

Religion and the Secular State of Spain

I. SOCIAL CONTEXT

It is clear from a recent CIS (Sociological Research Centre) barometer that a significant number of Spaniards declare they are Catholic (76 percent), although the percentage of churchgoers among the believers is much lower. In other words, a considerable secularisation has occurred among the population of Spanish nationals over the last few years, as in other European countries.

In a questionnaire completed in January 2014,¹ Spaniards were asked the following question: *How would you define yourself regarding religion: Catholic, believer in another religion, non-believer or Atheist?* The responses were as follows: Catholic 71.5 percent; Believer in another religion 2.4 percent; Non-believer 14.8 percent; Atheist 9.9 percent; Did not answer 1.3 percent. For those who defined themselves as Catholics or believers in another religion, the questionnaire asked the following additional question: *How often do you go to mass or other religious services, not counting social occasions such as weddings, communions or funerals?* Responses: Almost never 62.1 percent; Several times a year 14.1 percent; At least once a month 8.3 percent; Almost every Sunday or national holiday 12.9 percent; Several times a week 2.3 percent; Did not answer 0.3 percent.

Due to immigration over the last few years, the number of believers belonging to non-Catholic religions has increased. The majority of non-Catholic churchgoers are not Spanish. Although there are not official statistics on religious denominations, references to nationality are illustrative. Thus, in Spain there are approximately:

- 1,000,000 foreign national citizens from countries with an Orthodox tradition (mainly from Romania, Bulgaria, the Ukraine, and Russia).
- 900,000 citizens from countries with an Islamic tradition (mainly from Morocco, Algeria, and Senegal).
- 600,000 citizens from countries with a Protestant tradition (mainly from the United Kingdom).

Among the traditionally Catholic gypsy population, there have been a considerable number of conversions to Evangelism (above all Pentecostalism) over the last few decades, so now there are more Evangelist gypsies than Catholic gypsies.²

II. THEORETICAL AND SCHOLARLY CONTEXT

The Spanish State is neutral in religion-related matters. No religious denomination has a state character. State neutrality with respect to religion means, according to constitutional jurisprudence, that the State cannot assume religious functions. This does not mean, however, that it has to remain indifferent towards the religious phenomenon.³

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1. *CIS Barometer, January 2014. Study number 3011*, http://www.cis.es/cis/opencm/ES/1_encuestas/estudios/ver.jsp?estudio=14036.

2. 2008 INE (National Statistics Institute) census.

3. STC [Sentencia del Tribunal Constitucional] 154/2002, 18 July, FJ 6 “In its objective dimensions, religious freedom entails a dual requirement, referred to by art. 16.3 of the Spanish Constitution; on the one hand, the neutrality of the public powers urges the aconfessionality of the State; on the other hand, the maintenance of cooperation relations of the public powers with the different churches. In this sense, we already said in STC 46/2001, 14 February, FJ 4, that ‘art. 16.3 of the Constitution, after formulating a statement of neutrality (STC 340/1993, 16 November and STC 177/1996, 11 November), considers that the religious

On the contrary, the State is forced to favor the exercise of the fundamental rights of people and groups and to remove the obstacles that prevent such exercise. The Constitutional Court has declared that the secularism of the Spanish State is a positive secularism.⁴ In other words, it admits cooperation with religious denominations. As an expression of that cooperative secularism, the religious denominations that have signed agreements with the Spanish State can give religion classes – with a denominational nature – in Spanish public schools as long as such classes are requested by at least ten students.

The positive trend of State neutrality is supported in the constitutional text, which forces public authorities to bear in mind the religious beliefs of Spanish society and to maintain the subsequent cooperative relations with the Catholic Church and all other religious denominations. However, there are some Spanish constitutional scholars that consider cooperation between the State and the various churches to be an expression of state paternalism⁵ towards the denominations, which would be incompatible with secularism. Within these doctrinal currents, there is a tendency for the Spanish State to adopt the French model of a secular state. This secularist conception has been included at a political level in a manifesto by the *Partido Socialista Obrero Español* party. The mainstream Spanish society is not secular, as shown by the data provided in Section I. Even though they are in the minority, however, secular movements are present in the media and active in public life. Both passionate debate and balanced opinion often appear on these topics in the press, especially during the last decade.⁶

III. CONSTITUTIONAL CONTEXT

Since the expulsion of Muslims and Jews from Spain in the 15th Century, Catholicism has been the only religion in the country until the changes occurring over recent years due to the rise of immigration to the country. From a legal point of view, Spain has had an important tradition of Catholicism as the official religion of the State with the only exception of two brief periods: the 1869 Constitution and the Constitution of the 2nd Spanish Republic (1931-1936). The Republic adopted legislation that was hostile toward religion and toward the Catholic Church. It produced a strong rejection of religion in one sector of the population and a deep division between Catholics and non-Catholics. This division was one of the many reasons that led to the Spanish Civil War between 1936 and 1939.⁷

After the war, Francisco Franco's dictatorship was established, lasting from 1939 to 1975. The State declared itself as Catholic by proclaiming, "The profession and practice of the Catholic religion, which is that of the Spanish State, will enjoy official protection." The private exercise of other religions was tolerated in their places of worship but they were not granted true religious freedom as it was stated that "there is no authorization for

component is perceivable in Spanish society and orders the public powers to maintain 'the subsequent cooperation relations with the Catholic Church and with other denominations' thus introducing an idea of aconfessionality or positive secularism that "prohibits any type of confusion between religious and state functions (STC 177/ 1996)."

4. STC 46/2001 FJ 4: "As a special expression of such a positive attitude with respect to the collective exercise of religious freedom in its plural expressions or behaviours, art. 16.3 of the Constitution, after formulating a declaration of neutrality (STC 340/1993, 16 November and 177/1996, 11 November), considers that the religious component is perceivable in Spanish society and orders the public powers to maintain 'the subsequent cooperation relations with the Catholic Church and with other denominations' thus introducing an idea of aconfessionality or positive secularism that "prohibits any type of confusion between religious and state functions (STC 177/ 1996)." In the same regard, STC 38/2007, FJ. 5.

5. Ana Fernández-Coronado González, "Sentido de la Cooperación del Estado Laico en una Sociedad Multireligiosa," *Revista General de Derecho Canónico y Eclesiástico del Estado* 19 (2009), at iustel.com.

6. José María Martín Patino, "Crisis del Estado Laico," *ABC*, 13 July 2005, Opinión 3; Mariano Fernández-Enguita, "Ni Confesionalismo ni Laicismo," *El País*, 28 March 2005, 34.

7 For information on legislation on religion during the 2nd Spanish Republic, see Pedro Lombardía, "Precedentes del Derecho Eclesiástico Español," in Various Authors, *Derecho Eclesiástico del Estado Español* (Pamplona: Eunsa, 1980), 151-158.

external ceremonies or manifestations other than those of the Catholic religion.”⁸ During this same period, some courts considered behavior such as Bible study groups in the private homes of non-Catholics, the possession of non-Catholic books and magazines, and proselytizing by non-Catholics as criminal.⁹

Franco’s Regime was replaced in 1978 by a democracy when the current Constitution was instituted.¹⁰

The new regime meant a radical change with regard to the State policies in religious matters. Thus, Spain transformed from a strong confessional state to a secular state where religious freedom and equality dominated simultaneously to government cooperation with religion. These are the constitutional principles in force inspiring the relationships between the Spanish State and Religion.

