regulates only legal requirements for obtaining legal status of a professional healthcare chaplain.

- 15.4.1. “Chaplain of a medical institution” in the sense of Section 3, Paragraph five of the LRP should be understood as a professional health care chaplain in an inpatient medical institution – a hospital.
- 15.4.2. The scope of duties of the professional health care chaplain defined in the national legislation must be improved. As part of this, the Author suggests that paragraph 19 of the Regulation on Chaplain Services should be expressed in the following wording: *“19. Professional health care chaplains are medical support persons who: 1) perform pastoral care of patients and their relatives, as well as medical institution staff; 2) conduct education of medical personnel in religious matters; 3) organise religious activities in a medical institution; 4) advise medical personnel, patients and the patient’s relatives in the medical treatment of the patient in accordance with the patient’s religious beliefs; 5) advise in solving ethical issues and preventing violations of the prohibition of proselytism; 6) coordinate invitation of a clergyman, who is not a chaplain of a medical institution, to perform a religious activity; 7) coordinate agreement of religious activity with the management of the medical institution; 8) evaluate what religious activity will be performed, assesses its risks and dangers; 9) participate in the adoption of decisions concerning the restriction of religious activities in a medical institution.”*²¹⁴
- 15.5. According to the results of the Author’s empirical research, the right of patients to receive mental care in accordance with Section 3, Paragraph five of the LRP is basically not implemented in hospitals in Latvia. The

²¹⁴ Considering that currently the second sentence of paragraph 19 of the Regulations on chaplain services also includes the competence of chaplains of social care institutions, when making amendments, to separate the competence and functions of chaplains in social care institutions in a separate legal norm and establish and provide for their operation regulation, for example, point 19.¹

research illustrates that Hospitals lack understanding of the procedure for implementation of rights contained in Section 3, Paragraph five of the LRP. In order to enliven the application of Section 3, part five of the LRP in hospitals and to ensure availability of professional health care chaplains, it is necessary to improve special regulatory acts in the field of mandatory requirements, financing and legal status of chaplains.

- 15.5.1. The Author proposes to supplement the CM Regulations No. 60 of January 20, 2009 “Regulations on Mandatory Requirements for Medical Institutions and their Structural Units” with legal norms that provide for the creation of a chaplaincy service. Namely, with subparagraph 94.7 in the following wording: “94. the inpatient treatment facility has the following structural units: 94.7. *professional health care chaplain service*”, and with subsection 98.3 in the following wording: “98. patients in the inpatient treatment facility are provided with: 98.3. *pastoral care.*”
- 15.5.2. The Author offers to revise regulations of the CM of August 28, 2018 No. 555 “Organisation and payment procedure for health care services” contained in the regulation, which affects allocation of funding for the employment of medical support persons in medical institutions. According to paragraph 153 of the mentioned CM regulations and paragraph 153.¹ in the manipulation tariffs calculated by the National Health Service may include remuneration for the work of medical and patient care support persons, including the work of a medical physicist who, like the professional health care chaplain, is a medical support person. In the opinion of the Author, it is necessary to include the procedure for determining remuneration for the work of a professional health care chaplain in the mentioned regulations of the CM,

considering that it is necessary to implement the rights contained in Section 3, Paragraph five of the LRP.

- 15.6. Only 13 chaplains are registered in Latvia. In the Health Inspectorate's Register of Medical Persons eight professional healthcare chaplains are registered who are employed in four hospitals – two in level V hospitals and two in level IV hospitals.
- 15.6.1. In the opinion of the Author, in order to ensure increase in the number of professional health care chaplains in the country and, accordingly, their availability in medical institutions, separate measures can be taken to improve requirements for obtaining the legal status of a professional health care chaplain. The Author considers the requirement that, in order for a person to be able to start working as a professional health care chaplain after successfully passing the certificate exam, they must obtain at least one more year of full-time or two years of part-time chaplain work experience, excluding teaching practice, as disproportionate in relation to other requirements, including the higher education requirement and the requirement that professional health care chaplain is nominated by a religious association (church). In the opinion of the Author, experience of working with patients, their relatives and medical personnel can be evaluated in the chaplain training process, determining that until obtaining the certificate a person must work for the obtaining of the certificate of a professional health care chaplain, should work under the guidance or supervision of a certified professional healthcare chaplain during the training process. This practice has already been established in the training process of medical personnel - resident physicians
- 15.6.2. As one of the justifications affecting the number of professional health care chaplains and their availability in inpatient treatment facilities,

there is a requirement that only religious associations (churches) included in paragraph 5 of the Regulations on chaplain services have the right to nominate a person for the position of chaplain. A number of religious organisations registered in Latvia do not have the right to nominate persons for the position of chaplain, even if they have received theological education.

