The Contemporary Form of Registering Religious Entities in Spain

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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.

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.
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
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, 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:

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

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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.

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

The concept of a religious entity has not been defined in the legal ordinances of the Spanish State. 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.”

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.

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:

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11. See M. López Alarcón, Entidades Religiosas [Religious Entities], 1993
12. B.O.E., 1979, 76.
churches, religious denominations and communities, and their federations.\textsuperscript{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.\textsuperscript{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.\textsuperscript{16}

Later, in 1984, another Royal Decree authorized the inscription of religious foundations of the Catholic Church,\textsuperscript{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.

\textsuperscript{14} See L.O.L.R. art. 5 (B.O.E., 1980, 177).
\textsuperscript{15} See L.O.L.R. art. 6 (B.O.E., 1980, 177).
18. The following tabular data is derived from the database of the Register of Religious Entities of the Spanish Ministry of Justice.
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.

<table>
<thead>
<tr>
<th>Number of Inscribed Entities</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Orders, Congregations, Institutes, Associated Entities and Federations</td>
<td>3,424</td>
</tr>
<tr>
<td>Communities or Houses dependent upon Orders, Congregations and Institutes</td>
<td>8,556</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>11,980</strong></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Cancellation of Inscriptions</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Orders, Congregations, Institutes, Associations, Federations, Communities and Congregations</td>
<td>1,025</td>
</tr>
<tr>
<td><strong>Active Entities</strong></td>
<td><strong>10,955</strong></td>
</tr>
</tbody>
</table>

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:

<table>
<thead>
<tr>
<th>Number of Entities Registered</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Churches, Communities, or Confessions</td>
<td>797</td>
</tr>
<tr>
<td>Religious Federations</td>
<td>27</td>
</tr>
<tr>
<td>Associations</td>
<td>64</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>888</strong></td>
</tr>
</tbody>
</table>
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:

<table>
<thead>
<tr>
<th>Entities Belonging To:</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>The Federation of Evangelical Religions of Spain (FEREDE)</td>
<td>489</td>
</tr>
<tr>
<td>The Federation of Israelite Communities of Spain (FCIE)</td>
<td>11</td>
</tr>
<tr>
<td>The Islamic Commission of Spain (CIE)</td>
<td>51</td>
</tr>
<tr>
<td>Non-Federated Entities</td>
<td>337</td>
</tr>
</tbody>
</table>

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:

<table>
<thead>
<tr>
<th>Creeds or Religious Denominations</th>
<th></th>
</tr>
</thead>
</table>
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:

<table>
<thead>
<tr>
<th>YEAR OF INSRIPTION</th>
<th>ENTITIES REGISTERED</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Absolute Numbers</td>
</tr>
<tr>
<td>PROTESTANTS</td>
<td>745</td>
</tr>
<tr>
<td>Evangelical Christians</td>
<td>423</td>
</tr>
<tr>
<td>Evangelical Christian Brothers</td>
<td>90</td>
</tr>
<tr>
<td>Evangelical Christian Baptists</td>
<td>130</td>
</tr>
<tr>
<td>Other Evangelical Churches</td>
<td>41</td>
</tr>
<tr>
<td>Pentecostals</td>
<td>19</td>
</tr>
<tr>
<td>Philadelphia</td>
<td>1</td>
</tr>
<tr>
<td>Churches of Christ</td>
<td>12</td>
</tr>
<tr>
<td>Salvation Army</td>
<td>1</td>
</tr>
<tr>
<td>Church of God</td>
<td>4</td>
</tr>
<tr>
<td>Lutherns</td>
<td>4</td>
</tr>
<tr>
<td>Calvinists</td>
<td>2</td>
</tr>
<tr>
<td>Adventists</td>
<td>2</td>
</tr>
<tr>
<td>Anglicans</td>
<td>16</td>
</tr>
<tr>
<td>Orthodox</td>
<td>5</td>
</tr>
<tr>
<td>Mormons</td>
<td>1</td>
</tr>
<tr>
<td>Jehovah’s Witnesses</td>
<td>1</td>
</tr>
<tr>
<td>Jews</td>
<td>15</td>
</tr>
<tr>
<td>Muslims</td>
<td>95</td>
</tr>
<tr>
<td>Orientals</td>
<td>7</td>
</tr>
<tr>
<td>Buddhists</td>
<td>11</td>
</tr>
<tr>
<td>Others</td>
<td>8</td>
</tr>
<tr>
<td>TOTAL</td>
<td>888</td>
</tr>
</tbody>
</table>

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

IV. REQUIREMENTS FOR INSRIPTION

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.\textsuperscript{20}

The Regulation of the Register specified other new requirements with respect to the inscription of minor entities (Orders, Congregations and Associated Entities).\textsuperscript{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:\textsuperscript{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

\begin{itemize}
\item \textsuperscript{20} See LOLR art. 5(2) (B.O.E., 1980, 177).
\item \textsuperscript{21} See R.D. 142/1981, art. 3 (B.O.E., 1981, 27).
\item \textsuperscript{22} See LOLR art. 3 (B.O.E., 1980, 177).
\end{itemize}
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.\textsuperscript{23}

The experience with the Resister 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.\textsuperscript{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.\textsuperscript{25}

V. WHAT DOES INSRIPTION 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


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

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.

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. 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

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

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,” 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” and “denominations.” The Organic Law of Religious Freedom refers to “Churches, denominations, and communities” and also “religious entities.” 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

34. Id. art., 16.3.
35. L.O.I.R. arts. 5.1, 6-8.
36. Id. art. 5.3.
associated religious entities; religious congregations and institutes; and associated religious entities and federations.\footnote{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, \textit{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.\footnote{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

\footnote{37. \textit{See} Royal Decree of January 9, 1981, concerning the Register of Religious Entities art. 3.1, 7.3, 8; \textit{see also} id. art. 2.}
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. 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.”

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.” 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).


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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 works 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. 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.