

Religion and the Secular State in Andorra

I. SOCIAL CONTEXT

Because of its history, the reason for its existence, the principles contained in its Constitution, its culture, location, and the important role of the Catholic Church in its political structure, Andorra is a state unlike any other. It is a co-principality in which the Heads of State are the Bishop of Urgell (whose See is the city of Seu d'Urgell in Catalonia, close to the border with Andorra) and the President of the French Republic. Not until 1993 did Andorra adopt a modern Constitution. Prior to this, its political and legal framework were inherited directly from medieval times, when the co-principality was founded as the solution to a territorial dispute between the bishops of Urgell and the French Counts of Foix over the valleys of Andorra in the 13th century. It seems likely that the unusual situation wherein one of the Co-Princes is a bishop has guaranteed Andorra's survival, preventing it from being absorbed by either Spain or France. Andorra's independence is noteworthy, given that it consists of a series of valleys in the center of the Pyrenees, lying in the middle of the frontier between its two larger neighbors.

The demographic composition and culture of Andorra have remained stable and virtually unchanged for centuries, and are almost identical to those of the Catalan area of the eastern Pyrenees. Catalan is the only language spoken in the country historically and is the official language today. The civil law of Andorra is copied from the historical legal system of Catalonia, which is still based on the *ius commune* of the Lower Middle Ages: Canon Law (*Corpus iuris canonici*) and Roman Law (*Corpus iuris civilis*).

The economy of Andorra was typical of mountainous regions and relatively poor until the middle of the 20th century when tourism, commerce and winter sports transformed the situation.

Andorra shares its social organization, language, legal system, culture, and religion with its neighbouring region of Catalonia: the language spoken is Catalan, and Catholicism historically has been the only religion of the country. It should be noted that the proximity and institutional stability of the Bishop of the Seu d'Urgell has meant that his political influence has been more intense and more immediate than that of the French Co-Prince (which has undergone a number of changes since the rights of the Counts of Foix passed to the Kings of France and later to the Republic, resulting in periods where the French presence has been erratic).

Today, approximately 99.1 percent of the *de facto* population belong to the Catholic faith. There is a small minority of Protestants (0.35 percent), some Jews, and followers of other religions. The increased immigration of recent years has led to a slight rise in the number of Muslims and other religions.

II. THEORETICAL AND SCHOLARLY CONTEXT

Andorra has not developed any groups or currents of academic thought concerning its political status or the relation between secular authority and religion. This is principally because geographic, demographic, and historical circumstances have determined the intellectual, philosophical, or political organizations or movements in Andorra. Political parties have only emerged in the wake of the Constitution. There has, therefore, been no development of home-grown political schools or doctrines: cultural influences are divided between Catalonia (the language and south-facing orientation of the valleys has *inclined* the population of Andorra towards Catalonia), and a touch of French intellectualism.

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At the present time, the political postures are very similar to those of Spain and France, although Andorra also has the moderation that is customary in small states. This moderation is also noticeable in the approach to religion adopted by the political parties, which tend to favor religious freedom, while avoiding anticlerical or anti-Catholic postures, which would lead to a crisis of the constitutional system with troubling consequences. Spain has attempted on several occasions to convince the Bishop of Urgell to cede his sovereignty, but this option has always been viewed with apprehension by the people of Andorra and rejected.

III. CONSTITUTIONAL CONTEXT

The Principality of Andorra has had a special relationship with the Catholic Church since the 9th century. It is a well-established historical tradition that Charlemagne founded Andorra in 805 A.D. and donated the territory to the Diocese of Urgell. Although it was specified that the Principality of Andorra would be held under the jurisdiction of the Counts of Urgell, documents from different periods affirm that they exercised their sovereignty as vassals of the bishop. Ermengol VI, Count of Urgell, ceded his rights to the possession of Andorra to the bishop Pere Berenguer in 1133 A.D. From that moment, the Bishops became both spiritual and temporal lords of the valleys. However, the need to defend these possessions from the avarice of the nobility led the bishops of Urgell to seek the protection of influential families who could provide them with military support. A number of disputes arose in the 13th century between the bishops of Urgell and the Counts of Foix. After one conflict with the Count of Foix, bishop Pere de Urgio was forced to accept the famous *Pareatges* or agreements of 1278 and 1288, which established the regime of co-sovereignty. This agreement stated that the Counts of Foix and their descendants would hold Andorra as property of the Bishops of Urgell, and would render homage to the bishop. They would take equal share both in the receipt of tributes and the administration of the territory.

