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Preface

Freedom of religion has become a foremost issue and a major challenge in the European Union during recent years. Immigration contributes to the rise of Islam, the impact of Christian communities in European society is undergoing significant changes. New Member States have acceded to the European Union.

The third edition of this book responds to these developments. It gives an account of the law on religion in all the Member States and in the European Union itself. The contributions follow a similar structure to facilitate the comparison between the various systems.

The work and friendship of the European Consortium for Church and State Research and its members were absolutely vital to this endeavour. I do thank all those who have contributed to make this book possible, especially Professor David McClean and Dr Penny Granger for having revised the English language of all the reports.

Trier, Summer 2019

Gerhard Robbers
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I. Social Facts

Belgium is characterised by a rich diversity in religions and beliefs. This has not always been the case. For a variety of reasons Belgium used to be a predominantly Roman Catholic country. In the National Census of 1846, for instance, no less than 99% of the population registered their religious adherence as Roman Catholic.4

However, ever since the 1960s the combined forces of secularisation and immigration have drastically altered this former state of affairs: the number of Catholics has steadily decreased, and church attendance has entered into a free-fall, while the presence of ‘new’ religions has increased.

Religious adherence is no longer officially registered; the 1846 census was the last one to include it (for reasons of privacy and (negative) freedom of religion it was henceforth excluded). As such, reliable statistics are notoriously difficult to come by and estimates of the relative and absolute sizes of religious groups vary widely, and are often based on questionable and mutually contradictory sources.5

Bearing that in mind, it is currently estimated that between 50 to 60% of the population belongs to the Roman Catholic Church. With a total population of 11.4 million, this would amount to 5.7 million to 6.8 mil-

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1 This chapter was based on the text written by Rik Torfs for the 2005 edition of State and Church in the European Union, and – in part – on the entry on ‘Law and religion in Belgium’ for the 2016 Encyclopedia of Law and Religion (Brill, editors: G. Robbers & W.C. Durham), by Rik Torfs and Jogchum Vrielink. New material has also been included.

2 Full professor at the Faculty of Canon Law, KU Leuven.

3 Associate professor at Université Saint-Louis – Bruxelles (Centre interdisciplinaire de recherches en droit constitutionnel et administratif).


lion adherents. The vast majority of these, however, are not active practitioners. For instance, only about 8 to 15% of people who self-identify as Catholic regularly attend Sunday mass. Socially, though, Catholicism does retain significance in major life events. A relatively high number of children are baptised, about half of the population still opts for a religious marriage, and many funerals include religious services. Furthermore, and strikingly, in primary and secondary education Catholic schools remain responsible for the education of between 60% and 70% of the school-going population (*infra* VIa).

Muslims have been present in Belgium in significant numbers only since the post-WWII period. Between 1945 and the late 1960s massive labour immigration took place, strengthening the country’s industrial workforce with Italians, Turks, Moroccans and Tunisians; this was followed by a process of family and marriage immigration from the 1970s onwards.\(^6\)

Due in large part to these processes, Islam is presently the second biggest religion in terms of adherents, estimated to number between 400,000 and 910,000 (amounting to between 3.5% and 8% of the population).

The prominent presence of Islam, and (fear of) radical Islam in particular, is an important issue in public and political debates in Belgium, giving rise to a significant number of repressive and restrictive policy initiatives and legal measures. More generally, it has – more than ever – brought back religion on the political agenda.

The remaining religious and belief groups are significantly smaller in size than Catholics and Muslims, though exact numbers are again impossible to come by. The number of Protestants is estimated at 80,000 to 110,000 (around 1%). Jews and Orthodox Christians are believed to range between 30,000 and 50,000 each. Most Jews live in Antwerp and Brussels. Many of those living in Antwerp belong to a variety of Hasidic groups. They have extensive networks of synagogues, shops, schools and organisations. The Orthodox minority mostly includes (descendants of) Greek, Romanian, Bulgarian, Ukrainian and Russian migrants.

Other religious minorities, smaller still, include Jehovah’s Witnesses, Anglicans, other Christian congregations, Buddhists, Hindus, Mormons, Sikhs, Hare Krishnas, Jains, and Scientologists.

Belgium is characterised by a high degree of secularisation, which is, according to various experts, more widespread than in countries such as the Netherlands and Germany. However, even more so than with regard to religious groups, the exact number of agnostics and (active) non-believers is a matter of fierce debate.

Representatives of official movements of (active) non-believers estimate their own number at 1.5 million. According to Government however, there are only 350,000, 110,000 of which are members of organised secular humanist groups.

Finally, a significant portion of Belgian society, ranging between 25 and 35%, regards itself as non-affiliated to any religion, without considering themselves non-believers or atheists.

II. Historical Background

Christianity arrived early on in the region that is currently Belgium. It soon became home to thriving monasteries that contributed to its economic and cultural development.

During the Ancien Régime, Catholicism became the region’s established religion (after 1648, Peace of Westphalia). An attempt to curtail the privileges of the Catholic clergy, was made during the Austrian Habsburg period, by the Holy Roman Emperor Joseph II (1741-90), in his efforts to modernise the traditional Catholic Church and to introduce (some degree of) religious freedom, through his Edict of Tolerance of 1781. Joseph II’s efforts in this regard met with vehement resistance, and led to the Brabant Revolution of 1789, resulting in the temporary establishment of the United States of Belgium in 1790.

Shortly after the suppression of this revolt by the Austrians, annexation to France followed in 1795. In the wake of the French Revolution, religious orders were dissolved, privileges abolished, and many churches were confiscated and sold. Napoleon Bonaparte, upon seizing power in 1799, re-opened the churches to the public, and restored Catholicism to a privileged position in his ‘Concordat’ of 1801.

7 At least they did so in 2001, see: Questions and Answers, Chamber of Representatives, 2000-2001, 13 August 2001, 1003 (Question no. 373, Van Den Eynde).
In 1815 the region that is currently Belgium split off from the French Empire, along with what are now the Netherlands and Luxemburg, to form the United Kingdom of the Netherlands. This regime, led by the Protestant King William I, provided a significant degree of religious tolerance on paper, guaranteeing freedom of religion and equality of religious communities in the Constitution. However, King William himself was inclined to interfere intensively with the religious life of his subjects (as with other aspects); in practice, Church and State were not separate.\(^9\)

Geographically, the Kingdom’s north was mostly Protestant, while the south was predominantly Catholic. The south objected to William’s rule: the Catholics saw their influence, and privileges, declining, while the anticlerical liberals were disgruntled with the meddlesome northern King for other reasons. Together they forged what went into history as the ‘monstrous’ or ‘unholy alliance’ (*Monsterverbond*), resulting in the 1830 Belgian Revolution.

Once independent, Belgium drafted one of Europe’s most liberal constitutions, partially by way of (negative) response to the preceding regimes. Young liberal politicians wanted to propagate the modern freedoms and protect them constitutionally, including religious freedom and autonomy (abandoning attempts to exercise absolute governmental supervision over the Church). Equally, it was a time when a rather progressive Belgian Church was prepared to step forward and be a loyal partner in the negotiation of the Constitution, without upholding (formalised) privileges for the Roman Catholic Church.\(^10\) Thus, the Belgian constitution established a regime of exceptionally far-reaching freedoms, including for the freedom of religion, worship, association, education, speech and press, as well as introducing a system of financial state support for religions present in the country.\(^11\)

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10 The letter from the Prince de Méan, Archbishop of Mechelen, which was read out before those gathered during the meeting of the National Congress (*Congrès National*), on 17 December 1830, undoubtedly had a major influence on the final drafting of the articles of the 1831 Constitution in which the basis for the relationship between Church and State was to be laid down.

Illa. Legal Sources

Church and State relationships in Belgium are largely governed by the Constitution, and – to a lesser extent – specific, federal and federated, legislation.

i. Constitution

The original 1831 Constitution has been amended on many occasions, but the core rights and principles governing State and Church, and granting religious (and closely associated) rights have largely remained untouched. The pervading mood of 1830, the year Belgium became independent, can still be felt (supra IIa). The Belgian Constitution explicitly mentions ‘religion’ in two distinct titles: the one on fundamental rights (Title II), and that on finances (Title V).

Firstly, Title II, on ‘Belgians and their rights’, contains at least four articles relevant to the freedom of religion, guaranteeing full religious freedom on both the individual and the community level.

Freedom of worship and its free and public practice are guaranteed under article 19 of the Constitution, with the (sole) exception of allowing the punishment of criminal offences committed in the exercise of said freedoms.

The corollary of article 19 is contained in article 20: no person can be forced or obliged to contribute in any way to the acts of worship or ceremonies of any religion or to respect its days of rest/worship.

Article 21, section 1 stresses that the State has no right to intervene either in the appointment or installation of ministers of any religion (1), or to forbid them from corresponding with their superiors (2), or to publish the acts of these superiors (3). Regarding the latter, article 21 points out that such publications are, however, subject to the ordinary rules of liability concerning the use of the press and publishing. Article 21 is generally interpreted as an affirmation of the freedom of internal ecclesiastical organization. At the same time, the article’s second section contains an exception to this principle by providing that civil marriage must always precede the religious marriage ceremony, apart from exceptions that may be established by law, if necessary (infra XIa).

A final article in Title II that merits brief mention here is article 24, on the freedom of education and educational rights. Important amendments were introduced to this article in 1988 concerning the religious rights of
parents, including a right to be offered denominational religious education (see infra VI).

Aside from articles on fundamental rights, religion is also mentioned in Title V on finances (though it can be pointed out that state support for religion is also already visible in the educational field, as religious schools are subsidised, and religious education in primary and secondary public education is state-financed). More specifically, article 181 § 1 in Title V provides that the salaries and pensions of ministers of religion are borne by the State.

While article 181 § 1 remains unchanged since 1831, the article’s second paragraph was introduced only in 1993. It extends the same financial privileges to non-religious beliefs as well. This arrangement created a constitutional basis for the expansion of state support for secular-humanist institutions.12

ii. Secondary legislation13

In addition to the Constitution there is a range of ordinary laws and provisions concerned with the legal relationship between Church and State. Here we will limit ourselves to listing a number of criminal provisions in particular: article 268 of the Criminal Code punishes religious ministers who verbally and directly attack the authorities during gatherings held in public with a fine and a prison sentence (the so-called ‘pulpit offence’); article 142 of the Criminal Code renders it an offence to either force or hinder anyone to practise a religion, by means of violence or threats; relatedly, article 143 of said Code forbids disrupting, hindering or interrupting the practice of a religion, by means of creating disturbances or disorder either in locations that serve for religious activities or during public ceremonies of that religion; article 144 criminalises anyone who “by means of actions, words, gestures or threats” reviles or abuses attributes of a religion, either in places of worship or at public ceremonies of that religion, while article 145, in turn, prohibits anyone from defaming a minister of a religion “in the exercise of his religious service” by means, again, of “actions, words,

gestures or threats”; article 228 protects the official robes; and article 267 punishes ministers who ordain marriages before a civil marriage service has been held; article 442quater (since 2011) penalises abuse of an individual’s vulnerability by sectarian organisations; discrimination legislation (on all federated levels) contains criminal provision banning ‘incitement to hatred, discrimination and violence’ vis-à-vis persons or groups on the basis of religion or belief (either in public or at least in the presence of witnesses); the Criminal Code provides in aggravating circumstances in case one of the motives for certain crimes 14 “consisted in the hatred against, the contempt for, or the hostility against a person based on” religion or belief (and a large number of other grounds); a final provision that merits mention is art. 563bis of the Criminal Code, that in July 2011 introduced a general prohibition on face-covering clothing in public life (a so-called ‘burqa ban’).

iii. Impact of devolution

The gradual regionalisation or devolution of the former Belgian unitary state into a (con)federal one is also relevant in the field of the relationship between State and Church. Aside from the federal level, the Belgian state comprises three communities (the Flemish Community, the French Community, and the German-speaking Community), three regions (the Brussels-Capital Region (Brussels), the Flemish Region (Flanders), and the Walloon Region (Wallonia)), and four language areas (the Dutch language area, the French language area, the German language area, and the bilingual Brussels-Capital area).

The impact of the ongoing devolution on church and state relationships is both direct and indirect. Indirectly, the regionalisation of topics such as culture and education entails ‘incidental’ consequences with regard to the legal position of religion. For instance, the time awarded to religion on radio and television is a regional matter, which can lead (and has led) to differences on this level between the federated entities (infra VIb). Furthermore, although the right to religious education, even in public schools, is based on the constitution, the interlocutors of churches and religious bodies are chosen at the regional level and – moreover – the constitution does

14 The relevant provisions apply to a large number of crimes, including rape, assault, manslaughter, murder, criminal negligence, stalking, arson, defamation and slander, grave desecration, vandalism, etc.
not detail the number of hours that have to be provided (again allowing for regional variations: infra VIa).

More directly, regionalisation has affected religion inter alia on the basis of a law of 13 July 2001 that rendered the regions (rather than the federal state) responsible for the material organisation of the recognised religions.15

All in all, the legal position of religion is gradually becoming a mixed matter. Although many of the main elements remain federal, the influence and competence of the regions and communities continually increases.

IIIb. Basic Categories of the system

i. Separation of Church-State and neutrality

It is not unusual for the term ‘separation of Church and State’ to be used as a description to sum up the relationship between the two bodies or spheres. However, the separation of Church and State in Belgium is not a strict or full separation, as can already be inferred from the rather central place that religion takes up in the country’s Constitution (art. 181 in particular). The State positively promotes the free development of religious activities (ideally) without interference with their independence. Some refer to this as ‘positive neutrality’ or ‘active pluralism’.16 Others speak of the ‘mutual independence’ of Church and State.17

More generally, in the relationship between church(es) and the State, the neutrality of the state is considered an important constitutional principle, albeit not explicitly laid down in the Constitution itself. The Belgian Council of State (the country’s highest administrative Court and advisory body) considers the principle to be intimately associated with the principle of non-discrimination and equality, particularly on religious grounds.18 Neutrality implies that the State itself does not adhere to or identify with any one religion in particular. This means, among many other things, that

17 P. Errera (1918), Traité de droit public belge, Paris, Giard et Brière, 87; F. Laurent (1862), L’Église et l’État en Belgique, Brussels/Leipzig, Lacroix Verbroeckhoven, 1862, 351.
18 Council of State 20 May 2008, no. 44.521/AG.
religious symbols (such as crucifixes) in public buildings and courts are generally unacceptable, except in cases in which they are part of the (historical) architecture. More generally, neutrality entails that the state ought also to refrain from interpreting religious rules and practices (infra IIb,iii).

ii. Recognised religions

The constitutional system of state support for religions and non-religious beliefs self-evidently requires identification of those religions and beliefs that are eligible for financing. In others words, Belgium has a system of recognised religions (see, on the criteria for recognition: infra IVa.i).

iii. (Legal) concept of religion

Belgian courts often employ the concepts of religion and religious rules or prescripts, but their precise content remains mostly un(der)defined, and purposely so. In Belgium, as in many other countries, the separation of Church and State (supra IIIb.i) and the core of religious freedom itself are believed to require restraint on the part of courts and authorities in assessing what may or may not constitute a religion or a religious prescript. When assessing whether a ‘religion’ is involved, judges are assumed to first base their assessment on the subjective claims of believers, and secondly on external aspects such as the existence of temples, prayer texts or ritual acts. Only when this does not yield sufficient clarity, a certain amount of analysis of what is contained within the movement may (exceptionally) be regarded as necessary.

Formerly, this analysis used to be less reticent: up until the middle of the 20th century for instance (some) jurisprudence took the view that for something to be (legally) regarded as a religion, a practice focused on a

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19 Although a more tolerant position is generally adopted where it concerns nativity scenes and other Christmas related icons and symbols.
20 Supreme Court (Cour de Cassation or Hof van Cassatie) 7 November 1834, Pas., I, 332.
deity was required. Under the influence of ongoing ‘multiculturalisation’, this somewhat ethnocentric approach, which would for instance exclude some schools of Buddhism, has been abandoned.

These days, Belgian courts either employ highly abstract general criteria to determine what constitutes a religion (much like the Strasbourg institutions do, by requiring that beliefs “attain a certain level of cogency, seriousness, cohesion and importance”, in order to qualify for protection under Article 9 ECHR), or – increasingly – simply start from the assumption of an interference with the freedom of religion, and to subsequently assess the legitimacy of this interference, avoiding the question of what constitutes a religion altogether; though the latter approach, obviously, raises problems of its own.

IV. The Legal Status of Religious Communities

While the Belgian Constitution and the principle of neutrality posit a theoretical equality between religions, one cannot get around the fact that in practice differences in treatment remain. In part the very system itself provides for this: as mentioned, Belgium has a system of official recognition of religious communities by, or by virtue of, law.

i. Recognised religions and beliefs

The main basis for recognition is the social value of the religion as a service to the population. Concrete criteria that are employed for recognition include that the religious group must be: considerably large; well-structured and organised; established in the country for a sufficiently long period of time; represent a certain social interest and importance; and not constitute

22 E.g. Court of Appeal of Liège, 21 November 1949, Pas. 1950, II, 57.
a threat to social or public order. Strikingly, these (policy) criteria have no basis in formal legislation (let alone in the Constitution).

Presently, Belgium recognises and subsidises six religions and one non-religious belief: Roman Catholicism, Protestantism, Judaism, Anglicanism, Islam, Orthodoxy and the (secular-)Humanist movement (or organised laïcité). Roman Catholicism and Protestantism were financed from the outset. Judaism and Anglicanism followed suit in 1831 and 1835 respectively. It was not until the end of the 20th century, in 1974 and 1985, that Islam and Orthodoxy were recognised. Finally, and as mentioned, a constitutional amendment in 1993 ensured (full) recognition of the secular Humanist movement (supra III), which probably postponed a fundamental debate on the support system.

Since the turn of the century, a union of Buddhist organisations has been seeking to be recognised as well. This request has not resulted in formal recognition yet, though things seem to be progressing in that direction, albeit very slowly. The Belgian state already provides funding to the Buddhist applicants in order to enable them to fulfil the structural requirements for recognition, but more concrete steps towards recognition have not been realised.

Of the six recognised religions, Roman Catholicism is the most important one, by virtue of sheer numbers (supra I). While this has not resulted in the religion having a privileged position de iure, de facto things look differently. Firstly, the legal status of religions in Belgian law quite clearly finds its source of inspiration in the structure and functioning of the Roman Catholic Church. This is evidenced for instance in the above-mentioned criteria that are employed for recognition, which are strongly modelled upon characteristics of Catholicism. Relatedly, the criteria have been critiqued for being

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discriminatory, by scholars as well as by international organisations, such as the Human Rights Commission. Another, related, example is the following: in order to be able to make actual claims for State payment of religious ministers, a hierarchically structured religious community is required (with a governing body), which, moreover, works on a territorial basis. The Catholic Church obviously fulfils these requirements, but this is not as clear for the Islamic faith. As a result Islamic religious ministers were not paid by the State until 2007, despite Islam having been recognised since 1974. Effective recognition of mosques, likewise, took a significant amount of time.

Additionally, the Roman Catholic Church plays a significantly bigger role than other religions when it comes to public expressions of faith (see also infra VI, on culture). Belgium’s National Day (21 July), for instance, typically starts with a Catholic Te Deum service in the Cathedral of Brussels, attended by the King and other dignitaries. The Catholic Church also had a prominent role at the funeral of King Baudouin on 7 August 1993, and more generally the royal family has a reputation of deeply rooted Catholicism.

Summarising, it might be said that among the recognised religions, the Roman Catholic one is primus inter pares.

ii. Unrecognised religious groups

Aside from the recognised religions there is a range of unrecognised (minority) religions (supra I). Their legal status is not always enviable. Not only do they not receive state support like recognised religions do (infra VIII), but they are also liable to experience additional disadvantages.

Firstly, as a legal definition of religion is lacking (supra IIIb.iii), the system of recognised religions sometimes results in a certain degree of ‘spill-
over’ in the wider religious (legal) context. Not infrequently (though by no means systematically) religious liberties and rights are wrongfully reserved – by courts or other public authorities – for recognised religions. So not only do unrecognised religious groups not enjoy the advantages that recognised religions can lay claim to, but they are sometimes not even regarded as religions, pure and simple.

Secondly, non-recognised religions and religious groups are, in practice, much more likely to clash with concepts of public order.

For instance, up until the abolition of compulsory military service, the problems that Jehovah’s Witnesses encountered were well known. For reasons of belief they refused to perform military service as well as the alternative to it: civic service. On the basis of article 46 of the military penal statute book, the individuals concerned were classified as deserters, and this generally led to a two-year prison sentence.32

Furthermore, Belgium has been among those countries strongly concerned by so-called ‘harmful sectarian organisations’.33 A parliamentary report on this issue was submitted to the Chamber of Representatives on 28 April 1997, which contained a list of organisations. Publication of the report stirred much commotion, causing the Parliamentary commission that had issued the report to officially state that the presence of a certain movement on the list did not imply that the group was a sect, let alone that it was considered dangerous.

After examination of the report an ‘Information and Advice Center concerning Harmful Sectarian Organisations’ (IACSSO) was founded in 1998. The Center and its functioning led to controversy, both within Belgium and abroad.34 An Antroposophical organisation challenged the Center’s founding law before the Belgian Constitutional Court (Grondwettelijk Hof or Cour Constitutionnelle). The Court declined to annul the legislation, suggesting that harmful sectarian organisations may be treated more strictly than harmful organisations in general. In other words, religious groups, paradoxically, (may) enjoy less protection, in this context, than ordinary

associations.\textsuperscript{35} The Court did state that the Center cannot prevent or forbid the expression of an opinion by a philosophical or religious minority. The Center may only inform the public with regard to activities of particular associations and groups, in order to enable people to evaluate potentially harmful opinions and beliefs with greater accuracy.\textsuperscript{36}

At least one religious organisation has attempted through the court system to compel the Belgian State and the IACSSO to retract an advice, as well as to be financially compensated for any harm that occurred due to it; ultimately, these attempts proved unsuccessful.

More specifically, it concerned Sahaja Yoga Belgium, which had been the subject of an advisory opinion by the IACSSO in 2005. Sahaja Yoga took issue with the contents of the opinion and sued the Belgian State and the IACSSO. The case was initially declared unfounded in December 2005 in summary proceedings. In June 2006, the court of appeal ruled in favor of Sahaja Yoga, since the advisory opinion had not been prepared with the necessary objectivity and it had not been sufficiently reasoned; a ruling that was confirmed by the court of first instance in February 2008. However, in a judgment of 12 April 2011, the court of appeal in Brussels reversed, finding Sahaja Yoga unable to provide conclusive evidence for alleged errors committed by the IACSSO. This last judgment was final.

iii. Religious autonomy: general

Article 21 of the constitution has always been considered a solid legal basis for the self-government of religious communities: the provision bears the imprint of the newly created Belgian State wishing to distance itself from the meddlesome policies of King William I (\textit{supra II and III}). The provision entails that the State may not interfere with or supervise the Churches, and that the latter are free to choose their own internal structure. It would be overstating things, however, to say that the State has no opportunity whatsoever to control churches and their activities.

Traditionally, the control exercised by secular courts remained exclusively formal, which meant that the civil judge merely had the right to determine whether a challenged decision was in fact taken by the competent
ecclesiastical authority. This approach was dominant throughout the 19th century.\textsuperscript{37}

Following two decisions by the Belgian Supreme Court, in 1994 and 1999,\textsuperscript{38} an evolution in this case law became apparent. In these cases, the Supreme Court was confronted with decisions by courts of appeal, which went beyond the traditional approach. The courts of appeal ruled that religious groups could also be legally held to correctly observe procedures as internally prescribed, and, moreover, that they were bound to respect the right of defence as well as all other principles laid down in article 6 § 1 of the European Convention on Human Rights. While the Supreme Court declined to support this rather radical new viewpoint in its entirety, it did accept the principle that religious groups were held to act within their own procedural norms, and that it was up to the courts to verify this.

In taking this position, the Supreme Court went beyond the traditional position, without however accepting the option taken by the courts of appeal that had previously adjudicated the cases. All this may be summarised as follows (see table 1).

Table 1: Development

<table>
<thead>
<tr>
<th>Development</th>
<th>Requirement</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Traditional (19th century) position</td>
<td>Did the competent religious authority take the challenged decision? (a)</td>
</tr>
<tr>
<td>2. Intermediate (current) position</td>
<td>Did the competent religious authority take the challenged decision (a), and is it in compliance with the procedural norms of the religion? (b)</td>
</tr>
<tr>
<td>3. Rejected (radical) position</td>
<td>Did the competent religious authority take the challenged decision (a), and is it in compliance with the procedural norms of the religion (b), and do these norms respect the right to a fair trial as well as other principles formulated by art. 6 § 1 ECHR? (c)</td>
</tr>
</tbody>
</table>


\textsuperscript{38} Supreme Court, 20 October 1994; Supreme Court, 3 June 1999.
At the same time, it should be pointed out that the Belgian Constitutional Court has, in at least one case, been highly tolerant of far-reaching intervention in religious organisational autonomy. In March 2005, the Court rejected an appeal for annulment brought by the executive council of Muslims of Belgium (L’Exécutif des Musulmans de Belgique or Executief van de Moslims van België) against elections for this body, of March 2005. The problem was that these elections had been entirely organised by the government, rather than by the religious community itself.\textsuperscript{39}

Strikingly, in the Court’s opinion, this use of imposed elections, as a means of choosing a body to represent the Islamic community to the Belgian public authorities, did not amount to a violation of religious autonomy or freedom of religion. The Court considered that elections had previously been chosen by the Muslim community as an appropriate means of selection, and it believed the Belgian legal authorities could not “be reproached for having surrounded the election with measures intended to ensure its fairness”, especially given “that the Muslim religion has neither a pre-established, universally recognised structure, nor a clergy as such”.\textsuperscript{40}

It seems highly doubtful whether this decision would have survived scrutiny by the European Court of Human Rights.\textsuperscript{41}

\textit{iv. Religious autonomy and non-discrimination}

Since the turn of the century, the impact of non-discrimination legislation may also be felt in this domain. Discrimination law can, in this context, be regarded as a double-edged sword, effectuating either less or more autonomy, depending on the situation.

The former may be the case, \textit{inter alia}, due to the procedural and evidentiary impact, pertaining to the burden of proof that discrimination law may have.

This can be inferred from a case in which the applicant was expelled from the Jehovah’s Witnesses for (allegedly) not having behaved in accordance with the congregation’s rules. He complained in particular about the fact that the expulsion was accompanied by instructions to congregation members to refrain from having (more than minimal) contact with


\textsuperscript{40} Constitutional Court 28 September 2005, 148/2005, B.5.8 & B.6.2.

\textsuperscript{41} See e.g. ECtHR (GC) 26 October 2000, \textit{Hassan & Chaush v. Bulgaria}, app. no. 30985/96.
expelled individuals, even if these are family members. In bringing his suit, the applicant relied on the federal anti-discrimination act.

The court of appeal of Liège had concluded that the applicant had not established, sufficiently convincingly, that he had been discriminated against.\footnote{Court of Appeal of Liège, 6 February 2006.} The Supreme Court, however, quashed this decision due to it being in breach of the principle of the reversal of the burden of proof as enshrined in the Federal discrimination legislation, ruling that the applicant need not \textit{unequivocally} prove discrimination, merely that there were sufficient elements to \textit{presume} discriminatory treatment, at which point the burden of proof would have to shift.\footnote{Supreme Court, 18 December 2008.}

The case was remanded to the Court of Appeal of Mons, which again rejected the action of the applicant. On the one hand, the Court held that the applicant had not invoked any pertinent element to presume the existence of discrimination. Therefore the burden of proof did not have to shift after all. On the other hand, the Court emphasised that State obligations of neutrality and the principle of autonomy forbade it to assess the legitimacy of religious beliefs and the way in which these manifest themselves (cf. \textit{supra}).

The principle of non-discrimination may, \textit{de facto}, act as a force for greater autonomy of religious communities as well. For instance, in 2004 the Flemish Region introduced legislation that stipulated that an elected or appointed member of a church council would automatically be considered as having resigned upon reaching 75 years of age. While rejecting the argument that this rule amounted to an interference with religious autonomy \textit{stricto sensu}, the Constitutional Court did consider the rule to constitute discrimination on grounds of age. The Court accepted that imposing such an age limit pursued a legitimate aim, i.e. of encouraging the renewal of the membership of church councils, and thereby to ensure an effective and efficient management. However, it found the rule disproportionate to this aim, as it was based on an absolute presumption that members of church councils aged 75 years would no longer be capable of ensuring good management.\footnote{Constitutional Court, 5 October 2005, no. 152/2005.}
v. Religious autonomy: range of activities

In addition to the basic principle(s) there is the issue of the precise *range* of activities that enjoy protection from religious autonomy. In this regard, it tends to be only the religious organisation in the strict sense that *fully* enjoys the autonomy as delineated by article 21, and as elaborated by the Supreme Court.

Religions that desire to organise activities in other fields, such as health care and education (*infra* VI), are bound by the civil legislation in that field (though more limited exceptions and exemptions may sometimes apply). In order to participate properly in such societal areas, religious representatives are required to establish a legal person, which will mostly take the form of a non-profit organisation.\(^{45}\)

The latter is necessary for at least two interconnected reasons. Firstly, religions themselves, as well as religious substructures (e.g. dioceses, parishes, etc.) do not possess legal personality according to Belgian law. Secondly, legal personality is necessary for several practical reasons. It tends to be required, for instance, in order for one to receive financial support from the State (see also *infra* VIII). Civil structures tend therefore to be indispensable.

V. Churches and Religious Communities within the Political System

The relationship between politics and religion has always been informal, but important. For many years, the Catholic or Christian Democratic Party has played a key role in Belgian politics. For virtually the entire second half of the 20\(^{th}\) century, for instance, the party was considered a necessary and inescapable partner in (federal) government coalitions. In 1999 they moved to the opposition for the first time in more than forty years, to return to (and remain in)\(^{46}\) power again since 2007.

In the late 1960s, the Christian-democratic party split in two parts, a Dutch-speaking party (initially called CVP, presently CD&V) and a French-speaking one (initially called PSC, presently cdH). This phenomenon was by no means specific to the Christian-democratic party, as

\(^{45}\) Vereniging zonder Winstoogmerk (VZW) or Association Sans But Lucratif (ASBL).

\(^{46}\) Although the government since 2014 only included the Dutch-speaking Christian democratic party (CD&V), and not its French-speaking counterpart (cdH).
the same happened to the two other main political families, the socialists and the liberals.

Generally speaking, secularisation has diminished the Christian democrats’ dominance (as well as that of its pillar: see infra VI) at once rendering it unable to oppose liberal legislation on traditionally sensitive issues like abortion (1993), euthanasia (2002), and same sex marriage (2003). Increasingly, moreover, the party’s own positions on these issues have become far less radical than those that the Catholic Church espouses: the link between the Church and the Christian democrats has gradually weakened. Influence of church leaders became less pronounced, and presently is quite marginal, and the parties are very much open to non-believers as well.

**VI. Culture**

Religious communities, and especially the Catholics, play an important role in Belgian cultural life. While the liberals and Catholics were brought together in 1830 in their resistance against the Dutch King and his policies (supra IIb), their differences were again brought to the fore once Belgium became an independent political entity. Their mutual opposition led to enduring struggles over issues related to church and state relationships, leading to a strong ‘pillarisation’ of society along religious and ideological lines in the 20th century: trade unions, schools, political parties (supra V), health services, youth organisations, cultural associations, newspapers, and schools were all (a)religiously fragmented. Many ‘pillarised’ organisations and institutions persist to this day. Most have, however, become much more open to ‘outsiders’, with labels like ‘Catholic’, ‘liberal’ or ‘socialist’, having become sociological rather than ideological. In this section, we focus specifically on the place and role for religion and religious organisations in education (a) and the media (b).

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a. Education

Education, by and large, is not a federal competence in Belgium, but one which resides with the French, Flemish and German-speaking Communities (supra IIIa.iii). However, the level of differentiation that this can lead to is curtailed by constitutional provisions and principles that all political entities and levels of the Belgian federation have to adhere to. Changing these aspects would require constitutional revision.

To begin with, article 24 § 1 of the Constitution provides that “education is free”, which entails that citizens are free to found their own schools, on any religious or non-religious basis that they choose. These schools are collectively referred to as ‘free (subsidised) education’.

Article 24’s first paragraph also requires the three language communities to provide non-denominational, public education, which implies in particular “the respect of the philosophical, ideological or religious beliefs of parents and pupils”. These, as well as all other public schools, are furthermore required, until the end of compulsory education, to provide students with a “choice between the teaching of one of the recognised religions and non-denominational ethics teaching” (24 § 1). As such, even if the three communities have exclusive competence over issues pertaining to education, they must all include (denominational) ‘religion education’ – organised by the religious communities themselves – in the school programmes of their state schools.

It should be noted that fierce debates are waged concerning this issue of religious education, in the French as well as the Flemish community. The present-day legal state of affairs is the result of a political compromise

51 Non-public schools based on a specific religious (or non-religious) basis are free to decide for themselves how to handle the confessional part of their curriculum.

52 The recognised religions are largely free to determine the contents of these courses, albeit that the Flemish legislator determined in 2013 that the contents should at least respect international and constitutional principles of human rights and children’s right in particular, and that they have to respect the wider goals of education and development: Flemish decree 19 June 2013 (Moniteur Belge, 27 August 2013). In its advice concerning the introduction of this requirement, the Council of State emphasised that in applying it there ought to be sufficient respect for the freedom of religion (Advice Council of State 16 May 2013, no. 53.213/1).

embodied in the so-called School Pact and in the School Pact Act of 29 May 1959. In practice, it has caused several kinds of problems and discussions.

One of these problems concerns the content of the non-religious ethics course, which had to be followed if classes in one of the recognised religions were not chosen. The Council of State decided in the 1985 Sluijs case that no one may be forced to take an ethics course, which manifestly defines itself to be non-confessional, and which expressly promotes ideas that can be labelled as ‘free thinking’. After education became a community competence, a related judgment came down concerning a Jehovah’s Witness, Vermeersch, who neither wished to choose classes in any of the recognised religions nor in non-denominational ethics. The Council of State ruled that no one could be forced to make such a choice against his or her own convictions. A third ruling, shortly afterwards, in the case of Davison, significantly reduced the justification requirements for requesting an exemption (which had appeared to still be quite demanding in Vermeersch).

Gradually, this led to an increasing number of requests for exemption from both religious education and non-religious ethics teachings, with governments on some levels having become increasingly open to accepting exemptions from the traditional ‘mandatory choice’. More accurately: the ‘mandatory choice’ was largely replaced by ‘exemptions on demand’; at least in the Flemish public educational system. For that context, for instance, a circular of 8 July 1992 ensured that exemptions no longer had to be granted by the ministerial level. Instead, they could simply be obtained from the boards of individual schools. In 1997 the right to an exemption was explicitly included in formal legislation for primary education, for secondary education this took until 2004.

54 Council of State 14 May 1985, no. 25.326.
55 Council of State, 10 July 1990, no. 35.442.
56 Council of State, 13 November 1991, no. 35.834.
59 J. Lievens (2019), De vrijheid van onderwijs, Antwerp, Intersentia, 470.
Nonetheless, the ‘mandatory choice’ still remained in many schools in the French Community. The background of this was as follows. In Flanders, the ethics course is organized by the recognized secular-Humanist movement, and as such is quite plainly non-neutral. However, in the French Community the government itself oversees the course, and as such it was claimed to be ‘truly’ neutral, allegedly making exemptions unnecessary. Meanwhile, however, the Constitutional Court has confirmed that, in the French Community as well, regulations that provide a ‘mandatory choice’, and that do not allow for exemptions on demand (without much motivation), cannot be regarded as constitutional, since teachers of the ethics course were not obliged to be neutral.\(^{60}\) A system of exemptions has since been introduced.\(^{61}\)

In addition to the introduction of exemptions, the ruling by the Constitutional Court also led the French Community to modify the system of religious education. Religious education has been reduced from two hours to one hour per week, in public schools and in non-confessional subsidised schools (which was considered possible since although the Constitution guarantees religious education, it does not specify the required number of hours). A specifically designed course in ‘philosophy and citizenship’ is now organised in the hour that thus became available.\(^{62}\)

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60 Constitutional Court 12 March 2015, no. 34/2015.
i. Primary and secondary education

In practice, in the area of education, in terms of sheer numbers, Catholic education outstrips State education significantly; especially in Flanders. About 60% of all Belgian secondary school students go to Catholic schools, but in Flanders this number is close to 70%, a percentage that is exceptionally high compared to other Western European countries. It must be underlined, however, that the religious character of most of these schools has moved into the background.

Other religions organise education in Belgium as well. Judaism, for instance, has a longstanding tradition in this area. Geographically, Jewish schools are almost exclusively situated in Brussels and Antwerp. Especially in Antwerp a high percentage of Jewish children (as many as 95%) receive their education in a Jewish school. For Brussels, where most Jews are more liberal, this percentage is significantly lower.

A number of (primary) Protestant schools are present in Belgium as well, predominantly in Flanders, commonly known as ‘Biblical Schools’ (Scholen met de Bijbel).

Up until quite recently there was but a single recognised Islamic school in Belgium. When it was established, in 1989, it encountered strong opposition, both in the public opinion and on the political level. Since 2011, 2012 and 2017 respectively three additional schools have been recognised. All three schools are located in the Brussels agglomeration, and all concern primary education. 2015 witnessed the upstart and recognition of the first secondary Islamic school (in Schaerbeek, a municipality in Brussels.

Finally, the free education network includes a number of so-called ‘method schools’ (methodescholen), such as the Modern School Movement (Freinet), Waldorf education (Steiner), Jenaplan schools, etc.

ii. Religion in higher education

At the level of higher education several denominational research and teaching institutions exist. The protestant religion has the strictly private Faculty of Protestant Theology in Brussels (Universitaire Faculteit voor Protestantse Godgeleerdheid or Faculté universitaire de théologie protestante), which delivers university diplomas in protestant theology. This bilingual institution was founded in 1950, and its recognition as an academic insti-
tute took place in 1963. Additionally, a Flemish evangelical theological faculty (Evangelische Theologische Faculteit) in the town of Heverlee (Leuven) was recognised in 1983.

The Institute for Higher Jewish Studies (Instituut voor Hogere Joodse Studies or Institut de Hautes Études Juives) was founded in 1959. It was closely associated with the Institute of Sociology of the Free University of Brussels (ULB). As of the academic year 2000-01, the Dutch speaking part of the institute was taken over by a new Institute for Jewish Studies (Instituut voor Joodse Studies) at the University of Antwerp. This new institute receives financial support from the Flemish community.

Existence of other denominational institutes notwithstanding, the position of (traditionally) Catholic institutions for higher learning is dominant by far. As far as universities are concerned, five Catholic ones remain: the Catholic University of Leuven (KU Leuven); the Catholic University of Louvain (UCL); the University Saint-Louis – Bruxelles (USL-B), formerly known as the Facultés Universitaires Saint-Louis (FUSL); the University of Namur (formerly Facultés Universitaires Notre-Dame de la Paix); and the (private) Catholic university of Mons (Facultés Universitaires Catholiques de Mons (FUCaM)). Aside from these universities, stricto sensu, there are numerous Catholic colleges throughout the country (hogescholen or haute écoles).

As is the case with primary and secondary schools, ‘Catholic’ has – in the context of higher education – become more of a sociological than an ideological or religious notion, with many or most students and staff members being non-believers or adherents of other faiths. Catholic theology is taught only at the Catholic University of Leuven (KU Leuven), in Dutch and English, and at the University of Louvain (UCL), in French. Canon Law can only be studied at the Catholic University of Leuven (KU Leuven).

b. Media

As far as religious broadcasting on radio and TV is concerned, recognised worldviews were traditionally entitled to (free) public radio and television

63 P. De Pooter (2003), De rechtspositie van erkende erediensten en levensbeschouwingen in Staat en maatschappij, Brussels, Larcier, 443.
64 USL-B and UCL are involved in a process of merger.
65 On the Dutch-speaking side, these are often part of an association with the KU Leuven.
broadcasting time (known as *le droit à l’antenne*, which literally translates as ‘the right to the antenna’). This principle was first established by the federal government in 1964. Since then radio and television have become regional matters. Currently, the French and German speaking public broadcasting regimes still offer airtime to recognised religious groups. In Flanders, however, the system was revised in 2016, reducing airtime for the (recognised) religious communities themselves to broadcasting a limited number of religious services (on the radio, about 57 Roman-Catholic services are broadcast annually (and none for other religions), while some 30 Roman-Catholic services, 6 Protestant ones, and 2 Orthodox, Islamic of Jewish services (each) are televised).

In the written press, the role of religions is more indirect. A large number of the daily newspapers were historically Catholic (e.g. *De Standaard* and *La Libre Belgique*), however without the Church authorities having editorial control. Many of those have, however, evolved towards pluralism. Today, none of the mainstream daily newspapers is still Catholic. In Flanders, as a reaction to this development, the Church, together with external sponsors, founded the weekly, *Tertio*, in the year 2000, with a limited number of readers but with an outspoken Catholic identity. The weeklies *Kerk en Leven* and *Dimanche* are also Catholic.

**VII. Labour Law within Religious Communities**

Important evolutions have taken place in the relationship between employment law and religions. As far as religious personnel are concerned, it used to be the case – to varying degrees – that the religious element dominated the relationship of religious personnel with their churches, with religious personnel not even being regarded as employees or as being self-employed, due to *inter alia* the absence of (formal) employment contracts. Presently however, the presumption in favour of the religious relationship has been amended. The closeness to the heart of the message and the institution plays a part. For a pastor, the ecclesiastical relationship dominates, whereas other functions, often more common and secular, tend to give way to labour law. This development, triggered by pension claims by religious personnel, reflects the fact that society in general no longer con-

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sidered labour in a religious context as fundamentally different to other types of work. Concerning secular or lay personnel, the development mirrors that of religious personnel, albeit with a few important differences.

VIII. Financing of Churches

The Belgian system of State financing for religions is one of direct financing only, and is limited to recognised religions (supra IIIa.i & VIa.i). As provided by article 181 of the Constitution, this first and foremost entails payment of the (modest) salaries and pensions of ministers. This practice, enshrined in the Constitution, already began under the French regime, after the Revolution, as a means to compensate for the nationalisation of the property of the clergy (supra II.a), and the suppression of the so-called tithes.

In addition to payment of salaries and pensions of ministers, recognition entails a few additional benefits for the religions involved. To begin with, deficits incurred by ecclesiastical administrations for temporal goods are borne by the municipalities. It may be noted that this does not always encourage financial responsibility on the part of said administrations.

An additional advantage entails that recognised religions may request State subsidies for constructing or renovating their buildings. Pastors and bishops must furthermore be granted appropriate housing (‘in accordance with their social status’), and expenditure for these purposes is, again, chargeable to the municipalities or provinces.

Furthermore, recognised religions and beliefs may designate chaplains, paid by the State, in prisons and in the army (infra IX). Moreover, one of the aspects of article 24 of the constitution, as mentioned, entails that schools organised by public authorities must offer a choice between instruction in one of the recognised religions and instruction in non-religious ethics for the duration of compulsory education, and the State must also pay for this instruction (supra VIa).


69 Council of State, 2 April 1953.
The system also offers a number of tax benefits, including an exemption from taxation on income derived from property ownership for buildings (or parts of buildings) that are used for worship.

**IX. Access of Religious Communities to Public Institutions**

This section firstly deals with the three main chaplaincies in public institutions, i.e. those in the military (a), in health care institutions (b) and in prison facilities (c). Afterwards, chaplaincies in other public institutions are addressed (d).

*a. Armed forces*

A military chaplaincy existed within the Belgian army since the country’s foundation. Until 1914 its corps consisted exclusively of Roman Catholic clergy. The First World War (and the effects of the accompanying conscription) ensured that the religious diversity that had started to characterise the country also became reflected in the army. This quickly led to the admission of chaplains for Protestant and Jewish soldiers and, ultimately, to the establishment of a religiously pluralistic model of spiritual care.

After much and sustained insistence – with the first legislative proposals dating back to 1980 – space was also created within the army chaplaincy for secular humanist spiritual care in 1991.

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71 Additionally, the state police (Rijkswacht), a militarised national police corps, disposed of its own chaplaincy up until 1 January 1997. Eventually its chaplaincy was integrated into the army chaplaincy. See Parliamentary Documents, Senate 1996-97, 28 November 1996, 2029.

72 See inter alia Ministerial Decree 7 August 1914 (waarbij aan de bedienars der verschillende erkende eerediensten wrije toegang tot de zieken en gekwetsten verleend wordt), Moniteur belge 8 August 1914; Royal Decree 17 August 1927 (réglant l’état et la position des aumôniers militaires), Moniteur belge 1 September 1927.

The size of the military chaplaincy is closely linked to the actual need or demand for spiritual care. This means, for instance, that the number of military chaplains has shrunk significantly since the end of the Cold War and after the abolition of conscription.\textsuperscript{74} In 2015 16 chaplains remained, organised into a Department of Religious and Moral Assistance. Of these 16 chaplains, 13 are Catholic, 2 are Protestant and 1 is Jewish. In addition the military employs 6 secular humanist counsellors.\textsuperscript{75}

Islamic or Orthodox spiritual care is not provided within the armed forces. Plans for introducing a Muslim chaplain have been around since 2008, but so far without result.\textsuperscript{76} The government attributes this to the lack of a valid Islamic interlocutor, able to legitimately nominate a chaplain.\textsuperscript{77}

\textit{b. Hospitals}

Since Belgian independence the government has, in one way or another, supported and enabled chaplaincies in hospitals. Spiritual and moral assistance in general hospitals is governed by a Royal Decree of 1964.\textsuperscript{78} The decree obliges hospitals to grant access to ministers of religion at the patient’s request. In 1970 the decree was amended to provide the same access rights to secular humanist counsellors.\textsuperscript{79} Currently, the relevant provision provides:

“Ministers of religion and lay counselors [secular humanist counselors] will be granted unrestricted access to the facilities; they must be met with the appropriate atmosphere and facilities for the performance of their duties. Full freedom of belief, religion, and political conviction

\begin{itemize}
\item \textsuperscript{74} In 1994 conscription was suspended. In 2004 it was formally abolished.
\item \textsuperscript{75} Parliamentary Documents Chamber 2014-2015, Chamber commission for national defence, 27 May 2015, no. COM 182, 13 (Defence Minister Vandeput).
\item \textsuperscript{76} Ibid., 13.
\item \textsuperscript{77} Ibid. The government furthermore denies that its ambition for religious expansion, in this context, is driven by a fear for radicalisation: “La mission de l’assistance religieuse et morale consiste à assurer les cultes et à fournir l’assistance morale et religieuse nécessaire au personnel qui le demande. La Défense dispose d’autres services chargés de la sécurité et de la lutte contre la radicalisation”.
\item \textsuperscript{78} Royal Decree of 23 October 1964 (tot bepaling van de normen die door de ziekenhuizen en hun diensten moeten worden nageleefd), Moniteur belge 7 November 1964 (latest amendment: 8 August 2014).
\item \textsuperscript{79} Royal Decree 12 January 1970, Moniteur belge 7 January 1972.
\end{itemize}
must be guaranteed to everyone” (annex B, III, 5o Royal Decree 7 November 1964)

A circular of 1973 (amended and reaffirmed in 1997) served to further clarify and elaborate this provision. The document stipulates that the individual freedom of the patient must be respected as much as possible, and that moral, religious or philosophical assistance under the best conditions by an expert of his or her choice should be facilitated. In practice, patients are informed of their rights after checking into a hospital, and they are presented with the (non-obligatory) option of filling out a form specifying their wishes in this regard. They may also express (or change) their wishes at any given time, later on, and the hospital is held to inform the religious or spiritual representatives of these wishes as soon as possible. All requests and information must be treated confidentially.

The persons providing (subsidised) religious and moral support in this context are appointed by the recognised religions and beliefs, and patients may not be charged for their services. For the Roman Catholic religion not only priests fulfil these tasks, but mandated laypersons as well (with the exception of administering sacraments). Patients may also request representatives from non-recognised religions, albeit that these do not receive government remuneration.

80 Circular of 5 April 1973. In 1971 an earlier circular had already been issued, but the arrangement therein encountered fierce resistance in Catholic institutions in particular, and it was abrogated as to its effects on 13 March 1972. See also the circulars of 5 April 1974, 12 February 1987 and 13 March 1997, elaborating and/or amending the one from 1973.


82 Point 6 Circular of 5 April 1973. A number of shortcomings both in the circular itself and in its implementation can be identified. See inter alia: Proposition of resolution concerning the religious, philosophical and moral assistance within hospital care, Parliamentary Documents 2006-2007, no. 51-2709/1, 4-6.

83 Point 1 (in fine) Circular of 5 April 1973. Due to privacy considerations the circular also expressly prohibits asking patients (either by means of forms or in person) about their religious adherence. See inter alia Circular 5 April 1974 (addressing the fact that a number of hospitals were not respecting this principle).

84 These individuals are granted the same rights as (other) representatives by point 2 of the Circular of 5 April 1973.

The religious and moral representatives may visit the patients at any desired time and without being subjected to time limits.\textsuperscript{86} However, they are obliged to abstain from visiting patients who have opted for religious or spiritual assistance from another denomination or patients who have expressed their wish not to receive any assistance whatsoever.\textsuperscript{87} The representatives are also bound to professional secrecy.

Concerning psychiatric hospitals, the same arrangements are applicable. In that context additional norms apply as well though, due to the specific nature and conditions of psychiatric patients, which may require added caution. Accordingly, and under threat of criminal sanctions,\textsuperscript{88} the Act of 1990 concerning the protection of the mentally ill posits that “every mentally ill person must be treated with full respect for his freedom of opinion, his religious and philosophical beliefs, in such a manner that his physical and mental health, his social and familial contacts as well as his cultural development are encouraged” (art. 31 § 1).\textsuperscript{89}

Finally, in the context of nursing and care homes similar principles hold concerning the freedom of choice for inhabitants and the right of entry for religious and moral representatives.\textsuperscript{90} An important difference is that the

\textsuperscript{86} Point 4 Circular of 5 April 1973.

\textsuperscript{87} Ibid.

\textsuperscript{88} Art. 37 Act of 26 June 1990 concerning the protection of the mentally ill person, Moniteur belge 27 July 1990 (latest amendment 9 July 2014).

\textsuperscript{89} Transl. of: “Iedere geesteszieke wordt behandeld met eerbiediging van zijn vrijheid van mening, van zijn godsdienstige en filosofische overtuiging en op zulke wijze dat zijn lichamelijke en geestelijke gezondheid, zijn sociale en gezinscontacten alsmede zijn culturele ontwikkeling in de hand worden gewerkt”. On a side-note, the Act also contains this noteworthy provision (art. 2, section 2 Act of 26 June 1990): “Maladjustment to moral, social, religious, political or other values may not in itself be considered a mental illness” (transl. of: “De onaangepastheid aan de zedelijke, maatschappelijke, religieuze, politieke of andere waarden mag op zichzelf niet als een geestesziekte worden beschouwd”).

\textsuperscript{90} See art. N1, 4, e; art.N1 (Walloon region), 4, e; art. N1 (Brussels capital region), 4, e; art. N1 (Flemish region) Royal Decree of 21 September 2004 (boudende vaststelling van de normen voor de bijzondere erkenning als rust- en verzorgingstehuis, als centrum voor dagverzorging of als centrum voor niet aangeboren hersenletsels), Moniteur belge 10 April 2014 (latest amendment 12 January 2016). Similar requirements were previously inscribed in the Royal Decree of 2 December 1982 (abrogated by art. 7 of the aforementioned Royal Decree of 2004). See also, specifically for the Walloon region, the Decree of 5 June 1997 (betreffende de rustoordcn, de serviceflats en de dagcentra voor bejaarden (…)), Moniteur belge 26 June 1997 (art. 5 § 2, 9°, a and c).
relevant regulations do not provide for government funding for payment of chaplains and moral counsellors in this context.\textsuperscript{91}

c. Penitentiaries

Much as the aforementioned chaplaincies, the prison chaplaincy is of ancient date and it has long been, at least in terms of being state financed, the exclusive domain of the Roman Catholic Church.\textsuperscript{92} Until the beginning of the 21\textsuperscript{st} century virtually the entire staff consisted of Roman Catholic chaplains, with the exception of a single Protestant one. Other religions and beliefs provided services on a voluntary basis, which took on an ever-increasing scale. Partly for this reason, the system was a controversial one: it was widely considered discriminatory by virtue of its clinging to historical (and out-dated) proportions. The arrangement was fundamentally revised in 2005.\textsuperscript{93} At the time the government attempted, for the first time ever, to base staff allocation on an empirical needs assessment.

The size and composition of the prison chaplaincy has since 2005 become somewhat more proportionate to the actual needs and demands, with Anglican, Islamic,\textsuperscript{94} Orthodox, Jewish and secular humanist spiritual care being introduced. However, the relative numbers of prison chaplains are still by no means proportionate to the contextual needs assessment within the context of prison facilities (see table 2). The secular humanists, for instance, would have had only a limited presence in this sector (1.6\%) based on the assessment. However, in 2005 they were granted 9 representatives, out of total of 65 positions at the time, which roughly amounts to 14\% of the corps.\textsuperscript{95}

\textsuperscript{91} See “Wettelijk kader”, Pastoralezorg.be.
\textsuperscript{92} In addition spiritual care is offered by volunteers. This is the case for all recognised religious groups.
\textsuperscript{95} See Royal Decree 25 October 2005 (houdende vaststelling van het kader van de aalmoezeniers en de islamconsulenten van de erkende erediensten en van de moreel consulenten van de Centrale Vrijzinnige Raad der niet confessionele levensbeschouwing bij de Strafinrichtingen, zomede tot vaststelling van hun weddeschalen), Moniteur belge 10 November 2005.
Since 2005, the number of personnel has steadily increased, rendering this form of spiritual care in public institutions the most important one, numerically speaking.

In 2015 it was estimated that over 35% of detainees were Muslim.96 This numerical development coupled with the fear that Muslims in detention situations are liable to radicalise,97 led to an important (or historic, even) change in the corps’ composition: in 2016 the Islamic prison chaplaincy became larger than that of the previously dominant Roman Catholic one (see table 2).98

Table 2: Prison chaplaincies

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<tr>
<td>Catholic</td>
<td>40</td>
<td>25</td>
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<tr>
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<td>6</td>
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<td>2</td>
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<td>9</td>
<td>9</td>
<td>1.6%</td>
</tr>
<tr>
<td>Total</td>
<td>41</td>
<td>65</td>
<td>78.4</td>
<td>100% (99.9%)</td>
</tr>
</tbody>
</table>

Spiritual care for inmates is also taken up by others than the chaplains of recognised religions: non-recognised religions and beliefs may also provide some form of spiritual guidance in prisons (albeit unpaid and under restrictive conditions). The legislation that was enacted in 2005 even con-

98 Royal Decree 10 April 2016 (tot wijziging van het koninklijk besluit van 25 oktober 2005), Moniteur belge 19 April 2016.
tained a specific provision guaranteeing their rights, but it was removed again in 2006. This significantly weakened the position of Buddhists, Hindus and Jehovah’s Witnesses among others.99

d. Other public institutions

The post-World War II arrival of migrant workers soon led to the establishment of state-funded ‘migrant chaplaincies’.100 In retrospect these chaplaincies can be regarded as early harbingers of the formal recognition of the religions of these newly arrived migrants under the system of article 181 of the Constitution, in 1974 (Islam) and 1985 (Orthodoxy) respectively.

The migrant chaplaincies differed from other forms of chaplaincies in that they were explicitly open for (at the time and/or still) unrecognised religions.101 The system was even characterised by a form of positive discrimination vis-à-vis non-recognised religions: in order to receive funding chaplains of unrecognised religions had to meet lower requirements concerning the numbers of adherents they had to reach than did chaplains of recognised religions (i.e. 1,000 versus 5,000).102 Since the competence for this issue was transferred, due to devolution, to the communities the situation in Flanders has legally remained as it previously was, but since the year 2000 the government no longer provides a budget for migrant chaplains (resulting in a de facto abolition).103 The French Community replaced

100 Royal Decree 10 July 1952 (*fixant l’indemnité allouée aux aumôniers des travailleurs étrangers occupés en Belgique*), *Moniteur belge* 14-15 July 1952. By Royal Decree of 11 May 1971 (*Moniteur belge* 22 May 1971) the aforementioned Decree was supplemented with an arrangement concerning secular humanist counsellors.
101 Art. 3 Royal Decree 10 July 1952.
102 *Ibid*.
103 House of Representatives, *Parliamentary questions and answers*, 1999-2000, 2 June 2000 (question no. 132, Ludwig Caluwé), 1397. The considerations that the government referred to for cutting the budget were as follows: 1. the changed legal and policy context: “current legislation is aimed at participation, emancipation, reception of newcomers, refugees and travelling people”; 2. the fact that self-organisations of migrants and ethnic minorities are recognised and subsidised; 3. the (operational) recognition of Islam, and its associated funding on the basis of art. 181 of the Constitution.
the former arrangement in 1983 (and 1984); since then only recognised religions and beliefs could receive funding.\footnote{Executive Decision of 11 March 1983 (\textit{Moniteur belge}, 7 May 1984), amended by the decision of 5 March 1984 (\textit{Moniteur belge}, 22 June 1984). The French Community subsequently transferred this matter to the Walloon region and the French Community Commission (COCOF). The latter abolished the French Community’s decisions by decree of 13 May 2004 (\textit{Moniteur belge} 23 March 2005).}

A Belgian peculiarity was the phenomenon of the chaplaincy for offshore fishermen.\footnote{Royal Decree 28 November 2002 (\textit{tot vaststelling van het statuut en de bezoldigingsregeling van de aalmoezenier en de morele consulent bij de Dienst Zeevisserij van het Ministerie van Middenstand en Landbouw), \textit{Moniteur belge} 19 December 2002.} Formally instituted in 1886, it long remained the only chaplaincy (with one chaplain) reserved for a single religion: Roman Catholicism. Eventually a second, secular humanist, counsellor was added. This expansion took place \textit{ad hoc}, without being based on objective distribution criteria. In October of 2014 the Roman Catholic chaplain was forced to retire, without being replaced;\footnote{It had already been decided in 2005 that the government was no longer under the obligation to appoint and pay for a chaplain in this context, but the agreement also entailed that the serving chaplain could remain in place until his retirement.} he did remain active on a voluntary basis after his retirement.

Finally, we may refer to the airport chaplaincy (Zaventem), which originally resided under the Authority of the Airways (\textit{Regie der Luchtwegen}), a central government agency.\footnote{The current ‘Belgocontrol’.} This chaplaincy was developed prior to the privatisation of the national airport. Presently it consists of a corps of four chaplains (Roman Catholic, Protestant, Orthodox and Jewish) and one humanist counsellor.\footnote{Remuneration was established by Royal Decree of 27 March 1998. The staff formation was determined by the Royal Decrees of 17 June 1997 and 26 May 1998. \textit{See: Parliamentary questions and answers}, Senate 2000-2001, 9 January 2001, 1301 (question no. 849 De Schamphelaere). Answer provided by the Minister of Telecommunication and Public Enterprises.} An Islamic airport chaplain was never introduced. Following the privatisation of the airport, public funding extinguished, though the religious communities themselves still provide religious assistance in this context.

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\textsuperscript{105} Royal Decree 28 November 2002 (\textit{tot vaststelling van het statuut en de bezoldigingsregeling van de aalmoezenier en de morele consulent bij de Dienst Zeevisserij van het Ministerie van Middenstand en Landbouw), \textit{Moniteur belge} 19 December 2002.

\textsuperscript{106} It had already been decided in 2005 that the government was no longer under the obligation to appoint and pay for a chaplain in this context, but the agreement also entailed that the serving chaplain could remain in place until his retirement.

\textsuperscript{107} The current ‘Belgocontrol’.

X. Legal status of Priests and Members of Religious Orders

The legal position of priests and religious personnel is, for most purposes, no different from that of any other Belgian citizen. There are, however, several exceptions. To begin with, the Judicial Code (art. 224, 12º) provides that ministers of recognised religions or representatives of recognised (non-religious) beliefs are exempted from jury duty.

Additionally, some incompatibilities between combining certain religious positions with other functions flow from both the Constitution and regular legislation. Here, notably, being a (paid) minister for a recognised religion is often considered more problematic than being a minister for a religion that is not (yet) recognised.

To begin with, article 51 (originally art. 36) of the Constitution determines that having “any salaried position other than that of [government] minister”, paid by the federal government, cannot be combined with being a Member of Parliament. This includes ministers of religion in the sense of article 181 of the Constitution to the extent that they receive payment by the State (supra IIIa.i & VIII). Positions on committees or lower level representative bodies, such as municipal councils, do remain possible. Other incompatibilities with being a cleric of a recognised religion include holding the function of judge, clerk and registrar in the Constitutional Court (art. 44 Special Law concerning the Constitutional Court).

However, not all incompatibilities are limited to ministers of recognised religions. ‘Ministers of the religions’ in general are not allowed to become Mayors or Aldermen, for instance (art. 72 New Municipal Code). Furthermore, being a member of the Council of State (or of its auditeurs’ office, coordination office, and registry) or being any kind of judge is incompatible with being part of the ‘ecclesial order’ (geistelijke stand or l’état ecclésias- tique) or clergy.109

Case law pertaining to this issue is limited. An exception involved a priest who was neither paid by the State nor acting as a parish priest, who had hoped to become a judge, but was rejected, with the State invoking the aforementioned incompatibility. He eventually took his case to the European Commission for Human Rights. The Commission ended up ruling against him, refusing to read into article 9 (right to freedom of religion) a right to hold public office.110

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109 See resp. Laws on the Council of State (art. 107); Judicial Code (art. 293).
XI. Matrimonial and Family Law

a. Civil marriage prior to religious marriage

As mentioned above, article 21 of the Constitution provides that a civil marriage must always precede the religious marriage ceremony (supra II-Ia.i). Article 267 of the Criminal Code also renders the reverse order a crime, stipulating that any minister of a religion, who concludes a religious marriage prior to the civil marriage ceremony having been performed, will be punished with a fine (supra III.a.ii); note that the spouses involved are not punishable. An exception to the rule holds if one of the persons involved in the ceremony was in mortal danger, and any postponement could have made the wedding impossible. Historical and mostly practical reasons lie at the root of this restriction contained in both the Constitution and the criminal law. In the 19th century, in accordance with long tradition, many people married only in Church and did so despite the fact that the bishops encouraged them to also conclude a civil marriage. This widespread practice (which had already previously been banned, under French rule) was considered detrimental for an efficient functioning of the services of the secular state. In order to bring an end to this situation, and in a spirit of reconciliation, the Catholic majority of the post-revolutionary National Congress approved the second paragraph of the current article 21 of the Constitution. Later on, the corresponding criminal provision was introduced in the criminal code.

While introduced with a view to prevent a common Roman Catholic practice, both the Constitutional and criminal provisions are neutral in their wording. As such, the rule is applicable to any kind of marriage, which was also explicitly confirmed by case law from the Supreme Court.

In practice, courts sometimes have difficulty with the interpretation of the religious concepts of marriage, as it is not always clear whether particu-

111 An exception to the rule holds if one of the persons involved in the ceremony was in mortal danger, and any postponement could have made the wedding impossible.
114 E.g. Supreme Court 26 December 1876.
lar religious manifestations under legal scrutiny, which preceded a civil marriage, already constituted a religious marriage, or, for instance, only a betrothal.

b. Children: adoption and religious upbringing

Concerning children and parenthood, legislation on adoption explicitly includes religion and belief (that is the religious background of the child) as one of the elements that should be taken into consideration when deciding on an adoption, in order to ensure the type of adoption that is in the best interest of the child and its fundamental rights (art. 362.3, 3° Act of 24 April 2003).

Furthermore, as far as children’s religious upbringing after separation of the parents is concerned, article 374 § 1 of the Civil Code provides that, in case the parents do not agree, the competent judge has the authority to make one of the parents responsible for major religious choices for the child.115

c. Private International Law

Belgian private international law allows a personal status created abroad to have (indirect) effects in Belgium, through the mechanism of a simplified public order control.116 This rule, while not explicitly mentioning religion, can have the effect of (partially) accommodating religious norms to some extent, e.g. polygamy and dowry systems.

i. Polygamy

Polygamy is unlawful in Belgium, but through the application of private international law, widows that were lawfully married abroad into polygamous marriages are able to obtain an equal and proportional (but divided)

share in survival pension rights. However, Belgium’s highest courts disagree on whether, in cases where the first wife has the nationality of a country prohibiting polygamy, the second wife has to be excluded from widow pension claims.

As far as (underage) children from polygamous marriages are concerned, the Belgian Constitutional Court ruled in 2008 that these children should not be discriminated against in the context of family reunification.

ii. Dowry

Belgian case law is divided on the question whether or not the payment of a dowry as a condition of matrimonial validity is in conformity with Belgian international public order. In 1989 the Brussels court of first instance was confronted with a Moroccan woman who claimed that she had not received the sadaq (the required marriage gift given by the groom to the bride). The Judge enforced the application of the Moroccan family code (Mudawana), and declared the nullity of marriage due to lack of a dowry. Likewise, the Court of appeal of Brussels has ruled that the lack of a dowry could be deemed equivalent to and evidence of lack of consent.

Contrary rulings have inter alia come down from the court of appeal of Ghent, which ruled that – in order to be taken into account as an evidence of lack of consent – a missing dowry must be supplemented by other evidence, since it is contrary to the principle of liberty and equality of spouses to give formal legal effect to a mere lack of a dowry.

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117 Constitutional Court 4 June 2009, nr. 96/2009.
119 Constitutional Court 26 June 2008, no. 95/2008.
121 Court of appeal of Brussels, 1 February 1994, and 10 May 1996.
122 Court of Appeal of Ghent, 12 September 1994.
XII. Conclusion

The situation of Church and State relationships in Belgium may be summarised as follows:

1. The system, quite favourable to religion, is more a system establishing mutual independence than separation in a strict sense.
2. Although theoretically all religions enjoy the same rights, there is an important difference between recognised and non-recognised religious groups. Furthermore, practice reveals the Roman Catholic religion to be primus inter pares among the recognised religions.
3. Gradually secularisation is colouring the Belgian Church and State system. This secularisation is not generally characterised by a frontal attack on religion, but rather by a gradual loss of power and the degree of autonomy of the churches in various fields. An example is the increasing influence of labour law in Church life as well as tendencies favourable to (moderate) State control of internal church procedures.

XIII. Select bibliography


State and Church in Bulgaria

Atanas Krussteff

I. Social Facts

Bulgaria is often referred to as an Orthodox Christian country. More than 80% of the total population of the country declare themselves as Orthodox according to census surveys over the course of a century. In the latest 2011 census, the percentage was 76%, which is a substantial decrease compared to previous surveys. The Muslim population is concentrated in certain parts of the country, mainly southeast and northeast Bulgaria. Throughout the 20th and 21st centuries, Muslims comprised steadily about 10% of the whole population of Bulgaria.

Survey methodology makes it hard to estimate the number of active believers. The 2011 census questionnaire included one simple question concerning religion: “Are you religious?” However, the interviewed persons were directed to answer “yes” even if they practised only “the customs, traditions and rituals” of a certain religion. In any case, the number of positive answers to this question has not been published.

The answers to the survey question “What is your religion?” indicate mostly a broad self-identification with religion as a feature of ethnicity or nationality. That is confirmed by the almost identical rate of answers in respect to ethnicity.

It is important to note that according to a report of the National Statistics Institute from the end of 2014, very critical of the 2011 census on account of its methodology, 2.3 million persons interviewed did not respond to the question of religious affiliation which makes all figures concerning religion rather insecure.

The official results of the 2011 census showed a total population of 7,364,570, of which 4,374,135, or 76.0%, identified themselves as Orthodox Christians; 48,945, or 0.8%, as Catholic; 64,476, or 1.1%, as Protestant; 577,139, or 10%, as Muslim (Sunni Muslims made up 546,004, Shia Muslims 27,407, and 3,727 answered only “Muslim”). Members of other denominations numbered 11,444, or 0.2%. 272,264 persons, or 4.7%, belonged to no denomination, and 409,898, or 7.1%, did not answer the question.
II. Historical Background

Various factors contributed to the nature of the church and state model in Bulgaria. Adoption of Eastern Orthodoxy is a fundamental factor. 500 years under the Ottoman Empire with its competing holistic and politically dominant religion, Islam, deeply rooted the Church as a major force for the preservation of Bulgarian identity. Independence in 1878 started a process of reception of Western constitutionalism and legal patterns. Finally, following 45 years of Communist rule during the second half of the 20th century, this process was resumed. However, Orthodoxy and the state even today can hardly fit into a classic Western constitutional framework.

Since its beginning, Christianity permeated Bulgarian lands which were then part of the Roman Empire. In 865, Christianity was officially established as the state religion for the Kingdom of Bulgaria, as a reception of Oriental Orthodoxy. The Byzantine style church and state model, known as *cesaropapism*, is characterised by the leading role of the state. It is often defined by its proponents as a “church and state symphony”. This traditional institutional embrace, together with the overwhelming majority of Orthodox in the population, never made the Western concept of separation of church and state feasible.

Byzantium forged the basic features of the contemporary model. The Ottoman Empire held Bulgarians separate from the West during its modernisation, marginalising them in religious terms in two ways: first in relation to the dominant religion, Islam, and secondly from Greek Orthodoxy. Thus, the Bulgarian national identity was forged in alienation from church it could “own” church as a sole and universal national institution, which led to a late-19th century struggle for church independence which had also the character of political self-determination.

The “Westernising” of Bulgarian law started a controversial process of rapprochement with modern international standards in the field of religious freedom, which had to survive totalitarianism. First, the Bulgarian Turnovo Constitution of 1879 did not adopt a model of separation between church and state. However, it created a framework of tolerance and sufficient religious liberty. It protected religious pluralism for everyone, not just Bulgarian citizens (Art. 40). It also provided for the autonomy of religious communities (Art. 42).

Separation of church and state was proclaimed with the 1947 Communist Constitution of the People’s Republic of Bulgaria (CPRB) (Art. 78). However, while the CPRB formally proclaimed freedom of religion, it did not have practical application and remained a soviet-style set of slogans.

The Constitution proclaimed the significance of the Orthodox tradition for Bulgaria (CRB, Art. 13 sec. 3), yet history left the country rich and colorful heritage of religious minorities that had lived in peaceful coexistence for centuries. A large Muslim population was present together with Armenians, Jews, Catholics, and Protestants. Though unmentioned explicitly in the CRB, this reality prompted the more minority-sensitive model expressed in the preamble of the new Law on Religions of 2003 (LR).

In general, after the fall of Communism, despite the rise of religious activity, religion could not attain substantial influence in public life. It remains a sort of second class issue in an actually largely religiously skeptical country. It became a hot issue of debate during the 1990s with the appearance of foreign missionaries and the split in Orthodox Church leadership at that time. However, the split was not a genuine religious issue, but rather a reaction to a cultural challenge to Orthodoxy as part of national identity and an extension of the all-out, fiery battle between the political left and right.

Although a constitutional favorite, the Orthodox Church has no economic and political power, unlike other churches in countries with one dominant religion.

III. Legal Sources and Basic Approaches to Religion and Belief

Different normative acts with legal and sublegal force address to freedom of religion and belief. Basic documents are the CRB, LR and the Law on the Protection against Discrimination (LPD).

The CRB, for the first time ever, effectively adopts a large proportion of international standards. In contrast to the constitutions of the totalitarian period, it has for the first the same direct force and application as any other law. Though not expressly mentioning all of them, it incorporates all basic international instruments for the protection of human rights into domestic law, generally incorporating them via Art. 5 sec. 4. When adopted after due constitutional procedure, international instruments become part of national law, with priority over “internal law” but below the constitution. Among these are the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural

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Rights (ICESCR), the Convention on the Rights of the Child (CRC), and the European Convention on Human Rights (ECHR), etc.

At first glance, the CRB gives a strongly secular message, similar to that of its predecessor, the CPRB, and very different to the religion-friendly Turnovo Constitution. The wording is economical, oversimplified, and inconsistent, quite different from the language of the ICCPR and the ECHR. Article 13 section 1 shortly states, “Denominations are free.” Section 2 adds, “Religious institutions are separate from the state.” In Article 37, the right to freedom of religion and belief is proclaimed inviolable and referred to as “choice of religion, religious or atheistic views” together with “freedom of conscience” and “freedom of thought”. Article 37 section 2 sets limitations to “freedom of religion”.

Article 13 section 3 declares that Eastern Orthodoxy is the “traditional religion in the Republic of Bulgaria”. This clause is to be unconditionally understood as a declaration without legal effect, although it is notable that it is not in the preamble but forms a normal constitutional provision. Being part of the normative body of the constitution, it is widely understood as a guarantee of privilege for the Orthodox Church, especially at local levels, where most issues with freedom of religion arise. This controversy is deepened by the LR, which gives the Orthodox Church concrete advantages (Art. 10).

No religious rules are part of state law, even as subsidiary rules. Religious communities and institutions are not regarded as subjects of public law.

The CRB contains no express notion of co-operation between religions and the state. The state has a passive position and is obliged to act only to maintain tolerance between religions and between believers and non-believers. On the other hand, ordinary laws provide for subsidies, tax exemptions, and the right to use state or municipal land free of charge (LR, Art. 21 sec. 3).

Religious equality is not explicitly addressed outside the general non-discrimination clause (CRB, Art. 6). The LPD prohibits any discrimination on the grounds of religion, particularly in the spheres of employment and the cultural rights of religious minorities. It also provides for affirmative action for members of religious minorities in the sphere of government and decision-making.

Bulgarian legislation overall gives the impression that enthusiasm for liberal reforms after 1989, affecting most other spheres of human rights (personal, socio-economic, cultural), ran out of steam in the field of freedom of religion. While international standards regard this human right in a more favorable light than most others, the Bulgarian legal apparatus ap-
approaches freedom of religion and belief in a rather conservative way, revealing a regulatory trend away from freedom of religion. Unfortunately, this liberal deficiency is deepened in view of a series of Bills for presentation to Parliament which are supported by almost all political parties aiming at additional restrictions which violate principal aspects of the right to freedom of thought, conscience and religion.

An important part of the constitutional order is the practice of the Constitutional Court (CC). Some decisions interpret Bulgarian law so as to meet or promote international standards. The CC underlines the individual character of the right to religion and belief and interprets the limitation clause in a strict manner (Decisions 5/1992; 2/1998). CC Decision 12/2003 should also be mentioned, though it has no relevant force. It is significant for its effort to make clear that there is no obligation for religious communities to register and that worship in communion with others can be exercised by non-registered communities.

Latest amendments of the LR sustain the constant trend towards extreme restrictions and control of the right to freedom of religion. Much discussed, they were presented as measures against “radical Islam” but an ingrained opposition to the presence of non-Orthodox “foreign”, “non-traditional” religions is an obvious reflection of the tight intertwining of the state and the Orthodox Church. The proposals were considered in the 42nd National Assembly. The trend gained force in the current 43rd National Assembly with bills backed by 95% of the parties represented in the Parliament. The main features of these Bills were: state subsidies for the Orthodox Church and the Muslim community including the salaries of the clergy and the maintenance of properties; registration of communities - prerequisite for the practice of religion, registration needing the approval of Directorate on Religions; de-registration provided for as a sanction for abuse of “the laws” (meaning any law); prohibition against foreigners acting as head clergy, and on acting as preachers and or missionaries without special permission from the state; prohibition against Bulgarians so acting without approved by the state religious education authority; restrictions on education and educational institutions; prohibition against any foreign financing, with no exception for EU; overall strict financial control; worship to be allowed only in buildings licensed by the state, etc. In the end, due to not entirely clear factors, in the final version (State Gazette No108 of 2018, in force since 01.01.2019) from the major suggestions remained only the state subsidies for the Orthodox Church and the Muslim denomination, and deregistration of religions for “systematic abuse of this (LR) law” and “activities contradicting clauses of the Constitution”.

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In conclusion – if separation of church and state could be regarded as a process of privatisation, the above tendency should be understood as its opposite – nationalisation of the church.

Law on Religions

As a result of the trend towards increased regulation, before Christmas 2002 the Parliament passed a new Law on Religions (LR). It goes beyond the declarative singling out of the Orthodox Church in Article 13 of the CRB and grants it some real advantages. Separately, it treats religious organisations unfavorably in comparison with other kinds of organisation. This raises questions about the principles of neutrality and equal treatment by the state.

The LR was challenged before the CC with the support of all religions except the Holy Synod of the Orthodox Church, favoured by the government. The Court majority found the challenged provisions unconstitutional, but fell one vote short of the qualified majority required by the CRB for the decision to come in force.

The time of enactment of the LR had special features. A tense conflict within the Orthodox Church was coming to head. Two rival Holy Synods struggled for power and property. The Orthodox Church itself had never been formally registered as a legal entity, a status strictly required for other religious communities. The newly formed “alternative” synod was never given registration despite its numerous attempts to obtain one. Thus, Article 10 of the LR declared the favoured synod a legal entity \textit{ex lege} and outlawed the other synod, dispossessing it of its property (Transitional and Concluding Provisions, Art. 10 sec. 1 and para. 3), despite the support of its parishioners.

Otherwise, the LR reiterates most of the constitutional provisions. In a separate section of the preamble, after the special tribute to Orthodoxy, respect is paid to “Christianity, Islam, Judaism and other religions”.

The LR defines the right to freedom of religion in more detail than the CRB. Article 2 section 2, Article 5, and Article 6 enumerate different forms of exercise. While these sections enrich the general provisions of the CRB, they also tend to frame the enumerated forms of expression exhaustively, as the \textit{only} possible forms. In most criminal cases, with regard to religious practices, there are accusations of “unregulated religious activity”, meaning religious activity that is not allowed: a perversion, typical for totalitarianism, of the principle that all is allowed if not expressly forbidden. Equality of religions is mentioned explicitly.
The regulative and discriminatory character of LR as directed particularly at religion, is visible by the fact that it does not address non-believers, atheists or other persons in the context of the right to freedom of religion and belief. No corresponding regulations apply in their case: so atheists can unite much more freely to oppose religion than believers can to practice religion.

The individual character of the right is explicitly mentioned.

The LR reiterates the CRB limitations clause (Art. 7 sec. 1 and 2), underlining that no additional limitations, except those included in the Article, may be set (Art. 7 sec. 3), and at the same time introducing some additional restrictions in the following paragraphs.

Further, the LR sets out a special procedure for religious communities to acquire the status of a legal entity which is different from the one required of other legal persons. Like the CRB, the LR fails to explicitly protect the right to practice collectively without formal registration of the respective community.

The LR reinstates a governmental body, the Directorate of Religions, existing under the previous LR of the Communist state. The Directorate possesses certain controlling functions. For example, it gives opinions on the registration of religions, controls admission of foreign missionaries, decides on cases of allegations and complaints of “misuse of the right to religion” and “illegal religious activity”, and makes proposals for state subsidies for registered denominations. It can impose fines or recommend criminal prosecution.

The LR recognizes the right to property, financing, healthcare, and social and educational activities of religions. The LR refers to all forms of collective religious practice as possible only for registered denominations.

With the latest amendments of LR (SG the state assumed direct state funding of religions which represent more than 1% of the population of the country. They will be financed directly from the state budget for wages of the clergy and and property maintenance. These criteria meet only the Bulgarian Orthodox Church and the Muslim denomination. Besides such statistics being too unreliable, many experts view this approach openly discriminatory in principle. However, the political consensus on the matter stops now any challenge before the Constitutional Court.
IV. Individual Freedom of Religion or Belief

General Scope of Protection

The individual character of the right to religion or belief is protected, though not explicitly, in the CRB. Article 37 of Chapter II, “Basic Rights and Obligations of Citizens”, does not specify whether this right is protected for non-Bulgarian citizens. CC Decision No 5/1992 elaborates a more precise definition of the individual and universal character of this right in connection with the ICCPR and the ECHR.

Many practical issues originating from the everyday life of believers and religious communities, such as religious symbols, dress, bell ringing, religious acts of observance in public places such as prayers and processions, ritual slaughter, dietary requirements, and conscientious objection to military service, among others, are not addressed at all. As an exception in 2016 after the initiative of a so-called Patriotic Party a burqa ban law was passed.

Status of Minors

All persons, regardless of age, are entitled to the right to freedom of religion or belief. Bulgarian citizens reach full legal capacity at 18 years of age. Before that age, most limitations on religious rights are related to the limitations on the personal exercise of rights more generally. Such limitations reflect the legal authority of parents and legal guardians to make legal decisions for of minors (up until age 14) or to confirm their legal acts until age of maturity (between ages 14 and 18).

According to Article 47 section 1 of the CRB, parental authority with respect to raising and educating children lasts until the child has reached the age of 18. Article 6, section 2 of the LR formulates this authority in more detail with respect to the right to religion: parents and their legal substitutes “have the right to provide religious education to their children according to their own convictions”. Minors under the age of 14 can take part in religious activities of religious communities only with the express consent of their parents or their legal guardians (Art. 7 sec. 5). Minors between 14 and 18 are able to have any religious affiliation and perform religious activities themselves, except in the case of the express disagreement of their parents or their legal guardians. The exercise of religious rights by minors is limited by analogy with the rules for the validity of civil law acts and this can be justified in so far as the legal nature of general civil law reflects fundamental human rights.
The right of minors to freedom of religion is subject also to the Law on Protection of the Child (LPC). Specifically, any child has the right to expression of opinion (Art. 12). The law grants a right to minors between 14 and 18 years to “take up their position on religious matters” based on agreement with their parents or their legal guardians. In case of disagreement, the court can decide the matter, an option not available in the exercise of any other right by minors. On the whole, the text of the LPC with respect to religious rights looks like a severely abbreviated version of the Convention on the Rights of the Child without its delicate and balanced approach.

Activities Protected

One interpretation of Article 37 of the CRB, CC Decision 5/1992, confirms that the clause protects, on the one hand, the forum internum—the inner freedom to believe or not—which is an absolute right not subject to any restriction or interference. On the other hand, it protects and guarantees the external manifestation of the right. CC Decision 5/1992 enumerates some possible forms of expression: free choice of religion and opportunity for free exercise through word, press, and association. The CC gives the right not to believe full parity with the right to believe.

There are no specific limitations on active forms of proselytism. The CC sets a broad limit. It holds that the preaching of religious fundamentalism or extremism is always a violation of constitutional principles. The CC does not offer any clarification of the terms “religious fundamentalism” and “extremism”, so they remain open to interpretation.

The right to conscientious objection to military service was proclaimed in the constitution, but it was made dependent on an ordinary law that appeared only in 2006, or 15 years after the adoption of the CRB. During the intervening years, courts sentenced every conscientious objector. Then, with an amendment in 2008, this provision of the CRB was cancelled. This came about as a result of the reform of the army that made it exclusively professional.

Violent Communist hostility to religion left the country void of any religious symbols in public places, save churches. Some court decisions with respect to wearing religious dress (such as headscarves) confirm its ban in public schools where uniforms are worn. In 2016 a law, known as the burqa ban, banned covering the face in public. Together with another criminal case against “radical Islam” this law targeted a small Roma Mus-
lims neighbourhood in a small provincial town where the few known cases took place.

Major religious holidays for Orthodox believers are official holidays of the state. Believers of 12 non-Orthodox denominations are given the right to take paid or unpaid leave to celebrate their main religious holidays (Labour Code, Art. 173 sec. 2). At the end of each year the government publishes a list of religious holidays attracting this rights for each denomination during the following year. By analogy such rights are recognised ad hoc by an order of the Minister of Education for Muslim school students but no such order was made for students belonging to the Adventist Church. Article 13 section 2 of the LPD obliges employers to provide working time and days of rest according to the employee’s religion or faith but this is to be balanced with the employer’s business interests.

Limitations to Freedom of Religion or Belief

The possible limitations on the freedom of religion or belief are listed exhaustively in Article 37 section 2 of the CRB, which reads: “Freedom of conscience and religion should not be directed against national security, public order, national health and morals or against rights and freedom of other citizens.” CC practice holds that limitations should be subject to strict interpretation. Article 13 section 4 of the CRB bans religious communities from political activity, going so far as to say that “religious beliefs cannot be used for political purposes”. Compliance with other constitutional obligations is a general limitation on freedom of religion and belief.

The limitation clause in Article 37 poses a complex problem in theory and practice. For example, unlike international standards, it includes national security as a ground for limitation. The requirements of ICCPR and the ECHR — limitations to be prescribed by law, proportional, and necessary in a democratic society—are missing. The invisible interaction, not spelt out, of international treaties and CRB remains the only solution of this problem.

The LR introduces some additional limitations. Article 7 section 4 proclaims that any internal rules, rituals, or rites of a religious community should not restrict the rights and freedoms of its members, a provision obviously at odds with religious autonomy. Article 7 section 5 regulates minors’ participation in religious activities.

There are no explicit limitations for states of emergency.

Some other general differences between international standards and the CRB limitation clause are apparent. If Article 18 of the ICCPR and Article
9 of the ECHR underline the exceptional character of the limitations, the CRB and the LR take a reverse approach. The ICCPR and the ECHR declare that “freedom to manifest one’s religion or beliefs shall be subject only to such limitations as...”, while the CRB says that “freedom of conscience and religion should not be directed against...”. The logic of the text presupposes that religiously motivated behaviour is a usual source of risk to these basic public values. Thus, the fundamental character of this right becomes vague and is deprived of the priority it is granted by international treaties and the Constitution.

V. The Legal Status of Religious Communities

Religious communities have the right to the status of a legal entity. With registration they become “religious institutions” (Additional Provisions of the LR, Para. 1 sec. 3). It is noteworthy that the same term is used in the separation clause of Article 13 section 2 of the CRB, where it has a broader meaning of “religious institution” without equating it with registered communities only (CC Decision 5/1995). On the other hand, the right to the status of a legal entity can only be enjoyed by a religious community on the basis of a restrictive administrative order, which raises questions of constitutionality.

A religious community may acquire the status of a legal entity only via the procedures set forth in the LR (Art. 14). Incorporation according to general civil law procedures has been banned since 1994. No such restrictions exist for any other form of association, including atheistic associations. An expert opinion of the Directorate of Religions is required for the registration of a particular religion.

Registered religions may have local branches. However, they are subject to registration with the mayor of the local municipality, and that is where most of the practical problems arise. Some mayors will not recognise central registration as sufficient and accept as fully valid only the local entity. In practice registration is still regarded as a sort of a licence to the exercise of religious rights. As a remnant from Communist times, this controlling practice still prevails at the local level. Interpretation of the CRB and the LR seem to demand otherwise, but the practical need for effective protection of the right requires that the right to practise individually or in community with others without formal requirements be protected more clearly, confirming that registration is a right but not an obligation. Incidentally, CC Decision No. 12/2003 explicitly reviewed the issue and concluded that registration is a constitutional right, and practice without registration holds.
is fully legitimate, but this decision remained without binding legal effect due to the lack of the required qualified majority.

Any religious activity and forms of state support, subject to the LR and other legislation, are allowed only for registered religions, including the right to hold property, all forms of financing, healthcare, social aid, educational institutions, access to public institutions, the right to use free state and municipal property, tax exemptions for building houses of worship, monasteries, and similar facilities, etc.

VI. Religious Autonomy

The CRB has no explicit references to religious autonomy. Some authors find that separation between church and state (Art. 13) provides for and guarantees it, but this notion is unacceptable. Article 13 establishes the secular nature of the state. Any private person is autonomous in this sense. Religious autonomy is thus something more and different. It refers to specific independence of internal doctrines and rules, which is usually not granted to most other collective subjects of law. The LR goes a bit further and provides: “State interference is inadmissible in the internal organisation of religious communities and religious institutions” (Art. 4 sec. 2). A long history, including some quite recent events, of state direct and sometimes violent interference with internal matters of the Orthodox Church, the Muslim denomination, and other religions, leaves legislation lacking more effective protection and guarantees for religious autonomy (see Hasan and Chaush v. Bulgaria, (No. 30985/96), The Supreme Holy Council of the Muslim Community v. Bulgaria (No. 39023/97), and Holy Synod of the Bulgarian Orthodox Church (Metropolitan Inokenti) and Others v. Bulgaria (Nos. 412/03 and 35677/04)). Despite the clear stance of ECtHR against the abuse of religious autonomy by the Bulgarian state, attempts at anti-constitutional state interference do not cease and become even more threatening (see Bills No 654-01-26/01-03-2016 and No 654-01-32/14.3.2016 filed at the 42nd National Assembly and Bills No 854-01-34/4.5.2018 and No 854-01-35/9.5.2018 filed at the 43rd National Assembly, mentioned above).

VII. Education

Religious education is not protected explicitly beyond the general constitutional right to secular education. Religious education is provided for in its
active and passive forms as part of the right to religion in Article 6 sec. 1 p. 6 of the LR. Religion is included as a facultative subject at some primary and secondary state schools but is meant as a cultural subject not Theology as required by the Orthodox Church and existing before 1944. Religious secondary and high schools can be established only with permission from state education authorities. Major denominations run such schools. At St Climent Ohridsky University in Sofia, which is state owned and funded, there is a Theological Faculty, which teaches Orthodox Church doctrines and practice. It trains clergy for the Orthodox Church and teachers for the subject of religion at primary and secondary schools.

VIII. Religion and Personnel Matters

There are no statistics available about the number of employees in religious institutions and their subordinate organisations, yet it is clear that the number is relatively small. LPD Article 7 section 1 p. 3 entitles religious communities to employ their staff according to their religion, and exempts them from general sex discrimination clauses. Currently, relations between religious institutions and their employees are not legally clear at all, neither their legal nature (labour, civil, or another kind), nor the social and health insurance status of employees, etc. An amendment to the LR proposed at the 42nd National Assembly, aimed at defining the social and health insurance status of clergy was not passed. New legislative proposals at the current 43rd National Assembly do not address such topics.

IX. Finance

Registered religious communities have full rights to own property. Religious communities can establish commercial companies and own shares, securities, and intellectual property rights, etc.

The latest amendments of LR introduced a two-class financial system of religions as the Bulgarian Orthodox Church and the Muslim denomination got a massive state budget funding for wages of the clergy and personnel and property maintenance. Actually, an existing situation of budget financing of both religions was thus legalized.

Religious communities can raise funds through donations. They are exempted from donation taxes. They can acquire funds through commercial activities of their own commercial companies. Trade with goods connected
to worship, rituals, and rites of a particular religion can be carried out directly by the religious institution and is tax free. The sale of candles at religious services is an important source of income for the Orthodox Church.

Many religious communities that existed during the totalitarian regime, before 1989, were given back part of their properties expropriated by the Communist state. However, this question, even in respect to the Orthodox Church, is not yet solved comprehensively. Even still, the Orthodox Church is a large real estate owner. The problem with restitution of the waqf property of the Muslim community is not yet solved.

No church-run healthcare establishments exist. Only the Catholic Church maintains a few social care premises for the elderly, single mothers, and handicapped children.

The Bills for the amendment of LR provide for state subsidies of denominations which have as members more than 1% of the total population of the country. Detailed accounting reports and audit are also to be required for these denominations similar to such for NGOs registered in the public interest. Only Orthodox and Muslim communities will be able to meet in this criterion.

X. Religious Assistance in and Access to Public Institutions

Religious activities of any kind, including conscientious objection, are strictly prohibited to army personnel during the fulfilment of their military obligations. No religious, atheistic, political, or ideological organisations are allowed on army premises (Law on Defense and Armed Forces, Art. 183).

Religious assistance is allowed in hospitals. Hospitalised patients have the right to religious assistance by clergymen and access to religious activities in the hospital.

Social activities organised by authorities in prisons include, by law, “religious support”. Prisoners and detained persons are allowed to take part in religious services and rituals and to possess religious literature (Law on Execution of Punishments, Art. 166). Access to prisons is granted only to the clergy of registered religions. They have the right to meet alone with prisoners and to organise religious services. A government-funded position at a prison may be opened for clergy of “the religion practised by the majority of prisoners”. As a result of this quantitative criterion, only Orthodox priests are appointed by the government. Orthodox chapels exist in most prisons.
XI. Religion and Family Matters

Religious communities have been entirely stripped of their authority in family law matters which exist under the Turnovo Constitution, which was in force until 1949. Marriage and divorce are entirely secularised. The Family Code, which was in force until 2006, forbade the conduct of a religious marriage before a civil marriage was contracted. The new Family Code of 2006 does not include such a prohibition but confirms that religious marriage has no legal effect. Bulgarian law does not explicitly restrict religious marriages between foreigners, but requires that any marriage between foreigners be contracted only before the respective diplomatic or consular authorities of their “native country of spouses”. No religious rules have legal effect with respect to origin, inheritance, and relations within the family.

XII. Religion in Criminal Law and Other Public Regulations

Chapter Three Section II of the Criminal Code is entitled “Crimes against Denominations”.

Preaching religious hatred by any means, and desecration, demolition, or damage of any kind to a religious building or its adjacent buildings, religious symbols, or tombstones are criminal acts, as is obstruction by force or threat to the worship of “citizens”, still with some reservations as to the legality of worship itself (Criminal Code, Art. 164 para. 1–2).

Another crime consists of “[p]articipation in mobs, gathered to attack groups of the population, particular citizens or their properties”.

Despite the high rate of such violations, prosecutions concerning these offenses are rare, and in reality the courts have not provided any protection for denominations against crimes directed against them, as the heading of the Criminal Code Section claims to provide. The few existing cases impose sanctions for religious practice of some forms of Islam that are considered radical (“preaching of anti-democratic ideology”). Such court practice is based entirely on doctrinal analysis and not on any openly hostile acts. There are attempts of the so called “patriotic” parties in the parliament to include explicitly “radical Islam” as a form of criminal anti-democratic ideology in the Criminal Code.

Some crimes in the same chapter are explicitly part of the limitations apparatus. These include “compelling somebody to take part in religious activities” (Art. 165 para. 2), “organising a political party on religious grounds” (Art. 166), or “using the church or religion by any other means
in order to propagandise against state power or its undertakings” (Art. 166). These definitions demonstrate a laicité type over-reaction, as the last one mentioned is a literal verbal inheritance from the communist Criminal Code, which is still in force although radically amended in its other parts.

Administrative penalties in the LR are provided for persons who, not being authorised by the respective religion, act on its behalf and who generally “obstruct others from forming or expressing their religious convictions”.

The secret of the confessional is inviolable according to Article 14 of the LR and clergy are excused from testifying about information that they have come to know in confession. However, what exactly constitutes confession and how this principle applies to religions that do not have a formal confessional practice is not defined.
XIII. Select Bibliography and Leading Cases

Books and Articles


Legislative Sources


Law on Religions (*State Gazette* No. 120/2002, last amendment *State Gazette* No. 108/2018).

Law on Restriction of Wear Covering the Face (*State Gazette* No. 80/2016)

Cases


*The Supreme Holy Council of the Muslim Community v. Bulgaria* (No. 39023/97).

*Holy Synod of the Bulgarian Orthodox Church (Metropolitan Inokentiy) and Others v. Bulgaria* (Nos. 412/03 and 35677/04).

I. Social Facts

The Czech Republic consists of the territories of three historic Czech (Bohemian) lands: Bohemia, Moravia and southern part of Silesia. Since the dissolution of the former Czechoslovakia on 1 January 1993 it has been a unitary state using one legal system.

The membership of religious communities is governed by their statutes. There is no State provision for the registration of members of religious communities. But religious communities as a whole are registered as a special type of legal person under Czech law. There are 41 registered religious communities in the Czech Republic (2019).

About 80% of the members of religious communities belong to the Roman Catholic Church. According to the Czech Bishops’ Conference, 3,887,400 baptised Catholics live in the Czech Republic, out of a total number of 10,610,055 inhabitants (31 December 2017).

The Roman Catholic Church is followed in size by the Czechoslovak Hussite Church, which developed from Catholic modernism and unites both Catholic and Protestant aspects of worship and teaching with the former Hussite tradition, and by the Evangelical Church of Czech Brethren, which unified the original Reformed and Lutheran Czech congregations. Each of these two churches has about 100,000 members.

Almost 50,000 members belong to the two Orthodox Churches (larger Czech and smaller Russian).

More than 30,000 members belong to three Lutheran Churches. Two of them are located in Eastern Silesia (Poles and Czechs), the third one, by origin Slovak, has dispersed their members and parishes on the whole territory of the Czech Republic.

1 The legal norms of the Czech Republic use the term Churches and religious societies, but there is no legal distinction between these terms. Their usage is a matter of their own choice. Some religious communities don’t use any of these terms in their registered name.
There is a large number of religious communities in the Czech Republic with memberships between 5,000 and 20,000 people. All of them have a growing tendency in membership as well as parish congregations on the whole territory. To this group belong: the Religious Society of Jehovah’s Witnesses, the Church of Brethren (Evangelical Congregationalists), the Seventh Day Adventists, the Greek Catholic Church, the Apostolic (Pentecostal) Church, the Christian Fellowship (Pentecostal) Church, the Unity of the Brethren (Herrnhut/Moravian Brethren), Christian Congregations (Darbists), Baptists and Methodists.

A large number of religious communities, which have between 300 and 5,000 members, were registered during last decades: the Church of Jesus Christ of Latter-Day Saints (Mormons), (theosophical) Community of Christians, the Armenians, the Salvation Army and six churches from the Movement of Faith.

The Jewish communities consist of rather over 3,000 members.

Religious communities of Eastern spiritual provenance (Hare Krishna Movement, Czech Hindu Religious Society, Diamond Way Buddhism, Theravada Buddhism, and Vishva Nirmala Dharma) have mostly Czech members. Small religious communities with old tradition are the Old Catholic Church, the New Apostolic Church and the Religious Society of Unitarians.

The main stream of immigrants to the Czech Republic comes from Ukraine, Slovakia and Vietnam and many of them strengthen the number of members of the above mentioned religious communities.

A small number of immigrants come from Islamic countries. Muslim communities continue to grow thanks to immigration, but relatively slowly. They number between 4,500 and 10,000 persons. The Centre of Islamic Communities in the Czech Republic was registered as a religious community in 2004.

The Czech lands are frequently seen as a predominantly atheistic, or at least irreligious, territory, especially in journalistic and political reflections.

