

## Religion and the Secular State in Colombia

### I. SOCIAL CONTEXT

The Colombian territory covers 1,140,000 km<sup>2</sup>, and the population is approximately 45 million inhabitants (75 percent urban, 25 percent in rural areas).

Independence from Spain in 1819 began the current political system of a unitary (non-federal) presidential republic, and the legislature consists of the Senate and House of Representatives. The Constitution currently in force is from 1991.

The legal system is European-continental; however, in recent years the jurisprudence of the Constitutional Court, created in 1991 has assumed particular importance. Interpretations of the Constitution issued by the Court often go beyond the text itself, searching its “spirit.” However, this approach to the common law system has created difficulties in the traditional Colombian legal context, in which laws made by Congress are the main point of reference in courts and administrative settings.

The Colombian population falls into two major religious groups: the Catholic Church (80-90 percent) and non-Catholic Christians of various denominations. This second group is not homogeneous, but includes very different religious communities (differing in such factors as number of members, doctrine, and structure). A small number of Jews and Muslims also reside in Colombia.

### II. THEORETICAL AND SCHOLARLY CONTEXT

Colombia is a secular state. Secularism, in Colombia, is understood in connection with the principles of equality and cooperation among different religious communities. Various factors led to this system as adopted in the 1991 constitution.

The first factor was greater sensitivity to the different manifestations and consequences of the right of religious freedom. This sensitivity is linked to the remarkable increase in recent decades of different Christian denominations other than the majority religion, Catholicism. Colombia is no longer homogeneously Catholic, as was the case until the second half of the twentieth century. Religious plurality demanded new approaches and resulted in the 1991 Constitution and subsequent legislation and jurisprudence.

The emergence of new religions opened the possibility of a different system of dealing with religion. One possibility was to continue the system of the previous Constitution (1886): allowing individual and collective religious freedom, while offering State protection of the Catholic Church. Catholicism was the majority religion, and was therefore regarded as “the Nation’s religion” and as a fundamental element of social order. In this scheme, the government limited recognition of minority faiths to the regime of private law associations, very different from the status accorded to the Catholic Church.

The system actually established by the 1991 constitution is markedly different from the 1886 constitution. The 1991 constitution welcomes the prospect of the “secular State,” in which the State does not adopt any religion, even if it is the church of the majority. The State also declared itself incompetent in religious matters. Furthermore, all religious denominations are equal before public authorities, and the State facilitates and promotes State cooperation with all religions. The reference point in this model has historically been the State’s relationship with the Catholic Church because this was the only type of

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institutional relationship between the State and a religion present in Colombia. However, the 1991 constitution has sought to extend to all religions, in many respects, the same legal treatment that was reserved exclusively for the Catholic Church.

Colombia's adoption of the 1991 model left behind two other alternatives that were common in countries with Catholic tradition, and also in Colombian history. One alternative was the confessional state, which could have been more or less intense. The other alternative was the secularism that seeks to relegate religion to the strictly private sphere, often with hostile demonstrations to the institutional and public presence of churches in social life.

### III. CONSTITUTIONAL CONTEXT

The following periods in the history of the Colombian Church-State relations can be identified, in a very general way as follows: 1) regime of Catholic confessionalism and "Patronato republicano"<sup>2</sup> (1824-1853); 2) regime of separation between Church and State, understood in a hostile secularist context (1853-1886); 3) regime of protected religion – the Catholic Church (1886-1991); 4) regime established by the Constitution of 1991, which can be described by full recognition of religious freedom, and the aforementioned principles of secularism, equality, and cooperation.

The current regime derives from the Constitution and the Ley Estatutaria de Libertad Religiosa (Religious Freedom Act, Law 133 of 1994). It developed out of an abundant jurisprudence of the Constitutional Court, although it has not been formulated as such in any constitutional or legal text. Its wording reflects the desirability of identifying the "fundamental choices" assumed by Colombian State and Society after the 1991 Constitution in the treatment of the religious factor.

"Principles" are the benchmark, the "touchstone," of the entire system. They inspire the concrete options and solutions (legal, administrative, jurisprudential). Therefore, they also measure the legitimacy of these options. In identifying the principles of Colombia's legal-religious atmosphere, the most helpful texts are the following:

a) "All persons are born free and equal before the law, will receive the same protection and treatment by the authorities and enjoy the same rights, freedoms and opportunities without discrimination based on sex, race, national or family origin, language, religion, political or philosophical opinion. The State shall promote conditions to ensure that equality is real and effective and adopt measures to help disadvantaged or marginalized groups. The State shall provide special protection to persons who by their economic status, physical or mental, are in obviously vulnerable circumstances and punish any abuse or mistreatment committed against them."<sup>3</sup>

b) "Freedom of worship is granted. Everyone has the right to profess freely their religion and to disseminate it individually and collectively. All faiths and churches are equally free before the Law."<sup>4</sup>

c) "No church or religious denomination is or will be official or established. However, the State is not atheist, agnostic or indifferent to the religious sentiments of Colombians. The government would protect individuals in their beliefs, as well as churches and religious groups and facilitate their participation in achieving the common good. Similarly, it will maintain harmonious relations and common understanding with the churches and religious entities existing in Colombian society."<sup>5</sup>

d) "The State recognizes the diversity of religious beliefs, which do not constitute cause for inequality or discrimination before the Law to nullify or restrict the recognition

