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CHURCH AUTONOMY AND RELIGIOUS LIBERTY IN SPAIN*

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I. HISTORICAL BACKGROUND

To understand adequately the current legal status of the autonomy of churches in Spain, it is important not to lose sight of the historical background preceding the enactment of the Constitution in force, which dates from 1978.¹

When Spain became a unified kingdom, at the end of the fifteenth century, Christian religion played a fundamental role. Elizabeth I of Castile and Ferdinand V of Aragon achieved the Spanish political unification through the conquest of the last Islamic territory in the Iberian Peninsula: the Nazari kingdom of Granada, in 1492; Muslims were forced either to convert to Christianity or to leave the country. The very same year, they enacted a

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¹ An interesting outline of this historical background can be seen in *P. Lombardía*, *Precedentes del Derecho eclesiástico español*, in the collective textbook “Derecho Eclesiástico del Estado español” (2d ed.), Eunsa, Pamplona 1983; *J.A. Souto*, *La libertad religiosa. Las relaciones Iglesia y Estado*, in the collective volume “La Constitución Española de 1978. 20 años de democracia”, Congreso de los Diputados, Madrid 1998.

decree expelling the Jews from the Spanish kingdom. Actually Elizabeth and Ferdinand are known by historians as “the Catholic Kings”.²

Since then, Christian religion has been as a sort of political “glue” in Spain, and was one of the main factors involved in the colonization of the New World. Christianity became one of the signs of identity of our country: one could not be completely Spanish without being a Christian. When the Lutheran Reformation came, and during the years of religion wars in Europe, Spanish Kings were definitely on the side of the Catholic Church of Rome. Philip II even promulgated the canons of the Council of Trent as a secular law of the Spanish Kingdom, in 1564 (the Council had ended in 1563).

Based upon an overwhelming majority of Catholic population, Spain has been officially a Catholic Kingdom (“confessional” State) until 1978, with only two interludes: the liberal Constitution of 1869, and the 1931 Constitution of the Second Republic;³ both Constitutions had an ephemeral life. During the years of Franco’s dictatorship, there was a close collaboration between political and ecclesiastical authorities, the latter being one of the strongest supports of General Franco’s long-lasting regime (this situation has been called “National-Catholicism”). Reciprocal co-operation experienced a progressive crisis after the Second Vatican Council (1965), which contributed to renew the political and religious ideas of a significant part of the Spanish clergy.⁴ The relationship between political and ecclesiastical hierarchy was never again easy.

The Constitution of 1978 was a fundamental turning point in this area of Spanish law. The preceding confessionality of the State was replaced by four new constitutional principles: religious freedom, neutrality, equality and co-operation. It means that: 1) the right to religious freedom are recognized to all persons and churches; 2) the Spanish State has no official religion; 3) the

² Historically it seems that the adjective “Catholic” corresponds better to the former than to the latter: King Ferdinand is supposed to be one of the purest examples of the Renaissance princes which inspired the work of Maquiavelo.

³ In spite of it, the Constitution of 1869 declared that “the Nation was obliged to support the worship and ministers of the Catholic Religion”. On the contrary, the Constitution of 1931 took a decidedly anti-Catholic position.

⁴ Indeed, the first Spanish law on religious freedom was enacted in 1967, by the pressure of the Catholic Church. One of the Spanish Constitutional laws (Ley de Principios del Movimiento Nacional, 1958) solemnly declared that the Spanish State must “obey to the Law of God, according to the doctrine of the Saint, Apostolic and Roman Catholic Church”. And the Catholic official doctrine, since the Second Vatican Council (Declaration *Dignitatis Humanæ*), was that religious freedom of all persons had to be respected.

State regulation of religious matters must respect the principle of equality before the law; 4) the State is obliged to co-operate with the churches.⁵

II. THE LEGAL CONCEPT OF RELIGION

What has been said in the previous paragraphs explains that the legal concepts of “religion”, “church” and, generally, “religious bodies” or “denominations” are conditioned by the Spanish political and religious tradition. Indeed, one of the main problems – perhaps the main – that church autonomy poses in Spanish law is namely the legal definition of religion and “religious confession” (the generic terms frequently used by Spanish law and legal literature are *confesiones religiosas* or *entidades religiosas*).

