

Religion and the Secular State in Sweden

I. THE RELIGIOUS AND SOCIAL COMPOSITION OF SWEDEN

In 2009, the population of Sweden amounted to approximately 9.3 million inhabitants. With regard to area, Sweden is the third largest country in Western Europe.¹ Sweden is a constitutional monarchy with a parliamentary democracy. The country scores high on a wide range of international indicators, such as standard of living, longevity, gender equality, well-being, and well-functioning democratic institutions. A large majority of the population (73 percent in 2008) are members² of the Church of Sweden, which is the Evangelical Lutheran former State Church of the country.³ More than 40 percent of all marriages celebrated in Sweden in 2008 were officiated within the Church of Sweden. Approximately 60 percent of all new-born children were baptized, and 83 percent of all dead were buried according to the rites of the Church of Sweden.⁴

In spite of these figures, Sweden is regarded as a very secular country, religion being basically “private matter” not to be publicly demonstrated. In fact, Sweden is often described as one of the most secular countries in the world.⁵ Reference is made to a “Swedish paradox” reflecting a situation where the majority population has only a weak Church-associated belief in God (and resurrection), but still continues to make use of the rites of the Church in important life situations.⁶ According to statistics from the Church of Sweden, only 2 percent of its members regularly attend worship services.⁷ According to a recent European Barometer Study, only 23 percent of the Swedish population admit believing in God.⁸ Other available figures indicate that as many as 85 percent of the population identify themselves as non-believers.⁹ Studies classify 90.1 percent of the population as being of “Christian Protestant origin,” 1.8 percent as Catholics, and 8.2 percent as of “other” religious belief.¹⁰ The category “other” consists mainly of Muslims (Islamic religions).¹¹ Yet other studies claim that approximately 80 percent of the

MAARIT JÄNTERÄ-JAREBORG is Professor of Private International Law and International Civil Procedure and former Dean of the Faculty of Law at Uppsala University. She is a Member of the Curatorium of the Hague Academy of International Law and Foreign Member of the Finnish Scientific Society and the Finnish Academy of Science and Letters. She is Deputy Director of Uppsala University’s Center for Excellence “The Impact of Religion: Challenges on Society, Law and Democracy.”

¹ See <http://www.sweden.se/facts>.

² It should be noted, however, that until 1996 all citizens of Sweden were automatically born into the Church of Sweden on condition that at least one of the parents belonged to the Church. Since then, but not retroactively, one must, as a rule, be baptized to become a member of the Church. Only Swedish citizens or foreign citizens residing in Sweden may become members of the Church. SOU 1997:41, 86.

³ Available at <http://www.svenskakyrkan.se/default.aspx?di=37017>. Membership rates are, however, going down. In 2004, e.g., 80 of the population were members of the Church of Sweden. See A. Bäckström, N. Edgardh Beckman, P. Pettersson, *Religious Change in Northern Europe, The Case of Sweden* (2004), 18.

⁴ See <http://www.svenskakyrkan.se/SVK/ENGLANG.HTM> (visited 29 December 2009). The number of baptized children can be compared with the number from 2003, when 70 percent of all new born children were baptized within the Church. In comparison, burials within the Church had dropped less, from 87 percent to 83 percent. See Bäckström et al, *Religious Change in Northern Europe, the Case of Sweden*, 18.

⁵ See, e.g., SOU 2009:52, 86; T. Pettersson, in I. Svanberg and D. Westerlund, *Religion i Sverige* (2008), 34–38.

⁶ Bäckström et al., *Religious Change in Northern Europe, The Case of Sweden*, 87–88. “What in normal everyday life is *religiously abnormal* in Sweden, is considered *religiously normal* in *abnormal* situations.” Id., 139.

⁷ Available at <http://www.svenskakyrkan.se/SVK/eng/liturgiy.htm>.

⁸ *Special Eurobarometer 225 / Wave 63.1*, European Commission January – February 2005, 9. These results are rather similar with those of a World Value Survey, carried on in the 1990s and 2006 and described by Pettersson in Svanberg and Westerlund, *Religion i Sverige*, 34–38.

⁹ Available at <http://en.wikipedia.org/wiki/Sweden>.

¹⁰ Available at <http://en.wikipedia.org/wiki/Sweden>.

¹¹ The number of “Muslims” in Sweden is estimated to lie between 250,000 and 300,000. Of these, approximately 100,000 are believed to be religiously active. See Bäckström et al., *Religious Change in Northern*

population of the Nordic countries, Sweden included, have some sense of belonging and identification with their national “Folk Church.”¹² Of the political parties represented in Parliament, only one – The Christian Democrats – have issues of religion and faith on their agenda. This party is the smallest of the bourgeois parties at present in charge of the Government, with approximately 5-6 percent of the vote. But even for leaders of this Party, it would be most odd and unusual to refer to God in their public speeches or in the public arena in general.

Until recently the population of Sweden was unusually homogeneous as regards to ethnicity, language, and religion. During the last sixty years Sweden has transferred rapidly from a country of emigration into a country of immigration with ethnic, cultural and religious diversity. Today, more than 2 million inhabitants are of foreign origin, meaning that their own or their parents’ place of birth was in a foreign country. This number can be compared to the situation in the early 1900s when 0.7 percent of the population was foreign-born. Today, more than 200 languages are spoken in the country, as compared with the previous total dominance of the Swedish language.

Sweden has also been transformed into a multi-confessional society. As a sequel to immigration into Sweden, religion has gained a new kind of visibility in the Swedish society. This is demonstrated through newly built mosques (with minarets), religiously articulated dressing codes, celebration of Ramadan, and increasingly, the founding of schools with a religious curriculum. Much of the new visibility of religion in Sweden, then, is due to Islam’s new presence in the country, which in turn challenges the majority society’s understanding of the role of religion and neutrality in respect of confession.¹³

Is it “neutral” (or “neutral enough”) to celebrate the finishing of school terms in a church building (Evangelic Lutheran), as public schools in Sweden have done for generations, or does it have a “hidden” religious meaning? If so, should this tradition be discontinued, because it is a form of coercion against pupils of another faith or belief? Religion attracts increasing attention in the Swedish public debate also due to other changes in the society.¹⁴ In this discussion, the contents of the concept of “freedom of religion and faith” have been at stake in respect of issues such as alleged hate-speech, Islam, homosexuality, and recognition and officiating of same-sex marriages by faith communities. Important cases have been examined not only by Swedish courts but also by the European Court of Human Rights.

II. THE RELATIONS BETWEEN RELIGION AND THE STATE OF SWEDEN HISTORICAL OVERVIEW

A. *From a Catholic Church Province to a Unified Evangelic Lutheran Church and State*

The present relationship between the State and religion in Sweden is the result of a long and complex historic development, characterized by deep tensions between conflicting ideas, interests, and forces.¹⁵

Christianity was gradually established in Sweden during a period of three centuries (800-1100 CE). Sweden became an ecclesiastic province of its own within the Catholic Church, under the direction of a Swedish archbishop placed in Uppsala who in turn was under the Pope. The Church and Canon Law had a considerable influence on the societal developments and internationalization of Sweden as well as on the laws of the country. Canon law came to co-exist together with the provincial laws of the country. The Church,

Europe, The Case of Sweden, 83. According to M. Sayed, *Islam och arvsrätt i det mångkulturella Sverige, En internationellt privaträttslig och jämförande studie*, (2009), 81, up to 400,000 can be estimated to be Muslims, in one sense or another.

¹² See Bäckström et al., *Religious Change in Northern Europe, The Case of Sweden*, 88–90, 139–40.

¹³ SOU 2009:52, 86.

¹⁴ The Internet is often mentioned as a factor of particular importance. Also new forms of spiritualism and various forms of “private religions” have emerged and become increasingly popular. Id.

¹⁵ SOU 1997:41, 53. This presentation is largely based on that report, 53–90.

which came to own approximately one fifth of all land in Sweden, took active part in the care of the sick and the poor, and in education. The Church founded the country's first University in 1477 in Uppsala.