Religious freedom and equality are, at the same time, principles and fundamental rights. State secularism and cooperation with religion are only principles.

A. *Religious Freedom*

Religious freedom as a fundamental right is recognized in the Article 16.1 of the Spanish Constitution which provides that “freedom of ideology, religion and worship of individuals and communities is guaranteed, with no other restriction on their expression than may be necessary to maintain public order as protected by law.”

Religious freedom as a State principle clarifies Article 9.2 of the Constitution which provides that “it is the responsibility of the public authorities to promote conditions ensuring that freedom and equality of individuals and of the groups to which they belong are real and effective, to remove the obstacles preventing or hindering their full enjoyment, and to facilitate the participation of all citizens in political, economic, cultural and social life.” Rather than be a passive spectator, the State is involved in the active task of promoting freedom and equality.

The principle of religious freedom requires immunity from state and private coercion to participate in a particular religion. The absence of coercion, however, is not enough to guarantee religious freedom. The Spanish State is also obligated to remove obstacles and to promote conditions so that religious freedom for individuals and communities is real and effective. Adopting the necessary measures to facilitate religious assistance in public hospitals, penitentiaries or military establishments, for instance, is an obligation of the State.

B. *The Principle of Religious Equality*

Religious equality and non-discrimination as fundamental rights are established in Article 14 of the Constitution that states “Spaniards are equal before the law and may not in any way be discriminated against on account of...religion...”

The right of equality also stems from Article 9.2 of the Constitution that, as previously noted, imposes on the government an active obligation of removing obstacles and promoting conditions to provide an effective guarantee of freedom and equality, both of individuals and communities.

The religious equality principle means, first of all, that discrimination or different legal treatment for individuals or groups because of their religious convictions or attitudes will not be employed by the government. It also means that the State is obliged to equally

8. *Fuero de los Españoles* (one of the Franco’s Constitutional Laws) as formulated in 1945 (art. 6).

9. A study of these judgments can be found in Lorenzo Martín Retortillo Báquer, *Libertad Religiosa y Orden Público* (Madrid: Tecnos, 1970). For information about the main lines of Franco’s legal frame on religious freedom, see Pedro Lombardía, “Precedentes del Derecho Eclesiástico Español,” supra n. 7 at 158-173; Alberto de la Hera Pérez-Cuesta, “Actitud del Franquismo Ante la Iglesia,” in *Iglesia Católica y Regímenes Autoritarios y Democráticos*, ed. Iván C. Ibán (Madrid: Edersa, 1987), 43-70.

10. BOE (*Boletín Oficial del Estado*) n° 311, 29 December 1978.

guarantee religious freedom of individuals and groups. Each individual or group, regardless of their different features, historical traditions, or social roots, are equal holders of the same fundamental right of religious freedom. Nonetheless, equality does not mean uniformity, nor does it prevent the recognition of peculiarities. That is to say, equality means equal religious freedom for everybody.

C. *The Principle of Secularity of the State*

Whereas religious freedom and nondiscrimination are at the same time principles and rights, secularism and cooperation are only State principles.¹¹

Article 16.3 of the Constitution establishes that “*no religion shall have a state character.*” This linguistic expression is inspired by the Constitution of Germany but is foreign to the Spanish tradition because it declares not the secularity of the State but instead, the non-state character of religions that is something typical of the protestant tradition in national churches organized and protected by the State. In any case, apart from the lack of clarity of the words, it is obvious that Article 16.3 means that the Spanish State is a secular State.¹²

A secular State acknowledges that religion is something that applies to individuals but not to the State. It confines its task to effectively guarantee (as a social State) the freedom of individuals and religious groups and to guarantee that the exercise of religious freedom is taking place within the limits of constitutional public order.

State secularism means the inability of the State to make a religious pronouncement. A consequence of this inability is the respect by the government for the autonomy of religious creeds.

It is telling to consider that secularism is a feature of public powers but not of individuals. The inability of the State to sponsor a religion does not mean the State professes atheism or agnosticism. Such a profession would be also contrary to secularism as it is a declaration of faith (in this case a negative declaration) rather than the absence of it.¹³

D. *The Principle of Cooperation*

The principle of cooperation is established in Article 16.3 of the Constitution providing that “the public authorities shall take into account the religious beliefs of Spanish society and shall consequently maintain appropriate cooperation relations with the Catholic Church and other confessions.”

Also, confusion and lack of communication between State and religious denominations are contrary to the cooperation principle. Recognizing the mutual autonomy of the State and of religion, the cooperation principle works to effectively guarantee religious freedom and equality with the State acting as state and religions acting as religion. An important manifestation of the cooperation principle are the Agreements between the State and the various creeds to bilaterally regulate the issues of mutual interest. Nonetheless, the Agreements with religious denominations in Spain are not a constitutional requirement as they are in Italy. In fact, the Agreements are provided only for some religions (those with well-known roots) whereas the cooperation principle extends to all of them by a constitutional implication.

11. STC 94/1983, 8 November, FJ 5.

12. On this principle see: María José Roca Fernández, “Laicidad del Estado y Garantías en el Ejercicio de la Libertad: Dos Caras de la Misma Moneda,” *El Cronista del Estado de Derecho* 3 (2009): 44-51.

13. In this sense the Constitutional Court has declared that “the secularity of the State does not prevent the religious feelings or beliefs of society to be protected.” (Auto TC 180/1986, 21 February 1986, FJ 2).

IV. LEGAL CONTEXT

A “Code of Ecclesiastical Law” does not exist in Spain. Instead, some specific regulations referring to religion are dispersed in different sectors of our legal system (e.g.: provisions on the effects of religious marriage in the Civil Code, provisions on the offenses relative to freedom of conscience, and protection of religious belief in the Criminal Code, etc.). However, all these provisions stem from the same constitutional principles that give them unity and make it possible to speak of a “system” of Ecclesiastical law. We have already referred to these constitutional principles.

Article 81 of the Spanish Constitution establishes that the implementation of fundamental rights and public freedoms shall take place through “Organic Acts.” The approval, amendment, or repeal of these Acts shall require the overall majority of the Members of Congress in a final vote on the bill as a whole. According to this rule, the Organic Act 7/1980 of July 5 of Religious Freedom (The Organic Act) was passed to implement the fundamental right of religious freedom.¹⁴ The first part of the Law (arts. 1-4) consists of the essentiality of the right of religious freedom, its limits, when it is applied, and its judicial protection. It is a direct development of what is recognized in the Constitution. In the second part of the Law (arts. 5-8), the legislation determines the general conditions of the relationship between the State and religion. It determines how the various denominations obtain legal personhood in Spanish law, recognizes their autonomy, provides the possibility of Agreements for those religions with well-known roots and creates the Advisory Committee on Religious Freedom in the Ministry of Justice whose membership is divided equally between representatives of the government and representatives of various denominations and includes the participation of experts.

The Organic Act applies to individuals and religious groups in a strict sense, providing Article 3.2 that “activities, purposes and entities relating to or engaging in the study of and experimentation with psychic or parapsychological phenomena or the dissemination of humanistic or spiritualistic values or other similar non-religious aims do not qualify for the protection provided in this Act.”