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2. During the colonial period, the regime known as the "Patronato Real" governed in the Spanish domains. The Patronato Real was the set of attributes recognized by the Holy See to the Spanish Crown, which allowed control of Church life (appointments, discipline, etc.). With their newly-acquired independence, the new authorities wanted to keep the same system. This is known as the "Patronato Republicano."

3. COLOMBIAN CONSTITUTION, art. 13 (1991).

4. COLOMBIAN CONSTITUTION, art. 19 (1991).

5. Religious Freedom Act, art. 2 (1991).

or the exercise of fundamental rights. All faiths and churches are equally free before the Law.”<sup>6</sup>

The principles of secularism, equality, and cooperation are not unique or original to Colombian system. They correspond, in general, to the choices made by countries whose systems of relations with churches, and more generally the legal treatment of religious freedom, are similar to Colombia’s. This is the case of Spain, Italy, and Germany.

In Spain and, to a large extent also, in Italy, the contact points with Columbia derive from a similar legal and social reality, specifically in relation to the following: 1) a majority Catholic population and the presence of more or less intense religious minorities; 2) a history marked by the alternation of hostile-secularist and confessional regimes; 3) a system of institutional relations with the Catholic Church, which often resulted in the signing of Concordats; 3) extension of the Agreement system to religious minorities.

The Constitutional Court has repeatedly mentioned the previously discussed principles, but they are listed as such. The following is a particularly eloquent example:

The 1991 Constitution establishes the character of the social state of law in Colombia, of which religious pluralism is one of the most important components. Similarly, the Constitution precludes any form of established religion and states the full religious freedom and equal treatment of all faiths, since invoking the protection of God, made in the preamble, is general in nature and not related to any Church in particular. This implies that in the Colombian Constitution, there is a separation between Church and State because the State is secular. In fact, this strict State neutrality in religious matters is the only way that public authorities ensure pluralism and equal co-existence and autonomy of different faiths. Obviously, this does not mean that the State is unable to establish cooperative relationships with various religious denominations, provided that the equality is respected.<sup>7</sup>

Finally, according to Article 93 of the Constitution, “Treaties and Conventions ratified by the Congress that recognize human rights and prohibit their limitation in states of emergency have priority domestically. The rights and duties in this Charter shall be interpreted in accordance with international human rights treaties ratified by Colombia.”

Among these Treaties we may account, along with the Universal Declaration of Human Rights (1948), the International Covenant on Civil and Political Rights; the International Covenant on Economic, Social and Cultural Rights (1966, both ratified by Colombia through Law 74 of 1968); and the American Convention on Human Rights (1969, ratified by Colombia with Law 16 of 1972).

According to the jurisprudence of the Constitutional Court, the Human Rights International Treaties are part of the so-called “block of constitutionality.” This concept attempts to reconcile two seemingly contradictory constitutional requirements: Article 93 and Article 4 (“The Constitution is norm of norms. In the event of any inconsistency between the Constitution and the law or other norm, the constitutional provision prevails.”) For the Court, the “block of constitutionality” consists of “those rules and principles that, not appearing formally in the articles of the Constitution, are used as parameters for the control of constitutionality of laws, as they have been integrated in various ways in the Constitution, under a mandate from the Constitution itself. They are true principles and rules of constitutional value, i.e. norms at the constitutional level.” One consequence of this approach is that “the Colombian State must adjust the rules of inferior rank of the domestic legal order to the content of international humanitarian law, in order to enhance the performance of such values.”<sup>8</sup>

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6. Religious Freedom Act, art. 3 (1991).

7. Decision C-350 (1994). The Constitutional Court decisions are mainly of two types: the letter “C” indicates decisions of constitutional control; the letter “T” refers to decisions of guardianship (*tutela, amparo*) of fundamental rights. The text of the decisions cited in this work can be found in <http://www.derechocolombiano.com/>; <http://www.notinet.com.co/>.

8. Decision C-225 (1995).

## IV. LEGAL CONTEXT

A. *Religious Freedom Act* (Ley Estatutaria de Libertad Religiosa)

The Religious Freedom Act (*Ley Estatutaria de Libertad Religiosa*, Ley 133 of 1994)<sup>9</sup> developed the freedom of religion and worship recognized in Article 19 of the Constitution.

With the *Leyes Estatutarias*,<sup>10</sup> Congress regulates, among other topics, matters related to fundamental rights and duties of individuals and the procedures and resources for their protection. Approval, amendment, or derogation requires an absolute majority of Members of Congress. It also requires the prior review of the respective draft law by the Constitutional Court<sup>11</sup> as well. The Religious Freedom Act, therefore, has a particular hierarchy, inferior only to the Constitution.

