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The Contemporary Form of Registering Religious Entities in Spain

*Rosa María Martínez de Codes**

I. PREAMBLE

The subject of this work is intended to serve as a basis of reflection on the achievements and problems that registration of religious organizations currently pose in the administrative practice of the Spanish State. We do not try to pose doctrinal debates, but to advance the search for criteria that permit reconciling religious liberty and cultural values and traditions, following the guidelines of the new legal order inaugurated in Spain in 1978.

It seems opportune to initiate this topic by explaining the previous fundamental set of rules that serve as a legal frame of reference for the existence of a Register of Religious Entities in the Spanish legal system.¹

The Spanish Constitution of 1978 represented a substantial change in previous religious policy. Thus from a traditionally religious State has evolved a pluralist, non-confessional State, which, in Article 1 of the Constitution, consecrates liberty, equality, and pluralism as fundamental values.²

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1. Most of the legislation mentioned in this text is in the process of being translated into English. See Spanish Legislation on Religious Affairs, Ministry of Justice, Madrid, 1998. Currently, only the Spanish version is available. See Real Decreto [hereinafter R.D.] 142/1981, sobre organización y funcionamiento del Registro de Entidades Religiosas [Royal Decree 142/1981, Concerning the Registration and Function of the Register of Religious Entities], Official State Gazette [hereinafter B.O.E.] (B.O.E., 1981, 27).

2. See, e.g., J. AMORÓS, LA LIBERTAD RELIGIOSA EN LA CONSTITUCIÓN ESPAÑOLA [RELIGIOUS FREEDOM IN THE SPANISH CONSTITUTION] 166-97 (1984); L. Echevarría, *La nueva Constitución ante el hecho religioso* [The Religion Act and the New Constitution], in EL HECHO RELIGIOSO EN LA NUEVA CONSTITUCIÓN ESPAÑOLA [THE RELIGION ACT IN THE NEW SPANISH CONSTITUTION] 43-75 (1979); J. Giménez & M. de Carvajal, *Principios informadores del actual régimen español de relaciones entre la Iglesia y el Estado* [Formative Principles of Current Church-State Relations], in IGLESIA Y ESTADO EN ESPAÑA [CHURCH AND STATE IN SPAIN] 3-51 (1980); D. Llamazares & G. Suárez Per tierra, *El fenómeno religioso en la nueva Constitución. Bases de su tratamiento jurídico* [The Religious Phenomenon in the New Constitution].

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These values, applied to religious phenomena, are the specific inspiration of the principles of freedom, equality, and religious pluralism in accordance with the provisions of Articles 14 and 16 of the Constitution.

Article 16 of the Spanish Constitution became the axis or model for the relations that the State maintains with the individual and with religions. First, "ideological, religious freedom and freedom of worship of individuals and communities are guaranteed with no further limitations on religious manifestations than those necessary to maintain public order as protected by law." Second, as a result of the above, "no one shall be forced to state their ideology, religion or beliefs." Third, the Constitution states that "no religion shall have state character." Despite the separation between religious confessions and the State, "public authorities shall bear in mind the religious beliefs of Spanish society and shall maintain the resulting relationship of cooperation with the Catholic Church and the other religions."³

In order to comply with this principle of cooperation or collaboration, public authorities may sign agreements with religious confessions. In doing so, the State signed agreements

Foundation for Judicial Interpretation], 61 REVISTA DE LA FACULTAD DE DERECHO DE LA UNIVERSIDAD COMPLUTENSE 9-34 (1980); A. Molina, *La cuestión religiosa y la Constitución [The Religion Question and the Constitution]*, in LA CONSTITUCIÓN ESPAÑOLA DE 1978 [THE SPANISH CONSTITUTION OF 1978] 85-110 (1980); A. Molina, *La Iglesia y la Constitución española de 1978 [The Church and the Spanish Constitution of 1978]*, in ANALES VALENTINOS VI/12 385-438 (1980); A. Mostaza, *El nuevo régimen de relaciones Iglesia-estado según la Constitución española de 1978 y calificación jurídica del mismo [The New Regime of Church-State Relations Following Judicial Approval of the Spanish Constitution of 1978]*, in ASPECTOS JURÍDICOS DE LO RELIGIOSO EN UNA SOCIEDAD PLURAL [JUDICIAL ASPECTS CONCERNING RELIGION IN A PLURALISTIC SOCIETY] 211 (1987); L. Prieto Sanchis, *Las relaciones Iglesia-Estado a la luz de la nueva Constitución: problemas fundamentales [Church-State Relations in Light of the New Constitution: Fundamental Problems]*, in LA CONSTITUCIÓN ESPAÑOLA DE 1978 [THE SPANISH CONSTITUTION OF 1978] 319-74 (1981); P.J. Viladrich, *Los principios informadores del Derecho Eclesiástico Español [Formative Principles of Spanish Ecclesiastical Law]*, in DERECHO ECLESIASTICO DEL ESTADO ESPAÑOL [JOURNAL OF STATE ECCLESIASTICAL LAW] 169-262 (1983).

