



Rechtshistorische Reihe

446

Frank L. Schäfer
Werner Schubert
(Hrsg./eds.)

Justiz und Justizverfassung Judiciary and Judicial System

Siebter Rechtshistorikertag im Ostseeraum,
3.-5. Mai 2012 Schleswig-Holstein

7th Conference in Legal History in the Baltic Sea Area,
3rd-5th May 2012 Schleswig-Holstein

Justiz und Justizverfassung
Judiciary and Judicial System

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Vorwort

Der Tagungsband dokumentiert den VII. Rechtshistorikertag im Ostseeraum. Die Veranstaltungsreihe dient seit dem Jahr 2000 zur Förderung der Kooperation und des Gedankenaustauschs zwischen den Rechtshistorikerinnen und Rechtshistorikern in den Anrainerstaaten der Ostsee. Zugleich ist die Veranstaltungsreihe Bestandteil eines größeren Netzwerkes in Nordeuropa sowie im Ostseeraum. Zu nennen sind bei den Historikern die Kooperation „Nordic Spaces: Formation of States, Societies and Regions, Cultural Encounters, and Idea and Identity Production in Northern Europe after 1800“ und bei den Rechtshistorikern die Doktorandenförderung über das Projekt „Legal history on the edge of Europe: Nordic law in the European legal community 1000–2000 a.d. (REUNA)“. Hinzu kommen einzelne Veranstaltungen wie 2010 in Finnland zu „Nordic Legal Traditions and the Changing European Context“ und die thematische Kongressreihe „Carlsberg Academy Conference on Medieval Legal History“ in Kopenhagen.

Der VII. Rechtshistorikertag im Ostseeraum fand vom dritten bis zum fünften Mai 2012 in Schleswig-Holstein statt. Tagungszentrum war das Dr. Otto Bagge-Kolleg der Dr. Otto Bagge-Stiftung der Rechtswissenschaftlichen Fakultät der Christian-Albrechts-Universität zu Kiel in Sehlendorf an der Ostsee. Am vierten und fünften Mai tagten die Teilnehmer an historischen Stätten der Gerichtsbarkeit und der Wissenschaft in Schleswig-Holstein: im Sitzungssaal des Schleswig-Holsteinischen Oberlandesgerichts in Schleswig, im Kuppelsaal des Prinzenpalais des Landesarchivs Schleswig-Holstein in Schleswig sowie im Roten Saal des Rathauses der Hansestadt Lübeck. Dafür gilt unser besonderer Dank Herrn Heinz-Karl Waßmuth, Vizepräsident des Schleswig-Holsteinischen Oberlandesgerichts, Herrn Professor Dr. Dr. Rainer Hering, Direktor des Landesarchivs Schleswig-Holstein, sowie Herrn Bernd Saxe, Bürgermeister der Hansestadt Lübeck.

Mit dem Thema „Justiz und Justizverfassung“ knüpfte der VII. Rechtshistorikertag im Ostseeraum an den IV. Rechtshistorikertag im Ostseeraum in Greifswald über „Gerichtskultur im Ostseeraum“ an. Die Teilnehmer setzten sich auf dem VII. Rechtshistorikertag zum Ziel, die Geschichte des Prozessrechts, der Justiz und ihrer Institutionen in der ganzen Bandbreite des Ostseeraums zu erforschen und zu präsentieren. Die Referate widmeten sich in der Horizontalen den einzelnen Anrainerstaaten der Ostsee: Dänemark, Schweden, Baltikum, Finnland, Russland/Sowjetunion, Polen und Norddeutschland (Schleswig-Holstein, Mecklenburg). In der Vertikalen reichten die Referate von der Höchstgerichtsbarkeit im Ostseeraum bis zur Dorfjustiz des russischen Bauerntums. Ebenso vielfältig waren die Anknüpfungspunkte in der Gerichtsorganisation: Sie reichten von den Obergerichten über die Spruchfakultäten und Laiengerichte bis zur Kirchengerichtsbarkeit. Zu den Referaten von Jukka Kekkonen über „The administration of justice after crisis episodes in Finland; experiences from postwar (1918– and 1945–) situations“ und von Joachim Rückert über „Savigny, Justiz und Justizverfassung – auch am Beispiel

zweier Staatsratsgutachten“ liegt keine Schriftfassung vor. Die Referate von Tatiana Borisova über „Russian judiciary and the problem of law interpretation in late imperial Russia“ und von Pia Letto-Vanamo über „Finnische Justiz im 20. Jahrhundert“ werden bei Lindsay Farmer u.a. (Hg.), *From the Judge's Arbitrium to the Legality Principle* bzw. in der Zeitschrift für Neuere Rechtsgeschichte abgedruckt.

Unser besonderer Dank für die Vorbereitung dieses Tagungsbandes gilt den Mitarbeiterinnen und Mitarbeitern am Lehrstuhl für Bürgerliches Recht, Europäische und Deutsche Rechtsgeschichte sowie Historische Rechtsvergleichung am Juristischen Seminar der Christian-Albrechts-Universität zu Kiel. Ferner sind wir der Deutschen Forschungsgemeinschaft sowie der Prof. Dr. Werner Petersen-Stiftung für die Unterstützung der Tagung verbunden.

Kiel, Juni 2013

Frank L. Schäfer und Werner Schubert

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Ecclesiastical Administration of Justice in the Baltic Region of the Russian Empire during the Early State Modernization: The Case of the Province Estland

Andres Andresen

I. Introduction

The previous research has quite unanimously pointed to the Baltic provinces Estland, Livland and Kurland between c. 1800 and 1880 as – at least for nineteenth century Europe – anachronistic examples of comprehensive estate privileges. At times when constitutionalism and liberalism had become the modern catchwords in contemporary European politics, on the Baltic soil and under the supremacy of the Russian tsars, the Baltic German noble estates and town elites still enjoyed rights of corporative self-government which partly dated back to the Middle Ages. According to general knowledge, the Baltic corporative privileges in the fields of administration and judiciary were decimated with the major unification reforms of the late nineteenth century (the infamous Russification).¹ Some recent studies, however, have emphasized that these reforms were preceded by interventions of central state power in provincial privileges several decades earlier which should be considered as elements of the same line of development – the modernization of the state administration, especially regarding reforms targeted at the unification of different regions.² This paper follows the same rationale and takes a closer look at the Lutheran ecclesiastical administration of justice in the Baltic provinces in the context of state policies during the early nineteenth century.

The provinces Estland, Livland and Kurland formed a very distinct region of the empire, especially due to their common cultural and historical background of western Christianity and also due to their long-standing institutional traditions. In Estland and Livland the Russian rule had replaced that of the Swedish monarchs during the course of the Great Northern War, in 1710. The capitulations concluded by the local estates and the Russian military leadership guaranteed the domination of the Lutheran confession, the self-government of the noble landlord corporations

¹ As an introduction see for example *Michael Haltzel*, *Der Abbau der deutschen ständischen Selbstverwaltung in den Ostseeprovinzen Rußlands. Ein Beitrag zur Geschichte der russischen Unifizierungspolitik 1855–1905*, Marburg/Lahn 1977; *Gert v. Pistohlkors* (Hg.), *Baltische Länder*, Berlin 1994, esp. pp. 397 sqq.