The Organic Act provides the general legal regime for all religions and stipulates the possibility of a specific legal frame by signing an Agreement with the State. Bilateral instruments to regulate matters of common interest for Church and State have been utilized in Spain from the eighteenth century but exclusively to define the legal status of the Catholic Church. These were the Concordats, an ancient institution with a juridical nature analogous to that of international treaties. The concordatary Agreements that are currently in effect with the Catholic Church in Spain date from 1976-79.¹⁵

The Organic Law created a sort of replica of the Concordats and made it available to any religious denomination with well-known roots in Spanish society. These formal agreements have to be approved by an act of Parliament.¹⁶

Which religious beliefs were considered to have well-known roots in Spain? In addition to the Catholic Church, Protestants, Jews and Muslims were. In 1992, these three religions signed their respective cooperation agreements with the State that were approved

14. For a balance of the Law after almost thirty years of its promulgation, see Javier Martínez-Torrón, “La Ley Orgánica de Libertad Religiosa, Veintiocho Años Después,” in *Revista General de Derecho Canónico y Derecho Eclesiástico del Estado* 19 (2009).

15. In 1979, the 1953 Concordat was replaced by a set of Agreements with the Holy See which, in fact, collectively constitute a Concordat and are assimilated to international treaties in Spanish law. These bilateral Agreements regulate legal affairs, economic affairs, education and cultural affairs, and religious assistance to the Armed Forces. On these Agreements with the Holy See, see Pedro Lombardía and Juan Fornés, “Las Fuentes del Derecho Eclesiástico Español,” in Various Authors, *Tratado de Derecho Eclesiástico* (Eunsa: Pamplona 1994), 321-376.

16. On these Agreements see Various Authors, *Acuerdos del Estado Español con Los Judíos, Musulmanes y Protestantes* (Salamanca: Publicaciones de la Universidad Pontificia de Salamanca, 1994); David García-Pardo, *El Sistema de Acuerdos con las Confesiones Minoritarias en España e Italia* (Madrid: BOE y Centro de Estudios Políticos y Constitucionales, 1999).

on the same day (November 10) in three different laws.¹⁷ Some years later, the qualification of “deeply rooted” (*notorio arraigo*) was given to other religious denominations: The Church of Jesus Christ of Latter-day Saints [Mormons] (2003), the Jehovah’s Witnesses (2006), the Federation of Buddhists from Spain (2007), and the Orthodox Church (2010). Even though these religious creeds have not signed cooperation agreements with the State, the “deeply rooted recognition” allows them certain economic and tax benefits and probably, in the future, to authorize religious marriages with civil effects.¹⁸

To obtain the “deeply rooted” qualification and to be able to sign Agreements, the various Evangelical churches had to join together in a single Federation (including even non-Evangelical churches such as the Greek Orthodox Church in Spain or the Seventh-day Adventists). All Jewish communities also had to join together in a Federation as well as various Islamic communities.¹⁹ This has led to some problems as the various Jewish or Muslim communities and the different Evangelical churches are not uniform and there are significant differences between them.

To draft the agreements with minority religions, the guidelines for the existing agreement with the Catholic Church were followed. Thus, the agreements recognized the civil validity of marriages administered in accordance with the Islamic, Jewish, or Evangelical ceremony.²⁰ They also recognized the possibility of teaching religion classes in state schools when students ask for it.²¹ (If there are at least 10 students in each class, the teacher is paid by the government.²²) The agreements also granted, among other rights, a system of tax benefits and the right to religious assistance for individuals in the military, prisons, hospitals, or other similar public centers. Called an “incision,” this right to religious assistance for individuals in public centers is guaranteed for members of all denominations. The system to grant the right is not the same in all cases, however. Taking

17. Law 24/1992, of 10 November, approving the Agreement of Cooperation between the State and the Federation of Evangelical Religious Entities of Spain; Law 25/1992, of 10 November, approving the Agreement of Cooperation between the State and the Israelite Communities of Spain; Law 26/1992, of 10 November, approving the Agreement of Cooperation between the State and the Islamic Commission of Spain (BOE n° 272, 12 November 1992).

18. See *infra* Section IX.

19. The Federation of Evangelical Religious Entities of Spain (Federation de Entidades Religiosas Evangélicas de España, FEREDE); the Jewish Communities of Spain (Federación de Comunidades Judías, FCJ); the Islamic Commission of Spain (Comisión Islámica de España, CIE).

20. “The civil effects of marriages celebrated before the ministers of Churches belonging to the FEREDE are recognized. For full recognition of these effects, the marriage must be registered in the Civil Registry Office.” “Civil effects of marriages held in accordance with formal Jewish rules and officiated by dignities pertaining to the FCI member Communities shall be acknowledged. Full recognition of such validity shall call for registration of such marriages in the Civil Registry Office.” “Civil validity of marriage administered in accordance with the religious ceremony established under Islamic Law is acknowledged from the time of the wedding is held if the parties thereto meet the legal capacity requirements established by the Civil Code. The bride and groom shall lend their consent in the presence of one of the persons mentioned in Article 3.1 above (Islamic religious leaders and imams of the CIE) and at least two witnesses, who must be of age. For full recognition of these effects, the marriage must be registered in the Civil Registry Office (art. 7.1 of the Agreements with the FEREDE, FCI and CIE).

21. “Students, their parents and those school organisms so requesting, shall be guaranteed the right to receive (Evangelical/ Jewish/ Islamic) religious classes in public and private subsidized schools, at the primary, elementary and secondary levels, as long as the exercise of this right is not in conflict with the nature of the centre” (art. 10.1 of the Agreements with the FEREDE, the FCI, and the CIE).

See in this regard Alejandro González-Varas Ibáñez, “Moral and Religious Teaching in Spanish Schools,” *Education Law Journal* 10 (2009): 271-279; Joaquín Mantecón Sancho, “L’enseignement de la Religion dans L’école Publique Espagnole,” *Revue Générale de Droit* 30 (1999-2000): 277 ff.

22. Resolution of 23 April 1996 and Accord, concerning the designation and economic regulation of persons responsible for Evangelical religious teaching at public primary and secondary educational teaching centres (BOE n° 18, 4 May 1996); and Resolution of 23 April 1996 and Accord concerning the designation and economic regulation of persons responsible for Islamic religious teaching at public primary and secondary educational teaching centres (BOE n° 107, 3 May 1996).

See Miguel Rodríguez-Blanco, “El Régimen Jurídico de los Profesores de Religión en Centros Docentes Públicos,” *Il Diritto Ecclesiastico* 112 (2001): 482-573; Zoila Combalía Solís, *La Contratación del Profesorado de Religión en la Escuela Pública* (Valencia: Tirant lo Blanch, 2013).

into account that most Spanish citizens are Catholics, the public hospitals have assigned one or more Catholic ministers to attend to patients who wish to be visited by them. These ministers offer their services full time and are paid by the relevant health authority. For members of other religions, no such regular service has been created because there is not a sufficient social demand for it. The alternative but equal system for members of other religions is to provide free access to the center for a minister when a patient requests it. That minister is not a State employee, though, and provides his services without payment. The agreements with minorities mirror those of the Catholics but also recognize some rights that Catholics do not need. For example, in the agreements with the Jews and with the Muslims, the government commits itself to protecting the specification of *halal* (for Muslims) and *kosher* (for Jews) food products. If the religions register these denominations in the Patent and Trademark Office, it is guaranteed that the products that carry the specification will have been produced in accordance with the respective religious laws.²³ This protection is not stipulated for Catholics who have no religious dietary laws. In the same way, the possibility of assigning Jews and Muslims (who have their own funeral rights) plots in municipal cemeteries has been provided.²⁴ Also in the Agreements with minority religions is the possibility to change some religious holidays or days off when prior agreement is reached between the parties concerned (the worker and the company).