However, sociological findings from 2006 and 2007 show that Czech society is becoming a society with a high degree of individualised and decentralised spirituality. Some sociologists point out a particular feature of the Czech character, noticeable in many important individuals since the National Revival in the 19th century, which is the so-called “timid godliness”.

Jiří Rajmund Tretera and Záboj Horák
It is spirituality that is not manifested outwardly through any show or display.²

II. Historical Background

A West Slavonic settlement in the territory of the present Czech lands accepted Christianity under the influence of the Irish, Frankish and Greek-Slavonic missions during the 9th century in the Great Moravian Empire. The later Czech (Bohemian) Kingdom entered into a free union with the Holy Roman Empire. The Kingdom was, of course, a Roman Catholic State. But from the Hussite Reformation at the beginning of the 15th century there were two recognised denominations in the Kingdom: the Catholic minority and the Utraquist (Calixtin) majority. During the 16th century the Utraquist Church came under Lutheran Protestant influence.

Recatholicisation after the Battle of White Mountain (1620) and the end of the Thirty Years War (1648) was connected with the victorious House of Habsburg. Protestantism was forbidden. The unification of the Czech lands with the Austrian and other hereditary Habsburg lands followed. The sovereign of this union appropriated the iura maiestica circa sacra. In this way the Catholic Church lost an essential part of its autonomy.

Josef II published his Letter of Tolerance for his hereditary lands in 1781. 2% of the inhabitants of the Czech countries professed Protestantism: either the Helvetic Confession (the majority) or the Augsburg Confession.

A process of emancipation of the Churches from the State started in 1848. In December 1867 a new liberal Constitution came into being for the western (Cisleithan) part of the dual Austria-Hungary. The basis of this Constitution was a secularised State, based on the principle of cooperation with Churches and religious societies, and on their parity. The right to be recognised by the State was given to all religious communities which respected its legal demands (1874). The newly recognised religious communities³ could join in teaching religion in public schools and taking religious services in the army. The stipends of priests, ministers and rabbis were financed partly by the religious communities and partly by the State.

³ E.g.: the Old Catholic Church (1877), and the Evangelical Church of Herrnhut – Moravian Brethren (1880).
(part of the *congrua* for Catholic and Orthodox churches and relevant *subsidies* for other churches and for communities of Jews). All acknowledged religious communities were supported by the State in proportion to the number of official declarations of religious affiliation made to the municipalities.

The Republic of Czechoslovakia, founded in 1918 with the dissolution of the Austrian-Hungarian Empire, adopted the legislation of the both parts of the Habsburg monarchy.

The Catholic Church was accused of having too close a relationship with the Habsburg dynasty. Approximately 10% of Czechs became non-denominational, 10% founded new Czechoslovak Church, 2% Catholics converted to Protestantism, increasing the number of Protestants among Czechs to almost 4%. 0.2 % Catholics converted to the newly founded Czech Orthodox Church. A total of 73% of the Czechs stayed in the Catholic Church.

In 1927 a *Modus Vivendi* was concluded between the representatives of the Czechoslovak Government and the Apostolic See. It concerned the process of appointing diocesan bishops in Czechoslovakia.

During the Nazi occupation of 1939–1945, Catholics in the Czech lands actively participated in the resistance and were persecuted. During 1945–1948, democracy in Czechoslovakia was restored according to the doctrine of continuity of the legal order which was in force until 1938. All religious communities became popular. The number of students of theology was higher than ever.

A radical change came after the Communist *coup d’état* in February 1948. All spheres of public life had to accept the “scientific”, i.e. the Marxist, ideology including atheism. In the years 1948–1989, atheism played the role of a State “religion”.

Religious communities became the only alternatively thinking institutions whose existence was tolerated, albeit with many limitations. The ultimate aim of the regime was, of course, the entire liquidation of religious communities.

All the land belonging to religious communities (forests and fields), an important source of their economic viability, was taken over by the State. Religious communities also lost all their rights for subsidies of patrons and other local legal entities for the maintenance of sacred buildings.

New Acts establishing State control over the Churches came into force on November 1, 1949. That legislation brought obligatory but very low stipends, but only for certain group of clergy. Any religious activity of clergy or lay preachers needed State permission, which was granted only for a geographically limited territory. This State permission could be revoked
without explanation. Offences under this Act were punishable with imprisonment according to the provisions of the Penal Codes of 1950 and 1961.

Obligatory civil marriage was established in January 1950 for the first time in the history of the Czech lands.

In April 1950 all the monasteries were seized and the brothers interned without legal justification in concentration camps. Later they were sent to forced labour units of the Czechoslovak People’s Army for three or four years and then dispersed as workers principally in agriculture, forests and mines.

Sisters from convents were sent to camps in the remote border regions and were obliged to work in factories. They were not allowed to admit novices, with a short break during 1968–1971. This state of affairs lasted until 1989.

In 1948–1950 all schools of religious communities on primary and secondary level were abolished and this lasted till 1990. All theological schools and seminaries were abolished, with exception of three State theological schools (for Catholics, for Protestants, for the Czechoslovak Church) with a limited number of admissions.

Almost all the Catholic bishops were imprisoned or interned. Only at the time of the Prague Spring liberalisation in 1968 and for some months after the Soviet occupation on 21 August 1968 could bishops discharge their functions, and religious sisters admit a number of novices. Numbers of children attending the voluntary religious education classes increased. Monks began to work underground.

However, from 1971 the persecution of religious communities was revived. All religious communities, especially the Catholic Church, became symbols of resistance during the Communist regime. They were respected by all dissidents.

On 17 November 1989, the 50th anniversary of the closure of the Czech universities by the Nazis, communist police brutally interrupted the students' commemorative procession in Prague. The events, later called the Velvet Revolution, were followed by the whole of Czechoslovakia. 10th December 1989 may be called a day of upheaval. On that day the last Communist president appointed a noncommunist government. The following day he resigned.

Parliament repealed the legal enactments that were contrary to human rights.

In January 1990 the legal provision allowing State interference in the appointment of clergy, preachers and all Churches’ employees was repealed.
The Charter of Fundamental Rights and Freedoms, passed by the Parliament of the Czech and Slovak Federal Republic (CSFR) on 9th January 1991, confirmed this principle. On its foundations was built Federal Act No. 308/1991 dealing with the freedom of religion and the status of Churches and religious societies. The time of its validity in the Czech territory (1991–2002) may be considered as the foremost period of religious freedom in history. The legal order of the Czech Republic, founded on 1 January 1993 as an independent State, has incorporated the principles of the law on religion of the CSFR.

But new legislation, Act No. 3/2002, has limited some of the rights of religious communities. Some common rights of all religious communities were declared as *special rights* and granted to only some of them.

On the other hand the new Act reduced the obligatory minimum membership required of registered religious communities to 300 people. It made possible an increase in the number of registered religious communities from 21 (2002) to 41 (2019). But the requirements, which must be fulfilled for acquiring the so-called *special rights*, are so severe that no of newly registered religious community has obtained them till now.

### III. Legal Sources

The Czech legal system, as it concerns religious communities has four layers: constitutional law; international agreements; internal State law; and Church-State Agreements.

Czech constitutional law consists of the Constitution of the Czech Republic (Constitutional Act No. 1/1993), the Charter of Fundamental Rights and Freedoms (Federal Act No. 23/1991) and other constitutional laws.

The Charter was republished in the Czech Republic under No. 2/1993, and may be deemed a second part of the Constitution. The Charter contains, especially in Articles 15 and 16, the most important constitutional provisions in Czech law on religion.

These articles read:

**Article 15**

1. The freedom of thought, conscience, and religious conviction is guaranteed. Everyone has the right to change his or her religion or faith or to have no religious conviction.
2. The freedom of scholarly research and of artistic creation is guaranteed.
3. No one may be compelled to perform military service if such is contrary to his conscience or religious conviction. Detailed provisions shall be laid down in a law.

Article 16

1. Everyone has the right to freely manifest his or her religion or faith, either alone or in community with others, in private or public, through teaching, practice, or observance.

2. Churches and religious societies govern their own affairs; in particular, they establish their own bodies and appoint their clergy, as well as found religious orders and other church institutions, independent of state authorities.

3. The conditions under which religious education is provided at state schools shall be set by statutes.

4. The exercise of these rights may be limited by law in the case of measures necessary in a democratic society for the protection of public safety and order, health and morals, or the rights and freedoms of others.

In addition, Article 17 of the Charter (the freedom of expression), Article 19 (the right to assemble), and Article 20 (the right to associate) may also be mentioned as implicitly protecting the freedom of religion.

According to Article 10 of the Constitution, international agreements, the ratification of which has been approved by Parliament and which are binding on the Czech Republic, constitute a part of the Czech legal order; should an international agreement make a provision contrary to Czech law, the international agreement is to be applied.


Between 2000 and 2002 representatives of the Czech Republic and the Apostolic See prepared an international agreement which was signed by them in July 2002. But the House of Deputies of Parliament voted by 110 votes to 90 not to recommend its ratification.

The third part of the Czech legal hierarchy consists of laws. Specialized regulations regarding religion include Act No. 3/2002 on Religious Communities and Act No. 428/2012, on the Property Settlement with Churches and Religious Societies. The remaining provisions on religion are dispersed in various laws, decrees and administrative regulations.

The laws are supplemented by domestic agreements between government bodies and religious communities or their representatives (Czech
Bishops’ Conference and the Ecumenical Council of Churches in the Czech Republic) on the engagement of religious communities in special spiritual care.

The agreements concern:

a) service of military chaplains (1998, 2012),

b) service of prison chaplains (the last one from 2013),

c) cooperation in public radio (1999),

d) spiritual service in the system of posttraumatic interventions to help the police, firemen and victims of crimes and disasters (2011), in force until 2014,

e) chaplaincy in hospitals (2019), based on the existing agreement between the Czech Bishops’ Conference and the Ecumenical Council of Churches in the Czech Republic of 2011.

IV. Basic Categories of the System

The Czech Republic is a state in which the principles of non-identification with any religion or ideology, of neutrality, of parity, and of the autonomy of religious communities have been applied. The State collaborates with religious communities in many areas. We may describe it as a cooperative model of secular state.

A regime of complete (strict) separation of religious communities and the State has never existed in the Czech territory. The application of the principle that the State does not identify with a sole ideology is first and foremost a reaction to the previous regime. A level of identification of the State with the Marxist-Leninist ideology was so high in the time of the Communist dictatorship (1948–1989) that the persecution of religious communities and people of faith can be classified as one of the most severe in the entire Communist bloc.

No state religion exists in the Czech Republic nowadays, nor any legal definition of religion.\(^4\)

The common participation of representatives of State and religious communities on national and memorial ceremonies is acceptable and in practice usual. State representatives voluntarily take part in religious ceremonies on these occasions. They are usually organised on an ecumenical

basis. Representatives of religious communities (principally all of main Christian denominations and Jews) are often invited to the secular ceremonies. On the occasion of a funeral of the representatives of the Czech State can participate religious leaders according to wish of the deceased and the family. All these acts are expressions of peace in the society and respect to religious faith of individual citizens.

V. Legal Status of Religious Communities

Particular religious communities can exist having no legal form. There is no duty to be registered. Should they need to act publicly, for example in order to lease a chapel, they are represented by an individual.

In the Czech Republic, we must first distinguish between religious entities per se and other ‘derived’ religious entities deriving their legal personality from those religious entities (such as parishes, dioceses, monasteries, lay, clerical and mixed organizations, charities, and diaconal organisations).

Religious communities acquire legal personality through state registration in a special register administered by the Ministry of Culture. Up to the present time (2019), 41 religious communities have been registered in the Czech Republic, and no registration has so far ever been revoked.

Derived legal persons gain legal personality by their creation by a registered religious community in compliance with the regulations set forth by the founding community. The derived legal persons are recorded in another register, also administered by the Ministry of Culture, only upon the request of the religious community that founded them.

The registered religious communities in the Czech Republic can associate into unions of religious communities. These unions obtain legal personality upon state registration in a special register (i.e. the third register of such a type administered by the Ministry of Culture). The unions do not have the right to establish other legal persons. There are only two such registered unions at present: the Ecumenical Council of Churches in the Czech Republic (with eleven ordinary members, one associated member and five observers) and the Military Spiritual Service (with five members).

5 The Roman Catholic Church is an associated member of the Ecumenical Council of Churches, The SeventhDay Adventists Church, the Federation of Jewish Communities in the Czech Republic, the Salvation Army, Christian Fellowship Church and the Lutheran Evangelical Church AC in the Czech Republic are observers.
Act No. 3/2002 made it possible for a much wider range of religious communities to gain registration by a reduction of the condition as to size from 10,000 adult believers to 300 adult believers. Newly registered religious communities acquire basic legal personality, certain tax advantages, and the right to found derived legal persons.

Religious communities that were registered before Act No. 3/2002 came into force could enjoy the so-called “special rights”, if they enjoyed them before. Newly registered religious communities can acquire special rights ten years after their registration if they fulfil additional legal prerequisites: having a number of adult members at least equal to 0.1% of the residents of the Czech Republic, having published an annual financial report during the last ten years, and having duly fulfilled obligations.

According to the Act No. 3/2002, special rights include teaching religion in public schools, founding church schools, pastoral care in prisons and the army, the right to celebrate marriages with civil effects, and maintaining confessional confidentiality if the religious community proves that such confidentiality has been practised for at least 50 years. Not all religious communities registered with special rights enjoy all of them.

VI. Religious Communities within the Political System

The position of religious communities within the political system has several aspects. As for political parties, the religious influence comes expressly into play, at a general Christian level, in the Christian and Democratic Union – the Czechoslovak People’s Party. The party is not connected with any particular religion. A variety of religious communities exercise their influence therein through individuals who are their members.

Sometimes, there are groups in certain other political parties formed by church members, usually designated as a Christian platform, which inform other members of the respective party of the social opinions of religious communities.

Integrating organisations which publicly express the opinions of religious communities on political and public issues are the Czech Bishops’ Conference, the Ecumenical Council of Churches in the Czech Republic and the Federation of Jewish Communities in the Czech Republic. Although they express their opinions independent of one another in certain cases, they frequently act jointly.

Individual religious communities, or rather their chief bodies, also release their statements on political and public issues in the Czech Republic.
and abroad. A great deal of activity in this respect is performed by the Synodal Council of the Evangelical Church of Czech Brethren.

Owing to the constitutionally guaranteed autonomy of religious communities in the Czech Republic, neither a state authority nor a self-governing body is allowed to interfere in either the internal issues or the teachings of any religious community. Neither political parties nor civil associations do so.

An example of the position of religious communities within the political system is provided by the negotiations in 2010–2011, upon the initiative of the Czech government as the sponsor of legislation, with representatives of seventeen religious communities that were, after the coup in February 1948, dispossessed of the property securing their activity. The negotiations concerned the preparation of a bill regarding the property settlement between the State and those religious communities, and were initiated by the government at the instigation by the Constitutional Court, which had declared in several judgments a duty of the legislator to adopt a restitution act, meeting thereby legitimate expectations of religious communities in relation to their historical property. Representatives of the government and the seventeen religious communities reached an agreement on partial property settlement between the State and religious communities on 25 August 2011. The outcomes of the negotiations were incorporated into the bill that was finally passed into law by the Parliament of the Czech Republic on 8 November 2012 as Act No. 428/2012, on the Property Settlement with Churches and Religious Societies. Representatives of the government and the seventeen religious communities reached an agreement on partial property settlement between the State and religious communities on 25 August 2011. The outcomes of the negotiations were incorporated into the bill that was finally passed into law by the Parliament of the Czech Republic on 8 November 2012 as Act No. 428/2012, on the Property Settlement with Churches and Religious Societies.

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VII. Culture

1. Church Public and Private Schools: Organization

It is possible to divide Czech primary and secondary schools into three categories:

1. **Public schools**: the majority of all schools, established by municipalities and regional authorities or exceptionally by the State (Ministry of Education),
2. **Schools established by a religious community** (national centres, dioceses, orders, parishes),
3. **Private schools**: schools established by an individual or by a legal entity of private law.

All schools must be registered by the Ministry of Education.

Religious schools were abolished in 1950; in June 1990 permission to found new religious schools was reinstated.

Religious schools are not the same as private schools. Religious school costs are mostly met by the State; their founder (a religious entity) usually gives a building and appoints the director of the school. As far as the students are concerned, they are admitted on the results of admission tests, not by reference to their confession, on which they are not questioned. The same applies to teachers. Religious schools enjoy great popularity in Czech society.10

2. Church Higher Schools

Religious communities have founded eleven higher schools11 providing theological and other special education. These schools accept as students those who have passed the school leaving examination at Czech grammar schools. Thus, their character is close to that of universities but their students do not obtain academic degrees. These schools prepare students for the teaching of religion, for social work, for pastoral assistance and for jobs in journalism.

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10 Now there are 140 religious schools, 70% are Catholic. The number of them increases a little every year.
11 The Catholic Church has founded five and Protestant churches six higher schools in the Czech Republic.
3. Religious Education

Religious communities have the right to organise religious classes as a nonobligatory subject at all public schools under condition that at least seven students from the school apply for it. Teachers need to be authorised by the religious community but the school pays them. All students may attend religious education classes, regardless to their religious adherence.

4. Theological Faculties at Public Universities

Contemporary Czech law considers universities to be free autonomous institutions. They may be founded by State or by private bodies. Religious communities are permitted to establish only private universities. They have not yet used this right.

There are currently five theological faculties in the Czech Republic within public universities: three at the Charles University in Prague (Catholic, Protestant and Hussite), and two Catholic theological faculties at other universities (in Olomouc and České Budějovice).

5. Broadcasting

The participation of religious communities in the broadcasting of the public Czech Radio is provided under the 1999 Agreement mentioned above. Proglas, a private radio station supported by Catholic Church with a Catholic priest as director, is very popular. The Church of the Seventh Day Adventists has established a private radio station, The Voice of Hope.

Noe, a private Christian TV station with a Catholic priest as director, is supported by several religious communities and particular believers as private persons.

Czech public television has introduced religious programming every Sunday afternoon. The Holy Mass and services of many religious communities are regularly broadcasted by radio or TV.

VIII. Labour Law within the Religious Communities

A decision of the Constitutional Court of the Czech Republic of 26 March 1997 rejected the jurisdiction of the secular courts in disputes concerning
the termination of a service relationship involving members of the clergy. In 2001 the European Court for Human Rights in Strasbourg confirmed this decision.

The employment of clergy and other pastoral employees of religious communities (even lay pastoral assistants) is ruled by their internal law (Church law, canon law); conflicts are dealt with by their own courts and other authorities. If there is no rule of a religious community available, it is necessary to use State rules as a subsidiary source of law.

The employment of nonpastoral employees is ruled by secular law, namely the Labour Code (2006).

**IX. Legal Status of Clergy and Members of Religious Orders**

The legal status of clergy and members of religious orders does not differ from the legal status of other citizens, including the right to vote.

The power of the State to recognise religious names was not put into force, but all citizens can change their names. In July 2001 the new Act entered into force, which enables citizens to enter two first names in their personal documents. Many religious have used this possibility and asked for recognition of their religious name as the second first name.

As far as the right of succession is concerned, clergy and religious have the same testamentary freedom as other citizens.

**X. Finances of Religious Communities**

In the Czech Republic, religious communities are financed from several sources. They are as follows: revenues from collections during and outside church services, regular contributions and occasional donations by members as well as donations by other private entities, dues paid to religious communities by their members in compliance with the internal rules of the communities, inheritance and endowments, proceeds from property (estates and financial assets) acquired by religious communities in fulfilment under Act No. 428/2012, on the Property Settlement with Churches and Religious Societies.

That Act makes possible partial restitution and effects a financial settlement between the State and religious communities. Further, it introduces an interim provision of allowances to promote the activity of affected religious communities in place of state subsidies for salaries of the clergy for-
merly provided by the State. As for the partial restitution, certain agricultural and forest estates as well as certain property that the religious communities were dispossessed of in the period from 25 February 1948 to 1 January 1990 are to be returned to the ownership of the religious communities, providing they made a claim thereto with the state property administrators, who administered those assets until 2 January 2014, and adduced evidence of their original ownership. The claims have already been raised by religious communities.

A more significant part of property settlement is to consist of financial compensation for damages suffered, which is precisely quantified and allotted to individual affected religious communities in Act No. 428/2012. That compensation is to be paid by the State in 30 consecutive yearly installments.

The third part of the property settlement is the temporary allowance to promote the activity of affected religious communities in substitution for the state subsidies for salaries of the clergy. This allowance is to be paid by the State for a transitional period of 17 years. In terms of the amount, it is, for the first three years, correspond to the amount paid to the affected religious communities in 2011. From the fourth year of the transitional period, the amount of the allowance is to be annually decreased by 5% of the sum paid out in the first year of the transitional period.

XI. Religious Assistance in Public Institutions

Religious communities that acquired the special right to provide pastoral care in prisons and the army according to Act No. 3/2002 propose prison chaplains and military chaplains. According to the agreements concluded between the Ecumenical Council of Churches in the Czech Republic, the Czech Bishops’ Conference, and the appropriate state body, they provide this care on the basis of the collective proposal of all religious communities that are parties to the agreement.

Prison chaplains and military chaplains are employees of the State. A large number of volunteers, members of a special civic ecumenical organisation, share in the pastoral service in prisons. They can be members of a religious community even if it does not have the special right and even if it is not registered.

Religious assistance in hospitals is to be provided under the Act of 2011.
XII. Matrimonial and Family Law

Since 1992 there has been a free choice between the civil form and the religious form of marriage before religious communities registered in the Czech Republic. Since the liberalisation of the registration of religious communities by Act No. 3/2002 such right belongs only to religious communities that acquired the special right to celebrate marriages with civil effects.

Those intending to marry before a religious community with civil effects have the duty to submit to the wedding minister a certificate issued by the state register office which confirms that there are no impediments in Czech civil law to their marriage. The wedding minister is obliged to deliver within three working days a record of the solemnisation of the marriage to the registry in whose administrative district the marriage was entered into. Publicly valid documents of the solemnisation of marriage will be issued by the registry.

Membership of a religious community, as far as adolescents are concerned, depends on the wishes of their parents (or legal guardians) and their own choice. Czech religion law follows in this respect the provisions of the Convention of the Rights of the Child. The attendance of children at religious education in schools has been resolved in the same way.

XIII. Criminal Law and Religion

According to the Czech Penal Code the defamation of religion and hate speech against believers and non-believers is a criminal offence. There is no legal provision for the punishment of blasphemy in this Code.

The State recognises the right to maintain the confessional confidentiality of ministers of religious communities registered with such a special right.

A religious community can obtain this right only if it has been a traditional practice of that religious community for at least fifty years.

XIV. Major Developments and Trends

The main current task is the regulation of chaplaincy in hospitals. Religious communities prepared all the necessary conditions in their common agreements and the state legislator adopted Act No. 372/2011, on Healthcare Services and Conditions for Providing Them. But its implementation depends on negotiations between the local bodies of religious communities and the owners of hospitals. Their operation depends on further regulations by the Ministry of Healthcare.
The second task is the question of possible changing of the Act No. 3/2002, on Religious Communities or its replacement by a new Act. The changes should concern especially so called special rights of religious communities.

The third task is the swift completion of the court proceedings concerning the property settlement between State and religious communities.

The fourth, more remote task, is the replacement of the text of the non-ratified concordat by new one and its ratification by the Parliament.

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State and Church in Denmark

Niels Valdemar Vinding

I. Social Facts

As established by article 4 of the Danish constitution of 1849, the Evangelical Lutheran Church is the Church of Denmark, or literally, the Folk Church or the People’s Church, *Folkekirke* in Danish. In 1994, 87.4% of the Danish population were members of the Folk Church. As of 1 January 2019, 74.7% were members, corresponding to 4.34 million in a population of 5.81 million. In pure numbers, membership is decreasing due to immigration, increasing religious diversity and growth in atheist sentiments. At the same time, there is a small increase in new baptisms. This reflects an increasingly polarised attitude towards religion, in general, and the Church of Denmark, in particular. The most significant decline in membership is in the Diocese of Copenhagen, where some parishes have membership below 50%. This calls into question the very premise in the constitution that the Church of Denmark is the People’s Church with the majority of the population as members. In that sense, it will in the future no longer be the People’s Church, but in effect merely the Church of Denmark in Copenhagen amongst other religious communities.

With increasing immigration in the second half of the twentieth century and the first decades of the twenty-first, Denmark has a growing number of different religious denominations and faith communities. While it is illegal to register information on religious conviction or affiliation, demographers of religion estimate that about 5.3% of the population, or about 300,000, are Muslim, either nominally or practising. The second significant religious minority is the Catholic Church in Denmark, which had 47,600 members as of 2017, up more than 25% since 2008. This is mainly due to immigration, most significantly from Poland and other European countries.
II. Historical Background

Massive carved runestones near Jelling in Jutland from the second half of the 10th century give testimony to the Christianisation of Denmark. Raised by King Harold Bluetooth, the larger of the two stones carries inscriptions celebrating his conquests of both Denmark and Norway, as well as his conversion of the Danes to Christianity. Demonstrating this to those who could not read, the larger stone carries a figure of the crucified Christ.

Missionaries had come to Denmark as early as the 8th Century. In the 9th Century, as regional king Harald Klak sought favours with Holy Roman Emperor Louis the Pious, son and successor of Charlemagne, he converted to Christianity and missionaries followed his reinforced troops back to Denmark. Amongst them was St Ansgar (801-865), the Apostle of the North. Historians have argued that major political factors and alliances with German Emperors were much more significant drivers of Christianisation than were the pious ambitions of individual missionaries, despite the flavour of the stories told.

From the turn of the first millennium, Denmark became strongly influenced by English church life due to the rule of Cnut the Great (1016–1035) in the Anglo-Scandinavian Empire. After the brutal conquests of England, Cnut would, with the blessing of the Pope, levy tolls on pilgrims travelling to Rome and secure fees from English archbishops after their investiture. Churches were built in most of Scandinavia under his rule and Denmark grew into a Christian country towards the end of the 11th century.

Denmark would remain part of the Roman Catholic Church until the Reformation of 1536, which was the culmination of reformist trends in Denmark itself, the influence of Martin Luther and the ambitions of Duke Christian, who had adopted many of Luther’s ideas after the Diet of Worms in 1521. After the death of his father, King Frederik I, in 1533, the rural nobility in Jutland elected Christian king in 1534 and he would set in motion a Protestant reformation in Denmark. However, the Council of the Realm with its Catholic bishops opposed reform, and two years of bloody civil war raged between Protestant and Catholic armies. Duke Christian, his rural nobility and German allies were victorious and in 1536, he was crowned as Lutheran king. Christian III (1536-1559) ended Catholicism in Denmark, imprisoned the bishops, seized their properties and estates and reconstituted the Council of the Realm and applied to the whole of Denmark the principles of the Lutheran Reformation.

Johannes Bugenhagen (1485-1558), reformer and confessor of Martin Luther, travelled to Denmark for the coronation of Christian III. In 1537, he was the author of the new Church Ordinance, Ordinatio Ecclesiastica.
Regnorum Daniae et Norwegice et Ducatum Sleswicensis Holtsatiæ etc., which was endorsed by Martin Luther, and inducted new Lutheran superinten-
dents. These did not have any temporal powers and served Christian III as
prince and first member of the church and defensor fidei. The Danish bish-
ops, as they would soon be called, did not gain the apostolic succession.
Bugenhagen’s church order echoes Luther’s doctrine of two governments
of the earthly kingdom as an interrelation of God’s two complementary
modes of rule. The church therefore became a state church over which
King in Council had the power to legislate in all matters.

The Lex Regia, the constitution of the absolutist rule from 1665 to 1849,
obliged the king to follow the Augsburg Confession of 1530, and required
all subjects to follow the same creed, which of course echoes the cuius regio,
ejus religio principle. In this absolutist constitution, the king committed
himself to protect the realm against heretics, fanatics and blasphemers and
article 6 gave the king all legislative and executive power in relation to the
entire church, ecclesial administration and clergy. The expression People’s
Church is understood in direct contrast to this King’s Church. However, a
few places in the Danish realm and the duchy of Schleswig, such as Fredericiana and Frederiksstad, Reformed, Catholic and Jewish dissidents were al-
lowed by royal decree to celebrate baptisms and marriages. The Jewish
community, for example, was recognised as early as 1685.

With the new, democratic Constitution of 1849, such rules of compul-
sory church membership were replaced by the freedom in article 67 to join
religious communities according to one’s own conscience and conviction,
as long as nothing is taught that violates morality and public order. No-
one could be forced to belong to a certain religious community with the
exception of the monarch, who according to article 6, “must belong to the
Evangelical Lutheran Church.”

Today, the Church of Denmark in Denmark is made up of 10 dioceses,
with four female bishops. In 1993, the Church of Greenland was given the
status of independent diocese in the Church of Denmark. Since 2009, how-
ever, it was legally and financially placed under Greenland’s Home Rule
government. The Church of Greenland is considered semi-independent
from the Church of Denmark, yet still considered a diocese in the Church
of Denmark. The Church of the Faroe Islands was previously a diocese in
the Church of Denmark, but in 2007 the Church of the Faroe Islands was
established. However, the Faroese bishop continues to attend the episcopal
meetings of the Church of Denmark.
III. Basic Categories of the Danish System

Danish ecclesiastical law consists of all the legal sources for all Christian churches and for all religious groups or communities in Denmark. However, the legal sources for the Church of Denmark are, first and foremost, the Constitution, then general laws and statutes, executive orders, ministerial law reports and circular letters, and case law, especially from the Supreme Court and the special clerical Court for Doctrinal Cases. Public law statutes govern issues regarding the economy of the church, maintenance of church buildings and the churchyards. Other specific legislation concerns membership of the church, its employees, the role of bishops, education, personal registration, baptism, confirmation, burial and a growing body of rules about the parishes and parish councils.

As the overarching legal frame, the Danish Constitution, *Danmarks Riges Grundlov*, governs and orders the relationship between state, church and religion in general. Article 4 imposes a duty on the state to subsidise the Evangelical Lutheran Church and set out unequivocally the legal position of Church of Denmark immediately after the first three articles (which deal with the jurisdiction of the Constitution, the form of government as a constitutional monarchy, and the establishment of the tripartite division of powers). Next, Article 4 states: “The Evangelical Lutheran Church is the Folk Church and as such is to be supported by the State.” The language of the article is two-fold. First, it defines, identifies, describes its subject, the Evangelical-Lutheran Church, as the Church of Denmark. Second, it declares the support of the state to the church, which is understood in economic, legal and political terms. A formal separation between the Church of Denmark and the State is not possible without changing the Constitution, a difficult process. The duty of the state to support the Church of Denmark does not mean that other religious communities or denominations cannot be supported.

By Article 66, the Church of Denmark should have its own synodical constitution, “the Constitution of the Evangelical-Lutheran Church of Denmark is regulated by an Act,” giving the church autonomy to freely decide on all ecclesiastical matters and freedom from the political rule to establishing a central church council that could speak on behalf of the church. This constitutional promise of establishment was never honoured, however. Following almost a century with several failed attempts to bring about such a constitutional act, the permanent secretary of the Ministry of Ecclesiastical Affairs argued that the Church of Denmark was ruled not by one law, but by many, in effect, public laws and statutes. The rule of the Ministry of Ecclesiastical Affairs has a legal basis, though not that intended.

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in the Constitution. The growing body of law and particular statutes concerning church matters is a testimony to this. One particular example is the 1903 Act on free Parish Councils, which entitled all members of the Church of Denmark of age to vote and to be eligible for election to the parochial church council, which is the fundamental democratic unit of the church.

Article 67, under which “members of the public are entitled to associate in communities to worship God according to their convictions, but nothing may be taught or done that contravenes decency or public order,” defines the principle of religious freedom and religious association.

Under Article 68, “no-one shall be liable to make personal contributions to any denomination other than the one to which he adheres.” Presently, more than 25% of the population are not members of the Church of Denmark and are not obliged to pay church taxes. However, through the general tax, they indirectly support the Church as per article 4.

Article 69 states that “the affairs of religious communities other than the Evangelical Lutheran Church of Denmark are regulated by an Act.” In December 2017, a bill was passed in the Danish Parliament that collected and clarified rights and privileges concerning the affairs of religious communities outside the Evangelical-Lutheran Church of Denmark. In many ways, this bill restated many of the existing executive practices in Denmark and gave clear and explicit language to the expectations and privileges of religious community. Taking effect on 1 January 2018, this new Act on the Religious Communities outside the Church of Denmark (LOV 1533, 19 December 2017) sets the frame for state and religion relations in Denmark, and it does so by making the executive instruments that conferred recognition upon dissenting religious communities part of statutory law.

Article 70 is a non-discrimination rule. “No person shall by reason of his creed or descent be deprived of access to the full enjoyment of civic and political rights, nor shall he escape compliance with any common civic duty for such reasons.” Until recently, Article 70 has been understood as a general provision against discrimination of religion, but in light of the 2016 change of the criminal code (art 136, subsection 3), it has become illegal to express support for certain criminal acts as part of religious education. It has been argued by Lisbet Christoffersen that this change to the criminal code presupposes an interpretation of Article 70 as outlawing discrimination based on a specific ‘his creed,’ and not religion in general, so that if all religious groups are limited by this change in the criminal code, there is no violation of Article 70. This question is still unresolved and remains to be tested in the courts, if prosecution is ever brought under this provision.
Beyond its formal legal scope, the Church of Denmark embodies all kinds of dualisms depending on perspective. From the top down, it is a state church with the public duty to ensure the availability of services and religious functions. From the bottom up, it is a democratic institution for the overwhelming majority of population, people with locally representative self-government. While it is supported by the state and the Ministry of Ecclesiastical Affairs is the executive body in charge, it is not a state agency. It is a religious denomination, but it is not a private association like most other religious communities in Denmark.

The Church of Denmark has a status similar to state agencies and its legal regulations are part of public law. Each parish church has to perform administrative functions and civil legal activities. As a rule, the parishes may own property, for instance real estate, which gives a certain income. Most local churches can be understood as legal persons or bodies with legal personality. The parish councils function as board of directors for the local parishes with independent legal capacity. This does not apply in respect of administrative duties, but also in relation to the election of priests, services, rites, and so forth.

IV. Legal Status of Religious Communities

For many years, rules and regulations to recognise and approve religious clergy and communities to perform ceremonies and weddings were left to the executive practice of the Ministry of Ecclesiastical Affairs and other ministries to govern executively ad hoc and as part of public law, not specific ecclesiastical law. Religious communities and congregations were effectively divided into three groups: communities recognised by royal decree, communities with approval to perform weddings, and other religious communities without any formal recognition. The concept of recognised religious communities originates in pre-constitutional royal practice, as Parliament had not until 2018 passed a law to fulfil the promise of article 69. Until the Marriage Act of 1970, recognition was given by a royal decree to priests of communities, who were then authorised to conduct marriages civil legal validity and to keep registries of civil status. Such recognition was given to 11 churches and communities; the Catholic Church, the Baptists, the Methodists, the Swedish Gustaf’s Church, the Norwegian King Haakon Church, the Finnish Church, the Icelandic Church, the Danish Reformed Church, St. Alban’s Anglican Church, the Russian Orthodox Church and to the Jewish Community.
As of 1 January 2018, this three-tier system of recognition, approval and the communities with no formal status was significantly changed, as the new *Act on the Religious Communities outside the Church of Denmark* came into force. The 2018 statute introduces in particular two new significant ideas; a single process of recognition by ministerial ordinance and distinct mechanisms for revoking the recognition of religious communities.

First, for minority religious communities there is now just one category of recognition, which is recognised by ministerial ordinance. The legal effects of the previous first and second tiers were comparable, but symbolically they were seen as very different. In specific terms, the new statute specifies that a religious community can be registered as a recognised religious community, if it:

1) has at least 50 permanent members who either have a permanent residence in Denmark or Danish nationality, and
2) does not encourage or do anything that violates the provisions of law or regulations laid down by law.

By subsection 2, it is provided that a request for recognition must include the following information:

i) Name and home of the religious community.
ii) Number of adult members of the religious community.
iii) The Articles of Association of the religious community.
iv) Name and address of the contact person who is responsible in relation to the Religious Register.
v) A text that expresses, describes or refers to the foundation of faith or doctrine of religion in the religion of religion.
vi) Documentation or description of the religious rituals of the religious community.
vii) The most recent financial statements, which must be audited and give a true and fair view of the financial situation of the religious community.

The second idea introduced is a legal framework for revoking recognition, if the religious community no longer meets the specified criteria. This has been presented as a power that the Ministry has always had, but there have been no cases, and there was never any control or inspection of the communities. The new statute establishes a Registry of Religious Communities (Article 7, subsection 4: “Recognition is listed in the Registry of Religions Communities, which is allocated to the Ministry of Ecclesiastical Affairs”). Furthermore, it sets up a number of continuing duties that the communi-
ties must adhere to, including annual reports as well as submitting their constitutions and articles of association to the ministry.

For members of the Church of Denmark, it has since 1868 been possible to form a special parish to elect a certain person as their priest and have this “Election Parish” (Valgmenighed) acknowledged as part of the Church of Denmark. This election parish must have its own building or otherwise acceptable church hall. The members pay all expenses and salaries themselves and receive no contributions from state. The Election Parish must have a council with legal capacity and is a legal person with corporate rights and duties in relation to both public and private persons and institutions. It remains under the supervision of the bishop in relation to the Ministry of Ecclesiastical Affairs, as per the Act on Election Parishes (LBK 797, 24 June 2013).

It is also possible to establish so-called “Free Parishes” (Frimenigheder) which are organisationally outside the Church of Denmark even if they confess the same EvangelicalLutheran faith and doctrines. The Free Parishes are autonomous in matters of organisation and have more privileges than other religious communities e.g. a right to use the buildings of the Church of Denmark for their religious services and for their priests to wear the same gown as other priests. They do not have the right to perform weddings with civil legal effect, but they can conduct ceremonies associated with weddings after the parties have registered a civil wedding.

V. Religious Communities within the Political System

Denmark is a secular, liberal democracy with a representative parliament, executive power with a government of elected politicians, and an independent judiciary. Although the Christian Democrat party was represented in Parliament from 1973 to 1994 and from 1998 to 2005, and right wing, populist parties have a rather thin varnish of pro-Christian sentiments and an anti-Muslim agenda, religion does not feature prominently in the political system.

However, to be secular in Denmark does not mean that religious sentiments are banned from the public sphere and political life. Rather, it means that freedom to religion and worship presupposes that officeholders and civil servants distinguish their religious convictions from the execution of their office. During the debates on the drafting of the constitution, it was said and clearly established that religious dissenters may also be Supreme Court justices, because that is the true meaning of such freedoms. In recent, rather alarmist, parliamentary debates on the influence of Mus-...
lims, some right wing politicians have sought to legislate to limit the appearance and dress of public employees, as not to alienate citizens, who might address themselves to the public officials. Such political notions undermine the trust, dignity and decorum of the Danish public offices and threaten to limit significantly the participation of religious individuals in public life.

More generally and looking beyond the political world to the wider public system in modern society, public authorities at local, regional or national level take responsibility for social, educational and healthcare problems and issues, including education of children and young people. This has historically been understood as part of their vocation and grew in the 20th century into the modern welfare state. But the state and public sector is no longer the sole provider of “welfare,” and a significant degree of cooperation has arisen with the ideals of new public management and privatisation. Presently, welfare is supplied from different sectors; from the public sector through state and municipality, the market sector through profitmaking, private organisations, and the civil society sector through voluntary, nonprofitmaking networks or associations. As for both Church of Denmark and other religious communities, to varying degrees, they cross through these sectors.

In Denmark, there are more than a hundred free organisations with the status of private legal entity which are founded on Christian principles and are active either in Denmark or on overseas humanitarian work, and around 15 associations working in foreign missions. These free organisations are either connected to the Church of Denmark or associated with other religious communities, and they have established many different social welfare institutions, commercial enterprises and schools. They form essential parts of the Danish welfare system by running kindergartens, primary and secondary schools, nursing homes, and so on. They often work together with public social authorities and are eligible for public subsidies.

Regardless of their legal status, all religious communities have the right to arrange social or humanitarian collections at their services or meetings, when the initiative for the collection is taken by the religious community as such. All private charitable and humanitarian organisations have a right to arrange public collections. Among these organisations we find some with close connections to the Church of Denmark or other churches, for instance Caritas with its relation to the Catholic Church. In the Church of Denmark, the parish councils may arrange collections and spend the money on different forms of voluntary work.

DanChurchAid (Folkekirkens nødhjælp) is such a private Christian organisation which takes part in national and international ecumenical cooper-
DanChurchSocial (Kirkens Korshær) has a closer connection with the Church of Denmark, but cooperates closely with public authorities. In Copenhagen, it works e.g. to help prostitutes, drug addicts and in shelters for homeless people.

Article 76 of the Constitution secures freedom of education as “a right for all children to receive a free education.” Parents or guardians, who wants to make their own educational arrangements for their children, are not obliged to send the children into the public schools (Folkeskolen). Such a freedom of schooling is a special right for the parents to give their children the necessary instruction either at home or in a private school. Parents may choose a private school for political, religious, cultural, pedagogical, national or personal reasons as provided in the Act on Free Schools and Private Elementary Schools (LBK 1111, 30 August 2018).

Many religious communities have opened such private schools, which may receive public subsidies if they fulfil prescribed conditions as to the curriculum, quality of instruction, independence and good administration. They must not be controlled by special interests and must promote democracy in the education. Larger donations must be disclosed publicly, and it is not allowed for such schools to cooperate with extraneous institutions or groups, which are not relevant to the curriculum, e.g. in order to practise political indoctrination. There have been some cases of this with Muslim schools, which have been closed by the authorities, after recent public attention and political debate.

**VI. Culture**

In the elementary schools, the subject “knowledge of Christianity” is a compulsory part of the curriculum on all levels from the 1st to the 10th grade, except the 7th and 8th grade, where the children are given the opportunity to receive preparation for confirmation from the parish priest. According to the Act on the Elementary School (LBK 1510, 14/12/2017), the central theme in this subject is the Evangelical Lutheran Christianity of the Church of Denmark. The teaching of Christianity comprises the history of Christianity in Europe and Denmark, the Reformation and the relation between State and Church in Denmark. It also aims to make the pupils familiar with fundamental values in Danish culture on the basis of the Bible. In the higher grade classes, the pupils are to be presented with other religions and different forms of philosophy of life, including Islam. In the gymnasium or grammar schools, religion is a compulsory discipline, with a focus on religion much more broadly and not especially Christianity.
Children who do not want to be confirmed are not obliged to follow the normal education in Christian knowledge instead of going to the priest of the parish. A child can be exempted from the “knowledge of Christianity” subject, if requested by the parents, and at the age of 15, at the request of the child. A teacher, too, can ask for exemption from the duty of giving instruction in Christianity.

Religion features into media as well, and most significantly, in the public radio and television. As part of the public service agreements with the Danish Ministry of Culture and regulated by the Act on Radio and Television Broadcasting (LOV 643, 08 June 2016), public radio and television system in Denmark consists of four major units:

1. "DR" (Danish Radio and Television), which is the biggest provider of public service in Danish media. DR is organised as an independent public institution that is fully licence-financed, yet subject to major political agreements between government and parties in Parliament.
2. "TV 2 Danmark" which is a limited company, entirely owned by the Danish state. The primary purpose of the company is to do public service media. TV2 is in part financed by advertisements.
3. The regional TV 2 stations are eight autonomous media stations, and they broadcast regional public service programmes from different parts of Denmark. These stations are fully licence-financed.
4. Radio24syv, literally, ‘Radio24seven,’ is an all-talk radio format established as a part of the media agreement from 2010 to counter the DR monopoly in radio. Radio24syv is run by a joint company by two major media organisations, Berlingske Media and PeopleGroup, and funded through the media licence funds.

DR, TV 2 Danmark, the eight regional stations and Radio24syv, are all obliged to deliver public service programmes through television, radio or the Internet, defined as “news, information, education, art and entertainment.” The programmes must reflect cultural, democratic and historical values of Danish society, as well as reflect the diversity and plurality. Transmission of programmes which might instigate hatred based on race, gender, religion, nationality or sexual orientation is expressly forbidden, which is in line with the EU Directive concerning broadcasting.

In 2018, the specific public service agreement for DR for 2019-2023 was renegotiated and came with two significant changes that reflect current trends. The agreement is between the liberal-conservative government parties and the right wing Danish People’s Party. The agreement firstly terminates DR efforts to work towards better integration of Danish society and secondly, explicitly states that DR programming should demonstrate that...
Denmark is rooted in Christianity and emphasise the Christian cultural heritage. Both these changes have been criticised by the opposition and are seen as an undemocratic violation of the independence of public media and a part of anti-immigration policies.

There are no specific regulations about the right of religious communities to get programme time. DR recently ended the transmissions of the Sunday morning Church of Denmark services, but continues to broadcast them on major religious festivals. Radio24syv have a very diverse and progressive programme platform, which amongst others includes a so-called ‘Bible school,’ where the radio host and a philosopher read and critically discusses the bible in entirety. The inaugural program aired in 1 November 2015 and read Genesis 1, and as of 1 January 2019, they are reading Acts 3 in programme number 827.

Associations and private communities as well as municipalities may also get special grants to make programmes. In addition, print media and magazine may get publication support. In print media, The Christian Daily has been published since 1896, and has in recent years seen a rise in readership.

Some of the Christian communities have established their own local TV, media and online stations. In Aarhus, a Programme Centre for videos, CDs and special TV programmes was established in 1998 as a commercial foundation, named The Church Media Centre of Denmark (Danmarks Kirkelige Mediecenter). In 2017, a group of young Muslims inaugurated Radio WAIH to air radio on issues relevant to Danish Muslims and others interested in Islam.

VII. Labour Law within Religious Communities

The Act on Employment in Positions in the Church of Denmark (LBK 864, 25 June 2013) deals with the employment of clergy and all other positions in relation to church services, church administration and churchyards. The clergy are civil servants and are appointed and dismissed by the Minister of Ecclesiastical Affairs in accordance with the Act on Civil Servants (LBK 511, 18 May 2017), which in chapter 9 regulates the special relationship between the clergy and the parishes. Clergy are appointed after nomination by the parish council in consultation with the bishop. Usually the normal rules of suspension and disciplinary action against civil servants applies to clergy, except in doctrinal questions. The rules on dismissal may be used after serious disagreement between the priest and the parish, which adversely affects church life in the parish.
For the other religious communities, the main principle is that they have to follow regular labour rules both as to individual labour law and collective labour law. The Act on Prohibition of Discrimination in the Labour Market (LBK 1001, 24 August 2017) and the practice of the Board of Equal Treatment allow – to a limited extent – employers to discriminate and dismiss persons on the basis of their religious conviction, if particularly relevant for the job, e.g. as an executive or minister in a religious community or a teacher in a religious school.

By comparison with those in other countries, employees in Denmark are rather well organised in labour and trade unions under a few central organisations, who negotiate salaries, other terms and conditions of employment with the Minister of Finance on behalf of the State. The central organisations for priests and deans and other officials are special interest organisations that also has the right to negotiate with the Minister of Finance. During the labour negotiations and conflict during the spring of 2018, some 370 contractually employed priests and almost all church officials risked either going on strike or being locked out, which threatened to halt most of the everyday business of the Church of Denmark.

Each group of church employees has its own trade union, e.g. the Danish Priests’ Association (Den danske Præsteforening) and the Deans’ Association (Provsteforeningen), with the right to negotiate on all employment matters concerning their members’ relationship to the church authorities. Although the members of the parish councils are democratically elected, they do have an organisation for their special interests, which is not a trade union.

VIII. Legal Status of Clergy and Members of Religious Orders

Priests in the Church of Denmark enjoy the full civil rights and liberties of the Constitution and the European Convention of Human Rights. They also have freedom of expression. In the Act on Parish Councils (LBK 771, 24 June 2013), article 37 emphasises that in preaching, in giving spiritual counsel and in teaching, the priest is independent of the parish council. This principle is called “freedom of preaching,” and per article 1 it rests with the parish council to make sure that the conditions for this is in order.

The Act on Civil Servants in article 10 states a “general duty” of “decorum” requiring the civil servants to observe conscientiously the rules about his employment and both within the service and in his private life to show himself worthy of the esteem and trust which his position requires. The
priest has a right to qualified professional secrecy not only concerning confessions, but also concerning all information which he receives during his office, if secrecy is appropriate, e.g. information concerning personal registration, and so on. Ministers and religious leadership in other religious communities share similar rights, but only in so far as they are recognised.

Priests and clergy have the right to take part in all forms of public life and to sit on public boards, if it is not in conflict with the duties and with decorum. Both in relation to the preparation of church legislation in the Ministry of Ecclesiastical Affairs and in many other administrative fields, the clergy will often be asked to take part as representatives, e.g. in the trade union for the priests. One provision, however, is that no one can speak on behalf of the Church of Denmark as such, because of the special Danish structure with no General Synod.

A recent change to the Procedural Code (LOV 670, 08 June 2017), made clear that a number of persons are excluded from acting as a juror or lay judge. This provision applies to lawyers, attorneys, members of the courts, and other senior officials, but also to the clergy of the Church of Denmark and clergy of recognised religious communities.

Where a priest through his preaching of the Gospel has disregarded the confessional basis of the Church of Denmark, and in this way has disregarded his vow in which he had promised to “preach the words of God clean and pure,” the Act on Court proceedings on Doctrinal Cases (LBK 5, 03 January 2007) directs the use of so-called Priests’ or Bishops’ Courts. Doctrinal cases concern breach of church discipline, and are not considered ordinary penal or disciplinary cases. With two theological experts added, the ordinary court and ordinary judge become the special Priests’ Court. Their ruling may be challenged on appeal to the High Court, where three theological experts will join the court. The experts will be chosen by lot from a list which is prepared by the Ministry of Ecclesiastical Affairs. If the case concerns a bishop it will start in the High Court and an appeal may be brought before the Supreme Court. The experts in the Bishops’ Court are the two most senior bishops. The priest or bishop against whom doctrinal action is brought has the right to choose an advocate as assessor. Only a few cases have until now been brought before these special courts, but minor cases on issues of doctrine and conduct are decided by the bishops and most of them amicably.
IX. Finances of Religious Communities

As at 2015, the revenues of the Church of Denmark amount to about 8.6 billion DKR, 78% of which is paid as church taxes by members and collected from their income by the state tax authorities. The state support from the national budget amounts to 9% and the remaining 13% comes from funds, property and special contributors. The Minister of Ecclesiastical Affairs is responsible for the church taxes and rates in consultation with the offices of the Church and the Minister of Finance. The average church tax rate in 2015 was 0.88%, with a range between 0.44% and 1.40% depending on the wealth of members in the different municipalities.

The expenditure of the Church of Denmark is distributed as follows, in rough numbers: 50% for wages to priests, deans, bishops and other staff members, 25% for daily working expenses and maintenance, 10% for pensions and 15% to new investments.

About 60% of the church taxes are used for wages to priests and deans. The State subvention goes to the Ministry of Ecclesiastical Affairs, wages for bishops, pensions for priests and deans and the remaining 40% of wages for priests and deans, the administration of parishes and dioceses, education, special grants for restoring historic churches, furnishings, graves and monuments deserving preservation. In 2015, through the national budget every Danish citizen paid 131 DKR to the Church of Denmark.

X. Religious Assistance in Public Institutions

The Ministry of Ecclesiastical Affairs and the bishops can decide that theologically trained persons shall or may by appointed in the service of public institutions or for groups who do not constitute a parish, e.g. for university students, for private religious and humanitarian organisations, for hospitals, for prisons and for the armed forces. In recent years priests have become more visible in many social contexts as trained helpers in disaster situations, among street children, the homeless and so on.

A recent report on Chaplaincy in Denmark by Aarhus University researchers demonstrated that in a number of public organisations, such Church of Denmark full time or part time chaplains are widely available. Across 57 hospitals in Denmark, some 111 chaplains are present. In prisons, 58 chaplains are available, servicing 14 prisons and 44 detentions. At eight universities, some 15 chaplains served students and employees. In the armed forces, across four branches and five commands, 81 chaplains rotate...
through service. Many of these chaplains have been in service with UN forces, Danish commitments in Iraq and Afghanistan or in other international peacekeeping activities with NATO.

By comparison, only two full time imams are chaplains. One is employed at the national hospital in Copenhagen and the other with the Copenhagen prison services. A small number of other religious clergy is called in when needed.

**XI. Matrimonial and Family Law**

The wedding ceremony may be either religious or civil, at the choice of the parties. The religious wedding may take place in the Church of Denmark, if one of the parties is a member. The same applies in recognised churches and religious communities. In such cases, the community must have a priest who is authorised to perform weddings. Everyone has a right to civil weddings.

In recent years, the promotion of access to same-sex marriages in the Church of Denmark has been a widely discussed issue. In 1989, registered or civil partnership was allowed, which forced the Church of Denmark to discuss the question. After public debate and changes in the political climate, in June 2012 the gender-neutral marriage was introduced to the *Marriage Act* (LBK 87, 29 January 2019) making marriage a legal union whether between two people of different sexes or between two persons of the same sex. Thereby, Denmark became the 12th country in the world to allow same-sex marriage, but priests in the Church of Denmark may excuse themselves from performing the marriage on the basis of conscientious objection.

The *Act of Aliens* (LBK 1117, 02 October 2017) has been significantly amended in recent years to include several new and very strict conditions especially concerning family reunions. If a marriage seems to be a forced marriage or a marriage of convenience entered into in order to get a residence permit, the permit will not be given and the marriage will not be recognised. Under the Act on Aliens there is no longer a right to a residence permit in order to bring about a family reunion. The aliens’ authorities (*Udlandingsstyrelsen*) must, subject to ECHR articles 8 and 12 and the UN conventions, test the existence of all the legal conditions. The result of the new rules is that the number of family reunions among immigrants has been sharply reduced. Also, the number of forced marriages of young immigrant women has been reduced during recent years.
The strict regime of the current government regarding aliens, asylum seekers and Muslims has been vehemently criticised by opposition parties. This criticism culminated after then Danish Minister for Immigration, Integration and Housing, Inger Støjberg, who is quite popular but controversial, directed the aliens’ authorities to separate 27 couples in the Danish asylum system, where one of the parties – usually the bride – were underage. A young Syrian couple, husband 26 and wife 17 and pregnant, were separated by force in 2016. The order from the minister was criticised by the Ombudsman and the separations were deemed illegal by the courts and the couple was awarded compensation.

XII. Criminal Law and Religion

Anyone who tries to hinder, obstruct or disturb divine services or other church ceremonies can be punished under the Criminal Code, article 137. In 2016, the so-called blasphemy provisions under article 140, which made it illegal to publicly mock or insult the confession of faith or worship of God, were revoked.

Article 266b under the Criminal Code, the so-called racism article, penalises statements or information, made publicly or with the intention of disseminating them widely, by which a group of persons are threatened, insulted or degraded because of their race, colour of skin, national or ethnic origin, faith or sexual orientation. If the activities or information have the character of propaganda this will be looked upon as aggravating circumstances. A handful of members of the rightwing Danish People’s party, including the former president of Parliament, Mrs Pia Kjærsgaard, have been convicted under this article, and the party is significantly biased against the use of anti-racism measures.

According to the Execution of a Sentences Act (LBK 1491, 13 December 2017), prisoners serving a sentence in prisons or arrests have the opportunity to participate in religious services performed in the institution and a right to see a clergyman or minister or equivalent from his own religious community. When in custody this right may be limited because of an ongoing investigation. If the prison authorities are responsible for the preparation of the prisoners’ food, a special diet must be provided for Muslims, Jews and others whose religion requires it. Again, in light of recent trends, the question of halal meat is hotly debated.
Major Developments and Trends

Amongst major developments and recent trends – and in addition to issues discussed above – two items warrant special attention. The first concerns the committee to propose a more coherent and modern governance structure for the Church of Denmark from 2012 to 2014. The second deals with a number of new pieces of legislation from 2016 following a rather problematic hidden-camera documentary allegedly exposing ‘radical’ mosques and imams.

In 2012, the Minister of Ecclesiastical Affairs, Mr Manu Sareen, commissioned former Parliamentary Ombudsman, Professor Hans Gammeltoft Hansen, as chair and a team of university experts and key stakeholders from the Church of Denmark, to work towards a more modern governance for the Church of Denmark, effectively to prepare a white paper to implement the promise of establishment in article 66 of the Constitution. The group presented their white paper on the Governance of the Church of Denmark in April 2014. Despite a number of minority opinions, the commission presented a new structure for the church, including a distribution of the powers and privileges that today rest with the Minister of Ecclesiastical Affairs. A democratically elected joint committee for the entire church together with the college of bishops would decide on the affairs of the forum internum of the Church of Denmark, including rites, doctrine, authorised hymn book and much more. In addition, the committee recommended a reform of the funding and finances of the church to promote greater transparency and autonomy.

However, in late October 2014, then Minister of Ecclesiastical Affairs, Mrs Marianne Jelved, reported that there was no political will or support to legislate based on the Commission white paper. Because of the significance of the issue and the deeply embedded nature of the Church of Denmark, the minister had insisted on wide parliamentary support, but failed to rally the different parties, including the liberals and conservatives, who feared a centralised and politicised church. Thus, the promise of article 66 remains unfulfilled. Nevertheless, the white paper and the deliberations and debates in the Church of Denmark were of lasting significance and demonstrated the difficulties in bridging the diversities and reforming governance, while maintaining a uniquely depoliticised Church of Denmark.

By contrast and rather over-politicised, the second major development in recent years regards a wave of legislation that seeks to target radical Muslims, but which alienates all religion, including the Church of Denmark. On 31st May 2016, a so-called agreement paper was presented by the Minister of Ecclesiastical Affairs, Mr Bertel Haarder, which sought through
a number of specific initiatives to curtail religious preachers, who seek to undermine Danish laws, values and support parallel views of law. The 8-page document accompanied by seven appendices constitutes the in-principle agreement by the Government (then, just the Liberal Party, Venstre) and the Social Democrats, the Danish People’s Party and the Conservatives, effectively representing a substantial majority in Parliament.

In the months and years that followed, some 12 bills were passed that systematically sought to push the limits of what Parliament might validly legislate, including mandatory courses on Danish family law, freedom and democracy for religious preachers (L50, 2016), the criminalisation of sympathy towards certain punishable acts during religious education (L18, 2016), a public list of non-EU religious preachers who were barred from entering Denmark (L48, 2016), limitation on municipal support for religious organisations (L149, 2016), a ban on the burqa and niqab in public (L219, 2017) and a specific and detailed mandatory ceremony requiring new citizens to shake the hand of the Minister (L80, 2018), which is assumed to be something Muslims would not do. All of this, and especially the criminalisation of certain opinions expressed during religious education and limitations on local support for religious groups, has a potentially dangerous impact on the social cohesion of religious individuals in society, the extent of which remains to be seen. All this legislation has been criticised vocally by the Church of Denmark, religious groups, civil and human advocates and much of the legal profession. The political agenda behind these acts and the disregard for its unintentional consequences makes it poor, ineffective and counterproductive legislation, and truly anti-democratic Muslim groups, such as Hizb ut-Tahrir, are having a field day. Ultimately, many of these legal instruments may never be used and the legislation might remain dead letter law, a lasting testimony to the anti-Muslim populism that ruled the former government.

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Author’s note and thanks

This article on State and Church in Denmark for the third edition of Gerhard Robbers (ed.), *State and Church in the European Union*, is based on prof. Inger Dübeck’s articles for the first and second editions. Although thoroughly re-structured, re-written, and updated, it is important to highlight that many of the choices, arguments and details find their direct origins in Dübeck’s articles. This concerns particularly sections VI, VII, VIII, IX, XII and XIII.

Niels Valdemar Vinding
State and Church in Germany

Gerhard Robbers

I. Social Facts

Within Germany there are two major Churches which are nearly equal in size and importance. The German population amounts to about 83.0 million in total; the Catholic Church has about 23.3 million members, while the Protestant Church has 21.5 million members. The Protestant Church consists of numerous separate territorially based Landeskirchen, each of these Churches being an independent unit. Together they form the Evangelical Church in Germany. There is also a number of smaller Protestant Churches that have chosen to stay outside this federation; they are known as the Freikirchen (Free Churches). The Protestant Churches are either Lutheran or Reformed Churches; some follow a unified confession, shaped in various ways from these two creeds. Orthodox Christians amount to about 2 million. Approximately 5.1 million inhabitants of Germany are thought to stay outside this federation; they are known as the Freikirchen (Free Churches). The Protestant Churches are either Lutheran or Reformed Churches; some follow a unified confession, shaped in various ways from these two creeds. Orthodox Christians amount to about 2 million. Approximately 5.1 million inhabitants of Germany are thought to be Muslims. The Jewish communities consist of about 100,000 members. There are also many smaller religions in the country, some having a long established tradition in Germany, others having been in Germany for only a short while. Their membership is estimated at about 2.4 million persons. There is also an estimated 27.1 million inhabitants of Germany who profess themselves to be without any confession. The confessional viewpoints in Germany tend to change very rapidly as a result of social developments as well as of immigration, so that estimates remain uncertain and tentative.

II. Historical Background

The religious situation in Germany, even today, is strongly influenced by the Reformation which began in 1517. The relationship between the Lutheran Reformation and the territorial sovereignty and activities of the local princes led to the existence of the Landeskirchen of today, for the
supreme bishops of such Churches were often the local sovereigns themselves. They worked out a close relationship between the Throne and the Altar that existed until 1919. Since the Middle Ages the Catholic Church had possessed a great deal of direct secular sovereignty and power. The archbishops of Trier, Cologne and Mainz were themselves Prince Electors of the Holy Roman Empire; their worldly power was not very different from that of other Electors.

These positions of sovereignty came to an end with the Reichsdeputationshauptschluss of 1803; a sort of recovery of damages was made by the majority of the lords of the "right of the Rhine", as a result of the Peace of Lunéville of 1801, for their "left of the Rhine" losses to France. In the process, the worldly sovereignty of the ecclesiastical princes was abrogated and the majority of their territory re-allocated. The property of the Catholic Church was for the most part secularised, so that not much more remained than the property belonging to local parishes.

In the Religious Peace of Augsburg of 1555, the Lutheran and Catholic confessions were recognised as essentially equal. At the end of the Thirty Years War, 1618-1648, both religious parties emerged without victory. Even today, the territorial distribution of religious congregations is enduringly marked by these events.

Throughout the 19th century, the ties between the State and the Protestant Church were gradually loosened. The Weimar Constitution of 1919 resulted in the establishment of a separation of Church and State, nevertheless recognising and allowing for the existence of cooperation in matters such as religious instruction in the public school system, the Church tax and military chaplaincy. Acknowledging responsibility for the murder of millions of European Jews by Nazi Germany in the 1940s has led Germany to give to the Jewish religious communities, though still small in numbers, a very visible role in society.

III. Legal Sources

Article 4 of the Basic Law guarantees the freedom of religion. Freedom of faith, of conscience, and freedom of creed, religion or ideology, are inviolable. The undisturbed practice of religion is guaranteed.

These individual rights guaranteeing the free existence of religion are complemented by and spelt out in Article 140 GG. These norms incorporate Articles 136-139 and 141 of the Weimar Constitution of 11 August 1919 into the Basic Law, so that they are fully fledged constitutional rights. Moreover, Article 7(2) and (3) of the Basic Law guarantees religious educa-
tion in the public schools. Numerous other regulations, such as the existence of theological faculties at State universities, are contained within the constitutions and other laws of the Bundesländer (Federal States). A large part of Religions-State relations in Germany is assigned to the competence of the Bundesländer. The detailed arrangements of the constitutional foundation for a Religions-State system are established in numerous regulations in the legal provisions ranking below the Basic Law.

The Federal Republic of Germany and its Bundesländer have established many concordats and Church-State treaties with the Churches in Germany. In relation to the Catholic Church, the Reichskonkordat of 1933 is an essential basis which is recognised as a treaty under international law. Church-State treaties with the Evangelical Church and those made with Catholic dioceses are sui generis but are treated as being in a category similar to that of international treaties. The subject matter of such treaties include the cooperation between the State and the religions, the guarantees and arrangements for religious education in public schools, the theological faculties, the military chaplains and the position of the Church in the public sphere, such as the financing of religious parishes. Treaties or agreements also exist with a whole range of smaller religious congregations, including Jewish as well as some Muslim communities.

IV. Basic Categories of the System

Under the Church-State systems of Europe, Germany takes a middle of the road approach between that of having a State Church and having a strict separation between Church and State. The Basic Law lays down a system under which there is a separation of Church and State while at the same time a constitutionally secured form of co-operation exists between the two institutions. This is done in order to care cooperatively for the needs of the people. The legal basis of the German State-Church system is therefore structured around three basic principles: neutrality, tolerance, and parity.

Neutrality requires the State not to identify with a Church; there is to be no Established Church (Art. 137(1) WRV in conjunction with Art. 140 GG). The State is not allowed to have any special inclination to a particu-

3 Cf. also Art. 136 WRV in conjunction with Art. 140 GG, Art. 4, 33(3) GG.
lar religious congregation or to judge such a congregation's particular merits or ideologies to be true. Ideological institutions are to be on equal footing with religious institutions; this deals with congregations which have a humanistic ideology or a position without reference to the question of a God or gods. This has however had only minimal social consequences. On the other hand, religious institutions must not be placed in a more disadvantageous position than societal groups; this prohibits a decision in favour of State atheism. Neutrality therefore also means non-intervention: the State is not allowed to take decisive action in the affairs of religious communities. This is made particularly clear in Article 137(3) WRV: Every religious community regulates and administers its affairs independently within the limits of the law that applies to all. This right of self-determination is valid, regardless of the legal status of the religious congregation.

The principle of tolerance obliges the State not only to be impartial as between all the different religious views, but also to maintain a sphere of positive tolerance that makes room for the religious needs of society.

Parity, as the last of the principles, means the obligation to treat all religious communities equally. This means that through a constitutional differentiation of legal status, a sort of graded parity exists that provides an adequate basis for dealing with the various social phenomena. This parity is a specific, grouporientated shaping of the idea of equal treatment that finds its historical roots in the equality of confessions – the result of the religious wars of the 16th and 17th century.

These basic principles are also to be seen in the setting out of the freedom of religion according to Article 4 GG. It is here that one finds the requirement of positive tolerance. Freedom of faith is guaranteed in order to give every individual the right to believe what they will. Also included is the freedom of faith in a negative aspect, that is the right not to have a creed and/or not to belong to a particular religious faith. Religious freedom also guarantees the right to act according to one's beliefs. As a result, e.g., the civil law provisions on the structures of an associations have to be interpreted in a way that allows the Bahá’í community to organize in a way compatible with its religious teaching.

Freedom of faith in the sense of positive tolerance also allows for the possibility of the State offering in public schools the opportunity for interdenominational school prayer, notwithstanding that such functions have been decreasing largely in recent times. Participation must be completely voluntary. The State must make sure that it provides for an atmosphere of tolerance. The State in certain circumstances, in which it has control over a person's surroundings, such as when one is obliged to attend school, is required to provide for the religious needs of those persons put into such a
position. This applies equally to the National Defence Force and penal institutions.

Religious institutions may also rely on the freedom of faith, which exists as a collective right.

V. The Legal Status of Religious Communities

The religious communities with large memberships in Germany, and also a considerable number of the smaller religious communities, have the status of public law corporations. Under various diverse individual arrangements, Church parishes, dioceses, Landeskirchen and Church federations are considered public law corporations. Unlike other public law corporations, the religious communities with this status are not integrated into the State structure. They retain their complete independence, even as public corporations. Under this legal norm, no particular identification between the Church and State is intended; quite the contrary, as the State’s view accepts that circumstance as a justification for the religious communities being part of public life. Only a few particular rights are associated with this status. Every religious community, upon application to the responsible federal state, will receive the status of a public law corporation, when they can prove through their bye laws and the number of their members that they are indeed a permanent community (Art. 137(2) WRV; Art. 140 GG). In the struggle of Jehovah’s Witnesses for recognition as a public law corporation the Federal Constitutional Court has stated that a general loyalty to the law is also required to obtain this status.

Other religious communities receive their legal capacity as a result of civil law. Their status will be at least that of a private registered association, if they want to obtain legal capacity at all. As a result of the guarantees of freedom of faith, the peculiarities of a religion must be taken into account; where necessary, the civil law conditions must be adjusted to meet the religious requirements. Consequently the Federal Constitutional Court has seen it to be a constitutional requirement that, contrary to the general requirements of civil law, a local spiritual advisory board of the Bahá’í that applies for legal status should be entered in the register of associations, even though it is considered not to be independent of other organs of the Bahá’í religious movement.

4 Cf. BVerfGE 52, p. 223.
5 Cf. BVerfGE 83, p. 341.
VI. The Meaning of Religious Community and the Right of Self-Determination

The right to self-determination (Art. 137(3) WRV, in conjunction with Art. 140 GG), may be considered to be the central reference point for the legal and social existence of religious communities; the provision calls them religious societies without introducing a special meaning. Religious societies must regulate and administer their affairs independently within the limits of the law that applies to all. Every religious community may, then, regardless of its legal status, manage its own affairs independently. This right of self-determination covers such things as religious dogma and teaching, making official appointments, religious services, the organisation of charitable activities, matters concerning the important parts of the relationship between employer and employees, and data protection. The list of possible examples should not mislead one into supposing that the right of self-determination is not all encompassing, nor should it be taken to suggest that the operating spheres of the Churches are to be restricted into certain defined areas.

The meaning and formulation of the limits of the right of self-determination is not uncontroversial. It exists only within the boundaries of the law that applies to all. For some time, the Federal Constitutional Court used the formula that a law would not be contrary to the right of self-determination of religious communities when the law did not particularly affect the religious community but instead affected everyone. Subject to that, a law breaches a Church's right of self-determination when the Church itself is not affected to the same extent as everyone else, but rather, within its special qualities as a Church, its self-identity and in particular its spiritual religious duty is subject to particular disadvantages. More adequate is another formula created by the Federal Constitutional Court whereby the right to self-determination cannot prevail against a general law that represents a provision of particular importance to the common weal.⁶

It is important for the understanding of this matter to note that the Federal Constitutional Court attributes major importance to the Church's self-identity: what is meant by the Church's affairs is determined particularly by how the Church itself views its own affairs, although the competence to take a final decision on the basis of the Basic Law is still reserved for the State Courts. The central relevance of the right of self-determination of a Church must furthermore be taken into account when defining the boundaries of this right.

⁶ Cf. BVerfGE 42, 312/334; 66,1/20.
A Church’s right of self-determination is not restricted to a narrowly-drawn field of specifically "ecclesiastical" activities. The idea of freedom of religious practice extends to preserve the right of self-determination in other areas that are also based on religious objectives, such as the running of hospitals, kindergartens, retirement homes, private schools, and universities.

In very substantial ways, the large churches in Germany provide social services, particularly in the form of the Caritas of the Catholic Church and the Diaconal Works of the Evangelical Church. Without these services, the guarantees of a social State in Articles 20(1) and 28(1) GG would be mere empty platitudes. All these activities are part of what religious communities and the Church really means. The service rendered by the Churches is also understood by State law to be a single whole. The right of self-determination is therefore not merely attributed to a Church itself as a distinct entity, but instead it is something common to all institutions which are connected in some way or another with the Church regardless of the legal form taken by those links. This is true so long as, according to their self-identity, their goals or duties are suitably carried out and are held to be true mandates of the Church.7

Taking also into account the status of a public corporation, this approach has led the Federal Constitutional Court to regard religious hospitals as enjoying a special position in the context of the State’s insolvency laws, even when according to the hospitals' statutes they are only loosely associated with the particular organised Church. It would not be compatible with the idea of the right of self-determination that a judicially ordered administrative receiver should act within the particular structure or organisation of a religious establishment.8

The space which the framework of the right of self-determination offers to the religious communities has been used by the large Churches in Germany to work out their own detailed and voluminous internal legal systems with their own peculiarities and particular Church emphases, which operate in parallel with State law. Within the framework of the right of self-determination, there is also a jurisdictional system belonging to the Church. So far as the right of self-determination applies, the jurisdiction of the Church is exclusively the Church’s own affair and Church matters settled internally are not reviewed by the public courts. In detail, however, there is still much that is a matter of debate. New developments indicate

7 Cf. BVerfGE 70, 138/162 with further references.
8 Cf. BVerfGE 66, p. 1.
that the State courts are becoming more ready to interfere in church matters, but they give ample space to the right of self-determination in assessing each individual case.

VII. Churches and Culture

The large Churches in the Federal Republic of Germany operate a significant number of private schools. The majority of them are recognised as replacing public schools. This means that they offer a standard of education equal to that offered in State schools. As a result, they are made subject to various important regulations that apply to the public schools. The entire school system of Germany exists on the basis of Article 7(1) GG and is thus under the supervision of the State; compared with the number of State schools, Church or other private schools or educational establishments form a small minority. Concerning the financing of private schools, the Churches, like other organisations running private schools, receive public funding. The large Churches operate a considerable number of kindergartens for children between about 4 and 7 years of age.

According to Article 7(3) GG, religious instruction in public schools, with the exception of non confessional schools, is to be a standard subject. Notwithstanding the State’s right of visitation, religious education is to be conducted in accordance with the guidelines of the religious communities. No teacher is obliged, against his or her will, to teach religious education. Parents or guardians have the right to control the participation of their children in religious education; in principle when the child reaches the age of 12 years, the parental decision is not allowed to conflict with the child’s. Upon reaching 14 years of age, the child may decide for him or herself. Religious education, according to the requirements of Article 7(3) GG, is to be a standard subject in public schools, and it is therefore not permissible to put it into the position of simply a minor or an optional subject. The content of religious education is to be decided by the confessional teachings of the relevant religion. When a minimal number of students of the same confession is reached, normally between six to eight pupils, a public school is obliged to offer corresponding religious education. Children, parents and religious communities have a constitutional right to such educational services.

A question not yet adequately settled relates to the religious instruction for Muslim school children; despite a basic standing entitlement to such religious instruction, claims for the service often founder because of the lack of representation on the part of the Islamic communities. A large vari-
ety of different approaches have been introduced in the various schools to provide religious instruction for Muslim pupils. There are more than 700,000 Muslim pupils in German schools. Pupils are allowed to wear religious symbols such as the Muslim headscarf in public schools; the full face veil, however, is not accepted. The same applies in most of the federal Länder, however, forbid teachers in public schools from exhibiting religious symbols in class to varying extents. This highly controversial issue relates predominantly though not exclusively to the Muslim women’s headscarf.

At numerous public universities there are theological faculties of a specific confession and also an increasing number of departments of Islamic theology. In a variety of differently fashioned State-Church agreements, the Churches have a more or less determinant influence upon the appointment of professors and on the curriculum and examinations. In this area the Catholic Church enjoys a greater area of control than does the Evangelical Church. The professors of the theological faculties at State universities are State officials; nevertheless at Catholic faculties they need the missio canonica from the Catholic Church. If it is withdrawn, the particular professor is not allowed to remain a member of the theological faculty. He or she will however still retain the rights and duties as a State official and must be given another position within the university. For vacant theological professorships, the State is obliged to find the necessary replacement.

Moreover, the large Churches also have their own theological faculties. The Catholic Church has its own university in Eichstätt, which also has a significant number of non theological faculties. There is also a large number of Church run colleges, offering an education that is more vocationally orientated than that of a university.

It is part of the special position of the Churches that they have a special so-called public mandate. This public mandate is secured by State-Church treaties and has its foundations in the religious freedom of the Churches. This accordingly allows them to have a say and a right to information in the matters and affairs of public life. On the basis of their public mandate, religious institutions have designated timeslots on television and radio. They are also, as a result, given a representative position on the supervisory boards of public institutions where a particular societal representation is necessary. The Churches' position is relevant to the broadcasting commissions of public broadcasting corporations such as ZDF, ARD and the Land-based broadcasting corporations, the supervisory commissions for the private television and radio stations, and also appraisal and classification boards in order to identify and restrain scripts and films that are deemed harmful to young viewers and listeners. Mirroring their historic and cul-

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tural impact, the Jewish communities usually also have representation in these bodies. Also, the Muslim population is represented here.

VIII. Labour Law within the Churches

The large Churches of the Federal Republic of Germany employ together more than 1.3 million persons: this is evidence of the importance of their position as employers. As public corporations, the Churches are considered to be entitled to confer public office. This means that they are able to have employees who are considered to be civil servants; reciprocally Church administrations are structured along the same lines as their State counterparts. The Churches frame their own civil service law along the same lines as the public civil service law, even in respect of salaries and benefits. For priests and ministers, a separate service law is in force that also mirrors public civil service law as far as possible, considering the special context.

However, for the large majority of the employees in the service of a church, normal labour law applies. It is nevertheless modified in many circumstances, on the basis of the Church's right of self-determination and its particular religious context. Freedom of religion demands that the special conditions which result from the duties of the Churches must be taken into consideration when examining their labour status.

A particular expression of this is in that Church employees owe a particular obligation of loyalty to their Church employer. It is the Church itself which, within the constitutional framework of the notion of ordre public, good faith, and prohibition of prejudice, determines the contents of these obligations. The right of self-determination of the religious communities allows the Churches, within the limits of the law that applies to all, to regulate Church working conditions according to their own terms and to make obligatory specific duties of the Church employees. Which basic duties of the Church are important as part of the terms of employment is judged according to the organised Church's own acknowledged standards. In cases of dispute, the labour courts have to respect the standards of the Church in assessing contractual obligation of loyalty, insofar as the Basic Law recognises the right of the Church to determine the matter internally. It is thus normally left to the organised Church to decide what is required for the credibility of the Church and its teaching, what the specific Church duties are, what are essential principles of the faith and morality, and what is to be considered contrary to these norms. In the case of a violation of such an obligation of loyalty by the employee, the public labour courts are
the final judge of whether termination of employment of a Church employee is justified or not. As a result of their religious mandate, Churches have the right to give notice to an employee when in their public way of life or in their publicly expressed opinions they act contrary to Church teachings. The Federal Constitutional Court ruled that it was constitutional to give notice of termination to a physician employed at a Catholic hospital who had publicly taken a stance against the Church on television and in a magazine concerning the right of women to have an abortion. This decision was reaffirmed by the European Commission of Human Rights.

More recent decisions show an increasing tendency of state courts to stricter scrutiny as to the appropriateness of termination.

In the sphere of collective labour rights, the Churches are also in a special position as a result of the notion of freedom of religion and consequently the right of self-determination. Their structures are not subject to the public co-determination laws. The State is in principle not allowed to intervene in the internal organisational structures and setup of the Churches. The Churches have developed the so-called third way in this area. They understand their vocation, especially in the area of charity, as part of one undivided, religiously based commitment. This in principle makes it impossible for them to accept a legal structure of labour relations which is based on the idea of a fundamental opposition between employer and employee. The Catholic Church along with most of the Protestant Churches therefore rejects the conclusion of agreements through collective bargaining with trades unions.

Within the Church structure there is in general, although highly controversial, no right to strike, just as there is no possibility by way of internal Church decision of locking out employees. The Churches have created their own system of employees' representation and co-determination. It confers, to a considerable extent, more extensive rights on their employees than does the public co-determination system.

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9 Cf. BVerfGE 70, p. 138.
10 Cf. BVerfGE 70, p. 138; EKMR, 12242/86, decision of 6 September 1989.
11 Cf. BVerfGE 137, p. 345.
12 § 118 BetrVerfG; § 1 IV MitbestG.
13 Cf. BVerfGE 53, p. 366/400.
14 Some Protestant Landeskirchen (Nordelbien, BerlinBrandenburg) have concluded collective bargaining agreements for their employees instead.
IX. Financing of Churches

As a result of repeated expropriation of church property in the past, the Churches in Germany now have only a relatively small amount of property. As compensation for the secularisation following the Reichsdeputationshauptschluss of 1803, a series of government decisions guaranteed funds for the Churches. They are guaranteed by Article 138(1) WRV in conjunction with Article 140 GG. This provision also envisages the ending of those payments which are necessarily linked to the payment of compensation; this so far has not been pursued on grounds of impracticality. In addition, other subsidies granted by the State are often related to long standing claims of the Churches; an important example is the fact that the local authorities must discharge their public duty to contribute to the maintenance of church buildings. Likewise, on the basis of contractual terms, there are some obligatory contributions to be made by the State to the Church, such as subsidies to the salaries of Church officials.

Approximately 80% of the entire Church budget, however, is covered by the Church tax; guaranteed by Article 137(6) WRV in conjunction with Article 140 GG. On the basis of the civil tax lists, in accordance with the law of the Länder, the religious communities that are public corporations are allowed to levy taxes. The large Churches have made ample use of this opportunity, but smaller religious communities with the status of public corporation, such as the Jewish communities, have also done so. Only members of the particular Church authorised to levy the Church tax are obliged to pay. The Church tax was instituted in the course of the 19th century in order to relieve the national budget of its obligations to the Churches, which were in turn based on the secularisation of Church property.

Those desiring to be free of the tax may achieve that result by leaving the Church. Withdrawal from the Church is effected by de-registering with the proper State officials and simply means that one has, according to the State classification, officially ended one's membership of the particular Church in question. However, most Protestant Churches see the withdrawal as a withdrawal from their particular Church as well. The Catholic Church, as a general rule, views the withdrawal as a serious violation of the person's obligations to the Church, without bringing into question the theological dimension of Church membership.

The rate of the Church tax is between eight and nine per cent of the individual's wage and income tax liability. Other tax standards may also be used. Although this concept is not a requirement, in most cases the Church tax is collected by the State tax authorities for the larger Churches,
as a result of an arrangement with the State. For this service, the Churches pay between three and five per cent of the tax yield to the State by way of compensation. If a Church member refuses to pay the required tax, legal means can be used to collect the tax; the Churches however are not required to pursue legal action in the case of non-payment. In so far as the Church tax is tied to the income tax of employees, the employer will directly provide the financial authorities with the Church tax along with income tax.

Because of the links with State taxes, tax exemptions also affect the Churches' own Church tax. It is estimated that about one third of all Church members pay no Church tax because they are not liable to income tax. In some cases the Churches attempt to make this good by demanding an alternative contribution to the Church, which is independent of income tax.

A further important source of income for some Church institutions is being part of the general public funding systems. Church-run hospitals, which in some parts of Germany make up the majority of the available hospital beds, are thus part of the publicly run financing systems for hospitals, supported mainly by money paid in medical insurance. Further, many Churches receive allocations from the State for activities in the same way as other publicly funded activities: it is part of the idea of State neutrality that Church activities are not to be put in a worse position than that of, say, State funded local athletic clubs.

Churches also receive a certain number of tax exemptions. The Church tax and charitable donations to the Church may be deducted from income tax; this applies equally to donations to non-profit organisations. Churches are also not required to pay certain taxes and duties.

X. Religious Assistance in Public Institutions

In so far as the need for religious services and religious assistance in the armed forces, hospitals, penal institutions or other public institutions is concerned, the various religious institutions are permitted to undertake such activities. They have a right to give religious assistance in hospitals and for prisoners. Religious activities within the police and the military forces are governed by contracts. Military chaplains are sent from the Churches for a specific time. For the duration of their service they are given the status of State officials; a contractual status is also possible. Their overall superior in matters of their State position is the Head of the Federal Defence Ministry. German military chaplains have the status of normal X.
civilian State staff without a uniform or military rank. As part of the State administration, there is an Evangelical Church office for the Defence Forces for Protestant military chaplains, and for the Catholics a Catholic military bishop’s office. Their sphere of duties is considered to be part of both Church and State administration. In Church matters they are subordinate to their respective military bishop, acting for his Church, and in matters of public administration to the Federal Defence Minister.

XI. The Legal Position of Priests and Members of Religious Orders

There is in general no special status in State law for priests, ministers, and members of religious orders within the German legal system. There is only a small number of particular considerations. The Federal Constitutional Court has declared it to be constitutional that a religious institution may deny their own Church office holders the right to stand for public office while they exercise a religious office. According to State law, the right to vote and to be elected is in no way restricted and there are no legal impediments whatsoever. Such regulation would not be in harmony with Article 3(3) GG, whereby no one on the basis of their faith is to be disadvantaged or privileged. Furthermore, Article 33(3) GG states that the enjoyment of civil rights and the admission to public office and the rights acquired in the civil service are independent of one’s confession. No one as result of their confession or ideology is to be disadvantaged. Similar stipulations are to be found in Article 138 WRV in conjunction with Article 140 GG. This prohibition against discrimination is however independent of the occupation of a religious office. Ordained Protestant ministers and Roman Catholics ordained to the diaconate are exempt from service in the Defence Forces, as are full time active ministers of other denominations. Ordinands are able to defer their Defence Force service (paras. 11, 12 WPflG). Ministers do not have to give evidence, especially in court, concerning events which were made known to them in their function as ministers (e.g. para. 53.1.1 StPO).

15 BVerfGE 42, p. 312.
XII. Matrimonial and Family Law

Contrary to the position in some other European countries, the Churches in Germany have no competence in the areas of marriage and family law. Marriage according to the German legal system is wholly a civil affair: it takes place in the register office. A different form, especially a religious marriage with legal effect, may be contracted only between foreigners before a body recognised by their home country as having the right to conduct a marriage. For German nationals, a religious wedding in Germany has no civil legal effect. On the other hand, though, everyone is in general free to have a religious wedding service. The formerly existing, yet constitutionally questionable rule which stated that a religious wedding is not to precede the civil marriage has been abrogated in 2007. However, for reasons of protection of minors, religious or traditional acts or treaties which are meant to constitute a relationship between two persons similar to a marriage are illegal if one of the persons has not reached the age of 18.

XIII. Religion and Criminal Law

Religion enjoys considerable protection in German criminal and procedural law. According to paragraph 130(2) of the Criminal Code a person inciting hatred against a religious group in specifically defined ways is punishable by up to three years imprisonment or a fine. Equally punishable is a person who attacks the contents of religious or philosophical beliefs in a way that threatens to disturb the public peace. The same applies to a person who interrupts the worship of a religious community existing in Germany or commits vituperating mischief in a place dedicated to worship by such a community. The ceremonies of philosophical, non-religious communities are equally protected. Interrupting funeral ceremonies as well as disturbing the peace of the dead is equally punishable (paras. 166168 Criminal Code).

A person who without being authorised uses titles, ranks, uniforms or ensigns of a public law religious community is liable to punishment of up to one year's imprisonment or a fine. The destruction or suppression of official documents of a public law religious community is punishable by up to two years imprisonment or a fine; in severe cases this rises to up to five years of imprisonment (paras. 132 and 133 Criminal Code).

The confessional secret is broadly protected. Clergy are not obliged to report under any circumstances what they have learned in performing spiritual care (e.g. para. 139(2) Criminal Code, para. 53 Criminal Procedure
Code, para. 383 Civil Procedure Code, etc.). Under these circumstances they are also not obliged to inform of planned crimes (para. 139(2) Criminal Code).

XIV. Particular Questions of Civil Ecclesiastical Law

In the last 50 years, German State-Church law, thanks also to the (mostly prudent) case law of the Federal Constitutional Court, has proved to have a clearly structured firm basis, and to be able to respond to social needs in particularly suitable ways. Especially Muslim immigration is triggering social and political change that can affect the relationship between religion and the State in general. The challenges of the law on religion will continue to include the accommodation of new religions and non-religious groups, in particular defining the status of Islam on one hand, and coping with the impact of widespread lack of religious interest on the other: important tasks that lie in the future.

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Kirche und Recht
State and Church in Estonia

Merilin Kiviorg

I. Social Facts

The Lutheran Church has been the largest religious institution in Estonia since the sixteenth century. During the first independence period 1918–1940 (before the Soviet occupation), Estonia was more or less religiously homogenous. Most of the population (c 78.2%) belonged to the Estonian Evangelical Lutheran Church (EELC). The second-largest Church was the Estonian Apostolic Orthodox Church (EAOC). According to the 1934 census, approximately 19% belonged to the latter church. When Estonia was occupied by the Soviet Union (1940–1941 and 1944–1991), the religious life of the country was oppressed and religious freedom almost non-existent. Although, according to the Statistical Office of Estonia, one could already see the beginning of secularisation of Estonian society (especially cities) in the 1930s, the process accelerated during the Soviet period for various reasons. In addition to political pressure, such as forced secularisation, destruction of religious traditions, it was also caused by urbanisation and other social factors.

After regaining independence at the beginning of the 1990s, Estonia experienced what can be called a “return of religion”, common in all Eastern European post-communist societies. This process was partly an expression of national identity and partly a reaction to the lifting of the suppression of individual freedoms by the Soviet regime. But the new religious enthui-

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2 See Statistical Office of Estonia, 2000 Population and Housing Census: Education. Religion (Tallinn: Statistical Office, 2002, No. IV), p. 40. The numbers refer to both active and passive members of the church. The data indicate that the number of those who actually paid their membership fees was considerably lower. According to the Statistical Office this was a definite sign of the secularisation of Estonian (urban) society.

3 Ibid., p. 30.
siasm petered out rapidly, and the major growth in the membership of religious organisations ceased.

Although Estonia is a country with a predominantly Christian background and history, it cannot be called homogenous in terms of religion. Today’s religious picture in Estonia is a mosaic of different faiths and denominations. Secularisation has also played a significant role, especially in the last 100 years, and has shaped the attitudes towards religion of contemporary society. According to the last population census in 2011, 54% of the adult population aged 15 and above declared that they do not adhere to any particular creed. Only 29% of such persons considered themselves to adhere to any creed. This percentage has not changed since the previous census in 2000. Of this figure, about 10% (13.6% in 2000) declared themselves to be Lutheran, the majority of whom are ethnic Estonians. The largest religious tradition in Estonia is currently the Orthodox Church, with 16% of the population considering themselves as Orthodox (12.8% in 2000). Since the census in 2000 the Orthodox community has grown in numbers and has become bigger than the historically dominant Lutheran Church. According to information provided by the Ministry of Internal Affairs, the EELC has 180,000 members and Orthodox churches (Estonian

4 It has often been argued that the low membership of the Church today is due to the Soviet occupation and atheist education. This is only partially true. Some scholars are of the opinion that statistics of church membership from before World War II give a false impression that the Lutheran Church could be regarded as the national church. Moreover, a bitter conflict between the dominant German clergy and national clergy during the 1920s and 1930s gave some indication that the Church had some way to go in successfully winning the hearts and minds of the nation. ‘The Lutheran Church had not enough time to establish itself as an essential part of the Estonian people’s national identity. If it had, atheist education probably would never have taken root to the depth it did.’ M. Ketola, ‘Some aspects of the Nationality Question in the Lutheran Church of Estonia, 191839’, in Religion, State and Society (Oxford: Keston Institute, 1999), vol. 27, no. 2, pp. 239243. Today, there are multiple factors that contribute to low affiliation to religious communities. Some scholars have pointed out economic success. R. Inglehart & P. Norris, Rising Tide: Gender Equality and Cultural Change around the World (Cambridge: Cambridge University Press, 2003), p. 127. It has also been pointed out that religious traditions and national identity have been weakly connected for Estonians. A. Kilp, ‘Secularisation of Society after Communism: Ten Catholic-Protestant Societies’, in Religion and Politics in Multicultural Europe, ed. A. Saumets & A. Kilp (Tartu: Tartu University Press, 2009), p. 226.


6 There are two Orthodox churches in Estonia: the Estonian Orthodox Church, subordinated to the Moscow Patriarchate, and the Estonian Apostolic Orthodox Church, subordinated to the Ecumenical Patriarchate of Constantinople. These
Apostolic Orthodox Church and Estonian Orthodox Church of the Moscow Patriarchate) have approximately 197,000 members. There are smaller communities of Roman Catholics, Baptists, Jews, Methodists, Muslims, Buddhists, and others. Statistics about affiliations do not give full picture of religiosity in Estonia. Surveys seem to indicate that religion is an individual and private matter in Estonia. For example a survey conducted by researchers at the Faculty of Theology of the University of Tartu point out that there is a high degree of individualisation of religion (approximately 58%). According to the last mentioned survey only approximately 10% of people questioned identified themselves as atheists.

II. Historical Background

Estonian history since the thirteenth century is a series of conquests by Germans, Danes, Swedes and Russians who fought against Estonians and among themselves for the control over the territory, each one having a turn in ruling and consequently in influencing the development of people in the territory of the present day Estonia. Compared to other Baltic Sea countries, Christianity arrived in Estonia relatively late. There were missionaries in Estonia before the thirteenth century. However, the Christian religion failed to assert itself without military force. Several different and often competing religious and lay powers participated in an effort to conquer the Eastern coast of the Baltic Sea: The papal curia, the archbishops of Hamburg-Bremen (to whom the Pope had granted the right to con-

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two Orthodox Churches are also partly divided on the basis of nationality. The Estonian Apostolic Orthodox Church has mainly Estonian speaking members and the Estonian Orthodox Church has mainly Russian speaking members.

7 Information about current membership of religious organisations is based on data from the Ministry of Internal Affairs. The data in the Ministry of Internal Affairs is updated to January 2013, <https://www.siseministeerium.ee/36748/>, 1.2.2018.

8 For more detailed account on law and religion in Estonia see M. Kiviorg, Law and Religion in Estonia (Kluwer Law International, 2016).

9 Uuring: eestlastel on oma usk’ (‘Estonians have Their own Belief’), Äripäev, 22. Apr. 2014.


duct missionary work in North Estonia as early as mid-ninth century), the Teutonic Order (which relocated from the Holy Land to Poland and Prussia) and the Danish and Swedish crowns.12

By mid fourteenth century the Order of the Teutonic Knights acquired control over most of Estonia.

Although the Baltic Germans were *Kulturträger* in one sense, cultural life from the thirteenth century onwards was divided along national and social lines.13 Christianity was also slow to take root in Estonia. “Although the reforms were discussed and even recommended by the Livonian Church (e.g., the Riga Synod 1437), no significant results were achieved before the upheaval occasioned by Martin Luther”.14 The translation of religious texts into Estonian also played a significant role at the beginning of sixteenth century.

In the 17th century, when Estonia came under the sovereignty of Sweden, a systematic ordering of life under the Lutheran Church began, and the Catholic Church was practically expelled from Estonia. The Reformation changed the Church-State relationship to that of a State Church or, more precisely, a Land Church.

The subjection of the country to Russian rule from the beginning of the 18th century did not change anything in principle. Some liberties were guaranteed in the 19th century: for example, the Grace of Czar Alexander I in 1817 permitted the activities of the Herrnhut Movement. In 1840s it was possible to convert from the Land Church (Lutheran Church) to the Czar’s Church, the Russian Orthodox Church (but not *vice versa*), and in the 1880s the first Free Church (Baptist) congregations were established. The freedom of religion was formally guaranteed to all the subjects of the Czar by the Tolerance Act of 17 April 1905.

The history of the law on religions in the Republic of Estonia may be divided into four main periods. The first started with the formation of the independent State in 191815 and with the adoption of the 1920 Constitution, which set forth the principle of a strict separation of State and Church.16 This was followed by the 1925 Religious Societies and their Associations Act (*Usuühingute ja nende liitude seadus*), which reaffirmed the

15 Prior to the 1917 revolution in Russia, Estonia was part of the Russian Empire.
16 RT 1920, 113/114, 243.
principle of equal treatment of all religious organisations, and the separation of state and church.\textsuperscript{17}

The second period (the 1930s) saw significant political changes in Estonian society, which were characterised by the centralisation of State administration, the concentration of power, a decline of democracy, and the expansion of State control. In 1934 the Churches and Religious Societies Act (\textit{Kirikute ja usuühingute seadus}) was enacted, not by Parliament but by decree of the State Elder (\textit{Riigivanem}, President).\textsuperscript{18} This Act established different legal treatment for churches and for other religious societies. The status of some churches, especially large ones, was to a certain extent similar to the status of a State Church. According to section 84(1)(b) of the 1938 Constitution, the leaders of the two largest and most important churches gained \textit{ex officio} membership of the \textit{Riiginõukogu} (Upper House of Parliament).\textsuperscript{19} The government of all churches was subjected to control by the State.

The third period began with the Soviet occupation of Estonia. The law on religions in the Soviet Union was based on the 1918 Leninist decree on the separation of church from state, and school from church. The bizarre fact is that the separation of state and church (religious organisations) was actually a nonseparation, because the state controlled all the aspects of religious organisations, including their leaders and sometimes even their members. Estonia became part of the USSR in 1940 and had little legislative independence during the occupation. USSR law dictated the laws on freedom of religion for the entire occupation period.

The fourth period began with the regaining of independence at the beginning of the 1990s and with the adoption of the 1992 Constitution.\textsuperscript{20} Estonia started to rebuild its legal order on the principle of restitution, while at the same time acknowledging the changes over time in European legal order and thinking. The Estonian Constitution provides express protection to the freedom of religion. Article 40 provides that:

\begin{quote}
Everyone has freedom of conscience, religion and thought. Everyone may freely belong to churches and religious associations. There is no state church. Everyone has the freedom to practise his or her religion,
\end{quote}

\begin{thebibliography}{9}
\bibitem{RT1925} RT 1925, 183/184, 96.
\bibitem{RT1934} RT 1934, 107, 840.
\bibitem{RT1937} RT 1937, 71, 590.
\end{thebibliography}
both alone and in a community with others, in public or in private, unless this is detrimental to public order, health or morals.

The religious freedom clauses in the 1992 Constitution were followed by the 1993 Churches and Congregations Act (Kirikute ja koguduste seadus, 1993 CCA).\textsuperscript{21} On 1 July 2002, the 1993 law was replaced by a new Churches and Congregations Act (Kirikute ja koguduste seadus, 2002 CCA).\textsuperscript{22} The 2002 CCA differed from the earlier law principally in the way in which religious organisations were registered by the government. Previously, under the 1993 CCA, religious associations were registered by the Ministry of Internal Affairs. According to the new law, religious associations are registered by the registration departments of courts.