- 15.6.3. Likewise, the situation that, according to the national regulatory framework, several religious organisations are prevented from nominating a chaplain for the position is risky from the point of view of human rights in matters affecting proportionality, legality and equality, and the state's obligation to observe neutrality and objectivity in relation to religious groups. Evaluating this issue in the light of human rights, it should be noted that it is not objective to establish such a formal ban without at the same time defining specific criteria which a religious organisation registered under the law must meet in order to be able to promote for the position of chaplain. If the religious organisation is registered and recognised as meeting the requirements of regulatory acts, there should not be *prima facie* doubts about correctness of activities of its representatives. In addition, Latvia, which is a member of the European Parliament and a High Contracting Party to the ECPHRFF, is obliged to check whether persons representing a particular religious community do not carry out activities that harm public safety. Within this framework, in the opinion of the Author, it is not necessary to unreasonably limit the right of religious unions to nominate professional health care chaplains for the position, but to implement measures controlling activities of medical support persons in accordance with the current regulatory enactments. In order to improve the mentioned situation, within the framework of the chapter, the Author

offers potential improvement opportunities of the national regulatory framework.

- 15.6.4. The Author suggests that Paragraph 5 of the Regulations on the services of chaplains should be expressed in the following wording: “5. *Chaplains are appointed by the leadership of religious organisations registered in accordance with the Law on Religious Organisations.*”.
- 15.6.5. The LRO protects the right to perform religious activities, including in hospitals and most inpatient treatment facilities where religious activities are allowed, which is supported by the results of the Author’s empirical research.
 - 15.6.5.1. The Author, within the framework of the second chapter of her Thesis, has found out that Latvia, in the context of Section 14, Paragraph six of the LRO, risks not to fulfil precautionary principle arising from its international obligations. In the opinion of the Author, Section 14, Paragraph six of the LRO in its current version should be applied with caution. Its grammatical application may give the prima facie impression that offense should be already identifiable in nature in order for the religious activity to be restricted. Referring to the precautionary principle, which must be followed by Latvia, it should be noted that it is not permissible to wait until the patient has been harmed due to religious activity. In that case, it could be concluded that the legislator did not take sufficient measures to be able to find a balance between the right to express religious beliefs and protection of other rights in medical treatment. In order to improve the mentioned situation, the Author, within the chapter, proposes to improve legal basis for the restriction of religious activity included in Section 14, Paragraph six of the LRO, in order to be able to predict risks in time

and prevent potential threats, without waiting until damage to other persons in the medical institution has already been done.

15.6.5.2. In order to prevent the risk that international obligations in the field of human rights could potentially be neglected, the Author proposes to make amendments to Section 14, Paragraph six of the LRO, expressing it in the following wording: “ (6) *Religious activity is restricted if it is reasonably foreseeable that regulatory acts will be violated and if during it violations of regulatory acts have been identified.*”

16. National legislation sets high legal requirements for the professional competence of a physician. The physician is bound by both the rights and obligations arising from the MTL and from the LRP, and from the regulatory enactments that regulate extent of physician’s theoretical and practical knowledge to be acquired in the medical education program, as well as the physician’s professional ethics documents.

17. The strict legal requirements set for the medical profession contained in the national regulatory enactments are basically aimed at protecting the patient’s right to receive quality and qualified health care services within the scope of his medical treatment. According to the national regulatory enactments, a physician has professional freedom. Within the framework of professional freedom, the physician has, among other things, the right to refuse the patient’s medical treatment. Among them, a physician may refuse to perform an abortion due to his religious beliefs. However, it should be taken into account that the physician’s professional freedom must be aimed at protecting the patient’s rights and legitimate interests. Within the framework of professional freedom, the physician may not try to get the patient to perform medical treatment in accordance with the physician’s religious values and convictions, or for the patient to change his religious convictions.