The fundamental rules on religious freedom are contained in the 1978 Constitution and in the Organic Law on Religious Freedom (hereinafter L.O.L.R.). The latter was enacted in 1980, in order to develop the provisions of article 16 of the Constitution. The L.O.L.R. is a concise statute which regulates the legal content of individuals’ religious freedom (arts. 1-4) as well as the basic legal status of religious bodies (arts. 5-8). In addition we must take into account some bilateral norms – negotiated by the Spanish State and religious confessions –, above all the Agreements (Concordat) signed with the Catholic Church in 1979, a few days after the Constitution was enacted; and the formal agreements signed in 1992 with the Evangelical, Jewish and Islamic religious communities.⁶

The L.O.L.R. is supposed to contain a special protective umbrella for religious freedom, including – as far as religious groups are concerned – a particular mention of the autonomy of churches (art. 6), and the possibility

⁵ See, on this subject, the recent book by *J. Calvo Álvarez*, *Los principios del derecho eclesiástico español en las sentencias del Tribunal Constitucional*, Navarra Gráfica Ediciones, Pamplona 1999.

⁶ These norms – and some others – can be found, in English version, in the recent volume *Spanish Legislation of Religious Affairs*, edited by the Dirección General de Asuntos Religiosos, Ministerio de Justicia, 1998. This translation will be the one I will follow, in principle, in the quotations included in this report. An English version of the basic legislative texts on religious freedom can be obtained also from the website of the Ministry of Justice: http://www.mju.es/ar_n00_i.htm. An overview of the Spanish law on religious matters, written in English, can be found in *I.C. Ibán*, *State and Church in Spain*, in *G. Robbers* (ed.), *State and Church in the European Union*, Nomos, Baden-Baden 1996, pp. 93 et seq.; *G.M. Morán*, *The Spanish System of Church and State*, in: *Brigham Young University Law Review* (1995), pp. 535 et seq. For an extensive information on the subject, see the collective volume *Tratado de Derecho Eclesiástico*, Eunsa, Pamplona 1994.

of granting a specific legal status to some religious denominations via a formal agreement or covenant with the State (art. 7). Moreover, the most significant churches established in Spain have the opportunity to be represented in a special advisory commission dealing with all projected legislation affecting religious freedom (art. 8).

However, in order to be granted the right to enjoy some or all of these advantages, it is necessary first to be permitted to register in the “Registry of Religious Entities” – a specific registry created by the L.O.L.R., to which only entities of a religious nature can be admitted. No minimum number of followers is required, but acknowledgment of religious nature is indispensable. This requirement is in accordance with the provision of article 3.2 L.O.L.R.: “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 crucial question, naturally, is to determine the legal meaning of religion in this context – or, more precisely, “religious aims or purposes”. There are many diverse ways of responding that question, ones more strict than others. The L.O.L.R. itself does not provide any definition nor any explicit criteria of interpretation. But the administrative praxis of the Registry has been gradually more and more clear in this regard, adopting a rather traditional and institutional view of religion. The courts – especially the Supreme Court – have confirmed this line of interpretation.

In brief, the officials of the Registry and the courts have understood the legal notion of religion according to the Spanish religious heritage. Consequently, they have considered that a certain entity can be qualified as religious, for legal purposes, when it accommodates to what could be called the functional structure of the three great monotheistic religions of the world – Judaism, Christianity, Islam –, which have contributed to mould the common concept of religion not only in Spain, but also in the entire Western culture. In other words, a group can be considered of religious nature and aims when it possesses a body of dogmatic and moral tenets derived from the belief in a supreme being, who is worshipped through some external practices or rites, and when it has an organizational structure endowed with certain stability.⁷

⁷ In order to avoid multiple quotations of administrative and judicial decisions, I prefer to cite the following writings: *M. López Alarcón*, *Dimensión orgánica de las confesiones religiosas en el Derecho español*, in 40 “*Ius Canonicum*” (1980), pp. 46 et seq.; *J. Martínez-Torrón*, *Separatismo y cooperación en los acuerdos del Estado con las minorías religiosas*, Comares, Granada 1994, pp. 74 et seq.

The attitude of the government in the last six years, at least, seems to be very firm in keeping in force this traditional approach to religion. In fact some recent drafts of a prospected modification of the L.O.L.R. intend to include these interpretive criteria of the concept of religion in the body of the new legislation. These drafts have an unclear future, but they are very expressive of a well established state of opinion.

