

## Religion and the Secular State in Argentina

### I. SOCIAL CONTEXT

The population of Argentina is by and large majority Catholic. There is an important Jewish community, which is smaller in number than in influence, a growing number of Muslims due to recent African immigration, and members of almost all Christian denominations, mainly evangelical and Pentecostal. The question about religion has not been included in the census in the last four decades, so there is no other available information than that given by partial studies, mostly reliable, and the denominations, sometimes optimistic in counting their flocks. In August 2008 there was a sociological study, seriously taken into consideration, about Religion and Beliefs of the Population. According to this study, 91 percent declared they believe in God, 76 percent of whom are Catholic, 11 percent agnostic or non-believers, 9 percent Protestant, Evangelical, or Pentecostal denominations, 1.2 percent Jehovah's Witness, 0.9 percent Mormon, and 1.2 percent other religions.<sup>1</sup> Some time earlier, Dr. Juan Navarro Floria reported these results:

According to surveys, of nearly 38,000,000 inhabitants in Argentina, eighty percent (80%) of the population acknowledges to be Catholic, ten percent (10%) belongs to different Protestant, Evangelical and Pentecostal churches, three percent (3%) belongs to other religions (specially the Jewish numerous community, with its significant social presence, but also Muslims and members of Afro-Brazilian groups; much less numerous, Buddhists, Hindus, Mormons and members of other religious groups); and seven percent (7%) states to be atheist or agnostic. The group evidencing the highest growth are the Evangelicals (and among them, specially Pentecostals and Neo-Pentecostals), which have grown significantly in the last twenty years, especially among the low-income urban sectors.

These last years have also witnessed an increase in religious practice. According to recent surveys, over 43 percent of the population goes to church at least once a month; but 80 percent admit to being a "religious persons" (whether going to church or not). The Catholic Church is the institution receiving the highest degree of trust from the population (exceeding by far, for instance, political parties, unions, corporations or the government itself) and experiences an increasing participation from its faithful. The Jewish community decreases by assimilation and emigration, while orthodox practicing groups increase among its members. The Islamic community has gained organization and presence, and in 1998, the biggest mosque in South America was built and opened that same year in Buenos Aires.<sup>2</sup>

During the second half of the 20th Century, Argentina received immigrants from all over the world, most of them with Catholic roots: Spanish and Italian and less, but significant, French. Other Catholics came from Ireland where they couldn't exercise freely their religion. Also victims of persecution were a huge number of Jewish immigrants, coming from the Russian Empire (then including Poland), and later Christian, Jews and Muslims from the crumbling Ottoman Empire and also from the Balkans.

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1. Ceil-Piette-Conicet, *Primera Encuesta sobre Creencias y Actitudes Religiosas en Argentina*, Fortunato Mallimaci, director. Buenos Aires, agosto de 2008, <http://www.calir.org.ar/docs/EstudioCONICET2008.pdf>.

2. Navarro Floria, J. G. "The Relations between Church and State in Argentina," <http://www.calir.org.ar>.

Immigration from Japan and China came later in the 20<sup>th</sup> century (there was even a Laotian immigration into the Province of Misiones). Due to anti-Semitic laws in Europe, there was a Jewish immigration (as of Italian Jews after 1938 Racial Laws<sup>3</sup>), and after both World Wars people from all parts of Central Europe sought refuge in Argentina. Since the second part of the 20<sup>th</sup> century, immigrants have been arriving from border countries (Paraguay, Uruguay, Bolivia) or others in Latin America, like Peru. Lately there is an increasing immigration from Africa, many of whom are Muslims.

## II. THEORETICAL AND SCHOLARLY CONTEXT

The constitutional tradition in Argentina has seen as not contradictory the preeminence of one church, the Roman Catholic. This is due to the fact that religious freedom has been assured for everyone in the country, marked by immigration and a generally successful integration in all fields.

The intensity of the bond between the Catholic Church and the State has been discussed: a “moral union” for some; for others, just an economic arrangement as a compromise solution in a tradition of ideas and political institutions rooted in liberalism. On the one side are the ideological struggles of the past – Masonry, anticlericism in the French tradition, strict separation of Church and State in the party platforms of Socialists, and others. On the other side is a hypercritical view of the influence of liberalism as not recognizing the rights of a Church with which the State should feel identified, or accepting the imposition of Church teachings upon society. Both have questioned the system created by the Constitution, and traces of this can be seen until today.

At the present time, only marginal groups would support the idea of one dominant Church. Many will be found, instead, searching for models of granting freedom for all, autonomy and cooperation, and the proper place for religion in a secularized society.<sup>4</sup> Some may criticize certain patterns of a “Catholic Nation” or look for a more distant relation with the State. A clear “neutral” system is demanded by others even without need of a constitutional reform. This secularity (understood as “laicismo” in Spanish) intends to avoid the principles of one religion or values that would be imposed in any way in society or even taken into consideration.<sup>5</sup>

Separation, neutrality, and independence of religious rulings are often brought to the debate about the place of religion in the public sphere and religion’s voice in matters of abortion, gay/lesbian rights, and other sensitive issues. The Catholic Church may be seen as a “corporation” whose power and influence should be reduced to the private beliefs of its members without the right to be heard in the public sphere. A minority well placed in the cultural arena or the media show “secularism-oriented intolerance,”<sup>6</sup> with an aggressive stand bordering on “anti-Catholicism.”<sup>7</sup> The non-Catholic religious institutions do not have enough public exposure to provoke such reactions, though their positions are in such cases characterized as fanatical and fundamentalist.

If religious freedom can be nominally considered a goal fully accomplished, in recent decades the struggle for “equality” has become a major claim of the non-Catholic world. Packed rallies in the center of Buenos Aires in 1999 and 2001 tried to show the

3. Smolensky, E.M. - Vigevani Jarach, Vera: “Tanti voci, una storia – Italiani ebrei in Argentina. 1938-1948), A cura di Giovanni Iannettone. Società editrice il Mulino, Bologna, 1997). Appalling rescue of the memoir of this late Italian, highly qualified, immigration. Practically none of the families (in many cases scarcely practicing Jews in Italy before) have kept traces of religious identity.