The Act is divided into five chapters: 1) the right of religious freedom; 2) the scope of the right of religious freedom; 3) the legal status of churches and religious denominations; 4) the autonomy of churches and religious denominations; 5) transitional and final provisions. A general description of its contents is as follows:

- a) The Act explicitly confirms the positive view of religion, already present in the Constitution. At the same time, it proclaims the secularity of Colombian State: “No church or religious denomination is or will be official or established. However, the State is not atheist, agnostic or indifferent to the religious sentiments of Colombians.”<sup>12</sup>
- b) The “activities related to the study and experimentation with psychic or parapsychological phenomena; Satanism; magical, superstitious, or spiritist practices” are excluded from the regulation of the Act as being “alien to the religion.”<sup>13</sup>
- c) It facilitates and promotes the participation of churches in achieving the common good and harmonious cooperation between the State and the various denominations.<sup>14</sup>
- d) With regard to the principle of equality, “The State recognizes the diversity of religious believing. This diversity will not constitute grounds for discrimination or inequality before the law that nullify or restrict the recognition or exercise of fundamental rights. All religious communities are equally free before the law.”<sup>15</sup>
- e) The right to religious freedom is not absolute. Its boundaries are formed by “the protection of the rights of others to exercise their freedom and public rights, and the safeguard of security, health and public morality. All these elements constitute the public order protected by law in a democratic society.”<sup>16</sup>
- f) The right of religious freedom, in its individual dimension, is widely described in Article 6. It is described with respect to churches and confessions in cf. Article 7 and 13-15. Article 8 calls for collaboration with churches and denominations to the “real and effective application of these rights.”
- g) The State continues to recognize the legal personality of the Catholic Church and the entities canonically erected according to Article IV, 1 of the Concordat with the Holy See. Churches that register in the Public Register of Religious Entities should notify the Ministry of Internal Affairs of the canonical erection or approval.<sup>17</sup> In relation to other religious entities, Articles 9 and 10 provide that the Ministry of Internal Affairs is competent to recognize legal personality, according to the general requirements established by the Act.
- h) Under the principle of collaboration with religious communities, it is also possible to

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9. Text available at [http://www.secretariassenado.gov.co/senado/basedoc/ley/1994/ley\\_0133\\_1994.html](http://www.secretariassenado.gov.co/senado/basedoc/ley/1994/ley_0133_1994.html).

10. See COLOMBIAN CONSTITUTION, art. 152 (1991).

11. See COLOMBIAN CONSTITUTION, art. 153 (1991).

12. *Id.*, at art. 2.

13. *Id.*, at art. 5.

14. *Cf. id.*, at art 2.

15. *Id.*, at art. 3.

16. *Id.*, at art. 4.

17. *Id.*, at art. 11.

subscribe International Treaties or Internal Public Law Conventions or Agreements<sup>18</sup> with the Ministry of Internal Affairs.

Decree 372 of 1996 established the internal structure of the Ministry of Internal Affairs. In doing so, it determined the Ministry's general functions related to religious freedom to be as follows: formulate and adopt policies on fundamental rights and freedoms and on public order and peaceful coexistence; the protection of freedom of religion and worship.<sup>19</sup>

More specifically, the responsibility of this Ministry<sup>20</sup> is to guarantee freedom of religion and the individual right to practice religion freely; to promote coexistence and tolerance among adherents of different faiths; to recognize special legal status of religious communities; to carry out the Public Registry of Religious Entities; and to manage the development and negotiation of Public Law Agreements with religious communities.

Decrees 200 of 2003 and 3420 of 2004 and Law 888 of 2004 confirmed the general objectives and functions of the Ministry in matters of religious freedom.

The 1991 Constitution does not address the possibility of concluding Agreements with religious denominations. This is different from the Constitution of 1886, which did so in connection with the Catholic Church. Though the 1991 Constitution fails to address the possibility of concluding Agreements with religious denominations, the Religious Freedom Act does so in Article 15: the State may conclude Agreements about religious matters (International Treaties or Internal Public Law Agreements) with churches and religious denominations that enjoy personality and offer warranty of stability.

The Constitutional Court of Colombia<sup>21</sup> has stressed that the determination of whether Conventions with Churches and religious denominations qualify as Public Law Agreements is the consequence of considering the Convention's relation to "matters of public concern," the "public," and the "general interest." Consequently, both the Catholic Church and other faiths are able to conclude Agreements and intervene directly in determining their specific legal situation and the ways to contribute to achieving the common good.

The Act distinguishes between International Treaties and Internal Public Law Agreements. Although not explicitly stated, International Treaties include Agreements with the Catholic Church because they are considered true International Treaties by force of their status as the subject of International Law of the Holy See.