### III. Legal Sources

The legal sources of the law on religion in Estonia are: (1) provisions set forth in national law\textsuperscript{23} (the Constitution of the Republic of Estonia, the Nonprofit Organisations Act,\textsuperscript{24} the Churches and Congregations Act and the other Acts directly or indirectly regulating the individual and collective freedom of religion), (2) provisions set forth in international law, and (3) the interpretation of fundamental freedoms and rights by courts (including decisions of the European Court of Human Rights and the European Court of Justice). Estonia joined the European Union on 1 May 2004.\textsuperscript{25} The law of the European Union takes precedence over Estonian Law, as long as it does not contradict the Estonian constitution’s basic principles.\textsuperscript{26}

The right to freedom of religion in Estonia is protected by the Constitution of 1992 and by the international instruments that have been incorporated into Estonian law. Starting with protection by international instruments, Art. 3 of the Estonian Constitution stipulates that universally recognised principles and standards of international law are to be an inseparable part of the Estonian legal system, and do not need further transformation.

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\textsuperscript{21} RT I 1993, 30, 510; RT I 1994, 28, 425.
\textsuperscript{22} RT I 2002, 24, 135; RT I 2002, 61, 375.
\textsuperscript{23} Translation of the texts of selected Estonian legal acts can be found at https://www.riigiteataja.ee/en/. This is an official webpage of the State Gazette (Riigi Teataja) where all the laws and other legislative acts of Estonia are electronically published.
\textsuperscript{25} Treaty of Accession, RT II, 2004, 3, 8.
\textsuperscript{26} Amendments to the Constitution of Estonian Republic, RT I 2003, 64, 429.
They are superior in force to national legislation and binding on legislative, administrative and judicial powers. It should be noted that Article 3 incorporates into the Estonian legal system both international customary norms and general principles of law.

International treaties (ratified by Parliament\textsuperscript{27}) are incorporated into the Estonian legal system by Article 123(2) of the Constitution. Article 123 states that if Estonian Acts or other legal instruments contradict foreign treaties ratified by the \textit{Riigikogu} (Parliament), the provisions of the foreign treaty must be applied. Estonia is party to most European and universal human rights documents.\textsuperscript{28} The Constitution does not say anything about the legal position of international treaties concluded by the Estonian government, but not ratified by the Parliament. In practice, many such international treaties exist, and the majority view among legal scholars is that these treaties have the same position in the hierarchy of norms as international treaties ratified by Parliament. This interpretation is also in conformity with the international obligations of Estonia under the 1969 Vienna Convention on the Law of Treaties.\textsuperscript{29}

Article 40 of the Estonian Constitution quoted above expressly protects freedom of religion or belief. Even during a state of emergency or a state of war, the rights and liberties in Article 40 of the Constitution may not be restricted (Article 130). Articles 41 on freedom of belief and 42 on the privacy of one’s religion and belief add strength to the commitment to freedom of religion or belief. In addition, other constitutional provisions complement basic freedom of religion. For example, Article 45 concerning the right to freedom of expression, Article 47 concerning the right to assembly and Article 48 concerning the right to association, each provides specific protection for aspects of religious freedom.

In addition to constitutional law and international human rights law, Estonia regulates freedom of religion and belief and church-state relations by a number of statutes and regulations. The principal statutes regulating

\textsuperscript{27} According to section 121 (1) the Parliament ratifies treaties: 1) which amend state borders; 2) the implementation of which requires the adoption, amendment or voidance of Estonian laws; 3) by which the Estonian Republic joins international organisations and leagues; 4) by which Estonia assumes military or financial obligations; where ratification is prescribed.

\textsuperscript{28} \textit{Inter alia}, the European Convention for the Protection of Human Rights and Fundamental Freedoms (1950), and the International Covenant on Civil and Political Rights (1966).


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church-state relations are the Non-Profit Organisations Act (Mittetulundusühingute seadus)\textsuperscript{30} and the 2002 Churches and Congregations Act. There are many other acts directly or indirectly regulating freedom of religion for both individuals and groups: for example, the Acts concerned with tax exemptions, education and criminal liability.

In Estonia church-state relations are governed not only by general laws but also by formal agreements that are negotiated directly between the Government and religious institutions. Some of these agreements are considered to be international treaties (such as the agreement between the state and the Holy See for the Roman Catholic Church). The agreements between the state and religious organisations may also have the nature of administrative agreements or cooperation agreements under civil law. The purpose of the agreements may vary from co-ordination and cooperation on issues of public interest to contracting for the specific religious needs of a religious community. The agreements are perhaps becoming an increasingly more important source for regulating the relationship between religious communities and the state. As a relatively new way of approaching this relationship in Estonia it is not without difficulties and controversies – mainly concerning the equal treatment of different religious communities.

\textit{IV. Basic Categories of the System}

The Estonian Constitution encompasses several important principles determining freedom of religion and the relationship between State and religious communities. These principles are: neutrality, equality/non-discrimination and autonomy of religious communities.

Article 40 of the Constitution stipulates the principle of institutional separation of the State and religious associations (‘There is no State Church’). However, this has not been interpreted as a rigorous policy of non-identification with religion. The cooperation between the State and religious associations in areas of common interest is an established practice today. Thus, the principle ‘there is no State church’ is not interpreted similarly to disestablishment in the United States or the principle of \textit{laïcité} in France. The Estonian Constitution does not make any reference to secularism as a constitutional principle. The stipulation ‘There is no state church’ has been interpreted as a stipulation of the principle of neutrality. The principle of neutrality in the Estonian Constitution is a reflection of the

\textsuperscript{30} RT I 1996, 42, 811.
neutrality and impartiality principle adopted by the European Court of Human Rights, which should be understood as an obligation of the state to be a neutral and impartial organizer of various beliefs. There have been heated debates over preferential treatment of Christian churches in Estonia. As one of the former Estonian judges at the European Court of Human Rights has observed: “under the Estonian Constitution the state needs to be careful when giving preference to one religious community over another – it has to have objective and reasonable justification, especially when financial subsidies or public services are in question”. In this regard he makes special reference to the equality principle.

The principle of equality is explicitly protected in Article 12 of the Constitution. The principle of equality is anchored in the first sentence of the first paragraph of Article 12 of the Estonian Constitution, which states that all persons shall be equal before the law. The second paragraph of article 12 of the Constitution sets forth the principle of nondiscrimination, prohibiting discrimination inter alia on the basis of religion or belief. The concept of equality and non-discrimination has been developed in the practice of the Estonian Supreme Court and it has also been influenced by the developments in the European Union law and practice as well as the practice that has emerged from the European Court of Human Rights. As the Constitution protects both the individual and the collective freedom of religion, these principles have to be applied to religious communities as well. Although freedom of religion or religious discrimination was not debated during the writing of the 1992 Constitution, subsequently the role of the major churches (especially the EELC) in Estonia and the equal treatment of religions has been a topic for political and public debate. Non-Christian religious communities have several times voiced their concern

34 See e.g. Thlimmenos v Greece (App no 34369/97) (2001) 31 EHRR 411; DH and Others v the Czech Republic (App no 57325/00) (2008) 47 EHRR 16.
about equal treatment and discrimination. On 17 October 2002 the Government and the Estonian Council of Churches signed the Protocol of Common Concerns. Although it has been argued that other religious organisations have in principle the right to seek the same type of cooperation, no other religious organisation has yet been able (or expressly willing) to sign an equivalent protocol. However, a step forward was made already in 2005 when a commission consisting of state representatives, representatives of Native religion, and various other experts was formed to draft a state program for the protection of “Groves” and other natural sacral objects (worship places).

The exact application of the equality principle in relation to religion has not been tested in Estonian courts. It is probably fair to say that the implementation of both above discussed principles – neutrality and equality – has problematic aspects. However, the constitutional framework has, so far, facilitated pluralism and tolerance towards expressions of different beliefs and religions and relatively peaceful coexistence of all religious communities and religious communities and secular society. The third constitutional principle, autonomy of religious communities, will be elaborated on in the next subchapters.

V. Legal Status of Religious Communities

In Estonia a religious association is a legal person in private law (2002 CCA, Article 5(1)). The 2002 CCA expressly states that the NonProfit Organisations Act and 2002 CCA are related as general and special legislation (2002 CCA, Article 5(1)). Estonian law addresses five different types of religious organisation: churches, congregations, associations of congregations, monasteries, and religious societies. The 2002 CCA gives legal definitions for all five categories of religious organisation. The 2002 CCA regul-

37 RT I 1996, 42, 811.
38 (1) A church is an association of at least three voluntarily joined congregations which has an Episcopal structure and is doctrinally related to three ecumenical creeds or is divided into at least three congregations and which operates on the
lates the activities of only the first four. The activities of religious societies are regulated not by the CCA but by the NonProfit Organisations Act.

The legal capacity of a religious association commences with its entry in the register of religious associations. The law does not prohibit the activity of religious associations which are not registered. Rather, the main disadvantage for these unregistered entities is that they cannot present themselves as legal persons, and therefore cannot exercise the rights or seek the protections accorded to a religious legal entity.

VI. The Right to Self-Determination/Autonomy of Religious Communities

The general right to self determination of persons (both individuals and groups) stems from Article 19 of the Estonian Constitution. Article 19(1) states that: "all persons shall have the right to free selfrealisation." The right to religious autonomy of religious communities is also considered to be an essential part of collective freedom of religion protected by Article 40 of the Constitution and also by Articles 48, 19(1) and Article 9(2).

The 2002 CCA gives considerable latitude for religious associations to organise themselves in accordance with their own teachings and structures. The statutes of a religious association may differ from the provisions basis of its statutes, is managed by an elected or appointed management board and is entered in the register.

(2) A congregation is a voluntary association of natural persons who profess the same faith, which operates on the basis of its statutes, is managed by an elected or appointed management board and is entered in the register.

(3) An association of congregations is an association of at least three voluntarily joined congregations professing the same faith and which operates on the basis of its statutes, is managed by an elected or appointed management board and is entered in the register.

(4) A monastery is a voluntary communal association of natural persons who profess the same faith, which operates on the basis of the statutes of the corresponding church or independent statutes, is managed by an elected or appointed superior of the monastery and is entered in the register.

(5) A religious society is a voluntary association of natural or legal persons the main activities of which include confessional or ecumenical activities relating to morals, ethics, education, culture and confessional or ecumenical diaconal and social rehabilitation activities outside the traditional forms of religious rite of a church or congregation and which need not be connected with a specific church, association of congregations, or individual congregation.

39 This was explicitly stated in the Presidential veto to the previous version of the 2002 Churches and Congregations Act in RTL, 3.7.2001, 82, 1120.
of the Non Profit Organisations Act concerning membership and management if such differences arise from the historical teaching and structure of the religious association (Article 5(2)). Other associations and religious societies registered under the Non Profit Organisations Act do not have the same amount of freedom. The Non Profit Organisations Act prescribes a structure and a way of (democratic) governance for the organisation. Thus, religious associations and religious societies have different degrees of autonomy as to their internal affairs. Religious societies are treated as regular non profitmaking organisations and enjoy less autonomy in their internal affairs than do religious associations.

Estonia has so far been very liberal towards the so-called nontraditional religious communities. Historically, there was an attempt to restrict their activities. Just before the adoption of the 2002 CCA by the Estonian Parliament, the Estonian Council of Churches sent a letter to the Parliamentary Commission asking it to take steps in the new law to limit the activities of "nonconstructive religious communities." These proposals were not enacted into law. The Council’s intention was probably an attempt in good faith to avoid harmful experiences to individuals. Yet, raising this issue created alarm when seen in the larger Eastern European or even pan-European context. Today's discussions are more related to immigration and to Muslim communities.

VII. Culture

Religious education and its content has been a sensitive and much debated topic regarding the relationship between religion and the state in Estonia, even during its first period of independence (1918-1940). A compromise of sorts has been achieved. Article 37 of the Constitution creates the basis for the entire school system and states, inter alia, that the provision of education shall be supervised by the State. Article 2 of the Education Act (Haridusseadus) sets objectives of education, stating inter alia that: the fundamental principles of education are based on the recognition of universal and national values, of the individual and of freedom of religion and conscience. Article 3 of the Basic Schools and Gymnasiums Act (Põhikooli- ja gümnaasiumiseadus, BGS) further specifies the framework of fundamental

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40 For more detailed account on religious education in Estonia see M. Kiviorg, Law and Religion in Estonia (Kluwer Law International, 2016), Part IX.  
41 RT 1992, 12, 192.
values of general education schools. The values arising from the ethical principles specified in the Constitution of the Republic of Estonia, the Universal Declaration of Human Rights, the Convention on the Rights of the Child and the fundamental documents of the European Union are considered important.

The Estonian school system consists mainly of public schools (state schools and municipal schools). Religious education in public schools is an optional, non-confessional (non-denominational) course. It is intended to be a mix of teaching about religions and ethics. This type of religious education reflects Estonian constitutional principles of neutrality, non-discrimination and freedom of religion and belief. The teachers of religious studies are paid from the state or municipal budget and they have to have both theological and pedagogical preparation (there are some exceptions as to qualifications). Although schools have relative freedom to provide and design their voluntary courses, the courses on religious education have to follow the State provided syllabus (Article 15(4) of the BGS). This is a result of the intense debates on religious education.

Confessional religious education is provided for children by Sunday schools and private schools. Religious organisations can set up private educational institutions. Private educational institutions enjoy a greater amount of autonomy regarding their syllabus, admission policies than public schools.

There have been debates on whether to make the current non-confessional religious education compulsory at all school levels. There are various factors hindering this. One of the reasons goes back to negative experiences in the first days of religious education in state schools after regaining independence. When schools became open to religious education, many eager people without teaching experience and professional skills rushed in to teach. Sometimes religious education in schools turned into confessional instruction. The lack of teachers with sufficient professional and pedagogical skills to communicate this subject in schools is acute even today.

At the university level, there has been a Faculty of Theology at the University of Tartu since 1632, but in 1940 the Soviet authorities abolished the theological department. In 1941, German occupation forces refused to al-

42 RT I 2010, 41, 240.
the faculty to be reopened; however, they granted permission for the
founding of a Theological Examination Commission at the Consistory,
thus providing an opportunity for students to complete their theology
degrees. After the Second World War, theological education continued, and
the Examination Commission was converted into the Theological Institute
of the Estonian Evangelical Lutheran Church, which operates to this day.
In 1991, the Faculty of Theology was reopened at the University of Tartu.
It offers higher theological education, but does not automatically authorise
graduates to serve as church ministers. This situation has been solved in co-
operation with the Theological Institute of the Evangelical Lutheran
Church. There is also a cooperation agreement with another private higher
education institution providing confessional studies. The Faculty of Theol-
ogy, as part of a public university, is fully funded from the State budget.

As to the religious organisations and the media, freedom of expression
is protected primarily by Articles 44, 45, and 46 of the Estonian Constitu-
tion. The Media Services Act (Meediateenuste seadus) establishes general
provisions for public and private broadcasting organisations.\textsuperscript{44} The broadcasting organisations have a right to freely decide upon the content of their
programmes within the limits of the law and their broadcasting permits
(the permits are required only from private broadcasting organisations).
There is one public broadcasting organisation, the Estonian Public Broad-
casting (Eesti Rahvusringhääling, ERR). There is a long established coopera-
tion with the Estonian Council of Churches. The EER has an agreement
with the Estonian Council of Churches regarding programmes on reli-
gious issues. On public holidays and Christian holidays ERR’s ETV channel
broadcasts religious services. There are also several television programmes
where religious issues are discussed. There are daily morning prayers on Es-
tonian Radio (ER) and services are broadcast on Sundays. There are also
many private radio stations; some are providing mainly confessional pro-
grammes.

Currently, anyone may freely publish newspapers, periodicals or books.
The Penal Code prohibits the printing of certain materials, such as war
propaganda and the incitement of racial or religious hatred. Many reli-
gious organisations have their own newspapers.\textsuperscript{45}

\textsuperscript{44} RT I, 6.1.2011, 1.

\textsuperscript{45} For more detailed account on religion and culture in Estonia see M. Kiviorg, \textit{Law and Religion in Estonia} (Kluwer Law International, 2016), Part XI.
VIII. Labour Law within the Religious Communities

A new Employment Contracts Act (Töölepingu seadus) was adopted on 17 December 2008 and it came into force on 1 July 2009. The new law replaced the previous Act of 1992 and introduced significant changes in employment law. As there have been no court cases regarding application of labour law within religious communities it is still not clear how exactly the law may affect religious communities. It needs to be noted that international and transnational developments in anti-discrimination law have also become increasingly (and potentially) challenging for religious communities. Two other acts need to be mentioned in that respect: the Estonian Gender Equality Act (Soolise võrdõiguslikkuse seadus) and the Equal Treatment Act (Võrdse kohtlemise seadus). Religious communities are allowed certain exemptions from the Equal Treatment Act. The wording of exemptions is based on European Union anti-discrimination legislation. The Gender Equality Act does not apply to the professing and practising of faith or working as a minister of a religion in a registered religious association (Article 2(2)). However, commentaries to the Gender Equality Act (commissioned by the Ministry of Social Affairs) state that it would be reasonable, in the future, to extend the application of the law to religious organisations.

IX. Legal Status of Clergy and Members of Religious Orders

In Estonia, clergy do not generally enjoy any special status in law; there are, however, a few exceptions to this. As mentioned above, equal treatment laws establish some exceptions to the general rules as to working in the religious community. This cannot be considered as priestly privilege. The exceptions have been established to respect the autonomy of Churches and other religious organisations. The salaries/stipends of priests and other people working for the Church or religious organisation are paid by the religious organisations themselves. Law also protects the confessional se-

46 RT I 2009, 5, 35.
49 RT I 2008, 56, 315.
51 K. Albi et al, Soolise võrdõiguslikkuse seadus, Kommenteeritud väljaanne (Tallinn, 2010), 23.
crecy (2002 CCA, Article 22). Some special provisions have been made to protect professional attire of minister of religion. Only a person to whom a religious association has granted the corresponding permission has the right to wear the professional attire of a minister of religion as prescribed in the statutes of the religious association concerned. The specified restriction does not apply if the professional attire of the minister of religion is ordinary clothing (2002 CCA, Article 21).

There are no restrictions in law on the holders of a spiritual office being elected either to Parliament or to the representative bodies of local government.

X. Finances of Religious Communities

One of the main principles underlying financial arrangements with religious communities is captured in Article 40 of the Estonian constitution: there is no State Church. There are no direct church taxes. However, there are several indirect ways in which the State supports religious organisations or guarantees enjoyment of collective freedom of religion or belief. For example, by taking into account the fact that sacred church buildings usually have historical, cultural, and artistic value, the State is obliged, according to law, to find finances to support the Churches and other religious organisations in the preservation of these buildings. The majority of these buildings belong to the EELC and Orthodox Churches. Provision of such funds, of course, very much depends on the availability of financial resources.

There are also various tax exemptions. For example, Article 11 of the Income Tax Act 52 allows religious associations that are registered in the register of religious associations to be included in the list of non-taxable organisations provided that certain conditions are fulfilled. They can also be excluded from the list. Religious associations are exempt from land (property) tax. Land tax is not imposed on land under the places of worship of churches and congregations (Land Tax Act, Article 4(5)). 53 This exemption does not apply to the properties of secular nonprofitmaking organisations.

As noted above, the salaries/stipends of priests and other people working for the Church or religious organisation are paid by the religious orga-

53 RT I 1993, 24, 428.
nisations themselves. Teachers of religious education in public schools are paid by from the state or municipal funds.

Since the beginning of 1990s the State has been giving regular support to the Estonian Council of Churches. The Estonian Council of Churches consists of 10 Christian Churches, including the two biggest Churches of Estonia – the Evangelical Lutheran Church and Estonian Apostolic Orthodox Church. In addition, there are examples of more specific financial support, for example, given towards publications of the newspaper of the Estonian Evangelical Lutheran Church and to one of the radio stations, which broadcasts programmes on Christianity and culture. The constitutionality of these allocations and preferential treatment of the Estonian Council of Churches and the Lutheran Church have been questioned by non-Christian religious communities.

XI. Religious Assistance in Public Institutions

The realisation of religious freedom in public institutions is regulated by Article 9(1) of the 2002 CCA. This article stipulates that: “Persons staying in medical institutions, educational institutions, social welfare institutions and custodial institutions, and members of the Defence Forces have the right to perform religious rites according to their faith unless this violates public order, health, morals, the rules established in these institutions, or the rights of others staying or serving in these institutions”. The general conditions for religious assistance in public institutions are regulated by Article 9(2) of the 2002 CCA. It provides that a religious association may conduct religious services and religious rites in a medical institution, educational institution or social welfare institution only with the permission of the owner or the head of the institution, in a custodial institution with the permission of the director of the prison, in the Defence Forces with the permission of the commanding officer of the military unit and in the National Defence League with the permission of the chief of the unit.

Chaplains are civil servants and are paid in full by the State budget. The prison chaplaincy is coordinated by the Ministry of Justice, defence forces chaplaincy by the Ministry of Defence, and police and border guard chaplaincy falls under Ministry of Internal Affairs. Thus, all three existing chaplaincy services are part of different institutional structures. From the side of the religious organisations the main coordinating body is the Estonian Council of Churches. Chaplains are also required to have approval from their religious organisation to work as chaplains. There is also a sailors’ mission (Eesti Meremeeste Misjon) that was established in 1991. There are
chaplains in some hospitals, care homes and private schools, but there is no state funded and regulated service in these institutions. Recently, the University of Tartu created a post for a university chaplaincy. Apart from the general statements in the above-mentioned provisions of the CCA, the chaplaincy service has been regulated in a piece meal and laconic fashion in different legal acts.\textsuperscript{54}

\textbf{XII. Matrimonial and Family Law}

During the first period of independence in Estonia (1918–1940) clergy had the right to register marriages under the 1926 Personal Status Act.\textsuperscript{55} This right to register marriages with civil validity was annulled in 1940 and only restored in December 2001. After Estonia regained independence, the issue of granting authorisation was discussed several times. But at the beginning of the 1990s neither society nor the church was ready for change. The topic was brought up again in 2000, when several proposals to change the law were put forward. Finally, in May 2001, the Estonian Parliament passed amendments to the Family Law. The amendments came into force in December 2001. In accordance with the Law a clergyman who has received authorisation from the Ministry of Internal Affairs is entitled to perform civil marriages. Thus, the State has not recognised the concept of religious marriage \textit{per se} but, rather, has established the possibility of delegating the obligations of the register office to a clergyman of a church, congregation, or association of congregations. According to the Family Law an authorised minister can refuse to perform the marriage if those being married oppose the conditions set for marriages by the confessions of the church, congregation or association of congregations.\textsuperscript{56}

The Ministry of Internal Affairs may authorise clergy to perform civil marriages only if they have successfully undergone training organised by the Ministry in conjunction with the register offices. The Ministry of Internal Affairs may refuse to authorise clergymen only on very limited

\textsuperscript{54} For further details on religious assistance in public institutions see M. Kiviorg, ‘Religious Assistance in Public Institutions: Estonia’ in M. Rodríguez Blanco and R. Balodis, Religious Assistance in Public Institutions (Comares, 2018, forthcoming).

\textsuperscript{55} RT I 1925, 191/192, 110.

\textsuperscript{56} In contrast, according to the 1926 law clergy were obliged to register anyone, not just members of their Church. Yet, this was seen as necessary even by clergy themselves as it provided correct and up-to-date statistics about changes in personal status that the previous system was not able to do.
grounds. Thus, the discretion of the Ministry has been reduced to a minimum. Only churches, congregations, or associations of congregations registered under the CCA may apply for authorisation to perform civil marriages. The Ministry of Internal Affairs may declare such authorisation void if, *inter alia*, a minister does not perform civil marriages in accordance with the law. The Ministry of Internal Affairs may also declare the authorisation to perform civil marriages void on the recommendation of a church, congregation, or association of congregations.

XIII. Criminal Law and Religion

The Penal Code (*Karistusseadustik*)\(^{57}\), adopted on 6 June 2001, and in force since 1 September 2002 has several provisions protecting the individual and collective freedom of religion. It also contains necessary restrictions on the manifestation of the freedom of religion. Article 154 of the Penal Code lays down the penalty for interfering with the religious affiliation or religious practices of a person, unless the religious affiliation or practices are detrimental to the morals, rights or health of other people or violate public order. Compelling a person to join or be a member of a religious association is punishable by a fine or by imprisonment for up to one year (Penal Code, Article 155). Article 152 of the Penal Code also provides the penalty for the violation of the principle of equality. "Unlawful restriction of the rights of a person or granting of unlawful preferences to a person on the basis of his or her...religion...is punishable by a fine or up to one year’s imprisonment." Activities which publicly incite hatred or violence on the basis of religion are punishable by a fine or up to 3 years’ imprisonment (Penal Code, Article 151).

The Criminal Code also introduced into Estonian law the concept of criminal liability for legal entities. For certain crimes a religious organisation can be subjected to compulsory dissolution. The basis for this may be found in Article 48(3) of the Constitution: “associations whose aims or activities violate criminal law are prohibited”.

The Code of Criminal Procedure (*Kriminaalmenetluse seadustik*),\(^{58}\) which came into force on 1 July 2004, sets forth the right of the clergy to keep confessional secrecy. This Code obviously tries to find a compromise between the right of a defendant to a fair trial and the clergy’s freedom of

\(^{57}\) RT I 2001, 61, 364.
\(^{58}\) RT I 2003, 27, 166.
religion. According to the Code, ministers of the religious organisations registered in Estonia have the right to refuse to give testimony as witnesses concerning circumstances which have become known to them in the course of their professional activities (Code of Criminal Procedure, Article 72). The same right, according to the law, applies to the professional support staff of the ministers. This right of ministers and their support staff is qualified by the requirement to give testimony if their testimony is requested by the suspect or the accused. Moreover, when a court is convinced that the refusal to give testimony is not related to ministerial or professional activities of support staff, the court may require a person to give testimony. The latter provisions may conflict not only with ecclesiastical law but also with Article 22 of the 2002 CCA. This article categorically declares that a minister of religion shall not disclose either information which has become known to him or her in the course of a private confession or pastoral conversation, or the identity of the person who makes a private confession or has a pastoral conversation with a minister of religion. One further aspect should be noted here, that the court deciding upon the question of testimony will have to interpret notions such as ‘minister’, ‘support staff’ and ‘related to professional activities’. Thus, it will be for future court practice to determine how much autonomy religious organisations themselves have in the determination of these notions.

XIV. Major Developments and Trends

It is probably right to say that Estonia is still looking for an adequate balance for interaction between State and religion. This process is influenced by Estonian history and culture, but also by debates throughout Europe and beyond. For example, recent migration crisis in Europe influenced debates in Estonia although numbers of new arrivals have been insignificant.

When the 1992 Constitution was created there were hardly any debates over the text or meaning of religious freedom articles in the Constitution. At the time other issues were considered more important. This kind of neglect in constitutional thinking has affected State and religious communities up to the present time. However, the relationship between State and religion has been gradually evolving through the heated debates

59 Attention should be drawn to the fact that Article 22 of the CCA is not formulated as a right, but as an obligation of clergy.
over co-habitation law, religious education, preferential treatment of Christian communities, financial support, property matters, and more recently over religious symbols, application of anti-discrimination laws and artistic expression versus religious freedom. Most importantly, however, this relationship has evolved through public debates over Estonian values and identity. These present and previous debates seem to be related to wider questions about identity or the re-building of Estonian identity after the collapse of the Soviet Union. So far there have been only a few cases in courts concerning freedom of religion or belief.

XV. Bibliography


State and Church in the Republic of Ireland

Stephen Farrell

I. Social Facts

Ireland is a predominantly Roman Catholic Country, with 78.3% of the population identifying as such in the 2016 census\(^1\). However, this marks a sharp decline from the 2011 census in which 84.2% of the population identified as Roman Catholic. This represents a wider trend of smaller numbers identifying as Christian. In the same period the Anglican population fell by 2%, the Presbyterian population by 1.6%, Pentecostals by 4.9% and those identifying themselves simply as Christian fell by 9.1%\(^2\). There has been a corresponding increase in those describing themselves as having no religion from 269,800 in 2011 to 468,400 in 2016, an increase of 73.6%. Those with no religion now account for just under 10% of the Irish population. The only increase in religious groups in this period has been the Muslim community, up 28.9% or 14,200, the Hindu community, up by 34.1% or 3,600 and the Orthodox community up by 37.5% or 17,000\(^3\).

Though these percentage increases are significant they still represent relatively small numerical increases, even in a population of just over four million. It is possible to link some of these changes to migration, but others are due to societal change. In this period there has only been an increase of c6,000 in the number of non-Irish people declaring themselves to be of no religion, whilst the figures for Irish people of no religion has increased by c190,000. In this period the number of non-Irish people living in Ireland fell from 544,357 to 535,475\(^4\). There were also large drops in the number of migrants to Ireland from the UK and from Nigeria. There are now c11,000 fewer British people living in Ireland and c3,000 fewer Nigerians than in 2011. This means that the largest non-Irish group is now people

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2 Ibid.
3 Ibid.
from Poland, followed by people from the U.K. This has to be read in light of the fact that people from Northern Ireland, part of the U.K., will often simply identify as Irish. The only identifiably Muslim country with an increase in numbers coming to Ireland is Pakistan, with 4,562 more people from Pakistan living in Ireland in 2016, or a total of 12,891. However, only 11% of Muslims in Ireland identify as Pakistani with 55.6% having Irish nationality. Therefore the increase in the Muslim population must be accounted for among the Irish population or from immigration from other non-Muslim states.

II. Historical Background

Ireland’s complex history is key in understanding the changing place of religion and the differing position of various religious denominations in the state.

Saint Patrick, born in Britain in 385AD, is credited with bringing Christianity to Ireland. The land he converted was under the authority of local kings, and this system existed until the arrival of the Anglo-Normans in the 12th Century. The Normans brought the diocesan system, having met a Church that was predominantly monastic in nature. In theory the Normans brought their own law, but in reality the pre-existing system of Brehon law remained, especially outside the main centres of population on the east coast. This inability to enforce the law across the island is most evident in the limited success of the Reformation in Ireland. The Act of Supremacy of 1534 saw Henry VIII recognised as the head of the Church, rather than the Pope. Despite the penalties for non-adherence including death the population of Ireland did not conform nor convert to Anglicanism in significant numbers. The Anglican Church of Ireland was established as the state Church by the Irish Parliament in 1536 and its clergy were supported by tithes from all the population, most of whom were Catholic. This caused obvious resentment, especially as the Catholic population were trying to build new churches, their existing buildings having been taken for Anglican use. Greater resentment resulted from the ‘Penal Laws’, a comprehensive set of laws designed to punish those who would not convert from Catholicism. Catholics were prevented from holding...
arms\(^7\), educating their children in the Catholic faith\(^8\) and from purchasing or inheriting land\(^9\). The Catholic hierarchy, including religious were banished\(^{10}\) and all secular clergy had to register and give sureties for good behaviour\(^{11}\). The Penal Laws gave way to Catholic Emancipation by the middle of the nineteenth Century and 1869 saw the disestablishment of the Church of Ireland\(^{12}\), it having lost the right to tithes in 1836\(^{13}\).

The journey to Irish independence brought sweeping changes in the religious landscape. The Act of Union of 1800 had seen the closure of the Irish Parliament in Dublin and the creation of a United Kingdom governed from Westminster, and the creation of the United Church of England and Ireland, which became the state Church. The early 20\(^{th}\) century saw several attempts by Liberal governments in London to grant Ireland Home Rule, what would today be termed devolution. This was opposed by Irish protestants on the basis that they feared domination by the Catholic majority, taking up the slogan ‘Home Rule is Rome Rule’. The Third Home Rule Bill was passed before the outbreak of the first world war but never enacted. The Declaration of Independence read during the Easter Rising of 1916 sought the protection of “the Most High God”, and a similar document in 1919 similarly appealed to the Divine as having inspired the fight for Irish freedom. The Anglo-Irish Treaty of 1921 saw the division of Ireland into Northern Ireland and the Irish Free State. The Constitution of the Free State guaranteed “freedom of conscience and free profession and practice of religion”. The Constitution also prohibited the endowing of any religion, either directly or indirectly. The 1937 Constitution of the Irish Republic deals with religion in Art 44. It recognised freedom of religion, but also the “special position of the Holy Catholic Apostolic and Roman Church as the guardian of the Faith professed by the great majority of the citizens”\(^{14}\) This ‘special position’ article was removed by a referendum in the Fifth Amendment to the Constitution in 1972.

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7 1695 Disarming Act.
8 1695 Education Act.
9 1704 Popery Act.
10 1697 Banishment Act.
11 1704 Registration Act.
12 Irish Church Act 1869.
13 Church Temporalities Act 1836.
14 Article 44.1.2.
III. Legal Sources

In Ireland the starting point for understanding the relationship between Church and State is *Bunreacht na hÉireann*, the 1937 Constitution. The Preamble invokes the “Name of the Most Holy Trinity, from whom is all authority, and to whom, as our final end, all actions both of men and States must be referred”. The Preamble also humbly acknowledges “all our obligations to our Divine Lord, Jesus Christ, who sustained our fathers through centuries of trial”. The Preamble serves little purpose other than as a way of saying that the Constitution is to be the Constitution of Ireland. It has occasionally been referred to by the Courts, but only so far as it shines a light on claims about the religious nature of the State. The Report of the Constitutional Review Group in 1996 recommended the amendment of the Preamble, but this has not been taken up by successive governments.

Article 44 of the Constitution provides that:

The State acknowledges that the homage of public worship is due to Almighty God. It shall hold His Name in reverence, and shall respect and honour religion.

1 Freedom of conscience and the free profession and practice of religion are, subject to public order and morality, guaranteed to every citizen.

2 The State guarantees not to endow any religion.

3 The State shall not impose any disabilities or make any discrimination on the ground of religious profession, belief or status.

4 Legislation providing State aid for schools shall not discriminate between schools under the management of different religious denominations, nor be such as to affect prejudicially the right of any child to attend a school receiving public money without attending religious instruction at that school.

5 Every religious denomination shall have the right to manage its own affairs, own, acquire and administer property, movable and immovable, and maintain institutions for religious and charitable purposes.

6 The property of any religious denomination or any educational institution shall not be diverted save for necessary works of public utility and on payment of compensation.

15 In *Quinn’s Supermarket Ltd. v. Attorney General* [1972] IR 1, at 23, the Preamble was used as a basis for the claim that the Irish are ‘a Christian people’. See also *Norris v Attorney general* [1984] IR 36.
Understanding the relationship between Church and State also requires attention to be paid to European provisions such as Article 9 of the European Convention on Human Rights, as well as to domestic legislation. Having inherited a common law system Ireland also has a large amount of judge made law and the case law is an important source, especially in the field of constitutional interpretation.

IV. Basic Categories of the System

In the normal categorisation of states into either a state-church system, a separation system, or a co-operation system, the Constitution of Ireland best fits the separation model. That is, Ireland seeks to separate Church and State from one another. Daly sees a threefold rationale for this. Firstly, it seeks to avoid the corrupting potential of State interference in religion. Secondly, it reflects the enlightenment idea that human progress is best served by the separation of civil and religious concerns and that good government is secured by the removal of theological concerns from civic polity. Thirdly, and most importantly for the framers of the Irish Constitution, separation seeks to uphold individual religious freedom.

Article 44.2.2 of the Constitution which provides that ‘The State guarantees not to endow any religion’, has been described as “one of the most under-exploited provisions of the Constitution” it also belies the very close relationship between the post-independence Irish State and the Catholic Church. Though a strongly separationist Constitutional provision, the reality of the relationship between Church and State is more complex and does not offer a neat model of church and state separation.

The leading case on the impact of 44.2.2 is *Campaign to Separate Church and State v. The Minister for Education*. In this case the Supreme Court rejected the view that the state was endowing religion contrary to Article 44.2.2 in its provision of religious chaplains in community schools. The case saw Article 44.2.2 considered in light of Article 42 of the Constitution which provides in 42.4 that;

17 ibid, at 86.
18 *Campaign to Separate Church and State v. The Minister for Education* [1998] 3 I.R. 321.
The State shall provide for free primary education and shall endeavour to supplement and give reasonable aid to private and corporate educational initiative, and, when the public good requires it, provide other educational facilities or institutions with due regard, however, for the rights of parents, especially in the matter of religious and moral formation.

Barrington J. recognised that parents have a "right to have religious education provided in the schools which their children attend",¹⁹ and that this right was broad enough to allow the State to fund religious chaplains in these schools. The purpose was not so much to confer a benefit on any religion, so much as it was intended to provide religious education in accordance with Article 42. A possible further erosion of the principle of separation found in Article 44.2.2 came from the Supreme Court in Re Article 26 and the Employment Equality Bill 1996,²⁰ where the court seemed to accept that the State would not be viewed as endowing a religion by giving the religion a financial benefit, provided all religions were benefitted equally, and the benefit was not discriminatory. In a comment that would severely curtail the scope of Article 44.2.2, Hamilton C.J. noted: “the endowment of religion implies the selection of a favoured State religion for which permanent provision is made out of taxation or otherwise.”²¹

V. Legal Status of Religious Communities

Most religious bodies in Ireland operate as charities and are subject to the rules laid down for charities in the Charities Act 2009, save that for churches there is no need to show that their activities benefit the public as there is a presumption that the advancement of religion is in the public benefit.

There is no Concordat between Ireland and the Holy See, though the possibility was considered in the early days of the independent State. The idea of a concordat was rejected on the basis that concordats were ‘a remnant of the bad days of temporal power, one of the methods by which Popes tried to secure material power and influence in the ordinary affairs of states’. A more serious reason for avoiding a concordat was that the people of Ireland held their priests in higher esteem than they held Vatican officials. A concordat with Rome would ‘gradually bring them regard insti-

¹⁹ ibid at 358.
²¹ ibid at 354.
tutional religion in Ireland as a material appendage of the central Roman government for which they have no great reverence... The practice of the spiritual teaching of the Church must suffer, and does in all cases suffer, when the ministers of religion derive the privileges of their position from any source but the people themselves.  

The Special Position of the Catholic Church recognised in the 1937 Constitution was a compromise position achieved by the writer of the Constitution and Irish Taoiseach, Eamon de Valera. Both the Archbishop of Armagh and Pope Pius XI wanted the Constitution to recognise the Catholic Church as the one true Church. Diplomatic efforts led to an agreement that the Pope would remain silent on the matter and neither approve or disapprove. The Special Position had limited legal impact and arguably, like the Preamble’s dedication to the Holy Trinity, was meant to be a statement of national identity rather than something justiciable. Its removal from the Constitution received no official response from the Catholic Church, save Cardinal Connall’s obiter dictum that he would not shed a tear at its removal.

The Irish Constitution does not attempt to define what is a religion. The Roman Catholic Church, the Church of Ireland, the Methodist Church, the Presbyterian Church, the Religious Society of Friends and the Jewish Religion were all recognised in the now repealed Article 44.1.2.-3. That Article also referenced other denominations existing at the time of the passing of the Constitution, and other legislation, such as the now repealed Adoption Act 1952 recognised the Salvation Army, the Plymouth Brethren and the Baptist Union. The case law on the status of religious communities in Ireland has tended to centre around whether or not a body could claim the relevant tax exemptions as a religion. However, the courts have rejected the idea that religious status can be determined by reference to cases concerning tax exemptions.

23 See McDonagh, Enda, ‘Church-State Relations in independent Ireland’, in Religion and Politics in Ireland at the Turn of the Millennium, Mackey J and McDonagh E (eds), Columba, Dublin 2003 at 41.
24 Johnson v Church of Scientology [2001] IR 682.
VI. Religious Communities within the Political System

For many years before independence Irish Nationalism had been closely associated with Catholicism. In Independent Ireland the population and legislature were predominantly Catholic and, whilst there were some notable dissenting voices in the Seanad, the Upper House of the Irish Parliament, the new legislature was keen to forge its own course and to cast off the legacy of its old overlord. One early example of this was a bill to remove the right to divorce by private members’ parliamentary bill in 1925. This means of divorce was a British provision and seemed to be removed without episcopal prompting.\(^{25}\) The writing of the Irish Constitution did see some discussion between the Taoiseach and his friend Fr John Charles McQuaid, later Archbishop of Dublin, though the extent of the influence exerted by McQuaid is debated.\(^{26}\)

Given population demographics it has only been relatively recently that any political party could decide lightly to take on or to defy the teaching of the Catholic Church. In 1951 the government was brought down when the bishops of the Catholic Church rejected the Mother and Child Public Healthcare Scheme as being against Catholic social teaching. In the parliamentary debate that led up to the passing of the bill the government had stressed to the House their acceptance of the bishops authority in social matters. The Taoiseach, John A Costelloe, said, ‘I, as a Catholic, obey my Church authorities’, and offered on his own behalf and of the entire government, his and their ‘complete obedience and allegiance’.\(^{27}\) Sixty years later the Taoiseach of the day, in response to a growing rift with the Vatican over clerical sexual abuse of minors pledged himself to a ‘Republic of Laws’ where ‘the law of the land should not be stopped by collar or a crozier’ and in which the Church would have no privileged institutional or legal status.\(^{28}\)

Between these two positions were decades where the Catholic Church exerted notable influence on the political system. Things began to change in 1974 with the McGee\(^ {29}\) case, which overturned the ban on the sale of contraceptives. In 1995 the fifteenth amendment to the Constitution overturned the constitutional ban on divorce, passed by the narrowest of mar-

\(^{25}\) McDonagh at 43.
\(^{26}\) See McDonagh at 37ff.
\(^{27}\) Dáil Éireann Debates, Vol 125, Col 784, 12 April 1951.
gins, 50.28% to 49.72%. 2015 saw Ireland become the first country in the world to legalise same sex marriage by popular vote. The last instance of the Catholic Church showing the extent of its social influence came in 1983 with the eighth amendment to the Constitution, which gave equal value to the right to life of the unborn and the mother, effectively banning abortion. The 2018 vote to repeal the 8\textsuperscript{th} amendment passed by a two thirds majority despite the vigorous campaigning of the Catholic Church, a sign that a new political landscape now exists in Ireland and that the Church has a marginal voice on social and political matters. Recent referenda to remove the criminal offence of blasphemy (2018) and to reduce the waiting periods required in obtaining a divorce (2019) passed with large majorities, and with less visible campaigning by the Catholic Church. It ought not to be thought the people of Ireland have all abandoned their faith, but rather that the voice of bishops on social matters is not the last word for the faithful or the electorate. This has always been a facet of Irish religious life, previously shown most notably in the hard line taken by bishops to Republican violence during the struggle for independence in contrast to the sympathy felt among clergy and people.\textsuperscript{30} What is notable is that through the pendulum swing in the position and influence of the Church in the political system, even from 1951 to today, little has changed in the regulatory framework governing the church state relationship, with the exception of the repealing of Article 44.1.1. The changing position has not been inspired by or reflected in the legal framework, and shows the flexibility of the Constitutional model of Church state relations found in Ireland.\textsuperscript{31}

\textbf{VII. Culture}

It is still not inaccurate to describe Ireland as a Catholic country, given the results of the 2016 census. What is obvious from recent referenda on marriage, abortion, divorce and blasphemy is that the Catholic faithful do not feel obliged to ensure that the law of the land conforms to Catholic social teaching. That said, the presence of the Church is very visible in Irish life and culture in a way that is not obvious in the Constitution.

The Church is actively involved in education at primary, secondary and tertiary level. The Constitution recognises the rights of parents to decide

\textsuperscript{30} See McDonagh.
upon the religious ethos in which their children are educated and the state is expected within certain parameters to facilitate this. The Church is also involved in healthcare, with many public and private hospitals still under the control of religious orders and other church bodies. This is increasingly coming under scrutiny as the law governing medical care becomes further out of step with the ethos of such hospitals. It has been said by the present Taoiseach that institutions such as religiously run hospitals will not be able to opt out of offering abortion services. In 2017 an announcement that the National Maternity Hospital would be moved to the site of St Vincent’s Hospital, run by the Sisters of Charity, caused a public outcry leading to the Sisters of Charity ending their involvement with the hospital group. This was described by the Irish Times as a victory for people power, and a turning point in the history of religious involvement in Irish healthcare.

Speaking recently in Germany the Catholic Archbishop of Dublin noted that it is difficult to define the place of the Catholic Church in Irish life today. The Angelus is broadcast twice a day by the state broadcaster, there is much religiosity still visible in national life, religious practice is high by European standards, the Marian Shrine at Knock is one of Ireland’s top tourist destinations yet the influence of the Church is decreasing and there is no Catholic vote as exists in America.

**VIII. Labour Law within the Religious Communities**

The Employment Equality Acts 1998-2011 provide the basis of workplace anti-discrimination laws in Ireland. There is a very wide and much criticized exemption given to churches in s.37 of the 1998 Employment Equality Act. That section provides that certain religious, educational or medical institutions under the direction or control of a body established for religious purposes, or whose objects include the provision of services in an environment that promotes certain religious values, will not be taken to have discriminated against a person if:

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32 ‘Hospitals with Catholic Ethos Expected to Carry Out Abortions- Varadkar’ in Irish Examiner, 12th June 2018.
33 Paul Cullen ‘Exit of Sisters of Charity from St Vincent’s a Victory for People Power’ in Irish Times 30th May 2017.

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(a) they give more favourable treatment, on the religion ground, to an employee or a prospective employee over that person where it is reasonable to do so in order to maintain the religious ethos of an institution, or
(b) they take action which is reasonably necessary to prevent an employee or a prospective employee from undermining the religious ethos of the institution.

Though no one has ever lost their job because of s.37, it is thought that the case of *Flynn v Power*[^35^], which predates the Employment Equality Acts, would be decided the same way today. This case concerned a female teacher in a Catholic school who became pregnant as a result of a relationship with a married man. She was dismissed from her employment and her dismissal was successfully justified by the defendant on the basis that the school was established to promote a certain religious ethos and the plaintiff's lifestyle was in contravention of that ethos.

There are many uncertainties surrounding s.37. it is unclear whether it relates to religious affiliation in the narrow sense, or if it extends to the level of religious observance on the part of an individual, or their orthodoxy. it is unclear how religious characteristics are to be discerned for the purposes of the section, or what lifestyle factors will be considered undermining of ethos. A further difficulty is in determining the class of persons who may undermine the ethos of an organization. There is a notable absence of any requirement of situational or occupational necessity in s37, with no requirement that the act of discrimination be necessary to the imparting of the religious beliefs of the institution. Whilst it may be argued that a teacher in a religious school must accept the ethos of the school, especially if they teach religion, it is harder to argue that the secretary or cleaner must.

The breadth of s.37 and its relation to non-religious characteristics such as lifestyle or sexual orientation, is unclear. The broad provision in s37(b) would seem to widen the scope of the exemption to characteristics not directly related to religion. The present government has been critical of s.37, but has taken the view that removing it would be a constitutional matter. In the Programme for Government, drawn up by the coalition partners in 2011, there was a commitment that

People of non-faith or minority religious backgrounds and publicly identified LGBT people should not be deterred from training or taking up employment as teachers in the State.\textsuperscript{36}

During 2012 the Government charged the Equality Authority with undertaking a public consultation on the future of s.37.\textsuperscript{37}

The bill that eventually gave rise to the Employment Equality Act 1998 was challenged in the Supreme Court in \textit{Re Article 26 and the Employment Equality Bill 1996}\textsuperscript{38}. Citing \textit{Quinn’s Supermarket}, the Supreme Court held that religious discrimination was permissible where necessary to give ‘life and reality’\textsuperscript{39} to the constitutional guarantee of religious freedom. However, in \textit{Quinn’s Supermarket}, discrimination was held to be lawful only insofar as it is necessary to protect religious freedom, it is difficult to see how the breadth of s.37 is required to protect religious freedom.

\section*{IX. Legal Status of Clergy and Members of Religious Orders}

This is an underdeveloped area of law in the Republic of Ireland. The vast majority of religious ministers in Ireland are Roman Catholic priests whose status is governed by Canon Law. Until recently there has been a

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  \item \textsuperscript{36} quoted in an INTO submission to the Equality Authority on s37. https://www.into.ie/ROI/Publications/INTOSubmissions/Submission_S371.pdf.
  \item \textsuperscript{37} The Minister for Justice, Equality and Law Reform said in the Dail “it is unjust that people whose wages are paid by the taxpayer and who are employed to provide essential public services, like education or healthcare services, should feel oppressed or feel a need to live their lives in secret for fear that their sexual orientation should lead to victimisation by an employer”. He proposed an approach to amending legislation on the lines that Section 37(1) could remain unchanged in respect of wholly autonomous religious institutions, but that for educational and medical institutions, it might be provided that more favourable treatment on the religion ground could not be based on a person’s characteristics under one of the other grounds; and that “reasonable action to prevent an employee or prospective employee from undermining the religious ethos of the institution may only be taken where an employee actively undermines or seeks to undermine, or where there is a reasonable belief based on demonstrable evidence that a prospective employee would so undermine or seek to undermine, the religious ethos of the institution concerned”.
  \item \textsuperscript{38} [1997] 3 IR 321.
  \item \textsuperscript{39} ibid.
\end{itemize}
high level of political and judicial deference to the internal regulation of the Roman Catholic Church. Also, it has not been possible to find any case before the Irish courts or the Employment Appeal Tribunal arguing as to the labour status of Catholic priests. The case law that exists concerns either ministers of other denominations or of Catholic Religious working as teachers.

In Ireland the traditional view of clergy in terms of employment is that they are not employees, but office holders. This position pre-dates independence and has been maintained in Irish law whilst the British courts have shown some signs of moving away from this view\(^\text{40}\). In the Irish case O’Dea v Briain\(^\text{41}\) it was accepted that a member of a religious order was an office holder, but they could also be in employment. On the facts of the case Sr. O’Dea was not claiming that she was employed by the religious order but that she was employed by its school as a teacher. The decision of her Superior to move her from Dublin to Monaghan meant she would lose her teaching job. The EAT focused on the fact as a sister and a teacher the nun operated under two codes, and that there was no guarantee that the two codes would always reconcile with one another. The power given to a religious superior through the vow of obedience was said to be absolute and that it could never have been intended to be questioned before any tribunal. This comes quite close to saying that there could have been no intention to create legal relations. The case of Millen v Presbyterian Church in Ireland\(^\text{42}\) a minister was considered not to be an employee of the central church because, though it issued his P60 (a document issued when a person leaves an employment), it was the local congregation that initiated the appointment, chose Mr Millen and ultimately paid his stipend. The nature of office or his spiritual duties was not considered. It is arguable that if Mr Millen had been pursuing his local congregation the decision may have been different.

In the case of Fraser\(^\text{43}\) the EAT gave a very strong and decisive determination which is worth reproducing in full.

The claimant is an office-holder and not an employee. No contract of employment exists; the nature of the relationship cannot be analysed in


\(^{42}\) Millen v Presbyterian Church in Ireland [2000] 11 ELR 292.

\(^{43}\) Representative Body of the Church of Ireland v Frazer [2005 EAT] 16 ELR 292.
contract terms because the tribunal does not accept that there was an intention to create legal relations. The nature of the relationship with the church is that of a vocation or a calling, which cannot be grounded in the common law notion of contract. The claimant's duties are defined and his activities are dictated not by contract but by conscience.\textsuperscript{44}

This restatement of the traditional understanding of the legal position of clergy requires little analysis and allows little room for circumnavigation. Suffice it to say that the Tribunal has reiterated a position that is much stronger than that in Preston. One question is whether the stipulation that a vocation cannot be grounded in contract precludes the finding of an intention to create legal relations alongside, but parallel to, the vocation of the minister. The EAT did not find an intention to create legal relations, though it is arguable that in a different case they may do so, notwithstanding the fact that the individual concerned is a minister of religion.

\textbf{X. Finances of Religious Communities}

Article 44.2 of the Constitution provides:

5. Every religious denomination shall have the right to manage its own affairs, own, acquire and administer property, movable and immovable, and maintain institutions for religious and charitable purposes.

6. The property of any religious denomination or any educational institution shall not be diverted save for necessary works of public utility and on payment of compensation.

There is limited case law on Articles 44.2.5 and 44.2.6. In \textit{McGrath and Ó Ruairc v Trustees of Maynooth College}\textsuperscript{45}, the Supreme Court adverted to Article 44.2.5 and its guarantee of the right of every religious denomination to manage its own affairs, in upholding the right of Maynooth College, a seminary, to enforce the discipline of its statutes. In \textit{Crichton v Land Commission and Gault}\textsuperscript{46}, the Land Commission purported to acquire land used as a schoolhouse by the Church of Ireland Diocese of Kilmore. It was held, citing Article 44.2.6, that

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  \item[44] Frazer 296.
  \item[45] McGrath and Ó Ruairc v Trustees of Maynooth College [1979] ILRM 166.
  \item[46] Crichton v Land Commission and Gault (1950) 84 ILTR 87.
\end{itemize}
\end{footnotesize}
This schoolhouse was held by a religious body for educational and religious purposes, and therefore the attempted acquisition by the Land Commission was unconstitutional and void.

The fact that this case was held before the Circuit Court makes it a poor authority for a Constitutional law provision. What exactly ‘works of public utility’ are in the context of Article 44.2 has never been tested before the courts.

XI. Religious Assistance in Public Institutions

The model of chaplaincy in public institutions in Ireland has never really been planned, but has emerged largely unchanged from a different and more clerical age. There is little by way of regulation of the chaplaincy field, outside of the area of healthcare. The Higher Education Authority has just completed a two-year review of the way in which chaplains of colleges and universities are appointed and funded. Chaplains are regularly found in public institutions such as hospitals, schools, prisons and universities. Sometimes these chaplaincy posts are funded by the state, or they may be partly funded by the religious body appointing or nominating the chaplain.

The willingness of the Irish State to fund certain chaplains does not necessarily carry with it an element of control in the appointment or regulation of the activities of a chaplain. In Conroy v Board of Management of Gorey National School 47 a Roman Catholic priest was removed by a school Board of Management from his state funded position as school chaplain. He alleged that his removal was ultra vires and in breach of fair procedures, and sought judicial review. The judge noted that unlike with the appointment of a teacher, the Minister for Education has no role in the selection criteria, appointment or necessary qualifications of a chaplain. The Minister could not seek the removal of a chaplain, and there was no public law element to the appointment 48.

The lack of regulation of paid chaplaincy posts in Irish schools reflects an historical legacy. Recently there have been changes in the law to import

48 para 46.
greater regulation. Section 30 of the Teaching Council Act 2001 became operative in November 2013. Subsection 5.5 provides that

In the case of school chaplains paid by the State, these posts are regarded as teaching posts, and, therefore, those appointed to them should be registered teachers... Any school chaplain currently in employment who cannot gain registration with the Teaching Council will be permitted to continue in his or her role in pastoral care but will be prohibited from teaching. New appointees to chaplain positions must be registered teachers.

This move to require chaplains to also be qualified teachers could be read as a secularizing move, as it reduces the likelihood of ordained clergy being qualified, and may be an attempt to move to a model of lay chaplains, with chaplaincy simply being an extra duty undertaken by one or more teachers. By requiring the chaplains to be registered teachers there is greater scope for regulating their activity and defining the limits of the service they are to provide. Most institutions welcome the presence of people of non-Christian faiths acting in a chaplaincy capacity amongst students, residents or staff. This is true of the Irish Prison Service and the Health Service Executive, which publishes guides for staff on how best to organize chaplaincy provision for patients of minority faiths.

XII. Matrimonial and Family Law

Family law in Ireland has seen significant recent development as society changes. In the area of contraception, abortion, same sex relationships and divorce the law has seen significant developments that cast light on the status of the church state relationship.

Article 41 of the Constitution provides

1. The State recognises the Family as the natural primary and fundamental unit group of Society, and as a moral institution possessing in-
alienable and inprescribable rights, antecedent and superior to all positive law.
2. The State, therefore, guarantees to protect the Family in its constitution and authority, as the necessary basis of social order and as indispensable to the welfare of the Nation and the State.

These provisions have been held not to ‘create any particular right within the family... but rather deals with the protection of the family from external forces’.\(^{53}\) It has also been held that the full constitutional protection only applies to families based on marriage.\(^{54}\) Marriage itself has been widened by referendum to include same sex couples\(^{55}\), following on from the introduction of some rights for same sex couples under the Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010. Six months after the passing of the Marriage Act 2015 new civil partnerships ceased to be available.\(^{56}\)

The 1937 Constitution contained a prohibition on divorce.\(^{57}\) A referendum to remove this in 1986 was defeated, but a second referendum in 1995 narrowly passed. The Family Law (Divorce) Act 1996 allows for no-fault divorce where the parties have lived apart from one another for four of the last five years, there is no reasonable prospect of reconciliation and proper provision has been made for the spouses and dependents. The Family Law (Divorce) (Amendment) Act 2019 shortened this waiting period from four to two years.

The rights of the unborn represent a controversial topic in Irish law. Whether and in what circumstances abortion was constitutionally permitted became an important issue in the wake of the United States Supreme Court decision *Roe v Wade*.\(^{58}\) The Irish position was not clear and much rested on the Offences Against the Person Act 1861 which made it an offence for a mother or another ‘unlawfully’ to procure an abortion. This provision had been read by UK courts to not apply where the circumstances meant that continuing with a pregnancy would result in the wom-

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54 *State (Nicolaou) v An Bord Uchtála* [1966] 1 IR 567 at 643-44.
55 A referendum on 22 May 2015 amended the Constitution of Ireland to provide that marriage is recognised irrespective of the sex of the partners. The Marriage Act 2015 gave legislative effect to the amendent.
56 *Marriage Act 2015* s8.
57 Article 41.3.2 ‘no law shall be enacted providing for the grant of a dissolution of marriage’.
an becoming ‘a physical or mental wreck’.\textsuperscript{59} There was a fear in certain sections of Irish society that the Supreme Court in Dublin might follow the Supreme Court in America unless the law was clarified. This led to the 8\textsuperscript{th} amendment to the constitution in 1983, which gave the unborn equal right to life to that of the mother. This amendment was not followed by any enacting legislation, it being considered to be ‘self enacting’. The Supreme Court considered likelihood of suicide a grounds of abortion notwithstanding the 8\textsuperscript{th} amendment\textsuperscript{60}, and this led to unsuccessful attempts in 1992 and 2002 to have the amendment made more restrictive. It was repealed in 2018.

\textit{Criminal Law and Religious Communities}

Ireland had limited references to religion or religious communities in its criminal law\textsuperscript{61}. In the past special protections may have been afforded to religion, religious acts of worship and religious persons under the law, but increasingly old common law offences are being systematically codified and old statutes which differentiated between persons and groups in a way that is no longer thought appropriate are being replaced by statutes which provide general provisions applicable to all and designed to protect all equally. Thus, whilst it was an offence under s.36 of the Offences Against the Person Act 1861 to obstruct a clergyman in the execution of his duty, punishable by up to two years hard labour, whereas s3.9 of the same act only carried a penalty of up to three months for attacking those seeking to sell grain. Today such specific offences have been removed and replaced with more general provision in the Non-Fatal Offences Against the Person Act 1997. Similarly, the crime of sacrilege under the Larceny Act 1916 was repealed by the Criminal Law (Jurisdiction) Act 1976 and is now dealt with in the same way as other property offences, and is covered by the Criminal Justice (Theft and Fraud Offences) Act 2001.

Blasphemy is no longer a crime in Ireland, it having been removed from the Constitution following a referendum in 2018. Prior to this Article 40.6.1 of the Constitution provided “The publication or utterance of blasphemous, seditious, or indecent matter is an offence which shall be pub-

\textsuperscript{59} R v Bourne [1939] KB 687. This was followed in Northern Ireland in Northern Health & Social Services Board v AMNH [1994] N1JB 1.

\textsuperscript{60} Attorney General v X [1992] 1 IR 1.

lishable in accordance with law”. The Law Reform Commission noted in 1991 that the common law offence of blasphemy “was totally uncertain as to both its actus reus and its mens rea”\(^{62}\). A 1999 attempted prosecution for blasphemy failed, the Supreme Court agreeing with the Law Reform Commission, holding that the task of defining the crime is one for the Legislature, not the Courts.\(^{63}\) The Defamation Act 2009 did seek to define the offence, but with a very narrow scope.

**XIII. Major Developments and Trends**

Archbishop Dairmuid Martin of Dublin has described the relationship between Church and State in Ireland as one of ‘prudent distance.’\(^{64}\) Recounting Pope John Paul II asking him how secularisation had come to Ireland so quickly, he replied that it had actually arrived gradually, but the Church had not noticed, too busy keeping the same show on the same road.\(^{65}\) This secularisation is a strong and continuing trend. Changes in family law and in civic society are not satisfying the appetite for reform but giving fuel to those who would wish to see Irish society transformed. The appeal to the founding fathers of independent Ireland and to the 1916 Proclamation of the Irish Republic is made to the ideal of a secular republic.

The Autumn of 2018 will see the Irish people presented with referenda to remove the offence of blasphemy from the Constitution and to remove the provision which talks of the place of the woman in the home and not being compelled to work outside the home. Whilst the latter could not be described as a religious provision, both show a desire to create a more liberal and advanced society.

A further area of conflict is the position of the Churches in the Irish education system. Almost all schools are managed by religious bodies. The Amendment to Education (Admission to Schools) Bill 2016, enacted in May 2018, removes the ability of religious schools to prioritise children of their religion in their admissions policy. The law does contain a derogation for minority schools, such as Jewish, Muslim or Protestant schools, but this derogation has not been tested before the courts and could be said to be contrary to the principle of equal treatment of religions. The present

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\(^{65}\) ibid.
educational model where schools are under the Patronage of a religious organisation or person, such as the diocesan bishop, is ripe for change. The prevailing rationale for the patronage model, in law and otherwise, has shifted from a broadly ‘communitarian’ idea of religious freedom – centring upon the recognition of religious identities – to a more individualistic. ‘choice’ oriented justification, centring instead upon the secular goods of diversity and choice. There have been calls in parliament for the Catholic Church to hand over ownership of at least some of its schools to the state and the Catholic Archbishop of Dublin has been vocal in his desire to make this happen.

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66 Daly at 252.
67 ‘The legal ownership of those schools should be transferred without any contribution... we need to take these schools and our entire primary school infrastructure into public ownership. We need to get the management controls that are necessary to bring us into line with every other European country’. Deputy Ruairí Quinn, Dail Éireann, Vol 684 Col 588 6th June 2011.
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I. Social Facts

Greece’s population amounts to approximately ten million inhabitants (according to the latest census of 2011, the registered population was 9.9 million, whereas the actual number of residents was 10.8 million). The vast majority of Greeks (over 90%) are Orthodox Christians — at least they were baptised as such when they were infants — but there are no official data as to the exact numbers and percentages (no data are collected in the census). In a Special Eurobarometer report of 2010 (p. 204), 79% of those asked declared their belief in God, while 16% believed that “there is some sort of spirit or life source” and 4% declared that they did not hold any such belief. In another poll (Metron Analysis, December 2011), 1.5% declared that they belonged to a religion other than Orthodox Christian.

The vast majority of Orthodox Christians have a relatively loose connection with the Church (for example, they engage in basic religious practices such as church weddings rather than civil ones, or fasting during Holy Week before Easter) but a smaller percentage are regular church-goers or follow the particular mode of life imposed by the Church (Sakellariou 2017). In another Eurobarometer survey on values (2016, 86.2), religion occupied a low position (13%). This loose connection with the Orthodox Church, combined with the recent increase in mainly non-Christian migrants, has challenged the dominance of the Greek Orthodox Church (cf. Papageorgiou 2012).

Most of the approximately 1.5% who are not Orthodox Christians are Muslims, including not only the religious minority of Western Thrace (amounting to approx. 100,000, which is 31% of the population of this region and protected by the Lausanne Treaty of 1923), but also newly-arrived immigrants. The minority comprises Greeks of Turkish origin (50%), Po-

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makos (35%) and Roma (15%). In Greece there are also Roman Catholics, who are to be found especially on the Cyclades islands (mostly on Syros and Tinos), as well as on Corfu, while a large proportion of the new immigrants, especially those from the Philippines and Poland, belong to the same denomination. In addition, there are Protestants, Jehovah’s Witnesses, Armenians and a few Jews (the remnant of the once thriving Jewish population of Thessaloniki, which was largely exterminated during the Second World War).

II. Historical Background

It was St Paul who founded the Greek Orthodox Church when he visited a number of Greek cities. During the early Byzantine period, Christianity became the state religion of the region which is now Greece. This region constituted the Diocese of Eastern Illyricum and was self-governing. Initially it was subordinated to the Bishops of Rome, but later, by 733 AD, it had been subsumed under the jurisdiction of the Ecumenical Patriarchate of Constantinople. In the Byzantine Empire, the Orthodox Church was characterised by a form of caesaropapism (Papastathis, 2006, 115). After Constantinople was conquered by the Ottomans, Mehmet II granted the Ecumenical Patriarch the power to govern the Christian population (millet başı).

The first head of state of independent Greece, Ioannis Kapodistrias, insisted on the autonomy of the Greek Church, given the fact that the Patriarchate of Constantinople was on Turkish soil and could be influenced by the Turkish government. Indeed, the Greek Orthodox Church was declared “autocephalous” (Decree of 23.07/4.8.1833), with full powers of self-government and the King as its Head. This development was in accordance with the founding or recognition of “national churches”, a mainstream trend in the Balkans at that time.

The result was the organisational division of the Orthodox Church into national autonomous or autocephalous Churches (Papageorgiou, 2012, 23). Such a rupture in the long tradition of unity between the Patriarchate of Constantinople and the Greek Church had a negative impact on their relationship. Consequently, it was only in 1850 that the Patriarchate of Constantinople recognised the Greek Church’s autocephalous character through a Synodal Tome, “albeit with some limitations”. It is also worth mentioning that the constitutions of the Greek state established the Eastern Orthodox faith as the prevailing religion or “religion of the state” (Papastathis 2005, 115).
III. Legal Sources

The State-Church relationship in Greece, within the “state-law rule” system, derives from and is regulated by the Constitution itself, together with a series of laws. The most prominent law is L. 590/1977 on the “Constitutional Charter of the Church of Greece”, which regulates the organisation and administrative and institutional functions of this Church. Laws often provide legislative authorisation to both the President of the Republic and the Minister of Education and Religious Affairs, as well as the religious authorities themselves (on the basis of Article 43 para 2 GrConst).

1. Religion and Church in the Greek Constitution

1.1. Religious freedom and equality (Articles 2, 4, 5(2) and 13)

The Greek Constitution establishes a liberal democratic state, without however a separation of state and religion. Article 13 para 1 expressly states that religious liberty is inviolable. It therefore specifies Articles 2 (human dignity) and 5 para 1 (free development of the personality), which protect the freedom of conscience in general. The freedom of religion extends to both forum internum (beliefs) and forum externum (the public manifestation of belief). It also covers the principle of non-discrimination on the grounds of religion.

Article 5 para 2 guarantees that “all persons living within the Greek territory shall enjoy full protection of their life, honour and liberty, irrespective of nationality, race or language and of religious or political beliefs”. In its seminal ruling 2280/2001 (on registering religion on the identity card), the Council of State in obiter dicta declared that Article 3 GrConst does not influence the exercise of the civil right enshrined in Art. 13, which stipulates equal treatment in the enjoyment of civil rights, independently of religion.

Article 13 para 1 section b, which specifies the general provision of Article 4 para 1 regulating equality, stipulates that “the enjoyment of civil rights and liberties does not depend on the individual’s religious beliefs”.

2 Council of State (Plenary) 2280-2285/2001 of 27/06/2001. The Court concluded that not only was the obligatory registration of a citizen’s religious beliefs on their ID card prohibited, but it was also prohibited even if they consented to such an action.
Article 13 para 2 GrConst guarantees freedom of worship for known religions, as long as it does not violate public order or morals (χρηστά ήθη). Article 14 GrConst provides protection for “all known religions” against offensive publications. In order for a religion to be classified as a “known religion”, it should not have any secret doctrines or occult forms of worship.

As opposed to freedom of religion, which is recognised as an absolute right, freedom of worship applies only to “known” religions: “the practice of rites of worship is not allowed to offend public order or moral principles” (Article 13§ 2 section b). As is obvious, there is a danger that the administration, in trying to define these vague terms, may unnecessarily limit religious freedom (cf Konidaris 1994: 175).

1.2. Acknowledging the religious phenomenon and the prevailing status of the Greek Orthodox Church

“All powers derive from the People and exist for the People and the Nation” and “shall be exercised as specified by the Constitution” (Article 1 para 3 Const), which means that Greece is a constitutional democracy and not a theocratic state. Nevertheless, the Preamble to the Constitution contains the phrase “in the name of the Holy and Consubstantial and Indivisible Trinity”; so already from the beginning the connection between a specific religion and the state is evident, at least from a symbolic and cultural point of view. Although according to legal doctrine the Preamble does not have any normative consequences, it is still sometimes evoked by both theory and the Courts, in combination with Article 3 GrConst, as a means of justifying the privileged treatment of the Greek Orthodox Church.3

Article 3 GrConst4 (an idiosyncratic detailed constitutional stipulation placed in the section “Basic Provisions”) regulates the relationship between

4 Article 3: “1. The prevailing religion in Greece is that of the Eastern Orthodox Church of Christ. The Orthodox Church of Greece, acknowledging our Lord Jesus Christ as its head, is inseparably united in doctrine with the Great Church of Christ in Constantinople and with every other Church of Christ of the same doctrine, observing unwaveringly, as they do, the holy apostolic and synodal canons and sacred traditions. It is autocephalous and is administered by the Holy Synod of serving Bishops and the Permanent Holy Synod originating therefrom and assembled as specified by the Statutory Charter of the Church in compliance with the provisions of the Patriarchal Tome of June 29, 1850 and the Synodal Act of September 4, 1928.
the State and the Greek Orthodox Church of Christ by declaring that the latter is the prevailing religion in Greece.

The term “prevailing” is considered to be descriptive rather than normative, meaning “of the overwhelming majority of the Greek people”, according to the concurring opinions of both theory (Tsatsos 1993: 607, Alivizatos, 1999, 27-8, Venizelos 2000) and jurisprudence. The Council of State (henceforth CoS), which is the supreme administrative court of Greece and functions as a quasi constitutional court, has affirmed this in a series of rulings (3533/86, 3356/95, 2176/98).

According to Papastathis (2005: 117) “prevailing” means that “(1) the Orthodox Christian faith is the official religion of the Greek State; (2) the Church, which embodies this faith, has its own legal status: it is a legal person under public law in its juridical relations, as are its various services…; and (3) it is treated by the State with special concern and in a favourable manner, which is not extended to other faiths and religions”. However, in contrast to what Papastathis himself explicitly made clear, recognising the religion of the Greek Orthodox Church as “official” (so also Manesis 1982: 247 and Spyropoulos, 1981: 340f who speaks of a ‘Staatsreligion’) is inconsistent not only with the constitutional principle of equality and, more specifically, religious equality but also with the European Convention of Human Rights (Art 9 in combination with Art 14; in the same vein of argumentation see, in greater detail, Kyriazopoulos 2001).

It is more convincing to accept that the term “prevailing” should be interpreted so as to be both dogmatically and practically in harmony with Articles 4 and 13 GrConSt and the ECHR so that, as a consequence, it bears minimal normative consequences. Such consequences may be only those which do not undermine either the freedom of religion or religious equality and the necessarily secular character of a liberal democratic state in which “all powers derive from the people”, not from God. Such consequences are those which serve the smooth functioning of the State when bearing in mind that the Orthodox Christian faith is, in practice, the prevalent religion in Greece. Therefore, it is normatively acceptable that Sunday is in principle a non-working day and that official holidays derive from the Orthodox Christian faith. If this were not the case, a huge number of

2. The ecclesiastical regime existing in certain districts of the State shall not be deemed contrary to the provisions of the preceding paragraph.
3. The text of the Holy Scripture shall be maintained unaltered. Official translation of the text into any other form of language, without prior sanction by the Autocephalous Church of Greece and the Great Church of Christ in Constantinople, is prohibited.”.
working people would be asking for religious exemption. So, the quantitative prevalence of Orthodox Christians, based on the State’s interest being the public interest, is acceptably interpreted as being normative.

Article 3 GrConst also refers to the autocephalous Church of Greece, and recognises the distinct administrative status of the other Orthodox Churches on Greek territory. It is worth noting that Article 3 GrConst also refers to the Patriarchal Tome through which the Greek Church was recognised as autocephalous, due to its significance for the maintenance of spiritual unity between the Patriarchate and the Greek Church (cf Frazee, 1969). Moreover, according to Article 72 para 1 GrConst, bills relating to Articles 3 and 13 (amongst others) may only be discussed and voted upon by the Parliament in plenary session and during a summer session.

Moreover, according to Article 16(2) GrConst, education, as organised by the State, aims, amongst other things, at developing “the national and religious consciousness” of the Greeks. This provision has been used by the Council of State (Greece’s supreme administrative court) as a justification for imposing a minimum number of hours for religious education lessons and –more recently- for a religious education of a catechetical kind (see judgment 660/2018 of the State of Council).

Article 33 GrConst (concerning the oath for the elected President of the Republic) and Article 59 GrConst (concerning the oath for the elected Members of Parliament) impose an Orthodox Christian or generally religious oath for state officials. Finally, the Constitution declares “the special regime” of the territory of Mount Athos, through which any person who resides there is automatically granted Greek citizenship (Article 105 Gr-Const).

2. Laws

2.1. The general legal framework

As has already been mentioned, in order for a religion to be classified as a “known religion”, it needs to be pre-registered (see CoS rulings 310/1997 and 493/1997). According to Law 4301/2014 (“Organisation of the Legal Form of Religious Communities and their Organisations in Greece”), and specifically Article 1 of this law, a religious community is constituted by “a sufficient number of individuals with a specific confession of faith in a ‘known’ religion who are permanent residents of a specified geographical region and whose aim is to carry out collectively the duties of worship and observance required by their religion”. Article 2 of the same law provides
for the possibility of recognising “Religious Legal Persons” by stipulating that:

An association of persons of the same religious community, which seeks the systematic and organised practice of their religion and the collective expression of the religious beliefs of its members, acquires a legal personality when it is registered in a special register (for Religious Legal Persons) kept in the Court of First Instance where the association has its seat. In order for a religious legal person to be established, a minimum of 300 persons is required, of whom at least one should be a religious worker, member of the clergy or the pastor of the religious community, to whom the performance of religious services has been assigned and who must be Greek or a citizen of a Member State of the European Union or an alien legally residing in Greece.

Furthermore, Article 9 stipulates that religious legal persons – and not religious communities – may establish places of worship in accordance with the prescribed procedure. An electronic register has also been established in the Ministry of Education, Research and Religious Affairs in which the judicial rulings pertaining to the recognition of religious and ecclesiastical legal persons are recorded.

2.2. The principle of non-discrimination on the basis of religion

Law 927/1979, as amended by Law 1419/1984, L 2910/2001 and L 4285/2014 (the latter being the national instrument implementing European Council Framework Decision 2008/913/JHA), provides for protection against discrimination based, among other things, on religious grounds.\(^5\) This law aims at preventing racist speech based — amongst other grounds — on religion with instruments of criminal law. Direct and indirect discrimination based on religion, amongst other things, are also prohibited by Law 3304/2005, which implemented EU Directive 2000/78/EC.\(^6\) In the same vein, there is provision for disciplinary measures against civil servants who, in the exercise of their duties, discriminate on the grounds of politi-

\(^5\) Law 1419/1984, Article 24, supplemented the earlier Law 927/1979 adding religion as a ground for non-discrimination, to those of race and nationality.

The self-administration of every religious community, according to its internal canon law, derives from the right to associate with others for religious purposes (Maghioros, 2003). However, there are specific provisions concerning the Orthodox Church of Greece: the latter is recognised (Article 3 GrConst) as autocephalous, although doctrinally inseparably united with the Ecumenical Patriarchate of Constantinople and with all other Orthodox Churches. The vast majority of the latter are autocephalous, meaning both spiritually self-sufficient and administratively independent, while a few others (the Churches of Finland and Estonia) are autonomous, meaning independent in administrative terms only.

At present, the territory of Greece is divided into five ecclesiastical provinces: a) the autocephalous Orthodox Church of Greece; b) the metropolitan sees of the New Lands; c) the semi-autonomous Church of Crete; d) the Dodecanesian metropolitan sees, and e) the self-administered monastic state of Mount Athos. Lastly, the Greek Orthodox Diaspora comes under the spiritual authority of the Ecumenical Patriarchate (Papastathis, 2005, 122-4, Papageorgiou, 2012, 24). More specifically, the so-called “New Lands” (Macedonia, Epirus, Western Thrace and the Aegean Islands) are the regions which were annexed to Greece after the Balkan Wars. Initially they remained dependent upon the Ecumenical Patriarchate and only through Law 3615/1928 and the Patriarchal and Synodal Act of 1928, which has also constitutional status, (as is explicitly stated in Article 3 GrConst) did they become part of the autocephalous Church of Greece. As an exception, the Church of Crete still has its own semi-autonomous administration and its own “Charter” (Law 4149/1961; see Papageorgiou, 2012, 163ff). Moreover, four metropolitan sees of the Dodecanese Islands and the Exarchy of Patmos are under the administrative jurisdiction of the Ecumenical Patriarchate. All these Churches (New Lands, Crete and the Dodecanese), as well as Mount Athos, are still under the spiritual jurisdiction of the Ecumenical Patriarchate.
V. Legal Status of Religious Communities

Religious communities in Greece are recognised as holders of the fundamental right to religious freedom against the State, even when organised as legal persons of public law. The principle of (religious) equality extends the privileges enjoyed by the Greek Orthodox Church to all religious communities, at least those belonging to a “known religion”.

1. The previous legal status

Until the promulgation of Law 4301/2014, a series of legal persons, over 10,000 in number, most notably the Greek Orthodox Church and its divisions and manifestations (such as the Archbishopric and the metropolitan sees, the parishes, churches and monasteries, according to Article 1 para 4 of L 590/1977), as well as the Jewish communities, have been recognised as legal persons of public law. The ECtHR had recognised the “sui generis legal personality” of the organisational subdivisions of the Catholic Church, even if they have not acquired a legal personality under Greek law. Their status was then recognised by Article 33 of L 2731/1999 (Psycho- giopoulou 2010: 130). It was debated whether the Roman Catholic Church itself was a legal person of public or private law. If recognised as a public entity, the Catholic Church could then accordingly act as agents of public administration (Papastathis 2005: 118). However, most non-Orthodox religious communities (Protestants, Evangelicals, Armenians etc) constitute legal entities of private law.

The legal status of the Jewish communities in Greece has been regulated by a series of laws (e.g. L 2456/1920, ML 367/1945, L 1657/1951, RD of 25/06/1951, DL 01/1969). The foundation of a Jewish (or Israelite) community as a legal entity of public law is effected by means of a presidential decree and presupposes the existence of at least twenty families and the operation of a synagogue. Such Jewish communities may operate religious schools.

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2. *The changes brought about by Law 4301/2014*

Law 4301/2014, which has already been mentioned (under III.B), aimed at rationalising the status of religions and denominations and has thus introduced a distinct legal type, the “religious legal person”, a new type of legal person of private law. The practice of the rites of worship of any religious legal person should not contravene public order and morals, a restriction which, according to Article 13 para 2 GrConst, pertains to religious worship and not religious freedom as such. All “religious legal persons” are administered by their religious minister or a body of more persons including the former (Article 8 of L 4301/2014) or by the Assembly of all its members. “Religious legal persons” have the right to organise, as their branches, places of worship, schools, NGO’s etc., in order to promote their faith (Article 9).

According to Article 12 of L 4301/2014, at least three “religious legal persons” may found an “ecclesiastical legal person”, which has a centralised structure, administered by a single-member or multiple-member organ. A judicial decision is also required for its establishment. Religious communities which do not qualify may use the word “Church” in their name only if they do not usurp the name of an existent “ecclesiastical legal person”. Such religious communities without legal personality have standing before the Courts, as explicitly stipulated by Article 15, as was already the case in the past, on the basis of Article 62 para 2 of the Code of Civil Procedure.

Article 13 introduces a wide-ranging exception concerning all the existent Churches (including the Anglican, Evangelical and German Evangelical Churches, the Armenians et al) and their own legal persons. More specifically, the Catholic Church and its (over 240) branches all over Greece are recognised without the need to fulfil the whole list of procedural requirements set out in L 4301/2014. Needless to say, the Greek Orthodox Church and all its branches (including parish churches), as well as all Orthodox Churches doctrinally connected with the Constantinopolitan Church, the Jewish communities and the Muftiships (see below) retain their legal status as legal persons of public law (Article 16 of L 4301/2014).

3. *The special status of the Muslim minority in Western Thrace*

A special Greek case is the religious community of the only officially recognised religious minority in Greece, the Muslim minority of Western Thrace. The Treaty of Lausanne (1923) guarantees its status, state-funded
bilingual education and the existence of religious ministers, as well as the operation of mosques. The muftiship in Western Thrace is divided into three territories: Xanthi, Komotini and Didymoteicho. Muftis are appointed by the government and also exercise judicial duties. The muftiates of Western Thrace are recognised as public services, under the jurisdiction of the Ministry of Education, Research and Religious Affairs. The *waqfs* in the same region are regulated by L 3647/2008, Article 4 of which stipulates that the existing *waqfs* are legal persons of private law.

There is constant tension between the Greek government and the Muslim community because the latter claims it has the right to elect its own muftis. This claim is legitimate but is undermined by the fact that the muftis exercise not only religious and spiritual duties but also judicial ones, due to the application of Sharia law in family and inheritance matters in Western Thrace.

In addition, there are three mosques with two imams and one mufti on the islands of Rhodes and Cos. There are also another six official mosques, of small size, functioning in Attica (cf Tsitselikis 2004: 91, Farooq 2016). The establishment and operation of a large mosque in Athens has been widely and passionately debated in the public sphere. Its construction has been affirmed by the Council of State (plenary ruling 2399/2014).

4. The special regime of Mount Athos

Mount Athos became part of Greece in 1912. It is under the spiritual jurisdiction of the Ecumenical Patriarchate and still retains its ancient privileged regime of self-government. This status, the twenty monasteries established there and their hierarchical order are enshrined in the Constitution (Article 105). These privileges (which, for example, relate to customs franchise, tax exemptions and the right of establishment) have even been enshrined in Joint Declaration No 4 of the Final Act (1979) of the Agreement on Greece’s accession to the European Communities.⁸ Within the framework of self-governance the monasteries agreed upon a charter regulating their administration, which was ratified by the Legislative Decree of 10/16.9.1926 and came into force in 1927.

Its most unusual characteristic is the so-called *abaton*, a centuries-old rule which is still in force and prohibits all women from entering the

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⁸ See Greece’s EU accession treaty of 28/05/1979 and the joint declaration concerning Mount Athos which was annexed to the Final Act.
Mount Athos peninsula. Having been first proclaimed by the Byzantine emperor Constantine Monomachus in 1046, the abaton was formalised by Article 186 of the Constitutional Charter of Mount Athos and Legislative Decree 2623/1953. Its violation leads to a penalty of imprisonment for between two and twelve months, although now, according to the general provisions of the Penal Code (PC), this may now be commuted to a pecuniary penalty (Konidaris 2003).

VI. Religious Communities within the Political System

Factually speaking, the umbilical cord between nation state and national church in Greece has never been cut. In some respects, the Greek state seems to be acting as if it were a confessional state (cf Papastathis, 2001, 425; Papastathis, 1996, 815ff). This is also reflected in Article 3 and in the entire “state-law rule” system that applies to the relationship between State and Church in Greece. Within the framework of “State-law rule”, the State regulates ecclesiastical matters that do not pertain to spiritual issues. This system survives despite the Church’s preference for a different one, the Synallilia (also called parallilia) system, meaning co-ordination and mutual assistance between two equal partners regulating their affairs independently. (Spyropoulos, 1981, 19f).

This legal system has its corollary in the extensive interventions by the Church in State affairs and vice versa, a phenomenon which undermines the Greek Church’s self-governance and imposes clerical views on state policies (cf Papageorgiou, 2012, 73). Right-wing political parties in particular seem to have a very close relationship with the Greek Orthodox Church and its ministers, legislating either in favour of (see the re-introduction of tax exemptions for the Church, below) or in accordance with the religious teaching of Orthodox Christianity. Social conservatism in Greece prevails and can undoubtedly be attributed to a large extent to the influence exercised by the Greek Orthodox Church, which is a markedly traditionalist one.

A recurring debate concerns the teaching of religious education in schools. The Greek Orthodox Church insists that it should have a catechetical character. In order to achieve this, the Church uses both political interventions and strategic litigation. Recently, the Council of State accepted an application submitted by the Metropolis and Metropolitan of Piraeus.

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and a student’s parent concerning the new RE syllabus taught at primary and secondary schools. The Court, by a majority of 12 against five members, adopted a very restrictive stance, declaring that (para 14 of the ruling) according to Article 16 para 2 GrConst, in combination with Article 13 paras 1 and 2 and Article 2 of the First Protocol of the ECHR, the development of religious consciousness, stipulated by the Constitution as an educational mission, means that the State, through its schools, has to promote the development of an Orthodox Christian consciousness. This in turn can be achieved only through the teaching of the doctrines, morals and traditions of the Orthodox Church. It thus concerns only students who belong to this religion. Other students should be able to claim exemption by declaring that they do not hold Orthodox beliefs.

VII. Culture

1. General

Given that the vast majority of the Greek population subscribes to the Orthodox Christian faith, everyday culture in Greece is heavily influenced by this religion. Not only are state holidays defined in accordance with it, but also on many state occasions, high-ranking officials of the Greek Orthodox Church appear and give their blessing, for example at the beginning of the school year or at the opening or inauguration of a public monument or project.

Religious sacraments, such as marriage and the baptism of infants, are considered almost natural and a Greek is socially expected to give an explanation should they deviate from these cultural traditions. In fact, civil marriage was only introduced in 1982 and even today the vast majority of weddings that take place are of the religious variety. The recent decline in the number of church weddings is mainly due to their cost, as they are usually accompanied by higher expenses than the more modest civil wedding ceremonies that take place at municipal register offices. An improvement in the couple’s financial situation often leads to a church wedding after their civil marriage.

Crucifixes and icons of Jesus Christ are present in court rooms and public and private schools. Daily prayers are held every morning in public schools for all students, and occasionally students go to an Orthodox church within the framework of their curriculum. In such cases non-believers may remain in their classrooms and wait for their classmates to return.
2. Education

2.1. Religious education in schools

All religious denominations have the right to found their own schools. Most notably, however, Article 16 para 2 GrConst declares that education is a mission of the state which, among other things, includes the development of the “religious consciousness” of students. In primary and secondary schools, courses in religious education are mandatory, and must be taught by regular teachers and theologians respectively; the content concerns Orthodox Christian doctrine and practice.

There is a debate here as to whether the notion of “religious consciousness” refers to a general awareness of the religious phenomenon and the notion of the sacred, or to the Greek Orthodox faith. The latter interpretation has been adopted by the Council of State in its ruling 660/2018 (plenary ruling of 20/03/2018). The judges, in accordance with the preamble to the Constitution and Article 3 GrConst on the prevailing religion, declared unconstitutional a ministerial decision which had slightly altered the absolute catechetical character of the RE syllabus. They ruled that the latter has to conform with the Orthodox Church’s beliefs, given the fact that the vast majority of students belong to this denomination. Non-Orthodox students, after a relevant declaration by their parents, have the right to be exempted from RE lessons. A small minority of the CoS (five out of 17 members) adopted the more liberal view of the notion of “religious consciousness”. The same Court had previously (2176/1998) declared unconstitutional the restriction of teaching hours devoted to religious instruction.

2.2. Education of the Muslim minority

The children of the Muslim minority in Western Thrace have the right to attend special schools where lessons are taught in Greek and Turkish. There are also two Islamic theological seminaries (madrasas), i.e. private Muslim hieratic schools supervised by the mufti, which also serve as “minority schools” of secondary education along with other bilingual secondary schools. These institutions are all publicly funded.
2.3. Education for religious personnel

The State also operates and finances the ecclesiastical education system which aims at educating Orthodox Christian ministers, through a complicated and constantly changing system.

According to Law 3236/2006 on “the Structure and Function of Ecclesiastical Education”, religious education for Orthodox students should be provided by ecclesiastical schools (secondary and higher), the “Supreme Ecclesiastical Academies” (which now constitute a part of the state tertiary education system), the “Ecclesiastical Institutes of Vocational Training” (which provide non-compulsory, post-secondary, non-tertiary vocational ecclesiastical training of two semesters’ duration), “Second Chance Hieratic Schools” (institutions of life-long learning offering two-year programmes followed by members of the clergy or laity over the age of 18), and a School for Church Ministry (Diakonia), which aims to provide life-long learning and further education for Church personnel, either clergy or lay people (cf Papadopoulou, 2013).

Two Schools of Theology (at the Universities of Athens and Thessaloniki) operate in Greece, both state-run and without a formally confessional character, though in practice they are orientated mainly but not exclusively to (Orthodox) Christian teaching. They accept graduates from senior secondary schools (lycea), based on their performance in the generally applicable pan-Hellenic university entrance exams and independently of their own religious beliefs.

VIII. Labour Law within the Religious Communities

In order to fulfil its mission, the Church of Greece (in the broader sense, including all relevant bodies) employs both paid and voluntary staff. The latter have no contractual relationship with the Church. The former consists of a) administrative, and b) parish priests, deacons, church cantors and the auxiliary staff of parish churches (Koukiadis and Papastathis 1993: 116).

Within the framework of “State-law rule”, the legal status applicable to both the voluntary and paid staff of the legal entities of public law of the Greek Orthodox Church is regulated by Article 42 of the Charter (L 590/1977), through Ordinances of the Permanent Holy Synod of the Church of Greece. Since the Synod is authorised by the Charter, which has the status of a statute, these Ordinances also constitute laws of the State. More specifically, the status of priests is provided for by Article 33 of Ordini
nance 2/1969 (GG B’ 193) “On holy temples, parishes and priests”. The qualifications, appointment procedures, assessment, promotion, transfer, granting of permits, disciplinary proceedings, positions, insurance issues, and any other matter concerning the status of the employees of the Church of Greece, its parish churches, the Apostolic Diaconate of the Inter-Orthodox Centre of the monasteries, as well as any other ecclesiastical public law entities, are regulated by Ordinances of the Permanent Holy Synod (which are published in the Government Gazette), in a similar way to the provisions of the Civil Servants’ Code.

Although they are on the State payroll, parish priests are not considered to be civil servants but “religious ministers” (CoS 507/1983, 315/1989). Church employees are employed by the Legal Entities of Public Law established by the Church itself and paid by the latter. Some of these employees have permanent contracts, while others have fixed-term contracts. In this way they are not subject to the general code for civil servants but their legal status is provided for by Articles 37-38 of the Charter and Ordinance 230/2012. A smaller number have private law contracts, as provided for in Article 103 paras 2 & 3 GrConst (for example, for administrative and secretarial duties, as well as cleaning and maintenance of buildings etc.) and are covered by Ordinance No 5/1978 “Code for Ecclesiastical Servants” (cf Papageorgiou 2014: 155ff). This Code is applied as lex specialis alongside the general Civil Servants’ Code (see, in greater detail, Papadopoulou 2016).

IX. Legal Status of Clergy and Members of Religious Orders

According to Article 13 para 3 GrConst, “ministers of all known religions shall be subject to the same supervision by the State and to the same obligations towards it as those of the prevailing religion”. Given the “State-law-system” described above, the general Code for Employees of the Public Sector (L 3528/2007) is applicable to the clergy of the Greek Orthodox Church, unless otherwise provided for by the “Code for Ecclesiastical Employees” (Holy Synod Regulation 5/1978). Muftis (appointed by president-

10 See Presidential Decree 53/2012 (GG A’ 105/30.4.2012) “Retention of a special evaluation system of the clergy of the Orthodox Church of Greece”.
11 CL 536/1945 (GG A’ 226); CL 469/1968 (GG A’ 162).
ial decree) are also civil servants, while the muftiates are considered public services (L 1920/1991).

Priests are allowed to marry before their ordination. Married priests, however, cannot be elected as bishops, although divorced priests may.

Ministers of religion no longer enjoy exemption from military service, with the exception of monks or novices of Mount Athos, as long as they wish to be exempted and retain their status until the age of 45 (Article 13 L3421/2005, as modified by Article 77§ 2 of L 3883/2010).

After a three-year probationary period, a novice may become a monk. The latter's estate is transferred to his monastery and to his family, if he is married. After his death, his estate is divided between the monastery and the Church.

X. Finances of Religious Communities

Religious communities, as holders of fundamental rights, even if recognised as legal persons of public law, hold the fundamental right of property, including movable and immovable property. The Greek Orthodox Church in particular and the monasteries own a significant number of “ecclesiastical properties”, often inherited from the Ottoman Empire on the basis of specific agreements. Moreover, as a legal person of public law, the Greek Orthodox Church, as the prevailing religion, is the recipient of large amounts of public funding: the salaries and pensions of the prelates, parish priests, deacons, preachers and other employees of the Orthodox Church are paid by the State (CL 536/1945, Article 8 L 1041/1980). The same applies to the pensions and health insurance of the monks, although it does not apply to precentors and sacristans who are not employees according to labour law, since they are considered to be inferior clergy (Papastathis 2005: 130). Last but not least, the Apostoliki Diakonia, an official institution of the Church endowed with educational and missionary tasks, also receives public funds (Papastathis, 1992, 1ff).

Tax exemptions of various kinds were granted to all churches, although most of them were abolished by Law 2459/1997, only to be reintroduced by Law 3296/2004 (of 14/12/2004). Moreover, real property which belongs to the Orthodox Patriarchates and the monasteries of the Ecumenical Patriarchate is inalienable and cannot be taken over by third parties through acquisitive prescription. Based on the principle of (religious) equality, the same applies to the real estate of the Roman Catholic monasteries (see decision 1161/1983 of the Thessaloniki Court of Appeal).
As a transitional stipulation, Article 18 of Law 4301/2014 regulates the issue of property succession, enabling religious communities existing at the time this law was promulgated (07/10/2014) to transfer their immovable property to “religious legal persons” as long as the relevant decision is taken unanimously by their members. This transfer would be exempt from tax if it took place within one year after the acquisition of legal personality, and in any case no later than three years after this same law came into force.

XI. Religious Assistance in Public Institutions

The State stricto sensu does not make provision for chaplaincies but gives religious denominations the freedom to provide them if they so wish. Chaplaincy services are in fact offered by the Orthodox and Catholic Churches, Islam, the Jews and the Armenians (Papageorgiou 2016). Services are offered at cemeteries by a number of (mainly Orthodox) priests, who are paid by local municipalities.

There are no specific legislative regulations concerning chaplaincy services in hospitals. Hospitals, which are generally state-owned, pay for their own priests. Nevertheless, the activities of these priests are regulated by the Greek Orthodox Church. Hospitals also allow the provision of this service by other denominations on an ad hoc basis, when necessary (Papageorgiou 2016).

Priests are also allowed to hold posts in the public or private sector – usually as teachers – and are paid accordingly (Papastathis 2010: 359). Those serving in the army and police hold officer rank and receive the respective salary and pension. A special Religious Body of the Armed Forces exists, which was established by Legislative Decree 90/1973. This Religious Body is staffed by Orthodox military priests and has a purely Orthodox Christian character. It operates under the Headquarters of the Armed Forces and is tasked with ensuring the “Christian and moral edification of the troops”. Military priests come under the Directorate of the Religious Service of the Hellenic Army General Staff (HAGS), and, as officers, come under the directorates of the units they serve. As clerics, however, they come under the jurisdiction of the local archbishops of the areas in which they are based13 (Papageorgiou 2016).

13 See L. 2439/1996 on the “Hierarchy and Development of Armed Forces Officers”.

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Spiritual/pastoral assistance is also offered by the Greek Orthodox Church to prison inmates. Priests offering pastoral services to prisoners are paid by the State under the auspices of the local Metropolis. The Church offers specialised seminars to those serving in prisons (Papageorgiou 2016).

XII. Matrimonial and Family Law

The State recognises weddings celebrated according to the rites of any known religion and regards them as being equivalent to civil marriage, as long as the religious marriage is not contrary to public order (see Article 1367 para 1 of the Civil Code). The same is not true in the case of divorce, however. The State recognises divorces only after a judicial decision, while the Orthodox Church follows in spiritually dissolving the marriage (Deliyannis 1993: 121ff). A church wedding presupposes a licence of the local Metropolitan, which is the equivalent of what the authorities would ask for in the case of a civil marriage.

The Greek government permits the application of sacred Islamic law (the Sharia) in family law matters. The Sharia is applied to Greek Muslims and regulates their personal status and family relations, especially in respect of marriage, divorce and inheritance, and, in the case of divorce, issues of custody and the awarding of parental responsibility. In this sphere the application of the Sharia does not touch upon private international law, as happens in many European countries; rather, it is applied by the mufti as an internal Greek law on Greek citizens (Papadopoulou 2010).

Article 8 of the Constitution enables Greek Muslims to opt out of the Sharia law and have recourse to their “natural judge” (Tsaoussi and Zervogianni 2008: 214). While the application of Sharia law had always been considered to be optional, allowing Muslim Greek citizens to be subject to the Greek Civil Code, a ruling by the Areios Pagos, the Supreme Civil and Penal Court, (1370/2014) came to the conclusion — which has been much criticised — that Sharia is obligatory for all Muslims in Western Thrace. While the case is pending before the ECtHR, the Greek Parliament has passed a law (L 4511/2018) stipulating that the application of Sharia law is optional for Muslim Greek citizens. Non-Greek Muslims, on the other hand, bring their cases before the civil courts, which have the discretion to decide according to Islamic law, based on international private law provisions.
XIII. Criminal Law and Religious Communities

1. Protection of religion in the Penal Code

The Greek Penal Code (PC) includes a special chapter on “disturbance of religious peace”. This chapter enumerates four distinct offences: a) malicious blasphemy (Article 198), which consists in any manifestation of offensive behaviour against God and the Church; b) insulting religion (Article 199); c) disturbance of religious congregations (Article 200), and d) insulting the deceased (Article 201).