The main problems have arisen in Spain when the strict application of these interpretive rules have left “out of the game” some groups of certain social significance – abroad rather than in Spain –, like the Church of Scientology and the Church of Unification, which are considered religious in other countries, particularly in the United States (although they have also experienced some problems in other European countries, like Germany or Belgium). Spanish administrative authorities have repeatedly rejected their application to register in the Registry of Religious Entities, arguing that their nature is not indeed religious. Following different judicial claims, there is now a pending case before the Constitutional Court – brought by the Church of Unification –, which is expected to be decided soon; this decision will be important to clarify the legal concept of religion that will be operative in Spanish law in the next future.

III. THE EFFECTS OF REGISTRATION AND THE EFFECTS OF LACK OF REGISTRATION

The immediate and direct effect of registration in the Registry of Religious Entities is the acquisition of legal personality in Spanish law.

In case the registration is rejected, the applicant is not deprived neither from the right to religious freedom nor from the possibility to acquire legal personality. Article 16 of the Constitution acknowledges the right to religious freedom to all persons and communities, without any distinction related to a hypothetical registration;⁸ the fact of registration, as we will see, has more to do with State cooperation than with the strict notion of religious freedom. On the other hand, a group can always obtain legal personality,

⁸ Article 16.1 of the Constitution provides: “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.” The protection offered by this right must be understood in accordance with the provisions of article 2 L.O.L.R.

even when authorities have refused to recognize its religious character, through its registration in the ordinary Registry of Associations.⁹

Notwithstanding that possibility, it seems obvious that registration in the Registry of Religious Entities is highly more convenient for a group auto-labeled as religious, because the fact of being granted legal personality as a religious denomination or “confession” automatically places the registered entity under the protective umbrella or the L.O.L.R. This means, according to the text of the law, the following. First, there is a reinforced protection of the autonomy and auto-organization of the religious confession (article 6)¹⁰, without the possible limitations that might derive from the subjection to the Law of Associations (when legal personality was obtained through the ordinary Registry of Associations). Second, a registered religious confession, assuming that it has acquired “well-known roots” (*notorio arraigo*) in Spanish society, is granted the possibility to obtain a specific legal status by means of a formal agreement with the State, which must be subsequently approved by an act of Parliament (article 7)¹¹. The increasing social significance of a confession might even lead to have some representative in the advisory commission of the Ministry of Justice on religious affairs, that

⁹ As a consequence, the registered entity is subjected to the provisions of the Law of Associations: Law 181/1964, 24 December.

¹⁰ Article 6 of L.O.L.R. provides: “1. Registered Churches, Faiths and religious Communities shall be fully independent and may lay down their own organizational rules, internal and staff by-laws. Such rules, as well as those governing the institutions they create to accomplish their purposes, may include clauses on the safeguard of their religious identity and own personality, as well as the due respect for their beliefs, without prejudice to the rights and freedoms recognized by the Constitution and in particular those of freedom, equality and non-discrimination. 2. Churches, Faiths and religious Communities may create and promote, for the accomplishment of their purposes, Associations, Foundations and Institutions pursuant to the provisions of ordinary legislation.” On the clauses of safeguard of a particular religious identity, see *J. Otaduy*, *Las cláusulas de salvaguardia de la identidad de las instituciones religiosas*, in 27 “*Ius Canonicum*” (1987), pp. 673 et seq.

¹¹ Article 7 L.O.L.R. provides: “The State, taking account of the religious beliefs existing in Spanish society, shall establish, as appropriate, Co-operation Agreements or Conventions with the Churches, Faiths or religious Communities enrolled in the Registry where warranted by their well-known roots influence in Spanish society, due to their domain or number of followers. Such Agreements shall, in any case, be subject to approval by an Act of Parliament.” For a discussion of the questions posed by this article, in the abstract and in practice, in the light of Spanish and Italian legal experience, see *J. Martínez-Torrón*, *Separatismo y cooperación en los acuerdos del Estado con las minorías religiosas*, Comares, Granada 1994.

was previously mentioned: the *Comisión Asesora de Asuntos Religiosos* (article 8).