4. In first place Pedro J. Frías, Germán Bidart Campos, Angel Centeno, and more recently Juan Navarro Floria, Roberto Bosca, María Angélica Gelli and others.

5. Petracchi, Justice Enrique, in the Supreme Court ruling “Sejean,” *infra* n. 23.

6. Martínez Torron, J. and Navarro Valls, R., Protection of Religious Freedom in the System of the Council of Europe,” in “Facilitating Freedom of Religion or Belief, a Deskbook,” m236. Martinus Nijhoff Publishers, 2004. I.

7. Join Declaration, the 18th International Jewish-Catholic Joint Committee, Buenos Aires, August 5-8, 2004: “Additionally, the Jewish community has become aware of, and deplors, the phenomenon of anti-Catholicism in all its forms, manifesting itself in society at large.” [http://www.vatican.va/roman\\_curia/pontifical\\_councils/chrstuni/relations-jews-docs/rc\\_pc\\_chrstuni\\_doc\\_20040708\\_declaration-buenos-aires\\_en.html](http://www.vatican.va/roman_curia/pontifical_councils/chrstuni/relations-jews-docs/rc_pc_chrstuni_doc_20040708_declaration-buenos-aires_en.html).

importance of the claim, as have writings, statements, and other initiatives. Since the early 1990s drafts of laws have been put forth - in one case, with approval of the high Chamber though not followed in the low Chamber. Representative (diputada) Cinthia Hotton, a member of the Baptist Church, with the support of a group of twelve others, introduced a draft now (as of October 2009) in study by the Chamber.<sup>8</sup> A pre-draft by the Secretary of Worship has not yet<sup>9</sup> been sent to Congress, though it may be at some time. The intention is to secure full legal recognition for non-Catholic denominations, giving the possibility of ways to cooperate with the State, suppressing compulsory registration and introducing a voluntary process to assure this cooperation and the full exercise of rights by denominations that choose to register, and full religious freedom for communities that choose not to register, as well as for all individuals. The U.N. Declaration on Freedom of Religion of 25 November 1981 is included as a part of the draft law, which also suggests that the main legal basis of the relationship between the Holy See and the State is the 1966 Agreement between them.

If such hopes succeed in becoming law, equality, at least in the legal field if not necessarily sociologically, shall be satisfactorily achieved. Nevertheless, the tradition of the country is very strong, towards the importance of the Catholic majority (even if a soft link with the Church), and the universal influence of the Church. However, if in the past the Catholic Church might be considered (not without reason) too close to power and using its influence too strongly in various ways, the last decade shows a Church committed to social issues. In 2002 the Church was decisive in beginning the “Argentine Dialogue,” and from then on Caritas and other Church-oriented groups have played a highly appreciated role in the social field, for example in the struggles against poverty, hunger, and drugs. In many ways the Church is considered a credible “hand” of the State in alleviating the problems of the poorest parts of population. The confrontation with the State is on educational and moral matters more than for calling attention to situations of injustice and inequity. On the other hand, both Kirchner presidencies show a government cold and distant towards the Church, perhaps as never before, though this is not always so in other levels of local governments in the provinces. For the most part ecumenical and interreligious relations have replaced the pattern of a Church intending to be the only actor in the religious scene. Even in the face of persisting misunderstandings and sensitivities, the Catholic Church and the rest of the religious world are capable of giving a unified voice and showing encouraging ways of cooperation. Observers of Argentine life are surprised with the permanent participation of Christians, Jews, and Muslims (even if the Gaza events in January 2009 and subsequently have in some ways hampered this) and the way they become, jointly, partners in relations with the State.<sup>10</sup> This situation is a characteristic of and of utmost importance to Argentina’s religious and civic life.

### III. CONSTITUTIONAL CONTEXT

#### A. *Political History of Argentina*

With the arrival of Spanish subjects over the course of three centuries, the territory of what is today Argentina received the preaching of the Gospel to the native populations and the installation of churches and convents at the same time that towns were founded. In 1621, under the Jesuits, the University of Cordoba was established, as the fourth university in all Latin America.

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8. The draft follows closely previous ones prepared by CALIR and by the Secretary of Worship. Before introducing it, Rep. Hotton (of a party of the center) sent it to the Archbishop of Buenos Aires and President of the Bishops Conference. Though unofficially, Card. Bergoglio gave his support to the initiative. The consultation has been resented by some Evangelical groups.

9. As of October 2009.

10. This is remarkable in some Provinces, in the first place, Córdoba. On the national level, the Archbishop of Buenos Aires and local bishops, share with non Catholic personalities saying a word, giving support or calling for attention on moments of tension or pain. A Jewish Rabbi, Sergio Bergman, very close to Card. Bergoglio, is at this time one of the most relevant voices claiming for the rule of law and democratic respect, he is even seen with a future in politics.

After the process of Independence (1810-1816) there was an increasing number of businessmen and qualified workers who arrived mainly from Britain and Germany. The first mixed marriages took place in those days, at times not without conflict with the Church authorities. Bible missions arrived at the same time, sent by British institutions.

In 1825 Argentina and Great Britain signed the Treaty of Peace, Trade, and Friendship in which religious liberty was assured for British subjects. The Anglican and Scots Presbyterian churches were built then, and a few years later the German Protestant temple. In the Province of San Juan, the Governor was ousted and the Act of Religious Freedom burnt publicly. Some of the "caudillos" (local leaders), in their armed struggle against Buenos Aires, carried in their flags the motto "Religion or Death." In fact, Buenos Aires, under the administration of Bernardino Rivadavia, began an Ecclesiastical Reform, by suppressing convents and confiscating Church properties, under the strong influence of regalism. The governments after Independence considered themselves heirs of the system of Patronage that the Popes had recognized to the Spanish Crown as a way of favoring evangelization. The new country lacked communication with the Holy See until 1856.