Physician must respect the patient's religious values and choice in medical treatment, including respect for the patient's autonomy and integrity, and perform medical treatment in accordance with regulatory enactments. Therefore, regardless of the fact that a physician has professional freedom, he must not use it to satisfy his religious values in medical treatment, guided by his beliefs and system of values.

18. The Author, within the third chapter of her Thesis, has found out that fulfilment of Latvia's positive obligations to effectively protect the patient's right to express his religious beliefs while physician is performing his professional duties is unsuccessful, due to the fact that a sufficiently effective legal regulation, has not been developed. Namely, knowledge and skills contained in the national legislation, which physician must acquire in the field of patient rights and in the field of ethics and deontology, are not sufficient for the physician to be able to act in cases where there are legal conflict situations in medical treatment, which are related to situations when a patient or a physician expresses his religious beliefs in medical treatment. As a result, there is a risk that conflict situations of a legal nature may be unsuccessfully resolved, which may result in violation of fundamental rights. Thus, it is necessary to improve national legislation and determine that physician has knowledge and skills in medical law and theoretical knowledge and practical skills when dealing with a patient who expresses his religious beliefs during medical treatment and when the physician has the right to refuse to treat a patient because of his religious beliefs. Also, regulatory acts must stipulate an obligation for physicians to regularly improve their professional qualifications and educate themselves in the field of patient rights and professional ethics and deontology. The Author, within the third chapter of her Thesis, offers a solution for improvement of legal framework to ensure that persons who learn profession of a physician

develop knowledge and skills in matters related to communication in medical treatment with patients and relatives of patients who express religious beliefs in medical treatment, which affect handling of situations in cases, when a physician has the right to refuse to treat a patient due to his religious beliefs, and which concerns cooperation with the chaplain of professional health care to resolve conflict situations of a legal nature. In the opinion of the Author, improvement of regulatory acts, including in the physician's medical education program acquisition of appropriate knowledge, skills and competences for communication with patients with specific religious beliefs and for cooperation between the physician and the patient with the professional health care chaplain, will contribute to implementation of culturally competent and human rights-based health care.

19. The physician's right to express religious beliefs in medical treatment includes exercise of the right of refusal to treat. In Latvia, a physician can exercise the right the right to express his religious beliefs, for example, by refusing to terminate a pregnancy if there are no medical reasons for it. As part of the third chapter of her Thesis, the Author has found out that in order to comply with international obligations in the field of human rights, it is necessary to find a balance between the right of patients and physicians to express their religious beliefs. As part of this, Latvia, as a Member State of the CE, which is a High Contracting Party to the ECPHRFF, has the obligation to provide the patient with an effective rights protection mechanism, according to which he can access health care services elsewhere in a timely manner. This means that the physician's right to refuse to terminate a pregnancy, if there are no medical reasons for it, should not be declarative, and practical implementation of this right must be ensured. Otherwise, Latvia risks not fulfilling its international obligations in the field of protection of the right to freedom of religion and also in the field of

protection of other rights with which it interacts in medical treatment. Among them, as a result of exercising the physician's right to refuse based on his religious beliefs, the patient's right to health protection may be violated.

- 19.1. The CM Regulation No. 268 of March 24, 2009 "Regulations on medical practitioners and students who study first or second-level professional higher medical education programs, competence in medicine and the scope of theoretical and practical knowledge of these persons" should be supplemented with paragraph 10.60 in the following wording: "10. In order to perform medical treatment, physician has theoretical knowledge and practical skills in the following matters: *10.60. medical law*"; with paragraph 10.61 in the following wording: "10. In order to perform medical treatment, physician has theoretical knowledge and practical skills in the following matters: *10.61. behaviour when dealing with a patient who expresses his religious beliefs during medical treatment*"; with paragraph 10.62 in the following wording: "10. In order to perform medical treatment, physician has theoretical knowledge and practical skills in the following matters: *10.62. action, in cases where physician has the right to refuse medical treatment of the patient due to his religious beliefs*".
- 19.2. Regular improvement of knowledge and skills as a medical professional's duty should be not only in the field of emergency medicine, but also in the field of patient rights and ethics and deontology. Therefore, the Author proposes to express Section 48 of the MTL in the following wording: "*Section 48. It is the duty of a medical practitioner to regularly improve his professional qualifications and to educate himself in the field of emergency care, as well as in the field of patient rights and professional ethics and deontology.*"