Seven hundred years later, the first constitution of Andorra declared in Article 43.2: “The Co-Princes, an institution which dates from the *Pareatges* and their historical evolution, are in their personal and exclusive right, the Bishop of Urgell and the President of the French Republic. Their powers are equal and derive from the present Constitution. Each of them swears or affirms to exercise their functions in accordance with the present Constitution.”

The unusual nature of the system has probably been the key to the balance of power between Andorra’s two neighbouring countries, either of which might have attempted to absorb the territory. In this context, Article 44.1 of the Andorran Constitution declares that “[t]he Co-Princes are the symbol and guarantee of the permanence and continuity of Andorra as well as of its independence and the maintenance of the spirit of parity in the traditional balanced relation with the neighbouring states. They proclaim the consent of the Andorran State to honour its international obligations in accordance with the Constitution.”

The constitutional principles that establish the relations between religion and State are as follows: the principle of equality,¹ the principle of religious freedom,² and the obligation of the State to guarantee cooperation with the Catholic Church. Article 11 of the Constitution of Andorra guarantees political and religious freedom. It also establishes the right of individuals not to be forced to declare or make public their ideology, religion or beliefs. Article 11.2 of the Constitution establishes that the freedom to express one’s religious beliefs or opinions should only be subject to the legal limitations considered necessary for the protection of public safety, order, health or morals, or the fundamental freedoms of other persons. Finally, in Article 11.3 the Constitution guarantees the Roman Catholic Church free and public exercise of its activities and the preservation of the relations of special co-operation with the State in accordance with the Andorran tradition.

1. CONSTITUTION OF ANDORRA, art. 6 (1993).

2. *Id.* at art. 119.

A suitable bilateral legal framework is therefore required for issues of mutual concern. This does not constitute the recognition of a series of privileges for the Catholic Church, but the regulation and ordering of their mutual relations for the public good, enabling it to fulfil its mission appropriately. Article 11.3 of the Constitution recognizes the full legal capacity within the Andorran legal system of church bodies established under Canon Law.

Article 20.2 of the Constitution establishes freedom of education and the establishment of educational centers, so that religious communities have the freedom to set up faith schools. Finally, Article 20.3 establishes the rights of parents to decide the type of moral or religious education that their children should receive in accordance with their own convictions.

The text of the Andorran Constitution establishes the principle of religious equality. However, Article 11.3 makes explicit reference to the Catholic Church and its relation of special co-operation with the State as forming part of Andorran tradition. There is no mention of any other religion as a potential alternative entity with which the State could co-operate. There is also explicit recognition of the legal status of entities created under Canon Law. This is the reason why the Catholic Church receives special treatment under some of the laws of Andorra. For example, Article 14 of the Andorran Nationality Act of 5 October 1995 recognizes the attribution of nationality to the representatives of the Co-Princes, the General Secretary of the Episcopal Co-Prince, and priests holding ecclesiastical offices in the parishes of Andorra.

There are no references to God or religion in the preamble of the Constitution as there are in many other European countries. It only refers to the origins of Andorran institutions in the “Pareatges,” the 13th century treaties which established the regime of co-sovereignty shared by the descendants of the Counts of Foix and the Bishop of Urgell.

Unlike the Constitutions of Spain and France, the Carta Magna of Andorra makes no mention of the State’s attitude towards religion. It does not say whether the State of Andorra considers itself to be secular or religious. However, the text of the Constitution can be interpreted as describing a secular state that regards religion as a positive value. The State therefore assumes responsibility for creating conditions under which religious equality and freedom are effective³ and for co-operating with the Catholic Church.⁴

IV. LEGAL CONTEXT

There is no specific legislation on the subject of religious freedom or the treatment of religious groups. Relations with the Catholic Church are governed by the agreement between the Principality of Andorra and Holy See of March 2008. Dealings with other religions are based on custom and a tradition of tolerance, without there being any institutional relations.