In 1853, after the fall of dictator Juan Manuel de Rosas, the country obtained a lasting and foundational Constitution. One of the greatest concerns of its framers was to attract useful immigration, specially bearing in mind the British, German, Dutch and others, to whom freedom of worship should be guaranteed. The Preamble of the Constitution invites "all men of the world who wish to dwell on Argentine soil" and ends by "invoking the protection of God, source of all reason and justice."

At the same time, the framers reached a compromise solution on the relation between State and Catholic Church. Some required that it should be recognized as the State Religion and even "the only true Religion." Certainly there was no one against some kind of recognition. So Article 2 determines that the Federal Government supports the worship of the Roman Catholic Apostolic Church.

Other articles assume the Patronage, by the intervention of the State (with its three powers) in the communication and appointments made by the Holy See, thus interfering in the autonomy of the Church. Congress had the task of assuring peaceful relations with native Indians and favored their conversion to Catholicism as well as authorizing the entering of other religious congregations than those already installed. Only the President and Vice-president were required to belong to the Catholic Communion, as well as to be born in Argentine soil or to be of Argentine-soil-born parents if born abroad.<sup>11</sup> All other public offices were open to people without reference to their religious affiliation. Free exercise of religion is a right for "every inhabitant" (Article 14), and specified, unnecessarily, in Article 20 for foreigners.

Even if these compromises did not fulfill what the Church expected in coherence with the teachings of the Popes at that time, a Franciscan friar (Mamerto Esquiú) in his "Preaching on the Constitution" when he swore allegiance in Catamarca, encouraged obedience and submission to the Supreme Law, as a guarantee of peace and freedom. This sermon was edited by the Government and was of great help for the full acceptance of the Constitution.<sup>12</sup>

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11. In fact, several Presidents where more or less agnostic, Socialist or Communist candidates where admitted to run for Presidency. But there was no case in which a non baptized in the Catholic Church run for the Executive. President Menem, himself a Catholic, was a son, husband and father of Muslims.

12. Padilla, N., *Ciento cincuenta años después y GENTILE, Por qué una ley de libertad religiosa en AA.VV., La libertad religiosa en la Argentina. Aportes para una legislación*, Roberto Bosca, compilador, CALIR- Konrad Adenauer Stiftung, 1ª Ed. 2003, 31 y 47, <http://www.calir.org.ar>

- Bianchi, *Historia de la Formación Constitucional Argentina (1810-1860)*, Lexis Nexis, 2007, 174.

- Bermudez, *La libertad religiosa en la Constitución Nacional en La libertad religiosa en el Derecho Argentino*, Bosca, Roberto y Navarro Floria, Juan G., compiladores, CALIR-Konrad Adenauer Stiftung, 2007, 74.

- Alberdi, *Bases y puntos de partida para la organización de la República Argentina*, Cap. XVIII, 12. Organización de la Confederación Argentina, en Besanzón, Imprenta de José Jacquin, 1858, tº I. 12.

- Alberdi, *Bases y puntos de partida para la organización de la República Argentina*, Cap. XVIII, 66. Organización de la Confederación Argentina, en Besanzón, Imprenta de José Jacquin, 1858, tº I. Secretaría de Culto, *Digesto de Derecho Eclesiástico Argentino*, ed. MRECIC, 2001, 87. *Constitución De La Nacion*

The Constitution was reformed in 1860, 1866, 1898, and 1949 but remained untouched in matter of Church and State Relations. It must be said that what happened in 1949 was more to be appreciated as a new Constitution (“Perón’s Constitution”), as social rights were incorporated, as were special clauses on family and education, and the clause referring to the conversion of native Indians was suppressed. The Holy See regretted that the occasion (the Peronist Government was then considered to be a friendly one) to eliminate the Patronage and arrive to a Concordat was missed

In 1954-55, General Perón, in his second Presidency, launched a campaign against the Church. All the official machine in this campaign was arrayed against the Catholic Church. The teaching of the Catholic religion, established in public schools in 1943, was suppressed. In one night session Congress recognized the right of remarriage for divorced couples. Congress also voted the establishment of a Constitutional Assembly to amend the Constitution by eliminating all clauses concerning the Catholic Church and assuring a “real free exercise of religion.” The election for this Assembly never took place.

On 16 June 1955, after a failed coup against Perón, while police and firemen looked the other way, gangs set fire to the building of Archbishop of Buenos Aires Curia and to seven other churches. Centuries of historical records were lost forever. Many priests and lay people were imprisoned, and a bishop and a canon of the Cathedral were expelled from the country.

After the Revolution that ousted Perón, the first Agreement with the Holy See was reached: the one concerning religious attention to the Armed Forces in 1957.<sup>13</sup>

On 10 October 1966 an Agreement between Argentina and the Holy See was achieved after nearly eight years of fruitful conversations. Pope Paul VI described it as the first result of the Second Vatican Council in Church and State relations. In fact, these relations would be based in autonomy and cooperation: the State recognizes the jurisdiction of the Church in its internal life, and renounced to the Patronage system established in the Constitution for the appointment of bishops and the admission of bulls and precepts emanating from the See of Rome.

A previous notification by Rome of its intention to appoint a bishop or create a diocese must be made under strict secrecy. If the Government has any “objection of a general character,” conversations should take place in order to solve the problem. The Government has thirty days to make observations. The practice is that the Foreign Ministry, through the Secretary of Worship, gives its consent in the first two or three days. It is possible that, by the accord of both parties, this mechanism will be suppressed in the near future.<sup>14</sup>

In 1994, the Constitution was amended. Article 75.22 concerning the powers of the Congress specifies:

To approve or reject treaties concluded with other nations and international organizations, and concordats with the Holy See. Treaties and concordats have a higher hierarchy than laws. The American Declaration of the Rights and Duties of Man; the Universal Declaration of Human Rights; the American Convention on Human Rights; the International Pact on Economic, Social and Cultural Rights; the International Pact on Civil and Political Rights and its empowering Protocol; the Convention on the Prevention and Punishment of Genocide; the International Convention on the Elimination of all Forms of Racial Discrimination; the Convention on the Elimination of all Forms of Discrimination against Woman; the Convention against Torture and other Cruel, Inhuman or Degrading Treatments or Punishments;

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*Argentina Comentada*, editor Daniel Sabsay, Coordinador Pablo L. Manili, Serrano, María Cristina, Art. 2: *Padilla*, N. Art. 14. Aporte sobre Libertad de Culto. Ed. Hammurabi, 2009.

