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Relations with Religious Minorities: The Spanish Model

*Alberto de la Hera**

Article 16 of the Spanish Constitution of 1978 obliges the public authorities to take “into account the religious beliefs of Spanish society” and “to maintain appropriate cooperation with the Catholic Church and the other denominations.”¹ The text of the aforementioned Article 16 emphasizes the constitutional importance given to the question of the different denominations and their presence in public life by the new Spanish legal system; the religious beliefs of the Spanish people are considered to be of such importance that the Constitution expressly takes them into consideration.² From this point of view, the new legislation is, in and of itself, an important and well-known innovation change from the previous situation, in which the denominations were regulated by the Law of Religious Freedom of June 28, 1967.³ This law was an innovation because the previous constitution existing during Franco’s regime, known as the “Fundamental Laws,” did not take directly into consideration the non-Catholic denominations, leaving them instead to be dealt with by the Law of Religious Freedom mentioned above.⁴

The 1978 constitution, however, establishes the obligations of the State towards the denominations with which it must maintain relations of cooperation,⁵ and the new General Act on

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1. LEGISLACIÓN ECLESIASTICA 46 (A. Molina & M.E. Olmos eds., 8th ed. 1996) [hereinafter LEGISLATION].

2. See J. MANTECÓN SANCHO, EL DERECHO FUNDAMENTAL DE LIBERTAD RELIGIOSA [THE FUNDAMENTAL RIGHT OF RELIGIOUS FREEDOM] 122 (1996).

3. See A. Motilla, *Proceso de formación del sistema de Derecho Eclesiástico* [The Process of Forming the System of Ecclesiastical Law], in CURSO DE DERECHO ECLESIASTICO [THE COURSE OF ECCLESIASTICAL LAW] 42-43 (I.C. Ibán et al. eds., 1991).

4. See A. de la Hera, *Las confesiones religiosas no católicas en el Derecho español* [The Non-Catholic Religious Denominations in Spanish Law], in PLURALISMO Y LIBERTAD RELIGIOSA [PLURALISM AND RELIGIOUS FREEDOM] 34-90 (1971).

5. See L. Prieto Sanchis, *Principios constitucionales del Derecho Eclesiástico Español* [Constitutional Principles of Spanish Ecclesiastical Law], in CURSO DE DERECHO ECLESIASTICO 206-15 (I.C. Ibán et al. eds., 1991).

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Religious Liberty (LOLR) of July 5, 1980⁶ sets out, in Article 7.1, that such cooperation should normally be through agreements between the State and the denominations:⁷ "Taking into account the religious beliefs existing in Spanish society [the State] shall establish Cooperation Agreements or Conventions with the Churches, Denominations, and Religious Communities enrolled in the Registry where warranted by being deeply rooted in Spain due to presence and number of followers."⁸

A number of problems, recognized by experts on the subject, become apparent upon reading the mentioned texts.⁹ For example, exactly what should the cooperation stipulated in Article 16.3 of the Constitution consist of? Though the law does not define the content or goals of such cooperation, it presupposes that either the State and the denominations have common objectives or, if only the denominations have objectives, then the objectives must be of an obvious public interest. Another of these problems is that of determining which of the non-Catholic denominations can aspire to signing an agreement with the State.¹⁰

We should bear in mind that these two questions are related to each other. The fact that the LOLR places restrictions on some denominations (using very general terms like Churches, Denominations and Religious Communities¹¹) in terms of the possibility of their signing agreements with the State could be interpreted to mean that the State considers that only certain religious groups serve the public interest. However, according to Article 7.1 of the LOLR, the determination of the characteristics of the groups which may sign such agreements is based on other criteria. They must meet two conditions: that

6. See M.J. CIÁURRIZ, *LA LIBERTAD RELIGIOSA EN EL DERECHO ESPAÑOL. LA LEY ORGÁNICA DE LIBERTAD RELIGIOSA [RELIGIOUS FREEDOM IN SPANISH LAW. THE GENERAL LAW OF RELIGIOUS FREEDOM]* (1984).