- 19.3. Within the framework of religious pluralism and to comply with international human rights obligations, a balance must be struck between the right of the patient and the right of the physician to express their religious beliefs. Within this framework, if Latvia has provided for a physician to exercise a right of conscientious objection, it has an obligation to provide the patient with an effective redress mechanism whereby he or she can access health care elsewhere in a timely manner. Otherwise, the exercise of the physician's right of conscientious objection may result in a violation of the patient's right to health protection.
20. The right to receive support of a chaplain during medical treatment in inpatient medical institutions contained in paragraph 19 of the Regulations on chaplain service, which concerns a physician, cannot be considered effective enough to protect the physician's right to express his religious beliefs. Basically, it is not possible for physicians in inpatient medical institutions to receive the support of a professional healthcare chaplain. Support of a professional healthcare chaplain in a physician's work can be equally important, both for the physician to receive the spiritual and moral support he needs, and for the chaplain to provide support in his work with patients.
- 20.1. In connection with the above, the Author suggests supplementing the MTL with a norm that allows medical personnel, including physicians, to receive pastoral care. Namely, the Author proposes to supplement *Section 53.3 of the MTL* and express it in the following wording: "*Section 53.3 Medical person has the right to receive pastoral care in an inpatient medical institution, which is provided by a chaplain of a professional health care institution in accordance with the regulatory enactments regulating the activities of chaplain services and religious organisations.*"

21. National legislation does not regulate nor prohibit the right of a physician to perform religious activities in a medical institution. Medical institution, as the physician's employer, can determine communication standards for patient-physician contact, including involvement of a professional healthcare chaplain, as well as determine the procedure for the physician's actions if the patient refuses medical treatment, as well as the procedure for the physician's right to perform religious activity, as well as wearing religious clothing and symbols in a medical facility. The physician must agree with the medical institution as his employer about the right to perform religious activities in the medical institution and the procedure for their implementation, for example, about wearing religious clothing and symbols in the medical institution, about possibility of praying, about observing different working hours, and the procedure for implementation of these rights.
22. Medical institution is responsible for determining the limits of protection of the physician's right to perform religious activities, so that interests of other persons in the medical institution are not violated. In the third chapter, the Author has concluded that the means selected by the medical institution, as the physician's employer, and their proportionality, are essential in determining the limits of the protection of the right to perform religious activities. Evaluating the mentioned issue in the light of human rights, it should always be assessed that the benefit which patients or other persons in the medical institution will gain will be greater than the damage caused to the rights of medical person by setting a restriction on the physician's expression of religious beliefs. If the means selected for restricting expression of the physician's religious beliefs are not proportionate, then a violation of the prohibition of differential medical treatment can be identified against the physician, which is marked by the findings expressed

in the practice of both the ECHR and the CJEU, especially in cases concerning wearing of religious clothing and symbols.

23. Latvia has an obligation to balance the right to express religious beliefs with other rights, which Latvia must protect both in relation to the patient's right to legal interests in medical treatment, and in relation to the physician's rights and legal interests in the field of employment in a medical institution. Neither Latvia nor its society may limit the right of patients and physicians to express their religious beliefs without a legal basis contained in the procedure specified in the regulatory acts. However, at the same time, neither the patient nor the physician, expressing their religious beliefs, should harm either Latvia or its society.
24. The Author, within the framework of the fourth chapter of her Thesis, has established that in some cases balancing the rights of the patient and the physician in the context of individual's right to self-determination and the right to achieve the highest attainable standard of health, considering constitutional protection provided and to be provided, is not considered adequate. As a result, the obligation to balance the right to express religious beliefs with other rights, which Latvia must protect, but is not effectively fulfilled in this regard. National regulatory framework concerning rights of the patient and the physician to express their religious beliefs in the context of the right to self-determination and the right to achieve the highest attainable standard of health is to be evaluated critically. Although international obligations in the field of human rights are clear, both regarding protection of the right to freedom of religion, as well as the right to self-determination and protection of the patient's dignity, and regarding protection of the right to achieve the highest attainable standard of health, national regulatory framework includes significant shortcomings. As the Constitutional Court has stated, the Legislator is obliged to regularly

consider whether the relevant regulatory framework is still effective, appropriate and necessary and whether it could be improved in some way.²¹⁵ Despite this, neither the insights expressed in the ECHR's practice nor the CE's guidelines, which the CE Member States, which are High Contracting Parties to the ECPHRFF, have to follow in cases where the right of refusal based on religious belief is implemented, have contributed to the elimination of shortcomings of the national regulatory framework.