#### *B. Concordat with the Holy See (1973)*

On 12 July 1973 the current Concordat between the Holy See and the Republic of Colombia was signed. The Colombian internal law approving both of the Concordat and the Final Protocol is Law 20 of 1974.

The Colombian Concordat is structured on the classic themes of Agreements between the State and the Catholic Church. The doctrine of the Second Vatican Council is present.<sup>22</sup> It incorporates elements of the Colombian situation, including the mission, territories, and educational and charitable work of the Church in these territories.<sup>23</sup> Specifically, the Church is committed to working with public education in deprived areas, through contracts between the government and the Episcopal Conference.<sup>24</sup>

Articles II and III proclaim the freedom and independence of the ecclesiastical jurisdiction, and the respect from the civil authorities of the Church. The State recognizes legal personality of the Catholic Church, the dioceses, religious communities, and other

18. *Id.* at art. 15.

19. *Cf. id.* at art. 5.

20. *Cf. id.* at art. 6.

21. Decision C-088 (1994).

22. See art. I: reference to the religious freedom of all faiths

23. Art. VI.

24. Art. XIII

entities that possess ecclesiastical canonical legal personality.<sup>25</sup> Concerning the appointment of bishops and archbishops, which is the exclusive right of the Roman Pontiff, the Holy See shall communicate to the President the names of the elected persons “to see if there are civil or political objections.”<sup>26</sup> Something similar happens with the erection of new ecclesiastical districts: the Holy See prior informs the government, and welcomes “fair and appropriate indications.”<sup>27</sup> The spiritual and pastoral care of Catholics in the Armed Forces is committed to the Military Ordinariate.<sup>28</sup>

The Catholic Church and other catholic entities with legal personality can acquire property, own property, and manage and dispose of property freely in the manner established by Colombian law for all citizens.<sup>29</sup> Buildings for regular worship, the diocesan curia, bishops’ and priests’ houses, and seminaries are exempted from taxation. Legislation for nonprofit civil entities applies also to nonprofit ecclesiastical entities.<sup>30</sup> It is recognized to the Church the right of asking free contributions from its faithful.<sup>31</sup> The State’s financial contribution to the creation of new dioceses and to support those in the so-called mission territories is referred to future regulation.<sup>32</sup>

The State recognizes the civil effects of catholic marriage,<sup>33</sup> as well as the decisions of canonical marriage, annulment, and dissolution, which are the exclusive competence of ecclesiastical courts.<sup>34</sup> Judges of the State handle causes of separation.<sup>35</sup> State officials, if necessary, cooperate in the execution of ecclesiastical decisions “to protect the rights of people who might be injured by faulty or incomplete execution of such decisions.”<sup>36</sup>

In education, the State undertakes to contribute equally in the maintenance of Catholic schools with the aim of making more viable the right of families to freely choose schools for their children.<sup>37</sup> Public schools, will teach the Catholic religion<sup>38</sup> with the understanding that it is not compulsory for Catholic children whose legal representatives have requested waiver of the Catholic religion courses. Waiver is also available for elderly Catholics who make such requests. These waivers are made in accordance with the principles of religious freedom found in II Vatican Council and the norms of the Political Constitution of Colombia.<sup>39</sup>

The Concordat further recognizes in the Catholic Church the freedom to organize and direct educational institutions at every level, as well as the autonomy to establish, organize, and conduct religious schools, seminaries, and formation houses.<sup>40</sup>

With regard to sacred ministers, the Concordat states that they will not be forced to hold public offices incompatible with their ministry and will be exempt from military service.<sup>41</sup> Civil and criminal cases are within the jurisdiction of the courts of the State, except for Bishops, whose criminal cases are judged by the Holy See.<sup>42</sup> In criminal proceedings against clergy, exceptions to the common legal scheme are agreed: the trials will not be public and accused persons will not be detained in common prisons during the trial. However, if the final decision is that of guilty, the common penalty regime is

25. Colombian Concordat art. IV.

26. *Id.* at art. XIV.

27. *Id.* at art. XV.

28. *Id.* at art. XVII.

29. *Id.* at art. XXIII.

30. *Id.* at art. XXIV.

31. *Id.* at art. XXV.

32. *Id.* at art. XXVI.

33. See *id.* at art. VII.

34. *Id.* at art. VIII.

35. *Id.* at art. IX.

36. *Id.* at art. XXI.

37. *Id.* at art. XI.

38. See *id.* at art. XII.

39. See Exchange of Instruments of Ratification of the Concordat, Vatican City, 2 July 1975.

40. Art. X.

41. Art. XVIII.

42. *Id.* at art. XIX.

applied.<sup>43</sup> The unlawful exercise of ecclesiastical functions by those who have no canonical mission is seen as a usurpation of public functions.<sup>44</sup>

The Concordat recognizes that the Church has the right to own and operate cemeteries and to exercise its ministry in civil cemeteries.<sup>45</sup> Finally, in cultural heritage, the Catholic Church and the State are committed to developing an inventory of assets that are worthy of attention for joint preservation and display for the purpose of social education.<sup>46</sup>

The 1991 Constitution raised the question of conformity or nonconformity of the Concordat with the new constitutional text. The Constitutional Court declared unconstitutional a number of articles of the Concordat in Decision C-027, 1993. The controversy over the scope of this Decision remains open. In practice, the Concordat continues to be applied in most of its articles. The main reason is that in later years, laws have been rendered wholly compatible with the general provisions of the Concordat, and also applicable to all faiths, particularly in the Religious Freedom Act of 1994.