7. "Nella maggior parte degli Stati d'Europa si è fatto riferimento alla cooperazione fra Stato e Chiesa; l'accordo è un mezzo adeguato per realizzare questa cooperazione" R. Puza, Address at the Convenzioni concordatarie e diritto statale in materia religiosa. L'esperienza della Germania, *transcript available in 1997/2 QUADERNI DI DIRITTO E POLITICA ECCLESIASTICA* 329.

8. LEGISLATION, *supra* note 1, at 146.

9. See Prieto Sanchis, *supra* note 5, at 207.

10. See J.A. SOUTO PAZ, *DERECHO ECLESIASTICO DEL ESTADO [ECCLESIASTICAL LAW OF THE STATE]* 335-36 (1993).

11. See General Act on Religious Freedom art. 2.2 (B.O.E. 1980, 177), *reprinted in* LEGISLATION, *supra* note 1, at 144.

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of being “inscribed¹² in the special Registry;” and that of “having deep roots in Spain,” as a result of “their presence and number of followers.”¹³

It is obvious that these two requirements, which must be complied with if a denomination is to sign an agreement with the State, are of an entirely different nature. The first, inscription in a special Registry, is, *a priori*, a question of form,¹⁴ while the second is based on social facts. And neither of them is a consequence of the other. After all, we might suppose the existence of a well-known, deeply rooted denomination with a large number of members in Spain that has not inscribed its organization in the Registry. Or there might be denominations inscribed in the special Registry that have few members and are neither well-known nor deeply rooted in the country. Consequently, the possibility of confessions signing agreements with the State depends on complying with two legal requirements which are completely independent of each other: in one case the will of the denomination that applies for the inscription concurs with that of the State that accepts it, while in the other case, we see the concurrence of a sociological fact, totally unrelated to the will of either of the parties, with the will of the State that evaluates it.

Looking first at the requirements for inscription in the Registry, Article 5.1 of the LOLR of July 5, 1980 states that “Churches, Denominations, and Religious Communities and their federations shall acquire legal personality once registered in the corresponding public Registry created for this purpose in the Ministry of Justice.”¹⁵ The inscription, which is not *ex officio*, unconditional, or automatic, must be applied for by those denominations that are interested, and the State can agree to it or not.¹⁶ Whether or not the request is granted will depend on the applicant including the following information

12. Inscribir [inscribe] is the Spanish word used to describe the process of registration.

13. LEGISLATION, *supra* note 1, at 146.

14. See M.J. Ciaúrriz, *Tratamiento jurisprudencial de la inscripción en el Registro de Entidades religiosa* [Jurisprudential Treatment of the Inscription in the Registry of Religious Entities], in *DAS KONSOZIATIVE ELEMENT IN DER KIRCHE* 821 (von W. Ayman et al. eds., 1989).

15. LEGISLATION, *supra* note 1, at 145.

16. See SOUTO PAZ, *supra* note 10, at 336.

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regarding: "its foundation or establishment in Spain, declaration of religious purpose, denomination and other particulars of identity, rules of procedure and representative bodies, including such bodies' power and requirements for the valid designation thereof" (Article 5.2).¹⁷

Among all these elements, the State can act with discretion on only two of them:¹⁸ those that are related to the internal organization and to the religious basis or orientation of the applicant.¹⁹ That the group applying for inscription is present in Spain is simply a fact. The same can be said for its denomination; it could turn out that the denomination simply lacked a religious nature.²⁰

With respect to the denomination's internal functioning and organization, a possible reason for turning down the application for inscription would be if it were revealed that the internal organization was working against the personal liberties recognized and established by the constitution—the State would then have to decide whether or not to accept the request.²¹

As for whether the self-denominated groups actually have a religious basis or nature, the decision of the State in favor of or against the inscription in this case is discretionary; that is to say, it is the result of discretionary consideration by the State of a debatable reality.²² Naturally, the denominations can appeal to executive authority or to the courts to protect their rights.²³

17. LEGISLATION, *supra* note 1, at 145.

18. See M. López Alarcón, *Entidades Religiosas [Religious Entities]*, in DERECHO ECLESIASTICO DEL ESTADO ESPAÑOL [ECCLESIASTICAL LAW OF THE SPANISH STATE] 286 (1993).

