

## **FREEDOM OF CONSCIENCE IN CHILE**

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### **Independent and Confessional Chile**

The evolution of religious freedom in Chile has very much followed its own path. However, in many senses it is a path that has been followed by other nations who have adopted a particular faith as their official state religion.

Our country gained independence from the Spanish Crown at the beginning of the 19<sup>th</sup> Century following several centuries of domination under Spanish rule after the discovery of America. During this period, the Spanish brought with them not only their laws, economy, language and culture but also a relevant gift: their official religion, Catholicism, which they left as a legacy. Chile began its life as an independent, confessional country in 1810. The newly instated constitutional regime respected the Catholic Church's privileges. At that time the Catholic Church held a huge majority in Chile and its preeminence was neither discussed nor questioned by the republican authorities or the citizens.

When the normative system was established, Catholicism was consecrated as the only existing religion in the newly-formed country and during its first years any other form of religious worship was prohibited in Chile. Furthermore, the church demanded obligations and a commitment from the authorities, giving them rights and privileges which committed the State to the Catholic Church and ensured that only the practice of said religious denomination was accepted.

In the beginning years, while independence was still being consolidated and the constitutional framework defined, various draft constitutions were seen which maintained the aforementioned principle, prohibiting public and private exercise of any other form of worship. With the exception of Catholics, there was absolutely no room for religious freedom.

However, in 1833, when the Constitution which governed the Republic until 1925 was approved, the principle which was established allowed the private practice of other forms of worship. This left a small space for religious pluralism. It was noticed that citizens from other parts of the world were beginning to arrive and brought with them their faith. This demanded at the very least a permissive attitude towards the possibility of everyone practicing their own faith.

### **The Arrival of Secularism**

Reality is more stubborn than the will of a Government or the prevailing majority. As the years passed, the number of people who practiced other, mainly Christian, religious denominations grew. This began to cause practical problems of a different nature which slowly forced changes in the law, but which importantly forebode that the original landscape was about to change. The imposition of an official creed was a delicate issue for many people who could not hold back.

In 1865 an interpretive law based on the existing Constitution was published. This law implied significant change in this field, the main change being the authorization for dissidents to found and maintain private schools where they could educate their children according to their own religion. Later, in 1883, a burial law was announced which established that publicly funded cemeteries could not discriminate on the basis of religion in burials. In January, 1884, the main reform aimed at eliminating limitation and prohibition in religious freedom was proclaimed. This was achieved through the establishment of civil marriage, thus ending the Catholic Church's exclusive authority to consecrate and legally register marriages. Finally, in that same year, a law was announced to create the Civil Registry as the only legal authority for registering births, marriages and deaths.

### **The Consolidation of Religious Freedom**

The changes introduced toward the end of the century through the so called "secular laws" described above set the pace for a change which gradually gathered strength thanks to the arrival of new waves of immigration. Added to this was the increase in trade with different nations from the protestant world. With them also arrived mission ministers, especially from the US, which gave strength to the establishment of Protestant Churches.

With this stage set, the discussion about a new set of internal relations would not take long. The progressive influence of the intellectuals of the Enlightenment, the climate of rationalism and emergence of political voices professing a secular influence all started to produce a break in the Church-State relation. Taking advantage of a period of institutional crises, this led to a substantial modification of the constitutional framework.

In 1925 the Political Constitution was approved. This formally established the definitive separation of the Catholic Church from the State by consecrating freedom of religion as a fundamental right for all inhabitants of the Republic. Article 10, Section 2 of this law regulated religious freedom, understood as being "the expression of all beliefs, the freedom of conscience and free practice of all forms of worship which do not go against morality, proper conduct and public order."

This step represented a fundamental change in the historical evolution of religious freedom in Chile. A little over a century had passed since the birth of the Republic with its solid religious unity when Chile entered a process of confessional separation. However, this did not represent contempt or a breakdown for the Church. Instead, the

aim was to put an end to the institutional commitment which obliged State Administrative Agencies to adopt a doctrinaire or proselyte approach. It was becoming necessary to avoid having a certificate of membership to a religious creed in order to participate as a citizen or carry out professional activities. It also became necessary to put an end to government intervention in religious activities such as the appointment of ecclesiastical authorities, where the government played an active role.