### *C. Convenio de Derecho Público Interno n. 1 de 1997*

In Article 14 of Decree 782 of 1995, the conditions for Public Law Internal Agreements are set out:<sup>47</sup> 1) the religious entity wanting to sign such Agreement must have special juridical personality, recognized by the Ministry of Internal Affairs, or “public ecclesiastical personality” (refers to the distinction between non-Catholic and national Catholic entities); 2) the State keeps its discretion to weigh the desirability of the Convention, depending on the content of the statutes of the religious community, the number of its members, its roots, and its history; 3) if the Agreements deal with matrimonial matters, the community must demonstrate possession of matrimonial law provisions not contrary to the Constitution, and ensure the reliability and continuity of their religious organization;<sup>48</sup> 4) if the Agreement includes the possibility of declaring nullity of marriage, it is required that the religious entity hold substantive and procedural laws to guarantee full respect for fundamental rights.

The competence to subscribe the Agreement corresponds to the Ministry of Internal Affairs, in consultation with other Ministries if the matter requires. The checking of legality is performed by the Board of Civil Service and Consultation of the State Council. The Agreement is then promulgated by its publication in the Official Journal.<sup>49</sup>

Termination of the Agreements may be mutually agreed between the parties or by unilateral decision of the State.<sup>50</sup> The latter may occur in the following situations: 1) cancellation of the legal personality (in the case of Catholic entities, this decision can only be taken by the respective authorities of the Catholic Church); 2) breach of commitments. In any case, termination of the Agreement requires a Government Decree, with a previous judicial Decision.

Agreements can be on any religious issue. However, their existence is required for the recognition of civil effects of religious marriages and of nullity decisions;<sup>51</sup> to offer religious education in denominational schools; to ensure permanent religious assistance in prisons, hospitals, welfare, education, military, and police facilities; and for regulating all matters relating to artistic and cultural heritage.<sup>52</sup>

Furthermore, the Religious Freedom Act provides the existence of Agreements as a

43. Id. at art. XX.

44. Id. at art. XXII.

45. Id. at art. XXVII.

46. Id. at art. XXVIII.

47. Cf Religious Freedom Act, art. 15.

48. Cf. Law 25 of 1992, Art. 1, 2.

49. Cf. Decree 782, art. 15 (1995).

50. Cf. id. at art. 16.

51. Cf. Decree 782, art. 13, paragraph 2 (1995).

52. Cf. Law 25 of 1992, art. 1; Religious Freedom Act, art. 15.

way of regulating the civil recognition of religious study certificates.<sup>53</sup>

By Decree 354 of 1998 the President approved the Internal Public Law Agreement number 1 of 1997, between the Colombian Government and some non-Catholic Christian Religious Entities. It was signed in Bogotá on 2 December 1997. The negotiation and development of the Agreement was carried out by the Ministry of Internal Affairs, in accordance with Article 15 of Decree 782, 1995. It is the only such agreement that has been signed to date.

The Agreement extends to the following religious entities: *Concilio de las Asambleas de Dios de Colombia, Iglesia Comunidad Cristiana Manantial de Vida Eterna, Iglesia Cruzada Cristiana, Iglesia Cristiana Cuadrangular, Iglesia de Dios en Colombia, Casa sobre la Roca-Iglesia Cristiana Integral, Iglesia Pentecostal Unida de Colombia, Denominación Misión Panamericana de Colombia, Iglesia de Dios Pentecostal Movimiento Internacional en Colombia, Iglesia Adventista del Séptimo Día de Colombia, Iglesia Wesleyana, Iglesia Cristiana de Puente Largo, y Federación Consejo Evangélico de Colombia (Cedecol)*. All of the preceding religious entities had special juridical personality recognized by the Ministry of Internal Affairs.

The articles of the Agreement follow closely the classical matters contained in the Concordats with the Catholic Church. The covered topics are marriage in Articles I-VI; religious education and freedom of education in Articles VII-XIII; religious assistance to members of the security forces and in prisons in Articles XIV-XVIII; places of worship in Articles XIX-XX; and social assistance programs in Article XXI.

Article XXIII refers only to the Seventh-day Adventist Church. It states that, by agreement between the parties (employee and employer), Saturday can be established as the weekly day of rest. In addition, students are exempt from submitting exams and attending classes on Saturday.