19. See I. Aldanondo, *El Registro de Entidades Religiosas [The Registry of Religious Entities]*, VII ANUARIO DE DERECHO ECLESIASTICO DEL ESTADO [JOURNAL OF ECCLESIASTICAL LAW OF THE STATE] 24-25 (1991).

20. See Alarcón, *supra* note 18, at 287.

21. See J.M. Vázquez García-Peñuela, *Posición jurídica de las confesiones religiosas y de sus entidades en el ordenamiento jurídico español [Juridical Position of the Religious Denominations and of Their Entities in the Spanish Juridical Ordinance]*, in VV.AA. TRATADO DE DERECHO ECLESIASTICO [THE TREATMENT OF ECCLESIASTICAL LAW] 588-89 (1994).

22. "Il potere pubblico potrebbe porre restrizioni alla libertà religiosa attraverso qualsiasi esplicazione di potere insito nelle sue funzioni, e cioè tanto attraverso provvedimenti amministrativi e di polizia, quanto attraverso l'emanazione di norme" A. Vitale, *Regolamentazione della libertà religiosa*, IX-2 IUS ECCLESIAE 576 (1997).

23. See Aldanondo, *supra* note 19, at 36-37.

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Already by 1987, seven years after the LOLR became effective, the number of inscribed religious groups was very high.²⁴ There were also varied organizations whose applications for inscription had been rejected because they failed to comply with the legal requirements.²⁵ At any rate, by virtue of the above-mentioned Article 5.1, inscription allows those who are accepted to become recognized legal entities with all the corresponding rights established thereby.²⁶ However, one of those rights, precisely that of signing agreements with the State, is notably limited by the second requirement, that of being widespread and “deeply rooted”²⁷ with numerous believers in Spain, according to Article 7.1 of the LOLR.²⁸ In fact, such agreements have not been signed with the “Churches, Denominations, and Religious Communities,” as the LOLR says in Article 7, but instead with Federations of these organizations grouped around an orientation declared to be deep rooted and widespread.

The facts themselves have demonstrated what should be understood by the expression “deeply rooted”²⁹ in terms of deciding which denominations may enter into cooperation agreements with the government in accordance with Article 7.1. In fact, to date, four religious confessions have signed such agreements. The first is the Catholic Church, which currently has in force several agreements signed with the Spanish State, all entered into prior to the publication of the LOLR. One of

24. See M.J. Villa, *Legislación española relativa a las confesiones religiosas no católicas* [Spanish Legislation Concerning Non-Catholic Religious Denominations] IV ANUARIO DE DERECHO ECLESIASTICO DEL ESTADO [JOURNAL OF ECCLESIASTICAL LAW OF THE STATE] 823-825 (1988).

25. See C. Seco Caro, *La inscripción en el Registro de Entidades religiosas de las denominadas “Iglesia Cristiana Palmariana de los Carmelitas de la Santa Faz” y “Orden religiosa de los Carmelitas de la Santa Faz en Compañía de Jesús y María”* [The Inscription in the Registry of Religious Entities of those Denominated “Christian Palm Church of the Carmelitas of the Holy Face” and “Religious Order of the Carmelitas of the Holy Face in Company with Jesus and Maria], IV ANUARIO DE DERECHO ECLESIASTICO DEL ESTADO [JOURNAL OF ECCLESIASTICAL LAW OF THE STATE] 581-600 (1988).

26. See Aldanondo, *supra* note 19, at 37-46.

27. M.J. Villa, *Reflexiones en torno al concepto de “notorio arraigo” en el art. 7 de la Ley Orgánica de Libertad Religiosa* [Reflections on the Concept of “Being Deeply Rooted” as Required by Article 7 of the General Law on Religious Freedom], I ANUARIO DE DERECHO ECLESIASTICO DEL ESTADO 143-83 (1985).