13. Padilla, N. y Navarro Floria, J. G., “Asistencia religiosa a las Fuerzas Armadas – En el 40 Aniversario del Acuerdo entre la Nación Argentina y la Santa Sede sobre jurisdicción castrense,” Buenos Aires, Secretaría de Culto, 1997. Navarro Floria, Juan G. Precisiones jurídicas en torno al Obispado Castrense en Argentina., [athttp://www.calir.org.ar](http://www.calir.org.ar).

14. Padilla, N., A 30 años del Acuerdo entre la Argentina y la Santa Sede, ed. Secretaría de Culto, 1996, available at <http://www.calir.org.ar>.

the Convention on the Rights of the Child; in the full force of their provisions, they have constitutional hierarchy, do not repeal any section of the First Part of this Constitution and are to be understood as complementing the rights and guarantees recognized herein. They shall only be denounced, in such event, by the National Executive Power after the approval of two-thirds of all the members of each House.

The articles on Patronage were formally eliminated, as was the requirement for the President and Vice-president to belong to the Catholic Communion, and leaving the oath of office free, according to the religious beliefs of each person.<sup>15</sup>

The clause on the conversion of native Indians, which had been reestablished when the 1949 Constitution was abolished in 1956, has been replaced, with the active support of the Church, by a clause recognizing the spiritual and cultural values of the “indigenous people” (Article 75.17).

### *B. Constitutional Provisions and Principles Governing Religion and the State*

As explained previously, the Federal Government “supports” the Catholic Church, literally “the worship.” This “support” has been at times understood as merely economical (with the intervention of State in Church affairs as a counterpart). But, in the words of one of the framers, “this means for us that it is the true Religion; we wouldn’t give support to a chimera.” Indeed there is a preeminent status for the Catholic Church, understood also prior to 1994, as a “moral union” (in words of one of Argentina’s most eminent constitutionalists, Germán Bidart Campos).

This state of affairs has coexisted with a complete freedom of religion for all individuals and denominations, many of which have had an explosive growth in recent years. In his Report on Argentina, the Special Rapporteur on Freedom of Religion and Belief of the U.N. recalled the General Remark n. 22 of 20 July 1995 of the Human Rights Committee noted that a State’s recognizing one religion as a State Religion or establishing an official or traditional religion is not in contradiction with human rights, provided that no discriminatory treatment be made towards the others.<sup>16</sup>

Though before 1994 the Argentine State could be qualified as “confessional,” the above-noted amendments reinforced its character as a secular State (*laicidad positiva*) with a preeminent religion, a State that appreciates religion as a whole and assuring free exercise for all. It must be noted that in the late 19th century, the State took power over civil matters as, for example, civil marriage prior to a religious one (the only form that produced legal effects), birth and death registrations, and secularized cemeteries. Religion was suppressed in all schools in regions under federal law, admitting religious instruction only after school hours by the ministers of the denominations to which the children belonged. The regulation of non-Catholic denominations started in 1945 with the requirement of registration of churches and denominations in order to be allowed to exercise religion freely. This law, still valid, is from 1978, which was enforced by the “de facto” Government. Since 1989 many drafts have been made by the Secretary of Worship, by the Congress, and by the denominations themselves, but the issue is still pending.<sup>17</sup>

Some additional specific points worth mentioning are as follows:

1. *Are issues of religion and religion-State relations specifically addressed in the Constitution? Is religious freedom explicitly protected?* Article 2 (“The Federal Government supports the Roman Catholic worship”; Article 14 (“All inhabitants have the right to...profess freely their worship”), same provision for foreigners (Article 20). The human rights treaties and declarations, that contain specific prescriptions on freedom of religion, are declared by Article 75 par. 22, of “constitutional hierarchy.”

15. Only one, Vice-president Carlos Alvarez (1999) chose the oath by “God and Fatherland” instead of “by God, Fatherland, and on the Holy Gospel,” the traditional formula.

16. Informe del Relator Especial de las Naciones Unidas, en *La Libertad Religiosa en la Argentina*, Compilador Roberto Bosca, CALIR-KAS, 2003, available at <http://www.calir.org.ar>.

17. Padilla, N. *Ley de Libertad Religiosa, “la historia que he vivido,”* 2009, at <http://www.calir.org.ar>.

2. *Is there a preferred or privileged religion or group of religions?* According to Article 2, the Roman Catholic Church is preeminent or preferred in relation with all other creeds (see above).
3. *Is there any reference to religion as foundation or source of State law?* The Agreement between the Holy See and the Argentine Republic, October 10<sup>th</sup>, 1966, is the principal source, after the Constitution, of State law in what concerns the relation between the State and the Roman Catholic Church. According to Article 75, par. 22, the concordats with the Holy See, as well as other treaties, have a superior rank over internal legislation. There are many laws, decrees and other rules concerning religion both in national and provincial legislation.<sup>18</sup> As an example, the Civil Code, Article 33 can be mentioned: the Catholic Church is recognized as a “artificial person of public law” (before being amended in 1968: “person of necessary existence”) as the State national and provincial. Many other provisions in the same Code, and in the Penal Code and others, have special provisions on religion or religious ministers. Specifically, there is a law n. 24.483 for Institutes of Religious Consecrated Life, voted in 1992. Their canonical statutes are recognized after registration (voluntary) in a Registry at the Secretary of Worship. Until then, and with the exception of the pre-constitutional orders – Franciscan, Dominicans, Jesuits, of Mercy – were not given any specific legal status different to any civil association. As to non-Catholic denominations, law n. 21.745 and the decree 2.037/1979 makes it compulsory to register at the National Registry of Worships (Cultos) as a condition for their activity.
4. *Is there mention of State cooperation with or separation from religion?* The Agreement with the Holy See is based on the principles of autonomy and cooperation. The Constitution of the Province of Córdoba specifically addresses the issue in Article 6, after assuring freedom of religion: “The Province of Córdoba, according to its cultural tradition, recognizes and guarantees the Roman Catholic Church the free exercise of its worship. Relations between the Church and the State are regulated by the principles of autonomy and cooperation. At the same time, the Agreement guarantees the free and public exercise to all denominations, without any restrictions other than those imposed by moral, good customs, tradition, and public order.”