² See for example *Lea Leppik*, *The provincial reforms of Catherine the Great and the Baltic common identity*, *Ajalooline Ajakiri* [The Estonian Historical Journal] 2012 1/2 (139/140), pp. 55–78; *Andres Andresen*, *Unifying the Periphery of a Conglomerate State: Ecclesiastical Legislation in Estland and Livland (1686–1832)*, in: *Marju Luts-Sootak/Sanita Osipova/Frank L. Schäfer* (Hg.), *Einheit und Vielfalt in der Rechtsgeschichte im Ostseeraum. Sechster Rechtshistorikertag im Ostseeraum*, 3.–5. Juni 2010 Tartu (Estland)/Riga (Lettland), Frankfurt a.M. u.a. 2012.

(*Ritterschaften*) of Estland and Livland as well as of the town elites in Tallinn (Reval) and Riga, the local legal tradition and court system, and German as the local official language. These terms were later confirmed by Tsar Peter I, by the provisions of the 1721 Treaty of Nystad as well as by later monarchs.³ As a result of the third Polish partition in 1795 Russian supremacy extended over Kurland. Also in this province the privileges of the estates were guaranteed by the monarchs.

The Baltic provincial privileges and historical institutional traditions contributed to the relatively strong institutional particularism in both secular and clerical fields of society. In Estland, Livland and Kurland the early modernizing efforts of the central government were mostly directed at overcoming the secular institutional particularism and unifying the structures of society with the core area of the state. First and foremost this pertained to the fields of province administration and the secular judicial system. During the late eighteenth and early nineteenth centuries the Russian monarchs Catherine II and Alexander I initiated several reform attempts which were targeted at updating various spheres of the state according to the contemporary European examples. For a short while, the liberal-minded Alexander I even took up the idea of transforming the autocratic empire into a constitutional monarchy of the enlightened European type. All through this period of early state modernization the domain of state administration enjoyed the most attention.⁴

At this period of time, until the late 1820s, Lutheran church governance and ecclesiastical administration of justice in the Baltic region were spared of any major coordinated intervention. Although Alexander I had worked on some ideas regarding centralized Protestant church governance, eventually these ideas had no direct impact on Estland, Livland and Kurland. Then finally in 1832 the new Act for the Evangelical Lutheran Church of the Russian Empire comprehensively unified the Lutheran ecclesiastical institutions throughout the Empire.

The aim of this article is twofold. The primary objective is to study the Baltic ecclesiastical administration of justice in the early nineteenth century before 1832. To this end, I shall take up the case study on the province Estland. My secondary intention is to briefly examine the most important changes in the system of ecclesiastical judiciary which were prescribed by the 1832 Lutheran Church Law.

³ *Eduard Winkelmann* (Hg.), *Die Capitulationen der estländischen Ritterschaft und der Stadt Reval vom Jahre 1710 nebst deren Confirmationen. Nach den Originalen mit andern dazu gehörigen Documenten und der Capitulation von Pernau, Reval 1865*; *Carl Schirren* (Hg.), *Die Capitulationen der livländischen Ritter- und Landschaft und der Stadt Riga vom 4. Juli 1710 nebst deren Confirmationen. Nach den Originaldokumenten mit Vorausstellung des Privilegium Sigismundi Augusti und einigen Beilagen, Dorpat 1865*. On religious privileges see *Andres Andresen*, *Formal stipulation and practical implementation of religious privileges in Estland, Livland and Courland under Russian supremacy: researching the core of Baltic regional identity*, *Ajalooline Ajakiri [The Estonian Historical Journal]* 2012 1/2 (139/140), pp. 33–54.

⁴ For a general overview see v. *Pistohlkors*, *Baltische Länder* (supra fn. 1), pp. 287 sqq.

The history of the Lutheran ecclesiastical judicial system in the provinces Estland, Livland and Kurland has been one of the most neglected areas in the Baltic legal historiography. Several church historians have touched upon the system of church courts, but only rather generally.⁵ Legal historians working on the Baltic region have almost entirely abandoned the themes of ecclesiastical courts, ecclesiastical administration of justice and Lutheran church law.⁶ A recent study in the field of historical research examines the influence of state power on church governance, church institutions and church law in Estland during the period of 1710–1832.⁷

The most important archival sources for the study of the ecclesiastical administration of justice in the Baltic provinces are, firstly, the protocols of the church consistories, and secondly, the acts of law issued by the provincial governments. In the case of the province Estland all these sources are preserved in the Estonian Historical Archives in Tartu. Among the published sources the Swedish Church Law of 1686 and the Swedish consistorial code of procedure of 1687,⁸ numerous

⁵ *Hermann Dalton*, *Verfassungsgeschichte der evangelisch-lutherischen Kirche in Rußland*, Gotha 1887; *Juhan Kõpp*, *Kirikuvallitsemisõpetus*, Tartu 1940; *Wilhelm Lenz*, *Zur Verfassungs- und Sozialgeschichte der baltischen evangelisch-lutherischen Kirche 1710–1914. Der Aufbau der Landeskirchen und die Stellung des Pastors in Liv-, Est- und Kurland*, in: Reinhard Wittram (Hg.), *Baltische Kirchengeschichte: Beiträge zur Geschichte der Missionierung und der Reformation, der evangelisch-lutherischen Landeskirchen und des Volkskirchentums in den baltischen Landen*, Göttingen 1956, pp. 110–129.

⁶ In the Baltic German overviews of the Baltic history of law, church law has been studied extremely superficially. For example Friedrich Georg von Bunge has written four pages on canon law, but Lutheran church law in Estland has been summarized only in a few lines (*Friedrich Georg v. Bunge*, *Einleitung in die liv-, esth- und curländische Rechtsgeschichte und Geschichte der Rechtsquellen*, Reval 1849, pp. 170–174, 205–206); also the part on the system of Lutheran church courts is very laconic (*Friedrich Georg v. Bunge*, *Geschichte des Gerichtswesens und Gerichtsverfahrens in Liv-, Est- und Curland*, Reval 1874, pp. 170, 175, 177–178, 203). Oswald Schmidt only mentions the church laws of 1686 and 1832 (*Oswald Schmidt*, *Rechtsgeschichte Liv-, Est- und Curlands. Aus dem Nachlasse des Verfassers hg. von Dr. Eugen von Nottbeck*, Dorpat 1895, pp. 174, 277–278). However, F. G. v. Bunge regarded all the acts of law which were applied in a Baltic province as *provincial law* (*Marju Luts*, *Juhuslik ja isamaaline: F. G. v. Bunge provintsiaalõigusteadus*, Tartu 2000, pp. 133–135), thus also ecclesiastical law has to be considered an integral part of the provincial law.

⁷ *Andres Andresen*, *Eestimaa kirikukorraldus 1710–1832. Riigivõimu mõju institutsioonidele ja õigusele* [Church constitution in Estland, 1710–1832. The influence of state power on institutions and law], Tartu 2008. I have used some parts of my monograph for this article.