V. THE STATE AND RELIGIOUS AUTONOMY

The religious denominations registered in the Ministry of Justice's Religious Entities Register ("Register") enjoy full autonomy in Spain (art. 6 of the LOLR²⁵). This autonomy is recognised both for the denominations and for religious legal persons (religious orders, foundations, teaching institutions, hospitals or other care institutions, etc.). The fact that the denominations have their own internal law is a clear expression of religious autonomy. This internal law is recognized to some extent within the state law through referral and budget, the typical institutions of private international law. By virtue of referral, certain denominational rules are effective in state law, as is the case of the institution of marriage according to the Protestant, Jewish, and Islamic rites. Applying the budget theory, the denominational origin terms that appear in the state law are interpreted according to the denominational law where these terms have their origin (e.g. ministers of cult, temples, etc.).

The recent pronouncement of the Constitutional Tribunal (*Tribunal Constitucional* / TC), which includes the right of access to the Register as an essential religious right, seems to permit an interpretation that also includes the right to autonomy for churches. The idea that the right to autonomy forms part of the essential content of religious freedom of the denominations is reinforced in legal basis number seven of the actual Decision:

23. "In order to protect the proper use of such denominations (Halal / Kasher, Kosher, Hashrut –and all of these associated with the terms U, K or Parve–), the (CIE / FCI), must apply for and obtain registration of the corresponding trademarks from the Patent and Trademark Office, pursuant the legal standards in force. Once the above requirements are met, products bearing the (CIE / FCI) mark on the package shall be guaranteed for the intents and purposes of marketing, import and export, to have been prepared in accordance with (Islamic Law / Jewish law and tradition). The slaughtering of animals in accordance with (Islamic Laws / Jewish Law) must abide by health standards in force" (art. 14, 2 and 3 of the Agreements with the CIE and with the FCI).

24. See Article 2, 6 and Article 2, 5 of the Agreements with the FCI and with the CIE, respectively. See Alejandro González-Varas Ibáñez, "Libertad Religiosa y Cementerios: Incidencia del Factor Religioso Sobre las Necrópolis," *Ius Canonicum* 82 (2001): 645-695.

25. Art. 6.1: "The Churches, Denominations and religious Communities registered, shall have full autonomy and shall be able to establish their own rules of organization, internal regime and regime of their personnel. These rules, like the rules that regulate the institutions created by them to carry out their purposes, shall be able to include clauses that safeguard their religious identity and own nature, as well as due respect for their beliefs, without detriment to the rights and freedoms recognized by the Constitution and especially those relating to freedom, equality and non-discrimination."

The registration of a religious entity in the Register entails, above all, the recognition of its legal personality as a religious group; in other words, the identification and admission into the legal system of a group of people whose aim is to exercise, with immunity of coercion, their basic right to the collective exercise of religious freedom, as established in art. 5.1 of the LOLR. But at the same time, the recognition of this specific or singular legal personification confers a certain “status” on the entity, which above all is expressed in the full autonomy attributed to it by art. 6.1 of this law, by virtue of which the religious entities or denominations registered “may establish their own rules of organisation, internal regime and regimes of their personnel.” It adds the precept that the power of self-regulation may include the configuration of institutions created to exercise their purposes, as well as clauses to safeguard their religious identity and own nature, and due respect for their beliefs.

On the other hand, the specific ‘status’ of religious entity conferred by the registration in the Register is not limited to the aforementioned internal scope, through the recognition of the capacity of self-organisation of the collective subject, but rather, it extends, too, to an external aspect, in the sense that the specific expressions that, in the exercise of the basic right, are carried out by the members of the registered group or community, are facilitated in such a way as to permit the collective exercise of religious freedom with immunity of coercion, with no obstacles or disturbances of any kind.²⁶

The decision of the Constitutional Court on 15 February 2001, guides the interpretation of the limits that are included in Article 6.1 of the Ley Orgánica de Libertad Religiosa (LOLR)²⁷ (the basic rights recognized in the Constitution, especially freedom, equality and non-discrimination) in the sense that they must coincide with the limits of Article 3 of the LOLR. It must also be taken into account that “limits of the freedom of beliefs are submitted to a strict interpretation.”²⁸

A religion’s right to autonomy will have a different intensity depending on whether such the right extends to its members or to third parties outside the denomination. It also depends on whether a contractual link, of which a denominational entity is a party, exists or not.²⁹ The autonomy of these denominations may not alter the private legal traffic, or minimize the legal mandates to the extent that it endangers the Rule of Law or alters the legal certainty.³⁰

With respect to the right of denominations to establish the content of religious

26. STC 46/2001, 15 February, FJ 7.

27. Ley Orgánica 7/1980, de 5 de julio, de Libertad Religiosa, available at <http://www.boe.es/buscar/doc.php?id=BOE-A-1980-15955>.

28. STC 141/2000, 28 May, FJ 3. Earlier, STC, 20/1990, 15 February, FJ 3 and 5; STC 120/1990, 27 June, FJ 10 and STC 137/1990, 19 July, FJ 8.

29. STC 141/2000, 29 May, FJ 4, Art. 16 protects an “*agere ligere* consistent (...) in professing the beliefs desired and behaving in agreement with them, as well as in maintaining them with respect to third parties and being able to proselytise them. This power (...) possesses a different intensity depending on whether it extends to one's own behavior and how each party disposes of this, or on the repercussion that such behavior, in agreement with one's own beliefs, has on third parties, be these the actual State or individuals, aiming for them to become the target and receivers of these same beliefs.”

30. STC 141/2000, 29 May, FJ 4, “From the moment when their convictions and the adaptation of their behavior to these convictions is done externally, and is not restricted to their private and individual sphere, and the extent to which they are affected becomes clear to third parties, the believer cannot hope, protected by the freedom of beliefs of art. 16.1 CE, that any limit to that behavior will only be a restriction of the infringing freedom of the constitutional precept mentioned; or alter, just by upholding the freedom of beliefs, the private legal traffic or the mandatory nature of the legal mandates on the occasion of the exercise of this freedom, under the pretext of relativizing them to an intolerable point for the survival of the actual democratic Rule of Law of which legal certainty is also a fundamental principle.”

courses, the TC has clarified the right by reinforcing religious autonomy and declaring that “religion classes do not form part of the general educational schedule as religion is a subject that students can voluntarily choose. It is obvious that the teaching staff and the student parent associations lack the capacity to develop study plans for different educational levels and different religious denominations that, under the protection of Article 3.3, can establish alternative and supplementary teaching. These alternative and supplementary courses that are beyond the control of the school boards since they have a secular or non-denominational nature and must not intervene...”³¹ It can be said, therefore, that this power is an expression of the right to religious autonomy. In other words, it must be understood that the various denominations are protected by their right to autonomy in the transmission of the dogmatic contents and values of their religious courses that may not coincide with the State’s beliefs.