#### IV. LEGAL CONTEXT

##### A. Legislation

1. *Financial capacity and support.* Article 33 of the Civil Code, considers the Catholic Church an “artificial person of public law.” Other religious groups are persons of private law.

As a consequence of the “support” provided to the Catholic Church there are laws that a) benefit Diocesan seminaries and five institutes of consecrated life, b) grant an allowance to residential and auxiliary bishops, and c) grant an allowance to the parishes located in border areas or those enduring utmost economic hardship. Such economic contribution, however, is minimal: in 2009, it totaled (adding all mentioned allowances and other minor ones) some five million dollars (USD 5.000.000), an insignificant portion of the national budget. Even if this support is small and the fact that the State supports economically one creed, it is deemed necessary for the economic life of the Church until better ways of support are found, either by tax deductions, by plans launched by the Church itself (“Plan Compartir” – Sharing Plan), or through the contribution of the parishioners.

2. *Tax exemptions.* Most tax exemptions benefit all religious faiths. Argentina being a federal country, there are national, provincial and municipal taxes, each of which follows

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18. *Digesto De Derecho Eclesiastico*, dirigido por Juan G. Navarro Floria, coord. Octavio Lo Prete y Luis M. de Ruschi, Secretaría de Culto 2001. A more recent collection of all the national legislation in *La libertad religiosa en el Derecho Argentino*, CALIR-KAS, 2007, available at <http://www.calir.org.ar>.

its own regime. Yet the common denominator is the tax exemption applied to the Catholic Church as well as to all remaining religious creeds on the same terms.

The most significant exemption regarding income tax is the one applied to religious institutions. It exempts churches and other religious institutions from paying taxes on incomes of any kind and also on their property. To profit this exemption, a special statement must be obtained from the tax administration authority (*Administración Federal de Ingresos Públicos*), for each subject, except in the case of the Catholic institutes of consecrated life, where exemption is automatic.

Furthermore, as regards to import and export customs duties, broad exemptions are foreseen for religious institutions. Special regulations favor the coming to Argentina of ministers and personnel of all denominations. This is specifically included in the Agreement with the Holy See for Institutes of Consecrated Life called by the bishops.

3. *Discrimination.* The draft of what is now law n. 23.598 was presented by the then Senator Fernando de la Rúa in 1988, as a response to attacks on cemeteries and premises of the Jewish Community. The penalties for all discriminatory actions due to religious or racial reasons, or criminal offenses based on those reasons, have their penalties increased, and the Courts have based on them a few cases of racial discrimination.

4. *Spiritual attention to the Armed Forces, prisons and hospitals.* Argentine law establishes religious attention for the Armed Forces, Police Forces and others, for Catholic members, by the 1957 Agreement on the subject (above mentioned). For five years now it has been said to be the will of the different governments (first of President Néstor Kirchner, now of President Mrs. Cristina Fernández de Kirchner) to modify the legislation in order to favor religious pluralism.

Hospitals and prisons also have religious assistance for the inmates, with Catholic chaplains. Non-Catholic ministers are called according to the wishes of those interned. A matter of interest is the existence in the Province of Buenos Aires of “Evangelical pavilions” in prisons, where the internal life of the inmates is regulated by the pastors.<sup>19</sup> A Jewish synagogue was opened recently at one of the biggest prison buildings in Buenos Aires.

5. *Religious festivities.* Recognized as national holidays are Holy Fridays, Immaculate Conception (December 8), and Christmas. Holy Thursday is an optional non-work day. Laws n. 24.571 (1995) declared non-work days for all Jewish inhabitants for New Year – Rosh Hashanah (2 days) and Yom Kippur (1 day). In 2005, a law extended this to the 4 days of Pesaj. Law n. 24.757 (1996) declared non-work days for the End of Fasting (Id al Fitr). Law n. 25.151 (1999) establishes that those who do not work due to the religious festivities shall receive their pay and all other benefits. In schools and universities teachers and students are allowed to be absent (for example from an examination) on those days. This is also the case for the Seventh-day Adventists.

## B. Case Law

As to case law related to religion, the Supreme Court, after 1983, has passed some remarkable sentences. We will focus on these, omitting those prior to this period.

1. *Conscientious objection.* The Supreme Court ruled that a young man called to what was then compulsory military service was exempted from having to use weapons because he claimed to be a Catholic and, therefore, asserted that to take arms is against the Fifth Commandment. It must be noted that the Court did not determine Catholic Church teachings about war and military service but considered the conscience demands of the claimant. The Court limited this to “times of peace” and was of the opinion that the soldier should have to serve in other ways.<sup>20</sup> Previously, during the military regime,

19. “El Cristo de los presos,” por Alejandro Seselovsky, Pagina 12, Sociedad, 14.3.2004, quoted in Padilla, Norberto. “El derecho de practicar la religión,” Martín Sánchez, Isidoro y Navarro Floria, Juan G. (Coords.): *La libertad religiosa en España y Argentina*, Fundación Universitaria Española (2006) Madrid, 38/64.

20. C.S.J.N. Fallos 312:496 (1989). 9. Portillo, Alfredo. See also: Padilla, Norberto, Comunicación “La obligación de armarse en defensa de la Patria y de esta Constitución y la objeción de conciencia,” en Coloquio



conscientious objection had not been allowed to Jehovah Witnesses because this creed had been suppressed in 1976.