⁸ In the Baltic provinces and in the Lutheran congregations of Russia proper the German translations were used: *Kirchen-Gesetz und Ordnung, So der Großmächtigste König und Herr, Herr Carl, der Eilffte, Der Schweden, Gothen und Wenden König*, etc. Im Jahr 1686 hat verfaßen und Im Jahr 1687 im Druck ausgehen und publiciren lassen. Mit denen dazu gehörigen Verordnungen. Stockholm [*sine anno*]; Ihr: Königl. May:t Verordnung, Wie es mit den Gerichts Processen bey denen Thumb-Capituln soll gehalten werden. Gegeben auf dem Schloß zu Stockholm den 11. Februarij Anno 1687, in: *Kirchen-Gesetz und Ordnung*, pp. 175–189.

decrees of the imperial government⁹ and the Act for the Evangelical Lutheran Church of the Russian Empire of 1832 (together with the instruction for the clergy and with the new liturgy)¹⁰ are to be mentioned as the most prominent ones.

II. Lutheran Territorial Church of Estland

Until about mid-nineteenth century Lutheranism formed the solely dominating confession in the Baltic region. Only since the 1840s did Russian Orthodoxy gain ground to a notable extent, as a result of a wide-scale conversion movement among the Estonian and Latvian peasantry in the province of Livland, caused by social and economic reasons.¹¹

Due to the Lutheran Reformation several territorial churches had emerged in the Baltic region, among others the territorial church of the province Estland. The absolutist rule of King Charles XI brought about the unification of the Lutheran ecclesiastical organization throughout the Swedish conglomerate state, mainly as the consequence to the implementation of the 1686 Church Law. This institutional interlude proved to be short-lived, as under the early Russian rule the Lutheran church organization of the Baltic region once again split up into several territorial churches. This resulted from the self-government of the estates in Estland, Livland, Ösel, Tallinn and Riga.

In the early nineteenth century the territorial church of the province Estland was governed by the consistory, situated in Tallinn.¹² The consistory comprised six Lutheran pastors as assessors and a secular president, all of which were life-long posts. The senior pastor of the Cathedral Church on the Tallinn Dome Hill was ex officio a member of the consistory. The vacancies of the other clerical assessors were filled according to the decision of the consistory itself. In case of a presidential vacancy the clerical assessors proposed three candidates from among the *Land-räte*, after which the *Landratskollegium* elected the new president.¹³ According to the procedure dating back to the Swedish period only the secretary of the consistory

⁹ Полное Собрание Законовъ Россійской Имперіи (hereafter ПСЗ) [Собрание первое], Т. IX–XLV; Собрание второе, Т. I–VII, Санктпетербургъ 1830–1833.

¹⁰ Уставъ Евангелическо-Лютеранской Церкви въ Россіи (ПСЗ II. Т. VII. Nr. 5870); Наказъ Духовенству и Начальствамъ Евангелическо-Лютеранской Церкви въ Россіи [ПСЗ II. Т. VII. Nr. 5871]; Gesetz für die Evangelisch-Lutherische Kirche in Russland. Instruction für die Geistlichkeit und die Behörden der Evangelisch-Lutherischen Kirche in Russland. Agende für die Evangelisch-Lutherischen Gemeinden im Russischen Reiche [*sine loco sine anno.*]

¹¹ See *Hans Kruus*, Talurahva käärimine Lõuna-Eestis XIX sajandi 40-ndail aastail [Mit einem Referat: Die Bauernbewegung in Südestland in den 40er Jahren des XIX. Jahrhunderts], Tartu 1930.

¹² The town of Tallinn had its own Lutheran territorial church, completely separate from the Estland church.

¹³ Twelve *Landräte* or councillors composed the *Landratskollegium* – the permanent executive body of the *Ritterschaft*.

was salaried by the state, and thus only in his case the provincial government (i.e. the state) had to appoint him to office.¹⁴

The church of Estland was divided into provost districts, these again into parishes. One of the parish pastors carried out the office of the provost as an additional task. On parish level a number of institutions complemented the office of the pastor. Two *Oberkirchenvorsteher*, elected to the office by the local noble landlords from among themselves for three years, looked after the economic problems of the parish church and fulfilled numerous other tasks related to general administration, communication and police.¹⁵ The pastor and the two *Oberkirchenvorsteher* constituted the *Kirchengericht*, the institution which took care of the ecclesiastical police of the parish. All the landlords of the parish, with the *Oberkirchenvorsteher* presiding, composed the *Kirchenkonvent* (also called *Kirchspielskonvent*). The *Kirchenkonvent* settled various tasks related to the *externa* of the parish church.¹⁶ The *Küster* acted as an assistant to the pastor. At every parish church one or two peasants were appointed to the post of the *Kirchenvormünder*, to carry out the orders of the pastor and the *Oberkirchenvorsteher*.¹⁷

In the early nineteenth century each of the several Lutheran territorial churches in the Baltic provinces boasted its own particularistic system of ecclesiastical law. The law of the Estland church was founded mainly on the legal sources of Swedish origin. The Swedish Church Law (1686) together with the consistorial code of procedure (1687) has been mentioned above with regard to the main sources already. In addition the special supplement to the Church Law for Estland (1692),¹⁸

¹⁴ Eesti Ajalooarhiiv [Estonian Historical Archives, hereafter EAA] [archive] 1187–[series] 2–[record] 47, pp. 26 o.l. [overleaf] 27; 1187–2–326, p. 82 o.l.; 854–2–2891, p. 45; 1187–2–110, pp. 147–148; 1187–2–121, pp. 73–73 o.l. See also *Hugo Richard Paucker*, *Ehstlands Geistlichkeit in geordneter Zeit- und Reihefolge*, Reval 1849, p. 21.

¹⁵ See *Andresen*, *Eestimaa kirikukorraldus* (supra fn. 7), pp. 161–163.

¹⁶ *Andresen*, *Eestimaa kirikukorraldus* (supra fn. 7), pp. 120–123. On the proposal of the *Landtag* (the diet of the *Ritterschaft*), on March 22, 1809 the provincial government issued a provincial decree which required some improvements concerning the *Kirchenkonvent* (EAA 1187–2–327, pp. 453–453 o.l.).

¹⁷ *Andresen*, *Eestimaa kirikukorraldus* (supra fn. 7), p. 123. See also the special supplement of the 1686 Church Law for Estland: Declaration der Kirchen-Ordnung. Königliche Majestäten gnädigste Resolution und Erklärung derer von Ritter- und Priesterschaft in Ehstland, durch den Bischof Johann Heinrich Gerthius, unterthänigst vorgetragenen Fragpunkte und Erinnerungen, angehende etliche Fälle, so bey der publicirten und in Druck ausgegangenen Kirchenordnung in ihrer Vorstellung an dem Orte in Bedenken kommen. Gegeben Stockholm, den 30sten November 1692, in: *Gustav Johann von Buddenbrock* (Hg.), *Sammlung der Gesetze, welche das heutige livländische Landrecht enthalten, kritisch bearbeitet*, Bd. 2: Aeltere hinzugekommene Landesrechte. Zweite Abtheilung und Anhang. Kirchenrecht und Richterregeln, Riga 1821, pp. 1641–1656, zum Cap. 19. § 31.

¹⁸ See fn. 17.

the Priest Privilege Act of 1675, regulating the personal rights of the clergy¹⁹ as well as the decree of Estland's governor on the income of rural pastors (1645)²⁰ should be mentioned in this context.