25. The Legislator has not developed a national regulatory framework that allows the physician to make sure whether the patient has expressed his decision to refuse medical treatment freely. Within this framework, the physician has no rights protection mechanisms to prevent situations where the patient's decision to refuse medical treatment is influenced by persons whom the patient has invited to provide support in medical treatment. The lack of procedure in the national legislation, how a physician should act in such situations, can create a potential risk of violation of the fundamental rights of the patient. Especially in situations where there is doubt that the patient's decision, such as the decision to refuse a blood transfusion, has been made freely and not influenced by representatives of a religious organisation, and the physician must act urgently to save the patient's life or prevent incomparably greater harm to his health. Further in-depth research should be conducted on the strengthening of the patient's self-determination institute in medical treatment, on the basis of national legislation should be improved. In the opinion of the Author, regarding the patient's right to self-

²¹⁵ Judgment of the Constitutional Court of the Republic of Latvia of June 6, 2012 in case No. 2011-21-01. paragraph 9. Retrieved from: https://www.satv.tiesa.gov.lv/web/viewer.html?file=/wp-content/uploads/2016/02/2011-21-01_Spriedums.pdf#search= [viewed 20.05.2022.].

determination in medical treatment, educational measures should also be taken by medical personnel and medical institutions.

26. In the opinion of the Author, regarding the patient's right to self-determination in medical treatment, educational measures should also be taken by medical personnel and medical institutions. It is unacceptable that the patient's religious beliefs prevail over the physician's duty to ensure the patient's quality medical treatment, as was observed when the Covid-19 vaccination was carried out in Latvia. The patient has the right to refuse medical treatment due to his religious beliefs, but the patient's religious beliefs must not contribute to the fact that the patient is provided with a health care service that does not comply with regulatory enactments. Among them, disordered internal regulatory acts of medical institutions should not contribute to this.
27. The patient's right to achieve the highest attainable standard of health should be critically assessed, in situations where national legislation does not regulate procedure by which the patient can timely access healthcare services elsewhere, if the physician's religious beliefs have contributed to the fact that he is not allowed to provide healthcare services, or when the physician has refused to treat a patient because of his religious beliefs. The Author is particularly critical of the shortcomings of the national regulatory framework, which affect the physician's right to refuse to perform a pregnancy termination and the pregnant woman's right to receive pregnancy termination services elsewhere. Despite the findings expressed in ECHR practice and the instructions of the CE, the legislator has not developed a national regulatory framework that would allow pregnant women who wish to have a pregnancy termination to receive timely information that termination of pregnancy will not be possible at a particular physician. Likewise, the procedure by which a pregnant woman is referred to another

physician for pregnancy termination services if she has received a refusal to perform a pregnancy termination is not regulated in the national legislation. National laws and regulations in this area must be revised and improved, because otherwise there is a potential risk of violation of fundamental rights.

28. Functions of the National Health Service should be supplemented with the obligation to create a list of physicians and medical institutions that provide pregnancy termination services in Latvia, so that patients have timely information about the fact that the physician refuses to terminate the pregnancy, and not only in the case when the patient has already turned to the physician. The mentioned list should include information about physicians who refuse to perform pregnancy termination services in Latvia if there are no medical reasons for this.
- 28.1. The Author proposes to supplement the Regulation No. 60 of the Cabinet of Ministers of January 20, 2009 “Regulations on mandatory requirements for medical institutions and their structural units” with paragraph 6.¹ in the following wording: *“6.¹ A medical institution that provides health care services in the field of sexual and reproductive health has access to for information on: 1) the availability of a pregnancy termination service with medical indications or a report issued by a law enforcement agency about a case of rape; 2) the availability of termination of pregnancy service without medical indications”*.
- 28.2. The Author proposes to express Section 40 of the MTL in the following wording: *“Section 40. (1) The physician is responsible for preserving unborn life, and his duty is to try to dissuade patients from terminating the pregnancy, if the pregnancy does not conflict with the woman’s state of health and there is no danger that the newborn will have hereditary or acquired disease. A physician has the right to refuse to terminate a pregnancy if there are no medical reasons for it. (2) If a physician has*

refused to terminate a pregnancy for which there are no medical reasons, the physician is obliged to make refusal in writing, add it to the patient's medical documentation and immediately send the patient to another physician.”.