28. See LEGISLATION, *supra* note 1, at 146.

29. SOUTO PAZ, *supra* note 10, at 336.

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these dates from General Franco's regime³⁰ while another came after Franco's death but before the Constitution.³¹ The rest were signed after the new Constitution was enacted.³² The second entity is the Spanish Federation of Evangelical Religious Entities;³³ the third and fourth are the Federation of Israelite Communities,³⁴ and the Islamic Commission of Spain, respectively.³⁵

The mention of these last three organizations is important. Jews and Muslims have formed part of the historic reality of Spain for many centuries. They have implanted so many important features into Spanish culture, language, art, and

30. See Convenio de 5 de abril de 1962, entre el Estado español y la Santa Sede, sobre reconocimiento, a efectos civiles, de estudios no eclesiásticos, realizados en Universidades de la Iglesia [Convenant of 5 April 1962, between the Spanish State and the Holy See, concerning recognition, to civil effects, of non-ecclesiastical studies, carried out in Universities of the Church], reprinted in LEGISLATION, *supra* note 1, at 63-70.

31. See Acuerdo de 28 de julio de 1976, entre la Santa Sede y el Estado Español [Agreement of 28 July 1976 between the Holy See and the Spanish State], reprinted in LEGISLATION, *supra* note 1, at 71-73.

32. See Acuerdo de 3 de enero de 1979, entre el Estado Español y la Santa Sede, sobre Asuntos jurídicos [Agreement of 3 January 1979 between the Spanish State and the Holy See, concerning juridical matters], reprinted in LEGISLATION, *supra* note 1, at 74-79; Acuerdo de 3 de enero de 1979, entre el Estado Español y la Santa Sede, sobre Enseñanza y Asuntos culturales [Agreement of 3 January 1979 between the Spanish State and the Holy See, concerning Teachings and Cultural matters], reprinted in LEGISLATION, *supra* note 1, at 80-87; Acuerdo de 3 de enero de 1979, entre el Estado Español y la Santa Sede, sobre la Asistencia religiosa a las Fuerzas Armadas y Servicio militar de Clérigos y Religiosos [Agreement of 3 January 1979 between the Spanish State and the Holy See, concerning the religious Assistance and the Armed Forces and military Service of Clergy and Religious Peoples], reprinted in LEGISLATION, *supra* note 1, at 88-93; Acuerdo de 3 de enero de 1979 sobre Asuntos económicos [Agreement of 3 January 1979 concerning economic Matters], reprinted in LEGISLATION, *supra* note 1, at 94-99.

33. See Ley 24/1992, de 10 de noviembre, por la que se aprueba el Acuerdo de Cooperación del Estado con la Federación de Entidades Religiosas Evangélicas de España [Act 24/1992, of 10 November, by which the cooperative agreement between the State and the Federation of Evangelical Religious Entities is approved], reprinted in LEGISLATION, *supra* note 1, at 104-14.

34. See Ley 25/1992, de 10 de noviembre, por la que se aprueba el Acuerdo de cooperación del Estado con la Federación de Comunidades Israelitas de España [Act 25/1992, of 10 November, by which the cooperative agreement between the State and the Federation of the Israelite Communities of Spain is approved], reprinted in LEGISLATION, *supra* note 1, at 115-27.

35. See Ley 26/1992, de 10 de noviembre, por la que se aprueba el Acuerdo de Cooperación del Estado con la Comisión Islámica de España [Act 26/1992, of 10 November, by which the cooperative agreement between the State and the Federation of the Islamic Communities of Spain is approved], reprinted in LEGISLATION, *supra* note 1, at 128-41.

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customs that it would be impossible to understand Spanish history without them. Aside from however many members both religions may have in Spain at a given moment, Judaism and Islam are so deeply entrenched in its history that it is hardly necessary to prove or demonstrate it. At the same time, they share equally with Christianity the role played in the universal history of mankind by the three main monotheistic religions.