During the period of Russian rule the provincial government of Estland complemented the local ecclesiastical law with numerous decrees. State authority regulated various aspects of church and religion: issues concerning the whole Russian empire, such as state holidays, general peace and order; issues concerning all Lutherans in the empire, such as relations between different confessions; and issues concerning individual provinces, such as church property, church roads, church discipline, ecclesiastical holidays and ceremonies, the judicial subordination of the clergy, the tasks of the pastors concerning communication, and the tasks of the *Oberkirchenvorsteher*.²¹

The ukase of the empress Anna from February 23, 1734 ordered the Council of Justice of Livland and Estland Matters²² to act as the highest imperial authority in all affairs related to the confessions other than Russian Orthodoxy, proceeding from the "main regulations" of these confessions.²³ Consequently this Council used the 1686 Swedish Church Law together with the 1687 consistorial code of procedure as its legal basis concerning the Lutheran confession.²⁴ For the Baltic territorial churches the Council performed mostly the functions of the high court of appeal.

The early period of the reign of Alexander I (1801–1825) was marked with extensive reforms of imperial governance. Since 1810 the newly-founded central institution, the General Administration of the Religious Matters of Foreign Confessions (*главное управление духовных дел иностранных исповеданий*) took

¹⁹ Privilegia, zuerst von Ihro Königl. Majest. der Königin Christina; nachgehends aber von dem Großmächtigsten Fürsten und Herrn, Herrn CARL dem Eilften, der Schweden, Gothen, und Wenden König, etc. Im Jahre 1675, auf dem Reichstage zu Upsal übersehen, und auf das neue confirmiret, vor denen Bischöfen und sämtlicher Priesterschaft in Schweden, und darunter gehörigen Landschaften, in: *Heinrich Johann Derling* (Hg.), *Auswahl derer wichtigsten in denen Landes- und Stadtgerichten des Herzogthums Ehistland, auch noch jetzt geltenden Königl. Schwedischen Verordnungen*, Reval 1777, pp. 144–166.

²⁰ See the later copy of the decree Interims Verordnung angehende der Land-Priesterschaft nothdürftigen Unterhalt, in: EAA 1187–1–1, pp. 5–11 o.l. The decree has been published: Einige in Ehistland ergangene, die Prediger-Einkünfte, wie auch die Bauer-Heirathen, betreffende, ältere Verordnungen, in: *August Wilhelm Hupel* (Hg.), *Von den Kosaken. Nebst andern kürzern Aufsätzen. Der nordischen Miscellaneen 24stes und 25stes Stück*, Riga 1790, pp. 439–448.

²¹ *Andresen*, Eestimaa kirikukorraldus (supra fn. 7), p. 193.

²² This institution was called the Council of Justice of Livland, Estland and Finland Matters during the period 1763–1812.

²³ ПСЗ I. Т. IX. (supra fn. 9) Nr. 6548; *Hermann Dalton* (Hg.), *Urkundenbuch der evangelisch-reformirten Kirche in Rußland*, Gotha 1889, pp. 28–31.

²⁴ For matters of the Lutheran congregations in Russia proper, a special institution – the *Consistorial Session* (*Konsistorialsitzung*, *Консисториальная заседания*) was established at the Council of Justice of Livland and Estland Matters.

over the supervision of all confessions except the Russian Orthodoxy.²⁵ In 1817 this institution was merged with the Ministry of National Education. The new central institution, based on a Prussian model, was called the Ministry of Religious Matters and National Education (*министерство духовных дел и народного просвещения*).²⁶

III. The Consistory of Estland as a Judicial Institution in the Early Nineteenth Century

According to the Swedish 1686 Church Law and the 1687 consistorial code of procedure, the bishop or the superintendent together with the consistory formed the ecclesiastical court. All cases related to religious life, doctrine, duties of the clergy and school teachers²⁷ and social care of the poor and ill belonged to the jurisdiction of the ecclesiastical court. Likewise the ecclesiastical court sentenced on lawsuits concerning marriage.²⁸

The Estland consistory was involved in administering justice on two regular sessions a year – the winter and the summer session. Only for these sessions did the consistory convene in a body. In the meantime the senior pastor of the Cathedral Church and the secretary dealt with the routine business, in more important cases the president decided the questions. The regular session lasted for two or three weeks, six days a week, according to the number of the pending cases. During the session the consistory administered justice, but also dealt with the more important problems of church governance, like the revision of several treasuries, inspection of various protocols and reports of the pastors and the provosts, the election of

²⁵ Главное управление духовных дел иностранных исповеданий, in: Государственность России. Государственные и церковные учреждения, сословные органы и органы местного самоуправления, единицы административно-территориального, церковного и ведомственного деления (конец XV века – февраль 1917 года). Словарь-справочник. I. Составители О. Ф. Козлов, В. Ф. Янковая, Москва 1996, pp. 182 sq.

²⁶ Министерство духовных дел и народного просвещения, in: Государственность России. Государственные и церковные учреждения, сословные органы и органы местного самоуправления, единицы административно-территориального, церковного и ведомственного деления (конец XV века – февраль 1917 года). Словарь-справочник. III. Составители О. Ф. Козлов, В. Ф. Янковая, Москва 2001, pp. 75 sq.

²⁷ In the consistorial code of procedure the term *persons of the ecclesiastical and school estate* is used (*Priester- und Schulen-Standes Personen*) (Gerichts Processen bey denen Thumb-Capituln [supra fn. 8], § XV).

²⁸ Kirchen-Gesetz und Ordnung (supra fn. 8), Cap. XV. § I; Cap. XVI. §§ I, III, VI; Cap. XIX. §§ XVIII, XXXII, Cap. XXII. § IV, Cap XXIV. § II; Gerichts Processen bey denen Thumb-Capituln. §§ IV, XV. In like manner, the lawbook of the Estland Knight and Land Law stipulates, that the bishop and the consistory have the jurisdiction over matters related to the ecclesiastical office (Des Herzogthums Ehsten Ritter- und Land-Rechte. Erstes Buch. II. Tit. Art. 5).

provosts or members of the consistory.²⁹ On request of the nobles to divorce their marriage, the consistory sometimes arranged an extraordinary session.³⁰

For the everyday life of the common man, administering justice in the field of marriage – especially the divorce cases – made up the most important part of the activities of the ecclesiastical court. Marriage cases also formed the lion's share of all judgments passed by the ecclesiastical court.

According to the Church Law of 1686 the marriage cases were divided between secular and ecclesiastical jurisdiction. The secular court passed judgments in "secular" cases: if a person was at all (*von Natur wegen*) suited for marriage; questions related to the parents of the married couple and their rights; problems related to the engagement presents and adultery; in case of a divorce, the subsistence of the children and division of the property – all in all everything related to the financial and economic rights and obligations of the married couple and their parents.³¹ The consistory and the bishop (in the actual case of Estland in the early nineteenth century only the consistory), i.e. the ecclesiastical court, had jurisdiction over the following cases: the determination of the degree of kinship; if the couple can get engaged or get married in a certain case; the divorce of the engagement and marriage; if the married couple can live separately (*vom Bett und Tisch geschieden*); if the adulterer may marry again – all in all cases related to "the Word of God and conscience".³² Family law and cases concerned with guardianship are also regulated to some extent in the Second Book of the Estland Knight and Land Law (*Des Herzogthums Ehsten Ritter- und Land-Rechte*).