3. D. Llamazares, *El Principio de cooperación del Estado con las Confesiones Religiosas: Fundamentos, alcance y límites [State Cooperation with Religious Denominations: Foundations, Scope, and Limits]*, 5 ANUARIO DE DERECHO ECLESIASTICO DEL ESTADO 69-102 (1989); see also M. López Alarcón, *Relevancia específica del factor social religioso [The Specific Relevance of the Religious Social Factor]*, in RELACIONES ENTRE LA IGLESIA Y EL ESTADO [RELATIONS BETWEEN CHURCH AND STATE] 465-78 (Navarra ed., 1989).

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on January 3, 1979 with the Holy See agreements which follow the path of international treaties addressed in Articles 93 and 96 of the Spanish Constitution.

For the purpose of guaranteeing and making effective the fundamental right of religious freedom, Organic Act 7/1980, dated July 5, 1980, on Religious Freedom,⁴ was published. Article 7 of this law develops the possibility of agreements with other religions.

In this sense, the law establishes that, "the State, bearing in mind the religious beliefs existing in Spanish society, shall establish, where appropriate, Agreements and Accords of cooperation with those Churches, religious Denominations and communities inscribed in the Register which, because of their scope and number of faithful, are deeply rooted in Spain. In any case, these agreements shall be approved by law in Congress."⁵

In fulfillment of these provisions, on April 28, 1992, the Agreements of Cooperation between the State and the Federation of Evangelical Religious Entities of Spain, the Federation of Israelite Communities of Spain, and the Islamic Commission of Spain were signed.⁶ The signing of these agreements brings into existence a special law that guarantees, in a way that goes beyond ordinary law, the religious characteristics of each of these religions, as well as the rights of their members.

The fundamental requirements that allow a religious organization to sign cooperative agreements with the State are basically three:

4. See Organic Law of Religious Freedom [hereinafter L.O.L.R.] (B.O.E., 1980, 177). See M.J. CIÁURRIZ, *LA LIBERTAD RELIGIOSA EN EL DERECHO ESPAÑOL. LA LEY ORGÁNICA DE LIBERTAD RELIGIOSA [RELIGIOUS FREEDOM UNDER SPANISH LAW. THE ORGANIC ACT OF RELIGIOUS FREEDOM]* (1984).

5. L.O.L.R. art. 7 (B.O.E., 1980, 177).

6. The term "Evangelical" includes all denominations with a Protestant orientation. See Acts 24/1992, 25/1992, 26/1992 (B.O.E., 1992, 272); see also D. LLAMAZARES, *ACUERDOS DEL ESTADO CON LAS CONFESIONES RELIGIOSAS (FEREDE Y FCI) [STATE AGREEMENTS WITH THE RELIGIOUS DENOMINATIONS]* (1990); J.A. SOUTO PAZ, *DERECHO ECLESIASTICO DEL ESTADO [ECCLESIASTICAL LAW OF THE STATE]* (1992); P. Lombardía, *Los Acuerdos entre el Estado y las Confesiones religiosas en el nuevo Derecho eclesiástico español [The Accords Between the State and Religious Denominations in the New Spanish Ecclesiastical Law]*, in *NUOVE PROSPETTIVE PER LA LEGISLAZIONE ECCLESIASTICA [NEW PERSPECTIVE ON ECCLESIASTICAL LEGISLATION]* (1981).

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(1) The religious entity shall be legally recognized through inscription in the Register of Religious Entities.⁷

(2) The inscribed religious entity shall be deeply rooted in Spain as indicated by its extent and number of faithful "notorio arraigo."⁸ Proof of this evident establishment shall be given by the Advisory Committee on Religious Freedom,⁹ which shall bear in mind the number of members and the extent of the presence of the religious denomination in the country. The latter shall be determined by geographical extension and the period of time during which it has been established.

(3) The conclusion of agreements "should be studied from the perspective of general interest to Spanish society."