## V. THE STATE AND RELIGIOUS AUTONOMY

According to Article 7 of the Religious Freedom Act, various rights are recognized as belonging to religious communities: freedom to establish places of worship; freedom to exercise the ministry, confer religious orders and assign charges; the right to communicate with the faithful and with other churches or religious denominations; the right to establish their own institutions of theological studies; the right to write, publish, receive, and freely use books and other publications on religious matters; and the right to announce, report and disseminate their faith and to perform educational and charitable activities. As seen before, for the civil recognition of study certificates, an Agreement with the religious community is required.

Article 13 of the same Act recognizes the full autonomy and freedom of religious entities. They can therefore set their own rules of organization, internal rules, and dispositions for their members. Confessions with legal personalities can also create and foster partnerships, foundations, and institutions to carry out their ends.<sup>54</sup> Religious entities also have the ability to acquire, sell, and administer property freely, and own artistic and cultural heritage and to request and receive donations and organize collections among the faithful.

## VI. RELIGION AND THE AUTONOMY OF THE STATE

In Colombia there are no limitations on religious ministers participating as candidates in elections for public office or being appointed as officers of the Administration, however, the role of judge or magistrate is incompatible with the performance of the ministry in any religious denomination.<sup>55</sup>

Common in recent years is the existence of political parties, more or less religious,

53. Art. 7, paragraph d.

54. See Religious Freedom Act, art. 14.

55. Administration of Justice Act, Law 270 of 1996, art. 151, 5.



linked to non-Catholic Christian churches, and some ministers have been elected to positions of popular representation.

This has not been the case with Catholic priests, under the prohibitions contained in cc. 287, 2 and 289, 2 of the Code of Canon Law.<sup>56</sup> The exceptions in these rules have not been applied in Colombia. The Concordat, as previously discussed,<sup>57</sup> states that clerics will not be forced to hold public offices incompatible with their ministry.

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

The 1991 Constitution expressly invokes in its Preamble “the protection of God.” This reference indicates that the Colombian State recognizes the existence of God in the origin of its fundamental institutions, without referring, however, to any particular religion. The Preamble expresses, therefore, a positive view of religion.

This positive and “friendly” view of the religious phenomenon is confirmed by the Religious Freedom Act: “No church or religious denomination is or will be official or established. However, the State is not atheist, agnostic or indifferent to the religious sentiments of Colombians. The government would protect individuals in their beliefs, as well as churches and religious groups and facilitate their participation in achieving the common good. Similarly, the State will maintain harmonious relations and common understanding with the churches and religious entities existing in Colombian society.”<sup>58</sup> Religious beliefs are, therefore, a “constitutionally protected value.”<sup>59</sup>

The recognition of the importance of religious phenomena and their manifestations has led, in the words of the Constitutional Court, to the recognition of “a special regime, different from the rest of the regimes governing other civil liberties, societies, associations and other legal persons, thus highlighting the undeniable importance of religion in contemporary societies.”<sup>60</sup>

Colombia has maintained a strong concordatary tradition with the Catholic Church, which has helped to strengthen the idea that relations with religious groups have a unique character, distinct from the State’s relations with private entities. This concept has allowed and facilitated the recognition of other religious entities in similar terms, providing them, for example, the system of Public Law Agreements.

It is not just a pragmatic solution or simple imitation: the coordination model involves the recognition that the existence and activity of religious groups is directly related to the common good and deserves, therefore, a “special” regime, both from the standpoint of legal recognition by the State, and by way of establishing relations with religious entities.

The Colombian system (a real novelty in the Latin American context), also allows a “particularized” treatment in the state’s relations with each community, which helps to avoid the danger of indiscriminate egalitarianism. Justice, according to the classical formula, is to “give each his due,” not give everyone the same. The difference in treatment can therefore be fully justified, depending on the nature of the confession, legal status, roots, and so on. The system of Public Law Agreements can therefore better ensure the respect of difference, not only for its specific character, but because its production involves the two parties reaching an agreement on what is most consistent with the nature of the community or communities involved.

In Colombia, conscientious objection has no explicit constitutional or legal basis.

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56. Can. 287, 2: clerics “are not to have an active part in political parties and in governing labor unions unless, in the judgment of competent ecclesiastical authority, the protection of the rights of the Church or the promotion of the common good requires it”; can. 289, 2: “Clerics are to use exemptions from exercising functions and public civil offices foreign to the clerical state which laws and agreements or customs grant in their favor unless their proper ordinary has decided otherwise in particular cases.”

57. art. XVIII.

58. art. 2.

59. Decision C-350 (1994).

60. Decision C-088 (1994).

There are, however, numerous Decisions of the Constitutional Court. In general, the approach of the Court has been restrictive. The downside in these matters is that sometimes the Court's decision hangs on the definition that the Court itself gives to what is considered a matter of religion or conscience, contrary to what was said by the persons concerned. This approach raises serious concerns regarding proper respect for freedom of conscience.