The temptation to place the State at the service of one faith is significant and it seems convenient and attractive to use government to influence society in terms of religion. However, spreading faith, promoting its doctrine and religious experience are all personal acts which stem from man's freedom. For me, God's calling does not come from the State's backing. Instead, it follows the mysterious paths of the divine plan, a plan which is capable of nesting in the human heart. What is asked of the State is not to play the role of promoting faith, rather that of respecting personal will to adopt a creed or to adopt none according to the interests and conscience of each citizen. In order to achieve this, it is essential to define which areas belong autonomously to each party, letting people "give to Caesar what is Caesar's and to God what is God's."

### **Religious Freedom, Religious Equality**

The evolution experienced in the constitutional sphere was kept unchanged in the new Constitution which was adopted by the country in 1980. In Article 19, Section 6 religious freedom is regulated in similar terms to those set out in the 1925 Constitution. Thus, the theories of autonomy and freedom of conscience were strengthened, preserving the right to erect and maintain temples and the right to exemption from property tax for designated places of worship, amongst others.

However, the freedom which was practiced suffered from situations which reflected differences which were yet to be overcome. In effect, the presence of the Evangelical and Protestant Church was not the same in certain specific areas of the community. Thus, the possibility of giving religious assistance in hospitals, prisons and other such places demonstrated privileges for the Catholic Church. Equally, the ability to teach in public educational establishments showed a clear discrimination in regards to non-catholic creeds and the presence of these creeds in the Chilean armed forces was also restricted, if not totally avoided.

The Catholic Church, constituted under the Confessional State had acquired the legal status which belongs to a State Body, that is, a legal body in public law. The other creeds were dressed in various, different legal apparel, each of them belonging to private law. This situation, added to the aforementioned concrete restrictions on practicing religious activities, was evidence of the hateful differences which made it seem that religious freedom was hiding even greater discrimination. This caused deep and justified discomfort amongst the affected churches. This discomfort was not the responsibility of the Catholic Church, as its status was merely the product of historical circumstances. However, because of its arbitrary nature, the result at the end of the day

generated a strained atmosphere of discomfort and negativity which forced the existing regulations to be reviewed.

This initiative was finally adopted by Patricio Aylwin's Government in 1992 in the terms agreed in a bill which was written together with the National Congress (particularly the Senate), where I was able to play an active role.

In essence this legal initiative was something quite simple, but difficult to implement. Freedom was already an established achievement, but legal equality for every creed was inexistent. This was the area which required most focus, and was set out in Law 19,638. This law, known as the Freedom of Religion Act, established the rules to guarantee both principles: not just religious freedom but also religious equality. For my interest in assuring religious equality for all creeds, I had to personally experience all kinds of difficulty, the product of both suspicion and distrust. This religious equality was something that some ecclesiastical authorities from the Catholic Church, the religion which I profess, failed to understand and they let me know this in no uncertain terms. However, what some of us favored was not entirely different from what my Church was itself asking for in China. It was perhaps this, and common sense, which allowed us to regain trust and advance.

In the end, the process worked out well. This was achieved in a way which I feel must be highlighted: the legal status of all Churches was brought in line with the Catholic Church, that is to say a legal body in public law (and not the other way round, lowering the Catholic Church's status). Thus, all existing or future creeds which are constituted according to the procedures set out by the new legislation acquire the same status as the Catholic Church (*persona jurídica de derecho público*). By doing this, a principle of equality has been established that is of such transcendence and magnitude that it will go on to become as important and valuable a milestone as the moment when the principle of religious freedom was consecrated.

### **Final Adjustments: A New Religious Order**

As a corollary to this process we can add two very important facts that followed the promulgation of the freedom of religion act and which ended up configuring the new religious order.

On the one hand, various decrees have been announced which aim to make religious work by all creeds more effective and equal. This is the case in a range of fields which previously showed strong signs of discrimination: education, the prison service, the armed forces, hospitals, amongst others. On the other hand, nowadays, catholic priests and evangelical ministers participate in all public ceremonies under the same conditions and in total harmony.

Additionally, in 2008, another law was approved which added something that is seen as a strong national symbol. In Chile, for historical reasons, there are a series of different types of legal public holidays: namely religious and historic holidays. However, the

former had until recently belonged solely to the catholic religion, as was to be expected. For this reason, the creation of a new religious holiday was proposed and accepted by National Congress. The holiday which was established is diverse in its nature and is called National Evangelical and Protestant Church Day, fixed for October 31<sup>st</sup> of each year.

This fact is more than just symbolic. It is the verification of the principle of respect and openness towards different creeds, highlighting those creeds which have a greater presence in Chile's religious life: those that contribute to national spiritual life. This does not mean they are granted official support, but it does show acknowledgement and a valuing of the work which each denomination carries out.