Having defined the possible development of the Organic Law on Religious Freedom in the Spanish legal system, it seems appropriate to describe the functioning of the Register of Religious Entities, as this is the first requirement for a religious entity to be permitted to sign agreements of cooperation, and it is the instrument of civil recognition of religious organizations.

II. ORGANIZATION AND FUNCTIONS OF THE REGISTER OF RELIGIOUS ORGANIZATIONS

The Register of Religious Entities was created by Article 5 of the 1980 Religious Freedom Act and is successor to the previous Registers of 1957 and 1967,¹⁰ although now the inscriptions are made in a very different context: that of a non-confessional State. It is a constituent register, that is, one that grants civil legal personality to the inscribed religious entities.

7. See L.O.L.R. art. 5 (B.O.E., 1980, 177); R.D. 142/1981 (B.O.E., 1981, 27); Provisión 11 de mayo de 1984 sobre publicidad del Registro de Entidades Religiosas [Provision of May 11, 1984 concerning Publicity of the Register of Religious Entities] (B.O.E., 1984, 125); see also M.E. Olmos, *El Registro de Entidades Religiosas* [*The Register of Religious Entities*], 1988 REVISTA ESPAÑOLA DE DERECHO CANÓNICO 97-121 (providing a selected bibliography on the Register).

8. L.O.L.R. art. 7.1 (B.O.E., 1980, 177).

9. See *id.* art. 8; R.D. 1890/1981 (B.O.E., 1981, 213). Concerning the authority and organization of the Commission, see Provision of October 31, 1983 (B.O.E., 1983, 311); J.A. Souto, *La Comisión Asesora de Libertad Religiosa* [*The Advisory Commission on Religious Freedom*], 14 REVISTA DE DERECHO PROCESAL (1982); J.M. Contreras Mazario, *La Comisión Asesora de Libertad Religiosa* [*The Advisory Commission on Religious Freedom*], 1987 REVISTA ESPAÑOLA DE DERECHO CANÓNICO 131.

10. See Olmos, *supra* note 7, at 97-100.

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Royal Decree 142/1981, dated January 9, 1981, concerning the organization and functioning of the Registry of Religious Organizations, describes the regulatory process of inscription.

The concept of a religious entity has not been defined in the legal ordinances of the Spanish State.¹¹ This lack of definition has caused the State problems in conferring a particular legal capacity on some minority religious movements that are often different from the dominant culture. Notwithstanding, in all legal ordinances similar to those of the Spanish State regarding religious issues, it is predominantly religious activity and its manifestation of worship which determine the acquisition of a special status and the legal capacity to operate as a religious entity.

The acquisition of civil legal personality of the entities of the Catholic Church is based on Article 1 of the Agreement on Legal Affairs between the Spanish State and the Holy See of January 3, 1979, cited above, which has been developed in a later Resolution on March 11, 1982 by the General Directorship of Religious Affairs concerning the inscription of Catholic Church organizations in the Register. Article 5 of this Resolution establishes that the "inscription of religious organizations that are part of the Catholic Church shall proceed as provided in the Agreement on Legal Affairs of 1979."¹²

Additionally, for non-Catholic Religious Entities, the acquisition of a civil legal personality requires registration in the Register of Religious Entities, regulated by the Organic Law of Religious Freedom and Royal Decree 142/1981 concerning the regulation of the Register.¹³

III. TYPOLOGY OF ORGANIZATIONS ELIGIBLE FOR REGISTRATION

The Organic Law of Religious Freedom of 1980 allows for inscription in the Register by the following religious entities:

11. See M. López Alarcón, *Entidades Religiosas [Religious Entities]*, 1993 DERECHO ECLESIASTICO DEL ESTADO ESPAÑOL 265-324; S. Bueno Salinas, *Confesiones y entidades confesionales en el Derecho español [Religious Denominations Under Spanish Law]*, 1988 ANUARIO DE DERECHO ECLESIASTICO DEL ESTADO 107-34; I. Zabalza, *Confesiones y entidades confesionales en el ordenamiento jurídico español [Religious Denominations in Spanish Judicial Authorization]*, 1987 ANUARIO DE DERECHO ECLESIASTICO DEL ESTADO 249-68.