As for the evangelical confessions, which are less deeply rooted in Spain than Islam and Judaism, they have not marked Spain's culture and social reality in such a deeply meaningful way. Yet, they share with the predominant Catholicism the name of "Christians" and faith in Christ and have made an important contribution to the struggle for religious freedom. Today they are probably the largest number of denominations with respect to new growth and have the greatest impact in Spain.

These realities are reflected in the three recent agreements with the mentioned organizations: while those signed with the Jews and the Muslims contain clauses for the protection of their cultural and artistic heritage, nothing similar is found in the agreement with the Protestants.³⁶ And this, precisely, is one of the few elements that differentiates it from the texts of the other agreements. Otherwise the three agreements are almost identical.³⁷

This close similarity among the three agreements with the non-Catholic denominations should be pointed out, as it allows us to clearly distinguish the differences between the State's agreements with them and with the Catholic Church, in terms of the regulatory environment governing the relations between the religious bodies and the State.

The fact that the agreements that affect the Catholic Church were reached prior to the LOLR meant the framework and the way of dealing with the main subjects of the agreements were rather different from those specified by the

36. See M.J. CÍARRIZ, *El contenido del derecho fundamental de Libertad religiosa* [*The Content of Fundamental Right of Religious Freedom*], in VV.AA. TRATADO DE DERECHO ECLESIASTICO [THE TREATMENT OF ECCLESIASTICAL LAW] 467 (1994).

37. See A. de la Hera, *Acuerdos con las Confesiones religiosas minoritarias* [*Agreement with the Minority Religious Denominations*], XXXV-69 IUS CANONICUM 219 (1995).

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LOLR. The agreement with the Holy See of 1976 was signed while the Law of Religious Freedom of 1967 (which did not affect the Catholic Church) and the Concordat of 1953 were in effect.³⁸ Needless to say, the legal status of the Catholic Church at that time was completely different from that of the other confessions.³⁹ And, with respect to the Agreements of January 1979, they were only affected by the constitutional articles, which were logically quite general, and therefore left the negotiators with a wide margin of manoeuvre.⁴⁰

The negotiators were more restricted when it came to negotiating the agreements with the federations of non-Catholic denominations since they had to abide by the greater precision of the LOLR.⁴¹ It could even be pointed out that the three agreements signed after the LOLR may not have been necessary.⁴² These agreements were requested by the respective denominations in order to have their situation legally regulated and to obtain recognition of a series of rights. But they also intended to obtain through Spanish Law a legal status as similar as possible to that held by the Catholic Church.⁴³ This could explain two things: that even the signatories did not seem enthusiastic about the agreements,⁴⁴ and that the text of the agreements are so similar that it is surprising that each Federation was willing to accept a model of relations with the State with so few differences among them. After everything is said and done, one of the main objectives of the non-Catholic religious organizations affected was to obtain, to the degree possible, a legal status equal to that of the Catholic Church and thus bring to a close a historic situation of inequality and injustice so well-known to all. They hoped to achieve, as had the Catholic Church, a "Concordat-like" (using the term in its widest and most expressive sense) which, basically, they have.

38. See Motilla, *supra* note 3, at 31.

39. See *id.* at 41-44.

40. See SOUTO PAZ, *supra* note 10, at 173-74.

41. See I.C. Ibán, *El sistema de fuentes del Derecho Eclesiástico* [*The System of Sources of Ecclesiastical Law*], in CURSO DE DERECHO ECLESIASTICO [THE COURSE OF ECCLESIASTICAL LAW] 154-59 (I.C. Ibán et al. eds., 1991).

42. See de la Hera, *supra* note 37, at 215-17.

43. See D. Basterra Montserrat, *Acuerdo Estado Español-Federación Evangélica* [*Agreement between the Spanish State and the Evangelical Federation*], VII ANUARIO DE DERECHO ECLESIASTICO DEL ESTADO 579-88 (1991).