Sweden was one of the first countries in Western Europe to embrace of the ideas of the Reformation (*Västerås Parliament* 1527). Reformation gave an opportunity, i.a. to weaken the powers and influence of the Catholic Church in Sweden and to confiscate its property, to get rid of the Danish influence in the country, and to unify the country. In 1593, the *Convocation of Uppsala* took the final decision that the Evangelist-Lutheran faith was to be the national religion of Sweden under the supremacy of the King. A State Church – the Church of Sweden – was established. Unity of faith became the foundation of the State for the following 300 years.¹⁶

The King, the Government, members of Parliament, judges, and all government officials could only be of the Evangelic Lutheran faith. A certain proportion of the members of Parliament consisted of clergymen.¹⁷ The Church not only functioned as a religious congregation, but also as a forum for social and general public issues, setting the standard for societal values and the culture of the land, which passed from one generation to another unchanged.¹⁸ The relations between the Church and the State were modelled on German, Lutheran inspired examples. A distinction was made between “worldly regulations” and “spiritual regulations,” both originating from God but to be kept separate.¹⁹ The Church of Sweden was organized in a similar manner as the previous Catholic Church province of Sweden, but with different functions and less autonomy in relation to the State.

During the centuries that followed, to lead a religiously active life under supervision of the Church of Sweden was generally considered a part of being a national of Sweden.²⁰ During a major part of this period, dissenting religious views were criminalized and severely punished. Nationals of Sweden who tried to apostate from the pure evangelical faith were expatriated.

B. *Gradual Dissolution of the Unity of Faith and the Unified Church*

During the course of the 18th century, the State slowly began opening up to religious freedom by allowing immigrants to practice their religion in Sweden.²¹ In the 1809 Constitution of Sweden, the requirement of religious unity was abolished. Another aim of the Constitution was to safeguard the freedom to exercise one's religion, or to abstain from exercising it.²² This political turn was probably caused by the liberal ideas of the Enlightenment. Nevertheless, it was not until the 1860s that it became legally possible for Swedish nationals to leave the State Church – but then only for the purpose of entering into another congregation, approved by the State. An unconditional legal right to leave the Church of Sweden without having to enter another congregation was not granted until 1951 through the enactment of the Religious Freedom Act (1951:680) (*Religionsfrihetslagen*). Freedom from religious affiliation became an important civic right, expressed by the so-called negative principle of religious freedom.²³ Since the 1951 enactment, the protected freedom of religion is, basically, a right for the individual and not for the collective. Another landmark event took place in 1958, when it was decided that the Church of Sweden should allow female ministers. This decision, which divided

¹⁶ Sweden, Norway, Denmark, Iceland and Finland form together what may be called to Protestant Nordic Region. See Bäckström et al., *Religious Change in Northern Europe, The Case of Sweden*, 33.

¹⁷ This was an automatic legal right of the clergy which came to an end only in 1863.

¹⁸ See Bäckström et al., *Religious Change in Northern Europe, The Case of Sweden*, 36.

¹⁹ SOU 1997:41, 58–59.

²⁰ Government Bill, Prop. 1997/98:116, 17.

²¹ This development was dictated out of concern for the State's economy and to make it possible to recruit qualified (Christian) craftsmen into Sweden. Also in 1782, adherents of Judaism received certain rights to exercise their religion in Sweden. See SOU 1997:41, 62–63.

²² This meant, i.a., that it was no longer compulsory to attend services and to take part in the Holy Communion. SOU 1997:41, 63.

²³ See Bäckström et al., *Religious Change in Northern Europe, The Case of Sweden*, 47.

the Church, is an example of strong State interference.²⁴

The following decades proceeded with discussions, surveys, and analyses on the State-Church relations by several national committees appointed by the Government. The point of departure has been the special legal position of the Church of Sweden in relation to societal developments. Should the Church remain a part of the State organization, or should it be separated in full or in part? Many of the previous social functions of the Church, such as medical care, education, and social care had gradually become the responsibility of the State. A strong welfare State, based on the idea of a "Folk Home,"²⁵ was built up in the decades following the Second World War, mainly under the influence of the Swedish Social Democratic Party.

The country experienced strong economic growth and the standard of living, health, and education rose in all levels of society. New legislation, based on the idea of gender equality paved the way for women's entry into the labour market and abolished the remains of religious values in fields such as family law.²⁶ In this sense, the law was "secularized," i.e., liberated from "the chains of religion." The Church became primarily an "administrator of a specifically religious social sphere," and as a result suffered a decline in its social authority.²⁷ Religion became increasingly regarded as belonging to the private sphere of life only. Sociology of religion studies consider these developments as the explanation to why Church engagement in present-day Sweden is among the lowest in the world.²⁸

On 1 January 2000 the separation between the State and the Church of Sweden was carried out (hereafter referred to as "the State-Church separation" or "the separation"). The Act (1998:1591) of the Church of Sweden established the fundamentals of the Church of Sweden as a religious community, in line with the self-image of the Church.²⁹ The Church of Sweden is described as a democratically³⁰ governed *Folk Church of Sweden*,³¹ based on evangelical Lutheran articles of faith but open to everybody and operating everywhere in Sweden. Section 1 of Act (1997:1591) of the Church of Sweden states: "The Church of Sweden is an Evangelical Lutheran Community of faith, manifested in parishes and dioceses. The Church of Sweden also has a national organisation." The Church consists of thirteen dioceses, each led by a bishop, working closely together with a democratically elected diocesan board. On a national and international level, the Church is represented by the Archbishop of Uppsala. The relevant regulations are contained in the Ordinance of the Church of Sweden (1999). The Ordinance, which is an internal church regulation, regulates issues such as the decision-making procedure of the Church, the ordination of bishops and clergy, and the Church's financial administration. The highest decision making body is the General Synod, which meets twice a year. As regards organization, the Church consists of 2,219 parishes, 1,025 pastorates, 152 deaneries and 13 dioceses.³² The Church is in charge of approximately

²⁴ As a compromise, a so-called conscience clause was adopted through Act 1958:514, enabling the dissenting priests from cooperating with female ministers. This clause was applied until 1983.

²⁵ The underlying idea was a vision of the society as a "large family," replacing the earlier welfare functions of the family. See Bäckström et al., *Religious Change in Northern Europe, The Case of Sweden*, 42-43.

²⁶ See M. Jänterä-Jareborg, "Family Law in a Multicultural Sweden – The Challenges of Migration and Religion," *Uppsala-Minnesota Colloquium: Law, Culture and Values, De lege* (2009): 155–56.

²⁷ See Bäckström et al., *Religious Change in Northern Europe, The Case of Sweden*, 14.

²⁸ See Pettersson, in Svanberg and Westerlund, *Religion i Sverige*, 34, 37.

²⁹ Government Bill, Prop. 1997/98:116, 38.

³⁰ Church elections take place every four years. A right to vote belongs to all members of the Church, starting at the age of 16 years. During the last elections, slightly more than 10 percent of those qualified to vote made use of their vote.

³¹ The idea of a "Folk Church" is to be seen as a counterpart to the idea of the Swedish society as the "Folk Home." It is a vision of the Church meeting the challenges of the modern society, as a popular movement in a situation which no longer is unitary/homogenous. The general elections are an example of giving the people "the folk" and influence. See Bäckström et al., *Religious Change in Northern Europe, The Case of Sweden*, 44–47, 65. See also SOU 2009:52, 87.

³² Church of Sweden Calendar 2003. See Bäckström et al., *Religious Change in Northern Europe, The Case of Sweden*, 75.

3,500 church buildings.