12. B.O.E., 1979, 76.

13. See L.O.L.R. (B.O.E., 1980, 177); R.D. 142/1981 (B.O.E., 1981, 27).

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churches, religious denominations and communities, and their federations.¹⁴

This Organic Law also establishes that these major entities, as scientific doctrine refers to them, may, for the purpose of achieving their aims, create associations, foundations, and other institutions. The lesser organizations, according to the Organic Law of Religious Freedom, are governed by the State's general legislation concerning associations, foundations, etc.¹⁵

Subsequently, Royal Decree of 1981, relative to the Register, provided that in addition to these major entities (churches, denominations, communities, and federations), orders, congregations, religious institutes, and associated entities created by the churches and denominations can also be registered.¹⁶

Later, in 1984, another Royal Decree authorized the inscription of religious foundations of the Catholic Church,¹⁷ as required by the agreement on Legal Affairs signed by the Holy See and Spain in 1979.

Currently, religious entities may enroll in the Register under the following classifications:

- (1) Churches, religious denominations, and communities;
- (2) Orders, congregations, and religious institutes;
- (3) Associated religious entities;
- (4) Religious federations; and
- (5) Religious foundations belonging to the Catholic Church.

The following is a compilation of the number of religious entities belonging to the Catholic Church that are inscribed in the Registry, as well as the religious entities that are not part of the Catholic Church but which are also registered, along with a possible classification of the latter.

14. See L.O.L.R. art. 5 (B.O.E., 1980, 177).

15. See L.O.L.R. art. 6 (B.O.E., 1980, 177).

16. See R.D. 142/1981, art. 2 (B.O.E., 1981, 27).

17. See R.D. 589/1984, sobre Fundaciones Religiosas de la Iglesia Católica [R.D. 589/1984 Concerning Religious Foundations of the Catholic Church] (B.O.E., 1984, 85).

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A. *Catholic Entities Inscribed in the Register of Religious Entities*¹⁸

18. The following tabular data is derived from the database of the Register of Religious Entities of the Spanish Ministry of Justice.

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Entities belonging to the Catholic Church may be orders, congregations, and institutes; associated entities; or federations. The total number of these organizations registered on December 31, 1996, came to 3,424. Besides these entities, houses or communities dependent upon orders, congregations, or institutes are also considered "registered entities." These totaled, on the same date, 8,556.

NUMBER OF INSCRIBED ENTITIES	
Orders, Congregations, Institutes, Associated Entities and Federations	3,424
Comunities or Houses dependent upon Orders, Congregations and Institutes	8,556
TOTAL	11,980

CANCELLATION OF INSCRIPTIONS	
Orders, Congregations, Institutes, Associations, Federations, Communities and Congregations	1,025
ACTIVE ENTITIES	10,955

B. Non-Catholic Religious Entities Inscribed in the Register of Religious Entities

The number of religious organizations not belonging to the Catholic Church inscribed in the Register as of October 1, 1997 are as follows:

NUMBER OF ENTITIES REGISTERED	
Churches, Communities, or Confessions	797
Religious Federations	27
Associations	64
TOTAL	888

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Of these entities, 551 belong to one of the Religious Federations which have signed an Agreement of Cooperation with the State, according to the following distribution:

ENTITIES BELONGING TO:	
The Federation of Evangelical Religions of Spain (FEREDE)	489
The Federation of Israelite Communities of Spain (FCIE)	11
The Islamic Commission of Spain (CIE)	51
Non-Federated Entities	337

The non-Catholic religious entities inscribed in the Register of Religious Entities can be further classified according to their creed, denomination, or religious belief, as follows:

CREEDS OR RELIGIOUS DENOMINATIONS

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Protestants	745
Evangelical Christians	423
Evangelical Christian Brothers	90
Evangelical Christian Baptists	130
Other Evangelical Churches	41
Pentecostals	19
Philadelphia	1
Churches of Christ	12
Salvation Army	1
Church of God	4
Lutherans	4
Calvinists	2
Adventists	2
Anglicans	16
Orthodox	5
Mormons	1
Jehovah's Witnesses	1
Jews	15
Muslims	95
Orientals	7
Buddhists	11
Others	8
TOTAL	888

In accordance with this classification, the Protestant churches or communities represent 84 percent of the total non-Catholic entities inscribed in the Register.

C. Year of Inscription of the Religious Entities

One of the most interesting facts provided by the database of the Register of Religious Entities is the year of inscription. According to this data, the following classification can be established:

YEAR OF INSCRIPTION	ENTITIES REGISTERED	
	ABSOLUTE NUMBERS	PERCENTAGE

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Before 1970	109	12.3
1970 - 1974	97	10.9
1975 - 1979	45	5.1
1980 - 1984	121	13.6
1985 - 1989	144	16.2
1990 - 1994	246	27.7
1995 - 1997	126	14.2
T O T A L	888	100

The more than fifteen years that have passed since the publication of the Royal Decree have shown the insufficiency of the typology mentioned. There are organizations that are clearly religious but which have not been included in this classification: for example, chapters of the Catholic Church, seminaries or training centers for ministers, territorial boundaries for denominations which have them, and local communities or councils of various churches and denominations.