The Author expresses the hope that findings expressed in the Thesis will allow a broader look at the existing national regulatory issues in the field of protection of the right of patients and physicians to express their religious beliefs in medical treatment, as well as to promote development of legal opinion in matters of law application in relation to the challenges of balancing the right to express religious beliefs in medical treatment with other rights, which are relevant in medical treatment, and will also contribute to the improvement of legal framework.

Publications and reports on the topic of the Thesis

Scientific publications included in international databases (Web of Science, SCOPUS, ERIH PLUS):

1. Šāberte, L., Palkova, K. 2022. Administrative Liability for Vaccination with an Age-Inappropriate SARS-CoV-2 Vaccine: Latvian Experience. *European Journal of Health Law*. Available: <https://doi.org/10.1163/15718093-bja10103>. Included in *Web of Science* and *SCOPUS* database.
2. Šāberte, L. 2021. “The patient’s right to receive a cross-border health care service if effective inpatient treatment is available in the patient’s home Member State, but the method of treatment used does not correspond to the patient’s religious beliefs”. *Socrates: Electronic journal of legal scientific articles of the Faculty of Law of Rīga Stradiņš University, Riga: RSU, 2021, no. 2 (20), pp. 160 – 187. ISSN: 2256 - 0548. Available: <https://doi.org/10.25143/socr.20.2021.2.160-187>. Included in the *ERIH PLUS* database.*
3. Šāberte, L., Tarasova, D., Palkova, K. 2021. “The right of a medical practitioner to express his religious beliefs in legal employment relations”. *Socrates: Electronic journal of legal scientific articles of the Faculty of Law of Rīga Stradiņš University, Riga: RSU, 2021, No. 2 (20), pp. 188 – 211. ISSN: 2256 - 0548. Available: <https://doi.org/10.25143/socr.20.2021.2.188-211>. Included in the *ERIH PLUS* database.*
4. Šāberte, L. 2017. “The medical practitioner’s right to freedom of religious belief and its implementation when providing health care services in Latvia: the framework of constitutional protection”. *Socrates: the electronic journal of legal scientific articles of the Faculty of Law of Rīga Stradiņš University, Riga: RSU, 2017, no. 2 (8), pp. 102 – 116. ISSN: 2256 - 0548. Available: <https://doi.org/10.25143/socr.08.2017.2.102-118>. Included in the *ERIH PLUS* database.*

Presentation at an international scientific conference with an oral report, theses or a poster report:

1. Šāberte, L. 2023. “The Capable Adult Patient’s Right to Decide in Medical Treatment Based on His or Her Religious Beliefs in the Republic of Latvia”. International scientific conference “Places”, Rīga Stradiņš University, Latvia, Riga, March 29, 2023. Presentation with an oral report. Theses book, p. 23. Available: https://dspace.rsu.lv/jspui/bitstream/123456789/11310/1/2023_Abstracts-Book_PLACES.pdf.
2. Šāberte, L., Palkova, K. 2022. “Administrative liability for performance of vaccination with an age-inappropriate SARS-CoV-2 vaccines in the Republic of Latvia”. 8th European Conference on Health Law. Belgium, Ghent, April 20-22, 2022. Presentation with an oral report. The report is included in the conference proceedings. Goffin T., Balthazar T. Book of Proceedings of the 8th European Conference on Health Law. pp. 9 – 23. Available at: <https://eahl.eu/eahl-2022-conference>.