With respect to state neutrality being broken by Spain’s resorting to an external body (the denominational authorities) to hire religion teachers (whose job is considered public employment), the constitutional jurisprudence has understood that the autonomy of the religious denominations prevails.³² The neutrality of the State requires that it does not interfere with religious denominations or challenge their judgement.³³ In the education sector and as a general rule everywhere, demanding the workers of an entity or enterprise with its own set of ideas to be loyal to this set of ideas is an expression of the right of religious freedom (pursuant to community directive 2000/78, art. 4.2).

Furthermore, the fact that baptisms are still recorded in parish records is considered a sign of respect for the ideals that Christian churches maintain. Appealing to the rights of owners to access personal data acknowledged in the Organic Law on Personal Data Protection, some people, who had made a declaration of apostasy, aimed to cancel their baptism entry. In this conflict, the Spanish Supreme Court³⁴ has acknowledged that Churches are entitled to record baptisms in a way that reflects their belief for baptism’s importance. Thus, a baptism cannot be cancelled because it cannot be deleted.³⁵

VI. RELIGION AND THE AUTONOMY OF THE STATE

No religious denomination has State backing. Consequently, the State enjoys full autonomy from the religious creed of any denomination. This State autonomy does not mean that the State cannot include values in its laws that originate from a certain religious conception of life. These values are included depending on whether they are shared by mainstream society and whether they are legally recognised through the democratic channels established. Religious denominations have no representation in the legislative bodies of the Spanish State or in the Assemblies of the Autonomous Communities. Religious denominations also have no representation in the advisory commissions of the public bodies for the protection of childhood or youth.

By virtue of the autonomy of the religious denominations, no denomination can exert control over another. Those denominations that are acknowledged as having well-known, deeply-rooted beliefs in Spain are entitled to appoint a representative who will form part of the Advisory Commission for Religious Freedom. This Commission acts as a

31. STC 1 April 1988, FJ 3.

32. STC 15-II-2007, FJ 2.

33. This is mentioned in the jurisprudence that came about in a conflict between the Union of Seventh-day Adventist Christian Churches and some of its members; see the study of Gloria Moreno Botella, “Ministro de Culto Adventista y Autonomía Confesional,” *Revista General de Derecho Canónico y Derecho Eclesiástico del Estado* 1 (2003), at iustel.com.

34. STS of 19 September 2008, contentious-administrative court (section six), further appeal no. 6031/2007. On this decision (and subsequent ones that follow its doctrine), see Beatriz González Moreno, “El Derecho Fundamental a la Protección de Datos Personales: Su Contenido y Límites Respecto al Bautismo y la Apostasía,” *Revista General de Derecho Canónico y Derecho Eclesiástico del Estado* 19 (2009).

35. See STS of 4 February 2011. The Supreme Court understood that the parish registers of baptism did not have the status of files, so they do not fall within the scope of the Data Protection Act.

consultant for the executive power and its opinion must be heard by the Government before an Agreement is signed between the State and a denomination with well-known, deeply-rooted beliefs. In Spanish law there is no limitation for members of specific religions to access to the civil service or to any representative post. Indeed, a rule of this type would go against Article 14 of the Constitution which forbids any discrimination for religious reasons, against Article 16.2, which establishes that “nobody can be forced to declare their ideology, religion or beliefs,”³⁶ and against Article 103.3 which establishes the principles of merit and ability for civil service. The organization of State funerals on the occasion of terrorist attacks or the death of Spanish soldiers on operations abroad do not eradicate state neutrality or represent a lack of state autonomy from churches. These funerals, which are not prescribed in any legal rule, are simply a solemn expression of condolence.

VII. LEGAL REGULATION OF RELIGION AS A SOCIAL PHENOMENON

Religion is regulated in Spain as a specific social phenomenon which differs from humanitarian, philanthropic, or solidarity movements in general. This does not mean, however, that positive religious freedom prevails over negative religious freedom on a personal or individual level. Under Spanish law, atheists and agnostics have the same scope of religious freedom as believers of any denomination. This does not prevent religion from being considered as a factor of positive social influence, however, and the State is forced to cooperate with religious denominations. If society was considered indifferent to religion, forcing the State to collaborate with religion would seem counter-intuitive. There is, however, a religious trend that attempts to reduce any partnerships between the State and religions as much as possible. In addition, there is a tendency today to not differentiate between the protection of religious freedom and the protections of ideological freedom or freedom of thought in the legal field.

VIII. STATE FINANCIAL SUPPORT FOR RELIGION

The right to accept voluntary economic offerings from the faithful is acknowledged in Spain for all religious denominations. In addition, all religious denominations benefit at least from the tax exemptions that non-profit entities enjoy.

In 1979 the Catholic Church signed an agreement on economic affairs with the Spanish State. By virtue of that agreement, and through successive modifications, citizens wishing to do so can assign 0.7 percent of the amount they have to pay to the Spanish Treasury to the Catholic Church through the personal income tax system. This is not a religious tax similar to the tax that exists in Germany since it is not linked to religious belonging and is not compulsory. Members of the Catholic Church may choose not to assign any amount to the church and individuals who are not Catholic may still assign 0.7 percent of their taxes to the Catholic Church through the personal income tax. This assignment covers approximately 25 percent of the Catholic Church’s necessary budget in Spain.³⁷ The “Pluralism and Co-existence Foundation” is a public foundation created in 2005 whose assets come entirely from the taxes assigned to it each year in the general State budgets. This foundation has been created to finance the religious denominations that have well-known and deeply-rooted beliefs.³⁸

36. María José Roca Fernández, *La Declaración de la Propia Religión o Creencias en el Derecho Español* (Santiago de Compostela: Universidade de Santiago de Compostela, 1992).

37. Pursuant to European regulation, the cases of non-subjection and the exemptions in Articles III and IV of the Agreement between the Spanish State and the Holy See, the value added tax and the Canary indirect general tax were eliminated.

38 Art. 7.1. of the Articles of the Foundation: “the aim of the Foundation is to contribute to the execution of cultural, educational and social integration type programmes and projects of non-Catholic religious denominations that have a Cooperation Agreement with the Spanish State or denominations with well-known and deep-rooted beliefs (notorio arraigo) in Spain.

Apart from these two direct channels whereby the State cooperates with the denominations for their financing, there are also some indirect cooperation channels, which include the following: increases in assets as a result of gifts acquired by the Holy See; the Episcopal Conference; the dioceses; the parishes; the religious congregations and orders; and religious associations and entities engaged in charity-teaching, medical services, hospital or social assistance activities. All of the above listed are exempt from the Company Tax when the conditions and requirements demanded in the aforementioned agreement allow exemption for death duties and gift taxes. The same benefits are applicable to recognize non-Catholic confessional associations when they are registered and when they have signed an Agreement with the Spanish State.³⁹

Religious foundations⁴⁰ benefit from the tax regime of non-profit entities and from the tax incentives for patronage.⁴¹

By virtue of Article 63 of the Law on the Reform of Local Tax Offices (law 51/2002, 27 December), members of the Catholic church, under the terms foreseen in the Agreement between the Spanish State and the Holy See on Economic Affairs, and members of legally recognized non-Catholic confessional associations, under the terms established in the respective cooperation agreements, are exempt from real property tax.