IV. THE REAL DIFFERENCE: FORMAL AGREEMENTS WITH THE STATE

What I have described before is the theoretical legal frame designed by the L.O.L.R. Real life is somewhat different. In practice, and despite the formal reinforcement of churches' autonomy stated in article 6 L.O.L.R., the differences between the legal persons registered as religious entities and the ones registered as ordinary associations is virtually imperceptible. Ones and others can own real and personal property, hire their own employees, be a plaintiff in a judicial process, etc. Moreover, since 1994 both can obtain the same financial benefits from the State through the ways open by the Law of Foundations.¹²

Without losing sight of the special case of the Catholic Church, the real distinctions between religious confessions comes by way of the agreements regulated in article 7 L.O.L.R., because it is in these agreements where we can find real expressions of the State cooperation. Resort to bilateral legal sources is what makes a difference in this area. The religious confessions which have been able to reach an agreement with the Spanish State enjoy a more favorable legal status than the others.

Until now, no single religious denomination, apart from the Catholic Church, has signed a formal agreement with the State. As I said before, the main lines of the specific legal status of the Catholic Church is contained in an agreement of 1976 and four agreements of 1979, which altogether form a Concordat, and are subject to rules different from article 7 L.O.L.R. – their nature is similar to international treaties (the Holy See was the High Contracting Party).¹³ In actual application of article 7 L.O.L.R., there are only three agreements, approved by Parliament simultaneously, in 1992, with a content almost identical. The contracting parties were not single confessions, but three federations of religious communities: Evangelical, Jewish and Islamic. It means that, until now, the Spanish State has

¹² Law 30/1994, 24 November.

¹³ Spanish scholars are almost unanimous in accepting this point. See A. *Motilla*, *Los acuerdos entre el Estado y las confesiones religiosas en el Derecho español*, Bosch, Barcelona 1985; A. *Viana*, *Los acuerdos con las confesiones religiosas y el principio de igualdad*, Eunsa, Pamplona 1985.

concluded agreements with the most traditional religions, with ancient roots in Spanish society.¹⁴

The preceding observations has moved some scholars to affirm that, from the legal perspective, we can distinguish between four categories of religious groups in Spain. If we arrange them according to the support received from the State, these categories are: the Catholic Church; the confessions that have reached a formal agreement with the State in application of article 7 L.O.L.R.; the confessions registered in the Registry of Religious Entities; and the non-registered religious groups.¹⁵

If we approach the question formally, we may assert that these categories do not refer to the strict concept of religious freedom, but rather to the State cooperation with religious confessions. This is obviously true, for our Constitution guarantees religious freedom to all individuals and communities without further distinctions. But, on the other hand, the State cooperation is closely related to the autonomy of churches, as cooperation is often aimed to strengthen church autonomy in one sense or another. And, because church autonomy can be seen as an aspect or real religious freedom, the natural conclusion is that diverse degrees of State cooperation may produce different degrees of religious freedom depending upon which category a religious group has been located (voluntarily or not).

In view of the above mentioned, it is important to distinguish between two notions of religious freedom.

¹⁴ We should note, however, that within the Evangelical federation are included some churches which are not properly Evangelical: for instance, recent Christian churches like the Seventh Day Adventists, and even the Greek Orthodox Church. The idea was to put all the Christian non-Catholic churches in the same Federation. Nevertheless, not all of them accepted that solution; the most significant example is the Church of Jesus Christ of the Latter-Day Saints (Mormons). It is important to remark also that these federations were constituted to unify different religious denominations belonging to a common religious trunk in order to facilitate the negotiations of agreements with the State (the government was not willing to initiate a dialogue with and indefinite number of interlocutors). The actual aim and justification of these federations, therefore, is secular as well as religious. The itinerary followed in the negotiation of the three agreements of 1992 is described with detail in A. *Fernández-Coronado*, *Estado y confesiones religiosas: un nuevo modelo de relación (los pactos con las confesiones, leyes 24, 25 y 26 de 1992)*, Civitas, Madrid 1995.

¹⁵ See I.C. *Ibán*, *Las confesiones religiosas*, in the collective textbook: *Curso de derecho eclesiástico*, Publicaciones de la Facultad de Derecho de la Universidad Complutense, Madrid 1991, pp. 223 et seq. To be more precise, we should add the religious groups that enjoy legal personality through their registration as ordinary associations.

One is the general concept of religious freedom according to the traditional conception of formal liberties which is characteristic of liberal democracies. It comprises certain fields in which free action of individuals and communities must be protected from any external interference, public or private. The descriptive content of article 2 L.O.L.R. corresponds to this very concept.¹⁶

The other is a notion of religious freedom which can be applied only to communities. It is the concept of religious freedom as church autonomy, i.e. the protection of the auto-normative and auto-organizational capacity of religious confessions, which implies – at least in current Western societies – the acknowledgment and, perhaps, the cooperation of the State.