Since the separation of the State and the Church, religious communities in Sweden were placed on a formally equal legal footing, the State being officially neutral in respect of confession. A special enactment, the Act (1998:1593) on Religious Communities, treating all denominations on a pluralistic basis, was adopted simultaneously with the Act (1998:1591) on the Church of Sweden. The Church of Sweden ceased to be a part of the public administration of Sweden and became a voluntary organization.³³ The separation had been prepared for well in advance, i.e., by removing specific, in nature “secular,” functions of the Church to State bodies. For example, in 1991 the Swedish Tax Registration Offices (*Skatteverket*) took over the previous function of the Church of Sweden to maintain and keep the national registration records.³⁴ The Church kept, nevertheless, some of its historic privileges and special public commissions. Through the special enactment mentioned above, the Church of Sweden acquired a special legal status not comparable to any other association or body in Sweden.³⁵ This enactment “assigns the Church a semi-official role both as a state-regulated institution and as a religious organization.”³⁶ This has been explained as a compromise between the necessity to pay regard to this Church’s position in the history of Sweden and the goal of treating religious denominations equally in Sweden.³⁷

III. SWEDISH DEBATES RELATING TO THE CHURCH-STATE RELATIONSHIP, SECULARISM, AND THE SECULAR

The separation between the State and the Church of Sweden was preceded by several decades of debates and discussions on how the State and the Church of Sweden should relate to one another. Several Committees appointed by the Government studied these issues. Their recommendations varied from maintaining the constitutional bond with the State and the basic structure and functions of the Church, to a complete separation between the Church and the State.³⁸

The legal situation of today corresponds more to the second model, although there are also exceptions. The distinction that still needs to be made between the Church of Sweden and other denominations is motivated primarily by Sweden’s history and the role played by the Church. The Church of Sweden is subject to specific legislation and is in charge of several semi-public commissions. It continues to play a unique role in particular with respect to the administration of graveyards and funerals as well as the care of the Sweden’s cultural-historical heritage in form of old church buildings and other property belonging to the Church.

Secularism can mean different things,³⁹ for example, that the previous functions of churches are taken over by secular bodies. As described above, Sweden is largely secular in this respect. Another indicator of secularism is low participation of the public in church activities. Also in this respect, Sweden is secular. Yet another understanding of secularism is that religion is kept out of the public arena. In this respect, the situation is more complex in Sweden, as shall be developed in the next sub-sections.

There are indicators implying an increasing religious engagement in Sweden alongside with the country’s transformation into a pluralistic, multicultural society. In this respect,

³³ The Church of Sweden is the largest independent organization in Swedish society. *Id.* at 61.

³⁴ In 1996, Swedish citizens ceased to become automatically, upon birth, members of the Church of Sweden if one parent was a member.

³⁵ See Bäckström et al., *Religious Change in Northern Europe, The Case of Sweden*, 36.20.

³⁶ *Id.* Others emphasize that the Church of Sweden, as well as the registered religious communities, are not public law subjects, but associations of private (civil) law. It follows that the “semi-official role” of the Church is contested. See, e.g., D. Hanqvist, *Religion som privatangelägenhet – stat-kyrka-reformen, Förvaltningsrättslig tidskrift* (2002), 389–93.

³⁷ Government Bill, Prop. 1997/98:116, 18. See also SOU 2009:52, 88.

³⁸ Before the separation was finally carried out, many preparatory legislative steps had been taken. See SOU 2009:52, 87.

³⁹ See Pettersson, in Svanberg and Westerlund, *Religion i Sverige*, 32–38.

the stance taken by the Swedish State is mixed. On the one hand an official aim is to promote multi-confessionality in the Swedish society. Religious activities are considered an advantage to society and worthy of various forms of state support. The State also strives to promote co-operation among the various religious communities in the country.⁴⁰ On the other hand, the State strives not only at remaining neutral in respect to confession but also at protecting the individual from any form of religious coercion.⁴¹ The constitutional protection of the equal rights and human dignity of all individuals takes priority in cases of conflict. An illustrative example of the Swedish position is that the State provides financial support to religious communities. This support is, nevertheless, conditional. The denomination must, i.a., be registered as a religious community, which involves a certain degree of State control, and contribute and confirm the fundamental values upon which the Swedish society is based, i.e., those values that keep society together.⁴²

Free-standing confessional schools are much debated in Sweden. In 2008, there were 100 such schools authorized by the competent State authority and also funded by public means. Schools with a confessional orientation constitute approximately 10 percent of all authorized free-standing schools in Sweden. The right of religious groups to maintain their identity and confession in schools of their own is confronted with the risk that certain minorities will otherwise be isolated from the rest of society.⁴³ The State has chosen to promote a sense of belonging and identity, for example, by permitting schools with a confessional orientation, as long as they can be considered to supply education of the same quality as that of the public schools.

The constitutional limits in Sweden with regard to multi-culture and multi-confessionality have also caused debate in other respects. In 2008, the Swedish government appointed a committee to investigate and propose special education for Imams in Sweden on Swedish society, its traditions, language, institutions, and laws. The purpose of this commission was, basically, to create means to facilitate integration of new immigrant groups in Sweden. Interestingly enough, in its report to the Government in 2009, the committee abstained from delivering any such proposals by reference to the Constitutional rights of individuals and to the official confession-neutral stance of the State.⁴⁴ This report is, at present, subject to a general consultation procedure among the concerned institutions and bodies in Sweden. Among the Muslim communities in Sweden, the reaction to special education initiatives focused on the communities' religious leadership has been mixed.

Generally speaking, the churches have become more visible in society during the last two decades and their assistance has come under demand in situations of public crisis following, for example, large scale accidents, often under dramatic circumstances where many lose their lives or where people of various ethnic origins are involved. Today, the important role played by religious communities in emergency management is both recognized and financially supported by the State.⁴⁵

Sociology of religion studies indicate that religion is in Sweden to stay but that it is taking new forms; some even see clear trends of de-secularization.⁴⁶ Also, the State advocates pluralism, which includes recognition of the value of religion and exercise of religion and the co-existence of various religions. The Act (1998:1593) on Religious Communities treats all denominations on a pluralistic basis. One major reason for this stance is the policy of the State that all citizens should be able to feel that they belong to

⁴⁰ SOU 2009:52, 93.

⁴¹ Id., 98.

⁴² See *infra*, Sections V, C and VIII, B.

⁴³ See K. Borevi, in Svanberg and Westerlund, *Religion i Sverige*, 381.

⁴⁴ SOU 2009:52, 12–13.

⁴⁵ The State Commission for Government Support to Faith Authorities is in charge of coordinating the religious communities' contributions in cases of emergency and for granting State subsidizes. See *infra*, Section IV, H.

⁴⁶ See Pettersson, in Svanberg and Westerlund, *Religion i Sverige*, 32–38.

the society, that they have equal rights, so as to provide a context where all citizens are willing to participate in society. Differences of religion and faith should not be an obstacle for achieving integration.

In Sweden, research in particular within the sociology of religion prefers to use the expression “religious change” instead of secularization.⁴⁷ The semi-official position of the Church of Sweden is, however, difficult to combine with the official rhetoric/ideology which, on certain conditions, treats all religious communities alike. The image of a Folk Church is also difficult to combine with the society’s transformation into a multicultural society.⁴⁸ Following the State-Church separation, the Church’s membership rates have declined and continue to decline.⁴⁹ Still, the great majority of the population remain members of the Church of Sweden. All in all, the Swedish position would seem to qualify as that of an “accommodationist regime,” committed to the neutrality of the State but allowing high levels of cooperation with religions.⁵⁰

IV. CONSTITUTIONAL AND OTHER LEGAL CONTEXT

C. *Relevant Provisions – Past and Present*

In 1634, the first Constitution of Sweden was enacted. Its initial provisions established religious unanimity as the foundation of Swedish society and law, the purpose being to unite the country religiously in order to strengthen the State’s political foundations and facilitate governance.⁵¹ These provisions were transferred unaltered to the subsequent constitutions, until the Constitution of 1809. The 1809 Constitution was based on a more liberal outlook and no longer made any reference to religion as a foundation of the State and its legal order. The 1809 Constitution, under the influence of the Enlightenment, contained explicit provisions on freedom of religion, but only in the sense of providing the individual the freedom to exercise his or her religion.

The present 1974 Constitution of Sweden, through provisions in the Ordinance of Government (*Regeringsformen*), safeguards the freedom of each citizen to alone, or with others, exercise his or her religion without state infringement.⁵² It guarantees, likewise, the individual’s freedom to disassociate from religion and the freedom of not having to acknowledge one’s views, including religious views.⁵³ This provision has also been characterized as a constitutional guarantee of religion as a “private matter” of the individual.⁵⁴ The Act (1951:680) on religious freedoms was repealed on 1 January 2000, as redundant in relation to the provisions on religious freedom in the Ordinance of Government.