Apart from the direct financing (by tax allocation) and the indirect financing (through tax exemptions), the State finances some religious or educational services provided by religious denominations. Thus, for example, the Covenant of Collaboration was signed on October 24, 2007 between the State and the Islamic Commission of Spain to finance the expenses of providing religious assistance in state penitentiaries. By virtue of the agreement, the State assumes the payment⁴² of the Islamic ministers who provide Islamic religious assistance. Likewise, it assumes the payment of the Evangelic Christian religion classes, as stipulated in Judgement on 23 April 1996.⁴³

IX. RELIGIOUS MARRIAGE IN SPANISH LAW

The Civil Code was adapted to the new constitutional principles on marriage via Law on July 7, 1981 which established an optional marriage system that acknowledged two forms of marriage with civil effects: civil marriage and religious marriage. The law allows the contracting parties the freedom to choose one model or the other. Article 59 establishes that “consent to marriage may be given in the way foreseen by a registered religious denomination, under the terms agreed with the State, and lacking this, authorized by the State legislation.”

To date, only those denominations with an Agreement (the Catholic Church, the FEREDE [Federation of Evangelic Religious Bodies of Spain], the FCI [Federation of Israelite Communities of Spain], and the CIE [Islamic Commission of Spain]) are allowed this possibility in their respective Agreements. Nonetheless the government has recently approved a draft law which will give civil validity to religious rites of marriage of those denominations with well-known roots but without a cooperation agreement (Mormons,

Art. 8.1. of the Articles of the Foundation: “the Foundation is created in benefit of non-Catholic religious denominations that have been declared to have well-known and deep-rooted beliefs (notorio arraigo) pursuant to Organic Law 7/1980, 5 July, on religious freedom.”

39. Law 29/1987, 18 December, on death duties and gift taxes. Final provision 4.

40. Law 50/2002, 26 December, additional provision 2.

41. Law 49/2002, 23 December, additional provisions 8 and 9 and Royal Decree 1270/2003, 10 October, whereby the application regulation for this law is approved.

42. The amount that must be paid to each religious assistant will depend on the demand for religious assistance effectively proved, in agreement with the following scale: Up to 50 inmates, half day. From 51-150 inmates, full day. More than 150 inmates, full day + half day. The full day will be considered as six hours and the half day three hours.

43. Judgment of the sub-secretariat (of the Ministry of the Presidency), whereby the publication of the agreement of the Council of Ministers, 1 March 1996, is made available, as well as the agreement on the appointment and economic regime of the people responsible for Evangelic religion teaching, in primary and secondary education public schools (B.O.E. 4 May).

Orthodox, Jehovah's Witnesses, and Buddhists).

There are differences between the civil effectiveness of canonical marriages and that of other religious marriages which are explained by the deep-rooted nature and historical tradition of canonical marriage in Spain.

A. Civil Effects of Marriage and Canonical Resolutions

In accordance with the regulations provided for in the Civil Code and in the Agreement with the Holy See on Legal Affairs, a marriage held according to the rules of Canonical Law produces civil effects from the time it is held. To fully recognize these effects, its registration in the Registry Office will be necessary. Thus, a canonical marriage is effective in Spain without requiring preliminary civil proceedings, although it will not be fully effective until it is registered at the Registry Office. The registration at the Registry Office is carried out simply by presenting the church certificate. The entry will be denied, however, when, from the documents presented or from the entries of the Registry Office, it is verified that the marriage does not meet the requirements demanded for it to be valid in the Civil Code.

With reference to the judgements pronounced by the church courts on canonical marriage, nullified and unconsummated marriages will have civil effect in Spain upon request of either of the parties if they adapt to the State Law in judgement pronounced by the competent civil judge in agreement with the conditions that are established by the exequatur for foreign decisions. Recognition of these canonical judgements does not prevent those who have held a canonical marriage in Spain from being able, if they so wish, to resort to civil jurisdiction to obtain the nullity, annulment, or civil separation of their marriage.

B. Civil Effects of Other Religious Marriages (FEREDE, FCI, CIE)

Apart from canonical marriage, in Spain it is possible to hold Islamic, Jewish or Protestant marriages with civil effects. This possibility, granted in the Civil Code, is developed in the three Agreements of 1992. For this purpose, and unlike what occurs with canonical marriage, the law demands that the contracting parties initiate the proceedings in front of the officer of the relative Registry Office prior to the marriage. After verifying the civil marriage capacity of the contracting parties, the officer at the Registry Offices authorizes the parties to hold a marriage with civil effects within six months from the issue of the certificate. The marriage must occur in front of the minister of the relative religion and at least two witnesses of full legal age. The marriage will take effect from the moment it is held, but without prejudice to the rights acquired in good faith by third parties, until it is registered at the Registry Office. Recognition of these religious marriages does not even entail full recognition of the way they are held as this is regulated in civil law (Agreements of 1992) imposing requirements that, at times, the religious law does not demand (for example, the presence of the Imam in Islamic marriages). However, the result of this is that anyone wishing to hold an Islamic, Jewish, or Evangelic marriage with civil effect does not have to participate in both the religious and civil ceremony. As an exception, the preliminary civil proceedings can be eliminated in the case of Islamic marriage. In this case, though, it will only be effective at the time such marriage is held if the contracting parties satisfy the civil capacity requirements and, at the time of the registration, the officer verifies the civil capacity requirements.

Unlike canonical marriages, in the case of these religious marriages, no civil effect is recognised for the possible judgements of nullity or annulment derived from denominational courts.

X. RELIGIOUS EDUCATION OF THE YOUTH

A. *Right to Education, Freedom of Teaching and Religious Factor*

Article 27.1 of the Constitution establishes that “everyone has the right to education. Freedom of teaching is recognized.” Thus, it recognizes two different rights.

On the one hand, the right to education obliges the government to guarantee a place in school for everyone via the creation of ideologically neutral and free public schools. It also means that the government must manage and guide the educational system so as to guarantee its quality.

On the other hand, freedom of teaching is the right of citizens and social groups to create private schools so that parents have the right to choose the type of education that they wish their children to receive. These schools may have a certain ideology and they may be fostered by religious denominations. In Spain, in fact, the Catholic denominational school continues to play a very important role in the entire education system. The ideology of the school is developed based on respect for constitutional principles. Thus, Article 27.6 of the Constitution states that “physical and legal persons are acknowledged the freedom to create private schools, based on respect for the constitutional principles.”

The issue of religion classes in public schools links to the recognized right in Article 27.3 of the Constitution, which establishes that “the public powers guarantee the parents’ right for their children to receive religious and moral education that is in agreement with their own convictions.”

B. *Schools with Ideology*

There are three types of schools in Spain, each differing from the others depending on its ownership and financing. Public schools with public financing and ownership; private schools with private financing and ownership; and private aided schools, with private ownership and public financing. As the latter receive public financing, they have to satisfy certain requisites with respect to how they are organized and to their student admission criteria.