Thus, if we accept that church autonomy is a part of the religious freedom of communities, and if we admit that church autonomy asks for a cooperative attitude of the State, we can understand that Spanish law has created different categories of religious confessions, each one enjoying a different degree of freedom. The highest degrees of cooperation, and consequently of protection of church autonomy, are reserved to the use of bilateral legal sources – i.e. formal agreements between the State and the churches. On the contrary, the specific protection of church autonomy that the L.O.L.R. grants

¹⁶ Article 2 L.O.L.R. provides: “1. The freedom of worship and religion guaranteed by the Constitution secures the right, which may therefore be exercised by all without duress, to: a) Profess whatever religious beliefs they freely choose or profess none at all; change or relinquish their faith; freely express their own religious beliefs or lack thereof or refrain from making any statement in such regard. b) Take part in the liturgy and receive spiritual support in their own faith; celebrate their festivities; hold their marriage ceremonies; receive decent burial, with no discrimination for reason of religion; be free from any obligation to receive spiritual support or participate in religious services that are contrary to their personal convictions. 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. d) Meet or assemble publicly for religious purposes and form associations to undertake their religious activities in community in accordance with ordinary legislation and the provisions of this General Act. 2. It also comprises the right of Churches, Faiths and religious Communities to establish places of worship or assembly for religious purposes, appoint and train their ministers, promulgate and propagate their own beliefs and maintain relations with their own organizations or other religious faiths, within the national boundaries or abroad. 3. To ensure true and effective application of these rights, public authorities shall adopt the necessary measures to facilitate assistance at religious services in public, military, hospital, community and penitentiary establishments and any others under its aegis, as well as religious training in public schools.”

generally to the registered religious denominations is very reduced, and in practice does not differ substantially from the autonomy that ordinary associations have under the Spanish law. In other words, there is not any “plus” of freedom offered to religious confessions without agreement, apart from what is provided generally in the Constitution (and expressed with more detail in article 2 L.O.L.R.). In this regard it is interesting to note that one of the most clear and universally accepted manifestations of State cooperation with churches, the clergyman-communicant privilege (*secreto ministerial*), is not established in the L.O.L.R., but in art. 417 of the Code of Criminal Procedure (*Ley de Enjuiciamiento Criminal*), which dates back to the 19th century. And it is even more striking to observe that, among the norms specifically dealing with religious matters, only the bilateral agreements refer to this privilege.¹⁷

The Catholic Church enjoys without doubt the maximum degree of State cooperation and, accordingly, of recognition of its autonomy. The self-organizational power of the Catholic Church is widely recognized in the 1979 Agreement on Legal Affairs. Let us cite some illustrative examples. Legal personality in Spanish law is automatically granted to the circumscriptions of the ecclesiastical territorial organization (mainly dioceses and parishes), after due notification by ecclesiastical authorities. Religious institutes and orders, and canonical associations, can also obtain legal personality easily with a simple procedure of registration in the Registry of Religious Entities – in which there is a section specifically assigned to the Catholic Church and its institutions.¹⁸ Canonical marriage produces civil effects, and these effects are granted – with some conditions – even to the judicial decisions of ecclesiastical courts declaring the nullity of marriages.¹⁹ Inviolability of places of worship is guaranteed. In addition,

¹⁷ See art. II.3 of the Agreement between the Holy See and the Spanish State, 28 July 1976; and art. 3.2 of the 1992 Agreements with the Evangelical, Jewish and Islamic federations. See *R. Palomino*, *Derecho a la intimidad y religión. La protección jurídica del secreto religioso*, Comares, Granada 1999.

¹⁸ The Registry of Religious Entities is currently divided into three sections. The special section is reserved to the religious denominations with formal agreements of cooperation with the State, which includes the Catholic Church, and the Jewish, Evangelical and Islamic federations, as well as their respective minor entities. The general section is paradoxically the least important one, as is reserved to the religious minorities without agreement with the Spanish State. The third section is devoted to the foundations erected by the Catholic Church, which enjoy a specific legal status different from the rest of foundations, according to the Law 30/1994 (cited supra, note 12).