3. Šāberte, L. 2021. "Legal and Practical Aspects of Ensuring Chaplaincy Services in the Hospitals of the Republic of Latvia in the Context of the Right of Patients and Their Relatives to Receive Mental care". At the 8th international scientific conference "New Legal Reality: Challenges and Perspectives" (New Legal Reality: Challenges and Perspectives). University of Latvia, Latvia, Riga, October 21, 22, 2021. Stand paper. Available: <https://www.apgads.lu.lv/en/izdevumi/brivpieejas-izdevumi/konferencu-krajumi/jauna-tiesiska-realitate-izaicinajumi-un-risinajumi-i/>. Report is included in the collection of articles of the conference: New legal reality: challenges and solutions. Proceedings of the 8th International Scientific Conference of the Faculty of Law of the University of Latvia. Riga: LU Academic Publishing. Vol. I. pp. 132-142. Available: https://www.apgads.lu.lv/fileadmin/user_upload/lu_portal/apgads/PDF/Konferences/2022/iscflul-8-1/JF_8_startp_konf_LV.pdf.
4. Šāberte, L. 2021. "Patient's right to cross-border healthcare when effective hospital treatment is available in the patient's Member State but the method of treatment used is against the patient's religious beliefs". International scientific conference "Places", Rīga Stradiņš University, Latvia, Riga, March 25, 2021. Oral Report. Theses book, p. 52. Available: https://dspace.rsu.lv/jspui/bitstream/123456789/3646/1/PLACES_2021_Abstracts-Book.pdf.
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7. Šāberte, L. 2018. "Judgments of the Court of the European Union on the implementation of freedom of religious belief in the workplace and its impact on medical personnel as health care workers in Latvia". 13th International scientific conference "Social science for regional development 2018, dedicated to the centenary of the Baltic States". Latvia, Riga, Daugavpils University, October 12-13, 2018. Oral report. Book of theses, p. 73. Available at: https://www.researchgate.net/publication/328364260_ENTREPRENEURIAL_ACTIVITY_AND_SOCIO-ECONOMIC_DEVELOPMENT_INSTITUTIONAL_AND_SOCIO-CULTURAL_ASPECTS.
8. Šāberte, L. 2017. "Implementation of the medical person's right to freedom of religious belief while providing health care services in the Republic of Latvia. Framework of constitutional protection". Rīga Stradiņš University's international scientific-practical conference "Directions of modernisation of the legal system, real situation and future perspectives". Latvia, Riga, Rīga Stradiņš University, April 26, 2017. Oral report. Conference program, p. 3. Available: https://www.rsu.lv/sites/default/files/imce/Zinas/Zinu%20pielikumi/tiesiskas_sistemas_modernizacija_s_virzieni_programma_rev2.pdf.

Presentation at the scientific conference of local importance with an oral report or theses:

1. Šāberte, L. 2023. "Interaction of the right to information with the patient's right to express his religious beliefs in medical treatment". Medical law conference Rīga Stradiņš University, Latvia, Riga, June 16, 2023. Available: https://www.rsulv/notikumi/medicinas-tiesibu-konference-2023?fbclid=IwAR1ch-AYw6iT6ZP9_egRrQTK-fA6Y30BJE4wZ74fxIc3W_QLvabou9tz8ss.
2. Šāberte, L. 2022. "Administrative responsibility for age-inappropriate Covid-19 vaccination in the Republic of Latvia". Medical law conference Rīga Stradiņš University, Latvia, Riga, June 17, 2022. Available: <https://www.rsulv/notikumi/medicinas-tiesibu-konference-2022>.
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Articles, which are directly related to the research conducted in the Thesis, in publications published in Latvia:

1. Šāberte, L., Slokenberga, A. 2022. *Chapter 4. Competence of medical personnel and medical support personnel in medical treatment. Medicīnas tiesības. The second updated edition.* Textbook. S.Slokenberga and a team of authors, scientific editing S.Olsena. Riga: Courts House Agency, ISBN NO. 978-9934-621-01-7. pp. 122-161.

2. Šaberte, L. 2019. *Paragraph 2: The purpose of the law. // Comments on the Law on the Rights of Patients*. Team of authors LL.D. Scientific editing S. Slokenberga Riga: Latvijas Vēstnesis, ISBN NO. 9789984840604. pp. 21-28.
3. Šaberte, L. 2019. *Paragraph 3: General provisions. // Comments on the Law on the Rights of Patients*. Team of authors LL.D. Scientific editing S. Slokenberga Riga: Latvijas Vēstnesis, ISBN NO. 9789984840604. pp. 28 – 39.
4. Šaberte, L., Strazdiņa, L. 2019. *paragraph 4: Right to information. // Comments on the Law on Rights of Patients*. Team of authors LL.D. Scientific editing S. Slokenberga Riga: Latvijas Vēstnesis, ISBN NO. 9789984840604. pp. 39-61.
5. Šaberte, L. 2019. *Comments to the Law on the Rights of Patients. Transitional provisions of the Law on the Rights of Patients, amendments and Informative references to European Union directives*. Team of authors LL.D. Scientific editing S. Slokenberga Riga: Latvijas Vēstnesis, ISBN NO. 9789984840604. pp. 310-322.