In another case, the problem was a sick Jehovah's Witness, who, according to the hospital, needed a blood transfusion. Members of the Court expressed the opinion that no coercion should be exercised on the person, who was free to accept or not accept a medical treatment. The right of privacy and of religious freedom was enhanced. By then the man was no more in hospital, and the majority of the Court did not share the position of the others who believed that the right of refusal of transfusion should be an established position for any other case to rise in the future. The majority understood that each time the problem would arise, a decision should be taken as to the proper result.<sup>21</sup>

The Jehovah's Witness Association in the southern Province of Neuquén alleged that the educational regulations on patriotic symbols could violate their religious freedom. The Court considered there was not a "case, but Justice Elena Highton expressed an in-depth opinion on the subjects of religious freedom and conscientious objection."<sup>22</sup>

2. *Respect of Religious Feelings.* The Supreme Court accepted for the first time the full operative force of international treaties in a case in which a claimant (a professor of Constitutional Law) demanded to exercise the "Right of Reply" recognized by the American Convention on Human Rights (Article 14 ) after a television program in which the Holy Virgin was insulted. For the divided Court, "the defense of religious feelings, in this case, by the exercise of the Right of Reply, is a part of the pluralistic system that in the religious matter our Constitution adopted in Article 14. It is clear that when persons, symbols or dogmas that nourish the faith of people by slander, mockery or ridiculous presentation, these can feel morally under coercion in the free and public exercise of their religion, due to the understandable fear of been the object of ridicule that can be caused, for reasonable fear of being the object of ridicule, due to the extraordinary spreading by the current power of mass media."<sup>23</sup>

3. *Marriage.* In a controversial decision, the Court considered the Senate's analysis of a reform of the Civil Code in which the establishment of divorce with the right of remarriage was admitted. The Court declared that the previous practice of divorce without dissolution of bonds of marriage had become unconstitutional. One of the arguments was that indissoluble matrimony is a Catholic Church teaching, and that its imposition on those who do not adhere to that creed violates freedom of religion. In consequence, the Civil Registry Office was forced to marry the claimant.<sup>24</sup> A short time later, the Senate approved the bill.

In a further ruling, the Supreme Court rejected the claim of a couple wishing to get married with a clause of indissolubility. Only one of the Justices, Dr. Antonio Boggiano, deemed that option possible due to the protection of religious freedom and the right of privacy.<sup>25</sup>

4. *Prescription of Religious Oath.* The Chamber of Appeals of Tucumán declared that a clause in the Constitution of the Province was not in accordance with the provision of the American Convention on Human Rights that forbids discrimination on the basis of religion. The Constitution established an oath formula for the Governor taking office "by the Holy Gospel," and one of the candidates (to this day in office) objected because he professes the Jewish creed.<sup>26</sup>

de Derecho Eclesiástico del Estado, Facultad de Ciencias Jurídicas y Sociales, Universidad Católica de Valparaíso, 29 y 30 de agosto de 2002. Navarro Floria, Juan G. El derecho a la objeción de conciencia, Buenos Aires, 2004.

21. C.S.J.N. Fallos 6.4.1993. Bahamondez, Marcelo s/ medida cautelar.

22. C.S.J.N. A. 639. XXXV. "Asociación de Testigos de Jehová c/ Consejo Provincial de Educación del Neuquén s/ acción de inconstitucionalidad."

23. CSJN, 7.7.1992 JA 1992, III, 194, (Ekmedjian vs. Sofovich).

24. C.S.J.N., *Sejean v. Zacks de Sejean* (1986), Fallos 308:2268.

25. C.S.J.N. 5.2.1998, E.D. 176-431 (Sisto y Franzini).

26. Cámara Contencioso Administrativo, Tucumán, Sala I, 2.5.2003, "Alperovich, José J. c/ Pcia. de Tucumán," La ley 2003-E-490, con nota de Germán J. Bidart Campos.

## V. THE STATE AND RELIGIOUS AUTONOMY

In Argentina's State structure there has always been an office for religious matters. Until 1898 it was the Ministry of Justice, Worship (Culto), and Public Education. After that, Worship became part of the Ministry of Foreign Affairs, with the addition "de Culto" (Worship). Today this is the Ministerio de Relaciones Exteriores, Comercio Internacional y Culto (Foreign Affairs, International Trade and Worship Office). It must be said that the term "Culto" is wrongly translated sometimes as "Cult," which is misleading. The proper terms would be Worship or Religious Affairs. The rank has been General Director, Under Secretary, or State Secretary, with the functional rank of Ambassador. At present there are a State Secretary and an Under Secretary who internally divide protocol duties. The Secretary of Worship has special intervention in relation with the Holy See (coordinated often with other areas in the Ministry).<sup>27</sup> There are two General Directors, one for Catholic Worship and one for the National Registry of Denominations (Cultos). The first has as a primary task to be the link between the State and the Roman Catholic Church in Argentina, having in charge the Registry of Institutes of Consecrated Life and administering the means of support due to the Church by the laws above mentioned. The second Director is the link between the State and the denominations different than the Catholic Church.

During the presidency of Fernando de la Rúa, when the author of this Report was State Secretary, an Honorary Advisor Council for Religious Freedom was created, including representatives from Catholicism, Greek Orthodoxy, Evangelical churches, Judaism, and Islam, acting exclusively in their private character, not in representation of their organizations. The first task was to prepare the draft of the Law on Religious Freedom. After the end of this Government (December 2001), the Council was no more part of the structure of the office of the State Secretary. The Council members, with the author of the Report, the Chief of Cabinet (Dr. Navarro Floria) and the Council Secretary (Dr. Lo Prete) created CALIR (the Argentina Council for Religious Freedom),<sup>28</sup> maintaining fluid relations with the Secretaría de Culto since 2003.