Recognition of the system of co-principality involving one ecclesiastical Co-Prince as in the Constitution of Andorra called for an international treaty to establish the role of the Holy See in the election of the bishop. The Agreement between Andorra and the Holy See, which is responsible for appointing the Bishop of Urgell, was consolidated under the Constitution and forms the basis for the principles which guide the relations between the parts, but also the obligation to maintain the agreement (*pacta sunt servanda*) and the commitment to create laws to put the negotiated clauses into effect. It was also highly fitting that the historical legacy of the *Pareatges* should find expression in a bilateral international treaty because of the institutional significance of the figure of the Co-Princes in Andorra, and the importance of its recognition in international law.

Although it is not mentioned in the preamble of the agreement, the treaty asserts the specifically international character of Andorra, despite the historic resistance of the French Co-Prince to the recognition of this fact. France has attempted to make use on several occasions of the “colonial clause” in order to extend to Andorra the treaties it has signed, as established under international law for those territories whose foreign relations

3. Id. at art. 6.

4. Id. at art. 11.

are the responsibility of another state. The Episcopal Co-Prince has always opposed this claim, maintaining that no authority other than that which is shared equally by the Co-Princes can intervene in the sovereignty and independence of Andorra.

It is precisely in this area, where France maintains the total separation of Church and State and where there are no bilateral treaties between both parts, that the singular nature and independence of Andorra's international relations as expressed in the Andorran agreement are most clearly defined.

It should be noted that a group of parliamentarians challenged this Agreement on constitutional grounds shortly after it was signed. The principal motive of the challenge was that Article XI, 3 a) of the Agreement established the obligation for *all educational centers* to teach Catholicism, which was considered by this group to contravene the right of parents to choose their children's education, and their moral and religious upbringing in accordance with their convictions,⁵ as well as their right to freedom in education and the creation of educational centers.⁶ They also argued that the Article was in contradiction with the principle of state secularism.

On 4 September 2008, the High Tribunal declared Article XI, 3 (a) of the agreement to be constitutional, although subject to two important specifications in its interpretation. The Constitutional Tribunal considered that the teaching of Catholicism in "all" educational centers was acceptable under the constitution. However, it established two exceptions to this rule: (1) foreign centers which do not form part of the Andorran education system and which are regulated by specific international agreements, and (2) private educational centers whose character would be seriously affected were they obliged to teach Catholicism.

There are no bodies within the administration of the State that have specific responsibility for relations between the State and religious communities, nor are there any advisory bodies that are concerned with this area. There are institutional relations at the highest level (international law) with the Catholic Church. These relations were based in the past on tradition and the existence of the Episcopal Co-Prince. They are currently regulated by the agreement between the Principality of Andorra and the Holy See of 17 March 2008. To date, there have been no laws passed to develop this legislation, or agreements at a lower level. There are no agreements with other religious groups.

V. THE STATE AND RELIGIOUS AUTONOMY

There is no legislation in Andorra that regulates the civil aspects of religious life. The international agreement signed by the Principality and the Holy See in 2008 acknowledges in its preamble that the text is founded on the mutual recognition of independence and freedom of Church and State. Article IV specifically recognizes the right of the Catholic Church to carry out its apostolic mission and guarantees the free and public exercise of its activities. It specifically gives the Holy See or its designated authority the right to create, modify or suppress orders, religious congregations, and other ecclesiastical institutions and bodies, the right to communicate freely with these bodies and their congregations, and to publish and broadcast any disposition relative to the running of the Church.

The Andorran penal code considers religion to be an established right that deserves protection. Article 10 of the code states that the commission of a crime for religious reasons would constitute an aggravating circumstance, augmenting the penalty incurred by the crime itself. The latest reform of the penal code considered it unnecessary or even counter-productive to include a specific definition of the act of impeding the practice of religious activities or attendance at these acts, or the use of coercion to force people to attend them. This is because these crimes are already sufficiently protected among the crimes against the right of assembly and the crime of coercion.⁷ Even so, there are still a

5. CONSTITUTION OF ANDORRA, Art. 20.3 (1993).

6. Id. at art. 20.2.

7. Legislative decree of 17-12-2008, publication of the reformed text of the penal code, Official Bulletin of the Principality of Andorra, 24-12-2008.

number of crimes in the penal code that aim to protect the peaceful exercise of the right to religious freedom: Article 186 considers discrimination on religious grounds to be a crime, Article 357 refers to the breach of public order in a religious activity, and Article 399 refers to the crime of *hate speech*.