The constitutionally protected freedom of religion cannot in itself be restricted; it is regarded as an absolute right of the individual. Freedom of religion requires treating all religious communities alike. However, the exercise of religion is often linked with other fundamental freedoms, such as the freedom of assembly and the freedom of expression. These freedoms can under certain conditions be restricted as long as the limitations can be

⁴⁷ See Bäckström et al., *Religious Change in Northern Europe, The Case of Sweden*, 20.

⁴⁸ T. Ekstrand’s doctoral dissertation “The Limits of the Folk Church – A Theological Analysis of the Transition from State Church to Free Folk Church,” (2002) (in Swedish) focuses on this challenge. See also Bäckström et al., *Religious Change in Northern Europe, The Case of Sweden*, 65.

⁴⁹ This development may have various reasons. Since 1996, e.g., a Swedish citizen is no longer (upon certain conditions) automatically born as a member to the Church. Another reason is that once the Church was separated from the State, those who are not interested in the activities or rites of the Church felt it to be a logical decision to leave the Church. A third reason may be the church fees that are levied by the State in connection with tax revenues. Many tax payers, seeing the size of the church fee on their tax sheet, feel motivated to leave the Church. See *infra*, Section VII, C.

⁵⁰ See Questionnaire, 1.

⁵¹ See SOU 1997:41, 60–62.

⁵² Ordinance of Government, Ch. 2 § 1.6.

⁵³ Ordinance of Government, Ch. 2 § 2.

⁵⁴ SOU 2009:52, 92.

justified with regard to fundamental values of a democratic society. Although the right to religion and to the exercise of religion have not been defined by law, they do not, for example, justify any acts that normally are penalized.⁵⁵ Nor can freedom of religion infringe upon other individuals' constitutionally protected rights.⁵⁶

The European Convention on the Fundamental Freedoms and Human Rights (1950) was incorporated into Swedish law through a special enactment in 1994⁵⁷ through which the Convention rights obtained a constitutional status.⁵⁸ As a result, Swedish citizens enjoy double religious protection from the State, – through the Constitution and through the Convention.⁵⁹ In 2003, a provision was added to the Ordinance of Government stating, i.a., that the prospects of religious minorities to maintain and develop their own culture and denomination should be promoted.⁶⁰ This provision states a goal for the public sector in Sweden without being legally binding.

An exception to the principle that no religious community in Sweden is to play any specific role in the confession-neutral governance of the country⁶¹ follows of the Ordinance of Succession (*Successionsordningen*),⁶² which is part of Sweden's Constitution. According to this Ordinance, the Head of State (the King or Queen of Sweden) must be of the "pure Evangelical faith." If the Head of State apostates to another religion, he or she must abdicate. Also, princes and princesses shall be brought up in accordance with the "pure Evangelical faith."⁶³

These constitutional demands concerning confession have not been repealed as other constitutional provisions have on this issue. The reason is that the confession of the Head of State is considered to be a matter of state law rather than a matter of religious freedom.⁶⁴ The Head of State is granted religious freedom through his or her right to abdicate.⁶⁵ These constitutional requirements have been questioned, but they are not subject to any pending law reform. They can be claimed to constitute the major difference of treatment in Swedish law on the basis of religion or belief.

According to the Ordinance of Government, all regulations regarding religious communities require the form of law.⁶⁶ These regulations are found in the Act (1998:1593) on religious communities, as well as in the Act (1998:1591) on the Church of Sweden. Furthermore, these regulations can only be changed either with qualified majority in Parliament, or after two voting procedures with a general election in between.⁶⁷ It follows that both enactments are, thus, constitutionally protected from hasty or frequent legislative changes.

The Constitution does not contain any explicit provisions on State neutrality on religious issues or on the principle of equality when dealing with religions. Nevertheless, this is implied, and it is also confirmed by statements in *travaux préparatoires* preceding the Church-State separation reform.⁶⁸ In 2003, a provision was inserted into the Constitution obliging the State to support the prospects of religious minorities to maintain and develop their own culture and denomination.⁶⁹ This provision can be seen as an expression of the general goal of equal treatment of different religions and faiths.⁷⁰ All

⁵⁵ See SOU 1997:41, 94.

⁵⁶ SOU 2009:52, 92.

⁵⁷ Act (1994:1500) on the Implementation of the European Convention.

⁵⁸ Ordinance of Government, Ch. 2 § 23.

⁵⁹ See SOU 2009:52, 94.

⁶⁰ Ordinance of Government, Ch. 1 § 2 ¶ 5.

⁶¹ This question is also addressed in the Questionnaire, Question No. 6.

⁶² This Ordinance dates back to 1810, but was revised in 1979, i.a., to enable cognatic succession.

⁶³ Ordinance of Succession (to the Throne), § 4. See Government Bill, Prop. 1997/98:116; Government Bill, Prop. 1997/98:49.

⁶⁴ Government Bill, Prop. 1997/98:49, 17–19.

⁶⁵ See SOU 1997:41, 117.

⁶⁶ Ordinance of Government, Ch. 8 § 6.

⁶⁷ See *id.*

⁶⁸ Government Bill, Prop. 1997/98:116, 19.

⁶⁹ Ordinance of Government, Ch. 1 § 2 ¶ 5. See also *supra*, Section III, *D.*

⁷⁰ Government Bill, Prop. 2001/02:72, 19.

individuals should be able to feel included in the society. It also provides grounds for the granting of State subsidies to religious communities.⁷¹

The Ordinance of Government contains a general delegation clause which stipulates that administrative duties of a public law nature can be delegated to, i.e., a *registered religious denomination*.⁷² This clause constitutes the constitutional ground for the State's delegation to religious denominations the competence to officiate marriage ceremonies with full civil law effects.

D. State Bodies Dealing with Religious Denominations

In Sweden, there are two state bodies that deal with various issues related to religious denominations, namely the Commission for Government Support to Faith Communities (*Nämnden för statligt stöd till trossamfund, SST*)⁷³ and the Legal, Financial and Administrative Services Agency (*Kammarkollegiet*). The Commission is in charge of distributing the State's financial support for religious denominations⁷⁴ and carries on a dialogue with the religious communities in the country about the prerequisites for the grants. In addition, it handles matters concerning the denominations' roles in the coordination of emergency management. The Agency, in turn, is in charge of the formalities relating to the registration of religious denominations.

Under Swedish law, in order to obtain legal personality, religious congregations must establish themselves as an association recognized by the State.⁷⁵ Since 1 January 2000, a special form of association is available for religious congregations for this purpose called "registered denomination of religion (or faith)" (*registrerat trossamfund*).⁷⁶ The Agency examines the formal criteria for registration, and does not regard or intervene in the denomination's confessional issues. The Agency is also in charge of the State's delegations to denominations regarding the right to officiate marriage ceremonies.⁷⁷ The assignments of the above-mentioned bodies do not extend to any issues of a confessional character.

In addition, in 2000 the Government established a special Council for contact with faith communities (*Regeringens råd för kontakt med trossamfunden*),⁷⁸ chaired by the Minister of the Government in charge of issues relating to religious denominations.⁷⁹ The Council consists of eighteen members, including representatives from the religious denominations in Sweden. The Council, which meets three to four times per year, is designed as a forum for contact, information, and debate on issues of joint interest. Formal agreements between the State and religious communities do not belong in the Swedish model.

The Swedish State has delegated the right to officiate marriage ceremonies to various faith communities in Sweden. The same conditions for delegation apply in this respect to all religious denominations. The State offers assistance with the levying of registered religious denominations' member fees. Prior to the State-Church reform, this assistance was only available to the Church of Sweden, but now all congregations have a possibility to apply for this assistance.⁸⁰ This form of assistance requires that the community in question contributes to maintaining and strengthening of the fundamental values on which society is based. It is also required that the community is stable and vital.⁸¹

⁷¹ SOU 2009:52, 92. See further infra, Sections IV, H and V, C.

⁷² Ordinance of Government, Ch. 11 § 6.

⁷³ See <http://www.sst.a.se>

⁷⁴ Act (1999:291) on Fees to Registered Religious Communities.