Assuming the duties of a religious minister of any known religion under false pretences (Article 175 § 2 PC) is punishable by a sentence of up to one year’s imprisonment or a fine. Article 176 of the Penal Code provides for a penalty of up to six months’ imprisonment or a fine for those who publicly bear the sacerdotal vestments or other insignia of a religious minister of any known religion. On this point, in the Serif case\(^{14}\) the ECtHR found that the applicant’s conviction (based on Articles 175 & 176 Penal Code), on the ground that he had acted as an imam towards a community who had accepted him as such, was not in harmony with religious pluralism in a democratic society, guaranteed by the Convention. For that reason, this same conviction was not justified by a “pressing social need” and thus it was not “necessary in a democratic society for the protection of public order” under Article 9 § 2 of the Convention.\(^{15}\)

2. The internal dimension

The Greek Orthodox Church enjoys jurisdiction in penal matters (Law 5383/1932) over clergy and monks, this power being exercised by “Ecclesiastical Courts”. The latter comprise: a) episcopal courts (for priests, deacons and monks); b) the First- and Second-Instance Synodal Courts; c) the First- and Second-Instance Courts for Bishops, and d) a special court for members of the Permanent Holy Synod. Any bishop found guilty by the Second-Instance Court has the right to appeal to the Ecumenical Patriarchate.

Ecclesiastical Courts may impose penalties for misdemeanors such as demotion, suspension, dethronement (only for bishops), fines, internment

\(^{15}\) See also ECtHR, Aga v Greece, nos. 50776/99 and 52912/99, 17/01/2003.
and unfrocking. Their decisions resemble those of disciplinary boards. Although they do not fulfill all the requirements of the notion of “courts”, they need to comply with the obligations deriving from Article 6 ECHR (see also CoS ruling 825/1988).

However, for penalties which are not purely of a spiritual nature, the State courts have jurisdiction and judicial review is possible when the clergyman’s rights (deprivation of salary, suspension etc.) are at stake. In the event of a lay person committing a crime of faith (e.g. heresy or schism), the Holy Synod may impose an aphorism (anathema) or excommunication (Papastathis, 2005, 129).

**XIV. Major Developments and Trends**

In the traditionalist and socially conservative Greek society, things change very slowly both within the Church and in its relationship to the State. While there has long been a debate in the public domain on the need to proceed with a constitutional revision in order to bring about the so-called “separation of Church and State”, this scenario does not seem at all likely, even if such a constitutional revision takes place. The strength of the Greek Orthodox Church, as already described above, is massive and any politicians acting against its interests have to face the political cost of their decisions.

The only major factor in this equation is the European Court of Human Rights. With the Greek courts being strongly influenced by the Greek Orthodox Church, this transnational institution is apparently the major counter-majoritarian institution that can play a decisive role as far as the “checks and balances” are concerned in the protection of religious minorities. Major changes in the past, especially in favour of a more just, if not equal, treatment of minority religions in Greece have been prompted by its decisions, with the legislator following suit. This was the case, for example, in the issue of conscientious objection to military service, establishment of places of worship and the taking of oaths (Anthopoulos, 2003, GR93; Papageorgiou 2011). In the unending debate on the character of religious education courses in public schools, for example, it will come as no surprise if this Court’s rulings facilitate the changes desired by many.
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The Spanish Constitution provides that “nobody may be compelled to make statements regarding their religion, beliefs or ideology” (art. 16, 2). As a result, there are no official registers with the number of members of the various religions; such details may not even be obtained indirectly, for example through a register of “church taxes” paid. So in order to have a rough idea of the real situation, we need to turn to surveys in which the subjects themselves declare their own religious beliefs. Rather than legally defined affiliations (e.g., baptisms within a specific Christian Church), such surveys provide us with personal options revealed at the time of the consultation. With these caveats in mind, I believe that the data included in the following are sufficiently reliable.

<p>| | |</p>
<table>
<thead>
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<tbody>
<tr>
<td>Catholics</td>
<td>67.6%</td>
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<tr>
<td>Other religious believers</td>
<td>3.1%</td>
</tr>
<tr>
<td>Non-believers</td>
<td>16.8%</td>
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<tr>
<td>Atheist</td>
<td>10.3%</td>
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<tr>
<td>No answer given</td>
<td>2.1%</td>
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*Source: Centro de Investigaciones Sociológicas (Survey nº 3191, October 2017) (www.cis.es)*

These data could easily lead one to conclude that Catholicism is overwhelmingly the majority option in Spain, that a fourth of the population has no relationship with religion and that the remaining expressions of religious faith are almost insignificant. Such an analysis, however, would be only partially correct as it requires some further qualification.

As will be seen in the following section, it is clear that, historically, the Catholic Church has held absolute dominion over religious reality in Spain. While this led to an almost automatic identification between Spanish citizen (or subject) and Catholic, the situation is changing radically and rapidly.
In the last few decades, Spain has undergone a process of secularization that has been highly significant and, I would say, more extensive than in other Western European countries. This process may be observed in various ways. Firstly, a good number of those who declare themselves to be Catholic have gradually distanced themselves from rules established by the Catholic hierarchy in areas such as marriage, sexuality, abortion, etc. Secondly, a few decades ago this same group represented more than 90% of the population but their number is now in inexorable decline. All indications are that this will continue to be the case in the foreseeable future: note, for example, that only 44% of young people (18-24 years old) declare themselves to be Catholic.

This steady move away from Catholicism does not mean there has been any significant increase in the number of devotees of other religious communities. What is on the increase is the number of non-believers and atheists.

These last statements, however, are also in need some further clarification. In terms of the total population, the percentage of members of other confessions remains low, although this figure has recently increased from 2% to slightly above 3%. Perhaps most importantly, this percentage among young people has risen to around 6%. In my opinion, the explanation for this clearly lies with immigration and the fact that in the last few years alone, a significant number of immigrants have not been Roman Catholics but mostly Orthodox Christians (who hail from some Eastern European countries) and Muslims. A phenomenon that is, if you will, national but of foreign origin.

In sum, the immense majority of the inhabitants of Spain declare themselves to be Catholic, but this does not necessarily mean that they strictly observe the tenets of Catholicism. This is a consequence of a process of secularization in which a rapidly increasing amount of people have no contact with any form of religious belief or practice. Lastly, the increasing number of members of other religions is directly related to the process of immigration.

II. Historical Background

In the previous section, I have argued that Spanish society is strongly secularised. There is a notable trend towards social behaviour that is alienated from the precepts of religion, although a very high number of Spaniards declare themselves to be Catholic. The social presence of the Catholic Church is also of great importance, as may be seen in a variety of contexts.
including the education system, or the participation by the Church in some official acts of the State. In addition, the increase in the number of members of other religions is due to immigration, which is to say that its causes lie outside of Spain. All of this may not appear to be completely coherent but it has an extraordinarily clear explanation: history.

While there is not the space here to enter into debate on the origins of Spain as a political entity, it may be asserted that its Catholic unity was already proclaimed in times as far back as those of the Third Council of Toledo (589). While it is certainly true that the three religions of the Book (Christianity, Judaism and Islam) co-existed in the Iberian Peninsula during many centuries, it is no less true that the most important step towards the full unity of Spain (1492) depended on the military defeat of Islam and the expulsion of the Jews. National identity is thus largely based on religious unity.

The Reformation was a key element in the identification of the Nation (which would later be the State) with the Church, thus leading to the phenomenon of national churches. While the Reformation had barely any direct effect in Spain, the Spanish monarch, as with other Catholic monarchs, knew how to exploit it for his own ends. On one hand, he achieved a control over the Catholic Church in his territory, without breaking away from Rome, that was not so different from the control exercised by a Protestant King (a practice which came to be known as Regalism). On the other hand, the defence of Catholicism against attempts at reform enabled the monarch to establish a control over society that went far beyond the bounds of religion and clearly entered into politics (the Inquisition was an institution that evidently acted along these lines). Thus, with the acquiescence of Rome, the Spanish monarch used the Catholic religion as a means of social control, a practice that reached its height in the 18th century but which had a long history and which lasted even until most recent times. What did not meet with the approval of Rome, however, was the strong control exercised by the monarch over the Catholic Church throughout all territories in royal possession. There is only one exception in which the pontificate did not oppose Regalism and its techniques of control and this occurred in one territory under control of the Spanish Crown: American Regalism. This refers to the process that developed in the American territories but which Rome had to allow as it found that it was the only way to impose Catholicism.

From a legal-political perspective, the 19th century was characterized by a seemingly endless series of Constitutions that were enacted under the influence of various political changes that swung between liberalism and conservatism. Nineteenth century liberalism tended to sustain positions
that were not necessarily opposed to Catholicism but, at the least, were opposed to the excessive presence of the Catholic clergy in managing the affairs of society; liberalism was anti-clerical in some respects. However, this does not in any way mean that liberalism was a primary cause of the split in identity between Spain and Catholicism. One has only to think, for example, of the Constitution of Cádiz (1812) which is steeped in the paradigm of Hispanic liberalism but which declares Catholicism to be the official religion and prohibits the practice of any other religion. Such provisions should not come as a surprise considering that one third of the constituent assembly were members of the clergy or of a religious order.

The identification of legal-political structures with the Catholic religion clearly began to come apart as late as 1931. This was the year that Constitution of the Second Republic was enacted, in which it was established that “the Spanish State does not have an official religion” (art.3), and in which religious teaching was banned and State funding of the Catholic Church was ended, etc. While this issue is certainly debatable, from my point of view and in general terms, the measures adopted by the Second Republic in this area were clearly of a modernizing nature. There were probably some excesses but these had more to do with the perhaps all too rapid pace of reforms rather than their content. Certainly these measures met with intense opposition from the Catholic Church and from large groups of the population that held positions sympathetic to the ecclesiastic perspective. Be that as it may, this secularizing politics, with certain touches of anti-clericalism, was one of the elements that triggered the frustrated coup d'état, itself the origin of the prolonged civil war (1936-1939).

The military faction that triggered the civil war sought to use defence of the Catholic unity of Spain as a way of justifying its attempted coup d'état and its maintenance of a prolonged civil war. The Spanish Catholic hierarchy (Rome was at first more cautious) provided practically unanimous support to this faction and it did not hesitate to characterize the war as a religious crusade.

With such precedents, it is not surprising that the political regime that appeared after the civil war reasserted the traditional principle of identification between the Nation and the Church. Catholicism was declared the official State religion, non-university teaching was practically monopolised by the Catholic Church, there was a notable presence of members of the Catholic hierarchy in political organisations, and a Concordat was signed in 1953 that recognized all privileges claimed by the Church, etc. A model was thus created that was so rigid and anachronistic that it could not possibly last once there was change from the autocratic system put into place by General Franco. While the political regime certainly evolved throughout
its 40-year period, the more profound changes had to wait until the death of Franco in 1975.

Following his death, a rapid and efficient shift from an autocratic to a democratic system completely altered the legal model. This, inevitably, also had some impact upon the area of State-Church relations. Within a year, an agreement was signed with the Holy See that lay the foundations for the replacement of the Concordat of 1953. In 1978, a Constitution was passed that declared the non-confessional character of the State and full religious freedom. A series of agreements with the Holy See that included a new Concordat (1979), as well as a Religious Freedom Act (1980) and another series of reforms (e.g. the introduction of divorce), all meant that the Spanish legal model came to occupy a position completely contrary to what had been in effect until only a few years previously. As will be analysed in the following, it was only under the socialist governments that some educational reforms, the signing of agreements with religious minorities (1992), etc., completed the processes of reform and created the now-existing model of ecclesiastical law. Certainly, there have subsequently been some legal changes of some importance carried out in this area, but the framework of legal sources, along with their contents, have remained essentially unchanged for a quarter of a century: the Constitution, the Religious Freedom Act, and Agreements with the Catholic Church and with religious minorities. All of this, however, will be discussed in the following sections.

III. Legal Sources

The Constitution, brought into effect in the year 1978, occupies the highest hierarchical position in the system of sources in Spanish Law. Article 16, located in the chapter “Rights and freedoms”, establishes the foundations of the model of State-religion relationships in the following terms:

“1. Freedom of ideology, religion and worship of individuals and communities is guaranteed, with no other restriction on their expression that may be necessary to maintain public order as protected by law;
2. Nobody may be compelled to make statements regarding his religion, beliefs or ideology;
3. There shall be no State religion. The public authorities shall take the religious beliefs of Spanish society into account and shall in consequence maintain appropriate co-operation with the Catholic Church and the other religious confessions”.

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Article 14-2 of the same Constitution prohibits discrimination among Spaniards on the grounds –among others– of religion: “Spaniards are equal before the law and may not in any way be discriminated against on account of [...] religion [...].”

Further, article 27-3, in which the education system is regulated at a constitutional level, establishes that “the public authorities guarantee the right of parents to ensure that their children receive religious and moral instruction that is in accordance with their own convictions”.

Spain has for centuries maintained concordat relationships with the Holy See. Following this tradition, four agreements of 3 January 1979, regulate the fundamental aspects of the situation of the Catholic Church. Their contents, respectively, are education, economic affairs, the Armed Forces (fundamentally religious assistance) and legal questions (the legal personality of the bodies that comprise the Church and the civil effects of canonical marriage). To all these, it is necessary to add an agreement of 5 April 1962, that refers to some Universities belonging to the Church; another, already mentioned, of 28 July 1976 (in which the State renounces the right to intervene in the appointment of bishops and the Church renounces certain advantages in criminal proceedings against clergy) and, lastly, the agreement of 21 September 1994 (which regulates some questions of Spanish property in the Holy Land).

On 5 July 1980, the Religious Freedom Act was passed. In what was a novelty for our legal system, this enabled agreements to be established with other religious confessions (art.7). In accordance with this provision, three agreements were passed in 1992 with religious minorities such as Jews, Muslims and Evangelicals (this group also included non-Evangelicals such as some Orthodox or Anglican churches). These agreements have the status of ordinary laws (Laws of 10 November, 1992).

There are no other specific laws with respect to religion but in numerous legislative provisions we find references to religion in relation to such questions as teaching, criminal law, tax legislation, etc.

A complete account of sources should necessarily include court rulings, as well as the decisions of the Spanish Constitutional Court, the Court of Justice of the European Union and especially the European Court of Human Rights.

Lastly, mention should be made of the Public Administration. On one hand, the process of agreements between religious confessions and various levels of government (central, regional and local) is becoming more widespread. Numerous examples could be cited but it is enough to indicate that the practical realisation of religious assistance would not be possible without them. On the other hand, the Administration plays a decisive
role in ensuring that religious communities have access to a certain level of advantages. We shall provide two examples in this regard.

Registration in a specific register confers certain rights upon religious confessions (criminal law protection, the right to open of temples, etc.): notwithstanding the above possible control by the courts of justice, the admission or not of this registration is the responsibility of the Administration. The already cited Religious Freedom Act determines that in order to enter into an agreement (and to obtain other advantages) it is necessary that the religious confession be in possession of a declaration of “conspicuous and well-established presence” (notorio arraigo) in Spanish society. In the year 2015, the Administration set the “objective” criteria necessary to have access to said declaration.

Until now we have referred exclusively to the organs of the central State but naturally our overview becomes more complicated if we include two other types of government, the regional and local. While both lack direct competencies in the area, this does not prevent them from indirectly carrying out an important role in the practical exercise of religious freedom (cemeteries, urbanism, teaching, etc.).

IV. Basic Categories of the System

I do not think that traditional concepts help to describe a complex legal model; among other reasons, these concepts lack precise meaning. If we take article 16 of the Constitution, already cited, as our only point of reference, we could say that we have before us a model of religious freedom (“freedom of… religion… is guaranteed”), in which there is no State religion (“there shall be no State religion”) and in which the State must collaborate with some religious groups (“the public authorities… shall… maintain… cooperation with the Catholic Church and the other religious confessions”). A model of religious freedom, if you like, that includes cooperation with other religious confessions and, expressly, with the Catholic Church. This being the case, it seems to me that an adequate characterisation of the model demands some further detail.

Two basic concepts govern this model: religious freedom and religious confession. The first of these is a fundamental right with the maximum level of protection. In a certain sense, this right acts to limit the level of protection provided to the religious confessions: these might receive specific treatment, only as long as this does not restrict religious freedom (and equality). The concept of religious confession, however, is not unitary and the regulation has generated different types of confessions with different
rights. This creates a pyramidal structure in which some confessions receive more favourable treatment than others. Let us see how this is so.

Having established its position via international treaties, the Roman Catholic Church sits at the very top of the model. It enjoys various advantages which are not afforded the remaining religious confessions (the obligatory provision of Catholic religious teaching in government-funded schools, the possibility of taxpayers apportioning some of their taxes to the Church, the efficiency of the canonical statement of nullity of marriages, etc.).

The second level is occupied by those confessions that have signed an agreement with the State as contemplated under the Religious Freedom Act (Muslims, Jews and Evangelicals). Under certain conditions, they are able to provide religious education in non-university teaching centres and have certain tax benefits, etc.

I have already referred to the “declaration of well-established presence“. The Government has established some criteria necessary to obtain this declaration (accredited long-term presence in Spain, presence in various regions, etc.). As well as those religious confessions that have signed an agreement, another four are in possession of this declaration (Mormons, Jehovah’s Witnesses, Buddhists and the Russian Orthodox Church) and are in possession of certain rights (their ministers may celebrate marriages, they may apply for economic assistance from a certain public foundation, and they may form part of a consultative body of the Administration, the Religious Freedom Advisory Committee).

The last level of the model is occupied by those religious confessions that have been registered as such with the Ministry of Justice. These are extremely numerous and some of the advantages they enjoy are: specific criminal law protection, the right to open places of worship and to provide religious assistance in the Armed Forces.

In sum, this is a model of religious freedom in which the religious confessions are treated in different ways.

V. Legal Status of Religious Communities

The Religious Freedom Act establishes that “Churches, Faiths and Religious Communities and their Federations shall acquire legal personality once registered in the corresponding public Registry created for this purpose and kept in the Ministry of Justice“ (art.5,1). In other words, religious confessions have access to a special register that grants them legal personality. The prerequisites for registration are established by the law itself: “Reg-
istration shall be granted by virtue of an application together with an authentic document containing notice of the foundation or establishment of the organisation in Spain, declaration of religious purpose, denomination and other particulars of identity, rules of procedure and representative bodies, including such body’s power and requisites for valid designation thereof” (art. 5, 2). The Administration is thus responsible for admission or denial of the registration, and, in the case of denial, the interested parties may naturally appeal before a court of law.

It is not only religious confessions that may enrol in the register but also the entities that they create, such as territorial divisions, associations, training centres for ministers of religion, places of worship, ministers of religion, federations of various confessions, etc. In order to develop the provisions regarding the Religious Freedom Act, a recent ruling (Royal Decree 594/2015, of 3 July) regulates the register. We might note here that in more than thirty years of its existence, the criteria for admission of registrations have varied, there being periods of greater ease and others of greater restriction. In any case, more than two thousand confessional entities are currently registered.

Put simply, we could say that Spanish Law regards each religious confession as a legal person, one that receives treatment which is separate -or different- from that of other corporate entities. Some of the treatment resulting from this specific form of legal personality is favourable but, as we have already seen, it has various levels. Some rights are obtained via the declaration of well-established presence and even more are granted via the signing of an agreement. It should be noted that in all these cases, the power of Government, though subject to judicial control, is enormous; it is responsible for registration, for the regulation of the declaration of “well-established presence” and also for the possibility of entering into agreement.

Special mention must be made of the Roman Catholic Church. There are two clearly particular features; first, the Church is expressly named in the Constitution; second, the Holy See is recognised as a subject of International Law while the concordat system has been maintained. I do not believe that the mention in art.16 of the Constitution is of much real legal significance; this may be explained by historical and sociological reasons that in turn may have had political motives when the Constitution was being drawn up. In reality, I think such motives no longer exist.

In terms of legal position, the second of these features has greater significance. It could be said that, via the Holy See, the Roman Catholic Church has an international legal personality. With regard to the Spanish Church and its entities, it is the legal agreement itself with the Holy See that establishes procedures for obtaining legal personality for the various compo-
nents of the Church (art.1): the Bishop’s Conference is afforded this personality by law; dioceses and other territorial divisions are obtained by simply notifying the State; religious orders must enrol in the previously mentioned register by providing certain data; etc.

VI. Religious Communities within the Political System

It could be asserted that, from a strictly legal perspective, the religions do not play any significant role in the political system. Yet such an assertion would ignore social and political reality; it would be correct from a formalist position but would not hold true from a realist perspective.

Once again, any further explanation must inevitably turn to history. For centuries, the Roman Catholic Church directly formed part of the political system, as established by the Law. In principle, things changed radically more than forty years ago and, apart from the remnants of a Catholic confessional culture, the legal system is now to a large extent secular. If this is taken into account along with the highly rapid process of secularization (religious indifference) of society, one might arrive at the conclusion that institutional religion is irrelevant to the political system. Such irrelevance would be further illustrated by the fact that there are no political parties in some way inspired by religion.

Despite this, the Catholic Church does have a presence, not necessarily legally regulated, in political and institutional life. One example would be funerals of significant public figures or of victims of terrorist acts or catastrophes; such funerals are not just acts of the Catholic Church but also acts of State involving the highest authorities. Or there is the presence of State representatives in certain strictly religious acts, such as the processions or canonisation ceremonies of the Catholic Church. These are just examples but they reflect the continued existence of the Catholic Church as a politically relevant institution. Yet at the same time, the search for formal equality has led to other religions being granted an increasing level of participation in public acts (although this is still at a minimal level). In reality, the process is not wholly coherent: so as not to suppress the presence of the Catholic Church, the presence of other confessions is increased, at a time when society is increasingly secular.

Of a very different nature, but relevant in the present context, is the participation of religious confessions that have obtained the “declaration of well-established presence” in the so-called Advisory Committee for Religious Freedom (Royal Decree 932/2013, of 29 November), Government Advisory Body, as part of the Ministry of Justice.
VII. Culture

For historical reasons, the presence of the Catholic Church in the area of education is of great, though decreasing, importance. Yet from a legal point of view, the Church holds the same status as any other institution. Together with public colleges, we find a high number of privately-funded schools in the non-university educational system. These schools may follow an ideological or religious direction but in certain conditions they may be publicly funded. A large number of them are Catholic.

With regard to the Universities, the situation is quite similar. The only particular feature is that there are four Universities run by the Roman Catholic Church whose functions are regulated by the already cited agreement with the Holy See of 5 April 1962. Any other non-public University (Catholic or not) has its position regulated according to the ordinary laws regarding private Universities.

With respect to religious teaching in publicly-funded schools, the provision of Catholic religious instruction is obligatory as a result of the contents of one of the agreements with the Holy See in 1979. Teaching staff, materials, etc., are chosen by the Church itself while the costs are covered by the State. It is the parents of the students who decide whether or not they want their children to receive religious instruction.

The agreements of 1992 with minorities also establish that these groups’ respective religions may provide religious instruction. This is to be activated only in the case there is demand from the parents of the students. In the case of Muslims and Evangelicals, the cost of teaching staff is to be covered by the State whenever there are more than nine students applying for this instruction.

The actual status of religious instruction in the educational curriculum varies constantly in relation to the ideological direction of the government: whether it exists an optional subject, whether it is to be graded, and whether this grade counts when applying for entrance to university, etc.

At the university level, the agreements with the Holy See of 1979 contemplate the presence of Faculties of Theology in public Universities but, in practice, none of these exists. Religious studies such as Theology or ministerial training, within Catholic Universities, are officially recognised. The agreements of 1992, as well as unilateral legislation, provide a mandate for the government to make similar provision in cases where minorities possess an agreement. Such a mandate has not been acted upon.
VIII. Labour Law within the Religious Communities

In the field of Labour Law, there is no special treatment for the religious confessions.

There is a broad body of case law that refers almost exclusively to the Catholic Church and to work done by members of religious orders within the order and whether this may be legally-defined as work. But since there is no relevant legislative ruling, and as case law is far from being unanimous, I believe that it is not appropriate to refer to it here.

There is a regulation regarding teachers of the Catholic, Evangelical and Muslim religions, published as Government administrative dispositions, which is based on specific agreements (fundamentally: Royal Decree 696/2007 of 1 June).

IX. Legal Status of Clergy and Members of Religious Orders

In principle, it could be argued that there is no specific treatment or status for ministers of religion and members of religious orders. Nevertheless, these groups do have some specific characteristics that have been taken into account by the law, which does not necessarily imply that they receive favourable treatment. In first place, certain rights to social security benefits have been recognised for members of religious orders and clergy of the Catholic Church (Royal Decree 2398/1977 of 27 August and various other provisions), as well as Jewish ministers (art.5 of the Agreement of 1992), Evangelicals (Royal Decree 369/1999 of 5 March) and Muslims (Royal Decree 176/2006 of 10 February) together with the federations that signed the conventions of 1992. Recognition of rights have also been granted to the ministers of the two confessions in possession of the “declaration of well-established presence”; the Jehovah’s Witnesses (Royal Decree 1614/2007 of 7 July) and the Russian Orthodox Church of the Patriarchate of Moscow (Royal Decree 822/2005 of 8 July). Presumably the process will come to include other confessions.

In those cases where ministers of a registered confession are not Spanish, work permits will not be required as long as the activities they undertake are of a strictly religious nature (Royal Decree 557/2011, of 20 April).

With regard to the possibility of refusing to testify before a court of law, the agreement with the Holy See of 1976 establishes that in such cases the Catholic clergy will not be obliged to testify, on the ground knowledge of certain facts may be gained in the exercise of religious duties. In the agree-
ments with minorities, some formulae are established that are similar to those envisaged for doctors, lawyers, etc.

X. Finances of Religious Communities

Religious confessions receive public financing in three ways. The first, which is via direct funding, is when State funding is received without any defined final goal. The only confession to receive such funding is the Catholic Church, as detailed in one of the agreements of 1979 (and developed in the Act of 28 December 2006). More specifically, those who pay income tax may opt to direct 0.7% of this same tax to the Catholic Church (they may also direct, alternatively or cumulatively, the same percentage to other social ends as annually determined by the Government, both central and regional). It should be made clear that this is not a different tax in itself, as whatever option the taxpayer chooses, the quantity to be paid is always the same.

For religious confessions that have obtained the declaration of “well-established presence”, there is the possibility of gaining access to funds managed by a public foundation (Act of 27 December 2004). For the moment, and in practice, only religious confessions with agreements have benefitted. It should be noted that here, in contrast to the case of the Catholic Church, the taxpayer takes no decisions.

A second avenue of funding occurs when the State pays for the religious confessions’ own activities (as is the case with religious teachers in State schools and staff who provide religious assistance in hospitals, prisons, etc.). In general terms, the beneficiary of this funding is the Catholic Church, although in recent times this has grown to include two of the religious confessions that have signed agreements (Muslims and Evangelicals).

The third avenue of funding is via tax benefits. Oversimplifying, we could say that the system has developed in such a way that the Catholic Church (with a few exceptions from the past that still remain in place), and the religious confessions that have signed the agreements of 1992, are both afforded the same conditions as those enjoyed by NGOs.
XI. Religious Assistance in Public Institutions

There are basically three public institutions that offer religious assistance: the Armed Forces, prisons (to which we have to add the recent phenomena of internment centres for illegal immigrants) and hospitals.

As envisaged under both the relevant agreement with the Church and the military legislation (Royal Decree 1145/1990, of 7 September), Catholic religious assistance is provided in the Armed Forces via a canonical structure known as the military Vicariate, a personal diocese headed by a bishop responsible for all Catholic military, as well as civil employees and their families. The costs are covered by the State and staff attached to the diocese are under contract.

The system differs for members of other religious confessions. While the agreements of 1992 establish the possibility of religious assistance for such minority groups, military legislation contemplates this assistance for registered religious confessions. There are two fundamental aspects that distinguish it from the system for Catholics; on one hand, the service is not permanent, which means the interested party must apply for it, and on the other hand, its costs must be borne by the religious community itself.

The case of penitentiary establishments is not very different. Religious assistance provided by the Catholic Church is permanent and its costs are covered by public funds (Agreement of 1992 and Order of 24 September 1993). In cases where minorities are in possession of a signed agreement, the inmate must apply for the assistance and the cost is borne by the relevant religious confessions (Royal Decree 710/2006, of 9 June), although in the case of Muslims, in the event that more than nine inmates apply, the cost will be covered by the State. Registered religious confessions and those without an agreement may also provide this service (Royal Decree, 190/1996, of 9 February), naturally subject to previous authorisation from the penitentiary authorities.

The recent phenomenon of mass illegal immigration has generated the need to establish internment centres. While these centres are clearly not prisons, the system governing the inmates is not very different. Religious assistance for Catholics is regulated by an agreement with the Bishops’ Conference (12 June 2014), while the Islamic Commission, the Evangelical Federation and the Federation of Jewish Communities (4 March 2015), each have their own agreement. In all these cases, costs are assumed by the relevant confession.

With respect to religious assistance in public hospitals, there is a complete system for Catholics. This permanent and publicly-funded model is regulated by the 1992 agreements and several administrative conventions,
at a state and regional level, between health institutions and the ecclesiastic hierarchy.

Religious assistance is provided for those minority groups in possession of agreements and, in practice, it provides the ministers of these religions with freedom of access but does not provide public funding. Although there are no explicit statements to the effect, one may imagine that in practice the system employed is very similar for registered confessions.

XII. Matrimonial and Family Law

Together with civil marriage, Spanish Law provides for the possibility that certain religious forms may have civil effects. Until relatively recent times, State regulations impeded access to civil marriage and facilitated access to canonical marriage.

Currently, the Civil Code (arts.59 and 60) envisages that civil effects will not only result from Catholic marriages (as also established in the agreement with the Holy See of 1979), but also from Muslim, Jewish or Evangelical marriages (as set out in the agreements of 1992), and also from those religious confessions that have been declared to have a well-established presence.

There is, however, a relevant difference in the case of marriage celebrated according to the Canon Law of the Roman Catholic Church. It is the only case in which an ecclesiastical declaration of nullity of marriage, subject to certain State controls, will have civil effects. We find nothing similar in other religious marriages.

XIII. Criminal Law and Religious Communities

There are various types of criminal offence in which religion is relevant. It is punishable to prevent or oblige attendance at acts of worship (art.522); to interrupt or disturb acts of worship, especially if these occur in a place of worship (art.523); to commit profane acts in a place of worship that offend religious feelings (art.524); to offend religious feelings in writing or in word (art.525).

So-called hate crimes are of a different nature. These are cases in which, so to speak, damage is done to a person on the basis of a personal condition or hate is incited towards that same person for such a condition. The broad catalogue of hate crimes listed in the criminal regulations (those
XIV. Major Developments and Trends

Throughout the last four decades of Spanish Law, two great changes have had to be confronted: one political and the other sociological. Both changes, while certainly not independent of each other, have clearly taken place in the field of State regulation of the religious phenomenon.

During the regime of General Franco, which ended with his death in 1975, the Roman Catholic Church clearly held a privileged position. Not only was the Church as institution present in various State bodies but the moral values of Catholicism were also understood to be the values of the State. The remaining religious confessions, which were a very small minority and were almost all Christian, were for the most part tolerated. At the same time, practically all Spaniards considered themselves to be Catholic or at least declared themselves as such and formally acted as such. This was thus a system without religious freedom and without religious plurality.

From 1975 onwards, there was a rapid alignment of the Spanish legal system in relation to other democratic liberal countries. Human rights, equality between citizens, etc., came to be the key elements of the model. In the area that concerns us, a choice could have been made to provide equal status to religious confessions by reducing the level of advantages enjoyed by the Catholic Church. Another formula was chosen: to increase the advantages of other religious confessions. The gradual implementation of this process led to a system of various levels of favourable treatment. Under this system, absolute equalisation will only occur as result of a long-term process.

Yet if there has been important legal-political change, there has perhaps been greater social change, particularly in the area of religion. Over forty years ago, almost all Spaniards considered themselves to be Catholic, and yet in a very short time not even half of the population will identify as such. This does not mean there has been higher number of affiliations with other religions but rather an increase in the number of non-believers. The increase in believers in faiths other than Catholicism, important in relative terms though minimal in absolute terms, fundamentally has its ori-
gin in immigration. In recent times, a fair amount of immigrants have been members of Islam or an Orthodox religion, which is a completely new turn of events. But probably more important than the dramatic reduction in the number of Catholics and the slight increase in the number of other religious confessions is the fact that “Catholic values” are no longer considered, either in a real or formal sense, to be positive values by society at large. To put it another way, the secularisation of society which has taken place throughout Western Europe, has occurred at a much more rapid pace in Spain.

Certainly, treatment favourable to the Catholic Church continues to exist (such as the obligatory provision of Catholic religious teaching in State-funded public schools). Under certain conditions, some confessions are afforded similar treatment (public funding of Islamic teaching when there are ten students or more). Treatment is less favourable for some confessions (for example when the cost of Jewish instruction is borne by the religious community), while others may not receive any type of favourable treatment (Jehovah’s Witnesses). This difference in treatment may in part be explained by historical reasons and in part by the number of members of each religion.

In the area of religious legislation, I understand that there are two processes, in some ways contradictory but simultaneous, that are now occurring and that are going to increase over the next few years. First of all, an increasing number of different religious confessions are receiving treatment comparable to that of the Roman Catholic Church. Secondly, religious values in society and, inevitably, in the legal system itself, are gradually becoming irrelevant. If there has been a secularisation among “Catholics”, intuition tells me this same process is occurring among the youngest members of other religions, particularly Muslims. In the medium term, this might mean there is a certain incoherence in the model: a system that protects “religious structures” in a society that is largely indifferent to religion. This might pose problems which are theoretical (in fact, unequal treatment for non-believers) but not practical, always as long as society considers religion irrelevant. Political problems may arise when the eventual majority of non-believers cease to adopt their indifferent attitude and attempt to achieve equality-based individual treatment; that is, when they try to stop religious confessions from receiving specific treatment. No doubt this position is considered to have been resolved in the current so-
cial State but it does not seem clear to me that this State model can survive in the long term, in matters religious or otherwise.

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Textbooks
I. Social Facts

France is perceived as a “secular” country, nurturing a strict separation that relegates all things religious to the private sphere, and one whose population is seemingly indifferent to religion. In fact, the country is still imbued with a Roman Catholic culture etched with humanism, which is nevertheless being slowly eroded away.

Article 8 of the amended Law of 6 January 1978 “prohibits the processing of personal data revealing alleged racial or ethnic origin, political opinions, religious or philosophical beliefs or trade union membership of a natural person (...”). As a result, statistics on the religious affiliation of individuals are not included in the official census results of the French population. Knowledge of religious sociology in France relies on the publication of surveys.

According to an IFOP survey conducted in 2010, 64% of French people call themselves Catholic, compared to 75% in 1987. According to IFOP for the Journal du dimanche in 2011, 4% of French people claim to be Protestant, 1% Jewish and 2% to belong to other religions. As for Islam, an INED report “estimates the number of Muslims in France to be 4.1 million. 49% of them say they have a strong religiosity but only 4% define themselves as cultural Muslims, while 25% of Catholics say they are 'cultural Catholics'”. Let us note, however, that Muslims stem from communities of diverse ethnic origin with highly variable levels of religiosity.

Those “without religion” – including atheists, the indifferent and agnostics – make up nearly 25% of the population according to the 2010 IFOP survey, and 36% in 2011 according to a Harris Initiative survey. The number of people without religion is particularly high among young people: 37.5% of those aged 18-34 say that they do not belong to any religion. The number of those without religion in France is significant if compared to other European States (15% of non-believers and atheists in Spain, for ex-

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ample). The religious fervour of Catholics is not very intense, churchgoers per week number 8%, per month 9% and occasional churchgoers 31%

More recently in 2018, figures indicate weekly practice of 2% for the entire French territory and 5% in the diocese of Strasbourg. The number of Catholic priests is constantly decreasing: 32,267 diocesan priests and religious priests in 1990, compared with 11,908 in 2015. The decrease in the attachment of the French to the Catholic institution is also measured by the number of Catholic marriages (55,854 in 2015 compared to 236,300 civil marriages) and baptisms (262,134 for 800,000 births in 2015). These last two figures, much lower than those of the 1950s, cannot be explained solely by the establishment of other religions in France. They illustrate a trend towards a relative dechristianisation of France with a concentration of communities of believers in towns and cities and their increasing scarcity in rural areas. The Catholic Church is particularly affected by this phenomenon because of the virtual disappearance of the clerical network.

II. Historical Background

- General law

During the Ancien Régime, the role of the Catholic Church and that of the “Most Christian King” were intimately linked. Once crowned, the king was no longer like other laypeople. He was invested with a mission of protection towards the Church. This position, theorised by Gallicanism (which is a specific form of jurisdictionalism), conferred upon the king the exercise of temporal authority over the Church of France, including the power to recommend candidates for appointment as bishops and mitred abbots, in accordance with the Pragmatic Sanction of Bourges issued by Charles VII on 7 July 1438. Repealed by Francis I, the Pragmatic Sanction was replaced by the Concordat of Bologna in 1516, which put an end to the election of bishops by chapters and of abbots by their communities. The agreement of 1516, which remained in force until 1790, allowed the king to appoint religious dignitaries who would subsequently receive pa-

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3 La vitalité du diocèse de Strasbourg en chiffres. Situation as of 2 April 2018 (document available on the website of the Diocese of Strasbourg).
4 Statistics published by the French Bishops’ Conference, available on the CEF website.
pal investiture. During this period, the Assembly of the Clergy drew up a charter of Gallicanism entitled “Declaration of the Four Articles”. It was reinstated by Napoleon in 1801. It continued to be invoked and even applied throughout the 19th and early 20th centuries, before finally giving way to ultramontanism. The Declaration emphasises the independence of the king from ecclesiastical authority, the distinction between temporal and spiritual power and the Pope’s lack of authority over the Princes in temporal affairs.

The Revolution resulted in the secularisation of church property (Decree of 2 November 1789), the creation of a national church subsidised from public funds and integrated into the State apparatus (Civil Constitution of the Clergy of 12 July 1790) and the proclamation of freedom of conscience and worship (Declaration of the Rights of Man and the Citizen of 26 August 1789, Article 10). But the Thermidor convention brought in a strict regime of separation under the terms of a decree of 21 February 1795: non-salaried clergy, a principle of non-recognition of faiths, and the neutrality of public places.

The restoration of religious peace in France, as desired by Bonaparte, involved establishing a system of recognised faiths. It was established by the Law of 18 Germinal year X (8 April 1802, Concordat and Organic Articles) and by two decrees of 17 March 1808 concerning the Jewish faith. It was based both on the laws of the Revolution and on the provisions of the Ancien Régime, while introducing a clear break with the latter by recognising the Protestant churches (Reformed and Lutheran), and the Jewish faith, whereas the Civil Constitution of the Clergy of 12 July 1790 applied only to the Catholic Church. Religious pluralism was recognised and institutionalised, civil status and marriage were secularised, while divorce became enshrined in the French Civil Code. Faiths were controlled by the state, which paid ministers of religion and re-drew the boundaries of religious dioceses based on the map of départements and communes. The “Concordat reorganisation” finally united minds by creating a consensus that was difficult to call into question throughout the 19th century. The system of recognised religions was maintained throughout the 19th century thanks to a fragile agreement under the First Empire, an alliance of throne and altar under the Restoration (1814-1830), tensions followed by a certain cordiality under the July Monarchy (1830-1848), as well as alliances and disagreements under the Second Empire. From 1879 with the advent of the Republic of Republicans, a clearly declared anticlericalism gradually led to the end of the system of relations between the French State and religions initiated in the early 19th century. This had the effect of putting congregations and religious orders under supervision, followed by their expulsion, the
abolition of the military chaplaincy, the secularisation of teaching curricula and institutions, the abolition of faculties of theology in state universities, the secularisation of cemeteries, the restoration of divorce, the rupture of diplomatic relations with the Vatican in 1904 and, to top it all, the Law on the Separation of the Churches and the French State of 9 December 1905. Faiths became henceforth organised within a private law context. The Law of 1905 prohibits the State paying salaries and subsidising religions.

The combative laïcité implemented by the Republic of Republicans between 1880 and 1905 progressively faded away to make room for more serene and, above all, more pragmatic relations. Diplomatic relations with the Holy See were restored in 1921 and a right to scrutiny was established the same year for the benefit of the French government when appointing a diocesan bishop. Finally, from 1924, Catholic dioceses became organised as part of diocesan associations, the Catholic Church having refused to organise itself in the form of religious associations, as provided for by the Law of 1905.

- **Local law in the French Overseas Départements and Territories**

It is possible to identify three types of normative regulation applied to religions in the colonies before 1905: French Guiana (Order of 27 August 1828), the territories covered by the law of 18 Germinal year X (Réunion, Martinique, Guadeloupe) and finally those whose religious institutions had no well-defined legal regime. The introduction of the “separation” did not disturb the previous way of thinking about state-religion relations in the colonies and protectorates. The Law of 9 December 1905 was extended to the “Concordat colonies”. Currently, it applies in the départements of Martinique, Guadeloupe and Réunion. Guiana local law has been maintained. However, the legal vacuum that characterised the other territories was not immediately filled after 1905; it would take more than thirty years for the government to come up with a solution. It was only in 1939 that the Minister for the Colonies, Georges Mandel, drew up a text to provide a basic status for faiths and, where appropriate, congregations.
Following the French Revolution, Catholic, Protestant and Jewish faiths in the Rhine and Moselle départements became subject to the same regime as in “Old France” (Law of 18 Germinal year X for Christian faiths and 1808 decrees for the Jewish faith). The handing over of the départements of the Rhine and Moselle to Germany (Treaty of Frankfurt of 10 May 1871, signed after the French defeat of 1870) marked a first step towards a distinction which would become increasingly apparent between two notions of managing religions. This handover was made to the group of states forming the newly constituted Second German Reich. The départements of the East became an imperial territory (Reichsland) named Alsace-Lorraine (Elsass-Lothringen). After some hesitation, the so-called religious legislation resulting from the law of Germinal year X and the Falloux law (worship, congregation, education) was maintained.

After the return of Alsace-Moselle to France, a law of 17 October 1919 provisionally maintained the measures in force before the disannexation. Article 7 of the Law of 1 June 1924 safeguarded the law on religious communities and congregations. A Council of State notice dated 24 January 1925 confirmed Article 7 of the 1924 Law, meaning “that the Concordat regime, such as it results from the Law of 18 Germinal year X, is still in force in the Rhine and Moselle départements”.

Alsace and Moselle were annexed to the Third German Reich in 1940 de facto in the absence of an appropriate international act endorsing this conquest. German laws and regulations of the time were introduced en masse as a result. In religious matters, the 1801 Concordat and the 1902 convention on establishing a faculty of Catholic theology were unilaterally denounced.

During the liberation, the order of 15 September 1945 on the restoration of Republican legality re-established pre-1940 local legislation. The system of religious communities, the congregations, the status of the faculties of theology and religious education in state schools, as well as the status of denominational primary schools were all restored in the three départements of the East to form part of Republican legality.

III. Legal Sources

The undisputed sources of constitutional law on religions are contained in Article 1 of the Constitution of 4 October 1958: “France is an indivisible, secular, democratic and social republic. It ensures equality before the law
for all citizens without distinction of origin, race or religion. It respects all beliefs”. Article 10 of the Declaration of the Rights of Man and of the Citizen states: “No one shall be disturbed by his or her very religious opinions, provided that their manifestation does not disturb the order established by law” and the preamble to the Constitution of 3 October 1946 “No-one may be harmed in his or her work or employment by reason of his or her origins, opinions or beliefs” (§ 5), “The organisation of free and secular public education at all levels is a State duty” (§ 13). It is for the Constitutional Council to identify the fundamental principles recognised by the laws of the Republic (“PFRLR”) that have constitutional value. They are the result of a homogeneous legal tradition and must be included in pre-1946 republican legislation. The Constitutional Council identified five PFRLR more or less related to the law of religions: freedom of education, freedom of conscience, respect for privacy, freedom of association, freedom of communication of ideas.

The Council of State, following the shock and uncertainties of the difficult separation of 1905, has traditionally banned any negative understanding of laïcité. In its public report of 2004, it recalls that the principle of laïcité implies state neutrality, religious freedom and pluralism. The Chairman of the Constitutional Commission stated in 1946: “Laïcité is not a philosophy or a doctrine, but the coexistence of all philosophies and doctrines, the respect for all beliefs”. If the constitutional texts give no definition of laïcité, the Constitutional Council in a recent decision specified for the first time “that the principle of laïcité is among the rights and freedoms that the constitution guarantees; that the result is neutrality; that it follows that the Republic does recognise any faith; that the principle of laïcité imposes respect for all beliefs, equality of all citizens before the law without distinction as to religion and that the Republic guarantees free religious practice; that it implies that the Republic does not remunerate persons of any faith”. Thus, the principle of laïcité excludes any regime of recognition and prohibits paying salaries to religious personnel, but without prohibiting public subsidies to religions. The ban on subsidising religions enshrined in the Law of 9 December 1905 has solely legislative value.

There is no single law in France that organises the system of religions throughout French territory. In addition to the general law on religions laid down by the Law of 9 December 1905 which applies to most of France, the legislator has maintained local rights: local law on religions in Alsace-Moselle governed by the Law of 18 Germinal year X; local law on

religions of the Department of Guyana (Order of 27 August 1828); local law on French Overseas Territories governed by the Mandel decree-laws of 16 January 1939 and 6 December 1939 and, for French Polynesia only, the Decree of 5 July 1927 governing the Protestant faith.

**IV. Basic Categories of the System**

Relations between the French State and religions in France are characterised on the one hand by the existence of a plurality of statuses of the faiths. The law on French faiths is not monolithic, it is pluralistic especially because of pragmatic public policies that have enabled the maintenance of sometimes paradoxical systemss, established by colonial policies, geographical and cultural differences and the vicissitudes of history. In addition, state co-operation with faiths is selective. Only religious denominations in tune with common values benefit from support mechanisms, in particular tax exemptions provided for in the French Tax Code. Conversely, groups whose religious practice is considered excessive and contrary to public order fall under specific legislation, as evidenced on the one hand by the Law of 12 June 2001 to strengthen the prevention and repression of sectarian movements violating human rights and fundamental freedoms and, on the other hand, the Law of 15 March 2004 governing, in application of the principle of laïcité, the wearing of symbols or clothing denoting religious affiliation in state primary and secondary schools, and the Law of 11 October 2010 prohibiting concealment of the face in public. There exists in this respect an agreement that transcends traditional political divisions. Finally, although freedom of religious organisation or institutional freedom of faiths is recognised as an extension of freedom of religion, allowing religions to establish religious organizations based on their self-understanding, it does not grant specific rights to religious groupings. Strong neutrality, freedom of organisation of faiths confined to worship and the spiritual, a pragmatism illustrated by a plurality of statutes of religions and the will to integrate religious groups into the common values of society, constitute the pivotal elements of the French system of relations between the state and religions.

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V. Legal Status of Religious Communities

- General law

The Law of Separation of 9 December 1905, which applies to most of French territory, does not enshrine state indifference towards churches and religions. Public authorities do not disregard organised religions which are groupings in society, like trades unions and associations of people representing non-governmental bodies. On the contrary, the legislator has set a legal framework facilitating the organisation and support of faiths. Religious associations in the Law of 9 December 1905 (Title IV) – created according to the model for associations in the Law of 1 July 1901 – represent an associative form adapted to the exclusively worship-related aims of religious groupings. The Law of 1905 substitutes the status of recognised faiths in public law established by the Law of 18 Germinal year X with an organisation of faiths under a private law regime with non-differentiated treatment of faiths.

Under the terms of Articles 18 and 19 of the Law of 1905, religious associations are required to have an exclusively worship-related nature. There is therefore – unlike associations formed under the Law of 1901 – no contractual freedom to define their purpose. This limitation to contractual freedom also applies to the status of associates, which must be domiciled in the religious district represented by the association\(^7\), and to the number of associates, 7-25 depending on the numbers of residents in the communes concerned. Recognising the status of religious association, with all the benefits attached to this status – which includes the ability to receive gifts and bequests exempt from duties since 1942\(^8\) and the right to benefit from tax exemptions and tax reductions comparable to those granted to associations of public utility – falls under the responsibility of the administration. The Council of State sets out three conditions to qualify for the status of religious association: the association must represent a community of belief referring to a supernatural purpose\(^9\); its purpose must be exclusively religious; its activities should not undermine public order\(^10\).

The system of religious association is, however, flawed by an ambiguity which bears on its worship-related purpose. Articles 18 and 19 of the Law

\(^7\) Decree of 16 March 1906.
\(^8\) Law of 25 December 1942.
\(^9\) Council of State, 17 June 1988, Union of Atheists.
\(^10\) Council of State, Opinion, 24 October 1997, no. 187122.
of 9 December 1905 provide that associations be formed to support costs, maintenance and the public practice of religion. The practice of worship thus includes both its physical aspect and its spiritual aspect, which has generated opposition from the Roman Catholic Church\footnote{Encyclical \textit{Vehementer nos}, 11 February 1906.} for whom the law of separation fails to comply with the constitution of the Catholic Church and more precisely episcopal authority, by assigning administration and supervision of the faith to an association of laypeople. The Catholic Church, unlike other recognised religions, has therefore refused to create religious associations. To escape this impasse, it was appropriate to find a compromise by creating associations both conforming to the Law of 1905 and compatible with the hierarchical constitution of the Catholic Church. Model statutes for diocesan associations were submitted by the government including the opinion of three jurists who, on 7 April 1923, found them to conform to the Law of 1905. A notice of compliance was then issued by the General Assembly of the Council of State on 13 December 1923. These model statutes were approved by the Holy See on 18 January 1924 by means of an encyclical (\textit{Maximam gravissimamque}) after negotiation with the French government and on the basis of a \textit{modus vivendi} qualified as “an international agreement in simplified form”. Unlike the religious association, the diocesan association has a restricted purpose. Incorporated as part of a diocese, it is intended “to meet the cost and maintenance of the Catholic faith under the authority of the bishop, in communion with the Holy See and in accordance with the constitution of the Catholic Church”. The 1923 model statutes provide for only one association per diocese. It is created solely upon the initiative of the bishop\footnote{Emile Poulat, \textit{Les diocésaines}, Paris, La Documentation française, 2007.}.

The representative body of the Muslim faith in France is the French Council of the Muslim Faith (\textit{Conseil Français du Culte musulman (CFCM)}), which has a status\footnote{Status of the French Council of Muslim Worship.} based on the common law on associations (Law of July 1901). It is a union of associations that brings together the Regional Councils of the Muslim Faith (\textit{Conseils Régionaux du Culte Musulman (CR-CM)}), also incorporated as associations governed by the Law of 1901 and federations of associations whose purpose it is to manage and invigorate Muslim places of worship and mosques. Thus, organisations representing the Muslim faith, in application of their status, belong to 1901 associations, even if some of the local mosque associations are organised within the framework of religious associations. Avoiding a religious association
in the representation of Muslim faith seems to stem from the desire to distinguish CFCMs/CRCMs from Muslim federations. The former are entrusted with tasks of an essentially administrative nature, the latter with supervision of activities related to doctrine and theology. However, this architecture was complemented in 2018 by the creation of a national Muslim religious association responsible for the worship aspects of Islam at national level.

- Local laws

In local law in Alsace-Moselle, four faiths are organised within the framework of their public law status set by the French State (statutory faiths), while respecting the constitution specific to each religion. Other (non-statutory) faiths are organised under private law, referring to the local law on associations. The Catholic dioceses of Metz and Strasbourg, the Union of Protestant Churches in Alsace and Lorraine (UEPAL), as well as the Jewish faith, are organised by public authorities in the context of religious districts to which are assigned ministers of religion whose salaries are paid by the French State and whose property and in some cases the practice of worship are managed by public religious institutions, in application of the Law of 18 Germinal year X (Concordat and Organic Articles for Christian faiths) and the Order of 25 May 1844 (Jewish faith).

Religions in Guiana are organised according to an Order of 27 August 1828 for the Catholic faith, and the decrees of 16 January and 6 December 1939 for religious missions and the Law of 1 July 1901 for faiths wishing to benefit from a basic status. Catholic ministers of worship (bishop, officiating priests) are remunerated by the départements in accordance with Article 33 of the Law of 13 April 1900, which makes the départements responsible for this expenditure. The département of Guiana also provides for the maintenance of churches and presbyteries assigned to the Catholic faith.

Finally, the Mandel Decree (as amended) of 16 January 1939 has structured the practice of worship in French Southern and Antarctic Territories, in New Caledonia since 1943, in French Polynesia since 1951, in Wallis and Futuna Islands since 1948 and in Saint Pierre and Miquelon since 1956. The Law of 9 December 1905 does not apply in these territories where funding faiths is allowed. So, in Saint-Pierre and Miquelon, emolu-

ments for the few Catholic priests are subsidised by the Conseil général of the territorial collectivity.

- Religious congregations

Congregations are groupings of people linked to a faith, pursuing a community life and commitment inspired by a rule of life or statutes. Congregations can be recognised by the French State pursuant to a procedure established by general law (Law of 1 July 1901, Title III, as amended) or local law in Alsace-Moselle (Law of 2 January 1817 and Decree of 31 January 1852). There is currently no longer a difference between the two systems as regards the procedure. Applications for recognition, accompanied by the statutes of the congregation and an attestation from the religious authority on which the congregation depends, are addressed by the leader or the superior of the community to the Ministry of the Interior. Congregations recognised by decree enjoy extended capacity to receive donations and bequests and benefit from tax exemptions. They may perform acts of civil life accessible to legal persons. In addition to Catholic congregations, Protestant and Buddhist congregations have been recognised by the French State.

VI. Culture

- Religious education

The right to the transmission of faith is one of the components of freedom to believe and to practise one's religion. The constitutional principle of laïcité does not prohibit public authorities from facilitating religious education within the public service of education. On the contrary, the State must take all appropriate measures to ensure religious freedom and religious instruction for students in state education. However, the conditions for implementing religious education are diverse on French territory. Indeed, laws passed at the end of the 19th century make religious education a private matter deriving from parents' free choice, but they do not apply in the three Eastern départements (Haut-Rhin, Bas-Rhin, Moselle), where religious education is an integral part of curricula in primary and secondary schools.

15 Article L. 141-2, French Education Code.
In general law on education, religious education must be provided outside schools for state primary institutions. One day a week apart from Sundays, these schools allow parents wishing to do so, to give their children religious instruction.\(^{16}\) For state secondary education (collèges, lycées), a statute for chaplaincies was defined by a law of 31 December 1959 and a decree of 22 April 1960. The establishment of a chaplaincy in a state secondary school inside or outside the establishment is subject to a request by the parents of students made to the head of the school. The latter forwards the file to the rector of the académie who makes the decision to accept or refuse the creation of a chaplaincy; the latter has no organic link with the state school.\(^{17}\) These chaplaincies have mainly been organised for Catholic students and to a lesser extent for Protestant students. No Muslim chaplaincy exists in mainland France.

In Alsace-Moselle local law, confessional religious teaching as part of school curricula is provided to pupils who are members of one of the four statutory religions (Catholic, Protestant Reformed, Protestant Lutheran, Jewish), in accordance with the Law of 15 March 1850 (for primary schools) and the Order (as amended) of 13 July 1873 (for secondary schools). Religious education, the content of which is determined by the relevant religious authorities, must be organised by public authorities; students may be exempted at the request of the parents. Religious authorities present candidates for nomination for teacher of religion posts to the school management. In secondary schools, Catholic and Protestant statutory religions have – in the absence of enrolment of students in denominational religious education classes – created, with the agreement of the administration, courses on religious awakening and religious culture which are open to all pupils interested. Inter-religious teaching courses are being trialled.

- **Private primary and secondary education**

Private education of a denominational nature is guaranteed by the principle of freedom of education which was made part of the constitution in 1977.\(^{18}\) Opening a private school is conditional on making a declaration. Conditions relating to the age and ability of teachers and those relating to

\(^{16}\) Article L. 141-3, French Education Code.

\(^{17}\) Article L. 141-4, French Education Code.

\(^{18}\) CC, no. 77-87 DC, 23 November 1977.
the premises are laid down in the French Education Code\textsuperscript{19}. The codified Debré Law of 31 December 1959 allows private primary, secondary and technical institutions to enter into a contract with the State. Contracting with private primary and secondary schools depends on the budget allocated annually to private education\textsuperscript{20}. In fact, the proportions relating to private education (20\%) and state education (80\%) have been fixed and are now evolving only on the periphery. Contracts agreed with private institutions entail conforming to the rules governing the teaching, organisation and functioning of public institutions, particularly in terms of the curricula. The French Education Code provides for the private institution to keep its own character, which is more often than not confessional, but must provide instruction while respecting pupils’ freedom of conscience. Teachers are held to a duty of confidentiality and respect for the intrinsic character of the institution. Being linked to a public service implies that all children have access to these institutions without distinction of origin, opinions and beliefs. The law establishes two categories of contract: simple contracts and contracts of association; in the latter case, alignment to public institutions is strengthened\textsuperscript{21}. The teaching curricula in these establishments are delivered according to the rules of state education and the teachers are remunerated by the French State. With schools under simple contract, teachers are salaried by their institutions, but via a subsidy paid by the state to the latter. No subsidies are paid to these institutions for other categories of staff. The operating expenses of the establishments under contract of association are assumed by public authorities under the same conditions as those of the corresponding classes in state education.

Private institutions which are not under contract are subject to checks by the inspector of the académie (layout of premises, health and safety, minimum standards of knowledge) and operate freely. Generally, their courses prepare students for diplomas awarded by the State and, with some exceptions, are aligned to the curricula of the latter. Following the decrease in the number of non-contracted establishments, state control of these establishments was strengthened by Law no. 2018-266 of 13 April 2018.

\textsuperscript{19} French Education Code, art. L. 441-1 \textit{et seq.}
\textsuperscript{20} French Education Code, art. L. 442-14.
\textsuperscript{21} French Education Code, art. L. 442-33 \textit{et seq.}
The freedom of higher education established by the codified law of 12 July 1875 sets out the conditions for the creation, organisation and functioning of private higher education institutions, including free theological faculties. The opening of an institution to be administered by at least three persons is subject to a declaration to the rector in the main town of the Académie, to the state representative in the département and to the public prosecutor of the court in the jurisdiction or to the public prosecutor. These institutions may not take the name of a university following a law of 18 March 1880. Similarly, in accordance with the Law of 1875, they may be called a free/independent faculty, but not a faculty.

It is currently possible to list nearly 17 faculties of theology in France placed under the regime of the law of 12 July 1875: seven faculties of Catholic theology: the Centre Sèvres – Jesuit Faculty of Paris, the Faculty of Theology of the Cathedral School of Paris and the five faculties of theology placed in Catholic institutes (Paris, Lyon (two), Toulouse, Lille, Angers) provide university level theological teaching; five faculties of Protestant theology: the free theological faculties of Montpellier and Paris unified within the Protestant Institute of Theology of the United Protestant Church of France, the Independent Reformed Theology Faculty of Aix-en-Provence, the Independent Evangelical Theological Faculty of Vaux-sur-Seine and the Adventist Theological Faculty of Salève; one faculty of Orthodox theology – St. Sergius Orthodox Theological Institute – which was created shortly before the Second World War by Russian Orthodox emigrants; and the Séminaire Israélite de France, training rabbis and officiating ministers. Created thanks to state funding in 1829-1831, it has since been supported since 1905 by the Israelite Central Consistory. Similarly, several Islamic science institutions are claiming the status of declared private higher education institutions: the European Institute of Human Sciences (EIHS) on two sites close to the organisation Muslims of France which is linked to the Muslim brotherhood; the Ghazali Institute (Great Mosque of Paris) close to the Algerian government; and the Free Faculty of Muslim Theology in Strasbourg, created by the Dyanet/Ditib.

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23 Adventists are part of the Protestant Federation of France.
Free faculties have the capacity to award degrees, but these are not recognised by the State. The state monopoly on degrees and diplomas was established by the Law of 18 March 1880 on freedom of higher education. For Catholic faculties awarding degrees authorised by the Holy See, equivalence with French diplomas may be determined by the ad hoc committee of the public university concerned when applying for student enrolment, in accordance with the agreement signed between the French Government and the Holy See in 2008. In the départements of the Rhine and Moselle, the two faculties of Catholic and Protestant theology of the University of Strasbourg and the department of Catholic theology of the University of Lorraine (Centre autonome d’enseignement et de pédagogie religieuse) under local law are governed by ordinary university law, subject to the provisions of the agreements made between the French State and the Holy See.

VII. Labour law within the religious communities

Employees of institutions and companies and (cultural, charitable, social, hospital, educational) organisations under the supervision of a religious grouping are considered to be “employees of a business with a specific ethos” and as such are required to show a certain loyalty towards the latter. The notion of a company with a specific ethos or affinity is essentially used by doctrine. Case law, for its part, mentions “companies with ideological ethos” or else “the essential purpose of the company”. The purpose of such undertakings is to defend and promote a doctrine or philosophical, political, or religious ethic. Businesses can also fall into this category: stores selling religious articles or “confessional restaurants” (those providing food meeting the dietary rules of a particular faith), for example. The company with an ethos favours that which conforms to the ideological goals that it has set itself.

A decision by the Social Chamber of the Court of Cassation dated 17 April 1991 (Painsecq c/ St. Pius X Fraternity) tends, however, to limit viola-
tions of privacy of employees working for companies with a specific ethos. The fact of privately adopting conduct contrary to the “ethos” of the company, in this case its religious rules, is not sufficient grounds for dismissal. Only objective behaviour constituting disruption in the company may be invoked as grounds for dismissal. The Court of Cassation tends not to consider that the employee's behaviour in their personal life is just cause for dismissal. Moreover, case law sets a hierarchy among employees purveying this ethos: some are not bound to a community of thought and faith due to their role. This relates, e.g. to employees fulfilling physical tasks, who have no direct contact with the followers of a religion and therefore cannot exercise any influence over them.

VIII. Legal Status of Clergy and Members of Religious Orders

An employment contract may be formally made between personnel exercising a pastoral or worship-related activity and religious authorities, so labour law applies in this case. The Catholic Church has retained this solution for laypeople exercising a pastoral function, the Jewish faith for some rabbis too. In addition, most Muslim religious officials, with the exception of imam functionaries seconded by a foreign administration, hold an employment contract. They often carry out socio-educational supervision activities in parallel with cultural duties.

On the other hand, when the legal relationship between the individual – in this case the minister of worship – and the religious authority is not formally qualified, case law considers that religious activity based on a spiritual commitment cannot, by itself, be analysed as an employment contract. Neither the pastor nor the priest concludes a contract of service with respectively a religious association and a bishop, for the exercise of their spiritual duties. In this case, the judge, respectful of the principle of neutrality, refused to characterise the links resulting from the constitution of the religion concerned in the absence of any objective or subjective elements of the contract of employment: lack of relationship of subordination; activity of non-professional nature; absence of remuneration in return for work undertaken; intention of the parties to give the activity another characterisation than that of an employment contract due to the spiritual purpose of the undertaking. The Court of Cassation confirmed the exclusion from labour law of religious commitments, but within a restrict-

26 Cass. Ch. civ. 23 April 1913 and 24 December 1912.
ed scope reserved for members of a religious congregation or of an association of worshippers and working for the benefit of the latter. Respect for freedom of religious organisation is in this case combined with a supervisory power exercised by public authorities.

The French State does not intervene in the appointment of ministers of worship in the separation regime in accordance with the Law of 9 December 1905. However, this principle includes mitigations. The Holy See therefore grants a right of intervention to the French government when appointing bishops on the French mainland. This right to object is the result of a May 1921 note addressed by Cardinal Secretary of State to the French Government's chargé d' affaires extraordinaire for the Holy See. In addition, the appointment of chaplains, whether volunteer or paid (army, prisons, hospitals), assumes the agreement of both religious and civil authorities.

Under local law in Alsace-Moselle, the authorities and ministers of the four statutory religions are governed by a statute laid down by a local law of 15 November 1909 and, for employees of the secretariats of the higher authorities of the same faiths, by a local law of 20 May 1911. Ministers of religion and employees of secretariats do not have the status of public servants: they are agents of public law who also have no obligation as regards hierarchical obedience and no duty of confidentiality towards public authorities.

The procedures for appointing the authorities, ministers and secretarial staff of the four recognised faiths vary according to the importance of the role: direct appointment, government approval and free appointment.

There is no ineligibility or incompatibility of roles for all ministers of religion in any field whatsoever, including jury duties. Ministers of religion are in this respect “ordinary individuals”.

IX. Finances

Article 2 of the Law of 9 December 1905 provides that “the Republic does not recognise, nor salary, nor subsidise any faith...”. This provision, the initial objective of which was to abolish the religious affairs budget, i.e. state remuneration for ministers of recognised religions and the distinction between recognised and non-recognised faiths, included many exemptions, some laid down by the Law of 1905 itself. Thus, paragraph 2 of Article 2 of

27 Cass. social, 20 January 2010, no. 08-42.207.
the Law of 1905 provides that “expenditure for chaplaincy intended to en-
sure the free exercise of worship in public institutions such as primary and
secondary schools, hospices, asylums and prisons may however be listed”. Freedom of worship prevails in this case over the principle of non-subsidisation when members of a religious grouping are located in a closed envi-
ronment (boarding school, prison, hospital) and cannot reach a place of
worship.

On another level, Article 19 of the Law of 1905 declares that “amounts
provided for repairs to buildings assigned for public worship are not con-
sidered to be subsidies, whether or not the former are listed as historic
monuments”. A law of 13 April 1908 added a new subsection to Article 13
of the Law of Separation, providing that “the State, départements and com-
munes will be able to commit the expenditure required for the mainte-
nance and conservation of buildings of worship when their ownership of
the latter is recognised in law”. Almost all buildings of worship are prop-
erty of the French State or communes and are legally assigned to the practice
of worship. Finally, Article 19 (as amended) of the Law of 9 December
1905 authorises public subsidies for work to buildings of worship owned
by religious associations, whether or not they are listed as historic monu-
ments. Besides these examples, there exists an instrument authorising par-
ticipation by public authorities in the construction of new buildings of
worship: the administrative emphyteutic lease. This mechanism to aid
construction, secured by Council of State case law, helps local authorities
rent out to religious associations a building plot intended for the installa-
tion of a place of worship. This particularly advantageous agreement for re-
ligious associations provides, however, for the land and buildings to be re-
turned to the public authority at the end of the lease. At the end of the
lease, the status of the building will therefore be fragile. Built after the Law
of 9 December 1905, it will not be able to be incorporated into the public
domain of the commune.

Finally, given the constant deficit of CAVIMAC health insurance and
retirement funds for ministers of worship, established by a law of 2 Jan-
uary 1978, the French Social Security Code has provided that the balance
of this fund would be assured by a contribution from the general
scheme.

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28 Article L 1311-2 CGCT.
29 CE ass., 19 July 2011, Mme Vayssière.
30 CSS, art L. 382-22.
Recent Council of State case law emphasises that there is generally no obstacle to funding an activity or equipment needed for worship insofar as there is a specific local interest or the need to integrate a portion of the population into the national community. In this case, it is not the religious activity that is supported, but the interest it represents for the public community concerned. Religious and diocesan associations also benefit from a very wide range of tax exemptions, as do associations of public utility: exemption from business taxes, corporate tax at reduced rates, relief from duties on the free transfer of assets (notarised donations and bequests), tax exemption on manuals gifts, deductibility for donors of the amount of their donations made to religious institutions, exemption from land tax on properties built for buildings of worship, and exemption from housing tax.

In local law on faiths in Alsace-Moselle, financial support for religious activities, institutions and personnel is characterised by the obligation of the French State to pay ministers of the four recognised or statutory religions whose positions were provided for in the Ministry of the Interior budget (1,397 posts in 2018) and the obligation for communes to balance the budgets of local or parish public religious institutions (Israelite consistories, Catholic fabriques and Presbyterial Councils), and provide accommodation for priests, pastors and rabbis or, failing this, a housing allowance.

X. Spiritual Assistance in Public Bodies

The right to spiritual assistance in institutions restricting the movement of users (boarding schools of educational institutions, hospitals, prisons) is enshrined in Article 2, paragraphs 1 and 2, of the Law of 1905. Military chaplaincy is organised in accordance with a law of 8 July 1880 and subsequent legislation.

The administration may fund chaplains in hospitals, prisons and boarding schools and is required to remunerate army chaplains, the number of whom is determined by the legal texts. Chaplains in boarding schools of educational institutions have never perceived [received?] benefits in compensation for performing their duties. Places of “spiritual welcome” have, moreover, been created in a number of establishments that fulfil a mission

31 CE ass., 19 July.2011, nos. 320796; 308544; 308817; 313518; 309161.
of general interest or which are of a public nature (retirement homes, airports).

Prison chaplaincy falls under the Code of Criminal Procedure; Article R. 57-9-3 stipulates that “each detainee must meet the requirements of their religious, moral or spiritual life. Upon arrival in the establishment, the person is informed of their right to receive a visit from a minister of religion and to attend religious services and worship meetings organised by persons authorised for this purpose”. As such, chaplains are appointed by the administration based on a proposal from the national chaplain of prisons and receive a lump-sum allowance. They may be assisted by volunteer chaplains who are approved by the administrative authority. Chaplaincy status is available to all religions, including Jehovah’s Witnesses.

In hospital establishments, the organisation of chaplaincies falls to the head of each institution. A circular of 20 December 2006 determines a number of rules. It recalls that the organisation of chaplaincy services at hospital is a legislative obligation. A patient must be able to follow the precepts of his or her religion, while respecting the freedom of others: any proselytism is prohibited. Chaplains are responsible for ensuring worship and assisting patients. Their numbers are determined by management boards in line with the importance of the establishment. Depending on the case, chaplaincy may be provided on a temporary or permanent basis by chaplains recruited as contract workers or else by volunteer chaplains. They are appointed by the heads of the institutions upon proposal by the religious authorities. The 2006 circular applies in Alsace-Moselle for the recruitment of all chaplains, whether they belong to a statutory or non-statutory faith (recognised or non-recognised faith).

The Law of 8 July 1880 gives a status to military chaplaincies by creating permanent services, which was not previously the case. A decree of 1 June 1964, as amended in 2005, 2008 and 2011, and an order of 15 June 2012 determine the system of military chaplaincy. Chaplains of various faiths (Protestant, Catholic, Jewish and Muslim since 2005) are assigned to military establishments as well as to mobilised forces. Military chaplains tasked with ensuring “religious support for defence personnel who so wish” are contract workers under public law with the rank and pay of an officer: lieutenant, captain and lieutenant colonel for chief chaplains, but with no

32 CPP article D 439.
34 Circular of 5 September 2011 on the charter of chaplaincies in hospitals.
correlation to the military hierarchy. Chief chaplains are appointed by the Minister of the Armed Forces from among the candidates proposed by each faith. Other chaplains are appointed by the Minister of the Armed Forces upon a proposal by the chief chaplain.

The Decree of 3 May 2017 on military, hospital and prison chaplains and their civil and civic training requires chaplains paid by public authorities to hold a university degree in civil and civic training recognised by the ministries concerned. The content of the diploma courses is structured around training in laïcité and republican institutions.

XI. Religion and Family Law

French law has recognised only civil marriage since the French Revolution. A law of 20 September 1792 permanently removed from parishes their management of civil status. To mark properly the distinction between civil and religious, Article 433-21 of the French Penal Code sanctions ministers of religion who habitually perform religious marriage ceremonies prior to delivery of an act of civil status. Civil marriage in France is not subject to any religious precepts and anything with a religious connotation brought to the attention of the judge in family law is considered to have no legal basis. Everyone is free to marry, despite religious commitments (priestly celibacy or vow of chastity) or theological positions of the various faiths (ban on same-sex marriage, for example). The civil courts sanction the intrusion of religious elements infringing the will and the freedom of individuals to engage in marital links. As with any legal act, marriage may be annulled if the conditions laid down in law have not been met. Article 180 of the French Civil Code prohibiting the exercise of a constraint on the spouses applies particularly to marriages arranged for religious reasons in some communities; it also provides that being mistaken about the essential qualities of one of the spouses, in relation to their religious situation, for example, may constitute a case for the marriage to be declared null and void. In the context of matrimonial life, each spouse retains their freedom of conscience and religion. Article 212 of the Civil

35 Inter-ministerial decree of 5 May 2017 on civil and civic training diplomas taken by active military chaplains and hospital and prison chaplains and establishing the procedures for drawing up the list of such training courses.
36 CA Versailles, 15 June 1990.
38 Cass ch reun, 24 April 1862; CA Douai, 17 November 2008.
Code establishes an obligation of mutual tolerance, freedom of belief is an illustration of the respect that spouses mutually owe one another. Each spouse has the freedom to have or not to have a religion, to practise or not to practise it. But this principle encounters limitations when this freedom infringes obligations arising from marriage and renders continued co-habitation intolerable: food imposed by religious convictions; frequent absences to attend spiritual training; rhythm of life determined by beliefs; disputes regarding the use of contraception and abortion. The evolution in French law on divorce is marked by a decline in the influence of religious rules and in particular the principle of the indissolubility of marriage advocated by the Catholic Church. The Court of Cassation recognised in 1991 a right to request divorce as a public policy matter. In the context of divorce, the religious element is confined to the supposition of excessive religious feeling which may constitute misconduct within the meaning of Article 242 of the Civil Code.

XII. Penal Law and Religion

French law protects religion in criminal law by sanctioning defamation and insults against religion and by protecting the practice of worship. Ministers of religion are subject to specific rules, particularly with regard to mandatory secrecy or confidentiality. Finally, sectarian aberrations are subject to the full weight of the law.

Publicly provoking hatred, discrimination or violence against individuals or groups of persons due to their membership or non-membership of a specific religion is an offence. Articles 32 and 33 of the Law of 29 July 1881 forbid publicly insulting and defaming people or groups of people due to their religion. Article 32 applies to all religions, including those designated as “sects”. Insults and non-public defamation are punishable under article R. 625-8 and R. 625-8-1 of the French Penal Code.

Offences corresponding to blasphemy are no longer envisaged by French law. Article 166 of the local Penal Code in Alsace-Moselle, creating an offence of blasphemy, has been repealed.

39 French Civil Code, art. 203-211.
40 CA Caen, 5 January 2006 and CA Bordeaux 7 June 1994.
41 French Civil Code, art. 229-1 et seq.
43 CA Paris, 3 June 1997.
44 Law no. 2017-86 of 27 January 2017 on equality and citizenship.
A specific offence of impeding the practice of worship that applies to all
religions was created by Article 32 of the Law of 9 December 1905. These
disorders must have entailed an impediment, a delay or an interruption of
religious practice, i.e. all religious acts performed by a minister of religion
in a place of worship including a catechesis meeting organised in a church
vestry. In local law in Alsace-Moselle, Article 166 of the local Penal Code
forbids disruptions to religious worship in public.

Article 35 of the Law of 9 December 1905 forbids speeches and writings
publicly distributed by ministers of worship calling on people to resist local
laws or acts by local public authorities. Furthermore, Article 34 of the
same law forbids ministers who have insulted or defamed a citizen in
charge of a public service in a place where worship is exercised publicly.
Similarly, Article 130 a) of the local Penal Code in Alsace and Moselle
forbids ministers of worship from making statements that constitute a breach
of the peace.

The Penal Code (Article 226-13) forbids the disclosure of information of
a confidential nature by a person entrusted with it either by status or by
profession or due to a temporary role or assignment. It is accepted in case
law that ministers of all faiths are – by status or by profession – custodians
of the secrets confided in them. Ministers of worship may have direct ac-

tess to information covered by secrecy, by confession or confidences or
even indirectly due to deductions or information collected by a third par-
ty. The Caen Criminal Court limited the scope of the duty of secrecy in its
judgment of 4 September 2001. Here it related to information obtained
from the mother of a child sexually abused by a priest and disclosed by a
vicar general to his bishop. As the priest was not the original recipient of
the confidence, the judges considered that it was not a confidence covered
by professional secrecy. If the French Penal Code provides a certain num-
ber of obligations to denounce criminally sanctioned violations, including
sexual abuse inflicted on minors, it does however exclude from its scope
the obligation to denounce those who are custodians of a professional se-
cret. In such cases, the decision to denounce is left to the internal forum
of persons subject to secrecy.

Article 433-21 of the Penal Code forbids the church minister from pro-
ceeding in customary manner to celebrate a religious marriage without

45 Cass crim, 6 November 1909, Public Prosecutor, CA Amiens c/Waguet.
47 Cass crim, 4 December 1891, Fay.
48 French Penal Code, art. 434-3.
49 French Penal Code, art. 434-1, art. 226-14.
having seen the marriage certificate previously issued by the state registrars. Law no. 2001-504 of 12 June 2001 reinforces the prevention and repression of sectarian movements infringing human rights and fundamental freedoms. It defines a sectarian movement as a movement which pursues activities aiming to create, maintain and exploit the psychological or physical hardship of persons engaged in such activities. The Law of 2001 expanded the scope of fraudulent abuse of the state of ignorance or weakness. There are also criminal penalties imposed on groups when abuse of weakness has been committed on their behalf\textsuperscript{50}.

Religious discrimination which consists of a difference in treatment between individuals due to their convictions, their religious belonging or non-belonging is, in French law, not the object of repression according to a uniform regime. It falls within the Penal Code (Article 225-12 \textit{et seq.} and 432-7), Labour Code (Article L. 1131-1 \textit{et seq.}) and Law no. 83-634 of 13 July 1983 for administrative law. Finally, Article 84 of the Law of 29 July 1881 on freedom of the press sanctions incitement to discrimination.

**XIII. Major Developments and Trends**

Legislation, case law, administrative practices and, more generally, public policies in France have been characterised in recent years both by a withdrawal of the State with regard to managing anything religious and by the desire to counter communitarianism and radical abuses by facilitating the integration of religious groupings into society.

Thus, the appointment of bishops is now, in both general and local law, left to the discretion of religious authorities with barely any interference from public authorities, which was not the case until the 1990s. The rules on funding religious activities are more flexible, but in reality, this relaxation is the result of their trivialisation and assimilation to social activities. They are required to be in the public interest in order to receive public aid. Monitoring of private, non-contracted schools, often under the supervision of fundamentalist religious bodies, has been strengthened and training in \textit{laïcité} and republican institutions has been made compulsory for chaplains remunerated by public services.

Islam's organisational effort continues with the active support of the administration. These attempts at creating a structure are not without difficulty due to the fragmentation of Muslim communities and foreign states'
desire to exercise control over these groupings. This is illustrated by the creation of a national Muslim religious association and by the suggestion made to Muslim associations to integrate into the French system of faiths by organising Islam within the framework of associations of worship, which is not currently the case: the CFCM and the CRCM are governed by the common law on associations. Emphasis is also placed on the training of imams. In this regard, reference is made to the possibility for candidates for the imamate to follow a degree course in the human and social sciences at public universities, which would be supplemented by courses given by free faculties of Muslim theology. Furthermore, consideration has been given to creating a course in Muslim theology at the University of Strasbourg.

XIV. Bibliography


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Revue du droit des religions
State and Church in Croatia

Vanja-Ivan Savić

I. Social Facts

Croatians are predominantly Roman Catholic. The connection between Catholic Church and Croatian identity is so strong that if you are Croatian it will be presumed you are Catholic. Today more than 86% of the population of Croatia declare themselves to be Catholics and the percentage of church attendance is still among the highest in Europe. There are many historical and cultural reasons for the Catholic Church having such a special position within Croatian society: one among many is fact that Croatia, although an historically ancient state, was not independent for centuries, and the Catholic Church was always a reminder of Croatian identity. Only in 1991, after the collapse of the Berlin Wall and dissolution of the former Yugoslavia, did Croatians gain their own state again. In all those historical periods when the Catholic Church preserved national identity, members of clergy were the most prominent protectors and preservers of the rich ethnic and cultural fibre of Croatian identity. This was especially visible during Ottoman rule where many parts of Croatia were under Turkish occupation; priests, Franciscans in particular, were then closely connected with Christians who had not converted to Islam. Even today in some parts of Croatia and Bosnia and Herzegovina which have a Croatian population, people call them ‘uncles’. During communist rule religion was suppressed and the overlapping Catholic and Croatian identities were considered as enemies of the Yugoslav state. During those times the role of the Catholic Church in keeping the religious and ethnic fibre of the nation was tremendous. All this made the position of the Church strong, and today it still enjoys a high position within Croatian society.

Croatia is a secular state but not an entirely lay one. Croatian society is still quite homogenous, though this will probably change in the years to come as a result of immigration and the fact that Croatia became a member state of the European Union, and that movement of people is in-

1 Vanja-Ivan Savić, University of Zagreb, Faculty of Law. This paper has been written for the project of the University of Zagreb, Faculty of Law, for the year 2018.
evitable. The largest groups within Croatian society in addition to Catholics are Serbs who are mainly Orthodox, Bosniaks who are mostly Muslims, and there is a small percentage of Protestants together with a small Jewish community. Croatia belongs to the group of states who, although secular, recognise the special position of religion within the system and therefore it has a model of co-operation which is in accordance with its Constitutional framework. Croatia signed four International Treaties with the Holy See and many similar agreements with other significant religious denominations (organisations). For instance, the Islamic Community in Croatia has an agreement with the State under similar conditions as the Catholic Church (Holy See) and Croatian Muslim leaders often acknowledge that the legal regulation of Islamic community life in Croatia is probably the best model any state has with the Islamic group within its territory. A new Mosque in Rijeka, designed by the most prominent Croatian architect Dušan Džamonja, has just been finished. It is not an exaggeration to say that the regulatory framework of the relationship between the Islamic community of Croatia and the Croatian State could be termed a Croatian ‘export product’. Croatia, together with Austria, has more than 100 years of treating Islam as a recognised religion. The position of the Serbian Orthodox Church is also quite strong, and they are present in the daily life of the biggest Croatian minority: Serbs. They organise the work of schools and bookstores, and their major religious services and ceremonies are covered by national TV and Radio Channels.

II. Historical Background

Christianity arrived in the area which is nowadays Croatia very early, in 7th century. The geographical position of Croatia made it very prone to the acceptance of the new religion; its proximity to the Mediterranean routes and also being in the centre of the Roman Empire all played their part in establishing the religion on the eastern shores of the Adriatic. There are serious historical claims that St. Jerome was born on the soil which today belongs to the Croatian Republic. Also all relevant historical explorations show that the shipwreck of Saint Paul most probably happened on the Island of Mljet (Melita) and not Malta as has previously been believed. Malta enjoyed enormous political power and influence, so therefore it was impossible to convince anybody that such important man was not on Malta but some (unimportant) island in the Adriatic Illyria. In the Acts of the Apostles it was clearly stated that while on ‘Melita’, St. Paul was attacked and bitten by the snake in the woods. On Malta there have never been
woods or snakes. On the contrary, Mljet in Croatia was always heavily covered by woods and was full of snakes. The problem was so huge that the former Yugoslav government introduced mongooses to the island and they have killed every single snake on the island, so Mljet is now snakeless but also has no small mammals because they have all ended up in mongooses’ stomachs.

When writing about historical background there is always a question as to when we should start to write – from the Middle Ages onwards, or it would be more appropriate to write about modern day Croatia and its history? Although I feel that for this kind of format it would be more appropriate to write about the history of the modern state, I also feel it is necessary to explain some historical processes which have preceded modern day Croatia. Apart from mentioning the acceptance of Christianity in 7th Century by Prince Višeslav (knez Višeslav) I will briefly explain the relationship between the Roman Catholic Church and State in the Austro-Hungarian Monarchy, Pre-Communist Yugoslavia, the Socialist Period and then Modern Day Croatia.

When Croatia was part of Austro-Hungarian Monarchy, the Catholic Church was originally treated (not officially recognised) as the state church, and therefore Catholics belonged to the state religion, and other accepted churches, Protestant and Orthodox Churches, operated without privileges. On the other hand Jews were also present and their status was regulated by the Law of 1729 in which they had only the right to trade, without real estate property rights. That changed during the rule of Joseph II when The Law on Tolerance was delivered: Catholicism was the official faith and others were just accepted (tolerated). During that period, especially after the death of Joseph II, the Catholic Church had strong influence in Croatian society; even apostasy was punishable by the Criminal Code in art. 122 and the Civil Code in its art. 768 provided that it should be one of the grounds for disinherency. Subsequently the State concluded...
ed a Concordat with the Holy See in 1855 in which Catholicism became the state official religion, and in 1859 an Imperial Patent made Protestants equal to Catholics. Even after the Austro-Prussian war of 1866 when Franz Joseph established the Dual Monarchy and proclaimed equality in all regions of the Hungarian part of the Kingdom, Croatia and Slavonia (one of Croatian regions) retained autonomy in religious matters, while Dalmatia (also one of Croatian regions) followed Austrian territory as being officially part of Austria, not Hungary. Until 1916 five religious communities were recognised officially through the legislative process of the Croatian Parliament: Catholic Church, Orthodox Church, Evangelical Church, Jewish Community and Islamic Community. Croatia was the second country in Europe to recognise Islam as a registered and organised faith, after Austria in 1912, although parts of Croatia which were under Austrian rule (Dalmatia) had it even back in 1912.

After the dissolution of the Austro-Hungarian Empire, King Alexander of Yugoslavia guaranteed the equality of all religions in 1919 by proclamation, and also abolished the state religion as such: a Ministry of Religion was established. Despite the formal equality, Serbian and Montenegrin Orthodox churches which merged in 1920 had a privileged position compared with all other religious communities—for example, although Catholics in the Kingdom of Serbs, Croats and Slovenes made up to 39.9% of the total population, the Ministry of Religion gave ‘only’ 10,903,993 crowns to Catholic Church and 141,246,426 crowns was given to Orthodox Church. After the Constitution of 1921 the state church system was formally dissolved, but religious communities remained part of the state system, as quasi-public bodies. During the dictatorship under King Alexander, four laws regulating the existence and work of the Serbian Orthodox Church, the Islamic Community, the Evangelical Church and the Jewish Community were put into force, but no Law regulated the status of Catholic Church. The ‘old’ Concordats were still in force but to some extent outdated. Therefore the Catholic Church requested a new Concor-

6 Ibid., str. 227.
7 Ibid.
8 Ibid., str. 229.
10 For details Staničić, p. 233.
11 Ibid.
12 Ibid., p. 234.
dat with the Holy See but this was never signed. All religious groups other than Catholic, Orthodox, Jewish, Muslim, Evangelical and Reformed Christian were forbidden and illegal.

When we talk about the position of religious communities within the former Socialist Federal Republic of Yugoslavia, the main statement is that religion was heavily suppressed by the regime with some variations in the time scale. Although religious groups were guaranteed freedom of association, public prerogatives were lost (Law on the Legal Status of Religious Communities 1953) and state subsidies were also lost. 13 Despite the formal guarantees, Catholics were specially prosecuted and their connection with the Holy See was specially regarded as anti-communist, anti-socialist and anti-Yugoslav. The Church was deprived of its property, Catholic institutions were closed and the Faculty of (Catholic) Theology was expelled from the University of Zagreb. This was especially dramatic since Theological Faculty, founded by Jesuits in 1669, was one of the original faculties of the University of Zagreb. Religious matters were transferred from federal level to the level of republics, and in 1978 Socialist Croatia enacted the Law on the Legal Status of Religious Communities which were granted civil law rights and became legal persons. The position of the Catholic Church was improved under the Pope Paul VI when diplomatic relations between Yugoslavia and the Holy See were established. 14 Generally speaking the situation for the Catholic Church and most other religious communities was pretty bad: many priests and religious people suffered and had been tortured; many of them prosecuted and killed, including our Archbishop Blessed Aloysius Stepinac. The fact that Blessed Aloysius Stepinac held office during Pavelić’s regime was one of the accusations of Socialist prosecutors of Yugoslavia in the trial against the beloved Croatian Cardinal who saved numerous Serbs, Jews and others and under extremely heavy consequences managed to resist the regime and Pavelić himself. There is important remark made by American historian Michael Phayer that ‘no one in the European Catholic Clergy so clearly spoke against Nazi crimes as Blessed Stepinac and the Dutch Catholic Cardinal Johannes de Jong’. 15 St. John Paul II beatified him in 1998 during his papal visit and pilgrimage to Croatia and the St. Mary of Bistrica Shrine. Until 1966 there was no agreement between the Holy See and Socialist Federative Republic

13 Ibid., p. 237.
14 Ibid., str. 238-239.
of Yugoslavia in which the Socialist Republic of Croatia was an integral part. In 1966 a Protocol on relationships between SFRY and the Vatican was signed but there was no mention of chaplaincy. Only after 1991 in the new Croatian Republic, a new era began for relationships between the State and Catholic Church and other recognised religious communities.

III. Legal Sources

Relations between Church and State are primarily governed by the Constitution of the Republic of Croatia\textsuperscript{16} which guarantees the equality of all religions within the state. By the Croatian Constitution all religious communities are equal before the Law, and Croatia has no state church. The article obviously guarantees separation of the church and state but it leaves space for some sort of co-operation between church and state, although there have been many speculations about this issue. According to Norman Doe there are three models of regulation of Church-State Relationships: a) state church, b) model of co-operation and c) complete detachment of church and state.\textsuperscript{17} Croatia falls into the second category, and if not clearly visible in the Constitution, it is visible in other documents of the State. One thing is certain: the Croatian constitution says nothing explicit about co-operation (especially) with the Catholic Church but it also leaves space (ie does not forbid) some sort of co-operation. Another argument is that the Constitution states that all religious communities are equal before the law, and the basic law in this field is \textit{Zakon o pravnom položaju vjerskih zajednica} (Law on Legal Status of Religious Communities)\textsuperscript{18} and another issue is that International Agreements and Contracts between Republic of Croatia and the Holy See are International Agreements which are above the law, but below the Constitution.\textsuperscript{19} Although it is not a secret that the Catholic Church has a special position within the legal system, it is also

\begin{itemize}
\item \textsuperscript{16} Constitution of the Republic of Croatia, National Gazette, 56/90, 135/97, 8/98, 113/00, 124/00, 28/01, 41/01, 55/01, 76/10, 85/10, 05/14, Art. 41.“All religious communities shall be equal before the law and separate from the state. Religious communities shall be free, in compliance with law, to publicly conduct religious services, open schools, colleges or other institutions, and welfare and charitable organisations and to manage them, and they shall enjoy the protection and assistance of the state in their activities.”.
\item \textsuperscript{17} Doe, Norman; Law and Religion in Europe, Oxford University Press, 2009., p. 14.
\item \textsuperscript{18} National Gazette No. 83/02, 73/13.
\item \textsuperscript{19} Art. 139 Constitution.
\end{itemize}
the fact that all major religious communities support that kind of relationship between state and the Catholic Church since all others are tailored according to that model. Croatia signed four International Treaties with the Holy See and subsequently many other religious communities also signed agreements with the Croatian state. Apart from that, there are two other international treaties which are in force in Croatia: the International Covenant on Civil and Political Rights and the European Convention on Human Rights, both of which guarantee freedom of religion.20 The major document regulating religious communities remains the Law on Legal Position of Religious Communities ‘Zakon o pravnom položaju vjerskih zajednica’.21 There are some provisions in other legal documents which regulate the position of religious communities, but in an indirect way. For instance, the Criminal Law22 in Article 145 guarantees that someone who discloses a confessional secret will be incarcerated up to 3 years. Also Article 302 of the same Law waives obligation of a religious person who hears confession to disclose what he/she found out through the sacrament of reconciliation. Although this was mainly designed for Catholic priests, it is equally applicable for all religious workers who under their church rules are authorised to perform a similar ceremony (Orthodox Church priests for instance). Obviously there are two preconditions for that: a) one is that the religious community is officially registered within Croatia and second b) is that the ceremony is an integral part of the rules of that particular church/religious community. In connection with this it is important to state that only premises of the Catholic Church are exempt from police interference which is based on the article 7 of the Treaty on Legal Issues 23 In the same manner a religious confessor (in broader definition) cannot be asked to be a witness. The rule is very strict, it is not said that the confessor can decide if he/she wants to witness, he/she may not even be called to witness box.

IV. Basic Categories of the System

As stated in the previous paragraph the Republic of Croatia guarantees equal treatment to all religious communities before the law. The issue here

20 Article 18. of the Covenant and Article 9 of the Convention.
21 The Law on Legal Status of Religious Communities NN/83/02, 73/13.
22 NN 125/11, 144/12, 56/15, 61/15, 101/17.
23 Ugovor o pravnim pitanjima (in Croatian).
is that there are a few prerequisites in order for a religious community to be treated as a legal entity which guarantees it all legal rights: a minimum number of adherents is a typical precondition. Apart from this fact there is a constitutional provision which puts international treaties in a hierarchy of norms above the ‘ordinary’ law and for that reason the Catholic Church is in a privileged position for obvious reasons: it is the only religious community which has a state-international sovereign entity which can represent it and stipulate a document which will be on higher hierarchical level in the scale of norms.

Also, the terminology of separation of church and state is always ambiguous. It can of course be used as a term which explains legal (de)regulation which is connected with only two bodies or entities: a Church (e.g. the Catholic Church) and the State. Although it is always perceived that the dominant and historically more present religious community is in question, that term should be used and understood, in contemporary language and legal discourse, as a separation between all religious (but primarily more dominant) group(s) and the state. On the other hand very few countries have real separation between church and state in a sense which the constitution of France provides (Laïcité) although I do not believe that complete separation of church and state in 100% pure form is possible and even in countries which accept the French model of Separation.24 As Doe analyses the European Continent in his excellent book Law and Religion in Europe25 there are three models of relationship between church in State in Europe; a) state church as UK has, b) complete separation as France has (although I do not accept that this is complete truth and c) the model of co-

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24 Even the French Republic is not purely secular. Please read Lassia Bloß, NYU Jean Monnet Paper, European Law on Religion – organizational and institutional analysis of national systems and their implications for the Future European Integration Process at https://jeanmonnetprogram.org/archive/papers/03/031301.pdf. In that work it is very well argued that France also has exceptions and that laicity principle does not exist in some parts of Eastern France (Alsace and Moselle) and also the overseas départements which are integral parts of the French Republic had special relationships with the Catholic Church. My notion is that is not possible to completely detach religious influence from the culture which has shaped the law of particular society if not in technical terms but through values and tradition. Secularism is also a Judeo-Christian concept. See anja-Ivan Savić, Still Fighting God in the Public Arena: Does Europe Pursue the Separation of Religion and State Too Devoutly or Is It Saying It Does Without Really Meaning It?, BYU Law Review, Vol 2015.

operation which exists in many European countries. Croatia belongs to the latter one.

As a matter of fact it is not a secret that the State heavily relies on the Churches and Religious Communities. Without humanitarian, social and cultural work which religious communities perform, states (including Croatia) would have much more to do within the society. In other words, the Croatian state is separated from Church but promotes and encourages its work. 26

V. Legal Status of Religious Communities

This matter has been covered in previous chapters but I will concentrate on establishment of religious communities and their registration which is the major starting point for acquiring all other rights within legal system of the country. The Law on Legal Status of Religious Communities was enacted in the Croatian Parliament in 2002. 27 According to this law there are several categories of religious communities: 1) the Catholic Church which has a special position within the Legal system since it has four international treaties signed with the state – for that reason this Law does not apply to this entity in a way it does to all other non-Catholic religious groups 28, 2) religious communities which have signed an agreement with the state, 3) registered religious communities and two uncategorised: a) unregistered, but in the process of registration and b) unregistered without any particular form required by law. 29

The first prerequisite for legal personality is registration into the register of religious communities - but - this is actually secondary registration. In

26 Torfs, Rik; positive neutrality, second edition of this work, p. 5.
28 See: Darija Damjanović Barišić, Dvadeset godina od potpisivanja ugovora između Svete Stolice i Republike Hrvatske, Diacovensia : teološki prilozi, Vol.24 No.4 Prosinac 2016., p. 514. It is clear that the Law on legal status on religious communities theoretically 'covers' the Catholic Church, but relationships between the State and Catholic Church are regulated by an hierarchically higher legal source which produced extensive regulations covering relationships between the State and The Catholic Church according to which all other stipulations are made towards other religious communities.
the first place a religious community has to be registered as an ‘ordinary’ association for five years and have more than 500 adherents.\textsuperscript{30} There are also some other preconditions for ‘secondary’ registration as technical preconditions through which it will be visible that the association has a religious character and that its activities are not contrary to public order of the state.\textsuperscript{31} If a religious community receives this attestation from the State it will be in a position to request public funds for maintaining its activities, such as schools or cultural centres etc. The Ministry of Administration collects and archives all information on religious communities in registers from which all elements important for legal personality can be extracted such as identification number, person registered for representation, seat of legal entity etc. A special register is held for legal persons within the Catholic Church, all in accordance with Canon Law and Treaties signed by the Republic of Croatia and the Holy See.

Four agreements were signed between Republic of Croatia and the Holy See: a) Agreement on legal issues signed 18\textsuperscript{th} December 1996\textsuperscript{32}, b) Agreement on the co-operation in the fields of education and culture signed 18\textsuperscript{th} December 1996\textsuperscript{33}, c) Agreement on religious assistance in military and police units signed on 18\textsuperscript{th} December 1996, \textsuperscript{34} and the most complex Agreement on Economic Issues signed on 9\textsuperscript{th} October 1998.\textsuperscript{35} There are also a few other Agreements which have been signed between Catholic Church and public bodies; one of those stipulated within the public arena is a Contract between Catholic Bishops’ Conference and Croatian Radio Television on mutual relationships in 2000; an Agreement on religious assistance in prisons and detention and rehabilitation centers signed 2002, an

\begin{footnotesize}
\begin{itemize}
\item \textsuperscript{30} Art. 21. Law on Legal Status of Religious Communities.
\item \textsuperscript{31} Ibid., Art. 4.
\item \textsuperscript{32} \textit{Ugovor o pravnim pitanjima od 18. 12. 1996.} This Agreement was the basis for registration of the legal entities of the Catholic Church into Register which had its place in the Ministry of Administration.
\item \textsuperscript{33} \textit{Ugovor između Svete Stolice i Republike Hrvatske o suradnji na području odgoja i kulture od 18.12. 1996.} This Agreement was the basis for another agreement signed on 29th January 1999 between the State and Catholic Church in Croatia on religious education.
\item \textsuperscript{34} \textit{Ugovor o dušobrižništvu katoličkih vjernika pripadnika oružanih snaga i redarstvenih službi Republike Hrvatske od 18. 12. 1998.}
\item \textsuperscript{35} Vladimir Lončarević, \textit{Pravni položaj crkava i vjerskih zajednica te njihovo stjecanje pravne osobnosti u Republici Hrvatskoj}, www.reformator.hr, accessed on 27\textsuperscript{th} August 2018., http://reformator.hr/oldweb/Pdf/Vjerske%20zajednice%20u%20Hrvatskoj%20Loncarevic.pdf., Denis Bajs, Vanja-Ivan Savić, Sveta Stolica i Država Vatikanskoga Grada, Pravnik, Zagreb, 1998., p. 79-95.
\end{itemize}
\end{footnotesize}
Agreement on religious assistance in hospitals and institutions for social care and an Agreement on the Return of Church books and registers stolen after 1945, both signed in 2005.\textsuperscript{36} It is important to state that the Republic of Croatia recognises the public legal personality of the legal entities of the Catholic Church according to the provisions of Canon Law.\textsuperscript{37} Major religious Catholic Holidays are also public holidays of the Republic of Croatia\textsuperscript{38}, but members of other religious communities also have the right to free days: Orthodox Christians have the right to abstain from work at Christmas and Easter, Muslims on Ramadan, and Kurbam Bajram and Jews on Rosh Hashana and Yom Kipur. Adventists have the right not to work on Saturdays.\textsuperscript{39, 40}

Catholic Church clergy who are allowed to perform marriages by the provisions of Canon law received public powers and prerogatives, and such a marriage is equal to public civil marriage, making life easier for thousands of religious couples who were previously obliged to have two ceremonies: once before civil and once before church authorities in order to have a legally registered marriage in two legal systems: state’s civil law and religious law.