### **Final Reflections**

The precedents set out in reference to the evolution of religious freedom in Chile allows us to formulate some reflections on the topic at the heart of this text, that is, the form and characteristics which should accompany the practice of this fundamental right.

- a) The time when religion was confused with the State should no longer remain. In some parts where this is still defended, it should become history. This is because the characteristics of our current, pluralist, open and changing society, in the context of a democracy, are totally incompatible with an official commitment to a single religion by the State. This is also incompatible with the freedom of religion, freedom of thought, freedom of expression, freedom of assembly, freedom of association and, in general, freedom of conscience. State adhesion to one creed goes against pluralism which must be respected in multicultural societies, such as the one which we live in. It also steers the work of the state towards spheres which belong to the area of a people's intimacy and privacy and restricts, if not impedes, the proper running of a democracy and due respect to human rights.
- b) The battle to gain religious freedom in places where it does not exist or is seriously limited is a necessary battle and, above all else, a battle that can be won. Evidence shows that exclusive religious fundamentalists, or dictatorial atheists, cannot resist in the long run the force of religious freedom because it is based on a basic need of the human spirit which is stronger than discrimination, persecution and contempt. The battle can be won.
- c) The establishment of religious freedom should be accompanied by the acknowledgement of churches as having social hierarchy. This acknowledgement should be given to organizations that meet and satisfy public objectives and that contribute to the common good of society. It is not about trying to make a confessional State or to confuse religion with a task that belongs entirely to public bodies. It is more about giving public status to churches. By this we mean giving each creed its space, as well as a place and the autonomy needed to assure that religious freedom is fully exercised. Their development leads to a special contribution to society through the role which they play, even when their beliefs are not shared by many members of that

society and even by non believers. At the same time, social consecration by having public status also ensures legal control which must not only guarantee the proper exercising of this freedom, but also ensure that the responsibilities which these rights bring with them are also fulfilled. These responsibilities have to do with respect between different creeds or between those who profess a religion and those who choose not to follow any religion. Respect, more than mere tolerance.

- d) By acknowledging the exercising of religious freedom by entities which enjoy public status, it not only allows them autonomy and enables them to establish sufficient legal regulations; it also has another particularly noteworthy aspect. It constitutes an acknowledgement by the State of the objective value which religious practice has in a community. Contribution to community peace and the common good require significant support which the spiritual uplifting of members of society procures. The promotion of a religion is, perhaps, the human power which helps to strengthen these objectives. This is supported by history and validated by empirical science by acknowledging time and again that all forms of spiritual surmounting, reaffirmation of the transcendence of religious faith, strengthening of human dignity, and promoting and spreading of moral principles effectively contribute to better personal growth and balance. They also contribute to progress within a society, probably more so than any other activity. That determination is the focal point of all religion and thus is essential for all culture and for the very survival of the State itself.
- e) Despite everything I have said, I am conscious that as we speak that nowadays new challenges have arisen in different parts of the world not imposed by one creed to another, but from some non believers to all religion followers. In the name of liberty some have rightly claimed their freedom not to be interfered by any creed in their way of living. But as this feeling and concepts grows, still in the name of some kind of liberalism on modernism, the interest is switched not only to neutralize religion but rather to get rid of its influence in society. Imposing new values, exhibiting some violent attitudes towards believers, the initial self respect is turning in many cases to a proactive negative profile. In the name of minority groups or founded in particular situations, such as immigration problems in Europe or the responsibility assigned to a religion instead of persons as the cause of 9/11, or just because faith wouldn't be rationally sustained, whichever the reason is, a trend is growing to condemn religious beliefs or at least to reduce its influence in public affairs drastically. Disguised as liberalism, intolerance has found new grounds for action.

But again, no matter the motives and arguments given to struggle against religious freedom, human nature is stronger. We need space and autonomy to develop our own religious or spiritual beliefs and nothing can stop us from exercising this basic right. Hence its time to see at each others creed not as enemies to our own faith but as partners in the effort to ensure the chance for any person to choose its way, whether you are a believer or not. It isn't a creed that is at stake but religious beliefs or its practice as such

Note from the author: To prepare this presentation I have consulted the document “Antecedentes Legislativos sobre la Libertad de Culto” (“Legislative Background of Religious Freedom”). This document was produced by the Chilean National Congress’ Library on September 12<sup>th</sup>, 2011.