Additionally, non-Catholic religious foundations cannot currently enroll in the Register.¹⁹ The different forms of organization and operation of different religious denominations invites further modification of the current classification. In the reform of the regulation, which is being prepared by the General Directorship of Religious Affairs, an expansion of the

19. See R.D. 589/1984 (B.O.E., 1984, 85); *Acuerdo de la Comisión Permanente de la Conferencia Episcopal española, sobre procedimiento para la inscripción de Asociaciones y Fundaciones en el Registro de Entidades Religiosas, XIII reunión de 11 a 13 de julio de 1984, [Agreement of the Permanent Commission of the Episcopalian Spanish Conference, Concerning the Process of Inscription for Associations and the Foundation in the Register of Religious Entities, 13th Meeting of July 11-13, 1984]*, BOLETÍN OFICIAL DE LA DIÓCESIS DE CARTAGENA (1984).

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typology of organizations that may be registered is foreseen, based on recent experience.

IV. REQUIREMENTS FOR INSCRIPTION

According to the Organic Law of Religious Freedom (LOLR), the registration of churches, denominations, communities, and federations is carried out by means of an application accompanied by a certifying document proving its foundation or establishment in Spain, a description of its religious purposes, denomination of the entity, and system of operation and representative agencies, indicating the authority and the requirements for valid establishment of the latter.²⁰

The Regulation of the Register specified other new requirements with respect to the inscription of minor entities (Orders, Congregations and Associated Entities).²¹ For example, in these cases, the major entity responsible for the creation of the smaller one must provide certification of the religious objectives of the latter.

Notwithstanding, the Law and the Regulation establish certain limits to inscription in the Register apart from the more formal requirements already mentioned.²²

(1) The protection of the right of others to exercise public liberties and fundamental rights;

(2) The safeguarding of security, health, and public morality (all elements of public order protected by law in a democratic society);

(3) The regulation of activities, objectives, and entities related to the study and experimentation of psychic or parapsychological phenomena or the diffusion of humanist or spiritual values or other similar objectives distinct from religious objectives.

Aside from these limitations imposed by law that should guide the qualifying action of the administration, no other requirements exist for eligibility for inscription.

Once the request for inscription is presented, the General Directorship of Religious Affairs has six months to make a decision. In the case of administrative silence, the decision is

20. See LOLR. art. 5(2) (B.O.E., 1980, 177).

21. See R.D. 142/1981, art. 3 (B.O.E., 1981, 27).

22. See LOLR. art. 3 (B.O.E., 1980, 177).

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considered positive. The time limit for amendments and modifications is two months. A negative resolution can be appealed before the ordinary courts (judicial review), and specifically before the High Court.²³

The experience with the Register has shown that the requirements for inscription are insufficient in some cases to get to know the entities nature. The Organic Law of Religious Freedom does not provide a legal definition of what can be considered a church or denomination.²⁴

Furthermore, the concept of "religious purposes" is confusing because the law provides no legal definition. It comes close to defining religious purpose in the negative sense, leaving beyond the scope of its protection those organizations or activities which propose the study of psychic or parapsychological phenomena or the propagation of humanist or spiritual values or similar objectives.²⁵

V. WHAT DOES INSCRIPTION IN THE REGISTER MEAN?

We previously pointed out that inscription in the Register is one of the requirements, although not the only one, for a religious denomination to enter into an agreement with the State, and discussed the requirements and limitations imposed by the LOLR and the Regulation of the Register for inscription. We also mentioned that churches, religious denominations and communities, and their federations, by being registered in the Public Register, are granted legal status. However, acquisition of legal status is not the only result of inscription; the Spanish legal system foresees other effects that favor those

23. See R.D. 142/1981, art. 6 (B.O.E., 1981, 27); L.O.L.R. art. 4 (B.O.E., 1980, 177); see also A. Motilla, SECTAS Y DERECHO EN ESPAÑA: UN ESTUDIO EN TORNO A LA POSICIÓN DE LOS NUEVOS MOVIMIENTOS RELIGIOSOS EN EL ORDENAMIENTO JURÍDICO [SECTS AND LAW IN SPAIN: A STUDY OF THE NEW RELIGIOUS MOVEMENTS IN JUDICIAL ORDINATION] 244-53 (1990).