44. See *id.* at 588.

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Once the constitutional law had set out the possibility of relations of cooperation between the State and the denominations, and the LOLR had specified that the normal and habitual way of bringing this about should be by way of agreements to this effect, then for those denominations that met the conditions of Article 7.1, the way was obvious and clear.⁴⁵ Starting from there, and above and beyond the differences in the agreed-on texts due to the peculiarities of each denomination, the possession of an agreement by one of the deeply rooted denominations meant the attainment of full legal recognition and a position, made possible by Article 16.3 of the Constitution, that had been reserved for centuries for the Catholic Church.⁴⁶ Thus, the non-Catholic denominations have overcome the system of bilateral agreements, as this is no longer a privilege of one denomination,⁴⁷ and have become recognized legal entities in Spain, which has thus definitively adopted the formula of pluralism and general religious freedom guaranteed by the government.⁴⁸

It is at this point that we can return to the idea that the agreements with the three main non-Catholic denominations may not have been necessary in the first place. Looking at the problem from this angle supposes that the three agreements could have been replaced by State law. This is supported by the fact that the agreements are, textually, virtually identical. If the three agreements had to say the same thing, with each one even including the subject matter from the articles in the same order, with very few differences, i.e., conservation of cultural heritage, holidays, some aspects of matrimony, then a state law common to all the eligible religious organizations would in fact have created the same legal requirements for all of them, which

45. See A. Fernández-Coronado, *Los Acuerdos del Estado Español con la Federación de Entidades Religiosas Evangélicas de España (F.E.R.E.D.E.) y la Federación de Comunidades Israelitas (F.C.I.)* [The Agreements between the Spanish State and the Federation of Evangelical Religious Entities of Spain and the Federation of Israelite Communities], VII ANUARIO DE DERECHO ECLESIASTICO DEL ESTADO 541-42 (1991).

46. See P.J. Viladrich & J. Ferrer Ortiz, *Los principios informadores del Derecho Eclesiástico español* [The Formative Principles of Spanish Ecclesiastical Law], in DERECHO ECLESIASTICO DEL ESTADO ESPAÑOL [ECCLESIASTICAL LAW OF THE SPANISH STATE] 208-10 (1993).

47. See de la Hera, *supra* note 37, at 201-04.

48. See Prieto Sanchis, *supra* note 5, at 196-200.

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as a practical matter is the result attained by the existing agreements.⁴⁹

The possibility existed and would not have altered the judicial regulation of the rights and obligations obtained by the three denominations. It would have even contributed to re-enforcing the image of a democratic state that respects and protects liberty. However, a clear difference in the legal situation with respect to the State would still remain between the Catholic Church and the other denominations. Because of this, the express mention of the Catholic Church in Article 16.3 of the Constitution would no longer be interpreted as the simple recording of a social fact, "a paradigm of treatment to be extended to other denominations," but would instead become a privilege and thus a violation of the principle of equality.⁵⁰

It would in effect be possible to give exactly the same degree of liberty to both the Catholic Church and the other denominations, in one case by agreements, and in the other case by a state law. But whereas in the second case there would be no loss of liberty, this would be counterbalanced by a serious loss of equality which would make it difficult to refute the accusation of veiled denominationalism that has frequently been made against Article 16 of the Constitution by those who would have preferred it to be written differently.⁵¹

And all this without taking into account the bilateral aspects of the agreed-on text, which means the involvement of each denomination in the regulation of its own judicial status in Spain. A common state law supposes a unilateral decision; the possibility that the legislators might make an informal agreement with those affected by the law would not have been enough to avoid infringing the formal aspects of the law. The possibility of bilateral agreements was therefore a requirement of Article 1 of the Constitution⁵² as a principle of liberty and

49. See D. LLAMAZARES, DERECHO ECLESIASTICO DEL ESTADO [ECCLESIASTICAL LAW OF THE STATE] 196 (1989).

50. Viladrich & Ortiz, *supra* note 46, at 208.

51. See A. Bernárdez, *La mención de la Iglesia Católica en la Constitución Española* [The Mention of the Catholic Church in the Spanish Constitution], in VV.AA. LAS RELACIONES ENTRE LA IGLESIA Y EL ESTADO. ESTUDIOS EN MEMORIA DEL PROFESOR PEDRO LOMBARDÍA [THE RELATIONS BETWEEN THE CHURCH AND THE STATE. STUDIES IN MEMORY OF PROFESSOR PEDRO LOMBARDÍA] 403-20 (1989).