¹⁹ The exact profiles of the Spanish matrimonial system are not at all easy to understand. See on this subject *R. Navarro-Valls*, *El matrimonio religioso ante el*

important tax benefits and significant educative facilities are granted in other two 1979 Agreements,²⁰ including the capacity to establish centers, at any level, for secular as well as for ecclesiastical studies.²¹ The traditional Catholic system of military chaplaincies is deeply integrated with the structure and legislation of the Army,²² and something similar occurs in prisons.

The Evangelical, Jewish and Islamic communities which reached an agreement with the State in 1992 enjoy a legal status, and an acknowledgement of their autonomy, quite similar to the one granted to the Catholic Church in many regards. Legal personality of their internal entities or institutions are never granted automatically, but is conceded very easily through registration in the Registry of Religious Entities, which is accepted with the mere presentation of a certificate of “religious purposes” issued by the respective religious federation; moreover they share the special section of the Registry with the Catholic Church.²³ The tax status resembles the one granted to the Catholic Church – if we except the direct economic collaboration of the State following the taxpayers’ choice.²⁴ Civil effects are conceded to religious marriage, although not so extensively – the decisions of religious courts are not recognized by civil courts. Religious assistance is

Derecho español, Publicaciones de la Facultad de Derecho de la Universidad Complutense, Madrid 1984; *J. Ferrer Ortiz*, El matrimonio canónico en el ordenamiento español (Interpretación armonizadora de las normas aplicables), Eunsa, Pamplona 1986.

²⁰ See Agreement on Economic Affairs, Agreement on Educational and Cultural Affairs, both of 3 January 1979.

²¹ See *A. de la Hera*, La enseñanza en el Acuerdo entre la Santa Sede y España de 3-I-79, in: *La Ley* (1981-2), pp. 853 et seq. The Royal Decree 3/1995, 13 January, even grants full civil effects to the academic degrees (diplomat, bachelor, licentiate, doctor) obtained in ecclesiastical sciences within educational centers duly erected by the Catholic Church according to canon law.

²² See Agreement on Religious Attendance of the Armed Forces and the Military Service of Clergymen and Members of Religious Orders, 3 January 1979. See *J.M. Contreras*, El régimen jurídico de la asistencia a las Fuerzas Armadas en el sistema español, Madrid 1989.

²³ See *supra*, note 18.

²⁴ Very briefly, each citizen can decide to deliver a small percentage of his or her income tax to the Catholic Church; the choice is made when filling in the general form used for the declaration and payment of the income tax every year; the State is then responsible for collecting the resulting sum and giving it to the Church. This system was offered to the Evangelical and Jewish federations during the negotiations with the government, but they preferred to reject it. See *M.J. Roca* (ed.), *La financiación de la Iglesia católica en España*, Fundación Alfredo Brañas, Santiago de Compostela 1994.

not supported by permanent chaplaincies – the number of non-Catholic believers in the military would not justify it – but by a system of free access of religious ministers to the military facilities; the same applies to penitentiaries.²⁵ Religious teaching is organized in public schools, the teachers are appointed by religious authorities, and since 1996 they are paid by the State, like the teachers of Catholic religion.²⁶

The significant differences between religious confessions with and without an agreement with the State are beyond doubt, but tend to be mitigated by an interesting fact: Spanish law is experiencing a certain – and probably increasing – trend towards an equal regulation of State co-operation with religious bodies and with other charitable organizations. This is an atypical but effective way to reduce the distinctions between categories of religious confessions, and is especially true as far as tax benefits and, in general, financial co-operation are concerned. In this regard, the 1994 Law of Foundations has opened a wide door to parity. It does not take benefits away from the churches, but rather extends them to any charitable organization which can comply with the legal requirements to be established as a foundation.²⁷ Something similar could be said, for instance, in regard to education. Churches do not enjoy more autonomy than non-profit organizations: the latter can create educative centers at any level, including universities, which until recently could only be erected by the State or by the Catholic Church.²⁸

²⁵ See *J. Mantecón Sancho*, La asistencia religiosa penitenciaria en las normas unilaterales y acuerdos con las confesiones, in 37 “*Ius Canonicum*” (1997), pp. 573 et seq.

²⁶ These provisions regard only Evangelical and Islamic communities (Jewish communities apparently preferred not to receive direct economic cooperation from the State) are contained in two accords of March 1996 between the government and the respective religious federation. The text can be found in the cited volume “*Spanish Legislation of Religious Affairs*”, edited by the Dirección General de Asuntos Religiosos, Ministerio de Justicia, 1998.