The ideology is the actual nature and orientation of the school. Public schools must be ideologically neutral so that all students fit into the public school, regardless of their ideas and beliefs. The neutrality aims to guarantee the students’ freedom of conscience. Hence, public schools cannot become instruments used by the government to disseminate an official ideology or doctrine. In public schools, teachers may “resist any mandate consisting in offering a certain ideological orientation to their teaching” (STC [Decision of the Constitutional Court] of 13 February 1981). In turn, public school teachers must forfeit the ability to indoctrinate their students. In the words of the Constitutional Court: “the ideological neutrality of teaching in public teaching schools... imposes on teachers, who work therein, an obligation to relinquish any form of ideological indoctrination, which is the only attitude compatible with the respect for the freedom of the families that, based on their free decision or forced by circumstances, have not chosen teaching centres with a certain and explicit ideological orientation for their children.”

The Education Act permits owners of private aided and private schools to endow them with an ideology; namely, a document that shows the actual nature of the schools from the point of view of their religious and ideological orientation, although it is not limited to those aspects. The ideology conditions the behavior of the members of the educational community. The rights and academic freedom of the teacher fall within two extremes. On the one hand, as indicated by the Constitutional Court in the aforementioned decision, the existence of ideology “does not force them to become apologists for such ideas, or to transform their teaching into propaganda or indoctrination, or to subordinate the demands imposed by scientific rigour on their work to that ideology.” In turn, the freedom of teachers is “freedom in the teaching posts they occupy (in other words, in a certain school) and it must, therefore, be compatible with the freedom of the school, of

which the ideology forms part. The freedom of teachers does not empower them, therefore, to aim open or overlapping attacks against that ideology, but only to develop their activity in the terms they consider to be the most adequate and which, in agreement with a serious and objective criterion, are not contrary to the former.”

The most problematic question in this regard is the authorization of the activities undertaken by teachers hired by schools with ideologies that are contrary to the school's ideology but are done outside their teaching function. The Constitutional Court has defended the evaluation of each specific case. It indicates that the service relationship between teachers and schools does not extend to their non-academic behavior but it states at the same time that “the possible notoriety and nature of these activities and even their intentionality may make them an important and even decisive part of the educational task that is entrusted to them.”

C. Religion Classes in Public Schools

In the Spanish system it has been understood that whenever religion classes are voluntary in public schools, this does not violate the secular nature of the State or the neutrality of the public school. On the contrary, such classes are aimed at making religious freedom possible, as indicated in Article 2 LOLR (Act on Religious Freedom).⁴¹ The freedom of worship and religion guaranteed by the Constitution secures the right, which may therefore be exercised by all without duress, to: (...) c) receive and give religious teaching and information of any kind, orally, in writing or any other means; choose religious and moral education in keeping with their own convictions for themselves and for any non-emancipated minors or legally incompetent persons, in and outside the academic domain (...). 3. To ensure true and effective application of these rights, public authorities shall adopt the necessary measures to facilitate (...) religious training in public schools.” Thus, our Constitutional Court has indicated that the neutrality of the State and of its schools “does not prevent the organization in public schools of classes of free choice to provide the parents with the right to choose for their children the religious and moral education that is in agreement with their own convictions (art. 27.3 of the Constitution)” (STC 5/1981, repeating this principle in STC 38/2007).

With respect to the religion classes given in public schools, for the moment, these contemplate Catholic, Muslim, Jewish, and Protestant teaching under the terms established by the Holy See on teaching and cultural affairs in Article 10 of the three Agreements of 1992 with the FEREDE, the FCI, and the CIE. These are subjects that must be offered by the schools but, given their denominational nature, these students are free to follow them.

One of the most debated aspects has been the alternative that students, who do not choose to take religion, should study. For primary students, *Social and Civic Values* is the class that replaces religion. Parents or legal guardians choose whether or not their students will take the class. In the case of secondary education, an alternative to religion is the subject of *Ethical Values*. Parents, legal guardians, or the pupil herself (when appropriate) may choose whether or not to take the class.⁴⁴

As the teaching of religion is denominational teaching, the teachers are proposed by their various religious denominations so long as they have the proper academic qualifications to guarantee their competence. Out of those proposed, the school chooses the people it deems most appropriate. Those individuals are hired for an indefinite time and are paid in line with teachers of the same educational level. If the religious authority deems that one of the people proposed no longer satisfies the necessary requirements to occupy the post, it may withdraw its certification. This will effectively cause the teacher's dismissal on the basis of lacking one of the necessary requisites to carry out his/her functions. This recruitment system, with the intervention of both the religious authorities

44. Organic Law 8/2013, 9 December, to improve the educational quality.

and public schools has been the subject of different conflicts and appeals but it was confirmed by the Constitutional Court in STC 38/2007, on February 15.⁴⁵

It is clear that religion classes cannot be compulsory. If this were the case it would violate the neutrality of the public school and the student's freedom of beliefs. As a result of the enactment of the Organic Law 2/2006, 3 May, of Education by the socialist government, a debate arose due to the compulsory implementation in the Spanish education system of the so-called subject "Education for citizenship". The social debate was transferred to the judicial system when conscientious objectors (several parents who refused to let their children receive this subject) claimed that, based on the objectives and minimum content defined by the government, the discipline was not neutral but rather based on a specific ideology, which could represent an imposed indoctrination outside the parents' election and contrary to their religious and ideological freedom. The decision of the Higher Courts of Justice varied in the different Autonomous Communities. On January 28, 2009, the Supreme Court unified the doctrine by ruling against the right to object to the subject. The recent educational reform introduced by the Organic Law 8/2013, 9 December, has removed this controversial subject.

XI. RELIGIOUS SYMBOLS IN PUBLIC PLACES

As yet, no similar law to the French one has been passed in Spain with respect to the presence of religious symbols in public spaces. There is no regulation in force, either, that encourages the presence of crucifixes or other religious symbols in school classrooms as there is in Italy or Bavaria. In fact, new schools are not usually equipped with crucifixes. The controversial cases arise in the older public schools. Private schools have the right (as part of the right of religious freedoms) to conduct their teaching within the framework of their own ideas. Hence the presence of religious symbols in schools with their own ideology is fully guaranteed.

Conflicting cases have arisen, above all, in the education sector due to the presence of crucifixes or nativities. In some cases, religious services have created a stir as well.⁴⁶ To date, the majority of the decisions passed by the Higher Courts of Justice have considered that any decisions adopted by the councils of the respective schools –regardless of whether the decision was to keep or remove the religious symbol– were lawful.⁴⁷ In the Autonomous Community of Andalusia, when parents of a school asked for crucifixes to be removed from the classrooms, the solution adopted was to order the removal and suggest that religious symbols be displayed only in the classroom where Christian religion

45. Particularly relevant in this regard is the judgment of the Constitutional Court 128/2007, 4 June. The case arrived before the ECtHR that declared that the decision of the Catholic Church not to renew the contract of a married priest father of five to teach Catholic religion after the publication of an article in which he disclosed his membership to the movement "optional celibacy" does not violate the Convention (*Fernández Martínez v. Spain*, 15 May 2012). The case is currently pending before the Grand Chamber. Nonetheless, in a very similar case the Spanish Constitutional Court has judged in the opposite direction declaring the illegitimacy of the dismissal of a teacher civilly married to a divorced man (STC 51/2011, 4 April). On this subject see Zoila Combalía Solís, *La Contratación del Profesorado de Religión en la Escuela Pública*, supra n. 22.