52. See LEGISLATION, *supra* note 1, at 43-44.

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equality which must be put into effect by the State (Article 9),⁵³ all of which is correctly set forth in Article 7 of the LOLR.⁵⁴

I will not deal here with the problem of international law and the international aspects of the agreements between Spain and the Holy See. This has often been dealt with by jurists and experts in the matter and for a century has been subject to numerous debates and arguments from irreconcilable positions.⁵⁵ In any case, the other denominations do not have, nor do they aspire to have, the same international situation as the Catholic Church and the Holy See, whose legal organization and “legal personality” are entirely different.⁵⁶

That such a fact marks a difference between the judicial conception and classification of the agreements with the Holy See and those signed later with the other three denominations is entirely irrelevant. The German agreements with the Protestant denominations, although with the Länder as signatories instead of the Federal Government,⁵⁷ and the numerous Italian “intese,”⁵⁸ have progressed substantially as bilateral agreements and also as a focus of attention of legal and non-legal experts in the matter. In fact, they have progressed to such an extent that they have resolved and overcome the aforementioned difference which in Spain has not even been seriously considered or debated.

The three non-Catholic agreements, then, can be read together.⁵⁹ The fact that they are almost identical guarantees judicial uniformity—if you have read one you have read them all—but reduces the scope of the bilateral agreements with each of the organizations affected.

It is difficult to determine to what degree the option chosen has been the best one, or if it would have been better to emphasize first the distinctive elements and afterwards the

53. *See id.* at 44.

54. *See id.* at 146.

55. *See* Ibán, *supra* note 41, at 149.

56. *See id.* at 154-55.

57. *See* G. Robbers, *Stato e Chiesa in Germania* [*State and Church in Germany*], in *STATO E CHIESA NELL'UNIONE EUROPEA* [STATE AND CHURCH IN THE EUROPEAN UNION] 59-76 (G. Robbers ed., 1996).

58. S. Ferrari, *Stato e Chiesa in Italia* [*State and Church in Italy*], in *STATO E CHIESA NELL'UNIONE EUROPEA* [STATE AND CHURCH IN THE EUROPEAN UNION] 181-203 (G. Robbers ed., 1996).

59. *See* SOUTO PAZ, *supra* note 10, at 335-49.

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common ones. Here we enter into the eternal controversy between security and justice, and between liberty and uniformity. Evidently, a wide range of measures designed to protect the denominations provides a better guarantee of public order, but at the cost of losing particular individual characteristics that may have been worth taking into account. At any rate, the fact that the denominations have accepted the system means that the agreed-on system is preferable to having nothing.⁶⁰

Everything that has been set out herein until now (the description of the characteristics of the three Agreements and their meaning and significance in the Spanish legal system, and of the relations of cooperation between the public authorities and the denominations established by the Constitution), is reflected clearly in the Preambles of the three agreements.⁶¹ Practically speaking, the three coincide in the wording of their corresponding Preambles, with a few variations.⁶²

The texts of the three Preambles open with a reference to the basic principles of the present Spanish political system on which the relations between the State and the denominations are based, all of which has already been explained herein. Each Preamble defines the State as pluralist, in contrast to the confessional character of the previous political system, and stresses the fact that the principles of equality and religious freedom are the fundamental defining factors of the State's attitude towards religion.⁶³

This Preamble, shared by the three agreements, clearly differentiates between the individual citizen's rights to equality and religious freedom, and their community rights, which derive from their individual rights.⁶⁴ Of course, the fact that a person practices a given religion does not mean that he or she can inscribe his or her name in a Registry. Moreover, Article 16.2 of the Constitution specifically prohibits anyone from being

60. See Bastera Montserrat, *supra* note 43, at 579.

61. See de la Hera, *supra* note 37, at 220-22.

62. As has been discussed, these variations include the different terminology necessary to describe diverse aspects of the religions, and the absence of any reference to "cultural and artistic heritage" in the agreement with the Evangelical Federation. See LEGISLATION, *supra* note 1, at 104-06, 115-17, 128-30.