²⁷ However, the tax status of the religious communities with an agreement with the State is still more favorable. See *M. Blanco*, Cooperación del Estado con las confesiones religiosas en materia económica, in the collective volume “*Tratado de Derecho Eclesiástico*”, Eunsa, Pamplona 1994, pp. 631 et seq.; *J. Camarasa*, Régimen tributario de entidades religiosas y entidades sin fines de lucro, Marcial Pons, Madrid 1998; *Z. Combalía*, Financiación de las confesiones no católicas en el Derecho español, in 10 “*Anuario de Derecho Eclesiástico del Estado*” (1994), pp. 431 et seq.

²⁸ See *J.R. Polo Sabau*, El régimen jurídico de las Universidades privadas, Ministerio de Administraciones Públicas, Madrid, 1997.

V. CONCLUSION: AN IMPERFECT SYSTEM THAT WORKS ACCEPTABLY WELL

In general we could affirm that the present state of things is far from perfect, but is widely accepted. And it is interesting to note that it is accepted not only by the Spanish society, but also and principally by the biggest part of the significant religions existent in the country.

Of course there are problems. Statistically they are not very momentous, but they claim for a solution. Although numbers always have to be taken into account, statistics are not the best way to approach to freedom. And when we discuss church autonomy we ought not to forget that we are discussing religious freedom.

The main problems existent in Spain have been mentioned before. One is the difficulty to define the legal concept of religion. The traditional – and narrow – concept utilized until now by the Spanish government and judiciary has caused some trouble to certain recent groups, like the Church of Scientology or the Church of Unification. These groups present themselves as religious. They are new, and atypical. But they are well known and respected in many countries, above all in the United States (although European society has often looked at them with diffidence²⁹). It is likely that their claims to be legally acknowledged as religious denominations can not be dismissed with a simple “Sorry, you do not fit into our traditional notion of religion”.

The second problem, much more important from the point of view of the number of people affected, is the unsatisfactory legal status of some churches which are currently out of the agreements’ system, but which have quite a few thousand followers in Spain: namely the Jehovah Witnesses and the Church of Jesus Christ of the Latter-Day Saints (Mormons). These two churches would not, or could not, enter the Evangelical federation, but they have been asking for an agreement with the State.³⁰ However, the

²⁹ It is enough to remember the recent problems experienced by Scientology in Germany. See on the subject *G. Robbers*, Religious freedom in Germany, in *J. Martínez-Torrón* (ed.), *La libertad religiosa y de conciencia ante la justicia consitucional*, Comares, Granada 1998, pp. 205-206.

³⁰ The paradox is that, for the Mormons, the agreements of 1992 implied a step backwards in the advantages previously granted by the State. Before that date, they had the right to include the teaching of their religion in the curricula of public schools (when it was requested by the students’ parents). Afterwards, for some reason that I have been unable to apprehend, the government understood that religious teaching in public schools had to be reserved to the religious communities included in the three agreements, and consequently the Mormons were deprived of that right.

government did not – in 1992 – and does not – currently – consider that any other agreements are necessary.³¹ Apparently the government is satisfied with having granted a negotiated legal status to the most traditional religions, and do not feel the necessity to give a similar solution to churches which are certainly spread throughout the country, but which are recent and sometimes not very popular. Spanish authorities have not even acknowledged the fact that they have “well-known roots” in Spanish society according to article 7 L.O.L.R. This is surprising, for any of them probably counts more faithful than all the Spanish Jewish communities altogether.³² Numbers are certainly not the only factor to determine the social rooting of a church, but are a necessary element of it, and have an attractive advantage: they can be checked out with relative objectivity.

In reality, what the above mentioned problems put on the table is that the L.O.L.R., when dealing with central issues, was elaborated in too generic terms. There is no precise legal concept of religion, there are not objective criteria to determine when a church is entitled to negotiate and obtain an agreement with the State. The general provisions of L.O.L.R. can be construed in many ways, perhaps too many. The way currently followed by the Spanish government and judicature is not necessarily the best one.

³¹ In this regard, the change of government of 1996 (the Socialist Party, center-left, was replaced in government by the Popular Party, center-right) did not bring any variation of the official religious policy.

³² Although it is difficult to provide exact numbers, the Jehovah Witnesses is probably the most widespread single religious denomination in Spain apart from the Catholic Church.