Regarding any possible restrictions on the activities of religious communities in the public sphere, Article IV, Section 2 of the agreement between the Holy See and the Principality of Andorra establishes a series of limits. The precept establishes that public and social manifestations of Catholicism are subject to the prevailing dispositions with regard to safety, public order and health, and the fundamental rights and responsibilities of other persons.

VI. RELIGION AND THE AUTONOMY OF THE STATE

The Catholic Church has a special role in the government of the country due to the fact that one of the two Co-Princes of the country is the bishop of the Diocese of Urgell, who the Holy See has the liberty to appoint freely, as stated in the preamble to the agreement between the Holy See and the Principality of Andorra of 2008. The government of Andorra must be informed of the designated appointee's name prior to his appointment (Article 2 of the agreement). The civil authorities can then take advantage of this "unofficial right of notice" to put forward any objections on political grounds. However, as the text of the Agreement states, in the case of an objection on the part of the Government of Andorra, the final decision rests entirely on the considered opinion of the Holy See.

With regard to the figure of the Episcopal Co-Prince, Article 43 of the Constitution of Andorra establishes the following: "1. In accordance with the institutional tradition of Andorra, the Co-Princes are, jointly and indivisibly, the Head of State, and they assume its highest representation. 2. The Co-Princes, an institution which dates from the Pareatges and their historical evolution, are in their personal and exclusive right, the Bishop of Urgell and the President of the French Republic. Their powers are equal and derive from the present Constitution. Each of them swears or affirms to exercise their functions in accordance with the present Constitution." Despite forming part of the hierarchy of the Catholic Church, his function in Andorra is political and must conform to the Constitution.

Together with the other Co-Prince, the Bishop of Urgell has many important functions in the government of the country: they are the symbol of the Andorran State's consent to honour its international obligations (Article 44.1 of the Constitution); they arbitrate and moderate the functioning of the public authorities and institutions, and are regularly informed of the affairs of State (Article 44.2); they call the general elections, appoint the President of the Government, dissolve parliament (the General Council), and authorize the diplomatic representatives of Andorra abroad, while foreign representatives in Andorra present their credentials to each of the Co-Princes. They also appoint the heads of other institutions of the State, approve and announce laws as stated in Article 63 of the Constitution, among other functions (Articles 45 and 46). Each Co-Prince also appoints a personal representative in Andorra, as established in Article 48 of the Constitution.

VII. LEGAL REGULATION OF RELIGION AS A SOCIAL PHENOMENON

There is no law within the unilateral legislation of Andorra that specifically regulates religion as a social phenomenon. There are no distinct categories according to religion or religious communities, nor is there a special register. Any religious group that aspires to full legal status must conform to the standards set out in the Associations Act (*Llei qualificada d'associacions*) of 29 December 2000. This law does not provide protection for the autonomy of the registered association, but rather imposes certain obligations which may constitute serious limitations on the character of the faith. For example, Article 17 of the law states that the internal organization of the association must be democratic and must include a general assembly, a board of directors and a presidency, regardless of the religion in question. There are a number of regulations among the many

areas of legislation that have a bearing on institutions and situations with religious significance. In these cases, the objective of the legislature is to provide special protection for religious elements. For example, the Personal Data Protection Act of 18 December 2003 states in Article 19 that religious beliefs should receive the consideration of “sensitive data,” which can only be used with the express consent of the party concerned. In any case, the law forbids the organization of archives around people’s religious beliefs.

Bilateral legislation, specifically that legislation contained in the agreement with the Holy See, establishes some regulations which offer more protection. Article 5, for example, recognizes the inviolability of Catholic places of worship, the exclusive responsibility of the ecclesiastical authorities over such places, and the State’s role in collaborating with and protecting these places.

The Constitution does not recognize the right to conscientious objection, and the Constitutional Tribunal has never made a decision on this matter.

VIII. STATE FINANCIAL SUPPORT FOR RELIGION

There is no legal impediment under Andorran legislation that would prevent religious bodies from receiving financial support from the State. The Constitution itself, in Article 11.3, commits the State to a special degree of collaboration with the Catholic Church that does not exclude any possible form of financial support. Besides this, Article 47 of the Constitution states that an equal amount of the General Budget should be assigned to each of the Co-Princes for the functioning of their services, which they may use as they see fit.