63. See Fernández-Coronado, *supra* note 45, at 545-46.

64. See Cíaúrriz, *supra* note 36, at 436.

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compelled to make statements regarding his religion, beliefs, or ideology.⁶⁵ Although this precept has not always been respected sufficiently by the government, its constitutional power certainly rules out the possibility of there being any kind of individual registry of individuals who belong to a religious denomination, whichever that might be.⁶⁶ This individual right is reflected in collective rights; the religious organizations do not have any obligation to become inscribed in the special Registry in the Ministry of Justice. The Preambles clearly indicate that “these rights, originally conceived as individual rights of the people, also include, by inference, those Religions or Communities to which those citizens belong for the satisfaction of their religious needs, requiring no previous authorization or registration in any public registry.”⁶⁷ However, the text of the three agreements adds:

Out of the deepest respect of these principles, and because of constitutional imperative, the State is constitutionally obliged, in the measure required by the religious beliefs of Spanish society, to maintain relations of cooperation⁶⁸ with the different religions. This shall be done differently with each of the denominations inscribed in the Registry of Religious Entities.⁶⁹

Continuing with the particular case of the denominations that are deeply rooted, the only ones that have managed to formalize agreements with the State until now,⁷⁰

the Organic Law of Religious Freedom [which] provides for the possibility that the State may materialize its cooperation with the religious denominations by way of Cooperation Agreements or Conventions, when the said denominations are duly inscribed in the Registry of Religious Entities Organizations and are well-known and deeply rooted in Spanish society, due to their domain or number of followers.⁷¹

65. See LEGISLATION, *supra* note 1, at 46; see also A. Motilla, *Church and State in Spain 1994*, 2 EUR. J. FOR CHURCH & ST. RES. 37 (1995).

66. See Aldanondo, *supra* note 19, at 23.

67. LEGISLATION, *supra* note 1, at 105.

68. See Fernández-Coronado, *supra* note 45, at 546.

69. LEGISLATION, *supra* note 1, at 105.

70. See de la Hera, *supra* note 37, at 222.

71. LEGISLATION, *supra* note 1, at 105.

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It is clear from the text of this Act that the State has no intention of controlling the religious activities of either individuals or their groups and associations and instead allows and considers legal the exercise of complete personal and collective freedom of action in this respect. Groups can always decide against becoming legally recognized as a religious organization with all the attendant rights if they decide against inscribing their name in the special Registry. However, any public activity for which legal recognition would be necessary does require the State to know about the existence of the groups and to have evaluated their characteristics positively, especially the religious basis of the organization, i.e., the extent to which they are really religious, in order to allow them to become inscribed in the Registry. Only after the requirement of inscription in the Registry is met does the possibility of a bilateral agreement come into the picture, if the conditions set out some pages before are met; then we see in the aforementioned Preambles of the agreements currently in force a program of political action by the public authorities which has been accepted by the denominations signatory to the agreements.

These pages show clearly the tremendous effort which has been made to provide all Spanish citizens with the legal means to have authentic religious freedom. The results will only be known after some time has passed. It is too soon to celebrate. There are still many difficulties in more than a few areas of Spanish social life, and, as we have recently been reminded,⁷² it would be naive to think that religious freedom is now a problem that has been completely solved in Western Europe. We hope at least to be on the right path.

72. See S. FERRARI & I.C. IBÁN, *DIRITTO E RELIGIONE IN EUROPA OCCIDENTALE* 13 (1997).