Participation in research and academic projects

Participation in the SAM 822 project “Strengthening the capacity of academic staff of Rīga Stradiņš University” (2018-2022).

Participation in research, exchange of experience and training programs and other events related to the research topic of the Thesis:

1. Participation in the seminar of the Association of Pastoral Care Professionals “*Primum non nocere*: How to recognise and avoid spiritual abuse in pastoral work”. On the Zoom platform (15.11.2023). Available: <https://katolis.lv/2023/11/pastoralas-aprupes-profesionalu-asociacija-aicina-uz-seminaru-par-garigo-vardarbibu/?fbclid=IwAR39zjV5cd0KiJoaK7G2ZXkai4c7PtN6Yg5zL0o97PZjnL3peL OosCtwd84>.
2. Participation with an oral report at The World Association for Medical Law (WAML) 27. At the Medical Law Congress, Mykolo Romerio University (Mykolo Romerio universitetas) in Vilnius, Lithuania (02.08.2023 - 04.08.2023). [Conference program, pp. 41, 57, 72]. Available at: <https://wafml.memberlodge.org/resources/Documents/2023%20Program%20and%20Abstract%20Book.pdf>.
3. Participation in the summer school of The Julius Maximilians University of Würzburg in European Union law: “Summer Studies on European Law 2021”, in digital format, (20.09.2021.- 24.09.2021.).
4. Short-term research internship at the institution “The Global Campus of Human Rights”, Venice, Italy within the framework of ERASMUS + (09.09.2019–18.11.2019).
5. Participation in the Nottingham Trent University summer school in human rights: “Nottingham Law School Strasbourg Summer School”, Strasbourg, France (07.08.2018-07.12.2018).

Oral reports at other conferences, seminars at international institutions, other publications and interviews related to the topic of the Thesis

1. Šāberte, L. 2020. "Patients and Their Relatives Right to Receive Spiritual Health Care in the Republic of Latvia." PhD seminar of the European Association of Health Law. European Association of Health Law, Belgium, Brussels. December 9-10, 2020.
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Approbation of the results of the Thesis in the health policy planning process, providing proposals for improvement of the national regulatory framework in the field of patients' rights

The Author has brought up certain problematic issues identified in the Thesis by leading the working group established by the order of the Minister of Health No. 15 of January 31, 2022 "On the working group for improvement of observance of patients' rights" and by preparing the report of May 9, 2022 "On the proposals put forward by the working group for improvement of observance of patients' rights" No. 1.3.-5./4025, which is available in the archives of the Health Inspectorate and the Ministry of Health.

The problem issues identified in the research conducted in the Thesis are integrated into the study courses in which the Author performs academic work:

1. Undergraduate study program "Law" in the study course "Medical Law".
2. Undergraduate study program "Law" in the study course "Health care organisation law".
3. In the Master's study program "Legal Science" in the study courses "Current problems of protecting the rights of medical workers and patients" and "Medical and legal problems of communication".

During her doctoral studies, the Author has supervised students' final theses, including bachelor's, master's and study theses, which touch on the topic of the Author's Thesis. For example, Master's thesis: "Activity of a professional health care chaplain in medical institutions in the Republic of Latvia: legal aspects and issues", Rīga Stradiņš University, Rīga, 2017. *Rated with 10 points (excellent).*

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2. United Nations. International Covenant on Civil and Political Rights. Adopted: 16.12.1966. Enters into force: 14.07.1992. Latvijas Vēstnesis, Nr.61, 23.04.2003. Joined: 14.04.1992. Retrieved from: <https://likumi.lv/ta/lv/starttautiskie-ligumi/id/705>
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4. United Nations. Vienna Convention on the Law of Treaties. Adopted. 23.05.1969 Shall enter into force. 03.06.1993 Latvijas Vēstnesis, Nr. 52, 03.04.2003. Joined 04.05.1993. Retrieved from: <https://likumi.lv/ta/lv/starttautiskie-ligumi/id/1>

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5. McBride, J. 2021. The Doctrines and Methodology of Interpretation of The European Convention on Human Rights by The European Court of Human Rights. *The Council of Europe*. Retrieved from: <https://rm.coe.int/echr-eng-the-doctrines-and-methodology-of-interpretation-of-the-europe/1680a20aee>
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