⁷⁵ See Act (1998:1593) on Religious Communities.

⁷⁶ See Regulation (1999:731) on Registered Religious Communities, § 2.

⁷⁷ Act (1993:305) on the Right to Officiate Marriage within a Religious Community, § 2.

⁷⁸ Available at <http://www.regeringen.se>.

⁷⁹ At present (2009), this is the Ministry of Culture.

⁸⁰ See infra, Section V, C.

⁸¹ See 16 § Act (1998:1593) on Religious Communities.

V. THE STATE AND RELIGIOUS AUTONOMY

E. *Confessional Neutrality and Autonomy of the Religious Denominations*

Since the separation between the State and the Church of Sweden, the official goal of the State is confessional neutrality. Religious denominations are autonomous and free from any State interference. The State does not interfere with the contents of any confession, the procedure for selection or choice of staff, or the denomination's financial affairs. Nevertheless, the State has access to certain instruments which in fact constitute a mechanism of control, at least to a certain extent.

Swedish law requires that a religious denomination must be founded in the form of an association, recognized by the State as a "registered community of religion (or faith)" (*registrerat trossamfund*),⁸² in order to obtain legal personality.⁸³ A denomination of religion or faith is defined by the legislation as a community for religious activities, including the arrangement of services.⁸⁴ Registration requires that the denomination has regulations stating its purpose and objectives, a name, board, names and other contact information of the members of the board, and those with the rights to represent the denomination.⁸⁵ Registration is granted by a state body, called The Legal, Financial and Administrative Services Agency (*Kammarkollegiet*),⁸⁶ which means that a state body is in charge of assessing which kind of a community qualifies as a religious community. This control is, nevertheless, aimed to be of a purely formal nature.⁸⁷ The granting of registration, in turn, is a precondition for granting State support to the denomination in question or for State delegation of any commissions involving exercise of law. State support takes place in the form of financial subsidizes or assistance with the levying of registered religious denominations' member fees in connection with income taxation in Sweden.

The State may provide financial subsidizes to a registered religious denomination only upon condition that the denomination contributes to the maintenance and development of fundamental values of the society. According to statements in a Government Bill,⁸⁸ it is required that the denomination counteracts all forms of racism and other discrimination as well as violence and brutality. The denomination is expected to contribute to equality between men and women. Its members and staff are to be guided by ethical principles which correspond with the fundamental democratic values of the society. These requirements do not, however, mean that the confession of the denomination should in itself be "democratic" or that the denomination's staff must be elected in a democratic procedure.⁸⁹ These issues are considered to remain outside of the scope of secular law. Financial subsidizes are granted upon application by the Commission for Government Support to Faith Communities,⁹⁰ each application being assessed individually. State subsidizing of religious denominations is based on the idea that the denominations are a part of popular movements in society and that they perform functions that are to the advantage of society. Due to these requirements it has been claimed that secular law, instead of defining religion, uses an "instrumental definition of religion" relating to societal advantage as a condition for state funding.⁹¹

⁸² See Regulation (1999:731) on Registration of Religious Communities, § 2. This form of organization was considered by the legislator to best correspond to the religious denominations' self-image.

⁸³ Act (1998:1593) on Religious Communities, §§ 7–9.

⁸⁴ Act (1998:1593) on Religious Communities, § 2.

⁸⁵ See Act (1998:1593) on Religious Communities, §§ 7–8. The "contact information" includes the social security numbers of each member – or in lack of such – the date of birth. The Agency in charge of registration must be informed without delay of any change in the data of relevance for the registration.

⁸⁶ See *supra*, Section IV.

⁸⁷ Government Bill, Prop. 1997/98:116, 25, 27.

⁸⁸ Government Bill, Prop. 1998/99:124, 64.

⁸⁹ See SOU 2009:52, 94.

⁹⁰ See *supra*, Section IV.

⁹¹ A. Jarlert, *Individuell eller institutionell religionsfrihet?*, 4. (To be published in a forthcoming Anthology

On the other hand, it is today evident that representatives of each religion are the ones to define the contents of their religion.⁹² Still, secular law may impose restrictions to what religion may require according to the followers of that religion. An example is that both kosher-slaughter and halal-slaughter of animals are forbidden in Sweden. According to the Act (1988:534) on Protection of Animals (*Djurskyddslagen*) the animal must be given anaesthetics before its blood may be run off.⁹³ Another example relates to circumcision. Circumcision of women is considered to be a very serious crime in Sweden, irrespective of any consent.⁹⁴ Although heavily criticized in public debate, circumcision of boys is permitted under certain conditions, such as that the operation shall be performed by a medical doctor.⁹⁵

It follows that there exist certain contradictions between the State's alleged general neutrality towards issues of religion and belief and the requirements set for subsidizing the activities of a religious denomination by the State or restrictions concerning certain religious rituals and requirements, such as slaughtering of animals and circumcision.

F. Church of Sweden

The present electoral system of the Church of Sweden – and in particular the role of the political parties in it – is a subject of debate.⁹⁶ At these elections, which take place every four years, representatives are elected at both the diocesan level and national levels. The groups responsible for the nomination of candidates are made up primarily of the political parties, each drawing up a special list of candidates (party members) for the elections. Although non-political groups may also draw up special lists of candidates, the unique involvement of political parties in the Church of Sweden cannot be questioned. Approximately 10 percent of the voters make use of their vote, compared with national elections in Sweden where voters' participation exceeds 80 percent.

VI. RELIGION AND THE AUTONOMY OF THE STATE

Questions of relevance under this part of the Questionnaire are of very limited importance under the Swedish model after the separation between the State and the Church of Sweden in 2000. To the extent that the questions raised can be of relevance, they have been dealt with under Sections IV and V, above. In general, the answer is that religious communities do not play any specific role in the secular governance of the country. They are, for example, not represented in any legislative or executive bodies. The religious communities of the country are also placed on an equal legal footing. It follows that none of them has the power to control other religious communities under the State law. Such functions are in Sweden performed by special state bodies, mentioned under Section IV, *B* above, and acting under secular law.

On the other hand, when legislative reforms in secular law of any alleged religious interest are initiated by the Government, the major religious communities are always heard, in particular or among other consulted bodies, before any Governmental Bill is put forth to Parliament. For example, before Swedish legislation on marriage was extended to cover same-sex couples in 2009, special hearings were held with leaders of all the major religious communities in Sweden regarding their position on this issue. In addition, these communities formed a special "referee group" in the preparation of the legislative amendments, with the right to attend all meetings of the legislative committee in charge.

Families – Religion – Law, Uppsala 2010).

⁹² *Id.*

⁹³ Act (1988:534) on Protection of Animals, § 14. See Y. Myhrberg & K. Ohlsson, *Djurskyddslagen, Karnov Svensk lagsamling med kommentar*.

⁹⁴ Act (1982:316) on Prohibition of Circumcision of Women. See also J. Schiratzki, *Barnets bästa i ett mångkulturellt Sverige – en rättsvetenskaplig undersökning*, (2000), 119–20.

⁹⁵ Act (2001:499) on Circumcision of Boys.

⁹⁶ See Bäckström et al, *Religious Change in Northern Europe, the Case of Sweden*, 76.