The main reasons why the Estland consistory divorced an engagement or a marriage can be summed up as following: slovenliness, adultery, lack of love, discordance, excessive drinking, bad treatment, irreconcilable enmity (*odium implacabile*).³³ On one occasion a tavern girl wished to divorce her engagement because she had become afraid of the hard work of a peasant wife.³⁴

The investigation process of the consistory is not described separately in the consistorial code of procedure. The procedure of the consistory in civil cases was verbal, if the parties did not demand otherwise, and summary. In some single cases, though, the treatment of a case could last for a longer period of time, also longer than a year.³⁵ In case of need the clarification of the facts took place by the means

²⁹ EAA 1187–2–107, p. 189 o.l.

³⁰ See for example EAA 1187–2–110, pp. 63 o.l.–64.

³¹ For the marriage, the consent of the parents was needed (Kirchen-Gesetz und Ordnung [supra fn. 8], Cap. XV, § VI).

³² Kirchen-Gesetz und Ordnung (supra fn. 8), Cap. XV, § I; Cap. XVI, §§ I, VI.

³³ EAA 1187–2–109, pp. 226 o.l., 227 o.l.

³⁴ EAA 1187–2–109, pp. 28 o.l.–30.

³⁵ EAA 1187–2–109, p. 227.

of correspondence.³⁶ According to the consistorial code of procedure the consistory had to try to reconcile the parties in the beginning of the process.³⁷ In practice the reconciliation attempt took place in front of the consistory after the hearing of both parties. According to the consistorial code of procedure the judgment of the consistory could be appealed to the royal Court of Appeal (*hovrätt, Hofgericht*). In especially important cases of religion and church matters, the monarch in person was the highest authority.³⁸ As mentioned earlier already, during the period of Russian supremacy the Council of Justice of Livland and Estland Matters served as the court of appeal.³⁹

It was compulsory for the members of the consistory to take part in the sessions, but in case of a motivated excuse non-attendance was allowed. For example, the president of the consistory in 1787–1802, Otto Friedrich von Stackelberg, used this privilege quite often during his last years at office.⁴⁰ In some cases the role of the president was limited to signing the documents compiled in his name.⁴¹ The session workday began with the revision of the judgments which were passed on the day before.

What were the main lines of consistorial procedure? After the complaint had arrived at the consistory, the summons (*Citation*) was sent to the defendant, with the content of the complaint, the date for the court session and the warning that in case the defendant does not show up, upon request of the plaintiff the trial can still take place. The call (*Notification*) to turn up to the court at a given date was also sent to the plaintiff.⁴²

If the defendant did not show up on the given date without any excuse, a new summons was sent with a new date and a warning that a fine has to be paid if the summons is ignored.⁴³ If the location of the defendant was unknown, then the consistory sent an order to all the provosts to be relayed to all the pastors that the summons might be announced at all the churches of the province Estland (*Edictal-Citation*). If the defendant still did not show up at the court, then the judgment could be passed in absentia.⁴⁴ The consistory could also request help from secular authorities to bring someone to the court.⁴⁵

³⁶ Gerichts Processen bey denen Thumb-Capituln (supra fn. 8), § XIX.

³⁷ Gerichts Processen bey denen Thumb-Capituln (supra fn. 8), § XVIII. See also Kirchen-Gesetz und Ordnung (supra fn. 8), Cap. XVI, § 1.

³⁸ Gerichts Processen bey denen Thumb-Capituln (supra fn. 8), § XXIV.

³⁹ See also *v. Bunge*, Geschichte des Gerichtswesens (supra fn. 6), p. 203.

⁴⁰ See for example EAA 1187–2–106, p. 205.

⁴¹ See for example EAA 1187–2–107, pp. 39 o.l.–41.

⁴² See for example EAA 1187–2–109, pp. 5 sq.

⁴³ See for example EAA 1187–2–109, pp. 20 o.l., 21.

⁴⁴ See for example EAA 1187–2–109, pp. 21 o.l.–22 o.l.

⁴⁵ Gerichts Processen bey denen Thumb-Capituln (supra fn. 8), § XVII.

At the trial first the plaintiff was summoned to listen to the complaint. Then the plaintiff was sent out, the defendant was summoned, the complaint was disclosed to him and he or she gave his or her evidence. Then the plaintiff was summoned again and the court listened to the opinion of both parties. After both parties had left the room, the court discussed the case and passed the judgment. In case of a final judgment (*Bescheid, Urteil*) the court tax was charged from either the defendant or the plaintiff, according to the outcome of the judgment.⁴⁶ In the written judgment the main facts from the testimony of the plaintiff and the defendant were given in addition to the final solution.⁴⁷

Since the second quarter of the eighteenth century it was possible to appeal to a special institution – the *Oberappellationsgericht*. The position of the president of the *Oberappellationsgericht* was filled by the governor of Estland or the rank-oldest *Landrat*, the members comprised two *Landräte*, two other members of the *Ritterschaft* and four pastors.⁴⁸ The members of this institution were appointed separately for each case.⁴⁹ The *Ritterschaft* appointed the secretary of the Harju (*Harrien*) *Manngericht* (a district-level court in Estland) as the secretary of the *Oberappellationsgericht*.⁵⁰ Persons of both the noble and of the burgher estates appealed to the *Oberappellationsgericht*, mostly in marriage cases.⁵¹ Unfortunately little source material has been preserved about this institution.

When someone wanted to sue a pastor in a secular court, the consistory had to control the suit in the first place. Only in case the consistory found the sued pastor guilty could he be taken to the secular court.⁵²

According to the 1686 Church Law, the widow could not marry earlier than one year after the death of her husband, the widower earlier than half a year after the death of his wife.⁵³ The peasants quite often submitted petitions asking for permission to marry before the end of the official period of mourning with the explanation

⁴⁶ See for example EAA 1187–2–109, pp. 10 o.l.–14 o.l.

⁴⁷ See for example EAA 1187–2–109, pp. 11, 16 o.l.

⁴⁸ See for example EAA 1189–1–2, p. 126. See also *August Wilhelm Hupel* (Hg.), *Topographische Nachrichten von Lief- und Ehstland*, Bd. 1, Riga 1774, pp. 464 sq.; *Olaf Schild*, *Kas Tallinna doomkirik on kirikuloolises arenemiskäigus olnud piiskopi-kirikuks?*, in: *Usuteadusline Ajakiri*. Lisavihk, 1 (1926), p. 22.

⁴⁹ *Hellmuth Weiss*, *Ein Bericht Philipp Christian Moiers über die kirchlichen und sozialen Verhältnisse in Estland um 1770*, in: *Rudolf von Thadden/Gert von Pistohlkors/Hellmuth Weiss* (Hg.), *Das Vergangene und die Geschichte. Festschrift für Reinhard Wittram zum 70. Geburtstag*, Göttingen 1973, p. 168; *Hasso von Wedell*, *Die Estländische Ritterschaft vornehmlich zwischen 1710 und 1783. Das erste Jahrhundert russischer Herrschaft*, Königsberg/Berlin 1935, p. 171 sq.

⁵⁰ EAA 1187–2–110, pp. 147–147 o.l.