Recently, the Constitutional Court accepted the conscientious objection to abortion, but only for individuals. The clinic or hospital cannot refuse to perform abortions if legal requirements are met.<sup>61</sup>

#### VIII. STATE FINANCIAL SUPPORT FOR RELIGION

In the Concordat of 1887,<sup>62</sup> the Colombian State assumed the obligation to provide financial compensation to the Catholic Church for the expropriation of church property that occurred during the second half of the nineteenth century. Article XXVI of the Concordat of 1973 maintains the same obligation. At present, the various obligations of the Colombian State to the Catholic Church have been unified into a single contribution, included in the annual budget of the Ministry of Foreign Affairs.<sup>63</sup> There is nothing similar for other religious communities.

In taxation matters, Article 7 of the Religious Freedom Act authorizes municipal councils to grant tax exemptions to all faiths on an equal basis.

At the national level, according to Article 23 of the Tax Statute,<sup>64</sup> religious denominations are not payers of income tax. In Decrees 3101 of 1990, 2820 of 1991, 2064 of 1992, 2511 of 1993, 2798 of 1994, 2231 of 1995 and 2300 of 1996, the exemption from income tax is reaffirmed.

In general, the Constitutional Court has established the following principle: "In light of the Constitution, law is forbidden to give different treatment to religious communities, which does not imply the automatic granting of a tax exemption to all when some of them have met the requirements of law to merit that exemption. The law is obliged to establish the same objective conditions for all religious denominations so that they become able to enjoy such exemption. If the collective entities involved meet the objective conditions established by law for the benefit of a tax exemption, that exemption must also be recognized."<sup>65</sup>

#### IX. CIVIL LEGAL EFFECTS OF RELIGIOUS ACTS

In Colombia, all religious marriages have civil effects.<sup>66</sup> The same applies to judgments of nullity of religious marriages issued by the authorities of the religious community. In the same sense, no homologation or "exequatur" is required from Civil Courts.<sup>67</sup>

For the Catholic Church, the same recognition is made in Articles VII and VIII of the Concordat. Something similar happens with the entities that signed the Internal Public Law Agreement No. 1 of 1997.<sup>68</sup>

The Concordat sets out in Article IV that the State recognizes the legal personality of the Catholic Church, the dioceses, religious communities, and other canonical legal persons. For this civil recognition to be effective, the ecclesiastical authority certifies the

61. Decision C-355 (2006).

62. Cf. Art. XXII-XXVI.

63. The yearly amount of this contribution (26 million Colombian pesos), is equivalent approximately to US \$13,000. Instead of distributing this amount among the dioceses (almost symbolic), the Episcopal Conference decided to use it to cover their own expenses.

64. Law Decree 624 of 1989.

65. Decision T-269 (2001).

66. COLOMBIAN CONSTITUTION, art. 42.

67. See Religious Freedom Act, art. 6, d.

68. Chapter I, art. I-VI.

entity's canonical existence. Decree 1396 of 1997 established in Article 2 that the registration in the Public Registry of entities, mentioned in article IV of the Concordat, shall be subject to norms agreed by the High Contracting Parties. In all cases, registration in the Public Registry of Religious Entities has no effect on the recognition and accreditation of the legal status of these entities. In the case of non-Catholic denominations, they must request recognition of legal personality from the Ministry of Internal Affairs.<sup>69</sup>

#### X. RELIGIOUS EDUCATION OF THE YOUTH

The outline of the right to education is contained in articles 67 and 68 of the Colombian Constitution. The following principles are worth noting: 1) responsibility in the educational process belongs to the State, society and family; 2) the State is responsible for regulation, final inspection, and supervision; 3) individuals may create educational institutions; 4) parents have the right to choose the type of education for their minor children; 5) religious education cannot be compulsory.

The Religious Freedom Act recognizes the right of parents (or children themselves, if they have reached the age of majority) to choose the religious and moral education of their children according to their own conviction.<sup>70</sup> Schools must provide religious education of the religions to which the students belong, and the students have the right not to be obliged to accept such religious education. Teachers of religion are required to possess a certificate of suitability from the respective church or denomination.<sup>71</sup>

Similar rules are contained in Article XII of the Concordat. It reaffirms the right of Catholic families to have their children receive religious education according to their faith. The Catholic religion is to be taught in public schools. Belonging to the ecclesiastical authority is the responsibility to develop programs, approve textbooks, and monitor the way religious education is taught. Teachers must have a suitability certificate issued by ecclesiastical authority. It also states that the State shall promote higher education institutes and the creation of superior religious science departments, where Catholic students may have the option to improve their culture in harmony with their faith.

On 2 July 1975, in the Exchange of instruments of ratification of the Concordat, it was stated that Catholic religious education is not compulsory for Catholic children whose legal representatives have requested waivers for the Catholic religion classes, or for overaged Catholic students that submit a request to the same effect.

The Internal Public Law Agreement n. 1, 1997, Chapter II deals with "teaching and non-Catholic Christian education and information."

Article VII ("The freedom to choose non-Catholic Christian religious education") warrants to the faithful of the confession's party to the Agreement the right to choose the kind of education they want for their minor children and the freedom not to be compelled to receive religious education different from their own convictions.