Some of the activities and institutions of the Catholic Church receive either direct or indirect financing as specified in Article 13 of the Agreement with the Holy See: “In view of the special relationship between the Principality of Andorra and the Church, as enshrined in the Constitution of the Principality, the Church and the bodies it establishes in pursuit of its goals, and therefore not destined towards profit-making activities, shall enjoy exemption from taxation except in the case of indirect taxation as normally included in the prices of goods and services. The profitable activities of the Church will not enjoy this exemption from taxation. 2. Notwithstanding the previous section, there is exemption from indirect taxation for the publication of instructions, ordinances, pastoral communications and any other document from the relevant ecclesiastical authorities, and the acquisition of objects for acts of worship.” Article 14 contains a commitment on the part of the State of Andorra to maintain its traditional secular collaboration with the Church with regard to its financial support. The annual budgets of each of the territorial divisions (known as “parishes”) within the Principality include an amount for the Catholic Church as a form of direct support. The Parliament also completely subsidizes the two schools that belong to the Bishop’s office: Col·legi Sant Ermengol and the Sagrada Família Center in Santa Coloma, also known as the Institut Janer, as mentioned in the Education Act (*Llei qualificada d’educació*), of 3 September 1993.

The 2006 Act, of 21 June, which modified the tax levied on the transfer of property, is an example of a form of indirect financing, as it exempts transfers in favour of the Co-Princes from this tax, as well as transfers of property and the creation and lease of rights over these items in the Church’s favor.

IX. CIVIL LEGAL EFFECTS OF RELIGIOUS ACTS

The Principality of Andorra recognizes the legal effects of marriages celebrated in accordance with Canon Law. The secular effects of Canon Law marriages are valid from the moment of their celebration, and for their full recognition they must be introduced into the Civil Register by presenting the ecclesiastical certificate of the marriage ceremony.⁸ The effects of declarations of nullity and dispensations of unconsummated marriages are recognized with full effect under secular law when they are sought under civil jurisdiction.⁹ This is in contrast to the Agreement on Legal Affairs in Spain, in which

8. See Agreement with the Holy See, art. 9 (2008).

9. See *id.* at art. 10.

Article 6.2 requires that such performances should conform to secular law in order to have full effect. The Agreement of Andorra does not include this requirement. It therefore avoids the difficulties in interpretation which have arisen in Spain when applying for recognition of the legal effects under secular law.

X. RELIGIOUS EDUCATION OF THE YOUTH

The Constitution recognizes the right to freedom of ideas, religion and worship in Article 11.1; the right to education, which includes “the freedom of teaching and establishment of educational centers” in Article 20.2; and the rights of parents “to choose the type of education that their children should receive. The parents also have the right to moral and religious instruction for their children that is in accordance with their own convictions.” The Education Act of 3 September 1993 also recognizes the rights of the parents to choose freely among the educational systems established in Andorra, and the rights of children to receive religious and moral instruction in accordance with their convictions.¹⁰

With regard to the freedom to establish educational centers, the Constitutional Tribunal recognizes the right of each center to define its own program.¹¹

With regard to the teaching of religion, Article 19 of the law regulating the Andorran education system specifically states, “Educational centers must offer courses on the Catholic religion throughout the period of basic education. These courses are optional for the students.” This means that religion does form part of the school curriculum, and that it must be available, although the choice is voluntary for the students.

Article 11.3 of the Agreement between the Holy See and the Principality establishes that “All education centers will guarantee the rights of the parents, in accordance with the Constitution, to moral and religious instruction for their children in accordance with their own convictions.” In general, “(1) Centers must make education in the Catholic religion available during the ordinary school timetable throughout the period of basic education. This education is optional for the students. (2) Education in the Catholic religion will be given by persons appropriately authorized by the diocesan ordinary. If such persons are not priests, they should possess a document issued to this effect by the ecclesiastical authorities. (3) The ecclesiastical authorities also have responsibility for setting the content of the courses on the Catholic religion as well as proposing the textbooks and corresponding teaching materials.”

Article 5 of the 1993 Education Act defines the structure of Andorran education as being plural and composed of: a) the Andorran education system and b) other centers that follow “other educational systems authorized by agreements.” The Andorran education system includes both private and public education centers. Public schools may or may not be State run, depending on whether they are run by public bodies other than the State or private, linked by agreement or contract with the Government (Article 23). Private schools require authorization from the administration (Article 25).