There are of course many other benefits which the Church received after signing the four international treaties, which enable the Church to be a ‘leader’ in achieving rights and managing its status. The status of the Catholic Church encouraged all the other churches to be more present and proactive in acquiring rights in accordance with the Law on Legal Status of Religious Communities. It would not be wrong to say that although many other religious groups settled within the Croatian legal system by various agreements which were signed in previous years, the Catholic Church remains \textit{primus inter pares} because of its significance, importance and influ-

\textsuperscript{36} Ibid., Lončarević, p. 4.
\textsuperscript{37} \textit{Ugovor o pravnim pitanjima}, Art. 2. par 1.
\textsuperscript{38} \textit{Ugovor o pravnim pitanjima}, Art. 8.
\textsuperscript{39} Lončarević, op.cit, p.3.
\textsuperscript{40} There was interesting example of social work student at the University of Zagreb Faculty of Law who belongs to the Adventists; she had lectures on Friday evenings which started after sunset for most of the semester. The Dean and Faculty administration (University of Zagreb, Faculty of Law) decided that according to the special Agreement which the Republic of Croatia has with the Adventist church she had the right to have separate classes or at least consultations which may replace lectures. Lectures though were not possible since there was lack of space and personnel. There is always an issue as to how far individual rights can go within the space of collective entity and problems concerning conditions for fulfilling all those rights.
ence on Croatian Society, and by ratio legis is the only religious entity with an 'elevated' legal position for the reason of the position of the Holy See in International Law.

Regarding all the other religious communities apart from the Catholic Church, there are differences between those which have signed agreements with the State and those which have not. Currently there are agreements with the following religious communities: Serbian Orthodox Church, Islamic Community, Evangelical Church, Reformed Christian Church, Pentecostal Church, Church of God, Alliance of Christ’s Pentecostal Churches, Adventist Christian Church, Reformed Movement of the Seventh Day Adventists, Alliance of Baptist Churches, Church of Christ, Bulgarian Orthodox Church in Croatia, Croatian Old Catholic Church, Macedonian Orthodox Church in Croatia, Jewish Community Beth-Israel, and Co-ordination of Jewish Communities of the Republic of Croatia.41 Three religious communities ‘Savez crkava Riječ života’, ‘Crkva Cjelovitog Evanđelja’ i ‘Protestantska reformirana kršćanska crkva’ stipulated agreements with the Republic of Croatia after the decision of the European Court of Human Rights in case of ‘Savez Crkava Riječ Života and Others v. Croatia’42 where there was a dispute over the religious communities in question not being able to exercise their rights to educate children in school or that their ministers were not able to perform marriage ceremonies because the State had not made an agreement with them. The State explained that it could not enter into agreement with those entities because they did not belong either to historical religious communities or to those with more than six thousand adherents. Since a similar agreement was stipulated for instance with Bulgarian Orthodox church which was not historical (on Croatian soil) or had more than 6,000 adherents, it was very hard to defend the argument provided by the State that those communities do not deserve that kind of document. This was a violation of articles 9 and 14 of the Convention.43

41 Staničić, p. 250. This was complete up to 2014.
43 Concerned discrimination against Reformist churches. Applicant churches complained that, unlike other religious communities in Croatia, they could not provide religious education in public schools and nurseries or obtain official recognition of their religious marriages as the domestic authorities refused to conclude an agreement with them regulating their legal status. See: https://www.echr.coe.int/Documents/CP_Croatia_ENG.pdf, accessed 30th August 2018.
There are really no more than a few benefits which are given to a religious community when it signs a contract with the State, such as the right to organise education in public schools, religious assistance in public institutions, for example, police, military, prison or medical facilities, the ability to perform matrimonial rites with public effects and financing from the State budget. In practice, for many of them this agreement will be more by way of recognition and status than enjoying real benefits. This can be achieved by being registered at the Ministry of Administration and having 500 members. Only after that the religious association may become a religious community and subsequently request to have an agreement with the State.

VI. Religious Communities within the Political System

After gaining independence in 1991, religious life in Croatia started to flourish and this was especially so for the Catholic Church which was a great supporter of Croatian independence and was perceived as the sole protector of Croatian ethnic identity during the communist regime. The fact that Croatian ethnicity and Catholicism overlap meant that fighting for faith is fighting for Croatia and vice versa. In the beginning of 1990s that actually meant that church strongly supported the Croatian Democratic Union (HDZ) ⁴⁴ led by the late Croatian president Franjo Tuđman. The Social Democratic Party which was led by former communist politicians (although some of them were reformed and pro-independent such as the late Ivica Račan who was president then) did not have much popular support. At this point it is important to state that the influence of the Holy See together with the late Pope St. John Paul II on the happenings in political arena was significant. The Holy See was among the first States in the world to recognise Croatia (the very first were Slovenia and Iceland). This was a precedent of its kind. Catholic diplomacy does not usually rush too much and usually recognises a State at the very end of the process of international recognition.

This relationship with the HDZ remained close for many years through the 1990s and 2000s. The late Croatian Cardinal Franjo Kuharić was beloved and very well regarded throughout the Croatian community. There were close talks between Catholic Church and governments of Croatia, especially in the years of the establishing of the modern state where

⁴⁴ Hrvatska demokratska zajednica (in Croatian) (HDZ).
there was mutual understanding of the need to return of stolen property which was taken from the Catholic Church during the period of the Socialist Federal Republic of Yugoslavia. Return of the Confiscated property was regulated by the Law on Compensation for the Property Confiscated during Yugoslav Communist Reign,\footnote{Zakon o naknadi za imovinu oduzetu za vrijeme jugoslavenske komunističke vladavine, National Gazette 92/96, 33/99, 42/99, 92/99, 43/00, 131/00, 27/01, 34/01, 65/01, 118/01, 80/02, 81/02.} and stolen church property was excluded from some specific exemptions where stolen real estate could not be returned or compensated.\footnote{This was equally applied to Serbian Orthodox Church. Some real estate was not able to be returned or compensated for physical or utilitarian reasons. When that happened other entities were offered money or were excluded from compensation.}

But the major force of Catholic Church was close support, both physiological and physical, to Croatian soldiers in the war fields in the Homeland war when Croatia was fighting for its freedom. For all those reasons the connection between the Party which brought democracy and freedom to the Nation, especially during times of war, and the Catholic Church stood strong. Even when the Croatian Democratic Union lost office, left wing governments were very careful in the way they treated the church. All prime ministers regardless of religious affiliation were always present at Christmas Eve Mass in Zagreb Cathedral of St. Mary and St. Stephen. Nowadays, the link between the Croatian Democratic Union and the Church is not so strong. The Croatian Democratic Union however, has an anthem “God Save Croatia”\footnote{Bože čuvaj Hrvatsku (Croatian).} and most of its MPs are declared Catholics, but popular dissatisfaction of the politicians as a whole group (class) made its mark on this relationship as well. Recent ratification of the Istanbul Convention\footnote{Istanbul Convention: Convention on preventing and combating violence against women and domestic violence; https://www.coe.int/en/web/istanbul-convention/home?desktop=false.} brought conflict between the Catholic Church and ruling party (HDZ) who are not officially Christian Democrats but formally state that they (also) share Christian values.\footnote{Statute of the Croatian Democratic Union, enacted 26th May 2018., Art. 1. Par. 1., http://www.hdz.hr/sites/default/files/hdz_statut_2018.pdf, accessed 1st September 2018.} The Catholic Church openly asked for non-ratification of the Convention for the controversial issues of gender ideology. The Catholic Church openly stated that the Istanbul Convention contains elements of Gender Ideology and as such is inappro
primate for Croatian legal and cultural fibre. For the first time in modern Croatian history MPs of the Croatian Democratic Union were not unanimous: fourteen voted against the ratification. 50 One of the most prominent priests in Croatia, the Jesuit Father Ike Mandurić openly criticised the long lasting support of the Church towards the Croatian Democratic Union. 51

Just recently, there were some discussions about revision of the so-called ‘Vatican’ Treaties, initiated by some left-wing parties, and the Croatian Democratic Union defended the current situation which might have given them some support from the Church side, but generally it is quite clear that the connection between HDZ and Church is not so close any more.

There was also an isolated case of a priest who was elected as an independent MP, from Split Diocese. He was deprived from sacral and ceremonial duties and the canonical disciplinary procedure was used to prevent him from performing pastoral duties. 52

One of the questions which appeared in the public arena was working on Sundays. Although the Catholic faithful have the right not to work on Sundays, in practice workers very rarely fight against employers through the courts of law or formally request a free day. There is even a problem of inappropriate payments to workers who work on Sundays or holidays. The major reason is lack of employment and fear of losing jobs. My opinion is that the system of inspections is inadequate. Few governments wanted to make Sunday an obligatory holiday but the Constitutional Court abolished those laws in 2004 and 2009 respectively. 53 Major arguments were that such laws (Law on Trade) 54 do not give adequate protection on the open market and would lace an unfair burden on employers. Until today this remains an open question, but the interest in it declines under the heavier influence of consumerism which is equally present in Croatian society.

51 https://www.bitno.net/vjera/aktualnosti/ike-manduric-popovi-su-krivi-za-sve/.
54 Zakon o trgovini (Croat.); National gazette No 87/08, 116/08, 76/09, 114/11, 68/13, 30/14.
VII. Culture

When we discuss Church and Culture we can concentrate on three major manifestations of cultural life/cultural presence: cultural life in general, religious education, and the media. Even if church attendance is quite high in Croatia, as previously stated Catholicism is part of everyday life even for non-believers or agnostics, so many of them also feel or behave as ‘folkloristic’ or ‘cultural’ Catholics. Baptisms are performed even for couples who do not regularly attend church, and festivities connected with baptisms, first communions and confirmations are widely accepted as popular feasts. Also, Christmas and Easter celebrations are part of everyday life through greetings, manifestations, typical food and clothing which are generally followed. All Saints Day and All Souls Day are accepted as days for remembrance of the departed even by non-believers and members of other religions. This is partially for the reason that the communist regime deliberately made 1st November a Holiday and called it The Day of the Dead, because they were unable to stop the popular habit of visiting cemeteries on that day. In order to neutralise it they created their own ‘holiday’ on the same day. Christmas greetings are common even among non-believers.

The School System is still heavily in public nonsectarian hands. There were always Catholic kindergartens (even during the communist regime), and until just recently there were only a few Catholic primary schools. This has started to change, and there are now a dozen Catholic primary schools around the country. There are Jewish, Muslim and Orthodox public schools which operate within the public schooling framework. Also, apart from Catholic High School which is supported by the Archdiocese of Zagreb,55 some other religious communities run high schools; the Islamic Community and Serbian Orthodox Church run public schools56 which are all incorporated within public school system. At the University level, the Faculty of Theology57 is part of the University of Zagreb58, as well as a Jesuit-owned Faculty of Philosophy and Religious Studies59. As stated earlier,

55 http://www.nkg-zagreb.hr/.
59 http://www.ffrz.hr/.
the University of Zagreb was founded by the Church (Jesuits) in 1669. The Faculty of Theology has Pontifical Approval and may award Canonical titles which are connected with ordination and post-ordination. The curiosity is that this Faculty, although religious, is part of a ‘secular’ University. Apart from previously described Catholic educational facilities there is one private Catholic University which offers degrees in history, psychology, sociology, communications and childcare. Religious Education is an obligatory subject in schools, but only for those pupils/students who elect to have it.

Regarding telecommunications it is generally understood that religious communities are very well represented. As previously noted, an Agreement between the Catholic Church and Croatian Radio Television was signed in 2000, which was a first step in founding a Religious Broadcasting Department at Croatian Television. Today there are many religious and religious-themed broadcasts both on Croatian Television and Radio. Sunday Mass is regularly transmitted both on Radio and TV. Manifestations of major religious communities such as the Serbian Orthodox Service at Christmas and Easter or major Islamic Holidays like Bajram are well covered by reports both on TV and radio. Since ethnicity and religion overlap, religious holidays are sometimes covered in broadcasts which are connected with minority groups and ethnic communities.

VIII. Labour Law within Religious Communities

Article 18 of the Law on Legal Status of Religious Communities regulates most of the general rights to which religious workers are entitled. It is clear that ‘priests and other religious workers’ are entitled to social, medical and workers’ rights according to special provisions of particular laws. Also, it is clear that religious community may conclude labour contracts with physical persons who perform religious duties like any other legal entity. When those contracts are made, religious workers receive the same rights as any

60 University of Zagreb, the oldest University in Southeast Europe was founded in 1669 and was then consisted of three schools: theology, philosophy and law. http://www.unicath.hr/.
61 Ugovor o katoličkom vjeronauku u javnim školama i vjerskom odgoju u javnim predškolskim ustanovama, čl.4., V. http://www.nku.hbk.hr/dokumenti/medunarodni-ugovori/60-katolickivjeronaukugovor.
62 One of those shows is named ‘Prizma’; https://www.hrt.hr/436106/organizacija/hr-tov-multinacionalni-magazin-prizma-slavi-25-obljetnicu-neprekidnoga-emitiranja.
other employees in the country. Regular students of religious schools who prepare for the priesthood or other clerical positions within a religious community have the same social rights as attendees of public schools. Priests do not receive salaries but stipends which are paid to particular priests according to a specific pattern. Usually they receive between 4.5-8k Croatian Kunas and from that amount they should leave 1,5k in the parish registry. This is taken from money which they receive from the parish income from collections (which are tax exempt) and church taxes. If the parish is poor, the diocese will contribute to those priests. All priests help to fund the public entity for the remuneration of elderly retired priests (social fund). Priests do not have working hours; basically they should be available 24 hours per day. According to labour law, it would be valid to conclude that violations of a ‘classical’ labour contract between religious community and religious employee could be enforced in the civil courts, but those which are only connected with autonomy of church authorities to appoint particular priests and/or religious workers would be exempt from enforcement through the public law system. There is a special situation for teachers of Catholic or any other religiously affiliated education who are employees of the State. Those instructors have to have a mandate to teach religious matters and that mandate is given by the religious community. In this respect those instructors are in a hybrid position. They are both religious and public servants. It is yet to be seen what decisions the Croatian courts will eventually take in potential disputes between religious communities and employees. It is a similar situation with military personnel in Military Chaplaincies. Those are on the payroll of the State Ministry of Defence and are considered both military and religious servants. The same situation obtains with employees in the Croatian police.

IX. The Legal Status of Clergy and Members of Religious Orders

Members of religious orders do not have any specific legal status within the Croatian legal system. There are however some exceptions in particular matters. The particular issue is dealt with in article 8 of the Treaty on Legal

64 Aproximately 700-1100 Euros per month.
Issues which provides that the Ministry of Interior must inform the Church authorities if a criminal investigation is opened against a particular cleric. Through this provision clerics of the Catholic Church are put in the same group as judges\(^67\) and/or attorneys\(^68\) for the prosecution of whom it is also necessary to have some form of information and/or approval. It is really not clear if this gives any advantage to a cleric who is under investigation since this provision is of an instructive character and the consequences of not following it are not prescribed. As previously noted, a church and its premises are protected from police and military intervention. Few members of Croatian Catholic clergy possess a Vatican City State Diplomatic Passport, but this is not relevant because under Croatian laws those citizens are treated as if they were Croatian nationals.\(^69\)

X. Finances of Religious Institutions

The financing of religious communities in the Republic of Croatia is regulated through two sources: a) Treaties between Republic of Croatia and the Holy See which applies only to that particular church and b) the Law on the Legal Status of Religious Communities which is relevant for all other religious communities. According to this Law, sources of finance are of three types: 1) institutional incomes 2) donations and c) State budget. Transfers from the State budget may also be put into two categories: i) which are dependent on the characteristics of the particular community and its importance to Croatian society and ii) which will be awarded for specific purpose and need.\(^70\) Both of those will be granted upon a request submitted to the Ministry of Finance. But, generally the bigger a religious community is, the more money it will get.

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68 Law on Legal Profession of Attorneys (Zakon o odvjetništvu), Art. 59, National Gazette, 09/94, 117/08, 50/09, 75/09, 18/11.
70 Law on Legal Status of religious communities, Art. 17.
In the following table it may be seen that bigger and more ‘influential’ religious communities receive more: the amount received corresponds with number of declared\textsuperscript{71} believers in Croatia\textsuperscript{72}.

<table>
<thead>
<tr>
<th>Religious Community</th>
<th>2014</th>
<th>2015</th>
<th>2016</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Catholic Church</td>
<td>388,142,873.43</td>
<td>380,088,636.53</td>
<td>297,851,360.52</td>
<td>1,066,082,870.48</td>
</tr>
<tr>
<td>Serbian Orthodox Church</td>
<td>8,381,152.00</td>
<td>9,655,708.00</td>
<td>9,655,708.00</td>
<td>27,692,568.00</td>
</tr>
<tr>
<td>Islamic Community</td>
<td>2,554,256.00</td>
<td>2,942,692.00</td>
<td>2,942,692.00</td>
<td>8,439,640.00</td>
</tr>
<tr>
<td>Evangelical Church</td>
<td>798,204.00</td>
<td>919,592.00</td>
<td>919,592.00</td>
<td>2,637,388.00</td>
</tr>
<tr>
<td>Reformed Christian Calvinist Church</td>
<td>842,548.00</td>
<td>970,680.00</td>
<td>970,680.00</td>
<td>2,783,908.00</td>
</tr>
<tr>
<td>Evangelical Pentecostal Church (on its account payments were made for Church of God and Union of Pentecostal Churches in Croatia)</td>
<td>792,192.00</td>
<td>858,287.00</td>
<td>858,287.00</td>
<td>2,508,766.00</td>
</tr>
<tr>
<td>Bulgarian Orthodox Church</td>
<td>158,372.00</td>
<td>158,375.00</td>
<td>158,375.00</td>
<td>475,122.00</td>
</tr>
<tr>
<td>Croatian Old Catholic Church</td>
<td>194,136.00</td>
<td>194,136.00</td>
<td>194,136.00</td>
<td>582,408.00</td>
</tr>
<tr>
<td>Macedonian Orthodox Church in Republic of Croatia</td>
<td>589,784.00</td>
<td>679,476.00</td>
<td>679,476.00</td>
<td>1,948,736.00</td>
</tr>
<tr>
<td>Coordination of Jewish Communities</td>
<td>532,136.00</td>
<td>551,754.00</td>
<td>551,754.00</td>
<td>1,635,644.00</td>
</tr>
<tr>
<td>Jewish Religious Community Bet Israel</td>
<td>341,452.60</td>
<td>408,708.00</td>
<td>408,708.00</td>
<td>1,158,868.60</td>
</tr>
<tr>
<td>Union of Baptist Churches in Croatia (on its account payments were made for Reformed Movement of Seventh-Day Adventists)</td>
<td>778,524.00</td>
<td>873,613.00</td>
<td>873,612.00</td>
<td>2,525,749.00</td>
</tr>
</tbody>
</table>

\textsuperscript{71} Croatian Bureau for Statistics; See: https://www.dzs.hr/.
Apart from the exact amounts received, there are important tax benefits which religious communities enjoy according to The Law on legal Status of Religious Communities. The major benefit is tax exemption for all donations and real estate transfers, and also exemption of income tax to prescribed level. Another important benefit is exemption from customs duties on all items which will be used for religious ceremonies.

### XI. Religious Assistance in Public Institutions

The State heavily relies on religious institutions in many aspects of public life such as hospitals, health institutions, schools, social work facilities, penitentiaries, prisons etc. The Catholic Church, and also other religious communities in Croatia, provide generous support for the poor and homeless and the State relies on those efforts. One of the biggest hospitals in Zagreb (now part of the University of Zagreb University System) belonged to Sisters of Charity (Order of Saint Vincent De Paul) and after 1991, although it remained in public hands, attracted many Catholic nuns who by their work support hospitals and health institutions. Generally, the doors of public institutions like prisons and hospitals are open to religious workers of all denominations, but Catholic clergy are more visible and their access is even easier. Catholic Mass is served in State prisons and hospitals. In many hospitals and nursing homes this is a regular activity for occupants of the institution. In the Armed forces the presence of Catholic clergy is

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73 Law on status..., Art. 17.
institutionalised through an agreement between the State and the Holy See, and priests are part of the public system, paid for their work in military and police facilities. In this respect they are also public servants.

XII. *Matrimonial and Family Law*

As elaborated in previous chapters, marriage customs have changed in modern-day Croatia with changes in Family Law regulations which previously did not recognise a religious form of marriage as valid in civil law. Lawful marriage was to be performed in front of the public officer (registrar). Today, religious workers of those religious communities who have regulated a legal relationship with the State have the right to perform religious marriages which will have religious and civil law consequences\(^74\), assuming that there are no obstacles as described in Family Law Act.\(^75\)

Homosexual ‘marriage’ in Croatia is not allowed although so-called civil partnerships are legal. Civil partners have almost all the mutual rights and obligations as heterosexual partners in marriage but without options to adopt children and call the relationship “marriage”. It is important to mention a referendum which took place in Croatia in 2013. The relatively small NGO named ‘in the name of the family’ collected more than 750,000 signatures in just two weeks in order to amend the Croatian constitution with the paragraph ‘marriage is union between a man and a woman’. On December 1\(^{st}\) 2013 a public referendum was held and 37% of citizens with voting rights to vote came out to vote. Out of that number 65% decided that the Constitution should be amended. A new paragraph became art 62.2 of the Constitution of Croatia.\(^76\) It is interesting that this question united all major religious groups (communities) in Croatia, and most of them encouraged their believers to sign for amendment but also actively

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76 See more in: Šavić, Vanja-Ivan; *Still Fighting God in the Public Arena: Does Europe Pursue the Separation of Religion and State Too Devoutly or Is It Saying It Does Without Really Meaning It?*, BYU Law Review, Vol 2015, No.3, p.714 et seq. 'Marriage is Between a Man and a Woman: The Story of the Recent Constitutional Change in Croatia'.

260
allowed polling stations in the premises of religious organisations, e.g.
church courtyards, religious club centres etc.

Regarding inter-family relationships, these are governed by the Family
Law Act, especially regarding determining the religion of children, which
a married couple decides together.

XIII. The Criminal Law and Religious Communities

As previously noted, religious personnel are citizens as are all others and
do not enjoy specific privileges and immunities. To some extent there are
some specific privileges of Catholic clergy which are derived from Treaties
which are signed between the Holy See and Republic of Croatia. Those
privileges are not significant when we discuss Criminal Law issues. The
Constitution of the Republic of Croatia forbids any behaviour which inter-
alia is based on religious hatred\textsuperscript{77} and subsequently the Criminal Code of
the Republic criminalises hate speech based on religious grounds for
which the maximum punishment is up to three years imprisonment.\textsuperscript{78} Of
course there are other provisions which are connected with religious mat-
ters, such as the desecration of a grave.\textsuperscript{79} Religious confessors cannot be
called as witnesses in criminal procedure; the seal of the confessional is ab-
solute.

XIV. Major Developments and Trends

At this moment, as in any European State, there are tendencies towards
secularisation and detachment from religious life, especially in urban ar-
eas, but they are slower and less aggressive than in many other regions of
Europe. At the same time there are growing tendencies of Christian re-
vival, a growing intellectual population who are growing in faith, and
Church attendance is still quite high. Regular public prayers at the famous
Marian pilgrimage site of Zagreb: Our Lady of The Stone Gate,\textsuperscript{80} which
gathers young and educated people, is a new phenomenon. As former be-
lievers depart from the Church, new and ‘refreshed’ believers find new

\textsuperscript{77} Constit. Art. 39.
\textsuperscript{78} Criminal Code, NN 125/11, 144/12, 56/15, 61/15, 101/17, Art. 325.
\textsuperscript{79} Ibid., art. 332.
\textsuperscript{80} \textit{Naša Gospa od Kamenitih vrata}.
ways of religious living such as the neo-catechumenal movement and so on. Protestant groups are also on the rise and a recent very well prepared and observed celebration of 500 hundred years since the Reformation showed that they have their own space in Croatian society. If there is something of which Croatia can be especially proud, it is the position of Islamic community in Croatia and their full integration in Croatian society, which Muslim leaders say is unique in Europe.81 This is something which might become a ‘Croatian export product’. Croatian Muslims are mostly of Bosnian (European) origin. Treaties between Croatia and the Holy See are not likely to be changed or amended in the near future.82 Croatia is a modern but still quite traditional European State where religion plays an important role in many aspects of life.

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State and Church in Italy

Roberto Mazzola

I. Historical and Regulatory Profiles

The Italian socio-religious situation is experiencing a profound transformation¹. This transformation has been rapid² due to large scale social changes such as the 1989 breakdown of the division between Eastern and Western Europe, which resulted in an increasingly diffused presence of Orthodox churches; the changes in the Roman Catholic community as a result of increased migration, which has led to a more plural version of Italian Catholicism³, and finally, the spread of Islam through the diaspora from North Africa.

It is evident that the legal system governing the relationship between the State and religion has been placed under notable stress as a result of this geopolitical framework. The primary agreement between the State and the Catholic Church (specified in art. 7 of the Constitution) and the agreements between the State and minority religious organisations, as per art. 8.3 of the Constitution, display a homogeneity that leans towards the Judeo-Christian tradition. Ecclesiastical politics rely heavily on the past⁴, as

¹ See: Study and Research Centre/Statistical Dossier on Immigration realized in partnership with Confronti and the support of the Otto per Mille Fund of the Tavola Valdese – Union of the Methodist and Waldensian Churches and the collaboration of the UNAR at http://www.dossierimmigrazione.it/ (viewed 15 July 2018.).
³ For updated study on religious pluralism in Italy see: E. Pace, Introduzione, in Le religioni nell’Italia che cambia. Mappe e bussole, (edited by Enzo Pace), cit., pp. 9-12.; Id. La geografia religiosa dell’Italia di fine secolo, in Quad. dir. pol. eccl., 1 (2000), pp. 35-49.
demonstrated by the insertion into the Constitution of laws approved during the previous fascist regime: the Lateran Pacts of 1929; law number 1159 of 1929 on approved worship of 1929 and the royal decree n. 289 from 28 February from 1930.

The system is characterised by both its continuity and its complexity. It centres on the dialogue between unilateral and bilateral legal sources, as well as connections between national and regional laws that aim to function for both the individual as well as the community. In 2001 the reform of Title V of the Constitution confirmed this complexity; article 117 redefined, but did not solve, the conflict between binomial state legislation and regional legislation. The regulatory framework now provides for regional contribution to State religious policy as per the guidelines and limits established by the national government and parliament (art. 117 p. 2 letter c).

Many issues of regional competence are relevant from a religious perspective: education, health, nutrition, cultural heritage and the environment, and the promotion and organization of cultural activities. This legitimises the existence of regional religious laws, as confirmed by sentence n. 406 from 2005 of the Constitutional Court which grants that legislative power be exercised by the State and regions, providing it respects the Constitution and EU and International obligations. EU law provides an additional layer of complexity. role of this legislation has grown in national regulatory significance with regards to religious freedom, as shown by the Court of Cassation judgments 406 and 1402 from 2006. These judgments acknowledge the superiority of the European Convention on Human Rights (ECHR) over ordinary law, while recognising the autonomy of EU Member States in the regulation and definition of religious policy, as long as it conforms to attachment 11 of the Declaration of the Treaty of Amsterdam.

While respecting the margin of discretion to which each Member State is entitled, these “interposed” or “sub-constitutional” rules confirm the...
growing role of the EU in matters of religious freedom\textsuperscript{8}. Constitutional judgments n. 349/2007\textsuperscript{9} and 227/2010\textsuperscript{10} corroborate this, reiterating that Italian legislative power must be exercised with respect to the obligations provided for by International and EU laws, with specific reference to the ECHR.

II. Legal Sources

1. Explicit References to Religion in Italian Law

The religious dimension in the Italian legal system is as individual as it is collective and is present in various levels in its sources. Explicit reference is made to religion in articles 7, 8, 19, 20 of the Constitution. Art. 19 specifically regulates individual and associated rights to religious freedom, while the other articles address the political and procedural profiles of the religious phenomenon, referring to the contractual nature of the relationship between the State and religious organisations and formalizing the principle of distinction between the laws (art. 7 and 8, third comma, Constitution). Despite common reference to religion, the rationale of these laws is not homogenous, since various cultural positions and ideologies have fuelled the debate of the Constituent Assembly. For example, if arts. 7 and 8, second and third comma, recall the institutional aspect of the relationship between religion and politics and overcome the logic of liberal inspiration that was typical of the XIX century, the first commas of art. 8 and art. 20 refer to the general principle of equality, with a specific focus on guaranteeing religious freedom to all religious organisations. On the individual aspect of religious freedom, art. 19 refers to the “personalist” principle as more generally established in art. 2 of the Constitution. Sentence n. 167

\textsuperscript{9} Sent. Const. Court, 22 October 2007, n. 349.
from 1999\textsuperscript{11} notes that this functions for the full development of human beings\textsuperscript{12}, as is the intended outcome of social organisation.

Naturally, there are other articles and constitutional elements that directly or indirectly relate to religion: art. 18 of the Constitution on the right to association; art. 21 on freedom of expression or art. 29 on the recognition or qualification of the family as a “natural society founded on marriage”.

In short, it is a network of principles that aims to reinforce rights themselves\textsuperscript{13}, contributing to a regulatory framework able to fill gaps in the legislative system, resolve antinomies and provide order and structure.

Ordinary legislation also contains explicit references to religion. These references are so widely spread and diverse that listing them all would be both impractical and boring. Rather, the point of focus should be that the Italian legal system does not have a general law on religious freedom that guarantees a minimum standard of fundamental rights relative to faith. It is also lacking an updated interpretation of the religious phenomenon\textsuperscript{14}, which, taking historical factors into account, would implement a new regulatory framework capable of breathing life into tired institutions.

Similarly, for treaty law\textsuperscript{15}, in addition to the first and second level agreements between the Holy See and the Italian Government\textsuperscript{16} and agreements signed from 1984 onwards between a growing number of minority religions and the Italian State\textsuperscript{17}, further agreements are now present at various levels in the Italian normative system in sectors such as education, health, nutrition, cultural heritage and the environment, and the promotion and organisation of cultural activities. The result is an orderly pyramidal frame-
work\textsuperscript{18} with the Roman Catholic Church at the top, followed in a hierarchical manner by the religions that have approved agreements, then recognised religious or worship organisations who have stipulated agreements that are yet to be approved as per legislation 1929/30. On the fourth level are religious organisations that have been recognised as entities but do not have any agreement under way; and on the last level are the religious organisations and groups that are organised in various ways but operate only under general law.

A structure of this nature inevitably corresponds to a clear diversification of both form and cognitive sources. The “very special law” contained in the Concordat and the Agreements is privileged, and places conditions on access to general law. The “special law” contained in agreements and the concordat that does not condition general law follows second to this. Finally, there is general law that has been stripped of the protection offered by religious freedom and the first two “special” and “very special laws”.

What are the consequences of this on the right to religious freedom and conscience? In general, the ascent from one level to another in the pyramid is often subject to the arbitrary discretion of public administration. This is displayed in the procedure for recognition of legal personality provided for by law n. 1159 from 1929: recognition requires a decision of the Council of Ministers, which is a political act, and is contingent on the benevolence of the Under Secretary in placing the issue in the agenda of the Council\textsuperscript{19}. Consequently, moving up in the pyramid is extremely difficult. The connection between the levels is subject to the unpredictable discretion of the State. This is particularly true for agreements, as this factor is only partially mitigated by the jurisprudence of the 2011 State Council sentence\textsuperscript{20}. In reality, the effects of this sentence were subsequently somewhat reduced by

\textsuperscript{19} The website for the Presidency of the Council unequivocally demonstrates that the initiation of negotiations with religious organisations is subject to the recognition of legal personality by the latter, following the favourable opinion of the State Council. See http://www.governo.it/Presidenza/USRI/confessioni/intese_index.htm (visited 14 April 2018.).
the final ruling of the Constitutional Court\textsuperscript{21} regarding the conflict of powers between the Government and the Court of Cassation and whether governmental decisions to launch negotiations are “political acts”. Indeed, the judge of laws, repeating the interpretive line of the 2011 State Council recognised that “at present (…), some assumptions underlining the decisions of the united sections of the Court of Cassation and the intervening subject seem to be still incorrect. Notwithstanding the Catholic faith, which is protected under art. 8, first comma of the Constitution, the absence of a stipulated agreement is not necessarily incompatible with the guarantee of equality between religious faiths. In our legal system, which is characterised by the principle of secularism and thus impartiality and equidistance for all religious faiths (…), it is not the stipulation of an agreement that allows for equality between religions: this is protected by art. 3 and 8, first and second comma and art. 19 of the Constitution, where the right of all freely to profess their religious faith, in individual or collective forms, is guaranteed, as well as in art. 20 of the Constitution”\textsuperscript{22}.

No less important is discretion in the recognition of legal personality of ecclesiastical bodies for the purpose of religion and worship\textsuperscript{23}. Italian legislation still requires a decree from the President of the Republic and political enforcement by the Council of Ministers. Discussion on the issue relies on the magnanimity of the Under Secretary to the President of the Council, who is in charge of preparing the agenda and may highlight or promote the issue. Moreover, although it is no longer obligatory, the opinions of the State Council are an essential factor in the procedure as they act as a precautionary measure. Indeed, the Presidency of the Council of Ministers continues to consider it appropriate to request the opinion of the administrative judge on the recognition of legal personality of the bodies in question, invoking art. 2 comma 3, let. 1 of law n.400 from 23 August 1988.

This pyramid of religion not only creates a problem for the exertion of collective religious freedom, it also undermines art. 20 of the Constitution, favouring discrimination among groups and rendering the exercise of free choice by statutory autonomy difficult. It forces minority religious organi-
sations to fit within rigid institutional and legal confines for religious organisations regulated by art. 8 of the Constitution, that is, forcing all other religious bodies to assume a form that fits within this model. Thirty years after the signing of the first agreement with the Waldensian Board, the implementation of art. 8 of the Constitution has actually driven the divide between the predominating and minority religions further apart. It is a situation that “creates serious concern of a fear of return to the “wait and see” policies of the fifties and sixties demonstrating the problematic nature of the relationship between the State and religious confessions” 24.

2. Exclusion of Sources of Religious Rights in the Legal System of the State

The separation mechanism adopted by the constituent does not consider sources of a religious nature in the preparation of State law 25. In other words, the Italian legal system does not provide for direct or immediate effect of religious laws. That said, there are some cases in which State regulations refer directly to the latter. Art. 7 comma 5 of law n. 121 from 1984 26 establishes that “the administration of property belonging to ecclesiastical bodies is subject to controls provided for by canon law” 27. In other cases, religious laws contribute to the definition of the prescriptive content of State laws, as per art. 498 of the Penal Code., which punishes anyone who illegally wears religious clothing in public. Statutory rules may also refer to the legal order of a religion to define the constitutive factors of some statutory legal cases, as has occurred for cases concerning “ministries of religion”, “sacred items”, “worship” etc. That is, the State legislator refers to terms or institutions of religious origin (heteronome rules) for the con-

26 Art. 7 comma 5 “The administration of property belonging to ecclesiastical bodies is subject to controls provided for by canon law. The purchase of these bodies is subject to controls provided for by Italian law for the purchases of legal persons”.
27 Art. 1085 c.c. “The right to take water is exercised from the spring equinox to that of autumn for summer water and from the autumn equinox to spring for winter water. The distribution of water during day and night refers to natural days and nights. The use of water in holidays is regulated by the rules for the holiday in force at the time when the use was agreed or when it was possessed”.

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struction of legal concepts or for the semantic improvement of specific laws.

The recognition of the juridical efficiency of religious sources also occurs in cases where the more or less automatic effectiveness of certain procedures provided for in the Italian legal system is subordinate to the existence of religious certification. It is enough to consider the effectiveness of judgments of matrimonial nullity pronounced by the Catholic ecclesiastical courts, where State recognition of the validity of the clerical judgment depends on the certifying force of the religious legal authority.

In saying this, direct or indirect reference to religious rules cannot exceed the limit provided for by the Constitutional Court in sentence (by now long passed) n.334 from 1996. Here, the judge established the impossibility of reinforcing the prescriptive efficiency of a State law through the appeal and support of religious laws. This finds basis in the principle of separation on which the secular democracy of the Italian Republic is based, as defined by the Constitutional Court in the historic sentence n. 203 from 1989. Relative to this issue, it is necessary to understand clearly the terms of the problem, so as to avoid misunderstanding. It has been pointed out that the State cannot use religious law to reinforce the strength of its own laws, but this does not exclude a general favor religiosis, as long as it is in full compliance with the principle of “positive secularity”, on which the relations between the Republic and religious organisations are based. This is confirmed by the second paragraph of art. 9 of law n. 121 from 25 March 1985, on the teaching of the Catholic religion in public schools. The Italian Republic recognises the value of religious culture, and actually promotes effective enjoyment with a view to strengthening religious and cultural pluralism (Constitutional Court 203/1989), and of providing a concrete protection of religious freedom and ensuring expansion under conditions of equality and non-discrimination.

3. The Right to Opt between the Civil and Religious Systems

The system of agreements provided for by constitutional laws grants the option of choosing, in some areas such as matrimony, between religious laws and state regulations. The legal system recognised the faculty of

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29 See J. Pasquali Cerioli, I principi e gli strumenti del pluralismo confessionale (artt. 7 e 8) cap. 6, in Nozioni di Diritto ecclesiastico, cit., pp. 101-104.

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choice not only between a religious or civil model of marriage, but also, where the law permits, to opt for a religious marriage with civil effects regulated by agreement\textsuperscript{30} or by intent\textsuperscript{31}. Religions that do not have an agreement are subject to the law from (l.1159/1929) on “permitted worship”. In this case, religious laws governing the celebration rites are permitted, but the substantial and procedural discipline of the rest is left to State jurisdiction as per art. 83 c.c. Not by chance, this law provides that marriages celebrated before ministers of religion confirmed by the State are regulated by the laws governing civil marriage (art. 84 e ss c.c).

4. Normative Autonomy of Religious Organisations

Respecting the principle of pluralism in legal systems, art. 7 comma 1 and art. 8 comma 2 of the Constitution recognise the full legal autonomy of all religious faiths. This follows from the recognition of the exclusive reservation of the legal/statutory competence granted to the Catholic Church as per art. 7 comma 1 of the Constitution and to other non-Catholic religious organisations as per art. 8 comma 2 of the Constitution. However, as these religious rules are applied in the Italian State territory, they should comply with the regulations of the Italian legal system. Indeed, regardless of their effectiveness, the laws and principles provided by the State legal system prevail over the religious norms only in cases where fundamental rights are contradicted and endangered by religious rules. In the pilot sentence n. 30 of 197, the Constitutional Court provided that the supreme principles on which the Constitution is based have no limit and will always be above religious laws, as they embody the values on which the Constitution is founded and thus cannot be subverted or modified by any source, either internally or heterogenous to the Italian Constitutional system\textsuperscript{32}. On a lower level, despite not containing the supreme principles of the Constitution, the violation of certain principles such as representation in “organisational laws” prevents the completion of some administrative procedures. An example is the recognition of legal personality of religious bodies with


ordinary procedure or other religious institutions as provided for by the Catholic Church in law n. 1 from 20 May 1985\(^\text{33}\).

Conscientious objection plays a role in the relationship between religious sources and the State legal system when it is motivated by religious reasoning and conscience. For reasons of religion and conscience, individuals are permitted under Italian State law to invoke the institution of conscientious objection *secundum legem*. The reasoning for this is found in arts. 2, 3, 19 and 21 comma 1 of the Constitution. As per sentence n. 271 from 2000\(^\text{34}\) of the Constitutional Court, these contain “a set of normative elements that converge in a sole configuration of a principle of protection of the so-called rights of conscience”. This exemption is limited and conditioned by the legislator’s requirements, as it is up to the legislator to “establish an equilibrium between individual conscience and its faculties, while balancing the complex mandatory rules of political solidarity, economy and society that are imposed by the Constitution”\(^\text{35}\). Art. 9 of law n. 194 from 22 May 1978 thus provides that doctors and healthcare workers may invoke the concept of conscientious objection in the matter of voluntary termination of pregnancy, as long as they comply with procedures established by the law. Members of the Jewish faith may use the *kippah* before the judicial authority without sanctions, as per art. 6 of the law n. 101 approved 8 March 1989.

The rationale behind exemptions for certain categories from general law on account of religious beliefs is different, as is indicated in art. 4 of law 121/1985 on the right of “ordained” catholic ministers to obtain, on specific request, exemption from military service or assignment to substitutive civil service. The same rationale is found in the consideration of religious holidays: art. 4 of law 101/1989 implements agreements made with the Union of Italian Jewish Communities (UCEI) and grants all Italian citizens of the Jewish faith the right to observe a day of rest on the Sabbath. These examples show that, especially in the public sectors and work relationships, belonging to certain religions or holding a certain set of values justifies exemptions to the general law, conditional on the expression of personal identity and the clear desire to be subject to a different discipline.

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5. Combatting Religiously Motivated Discrimination

Another peculiar feature of the Italian legal system with regards to the relationship between law and religion is the anti-discriminatory discipline\(^{36}\). Rules are in place to prohibit religious discrimination and limitations on the exercise of religious and conscientious freedom, particularly in long-term employment relationships. In this regard, arts. 8 and 15 of law 300/1970, art. 43 of legislative decree 286 from 1998 and legislative decree 216 from 2003 introduced numerous limits for employers to ensure religious and conscientious freedom is guaranteed for employees in both the public and private sectors. In particular, due to these laws, employers must i) not limit the expression of religious freedom; ii) not examine the religious beliefs of workers; iii) not treat workers differently on account of their religious beliefs; and iv) not dismiss anyone for religious reasons; v) not place limits on the religious freedom of workers who refuse to complete or carry out actions that are against their conscience or that do not comply with their religious rules if such behaviour does not limit their regular work procedure. It goes without saying that these requirements are not obligatory where the employer can be classified as an “Ideologically orientated organisation”, or an organisation that produces goods or provides services of an ideological or religious nature\(^{37}\).

III. Jurisprudential Profiles of the Italian Agreement System

The principles of distinction between the rules covered by art. 7 comma 1 and art. 8 comma 2 of the Constitution ensure separation between religion and jurisdictional functions. This profile is particularly evident in the case of matrimony: spouses can choose to end marriage either through the civil institutions of separation and divorce, regulated by law 898/1970 and by the recent law n. 55 from 6 May 2015, or through an ecclesiastical judge to obtain an annulment with relative enforcement process which terminates the civil effects of the canonical marriage. In practice this is quite complex from a legal perspective, particularly as in the 1984 Agreements, the “subject to jurisdiction” clause was not included in favour of ecclesiastical judges. This created a legal “gap” that has been filled by two different judi-

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cial interpretations\textsuperscript{38}: on the one hand, the United Sections of the Cassation with sentence n. 1824 from 13 February 1993\textsuperscript{39} confirmed the existence of competition between civil and ecclesiastical judges that is regulated by a criterion of “prevention”. In reality, four years ago the United Sections of the Cassation\textsuperscript{40} reduced the scope of this principle by applying a more restrictive interpretation. Indeed, for the judge of legitimacy, in the conflict between ecclesiastical and civil jurisdictions the criteria for prevention should operate in favor of civil jurisdiction as “the proceedings of a civil judgment impede enforcement as per art. 797 c.p.c., while the civil judge can be paralysed with only the start of enforcement of the ecclesiastical sentence, rendering the canonical process unable to determine a simultaneous pendency of two identical suits in State law”\textsuperscript{41}. On the other hand, in sentence 421/1993\textsuperscript{42} the Constitutional Court defended the principle of reserve jurisdiction in favour of ecclesiastical judges, as the systematic reading of arts. 8 of law 121/1985 and 4 of the additional Protocol noted the “permanence of a system in which civil effects are recognised through the transcription to marriage contracts as per the rules of canon law and that of the legal system governing them”. It can be established, on the basis of what was already supported by the Constitutional Judge in sentences 176 from 1973 and 18 from 1983, that the act of matrimony is governed by canon law and “it is logical that disputes regarding its validity should be dealt with by the courts of the order”\textsuperscript{43}. Thus, for the Judge of Laws, the 1984 Villa Madama Agreements did not abrogate the reserve of jurisdiction by confirming the jurisprudential leaning that was previously established in 1984\textsuperscript{44}.

It is clear that the biggest problems arise in relation to the ruling of the Cassation, where if the filing judge is of the civil law the problem is in establishing which law to apply: civil or canon? Indeed, the sentences of the Cassation do not clarify which law the judge should apply when called to rule on the annulment of a transcribed canonical marriage. The relative ju-

\textsuperscript{38} See. N. Marchei, La giurisdizione sul matrimonio canonico trascritto, in Nozioni di diritto ecclesiastico, cit., 277.ss.
\textsuperscript{39} This has been repeated in: Cass. sec. I, 386 from 2012.
\textsuperscript{40} Cass., sec. un., n. 16379 and n. 16380 from 2014.
\textsuperscript{42} Sent. Const. Court., 1 December 1993, n. 421.
\textsuperscript{43} N. Marchei, \textit{op.cit.}, p. 280.
\textsuperscript{44} Displaying this also: Turin Court of Appeal 29 April 1994 and the Florence Court of Appeal from 21 May 1999 and the \textit{obiter dicta} in the sentence of the Court of Cassation, sec. I, n. 8926 from 2012.
risprudence on the matter presents a contradiction, however the interpretation of the Court of Milan in case n. 6101 from 17 June 1996 seems to favour the application of civil law. This is because civil law is more respectful of the supreme separation principle enshrined in art. 7 of the Constitution. Thus, the most common interpretation is that the application of canon law by a civil judge would be incoherent with the principle of secularism that underlines the Italian legal system.

Another problematic profile present in the Italian legal system with regard to the relations between the State and religion concerns the respect of the fundamental principles of the State legal system by religious legal authorities. From this point of view, according to the principle of separation of the State and religion, religious justice can be administered only on the basis of internal law of a religious nature and State law will be effective only if implemented by the religious legal system as well. The problem arose in the enforcement procedures of the sentences relative to marriage annulment as per art. 8 comma 2 of 1121/985 and incorporated by the provisions of n. 4 lett b. of the additional Protocol. Pursuant to this legislation, the annulment sentences of ecclesiastical courts are effective in the Italian legal system only if the competent civil court (the territorial Court of Appeal) considers the legal requirements for the annulment as valid and existent. For the most part, these are respect for the contradiction principle during the trial in front of the ecclesiastical judge and above all, compliance with the principles of Italian public order.

Finally, with the aim of maintaining a relationship between the legal systems, it must be asked if the Italian State allows religious authorities unlimited jurisdiction with regards to the religious legitimacy of civil laws. By virtue of the principle of separation between the systems and the supreme principle of secularism, the religious authority cannot judge of the merit of State laws. At the most, it can express judgment of an ethical or moral nature, suggesting that followers disobey or lobby for or against the modification of certain laws. It is thus not only a question of prohibition of State interference in religious law, but also a corresponding prohibition on interference by religions in the law of the State.

45 The majority jurisprudence has aligned with the conclusions of the united sections and in most cases, has moved towards the application of civil law. See: Court of Torre Annunziata 25 January 1996; Court of Milan 17 June 1996; Court of Milan 14 May 1998; Court of Novara 4 February 2010.
4.1 Migration processes and the growth of religious pluralism have definitively increased the number of cases relative to behaviour and practices that do not conform with the behavioural and cultural practices of the Italian tradition. That said, as evidenced by the jurisprudence, this has never been as widespread and rooted as to trigger real processes of social transformation. In the Italian context, these phenomena have generally been episodic, in some cases repeated, but not intrinsically likely to change custom. Cases of infibulation, such as worries over the use of the burqa, display a form of social unrest and lack of tolerance, but are not real social emergencies. Art. 6, of law n. 7 from 9 January 2006, which introduced art. 583-bis in the criminal code, displays this. This law considers the acts of “clitoridectomy; excision; infibulation and whatever other practice causing similar effects” as crimes. The symbolic nature and importance of the law in defining a practice as “bad”, instead of formulating it in reaction to an actual danger is evidenced by the low number of sentences pronounced as of today, with only one conviction made with regard to that subject. The same theory can be applied to the burqa. The proposal to ban the use of the burqa was founded on motivations that were far from the actual use of the custom in the Italian territory. The proposals of law n. 2422 from the Sbai-Contento initiative from 6 May 2009 “Modifies art. 5 of law n. 152 from 22 May 1975 regarding the ban on wearing clothing such as the burqa and the niqab” and n. 2769 from the Cota and others from 2 October 2009 “Modifies art. 5 of law n. 152 from 22 May 1975 regarding the protection of public order and identifiability of the population” make up two examples of cases where once more, public order, security and social alarm are invoked not on the basis of real problems, but from the politics of some parties whose foundation and political consensus are based on social alarm and fear.

IV. Conclusions

Since 1947, religious pluralism under the Italian normative framework has been built on the basis of two distinct but connected criteria: “precedence” and “conformity”. In the first instance, no agreement would have been possible with a religious minority unless there was a preceding agreement with the Catholic Church. This was understood by the Waldensian Methodist community, whose representatives had to wait until 1984 to sign an agreement with the State. The agreement was signed three days af-
ter the new Concordat with the Roman Catholic Church, but the text of the agreement had been prepared as long ago as 1978. In any case, the criterion of precedence does not guarantee access to the agreement, so it is necessary that religious minorities satisfy the criterion of conformity; that is, they agree to regulate relations with the State as per the established method. In other words, the Italian State requests that minority religions are organised according to State recognised models. There is a particular focus on those that are based on the contrast between secular and spiritual power, as per the western Christian juridical tradition, which has always been accustomed to the distinction between religious and secular activities, as well as being used to understanding religious organisations through the hierarchical model, with professionals dedicated to salvation and spirit. It is clear that this model creates problems for a large number of religious organisations that do not adhere to an ecclesiological Constantinian model, causing an internal struggle for some as they attempt to establish a unitary representation. An example is the complex and laborious federation process between 2009 and 2011 that led to the convergence of some Islamic organisations in the regional Federations and subsequently, the Confederazione islamica italiana (CII). The Confederazione is explicitly linked to the government and a number of Moroccan institutions, with no possibility of creating a formal agreement with the State at this time.

The Italian system thus finds itself caught between two realities: a bilateral and regulatory system that has ultimately betrayed the original rationale by introducing strong elements of substantial inequality in collective religious freedom, and a desire for minorities to overcome the anachronism of the approved worship laws from 1929 to restore a more balanced and fair relationship between general and special legislation through the introduction of new rules for religious freedom.

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State and Church in Cyprus

Achilles C. Emilianides

I. Social Facts

The Republic of Cyprus was established as an independent sovereign republic on 16 August 1960, when its Constitution came into force and British sovereignty over Cyprus, as a crown colony, ceased. On 20 July 1974 the armed forces of the Republic of Turkey, one of the guarantor powers of the independence, sovereignty and territorial integrity of Cyprus, invaded the country and occupied the northern part of the island. As a result of the occupation, the Greeks and other Christians from that region became internally displaced persons and fled to the southern part of the island. In addition, Turks living in the southern part of the island were encouraged to relocate to the north. The Turkish occupation of northern Cyprus continues to the present day, and the Republic of Cyprus is thus prevented from exercising its powers over the whole island.

Since the 1974 Turkish invasion, providing precise figures with respect to the population of Cyprus has presented certain difficulties, due to the abnormal situation prevailing on the island. According to the 2011 official census the population of Cyprus (Turkish Cypriots residing in the occupied areas excluded) was 840,407, out of whom 667,398 (79.41%) were Cypriots, 106,270 (12.64%) were European citizens and 64,113 (7.62%) were third country nationals (the majority being Asian or Russian). Of the members of the Greek Community, 2,700 (0.4%) were Armenians, 4,800 (0.6%) were Maronites, while 900 (0.1%) were Roman Catholics. With the exception of a few agnostics, atheists, or naturalised foreign citizens, those of Greek origin normally adhere to the Greek Orthodox religion. In view of the fact that many non-Cypriots, such as mainland Greeks, Russians, Romanians and Bulgarians also adhere to the Orthodox Christian religion, it is estimated that approximately 82% of the total current population of Cyprus are Orthodox Christians. It is further estimated that the number of Roman Catholics residing in Cyprus, if non-Cypriots are also included, is approximately 2%. The Statistical Service of the Republic of Cyprus esti-

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mates that the number of Turkish Cypriots currently residing in the occupied areas reaches approximately 88,900, although it is suggested by Turkish Cypriot sources that the actual number might be closer to 120,000. So, around 12% of the current total population of the Republic, excluding the Turkish settlers, are Turkish Cypriots. It is further estimated that approximately 2,000 Cypriots are Orthodox Christians who follow the Old Calendar.

II. Historical Background

With the exception of sporadic Arab invasions, Cyprus remained for more than eight and a half centuries – between 325 and 1191 – part of the Byzantine Empire. Thus, Christianity was the state religion of the island. During the period of Frankish rule (1191-1489), the Roman Catholic or Latin Church was established as the official church of the new kingdom at the expense of the autocephalous Greek Orthodox Church of Cyprus. Following the Venetian period, which lasted for 82 years (1489-1571), there were more than three centuries of Ottoman rule (1571-1878). During that time and the period of British occupation that followed it (1878-1960), the Orthodox Church had a dual role. It was both the ministering religious organisation of Orthodox Christians of the island, and the nation-leading political coalition of the Greeks under foreign sovereignty.

The United Kingdom acquired the rights of possession and administration of Cyprus by signing the 1878 Treaty of Alliance with the Ottoman Empire. The UK agreed to preserve the status quo, including competencies granted by the Imperial prescript, Hatt-i-Humayun (1856), towards the Churches and religious authorities. These competencies included spiritual advantages and exemptions. This state of affairs remained in effect, even after the annexation of Cyprus by the UK in 1914, the recognition of this annexation by Turkey in 1923, and the proclamation of the island as a Crown Colony in 1925. The 1914 Charter of the Orthodox Church was drafted and put into effect by the Church itself, with no intervention from the British authorities, though it was never invested with state authority. It remained in operation for 66 years, until the enactment of the 1980 Charter. The Church of Cyprus was established as a legal entity under private law. Acts of the Church that were of a legislative and administrative nature, the decisions issued by ecclesiastical courts on any subject, and marriages contracted only through a church ceremony, were recognised by the state administration and justice. The election of Bishops and administration of ecclesiastical property were considered to be internal affairs of the Orthodox
Church. Laws enacted in 1937 attempted to restrict Church’s privileges by providing that the elected Archbishop should be approved by the colonial government; however, they were eventually superseded by Law 20/1946 after strenuous protests by the Church.

III. Legal Sources

The main legal source for religions in general is the Constitution of Cyprus. In view of the fact that the Constitution of Cyprus provides for the autonomy of the various religious creeds of the Republic in organising and administering their internal affairs, state laws relating to religion are few; state laws with respect to religion may, however, be found scattered in various legal instruments. The main Articles of the Constitution that refer to religion are the following: Article 18 which safeguards the right of religious freedom; Article 110 which safeguards the administration of internal affairs and property of the five main religions of the island and Article 111(1) which concerns family law disputes.

Article 18 of the Constitution safeguards the right of religious freedom, including the freedom of religious conscience and freedom of worship. This Article corresponds in many ways to Article 9 of the European Convention on Human Rights, but it is more detailed and its provisions cover aspects not recorded in Article 9. It provides that every person has the right to freedom of thought, conscience and religion. Freedom of thought is thus safeguarded for any person, either a believer or an atheist, a citizen or a non-citizen of the Republic of Cyprus. Every person has the right to profess his or her faith and to manifest it in worship, teaching, practice or observance, either individually or collectively, in private or in public, and to change his or her religion or belief. Until a person attains the age of sixteen, the decision as to the religion to be professed is to be taken by his or her lawful guardian.

The freedom to manifest one's religion may be restricted only if such limitations are prescribed by law and are necessary in the interests of: a) the security of the Republic, b) constitutional order, c) public safety, d) public order, e) public health, f) public morals, or g) the protection of the rights and liberties guaranteed to every person by the Constitution. In addition to the conditions mentioned above, any limitation of the freedom, to manifest one's religion must be considered absolutely necessary in a democratic society and thus be consistent with the principle of proportionality. It should be noted that the use of physical or moral compulsion for the purpose of making a person change or preventing him or her from
changing to another religion is constitutionally prohibited. Such constitutional prohibition has never been supplemented by law, and accordingly there have been no criminal prosecutions of illicit proselytism. It is further provided that no person is to be compelled to pay any tax or duty the proceeds of which are specially allocated in whole or in part for the purposes of a religion other than their own.

Collective and organisational religious freedom is also safeguarded. Whereas the Cypriot courts have not so far attempted to give a comprehensive definition of ‘religion’, the Constitution stipulates that all religions are free whose doctrines or rites are not secret. Furthermore, all religions are equal before the law and no legislative, executive or administrative act of the Republic may discriminate against any religious institution or religion.

Article 110 safeguards the right of the Orthodox Church to regulate and administer its own internal affairs and property and further stipulates that this right shall be exercised in accordance with the Holy Canons and its Charter in force for the time being. The Holy Canons whose force is safeguarded by the Constitution are not only those that relate to Church doctrine, but also those that refer to the administration of the Church’s internal affairs and property. This includes both the strict observance of the doctrines (doctrinal unity) and the effect of those fundamental administrative institutions of canon law that give a Church its Orthodox character (canonical unity). The Church is entitled to legislate freely and to draft and enact its own Charter, to the extent that it does not contravene the Holy Canons. The State must not act contrary to the right of the Church to regulate and administer its internal affairs. The current Charter of the Orthodox Church of Cyprus was enacted by the Holy Synod on 13 September 2010. The same right is accorded to the three religious groups of the Republic, i.e. Roman Catholics (Latins), Armenians and Maronites, and the Islamic faith.

IV. Basic Categories of the System

The aim of the Constitution is to treat the five major religions in an equal manner and to not differentiate among them. The Orthodox Church, the three other Christian religious groups and Islam, all enjoy exclusive competence with respect to their internal affairs, as well as the administration of their property. Such autonomy derives from the pre-existing legal regime, prior to independence; the Constitution has not created a new internal legal regime for the various religions in Cyprus, but has essentially
maintained, in effect, the provisions of Ottoman Law, especially Hatt-i-Humayun, albeit without affording a dominant position to the Islamic faith.

Such similarity in treatment is also evident by the provisions of Article 23 of the Constitution which safeguards the right to property. It is thereby provided that no deprivation, restriction or limitation on the right to acquire, own, possess, enjoy or dispose of any movable or immovable property, belonging to any See, monastery, church or any other ecclesiastical corporation or any right over it or interest therein, shall be made, except with the written consent of the appropriate ecclesiastical authority being in control of such property. The same right is accorded to all Muslim religious institutions, with regards to any immovable or movable property of any vakf.

Accordingly, no single religion or creed is established as the official religion. As a result there is no prevailing, established, or state religion in Cyprus. All religions and creeds deal exclusively with their own affairs, without in any way interfering in the affairs of the State. However, the five main religions of the Republic enjoy a special constitutional status. The state has recognised broad discretionary powers in their favour and does not have the right to intervene in their internal affairs, or in the administration of their property. Whenever matters of common interest arise, such as religious education, the State and the religious corporations debate in order to reach a common solution; if, however, this is not possible, the State may reach any decision, so long as it does not interfere with the internal affairs or the administration of the property of the constitutionally protected religions. Furthermore, the State is not confessional. Thus, when assuming their duties, state officials are not sworn in, but affirm their faith in and respect for the Constitution and the laws made thereunder, and the preservation of the independence and territorial integrity of the Republic of Cyprus. Accordingly, state officials do not have to follow any particular religion, or believe that a God exists, in order to be elected or appointed. Their only allegiance is towards the Constitution and the laws made thereunder, and not towards any religious beliefs.

In view of the above, the Constitution has introduced a system of coordination between the Republic of Cyprus and the major religions and Christian creeds. Such a system differs substantially from the State-law rule system prevailing in Greece, since it is based upon the autonomy of religious organisations, which are distinct from the State and deal exclusively with their own affairs. It further differs from the separation system, since the State has recognised broad discretionary powers with regard to the main religions’ internal affairs, administration of their property, family matters, and in general matters of communal character. The model prevail-
ing in Cyprus is essentially a pluralistic model, which recognises and embraces the public dimension to religion, while at the same time attempting to co-operate with all religions. The significance of faith in people’s lives is considered as worthy of protection by the state and where the function of the state overlaps with religious concerns, the state seeks to accommodate religious views, insofar as they are not inconsistent with the state’s interests. In consequence, pluralism is achieved through the recognition that the state and the various religions occupy, in principle, different societal structures; religious neutrality is not, however, achieved simply because there is religious autonomy, but also through positive measures on behalf of the state, which aim at the protection of religions. Other religious groups such as Jews, Jehovah’s Witnesses, Buddhists, or Protestant Christians, enjoy religious freedom according to Article 18 of the Constitution, and are equal before the law, so that no legislative, executive or administrative act could discriminate against them. However, such religions are not considered as religious groups in the constitutional sense and therefore, do not enjoy the special constitutional status of the five main religions of the island; differences in treatment between the five constitutionally recognised religions and other religions of the island principally occur with respect to religious education, direct financing and family law matters.

V. Legal Status of Religious Communities

According to Cypriot Law, a legal person is considered to be a legal person under public law, if it has been established by law, it is endowed with decisive public law competencies and is under the control of the State. The Orthodox Church of Cyprus does not fulfil the requirements of the aforementioned definition, since it is not under the control of the State. A majority of the Supreme Court of Cyprus held that the Orthodox Church was not an authority of the Republic of Cyprus in the sense of Article 139 of the Constitution. The Orthodox Church is therefore considered as a legal entity under private law, albeit of a peculiar nature. Although the Supreme Court’s aforementioned judgment concerned only the legal status of the Orthodox Church of Cyprus, it is undisputed that its principles also apply to the three constitutionally recognised religious groups. Therefore, those three religious groups should also be properly considered as peculiar legal persons of private law. It is further suggested that the same legal status should also be accorded to the Islamic faith.

Religions other than the five constitutionally recognised religions are not required to register with the authorities. Their members enjoy reli-
gious freedom according to the constitutional provisions, even if such reli-
gious organisations have not registered with the authorities. However, if
these religious organisations desire to engage in financial transactions,
such as maintaining a bank account, they must register as a non-profit
company. In order to register, a religious organisation must submit an ap-
application stating the purpose of the non-profit organisation and providing
the names of the organisation’s directors. So far, applications by religious
organisations have been promptly accepted by the authorities of the Re-
public of Cyprus, without any particular problems.

VI. Religious Communities within the Political System

The first President of Cyprus was Archbishop Makarios who presided be-
tween 1960 and 1977; during that era the political influence of the Ortho-
dox Church was undeniably far-reaching. Since the death of Archbishop
Makarios in 1977 the political system of Cyprus has been completely secu-
larised, since religious functionaries in principle refrain from participating
actively in elections and are not appointed to public offices. The Archbish-
op and other religious ministers restrict themselves, in general, to the exer-
cise of their spiritual role, without interfering in the exercise of the execu-
tive powers of the Republic. Consequently, religious influence in political
life has diminished substantially: no political party claims that it is guided
by spiritual truths, or that it has the support of the Orthodox Church. In
addition, the fact that the Archbishop or Metropolitans of the Church sup-
port a particular political party is of little significance to voters.

The Orthodox Church retains, however, a significant financial influ-
ence, since many major companies are owned directly by the Church and
the Church is also the largest land-owner on the island. Almost all political
parties and many politicians receive funding from the Church during elec-
tions, or with respect to their political activities. In addition, many politi-
cians regularly ask the Church to assist their voters and arrange meetings
with the Archbishop or other Metropolitans, in order to enable their vot-
ers to receive grants, or other donations, from the Church. Religious influ-
ence in politics may principally be traced in particular areas such as the
Cyprus problem and education. With respect to the issue of the Turkish
invasion, the Church is most influential while funding non-governmental
organisations, or associations of citizens, or even political activities, which
seek to inform the international community about the events that oc-
curred in Cyprus in 1974. With regards to education, it has been the prac-
tice of most Ministers of Education and Culture to consult the Church pri-
or to decisions that influence religious education, although this does not imply that the Church’s position will necessarily be adopted.

**VII. Culture**

Religion has a central role in the culture and civil society of the island. Many clubs, associations, or institutions of the island are either funded by the Church, or related to religious activities. The Orthodox Church publishes a bi-monthly official journal, named ‘Apostolos Varnavas’, while several other magazines promote the doctrines of the Orthodox tradition. It should also be noted that, the Armenians and Maronite have their own newspapers and cultural centres. The first private television channel in Cyprus belonged to the Orthodox Church and it was named *Logos*. *Logos* first aired on 26 April 1992 with live coverage of the Christian Easter celebrations from the St John Cathedral in Nicosia. Although the channel is now licensed to a third party, the Orthodox Church retains the right to transmit certain religious or spiritual programmes through the channel. News concerning the Orthodox Church and major religious activities, such as Easter celebrations, are further transmitted by the other private free to air television channels, as well as the two state owned television channels. The Archbishop of the Orthodox Church is considered to be a significant public figure and therefore, his views on various political, social, or spiritual issues are often reproduced or commented upon in news and talk shows. In addition, the Orthodox Church owns a private radio station, also called *Logos*. This radio station has been transmitting since 24 April 1992 and focuses on religious, spiritual and cultural programmes, Greek music, as well as talk shows. Logos was, however, recently renamed as Diesi and is now a music station. There are additional church-owned radio stations, which, however, only transmit locally. Transmissions concerning religious or spiritual issues are also broadcast by the other major private radio stations of the island, as well as the state owned Cyprus Broadcasting Corporation (CyBC). It should be further noted that the CyBC Law makes an attempt to accommodate the various religious minority interests, by providing access to the media and ensuring that all religious creeds may enjoy a certain amount of broadcast time.

Since the Turkish invasion of 1974, the Orthodox Church has undertaken an initiative to repatriate religious relics and antiquities stolen or looted from churches and monasteries in the occupied areas. In addition, the Church of Cyprus has been functioning as a Centre for the Maintenance of Icons and Manuscripts with the purpose of preserving the archaeological
and cultural treasures of the Church. Moreover, an Office for the documentation of Byzantine icons functions in collaboration with the Antiquities Department of the Republic. The Orthodox Church further supports a research centre, as well as a museum, aiming at the documentation of the cultural religious history of Cyprus and the financing of relevant publications.

VIII. Labour Law within the Religious Communities

The status of the clergy of the Orthodox Church and other religions of the Republic remains one of private law, even in cases where the salary of such clergy may be paid by the State. Clergy have employment contracts with, and receive instructions from, their respective Church and not the State; consequently, the State does not itself function as the employer, but simply funds the Churches, who function as the employers of the clergy. The above view is consistent with the fact that the various religious organisations, including the Orthodox Church and the three other Christian religious groups, are not considered legal persons under public law, but only legal persons of a peculiar nature under private law; therefore, the status of the employees of those Churches ought, in principle, to remain one of private law and not of public law. In light of the above, the employment relationship between a religious organisation and an employee is governed by the general provisions of employment law. The Supreme Court has thus held that despite their spiritual role, religious ministers are properly considered as employees, and thus, the general provisions of employment law are applicable with respect to their status of employment.

Law 58(I)/2004 implemented Council Directive 2000/78/EC establishing a general framework for equal treatment in employment and occupation, Council Directive. The Law sets out a framework in order to prevent discrimination on grounds of, inter alia, religion or belief, in the area of employment and occupation, so that the principle of equal treatment might be effected; its scope extends to religious organisations. Direct and indirect discrimination on grounds of religion are prohibited both by virtue of the provisions of Law 58(I)/04 and by Article 28 of the Constitution which safeguards the principles of equality and non-discrimination. However, Law 58(I)/04 allows for a requirement that a person should be of a particular religion or belief in order to be employed in a church or any other religious organisation if this is a genuine, legitimate and justified occupational requirement, with regard to the ethos of the organisation; the application of the principle of non-discrimination with respect to employ-
ment loosens in favour of the application of the principle of organisational religious freedom. In view of the peculiar and unique characteristics that the status of a religious minister entails, certain exceptions from the general provisions of employment law might be recognised in the appropriate cases; the extent to which the principle of organisational religious freedom may circumvent the application of the general provisions of employment law has not yet been settled, and has to be examined on a case by case basis and in the light of all relevant considerations.

**IX. Legal Status of Clergy and Monks**

The Law of the Republic of Cyprus contains no provisions as to the legal status of the clergy. It should be noted, however, that clergymen do not enjoy exemption from criminal or civil procedure as a result of any kind of confessional secret. Under Canon Law, clergy are prohibited from practicing certain professions, such as profitable activities which are inconsistent with their priestly functions, or the assumption of state offices. In the Orthodox Church of Cyprus clergy are composed of Deacons, Presbyters and Bishops. They hold ceremonial, administrative, and teaching authority. The ordination of a Deacon or a Presbyter is performed by at least one Bishop. The ordination of a Bishop is performed by the Archbishop or, by order of the latter, by the most senior metropolitan. If the See of a metropolitan is vacant, the Archbishop acts as Vicar of the See. A candidate for the position of the Archbishop or a Metropolitan is expected to be unmarried, to be over 35 years old, to be a graduate of a Theology school and to have completed ecclesiastical service of at least ten years as a clergyman. The status of clergyman is forfeited when a clergyman is defrocked. The penalty of defrocking is imposed by the Holy Synod, convened as a Tribunal.

The Law of the Republic of Cyprus further contains no provision as to the legal status of monks. The provisions of Canon Law apply, together with the internal regulations of monasteries. Under the Charter of the Orthodox Church of Cyprus, the status of a monk is acquired by tonsure. The minimum age for tonsure is eighteen, after the candidate has completed a three-year term as a novice. Tonsure is performed by the Abbot, a Bishop or a Presbyter with the permission of the local Bishop; otherwise it is null and void. It should be noted that lay persons also participate in all aspects of the work done by the Orthodox Church. The participation of laity in the Church of Cyprus is probably the strongest in the entire Orthodox world, both in the extent of its competencies and its elevation to the status

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of an organ of Church administration. Lay people participate in most of the central and peripheral organs of administration of the Church, as well as in the management of property and in the election of the Archbishop and the metropolitans on the island.

X. Finances of Religious Communities

The current financial system is a direct result of the constitutional provisions regarding the relations between state and church in the Republic of Cyprus. The right of the five major religions to exclusively regulate their own property is constitutionally recognised. Other religions have essentially the same legal status with regard to the administration of their property. Consequently, each religious body administers its own property without state intervention. The Republic of Cyprus does not impose any special religious tax. Furthermore, the income of religious organisations and charitable associations is exempt from income tax. Other tax laws, however, do not provide for the exemption of religious organisations.

While the Republic of Cyprus does not provide funding to religions per se, significant religious assistance is given to religious communities with regard to the construction, or repair, of their churches, monasteries and cemeteries, and for other religious purposes, in the form of state aid. It should be observed that such state aid is provided by the Central Government and is in practice given only to the five major religious communities and not to other religious organisations. Important assistance is provided by the State as far as the practice of religion is concerned. As a result of an agreement between the Republic of Cyprus and the Orthodox Church, the Church has transferred some of its immovable property to the Republic, which in return contributes to the payment of the salaries of parish clergy in rural areas. The government decided that this agreement should also extend to the clergy of the three other Christian religious groups of the Republic, and as of 1 January 1999 the state has also begun to pay the salaries of a number of priests of those three religious groups, despite the fact that only the Orthodox Church had granted any immovable property to the Republic. This was due to the fact that the three religious groups and the Orthodox Church should be treated on an equal basis in view of the system of co-ordination, which is in force in the Republic of Cyprus. The same treatment was granted to the parochial priests of the Orthodox Christians who follow the Old Calendar.

The Republic of Cyprus does not contribute, however, to the payment of salaries of religious ministers of other religions, or for lay people work-
ing either for the Orthodox Church or for the three religious groups. It should be further observed, that the ministers of the three religious groups of the Republic enjoy free medical treatment and medicines in Governmental hospitals, irrespective of their citizenship, despite the fact that such free medical treatment used to be provided for free only to Cypriot citizens. In addition to the above, the State provides an annual grant towards the churches of the three religious groups of the Republic, in order to assist them in fulfilling their religious duties. The Republic of Cyprus provides additional financial assistance to the three religious groups of the Republic with regard to their education, worship places, and their cultural heritage. Land, as well as public grants, has been given to the three religious groups of the Republic for construction of their churches, monasteries and cemeteries. Grants are also given for repairs to existing churches and monasteries. In addition, the Ministry of Education finances cultural activities of the Greek Orthodox Church and the three religious groups of the Republic, including publications, performances, construction of libraries, seminaries, museums, keeping collections of archives, or historic buildings. Financial assistance is also given to social and athletic clubs which relate to the Orthodox Church or to the three religious groups. Financial assistance is also given with regards to maintenance and reparation of mosques in the non-occupied areas.

XI. Religious Assistance in Public Institutions

The State recognises that chaplaincy serves an important cause, namely to serve the needs of the members of communities such as the army, prisons or hospitals who are otherwise unable to access the services offered by religious bodies to the general public. Moreover, chaplaincy is essential in order to safeguard that those members properly exercise their fundamental right to individual religious freedom, despite the constraints otherwise imposed. Accordingly, chaplaincy is considered as worthy of protection, since it promotes the exercise of the religious freedom and it is consistent with the recognition of faith in the lives people who are otherwise unable to exercise their collective religious freedom. The State should therefore be considered as having positive obligations to ensure that all people have access to religious services so as to exercise their beliefs in a meaningful manner.

The legal regulation of chaplaincy has not been an issue of particular significance in Cyprus. In view of the fact that the great majority of the population adhered to the Christian Orthodox religion, the Orthodox Church had traditionally enjoyed a leading role in safeguarding that chap-
laincy services are offered near hospitals or prisons, without the State regulating chaplaincy. Other religions, such as the Armenian, the Maronite, the Roman Catholic and the Islamic, also offer chaplaincy services whenever needed. The increase of the number of Cypriot residents who adhere to other religions has had the effect that the State should make provision for chaplaincy for members of different religions as far as possible. This seems to be dealt with, however, on an ad hoc basis, rather than being regulated by specific legal provisions, with the Orthodox Church sometimes acting as a facilitator between the State and other religions.

XII. Matrimonial and Family Law

By virtue of Article 111 of the Constitution, any matter relating to marriage and divorce of members of the Orthodox Church or of the three religious groups was governed by the canon law of their respective church and was adjudicated by the respective church’s ecclesiastical courts. However, the need to adjust all personal matters to contemporary legal principles, social perceptions, and the commitments of the Republic of Cyprus towards international conventions led to the First Amendment of the Constitution (Law 95/1989), which amended Article 111. Since 1989 the state Family Courts exercise jurisdiction with regard to all matters relating to marriage, divorce and family relations. The right of Orthodox Christians and members of the religious groups to opt for a civil marriage, and the ground of divorce of irretrievable breakdown rendering the marital relationship intolerable for the plaintiff have been introduced. Cyprus currently has a dual regime of civil and religious marriage. Matters relating to nullity of religious marriages continue to be governed by the canon law of the Greek Orthodox Church, or the Church of a religious group, as the case may be.

On 1 June 1983 the Church of Cyprus took an extremely important initiative for the premarital regulation of the health of future spouses, something that is disapproved of by most Churches in other countries. In Cyprus several incidents of sickle-cell anaemia are reported each year. The Holy Synod decided that among the documents that the spouses-to-be are required to submit to the Church for the issuing of a licence for the solemnisation of a religious wedding ceremony, there should be a certificate from a state-appointed doctor proving that they had been examined for sickle-cell anaemia. Even when the test shows that the disease is present, the marriage may still go ahead. The test aims exclusively at assisting the prospective spouses in making important decisions concerning the future of their family.
Criminal Law and Religious Communities

The interaction between criminal law and religion in Cyprus has not so far been an issue of major debate. This is probably due to the system of co-ordination prevailing in Cyprus, which has, in general, promoted religious tolerance between the various religious communities. There is a lack of case law with respect to the penal protection of religions; indeed the issue has almost never attracted social attention. Thus, the practical application or importance of the offences relating to religion which are enumerated in the criminal code has been limited. Part IV of the Criminal Code Cap. 154, entitled ‘Offences Injurious to the Public in General: Offences Relating to Religion’, protects certain religious manifestations. The criminal offences in the Cypriot penal code that are characterised as related to religion are the following: (a) defamation of religions; (b) disturbing religious assemblies; (c) unlawful trespassing on burial places; (d) affront to religious sentiment by word or act; (e) circulation of defamatory publications; (f) impersonating clergy; and (g) offences linked with acts of worship. Law 134(I)/11 further incorporated Council Framework Decision 2008/913/JHA on combating certain forms and expressions of racism and xenophobia by means of criminal law and provides that religious motivation in inciting violence or hatred is a criminal offence. There are no specific provisions in the Criminal Code providing that religious motivation is in general an aggravating or an attenuating circumstance of a specific offence. However, a judge may have the discretion, on the basis of all relevant factors, to consider whether to give weight to religious motivation when considering a specific offence.

Major Developments and Trends

Religious education remains a highly contested issue. Article 20 of the Constitution safeguards the right to education, including the right of the parents to secure for their children such education as is in conformity with their religious convictions. Religious lessons given in primary and secondary state schools follow closely the doctrine of the Eastern Orthodox Church. In secondary education, courses are given by graduates of university schools of divinity, while in primary education they are given by the class teacher. Attendance is compulsory for Orthodox pupils; atheists or members of other religions, however, may be excused. Whereas the new curriculum aims to tone down the extent of doctrinal education in favour of an approach where other religious tenets will also be taught, the course
remains mostly doctrinal. Religious education textbooks, similarly to other textbooks, are written by committees appointed by the Ministry of Education and Culture, and are distributed to every pupil in public schools for free. Teachers of theology in public schools are required to teach the content of such textbooks in order to promote the aims of the Curriculum; certain teachers of theology are even members of the clergy. Textbooks include topics from the Bible, both Old and New Testaments, the history of the Orthodox Church, the lives of the Saints, hymnography and hagiography, as well as moral teachings.

There is no religious education for members of other religions in public schools, with the exception of Maronites and Turkish Cypriots. The fact that the State cannot offer religious education consistent with every single individual religion or creed is not surprising; the greater majority of the pupils in each non-Turkish public school adhere to the Orthodox Christian religion and thus, it would be practically unfeasible for the State to provide religious education which would meet the demands of all parents. This is why the State has opted to assist children belonging to religious groups to attend private schools of their choice, if they so desire, and further, why non-Orthodox Christians pupils may request to be exempted from religious education, including collective worship. Parents maintain the right to request in writing that their children be exempted from religious education if they are not Orthodox Christians. The Supreme Court has stressed that a school cannot refuse to exempt students of other faiths from religious education. Exempting, however, only pupils who do not belong to the Orthodox Church presents certain problems, since there are parents who belong to the Orthodox Christian religion who do not wish their children to receive doctrinal religious education. Furthermore, atheists, or the non-Orthodox, might not wish to declare their religious beliefs to the school authorities in order to be exempted from religious education. Objections are also raised with regards to the doctrinal character of religious education in Cyprus.
Achilles C. Emilianides

XV. Bibliography


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State and Church in Latvia

Ringolds Balodis

I. Social Facts

Latvia’s current (2018) population numbers around 2 million inhabitants in an area of 64,589 sq. km. Of these nearly 60% are Latvians, and Russians (approximately 30%) are the largest other nationality. Latvia is a multi-confessional country, where the three largest denominations are Protestantism, Catholicism and Orthodoxy. Unfortunately, the census does not ask about religious beliefs. The unreliability of the data provided to the State is vividly revealed by information about the number of Muslims in Latvia. The registered Muslim congregations in their report to the Ministry of Justice give a total of 300, whereas in publicly accessible sources of information the number of Muslims is between one thousand and ten thousand believers. The case of Muslims is also interesting because religious organisations tend to exaggerate the number of their adherents.

The role of the church in the internal national processes in Latvia should not be underestimated. Public polls show that 70 per cent of Latvian citizens and 60 per cent of non-citizens trust the churches. Information provided by religious organisations\(^1\) indicates that among two million inhabitants there are (2019):

<table>
<thead>
<tr>
<th>Religious Group</th>
<th>Number</th>
</tr>
</thead>
<tbody>
<tr>
<td>Evangelical Lutherans</td>
<td>700,000</td>
</tr>
<tr>
<td>Roman Catholics</td>
<td>423,176</td>
</tr>
<tr>
<td>Orthodox</td>
<td>180,000</td>
</tr>
<tr>
<td>Orthodox Old Believers</td>
<td>46,482</td>
</tr>
<tr>
<td>Charismatic Christians</td>
<td>7,885</td>
</tr>
<tr>
<td>Baptists</td>
<td>6,449</td>
</tr>
<tr>
<td>Seventh-Day Adventists</td>
<td>3,818</td>
</tr>
<tr>
<td>Mormons</td>
<td>996</td>
</tr>
<tr>
<td>Latvian pagans (Dievturi)</td>
<td>530</td>
</tr>
</tbody>
</table>

\(^1\) As required by section 14(7) of the Law On Religious Organisations.
Information from sociological surveys is more credible, showing that religious affiliations of the population are: Lutherans 25%, Roman Catholics 21%, Orthodox 25%, Old Believer Orthodox 2.7%, Adventists 0.4%, and Jews 0.1%. About 20% of the Latvian population do not belong to any religion – some of those consider themselves to be believers without identifying themselves with any particular denomination, while others declare themselves to be atheists. This breakdown in percentage terms is approximate, because the State does not have at its disposal reliable statistics.

Based on data from the Ministry of Justice, the number of biggest religious organisations registered in Latvia is following (2019):

<table>
<thead>
<tr>
<th>Organisation</th>
<th>Number</th>
</tr>
</thead>
<tbody>
<tr>
<td>Lutheran</td>
<td>293</td>
</tr>
<tr>
<td>Catholic</td>
<td>278</td>
</tr>
<tr>
<td>Orthodox</td>
<td>136</td>
</tr>
<tr>
<td>Baptist</td>
<td>95</td>
</tr>
<tr>
<td>Old Believer Orthodox</td>
<td>64</td>
</tr>
<tr>
<td>Pentecostal</td>
<td>60</td>
</tr>
<tr>
<td>Seventh Day Adventist</td>
<td>51</td>
</tr>
<tr>
<td>Evangelical Christians</td>
<td>63</td>
</tr>
<tr>
<td>Jehovah’s Witnesses</td>
<td>34</td>
</tr>
<tr>
<td>Muslims</td>
<td>15</td>
</tr>
<tr>
<td>Latvian pagans (Dievturi)</td>
<td>11</td>
</tr>
<tr>
<td>Methodist</td>
<td>13</td>
</tr>
<tr>
<td>Jewish</td>
<td>12</td>
</tr>
<tr>
<td>Buddhist</td>
<td>4</td>
</tr>
</tbody>
</table>
II. Historical Background

Before the German invasion in the 12th century, the territory of Latvia was inhabited by many kindred Baltic tribes (zemgali, kurschi, latgali). The most widespread religion among these tribes was a kind of paganism, 'Dievturība'. Latvia was under German control until the 18th century. Under the influence of German landowners the Lutheran doctrine spread, and later provided good soil for other branches of Protestantism. 1524 is considered as the year of the foundation of the Latvian Evangelical Lutheran Church.

After Sweden lost the Nordic War, Latvia became part of the Russian Empire. Russia tried to convert its newly acquired lands to the 'Tsar's faith'. Orthodoxy did not become popular among Latvians; however, a certain number of them adhered to it. In the second half of the 17th century, Old Believers became active in Latvia. Despite Latvia being part of the Russian Empire, the Old Orthodox believers had found a haven in Latvia due to the distinctive and more liberal religious policy implemented in this region compared with others. Latvian Old Orthodox believers are the world's biggest group of the Old Believer Orthodox denomination.

The Republic of Latvia was founded on 18 November 1918. The proclamation of an independent democratic Latvia became possible largely through the promise of the founders of the state (ev.lutherans), for people from Latgale region (traditionally Roman Catholics territory) to sign an agreement with the Holy See in the country. Thus, the territorial unity of the Latvian State depended on religious tolerance towards Catholics. The State’s history is split into two periods: the first 1918-1940 and the second, starting in 1990. The normal development of Latvia as a state was violently interrupted by the Soviet occupation in 1940. The second independence period began with the declaration on the restoration of independence of the Republic of Latvia on 4 May 1990. This document recognizes the fact of occupation as a legal fact for the first time.

III. Legal Sources and Basic Categories of the System

The current Latvian legal regulation and the prevailing legal principles in the relationship between the State and the Church are close to the approach that dominates in the Central European countries. Latvia is a Member State of the European Union and the Charter of Fundamental Rights of the European Union is binding upon it, and the State has acceded to the European Convention for the Protection of Human Rights and Funda-

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mental Freedoms. Religious freedom prevails in Latvia, and there is no official state Church. In Latvia, separation of the Church from the State has been established at a constitutional level.

1. Constitutional provisions on religion

The Constitution of Latvia is a laconic basic law. Article 91 establishes equal treatment and prohibits any kind of discrimination. Article 99 provides:

“Everyone has the right to freedom of thought, conscience and religion. The church shall be separate from the State.”

Each of these sentences defines the nature and content of the relationship between the State and religion. The first sentence is “the clause of the freedom of religion”; the second sentence is “the clause of separation of the Church from the State.” Article 116 of the Constitution envisages the possible restriction of fundamental rights, among which the freedom of religion is listed, to protect the rights of other persons, the democratic state order, public safety, welfare and morals.

As the Constitutional Court (hereinafter – CC) has recognised, freedom of thought, conscience and religious belief is one of the most significant values in a democratic society. This freedom encompasses various religious, non-religious and atheistic views, as well as the right to convert to another religion or not to adhere to any religion. The freedom of religion should, in the opinion of the CC, be interpreted broadly. The CC has recognised that the freedoms included in Article 99 are important in shaping the identity and life-views of a religious person. In examining this Article in interconnection with Article 116, the CC drew the distinction between the internal aspect of religious belief (forum internum) and the right to external manifestation of religion (forum externum). Although the freedom of religion primarily is a matter of a person’s internal consciousness, it also includes the right to devote oneself to one’s religion or to express one’s religious beliefs. The expression of religious beliefs comprises, inter alia, worshipping, the performance of religious and ritualistic ceremonies.

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and preaching of doctrine. The internal expressions of religion may not be restricted.3

2. The Latvian Law on Religious Organisations

There are two dates of equal significance in the statehood of Latvia. These two dates are marked in the Preamble to the Constitution and are those of the founding of the State and the restoration of statehood. The State of Latvia was founded on 18 November 1918 and was restored on 4 May 1990. The prolonged Soviet occupation left a deep impact upon the State, its people and, naturally, also the religious organisations. Following the restoration of statehood in 1990, and in the course of a single year, Parliament adopted a new Constitution, acceded to 51 international documents in the field of human rights and hastily adopted 140 laws.4 One of these laws – “Religious Organisations Law”5 ensured the right of believers to association, the right to worship, and defined the procedure for establishing religious organisations and their registration. A year later, the law “On Restitution of the Property of Religious Organisations”6, was adopted. Although the Soviet Union had allowed believers to keep some of the church buildings for worship, it had divested the churches of many properties, turning former sacral buildings into planetariums, houses of culture, concert halls, sports halls, and even warehouses.

The “Religious Organisations Law”, like other laws of the period, was poorly drafted, and in 1995 the law “On Religious Organisations”7 (hereinafter – ROL) was adopted, a much better draft in which contradictions have been eliminated, the definitions of the terms made clearer, and the procedures for registering religious organisations better developed. The law both reflects the general public attitude towards new religious movements and is manifestly more stringent towards them. During the parlia-

3 Ibid.
mentary debates about the law, concern was voiced that Latvia was being inundated by the invasion of foreign, previously unknown, religious or pseudo-religious movements. The majority of the new movements are not only totally foreign to the Latvian mentality but also are often engaged in unlawful or even anti-state activities. The legislator, satisfying the public demand, reinforced the State’s control over religious organisations. For example, to register a Church, instead of the previous 3 congregations 10 congregations were required, whereas new religious organisations, upon commencing their activities, had to reckon with a moratorium on registration for 10 years. The new law also prohibited the registration of more than one association within one denomination. The last restriction was based on the legislator’s wish not to create chaos in the process of denationalisation of property.

3. The agreement between the Republic of Latvia with the Holy See and the resulting special status of the Roman Catholic Church

In Latvia, the Roman Catholic Church stands out among all other religious organisations both as to the type of recognition by the State and as to the level of that recognition. Since 12 September 2020, the status of the Roman Catholic Church in Latvia has been regulated by an agreement between Latvia and the Holy See, which was created upon the initiative of the Holy See. Pursuant to the provisions of the agreement, the Catholic Church is the only Latvian Church that has been recognised as the subject of public law, and it acquired this status with no need to report to the registration authority; moreover, the Church, unlike all other religious organisations, instead of registering congregations has only to inform the registration authority of their existence. The Chancery of the President of Latvia announces the names of bishops appointed by the Catholic Church. Despite active efforts by other churches (for example, the Evangelical Lutheran Church), only the Roman Catholic Church, with the support of the Holy See, has been able to achieve this status. One may conclude that the Catholic Church is guaranteed a higher degree of autonomy than any other religious organisation. A number of essential issues (for example, registration and the chaplaincy service) the activities of the Catholic
Church are regulated both by ROL and the agreement between Latvia and the Holy See.8

4. The Special Church Laws, adopted on the basis of agreements concluded by the government

Following the agreement with the Holy See, in 2004, the government made agreements with six Christian Churches and in 2006 with the Jewish Congregation, on the basis of which in the period from 2007 to 2008 seven laws were adopted (hereinafter – the Special Church Laws): Seventh-day Adventist Latvian Congregation Union Law, Latvian Baptist Congregation Union Law, Latvian United Methodist Church Law, Latvian Orthodox Church Law, Latvian Old Believers Pomorie Church Law, Latvian Orthodox Church Law and Riga Jewish Congregation Law.9 Section 5(7) was added to ROL, which provided that the relationships between the State and some Churches could be regulated by special laws. The seven special laws enshrine the status of a traditional religious organisation for each of the aforementioned religious bodies, although the State did not grant to any of them the status of a legal person of public law.

5. A comparative view on the rights established

The following Table presents a comparison of rights in the Special Church Laws and in the Agreement with the Holy See, with references to specific sections. The general right to autonomy of the Roman Catholic Church granted by Articles 1 to 4 of the Agreement covers some rights not expressly referred to in the Agreement.

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9 Seventh-day Adventist Latvian Congregation Union Law, LV No 93(3669), 12 June 2007; Latvian Baptist Congregation Union Law, LV No 86(3662), 30 May 2007; Riga Jewish Congregation Law, LV No 98(3674), 20 June 2007; Latvian United Methodist Church Law, LV No 91(3667), 7 June 2007; Latvian Old Believers Pomorie Church Law, LV No 98(3674), 20 June 2007; Latvian Evangelical Lutheran Church Law, LV No 188(3972), 3 December 2008; Latvian Orthodox Church Law, LV No 188(3972), 3 December 2008.
<table>
<thead>
<tr>
<th>Nr.</th>
<th>Regulatory act</th>
<th>Agreement with Holy See</th>
<th>Special Church Laws</th>
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</thead>
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<tr>
<td></td>
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<td>H</td>
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</tr>
<tr>
<td>1.</td>
<td>Traditionalism</td>
<td>2</td>
<td>2</td>
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<tr>
<td>2.</td>
<td>Protection of name</td>
<td>3</td>
<td>3</td>
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<tr>
<td>3.</td>
<td>Funerale ceremonies in cemeteries</td>
<td>8</td>
<td>6</td>
</tr>
<tr>
<td>4.</td>
<td>Right to property</td>
<td>5</td>
<td>5</td>
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<tr>
<td>5.</td>
<td>Recognition of full autonomy</td>
<td>1-4</td>
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<tr>
<td>6.</td>
<td>Rights to marry</td>
<td>8</td>
<td>7</td>
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<tr>
<td>7.</td>
<td>Right of confessional secrecy and protection of pastoral conversations</td>
<td>7</td>
<td>9</td>
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<tr>
<td>8.</td>
<td>Military service</td>
<td>10</td>
<td>10</td>
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<tr>
<td>9.</td>
<td>Relations with employees</td>
<td>13</td>
<td>13</td>
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<tr>
<td>10.</td>
<td>Relations with clergy (priests, bishops)</td>
<td>–</td>
<td>3</td>
</tr>
<tr>
<td>11.</td>
<td>Right to interpret scriptures</td>
<td>–</td>
<td>3</td>
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<tr>
<td>12.</td>
<td>Public law status</td>
<td>–</td>
<td></td>
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<tr>
<td>13.</td>
<td>Relations with foreign centres</td>
<td>3</td>
<td>–</td>
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<tr>
<td>14.</td>
<td>Legal status of sacred sites</td>
<td>6</td>
<td>–</td>
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<tr>
<td>15.</td>
<td>Tax credits for sacred sites</td>
<td>12</td>
<td>–</td>
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<tr>
<td>16.</td>
<td>Funding of religious festivals</td>
<td>–</td>
<td>–</td>
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<td>17.</td>
<td>Immunity of places of worship</td>
<td>–</td>
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<tr>
<td>18.</td>
<td>Right to educate own employees, clergy (pastors)</td>
<td>14</td>
<td>14</td>
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<tr>
<td>19.</td>
<td>Right to finances for educational institutions</td>
<td>19</td>
<td>–</td>
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<tr>
<td>20.</td>
<td>Autonomy of educational institution with regard to the content of education and learning process</td>
<td>18</td>
<td>–</td>
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<tr>
<td>21.</td>
<td>Major Seminary</td>
<td>20</td>
<td>–</td>
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<tr>
<td>22.</td>
<td>Right to Access to mass media</td>
<td>9</td>
<td>–</td>
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<tr>
<td>23.</td>
<td>Financing of the Military Ordinariate</td>
<td>29</td>
<td>–</td>
</tr>
<tr>
<td>24.</td>
<td>Access to prisons</td>
<td>30</td>
<td>Elsewhere</td>
</tr>
</tbody>
</table>

6. *The Judgment of the Constitutional Court of 26 April 2018*

The principle “one denomination – one Church” as the safeguard of stability that prevents property-related internal quarrels within a denomination became anachronistic over time, and restricted the freedom of religion. However, notwithstanding valid objections made by the responsible state
institutions\textsuperscript{10} and scientific publications\textsuperscript{11}, this discriminatory rule was deleted from ROL only as recently as 2018. The CC recognised the principle in ROL “one denomination – one Church” and the procedure for registering new religious organisations as being incompatible with Article 99 of the Constitution.\textsuperscript{12} To a large extent, the decision by the CC in the case was influenced by the considerations examined in the ruling by the European Court of Human Rights in the Case of Metropolitan Church of Bessarabia\textsuperscript{13}.

7. ”Traditionalism” and the positive neutrality that follows from it

For decades, the principles of the relationship between the State and Churches have not changed and are based on the principle of religious freedom, the separation between the State and the Church, and the concept of “traditionalism”. The Agreement with the Holy See and the Special Church Laws, in which the traditionalism of a number of religious organisations has been recognised, have brought Latvia closer to the Italian and Spanish model.\textsuperscript{14} The state has recognised, supports and finances a certain number of Churches, the Catholic Church and those covered by the Special Church Laws. The “recognition” by the State must be differentiated from “registration”, which religious organisations obtain by being registered. The Muslims and the representatives of other religious denominations are not included in the circle of State-recognised religions because in Latvia these are not large in numbers. Until 2018, the policy of positive neutrality could be also characterised as “the monopoly status” of some denominational centres. With the judgment by the CC of 26 April 2018, the State has changed this situation by reinforcing the freedom of religion and the believers’ right to found new denominational centres. Hence, the sepa-
ration of the State and the Church has been reinforced even more. However, in view of the delegation of the State’s functions and the State’s support to Churches in Latvia, in practice strict separation does not exist, but rather a partial separation from the state, the limits of which are not strictly demarcated.15

**IV. Legal Status of Religious Communities**

The legal status of legal entities is defined by the Civil Law, but the status and the registration of religious organisations are regulated by the ROL of 7 September 1995. Although the Government does not require the registration of religious groups, the Law accords registered religious organisations certain rights and privileges, such as status as a separate legal entity for owning property or other financial transactions, as well as tax benefits for donors. Registration also eases the rules for public gatherings. According to ROL article 13, first paragraph, religious organisations acquire legal personality through registration. The authorised representative of a religious organisation must submit an application for the registration in the Register of Enterprises. In addition, the ROL article 7, first paragraph states that legally registered religious organisations may form institutions that do not have a profit-making purpose. Such institutions are spiritual educational institutions, monasteries, missions, diaconate institutions and similar organisations. According to the ROL article 13, first paragraph, the legal status of those institutions is determined by religious union (church) or diocese.