24. See I.C. Ibán, *Las confesiones religiosas* [Religious Denominations], in CURSO DE DERECHO ECLESIASTICO [COURSE ON ECCLESIASTICAL LAW] 217-78 (I.C. Ibán et al. eds., 1991); J.M. Gonzalez del Valle, *Confesiones religiosas* [Religious Denominations], in DERECHO ECLESIASTICO DEL ESTADO ESPAÑOL [ECCLESIASTICAL LAW OF THE SPANISH STATE] 227-63 (1993); A. Motilla, *Aproximación a la categoría de Confesión religiosa en el Derecho español* [Approximation of the Classification of Religious Denominations under Spanish Law], in IL DIRITO ECLESIASTICO 169 (1989).

25. See L.O.L.R. art. 3(2) (B.O.E., 1980, 177).

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denominations which are registered. We will now look at these relevant effects.

First, we should mention that inscription grants some of the same rights that legal recognition awards to corporate entities; that is, the right to a legal name and identity, the right to hold title to goods and assets, the right to legal negotiation, the right of foundation, etc.²⁶

Second, there are effects that derive from identity as a religious entity that are related to the right of independent internal organization and organization of personnel. In this way, inscription guarantees independence, and safeguards both identity and beliefs.²⁷ The recognition of the autonomy of denominations fundamentally implies a recognition that their origins are not related to or dependent on the State. Each denomination can organize itself internally as it sees fit and emphasize those elements which differentiate it from other denominations and clearly identify it, so long as in doing so it does not violate the laws of the Spanish Legal system.

Third, inscribed religious entities can benefit, as religious entities, from tax exemptions or benefits, and may obtain special treatment with respect to the activities and places relating strictly to worship. The general criteria of the Spanish legal system concerning fiscal benefits is based on the assimilation of the legal system of religious denominations and that of non-profit entities or those of a charitable nature.²⁸ Along these lines, paragraph 2 of Article 7 of the LOLR states: "In the agreements or accords, and always respecting the principle of equality, fiscal benefits anticipated in the general legal system for non-profit entities and other organizations of a

26. See 2 C.C. ch. 2, art. 35-39.

27. See L.O.L.R. art. 6(1) (B.O.E., 1980, 177).

28. See Ley 30/1994 de Fundaciones y de incentivos fiscales a la participación privada en actividades de interés Orgánico (Disposición adicional quinta) [Law 30/1994 Concerning the Establishment and Fiscal Incentives for Private Participation in Activities of Organic Interest] (B.O.E., 1994, 282); R.D. 765/1995, por el que se regulan determinadas cuestiones del régimen de incentivos fiscales a la participación privada en actividades de interés Orgánico (Disposición adicional segunda) [R.D. 765/1995, Governing Fiscal Incentives for the Private Participation in Activities of Organic Interest] (B.O.E., 1995, 123); R.D. 589/1984 sobre fundaciones de la Iglesia Católica [R.D. 589/1984 Concerning the Establishment of the Catholic Church] (B.O.E., 1984, 85).

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charitable nature may be extended to said churches, denominations and communities.”

The system for treatment of contributions to churches and denominations under Spanish tax law is, in practice, two-fold: (1) the legal system applicable to charitable and non-profit associations, the common foundation to which denominations are compared; and (2) the specific systems applicable to those religious entities that have signed agreements with the State.²⁹

In summary, the root of these fiscal benefits for denominations is centered, in general and as with all economic aid, in the promotion of religious freedom which is reflected in the constitutional mandate of cooperation. The realization of this type of cooperation is today being put forward by other means, not only through agreements, but for the sake of constitutional equality.

Fourth, it should be further mentioned that only inscribed religious denominations may participate in advisory agencies of the Administration (for example, for the purpose of designating representatives of clearly established religions to the Advisory Committee on Religious Freedom).³⁰

And, finally, those religious organizations that are deeply rooted may participate in cooperative agreements with the State.³¹

In summary, registration of a religious entity grants a series of rights, beyond those of a legal nature, that denominations that are not registered do not have.

29. See Instrumento de Ratificación de 4 de diciembre de 1979 de los Acuerdos de 3 de enero de 1979, entre el Estado español y la Santa Sede, sobre asuntos jurídicos [Ratification Instrument of December 4, 1979 of the Accord of January 3, 1979, Between the Spanish State and the Holy See, Concerning Judicial Matters] (B.O.E., 1979, 300); Art. 11, Act 24/1992, 25/1992 & 26/1992 (B.O.E., 1992, 272).