46. On this topic, see Alejandro González-Varas Ibáñez, "Los Actos Religiosos en las Escuelas Públicas en el Derecho Español y Comparado," *Revista General de Derecho Canónico y Derecho Eclesiástico del Estado* 19 (2009).

47. Thus the Decision of the Higher Court of Justice of Madrid, 5 October 2002, on the crucifix in school classrooms. Among the doctrinal authors who have studied the topic, see Manuel Alenda Salinas, "La Presencia de Símbolos Religiosos en las Aulas Públicas, con Especial Referencia a la Cuestión del Velo Islámico," *Revista General de Derecho Canónico y Derecho Eclesiástico del Estado* 9 (2005), at iustel.com; Alejandro González-Varas Ibáñez, *Confessione Religiose, Diritto e Scuola Pubblica in Italia. Insegnamento, Culto e Simbologia Religiosa Nelle Scuole Pubbliche* (Bologna: CLUEB, 2005), 207ff; Alejandro González-Varas Ibáñez, "La Simbología Religiosa en los Espacios Públicos: Problemas Generales y Soluciones Concretas en los Estados Europeos," in *Inmigración y Derecho*, ed. Ines Celia Iglesias Canle (Valencia: Tirant Lo Blanch, 2006), 249-296; Santiago Cañameres Arribas, *Libertad Religiosa, Simbología y Laicidad del Estado* (Pamplona: Aranzadi, 2005), 123ff; Gloria Moreno Botella, "Libertad Religiosa y Neutralidad Escolar a Propósito del Crucifijo y Otros Símbolos de Carácter Confesional," *Revista Española de Derecho Canónico* 58 (2001): 173-218.

classes were delivered.⁴⁸ On the contrary, in the Autonomous Community of Castile-Leon, the Higher Court of Justice twice ordered the removal of crucifixes from schools⁴⁹ at the request of parents in spite of the decision adopted by the school council.

Conflicting cases are not reduced to the education sector, as they also include the presence of crucifixes and the Bible in swearing-in acts of public posts. By virtue of Royal Decree 707/1979, 5 April, Article 1, during acts involving taking possession of public posts or functions in the Administration, office takers are asked: Do you swear or promise on your conscience and honor to fulfil the obligations of the post... etc.? This question is answered by the person who has taken possession with one single affirmative answer. In other words, the situation of the person having to publicly express the option chosen does not arise. However, if the person chooses to take the oath, the Christian religious symbols (crucifix and Bible) are present. If the person chooses to make the promise, the text of the Constitution is present.

The total suppression of any religious reference or symbol in the public space in Spain seems impossible without squandering a good part of its cultural legacy. For example, the building where the Spanish Supreme Court has its headquarters is a historical building that is full of frescoes with many Biblical references. On the contrary, the building where the Constitutional Court has its headquarters is a newly constructed modern building, without any reference to any religious symbol. As yet, nobody has considered it reasonable to demand the elimination of the fresco painting from the Supreme Court or ask for religious symbols to be introduced in the Constitutional Court.⁵⁰

Logically, religious symbols in the field of relations between individuals receive a different treatment. The desire expressed by some workers to wear (or not wear) certain garments in their work environment due to religious reasons even when the employer has not been warned during the interview has not been accepted by the courts.⁵¹

Recently, the Spanish Supreme Court has annulled the provisions of the Lleida City Council banning the use of the burqa in the municipal spaces alleging that the City Council has no jurisdiction to regulate this issue.⁵²

XII. FREEDOM OF EXPRESSION AND OFFENSES AGAINST RELIGION

Recently, a series of conflicts have been arising with reference to the deference that the freedom of expression merits when its exercise collides with respect for religious feelings: film premieres, shows, photographic exhibitions, publication of books, etc. that ridicule sacred figures or certain beliefs, presenting them in an obscene or offensive manner.⁵³ The problem does not arise with respect to respectful criticism which,

48. There is also a report by the Ombudsman of a village in Andalusia, who, in his conclusions deems that the only places where the presence of the crucifix does not harm the State secularism in the school sector are places of cult or in the religion classroom. Perhaps, consistent with that report, the Junta of Andalusia has ordered that the crucifixes should be removed from the Virgen de la Cabeza School in Jaen, where some parents requested their removal. That is, in this case, the decision has been assumed by the Autonomous Public Administration and not by the School Board, as in the case of the Madrid school. María José Roca Fernández, "La Jurisprudencia y Doctrina Alemana e Italiana Sobre Simbología Religiosa en la Escuela y los Principios de Tolerancia y Laicidad. Crítica y Propuestas para el Derecho Español," *Anuario de Derecho Eclesiástico del Estado* 23 (2007): 257-291.

49. Decisions of the Court of Justice of Castile-Leon (Tribunal de lo Contencioso Administrativo), 20 September 2007 (no. 1617/2007; this can be consulted in the Aranzadi Repertory of Jurisprudence, with reference RJCA/ 2008/109) and of 14 December 2009, which can be consulted online at www.tirantonline.com, with reference TOL 1.724.360).

50. In the same sense see STC, 34/2011, 28 March, considering that the image of the Immaculate Conception can remain patron of the Bar Association of Seville, because it has acquired a historical and cultural significance and does not violate the neutrality of the institution.

51. Jaime Rosell Granados, "Imprudencia de Sanción Laboral por Uso de Vestimenta Religiosa," *Aranzadi Social* 1 (2003): 2809-2812.

52. STS (*Sentencia del Tribunal Supremo*) of 14 February 2013, administrative chamber (section 7).

53. For an analysis of the conflict in the International field see: Zoila Combalá Solís, "Libertad de Expresión y Difamación de las Religiones: El Debate en Naciones Unidas a Propósito del Conflicto de las Caricaturas de

obviously, is protected by freedom of expression, but rather with respect to offences. Both freedom of expression and respect for religious feelings are legally protected so each specific case must be pondered to reach a proper solution to the conflict.

The Spanish law protects religious feelings, both in its unilateral rules and also in its agreement-based regulations. Profanation is even sometimes treated as a crime and mocking, in its more serious forms, can be considered an offense (arts. 524 and 525 of the Criminal Code). Thus, the Agreement with the Holy See on Cultural Affairs expressly establishes that “safeguarding the principles of religious freedom and expression, the State will ensure that the feelings of the Catholics are respected in its social media and will establish the relative agreement on these matters with the Spanish Episcopal Conference” (art. 14).

The Spanish Penal Code also punishes incitement to hatred, discrimination, and violence based on religion in Article 510.

Mahoma,” *Revista General de Derecho Canónico y Derecho Eclesiástico del Estado* 20 (2009); Zoila Combalfía Solís, “The Right to Freedom of Expression in Islam: A Comparative Perspective,” in *Neuere Entwicklungen im Religionsrecht Europäischer Staaten*, eds. Wilhelm Rees, María Roca, and Balázs Schanda (Berlin: Duncker & Humblot, 2013); Rafael Palomino Lozano, “Libertad Religiosa y Libertad de Expresión,” *Ius Canonicum* 98 (2009): 509-548.