VII. LEGAL REGULATION OF RELIGION AS A SOCIAL PHENOMENON

Freedom of religion and freedom *from* religion enjoy specific constitutional protection in Sweden (see Section IV B, above). Furthermore, according to the Ordinance of Government, all regulations regarding religious communities require specific legislation.⁹⁷ These regulations are found in the Act (1998:1593) on religious communities as well as in the Act (1998:1591) on the Church of Sweden. In addition, the Ordinance of Government contains a general delegation clause, which stipulates that administrative duties of a public law nature can be delegated to a *registered religious denomination*.⁹⁸

A religious community in Sweden that wishes to be treated as such must be registered. *Registered religious community* is a special legal figure created for religious communities by Act (1998:1593) on Religious Communities.⁹⁹ The Church of Sweden, which is regulated by an Act of its own, i.e., Act (1998:1591) on the Church of Sweden, is a registered religious community *ex lege*. A registered religious community can acquire rights¹⁰⁰ and duties, and initiate proceedings in court and other authorities.¹⁰¹

In connection with the separation of the State and the Church of Sweden, church tax was replaced from 1 January 2000 by a church fee. Interestingly enough, just as the church tax earlier, the fees of the Church of Sweden continue to be levied by the State in connection with the general tax return system.¹⁰² A novelty brought by the reform is that the same right, to be assisted by the State in the levying of church fees, is now available to all officially registered religious communities.¹⁰³ This fee constitutes approximately 1 percent of an individual's income in all the religious communities which make use of this service, with the exception of the Church of Sweden where the fee is established at the parish-level.¹⁰⁴ Nevertheless, the community must fulfil special requirements to be provided such assistance.¹⁰⁵ In this regard, the State also levies a special burial fee which everyone who is recorded in Sweden's population registry to be habitually resident in Sweden has a duty to pay, irrespective of confession (or lack of confession).¹⁰⁶ The State does not keep any record of the religious affiliations of the population.¹⁰⁷ On the other hand, the State levying of membership fees, upon application of a registered religious community, makes it apparent on the tax pay slip to which community the tax payer belongs.

Even after the Church-State separation, certain parts of the activities of the Church of Sweden still bear the imprint of public law and are subject to special legislation.¹⁰⁸ An example is the Burial Act (1990:1144) (*Begravningslagen*), which deals with the Church's special responsibility for graveyards and funerals in Sweden. The Church of Sweden is, as a rule, in charge of the administration of burial activities in Sweden. The local parishes are the main actors. In the capital of Stockholm, however, the municipality is in charge. Administration of burial activities means, i.a., a duty to supply a sufficient number of

⁹⁷ Ordinance of Government, Ch. 8 § 6.

⁹⁸ See *infra* n. 72.

⁹⁹ If a religious community abstains from registration, it can still qualify as a so-called ideal association. A religious community cannot be registered in the form of a company, financial association, or foundation. See Act (1998:1593) on Religious Communities, § 7 ¶ 3.

¹⁰⁰ For example, a registered religious community is free to receive gifts and testamentary donations.

¹⁰¹ See Act (1998:1593) on Registered Communities, § 9 ¶ 1.

¹⁰² This procedure is regulated by Act (1999:291) concerning Fees to Registered Religious Communities.

¹⁰³ See Act (1998:1593) on Religious Communities, § 16. Earlier, individuals who did not belong to the Church of Sweden were not covered. The only way to avoid paying this fee is to resign from the membership of the religious community.

¹⁰⁴ Information relating to the size of the fee is available on the homepages of all the concerned religious communities. Relevant information is also available on the National Tax Authority's homepage.

¹⁰⁵ See *supra* Section V, B. In addition to the Church of Sweden, eight religious communities in Sweden make use of this service by State. They consist of the Catholic Church of Sweden and so-called Free Churches of Protestant Christian origin.

¹⁰⁶ See Burial Act (1990:1144), Ch. 9.

¹⁰⁷ On the other hand, the number of members is registered with the tax authorities in those cases where the community in questions makes uses of the State's fee levying services.

¹⁰⁸ Bäckström et al, *Religious Change in Northern Europe, The Case of Sweden*, 64.

burial grounds and graves for those who are registered within a certain region, irrespective of their faith. It also involves an obligation to continuous consultation and information with representatives of non-Christian communities within the region.¹⁰⁹ The County Government Boards in Sweden are under the duty to provide alternative burial forms. Roman and Greek Orthodox Catholics, Jew, and Muslims have access to burial grounds of their own in Sweden.

When the State and the Church of Sweden were separated, the Church became the owner of all Church buildings that had been inaugurated for divine services before January 1, 2000. According to Chapter 4 of the Act (1988:950) on Cultural Heritage (*Kulturminneslagen*) the Church is responsible for the care and maintenance of these church buildings and sites in accordance with their cultural-historical value and with respect to their appearance and purpose. With the exception of ordinary measures to maintain the property and urgent measures, any reconstruction, demolition or other changes in the exterior or the interior require special permission by the local County Government Board (*Länsstyrelsen*) or the National Office of Antiquities (*Riksantikvarieverket*). Detailed provisions regulate the care to be provided by the Church in respect of church buildings and sites, church movables, and burial-grounds. In connection with the State-Church separation, a special system of state subsidizing of the Church for the care and maintenance of this property was created on a diocese basis.¹¹⁰

Freedom of religion or belief does not entitle individuals or groups, on the basis of conscientious objection or otherwise, to exemptions from laws or contractual clauses of general applicability. Certain administrative exceptions have been made with regard to Swedish male citizens' general duty of military service.¹¹¹

The Commission for Government Support to Faith Communities and the Council for Contact with Faith Communities (above, Section IV) are, i.a., aimed to facilitate peaceful coexistence and respect between religious communities. Both are organized under the Swedish Ministry of Culture. A new important field of cooperation is emergency administration.

VIII. STATE FINANCIAL SUPPORT FOR RELIGION

In Sweden, the State itself provides direct financial support for religious communities. Religious communities are regarded to be organizations whose activities generally speaking are for the benefit of the society and therefore qualify for financial state support. The conditions for this support are regulated in a special enactment, Act (1999:932) on State Support to Religious Communities, in combination with the Act (1998:1593) on Religious Communities.¹¹² The general aim of the State's funding is to create opportunities for denominations to pursue long-term religious activities such as worship services, spiritual guidance, education, and care. Tax-exemptions for support to religious communities, education, charitable purposes, etc., have been advocated in public debate in Sweden but are not yet permitted under Swedish law.

A special state body, called Commission for Government Support to Faith Communities, has had responsibility over this area since 1971.¹¹³ In 2007, 50,232,000 Swedish crowns – corresponding to approximately 550,000 Euros at then applicable currency rates – were distributed by the Commission as State subsidizes. As mentioned earlier, only religious communities that contribute to the upholding and support of the fundamental values in society qualify for financial state subsidizes. The fundamental

¹⁰⁹. Special “ombudsmen” represent those who do not belong to the Church of Sweden. See Burial Act (1990:1144), Ch. 10.

¹¹⁰. See Act (1988:950) on Cultural Heritage, Ch. 4 § 16.

¹¹¹. See Act (1994:1809) and Regulation (1995:238) on Duty of Total Defense (= *Lagen/Förordningen om totalförsvarsplikt*).

¹¹². In addition, a special regulation applies, entitled Regulation (2007:1192) with Instruction for the Board for State Grants to Religious Communities.

¹¹³. See supra Sections IV, H and V, C.

values of society consist of respect for democracy, human rights and fundamental freedoms, and gender equality. It is furthermore required that the community is registered as a religious community and that it pursues activities with stability and vitality.¹¹⁴ Stability requires in this context that the community has been continuously active in Sweden for at least five years, has an organized structure, a solid economy, and premises for its activities.¹¹⁵ The Commission is also expected to carry on dialogues with the religious communities. It has institutionalized cooperation with the Islamic Cooperation Council and the Ecumenical Council for the Orthodox and Oriental Churches.¹¹⁶ In 2007, the Commission became in charge of coordinating relief work by religious communities in connection with general crises, such as national catastrophes of various kinds where people of different ethnic origin are injured or lose their lives.

The State subsidies are divided into three different categories: a) an organizational grant enabling the parishes to provide religious services, offer pastoral care, and give education; b) a working grant to support activities within specific areas that the State wishes to subsidize; and c) project grants, which are aimed to stimulate new forms of activities and cooperation.¹¹⁷

When the State and the Church of Sweden were separated as of 1 January 2000, the Church became the owner of the church buildings and sites that had been inaugurated before that date. To compensate the Church for the costs of caring and maintaining this property, a special system was created of State support to the Church.¹¹⁸ The justification for this compensation, called church-antiquarian compensation, is that the property in question constitutes an invaluable part of Sweden's cultural and historical heritage, not the faith of the Church as such.¹¹⁹ The amount of compensation is decided by Parliament upon a proposal by Government, based on estimations made by the National Office of Antiquities. The compensation granted is then divided among the dioceses of the country. No other religious communities in Sweden are included in this system.