It follows that according to the current regulatory framework four legal forms may be identified, three of which are religious organisations (churches, religious associations (church) and the diocese), but one is a body that may be formed by a religious association (church) or diocese for the attainment of individual goals. According to the ROL, twenty adult persons registered in the Latvian Citizens Register and sharing one confessional affiliation, may establish a religious organisation. Ten or more congregations of the same denomination with permanent registration status may form a religious association. As provided by the ROL, religious organisations (church congregations, religious communities and dioceses), seminaries, monasteries and diaconal institutions may be registered. Only

churches with religious association status may establish theological schools or monasteries.

According to first paragraph of article 8 of the ROL, religious organisations and institutions are registered in the register of religious organisations and its institutions maintained by the Register of Enterprises. According to Article 18 of Law on the Register of Enterprises, religious organisations and institutions are registered in the Public Organisations and Mass Media Registration Department of Riga Region of the Register of Enterprises.¹⁶

The Constitutional Court¹⁷ and the Senate of Supreme Court have repeatedly recognised¹⁸ that the state notary in considering registration applications checks for a formal compliance of document with the requirements of law, but does not evaluate actual decision-making facts. However another feature of the registration process is the preparation of an opinion by the MoJ which may in turn use the law enforcement authorities to determine whether the establishment of a religious organisation was in accordance with laws and regulations as well as any other information that would lead to a negative opinion. Article 18, second paragraph, of Law on the Register of Enterprises sets out grounds on which the state notary may postpone a decision or upon which the application must be refused.

V. Religious Communities within the Political System

During the first period of Latvia’s independence (1918 – 1940), religious organisations were forced to become involved in politics in order to resist the State’s activities regarding re-distribution and requisitioning of the Churches’ property. During the second period of independence (1990 – till the present day), religious organisations have a minor impact on politics. Rather, it can be observed that politicians involve religious organisations

¹⁶ Art 18 and 19 of Law on the Registrar of Enterprises set out the detailed rules governing decisions as to registration by the state notary of the Register, with rights of appeal to the Chief State Notary and onwards to the courts, including a final appeal to the department of administrative cases of the Senate of the Supreme Court.
¹⁷ About compliance of article 59 of Credit Institutions Law with the article 1 and 105 of Constitution: Decision of the Constitutional Court of case No 2010-71-01, LV No 167(4565), 21 October 2011.
in their activities to attract a larger number of voters. It is possible to speak about direct participation in political processes by some religious organisations and individual priests, which is manifested as support for some political organisations and in Parliament. As regards indirect participation in political processes, the priests of some denominations are actively involved in national events together with politicians (for example, the Church Service on the Festive Day of the Founding of the State of Latvia on 18 November, the Presidents’ inauguration ceremonies, etc.). There are currently no grounds to speak about the impact of any religious organisation or religion on political processes. None of the parties currently represented in the Parliament has made campaign promises related to religion. Section 22 of the “Pre-election Campaign Law” establishes restrictions on the placing of campaign materials in public spaces. Pre-election materials may not be placed in a public outdoor area (signs, stands, posters, blackboards, mobile billboards, placards, advertising in window displays and other similar advertisements) not only in buildings of the state and local government institutions but also in church buildings.

Calendar disputes regarding the celebration of Christmas occur every year in the Parliament.

VI. The State of Latvia and the Preservation of the Cultural Objects Owned by Churches

In Latvia, the church has been an integral element of both rural and urban cultural environment for centuries. Approximately 800 historic churches are located mainly in the centres of cities and villages. In contrast to the castles of nobility, which were burnt down during the revolution of 1905, the churches have remained intact throughout both world wars and currently are an indispensable part of the architecture, landscape and cultural environment of these places. The sacral architecture of Latvia reflects the evolution of art styles, beginning with the Romanesque and Gothic styles up to the Art Nouveau of the beginning of the 20th century and contemporary architecture. The government, responding to the request of the traditional churches, examined the preservation of the cultural historical heritage owned by the Church and developed appropriate legislative initia-

19 LV No. 199, 19 December 2012.
tives. In 2017, Parliament adopted the law “On Financing the Preservation of Sacral Heritage”\textsuperscript{20}. The purpose of this Law is defined as

“to ensure the preservation for the future generations the existing cult buildings that have the status of a protected cultural monument of national and local importance, including Latvian churches, convents, chapels, houses of prayer and religious cult objects (hereinafter — the sacral heritage) as part of cultural heritage of national importance.”

In view of the fact that the total amount of money needed to implement in full the programme covered by the law is 170 million euros, it was decided to resolve the particular matter within a cycle of at least 30 years, investing annually approximately 4 million euros into the preservation and restoration of churches. Since all demands cannot be satisfied, the State grants the money to the traditional religious organisations (basically, Roman Catholics, Evangelical Lutherans, and the Orthodox) in accordance with the principle “a little to all”, allocating part of the sums requested. The law provides that also the local governments may allocate money for the purpose. The money is allocated by the Council of Sacral Heritage, on which the Ministry of Culture, the State Inspectorate of Heritage Protection and religious organisations are represented. Three sacred sites must be noted in particular, and separate laws have been adopted with respect to these. These are (1) The Aglona Roman Catholic Basilica;\textsuperscript{21} (2) Riga Dom Cathedral owned by the Lutherans; and (3) The Orthodox Church’s Valgunde convent.\textsuperscript{22}

\textbf{VII. Labour Law within the Religious Communities}

The employment relationship is mentioned only twice in the ROL. First, Article 19 provides that in case of termination of a religious organisation’s activity, this organisation terminates its work relationship with all its employees in accordance with the Latvian Labour Law (hereafter – LL).\textsuperscript{23} Secondly, Article 14 provides that a religious organisation may appoint or elect and dismiss their ministers in accordance with its own statutes, and employ and dismiss other employees in accordance with the applicable

\begin{thebibliography}{9}
\bibitem{20} LV No 238, 27 January 2000.
\bibitem{21} LV No 162, 21 October 1995.
\bibitem{22} Law on the Latvian Orthodox Church, LV No 188 (3972), 3 December 2008.
\bibitem{23} LV No 105, 6 July 2001.
\end{thebibliography}
labour legislation. The current LL does not address the particular problems of religious organisations, which means that religious organisations are subject to the same legal rules as any other public or commercial company. However, LL Article 29(10) permits differential treatment in a religious organisation. Based on the religious beliefs of a person, differential treatment is permitted if a specific type of religious belief is an objective and substantiated pre-requisite for the relevant employment, taking into account the ethos of the organisation. An employer is prohibited from discriminating against its employees on religious grounds; however, the norms of labour law allow discrimination in religious organisations if they dismiss a minister who does not comply with certain denominational criteria. The case law holds that two types of employment in a religious organisation can be identified: a minister and an employee. The first one occupies an ecclesiastical position, doing work directly linked to the denomination, whereas the other is an individual, who might be defined as a technical staff member, one of the service staff, and whose competence does not include religious, denominational duties.

Although in fact employees of religious organisations used to work without employment contracts, the courts in Latvia do not recognise the existence of legal employment relationship unless a written employment contract has been agreed between the employee and the employer. If a labour contract has been concluded, then the court treats religious organisations as any other employers. The courts recognise as an indubitable right of a religious organisation to decide on the number of its employees and their duties, at the same time recognising the right of a religious organisation also to involve volunteers. As regards the ministers of registered religious organisations, the autonomy of the church in establishing these

24 The Department of Civil Cases of the Senate of the Supreme Court, 9.3.2011. SKC-762/2011.
25 Panel of Civil Cases of Riga Regional Court of 17.1.2005, Case No.CA 1975/21 (claim against a religious organisation for compensation for overtime work, unused leave, and compensation for using a private vehicle).
26 Jelgava Court of 2.11.2011, Case No. C15295911 (accountant of a congregation of the Orthodox Church dismissed, because the accountancy unit of the congregation was closed).
27 Valmiera District Court of 23.5.2008, Case No.C39047408 and Judgment by the Panel of Civil Cases of Vidzeme Regional Court of 28.10.2008 in Case No. C39047308 (minister dismissed and his wife declared redundant from her post as minister’s secretary. Different considerations applied to the two dismissals).
legal employment relationships is recognised. The court differentiates between the status of a minister and other employees, both by recognising the autonomy of Churches to act on the basis of their by-laws and ecclesiastical law, recognising, however, the priority of the Labour Law. The court has recognised that the prohibition by ecclesiastical courts to perform such office that can be taken by a narrow circle of persons cannot be recognised as an infringement upon fundamental rights. Even there have been other relevant cases, the ones referred to above are the most significant, since they outline the case law in Latvia.

28 Panel of Civil Cases of Vidzeme Regional Court of 15.11.2008, Case No. C39047308 (Lutheran minister dismissed by congregation, with agreement of College of Bishops, for professional incompetence; although the minister had an employment contract that did not alter the fact that he was an ecclesiastic, and subject to the provisions of a special law, Section 1(4) of ROL which as a special law had higher legal force than the LL.).

29 Panel of Civil Cases of Riga Regional Court of 28.10.2008, Case No. C27222609, CA-3174-10/26 (part-time secretary of a Lutheran congregation dismissed on the ground that he had acted contrary to moral principles and such action was incompatible with the continuation of employment legal relationship, relying on Article 3 in the Law of the Latvian Evangelical Lutheran Church that gives the right to the Church to establish and change employment relationships on the basis of a person’s religious affiliation, readiness and ability to act in good faith and in loyalty to the teachings of the Church. The court found in his favour as under the LL notice had to be given within one month of alleged violation becoming known, as what not the case. Although the norms of the Law of the Evangelical Lutheran Church could apply alongside the norms of the LL, the LL had primacy).

30 Para 107 of the Statute of the Orthodox Church of Latvia provides that the priests, deacons and psalmists are appointed, removed and transferred by the Primate. A decision by the Ecclesiastical Court of the Orthodox Church of Latvia on removing someone from clerical orders depends on a special procedure in accordance with the canons of the Church, and cannot be challenged in the regular courts as it turns on qualifications and personal character traits that cannot be verified in court. That the decision is taken by a narrow circle of persons does not amount to an infringement of fundamental rights ( Judgment by the Senate of the Supreme Court of 9.1.2008 in Case No. SKC-94/2008.).

31 For example, in 2014 Rabbi Menachen Barkahan submitted a claim to court against the Riga Jewish Religious Congregation, the Council of Latvian Jewish Congregations and Communities and a number of natural persons for injuring his dignity and respect because his rabbi’s site of prayer had been liquidated and his status as a rabbi had been contested.
VIII. The Legal Status of Priests and Members of the Religious Orders

According the Ministry of Justice in 2016\textsuperscript{32} clergy were serving in many of the religious organisations registered in Latvia. They included:

<table>
<thead>
<tr>
<th>Number</th>
<th>Religion</th>
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<tbody>
<tr>
<td>204</td>
<td>Lutheran</td>
</tr>
<tr>
<td>186</td>
<td>Catholic</td>
</tr>
<tr>
<td>102</td>
<td>Baptist</td>
</tr>
<tr>
<td>1</td>
<td>Jews</td>
</tr>
<tr>
<td>89</td>
<td>Orthodox</td>
</tr>
<tr>
<td>76</td>
<td>Pentecostal</td>
</tr>
<tr>
<td>35</td>
<td>Seventh Day Adventist</td>
</tr>
<tr>
<td>14</td>
<td>Old Believer Orthodox</td>
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<tr>
<td>304</td>
<td>Jehovah’s Witnesses</td>
</tr>
<tr>
<td>7</td>
<td>Muslims</td>
</tr>
<tr>
<td></td>
<td>Buddhist</td>
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According to Article 1 of the ROL officials of religious organisations are members of elected bodies (councils, boards and audit committees), including clergy. Under the legislation currently in force in Latvia, no privileges attach to the possession of spiritual or administrative office in a religious organisation. The only exception relates to military service. Under Article 21(1)(7) of the Compulsory Military Service Law, ordained clergy affiliated with any approved religious organisation and persons studying for ordination are not liable to compulsory active military service. Exemption from discharging military service due to religious reasons, and any attempt to use military rank to impose religious conviction is prohibited. Persons liable to military service objecting to its performance by reason of their opinions, conscience or religious conviction, may perform an alternative form of service.

*The Seal of the Confessional.*

In accordance with Article 7 of the Agreement between Latvia and the Holy See, the seal of the confessional is recognised as inviolable. Nobody may ever question a Catholic priest on matters connected with a confes-

sional secret, even if that priest appears as a witness or party before a civil tribunal. However, this right of priests is not secured by the existing Criminal Procedure Law (hereafter – CPL).\(^\text{33}\) While the CPL has been amended many times, it was adopted in the Soviet era. At present a new code has been prepared in which the seal of the confessional is fully recognised. In the new draft of CPL, which has received its first reading in Parliament, Article 121 named "Professional secrets protected under criminal procedure" is included. Clause 1(1) of the Article provides that there shall be no restrictions imposed on the right of clergy to refuse to give evidence about what is heard during confession, and to refuse to disclose any personal notes regarding such matters. There have been no cases in the courts and there has been no discussion of an issue which has proved controversial in other countries as to the boundary between a mere conversation between an accused and a priest on the one hand and the making of a confession in a sacramental sense on the other; or whether a particular church regards confession in a sacramental sense. The seal of the Confessional is also protected in the Special Church Laws for the traditional religious organisations.

**IX. Finances of Religious Communities**

The taxation that applies to Churches is not regulated by a single law. Under Section 15 of the ROL, these have the right to engage in business activities. If their revenue exceeds a certain amount, the religious organisation has to establish a company and perform its activities in accordance with the law "On Entrepreneurship". This provides that religious organisations have the right to engage in business activities, establish companies, and acquire shares in companies; pursuant to Section 16 of the ROL, religious organisations may own movable and immovable property; however, they are prohibited from mortgaging church buildings or ritual artefacts, and creditors may not foreclose on the same.

Pursuant to Section 2 (1) of the law “On Accounting”\(^\text{34}\) and Section 15 (5) of ROL, religious organisations, just like all other legal persons, must organise their accounting, prepare reports, and pay taxes. Religious organisations also must report annually on their activities. The personal income tax, the real property tax, the value added tax, and the customs duty

\(^{33}\) LV No 74, 11 May 2005.

\(^{34}\) LRAP No 44/45, 12 November 1992.
on imports apply to religious organisations. Unlike commercial companies, religious organisations do not have to pay the company income tax.

1. Religious organisations as public benefit organisations.

In accordance with Section 4 of “Public Benefit Organisation Law”35 (hereafter – PBOL), the public benefit organisations (hereafter – PBO) have the right to receive tax rebates specified by law. According to Section 3 of the PBOL, PBO are associations and foundations, the aim of which is public benefit activities, as well as religious organisations or the institutions thereof, which perform public benefit activities if such associations, foundations and religious organisations have been granted public benefit organisation status. The status of PBO is granted by the Ministry of Finance, on the basis of the statement by the Public Benefit Commission. The religious organisations that have been granted the status of PBO, in compliance with the Section 20 of the Law “On Enterprise Income Tax,” may receive donations allowing a donor to reduce his or her income tax liability. It must be noted that religious organisations may choose not to apply for this status.

Religious activity per se is not recognised as an activity of public benefit, and it often happens that they are deprived of the PBO status because the money has been spent on maintaining the building of the church or restoring icons. This is recognised by the State Revenue Service, which has noted that the PBO status is usually revoked exactly because religious organisations spend the money for religious activities. The law provides that the a public benefit activity is an activity, which provides a significant benefit to society or a part thereof, especially if it is directed towards charitable activities, protection of civil rights and human rights, development of civil society, education, science, culture and promotion of health and disease prophylaxis, support for sports, environmental protection, provision of assistance in cases of catastrophes and extraordinary situations, and raising the social welfare of society, especially for low-income and socially disadvantaged person groups. (Section 2(1) of PBOL). To a certain extent, it must be admitted that the fact that religious activities had not been included in this enumeration is evidence of the rather secular attitude towards religion taken by the state.

35 LV No 106, 7 July 2004.
A religious organisation with employees has the usual obligations of an employer under the law “On State Social Insurance”.

2. The personal income tax.

Under the law “On Personal Income Tax”, (hereafter – PIT), religious organisations must deduct the personal income tax from the remuneration disbursed to their employees.

3. Immovable property tax.

Under the law “On Immovable Property Tax”, the tax is not applied to immovable property of religious organisations that is not used in commercial activities. The use of such property for charity and social care, as well as for registered institutions of education for the clergy is not considered to be commercial activity. The exception is residential buildings owned by religious organisations. Para 4 of Section 1 (2) of the Law provides that the objects of religious organisations and the land for the maintenance thereof is subject to the immovable property tax if they are rented or leased out.

4. The value added tax.

Pursuant to “Value Added Tax Law” and other regulatory enactments pertaining to the activities of a religious organisation, value added tax is applied in the usual way. However, the supply of services, and the supply of goods closely linked thereto, to the members in their common interest in return for a subscription fixed in accordance with their rules by non-profit-making organisations with aims of a political, trade-union, religious, patriotic, philosophical, philanthropic or civic nature, provided that this exemption is not likely to cause distortion of competition. Hence, such transactions are exempt from the value added tax.

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36 LV No 274/276, 21 October 1997.
37 LV No 32, 6 July 1993.
38 LV No 145/147, 17 June 1997.
39 LV No 197, 14 December 2012.
5. **Customs duty on imports.**

Cabinet Regulation of 25 October 2016 No. 681, issued in accordance with the Customs Law, “Procedure, in which the goods imported by institutions and organisations are exempt from the customs duty on imports” (hereinafter – the Cabinet Regulation No.681) establishes a procedure, in which the goods imported by institutions and organisations of public benefit are exempt from the customs duty on imports.

X. **Religious Assistance in Public Institutions**

The work of religious organisations at public institutions is mainly carried out through the chaplaincy service. A definition of chaplains is included in the ROL and the Cabinet Regulation issued on the basis of that law. The Cabinet Regulation makes provision, without creating an obligation, for state institutions to introduce a chaplain’s office or chaplaincy service. Article 5 of the Regulation lists a number of religious organisations, the Orthodox, Evangelical Lutheran, Old Believer, Methodist, Adventist, Baptist, Pentecostal churches and Latvian pagans (dievturi), which may propose candidates for a chaplain’s office. Until now the Muslims have not asked to participate in the activities of chaplaincy services, but the Jewish denomination has declined this opportunity. In both cases this is linked to the small number of believers who could be eligible for services by chaplains of these denominations. The right to have representation of priests of their denomination in the chaplaincy service is guaranteed to those belonging to the Catholic Church by the Agreement with the Holy See but the rights of six traditional churches of Latvia (Orthodox, Evangelic Lutheran, Old Believer, Methodist, Adventist, Baptist) in Special Church Laws.

The rights of the Roman Catholic Church have been enshrined in the Agreement with the Holy See. Pursuant to Article 9 of the Agreement, the Roman Catholic Church is guaranteed the right of access to hospitals, prisons, orphanages and all other institutions of social or medical assistance, in which the presence of Catholics justifies the occasional or permanent pastoral presence of the authorised representatives of the Catholic Church.

The list of churches which may propose candidates for chaplaincy is broader in the Cabinet Regulations that regulate operations of the chaplaincy service, compared to the one defined in the law. This is because in practice some religious organisations (for example, Pentecostal) are so active in the field of chaplaincy that the State, which does not finance chaplaincy services, has had to reflect that on regulatory level.
1. Chaplaincy in the Armed Forces

The Cabinet Regulation on Chaplaincy Service (Para 6) provides that

“a chaplain is employed by the Commander of the National Armed Forces or the Head of Prison Authority, or the administration of an airport, a port or a station of road transport, or the administration of a medical treatment or social care institution (hereinafter – the respective institution). A chaplain is enrolled in professional service by the Minister for Defence or a commander (head) authorised by him.”

The Ministry of Defence states that the Chief of Chaplains cooperates with the bishops of Christian denominations, who have authorised individual clergyman to perform a chaplain’s duties. Thus, a chaplain has been authorised by a church, and the church may revoke his mandate. The Chief of Chaplains is an official of the army, and evaluation of the compliance of chaplains’ activities falls within his competence. Para 11 – 15 of the Regulation deal only with the issues of chaplains of the National Armed Forces, envisaging that chaplains may be private persons or military persons not bearing weapons. Para 15 of the Regulation provides that “Chaplains of the National Armed Forces in administrative issues shall be subordinated to the head of the military structural unit (commander of the unit), in issues that are related to chaplains’ activities to the Chief of Chaplains of the National Armed Forces, but in religious issues to the respective religious association (church).”

Article 25 of the Agreement with the Holy See guarantees to the Catholic members of the National Armed Forces the possibility of receiving adequate catechetical instruction and of participating in Eucharistic Celebrations on Sundays and on Holidays of obligation. The Agreement guarantees to chaplains of the Catholic Church canonical subordination to the Military Ordinariate.

2. Chaplaincy in Hospitals (historically, status, appointment, revocation, funding etc.)

According to Para 20 of the Cabinet Regulation on Chaplaincy Service, the financial, material and technical provisions for chaplains’ work is ensured

40 Upon the condition that this cannot hinder performing urgent duties of military service.
by the respective state or local government institution from the budget re-
sources allocated to it or a company, with which the chaplain has legal em-
ployment relationship. However, there remain hospitals and social care in-
stitutions which refuse to establish a post of chaplain, using as the pretext a
lack of financing, lack of interests among patients and sufficiently good co-
operation with the local clergy. Thus, hospitals in Latvia may be divided
into three groups: (1) hospitals with equipped chapels and chaplains on
the staff; (2) hospitals with equipped chapels, but without chaplains; (3)
hospitals without chapels and without chaplains. Hospitals which have
chapels and chaplains on their staff constitute approximately one-third of
all hospitals. At the hospitals chaplains, who come from Catholic, Luther-
an, Orthodox and Baptist churches, not only provide spiritual care to the
patients and co-operate with social workers, but also are spiritual care
givers to the medical staff.

3. Chaplaincy in the Penitentiaries

The work of chaplains in penitentiaries is organised by the ecumenical
chaplaincy service of the Prison Administration. Currently it is managed
by a representative of Pentecostal congregation, who has a particular ser-
vice rank with the Prison Authority. Currently spiritual care to inmates
of penitentiaries is provided by: 5 representatives of the Latvian Evangeli-
cal Lutheran Church; 1 from the Roman Catholic Metropolitan Curia of
Riga, 4 from the Association of Latvian Baptist Congregations, 3 from the
Association of Latvian Seventh-Day Adventist Congregations, and 3 repre-
sentatives of the Latvian Association of Pentecostal Congregations of the
International Pentecostal Church of Christ.

41 The establishment and basic principles of Prison Authority chaplaincy services
have been defined in the Sentence Execution Code of Latvia, the Law on the Pro-
cedures for Holding under Arrest, and the United Nations Minimum Standard
Rules for the Treatment of Prisoners (adopted in 1955); Cabinet Regulation
No. 134, Cabinet Regulation of 30 May 2006 No 423 “Internal Regulations of an
Institution for Deprivation of Liberty”, Cabinet Regulation of 27 November 2007
No 800 “Internal Regulations of a Remand Prison” and the internal regulatory
enactments of the Prison Administration.
4. Chaplaincy in the Other Public Institutions

Due to the negative attitude by the Ministry of Education and Science towards chaplaincy service, this service has not been established and is not envisaged in institutions of education. Likewise, the institutions of the Ministry of Interior (border-guard and police) have neither chapels, nor chaplains, because of the same attitude. It was argued that the staff members of these institutions have access to care provided by regular ministers. A strong chaplaincy service had operated at the airport since the beginning of the 1990s; however, with the change of the airport’s management a couple of years ago, the institution’s view on the expediency of this institution changed as well. Currently there are no chaplains at the airport, only the chapel remains. This particular case is a vivid example, showing that the development of chaplaincy service to a large extent depends upon the particular situation and not upon political strategy.

A chapel has been set up at the Latvian parliament, but there is no chaplain. A scheduled service at the Saeima’s chapel is announced on the parliamentary webpage at the beginning of the week, informing about the religious denomination to which the priest conducting the service belongs. The worship conducted by a minister is held on Thursdays, half an hour before the weekly plenary session. Only the members and employees of the Parliament are invited, since a parliamentary pass is required to enter the chapel. No chapels have been set up in local government buildings. At present Muslim clergy cannot be employed as chaplains, although they may be allowed to provide spiritual care in the relevant public institution.

XI. Matrimonial and Family Law

The right of religious organisations, referred to in Section 51 of the Civil Law, to conduct marriages has been defined in the Special Church Laws, all of which include a standard section worded as follows: “Those priests of the Church, to whom the Church has given the permission and who have been included in the list of priests who have the right to marry, have the right to marry in the procedure established in the Civil Law and other regulatory enactments.”

Data provided by the Civil Registry Department of the Ministry of Justice, show that approximately one-sixth of registered marriages are conducted in Churches. In the majority of cases persons chose to be married at a Civil Registry Department.
The total number of entries in the register of marriage including marriages registered in a Church:

<table>
<thead>
<tr>
<th>Year</th>
<th>The total number of entries in the register of marriage</th>
<th>Including marriages registered in a Church</th>
</tr>
</thead>
<tbody>
<tr>
<td>2005</td>
<td>12579</td>
<td>2549</td>
</tr>
<tr>
<td>2006</td>
<td>14610</td>
<td>2894</td>
</tr>
<tr>
<td>2007</td>
<td>15473</td>
<td>3014</td>
</tr>
<tr>
<td>2008</td>
<td>12904</td>
<td>2638</td>
</tr>
<tr>
<td>2009</td>
<td>9905</td>
<td>1848</td>
</tr>
<tr>
<td>2010</td>
<td>9205</td>
<td>1792</td>
</tr>
<tr>
<td>2011</td>
<td>10841</td>
<td>1930</td>
</tr>
<tr>
<td>2012</td>
<td>11565</td>
<td>2039</td>
</tr>
<tr>
<td>2013</td>
<td>11641</td>
<td>1871</td>
</tr>
<tr>
<td>2014</td>
<td>12735</td>
<td>1966</td>
</tr>
<tr>
<td>2015</td>
<td>13927</td>
<td>2150</td>
</tr>
<tr>
<td>2016</td>
<td>13403</td>
<td>2111</td>
</tr>
<tr>
<td>2017</td>
<td>13206</td>
<td>1898</td>
</tr>
</tbody>
</table>

The information at the disposal of the Registry provides an indication of the number of marriages conducted in each denomination.

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Roman Catholics</td>
<td>594</td>
<td>657</td>
<td>687</td>
<td>653</td>
<td>676</td>
<td>722</td>
<td>613</td>
<td>544</td>
</tr>
<tr>
<td>Evangelical Lutherans</td>
<td>602</td>
<td>821</td>
<td>938</td>
<td>943</td>
<td>972</td>
<td>1,095</td>
<td>1,122</td>
<td>968</td>
</tr>
<tr>
<td>Orthodox</td>
<td>212</td>
<td>321</td>
<td>302</td>
<td>183</td>
<td>5</td>
<td>9</td>
<td>92</td>
<td>6</td>
</tr>
<tr>
<td>Old Believers</td>
<td>8</td>
<td>9</td>
<td>5</td>
<td>5</td>
<td>4</td>
<td>6</td>
<td>5</td>
<td>3</td>
</tr>
<tr>
<td>Seventh-day Adventists</td>
<td>5</td>
<td>10</td>
<td>14</td>
<td>9</td>
<td>14</td>
<td>13</td>
<td>12</td>
<td>6</td>
</tr>
<tr>
<td>Baptists</td>
<td>118</td>
<td>152</td>
<td>86</td>
<td>92</td>
<td>119</td>
<td>137</td>
<td>144</td>
<td>112</td>
</tr>
<tr>
<td>Methodists</td>
<td>2</td>
<td>5</td>
<td>6</td>
<td>6</td>
<td>6</td>
<td>8</td>
<td>6</td>
<td>4</td>
</tr>
</tbody>
</table>

It must be noted that the same-sex marriage has not been recognised in Latvia, therefore all the data pertain to a marriage between a man and a woman.
woman. Divorce is granted only by the court, or a notary if both spouses have reached a consensus regarding the divorce.

**XII. The Criminal Law and Religious Communities**

Section 227 of the Criminal Law of the Republic of Latvia (hereinafter – the CL)\(^{42}\) prescribes a penalty for unlawful activities of religious organisations and their members. For organising or managing a group which teaches or performs religious rituals creating a threat to public security and order, or a person's health, rights or interests protected by law, or for participation in such activities, the penalty can be deprivation of liberty for the period of up to 2 years or a fine..

Section 149 of the CL provides for a fine equal to 30 minimum monthly salaries for violations of the ban against discrimination if such an offence has been committed more than once in a single year. The section speaks of “discrimination related to race or ethnicity” and it does not specifically refer to religion. The key phrase in this section is this: “… or for the violation of discrimination prohibitions specified in other regulatory enactments.” Such enactments include the law “On Religious Organisations”, which states, in Section 4.1, that “the direct or indirect restriction of inhabitant rights or the creation of privileges for inhabitants, as well as violation of the religious sensibilities of persons or incitement of hatred in connection with the opinions of such persons towards religion is prohibited.” This suggests that the norms of Section 149 of the CL apply in this regard, too.

Section 228 of the CL speaks of the desecration of a grave, a funeral urn, or a buried or unburied corpse. The penalty is a prison sentence of up to two till five years, community service, or a fine. The motivation for such criminal offences, including motivation that is based on religion, is irrelevant,\(^{43}\) but it is clear that if the offence involves such things as Satanism or hooliganism (damaging crosses, for instance), then the offences will be

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43 The exception here is avarice, when someone desecrates a grave with the purpose of robbing it. Religion, however, has no specific meaning when this criminal offence is investigated. See Krastiņš, U., Liholaja, V. and A. Niedre, op. cit., p. 205.
classified in accordance with Section 228. The same is true when people desecrate graves with anti-Semitic symbols.

The CL has no provisions penalising the celebration of a religious marriage before a civil marriage; proselytising; or female genital mutilation (though this could be prosecuted other norms in the CL which seek to protect the individual.

The CL and the Administrative Violations Law do not speak specifically of offences that are aggravated by religious motivation. The CL does not speak specifically of blasphemy but punishment for such activities can be based on other, aforementioned sections of the law. If animals are sacrificed as part of religious rituals, the punishment can be based on Section 230 of the CL (Cruel Treatment of Animals). Commentary on the CL focuses on Section 4 of the law on protecting animals, which speaks of mistreatment of animals in terms of organising fights among animals, involving animals therein, crippling or torturing animals, etc., but commentators also note that the rules would apply to the killing of animals as part of a religious ritual.

Section 48 of the CL, which enumerates activities which in Latvia are considered to be aggravating, refers also to criminal offences if these have been committed due to religious, national, ethnic or religious motivation. In Chapter IX of the CL “Crimes Against Humanity and Peace, War Crimes and Genocide”, Section 71 mentions religion in the definition of the genocide, as well as in the explanation of Section 71 regarding “a crime against humanity”, i.e., if a person has been subjected to inhuman activities on the basis of religious causes. Section 78 of the CL, “Triggering of National, Ethnic and Racial Hatred” sets the penalty for activities aimed at triggering national, ethnic, racial or religious hatred or causing discord at deprivation of liberty for up to three years or short-term deprivation of liberty, or community work, or a fine.

XIII. Religious Education

Para 1 of Section 6 of the ROL states that everyone has a right to religious education, both individually and together with others in educational institutions of religious organisations. In addition, at both national and local schools, a person, who has expressed the wish in writing, can study the Christian teaching in accordance with the curriculum approved by the Ministry of Education and Science, taught by teachers of the Evangelical Lutheran, Roman Catholic, Orthodox, Old Believers and Baptist denominations. Other denominations may provide religious education in private
schools only. The organisations that have no right to teach religion in schools focus on Sunday Schools.

The Christian teaching is taught in schools where at least 10 students have expressed a desire to learn the specific Christian teaching. Ethics is offered as an alternative to religious instruction. At the national minority schools supervised by the state or municipalities, if the students and their parents or guardians wish it, the religion characteristic of the particular national minority may be taught in compliance with the procedures prescribed by the Ministry. Thus, for example, Jews, whose religion is not mentioned in the ROL, can ensure that their children have religious classes.

The law “On Religious Organisations”, Para 5 of Section 6 states that the Christian faith and ethics teaching is financed from the state budget, so religious education is paid for by the state. The teachers must be selected by the denomination leaders and approved by the Ministry. They may also be chosen from among secular teachers.

The clause on religious freedom that is included in Article 99 of the Constitution is also relevant, for the right to religious education follows from it, examined in the light of Article 112 (the right to education), because the same Article provides for everyone’s the right to education. Article 114 of the Constitution also states that: “Persons belonging to ethnic minorities have the right to preserve and develop their language and their ethnic and cultural identity.” It all indicates that every person, including minorities, has an equal right to freely choose his or her religion. It is also declared in Article 2 of the ROL, which states: “The state does not grant any privileges to any religion or confession.”

At the University of Latvia, one of the faculties is the Faculty of Theology. Today it is a multi-confessional institution, providing the highest level of theological education.

XIV. The Protection of Animal Rights and Religion

Section 4 of the Animal Protection Law\(^\text{44}\) prohibits the cruel treatment of animals. Cruel treatment of animals is defined to include using animals in religious rituals and lotteries. Section 48(2) of this Law provides that an animal kept for farming purposes may be slaughtered in accordance with the

\(^{44}\text{LV No 444/445, 29 December 1999.}\)
traditional methods for meat production of religious communities and the laws and regulations regarding welfare requirements for the protection of such animals. Cabinet Regulation of 27 February 2007 “The Regulations on Marking Meat, Minced Meat, Mechanically Separated Meat, Meat Products and Meat Preparations” as amended defines the labelling required on meat products which have been slaughtered using the traditional methods of religious communities.
State and Church in Lithuania

Jolanta Kuznecoviene and Donata Glodenis

I. Social Facts

According to statistical data Lithuania is an overwhelmingly Roman Catholic country. The majority of the Lithuanian population (77.23%) consider themselves Catholics. Although most of them are not regular worshippers (only 12% attend church once a week or more frequently), they are strongly committed to the ceremonies of the Catholic Church. In 2014 approximately 90% of respondents indicated that they consider baptism, marriage, and burial according to Catholic rites to be very important; 53.2% argue that at the state schools pupils should have preparations for Catholic sacraments. Nevertheless, 77.9% hold that priests should not participate in politics, be elected to the Seimas (Parliament) and Municipality bodies.¹

In 2011 the religious affiliation of the population of Lithuania was as follows:²

<table>
<thead>
<tr>
<th>Confession</th>
<th>Membership</th>
<th>Membership as %</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total</td>
<td>3,043,429</td>
<td>100</td>
</tr>
<tr>
<td>Roman Catholics</td>
<td>2,350,478</td>
<td>77.23</td>
</tr>
<tr>
<td>Russian Orthodox</td>
<td>125,189</td>
<td>4.11</td>
</tr>
<tr>
<td>Old Believers</td>
<td>23,330</td>
<td>0.77</td>
</tr>
<tr>
<td>Evangelical Lutherans</td>
<td>18,376</td>
<td>0.60</td>
</tr>
<tr>
<td>Evangelical Reformed</td>
<td>6,731</td>
<td>0.22</td>
</tr>
<tr>
<td>Baltic Pagans</td>
<td>5,118</td>
<td>0.17</td>
</tr>
<tr>
<td>Jehovah’s Witnesses</td>
<td>2,927</td>
<td>0.10</td>
</tr>
</tbody>
</table>


² https://doi.org/10.5771/9783845296265

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<table>
<thead>
<tr>
<th>Confession</th>
<th>Membership</th>
<th>Membership as %</th>
</tr>
</thead>
<tbody>
<tr>
<td>Muslims (Sunni)</td>
<td>2,727</td>
<td>0.09</td>
</tr>
<tr>
<td>Pentecostals (all)</td>
<td>1,852</td>
<td>0.06</td>
</tr>
<tr>
<td>Jews</td>
<td>1,229</td>
<td>0.04</td>
</tr>
<tr>
<td>Word of Faith</td>
<td>995</td>
<td>0.03</td>
</tr>
<tr>
<td>Charismatic Evangelical Churches</td>
<td>931</td>
<td>0.03</td>
</tr>
<tr>
<td>Seventh Day Adventists</td>
<td>920</td>
<td>0.03</td>
</tr>
<tr>
<td>Greek Catholics</td>
<td>706</td>
<td>0.02</td>
</tr>
<tr>
<td>Buddhists</td>
<td>626</td>
<td>0.02</td>
</tr>
<tr>
<td>Church of Christ</td>
<td>516</td>
<td>0.02</td>
</tr>
<tr>
<td>New Apostolic Church</td>
<td>422</td>
<td>0.01</td>
</tr>
<tr>
<td>Methodists</td>
<td>364</td>
<td>0.01</td>
</tr>
<tr>
<td>Hare Krishna</td>
<td>344</td>
<td>0.01</td>
</tr>
<tr>
<td>Karaite</td>
<td>310</td>
<td>0.01</td>
</tr>
<tr>
<td>Armenian Apostolic Churches</td>
<td>130</td>
<td>0.01</td>
</tr>
<tr>
<td>Latter Day Saint (Mormons)</td>
<td>129</td>
<td>0.01</td>
</tr>
<tr>
<td>Other</td>
<td>410</td>
<td>0.01</td>
</tr>
<tr>
<td>Indicated as Evangelic, Protestant</td>
<td>1,206</td>
<td>0.04</td>
</tr>
<tr>
<td>Indicated as Christian</td>
<td>1,310</td>
<td>0.04</td>
</tr>
<tr>
<td>Agnostic</td>
<td>382</td>
<td>0.01</td>
</tr>
<tr>
<td>No particular religion</td>
<td>186,670</td>
<td>6.13</td>
</tr>
<tr>
<td>No response</td>
<td>307,757</td>
<td>10.13</td>
</tr>
</tbody>
</table>

II. Historical Background

The rise of the Lithuanian State is synonymous with the Lithuanian King Mindaugas who was baptised in 1251. At that time the See of Lithuania was formed. However, only in 1387 was Lithuania officially proclaimed a Christian State. Under the privilege of Grand Duke Jogaila, the Bishop of

2 Data from population census 2011. Accessible at: https://osp.stat.gov.lt/.
Vilnius was granted a generous amount of state land, and the churches and monasteries were exempted from their fiscal obligations to the state.\textsuperscript{3}

The Roman Catholic Church became powerful in the social, political, and cultural life of Lithuania. It was supported by the Grand Dukes and by the State. In order to reduce the influence of Protestantism, the Lithuania Seimas (Parliament), adopted laws (the Constitutions of 1630, 1648, 1666, 1674) prohibiting the construction of new churches for other denominations. In 1733, the Parliament excluded the other denominations from participation in State affairs. In the Constitution of 1791, the Catholic faith was declared as preeminent.

A period of suppression of the Roman Catholic Church began when Russia annexed Lithuania in 1795. According to documents published by Catherine II in the period between 1769 and 1772, most of the privileges which had previously been conferred on Catholic priests were withdrawn. The Government was given the right to intervene in the internal life of the Church. It also withdrew the rights of the Roman Catholic Church to appoint bishops independently, to establish new parishes, to appoint parish deacons and rectors of seminaries, to recruit students for the seminaries, to publish religious literature, or to admit other believers into the Roman Catholic Church.

The oppression of the Roman Catholic Church became more severe after the uprising of 1863. Public church processions were banned, the property and lands of the Roman Catholic Church were confiscated, censorship of Catholic publications and sermons was introduced, and the publication of religious literature and the teaching of religious subjects in schools was forbidden.

State and church relations changed after Lithuania regained independence on 16 February 1918. The Constitution of 1922 restored to religious communities the right to administer their internal affairs following their own canons and statutes, and to carry out cultural, charitable, and educational activities. Religious communities were granted the right to a legal personality. Clergy of recognised religious communities was exempt from military service. The State also continued to recognise church registrations of births, marriages and deaths. In fact, the civil registration of births, marriages and deaths was an awkward exception rather than the rule during the first independence, as the Civil Registration Act was not adopted dur-

\footnotesize{\textsuperscript{3} Jucas M., Lukšaitė I., Merkys V. (1988), Lietuvos istorija, Vilnius, Mokslas.}
ing that short period and civil registration was performed by municipalities on ad hoc basis.\(^4\)

However, the new Constitution of the Republic of Lithuania, adopted in 1938, limited some of the rights of religious communities. The Constitution did not acknowledge the right of religious communities to manage their affairs according to their own canons and statutes. It also restricted their public activities, and did not guarantee state financial support for private confessional schools.\(^5\)

The status of religious communities was essentially changed again after the Soviet occupation on 15 June 1940. Religious instruction in schools was abolished, all land of religious communities was nationalised, nationalisation of immovable property was initiated. The short German occupation in 1941-44 stalled the repression of the main churches, but repressions were renewed after the Soviets regained control of the Lithuanian territory. Restrictions on the rights of the churches were accompanied by complete nationalisation of their property in 1948, and the persecution and deportation of priests as part of the general repressions continued at least to the end of Stalin’s death in 1953. After that the pressure on the churches decreased, but the Soviet state continued to implement its atheist policy. The Constitution of the Soviet Socialist Republic of Lithuania declared only limited religious freedom (with freedom of atheist propaganda, but not freedom of religious instruction and proclamation). Although the “Statutes of Religious Organisations”, adopted on July 28, 1976\(^6\), allowed the religious communities to own property, the religious communities were not recognised as legal persons, could be dissolved at will by the government, and thus were not really free to operate their property.

Religious restrictions began to weaken as the “Perestroika” period and national renewal movement started on the second half of the 1980’s. As a symbol of change on 22 October 1988 the Communist Party returned Vilnius Cathedral to the use of the Catholic Church (the Cathedral was used as an art gallery previously). In 1989 an amendment to the Art. 50 of the Constitution of the Soviet Lithuania\(^7\) was passed, that recognised freedom of religious expression and guaranteed both legal personality and freedom

\(^{5}\) Vardys V. (1997), Christianity in Lithuania, Cikaga, p. 240269.
\(^{7}\) Adopted on 3 November 1989, No. XI-3330.
of self-determination to “the Church and other religious organisations”. The amendment even allowed cooperation between the secular educational establishments and religious communities in the sphere of moral education of society. This amended article of the Soviet Constitution was copied verbatim into the Art. 31 of the Provisional Basic Law of the Republic of Lithuania, which was adopted immediately after the declaration of the Restoration of Lithuania’s Independence on 11 March 1990. Thus a new period in State and Church relations in Lithuania began.

The first law of great practical importance for the religious communities was adopted only weeks before the restoration of independence, on 14 February 1990, and concerned restoration of confiscated property. The Act “On the return of the houses of prayer and other property to the religious communities” abolished the nationalisation act of 1948 and initiated the return of property to religious communities.

The second document relevant for development of the Church and State relations was the Act of Restitution of the Catholic Church's Status in Lithuania adopted on 12 June 1990. This Act declared several things: it recognised the right of the Roman Catholic Church to manage its affairs according to the norms of canon law; it declared that the losses suffered by the Roman Catholic Church would be compensated according to an agreement between the Church and the State. The Act also guaranteed that the State will not to restrict the educational activities of the Church; and it made explicit the collaboration between State and Church on a basis of parity.

Although this Act did not have the force of law, it was relevant to the situation in 1990. The Act expresses the State's stance on those questions and its obligation to pass a law regulating relations between the State and the Church. However, the Act of Restitution dealt only with the Catholic Church.

On 30 August 1991 diplomatic relations between the Holy See and the Republic of Lithuania were reestablished. One year later the Lithuanian ambassador to the Holy See, K. Lozoraitis, presented his credentials at the Vatican.

9 Adopted on 14 February 1990, No. XI-3697.
III. Basic Structures

1. Legal Sources

The fundamental legal act regulating State and Church relations is the Constitution of the Republic of Lithuania adopted on 25 October 1992. The Constitution defines the basis of State and Church relations and implements the main principles of human rights. It guarantees the freedom of the individual to choose and manifest his or her religion or faith in worship, practice, and teaching (Art. 25 and 26). The Constitution provides that convictions, professed religion or faith may not justify committing a crime or a violation of the law; while exercising their rights and freedoms, persons must observe the Constitution and not impair the rights and freedoms of other persons (Art. 28).

The most comprehensive provisions dealing with State and Church relations are contained in the Law of 1995 on Religious Communities and Associations (LRCA). This law guarantees the freedom of religion established by the Constitution of the Republic of Lithuania and international documents (Art. 2, 3, and 8); it lists the staterecognised traditional religious communities and associations (Art. 5); it defines the criteria and procedures for the state recognition of other religious associations (Art. 5 and 6); it provides procedures for conferring legal personality on staterecognised religious associations, and of registration for other religious communities and associations (Art. 5, 6, 10, 11 and 12). The procedure for the suspension or cessation of religious organisational activities is also set out in the LRCA.

The LRCA also regulates religious education in schools, the charitable, benevolent, and educational activities of the religious organisations (Art. 14), and their property rights, labour relations, taxation and social insurance issues (Art. 13, 16, 17, and 18).

The legal basis for the relationship between Church and State may also be found in the Civil Code of Lithuania, the Law on Education, the

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Law on Health Insurance\textsuperscript{13} and the Law on State Social Insurance Pensions,\textsuperscript{14} which between them set out the main issues concerning State and Church relations.

In addition to the laws regulating Church-State relations in general, the legal framework for the relations between the State and the Catholic Church was established by three agreements signed by the Holy See and the Republic of Lithuania on 5 May 2000.

The first agreement is entitled \textit{On Cooperation in Education and Culture},\textsuperscript{15} the second is \textit{Concerning the Pastoral Care of Catholics Serving in the Army},\textsuperscript{16} and the last is \textit{Concerning Juridical Aspects of the Relations between the Catholic Church and the State.}\textsuperscript{17}

The opportunity to define the legal status of a religious body by mutual agreement between the State and the religious association concerned is provided by Article 43 of the Constitution of the Republic of Lithuania. Nevertheless, so far only the relationship between the Roman Catholic Church and the State is regulated by agreements.

2. \textit{Categories of System Approach}

The system of Church and State relationship in Lithuania is characterised throughout as functioning under the middle road principle. The separate-ness of Church and State is declared by the Constitution of the Republic of Lithuania. Article 43 of the Constitution establishes the right of religious

\textsuperscript{13} Law on Health Insurance of the Republic of Lithuania. Accessible at: https://www.e-tar.lt/portal/lt/legalAct/TAR.94F6B680E8B8/aOxXEpxWPE.
\textsuperscript{14} Law on State Social Insurance Pensions of the Republic of Lithuania. Accessible at: https://www.e-tar.lt/portal/lt/legalAct/TAR.A7F77DF94F5D.
organisations to function freely according to their canons and statutes, and proclaims that there is no state religion in Lithuania.\textsuperscript{18}

More comprehensive regulations of State and Church relations are provided by the LRCA. Article 7 of this law states that "religious communities and associations shall not fulfil state functions, while the state shall not fulfil the functions of religious communities and associations".

The Constitutional statement on the absence of state religion in Lithuania is explained by the Ruling of the Constitutional Court of 13 June 2000.\textsuperscript{19} According to the Ruling, the statement on the absence of state religion means State and Church separation and neutrality. The separation implements two main principles of State and Church relations. Firstly, that State activities are based on the principle of secularity and, secondly, that areas of State and Church activities and functioning are delimited. Therefore the separation means that on the one hand churches and religious organisations do not interfere in the official activities of the State and do not make State policy, and on the other hand the State does not interfere in the internal affairs of the churches, which function according to their own canons and statutes. However, the separation of the Church and the State does not mean that the Church and the State have nothing to do with each other. The term "separation" stresses the importance of both State and Church in social life of Lithuania rather than the absence of any contact between them. Neutrality means that the State and its institutions are neutral concerning world view and religion. Neutrality guarantees tolerance towards various religious world views and forbids discrimination against believers and non-believers alike.


\textsuperscript{19} Ruling of the Constitutional Court of the Republic of Lithuania on the compliance of Article 1(5), Article 10(3 and 4), Article 15(1), Article 20, Article 21(2), Article 32(2), Article 34(2, 3, and 4), Article 35(2 and 5), Article 37(2) and Article 38(2 and 3) of the Republic of Lithuania Law on Education with the Constitution of the Republic of Lithuania. 13 June 2000. Accesible at: http://www.lrkt.lt/lt/teismo-aktai/paieska/135/ta341/content.
IV. The Status of Religions

1. Legal Status of Religious Bodies

While the Constitution of the Republic of Lithuania mentions “Churches” and “other religious organisations”, those terms are not understood as defining particular types of religious organisations. The main types of religious bodies – religious communities and religious associations – are defined in the Law on Religious Communities and Associations. According to Article 2 of LRCA, a religious community is a unit comprising a group of individuals seeking to implement the aims of the same religion. A religious association is a unit comprised of no fewer than two religious communities having a common leadership. LRCA also defines a religious centre as a governing body of a religious association.

Registration of religious communities and associations is not compulsory, though unregistered religious communities are not subjects of law. Non-registered religious groups are treated as groups of individuals; as they are not legal entities, their capacity to operate and to express the religion of their members is not as extensive as that of registered religious groups.

The LRCA identifies three different categories of religious communities and associations: "traditional religious communities and associations", "state recognised religious communities and associations" and "other (non-traditional) religious communities and associations".

The LRCA states that traditional religious communities and associations are those which are part of the historical, spiritual and social heritage of Lithuania. Article 5 lists the nine traditional churches in Lithuania: Roman Catholic, Greek Catholic, Evangelical Lutheran, Evangelical Reformed, Russian Orthodox, Old Believers, Jews, Sunni Muslim and Karaite. These are religions that have existed in Lithuania since the times of Grand Duchy of Lithuania.

State-recognised religious associations are registered non-traditional religious groups that have acquired this status by a parliamentary procedure. LRCA Article 6 states that a religious community (association) may be recognised by the State as part of its spiritual, historical and social heritage, if it has support of the public and if its teaching and rites do not conflict with laws and morality. The law also states that state recognition means, that the State supports the historical, spiritual and social heritage of a religious association.

Consequently, according to the LRCA, both traditional and state-recognised religious communities and associations are considered to be part of Lithuanian cultural heritage. Nevertheless, to be recognised is not the
same as to be traditional. According to a Ruling of 13 June 2000 of the Constitutional Court of the Republic of Lithuania, "naming churches and religious organisations as traditional is not an act establishing them as traditional organisations but an act stating both their traditional character and the status of their relations with society. Such an act reflects the development and the situation of the religious culture in society". Tradition is neither created nor abolished by an act of the will of the legislator. The effect of this is to effectively close the list of traditional churches. Another traditional religious association can be envisioned only in distant future.

The Constitutional Court has also expressed its opinion on the criteria for state-recognition of religious association in its decision of 6 December 2007. The Court stated, that “The condition “have support in society”... means that for a respective church and a religious organisation the support of society should be strong and long-term, therefore, it may not be limited to a small group of people or a small part of the society, or to several decades of activities, or to one or a few generations. The said support in society for a respective church and religious organisation should be such that it would be subjected to no doubt”.20

Religious associations may request state recognition not less than 25 years from the date of their initial registration in Lithuania. State recognition is granted by the Seimas of the Republic of Lithuania upon the receipt of a conclusion from the Ministry of Justice. If the request is denied, it may be resubmitted not less than 10 years from the day the original request was denied (Art. 6, LRCA).

On 1 July 2001 the Union of Evangelical Baptist Communities of Lithuania became the first non-traditional religious association that has been granted the status of a state-recognised religious association by the Seimas.21 Since then three other religious associations have been granted the status: Seventh Day Adventist Church on 15 July 2008, Pentecostal Union on 3 November 2016 and New Apostolic Church on 30 March 2017.22

21 Decision No.9464, Valstybės žinios, 2001, No. 622249.
The procedure for the acquisition of the status of a legal personality for both traditional and other religious communities and associations is established by the Constitution of the Republic of Lithuania, LRCA, and the Civil Code.

LRCA does not require the registration of the statutes or documents corresponding to those of the traditional communities and associations. Newly established (or reestablished) traditional religious communities and associations acquire legal personality following a report by their authorities as to their establishment (or reestablishment) to the Ministry of Justice. During the first decade following the adoption of LRCA only such a report was required, but later, after some lengthy disputes in the Old Believers and Evangelical Reformed communities over leadership, the regulations on document submission were changed to include more documents: decisions on establishment of religious communities, decisions on appointment of leadership, etc. Although the statutes of traditional religious communities are not registered in the Legal Persons’ Register, the Ministry of Justice has the right to require that a religious community submit the statutes or corresponding documents to the Ministry.

Nontraditional religious communities and associations acquire legal personality upon their registration in the Legal Persons' Register. The community can be registered provided it has at least 15 members who are adult citizens of the Republic of Lithuania. A religious association may be registered if it comprises at least two communities. A religious centre can be registered if it is established according to the statutes or corresponding documents of the religious association.

The religious body should submit documents to the Ministry of Justice as laid down by the LRCA and in the Civil Code. The Ministry checks that the documents comply with the LRCA and that the profession of this religion does not entail a violation of human rights, freedom and public order. The Statutes of a religious association may be registered within six months from the date of their submission.

The statutes or corresponding documents which are to be submitted must include the name of the community, legal form, objects and aims of the religion, organisational structure and authorities of the community or association, procedure for management, procedures for amending the statutes and change of the office address, requirements for joining and leaving the community, members' rights and duties, procedure for reor-

23 The Ministry of Justice has already granted legal personality to 967 traditional religious communities, associations and centers. Source: www.religija.lt.
ganisation, and procedure for distribution of its property following its liq-
uidation.

Religious communities belonging to an already registered nontradition-
al religious associations are registered according to the same procedure, but the conformity of the practices of the community with the law is gen-
erally assumed.\textsuperscript{24}

The Ministry of Justice may refuse to register the statutes of religious
communities and associations if "(1) necessary data are not provided; (2) the activity of religious community or association violates human rights
and freedoms or public order; (3) when the statutes under the same name
have already been registered" (LRCA Art. 12).

According to the Article 2 of the Civil Code religious communities and
associations are public (nonprofitmaking) legal persons.

Taking into account the Parliamentary Assembly of the Council of Eu-
rope recommendation 1412 (1999) "Illegal activities of sects" the Govern-
ment passed a decision on 14 April 2000 on establishing a commission for
coordinating the activities of various state institutions which, in accor-
dance to their competence, deal with problems raised by the activities of
religious, esoteric and spiritual groups. This Commission consists of rep-resentatives of the main Ministries – Justice, Internal Affairs, Education and
Science, Health, Culture, Social Security, Foreign Affairs, as well as repre-
sentatives of the General Public Prosecutor's office, the Committee on Hu-
man Rights of the \textit{Seimas}, and educational establishments. The main aims
of this commission are as follows:

1) to coordinate the investigation on the compliance of activities of
particular groups with the law;

2) to guarantee exchange of information among State institutions and,
if needed, to offer suggestions on urgent State action concerning the
affairs of these groups.

Every year the Commission presents information on its work to the Gov-
ernment and the Committee on Human Rights of the \textit{Seimas}.

\textsuperscript{24} 140 nontraditional religious communities have been granted legal personality
2. The Meaning of Religious Community and the Right of Self-Determination

The right of self-determination is an important principle defining State and Church relations in Lithuania. The internal autonomy of religious communities is guaranteed by the Constitution. Article 43 stipulates that religious communities can function freely according to their canons and statutes and have the right to freely proclaim the teaching of their faith, perform the rituals according to their beliefs, have houses of prayer and educational institutions for the training of priests in their faith insofar as they do not contravene Lithuanian law.

While the Constitution proclaims the basic rights of religious communities, the Law on RCA also addresses the organisational structure of religious communities. Article 7 states that religious communities and associations have a right freely to organise themselves in accordance with their hierarchical and institutional structure, and to manage their internal life according to their own canons, statutes and other norms.

The right of self-determination is also acknowledged in Lithuanian legislation when it proclaims the freedom for religious communities and associations to organise and carry out social activities, participate in charitable activities, and to run general educational and other institutions of instruction. Religious communities and associations may engage in production and economic activity: publishing, establish medical, charitable institutions and organisations, and public information media (LRCA Art. 14, 15). However, in performing these activities religious communities are bound by civil legislation, functioning as nonprofit organisations.

The independence of the Catholic Church is declared in the Agreement between the Holy See and the Republic of Lithuania concerning juridical aspects of the relations between the Catholic Church and the State. While Article 1 provides for the independence and autonomy of both the Catholic Church and the State (Art. 1(2)), it also stresses that in pursuit of its social, educational and cultural activities the Catholic Church must follow not only canon law but also the procedures prescribed by the laws of the State (Art. 4). Under Article 5 the State acknowledges the total competence of the Catholic Church in its own sphere.

V. Churches and Culture

Education is probably the area of the closest State and Church relations in Lithuania. The main provisions are declared in the Constitution, the Law
on RCA, the Law on Education\textsuperscript{25} and the Agreement on Cooperation in Education and Culture between the Holy See and the Republic of Lithuania (ACEC).

Article 40 of the Constitution lays down two principles, which frame the State and church relations in the area of education. The first one declares that the State and local government establishments for teaching and education must be secular. According to the Ruling of the Constitutional Court, secular education means that all state and municipal educational establishments are tolerant, open, and available for people of all religions, and that the curriculum’s worldview content is secular. There is no requirement concerning personal belief or religion for teachers, with the exception of teachers of religion.\textsuperscript{26}

The second principle proclaims that at the request of the parents, local government establishments must offer classes in religious instruction. However, the Law on Education (Art. 31), stipulates that only religions of traditional communities may be taught at the State institutions of general education. For the Roman Catholic Church this right is also provided by the ACEC (Art. 2).

Religious instruction is part of moral education in Lithuania. The pupil or parents/guardians have the right to choose one of the compulsory moral education subjects: religion of traditional religious community or ethics. Until the age of pupils reaches 14 years it is the parents or guardians who decide on the subject. From the age of 14 years, pupils make this decision themselves (Law on Education Art. 31). Children under the State or municipal care may chose religious lessons conforming to the religion professed by their family (Art. 31, Law on Education).

According to the data on religious education at the schools of general education, provided by the Ministry of Education and Science, during the school year 2016-2017 183,943 pupils studied Catholic religion, 3,028 Orthodox religion, 401 Evangelical Lutheran religion, 385 Judaism, 197 Evangelical Reformed religion and 50 the Karaite religion.

\textsuperscript{25} Accessible at: https://www.e-tar.lt/portal/lt/legalAct/TAR.9A3AD08EA5D0/TAIS_458774.

Teachers of Catholic religious instruction at general education schools are authorised by the local Bishop. Nevertheless, they are required to have a teaching qualification (Law on Education Art. 31; ACEC, Art. 3).

Religious communities possess the right to establish institutions of general education (Law on Education Art. 42; LRCA Art. 14). Although religious communities and associations are not directly indicated as entities subject to the Law, the right to establish educational institutions is guaranteed by the Law to all legal entities established in the Republic of Lithuania, as well as to the EU Member States legal persons or other organisations, natural persons and legal entities of other countries.

Recently, there were 25 Catholic Schools of general education in Lithuania, 11 of those are private educational establishments. Religious communities and associations also have a right to establish and possess training institutions for the clergy and teachers of religious instruction (LRCA Art. 14; Law on Education Art. 42). The state recognizes diplomas of higher education granted by the seminaries provided the level of studies meets the qualification requirements for higher education (ACEC Art. 11; Agreement between the Republic of Lithuania and the Holy See on the Recognition of Qualifications Relating to Higher Education Art. 5).

Seminary professors and students have the same rights and duties as do professors and students of other educational institutions (ACEC Art. 11).

The State grants subsidies to schools preparing teachers of Catholic religion and to the public institutions of postsecondary education, including those where faculties of Catholic theology, centres for religious study and departments are established (ACEC Art. 10). Article 11 of the ACEC obliges the State to provide financial support to Catholic seminaries. According to the Agreement, amount of subsidies should be fixed by a separate agreement between the State and the Lithuanian Bishops' Conference. Although recently there has been no such agreement in place, Catholic seminaries are financially supported by the state in accordance with other legal regulations. In particular, Kaunas seminary is a part of Vytautas Magnus University which has the same state support as other state institutions of higher education and research (Law on Science and Studies Art. 74). The St Joseph seminary in Vilnius and Bishop Vincent Borusevicius semi-

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27 Information provided by Petras Navickas, official of the Ministry of Education and Science.
29 Accessible at: https://www.e-tar.lt/portal/lt/legalAct/1a9058e049b311e6b5d09300a16a686c.
nary in Telsiai have the status of private Catholic higher school. Nevertheless, having been established by the Roman Catholic Church they also have right to be supported by the State in accordance with the Law on Science and Studies (Art. 74) which implies that non-state schools of higher education established by traditional religious communities are supported by state budget allocations in so far as they are allocated to the same type of public higher education institutions.

The Law on National Radio and Television\textsuperscript{30} also claims to regulate relations between the State and church. The Law provides airtime to broadcast religious services on National television and radio. However, the right to use air-time of the National television and Radio is granted only for the traditional and state-recognised religious communities (Art. 5).

Special provisions on broadcasting Catholic programmes are included in the Agreement between the Holy See and the Republic of Lithuania on Cooperation in Education and Culture. It states that Roman Catholic Church shall have access to public mass media and obliges the Lithuanian Bishop' Conference and the authorised institution of the Republic of Lithuania to sign an agreement on Catholic radio and television programmes broadcasting (Agreement on Education Art. 12)\textsuperscript{31}.

Recently permanent accesses to air-time on National TV and Radio had two traditional religious associations. The Roman Catholic Church broadcasts weekly programme “Šventadienio mintys” (“The Holiday Thoughts”) on National Television and a daily programme "Mazoji studija" ("The small studio") on National Radio. The Orthodox Church broadcasts programme “Krikščionio žodis” (“The Christian’s word”) twice a month on National TV. The Evangelical Lutheran Church has only occasional access to air-time on National TV.

The Roman Catholic Church is involved in the state media management process. It has a seat in the Board of National Television and Radio granted by the Statute on Lithuanian National Television and Radio (adopted on December 16, 2014)\textsuperscript{32}. Other religious communities are not provided with the same status.

\textsuperscript{30} Accessible at: https://www.e-tar.lt/portal/lt/legalAct/TAR.1559303036A8.
\textsuperscript{31} The authors of the article did not find official information that such an agreement has been signed.
\textsuperscript{32} Accessible at: https://www.lrt.lt/apie-lrt/lrt-taryba/dokumentai.
VI. Labour Law Within the Religious Communities

State and Church relations in the field of labour are regulated mainly by the Law on RCA, Law on Personal Income Tax and Law on the State Social Insurance Pensions.

According to LRCA religious communities and associations in Lithuania have the right to employ individuals on work contracts. For some roles, for example persons performing construction, repair and restoration work, work contracts are mandatory. However, religious communities and associations can also have clergy, assistants in religious rites and service staff who work without formal employment contracts, and it is a common practice with the major religious communities. For those working without labour contracts the labour law does not apply.

Individuals employed according to an employment contract with religious communities or associations have a right to social insurance and other guarantees established by law. For these purposes, religious organisations must contribute to the State Social Insurance Fund from their income the same amount as do State enterprises. Clergy, who are employed with a labour contract, share the same social rights and benefits as other employees.

As for the persons working without labour contracts, the Law on RCA states that members of clergy may be supported from their religious community or association funds, in accordance with established procedures. Members of the clergy and other individuals working for religious communities without labour contracts may make their own private contributions to the State Social Insurance Fund according to the procedures established by the Law (Art. 18, LRCA).

Since 1 January 2000 the clergy from traditional and other state-recognised religious communities, as well as monks working in monasteries, have been compulsorily insured by the state social pension insurance. Clergy of traditional religious communities and associations as well as novices in monastic formation who do not have employment contracts are also compulsorily ensured by the State with health insurance. The State pays from the National Budget all compulsory contributions for every notified person. Other persons working in religious organisations may pay their health and social insurance contributions by themselves. Clergy employed with labour contracts pay the same amount to the State Social Insurance Pension Fund and State Health Insurance Fund as other persons.
VII. Financing of the Churches

Churches in Lithuania are not supported by an imposed church tax. State and church financial relations include direct state financial support and indirect support through taxation policy.

The State finances educational establishments of traditional and other religious communities that have status of legal personality and provide education in compliance with the state standard (LRCA Art. 14, Law on Education Art. 67).

The Law on Education (Art. 67) does not differentiate between state confessional and other state schools and ensures the same amount of state financial support for all of them. According to the Law, teaching expenses are financed by the state budgetary funds, operational expenses are covered by allocating subsidies from the municipality budget. Amount of both kind of the support is determined by the methodology approved by the State. (Art. 67).

Private schools established by traditional religious communities or associations are supported by assigning them the same amount from the state and municipality budgets as are given to the comparable state or local government establishments. (Law on Education, Art. 67).

Private confessional schools of non-traditional religious communities offering state-required education might be supported by the State assigning money for teaching. Operational expenses should be covered by the owner of the school (Law on Education, Art. 67). Recently there are no schools established by non-traditional religious communities in Lithuania.

The state taxation policy applied to religious communities includes certain tax exemptions.

The income received by the clergy, assistants at religious rites and service staff in the form of donations is not subject to personal income tax. The exception to this rule is personnel performing construction, repair and restoration work (Law on Individual Income Tax Art. 17(37)).

Also exempt from income tax are services provided by clergy and assistants at religious rites for a religious community. The requirement of this provision is that of services be in compliance with the canon of the religious community and extra remuneration have been not received for those

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33 Information provided by Petras Navickas, official of the Ministry of Education and Science.
services. This rule is be applied only in cases when it is possible to relate the donation to the donor. (Law on Added Value Taxes Art. 24 (2).)\(^{35}\)

Income received by religious communities and associations as a donation or support are also exempt from income tax (Law on Donation and Support, Art. 17(25)). However, religious organisations are non-profit organisations (CC Book Two Ch. 4 Art. 2.34) therefore they are not exempt from income tax. Income tax must be paid on any income received from the commercial activities of the religious community or association. (Law on Added Value Taxes Art. 2 (5).

The state taxation policy applied to religious communities and associations also includes exemption from the real estate tax. However, the state distinguishes between religious communities and grants traditional religious communities the exemption from the real estate tax regardless of the use of property (Law on Real Estate Taxes Art. 7)\(^{36}\). For the Roman Catholic Church this right is guaranteed also by the Agreement between the Holy See and Lithuania on the Legal Aspects of Relationships between the Catholic Church and the State (Art. 10 (2)). Other religious communities and associations are exempt from real estate tax when buildings and facilities are used only for religious purposes. In case when non-traditional religious community lease a property or use it for other purposes, the real estate tax must be paid. (Law on Real Estate Taxes Art. 7).

In accordance with the amendment (adopted in 2016) to the Law on Land Tax\(^{37}\) traditional and state recognised religious communities are exempt from the land tax (Law on Land Taxes, Art. 8). Until 2008 only the Roman Catholic Church enjoyed this exemption. In 2008 and 2015 by the Resolutions of the Seimas this exemption was granted similarly to the Association of Lithuanian Evangelical Baptist Communities and the Seventh-day Adventist Church.

Traditional religious communities are supported by an annual appropriation from the State budget for the preservation of cultural monuments and other needs. For example, in 2017 the sum allocated from the state budget was 697,000 euro. This sum was divided between religious communities according to the number of believers: the Roman Catholic Church was awarded 626,500 EUR, the Lithuanian Orthodox Archbishopric 36,100 EUR, the Supreme Council of Lithuanian Old Believers Church 36,100 EUR.

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\(^{35}\) Accessible at: https://www.e-tar.lt/portal/lt/legalAct/TAR.ED68997709F5.
\(^{36}\) Accessible at: https://www.vmi.lt/cms/web/kmdb/1.9.1/-/asset_publisher/0OhS/content/nekilnojamojo-turto-mokescio-istatymas/10174?accessibility=true.
\(^{37}\) Accessible at: https://www.e-tar.lt/portal/lt/legalAct/TAR.D267FBDC094B.
8,300 EUR, the Lithuanian Muslim Sunni Spiritual Centre (the Muftiat)  
3,600 EUR and so on in descending order. Local authorities also make small allowances for various needs and projects of churches and religious organisations.

The State’s diverse financial relations with different religious communities permanently raise public awareness that the State does not provide sufficient protection for the equality of all religious groups. The issue was considered by the Constitutional Court. In the Decision Concerning the Status of Religious Organisations in Lithuania the Court explained that some benefits gained by traditional religious communities are provided by Constitution. The grant of the name of ‘traditional church’ for a religious organisation is the special method of State recognition. The institution of traditional churches is recognised by the Constitution. Traditionality means the special recent state of the State and the Church relations, grounded in the meaning and influence of religious culture on the development of society. For this reason, traditional Churches may be granted rights which other churches do not have.

An important aspect in finances of religious communities that have existed in Lithuania since before the Soviet occupation is the ownership of the houses of prayer that have been confiscated during the Soviet rule.

The first attempts at restitution of immovable property to religious communities preceded the declaration of independence of Lithuania by a month. The Act on the Restoration of Houses of Prayer and other Buildings was passed by Parliament on 14 February 1990. This act repealed the Decree of the Lithuanian Supreme Soviet of 6 June 1948 concerning the nationalisation of prayer houses, church buildings, and other requisites; local government bodies were thereby obliged to sign an agreement with the religious communities either to define the terms for the restitution of nationalised buildings, or to provide financial compensation or other means which would enable the restitution of premises that had previously belonged to the Church.

As this law was of too general a nature and as six month deadline specified in it came and went, it became clear that a more detailed and nuanced legislation is needed for the restitution effort to be successful. On 21 March 1995 a more elaborate law, titled “Law on the Procedure for the

39 Accessible at : http://www.lrkt.lt/lt/teismo-aktai/paieska/135/ta574/content.
Restoration of the Rights of Religious Associations to the Existing Real Property” was adopted replacing the act of 14 February 1990\(^{40}\). The law declared that restitution of immovable property will be partial (it would not include land). The law also prohibited return of buildings that were 1) of national significance (a list of buildings was later drawn up, that included only one religious building among 17 in the list); 2) that had been privatised according to the laws in effect at the time of privatisation; 3) that were used by educational and cultural institutions; 4) buildings that were significantly modified. The law also set a one year deadline for presenting claims to the ministries and municipalities, and documents supporting the claims had to be presented not later than a year after the claim itself. The law instituted three modes of restitution: the return of the confiscated property was the main one, but the religious community or association could also get compensation in-kind (property of comparable value, renting land, or providing help in renovation of other buildings). Religious communities could also opt for monetary compensation. The law also stipulated that in exceptional cases the Government could sign an agreement with a religious community to return the property otherwise unreturnable, which agreement was to be approved by the Seimas of Lithuania in order to take effect. Over the next 20 years after the adoption of the law most restitution issues have been resolved.

**VIII. Religious Assistance in Public Institutions**

The Law on RCA establishes the legal grounds for religious assistance in public institutions. The Law states that at the request of believers religious rites may be performed in hospitals, social care facilities, places of detention and military units. The authorities must provide opportunities for the performance of religious rites and agree the time for religious rites and services to be held (Art. 8).

The pastoral care of Catholics serving in the army is regulated by an Agreement between the Holy See and the Republic of Lithuania. According to this document the Catholic Church has established a Military Ordinariate responsible for the pastoral care of the Catholics serving in the Army (Art. 1). In cooperation with the Minister of Defence, the Military Ordinary appoints a Vicar General. The Vicar General is at the same time

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\(^{40}\) Accessible at https://www.e-tar.lt/acc/legalAct.html?documentId=TAR.579F0B8C810D.
the Head Chaplain of the Army (Art. 3). Military Chaplains exercise pastoral ministry according to canon law, the ordinances of the Military Ordinary, and the rules and regulations of the Army. The duties of the Military Chaplain are to visit military units, celebrating Mass and presiding at other acts of worship, administering the sacraments, teaching religion and morals, arranging talks on the topics of religion and morals, and performing other pastoral work (Art. 8).

The Ministry of National Defence undertakes to provide relevant material support for the Army Ordinariate and the spiritual activities of military chaplains (Art. 7). Chaplains in the Military become a part of the military structures, receive military ranks and the military statutes apply to them, although they also retain their subordination to the Ordinariate and administrative disciplinary action can be applied against them only with consent of the Ordinariate. In 2016 there were 14 military chaplains of the Catholic Church in the armed forces, serving Catholics in all military units. Military chaplains have also participated in the Lithuanian mission to Afghanistan.\(^4\)

The Penitentiary Code of the Republic of Lithuania regulates religious services at detention establishments. It states "the administration of all penitentiary institutions should provide conditions for the performance of religious rituals for persons who are serving the penalty of deprivation of liberty. Clergy of all confessions should have the right to visit penitentiary institutions without any restrictions" (Art. 60).\(^5\) Clergy may visit the inmates at their request at times agreed with the administration. Representatives of religious communities and associations having legal personality may visit places of detention with the permission of the administration of the detention facility.\(^6\) In contrast to their military counterparts, the prison chaplains have no formal standing in the system and they are not employed by State to serve in prisons.

Only the Catholic Church has an agreement with the Ministry of Justice, which is overseeing the prison system in Lithuania, regarding chaplaincy services. The agreement, signed on April 23, 2003, does not provide for a possibility of a paid status of the Catholic Chaplain, but does oblige the prison leadership to provide the facilities for the Chaplain to work in.

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41 Interview with Chief Chaplain Rimas Venckus on 27 July 2016, personal archive of Donatas Glodenis.
42 Internal Rules of the Penitentiary Establishments, approved by order of the Minister of Justice No.172, 16 August 2000//Valstybes zinius, 2000, No. 72.
43 Internal Rules of the Penitentiary Establishments, approved by order of the Minister of Justice No.172, 16 August 2001//Valstybes zinius, 2001, No. 72.
The other confession which works quite extensively with the prisons is the Orthodox Church, which has appointed its parish priests to visit the nearby penitentiaries offering pastoral care to inmates. It has priests appointed for every penitentiary.

The “Prison Chaplain Association of Lithuania” was established in 2002 by Protestants who wanted to have more coordinated ministry to the sentenced persons. In the beginning it was called “Association ‘Ministry to Prisoners’” but changed its name in 2004 to attract chaplains from all confessions, a move which in the end was not successful in attracting more inter-confessional effort. Its chaplains visit most of Lithuania’s prisons.

There is no statutory regulation regarding chaplaincy in the police forces, but the police is one and perhaps the only State institution that has been actively pursuing chaplaincy services from the Catholic Church, and lately expressed some interest in chaplain services from the Evangelical Reformed Church. The Commissar General of the police first asked for a chaplain to be appointed to police in 2004, and one chaplain was appointed for the whole of police by the Lithuanian Bishop’s Conference. Gradually more chaplains started to work for the Police. In 2014 almost every one of the 10 counties in Lithuania had a police chaplain. At first chaplains worked without being employed, but this hindered their work, since there was no way the police could even cover the travel expenses they incurred while serving the police. Therefore, according to the Chief Chaplain of Police, Algirdas Toliatas, the police asked for permission to symbolically employ the chaplains, granting them 1/10th time employment. Currently police employs 13 chaplains who serve in all the counties (major administration units of Lithuania) or the police schools as quarter time employees, with the Chief Chaplain, who coordinates the activities of chaplains, serving as full time employee. On 22 June 2016 an agreement was concluded between the Ministry of Internal Affairs and the Bishop’s Conference of Lithuania regarding the pastoral care in all statutory institutions, that is, the possibility of pastoral care was expanded beyond police to include firefighters, the customs institution, and the public security service. At first these institutions would be served by the same police chaplains, while in the future they might get their own.

44 Interview with Algirdas Toliatas on 19 July 2016, personal archive of Donatas Gidonis.
The chaplains in the police are employees and not statutory officers (a status usually bestowed on policemen, firefighters, customs officers, etc.) or state officials, so the general rules of Labour Code apply for their employment. As is customary with the Catholic Church, the agreement between the Bishop’s Conference and the Ministry of Interior provides that the chaplain has to be dismissed from employment if his “missio canonica” is withdrawn by a local Bishop.

Chaplaincy in the hospitals has been gradually revived in Lithuania after the restoration of independence, and its formalisation began in 2002. Currently the Catholic Church has 21 priests appointed as chaplains in hospitals. Lithuania currently has 134 hospitals of very different sizes and purpose, which means that very few actually have employed chaplains. For example, the largest hospital in Lithuania, Santariškių Clinics, employs two chaplains: one is employed full-time to serve in the oncology clinic and the other is employed half-time to serve all the other clinics. According to the information provided by email by the Bishop’s Conference of Lithuania, the other hospitals that do not have employed chaplains, are taken care of by the local parish priests. The Social Care institutions, that are under the Ministry of Social Care of Lithuania or under the municipal authorities, do not have chaplains employed, and the spiritual needs of the inmates are taken care of by the local parish priests.

Besides the Catholic Church only the Evangelical Reformed church was willing and persistent enough to negotiate some agreements regarding chaplains in the police, the military and the hospitals, despite its very small believer base, only 0.22% of the population. For example, an agreement with the Ministry of Defence regarding the Evangelical Reformed pastoral care service to the Army of the Republic of Lithuania was signed on 1 September 2014. The agreement specifically provides that the chaplaincy services would be offered to the Army for free and that the Ministry of Defence will not finance the services.

46 Interview with Santariškių Clinics chaplain Rimgaudas Šiūlys on 28 July 2016, personal archive of Donatas Glodenis.
47 Interview with Chief Superintendent of the Evangelical Reformed Church of Lithuania Rimas Mikalauskas on 14 July 2016, personal archive of Donatas Glodenis.
The Legal Status of Priests and Members of the Religious Orders

There are no special provisions in the Lithuanian legal system concerning the legal status of the clergy. Provisions in the Constitution and the LRCA are only indirectly relevant to this matter. According to the Constitution all citizens have the right to participate in the government of their State both directly and through elected representatives, and have equal opportunity to serve in a State office. Citizens who are 18 years of age or over have the right to vote in elections (Art. 33, 34). Provisions of the LRCA complement the Constitution stating that all individuals, regardless of the religion they profess, are equal before the law. It is forbidden to limit their rights and freedoms or to apply privileges.

Matrimonial and Family Law

Marriage in Lithuania is a concern of both State and Church. The Constitution of the Lithuanian Republic stipulates that the State registers marriages, births and deaths, and recognises marriages registered in Church (Art. 38).

The procedure for the registration of marriage is defined in the Civil Code. The church (confessional) marriage has civil effect as a legal act of the State from the moment of its religious celebration if it fulfils the following requirements:

a) there are no impediments to the requirements of Article 3.123.17 of the Civil Code concerning the spouses' age and free will;

b) the marriage has been celebrated according to the order established by the canons of religious organisations registered and recognised by the Lithuanian State;

c) the church (confessional) marriage has been recorded in the civil register (Agreement on Juridical Aspects Art. 13).

A church marriage must be recorded in the civil register. The religious organisation must present the report in a special form (established by the Ministry of Justice) to the civil register office within ten days of the marriage ceremony. The civil register office registers the marriage and issues a marriage certificate. The date of marriage registration is that of its celebration in church. If the report is not presented to the civil register office within ten days, the date of marriage entered into the register is that of its registration in the civil registration office (Art 3(304) of the Civil Code).
According to Art. 13 of the Agreement on Juridical Aspects, the decisions of ecclesiastical tribunals on the nullity of a marriage and decrees of the Supreme Authority of the Church on the dissolution of the marriage bond are to be reported to the competent authorities of the Republic of Lithuania with the aim of regulating the legal consequences of such decisions in accordance with the State legislation. However, it appears that this procedure has never been applied, as all marriages are dissolved by the civil divorce procedure in the civil courts first, and the Church annulment is sought only after the civil proceedings have been completed. The courts are careful to use different language for divorce in civil marriage and Church marriage cases ("divorce" in the first instance, "annulment of civil consequences of Church marriage" in the second instance), but otherwise the divorce procedures are not affected by the manner of conclusion of marriage.

XI. Criminal Law

Article 171 of the Penal Code penalises interference with religious rituals or solemnities. A person who disrupts services or other ceremonies of a stateregocised religious community by insolent actions, threats, sneering or any other loose behaviour is guilty of a misdemeanour and is punished by public labour, or fine, or restriction of freedom. It should be noted that, as a consequence of legal formula, the criminal law protects only rituals of traditional religious communities and associations and rituals of other state recognised religious associations, as the formula does not cover the other registered religious associations. So far, however, cases of application of Article 171 have been few and no complaints have been presented regarding the limited scope of applicability of the legal norm.

XII. Bibliography


State and Church in Luxembourg

Gerhard Robbers

I. Social Facts

The Grand Duchy of Luxembourg is situated in the centre of Western Europe, landlocked between France, Belgium, and Germany. In 2018, there were 602,005 inhabitants of Luxembourg; 48% of the population were not Luxembourg citizens.\(^1\) The latest official statistics on the religious composition of the population of Luxembourg date from the census of 1970. At that time, Roman Catholics amounted to 96.9% of the population, Protestants to 1.2%, Jews to 0.2%, and others to 1.7%. Since 1979, questions about religion in population censuses are prohibited by law. According to further surveys, as of 2011, 73% of the inhabitants of Luxembourg were Christians, 68.7% of those were Roman Catholics, 1.8% Protestants, and 1.9% belonged to another Christian denomination. 2.6% of the population adhered to a non-Christian religion, and 24.9% did not belong to any religion.\(^2\)

II. Historical Background

Before obtaining its independence during the 19\(^{th}\) century, Luxembourg was under successive Burgundian, Spanish, French, Austrian, and Dutch sovereignty. During the seventeenth century the Duchy of Luxembourg was divided between the six Catholic dioceses: Trier, Liège, Metz, Verdun, Reims, and Cologne. From 1715, under Austrian rule, State supremacy over the Catholic Church was dominant. In the course of the 1789 French Revolution and the revolutionary wars, Luxembourg came under French rule and formed the Département des Forêts in 1795. The 1801 Napoleonic concordat introduced a new structure for the relationship between the

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State and the Catholic Church, still providing for State domination over the Church.

In 1815, Luxembourg became a separate sovereign entity. It was established as a Grand Duchy and assigned to the king of the Netherlands in a personal union, while the country lost large territories to Prussia. Luxembourg became a member of the German Confederation.

According to Article 17 of the 1801 Concordat which envisaged a special treaty should a successor to the head of State not be a Catholic, a Concordat between the King and the Holy See was concluded in 1827. It reaffirmed the validity of the Concordat of 1801 and introduced special rules for the appointment of bishops. The Concordat of 1827, however, was never put into practice, and in 1852 it was repealed by both sides.

In the aftermath of the 1830 Belgian revolution, the 1839 Treaty of London defined two distinct Luxembourgs, the Grand Duchy of Luxembourg and Belgian Luxembourg, which formed a province of Belgium. The treaty of 1839 also defined the borders of the Grand Duchy, which have not changed since. In 1890, due to different laws of succession in the Netherlands and in Luxembourg, the personal union with the Dutch king ended, and Luxembourg had its own dynasty.

1833 the Pope appointed an Apostolic Vicar for Luxembourg, and in 1870 elevated it to a distinct diocese. Since 1988, Luxembourg has been an Archbishopric.

In 1848, a Constitution was introduced for Luxembourg, providing for extensive fundamental rights. As to religious freedom and the status of religious communities, its provisions are largely the same as in the current constitution which came into force in 1868.

In World War I, Germany occupied Luxembourg, disregarding its status of neutrality. German occupation during World War II devastated large parts of the country. The population and the Jewish community in particular suffered immensely under the Nazi regime. Out of the 3,900 Jews residing in the Grand Duchy before the war, 1,300 perished during the murderous German terror. Only two of the six original Jewish congregations remained at the end of the war.

New agreements with several religious communities were concluded in the years 1982, 1998, and 2003/2004. Far-reaching changes in State-religion relationships have been introduced, however, by the Convention between the State of the Grand Duchy of Luxembourg and the religious communities established in Luxembourg, which was concluded in 2015.
III. Legal Sources

Article 19 of the Luxembourg Constitution, dating from 1868, guarantees freedom of worship and public practice of religion, and freedom to manifest religious beliefs. The freedom of religions, that of their public exercise, as well as the freedom to manifest religious opinions, are guaranteed, save for the repression of crimes committed on the occasion of the practice of these freedoms. Furthermore, as is stated by Art. 20 of the Constitution, no one may be forced to take part in any manner whatsoever in the acts and ceremonies of a religion or to observe its days of rest.

In Luxembourg, it is considered that religious communities have a public role. In this context, and as stated in Article 22 of the Constitution, the spheres that require cooperation between Church and State are governed by conventions: The intervention of the State in the nomination and the installation of the leaders of religions, the mode of nomination and dismissal of other ministers of religions, the faculty of the former or the latter corresponding to their superiors and of the publication of their acts, as well as the relation between the Church and the State, are subject to conventions submitted to the Chamber of Deputies for the provisions which necessitate its intervention.

The Constitution also provides, in its Article 106: The salaries and pensions of the ministers of the religions are a charge to the State and regulated by the law.

There is no general religious freedom law in Luxembourg. Important legal sources are, beyond the Constitution and various laws governing specific fields of religious activities, the treaties between the State and individual religious communities. The most important one of those is the 2015 Convention between the State of the Grand Duchy of Luxembourg and the religious communities established in Luxembourg.3 Signatories to this agreement are the State of Luxembourg and the six defined religious communities. Special individual provisions with each of these religious communities are attached to this convention. It has been concluded for a peri-
od of 20 years and will then continue to apply tacitly for another twenty years unless it is renegotiated by the signatory parties.


IV. Basic Categories of the System

Religious communities in Luxembourg enjoy a far-reaching religious freedom. The system of State-religion relationships is based in the constitutional guarantee of human rights. It is also characterised by an ample system of State-religion treaties. The Napoleonic concordat of 1801 still provides a basis for the status of the Roman Catholic Church while it has been developed by a number of subsequent conventions. Whether or not the 1801 concordat is still in force, and to what extent, is a matter of ongoing debate. In any case, the concordat has been intensively developed and superimposed by subsequent legal developments. Treaties have also been concluded with a number of other religious communities, including the Muslim community in Luxembourg.

V. The Legal Status of Religious Communities

There are six religious communities in Luxembourg which have a special status under treaty law. These are the Catholic Church of Luxembourg, the Jewish Community of Luxembourg, the Protestant Church of Luxembourg, the Muslim Community of Luxembourg, the Anglican Church of Luxembourg, and the Orthodox Church of Luxembourg. Some of these consist of several individual and separate churches or communities. The defined six religious communities enjoy their special status as contracting parties of the State.

They have to have their legal seat in Luxembourg. Each one of them may form a foundation of public utility to be authorised by the Ministry of Justice.

Pursuant to Article 1 of the Law of 13 May 1981, the Catholic bishopric of Luxembourg constitutes a legal person of public law. Likewise, some other religious communities are legal persons of public law, such as the consistory of the Reformed Protestant Church pursuant to Article 2 of the Law of 23 November 1982; however, the 2015 Convention abrogated the
Convention of 15 June 1982 which transferred public legal personality to the Reformed Protestant Church of Luxembourg.

The 2015 Convention between the State of the Grand Duchy of Luxembourg and the religious communities established in Luxembourg makes provisions for representative bodies of the religious communities under the convention. It recognises the Archbishop of Luxembourg exercising the leadership and jurisdiction of the Catholic religion in conformity with the canonical rules of the Catholic Church. As to the Jewish religion, the Convention provides that the Jewish Consistory represents the Jewish communities in Luxembourg. It is a person of private law. It functions according to the rules established by the Jewish religion in its statute, which is communicated to the Ministry of Cults for information. Likewise, the representative body for the Protestant communities is the consistory. It has civil law personality. It may represent the communities in court if its assembly has authorised it to do so, in each individual case by a majority of two thirds. The Orthodox Church of Luxembourg comprises the orthodox communities of the Greek, Romanian, Serbian, and Russian Orthodox Churches; the Orthodox Church of Luxembourg has civil law personality. It is judicially and extra-judicially represented by the Archbishop-Metropolitan of Belgium, Exarch of the Netherlands and Luxembourg, under the Ecumenical Patriarchate of Constantinople. The Assembly of the Muslim Community of the Grand Duchy of Luxembourg, called the Shoura, represents the Muslim communities in the Grand Duchy. It functions according to the rules established in its statute, which is communicated to the Ministry of Cults for information. The Shoura has civil law personality. It may represent the communities in court if its assembly has authorised it to do so, in each individual case by a majority of two thirds. The Anglican Church possesses civil law personality; it is represented judicially and extra-judicially by the Bishop of the Diocese in Europe, his or her Vicar-General or a delegate specially mandate by one of them.

Religious communities other than those established under the Convention are also free to operate. They may be created freely as private law associations.

VI. The Meaning of Religious Community and the Right of Self Determination

The Constitution of Luxembourg guarantees religious self determination in its Article 19 underlining the freedom of religions and that of their public exercise, save for the repression of crimes committed on the occasion of the practice of these freedoms.
The Convention between the State of the Grand Duchy of Luxembourg and the religious communities established in Luxembourg reiterates the guarantee of religious self determination in its Article 2 by providing for the free exercise of religion within the boundaries of constitutional law and the respect of the public order, human rights and equal treatment.

The religious communities established under the Convention may also decide freely as to territorial and personnel issues concerning their organisation. However, before appointing a new head of the community, the community has to submit its decision for approval by the State government. They also have to have their seat in the country.

The signatory religious communities of the Convention have agreed to establish a council of Convention religious communities, the Council of Religious Communities Established in Luxembourg, which acts as interlocutor for matters of common interest as defined in the Convention.

VII. Churches and Culture

In public schools, a course “Education in Values”, in practice called “Life and Society”, has been introduced. It replaces the former system of confessional religious instruction, in which the pupils were able to choose between the confessional religious instruction and a course of general moral instruction. The new course is obligatory and aims at teaching about the great questions of humanity, philosophy and ethics as well as the great cultural and religious traditions. The content of the courses is defined by a national commission and approved by the Ministry of National Education. Procedural rules of the national commission must guarantee close participation of civil society in defining the contents. The Council of Religious Communities Established in Luxembourg is to be consulted on a regular basis on religious and philosophical contents of the course.

The teachers of the former confessional religious instruction are offered special training in order to teach the new courses of education in values and be employed in the public school system.

The Grand Séminaire du Luxembourg – Centre Jean XXIII – has been reorganised and transformed into a more interdisciplinary institution of higher education. As Grand Séminaire it still prepares future Catholic priests, offers courses for lay pastoral staff, and is open to other interested

persons. Together with a number of other institutions it has created the Luxembourg School of Religion and Society as an institution of higher education and research, lifelong learning, and adult education in the archdiocese of Luxembourg. The Luxembourg School of Religion and Society cooperates with other religious communities. The State subsidises the Centre Jean XXIII with a sum of 600,000 Euros per year.

The Archdiocese of Luxembourg is the majority owner of the "Luxemburger Wort", the daily newspaper with the largest circulation in Luxembourg.

VIII. Labour Law within the Churches

Labour relations of the staff of religious communities are governed by private law. This also applies to the staff of the Convention religious communities which have been employed after the entering into force of the Convention. Clergy employed before that date with the status of public officials will remain to so; they are to be encouraged by their respective religious community to retire at the age of 65.

IX. Financing of Churches

Instead of the previous contributions, the State of Luxembourg pays certain amounts of money to the religious communities with which a treaty exists. The amount varies according to the importance of the religious community. For the Roman Catholic Church it amounts to 6,750,000 Euros per year, while the previous yearly payment was as high as 23,720,000 Euros; the Jewish community receives 315,000 Euros, the Protestant church 450,000 Euros; the Orthodox church 285,000 Euros, the Anglican church 125,000 Euros, and the Muslim Shoura 450,000 Euros each year.

The contribution each year is linked to the development of salaries. The religious communities are examined by an independent auditor, whose report is submitted to the State authorities.

The payment can be stopped if the religious community does not respect the basic principles enumerated in Article 2 of the Convention between the State of the Grand Duchy of Luxembourg and the religious communities established in Luxembourg, such as the rights and freedoms laid out in the constitution, respect for public order, human rights and equal treatment.
The State continues to pay the salaries and pensions of the church officials who have been employed since before the entering in force of the new system. Church staff recruited after that date are employed under the regime of civil law and paid by the respective religious community.

In 2018, the 'church factories' were abolished and the new system of financing religious communities was introduced. These church factories, dating back to 1809, had been in charge of the collection and administration of the funds and revenues necessary for the construction and maintenance of the buildings and goods of the parish. Budget deficits had to be covered by the local community.

For the Roman Catholic Church, a church fund has been created by State law as a public law entity which is the owner of and in charge of maintaining the church buildings and other objects necessary for the Catholic Church. The church fund is governed by an administrative council appointed by the archbishop of Luxembourg. It is tax exempt.

Church buildings and church objects previously owned by the Roman Catholic Church, the State or the local communities have been transferred to the church fund.

Separate special agreements apply to Notre Dame Cathedral in Luxembourg City and the Basilica in Echternach, both of which are considered to be part of the national heritage.

X. Religious Assistance in Public Institutions

Military chaplains provide pastoral care for military personnel and the police force. The legal status of the chaplains is governed by military law. Hospital chaplains have access to public hospitals.

XI. Matrimonial and Family Law

The legal principle of universal civil marriage applies in Luxembourg. Pursuant to Article 21 of the Constitution, civil marriage must always precede the nuptial benediction. Clergy performing religious marriage before civil marriage are punishable with a fine from 500 Euros up to 5,000 Euros, in cases of repeated commission with imprisonment from eight days up to three months, as is stipulated in Article 267 of the Criminal Code.
XII. Religion and Criminal Law

Pursuant to Article 268 of the Criminal Code, clergy owe a duty of restraint in exercising their office. Directly attacking the government or an act of the State authorities as well as causing public uprising or disobedience to the law can constitute a punishable crime.

XIII. Particular Questions of Civil Ecclesiastical Law

The reform of State-religion relationships in Luxembourg has been and continues to be a matter for intense public debate. The current government, in its official statements, underlines the assumption that religion has in recent years lost much of its impact in the population.

XIV. Bibliography

State and Church in Hungary

Balázs Schanda

I. Social Facts

Since the Reformation Hungarians have been divided between Catholicism and Protestantism (mainly Calvinism). Orthodox minorities and a Jewish community have been present in the country since early times. The proportion of the Jewish population has risen in the 19th century from 1% to 5% due to immigration mainly from Galicia. A large majority of Orthodox Christians (Romanians and Serbs) have been cut off Hungary by the post World War I border arrangements. Two-thirds of the Jewish community perished in the Holocaust, particularly in 1944. The history of Hungary was determined from the 15th to the 17th century by the conflict with the Ottoman Empire – widely understood as a war between the Christian and the Muslim world. As the Turks were driven out from the country by the end of the 17th century the presence of Muslims practically ceased until the very recent times.

For the last century Hungary has been a country that has lost more of its population due to emigration than it gained from immigration. In fact a large part of immigrants are ethnic Hungarians from the neighboring countries who were cut off Hungary due to the post World War I border arrangements. Since the collapse of the communist regime, the migration balance is slightly positive as about 5% of the population lives and works in other EU countries and slightly more non-nationals have moved into the country. Their ethnic mix varies from Hungarians to Chinese. The percentage of resident aliens is about 2% of the population. The number of Muslims in the country has risen from a few hundred thirty years ago to a few thousand; that is still a relatively low figure. Half of the Muslims declared a Hungarian identity alongside Turkish, Arab, Persian and other identities. The share of those having a higher education is relatively high.

There are no exact data on religious affiliation. Whereas at the census in 2001 only 11% refused to answer the question on religious affiliation, ten years later 27% did not provide an answer. The percentage of those declaring that they did not have a religious affiliation has risen from 14,5% to 18%, as 20% of younger generations do not belong to any denomination.
Data are difficult to compare as in 2001 “religion” was the question, while ten years later the question was to which religious community one “feels one belongs to”. From a population of about 10 million most define themselves as Catholics, but in 2011 only 3.87 million declared that they belonged to the Catholic Church. In 2011 1.15 million declared themselves to be members of the Reformed Church and 214,000 of the Lutheran Church. 167,000 belong to other religious communities. Within younger generations, non-adherence rises but the proportion of declared atheists does not rise. Older generations (over 60) show a higher adherence to religion (almost ten times more declared an adherence than no adherence). Under the age of 40 only two times more stated an adherence than none; data, however, do not show secularisation on the rise. That means that generations born in the 1960s and those born in the 1980s have a similar level of religiosity. The most significant smaller religious communities are the Jehovah Witnesses (31,000 declared adherents), the Faith Church (an Evangelical congregation with 18,000 declared members), Buddhist (9,000), Baptists (18,000), 6,000 Adventists, 9,000 Pentecostals, 2,400 Methodists, 6,800 Unitarians. The number of Muslims was 5,579 (2,907 in 2001).\(^1\)

II. Historical Background

Hungary is a country that emerged into statehood by its adoption of western Christianity in the first millennium. The foundations of the structure of the Catholic Church were laid by St Stephen (997–1038), the first king of Hungary, who founded ten dioceses. Whereas Hungarian history is determined by adherence to western Christianity, Orthodox minorities have been present in Hungary throughout the country’s history.

The Reformation reached the country when the central state power was weak, and the country was engaged in war with the Ottoman Empire. Thus, the Reformation was highly successful in sixteenth-century Hungary, as the majority of the population turned first to Lutheran and, a little later, to Calvinist doctrine. The Reformed (Calvinist-Presbyterian) Church became the birthplace of national culture with respect to Bible translation, schools, and so on. The Counter-Reformation, supported by the royal court (from 1526, the Habsburg dynasty) also achieved success, but the

\(^1\) Census data available at: http://www.ksh.hu/nepszamlalas/vallas_sb (March 30, 2018.).
country has preserved a high level of denominational pluralism to the present time. A generally tolerant approach to religious issues is deeply rooted in Hungarian society. After the Turkish wars at the end of the seventeenth century, ethnic Hungarians became a minority in the Kingdom of Hungary. While the Serbs in the south remained Orthodox, large numbers of Romanians in Transylvania and Ruthenians in the Carpathians entered into union with the Catholic Church.