As to the evaluation of the place of the Secretary of Worship in terms of the protection of freedom of religion or belief of individuals and communities, it has struggled diligently at least since 1989 for a new regulation on religious freedom (only for some short periods was this not so). The Secretary tries its best to cooperate with all churches and organizations; in many ways this was and is a forum where the leaders of the religious world are gathered or are invited to meet with the authorities. The Secretary of Worship is generally respected and appreciated as a toiler in the remarkable religious coexistence in Argentina. This is one of the ways that the State shows its appreciation of religion and diversity as a value in society.

As for discrimination on religious grounds (and for discrimination on other grounds), the office in charge is the Instituto Nacional contra la Discriminación, la Xenofobia y el Racismo (INADI), highly ideologized and focused on the "moral agenda" (gender, gay/lesbian rights, sexual and reproductive rights), encouraging ways of "religious diversity." In a few Provinces and in the Autonomous City of Buenos Aires there are local offices against discrimination and specific offices for the relation with religious organizations.

## VI. RELIGION AND THE AUTONOMY OF THE STATE

Law 21.745 (1978) that created the "Registro Nacional de Cultos," provides the following powers to the State authority: to accept or deny the registration of religious organizations as a condition to any exercise of their activities. The denial of registration can be based on the failure to accomplish the registration requirements, and the revocation of authorization can be due to the non-fulfillment of duties imposed by the law, or verification that the principles and purposes that gave birth to the organization and

27. Available at <http://www.culto.gov.ar/>.

28. Available at <http://www.calir.org.ar/>.

subsequent approval are hazardous to public order, national security, or morals and public decency. In such cases, cancellation implies the prohibition to act in any part of the country and the loss of juridical law status (obtained at the Registry Office for civil organizations). Decree 2037/1979 provides regulation details of the law.

The provisions of the law and the decree are strongly contested as unconstitutional because they condition the exercise of religious liberty to a State authorization. The Secretary of Worship generally provides broad criteria for access to registration, the same as to cancellation, if there are any in recent years.

The law does not include the possibility of filing appeal against what the Authority resolves, but based on the Administrative Proceeding Act, this can be done. There are rarely problems reaching the Courts in these matters. At the present time, the Japanese “Nichiren Shoushu” is still fighting the annulment of the resolution that in 1998 ordered the cancellation of its registration. It must be said that in 2000 a Court ordered their premises be opened as a provisory measure, and so it is at the present time.

There are no other laws interfering with the free choice of individuals in faith matters.

As to religious peaceful coexistence, the State and religious groups and leaders are frequently side by side in defense of human rights, the fight against poverty, and the quality of education and moral values.<sup>29</sup>

## VII. LEGAL REGULATION OF RELIGION AS A SOCIAL PHENOMENON

Legal provisions in Argentina generally take into consideration particularities of religious affiliation.

Cemeteries are owned by religious groups (Jewish, Muslim), by private enterprises, or by the local States where the various religious rites can be performed (being generally one Catholic chapel).

As laws punish “ill treatment” or cruelty towards animals, there has been administrative questioning about animal slaughtering (in Umbanda rites), but if there is no cruel treatment, it is not forbidden.

There are no records of a person’s religious affiliation or its consequences under State law.

Conscientious objection is admitted in various cases: military service (in theory, because there is only a voluntary service), for education, health agents (about the teaching of “sexual and reproductive rights” or provision of birth control methods). An “institutional conscientious objection” is admitted for faith-based schools or health institutions.

The Catholic Church can own social communication media, though non-Catholic denominations as such may not (even if there are many under other associational ways to accomplish these ends). A recent and very polemic law on the matter has, surprisingly, left this issue unmodified, despite requests by the affected.<sup>30</sup>

## VIII. CIVIL LEGAL EFFECTS OF RELIGIOUS ACTS

Enforcing the 1966 Agreement, the Supreme Court understood that the Catholic Church has full power to determine under canonical law what falls under its provisions for the full exercise of its autonomy. Example: what Canon Law considers a church or liturgical garments and vessels of liturgical use cannot be subject to coerced execution. This is so according to case law but is covered by no specific legislative provisions. The drafts on Religious Freedom look to assure all denominations the same right. Also, human rights (to marry and to work) cannot be invoked by a priest ousted from his parish for getting married against Church discipline. For the Court, Church Law is free to establish

29. Recently, the Town Council of Río Cuarto (Province of Córdoba) created a Registry for Civil Unions (admissible for same sex partners). The Catholic bishop and the evangelic pastors issued a joint statement against the initiative.

30. CALIR, Comunicado 09 de octubre de 2009, available at <http://www.calir.org.ar/comu09102009.htm>.

the requirements for exercising ministry (a principle that the lower Courts have recognized for other creeds in similar situations).

Religious marriage has no civil effects, neither have Church Courts decisions. A lower Court did not admit as a requisite for declaring divorce what had been accorded by a couple's going first to a Rabbinical Court prescribed by Jewish laws.

Secular courts can not enforce the decisions of religious or hierarchical bodies.

As to property, the Civil Code refers to Canon Law where in some cases the disposal of Church property refers to the previous authorization by an ecclesiastical authority.

#### IX. RELIGIOUS EDUCATION OF THE YOUTH

Many denominations (foremost the Catholic Church) have schools, and their faith is a specific subject in school plans. Other privately owned schools include religion as an optional subject, some have interdenominational teaching. The Catholic Church as well as Protestant and Jewish communities own Universities that grant titles recognized by the State. A National Council of Superior Education (CONEAU) supervises academic requirements not interfering in confessional particularities of the universities that have that character.

State education does not include any kind of religious or interdenominational teaching. As said above, there is a deeply rooted tradition of "secular school / *escuela laica*" since law 1.420, which marked a defeat for the Catholic Church, or so it was intended by some of its promoters. It was a way, however, to integrate immigrant children coming from all over the world.

In 1943, under the military regime with strong right-wing Catholic influence, Catholic religious teaching was introduced in all public schools, providing an alternative teaching on moral and ethics for those who refused it. In 1954 the Government of President Perón eliminated religion from school, and it has not been reestablished. Some provinces have Religion in their curricula, for example the Provinces of Salta, La Pampa and Santiago del Estero. The Constitution of the Province of Córdoba grants the right of parents to have religious teaching (whether Catholic or not) for their children in public schools, but this clause has not been enforced. The Constitution of the Province of Buenos Aires requests that education follow the principles of Christian morality, respectful of freedom of conscience. The Constitution of the Autonomous City of Buenos Aires specifies that education shall be "*secular – laica*."