⁵¹ See for example EAA 1189–1–1, pp. 1–147.

⁵² According to the decree of the Swedish government from July 24, 1666 for the province of Estland (EAA 854–1–841, pp. 69 sq.).

⁵³ *Kirchen-Gesetz und Ordnung* (supra fn. 8), Cap. XV, § XXIV.

that there were many underage children in the family or a lot of work to do in the farm. In these cases the permission was given with a special decision (*Resolution*) and this could happen also between the sessions.⁵⁴

Marriages of close kinship were strictly forbidden, but this rule could be dispensed as well. The decree of the Swedish king Karl XII from 1698 reserved the right to dispense the marriages of close kinship solely to the monarch.⁵⁵ On the orders from the empress Anna, the Senate passed a ukase on October 3, 1733, giving the right to dispense marriages of close kinship to the Council of Justice of Livland and Estland Matters.⁵⁶ The ukase from February 23, 1734, ordering the Council of Justice of Livland and Estland Matters to act as the highest authority in all affairs related to the Lutheran confession, confirmed the aforementioned right of dispensation to this institution.⁵⁷ After the foundation of the General Administration of the Religious Matters of Foreign Confessions (1810) it acquired the authority to dispense marriages.⁵⁸

After obtaining the permission from the higher authority to dispense a certain marriage, the Estland consistory passed the judgment of its own (*Bescheid*). The respective pastor was let to know that there were no obstacles to wed the person, who had submitted the petition for the dispensation, with his chosen bride.⁵⁹ The dispensation cost the applicant a lot of money, a marriage with a cousin cost ten to twenty five rubles.⁶⁰ This money was sent to the institution that gave the dispensation to be used “on pious purposes”.⁶¹

The next change in the procedure of dispensing marriages occurred in 1823, as Alexander I, on February 20, confirmed the decision of the minister of the Religious Matters and National Education to temporarily assign the authority to dispense marriages to the consistories. This regulation had to last only until the foun-

⁵⁴ See for example EAA 1187–2–109, pp. 3 o.l., 4.

⁵⁵ The degrees of kinship, prohibited for marriage, are discussed in detail in the Estland Knight and Land Law (Des Herzogthums Ehsten Ritter- und Land-Rechte. Anderes Buch. II. Tit. Art. 1–11; III. Tit. Art. 1–4). See also *Friedrich Georg v. Bunge*, Geschichte des Liv-, Est- und Curländischen Privatrechts. Geschichtliche Uebersicht der Grundlagen und der Entwicklung des Provincialrechts in den Ostseegouvernements, Besonderer Theil. III. Privatrecht, St. Petersburg 1862, p. 133. According to the 1686 Church Law the pastor who wed the persons, who had no legal right to marry, faced one-month imprisonment on water and bread and after that he was to be exiled (Kirchen-Gesetz und Ordnung [supra fn. 8], Cap. XV, § III).

⁵⁶ EAA 1187–2–318, pp. 89 sq. o.l.

⁵⁷ See supra fn. 23.

⁵⁸ The Council of Justice of Livland and Estland Matters published the respective decree to the Estland consistory on October 7, 1810 (EAA 1187–2–115, p. 215).

⁵⁹ See for example EAA 1187–2–109, pp. 4 o.l., 5.

⁶⁰ For comparison: A farm laborer working at the manor of the lord got about five rubles plus clothing as a year’s salary.

⁶¹ See for example EAA 1187–2–106, p. 223 o.l.; EAA 1187–2–106, pp. 119, 223, 254.

dation of the General Consistory of the empire. The supervision over the issue of dispensations lay in the hands of the minister of the Religious Matters and National Education.⁶²

The consistory regularly sent the Council of Justice of Livland and Estland Matters reports on its court cases.⁶³ During the first five years of the nineteenth century (1801–1805), for instance, the consistory had forty-five cases on the average per year.⁶⁴ On a regular basis the consistory also reported to the Council of Justice of Livland and Estland Matters on the petitions, which were mostly related to the dispensation of unlawful marriages or marriage before the end of the official period of mourning.⁶⁵ Since 1805 a similar report was presented to the provincial government. That year the consistory reacted to 280 petitions.⁶⁶

Every year the consistory carried out a church visitation in some of the parishes. The president of the consistory usually performed the task of the principal of the visitation commission.⁶⁷ Two other members of the consistory belonged to the visitation commission as well.⁶⁸ During the winter session of 1803 the consistory decided that on future visitations the visitation commission cannot carry out divorces or other court judgments that belong to the jurisdiction of the consistory – as had been common practice earlier – any more, unless the visitation commission had been given detailed instructions to do so beforehand.⁶⁹

In some single cases the Estland consistory initiated the issue of new laws. For instance, the consistory had a case of a peasant wife who had gone to work as a wet nurse against the will of her husband. Resulting from the proposition of the consistory the provincial government issued a decree on August 4, 1826, prohibiting the landlords to give married women the permit to get employed against the will of their husbands.⁷⁰ Next year, the Governor General of Estland, Livland and Courland Filippo Paulucci took up this problem. As there had been several cases of peasant wives leaving their babies, only some weeks old, to get employed as wet nurses – in this way endangering the life and health of their own babies – on the orders of Paulucci the Estland provincial government issued a decree on June 14, 1827, prohibiting the women to get employed as wet nurses before their own babies

⁶² EAA 1187–2–128, p. 85–86 o.l.; 854–1–841, pp. 78 sq.

⁶³ See for example EAA 1187–2–106, pp. 255 o.l.–264; EAA 1187–2–110, pp. 77, 103 o.l.

⁶⁴ EAA 1187–2–106, pp. 255 o.l.–264; 1187–2–107, pp. 251–260; 1187–2–108, pp. 214–221; 1187–2–109, pp. 226–235.

⁶⁵ See for example EAA 1187–2–108, p. 193.

⁶⁶ EAA 1187–2–110, p. 251 o.l.

⁶⁷ *Olaf Sild*, Kirikuvisitatsioonid eestlaste maal vanemast ajast kuni olevikuni, Tartu 1937, pp. 82–87.

⁶⁸ See for example EAA 1187–2–107, pp. 45 sq.

⁶⁹ EAA 1187–2–108, pp. 21 o.l.–22 o.l.

⁷⁰ EAA 1187–2–333, p. 198.

are at least three months old and under the care of reliable people. The local pastor had to attest in written form that these conditions were fulfilled, before anyone could be employed as a wet nurse.⁷¹ Later, under the rule of the next Governor General, this decree was declared void with the justification that it had caused “inconvenience for mothers of higher estates”.⁷²

IV. Ecclesiastical Police in the Parishes in the Early Nineteenth Century

In the nineteenth century ecclesiastical police formed a lower-level part of the ecclesiastical administration of justice. In Estland every parish had to have two *Oberkirchenvorsteher*. But as this official had numerous different tasks to fulfill, it was not always easy to find candidates to this post. At times some parishes had no *Oberkirchenvorsteher* at all. On the ground of the respective complaint of the consistory, the provincial government issued a decree on March 14, 1817, which ordered the landlords to appoint the *Oberkirchenvorsteher* as the law insisted.⁷³

The *Kirchengericht*, comprising the pastor and two *Oberkirchenvorsteher*, dealt with cases of ecclesiastical police such as quarrels and brawls in the church and its near vicinity, rowing in the church, missing the service in the church, matters of the way of living of the people, especially slovenliness and adultery.⁷⁴ In more severe cases the *Kirchengericht* had only to investigate the facts and to report to the relevant institutions – to the consistory or the secular court.⁷⁵

The Peasant Law Act of 1816, best known for abolishing serfdom in Estland, also reformed the police order in the newly-founded peasant communities. Ac-

⁷¹ EAA 1187–2–334, p. 47.