In the seventeenth century, the Protestant nobility achieved considerable freedom in Hungary. However, due to the re-Catholicising efforts of the Habsburg kings, this freedom was gradually curtailed, whereas the state influence in the affairs of the Catholic Church was also strong, especially in the enlightened absolutist Josephinist (Joseph II, 1780–1790) era, when, for example, contemplative religious orders were dissolved. The Reformed and the Lutheran religions regained their freedom at the end of the eighteenth century. At that time, although the free exercise of these religions was permitted, their status remained far from equal to that of the Catholic Church. Even though revolutionary legislation in 1848 declared the equality of all accepted religions, the emancipation of Jews did not occur until 1867. Partly due to massive immigration by the end of the nineteenth century, the Jewish population had risen to over 5% (1.3% at the end of the eighteenth century). The liberal era of the late nineteenth century enhanced the rapid assimilation of the Hungarian Jewry. This era produced the legislation which proclaimed religious freedom for all, restricting, however, the right of public worship only to the communities that were acknowledged (either incorporated or recognised). After the trauma of the secession of Hungary that took place after World War I, national conservative forces dominated the political and the cultural landscape, cutting back some of the liberal legislation of the late 1800s. Hungary became a small country surrounded by its former territories with large ethnic Hungarian minorities. The country became involved in World War II and came under German occupation on 19 March 1944. In the following few months, three-quarters of the Hungarian Jewry – who had suffered massive discrimination but had enjoyed relative security until then – were deport-

2 Leopoldi II, Decree, Art. 26 (1790).
3 On the Issue of Religion, Act XX/1848. Accepted religions were: Latin, Greek, and Armenian Catholic, Reformed, Lutheran, Unitarian, Serbian, and Romanian Orthodox.
4 On the Equality of Israelites in Regard to Civic and Political Rights, Act XVII (1867).
5 Act XLIII/1895.
ed with the assistance of Hungarian authorities to Nazi extermination camps.

It has to be noted that in Principality of Transylvania (independent of the Kingdom of Hungary from 1526 to 1848), the development of religious freedom followed a different path. The free exercise of Reformed (Calvinist), Lutheran, Unitarian, and Catholic denominations was allowed by 1568 in Transylvania, while the exercise of the Orthodox faith was also tolerated. No other European state displayed such tolerance in its church policies at that time.

After the communist takeover in 1948, religious freedom remained a dead letter of the Constitution. Education was nationalised (1948), religious education limited (from 1949), theological faculties detached from state universities (1950), religious orders banned (1950), property of religious communities mostly confiscated, numerous religious leaders arrested and sentenced, including the Primate of the Catholic Church in Hungary, Cardinal Mindszenty, who was arrested on 26 December 1948 and after being tortured, sentenced to life imprisonment in February 1949. After the arrest of a considerable part of the Hungarian episcopate, the remaining Bishops' Conference signed an agreement with the Government in 1950, regulating the fate of members of banned religious orders and consenting to the operation of eight Catholic secondary schools managed by four orders. Other denominations had already signed similar agreements in 1948, basically acknowledging the emerging situation. The Churches were generally put under strict state control that was exercised by the State Office of Church Affairs. Although from the 1960s, state pressure began to relax to some extent, the general rules and practices of the regime did not change until the late 1980s. In 1964, the Holy See and Hungary signed a document on the procedure to be followed with regard to the appointment of bishops, the oath of the clergy on the constitution, and the operation of the post-graduate training institution of the Hungarian clergy, the Pontifical Ecclesiastical Institute in Rome. On a much longer list of sensitive issues, no agreement was reached. In a remarkable way, the competence of the Holy See with regard to issues of the Catholic Church in Hungary had been acknowledged; a unique development in the Soviet bloc. From that date, representatives of the regime and the Holy See met twice a year, once in Budapest and once in the Vatican, but diplomatic relations were not re-established. In the late 80s, control over religions became looser, a number of new denominations were acknowledged, and traditional denominations – including members of the Catholic episcopate – began to claim more freedom. The collapse of the communist system (1989/1990) brought a gradual new beginning for religious freedom and in church-state relations.
Following the landslide electoral victory of a centre-right political alliance (2010) far-reaching changes were introduced to religion-related legislation, as well as in many other fields of life.

III. Legal Sources

The Basic Law (the Constitution) provides for religious freedom with a wording similar to that of the Universal Declaration of Human Rights. In addition to that document, however, the Basic Law expressly recognises the right not to express conviction. Convictions can also be expressed in ways not contrary to the law. The Basic Law also states that church and state function separately and provides for the co-operation of religious communities and the state (Art. VII). The Basic Law also provides for non-discrimination, that is, on the basis of religion (Art XV (2)), and recognizes the rights of parents to decide on the education of their children (Art XVI (2)).

The Act on Right to Freedom of Conscience and Religion and the Legal Status of Churches, Denominations and Religious Communities (2011), provides details of both individual and collective aspects of the freedom of religion and for an institutionally strict, but benevolent separation. Details are regulated by separate legislation on the restitution of confiscated church property (1991), the funding of religious communities (1997), laws on public education (2011), and higher education (2011) – all modified in numerous cases.

Agreements concluded with the Holy See (diplomatic relations – 1990, army chaplaincy – 1994, funding – 1997 (revised in 2013)), and other religious communities (Reformed Church, Lutheran Church, Alliance of Jewish Communities, Baptist Church, Serbian Orthodox Church) significantly contributed, in general, to ensuring stability in church-state relations.

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6 Act CCVI/2011.
10 Act CCIV/2011.
Basic Categories of the System

The doctrine of neutrality elaborated by the Constitutional Court on the basis of the previous constitution, may be seen as the most important principle governing the State in its relationship with the religious communities as well as with other ideologies. The State should remain neutral in matters concerning ideology; there should be no official ideology, be it religious or secular. Neutrality means that the State should not identify with any ideology (or religion); consequently it must not be institutionally attached to churches or to any one single church, or to any organisation based on an ideology. This shows that the underlying doctrine behind the principle of separation (as explicitly stated in the Basic Law) is the neutrality of the State. Separation goes hand in hand with co-operation especially with regard to public services. Neutrality in Hungary should not be understood as ‘laicism’; the State may have an active role in providing an institutional legal framework as well as funds for the churches to ensure the free exercise of religion in practice. Public institutions, including schools, universities, hospitals, etc., are bound by the principle of neutrality.\footnote{11} There are no religious symbols at public institutions.

The meaning of separation may be defined on the one hand by respecting the autonomy (or self-determination) of the churches (‘the State must not interfere with the internal workings of any church’),\footnote{12} and, on the other hand, by the principle stated in the law on religious freedom: ‘No State pressure may be applied in the interest of enforcing the internal laws and rules of a church.’\footnote{13} The State has no competence concerning the nomination of religious authorities or ministers.

Legal Status of Religious Communities

There has been a recognition procedure for denominations since 1895 when a two-tier system was introduced with incorporated religions (Catholic, Orthodox, Calvinist, Lutheran, Unitarian and Jewish) as well as recognised denominations. In 1947 traditional denominations have lost

12 Constitutional Court Decision 4/1993. (II. 12.) AB.
13 Act CCVI/2011. § 8 (2).}
their “privileges” and all religious communities were put into the category of recognised denominations. As the recognition procedure was politically abused during the communist regime the new legislation adopted in 1990 aimed at the elimination of state control. Accordingly, the registration of churches was done by the county courts in the same way as associations, political parties or foundations were registered. The requirements were highly formal: communities wishing to be registered needed to submit the names of 100 private individuals as founding members, and a charter containing at least the name of the religion, its headquarters address, and its internal organisational structure, and specifying those internal units of the church that should enjoy legal personality. The founders had to submit a declaration that the organisation they have set up had a religious character and that its activities complied with the Constitution and the law (sections 89). The number of registered churches has grown to over 300. All Churches that were registered had the same rights and obligations. Equality, however, has become a matter of legal status and not of social significance.

Following the new constitution (2011) Parliament passed a new law on churches replacing Act IV/1990. The new law (Act CCVI of 2011 on the Right to Freedom of Conscience and Religion and the Legal Status of Churches, Denominations and Religious Communities) entered into force on January 1, 2012. The Venice Commission (European Commission for Democracy through Law) stated in its opinion on the new law that eliminating “the abuse of religious organisations, which have operated for illicit and harmful purposes or for personal gain” was a legitimate concern. Also the “limitation of number of recognised churches” was legitimate according to the Venice Commission (17).

Instead of a formal registration system and equal status for religious communities the 2011 Church Act provided for a two-tier system. Religious communities could either function as religious associations or as recognised churches. Religious associations only needed ten members to obtain registration and enjoy a wide autonomy. Recognition, however, depends on a decision of the Parliament (a qualified majority is needed) and presupposes the co-operation of the community and the state in the fulfillment of public duties. Religious associations could seek recognition if they had been functioning in Hungary for at least twenty years in an organised way or they represent a religion practised internationally for at least a century (the earlier version of the law did not take foreign existence into account). Of the 82 applying for recognition. Parliament recognised 17 religious communities in February 2012, raising their total number to 31.
All religious communities registered under the 1990 law that were not recognised as a church have become associations upon request. Religious associations may use the word “church”. In a number of practical matters the legislator when passing the final version of the new law seemed to meet the concerns of minor religious communities including communities that continue to function as associations. Examples could be that these associations have the right to own agricultural land or to run theological colleges.

The new religion law (and the law on associations) ensures a base level entity status for all religious communities. The most important difference between religious associations and other NGOs is that unlike other associations religious associations enjoy full autonomy. Like recognised churches they cannot be subjects of state control and function separately from the state. The European Court of Human Rights has found a violation with regard to the freedom of association read in light of the freedom of religion in a case launched by communities that were not recognised by Parliament and only registered as religious associations (Magyar Keresztény Mennonita Egyház and Others v. Hungary). After the judgment Parliament has discussed a bill to make the registration/recognition system more detailed and granting more rights to communities not recognised by Parliament but the bill failed to obtain the necessary qualified majority in Parliament in 2015.

Due to the amendment of the 2011 Church Act from April 2019 instead of the two categories (religious association – recognized church) there are four categories provided for religious communities.

The base level entity remains the religious association (vallási egyesület), a legal person enjoying full autonomy. A novelty of the amendment is that also religious associations have the right to receive tax assignments from income tax payers. This way they will enjoy a kind of public subsidy beyond tax exemption. The law also provides for a possibility to enter into agreements between the state and a religious association for further subsidies and the support of public benefit activities (like education, health care etc.).

A religious association can be upgraded into a registered church (nyilvátartásba vett egyház) after three years if in the three preceding years at least 1,000 taxpayers in average have assigned the 1% of their income tax to them and they have been functioning for at least five years as a religious association in Hungary or a hundred years abroad. Smaller religious associations can become registered churches if they declare to have no intention to receive extra public funding beyond the tax assignment system. For
further subsidies the state can also establish a contractual relation with registered churches.

A slightly higher status would be that of the incorporated churches – a kind of second level registration (bejegyzett egyház). A religious association can become an incorporated church if in the previous five years in average at least 4,000 taxpayers have assigned the 1% of their income tax to them and they have been functioning as a religious association for at least 20 years in Hungary or 100 years abroad or it has been a registered church for at least 15 years. Religious associations with at least 10,000 registered members can also become incorporated churches after 20 years if they declare not to run for further public subsidies. Beyond the possibility of agreements between an incorporated church and the state on public benefit activities incorporated churches also take part in the tax assignment system and they also receive an additional subsidy that supplements the tax assignments distributing the relevant share of the tax not covered by assignments (1% of the income tax is distributed between churches – the relevant share of those who do not make use of their right to assign 1% of their tax is distributed according the proportion established by those who assigned the 1% of their tax).

Religious associations, registered and incorporated churches are registered at the Budapest Metropolitan Court.

The highest status provide for religious entities remains that of recognized churches (bevett egyház). When the state enters a comprehensive cooperation agreement with an incorporated church this grants recognition to it. Such agreements are promulgated by special acts of Parliament. Recognized churches enjoy a wide range of special rights and public support including the public funding of their public benefit institutions (like schools, hospitals etc.).

Registered, incorporated and recognized churches as well as their internal entities are ecclesiastical legal persons, church entities. All ecclesiastical legal persons have the right to provide religious education in public schools and to receive public funding for such education.

Opening the tax assignment system for non-recognized churches was a consequence of a Constitutional Court decision (17/2017. (VII. 18.) AB) that stated that whereas distinctions between various types of religious communities can be legitimate under the Constitution there can be no difference between private individuals. Institutional subsidies may be different (for example the public support for the reconstruction of architectural heritage) but on the level of the individual believer/taxpayer differences would be discriminative.
The legislator has established a highly complex system for providing an adequate status for various communities. The amendment added some rights to all communities (e.g. the tax assignment system). Interim steps between religious associations and recognized churches could be appealing for some communities (additional funding, religious education at public schools, and a higher social prestige). Whereas religious associations have a right to be upgraded to registered of incorporated church if they meet the criteria the decision on becoming a recognized church remains a discretionary decision of the Parliament: both state and the church have to be willing to cooperate for the public good.

If a religious community were adopt an unconstitutional practice Parliament could withdraw recognition after an opinion delivered by the Constitutional Court. Associations could be dissolved by a court decision upon the lawsuit of the public prosecutor in case of unlawful activities. It is to be noted that religious associations – unlike other associations – are not subject to control by the public prosecutor with regard to the lawfulness of their activities.

Internal entities of churches are registered by the competent government agency instead of the court if the church wishes to register internal entities.

VI. Religious Communities within the Political System

There are no legal limitations on the political involvement of churches. The strict interpretation of the principle of separation rules out the possibility of any imposition of bans or limitations on clergy or churches concerning their political activities. Church practices differ on this issue. Mainstream churches prefer not to become involved in partisan politics; this, however, is a case of self limitation, not one imposed by public authorities. The self restraint of churches is often also urged by certain actors in the political arena.

VII. Culture

1. Religious education

Churches have the right to provide religious education in public schools and kindergartens at the request of children/students and their parents.
Non-public schools are not obliged to provide religious education, but they may do so. Neutral public schools should not endorse any religion or ideology, but must provide objective information about religions and philosophical convictions. Teachers at public schools should teach on a neutral basis; they have the right to express their opinion or belief, but they should not indoctrinate their students. Schools should provide fundamental information on ethics.

Denominational religious education was compulsory at public schools until 1949. After the communist takeover, religious education became an optional subject and a restrictive administrative practice as well the systematic harassment of parents resulted in a reduced proportion of children who received religious education at school. From 1990, the obstacles for religious education were removed and the co-operation of schools and churches reinforced to provide for adequate space and time for religious education and, in many areas, the schools have become the place of religious education again. Churches could freely organize religious education and instruction on the demand of parents.

An important element of the recent changes in the education system is the introduction of ethics in the curriculum. Since 2012 children participating in religious education at schools do not take part in the ethics classes, in other words, religious education has become a compulsory elective subject instead of an optional subject. Religious education at public schools can only be offered by recognised churches and not by religious associations.

Religious instruction in public schools is delivered by ecclesiastical entities, not by the school. The instruction is not a part of the school curriculum, the teacher of religion is not a member of the school staff, and grades are not given in school reports only participation is recorded. Churches decide freely on the content of the religious classes as well as on their supervision. Teachers of religion are in church employment; however, the state provides funding for the churches to pay the teachers. The school has only to provide an appropriate time for religious classes as well as teaching facilities. Churches are free to expound their beliefs during the religious classes: they do not have to restrict themselves to providing neutral education, merely giving information about religion, as do the public schools. Religious education is not part of the public school’s task; it is a form of intro-

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14 Act XCX/2011. § 35.
duction into the life and doctrines of a given religious community at the request of students and parents.

Private schools are differentiated from church-run schools. They can make denominational religious education compulsory but also can exclude religious education and enrol all the students for ethics classes. Parents pay tuition to private schools if the owner does not enter into a contractual arrangement with the state.\(^{16}\)

2. **Church run schools**

Parents with the constitutional right to decide on the education of their children also have the right to set up non-neutral schools. ‘Church schools’ are classed as neither public nor private. After public schools run by the municipalities, most schools are run by churches: At the level of secondary education, the proportion of church schools is over 20%.

In Hungary, all schools, including church-run schools, are bound by a national core curriculum. This, however, allows each school to establish its own teaching programme. Church schools are not bound by the principle of ideological neutrality. This means that such schools can identify themselves with a particular religion. Religious symbols are allowed on the building as well as in the classrooms. Religious instruction may be a compulsory part of the curriculum (in this case ethics is not a compulsory subject),\(^ {17}\) and the marks gained are shown in the school report. The church schools are allowed to select not only their staff but also their pupils according to religious principles – none of this is allowed in public schools. Church-run schools, however, can be obliged to enrol a minimum number of students from the local municipality.

The State budget grants equal funding for church schools formally maintained by the church, but with the State providing the running costs. The enjoyment of public subsidies, however, precludes the right to collect tuition fees.

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16 Act XCX/2011. § 31(2.).
17 Act CXC/2011. § 32(1jj.).
3. Theology

The training of religious personnel and the training in theology have been almost identical until recent times. During certain periods, public authorities showed interest in the formation of the clergy; at other periods, higher education was an issue of state concern, whereas the state sometimes seemed to be interested in both, universities and the future clergy. The first university in Hungary having a Catholic faculty of theology was set up by Cardinal Péter Pázmány, archbishop of Esztergom (as his seat was under Ottoman occupation, he resided in the northern part of his archdiocese in Trnava, now in day Slovakia) in 1635. The university came under state control during the reign of Maria Theresa in 1769 and moved to its present seat in (Buda)Pest in 1777. In 1950, the Faculty of Theology was detached from the University and entrusted to the Bishops’ Conference. Discussions on an eventual re-integration in the state university were rejected both for constitutional reasons (the interpretation of separation seemed to rule out mixed – non-neutral – public institutions), and by the Church that decided to launch a Catholic University based on the Faculty of Theology in 1992. It has to be added that a significant number of young clergymen receive training abroad, especially at the pontifical faculties in Rome. The most important Reformed (Calvinist) Theological College was founded in 1538 in Debrecen and became incorporated to a state university in 1912. Since 1949, it is independent of the state university, maintained by the Church District of the Reformed Church. Training in Reformed Theology was provided at schools from the 1530s in Sárospatak and Pápa. The Reformed Theological Academy in Budapest was launched in 1855. The Lutheran faculty of Sopron (founded in 1557) was incorporated in 1923 in the University of Pécs. In 1950, it was detached from the university and a year later the Lutheran Academy of Theology moved to Budapest where it functions nowadays as the Lutheran University of Theology. The Jewish Rabbinical Seminary in Budapest was set up by government decision in 1877. Since 1999 the institution functions as the ‘Rabbinical Seminary – Jewish University’, where not only rabbis and cantors receive training but courses in Judaism are offered too. Church institutions can be acknowledged by the state to issue recognised degrees. The state acknowledgement does not change the purely ecclesiastical nature of church institutions. A list of the theological institutions – extended several times – is annexed to the Act on higher education.

These institutional arrangements do not mean that in reality church institutions must be cut off from other institutions of higher education. This is determined by local arrangements between church institutions and uni-
versities. In some university cities, the church institution and the public university have formed a close co-operation with a number of students who frequent courses in both institutions. Religious training and training in theology can be provided by church-run institutions of higher education. The law on higher education requires the accreditation of theological institutions, but the content of theological courses is not subject to scrutiny, only material conditions (like the existence and the quality of the library) are controlled. Degrees are recognized by the State. Professors of church universities are appointed by the President of the Republic as are other university professors, but in their case the nomination is not made exclusively by the Minister of Education but jointly by the maintaining church and the Minister.

4. Media

Churches may provide mass media as may other legal entities. The distribution of frequencies is done by the National Media and Infocommunications Authority. In fact, there are a few local radio stations run by the Catholic Church and a national one, too. Broadcasting contracts are concluded between the Authority and the broadcaster selected in a tender procedure. The broadcaster pays a fee and is bound by its commitments made at the tender. Violations are sanctioned by the Authority.

There are both religious and church programmes in the public media: religious programmes are on general religion (on a neutral base), whereas church programmes reflect the beliefs of their respective community. The public media allocate airtime (not to be interrupted by commercials) to eight religious communities based on agreements signed with these communities.

The board of the public media (the Hungarian Television, the ‘Duna’ Television and the Hungarian Radio) has four seats for the four major religious communities of the country. It has no competencies with regard to programming, but it is the supervisor of the public media.

Print media is not bound by detailed regulations as is electronic media. Newspapers and periodicals have to be registered with the Media Authority. Churches and religious organisations publish a wide selection of print media. The Internet has become a powerful forum of religious presence.

18 Act CCIV/2011. § 91(7.).
5. Cultural heritage

Over 20% of buildings under architectural heritage protection belong to churches. The maintenance and the protection of national monuments is the responsibility of the owner. Observing the complex rules related to protected monuments is a heavy burden on owners. Due to the dissolution of religious orders in 1950, the continuity of historical monasteries was interrupted for at least four decades. The only important exception was the famous Benedictine abbey, Pannonhalma.

Museums and archives of churches may acquire the status of quasi-public institutions. This status gives access to additional state funds; these, however, do not cover the burden of employing additional qualified staff and providing access to researchers and visitors. Churches (like other entities) can also seek public status for their libraries, but in that case they have to be accessible, have to employ a qualified librarian, have to have appropriate opening hours and facilities, and provide services free of charge.

Churches in general do not have the financial means to play a determinative role in sponsoring arts. In some rural areas parish communities play an important role in preserving folklore traditions, while many urban congregations are innovative in organising a wide range of cultural events, exhibitions, concerts, and festivals. Many local congregations have a choir.

VIII. Labour Law within the Religious Communities

Labour law as well as tax law developed the term ‘ecclesiastical persons’, who have a special ‘ecclesiastical working relationship’ with their respective church. Ecclesiastical persons can be engaged in ecclesiastical service that is not employment in the sense of state law, but a relationship exclusively determined by internal church law. The new law on religious communities expressly provides for the special status of ecclesiastical persons: ‘Church personnel shall be natural persons who are defined in accordance with the internal rules of the legally recognized church, are in the service of the ecclesiastical legal entity and perform their service in specific church

20 Act LXIV/2001 § 41.
22 Act CXL/1997. § 54(4.).
service relationship, in employment relationship or in another legal relationship.'

As churches run a significant part of the education, health care, and social care systems they are notable factors of the labour market.

Work for churches can be carried out under four different legal regimes:

(a) Ecclesiastical persons can be employed in ecclesiastical service that is not employment in the sense of state law, but a relationship exclusively determined by internal church law. A priest or a pastor would usually work in ecclesiastical service, but churches may also choose to employ him under another legal regime – and they are free to classify persons in their service as 'ecclesiastical persons'.

(b) Employees of church institutions in genuine religious offices are usually lay persons, such as cantors or catechists. They usually stay in a regular work relationship with a church legal entity and, in their case, the equal treatment considerations with regard to discrimination on the basis of religion would not apply to them.

(c) Employees of church institutions in secular offices would be a third category. This is the category where equal treatment issues raise challenges both in theory and in practice. The intention of the lawmaker was probably not grant exemption from the principle of equal treatment for employees like teachers of secular subjects at church-run schools, staff of church-run institutions of social care, etc.

(d) Other types of contracts may also engage people in the service of religious organisations, mainly contracts under civil law. For example, at a construction or restoration project, it is the contractor who will employ a number of workers to carry out the actual work. So, the painter painting the church does not enter into any kind of contract with the church.

Employees of church-run institutions, like schools, hospitals, and institutions of social care, are (unlike their counterparts in public institutions) not public employees, but fall under general labour law. For this type of employees, a status similar to that of public servants is ensured. The employment relationship of persons employed in church-run schools, hospitals, etc., must conform to public employment rules with respect to wages,
working time, and rest periods. Salaries, holidays, etc., are not subject to
the discretion of the employing entity – protecting, in a way, both of them.

IX. Legal Status of Clergy and Members of Religious Orders

Clergy (“ecclesiastical persons”) enjoy some special rights e.g. vocational
secrets, personal income tax, national service. Clergy and members of reli-
gious orders may be employed in a special ecclesiastical service, so avoid-
ing the normal requirements of labour law. The relationship between the
diocese and a priest or between a religious order and its member is gov-
erned exclusively by canon law.

Social security also applies to ecclesiastical persons. In their case, the re-
spective church agrees with the National Pension Insurance Agency on the
pension insurance of its clergy. Usually churches insure clergy based on
the minimum wages, including the compulsory private pension insurance
for new employees (this, in the case of a member of a religious order, is in
fact theoretical).

X. Finances of Religious Communities

1. Property issues

Mainstream religious communities – especially the Catholic Church –
used to own vast properties, especially land and forests, until 1945. Endow-
ments used to secure the operation of ecclesiastical institutions, on the one
hand; on the other hand, patronage played a special role in Hungary: even
between World War I and II about two-thirds of the Catholic parishes had
a patron (a landowner, an ecclesiastical entity, or, often, an urban munici-
pality or a company) covering the expenses of the church building and the
clergy.

The Communist takeover after World War II brought a radical change:
almost all church property was confiscated, education and health care na-
tionalised, practically only church and parish buildings and a very limited
number of church institutions remained in the hands of churches.

With the collapse of the Communist regime, it was evident that church-
es were in need of some kind of public assistance to be able to function,

25 Act CCVI. § 20(2.).
but state control had to be overcome once and for all. In Hungary there was no re-privatisation after the transition. Nationalisation was regarded as unjust, harmful, and also illegal, but not invalid. The economic situation, which the ‘real socialism’ left behind, however, did not enable a full restitution or a full compensation. Private individuals who lost their property got partial compensation receiving compensation vouchers that they could use in the course of the privatisation process. Churches were the only juridical persons compensated on the basis of a special law.

Based upon the Act on the Settlement of Ownership of Former Real Properties of the Churches of 1991, churches could reclaim buildings (together with the site of the building) expropriated after 1948 and originally used for specific purposes, in so far as these properties were – at the time the Act came into force – the property of the state or a local municipality.\(^{26}\) Restitution was meant to be partial as the purposes defined by the Act did not cover economic utilisation (e.g., agricultural properties, land, vineyards, forests, apartment houses, press were excluded), but only property serving a wide range of religious and non-profit activities like religious life, education, culture, health care institutions were covered by restitution.

The law affected thirteen churches\(^{27}\) filing about 6,000 claims that fell under the Act. Following the agreement on financial issues with the Holy See signed on 20 June 1997,\(^{28}\) a new law passed in 1997 provided for the possibility of capitalising the value of property not restored to the church to form a virtual fund that granted a sum every year to the church concerned.\(^{29}\) The Holy See followed a highly modest approach in property issues: pastoral considerations and the need to secure the continuing operation of the Church were at the forefront instead of *restitutio in integrum.*

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27 These were the Catholic Church, the Reformed Church, the Lutheran Church, the Jewish Communities (29 properties), the Serbian Orthodox Church (21 properties), the Romanian Orthodox Church (7 properties), the Hungarian Orthodox Church under the Moscow Patriarchate (3 properties), the Baptist Church (4 properties), the Unitarian Church (1 property), the Methodist Church (2 properties), the Adventist Church (2 properties), the Salvation Army (1 property). The number of property claims is not necessarily proportionate to their value as some communities used to own (and now claim) more small properties, whereas others had large buildings. The Catholic Church had over 2,500 claims, the Reformed Church over 1,500, the Lutheran Church close to 500. Data taken from the Secretariat for Church Relations at the Ministry of Education and Culture, http://www.nefmi.gov.hu/egyhaz/egyhazi-ingatlanrendeze/egyhazi (30 March, 2018).
Instead of all claims being pressed, a fund was set up that provides an annuity to the church. Besides the agreement with the Holy See, the Government concluded similar agreements with the Alliance of Jewish Communities, the Lutheran Church, the Reformed Church, the Baptist Church, and the Serbian Orthodox Diocese that opted for annuity instead of taking some of their buildings back.

The claims falling under the Act could be settled in different ways: (a) direct agreement between the owner (the municipality) and the church on the transfer of the property; (b) transfer of the building by Government decree, with compensation paid to the owner; over 2,000 properties were dealt with in this way, partly restoring the buildings to the churches, partly the churches; (c) transfer of property claims to a virtual fund that pays a fixed annuity without limit.

2. Tax assignment

Since 1998, a major form of public funding is a tax assignment system, as income tax payers were given the right to assign 1% of their tax to a religious community of their choice or to alternative public funds. Beginning with the tax return for the year 1997 (due in March 1998), income tax payers could direct that 1% of their income tax be paid to a church of their choice or to a public fund (another 1% could be directed to NGOs, museums, theatres, and other public institutions).³⁰

The denominational proportions did not bring big surprises: over 60% of the declarations are made for the benefit of the Catholic Church, about 20% for the Reformed Church. According to the proportion of the declarations, the Faith Church (a charismatic-evangelical congregation) has become the fourth biggest religious community, followed by the Jewish Community, and the Baptist Church.

As Hungary introduced a flat tax system from 2011 with considerable family allowances, the role of income tax has reduced. The state supplements the sum assigned to churches by taxpayers based on the denominational proportion of assignments, so that 1% of income tax is effectively distributed among churches even if only less than a half of the taxpayers make use of the possibility.

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³⁰ Act CXXIX/1996.
3. Public funds for religious activities

Churches are exempt of various taxes and fees. For example, ecclesiastical legal entities do not have to pay local taxes and fees when purchasing or inheriting real estate or become parties to civil or administrative procedures. The stipend given by private individuals to Church persons for Church services is free of tax. In the agreement with the Holy See on financial issues the Parties agreed that the ‘scope of benefits and exemptions (…) shall not be narrowed down by the Hungarian State without the consent of the Church’.

The state contributes to some church activities, like restoration projects of architectural heritage, to a limited extent, based on individual decisions of Parliament and the Government. Local authorities may contribute to reconstruction projects, may sponsor expenses like the illumination of the church building, and often provide the building plot for new church buildings free of charge.

Beginning with 2002, churches receive a special fund to contribute to the salary of their staff (clergy or other full time church employees) serving and living in rural settlements of less than 5,000 inhabitants. With this contribution, the Government acknowledges that churches have a vital role in keeping the rural areas alive.

Religious instruction is sponsored by the state. The churches have to submit the number of religious classes they run to receive an amount per class. The funding of religious instruction was not included in the agreement with the Holy See, but the agreements concluded between the Government and Protestant Churches in 1998 contain this title and finally the 2013 modification of the agreement with the Holy See provided for the funding of religious education. It is not the school that pays for the religious instruction, and the teacher is employed by his church (i.e., using public funds to cover his salary). The new law on religious freedom expressly provides for the funding of religious education upon agreements concluded with churches.

Institutions providing higher education in theology can be accredited by the National Board of Accreditation to become entitled to issue degrees acknowledged by the state, but they are maintained by the churches in-

31 Act C/1990. § 3(5.).
32 Act XCIII/1990. § 5(1)c.
33 Attachment 4.8. to Act CXVII/1995. This covers mass stipends according to can. 945 of the CIC.
34 Act CCVI/2011. § 21(3.).
stead of being integrated in state universities. The church maintaining the institution can enter an agreement with the state to get the training funded (in the case of university-level training, the funding includes the funding of the teacher training quota in arts faculties).

In Hungary army chaplains qualify as officers, prison chaplains as public employees. This way the personnel of the four ‘mainstream’ religious communities (Catholics, Calvinists, Lutherans, and Jews) in the army and the prisons are directly paid by state organs. Ministers of other denominations have free access to military and penitentiary facilities, but receive no public salaries.

The major part of church activities is not covered by public funds. ‘The assets of churches (…) shall be composed primarily of the donations and other contributions …’ Churches are free to raise funds. Public authorities are not entitled to obtain any kind of information on these revenues, that is, churches manage and administer these funds freely.

Foreign aid played a significant role in financing the Church during Communist rule. Since the fall of Communist regime, the role and the amount of foreign aid is shrinking. Various foundations and since its establishment Renovabis, however, still play an important role in funding concrete projects.

4. Public funds for public activities of religious communities

Education, health, and social care are considered state duties. Religious communities are free to perform any public activity that is not reserved to the state. Religious communities have regained their freedom with the collapse of the Communist regime, and so may have a more important role in serving society, opening schools, institutions of higher education, health care, and social care. If a religious entity provides public services on demand to the citizens, it is entitled to the same subsidy as the state gives to public institutions. Church-run museums, archives, and libraries may receive public funding if they fulfil certain criteria. Restoration of church architectural heritage can be subsidized.

35 Act CCVI/2011. § 19/A.(1.).
36 E.g., decision of the synod of the Archdiocese Esztergom-Budapest § 61. (1994.).
37 Act CXXIV/1997. § 7 (1.).
The principle of equal funding was also reinforced by the agreement with the Holy See concluded in 1997\textsuperscript{38} as well as the agreements concluded between the Government and the mainstream Protestant denominations in 1998. Also, the law on church finances of the year 1997 restates the principle. It is important to note that these subsidies are due to the church maintaining the institution and not directly to the institution itself.

XI. Religious Assistance in Public Institutions

After decades of interruption the army chaplaincy was set up again in 1994.\textsuperscript{39} The chaplaincy is maintained by the state, and army chaplains are given military ranks. The Chaplaincy is not regarded as an unconstitutional entanglement as it has not become an institutional part of the military, but instead works alongside it. In creating the Chaplaincy, the state had the right to single out the four ‘historical’ religions, all of which had a minimum number of adherents. Equality does not require the provision of a chaplain from every church, especially if there are no members of that church in the military, either because of its small size or because of conscientious objection. Smaller communities certainly have the same right to exercise their religion on military premises, as do the Catholic Church, the Reformed Church, the Lutheran Church, and the Alliance of Jewish Congregations.

In 2000, a chaplaincy for the prisons was established for the Catholic, the Reformed, and the Lutheran churches, as well as for the Jewish community. This institution is similar to the Army Chaplaincy. All registered religions have the right to pursue religious activities in the prisons on the request of the inmates; however, the four largest religions are institutionalised, and their pastors can become public servants, paid by the prisons as their own staff. To qualify, these chaplains must have permission from their churches, and they must comply with the rules governing of civil servants.\textsuperscript{40}

The pastoral care of the sick and the elderly is an important activity of religious communities. Ministers have access to hospitals and other social

\textsuperscript{38} The principle of the equal funding of public activities is in full compliance with Canon 797 of the Code of Canon Law (CIC) urging in the name of the \textit{iustitia distributiva} the truly free choice of schools for parents.

\textsuperscript{39} On the Army Chaplain’s Service, Government Decree No. 61/1994 (IV.20) Korm.

\textsuperscript{40} 8/2017. (VI. 13.) IM.
institutions that are expected to co-operate in order to facilitate religious practice.

XII. Matrimonial and Family Law

Religious and civil marriage laws have been separate in Hungary since 1895. Civil marriage law does not know religious impediments. Consequently, a person under an ecclesiastical ban on marriage could enter into a civil marriage without any kind of legal difficulty. Since 1962, the separation of church and state has the consequence that the civil wedding does not have to precede the church wedding, so one can enter a marriage in church without any consequences under the state law (in state law such couples may qualify as non-marital cohabitants).

XIII. Criminal Law and Religious Communities

Blasphemy – when causing public scandal – used to be a criminal offence under the first criminal code (1878). The provision, however, was abolished in the early years of the Communist regime. At the moment, there is no offence like blasphemy. Since 1992, mere defamation does not qualify as a criminal offence any more as the Constitutional Court has found that this would be a disproportionate limitation of the freedom of expression.

The Criminal Code has a provision on the ‘Violation of the Freedom of Conscience and Religion’ that was incorporated into the Code by Act IV/1990. According to that provision:

Whoever

a. restricts another person by violence or by threats in his freedom of conscience,

b. prevents another person from freely exercising his religion by violence or by threats,

commits a crime, and is punishable by imprisonment extending to three years.

41 Act XXXI/1894.
42 Act V/1878, § 190.
43 Decision 30/1992. (V. 26.) AB.
44 Act C/2012, § 215 (Criminal Code.).
The abuse of someone because of his or her actual or assumed membership of a national, ethnic, race, or religious group is punishable by five years' imprisonment.\(^{45}\)

As a misdemeanour, the ‘Violation of the Right of Worship’ is penalised. It is committed by: ‘Whoever causes a public scandal in a church or on premises designated for the purposes of religious ceremonies or desecrates the object of religious worship or an object used for conducting the ceremonies on or outside the premises designated for the purposes of ceremonies.’\(^{46}\)

In the case of theft, punishment is higher when an object stolen, albeit of minor value is one designated for worship, or is a religious or consecrated object, or is stolen from a consecrated property.\(^{47}\)

In compliance to the Genocide Convention, genocide is penalised. along with national, ethnic, and racial groups, religious groups are protected against crimes aimed at the exterminated the group.\(^{48}\)

Following disturbing developments in criminality, the rise of violence against church buildings and churchmen, the clergy were recognised as persons ‘pursuing public tasks’.\(^{49}\) This means a higher penalty for the perpetrator of murder and robbery against a member of the clergy, as well as punishment for those attacking a person pursuing a public task (relating to his public task). The clergy enjoys a status equal in this respect to that of teachers, medical staff, public transport workers, or firemen.

### XIV. Major Developments and Trends

The two-tier system of religious communities that has been (re-)introduced in 2011 has brought a higher emphasis on the cooperation between mainstream churches and the state. Traditional religious communities have not regained their pre-war social status, however their role in education and social care has become essential. The question of cultural identity seems to be a central issue especially in an era when many have just a vague reli-

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\(^{45}\) Act C/2012. § 216.
\(^{46}\) Act II/2012. § 188.
\(^{47}\) Act C/2012. § 370.
\(^{48}\) Act C/2012. § 124.
\(^{49}\) Act C/2012. § 459(1)12d.).
gious identity. This identity is also expressed by the preamble of the new constitution (2011) that expressly refers to the Christian heritage.50

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State and Church in Malta

Ugo Mifsud Bonnici

I. Social Facts

In 2018, the population of the Maltese Islands was estimated at 475,700. With an area of 316 square kilometres, the islands have the highest population density in Europe: 1,457 persons per square kilometre. The age-child ratio in 2002 was 68 old persons to one hundred children, whereas the total dependency ratio was 46.09. The crude birth rate was 9.86 in 2002 (compared with 17.6 in 1970), births outside marriage 14.95. The crude death rate was 7.85; the life expectancy rates were 75.78 years for males and 80.48 years for females. The crude marriage rate was 5.80. Out of the 2,240 marriages registered in 2002, 575 were civil marriages whilst the rest were celebrated according to a religious (mainly Roman Catholic) rite. Marriages with a non-Maltese partner totalled 500. The total fertility rate for 2002 was 1.46.

The genetic mix is derived from mainly Mediterranean, predominantly southern European, stock with some British genes imported through inter-marriage during the last two centuries. Though their physical features can be diverse, the population is very homogeneous in culture and outlook. The last Census returns (1995) show that though a high proportion have a second language (English) and other languages (Italian, French, German), almost all Maltese know the Maltese language, which is widely used in social life, in the Courts of Law, in the churches, and in Parliament; English is also a second official Language, used for administration. Maltese is a complex language with a Semitic base, a large and predominant Romance element in its lexicon and sentence structure, and with a good sprinkling of English terms.

Traditionally, the Census Questionnaire has no question concerning religious faith, but almost all Maltese are baptised Roman Catholics, and the attendance at Sunday Mass varies in percentage terms from a low of 48 % in some towns and villages in the South East to a high of 79 % in parts of Gozo, with an average of 61 %.

A recent Catholic Church pastoral research sounding has revealed that whilst more than eighty percent of Maltese nationals declare themselves
Catholic, Sunday Mass attendance is down to forty percent, with, however seventy percent declaring that they had attended Church at least once in the last preceding month.

There is a number of Protestant Churches: Anglican, Presbyterian, and Baptist, which cater for foreign residents; and nuclei of Jehovah’s Witnesses and Unification Church followers, mainly composed of repatriated Maltese emigrants from the United States and Australia. There is a mosque, attended mostly by foreign Muslims and a small number of Maltese wives of Moslem husbands.

The social life of the country shows evidence of a Catholic tradition, with Sundays, feasts of patron saints, and the liturgical calendar providing the rhythm of the Maltese week and year. However life-styles are moving towards more of a Mid-European way of life as the statistics amply demonstrate by the fall of birth and marriage rates.¹

II. Historical Background

The reconquista of Malta and Gozo from Arab domination by Roger the Norman in 1090 established a very close relationship between the civil and religious authorities. Count Roger and his successors, the Norman Kings, saw themselves as the patrons and benefactors of the Church, and subsequently were given by the Papacy the right of nomination to the bishoprics within their realm. Even today, the Cathedral in the old capital of Mdina recalls the endowment supposedly received from the Norman liberator. During the Middle Ages the Maltese Università² ran the Island under the privileges received from Kings and Emperors, be they Norman, Angevin, Suabian, Aragonese or Spanish, under the shadow of the Cathedral which was administered by the Chapter in the absence of the mostly foreign-born bishops. The priests never formed part of this body, but occupied themselves in running the grammar school or the hospital with financial contributions from both Università and Cathedral (and occasionally from the absent bishop’s rents).

¹ Sources: Period Demographic Indicators issued by the National Statistics Office of Malta, and the Demographic Review of 2002 as well as Malta’s Demography within a European Perspective 2002, both published by the National Statistics Office of Malta.

² The Commonwealth or Municipal Authority which was the permanent government of the country.
When the Emperor Charles V granted Malta on fief to the Order of St. John in 1530, the civil and religious affairs of these islands became further entwined. The Hospitallers were a religious order responsible directly to the Pope, but they were put in charge of the defence of the country, and became de facto the government of Malta even though they were supposedly bound to respect the franchigie of the Università. Thereafter the Grand Master of the Order ruled and the Order provided all the services of Government except for some judicial functions retained by the Università’s civil and criminal courts at Mdina. The Grand Master’s absolute rule was at times compromised by the presence of the Bishop and later by the Roman Inquisition: that is, there were three religious authorities holding sway over the country. Over the centuries, the Church, collegiate chapters, and convents received bequests and pious foundations from knights, from the nobility and from all classes of what was a pious population, so that by the end of the eighteenth century a significant proportion of the immovable property in both islands was in ecclesiastical hands.

When General Napoleon Bonaparte, commanding an army of the French Republic bound for Egypt, landed in June 1798, the position changed: the Order of St. John was disbanded and all its property (including its thirty-eight churches and chapels together with their treasures) became State property. The other religious Orders had to restrict their presence to only one of their convents in Malta and Gozo. The sale, by public auction, of the sacred vestments and silver of the Carmelite Church and convent at Imdina, one intended for suppression, triggered the Maltese counter-revolution and the ensuing liberation of the Islands from French Republican troops with the help of the British Forces and those of their allies, the Portuguese.

The British Government, which had assisted the Maltese insurgents, was tempted into staying, and the Islanders issued it with an invitation to continue to "protect" them. However, the Declaration of Rights of 1802 made by the Representatives of the Maltese expressly stipulated respect for the status of the Catholic Church. The French experience, together with the British colonial principle of non-interference with the religious beliefs of the inhabitants, meant that throughout the whole period of colonial rule (informally from 1800 and formally between 1814 and 1964) the position of the Catholic Church was in general guaranteed. This did not mean that no changes were made. When the position of Great Britain in these Islands was further assured, a series of Proclamations and Ordinances was issued,
the effect of which was to remove some of the privileges hitherto enjoyed by the Church.\textsuperscript{3}

We now know from the discovery of secret files\textsuperscript{4} that the British Governors were extremely jealous of the position enjoyed by the diocesan bishop and of the revenues due to his \textit{mensa}, but they were more concerned by the fact that the King of the Two Sicilies had exercised the right of presentation of three names to the Holy See when the Bishopric became vacant. Furthermore, this right of presentation, which went back to the Normans, was entertained by the Pope for the vacancy which occurred in 1807 with the death of Bishop Labini. The Vatican was naturally happy to see this anachronistic right discontinued, and when the succeeding bishop, Mattei, died, it resisted an attempt by the British Government to impose Francesco

\textsuperscript{3} By Proclamation XXIII of 1822 a Law of Mortmain was enacted whereby the position of ownership of immovable property by the Church and its entities was frozen. The Church and its Orders, Chapters, Foundations and other entities could not acquire new property by any transaction inter vivos, except by Government dispensation, and had to sell within one year, on pain of forfeiture, any immovable property bequeathed to them causa mortis. This Mortmain principle, although rendered much more flexible by the Mortmain Law of 1967, in fact remained operative in Maltese legislation until 1992. The British Colonial Authorities through Governor Maitland justified the introduction of Mortmain by invoking the principles of free trade. Property in the hands of Ecclesiastical entities, it was said, in fact became extra commercium. This was however not the only reason. Also curbing the economic relevance of the Church was Proclamation V of 1828, which is still on the Statute Books as Chapter I of the Laws of Malta, and which provided that the decisions of the Ecclesiastical Court would henceforth have no binding effect at Civil Law except where a special Law so provides. The Acts and documents of these Courts, properly authenticated, can be produced in evidence in the Civil Courts only when relevant under the special Law. Proclamation VI of the same year (still in force as Chapter II) abolished the right of sanctuary whereby persons fearing arrest for a crime or a civil debt could take refuge in certain churches. A Law of 1831 (now Chapter III) provided that the Curia Deputation, deciding on the bestowal of Marriage Legacies administered by the Church, had to be appointed in consultation with the Governor. A Law of 1834 (now Chapter V) limits the effects of a promise of marriage to an action for damages in certain cases, solely in the Civil Courts. A Law promulgated through Proclamation VI of 1838 (now Chapter VI) provided for the appointment to Ecclesiastical positions or benefices of persons nominated by a foreign power, in the sense that such an appointment had to be approved by the Government and the appointment of an administrator to a vacant position or benefice when it had, according to custom or inveterate right, to be made by a foreign power, had henceforth to be made by the Archbishop of Malta or if the Archbishop made no such appointment within fifteen days, by the Governor.

\textsuperscript{4} Extant in the National Archives and now open to inspection and study.
Saverio Caruana as the next Bishop. The ban was finally lifted when the new Pope Pius IX opted for a loose arrangement of "consultation" before every new appointment; this was put in place after Caruana's death.

Throughout the whole period of British sovereignty, both the British Imperial Government and the Vatican avoided confrontation. Great respect was shown and precedence given by the colonial authorities to the Bishop of Malta and to visiting Cardinals and prelates. The Bishop of Malta and later, when the Bishopric of Gozo was instituted as a separate See, the Bishop of Gozo, were exempt from any criminal action in the ordinary Courts.

With the advent of self-government in 1921, complications of a local political nature found both the Government at Westminster and the Vatican again involved, albeit involuntarily. When the first Self Government Constitution was brought into force by the British Imperial Government in 1921, there was no religious clause in the document, but the first Act

As an example: At one time a decision was taken to revise the Laws of Malta and a Commission was appointed, composed mainly of judges from the United Kingdom. However it soon became apparent that as the Maltese legal profession including the minority on the Commission had a continental legal culture with its basis in Roman Law, and had practised for centuries in the Italian Language, the only tenable and acceptable way to modernise would be to continue within that cultural environment without trying to impose Common Law. Eventually, a new Commission was formed, composed totally of Maltese Judges, and the Commission adopted the Code Napoleon. However, not only was any reference to divorce expunged, but the undeclared, though very much implied, premise that Canon Law was the only law regulating marriage between Catholics in Malta, meant that there was no provision for any other kind of marriage. British Protestants were married first in the Governor's private chapel at the Palace and thereafter in the newly erected Anglican Cathedral and various Protestant Churches. A problem arose concerning mixed marriages and especially the validity of marriages contracted by ex-Catholic priests in Protestant Churches. These problems gave rise, in time, to protracted negotiations at the Vatican between Cardinal Rampolla, the Secretary of State, and the Governor of Malta, Lintorn Simmons, who represented the British Government. No legislative solution was found, but both parties felt they could rely on the written advice of Sir Hadrian Dingli, ex-Chief Justice of Malta, in the sense that by inveterata consuetudo all marriages contracted in the Churches or places of worship belonging to the various denominations and religions were valid according to the Law of Malta, and the parties were bound as regards questions of validity by the Canon laws of their faith. This was substantially the law prior to the arrival of Napoleon. Jewish and Muslim marriages had always been recognised as valid in Malta from time immemorial. The matter of the validity of a 'mixed' marriage, not celebrated according to the decrees of the Council of Trent, when one party was a Catholic, even a lapsed one, was not legally addressed until 1974.

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passed by the Maltese Legislative Assembly proclaimed the Catholic faith as the religion of Malta. For a time matters proceeded smoothly. However in the years 1928-32, the Government of Lord Strickland, formed by a compact between the Constitutional Party and the Labour Party came into collision with the Catholic Hierarchy of Malta and Gozo over a matter of Church discipline.

After the 1939-45 war, self-government was restored in 1947. No church-state difficulties were encountered until 1955, under the first Labour Prime Minister and subsequently with the Nationalist and coalition Governments. A number of crises occurred when the second Labour Prime Minister, Dom Mintoff, acted somewhat highhandedly in clashes with the church hierarchy led by Archbishop Gonzi in 1958 and between 1962 and 1967. Mintoff had suspected collusion between the British Government, the Nationalist Party in Government locally, and the Church headed by Gonzi, during the negotiations concerning the framing of the 1964 Independence Constitution. In fact Dom Mintoff had emphasized the need to include six points, which would guarantee a more clear cut division between State and Church. The quarrel was patched up in 1967, after the achievement of Independence, but the six points were to continue

6 The most decidedly pro-British Party.
7 A Maltese Friar too friendly with the Constitutional Club in Valletta was transferred to an Italian Convent by his Provincial who was an Italian national. Whereupon the Compact Government intervened by withdrawing the Maltese Friar’s passport and declaring the Italian Provincial Father Carta, persona non grata. Tempers flared, and following the issue of a Pastoral Letter enjoining the faithful, under the pain of Church sanctions, not to vote for Lord Strickland and his supporters, the 1930 elections were suspended during the actual voting, and the Constitution was partially suspended. Before its restoration, the Vatican sent to Malta a prominent ecclesiastic, Monsignor Robinson, who reported against Lord Strickland, in effect forcing him to ask to be reconciled in time for the 1932 elections, which, nevertheless, he lost. This did not deter him from putting all possible spokes in the wheels when the Bishop of Gozo, Monsignor Gonzi, whom Strickland suspected to be the real instigator of the Pastoral Letter, was mooted as successor to the Bishop of Malta, Monsignor Caruana. Gonzi only became Bishop of Malta in 1943, when Strickland had been dead for three years.
8 In the matter of the return to St. John’s Co-Cathedral of the Caravaggio masterpiece showing the beheading of that Saint; as well as regarding Gonzi’s allegedly pro-British attitude when the Constitution was suspended.
9 In the matter of the then Leader of the Opposition, Mintoff’s alleged extreme leftist views and laicist policies and Gonzi’s supposed leanings towards the Nationalist Party.
to trouble Labour Party-Catholic Church relations for a number of years, until the 1974 Constitutional Amendments and beyond.

Mintoff was re-elected Prime Minister in 1971 and set about a course that would ensure a removal of what he deemed was the undue influence of the Catholic Church in Malta’s political, social, cultural and even economic life. In 1974, whilst the negotiations with the Nationalist Party Opposition for the amendment of the 1964 Constitution were being conducted, the Labour Government took the opportunity of trying to arrive at an accommodation on certain matters with the Vatican directly. As regards direct political influence, the Labour Party insisted on a clearer description as a "corrupt practice" of the imposition of Church moral sanctions during elections. The Constitution was amended to specify in a more precise way that freedom of conscience had as a corollary the consequence that no adherence to a religious creed should be a requirement for state positions or state examinations. All supposed or real privileges enjoyed by the Bishops were suppressed.

In addition the 1971-76, 1976-81 and 1981-87 Labour Governments took a number of steps to try to diminish the Catholic Church’s influence. The Theological Faculty at the University, which had been the senior Faculty, present from its foundation in 1592, was abolished and the Church had to reconstitute it outside the University. Catholic schools which catered for a third of Maltese students were hamstrung by the imposition of "gratuity": to continue the schools' existence, tuition would have to be provided free of charge, and the Church had to fund the schools out of income from Church property. Without some kind of supplementary Government funding this was impossible in practical terms, and the schools were kept forcibly closed, with police stationed outside their doors. Help to Church schools was given, paradoxically in a wider context, but understandably in Catholic Malta, by a teachers' general strike proclaimed and maintained by the teachers of Government schools. To add to all this the Labour Government also sought to divest the Church and its institutions of all immovable property for which it had no written record of acquisition of ownership. Understandably the Courts of Malta declared this law (the so-called Devolution Act) unconstitutional as it concerned property which had been in the hands of the Church in some instances for over nine hundred years, some supposedly having been given as endowment to the Cathedral by Count Roger the Norman in 1090. Church hospitals were forced to close because the Government imposed as a condition for the renewal of their

10 Such as immunity from criminal action in State Courts.
licence that they should offer to the Government half their beds free of charge, without receiving any supplementary subvention. The Marriage Law of 1974 turned the wheel full circle: canon law was declared no longer of any effect at civil law, and all declarations by the Roman Rota as to the nullity of a Catholic marriage were not to be recognised. Foreign sentences pronouncing divorce were, on the contrary, to be given recognition. The conditions for the declaration of nullity by the civil courts of Malta were not aligned with those of canon law. This was partially rectified in 1981. Marriage according to the Tridentine Rite was not deemed to be a valid marriage if unaccompanied by registration by a government official in the church. In effect not only was a form of civil marriage provided for, a measure which was unanimously agreed upon in Parliament, but all marriages had to be "civil" marriages.

As a result of the crisis provoked by the schools and devolution issue, but not before a demonstration by Labour sympathizers had stormed into the Law Courts and the Curia, in the aftermath of the Court judgment declaring the Devolution Law unconstitutional, negotiations were initiated at the Vatican for some kind of settlement of the then current issues. Church schools had to be non-fee-paying, a desideratum for the Church, but the Government agreed to provide a partial subvention. The number and size of Church Schools had to be frozen. The Government repealed the Devolution Law. Church Hospitals never reopened as hospitals though some Religious Orders converted them into Old People's homes.

The Vatican sent to Malta as Nuncio a diplomat of the circle of Cardinal Casaroli, Monsignor Luigi Celata, and some compromise solutions were negotiated, such as the gradual introduction of Government subventions. With a change of Government in May 1987, church-state relations improved considerably and the contentieux were tackled systematically and radically. Thus it was agreed that all immovable property held by the Church which was not required for pastoral, educational or social welfare purposes, was transferred to the State at an equitable "social" price. The property which had been targeted under the Devolution Law was also transferred, and the appeal lodged against the Court judgment which had declared that law unconstitutional was abandoned. The Mortmain Law dating back to 1822, as amended in 1967, was repealed so as to remove any obstacle to the acquisition of property which could be deemed discriminatory in the context of the European Human Rights Convention. The Nationalist Government took the step, immediately on its return to office in 1987, of rendering the Convention directly enforceable. Special Accords were agreed with regard to the subvention to be given by the State so that Church Schools could continue to be free of charge, as well as concerning
the teaching of Catholic religious principles in State Schools. The Theological Faculty returned to the University. Agreement was also reached on the appointment by the Bishops in consultation with government of religious "Animators", as spiritual directors in the State schools.\footnote{The author of this contribution was then the Minister of Education delegated by the Nationalist Government to negotiate and arrive at a conclusion of these agreements and accords.} Some of the difficulties in the Marriage Law of 1974 as amended in 1980 were rendered more acceptable.

III. The Present Position at Law

1. In the Constitution

I. Article 2 of the Constitution deals specifically with and is entitled in its marginal note 'Religion'. The text runs as follows:

   (1) The Religion of Malta is the Roman Catholic Apostolic Religion.
   (2) The authorities of the Roman Catholic Church have the duty and the right to teach which principles are right and which are wrong.
   (3) Religious teaching of the Roman Catholic Apostolic Faith shall be provided in all State Schools as part of compulsory education.

This is not the original text of the 1964 Constitution. It is the text negotiated with the Vatican in 1974 to which the Nationalist Opposition in Parliament gave its assent, even though it criticised the text as not clear and not precisely worded in its second sub-article. The substitution was effected by Act LVIII of 1974.

It was explained that sub-article (1) should not be deemed prescriptive but only descriptive. In fact sub-articles (1) and (3) were not entrenched by Article 66, which establishes the special conditions for the amendment of certain articles of the Constitution, whilst sub-article (2) recognising the Church's right to teach was so entrenched. It was argued that the right to teach should be recognised even if or when the Church was no longer the church of the majority.

Notwithstanding the partial non-entrenchment, Article 2 is of great importance in that it provides the legal foundation for the practice of having the crucifix displayed in Parliament, in the courts of Law, in State schools and hospitals, and in public buildings and offices. The prayer which is re-
cited by the Clerk of the House before every parliamentary sitting is a Catholic prayer and every session of Parliament begins with a Mass of the Holy Spirit in St. John’s Co-Cathedral, considered as State co-owned at least. The form of oath administered to holders of office is assumed to be in the usual Catholic form, but the law provides for a solemn affirmation without any religious connotation. Under the umbrella of this provision the State pays for chaplains in hospitals, schools, prisons and the Police and Armed Forces.

Sub-article (3) was drafted when the Constitution mentioned, as it still does in Article 10, that Primary education had to be free and compulsory, but as from 1974 the age of compulsory education was raised to sixteen, and therefore as a matter of fact religious instruction in the Catholic Faith is provided in all State Primary and Secondary Schools. This does not mean that it is compulsory for students to receive it. The obligation is on the State to provide it, and to pay for it.

II. Article 32, which is an original 1964 provision, deals with the Fundamental Rights and Freedoms of the Individual, and is the first of a series of articles grouped under Chapter IV with the same description. The text reads:

Whereas every person in Malta is entitled to the Fundamental Rights and Freedoms of the individual that is to say the right, whatever his race, place of origin, political opinions, colour, creed, or sex, but subject to the respect for the rights and freedoms of others and for the public interest, to each and all of the following, namely:

(a) life, liberty and security of the person, the enjoyment of property and the protection of the law;
(b) freedom of conscience, of expression and of peaceful assembly and association; and
(c) respect for his private and family life,
the subsequent provisions of this Chapter shall have effect for the purpose of affording protection for the aforesaid rights and freedoms, subject to such limitations of that protection as are contained in these provisions, being limitations designed to ensure that the enjoyment of said rights and freedoms by any individual does not prejudice the rights and freedoms of others or the public interest.

Malta has a long tradition of being hospitable to people of a variety of races and creeds. With the British colonial presence the number of Protestants of all denominations occupying high positions in the State was a frequent occurrence, and the islands have had a small Jewish community as well as a small number of Moslem traders for centuries. In fact in the
1860s a number of cemeteries to cater for the burial of non-Catholics were built at Government expense concurrently with the building of a Roman Catholic cemetery. The practice of non-discrimination continued during self-government, after Independence, and continues to date.

Within the same Chapter, Article 40 expressly provides for the protection of the freedom of conscience and worship in these terms:

(1) All persons in Malta shall have full freedom of conscience and enjoy the full exercise of their respective mode of religious worship.
(2) No person shall be required to receive instruction in religion or to show knowledge or proficiency in religion, if, in the case of a person who has not attained the age of sixteen years, objection to such requirement is made by the person who according to law has authority over him and, in any other case, if the person so required objects thereto;

Provided that no such requirement shall be held to be inconsistent with or in contravention of this section to the extent that the knowledge of, or the proficiency or instruction in, religion is required for the teaching of such religion, or for admission to the priesthood or to a religious order or for other religious purposes, and except so far as that requirement is shown not to be justifiable in a democratic society.

(3) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of subsection (1) to the extent that the law in question makes provision that is reasonably required in the interest of public safety, public order, public morality or decency, public health, or the protection of the rights and freedoms of others, and except in so far as that provision or, as the case may be, the thing done under the authority thereof is shown to be not reasonably justifiable in a democratic society.

This was not the original text in the 1964 Constitution, nor can it be said to have been very elegantly phrased and drafted. It seems to have been the result of compromise not only between the Maltese Government’s position and that of the Vatican, but also of considerable cobbling of the words. However it satisfied at the lowest technical mean the compromise needs of that moment and has not caused any difficulty of interpretation since then, as it is sufficiently clear notwithstanding the abundant verbiage.

Article 45, within the same Chapter IV, provides for the remedies and the means of redress in the case of discrimination on various grounds. As a further note of clarification, sub-article (9) provides expressly:
A requirement, however made, that the Roman Catholic Religion be taught by a person professing that Religion shall not be held to be inconsistent with or in contravention of this section.

2. **In the Education Act (Act XXIV of 1988, Chap. 327 of the Laws of Malta)**

The Act was conceived when the problems which had arisen between the Church and the Labour Government in the 1970s and early 1980s were still very vivid memories. Article 3 safeguards the right of every citizen to education, and the following articles recognise the rights and duties of the parents (Articles 5 and 6), the State (Articles 4 and 7), and other entities (Article 8) amongst which the Roman Catholic Church is specifically mentioned. Sub-article (2) of that Article provides that when the Church [specifically mentioned but in common with other moral entities which do not have a profit motive] applies for a licence to open a school [provided that such application is signed by the Bishop in Ordinary] the Minister of Education [provided also that the proposed school abides by the Minimum Conditions] cannot refuse the application. In effect the Act recognises the right of every citizen, and his or her parents or guardians when still a minor, to choose the schools to attend. It also obliges the State to give proper space to schools with different cultures, *charismae* and characteristics, so that a proper choice is available.

There is a Scholastic Tribunal to which recourse may be made in the case of an institution deeming itself aggrieved were the Minister to refuse a licence on the basis of alleged non-conformity with the National Minimum Conditions.

3. **In the Criminal Code (Chap. 9 of the Laws of Malta)**

Under Title IV, Articles 163-165 of the Criminal Code provide for sanctions against crimes which offend the religious sentiment of others. Articles 163 and 164 deal with publicly "vilifying" by means of words, gestures, written matter, whether printed or not, or pictures or by other visible means, the Roman Catholic religion (163) or any other religion [the words used are "cult tolerated by the State", which are a leftover from previous times] (164). There is a differentiation between punishments, which was justified by the fact that public vilification of the Catholic Church could
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and did produce civil commotion when, though rarely, such incidents occurred.

Article 165 punishes "whosoever impedes or disturbs the performance of any function, ceremony, or religious service of the Roman Catholic Apostolic Religion or of any other Religion" with a term not exceeding one year's imprisonment, which was to be deemed aggravated if the act amounted to threats or violence against the person, and the punishment raised to two years. Article 165 does not discriminate in any way between religions.

4. In Fiscal Law

The Church as such enjoys no sort of exemption from Income Tax, from Value Added Tax, from Customs Duty or from any other tax. There are exemptions from which the Church and church entities benefit in the same way as other philanthropic or charitable organisations, and there are goods, such as those which are educational or related to an educational purpose, which do not attract any tax. There are cases where the Minister of Finance can, in his discretion, recognise an institution or an initiative as philanthropic or charitable, and in the great majority of cases Church institutions and initiatives are so classified.

Malta does not have any means by which a citizen can devolve part of his or her tax payments to the Church. The Church is financed principally from the income deriving from the Government Bonds transferred in payment of its former immovable property, contributions by the faithful, and other monies and bequests.

5. According to the Marriage Act (Act XXXVII of 1975 as subsequently amended, Chap. 255 of the Laws of Malta)

The Marriage Act of 1975 sought first of all to provide a form of civil marriage, as before that date only marriages performed according to some religious rite were considered to be legally valid, and a marriage between Maltese Roman Catholics or in which one of the parties was a Maltese Roman Catholic was deemed valid only if it conformed to Canon Law and the norms of the Council of Trent. Prior to 1975, Canon Law was regarded as part of the *jus commune*, applied in Malta from time immemorial in matters of marriage, in the absence of any municipal legislation. It was assumed
that all Maltese were Catholics and that for Catholics there could be no marriage which was not, of itself, a sacrament. The 1975 Act specifically declared (Article 35) that Canon Law would no longer be a part of the law of Malta.

That Act as originally enacted changed completely the way in which marriage was deemed to exist in Maltese law. Thereafter all marriages had to be registered in the same way and subject to the same procedures in the Public Registry. If the parties chose to marry in Church, as most did, they had to pay a fee to an official appointed to be present and then register their marriage in the sacristy or on a side table. Without this registration the marriage would have no civil effect.

The Act moreover legislated for the essential ingredients for validity, and for the required formalities as well as the grounds for nullity. The decisions of the Ecclesiastical Courts on the existence or non-existence of a marriage were no longer recognised. On the other hand, though divorce was not introduced, the decisions of foreign courts declaring a marriage dissolved, when the foreign Court was deemed to have had jurisdiction to pronounce on the marriage bond, were henceforth to be recognised, and if registered with the proper procedure, be taken as proof of the status of liberty to marry.

The grounds for nullity were not perfectly aligned with those of Canon Law. After 1975 a state of affairs came into being whereby persons who sought to have their marriage declared null and void had not only to sue before the civil courts for the annulment to have its civil effects but, if they wished to remarry in Church, as many would for obvious reasons in a predominantly Catholic community, had also to seek a similar declaration from the Church Tribunal. Sometimes these parallel procedures produced dissimilar results. As the civil courts were now competent to examine the validity of Catholic marriages contracted before 1975, the civil judges found themselves analysing purely canon law points. In addition to the variations in the grounds for annulment, there was considerable dissimilarity in the nature of the court procedures. One advantage, amongst a number of disadvantages, of this duality was the fact that as it was possible to produce in the ecclesiastical Tribunal the evidence collected in the civil courts, a number of cases in which the respondent in a case before the Tribunal refused to appear (and could not be compelled to appear) could be resolved, as that side of the story was obtained in subizione.

In 1981 the then Labour Minister of Justice, Joseph Brincat, took into law some amendments which narrowed the gap between the grounds for annulment at Canon Law and those in the Marriage Act. However the Church continued to nurse misgivings concerning the Act inasmuch as it
did not recognise the validity of the judgments of the ecclesiastical Tribunals and in fact subjected the marriage of Catholics in church to a purely civil law registration. The Church, which had always asserted an exclusive jurisdiction over the marriage bond of Catholics, considering that for Catholics the sacrament and the marriage were one and indivisible, could not countenance a situation in which it was denied recognition of its decision on matters of Canon Law.

After the change of Government in 1987, protracted negotiations finally led to a settlement on the matter by means of two agreements entered into on the 3rd February 1993 and 6th January 1995, which later were attached to the Marriage Law Amendment Act (Act I of 1995). Canon Law marriage was given recognition at civil law and the exclusive jurisdiction of ecclesiastical Tribunals with regard to Catholic marriages was restored, however with the proviso that should neither of the parties seise the Tribunal, or if having begun a case before the Tribunal a party were to discontinue it, the civil court would exercise jurisdiction. Although this amendment resolved the dispute, it had the undesirable effect of making a purely civil marriage more attractive as, when the marriage was celebrated in church, the Tribunals had a prior claim to jurisdiction, and it was known that procedures in the church Tribunals were lengthier and the judges more reluctant to declare the nullity of a marriage. A purely civil law marriage presented no such complications and the more lukewarm of the faithful opted for this. Whilst for many years civil marriages were few in number, since 1996 there has been a dramatic increase.

The second decade of the twenty first century has seen Malta move away from its former substantially Canon Law basis, in its Laws regarding marriage and the family. In parallel with a slide in Religious practice, public opinion also moved towards an acceptance of significant changes. Possibly, symbiosis with the ideas and living style prevalent in the Northern countries of the European Union, which Malta had joined in 2003, may have accelerated the rhythm of these changes.

The first major change, in October 2011, was to allow divorce. A member of the then Government side, Dr. Jeoffrey Pullicino Orland introduced a private member’s motion in Parliament, but the Prime Minister, then Dr. Lawrence Gonzi, thought it wise to submit the matter to a referendum. In May the electorate pronounced itself in favour by 53% of the votes cast. On 25 July 2011 Parliament passed the law legalising divorce. Under this law, the demand can be brought jointly by both spouses or by one spouse only, but the Court has to be satisfied that the spouses have lived apart for a cumulative period of four years out of the immediately preceding five years; that there is no hope of reconciliation and most importantly, that
maintenance payments to the spouse and children shall continue as agreed before in the contract of separation or by law as provided for under its article 66B, which concerns maintenance obligations.

A Civil Unions Act was enacted in 2014 which recognised in these civil unions the same rights, responsibilities and obligations as marriage, including the right to joint adoption. Though contested as to the method of provision, Parliament adopted the law by a vote of 37 in favour and 30 abstentions. It was signed by the President and published in the Gazette on 17 April 2014, with the first such union being joined in June of that year.

On 12 July 2017 the Maltese Parliament passed a law legalising same-sex marriage, which law was promulgated by the President of the Republic on 1 August 2017. The Minister for Equality issued a legal notice to fix the commencement of the law on 1 September 2017.

A Cohabitation Law was passed in 2017 which granted certain limited rights (such as medical decisions for a partner) for those cohabiting for more than two years, as well as for a contractual arrangement between the de facto cohabiting partners. The Law also provided for a unilateral declaration by a cohabitee, in order to secure certain rights (including those under the Rent Laws). Couples who are living together and who are in a cohabitation agreement can declare spousal privilege.

The Marriage Act (amendment) Act of 2017 (Act XXIII of that year) whilst declaring that Canon Law ceased to be the Law of Marriage in Malta, nevertheless made an Agreement concerning Catholic Marriages, concluded with the Holy See, part of the Marriage Law of Malta. The Agreement [Agreement between the Holy See and Malta on the Recognition of Civil Effects to Canonical Marriages and to Decisions of Ecclesiastical Authorities and Tribunals about the same Marriages (as amended by the Terzo Protocollo Addizionale)] had as a preamble:

“The Holy See and the Republic of Malta,- considering, on the part of the Holy See, Catholic doctrine on marriage, as also expressed in the Code of Canon Law, as well as the teaching of the Second Vatican Ecumenical Council on relations between the Church and the State, and, on the part of the Republic of Malta, the principles enforced by the Constitution of Malta;
- wanting to ensure, in line with fundamental human rights and the values of the family based on marriage, a free choice in matters of marriage; have recognized that it is opportune to reach an agreement on the recognition of civil effects to canonical marriages and to the decisions of the ecclesiastical Authorities and tribunals about the same marriages”.

Ugo Mifsud Bonnici
This amendment, in fact, retained, in the case of marriages celebrated in the Catholic Church, the provisions of Canon Law, and gave recognition at Civil Law to the decisions of Church Tribunals with regard to the validity of such marriages.

The present Government is currently proposing a draft amendment to the Embryo Protection Act which, very controversially, contemplates the possibility of anonymous gamete donation and surrogacy. The Opposition has spoken against this amendment. The Bishops have also attended a street demonstration against the amendment, which is still currently being debated, but which the Government side seems determined to pass. In a quite novel development, the President of the Republic has urged more consultation with the public and civil society on this controversial amendment.

Throughout the whole series of changes, the Catholic Hierarchy, though commenting critically, has not mounted any kind of sustained crusade. Although the Labour Party, in Government since 2013 has been in favour of the changes, the Nationalist Party when in Government before that year, and thereafter in opposition, has not been united in its stand, occasionally in part, agreeing to the changes.

6. Under the Cultural Heritage Act (Act VI of 2002)

As in the previous Act of 1925, a special position at law was granted by the 2002 Act to cultural property belonging to the Catholic Church and to Catholic religious orders and "destined or used" for religious purposes, in that they were deemed to fall (Article 52) under the exclusive regulation and superintendence of the Catholic Cultural Heritage Commission. A similar exemption was given to cultural property belonging to other Churches or religious communities.

However, should no such Commissions be appointed, the regulation and superintendence falls to the Superintendence of Cultural Heritage constituted under Article 7 of the Act.

When Napoleon Bonaparte conquered Malta and expelled the Order of Saint John, all the property belonging to the Order was declared Government property, including not only the palaces and auberges, but also the churches and chapels. Foremost amongst these churches was the Conventual Church which contained perhaps some of the most important cultural treasures of Malta, including paintings by Caravaggio and Mattia Preti. Napoleon gave permission to the Bishop to use the church as co-cathedral by a note from his own hand, which is still extant. The Catholic Church
has always contended that St. John's Co-Cathedral and all the other churches and chapels which belonged to the Order – which was a religious order owing direct allegiance to the Pope – could not be taken over by Government. Every year since 1798 has seen St. John's used by the Cathedral Chapter and the Bishop, and also serving the State as the "Official" Church for public thanksgiving services. The expenses of its upkeep were defrayed by the Government but at one time problems arose as to its being visited as a tourist attraction and for its proper safeguard. A Foundation was set up to administer this important monument through a Board on which both the Government and the Church appointed Trustees.

7. The Public Meetings Ordinance (Chapter 68)

Under Section 7 of this Law, the Commissioner of Police may order that a public (including a political) meeting be not held on any day, in any town or village where the meeting was intended to be held, on which a public solemnity or festival is to be celebrated. Sub-section (2) states that for the purpose of that Section "public solemnity" includes solemn functions held inside any church building, which it is reasonable to think might be interfered with by speeches delivered at, or the commotion caused by, a public meeting held in the vicinity of that church.

IV. The Present Position in the Cultural, Social, Political and Economic Life of Malta

The Church has a Radio Station (Radju ta' kulbadd [RTK] literally Everybody's Radio) which is one of the most popular and which enjoys considerable prestige because of its unbiased reporting of political events. Two weekly newspapers (Lehen is-Sewwa, [literally the Voice of Truth] founded in the late twenties, and Il-Ġens [literally the old Latin meaning the people]), and a good number of other publications mostly devotional or sectoral, provide ample space for disseminating a broad mixture of Catholic opinion. In addition, most of the other secular dailies [three privately owned English language and two in Maltese, one owned by the Nationalist Party and one by the General Workers' Union] or weeklies have pages allotted to church news or opinion.

The religious feasts of the country, national or local, are very closely followed by the general public. Church attendance on Sundays is high by...
most standards. There has not been a generalised apostasy of the working class or of the bourgeoisie. The Church also takes part in the cultural life of the country especially through its patronage of the arts, mostly painting and music in the churches.

There are sixty church schools across the whole range from kindergarten to sixth form, and about a quarter of all Maltese students of the relevant age groups attend these schools. These schools are free of charge and are heavily subsidised by Government. Admission to the boys' secondary schools is mostly through passing a common entrance examination.

The Church runs a crèche, a number of orphanages, as well as a home for the disabled which is in fact the only one catering for this need in Malta. In addition there are various old people's homes run by religious orders and by Catholic Action. The Emigrants' Commission runs welfare services for Maltese migrants, and as these have become progressively less in need of help it has taken on the care of refugees coming to Malta from the Third World, often in very difficult circumstances. There is also a Jesuits' Justice Commission championing the cause of dignified treatment of illegal immigrants.

The Church hierarchy generally tries to maintain a strictly neutral stance in matters of political controversy, even in the case of major national choices such as the Independence Referendum in 1964 and the very recent 2003 Referendum concerning the European Union Accession Treaty. Nevertheless the Church's teachings influence public opinion and have an indirect, and sometimes a very direct, influence on the country's political choices.

The Church owns a bank, the APS Bank, formerly bearing the full name of Apostleship of Prayer Savings Bank, which is no longer merely a savings bank but performs a number of banking services, and is the third in importance, albeit a distant third, in Malta. It also has other investments, but conducts its activities in the economic field with the greatest possible discretion. When the bulk of church immovable property, that which was not in use or intended for pastoral or social work, was transferred to Government, by agreement and under the terms of Act IV of 1992, the price, amounting to 29,000,000 Maltese pounds was paid in Government Bonds which provide a substantial yield. The Dioceses of Malta and Gozo publish yearly statements of account concerning the administration of Church finances.

The State pays for Catholic chaplaincy services in public hospitals and old people's homes, in the prisons, in the public cemetery, as well as in the armed forces and police.
The Anglican Church has a beautiful cathedral at Valletta and another church in Sliema, there are also churches of other Protestant denominations (Church of Scotland, Baptist, etc) mostly serving the expatriate community. There are some Maltese Jehovah’s Witnesses and members of the Unification Church, though the numbers are small. There is a mosque attended mostly by foreign residents or workers from Moslem countries and some Maltese wives and the offspring of mixed marriages.

V. Concluding Note

Relations between the Holy See and the Government of Malta have returned to normal after a period of some tension in the 1970s and early 1980s. There has been no confrontation between the Catholic Hierarchy and political leaders for quite some time. Though the Labour Leader Dr. Alfred Sant has occasionally thrown a ballon d’essai concerning the introduction of divorce which the Church opposes, the issue has not been presented to the electorate for an expression of opinion. There is a general consensus in both major parties that abortion should continue to be considered a crime. Neither the introduction of gay marriages nor the decriminalisation of euthanasia has been formally proposed by any political party, not even by the small Green Party which is not represented in Parliament.

Though social mores have been influenced by more liberal life styles, the general ethical tone of Maltese society can be seen to be firmly rooted in the Catholic tradition. This notwithstanding, there is a general feeling that the State should guarantee non-discrimination against people for their faith or lack of it. It is a generally held view that the State should be strictly lay and that the Catholic Church should continue to enjoy the utmost liberty but that there should be no trace of imposition through social censure or in any other way of any religious faith.

VI. Bibliography

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I. Social Facts

The law and the current situation in the Netherlands are a vast departure from the days of the Constitution of 1801, one of the Constitutions of the turbulent period of 1795 - 1814, which stated that every head of family or independent person of either sex must, upon reaching the age of fourteen, register with a church denomination. Changing denominations at a later date was allowed.\(^1\) Currently, both the obligation of church membership as a principle and also the assumption that everyone belongs to a church are obsolete. Insofar as the provision reflects the expression of free choice of religion, and makes an implicit reference to the existence of a variety of religious denominations, it still has a bearing on the present.

In the Netherlands, pluralism is a basic characteristic of religious life. Even in the days of the Republic of the United Netherlands, with its established Reformed Church and privileges for its adherents, a variety of denominations existed. The Union of Utrecht of 1579, the basis of the Confederacy, guaranteed freedom of religious conviction and outlawed inquisition. Public worship was restricted, though in the course of time it was practised with an increasing openness. An atmosphere of toleration was fostered. Even in the early days of the nation’s history, minority religions were a part of the societal pattern.

Religious variety continued and increased after the Kingdom of the Netherlands was founded in 1814, though in a different legal context. Separations from the Reformed Church and later on from its newer branches took place, resulting in a wide variety of Reformed denominations. From the late 19th century onwards, new church denominations emerged, including Pentecostal churches, Evangelical churches and the Salvation Army. Philosophical movements based on nonreligious spiritual belief became structured organisations, most notably following the Second World War. Immigration has led to an influx of adherents of Christian churches

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\(^1\) Art. 12 Staatsregeling des Bataafschen Volks 1801.
organised on a national or ethnic basis, as well as adherents of non-Christian religions.

In addition to religious diversification, secularisation has also become entrenched in society. Over the years, a distinct decline in church membership has become apparent. This phenomenon first became noticeable in the 1880s. It halted after the 1930s. The period of the 1960s once again showed a further decline in church adherence. The decrease of Church membership has continued. The first two decades of the 21st century again show a sharp decline in Church membership. Initially, the large churches suffered from loss of membership. The main Reformed Church was confronted with this development early on. The Roman Catholic Church followed somewhat later. The extent to which smaller Christian denominations were affected by decline in membership varied. It seems that the traditional Christian denominations encountered membership decline, whereas the relatively new branches of the Reformed Church remained fairly stable.

Until recently, the demographic spread of religious denominations within the country was a stable one. Notoriously nonreligious areas in the country could also be outlined. Increased mobility and the general decline in church adherence have profoundly altered the picture.

In the 1980s and 1990s, about a third of the population could be reckoned to adhere to various mainstream Protestant denominations, a third of the population to the Roman Catholic Church, and a third of the population to either other, smaller denominations or no religious denomination. In the latter category also the relatively small percentage of Muslims was included. In only a short period of time, much has changed. Surveys over the first two decades of the 21st century show a steep decrease of church membership in the Christian sphere. By the end of 2004, membership of the mainstream Protestant church was about 13% of the population; of the Roman Catholic Church 28%. By the end of 2015, membership of the mainstream protestant church was 10%; of the Roman Catholic Church 23%. No solid information is available about the percentage of Muslims in the Netherlands. In 2018, the percentage of Muslims of various national

4 See <https://www.ru.nl/kaski/onderzoek/cijfers-rooms/virtuele_map/katholieken/> (statistics on the Roman Catholic Church) and <https://www.ru.nl/kaski/onderz
backgrounds was estimated at 6% of the population; the percentage of Hindus and Buddhists in 2015 at 0.6% and 0.4% respectively.

Immigration over the last few years has increased significantly. The number of immigrants per year over the last number of years shows a steadily and strongly increasing line. The number of immigrants in 2015 was 203,000; the expectation for 2016 at that time being 240,000. There are no signs that the number is decreasing. However, precise numbers are not available. The total number of the population in 2017 was over 17 million.

II. Historical Background

The Constitution of 1814 established the Kingdom of the Netherlands, a decentralised unitary state. This Constitution formed a renewed starting point for church and state relationships. At the time of its enactment, it was clear that the idea of an established church belonged to the past. Nevertheless, the 1814 Constitution did not contain all the prerequisites for separation. In its general realisation of democratic principles and the rule of law, the Constitution provided for the free exercise of religious belief and the separation of church and state. This separation was based on the principle of non-interference, which stated that the state had no right to interfere in the internal affairs of the churches. The Constitution also provided for the establishment of a neutral state, which was defined as a state that was neither a protector of any church nor a persecutor of any religion. This neutral state was to be based on a principle of tolerance, which was to be used to protect the rights of all religious communities.


6 See Hans Schmeets, op cit, p.5; Schmeets estimates the percentage of Muslims in the Netherlands slightly lower than other sources.

7 See <https://www.cbs.nl/nl-nl/nieuws/2015/51/bijna-kwart-miljoen-immigranten-verwacht-in-2016> (last accessed on September 30, 2018). This number includes asylum seekers, immigration through family unification, and immigration from other EU-countries. Emigration is not included.

8 See <https://www.cbs.nl/nl-nl/visualisaties/bevolkingsteller> (last accessed on September 30, 2018).

of law, the 1814 Constitution was bleak compared to its more progressive predecessors. Subsequent Constitutions, starting with that of 1815, further continued in the line of development that had already been established. Although there are some clear breakpoints, the overall constitutional development has been an evolutionary one, and this is true also with respect to church and state relationships.

The chapter on religion in the 1814 Constitution was concerned with church and state, rather than with the individual’s freedom of religion. The Constitution, and even more so its 1815 successor, did in essence contain the idea that the state should not interfere with church organisation. In practice, however, the Crown was still actively involved in church matters. This situation would change in the latter part of the century.

The revision of the Constitution of 1848, initiated under the pressure of the revolutionary developments abroad, further shaped constitutional government. Various new fundamental rights were adopted, such as freedom of association and education. The chapter on religion was modernised. The 1848 revision prompted the Roman Catholic Church to restore its hierarchy in the Netherlands. This was effected in 1853. In that same year the Religious Bodies Act [Wet op de kerkgenootschappen] was enacted. Its main merit was the explicit formulation of the freedom of internal organisation of the churches. This Act remained to be in force until 1988.

At one point the 1848 Constitution proved to be restrictive. A new article was adopted which allowed religious processions only in situations where express permission had been given. As such permission was rarely granted, the result was a de facto ban on processions. The arrangement is illustrative of the somewhat tense relationships between the adherents of the various religious denominations at the time. It must be realised, however, that the general law with respect to meetings in the open air at that time was limited even by modern standards.

The period which followed was basically one of consolidation as far as institutional relationships between church and state were concerned. Major issues in the debate between church and state concerned the system of poor relief and that of education. A milestone was the revision of 1917 which prescribed full government funding for private elementary schools which complied with set educational standards and with given financial conditions.

From 1848 till 1972 the chapter on religion remained unchanged. The 1972 revision enabled the government to buy off its traditional obligations with respect to salaries and pensions for church ministers. This was realised in 1983. These obligations went back to the late 18th century and
originally served as compensation for the loss of church property through
government expropriation.

The year 1983 saw a general revision of the Constitution. The revised
Constitution incorporated new fundamental rights including a wide range
of social rights. It provided a renewed formulation of fundamental rights
which were already protected. Fundamental rights are contained in the
first chapter of the Constitution. In order to guarantee optimum freedom,
a strict and quite clearly defined system of restrictions of fundamental
rights was introduced. The 1983 Constitution brought a new formulation
of freedom of religion. As of 1983, freedom of nonreligious belief is also
protected by the Constitution. Subsequent partial amendments of the
Constitution have not affected the formulation of the freedom of religion.

Religious motivation – together with political persuasion – has been a
driving force for the organisation of social activities. Schools, hospitals,
trade unions, employers’ organisations, broadcasting companies and other
social institutions were and are organised on a denominational basis.10 In
the early process of development of political parties, religion played a role
as a basis of organisation.11

III. Basic Structure

a) Legal sources

Sources of (constitutional) law in the Netherlands are the Statute of the
Kingdom, the Constitution, further legislation, court decisions, legal cus-

10 On this process, its origins and significance, see A. Lijphart, The politics of accom-
modation. Pluralism and democracy in the Netherlands, Berkeley/Los Angeles/
London 1975.

11 A. Hoogerwerf, Godsdienst en politiek, in: H. Schaeffer et al. (ed.), Handboek Godsdienst

12 The Statute of the Kingdom, which is concerned with the relationship between
the Netherlands, the Netherlands Antilles and Aruba, may be disregarded in this
respect.
ter on religion by one article. This article guarantees freedom of religious belief as well as freedom of nonreligious belief. Article 6, section 1, of the Constitution states that "(e)veryone shall have the right to manifest freely his religion or belief, either individually or in community with others, without prejudice to his responsibility under the law". The second section adds that "(r)ules concerning the exercise of this right other than in buildings and enclosed places may be laid down by Act of Parliament for the protection of health, in the interest of traffic and to combat or prevent disorders".

Although Article 6 does refer to various manifestations of religious freedom, it is not very specific about the subject matter of its guarantee. Nevertheless, the guarantee in Article 6 is meant to be wideranging. At the time of the revision, it was accepted that Article 6 not only protects the freedom to have a religious or nonreligious belief, but also the freedom to act according to that belief.

The clause "without prejudice to his responsibility under the law" of the first section means that only the national Legislature is competent to restrict the guaranteed right. It gives, however, no clear indication of the concrete criteria to be met. The purpose of the second section is to allow delegation by the national Legislature of the power to restrict the guaranteed right in so far as it concerns the exercise of religion or nonreligious belief other than in buildings and enclosed places, and only for the purposes mentioned.

The courts have slightly modified the strict system that the Constitution introduced concerning the competent authority for restricting fundamental rights. The way this is done is, generally speaking, satisfactory.

On the basis of Article 6 (and 9) of the Constitution, the Public Manifestations Act [Wet Openbare Manifestaties] was enacted. This Act regulates, among other things, religious manifestations outside buildings and enclosed places, including religious processions.

Apart from Article 6, other articles refer to religion. Article 1 of the Constitution states that all persons in the Netherlands shall be treated equally in equal circumstances. Furthermore, it does not permit discrimination on the grounds of religion, belief, political opinion, race or sex or on any other grounds whatsoever. A specific reference to religion can be

found in Article 23 which relates to education. It guarantees freedom of (denominational) education. With respect to public-authority education, it prescribes equal treatment and respect for everyone's religion or belief. The Constitution entails no general guarantee of freedom of conscience.  

Although the Constitution is higher in the hierarchy than parliamentary legislation, the courts are denied the power of review. In interpreting the constitutionality of parliamentary legislation, the Legislature itself has the final word. The Courts only have the right to review legislation other than parliamentary legislation as to its compatibility with the Constitution. However, the Constitution prescribes that the courts may review the compatibility of any legislation – including parliamentary legislation and even the Constitution itself – with provisions of treaties that are binding on all persons or of resolutions by international institutions.

Thus, Article 9 of the European Convention on Human Rights (ECHR) and Article 18 of the Covenant on Civil and Political Rights (CCPR) may be invoked in court procedures relating to religion. The courts, notably the Supreme Court (Hoge Raad), however, are reluctant to uphold challenges. In a remarkable ruling in 1962, the Supreme Court held that the – then still existing – constitutional ban on religious processions was compatible with Article 9 ECHR. The Supreme Court interpreted its power of review in a restrictive way. The same was true of its interpretation of Article 9 ECHR itself. Recently, the Supreme Court has adopted a more active approach in reviewing legislation. The cases concerned did not involve religion. The general administrative court seems to have taken a more liberal view from the start.

In the present Constitution, the church as an organisation is no longer mentioned. Likewise, financial relationships between church and state find no explicit basis in the Constitution. But it should not be concluded from this that the Constitution has no relevance in these areas. On the contrary, freedom of church organisation is an essential element of the guarantee of freedom of religion. The Constitution does provide a framework for understanding financial relationships between church and state. Further institutional guarantees are necessary. The same is true for ensuring the

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14 Art. 99 Const. provides the basis for acknowledgment of conscientious objection against military service. This has lost practical meaning as drafting no longer takes place.
15 Art. 120 Const.
16 Art. 94 Const.
free exercise of religion individually or in community with others. Exposition of these freedoms by the Legislature is required to secure the guarantees in the various specific areas of the law.

Treaties between church and state are not a normal feature of the law. A special event was the agreement reached in 1983 between the state and the respective churches concerning the termination of the traditional government obligations with respect to salaries and pensions of church ministers. This agreement was subsequently confirmed by Act of Parliament. Legal doctrine is relevant for the development of church and state relationships, though in itself it is not a source of law.

Religion may play a role in legal relations between private individuals. The law is responsive to this. At the time of the general revision of the Constitution, it was explicitly acknowledged that fundamental rights not only function in relation to public authorities, but that they may have relevance for legal relationships between private individuals as well. Aspects of these relations may be determined in general by the intervention of the Legislature. More often, the courts have to balance interests in concrete cases on the basis of an interpretation of general concepts of civil law.

b) Categories of system approach

The system of church and state relationships is characterised throughout as one of separation of church and state. This principle has never been formulated in the Constitution or in any further legislation. Nevertheless, it does play a role and is referred to in the legislative process, in administration and in court decisions. The principle has a clear significance in the organisational independence of the church and has relevance for the financial relationship between church and state. Likewise, it has implications for the equal position under the law of the various denominations and for the attitudes towards denominational and nondenominational movements. Its precise meaning, however, is not easy to define.

The separation of church and state is not a "strict separation" in the sense that church and state should have nothing to do with each other. Such an idea would not be in keeping with social and political realities. Nor is it to be understood as a church hostile principle. In its actual functioning it is best understood by the interpretation of the constitutional provisions in which the principle is embedded as current law against a background of the historic development.

This means that the principle of separation of church and state must be interpreted in harmony with the principle of state neutrality and of free-
dom of religion or belief as reflected in the Articles 1 and 6 of the Constitution, separately and taken together.

In this instance, it is also interesting to notice that current fundamental rights doctrine acknowledges that classic liberal rights may induce positive government action under certain circumstances in order to secure the actual functioning of that right. This applies equally to freedom of religion.

Neither the principle of separation of church and state nor its constitutional expression gives a blueprint for the precise relationship between church and state. It must also be realised that guarantees which in a given period may be seen as necessary for ensuring separation, whether on the side of the church or on the side of the state, may eventually become unnecessary. With the development of law and society, new safeguards may, however, become necessary. Thus, the fundamentals on which the relationship between church and state are based need continuous interpretation and explication.

IV. Legal Status of Religious Bodies

a) Legal status of religious bodies

The church as an organisation is no longer mentioned in the Constitution. Nevertheless, the church is protected under the Constitution, as is its freedom to organise itself. Obviously, freedom of church organisation needs explication within the framework of law. The basic expression of the status of the church as an organisation is to be found in the law relating to legal entities.

Churches are legal entities of civil law. The Civil Code recognises churches as legal entities sui generis. Thus, their status as legal entities is distinct from that of other legal entities such as associations or foundations. Whereas the Civil Code defines the structures of the various types of legal entities, shaping their internal legal order is the sole province of the churches themselves. The Civil Code merely states that churches are governed by their own statutes in so far as they do not conflict with the law.

19 Sophie van Bijsterveld, op cit (2018), Chapter 9.
As a consequence of the autonomy of the church with respect to its organisation, the Civil Code also exempts the churches from its general provisions which are applicable to all types of legal entities. Analogous application of these provisions is allowed, in so far as this does not conflict with the churches' statutes or with the nature of their internal relations.\textsuperscript{21} Although the latter clause is not clear-cut, it does express the priority of church law over the civil law in this field. The current tendency in favour of analogous application is best illustrated by the decision of the Supreme Court which held that analogous application should be the starting point for rulings in this field.\textsuperscript{22}

Neither the Civil Code nor any other piece of legislation provides a definition of a "church". It is the organisation that constitutes itself as a church which determines this. In concrete cases, the administration may have to decide on this issue, and, in cases of conflict, the court may have to do so. In a case which did involve a dispute on the nature of the organisation, the court formulated the minimal requirements that there must be a "structured organisation" and that "religion must be involved".\textsuperscript{23} There is no system of prior recognition of churches. However, mechanisms of recognition can be found in specific areas, such as that of state funded spiritual care in public institutions, or state funded faith-based education.\textsuperscript{24}

Religious communities may organise themselves differently from a church, notably as an association or foundation under civil law, in which case the normal civil law regulations apply. Non-Christian religious communities often choose these forms of organisation.\textsuperscript{25}

\begin{flushright}
\textit{b) The concept of Church in law and the right to self-determination}
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The legal status of the church as described above also applies \textit{mutatis mutandis} to independent units within churches as well as bodies in which churches are united.\textsuperscript{26} Thus, the law is equally receptive to church struc-

\begin{flushright}
\textsuperscript{21}Art. 2:2, section 2, Civil Code.
\textsuperscript{22}HR 15 March 1985, NJ 1986, 191.
\textsuperscript{23}HR 31 October 1986, NJ 1987, 173.
\textsuperscript{24}See Sophie van Bijsterveld, op cit (2018), Chapter 4.
\textsuperscript{26}The latter category has been added in 1992, but in fact it was already recognised.
\end{flushright}
tures based on a central, hierarchical church concept, and to decentralised church models.

Neither of these categories is defined by the law. As to bodies in which churches are united, the requirement of a "distinctive incorporation in church law" was formulated during the process of enactment.27 Furthermore, the will to constitute a legal entity of that type is an essential condition. Councils of churches and other forms of cooperation between churches will usually not be regarded as such. As to independent units of churches, the intent of the church is a formative condition. The way in which the intent should be expressed is not completely clear. Material criteria (what is the organisation occupied with, religious, social, economic activities) as well as formal criteria (what is the formal influence of the church within the organisation) have been suggested as elements which may play a role in determining whether or not an organisation should be qualified as an independent unit of a church.28 In the light of the freedom of church organisation, notably the self-determination of churches, it is important, however, not to set strict criteria. The open character of the legal system itself does not justify strict criteria either.

Though churches are free to organise certain areas of their activities as independent units, there is in fact a long tradition of organising activities in the field of social, cultural and educational matters as normal associations or foundations on the basis of a religion or belief.29 These organi-

27 Kamerstukken II, 19821983, 17 725, no. 3, p. 53.
sations may to a greater or lesser extent be linked to a church, which link may be formalised in terms of statutes and regulations. The denominational identity of such organisations is, in general terms, protected by the Civil Code. These organisations are subject to legislation governing their field of activity.\textsuperscript{30} Within the framework of this legislation, special provisions may be needed to take the denominational aspect into account.

The preceding material shows that in its basic arrangement, freedom of church organisation and freedom of organisation on the basis of a religion is respected by the law. Occasionally, however, problems may arise. This is notably the case in relation to legislation which itself is not dealing with issues of church or religion but which may nevertheless affect churches and religion, for example, legislation prescribing democratisation of organisations, data protection legislation or equal treatment legislation. The tightening of state supervision with respect to acquiring the financially important fiscal status of "public benefit organisation" also for churches and faith-based charitable organisations is a case in point as well.

The result for either type of legal entity may not always be satisfactory. In any case, the freedom of the denominational organisations is usually respected to a lesser extent than that of the church as a legal entity – including the independent units and structures in which churches are united. The discussion on the criteria for independent units gains an extra dimension in view of the legal consequences which may thus evolve.

c) Churches and the political system

No statutes or case law exist regarding the involvement of churches or members of the clergy in political life.\textsuperscript{31} Therefore, there is no obstacle to members of the clergy participating in politics or holding public office. Similarly, churches can and do participate in public debate; the extent to which (representatives of) various religious or religious denominations feel inclined to do so varies.\textsuperscript{32} This is also true for the way in which such participation takes place.

In the Netherlands, the churches also cooperate as far as their activities in the public domain is concerned. The Council of Churches in the

\textsuperscript{30} See also below, section VIII.
\textsuperscript{31} See below, section XI.
\textsuperscript{32} Henk Vroom, Henk Woldring (eds.), Religies in het publieke domein, Zoetermeer 2002.
Netherlands is a forum on which Christian Churches of a wide variety of denominations cooperate with a view of developing joint statements and on public policy issues and commenting on public policy. For their joint legal interests, that is, for legal issues with a church-state dimension, including issues of freedom of religion, Jewish communities and Christian Churches cooperate in the Interchurch Contact in Government Affairs \([\text{Interkerkelijk Contact in Overheidszaken \text{ – CIO}}]\) and, for this purpose, maintain contact with public authorities at the national level. These forms of cooperation do not preclude churches from acting on their own behalf in these areas as well. Islamic believers are still in a process of setting up a joint organisation, representative of the various Islamic communities in the Netherlands, for maintaining contact with the state authorities. In addition to this, it is worth noting that various political parties represented in (both chambers of) Parliament have a confessional basis. The most significant of these, that of the Christian Democrats \([\text{CDA}]\) is a constant factor in Dutch politics. Apart from the \text{CDA}, there are currently, at the national level, two (small) Reformed parties.

\[\text{V. Churches and Culture}\]

At the beginning of the 19\textsuperscript{th} century, the basis was laid for a distinction between public(-authority) education and private education. On the basis of this distinction free private education was advocated as the Constitution gave the government responsibility for public education alone. Freedom of education was subsequently guaranteed in the Constitution of 1848. In the following period, the discussion concentrated on the character of public-authority schools – notably the place of religion in those schools – and on the (financial) position of private schools. The development with respect to elementary education was trendsetting for other areas of education.