With regard to the “education systems that differ from that of Andorra,” the Education Act only stipulates the subjects which form part of the education of Andorra which must form part of the syllabus. This category of education centers includes both foreign schools and two specific educational centers: Sant Ermengol and La Sagrada Família, which were founded by the Bishop’s office. Article 64 of the law regulating the Andorran education system of 1994 established the subjects that form part of “Andorran education,” adding that other subjects can be included in the corresponding agreement.

The foreign education systems “that differ from that of Andorra” are regulated by agreements, specifically those of Spain and France. Both the Spanish-Andorran agreement on education of 17 May 2007, and the agreement with the Government of the French Republic on education matters of 2004 have the status of international treaties.

10. See CONSTITUTION OF ANDORRA, art. 5 and 10 (1993).

11. Auto of the Constitutional Tribunal of 4 September 2008.

Concerning the regime which foreign centers have to abide by in relation with the teaching of the Catholic religion, Article 10 of the *Agreement on French education* says that “the centers of French education in the Principality of Andorra will have a syllabus conforming to that of public education centers in the French Republic. This education is evaluated in accordance with French qualifications. However, some specific subjects agreed by the Joint Committee may also be evaluated by Andorran qualifications.” Only Article 11 establishes a series of clarifications with respect to the obligatory teaching of “Catalan language, geography, history and the institutions of Andorra.”

The schools in Andorra that adopt the *Spanish education system* must offer education on the Catholic religion as indicated in Article 2 of the *Agreement between the Spanish State and the Holy See on Education and Cultural Affairs of 1979*. The syllabus used in “all of these education centers” must therefore include religious education in the same conditions as the other subjects considered to be fundamental. Spanish foreign schools in Andorra would therefore apply the same solution as the one proposed for the challenged Agreement, and there would be no conflict between the content of both Agreements.

It would seem, therefore, that from the point of view of ordinary legality, Article 9.3 of the Agreement does not alter the current legal framework as those who challenged it on Constitutional grounds have alleged. The Constitutional Tribunal directly opposed the application of the Agreement between Andorra and the Holy See to educational centers that do not form part of the Andorran system. The regulations of the Agreement “cannot alter that which is foreseen in these agreements because they are instruments and refer to issues that have been agreed with a third party.”

It seems, therefore, that the Constitutional Tribunal accepts as a general rule that the teaching of the Catholic Religion is to be offered not only in public centers, but also in private centers, *as long as it does not contradict their own nature*.

XI. RELIGIOUS SYMBOLS IN PUBLIC PLACES

The citizens of Andorra are free to wear or display religious symbols, as there is no legal limitation on this issue. The issue of the use of the Islamic headscarf in public buildings or educational centers has not been raised, and no court complaints have been registered concerning the presence of crucifixes or other religious symbols. The traditional emblem of Andorra does, however, contain the representation of two elements with religious significance: the mitre and staff that belong to the Episcopal Co-Prince.¹²

The legislation on cemeteries does include some references to this topic. For example, Article 18 of the Regulations of the communal cemetery of the Parish of Ordino affirms that symbols of religion and beliefs shall be admitted on condition that they do not constitute an affront to morals and good customs, and do not cause scandal or are inappropriate in a cemetery. The council has the right, however, to insist that their size be reduced, or to impose a degree of discretion on any symbolic representation that is held to be oversized or inappropriate.¹³

XII. FREEDOM OF EXPRESSION AND OFFENSES AGAINST RELIGION

The penal code of Andorra considers in its Article 339 that “any person who aims to insult publicly, carry out acts or proffer expressions which cause serious offense to the members of a religious, national, ethnic or political group, or persons who profess a particular belief or ideology must be subject to arrest.” It should be understood that the punishment for *hate speech* should also be included here. One result of the particular nature of Andorran political organization is that the penal code also considers the act of slandering, insulting or defaming the Co-Princes as a serious offense. In this case, the protection afforded the Bishop of Urgell does not derive from his religious status, but from the political position he occupies in the State for historical reasons.

12. See Law on the Use of Symbols of the State, 20 June 1996.

13. Regulations of the municipal cemetery of Ordino of 29 June 1994.