⁷² According to orders of the Minister of the Interior and State Council and the ukase of the Senate from April 16, 1830. The decree of the provincial government from January 16, 1831 invalidated the decree from June 14, 1827 (EAA 1187–2–336, pp. 1–1 o.l.).

⁷³ EAA 1187–2–330, p. 109. The governor of Estland issued the instruction on the election of the *Oberkirchenvorsteher* and on their duties in 1650 (*Gustaf Oskar Fredrik Westling*, *Kirchengesetz und Kirchengesetzarbeiten in Ehstland zur Zeit der schwedischen Herrschaft*, in: *Ehstländische Literärische Gesellschaft* (Hg.), *Beiträge zur Kunde Ehst-, Liv- und Kurlands*, Bd. 5, Reval 1900, pp. 55 sq.; *Gustaf Oskar Fredrik Westling*, *Mittheilungen über die Kirchenverfassung in Estland zur Zeit der schwedischen Herrschaft*, a.a.O., pp. 171–173). According to one later copy of this instruction, it was issued on February 24, 1651 (EAA 854–1–841, p. 29). The institution of the *Oberkirchenvorsteher* is regulated also in the Estland Knight and Land Law (*Des Herzogthums Ehsten Ritter- und Land-Rechte*, Sechstes Buch, II. Tit. §§ 1, 3).

⁷⁴ The provincial government issued special decrees concerning problems of slovenliness and adultery on August 25, 1697 (EAA 1187–2–316, pp. 3 o.l.–4), on July 20, 1765 and on September 13, 1772 (EAA 1187–2–328; pp. 85 o.l.–86 o.l.). The Senate issued relevant ukases on April 6, 1764 (published by the Estland provincial government on April 16 (EAA 1187–2–320, pp. 161 sq.) and on October 20, 1832 (published by the Estland provincial government on December 24 (EAA 1187–2–336, p. 345 o.l.).

⁷⁵ EAA 1187–2–27, p. 13 o.l.

cording to the new system the police (*Gemeindepolizey*) was carried out by the peasant officials, the *Gemeinde-Älteste* and the *Kirchen-Untervorsteher*.⁷⁶ The peasant community police officials were supervised by the landlords, who also executed the second level or the manorial police (*Gutspolizey*).⁷⁷ The manorial police itself was subordinated to the supervision of the parish level police institution, the *Kirchspielpolizeygericht*.⁷⁸

In matters of ecclesiastical police, the jurisdiction was divided between the community police and the manorial police officials on the one hand and the *Kirchengericht* on the other. In case the pastor or some ecclesiastical official made a complaint to the community or manorial police institutions, the respective institution had to solve the case. Otherwise the *Kirchengericht* was in charge.⁷⁹

V. Preparation of the 1832 Church Law

In the Baltic provinces and in the Lutheran congregations of Russia proper the 1686 Church Law formed the basic part of the Lutheran ecclesiastical law, but in addition a great number of other acts of law were in use. This kind of legal diversity hindered the efficiency of imperial institutions which had the task to supervise the Lutheran church institutions.

The ukase of Nicholas I from May 22, 1828 ordered the preparation of the new Lutheran⁸⁰ church law act. This was motivated with the need for greater clarity and uniformity in the Lutheran church organization. The emperor gave two starting-points: the new law act had to correspond, firstly, to the present general principles regarding the doctrine as well as the church organization and governance, and, secondly, to the present situation and needs of the state authority concerning the relations to the Lutheran church organization.⁸¹

The preparatory committee of the new Lutheran church law act comprised clerical and secular representatives of the Estland, Livland and Kurland territorial churches and of the St. Petersburg consistorial district, a professor of theology of the Tartu University, and, on the special request of the emperor and by consent of the Prussian king, the general superintendent of Pommern, Georg Carl Benjamin Ritschl, who had to pass on the experiences of the Prussian church organization.

⁷⁶ Ehstländisches Bauer-Gesetzbuch, in: PIC3 I. T. XXXIII. (supra fn. 9) Nr. 26 279. §§ 210–214, 225–227.

⁷⁷ Ehstländisches Bauer-Gesetzbuch (supra fn. 76), §§ 230 sq., 238.

⁷⁸ Ehstländisches Bauer-Gesetzbuch (supra fn. 76), §§ 245–248.

⁷⁹ Ehstländisches Bauer-Gesetzbuch (supra fn. 76), § 360. This procedure is confirmed by the decree of the provincial government from February 27, 1820 (EAA 1187–2–331, p. 122).

⁸⁰ The term *protestant-evangelical* is used in the ukase.

⁸¹ PIC3 II. T. VII. (supra fn. 9) Nr. 5870 (the ukase of the emperor from December 28, 1832, preamble).

Senator and count Paul von Tiesenhausen, the former *Ritterschaftshauptmann*⁸² of the Estland *Ritterschaft*, acted as the president of the committee. The General Administration of the Religious Matters of Foreign Confessions supervised the work of the committee.⁸³

The committee proceeded, above all, from the 1686 Swedish Church Law and the 1693 liturgy, as well as from the Prussian church law acts.⁸⁴ The state authority advocated the idea of subordinating all Lutheran church organizations to one central institution in St. Petersburg. The representatives of the Baltic territorial churches were very much against this idea, but they could not change this point.⁸⁵ In the end the State Council controlled and revised the project of the church law act.⁸⁶

VI. Evangelical Lutheran Church of the Russian Empire

Nicholas I sanctioned the Act for the Evangelical Lutheran Church of the Russian Empire⁸⁷ together with the instruction for the clergy and ecclesiastical institutions⁸⁸ with the ukase for the Senate on December 28, 1832. The new law act was implemented in the whole of the Russian Empire, except the Grand Duchy of Finland.⁸⁹ All preceding legal acts on Lutheran church organization were invalidated.⁹⁰ The new church law act was compiled in Russian, but in 1833 also the official German translation was published.⁹¹ The new liturgy was published only in Ger-

⁸² The senior official of the Estland *Ritterschaft*.

⁸³ In the course of time the personnel of the committee changed, see *Andresen*, Eestimaa kirikukorraldus (supra fn. 7), pp. 160 sq.

⁸⁴ Ueber die Organisation des Evangelisch-lutherischen Kirchenwesens in Rußland, St. Petersburgische Zeitung 1832, p. 63.

⁸⁵ *Dalton*, Verfassungsgeschichte (supra fn. 5), p. 313.

⁸⁶ Ueber das neue Gesetz für die Evangelisch-lutherische Kirche in Rußland. Aus dem Journal des Ministeriums des Innern (aus dem Russischen übersetzt), St. Petersburgische Zeitung 1833, p. 141.

⁸⁷ Устав Евангелическо-Лютеранской Церкви въ Россіи (ПСЗ II. Т. VII. [supra fn. 9] Nr. 5870).