30. See R.D. 1890/1981, art. 1(a) (B.O.E., 1981, 213).

31. See L.O.L.R. art. 7(1) (B.O.E., 1980, 177). Concerning the academic debate on “notorio arraigo,” see J. Leguina, *Dos cuestiones en torno a la libertad religiosa: control administrativo y concepto de notorio arraigo* [Two Questions Relating to Religious Freedom: Administrative Control and the Concept of “Notorio Arraigo”], 44 REVISTA ESPAÑOLA DE DERECHO ADMINISTRATIVO 683-88 (1984); M.J. Villa, *Reflexiones en torno al concepto de notorio arraigo en el artículo 7 de la Ley Orgánica de Libertad Religiosa* [Reflections on the Concept of “Notorio Arraigo” in Article 7 of the Organic Act on Religious Freedom], 1985 ANUARIO DE DERECHO ECLESIASTICO DEL ESTADO 143-184.

VI. PROBLEMS AND QUESTIONS CONCERNING THE REGISTER

The more than fifteen years that have passed since the proclamation of Royal Decree 142/1981, dated January 9, 1981, regulating the organization and operation of the Register of Religious Entities has provided outstanding experience in Register practice. This experience has shown some regulatory deficiencies which obliged the General Directorship of Religious Affairs (DGAR) to operate, in some cases, under a broader interpretation.

Among the primary objectives of a Regulation of Religious Entities should be the improvement in terms of judicial certainty in inscriptions, in an attempt to reduce the margin of discretion of the Administration. Along other lines, the Register should be a clear legal tool that faithfully reflects the reality of religious association in all of its various forms, in order to give religious organizations maximal flexibility in structuring their affairs within the general limits of laws. One possible means of minimizing fraud and reducing discretion on the part of the Administration would be to define, from a legal point of view, the concepts of "denomination" and "religious purpose,"³² seeking for this, among other approaches, from the consensus of the principal registered religious entities.

The confusion derives, in the first case, from the varied terminology used in the legal system of the Spanish State relative to religious denominations. The Constitution uses the terms "communities"³³ and "denominations."³⁴ The Organic Law of Religious Freedom refers to "Churches, denominations, and communities"³⁵ and also "religious entities."³⁶ The Royal Decree of January 9, 1981, concerning the Register of Religious Entities, appears to use the expression "entity" to refer globally to the various organizations that may be registered: churches, religious denominations, and communities; orders and

32. E. GARCÍA DE ENTERRÍA & T.R. FERNÁNDEZ RODRÍGUEZ, CURSO DE DERECHO ADMINISTRATIVO [COURSE ON ADMINISTRATIVE LAW] 1 (1990); F. SÁINZ MORENO, CONCEPTOS JURÍDICOS, INTERPRETACIÓN Y DISCRECIONALIDAD ADMINISTRATIVA [JUDICIAL CONCEPTS: INTERPRETATION AND JUDICIAL DISCRETION]] (1976) (explaining the theory of indeterminate judicial construction).

33. CONSTITUCIÓN [C.E.] art. 16.1.

34. *Id.* art. 16.3.

35. L.O.L.R. arts. 5.1, 6-8.

36. *Id.* art. 5.3.

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associated religious entites; religious congregations and institutes; and associated religious entities and federations.³⁷

In the reform of the Register Regulation, being prepared by the General Directorship of Religious Affairs, the possibility of formulating, for the sole purpose of registration, an integrated text which defines a “church,” “denomination,” or “community” as an entity made up of a significant group of faithful, professing a belief, endowed with a stable, internal, and independent organization structure, and which has one or more places of meeting or worship for religious purposes, is being contemplated. The experience gained from the functioning of the Register of Religious Organizations advises the introduction of such universal terminology that adapts the different terms used by the legislature to a reality conforming with Article 16.3 of the Constitution, while at the same time expanding the typology of the organizations eligible for registration.

With respect to the duties that Spanish law attributes to the concept of “religious purposes” we should emphasize (1) contributing to the definition of the scope of application of the LOLR; (2) configuring a requirement, *sine qua non*, for access of denominations to the Register of Religious Entities, evaluated by the DGAR; and (3) constituting a mandatory condition for access to the Register for minority religious entities, evaluated by the DGAR, upon presentation of certification of the “religious purposes” of the denomination with which these minority entities are integrated.³⁸

It is not possible here to look at more than the second and third aspects, since the first would lead us to another subject, that of the limits of religious freedom, which is beyond the scope of this article. So we must concentrate on the specific function that this concept fulfills: guaranteeing religious entities access to the Register.