The Federal Law of Education n. 26.206 (2006) omits referring to a transcendent dimension of education. The previous law did so and recognized the right of subjects of education to be "respected in their freedom of conscience, their religious, moral and political beliefs."

#### X. RELIGIOUS SYMBOLS IN PUBLIC PLACES

People residing in Argentina can freely use the religious symbols of their choice. There are no specific regulations on religious symbols in public facilities. Frequently icons of the Holy Virgin have been and are put in place by authorities, trade unions, workers, and employees in public offices, railway and bus stations, airports, police precincts, prisons, and even banks. The Crucifix is usually displayed in courtrooms. In other public offices, it generally depends of the preferences of each officer or Superintendency office.<sup>31</sup>

31. Only recently, the Town Council of the Capital of the Province of La Pampa (City of Santa Rosa) voted that the image of the Virgin of Luján, Patron of Argentina, be removed. The local Bishop, deeply regretting this, respectfully demanded to go to the Town Hall and take the image to be worshiped in some other place. But this is quite unusual and due more to local problems than to a more rational decision. In March, 2002, by the initiative of a group of people, an image of the Virgin Mary was installed at the entry hall of the Palace of Justice (seat of the Supreme Courts and other inferior ones). The Argentine Association for Civil Rights brought an action of protection, which was accepted at first instance. Three of the judges of the Court accepted the action, alluding that the image placed "does not fit in" with the scope of Art. 2 of the Constitution. One of the Justices said that the image compromised the Judiciary Power with a religion "shared by just a part of those who make it up and of the court patrons who go to it." The first instance ruling made way for the action and ordered

## XI. FREEDOM OF EXPRESSION AND OFFENSES AGAINST RELIGION

The Constitution forbids the imposing of “previous censorship” upon the press, and for the Supreme Court this is virtually an “absolute” principle. But responsibilities (civil and criminal) may follow in cases of harmful behavior. “Blasphemy” is not a criminal offense. On exercise of the “Right of Reply,” see Section V, above.

Law 23.598 against discrimination increases penalties by a third when the offense has been committed for, between other reasons, religious ones. Prison from one to three years is the punishment for those promoting organizations or making propaganda of religious or racial superiority or engaging in hate speech against persons or groups for racial or religious reasons.

As for defamation or slander of religious beliefs, the Courts of the Autonomous City of Buenos Aires took action when an art exhibition was displayed at a City-owned gallery, in which the contents were highly offensive to Catholic feelings. In first instance, a Catholic association obtained an order of closure, revoked by the higher Court.<sup>32</sup>

## XII. CLOSING REMARKS

The Argentine system shows a Constitution which has a theist conception, as God is invoked in the Preamble. A preference is recognized to one Church, assuring at the same time freedom for all. The plurality and diversity of the society is recognized and esteemed. The non-discrimination principle is present in all the legal system.<sup>33</sup>

How equality can be obtained, and what kind of equality, remain largely open questions: Freedom “against” the majority Church? Freedom for the same privileges that awake criticism when exercised by the majority Church? Equality as a minimum that could easily lead to the displacement of religion and leaving national tradition and deep feelings of the people aside?

The Supreme Court has a standard, useful for this matter also: Equality in equal circumstances.<sup>34</sup>

The denominations and the State are faced with the challenge of finding the best way to govern the particularities of Argentina’s religious world. It is understood that the only way of arriving to good results is, if there is not a risk of a religious confrontation, and if all concerned make as a priority trust, generosity, care for the common good, desire for

the removal, due to the affection of religious freedom of those who did not share the same religious faith. The Supreme Court, by resolution of the majority (three votes to five) upheld the decision and ordered the image removed, alleging that there had been no administrative act providing for its placement. The Federal Administrative Chamber revoked the decision of the lower court. Leaving apart procedural issues, the principles upheld were as follows:

- From a single public manifestation of a religious belief, even though it may emanate from one of the powers of the State, one cannot infer a presumption of discriminatory treatment or of absence of impartiality with respect to those who do not profess it.
- The presence of a Catholic religious symbol is not manifestly illegitimate in a public building, but is rather an option of those who exercise the power of superintendency. Neither imposition nor exclusion are preordained.
- Devotion to the Virgin Mary is a manifestation of faith that is very much a part of the people in general, even beyond those practicing the Catholic religion, as an expression of popular religiosity.

Those who alleged protection did not concretely mention that an act of discrimination or inequality had been committed, understood, according to the doctrine of the Court, as arbitrary or answering to “a purpose of hostility against a particular person or group of persons, nor does it amount to improper favor or personal or group privilege.” Specifically, there was not even an attempt to prove that someone’s free and egalitarian access to Justice had been restricted because of the fact that the image was placed.

32. It is significant that Protestant, Jewish and Islamic organizations stood by the Archbishop of Buenos Aires when ordering a day of fasting and prayer in reparation of the offense caused by the exhibition.

33. Gelli, M.A., “Espacio público y religión en la Constitución Argentina. Laicismo y laicidad en una sociedad plural.” *La Ley, Suplemento Especial 70 Aniversario*, noviembre, 2005. Navarro Floria, J. G. *Derecho Eclesiástico y libertad religiosa en la República Argentina*, en “Estado, Derecho y Religión en América Latina,” 53, Marcial Pons, 2009.

34. The issue was masterfully considered by Juan G. Navarro Floria in his conference address, “Los desafíos de la libertad religiosa,” at the International Congress held by CALIR in March, 2008. See also in the same Congress: Gentile, Jorge H. *Libertad religiosa en la Argentina*, available at <http://www.calir.org.ar/congreso/documentos/GENTILE.pdf>.

giving religion its place in today's society as source of the highest spiritual, human and cultural values, a guarantor of peace, freedom, and justice.