Article VIII ("The non-Catholic Christian religious education") establishes specific rules with regard to religion classes in public schools (school curricula, places and means of teaching, specific agreements with the state authorities). It also guarantees the possibility of issuing those classes in educational establishments promoted by the same denominations.

The entities party to the Agreement have the right to establish, organize and direct educational institutions of all levels. Established rules exist on studies, approval, and certificates.<sup>72</sup>

Religious entities must provide to the competent authorities their plans for education

69. See Religious Freedom Act, art. 9-12.

70. Art. 6, h.

71. See *id.* at art. 6, i.

72. Internal Public Law Agreement n. 1 (1997) Chapter II, art. X.

and institutional projects. The responsibility to monitor the quality of non-Catholic Christian religious education belongs to the religious authorities of the various denominations. The last article of Chapter II includes the requirements to become a teacher of religion.

The General Education Act has confirmed the principles contained in the Religious Freedom Act and in Agreements with religious denominations.<sup>73</sup> Article 23, 6 lists religious education among the key areas and compulsory basic education (which, according to Article 31, are the same in high school). It adds that religious education must be offered in all educational institutions, granting the constitutional guarantee under which no person shall be compelled to receive it. Article 24 emphasizes that the right to receive religious education is granted subject to the constitutional guarantees of freedom of conscience, freedom of religion, and the right of parents to choose the type of education for their minor children. In public schools, religion teachers receive their salary from the State because they are public employees.

#### XI. RELIGIOUS SYMBOLS IN PUBLIC PLACES

There is no specific legislation in regard to religious symbols in public places. In general, as a result of the traditional Catholic culture of the country, religious symbols are common in public places like courts, schools, and administrative offices. These symbols, in general, have not been controversial.

Something similar could be said about clothing. Some problems have occurred in countries with consistent Muslim minorities. It is not the case of Colombia.

#### XII. FREEDOM OF EXPRESSION AND OFFENSES AGAINST RELIGION

According to Article 85 of the Constitution, the right of religious freedom is of immediate application, i.e. it is not required to be legally enforceable. It enjoys the protection action (*tutela, amparo*) before judges, with the conditions set out in Article 86.

In practice, as evidenced by the work of the Courts and the jurisprudence of the Constitutional Court, the most common way to require effective protection of the right of religious freedom has been precisely the *tutela*.

The Constitution provides other protection mechanisms, such as those stated in Articles 87, 89, 90, 91 and 92. The religious fact, or circumstances directly related to religion, is subject to specific protection by the criminal law. The fact that a criminal offense is based on intolerance and discrimination involving race, ethnicity, ideology, religion or belief, sex or sexual orientation, or any illness or disability of the victim is considered as an aggravating circumstance.<sup>74</sup>

Among the circumstances that aggravate a penalty are certain personal qualities, which have been principal in the commission of crimes. The status of being a religious leader is the same.<sup>75</sup>

In crimes of forced disappearance, kidnapping for ransom, torture, forced displacement, and extortion, the status of certain persons, among which also are included "religious leaders," is considered as a circumstance that increases the penalty.<sup>76</sup>

The same Penal Code includes an entire chapter named "Crimes against religious sentiment and against the due respect for the dead." The first category, crimes against religious sentiment, criminalizes the following acts:

- a) Violence that compels a person to fulfill a religious ceremony, or interferes with participation in a ceremony of the same nature;<sup>77</sup>
- b) To disturb or to impede the conduct of a ceremonial or religious function of any

73. Law 115 of 1994.

74. See Penal Code, art. 58, par. 3.

75. Penal Code, art. 104.

76. Cf., Penal Code, art. 166, 170, 179, 181, 245.

77. Art. 201.

allowed religion;<sup>78</sup>

c) To cause harm to the objects intended for worship, or to the symbols of any religion legally allowed; to injure publicly such cults or its members by virtue of their office.<sup>79</sup>

In addition, the Penal Code includes “crimes against persons and property protected by International Humanitarian Law.”<sup>80</sup> Some of the articles refer to matters relating directly to religious issues. Specifically, it is established that religious staff have the status of special protection.<sup>81</sup> The following articles list behaviors, with their penalties, which involve “protected persons”: Articles 136, 138-140, 143, 146, 151, 152, 154, 156.

The National Police Code, Article 209, 4, states that persons who do not keep proper composure in a religious ceremony held in an open public place or public place, may be expelled by the police.

Finally, the Criminal Procedure Code,<sup>82</sup> Article 35, lists the crimes that require complaint. Among them there are the violation of religious freedom,<sup>83</sup> the disturbance of a religious ceremony,<sup>84</sup> and the damage or injuries to persons or things for worship.

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78. Art. 202.

79. Art. 203.

80. Title II, unique Chapter.

81. Art. 135.

82. Law 906 of 2004.

83. Cf. Penal Code, art. 201.

84. See Penal Code, art. 202.