It is appropriate to point out that an inquiry into the definition of “religious purposes” is a preliminary requirement for the examination of the remaining requirements, as derived from the declarations of the DGAR and the judicial pronouncements which contain references concerning what

37. See Royal Decree of January 9, 1981, concerning the Register of Religious Entities art. 3.1, 7.3, 8; see also *id.* art. 2.

38. See R.D. 142/1981, art. 3(2)(c) (B.O.E., 1981, 27).

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should be understood by "religious purposes" in the Spanish legal system.

The DGAR is the competent administrative authority for responding to petitions put before it. Its resolutions must necessarily affirm or refuse requests.³⁹ In administrative practice, we must emphasize the value that the DGAR attributes to the judgments handed down by the Advisory Committee on Religious Freedom, as well as the consultations made by the different agencies involved in making these decisions.

The most problematic cases usually arise when entities affiliated with a confession or federation request access to the Register, contributing the required certification from the church, community or denomination of which it is a part, and the General Directorship decides that the certification does not deal with the specific issue of "religious purpose."⁴⁰

In analyzing the resolutions decided in the 1980s by the DGAR concerning "religious purposes," it appears that creation and support of social charitable works do not constitute a "religious purpose." On the other hand, organizations that produce goods and services for the market cannot be considered religious either.

It is appropriate to note that the judicial pronouncements that have revised administrative acts denying inscription do not help the administration in defining the concept of "religious purpose."⁴¹ Despite not having yet reached a standard judicial interpretation of this concept, the social reality in force and the experience acquired in these past fifteen years of Register inscription appear to advise a broadening of the concept that goes beyond the purpose of worship.

39. For a study of administrative resolutions, see M.J. Roca, *Aproximación al concepto de fines religiosos* [Approximation of the Concept of Religious Ends], 132 REVISTA DE ADMINISTRACIÓN PÚBLICA 453-60 (1993).

40. See Art. 1 (3) of Acts 24/1992, 25/1992, 26/1992 (B.O.E., 1992, 272); Resolución de 11 de marzo de 1982 de la Dirección Orgánica de Asuntos Religiosos, sobre la inscripción de entidades de la Iglesia Católica en el Registro de Entidades Religiosas [Resolution of March 11, 1982 of the Organic Direction of Religious Matters, Concerning the Inscription of Entities of the Catholic Church in the Register of Religious Matters] (B.O.E., 1982, 76).

41. See A.C. ÁLVAREZ CORTINA, EL DERECHO ECLESIASTICO ESPAÑOL EN LA JURISPRUDENCIA POSTCONSTITUCIONAL (1978-1990) [SPANISH ECCLESIASTICAL LAW IN POST-CONSTITUTIONAL JURISPRUDENCE (1978-1990)] (1991).

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The basis of the reform of the Regulation of Religious Entities being prepared by the DGAR focuses on the analysis of an integrated text which, contemplates including charitable works⁴² in the definition of "religious purpose" along with more standard religious purposes such as the exercise and promotion of worship and devotion, preaching, moral and religious teaching and training, religious attendance, training and maintenance of ministers, and training of religious leaders, catechists and religious assistants. The importance of the Register of Religious Entities is demonstrated in its instrumental value in the service of religious freedom.⁴³ By inscribing in the Register, many important consequences are derived in the exercise of this fundamental right. For this reason, the preceding norms and register practice in those states that possess a common cultural tradition, as in the case of those countries belonging to the Hispanic world, should facilitate the search for criteria that permit harmonizing religious freedom with the values and traditions of our pluralist societies.

The search for these criteria helps to strengthen respect for the fundamental right of religious freedom. The criteria can be used in the development of provisions that reinforce a peaceful common life among the different peoples that make up our society.

42. Charitable works, as used, means the practice of charitable activities of assistance inherent in the religious tradition, performed freely and institutionally by a major registered entity or by a minority entity dependent upon the former. These activities shall be subject to the general provisions established in this area.

43. See S. Bueno Salinas, *El ámbito de amparo del derecho de libertad religiosa y las asociaciones* [*The Full Reach of the Law of Religious Freedom and Association*], 1985 ANUARIO DE DERECHO ECLESIASTICO DEL ESTADO 185-202.