⁸⁸ Наказъ Духовенству и Начальствамъ Евангелическо-Лютеранской Церкви въ Россіи (ПСЗ II. Т. VII. [supra fn. 9] Nr. 5871).

⁸⁹ *Gunnar Prawitz*, Kyrkans rättsliga ställning i Finland och Sverige, in: Svenska Pastoratens Riksförbund (ed.), Stat och kyrka i skilda länder. Del I. Finland, Sverige, Wales, Skottland, Stockholm 1957, pp. 15 sq.

⁹⁰ ПСЗ II. Т. VII. (supra fn. 9) Nr. 5870 (preamble).

⁹¹ Ueber das neue Gesetz, 1833 (supra fn. 86), p. 145.

man, as the third part of the German publication, following the church law act and the instruction for the clergy and ecclesiastical institutions.⁹²

The new law fundamentally changed the legal and institutional framework of the Lutheran church organizations in the Russian Empire. The new church law act stated the establishment of the *Evangelical Lutheran Church of the Russian Empire*. All territorial churches and separate congregations of the empire were united into one single organization.⁹³

The new church organization was divided into eight consistorial districts: Estland, Livland, Ösel, Kurland, St. Petersburg, Moscow, Riga and Tallinn.⁹⁴ The last two ones included only the respective town.⁹⁵ The consistory under the leadership of a secular president governed each consistorial district. The office of the consistorial vice president – general superintendent – was held by a pastor.⁹⁶ Besides, two secular and two clerical assessors belonged to each consistory.⁹⁷ In the consistorial districts of Estland, Livland, Ösel and Kurland the respective *Ritterschaft* proposed two candidates to the office of the consistorial president as well as to that of the clerical vice president. The *Landräte* served as candidates for the president. On the recommendation of the Ministry of the Interior and the General Consistory the emperor appointed the candidate to office.⁹⁸ The candidates of the secular member were proposed by the *Ritterschaft*, the candidates of the clerical members were nominated by the clergy of the consistorial district. On the recommendation of the Governor General, the Minister of the Interior appointed the new member to office.⁹⁹ The office of the consistory's member was held lifelong.

The state financed the consistories.¹⁰⁰ The activities of the consistories were supervised by the General Consistory and the Ministry of the Interior.¹⁰¹

The highest institution of governance and justice of the Evangelical Lutheran Church of the Russian Empire was the General Consistory in St. Petersburg.¹⁰² The

⁹² Gesetz für die Evangelisch-Lutherische Kirche in Russland. Instruction für die Geistlichkeit und die Behörden der Evangelisch-Lutherischen Kirche in Russland. Agende für die Evangelisch-Lutherischen Gemeinden im Russischen Reiche [*sine loco sine anno*].

⁹³ See also *Reinhard Wittram*, *Baltische Geschichte. Die Ostseelände Livland, Estland, Kurland 1180–1918*, München 1954, p. 184.

⁹⁴ Gesetz für die Evangelisch-Lutherische Kirche (supra fn. 92), § 290.

⁹⁵ Gesetz für die Evangelisch-Lutherische Kirche (supra fn. 92), § 291.

⁹⁶ Gesetz für die Evangelisch-Lutherische Kirche (supra fn. 92), §§ 275, 292.

⁹⁷ Gesetz für die Evangelisch-Lutherische Kirche (supra fn. 92), § 292. The staff of the consistories in Ösel, Tallinn, Riga and Moscow exhibited slight deviations from this general scheme.

⁹⁸ Gesetz für die Evangelisch-Lutherische Kirche (supra fn. 92), §§ 276, 293.

⁹⁹ Gesetz für die Evangelisch-Lutherische Kirche (supra fn. 92), § 294.

¹⁰⁰ Except the town consistories of Tallinn and Riga (Gesetz für die Evangelisch-Lutherische Kirche [supra fn. 92], § 295).

¹⁰¹ Gesetz für die Evangelisch-Lutherische Kirche (supra fn. 92), § 302.

members of the General Consistory were elected for three years: the secular president, the clerical vice president, two secular and two clerical members. The emperor appointed the president and the vice president to office.¹⁰³ The *Landratskollegien*, the town councils of Tallinn and Riga and the consistories of St. Petersburg and Moscow could nominate candidates for the secular members. All the consistories had the right to propose clerical candidates. The Ministry of the Interior appointed the candidate to office.¹⁰⁴

The General Consistory convened only for the sessions which took place twice a year.¹⁰⁵ This institution acquired the right to dispense marriages of close kinship.¹⁰⁶ In administrative matters the General Consistory was subordinated to the Ministry of the Interior, in judicial matters to the Senate.¹⁰⁷ As an exception, in matters of marriage divorce the General Consistory itself served as the highest court,¹⁰⁸ as was also the case in matters of suspending and discharging the clerics from the office, as well as unfrocking the clerics.¹⁰⁹ All consistories had to report regularly on their court cases to the General Consistory.¹¹⁰

In matters of doctrine, service and clerical office the emperor served as the highest authority.¹¹¹ A special secular official, the procurator of the General Consistory, supervised the General Consistory.¹¹² The Council of Justice of Livland and Estland Matters was dissolved.¹¹³

The everyday matters of the General Consistory were conducted in German, but reports to the Senate and the Ministry of the Interior had to be submitted in Russian.¹¹⁴

The consistories and the General Consistory formed a part of the Russian state machine. The new Lutheran church organization was practically a state church in the sense of an officially acknowledged and controlled church, but certainly not in the sense of the church of the dominating confession. By the side of the Russian

¹⁰² Gesetz für die Evangelisch-Lutherische Kirche (supra fn. 92), § 317.

¹⁰³ Gesetz für die Evangelisch-Lutherische Kirche (supra fn. 92), §§ 309 sq., 312.

¹⁰⁴ Gesetz für die Evangelisch-Lutherische Kirche (supra fn. 92), § 311.

¹⁰⁵ Gesetz für die Evangelisch-Lutherische Kirche (supra fn. 92), § 325.

¹⁰⁶ Gesetz für die Evangelisch-Lutherische Kirche (supra fn. 92), § 317, 5).

¹⁰⁷ Gesetz für die Evangelisch-Lutherische Kirche (supra fn. 92), §§ 318 sq.

¹⁰⁸ Gesetz für die Evangelisch-Lutherische Kirche (supra fn. 92), § 318, 1).

¹⁰⁹ Gesetz für die Evangelisch-Lutherische Kirche (supra fn. 92), § 318, 3).

¹¹⁰ Gesetz für die Evangelisch-Lutherische Kirche (supra fn. 92), § 302, 3).

¹¹¹ Gesetz für die Evangelisch-Lutherische Kirche (supra fn. 92), § 318, 2).

¹¹² Gesetz für die Evangelisch-Lutherische Kirche (supra fn. 92), §§ 313, 323.

¹¹³ ПЦЗ II. Т. VII. (supra fn. 9) Nr. 5866 (the ukase of the emperor from December 28, 1832); *Erik Amburger*, *Geschichte der Behördenorganisation Russlands von Peter dem Großen bis 1917*, Leiden 1966, p. 175.

¹¹⁴ Gesetz für die Evangelisch-Lutherische Kirche (supra fn. 92), § 324.