All the public subsidies to the religious communities are funded by general tax revenues and other income of the State or municipality. In this respect, it should be noticed that all registered religious communities qualify for public financial support. It is only in respect to the church-antiquarian compensation that the Church of Sweden enjoys a privileged position. The financing of salaries to the clergy and other staff, as well as the financing of church services is a purely internal matter of the religious communities.

IX. CIVIL LEGAL EFFECTS OF RELIGIOUS ACTS

Secular law can recognize legal effects to acts performed according to religious law only to the extent that a religious community has performed these acts within the mandate given to it by secular legislation. Of importance in this respect is the semi-official function that the Church of Sweden continues, by force of legislation, to enjoy in certain fields. The Ordinance of Government contains, furthermore, a general delegation clause enabling the State to delegate administrative functions to a registered religious community.¹²⁰

In Sweden, a marriage can, alternatively, take place in a civil law form or in a religious form. The religious communities' right to officiate marriage ceremonies with full legal effects can be mentioned as an example of the above-mentioned delegation according to the Ordinance of Government.¹²¹ The same conditions for delegation apply

¹¹⁴. In 2007, forty registered faith communities received grants of various sizes.

¹¹⁵. Act (1998: 1593) on Religious Communities, § 16.

¹¹⁶. See SOU 2009:52, 72.

¹¹⁷. Available at <http://www.sst.a.se/inenglish.4.7f968fc211eeec933de800011945.html>.

¹¹⁸. Act (1988:950) on Cultural Heritage, Ch. 4 § 16.

¹¹⁹. See SOU 1997:43; Government Bill, Prop. 1998/99:38, 133–60.

¹²⁰. Ordinance of Government, Ch. 11 § 6.3.

¹²¹. See Act (1993:305) on the Right to Officiate Marriages Within Religious Communities. Until the law amendment in 2009, all ministers of the Church of Sweden had an automatic right to officiate marriages in force of their ordination as ministers of the Church. Other religious communities (and their ministers) received the

in this respect to all religious communities, for example that the denomination must have at least 3,000 members and that its activities are organized in such a manner that it can be expected to pay regard to the rules of the Swedish Marriage Code. The delegation takes place by decision of a state body (*Kammarkollegiet*)¹²² upon application by the community. In 2008, approximately forty registered religious communities in Sweden had authorization to officiate marriage ceremonies in Sweden.¹²³ A marriage within a religious community but without the required State permit to officiate marriages is invalid according to secular law. Upon special conditions, the Government can upon application of the parties declare an invalid marriage as legally valid; a few such cases are examined every year. As regards marriages performed according to religious law abroad, the marriage is recognized under Swedish private international law as legally valid in Sweden if the marriage is valid according to the law of the country where the marriage was celebrated.¹²⁴

In 2009, Swedish legislation on marriage became gender-neutral, making it possible for same-sex couples to enter into marriage in Sweden. All Sweden's leading religious denominations were to a varying degree opposed to this law reform.¹²⁵ After the new legislation was adopted by Parliament, only the Church of Sweden has taken a positive decision, in its General Synod in September 2009, to officiate same-sex marriages once the marriage liturgy of the Church has been revised accordingly.¹²⁶ In the 2009 law reform, it was however, made clear by the legislator that no faith community or priest would be under an obligation to officiate same-sex marriages; to require otherwise was considered to infringe upon the religious communities' and concerned staffs' freedom of religion.¹²⁷ The religious communities, and their ministers, have continued autonomy to decide whose marriages they are willing to officiate.¹²⁸ The opposition from the religious communities towards extending the concept of marriage to same-sex couples has in the general debate in Sweden been used as an argument to fully secularize marriage and to cancel the State delegation to religious denominations to officiate marriages. Interestingly enough, also representatives for religious communities, in particular several bishops of the Church of Sweden, have publicly advocated that marriages should only be officiated in the form of secular law. The reason is that the notion of marriage in secular law, after the reform, no longer corresponds to the notion of marriage in religious law.

Only secular courts are recognized by Swedish law. It follows that these courts in Sweden have exclusive jurisdiction and that only their decisions are recognized by State authorities. Religious courts in Sweden remain an internal affair, without jurisdiction according to the secular law. Under Swedish rules on private international law, however, the jurisdiction of religious courts abroad may be recognized if the religious court is competent according to the rules prevailing in that foreign State. Under the same conditions, the decisions of a religious court abroad may also be recognized and enforceable in Sweden.¹²⁹

right to be granted such a right – upon application – through the Religious Freedom Act (1951:680). See SOU 2007:17, 255–60.

^{122.} This is the same state body which is in charge of registration of religious communities. See supra, Section V, B.

^{123.} These communities include various Christian, Muslim and Jewish denominations. See A. Jonsson, in I. Svanberg & D. Westerlund (eds.), *Religion i Sverige* (2008), 384–85. Altogether, more than seventy denominations are registered as religious communities in Sweden (2008).

^{124.} See M. Jänträ-Jareborg, "Family Law in a Multicultural Sweden – The Challenges of Migration and Religion," *Uppsala-Minnesota Colloquium: Law, Culture and Values, De lege* (2009): 160–62.

^{125.} See SOU 2007:17, 223–25, 351–65 on dissenting opinions to the Committee's proposal to extend the concept of marriage to same-sex couples.

^{126.} Although the Synod took this decision by a clear majority, many were opposed.

^{127.} See SOU 2007:17, 274–81.

^{128.} The religious communities apply different kinds of conditions, and also their priests may refuse to officiate in marriage ceremonies, for example, when the parties are not members of the community, when one of them is divorced, etc. In such cases, the civil ceremony is, normally, the option.

^{129.} Of special relevance in this respect is art. 63 of Council Regulation (EC) No. 2201/2003 of Nov. 27, 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the

X. RELIGIOUS EDUCATION OF THE YOUTH

All children are under Swedish law guaranteed the right to education.¹³⁰ The basic responsibility for organizing the various levels of school education (so-called public schools) belongs to the municipalities of the country. Since a law reform in 1990, also independent physical and legal persons may found schools, so-called free-standing schools (*fristående skolor*).¹³¹ This includes the right of religious communities to found and run schools with a confessional orientation.¹³² To create and run any free-standing school in Sweden requires a special permit (authorization) by the National School Agency (*Statens skolverk*). Several conditions must be fulfilled,¹³³ including that the education is capable of giving the pupils knowledge and capacities essentially equivalent to those provided by the public schools and that the education corresponds with the general goals and the values of the latter. The schools must be open for all pupils, irrespective of, for example, their faith,¹³⁴ and the teaching staff must have the general qualifications required by the School Act (1985:1100). A school with a certain confessional orientation may not favour teachers of its own faith at the expense of professionally qualified teachers not belonging to that congregation.¹³⁵

An authorized, free-standing school – confessional as well as non-confessional – is publicly financed, through the general tax system. More precisely, the school is entitled, according to the School Act, to receive for each pupil from the pupils' home municipality a specific school allowance, and may not take any fees of the pupils.¹³⁶ In economic terms, authorized free-standing schools are, thus, basically on an equal footing with the public schools. Nevertheless, the National School Agency has the right to deny public funding to an authorized confessional free-standing school if it is considered that the activities of the school involve negative consequences for education in the concerned municipality.¹³⁷ Diplomas granted by authorized confessional schools are recognized by the State. According to statistics from 2005, kept by the National School Agency, there were altogether 100 authorized free-standing schools with a confessional orientation.¹³⁸ The great majority of these schools had an express Christian profile, whereas ten of them had a Muslim orientation.

The curricula of public schools in Sweden must include non-denominational education which covers all major confessions in an objective and comprehensive manner.¹³⁹ This education is to be characterized by openness and tolerance and provide the pupil the opportunity of taking personal stances to issues of faith. Included are moral and ethical issues relating to life and death, guilt and responsibility, and so on. Also the authorized free-standing schools with a confessional orientation are required to pay regard to these requirements in their curricula.¹⁴⁰ This means, i.a., that the education in the

matters of parental responsibility, repealing Regulation (EC) No. 1347/2000. The article concerns the Regulation's scope of application in relation to EU member states' concordats with the Holy See.

¹³⁰ See School Act (1985:1100), Ch. 1 § 2.

¹³¹ See School Act (1985:1100), Ch. 1 § 3. These schools are regulated specifically in Chapter 9 of the Act.

¹³² See School Act (1985:1100), Ch. 9 § 2 ¶ 2. It was not considered possible, not least with regard to Sweden's international obligations, to require that the free-standing schools would have a non-confessional orientation. See K. Borevi, in I. Svanberg & D. Westerlund (eds.), *Religion i Sverige* (2008), 379–80. Of relevance in this respect is the European Convention on Human Rights and Basic Freedoms (in particular art. 9, 8, 10 and 14), and its first additional protocol (art. 2).

¹³³ See School Act (1985:1100), Ch. 9 § 2.

¹³⁴ This means, e.g., that Christian schools must be open for pupils who are not Christian and Muslim schools for pupils who are not Muslim. K. Borevi, in I. Svanberg & D. Westerlund (eds.), *Religion i Sverige* (2008), 380.

¹³⁵ Id.

¹³⁶ See School Act (1985:1100), Ch. 9 § 6. During the last years, new free-standing schools have been founded in Sweden, on a company basis, with clear financial motives. The education seems to be of a general good level, although these schools normally also make an economic profit.

¹³⁷ K. Borevi, in I. Svanberg & D. Westerlund (eds.), *Religion i Sverige* (2008), 380–81.

¹³⁸ See id. at 379.

¹³⁹ Instructions by the National School Agency. See www.skolverket.se.

¹⁴⁰ See H. Vogel, Skollagen, Karnov, *Svensk lagsamling med kommentar*, Ch. 9 § 2 ¶ 2.

school's own confession may not replace such education that the public schools are expected to provide in the field of religion and faith.¹⁴¹ Parents, furthermore, cannot deny their children from taking part in any form of obligatory school education.¹⁴²

Obligatory school education on issues of religion and faith has been regarded as problematic in Sweden ever since the enactment of the Religious Freedom Act (1951:680). In the 1960s, it was considered necessary to supplement denominational religious education, based on the primacy of Christianity, with knowledge on other religions. Successively, non-denominational issues have become central within this part of the school curricula. The free-standing schools with an express religious orientation are often a point of public debate.¹⁴³ Limitations in this respect are under consideration, for example, that no preaching of a religion (*förkunnande undervisning*) should take place under the lectures during school hours.

XI. RELIGIOUS SYMBOLS IN PUBLIC PLACES

There exist no general legal restrictions related to wearing religious symbols in public places in Sweden. On the contrary, wearing religious symbols falls generally under the constitutionally protected right of freedom of religion.¹⁴⁴ Also the Act (2003:307) on Prohibition of Discrimination protects against discrimination on the basis of religion.¹⁴⁵ However, due to other problems related to, for example, school attendance or other work, clothes that in whole or in part cover the face and/or the body of the student or employee may in an individual case be prohibited by, e.g., the principal of the concerned school. In one case, the question arose whether a bus driver, who was a Sikh, could wear a turban while driving the bus. This was answered affirmatively. Other cases have concerned female students' right to wear special head coverings. The National Ombudsman for Matters of Discrimination (*Diskrimineringsombudsmannen*) has stated that any general prohibition in schools of religious head coverings would prevent the individuals in question from exercising their freedom of religion. According to a decision by the National School Agency, a school direction may prohibit the wearing of religiously articulated clothing only for special reasons, for example, when it threatens the order and security in the school or prevents the school from carrying out its pedagogic commission.¹⁴⁶

In a Communication of 2003,¹⁴⁷ the National School Agency, on the other hand, pointed out that schools are not to be used as places for public religious manifestations. A public school environment should be kept neutral in respect of confession. This position, as well as respect for the individual's freedom to exercise his or her religion through the wearing of religious symbols, would seem to apply for public places in general in Sweden.

XII. FREEDOM OF EXPRESSION AND OFFENCES AGAINST RELIGION

Blasphemy was decriminalized in Sweden in 1949 and replaced by an enactment which protected serenity of faith (*trosfrid*).¹⁴⁸ This enactment was repealed in 1970. It follows that Swedish law does not protect religion as such against defamation but protects the exercise of religion. This can include protection against offensive statements. Of

¹⁴¹ Id.

¹⁴² See SOU 1997:41, 137.

¹⁴³ See K. Borevi, in I. Svanberg & D. Westerlund (eds.), *Religion i Sverige* (2008), 381.

¹⁴⁴ See above, Sections IV, C and IV, D.

¹⁴⁵ In Swedish: Lag (2003:307) om förbud mot diskriminering, § 1. See also Act (1999:132) concerning measures against discrimination in work-life on the basis of ethnicity, religion, or other belief.

¹⁴⁶ Decision No. 52-2006:689.

¹⁴⁷ Communication No. 58-2003:2567.

¹⁴⁸ In 1964, a court of appeal convicted a journalist, who had joked in a radio program about Holy Communion wine in petrol pumps, for offence against serenity of faith. See C. Hedin, in I. Svanberg & D. Westerlund, *Religion i Sverige* (2008), 391.

special relevance is an offence called “agitation against a national or ethnic group” (*hets mot folkgrupp*), criminalized in the Penal Code, Ch. 16 § 8.¹⁴⁹ In this respect, religion is closely linked with other fundamental and constitutionally protected freedoms, such as the freedom of assembly and the freedom of expression, which under certain conditions can be restricted.¹⁵⁰ In this context, all religions are placed on an equal footing.

According to the above-mentioned provision in the Penal Code, “a person who in a disseminated statement or communication threatens or expresses contempt for a national, ethnic or other such group of persons with allusion to race, color, national or ethnic origin or religious belief, shall be sentenced for agitation against a national or ethnic group to imprisonment for at most two years, or if the crime is petty, to a fine.”¹⁵¹ Where the limits to the freedom of expression are to be drawn through this provision is influenced by the European Convention on Human Rights and Fundamental Freedoms. In a recent much debated case in Sweden, a Christian Freechurch pastor had giving a sermon in his church on the topic of homosexuality and the Bible.¹⁵² The pastor compared homosexuals to a cancerous tumor in society. He was convicted for agitation under this provision by a first instance court. The court of appeal reversed this decision on the grounds that a conviction would be a disproportionate limitation of religious freedom of expression, and made references to the Swedish Constitution as well as the European Convention. The Supreme Court shared this conclusion. According to the Court a conviction would have been in line with the Swedish legislation’s intentions, but would probably not live up to a European standard as expressed by the European Convention. The general conclusion drawn in Sweden is that the European Convention has resulted in a more tolerant approach towards “hate speech” if found on a par with religious expression.¹⁵³

Another relevant provision is found in the Penal Code, Ch. 16 § 4. “A person who by act of violence, loud noise or other like means disturbs or tries to interfere with a public religious service, other public devotional exercise, wedding, funeral or like ceremony, a court session or other state or municipal official function, or a public gathering for deliberation, instruction or to hear a lecture, shall be sentenced for *disturbing a function or public meeting* to a fine or imprisonment for at most six months.”

Of relevance, furthermore, is Penal Code, Ch. 16 § 10 criminalizing offences against the peace of the tomb. “A person who, without authorization, moves, injures or outrageously treats the corpse or ashes of the dead, opens a grave or otherwise inflicts damage on or abuses a coffin, urn, grave or other resting place of the dead or a tombstone, shall be sentenced for *crime against the peace of the tomb* to a fine or imprisonment for at most six months.”¹⁵⁴

According to Penal Code, Ch. 29 § 2, it is an aggravating circumstance when a crime is committed in order to violate a person or a group of persons because of, for example, the person’s or the group’s religious belief.

¹⁴⁹. This provision dates back to Act (1988:835).

¹⁵⁰. See *supra*, Section IV.

¹⁵¹. Penal Code, Ch. 16 § 8.

¹⁵². See, e.g., T. Bull, “Freedom of Expression and the Limits of Tolerance: A Swedish Saga,” *Uppsala-Minnesota Colloquium: Law, Culture and Values, De lege* (2009): 113–14.

¹⁵³. See, e.g., *id.* at 116, 126.

¹⁵⁴. Penal Code, Ch. 16 § 10