The prescription that public-authority education be given "with respect to everyone's religion or belief"\textsuperscript{33} is to be interpreted as a neutrality clause which requires a positive attitude towards religion. The various education Acts provide that attention must be paid to the different religious values and traditions. Provision is made for religious education in public-authority schools. This instruction is offered on a voluntary basis. Pupils in primary public(-authority) schools, whose parents wish so, are provided with education in a religion or nonreligious belief within regular school time. In

\[\text{33 Art. 23, section 3, Const.}\]
2017, it was established by Act of Parliament that this education is state-funded at national level.\textsuperscript{34}

Freedom of education comprises freedom to found a school, freedom of denomination and freedom to administer a school.\textsuperscript{35} Private schools are financed by the state under the condition that they meet certain educational standards and comply with financial conditions. This was laid down in the Constitution of 1917 for general elementary schools.\textsuperscript{36} Among other things, the Legislature specifies numerical criteria for the foundation of a school. In setting up standards and conditions, the Legislature must respect freedom of denomination and freedom to administer the school.\textsuperscript{37} The precise range of these freedoms and the powers of the Legislature with respect to these freedoms are subjects of ongoing discussion. Private (denominational) schools may set loyalty conditions for their staff with regard to denominational views. Admission of pupils may be subject to such conditions as well.\textsuperscript{38}

In the field of higher education also, a distinction must be made between private universities and public-authority universities. Private (denominational) universities originated at the end of the 19th century. These universities are financed by the state, again subject to the condition that they meet certain educational standards and comply with financial regulations.

The faculties of theology of private universities may offer programmes leading to an academic degree as well as programmes for the education of church ministers.\textsuperscript{39} Apart from these institutions, churches run education centres which are under the financial and administrative control of the church itself.

Theological faculties at state universities do not prepare students for the office of church minister as was the case for the ministers in the previously established Reformed Church until 1876. Education for the office of

\textsuperscript{34} See Jurn de Vries, Sluitstuk van de financiële gelijkstelling. Honderd jaar na de onderwijspecificatie van 1917 ook bekostiging voor GVO en HVO op openbare scholen, in: Tijdschrift voor Religie, Recht en Beleid (TRRB), 2017 (8) 2, p. 66-82.
\textsuperscript{35} The so-called freedoms of "stichting, richting, inrichting". They are hard to translate.
\textsuperscript{36} For other schools this finds application too.
\textsuperscript{38} Under the General Equal Treatment Act (Act of 2 March 1994, Stb. 230), these powers are to some extent restricted. See below.
\textsuperscript{39} Some of these universities have only the one faculty of theology.
church minister rested with the state university and was financed by the state. Other churches established colleges at state universities too, which were also financed by the state.

Religion is also a relevant factor in the field of mass media. Broadcasting time is allotted to broadcasting companies. According to the Mass Media Act, these companies – associations under civil law – represent a specific societal, cultural, religious or spiritual tendency and focus on the satisfaction of the corresponding needs of the population. The amount of time allotted to each company is dependent on the number of members it has. Several of these broadcasting companies have a denominational background. Until 2016 Churches were allotted broadcasting time in the public broadcasting system as well.

VI. Labour Law within the Churches

In the field of labour law, religion and the freedom of church organisation is taken into account in various ways. The Labour Relations Act, for instance, exempts spiritual offices from the obligation of a public authority permit in the case of the dismissal of the officeholder. The relevance of this provision to church and state relations has been clearly demonstrated in a ruling of the Supreme Court. Initially, an Islamic imam was not regarded as having a religious office. A relevant consideration in reaching this conclusion was the fact that he would otherwise not enjoy dismissal protection. The Supreme Court came to the opposite conclusion and stressed the importance of the provision in terms of church and state relationships.40

The General Equal Treatment Act exempts churches, their independent units as well as the spiritual office, from its application.41

This does not mean that the state exercises no control over labour relations within the church. As was mentioned above, the Civil Code does not prevent courts from applying to churches the general provisions relating to legal entities "in as far as this does not conflict with the churches' statutes and the nature of their internal relations". These general provisions include the right of the court to declare void a decision of a legal entity which is taken contrary to "good faith". The specific case in which the

Supreme Court accepted this analogous application dealt with a church minister who challenged his dismissal.\textsuperscript{42}

Traditionally, the labour relationship between a church minister and a church is not regarded as a contract of employment under civil law.\textsuperscript{43} In the field of social security law, a marked change in approach became apparent in a series of rulings by the social security court in 1977. Until then, holders of a spiritual office were not subject to social security legislation as the element of subordination necessary for the application of the law was considered absent. In 1977 it was decided that the fact that the work performed was of a spiritual nature did not in itself exclude the possibility of a contract of employment. The change of opinion resulted in detailed case law which is not always easily accessible. In concrete cases, it has to be decided whether the official performs his work in "subordination", an essential requirement for a contract of employment. Traditional ministries in the church will usually not be regarded as meeting this criterion.

In the ordinary civil courts, where dismissals are usually dealt with, categorisations may differ from those in the field of social security law. The Supreme Court concluded with respect to a church minister that he did not have a contract of employment. The perspective of church and state relationships and freedom of church organisation played a prominent role in this decision.\textsuperscript{44} A test as to whether the work was conducted in subordination, however, was applied. In a case concerning an Imam, the court designated the labour relationship as a contract of employment.\textsuperscript{45}

Labour relations which seemingly take place in an ordinary setting, but in which the church exercises influence in one way or other, such as church ministers working in hospitals or homes for the elderly or other social institutions, whether denominational or not, are usually classed as contracts of employment by the ordinary civil courts. The essence of the employment is the church mission. When the requirements for the spiritual office no longer are fulfilled, which is a matter for the judgement of the

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\textsuperscript{42} HR 15 March 1985, NJ 1986, 191.
\textsuperscript{43} For an elaborate study on the legal status of the clergy see P.T. Pel, Geestelijken in het recht, de rechtspositie van geestelijke functionarissen in het licht van het eigen recht van de kerken religieuze gemeenschappen in de Nederlandse rechtsorde, Boom Juridische uitgevers, Den Haag 2013.
\textsuperscript{44} HR 14 June 1991, NJ 1992, 173; the decision was in contrast to the court of first instance and the court of appeal. Lower courts, however, may conclude that a contract of employment exists, e.g. Rb. Breda 3 February 1987, KG 1987, 103; Ktr.Den Bosch 2 February 1988, NJ 1992, 173.
\textsuperscript{45} HR 17 June 1994, RvdW. 136.
church, the basis of the contract of employment is gone. Problems do arise when the reason for the church's action is based on grounds applicable to the clergy which would ordinarily not be valid a reason for dismissal, such as (a second) marriage.

A similar situation is found in public institutions such as the armed forces and penal institutions. The difference is that in such cases the church minister will have the status of a military or civil servant. In a court ruling concerning a spiritual assistant in a penal institution, it was acknowledged that the church and state aspect played a role in interpreting the applicable civil servant law.46

Denominational institutions with personnel in nonreligious functions apply normal contracts of employment. The identity of the institution may justify specific loyalty requirements. The question is how far can they go. This is mainly a matter of case law, in which the courts balance the various interests. The General Equal Treatment Act sharpens the scrutiny of the courts. Collective labour relations within churches are not well developed.47 Labour conditions are fixed unilaterally. Trade unions in the classic sense of the term hardly exist; various professional groups within the church, however, have organised themselves and are taking part in discussions on labour conditions. Their status in regard to the church authorities varies.

VII. Matrimonial and Family Law

Just as religion may play a role in relationships between private individuals in general, religion may be a factor of legal relevance within family relations as well. As the legislation which deals with family matters is not specific with regard to religion, the courts decide upon family issues involving religion in concrete cases. In interpreting open legal concepts, courts can take the religious factor into account, without showing a preference for a particular denomination.

Legislation does specify the relationship between civil marriage and "religious marriage". The institution of marriage is clearly defined by the Civil Code and outlined in relation to religious procedures. The Civil Code states that it regards marriage only in its civil aspects. Religious ceremonies

47 See P.T. Pel, op cit.
with regard to marriage\textsuperscript{48} are not legally binding and cannot take place prior to the performance of a legally valid marriage. Thus, the Civil Code leaves no doubt as to the primacy of civil marriage over religious marriage. The church minister who performs a religious wedding ceremony without having verified the existence of a legally binding marriage is liable to prosecution\textsuperscript{49}. Discussions about the abolition of the requirement of a prior civil marriage before a religious ceremony with respect to the marriage have not led to any change in the law.

Denying legal validity to church marriages is seen as a consequence of the separation of church and state. The justification of the priority in time of civil marriage is to allow no misunderstanding of the legal consequences. The arrangement has been challenged under Article 9 ECHR. In 1971, the Netherlands Supreme Court upheld this system as a justified restriction of religious freedom\textsuperscript{50}.

As of 2002, persons of the same sex can also marry\textsuperscript{51}. Not all Churches regard same-sex marriages as a marriage in the religious sense and some, therefore, do not allow the performance of religious marriage ceremonies for such relationships. Prior to 2002, the so-called "registered partnership" was introduced in the Civil Code\textsuperscript{52}. The Roman Catholic Bishops' Conference has determined that the prohibition to marry for its clergy also extends to registered partnerships. In 2014, an Act of Parliament specifically ended the possibility of recognition of conscientious objection of civil registrars against the performance of same sex marriages.

Within family relations, conflicts may arise which find their roots in religion; conflicts between spouses or between parents and children. The courts acknowledge, for instance, that religious differences may lead to such estrangement between spouses that divorce is justified. In relations between parents and children, it has been decided that a parental refusal of marriage consent on religious grounds is not acceptable. On the other hand, parents are entitled to deny permission for a passport for their daughter to travel abroad with a boy-friend. Religious convictions or church membership may not be a condition for inheritance.

Even when religion itself is not at the root of the conflict, religion can be taken into account. In cases of guardianship, the religious background will be taken into account, especially if so desired. The area is primarily

\begin{footnotesize}
\begin{enumerate}
\item[48] Art. 1:68 Civil Code.
\item[49] Art. 449 Criminal Code.
\item[51] See Article 1: 30 Civil Code.
\item[52] See Article 1: 80 ff. Civil Code.
\end{enumerate}
\end{footnotesize}
shaped and influenced by case law. The courts deal with these cases in a satisfactory way.\textsuperscript{53}

\textbf{VIII. Finances of the Churches}

No general state support to churches exists. Nevertheless, financial support to church and religion has been granted over the years in various forms and for various causes. These ways of support are of a limited nature. Their legal basis varies. Financial relationships are not mentioned in the Constitution.\textsuperscript{54}

Financial relationships between church and state have been a subject of serious discussion in the 1980s and 1990s. The conclusion of this discussion was that financial support to churches and religion is allowed under special circumstances in order to prevent the free exercise of religion from becoming illusory.\textsuperscript{55} Thus, at the time, the Cabinet left open the possibility of financing buildings for non-Christian minorities. Incidentally, municipal governments are involved in a financially favourable way with the construction of religious buildings.\textsuperscript{56} Sometimes arrangements with financial consequences are made in the process of setting up urban renewal projects.

Financial support is given to specialised church ministries, i.e., for religious care in institutions such as military institutions and penal institutions. Currently, the basis of this support is the right to the free exercise of religion by persons in such institutions. For the armed forces, a special

\textsuperscript{53} A more difficult and controversial issue relating to families is the way in which the state may interfere in cases of adoption or refusal of certain medical treatment.

\textsuperscript{54} Previously, the Constitution did contain a specific article on the subject (see above). Only in the additional articles to the Constitution is there a relic which has lost its force. It is expected to be eliminated in the current revision.


\textsuperscript{56} For a famous case concerning the construction of the so-called Westermosque in Amsterdam, see Kemal Rijken, De Westermoskee en de geschiedenis van de Nederlandse godsdienstvrijheid, Amsterdam/Antwerpen: Atlas Contact 2014.

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consideration is the element of ethical conflict which plays a role in the justification as well.\footnote{For alternative ways to justify these and other types of financial support, see Sophie van Bijsterveld, op cit (2018), Chapter 5.}

In institutions such as hospitals and homes for the elderly specialised religious care also takes place. This is financed by the general funds of such institutions. Spiritual care is regarded as an essential element in the overall care which is provided. The organisation of the care in special institutions has consequences for the provision of religious care.

Apart from these specific areas, financial support exists which is not exclusively aimed at church and religion, but focuses on other causes. Tax exemptions exist in various forms. Donations to churches as well as to a wide variety of charitable institutions are exempt from taxation. This holds for both private individuals and for corporations or institutions. In this way, donations are encouraged. Both the criteria for eligibility for the required status for the receiving organisation of “general benefit organisation” and the supervision thereof have been considerably tightened.

Ancient church monuments like other ancient monuments share in public subsidies for repair and maintenance. Apart from central government funds, there are local and provincial monument lists and subsidies. These subsidies are partial and church communities which use ancient monuments still have a lot of costs. Church buildings, i.e. buildings used predominantly for worship, are excluded from local rates. More generally, the future of church and monastery buildings as religious cultural heritage – whether or not monuments in the technical sense – is recognised as a concern, not only by churches and religious orders but also by the state.

(Local) governments subsidise a whole range of social activities. They are not obliged to do so, but if they do, denominational activities should not be excluded. Only if the denominational background leads to objective differences in terms of the activity to be subsidised may it be taken into account. As to key areas of social work such as health care, financing structures are quite complex. Denominational institutions, however, participate in the same way as do other institutions.\footnote{Problems arise in the case of budget cuts, and forced consolidations. For schooling, see above.} The financial retreat of the state in the social domain and the introduction of contractual arrangements instead of subsidy regulations, has changed the relationship in this field between churches and faith-based organisations on the one hand, and municipal authorities on the other.
IX. Religious Assistance in Public Institutions

Specialised religious care takes place in various types of institutions, such as the armed forces, penal institutions, health care institutions, institutions for young people, and homes for the elderly. The church sees availability to people in unusual circumstances as part of its task. The history of specialised religious care in various institutions, its structures, its financing, and its specific legal basis are varied, though certain similarities do exist.

From the perspective of church and state relationships, these forms of spiritual care hold a special position. Although providing spiritual care is the province and responsibility of the church itself, the state has a responsibility as well. This responsibility varies according to the circumstances under which the spiritual care takes place.

At present, it is accepted that the government must take action when fundamental freedoms are threatened. Depending on the nature of government involvement with these institutions as a whole, the necessary involvement with regard to the conditions of providing spiritual care needs to be specified. In institutions which are fully controlled and financed by the state, such as penal institutions, government responsibility with regard to the availability of spiritual care is substantial. In social institutions for which the government merely prescribes the organisational structure, government responsibility takes a different shape.

The justification of government involvement can be further outlined for every specific type of institution. Elements of relevance are involuntary presence (e.g. penal institutions), confrontation with ethical conflicts (armed forces), and reduced accessibility for regular spiritual care (hospitals).

It is clear that spiritual care cannot be provided on the basis of strict proportionality of denominational preference. Cooperation between denominations is necessary. In public institutions, the responsible government minister appoints the church minister on the basis of nominations by the churches. A debate has emerged over the desirability of ‘being sent’ by a particular church as a precondition for appointment as chaplain.

59 Also nonChristian religion, and nonreligious belief.
The legal basis varies. In penal institutions, the basis is an Act of Parliament. For the armed forces funds are set aside in the budget. The specific services make the more precise arrangements of their own. An Act of Parliament secures the availability of spiritual care within care institutions. In ministerial subsidy and acknowledgement regulations religious care is mentioned as well.

X. Criminal Law and Religion

The penalisation of the various types of public blasphemy, previously penalised by the Articles 147, 147a, and 429 of the Criminal Code, was abolished in 2014. The Criminal Code does contain various other provisions regarding to religion.

Articles 137c-e of the Criminal Code recognise as felonies public oral expressions or expressions in writing which are offensive to people on grounds of their religion, belief or race, or which incite to hatred against or discrimination of people. Convictions on the basis of these articles do take place from time to time.\(^\text{61}\)

Expressions regarding religion or religiously inspired expressions which are not pertinent to religion can and do give rise to civil lawsuits. In these cases, courts usually balance the interests of the parties involved, taking into account fundamental principles such as freedom of religion or belief, freedom of expression, and the principle of non-discrimination. In a civil lawsuit, an expression may be regarded as wrongful vis-à-vis another party, even if that same expression would not lead to a criminal conviction.

Another example of the way criminal law and religion are connected is the protection of the secrets of the confessional which falls under the generally worded Article 218 of the Criminal Procedure Code.\(^\text{62}\)

XI. Legal Status of Holders of a Spiritual Office

It would be inaccurate to claim that holders of a spiritual office have a special legal status. Specific fields of law, however, do mention spiritual offices. In the field of labour law, for instance, exceptions to the general rules

\(^{\text{61}}\)See Sophie van Bijsterveld, op cit (2018), Chapter 8.

\(^{\text{62}}\)See also Article 272 of the Criminal Code on professional secrets. See also Art. 145, 146 of the Criminal Code on disturbing ceremonies.
are made with regard to holders of a spiritual office, and by means of interpretation, courts may regard the employment relation within a church as other than a labour contract.\textsuperscript{63}

Another area which should be mentioned is that of military service. The Military Conscription Act provides the basis for the exclusion of holders of a spiritual office from military service. The same arrangement has been made for those being educated to hold a spiritual office. For this purpose, secondary legislation covers in detail the specific church offices in specific churches. This list, however, is not exhaustive.

With the abolition of the penalisation of blasphemy, the Criminal Code provisions on insulating a cleric during the lawful execution of his vocation were also abolished. In regulations concerning specialised religious care, the office of church minister is, likewise, sometimes dealt with, as well as in the legislation concerning religious and civil marriage.\textsuperscript{64}

In the past, provisions existed which excluded holders of a spiritual office from representative councils of government. From 1848 to 1887, the Constitution stated that holders of a spiritual office were not eligible to be elected and sit in the national parliament. Until 1931, a similar provision existed in the Local Communities Act for the municipal councils. Such impediments no longer exist.

\section*{XII. Developments}

Major general developments in the domains of religion, society, and the state influence not only debates on church and state relationships and freedom of religion and belief in the Netherlands, but also the law and practice of these relationships.

One of these developments is the substantive decrease in membership of Christian Churches. This tends to affect the general personal experience with religion in society and the understanding and support of specific church and state law. In a different way, this development also raises positive concern such as for the future of religious cultural heritage. Another development in the domain of religion is that of the substantial and growing presence of Islam in the Netherlands. Although this development is not new in itself, societal issues related to it have become more pressing over the last few years. Issues of Islamic radicalisation and jihadism are

\footnotesize{\textsuperscript{63} See above, section VI.}  
\footnotesize{\textsuperscript{64} See above, section VII.}
matters of concern, and debates on integration policies and, in part, also on ‘values and norms’- debates, have gained a new acuity. In constitutional terms these developments play out in issues on restriction versus freedom of religion and on the meaning of “equal circumstances” in equal treatment of religion and belief. In the wider context, developments in and debates on the ways in which law and morality connect are relevant.65

Developments in society such as are commonly referred to as individualisation or globalisation lead to the introduction or strengthening of mechanisms of legal and administrative supervision and control where previously trust and mutual familiarity were dominant. This can be observed especially in financial and fiscal fields and the field of trade, where the prevention and countering of money laundering, unlawful use of assets, and other types of fraud also affect the law relating to religion.

The financial withdrawal of the state in the social domain and the repositioning of the state vis-à-vis society date back to the 1980s, but have accelerated over the last decade. As a result, self-reliance and participation of citizens are promoted. In this context, the social significance of churches and religious organisations is being re-discovered by the various levels of government and by society at large and renewed openness to various forms of co-operation can be witnessed.

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65 See also Sophie van Bijsterveld, The Empty Throne: Democracy and the Rule of Law in Transition, Utrecht 2002.


Sophie C. van Bijsterveld

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Tijdschrift voor Religie, Recht en Beleid (TRRB), with summaries in English.
State and Church in Austria

Richard Potz

I. Social Facts

In 2001 the last census in the traditional form of a questionnaire including a question on religious affiliation was held. After 2001, that type of census was replaced by register censuses, which are based on a combination of existing statistics and do not indicate the religious affiliation of the population. Therefore, one now has to rely on estimates and self-reporting by the churches and religious communities. The figures for Islam and Orthodoxy for example are inaccurate in so far as they are based solely on national origin.

<table>
<thead>
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<th>Religious Group</th>
<th>Percentage</th>
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<td>Roman Catholic</td>
<td>57.90 %</td>
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<tr>
<td>Islamic</td>
<td>6.00 %</td>
</tr>
<tr>
<td>Orthodox</td>
<td>5.00 %</td>
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<tr>
<td>Protestant</td>
<td>3.40 %</td>
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<td>Alevi</td>
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<tr>
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<tr>
<td>Jewish</td>
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<tr>
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<tr>
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II. Historical Background

The roots of the sociocultural and psychological factors determining Austrian law on religion go back to the Habsburg CounterReformation and the enlightened church policy of Joseph II., which remained influential until the 19th or 20th century. Because the ecclesiastical legislation cur-
rently in force emanates from all the various political systems operating in Austria since the beginning of the 19th century, reflecting the state of religious policies of their time, a systematic understanding of the law on religion is difficult to achieve.

The 1867 Staatsgrundgesetz (StGG: Constitutional Act on the Fundamental Rights of Citizens) signalled a reduction in the denominational bias of the State and the introduction of a denominationally neutral system in ecclesiastical matters; in practice, however, the State administration continued to favour the Catholic Church. In the Bundesverfassungsgesetz (BVG: Federal Constitution of the Austrian Republic) of 1920, the StGG was retained in principle due to a failure to agree on a new set of fundamental rights.

After lengthy negotiations, a Concordat with an Additional Protocol was concluded on 5 June 1933 and came into force on 1 May 1934 together with a corporative authoritarian Constitution.

The Anschluss to Nazi Germany on 13 March 1938 brought an end to the traditional denominational structure of Austria. The Concordat of 1934 was declared invalid, but the Concordat of the German Reich was not extended, so there was no concordat applicable to Austria. According to the Nazi administration, therefore, this situation created an opportunity to establish an exemplary Nazi church policy of a strict separation in Austria.

After the reconstitution of Austria in 1945, several laws relating to religion were transferred almost en bloc to the legal system of the Republic.  

Initially, the validity of the Concordat 1933 in domestic and in international law was unclear. In 1957 the Federal Government expressly recognised the validity of the Concordat and an active period of legislation on religion was initiated which in particular brought about a renewal of the law for specific recognised churches and religious societies.  

A further tranche of legislation on religion was introduced in the 1990s, with the specific aim of coping with the problems related to the emergence of new religious movements.  


2 Especially the treaties with the Holy See in the 1960s the ProtestanttenG 1961 and the OrthodoxenG 1967.

Constitutional Guarantees

Principles

The most important constitutional provisions in Austrian law relating to religion are contained in the Staatsgrundgesetz 1867, which was declared a constitutional law of the Federal State by Article 149(1) of the Austrian BundesVerfassungsgesetz (BVG) of 1920. Guarantees of individual religious rights are contained in Article 14, the institutional guarantees in Article 15. The legal provisions on religion in the Treaty of St Germain of 10 September 1919, and Article 9 of the European Convention on Human Rights (ECHR) which has constitutional status, are also of importance. There are also guarantees in constitutional and international law intended to protect religious freedom; these include general rules of nondiscrimination, relating, among other things, to differences in denomination.

Comprehensive Protection of Freedom of Religion

The constitutional norm of the European Convention on Human Rights overlays the older specific guarantees (freedom of belief, freedom of conscience, freedom of cult, freedom of confession) and summarises them in one "aggregated law on human rights" in which the separate guarantees come together. This comprehensive idea of religious freedom also makes it clear once and for all that not only is religious confession protected by the constitutional order, but a Weltanschauung (world view) which is not religionrelated is similarly protected.

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4 Especially Article 14 StGG: (1) full freedom of belief and conscience is guaranteed for everybody.
5 Section V (Protection of Minorities) of Part III of the Treaty of St. Germain is to be seen as constitutional law according to Article 149 BVG 1920: Of importance is especially Article 63(2): “All inhabitants of Austria have the right to exercise in public or private every kind of belief, religion or confession freely, insofar as their exercise is not incompatible with public order or good morals.”.
A particularly important expression of freedom of conscience is the possibility of doing alternative social service instead of military service (Article 9a(4) B-VG).

In education law, freedom of conscience is given concrete expression in the opportunity to opt out of religious instruction in school (RelUG Section 1(2)), and in the right of the teacher to refuse to teach in a denominational private school (PrivSchG Section 20). At university level, staff and students have the right not to participate in scientific and artistic tasks for reasons of conscience (UniversitätsG Section 105)

In medical law, there must be no discrimination against those who for reasons of conscience either will or will not participate in performing a legal abortion (Strafgesetzbuch Sections 97(2) and (3)), or a medically assisted procreation and pre-implantation genetic diagnosis (FortpflanzungsmedizinG Section 6).

Freedom of belief encompasses the right to have any belief, to change this belief or to have no belief, without interference from the state or groups in society. This fundamental right has been shaped by the provisions on secession from a church, which in the case of a recognised church or religious society must be declared before a state administration office to take effect (InterkonfG 1868, Section 6). In case of a registered religious community, even though there is no statutory provision on secession, termination of membership may be declared before a district administration office.

3. Protection of Fundamental Rights

As they are fundamental rights, the rights to freedom of religion are in the category of subjective public rights, the infringement of which can be brought before the Constitutional Court or the Supreme Administrative Court. The Constitutional Court has (BVG Article 144(1)) the task of protecting fundamental rights by deciding on complaints against decisions of the administrative authorities, if the complainant claims that one of his or her fundamental rights has been violated by a decision or an unconstitutional ordinance or law (Sonderverwaltungsgerichtshof). In 2014, the judicial control of the administration was expanded by the establishment of administrative courts in each Federal State and a Federal Administrative Court for the Federal administration.

The Supreme Administrative Court exercises its authority by deciding on complaints against decisions of the administrative authorities after all other legal remedies have been exhausted (BVG Article 131(1)).
4. Provisions of Ordinary Law

State law which is relevant to religion comes into two categories: the first deals with questions of the law on religion as, for example, the Recognition Act (AnerkennungsG) 1874, the Act on Confessional Communities (BekGG) 1998 and the Act on Interconfessional Relations (Gesetz über interkonfessionelle Verhältnisse) 1868; the second relates to the legal status of specifically recognised churches and religious societies. The special church-state law of the Catholic Church in Austria is traditionally found in by treaties with the Holy See; these are recognised as international public law treaties sui generis and are subject to the procedure of transposition (BVG Article 50). According to current Austrian constitutional law, there is no further legal basis for churchstate law by way of agreements.

Moreover, the law on religion has permeated the entire legal order over the course of time; thus it cuts across nearly all legal fields, where religion is relevant.

5. Basic Categories of the Austrian System

The legal system of the relations between State and Church in Austria is based on two main principles: the fundamental right to individual freedom of religious and philosophical beliefs; and the guarantee, through fundamental rights, of the corporate activities of religious communities in public. In Austria there is no established church: at the institutional level, State and religious communities are separate. The State accepts, however, the activity of religious communities in the public arena. The basic idea of this system is to provide the relevant legal framework for the incorporation of pluralistic religion into society in a context in which, as a matter of principle, the State does not exercise its sovereignty.

IV. Ordinary (State) Law

1. The Legal Status of Religious Communities

a) Recognised churches and religious societies

The constitutional basis of the legal status of recognised churches and religious societies is found in StGG Article 15:
Every Church and religious society recognised by the law has the right to corporate public religious practice, arranges and administers its internal affairs autonomously, and retains possession and enjoyment of its institutions, endowments and funds devoted to worship, instruction and welfare, but is like every society subject to the general laws of the land.

The treatment of churches and religious societies as corporations under public law *sui generis* carries less positive legal substance than the qualification that the State does not see religion as a private matter. The churches are generally included whenever state legislation relates to corporations under public law, except when the law expressly excludes them.\(^7\) The way in which the followers of a denomination can obtain legal recognition was established by the Recognition Act (*AnerkennungsG*) 1874. According to Section 1 of the Act recognition as a religious association will be granted to the followers of a previously legally unrecognised denomination under the condition, "that (1) religious teaching, service, statutes, and chosen names do not contain anything illegal or morally offensive and (2) the creation and existence of at least one cult community created according to the requirements of this law is guaranteed."

This provision has been complemented by Section 11 of the *BekGG* the 1998. In particular, a new demographic condition for recognition – 2% of the Austrian population – limited the number of candidates significantly.

Recognition according to the Recognition Act is granted by ordinance.\(^8\) Since 1988 the Constitutional Court has acknowledged a legally enforceable right to recognition. Although recognition is to be granted by way of ordinance, official notice must be given in a case of nonrecognition to make possible an appeal to the Supreme Administration Court.

The provisions concerning the churches and religious societies recognised by the Recognition Act are to be found in the Recognition Act itself; however, the law on religion concerning the "historically recognised" churches and religious societies is developed by way of special laws.

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7 E.g. in the Law on Private Radio Broadcasting and in the Law Concerning Subsidising Print Media, see infra.

8 On the basis of the Recognition Act the following are recognised by ordinance today: The Old Catholic Church (1877), the Methodist Church (1951), the Church of Jesus Christ of the Latter Day Saints (Mormons) (1955), The New Apostolic Church in Austria (1975), the Austrian Buddhist Religious Association (1983), Jehovah’s Witnesses in Austria (2009), Free Churches in Austria (2013).
For the Catholic Church the special law is the Concordat 1933 and additional and complementary treaties.9

According to the Concordat, the State gives the Church a guarantee that it may make laws, decrees and orders within its own field of competence without hindrance (Article 1(2)). The institutions of the Catholic Church with legal personality according to Canon Law also enjoy public law status in the sphere of State Law. Institutions that are to be founded in the future obtain the status of State institutions as soon as the notice of foundation is lodged with the competent Federal ministry (Article 2). The foundation of Church provinces and dioceses as well as important boundary changes must be the subject of a treaty with the Federal government (Article 3).10 There is no State participation in appointment to church offices, with the exception of the operation of the Political Clause in the case of bishoprics (Article 4).11 The Concordat contains rules dealing with the theological faculties, religious orders, the law on church property, and pastoral care in institutions. In the case of difficulties in the interpretation of the Concordat or the occurrence of problems not yet treated which affect State and Church, an amicable solution is reached (Clause of Amicability) or a ruling arrived by mutual consent.

The ProtestantenG 1961 represents the conclusion of a process which led to the equal treatment of the Protestant and the Catholic Churches. In comparison with the Concordat this more recent law guarantees greater religious freedom. Section 1(1) gives separate legal recognition to the Church of the Augsburg Confession and the Church of the Helvetic Confession, in addition to the Church of the Augsburg and Helvetic Confessions, at their express request.

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9 Treaty concerning the Regulation of Proprietary Relations 1960 as amended by an Additional Treaty 1996; Treaty concerning the Regulation of Questions relating to the School System and Concluding Protocol 1962, and the Treaties on constituting Dioceses concerning the Elevation of the Apostolic Administrative Burgenland to a Diocese 1960, concerning the elevation of the Apostolic Administrative InnsbruckFeldkirch to a diocese 1964, and concerning the establishment of a diocese of Feldkirch 1968.

10 See treaties on Diocesan Establishment in the preceding note.

11 According to this clause the Austrian Federal Government is informed of the name of the person chosen; the Government can then impose conditions of a general political nature. If no agreement is reached, the Holy See is free to appoint the candidate of its choice. The political clause is of little practical relevance nowadays; however, it may encourage the Holy See to consult the Government at an early stage if the candidate is likely to cause controversy.
The Protestant Church is completely independent of the State in the appointment of all its officers. It is, however, obliged to name legal representatives for all its institutions possessing legal capacity and to inform the State of their names, in addition to the names of the members of the governing body of the Protestant Church.

The Act on the Greek Orthodox Church (OrthodoxenG) 1967 first recognised this Church as a whole in addition to the various already existing church communities and also recognised the Greek Orthodox Metropolis of Austria as the only bishopric in Austria. For the purposes of State law, membership results directly from the law for all persons of Orthodox faith who have their permanent address (or in the case of those with no fixed address, have their habitual residence) on Federal territory. Because of the specific structures of the Orthodox Church, which are liable to lead to internal conflicts, provisions are included as to rights of supervision, reminiscent of the state control instruments of the 19th century. In an amendment of 2011 the Orthodox Bishops’ Conference was recognised and the possibility of recognising other Orthodox bishops was created.

The Act on the Oriental-Orthodox Churches (OrientalKirchG) 2003 put an end to the unequitable treatment between the Coptic Orthodox Church and the two other Oriental Orthodox churches which were already recognised – the Armenian Apostolic Church since 1973 and the Syrian Orthodox Church since 1985. These churches do not differ doctrinally, notwithstanding their canonical independence.

In 2012 the IsraelitenG 1890 was amended. It is based on the concept of the uniform religious community: every Jew belonged to the religious community of the area in which he or she had their permanent address. Although the Law allows the founding of another Jewish religious society according to the Recognition Act 1874 by reason of a difference in religious doctrine, due to the minimum number of believers required for recognition (currently appr. 17,800) this possibility has no practical significance.

In 2015, the IslamG 1912 was renewed by a new Act on the External Legal Circumstances of Islamic Religious Societies (IslamG 2015). The draft law has been the subject of an intense political debate, which has not yet subsided, even after the law has come into force. In principle, this law differs from the other special laws in two points: First of all, it is not a law regulating one single Islamic religious society but two: namely the Islamic Religious Community in Austria (IJGiÖ) and the Islamic Alevite Religious Community in Austria (Islamische Alevitische Glaubensgemeinschaft in Österreich, IAGÖ). Secondly, it is a law that not only regulates the external legal circumstances of an existing religious society, but also the precondi-
tions for the legal recognition of further Islamic religious societies. A controversial topic was also the ban on basic funding from abroad. All in all, some questions remain still open.

b) Registered religious communities

The Act on the Legal Status of Religious Communities (BekGG) 1998 created a legal basis for obtaining legal personality for religious communities without at the same time giving them the status of a public law corporation.12

This law does not apply to philosophical communities as being "non-religious belief communities"; there are problems associated with this, however, when viewed from a fundamental rights perspective.

The provisions for obtaining legal personality by religious communities were in many ways drafted in terms similar to the law on associations. Registration is obtained on application, subject to the possibility of rejection on specified grounds. At the point of registration, a legal personality in private law is created. As part of the application, the applicant has to prove that at least 300 persons resident in Austria belong to the religious community; these persons must not belong to another religious community or legally recognised church or religious community (Section 3(3)).

According to Section 5, the authorities must reject the application if the community's statutes do not meet the legal formal requirements, or if this is necessary in view of its teaching or practice for the protection of the interests in a democratic society, of public order, health, and morals, or for the protection of the rights and freedoms of others. This is a necessary safeguard particularly in the areas of inciting the commission of crime, impeding the psychological development of minors, injuring members' psychological integrity, or the application of psychotherapeutical methods in order to win converts.

The religious communities obtain with registration a sort of seal of approval. This has legal relevance beyond the grant of legal personality as, for

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12 Registered as religious communities are: Bahá’íReligion, Christian Community-Movement for Religious Revival in Austria, Church of Seventh Day Adventists, Free Christian Community/Pentecostal Community, Hindu Mandi Society, Islamic Shiite Religious Community; Old-Alevite Religious Community; Pentecostal ChurchCommunity of God in Austria; Vereinigungskirche in Austria. The Church of Scientology of Austria has withdrawn its application; the registration of Jahaja Yoga has been rejected (BekGG Section 5(2)).
example, where the legal order draws legal consequences from the religious dimension as such and not merely from the status of recognition.

c) Religious communities as associations

According to VereinsG 2002 Section 1(2) this law does not apply to those associations constituted under other legal provisions or which have adopted a different legal form under other appropriate legislation. This makes it clear that religious communities can obtain legal personality by the association route, which is not possible under the previous law. The religious communities constituted according to the VereinsG have equal status with other ideological associations.

2. The Notion of Freedom of Religious Communities

The term "internal affairs" (StGG Article 15) as applied to the recognised churches and religious societies is a constitutional term restricting the State's freedom of action. In these affairs the activity of the Church is not State activity: its general and individual acts are not administrative acts within the meaning of the Federal Constitution, so they are not submitted to the control of the Administrative or Constitutional Court.

What the term means for a particular church or religious society must be derived from the scope of the functions of that body, and must be defined primarily by the holder of the fundamental right, as it may be understood only within the selfunderstanding of the church or religious society. Ordinary State legislation may not impose a restriction on church action; it must respect the inherent distinctions just drawn and consider other fundamental rights. This opinion, which was developed in the literature, has been accepted by the Constitutional Court.13

The Constitutional Court recognises the right of legally recognised churches and religious societies to the full regulation and administration of their internal affairs without state interference and supervision.14

3. Religious Institutions

a) Legal status of church institutions in general

The institutions of the Catholic Church which possess legal personality according to Canon Law also enjoy public law status in the sphere of State legislation. They are granted this status as soon as the notice of foundation is lodged with the responsible ministry (Concordat Article 2 and 10). The institutions of the Protestant Church possessing legal personality become public law entities from the date of the lodging of the notice by the Protestant Church with the responsible ministry (ProtestantenG Section 4(1)). A corresponding provision is also included in the IslamG 2015 (Section 7 nr 3). With regard to all other recognised churches and religious societies, only parishes or cult communities and their associations may in principle attain public law status. Furthermore, institutions of religious communities may make use of all other legal forms permitted in State legislation.

b) Educational institutions: see below, Section VI)

c) Welfare organisations financed (supported) by churches

The increasing regulation of social and welfare tasks normally provides for the integration of nonState sponsors of such work into the welfare system. In many areas church institutions have traditionally played an important part.

V. Churches and Religious Societies in the Political System

There is a broad political acceptance that churches and religious societies carry out an important function in society, as expressed in the conferring of public law status on recognised churches and religious societies. They belong to those social associations which establish contexts for communication in society and politics. They are important participants in that public dialogue by which citizens are motivated to act responsibly. This leads to the fact that the religious communities are not only integrated in the process of opinionmaking concerning the formulation of State legislation which is relevant for them in a broad sense, but that they also are represented on many advisory bodies and committees.
VI. Religious Societies in State Law on Culture

1. Private Schools

State schools financed by the Federal Republic, Federal States, and local authorities are open to everyone, regardless, inter alia, of denomination. Private schools are granted public status if their governors, heads and teachers can guarantee proper and regular instruction in accordance with the aims of Austrian schooling. In the case of legally prescribed types of schools the results achieved in class must be equivalent to those at a State school of the same type. The fulfilment of these conditions is a legal presumption in the case of recognised churches and religious societies. As a result of their public status the reports issued by their schools have the same legal force as those issued by State schools.

Recognised churches and religious societies are granted subsidies towards the costs of personnel for denominational private schools with public status (PrivatschulG Section 17). This subsidy must be given as a "living subsidy" by means of the appointment of teachers employed by the Federation or the Federal States to the private schools. If this is not possible, an equivalent financial subsidy is granted (Section 19). Only teachers who agree to the appointment and to whose appointment the governing body of the church or religious society also agrees, may be appointed to denominational schools. The appointment must be terminated if the teacher so requests or if the church's governing body declares further employment of the teacher to be intolerable for religious reasons (Section 20).

2. Religious Instruction

Religious instruction is guaranteed by Article 17(4) StGG, which provides that the respective churches or religious societies are responsible for classes in religious instruction in schools. Viewed systematically, this Article elaborates the religious freedom of pupils and parents and the parents' right to determine the religious or philosophical education of their children. In 2005, the main objectives of Austrian schooling were incorporated into the

15 On the contrary, private schools run by unrecognised religious communities have no legal claim to financial assistance; this seems questionable on constitutional grounds especially with respect to Article 2 of the first supplementary protocol of the ECHR.
Constitution. According to Article 14 Section 5a B-VG, democracy, humanity, solidarity, peace and justice, as well as broadmindedness and tolerance towards all people are fundamental values for schools. Based on these criteria, young people should learn to take responsibility for themselves, for others, the environment and future generations, with a firm basis of social, religious and moral values. The article explicitly stresses that each pupil should be guided towards social comprehension and broadmindedness with regard to the political, religious and philosophical convictions of others. The inclusion of religious values is meant for persons who are open to religious education within a comprehensive school education. The legitimisation of religious instruction in fundamental rights would suggest the introduction of ethics as a compulsory subject. A school experiment in "Ethics" which began in 1997 has not yet been widely adopted.

The organisation, implementation and direct control of classes in religious education is left to the respective church or religious society. The State has the right to supervise religious instruction by way of its school supervisory bodies for organisation and disciplinary measures (ReligionsunterrichtsG/RelUG Section 2). Therefore, the churches and the religious societies, not the State, organise religious instruction classes, despite the fact that as a compulsory subject religious instruction enjoys equal standing with other subjects.

For all pupils who are members of a legally recognised church or religious society, religious instruction in their denomination is a compulsory subject in primary and secondary schools, and in some special colleges of education. At other schools religious instruction is an optional subject. Pupils aged under fourteen may be withdrawn from religious education by their parents making a request in writing to the Head of the school during the first five days of every school year. Pupils over fourteen may effect such a withdrawal by writing themselves.

The curricula for religious education are adopted by the churches and religious societies; the Ministry of Education must be informed of them and publish them, though this is of merely declaratory significance. State approval is not necessary. One restriction is the requirement that only such books and teaching materials may be used as are not in conflict with the aim of educating responsible citizens (RelUG Section 2(3)). Textbooks for religious instruction classes are included in the school book programme according to FamilienlastenAusgleichsG 1967, and are financed by the State.

Pupils and teachers are free to participate in religious devotions and ceremonies (primarily, school Mass). Teachers of religious instruction at State schools are appointed either by the Federation or the State or by the churches and religious societies. Only persons who have been qualified
and approved as such by the competent church or religious society may be appointed as teachers of religious instruction. According to Section 2(b)(1) RelUG in classrooms of public schools and of schools with public status in which religious instruction is a compulsory subject the school must exhibit a cross, if the majority of the pupils belong to a Christian denomination.

3. Pedagogical and Religious-Pedagogical Colleges of Higher Education

The Federal Act on the Organization of the Pedagogical Colleges and their Studies of 2005 (HochschulG) provides for the incorporation of the ‘Teachers Training Academies’ into the tertiary sector of education including power to award a bachelor’s degree for teaching appointments. Regarding the structure and organisation of the colleges, the same quality and academic level as provided at the public institutions must be guaranteed. As a consequence, denominational colleges are obliged to observe the general provisions concerning qualification of the teaching staff including performance review, academic autonomy, student co-determination and allowance for previous studies, personnel and material equipment. For the time being, four Catholic Religious-Pedagogical Colleges have been established. The Protestant, Orthodox, Old-Catholic, Eastern-Oriental and Protestant Free Churches, and the Israelite, Islamic, Alevite and Buddhist Religious Societies have started a cooperation with the Vienna Catholic College, including common institutions and courses.

4. Theological Faculties at State Universities

a) Faculties of Catholic Theology

There are Faculties of Catholic Theology at the Universities of Vienna, Graz, Innsbruck and Salzburg. Article 5 of the Concordat guarantees the continued existence of these faculties, financed by the State, for the purpose of the academic education of the clergy. Their internal organisation and educational practice is regulated by the State according to the law on universities. The term "internal organisation" is in this context a reference to the organisational provisions of the UniversitätsG (UnivG) 2002; the term "educational practice" refers to the provisions on academic studies in that...
law. There is also an explicit proviso in favour of the terms of the Concordat (UnivG Section 38(1)).

The appointment or admission of professors and lecturers must be agreed by the competent church authority. If church authorisation is withdrawn, the teacher must be excluded from exercising the teaching activity concerned.

The majority opinion is that the disciplinary measure of compulsory redundancy for a theology professor whose authorisation has been withdrawn according to Article 5(4) of the Concordat does not violate the rights of freedom of religion and conscience, opinion, or academic teaching and research, since the aim is to educate pastors and teachers of religious education.16

On the basis of Article 5 of the Concordat, theology may also be studied at theological colleges established by the competent church authorities.

b) Faculty of Protestant Theology

The Federal State is obliged to maintain a Faculty of Protestant Theology with at least six permanent chairs at Vienna University to guarantee the academic education of ordinands, and theological research and teaching (ProtestantenG Section 15). Teachers in the faculty must be members of the Protestant Church. When appointing a professor to a chair, the commission charged with the appointment must consult the Protestant Church authorities.

c) Islamic Theology

The introduction of regular studies in Islamic theology in addition to the study of Islamic religious pedagogy was a particular innovation of the IslamG 2015. According to Section 24(1) for the purpose of theological research and teaching and to ensure the academic education of spiritual ministers of Islamic religious societies up to six positions for teaching staff at the University of Vienna are to be created.

According to Section 24 (3) IslamG, a separate curriculum must be prepared for every Islamic religious society. On the occasion of the appointment of a professorship provided for in the Act, the Rector of the Universi-

ty of Vienna must contact (Fürbunghnahe) the Islamic religious societies regarding the persons proposed. This implies the persons teaching theological core subjects are adherents of a religious doctrine (Islamic school) represented in the Islamic religious societies recognised under this Act (Section 24 (4)).

5. Church Private Universities

The UniversitätsAkkreditierungsG 1999 put an end to the State monopoly in Austria and made it possible to organise private universities. In 2000 the Catholic Theological Private University of Linz made use of this provision.

6. Mass Media

a) Broadcasting legislation

The ORF-G 2001 created a public law foundation with the aim of fulfilling the public service role of ORF (Austrian Radio and Television). Within the framework of broadcasting it must have "adequate regard to the importance of the legally recognised churches and religious societies" (Section 4(1)(12)). According to Programme Directives 1.2.2., not only must events involving churches and religious societies be represented in their social context, but also their beliefsystems.

To safeguard the interests of listeners, the Audience Council (Publikumsrat) was established, consisting of 35 members (Section 28(1) ORF-G). The Roman Catholic Church and the Protestant Church are each entitled to nominate one member.

The Law on audiovisual media-services (Audiovisuelle Mediendienste-Gesetz) 2001 regulates private broadcasting on terrestrial television as well as radio and television on cable networks and via satellite. Churches and religious societies are expressly not excluded from private broadcasting as being "legal persons of public law" (Section 10(2)(1)).

b) Print media

The legally recognised churches and religious societies are expressly mentioned as eligible for subsidies for print media of which legal persons of
public law act as owners, editors, or publishers (PublizistikförderungsG 1984 Section 7(3)). The subsidies are distributed by a council, one of whose members is a representative of the legally recognised churches or religious societies (Section 9(1)(6)).

7. Protection of Historic Monuments

Since the 1 January 2010, immovable monuments are only protected on the basis of an ordinance confirming the public interest in their preservation (Section 2 section 4 Act on Protection of Monuments/ DMSG).

No alterations to or destruction of these monuments are allowed without the consent of the Federal Authority for Monuments (Section 5 Section 1 DMSG). Notwithstanding this provision, consent must be given to an application for alteration if the monument is used for worship by a legally recognized church or religious society and the alteration is necessary for the practice of worship on the basis of mandatory or at least generally applied liturgical instructions.

A Council for Historic Monuments has been established, to represent specialist expertise. One representative of the church or religious society concerned takes part in meetings of the Council as an ad hoc member if a monument in majority church ownership is affected or if general problems of sacred or other church monuments are being examined (Section 15 DMSG).

VII. Labour and Social Law

1. Collective Labour Law

The recognised churches and religious societies are empowered to conclude collective agreements by reason of their status as public law corporations as set out in Section 7 of the Arbeitsverfassungsgesetz (ArbVG) 1974. This opportunity has been used increasingly in recent years.

According to Section 132(1) ArbVG, some provisions are wholly or partially inapplicable to businesses and enterprises which directly serve political purposes and denominational, scientific, educational, or welfare pur-

17 Since 30 June 2010 the objects under monument preservation are listed at http://www.bda.at.
poses (Tendenzbetriebe). The aim of this arrangement is to prevent the participation of a works council in the making of economic decisions that would lead to a weakening of the specific purpose of the institution. The general exemption from codetermination by employees is not limited to the denominational purposes of recognised churches and religious societies. The first sentence of Section 132(4) ArbVG makes it clear that the provisions regarding the organisation of industrial relations are not applicable to businesses and enterprises which serve the denominational aims of a recognised church or religious society insofar as such provisions are in conflict with the specific nature of the business or enterprise. For this reason each case must be examined in order to determine whether the provision is compatible with the specific nature resulting from the right to self-determination.

According to the second sentence of Section 132(4) ArbVG, provisions on company agreements in certain matters, and some further provisions, are inapplicable to enterprises and administrative organisations charged with the administration of the internal affairs of legally recognised churches and religious societies.

2. Individual Labour Law

Church employment is governed by civil law. An internal church statute on employment and remuneration is a matter of contract law adopted by the churches and religious societies as holders of private law rights. This law is in principle variable within the legal limits on the free elaboration of employment contracts.18

Persons whose activity is characterised mainly by religious, welfare, or social purposes do not count as employees if they are not employed on the basis of a labour contract (Section 36(2) ArbVG).

A special relationship with the church or religious societies as employer results from direct participation in the pursuit of denominational aims. This expresses itself in a special sort of allegiance: acceptance of the teach-

18 See especially OGH ArbSlg 9490/1976, OGH 16.9.1987, 9 Ob A 71/87 (ÖAKR 37/1987/88), p. 36). Conflicts between a church or religious society and its officials in matters of private law employment contracts may in principle be taken to court; however all preliminary questions of e.g. the validity of the removal from office, the retirement, the disciplinary measure, the transfer to another post etc., are excluded from the court’s decision. See OGH SZ 47/135/1974, SZ 60/80/1987 (ÖAKR 37/1987/88, pp. 371, SZ 60/173/1987 (ÖAKR 37/1987/88, p. 376)
ing of the church or religious society and an appropriate way of life, as well as in a special duty of care by the church employer. This allegiance may vary with the importance of a person's work to the church's spiritual mission.

3. **Welfare Law**

Among the persons exempt from full insurance according to the *Allgemeines SozialversicherungsG* (ASVG Social Security Act) 1955, Section 5(1)(7), are priests of the Catholic Church, and members of religious orders and similar institutions of the Catholic Church, if they do not have contractual relations with other corporations apart from their church or its institutions.

If a person who is exempt from full insurance in this way ceases to be a member of the clergy, an order, or similar institution, a certain sum is payable to the new pension insurance institution on transfer (ASVG Section 314).

The *BundspflegegeldG* (Federal Care Constitution Act) 1993 introduced a nationwide (and in principle homogenous) reorganisation of payments to persons who need care. Priests and members of religious orders who are not covered by ASVG Section 3(1) are not included in the range of persons entitled, because they do not receive "basic payment by Federal law". By way of ordinance of the competent Federal ministry, however, persons who are excluded from pension insurance may be included in the range of persons entitled to care allowances. This has been done for secular priests (BGBl II 2002/72), though not yet for members of religious orders.

VIII. **Financing of Churches**

1. **The State Guarantee of Church Property**

The possession and enjoyment of church special purpose funds is guaranteed by Article 15 StGG: this is a specific application of the general fundamental guarantee of property. According to the unanimous opinion of the

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19 Holders of spiritual office in the Protestant churches, who were also previously exempt, were included in full insurance by the ASVG amendment 1980 and the *SozialrechtsÄnderungsG* 1996.
both courts and commentators, the independent administration of property is an internal matter for the churches and religious societies.

2. State Payments and Reserve Rights

State payments to religious communities exist only in relation to indemnity for financial losses caused during the Nazi occupation. According to the Treaty of Vienna of 1955 (Article 26), Austria is obliged to indemnify those suffering financial losses resulting from Nazi legislation or rioting during the time of Nazi occupation.20

A special problem was and is posed by the rights to restitution and indemnity of the Hebrew community and its institutions, since the necessary proofs required by law are often difficult to find and implementation of these laws has been very slow. Finally, the Federation established a general compensation fund, based on a 2001 treaty, for Jewish property which was confiscated or destroyed during the Nazi period which can also serve for claims of the cult communities and other Hebrew institutions (EntschädigungsfondsG 2001 – Compensation Fund Act).

3. Church Contributions and Taxes

The collection of church contributions and assessments for financing its material and staffing needs is an internal matter for a legally recognised church or religious society, but one for which the right to State legal guarantee may be used.

A Law on Church Contributions (KirchenbeitragsG) came into force for the Catholic, Protestant, and Old Catholic Churches on 1 May 1939. Adult members are liable to contributions, whether or not they avail themselves of the services of the churches. The decision on and the collection of contributions take place in accordance with an ordinance on church contributions which has been adopted by the churches. The binding character of the ordinance for the members of the church is part of internal church

20 For this reason the Catholic Church at present receives €17,295,000, the Protestant Church €1,113,000, the Old Catholic Church €51,000, the Hebrew Community €308,000, and additionally the equivalent of the salaries of a number of state employees on the basis of an average salary.
law. Nonpayment of contributions may be the subject of a civil court action.

For those churches and religious societies not subject to the KirchenbeitragsG there is the option of collecting contributions with the support of administrative enforcement. However, at present none of these churches and religious societies makes use of this provision.

IX. Status of the Recognised Churches and Religious Societies in Taxation Law

The provisions of tax law which are relevant to religion are based partly on the consequences in revenue law resulting from the public law status of churches and religious societies. Also relevant are the conditions which have to be met if the revenue law attributes benefits (reductions, exemptions) to corporations which display ecclesiastical aims in addition to those with public utility or charitable purposes.\footnote{21} (Section 34 Federal Revenue Act – Bundesabgabenordnung 1961).

X. Access of the Religious Communities to Public Institutions

1. Religious Assistance in the Armed Forces

The organisation of Catholic pastoral care in the armed forces is the task of the Bishop for the Armed Forces. He is appointed solely by the Pope on the nonbinding suggestion of the Federal Government or according to the process envisaged in the political clause. Service chaplains are chosen by the bishop with the consent of the Defence Ministry and appointed by the State (Concordat Article 8).

The Protestant Military Superintendent is charged with the organisation of Protestant pastoral care in the armed forces. He is nominated by the Protestant Church Council and appointed by the Defence Secretary. In spiritual matters he is subordinate to the governing body of the Protestant Church, in all other matters to the competent commanders of the Federal Army. The chaplains are appointed by the State, but they must be authorised by the Church (ProtestantenG Section 17). Islamic pastoral care was

\footnote{21} The analogous (and because of equal treatment reasons probably necessary) extension of the benefits in revenue law resulting from “ecclesiastical aims” to other religious communities has not yet been put into practice.
established in accordance with Section 18 IslamG. Orthodox pastoral care was established 2011.

2. Religious Assistance in Institutions

Special pastoral care may be organised for public hospitals, medical institutions, nursing homes, prisons, and community homes with the consent of the competent church authority. In addition the local pastors of all denominations including those not legally recognised or their representatives have the right of free access to members of their denomination in institutions.

XI. Clergy and Members of Religious Orders in State Law

In principle it is the selfunderstanding of the relevant religious community which decides who is to be regarded as clergy in State law. With respect to political rights, especially concerning the right to be voted into public office, there are no restrictions in State law.

1. Special Procedural Status

The clergy may not be summoned to give evidence in criminal, civil or administrative legal proceedings on matters entrusted to them during confession or under the obligation of confidentiality resulting from their pastoral office. As this provision protects individual freedom of religion, it also applies to pastors of denominations not legally recognised.

22 Section 85 StrafvollzugsG 1969 (Punishment Act) contains provisions on the religious activities of prisoners.

23 According to a typological description of the VwGH (Slg 9491/1913), if there is any doubt, a “person who is a teacher of the religious doctrine and advisor in religious matters, who supervises the service and the ritual institutions, who is entrusted with the office of preaching, the administration of the service and the decision in ritual questions, and who finally has to administer the register, is to be regarded as clergy”.

24 Section 155(1) Strafprozeßordnung 1975 (Criminal Procedure Law), Section 320(2) Zivilprozeßordnung 1895 (Civil Procedure Law), Section 48(2) Allgemeines VerwaltungsverfahrenG 1991 (General Administration Procedure Law).
2. **Special Status in Military Law**

The following persons are exempt from military service or social service for conscientious objectors, if they belong to a legally recognised church or religious society: priests; persons who work in pastoral care or religious teaching on the basis of a completed course of theological studies; members of religious orders after taking lifelong vows; students of theology who are preparing for spiritual office (Section 18(3) *WehrG* 1990 (Defence Act), Section 13(a)(1) *ZivildienstG* 1986 (Civilian Service Act).

XII. **Matrimonial and Family Law**

1. **Religious Upbringing of Children**

The parents of children who have not yet attained majority in religious matters may for as long as the marriage continues freely agree on the denomination or philosophy according to which they wish to bring up their children. The agreement ends with the death of either spouse. If one person has sole custody of a child he/she may decide on the nature of his or her religious upbringing. Guardians and trustees, however, require the authorisation of the guardianship court.

In the case of a change of religion for children of twelve or over, their consent is necessary. If the parents cannot reach agreement, a decision may be sought from the guardianship court. This must grant a hearing to children of ten or over. From the age of fourteen every person has the right freely to choose a religious denomination according to his or her own conviction and if necessary must be protected in that choice by the authorities.

2. **Church and State Matrimonial Law**

In Austria it is in principle possible to be married only by Canon Law without legal recognition in State legislation.

25 Sections 1 to 3 BundesG über die religiöse Kindererziehung 1985 (Federal Law Concerning Religious Upbringing of Children).

26 Section 4 BundesG über die religiöse Kindererziehung.
Provisions in Criminal Law

The classification of certain acts as religious offences is essentially to protect the religious peace and people’s religious convictions against disparagement or violation. For this reason the relevant provisions of the Penal Code (StGB) do not apply only to legally recognised churches or religious societies but to all those with a permanent community situated within the national territory. As religious offences in the narrower sense, the StGB cites the disparagement of religious doctrines and the disturbance of a religious worship.

A more serious punishment is available for ‘Incitement to violence’.

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27 According to Section 188 StGB: a person who derides or disparages a person or an object worshipped by a church or religious society on Austrian territory, or a religious doctrine, a legally permitted tradition or a legally permitted institution of such a church or religious society in circumstances in which such behaviour is apt to cause a breach of the peace, is punishable with a prison sentence up to six months or a fine of up to 360 daily instalments.

28 According to Section 189(1) StGB, a person who prevents or disrupts a legally permissible church service or a similar form of religious ceremony or worship of a church or religious society on Austrian territory by violence or the threat of violence is punishable with a prison sentence of 2 years. Sect 2 contains less serious disruptions of religious worship by mischief.

29 According to Section 283 StGB a person who publicly in a manner calculated to endanger public order, or perceptible by a broad public provokes or incites explicitly to violence towards a church or religious community or towards another group defined by the criteria of race (ethnicity), colour, language, religion or belief, birth, national or ethnic origin, gender, disability, age, sexual orientation, or towards a member of such a group, is to be punished with imprisonment of up to two years. The same applies to any person who perceptible by a broad public stirs up hatred towards one of these groups, or humiliates it in such a way as to interfere with human dignity and thus intending to disparage it.
Periodical

Österreichisches Archiv für Recht und Religion (öarr), formerly Österreichisches Archiv für Kirchenrecht (ÖAKR), since 1950.
State and Church in Poland

Michal Rynkowski

I. Social Facts

Throughout Europe, Poland is generally regarded as a Catholic State, a view which is still confirmed by the statistical data. Unlike in some other States the precise number of followers of the various confessions is not known in Poland, since adherence to a religion is not included in any official documents – not even in school reports which give the grades obtained in religious instruction. This situation is legally provided for by the Constitution. However, the 2011 Census included for the first time in 80 years a question about a membership in churches and religious communities. Interestingly, for a few Churches, data gathered on this occasion differed significantly from the data in official statistical annuals, which is provided by Churches themselves. For example, the numbers of Orthodox revealed in census is 30% of the data given by the Church. On the other hand, the Lutheran Church seems to be well informed about the number of its members. The figures in the table below come from the Statistical Annual, which are the official estimates for 2017:

(in brackets figures from 2003, i.e. from the 2nd edition of this book)

1 No one may be compelled by organs of public authority to disclose his philosophy of life, religious convictions or belief – Constitution, Art. 53(7).
2 Only churches and religious communities with a minimum of 5,000 baptised/members are included. Complete data can be found in: Rocznik statystyczny, Warszawa 2017, p. 194-196.
The following should be noted with regard to this table:

1) The numbers given above represent the numbers of baptised/members, which are not the same as the number of a people attending religious ceremonies:
2) Remarkable is a significant decrease as regards the Greek-Catholic Church (in 12 years, from 123,000 to 55,000), and Armenian Catholic

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3 Very detailed information provided by the Institute of the Statistics of the Catholic Church, www.issk.pl, in Polish only.

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<table>
<thead>
<tr>
<th>Church or Religious Community</th>
<th>Number of parishes or respective entities</th>
<th>Number of clergy</th>
<th>Number of members</th>
</tr>
</thead>
<tbody>
<tr>
<td>Catholic Church/ Latin Rite³</td>
<td>10,248 (10,018)</td>
<td>30,930 (28,259)</td>
<td>33,022,904 (34,498,271)</td>
</tr>
<tr>
<td>Orthodox Church</td>
<td>243 (223)</td>
<td>479 (296)</td>
<td>504,400 (509,500)</td>
</tr>
<tr>
<td>Jehovah's Witnesses</td>
<td>1299 (1,769)</td>
<td></td>
<td>120,196 (123,034)</td>
</tr>
<tr>
<td>Catholic Church/ Byz.Ukr. Rite (known as Greek-Catholic)</td>
<td>128 (137)</td>
<td>82 (71)</td>
<td>55,000 (123,000)</td>
</tr>
<tr>
<td>Augsburg Confession (Lutheran) Church</td>
<td>133 (292)</td>
<td>184 (175)</td>
<td>61,582 (86,880)</td>
</tr>
<tr>
<td>Old Catholic Church of the Mariavites</td>
<td>36 (37)</td>
<td>23 (27)</td>
<td>22,900 (24,288)</td>
</tr>
<tr>
<td>Polish Catholic Church</td>
<td>72 (83)</td>
<td>62 (106)</td>
<td>18,112 (22,422)</td>
</tr>
<tr>
<td>Pentecostal Church</td>
<td>239 (186)</td>
<td>376 (324)</td>
<td>24,095 (20,027)</td>
</tr>
<tr>
<td>Seventh Day Adventist Church</td>
<td>147 (151)</td>
<td>61 (69)</td>
<td>9,565 (9,492)</td>
</tr>
<tr>
<td>Catholic Church/ Armenian Rite</td>
<td>3</td>
<td>3</td>
<td>670 (8,000)</td>
</tr>
<tr>
<td>New Apostolic Church</td>
<td>53 (52)</td>
<td>86 (50)</td>
<td>5,437 (5,433)</td>
</tr>
<tr>
<td>Islamic Assembly Ahl-ul Bayt</td>
<td>1</td>
<td>1</td>
<td>6,020</td>
</tr>
<tr>
<td>Islamic Religious Community in RP</td>
<td>7</td>
<td>18</td>
<td>773</td>
</tr>
</tbody>
</table>

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3 Very detailed information provided by the Institute of the Statistics of the Catholic Church, www.issk.pl, in Polish only.
Church (from 8,000 to 670 members). Other Churches and communities more or less kept the number of their members.

3) The Catholic Church in Poland comprises four rites: Latin (usually called Roman Catholic), Armenian, Byzantine Slavic (with only one parish Kostomłoty near Terespol) and Byzantine Ukrainian (usually called Greek-Catholic). All these rites acknowledge the Pope as head of the Catholic Church. The Law of 1989 governing the relationship between the State and the Catholic Church applies to all four rites.

4) Contrary to that, the Polish Catholic Church was created in the USA in the 19th century; their members came to Poland only after 1918. This church is registered in the official register of churches and religious communities (see (4) below) separately from the Catholic Church. The Church is a member of the Union of Utrecht of the Old Catholic Churches and does not recognise the Pope as head of the Church.

5) The data of the first Census (1921) after the rebirth of Poland may be taken as a comparison: at that time 63.8% of the population declared themselves to be Roman Catholic, 11.2% Greek Catholic, 10.5% Orthodox, 10.5% were of Jewish belief, 3.7% Protestant, and 0.3% belonged to other faith communities.

II. Historical Background

The year 966, when Duke Mieszko was baptised on the occasion of his marriage with the Bohemian princess Dąbrówka (Dobrava), is regarded as the foundation year of the Polish State and the birth of Christianity on Polish soil. In 968 the first diocese was founded in Poznań; this was followed in the year 1000 by the Archbishopric of Gniezno and dioceses in Kraków, Kołobrzeg and Wrocław. From the beginning, Poland was part of Western Christianity. In 1385 Lithuania was christianised as a consequence of a spectacular marriage: Polish Saint Jadwiga (Hedwig from the House of Anjou), married the Lithuanian Grand Duke Jagello. A final union between the two States was established only in 1569 in Lublin. Thus was created a Republic of Both Nations (Rzeczpospolita Obojga Narodów): a multinational and multi-religious state, in which each noble had a passive and active right: either to elect the king or to be elected as king. This peri-

4 Historia Polski w liczbach (The History of Poland in data), GUS, Warszawa 2003, p. 385.
od, which lasted until the third partition of Poland in 1795, is known as the First Republic and existed as a republic of the nobles.

In the first half of the 16th century relatively large numbers of the richer strata of society followed Lutheranism, Calvinism, and the "Polish brothers" (the so-called Arians, who opposed the doctrine of the Trinity). During the course of the Counter-Reformation many returned to Catholicism, but in the 16th century Poland experienced relative religious freedom compared with other European States. In the time between the death of one king and the election of the next, the Primate, the Archbishop of Gniezno, was ex officio the Interrex. Of particular importance was the Confederation of Warsaw of 1573, which introduced the principle of the equal treatment of religions. In 1596 an agreement was concluded between the Catholics and that part of the Orthodox Church which had kept to their customs but which recognised the Pope as head of the church: this was the foundation of the ByzantineUkrainian rite, popularly known as Greek-Catholic. In 1668 a law was adopted according to which a change from Catholic belief to any other should incur the death penalty. However, in the Kingdom of Poland there was very little persecution of Protestants and only a limited number of witch trials took place. Only as late as 1716 was the building of Protestant churches prohibited. In 1768 religious tolerance was once again recognised in law. The Polish Constitution adopted on 3 May 1791 was the first modern constitution in Europe; it contained some provisions relevant to religion. Even in the Preamble it was stated: "In the name of God within the Trinity", and in Article 1 it was established that "The dominant national religion is and will be the Holy Roman Catholic faith with all its rights. The change from the ruling religion to any other confession will be punished as Apostasy. Yet, because our same belief orders us to love other brothers we shall offer all people of any confession religious peace and government protection, and we guarantee the freedom of all rites and religions in Polish territories according to the laws".

The Constitution was, however, not able to prevent the end of the First Republic, and so came the complete partition of Poland in the years 1772, 1793 and 1795. During this time the church played a special role in preserving Polish identity, culture, and language. Cardinal Mieczysław Ledóchowski, Archbishop of Gniezno, was for this reason imprisoned by the Prussian government.

The first constitution after the partitions, the Constitution of March 1921, contained only a short Invocatio Dei: "In the name of the almighty God", by way of a compromise in recognition of the Jewish and Muslim
The war and post-war periods were characterised by the great personalities of three cardinals: Adam Stefan Sapieha, Stefan Wyszyński, and Karol Wojtyła. The Archbishop of Kraków, Adam Stefan Sapieha, offered unprecedented resistance against the occupying powers of the First and Second World Wars. The two heroes of the second half of the 20th century – Cardinals Stefan Wyszyński and Karol Wojtyła (the latter elected as Pope John Paul II in 1978) successfully challenged the communist regime. Ostensibly favourable laws (such as that introducing the church fund which only existed on paper), violations of existing laws (expropriation of the property against the provisions of this law), and numerous mysterious deaths of clergy, always caused by "unknown delinquents", were permanent features of the anti-church policy of the communist regime.

The death of Pope John Paul II in 2005 led to a spontaneous national mourning, including closure on that day of many private establishments, like cinemas and restaurants. The government, led by L. Miller, declared that there is no need to adopt any measures, since “the Polish society knows anyway how to behave”. A few years later, in 2010, the death of the President of the Republic, L. Kaczyński in a plane crash near Smoleńsk and the following burial in the Cathedral in the royal castle of Wawel in Kraków showed very close links between the State and Church.

To certain extent symbolic is the question of the crucifix, hanging in the plenary room of the Sejm (lower chamber of the Parliament). It was placed during a night by two deputies in October 1997. In 2011, the deputies of the anti-clerical Palikot Movement requested the crucifix to be removed, as a sign of the neutrality of the state, expressed in Article 25 of the Constitution. The Speaker of the Sejm ordered four legal opinions and on their base came to a conclusion, that since there was no legal basis for the placement of this crucifix, there is no legal basis for the reversed action, i.e. the removal. The government of D. Tusk welcomed this approach. The crucifix remained in the room.

The majority of the statutes which are in force today were adopted shortly before or after the political changes that came about in 1989. An important change was brought about by the Law of 1989 guaranteeing the

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freedoms of conscience and confession, which was negotiated with the (Catholic) Bishops’Conference. Recent steps in the history of Polish civil ecclesiastical law are marked by the Concordat of 1993 and by the Constitution of 1997, which are discussed below.

III. Legal Sources

1. First, two important points about terminology: the Polish legislator uses the term "Kościoly i inne związki wyznaniowe", which should be correctly translated as "Churches and other faith communities". In foreign publications they usually are called "Churches and religious communities". The predominantly German term "Staatskirchenrecht" (state church law), although known in Polish legal writing, is not used in relation to Poland. The field of law governing these questions is usually called "prawo wyz- naniowe" (ecclesiastical law, although literally: confessional law). In the Constitution and in the laws generally the terms "wolność religii" (freedom of religion) or "wolność wyznania" (freedom of confession) are used. The predominant opinion holds that in practice no significance should be attributed to this difference in mere language.

The provisions of civil ecclesiastical law may be distinguished in two categories: those which relate to all churches and religious communities (general ecclesiastical law) and those relating to specific churches and religious communities (specific ecclesiastical law). In particular the Constitution of 1997 and the Law of 1989 on the guarantees of freedom of conscience and confession belong to the first group.

The most important source of Polish law on religion is the Constitution of the Republic of 2 April 1997. The Constitution – insofar it does not state otherwise – is directly applicable (Art. 8(2)), a fact relevant in relation to its provisions on religion. According to Article 87 the following categories of legal acts are general legal sources of the Republic: the Constitution, ratified international treaties, statutes and regulations. In all these categories of legal acts one can, to various degrees, find elements of the law on religion. Hence it is necessary to deal with them here.

7 All the handbooks in Poland bear such titles, see literature section below.
The Constitution itself contains some provisions relevant to religion: on the legal status of churches and other religious communities (Art. 25), the right of national and ethnical minorities to the preservation of their religious identity (Art. 35), religious instruction in schools (Art. 48), freedom of religion (Art. 53), and freedom of assembly (Art. 57). The Preamble to the Constitution is remarkable as it contains an *Invocatio Dei* that was the result of difficult negotiations: "...the Polish Nation all citizens of the Republic, both those who believe in God as the source of truth, justice, good and beauty, as well as those not sharing such faith but respecting those universal values as arising from other sources".

In relation to the legal status of churches and religious communities Article 25 is of fundamental significance. It reads as follows:8

1. Churches and other religious organizations shall have equal rights.
2. Public authorities in the Republic of Poland shall be impartial in matters of personal conviction, whether religious or philosophical, or in relation to outlooks on life, and shall ensure their freedom of expression within public life.
3. The relationship between the State and churches and other religious organizations shall be based on the principle of respect for their autonomy and the mutual independence of each in its own sphere, as well as on the principle of cooperation for the individual and the common good.
4. The relations between the Republic of Poland and the Roman Catholic Church shall be determined by international treaty concluded with the Holy See, and by statute.
5. The relations between the Republic of Poland and other churches and religious organizations shall be determined by statutes adopted pursuant to agreements concluded between their appropriate representatives and the Council of Ministers.

Sections 1 to 4 raise no specific controversies. In relation to Section 5, the agreements promised in the Constitution have not been concluded, except for an agreement with the Orthodox Church (5 June 2011), which however did not result in a new law. The current laws on the relationship of the State with the various churches and religious communities are unilateral acts of the State, not treaties or agreements comparable to treaties. From a legal point of view churches and religious communities have the same rights. In practice there are inequalities in view of the greater presence and

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influence of Roman Catholic clergy compared with clergy of other denominations, which makes it difficult to avoid taking into account the overwhelming majority of Catholics.

Article 53 of the Constitution is also comprehensive, and it is made up of seven sections. According to its Section 1, freedom of conscience and religion is guaranteed to everybody. This freedom comprises (Sect. 2) various forms of the exercise of this right, among them the right of parents to secure the moral and religious education and teaching of their children. The limits to religious freedom in Section 5 are similar to the principles in the European Convention on Human Rights; limitations must be necessary for the protection of the security of the State, public order, health, morals, and freedoms and rights of others. According to Article 85(3) “alternative service” is a possible option, on the grounds of religious attitudes and moral convictions.

Alongside the Constitution, the Law on the guarantees of freedom of conscience and confession of 17 May 1989 (referred to below as the Law of 1989) is the basis of the whole system of civil ecclesiastical law in Poland. This law was introduced two weeks before the historic elections of 4 June 1989, that is before the change of the political system. It has the character of a *lex generalis*, from which a *lex specialis* can deviate. Article 7 of the Law states that foreigners in the territory of the republic enjoy the same freedom of confession as Polish citizens.

2. Commentaries and handbooks insist that the term or the idea of separation of state and church has been expressed only very rarely since 1989 for historical reasons. Article 10 of the Law of 1989 says that the Republic of Poland is a State which is secular and neutral in questions of religion and belief (more precisely, the latter term used corresponds to the German “Weltanschauung”). According to Article 16 of the same law the State cooperates with churches and religious communities in preserving peace, framing the terms of development of the State, and in fighting societal pathologies. This co-operation also exists in relation to the protection, restoration, and extension of monuments of architecture, arts, and religious literature that form part of Poland’s cultural heritage (Art. 17). Co-operation is a term also used in the Concordat and other statutes.

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IV. Basic Categories of the System

Poland is a unitary state, as underlined by the Constitution of 1997 in the Article 4. There are no significant local legal differences, as the competences of the regions (województwo) are quite limited, in particular as regards church-state relations.

There have been several cases, decided by various courts, whether the internal law of the Churches and religious communities, like the Catholic Code of Canon Law, should be treated as law or not. The judgments of the courts went in various directions, however the leading opinion of the Supreme Court of 2008 indicates that a (civil) legal transaction concluded without respecting the internal ecclesiastical law should be validated by a respective religious body according to the ecclesiastical law (negotium claudicans, see below, part X). This opinion of the Supreme Court has been heavily criticised by many scholars who underline that the internal law of churches is not mentioned in the Constitution as a source of law, that it is never published in the official state publishing instruments, and that all negative consequences of such a transaction are carried exclusively by the non-ecclesiastical contractor, never by the ecclesiastical contractor, who neglected its duty.

V. Legal Status of Churches and Religious Communities

1. The legal status of a corporation under public law is not recognised in relation to churches and religious communities in current Polish law.10

Today, such a status is given only to territorial entities of the State. The differences between churches and religious communities are marked by the method of registration, but all subjects lawfully registered enjoy the same rights from a legal perspective. Churches and faith communities can be distinguished as forming two groups according to their recognition or registration:

1) Those which function based on a specific law that governs the relations between a given church or religious community and the State, or
2) Those that function on the basis of the law on the guarantees of the freedom of conscience and confession of 1989 which created a general framework for all churches and religious communities in Poland.

10 Some churches and religious communities had enjoyed such a status to a certain extent before the Second World War.
Only 15 of more than 165 registered churches and religious communities belong to the first group, but this group comprises all of the largest and, at the same time oldest, religious communities (with the exception of Jehovah’s Witnesses which, though being the third largest community, do not operate on the basis of a special law, but on the basis of the Law of 1989). To the first group belong following churches and religious communities, in chronological order (with the date of the relevant act in brackets): Eastern Old Rites Church (Ordinance [sic] of the President of the Republic, 22 March 1928), Islamic Religious Community (21 April 1936), Karaim Religious Community (21 April 1936), Catholic Church (17 May 1989), Polish Autocephalous Orthodox Church (4 July 1991), the Augsburg-Confession Church in the Republic of Poland (henceforth referred to as the Lutheran Church) (13 May 1994), Protestant Reformed Church (13 May 1994), Protestant Methodist Church (30 June 1995), Baptist Christians Church (30 June 1995), Seventh Day Adventists Church (30 June 1995) Polish Catholic Church (30 June 1995), Union of Jewish Confessional Communities (20 February 1997), Catholic Church of the Mariavites (20 February 1997), Old Catholic Church of the Mariavites (20 February 1997), Pentecostal Church (20 February 1997). After this series of the new laws (1991-1997), no new laws have been adopted since then. As mentioned above, except for the Orthodox Church, no agreements provided for by the Constitution in Art. 25.5, have been concluded. However between 2013-2017, the Speaker of the Lower Chamber (Marszałek Sejmu) published consolidated texts of the laws mentioned above.

The legal personality of the various confessional entities or institutions was granted in the above mentioned laws by recognising the different levels and kinds of church institutions as having legal capacity. The Concordat explicitly recognised the legal personality of the Catholic Church entities if they acquired this status according to canon law. In additional cases, legal personality is granted by way of a regulation of the Minister for the Interior and Administration.

Since 1998 it has been possible for a group of at least 100 Polish citizens with full legal capacity to apply for the registration of a church or religious community. In the first version of the Law of 1989, 15 persons were required as the minimum number of members; this led to some misuse of the right especially in relation to exemption from military service, taxation

benefits, and (at the time) duty free imports. The Minister for the Interior and Administration is competent to enter communities in the register. According to the Law of 1989 and the regulation of 31 March 1999 on the registration of churches and religious communities, the application must contain the following: a list of members, information about the general aims, principles of doctrine and ritual practice, location and subordinate bodies, and internal statutes. For example, in the last 12 years, some 25 churches and religious communities have been registered, mainly representing religions of the Far East. Some applications were rejected; in relation to some churches and religious communities the application has been refused repeatedly because of formal criteria. The criteria are equivalent to those of Article 9(2) of the European Convention on Human Rights, and the Minister checks, inter alia, on whether the aims and the doctrines of a church or religious community are likely to endanger public order or security, or are contrary to the right to life, morals, or the rights of parents. As an example, the Raelians who were the first to claim the cloning of a human being in 2002 were not registered in the Polish register as early as 1998. The refusal by the Minister was upheld by the Chief Administrative Court (NSA) in a decision of 22 January 1999.

VI. Religious Communities within the Political System

With the statistically overwhelming strength of the Catholic Church, the other Churches and religious communities are hardly present (despite popularity of some individuals like Lutheran Prime Minister J. Buzek or Lutheran ski-jumper A. Małysz). While theoretically all the churches and religious communities have the same rights, Catholic clergy are present at the state events and the politicians (above all, of the currently ruling Law and Justice Party) participate in a very public way in the Holy Masses and other services, including more or less regular appearances of the politicians in Częstochowa, where the famous picture of the Black Madonna can be found.

The presence of other churches and religious communities remains almost unnoticed except for two occasions: some Churches issued statements in favour of the European integration, in the eve of the referendum of the accession to the EU in 2003. On the other hand, representatives (chaplaincies) of various denominations participate in the military-religious ceremonies. For example, in the famous plane crash near to Smoleński, on board of the Presidential aircraft were the Catholic (so-called: field) bishop, Orthodox and Lutheran Chaplaincies.
VII. Churches and Culture

1. Churches and religious communities have the right to establish and operate schools, kindergartens, and other educational institutions (Art. 21, Law of 1989). The proportion of schools run by religious entities, however, is relatively small, and these schools educate only about 1-2% of the total number of pupils. Some non-Catholic educational institutions have also been established.

2. Religious instruction was abolished shortly after the Second World War in all schools. Since confessional schools had also been abolished, religious instruction took place in parish houses throughout Poland. Only in 1990, by way of a circular of a Minister, which was heavily criticised in legal circles, did religion return to the school curriculum. Later, this was settled by a regulation of the Minister for National Education in 1992. According to this regulation, the desire of the parents for their child to take part in religious instruction courses might be "declared in a most simple way". In practical terms, it was assumed that children take part in these courses. The regulation of 2014 changed slightly the wording: the request of parents should be expressed in writing, however there is no need to repeat it every school year (Regulation of 25 March 2014, OJ 2014, item 478). If the parents (and in secondary schools, the pupils themselves) want it, instruction in ethics may be offered as an alternative. If seven or more pupils, or their parents, of any given confession request it, religious instruction should be offered. If the number of children of a specific confession is between three and seven, religious instruction should be offered in co-operation between the school and the religious community. If the number of children is smaller, religious instruction is given in the respective church institutions. In all cases the teacher of religion must have a teaching qualification as stated in the Agreement between the Minister of National Education, the Bishops' Conference, and the Polish Ecumenical Council (see section XII, below).

The Grzelak case (appl. 7710/2002, judgment of 15 June 2010), concerning offer of ethics in a school, which reached the European Court of Human Rights in Strasbourg, demonstrates that the reality is somewhat more complicated than a text of a piece of legislation.

3. Theological faculties returned to State Universities in the 1990s, after over 40 years' prohibition. Only the Catholic University in Lublin (KUL) always had a theological faculty, but the KUL was a really special case in the whole Eastern bloc; between the war and 1989 it was maintained as a non-State university and run exclusively on private do-
nations. After the end of communist rule some changes took place: the KUL is now financed according to the Law of 14 June 1991 from the State budget; this is also the case for the pontifical theological faculty in Krakow (Law of 26 June 1997), and for the Kardynał Wyszyński [state] University in Warsaw which was founded in 1999 and which evolved from the Academy of Catholic Theology (Law of 3 September 1999).

Currently, there are theological faculties in the State Universities in Katowice, Kraków, Toruń, Opole, Olsztyn, Poznań, Szczecin, Warsaw. In the two latter cases the faculties were established together with the creation of the universities in the 1990s. In the University of Białystok there is a faculty in which Catholic as well as Orthodox theology is taught. In Wroclaw and Gdańsk the University Senates have voted against the establishment of theological faculties.

In addition to the Catholic institutions there is in Warsaw the "Christian Theological Academy", which provides the training of the non Roman Catholic clergy and theologians. It emerged from the Evangelical Theological Faculty of the University of Warsaw which was dissolved in 1954. The Christian Theological Academy has been in existence ever since – even between 1954 and 1989 – but only in the year 2000 was funding by the State budget secured by law.

4. Churches and religious communities are active in the field of the media in different ways. On public television they broadcast religious programmes explicitly provided for in the Concordat and laws. According to the agreement between the Polish Ecumenical Council and the public television providers there is an editorial committee responsible for ecumenical religious programmes. There are, however, no official representatives serving ex officio on supervisory or advisory councils. Some churches and religious communities also have their own broadcasting stations: there are both national and regional Catholic radio stations, and also a Radio "Orthodoxia". There is also a confessional television station: "Trwam", run by the director of the most famous (and controversial) Catholic Radio Station “Radio Maryja”.

According to Article 25 of the Law of 1989, churches and religious communities may operate publishing houses and edit journals and books, provided that they observe the general law in this field.

VIII. Labour Law within the Religious Communities

A person’s religious affiliation is not revealed in any official document and must not be inquired about for employment purposes.
The terms of work for clergy are laid out in the internal statutes of each respective church or religious community. This applies especially to the formal requirements, the hierarchy and routine of office, compensation for torts committed by clergy, and terms of responsibility. In the Lutheran Church, for example, "vocation" is the term for an agreement between the pastor and the parish. This agreement must meet certain standards relating to the salary within the group of clergymen (deacon, pastor, bishop, etc.) or to their rights after retirement. The same rules of employment law apply to laypeople employed in confessional institutions as to any other persons. A certain degree of loyalty is expected from the lay employees, however, according to the ethos of the religion.

Work-free holidays for the Catholics have been defined in Article 9 of the Concordat, making those days State holidays. In relation to other churches and religious communities the law has defined work-free days with the provision that the members of the respective confession have the right to a work-free day, which however is unpaid.

After a number of amendments in respective laws, the Polish labour law respects the conditions of the European non-discrimination framework, in particular as regards the Article 4 of the Directive 2000/78[12].

IX. Legal Status of Clergy and Members of Religious Orders

The clergy enjoy the same rights and have the same duties as all other citizens in all fields of state, political, economic, societal and cultural life. They are exempt from those duties that contradict the functions of a minister (Art. 12, Law of 1989). This applies especially to exemption from the conscription, which however was suspended in 2009. The internal statute of the religious community must explicitly state who is a minister of this given community, describe the method of their election or appointment, and the ministerial tasks. The necessary conditions for exemption from military service are stated by the Main Administrative Court in a judgment of 19 September 2000.[13] The laws on election to the Sejm, to the Senate or to the organs of local administration do not provide for any restrictions on the clergy, but because of tradition or of internal church provisions (as for example in the Lutheran Church) clergy do not run for public office.

12 M. Rynkowski, in: M. Hill QC (ed.), Religion and discrimination law in the EU, Poland, p. 268.
13 NSA sygn. III S.A. 1411/00.
Shortly after 1989 clergy tried to bring political influence to bear on believers during the elections, but this turned out to be in vain; since then, clergy have stressed the civil obligation to participate in elections, without mentioning the names of parties or of their candidates. In recent years clergy have again tried to influence politics, and some bishops manifest openly their political convictions in the current rule-of-law conflict, arguing in favour of the ruling Law and Justice party.


X. Finances of Religious Communities

Article 10 of the Law of 1989 says that the State and its entities may not provide financial assistance to churches and other religious communities. Exceptions are provided for by law or by provisions passed on the basis of a law. The churches and religious communities exist and operate thanks to the voluntary donations of believers. There is no tradition of a church tax in Poland, and a system of 1% of the tax due, which may be transferred in favour of an organisation of public benefit (similar to Italian, Spanish or Hungarian solution) may not be compared with the German or Austria tax\textsuperscript{14}. The most important financial sources for all churches and religious communities are: Sunday collections, donations (in most cases quasi fees) for baptism, marriage, and burial, and donations on the occasion of the annual "pastoral visit", usually called "kolęda", so literally: a Christmas carol. This takes place in the Catholic Church all over Poland at around Christmas time, usually in January: a priest or some other cleric pays home visits to all the inhabitants of the parish who so wish, and discusses with them any questions concerning their religious or societal life.

Church property and income are subject to general tax provisions, as stated by law. There are, however, many legal exemptions with the consequence that churches and religious communities pay hardly any tax for their non-economic activity. In the field of economic activities the confessional entities are liable to VAT and local taxes. They are liable to income tax for that part of their income which is not intended to be used for the

\textsuperscript{14} The Lutheran Church in Poland has introduced internally a kind of church tax (1\% of the income), which is however not comparable with the German system. Above all, there is no provision for the levy of the tax through State authorities.
purposes of religious observances or the renovation of buildings. The clergy of all churches and religious communities are, according to the statute of 20 November 1998, liable to a quarterly overall tax based on the size of the parish for incumbents (head of parish) (between 420 PLN and 1505 PLN) and the size of the parish plus the size of the town for vicars.

The clergy do not receive payment from the State for carrying out their priestly duties. However, they do receive a remuneration if they work as teachers of religion in schools. In the school year 1990/1991 when religious instruction was re-introduced after many years, the church renounced the salaries of the teachers of religion in view of the crisis in State finances (immediately after the breakdown of the communist regime this applied especially to priests and nuns; in the following years the number of lay persons as teachers of religion has continued to increase). It has turned out, though, that this was inconsistent with the Polish labour law, because an employee cannot legally renounce his salary.

As far as social insurance is concerned, individual clergy are responsible for their own contributions; superiors of religious orders are responsible for the contributions of the members of that order. The clergy pay 20% of the sum themselves; the rest is paid from the Church Fund. The Church Fund was created in 1950 after the expropriation of the property of various churches and religious communities. For decades, it existed only on paper; it took up its proper function as recently as the 1990s. The amounts foreseen for the Church Fund grow significantly: while in 2015, last year of the Civic Platform (E. Kopacz) government, the planned budget for the Fund was 118m PLN, in 2018 planned budget is 156m PLN, thus basically 40m PLN (or 10m EUR) higher. The explanation for such an increase seems to be rather political (influence of the clergy on the PiS (Law and Justice) government.

For a number of years, the question of the restitution of church property, the so-called "regulation process", was of particular importance. The churches in Poland, among them the Catholic Church, were never big land-owners (in total they owned 150,000 hectares) but, nevertheless, the main part of their property was expropriated after the war. In the 90’s, in charge of the process were so-called "regulation committees", mixed committees made up of representatives of the Ministry of the Interior and of the churches and religious communities. They functioned as a kind of arbitration court; their decision had legal effects of a court decision. However, there was no higher instance and no appeal, which was a reason for bringing one of the cases to the European Court of Human Rights. The ECtHR confirmed that Poland violated Article 6 para. 1 of the ECHR (Case ZNP v. Poland, appl. 42049/98, judgment of 21 September 2004).
In total there were five assets/regulation committees: committees for specific religious communities (i.e. the Catholic Church, the Lutheran Church, the Orthodox Church and the Jewish Religious Communities), and a general committee, which was appointed on the basis of an amendment to the Law of 1989; the procedure of this general committee is laid down in an Ordinance of the Minister of the Interior and Administration of 9 February 2000. The committees finished their work in 2011: while figures may vary, most reliable sources indicate that 60,000 hectare have been returned. Due to obvious historical and statistical considerations, this process was particularly relevant to the Catholic Church and the Lutheran Church in West Poland. The claims of the Jewish religious communities were a special case, because their claims mostly refer to the restitution of property that had been confiscated by the German (Nazi) Reich between 1933 and 1945. It is remarkable that the settlement of the restitution of church property constitutes a special case in the Polish legal system, since up to now (2018), almost 30 years after a change of the system, no "law on re-privatisation" has been drafted.

One issue still not fully clarified is that of the sale of the ecclesiastical properties without respecting the internal law of Churches and religious communities, mainly the Code of Canon Law. A couple of (not very coherent) judgments were issued after 2000. Currently the leading judgment is the opinion issued by the Supreme Court on 19 December 2008 declaring such a transaction negotium claudicans.

XI. Religious Assistance in Public Institutions

Pastoral care in the armed forces, the police, in hospitals, in medical, charitable, or care institutions, as well as in prisons, is governed by the Law of 1989, by further laws on the relationship of the State with various churches and religious communities, and regulations. Up to now, no specific controversies have emerged in this respect. There are three dioceses in the military forces: a Catholic, an Orthodox, and a Lutheran. The Catholic military bishop (more precisely, he is called: biskup polowy – “field bishop”) is at the same time a two-star-general (general dywizji), the bishops of other denominations have the rank of Colonel up to one-star-General (general brygady). The state budget states very clearly how much money is transferred to the chaplaincies of various denominations: while the Catholic Church receives the biggest part, the amounts are not proportional to the number of believers.
A Regulation of the Minister of Justice of 19 February 2016 concerning
the nutrition in prisons and similar institutions includes provisions con-
cerning food respecting religious or cultural requirements of the persons
(item 302 of 2016).

An interesting case was decided by the Supreme Court in 2013 (II CSK
1/13), when a man was given in the hospital the sacrament of the anoint-
ing of the sick, without his consent, as he was unconscious. After being
told about this fact, the man got a shock and claimed compensation, as he
was an atheist. Two instances judged that his rights were not violated, that
there was no issue of physical integrity (as the physical contact during the
sacrament is minimal) and that the applicant could not demonstrate any
negative consequence linked to this sacrament, and for him, as for an athe-
ist, the sacrament did not have any meaning or importance. The Supreme
Court pointed lack of the consistency among the lower courts: on the one
hand hospitals are not allowed to gather information about the religion of
the patients, on the other hand they gather information about sacraments
he/she received. The Supreme Court quashed the judgment of the Appeal
Court and asked it to review the case once again.

XII. Matrimonial and Family Law

"From the time on when a canonical marriage is concluded it has the same
effect as has a marriage concluded according to the Polish law" reads Arti-
cle 10 of the Concordat. This provision was one of the reasons for the long
delay in the ratification of the Concordat by Parliament (1993-1998): repre-
sentatives of the left wing SLD-Party feared that the clergy would not fulfil
their duty to notify the registrar's office in time or in the correct manner,
which would lead to a serious legal chaos. The so-called "concordat mar-
riages" have been possible since November 1998, that is since the ratifica-
tion and coming into force of the Concordat and after the amendment of
the Family Code by the Law of 24 July 1998. Marriages that have been
solemnised according to the confessional provisions of the following
churches and religious communities have effect in civil law: the Catholic
Church, Orthodox Church, Lutheran Church, Reformed Church,
Methodist Church, the Baptist Christians, Seventh Day Adventists, the Pol-
ish Catholic Church, the Union of the Jewish Confessional Communities,
the Old Catholic Mariavites and the Pentecostal Church. Marriages con-
ducted by the following religious communities whose relations with the
State are governed by a special law are not recognised: the Catholic
Church of the Mariavites, the Eastern Old Rites Church, the Islamic Reli-
gious Union and the Karaim Religious Union. According to commentators, the latter churches and religious communities declared no interest in the so-called concordat marriage.

The provisions in the field of marriage law were the basis for a statement by the Catholic Church that the Concordat also privileged other churches and religious communities because, following the Concordat, provisions were adopted which gave equal status to these bodies (or rather, to their members).

A confessional marriage may be concluded only after confirmation from the registrar’s office that a marriage between the parties is legally possible (to avoid bigamy). According to Article 18 of the Polish Constitution a marriage "as a union of a man and a woman…shall be placed under the protection and care of the Republic of Poland".

An amendment to the Constitution would be necessary to introduce same-sex marriage, but it does not seem to be a priority, despite some voices being raised in political debate. Article 18 is part of Chapter I; this is relevant insofar as chapter XII of the Constitution provides for a more difficult amendment procedure for chapters I, II (Fundamental Rights), and XII. An important condition for a confessional marriage to have civil effect is that the minister has to notify the local registrar’s office of the marriage within five days. In addition to that, a new legal option was introduced in 1999: for Separation, which in principle is equal to divorce; however, after separation, a subsequent marriage is not possible.

Divorce with civil effects (including a possibility of re-marriage) is possible by way of a court procedure before a State court. In order to protect the family, only the circuit court (sąd okręgowy, which is usually acting as 2nd instance) is competent in marriage cases, not the more local municipal court (sąd rejonowy). The judgments of the ecclesiastical courts in respect of marriage (or rather, its annulment), have no legal importance for the proceedings before the state court and cannot be taken into account as a sort of a preliminary ruling (V CKN, 1364/00, judgment of the Supreme Court of 17.11.2000).

The question of in vitro fertilisation remains unregulated. As the result of the very liberal positions of some parties and ultra-conservative positions of the other (including petitions to penalise persons participating in such programmes), no consensus could be reached.
XIII. Criminal Law and Religious Communities

A general prohibition on discrimination has been incorporated in Article 32 of the Constitution of the Republic. Further provisions can be found in the Criminal Code of 1997, Chapter XXIV, Articles 194-196. The Criminal Code provides in each case for three different kinds of possible sanctions: a fine, the restriction of liberty, and imprisonment for up to two years. LIABLE TO PUNISHMENT are all actions by which a person is restricted or impaired in his or her rights because of adherence or non-adherence to a belief; it is also an offence to disturb the public worship of a church or religious community that enjoys legally recognised status. It is to be noted that the term "public worship" can be interpreted extensively, and it is certainly not limited to Catholic Mass or other Christian services. The same punishment applies to a person who disturbs the ceremony of burial or marriage. A person also commits an offence by injuring the religious feelings of another person or who publicly shows disrespect for an object of religious cult or a place destined for the public exercise of religious rites.

One of the important cases, against a famous star of a Polish black/death metal band, clarified, that the offence may be committed not only on purpose, but also when the person in question was agreeing that he/she may commit such an offence (I KZP 12/12).

The Code on the execution of punishments provides in its Article 107 that a person who has committed a crime for political or religious reasons must not be imprisoned together with a 'regular' criminal; he or she has the right to own clothing and shoes, and is not obliged to work. These privileges do not apply when the crime has been committed by force.

XIV. Major Developments and Trends

Though the number those attending Mass (dominicantes) is not as high as the number of its baptised members (around 40% attend services), the Catholic Church with twoa cardinals (Archbishops of Warsaw and Cracow), over 100 bishops, and over 30,000 priests is without any doubt the most important and most influential religious community in Poland. Seven other big churches (Lutherans, Methodists, Baptists, Mariavites, Orthodox, Reformed and Polish Catholic) founded the Polish Ecumenical Council (Polska Rada Ekumeniczna) in 1989; although the Catholic Church is not a member, it works together with the PRE. A certain new spirit may be seen in the establishment of church buildings that are used by two denominations or that have even been consecrated by bishops of two differ-
ent denominations, as happened in Wroclaw in 2000. Caritas, Diaconic Work and the Orthodox Eleos sell candles together before Christmas; the proceeds are used for the support of children in need. The churches and religious communities make common statements in relation to draft laws and draft ordinances that relate to their social and charitable activities, and they organise joint conferences to discuss such questions.

The most important sign of ecumenical co-operation was the Common Declaration of seven churches (Catholic, Lutheran, Orthodox, Methodist, Polish Catholic and Old Catholic Church of the Mariavites) of 23 January 2000, in which they mutually recognised each others' baptisms. A special example can be found in Wroclaw, where bishops of five denominations have their seat: Roman Catholic, Greek Catholic, Polish Catholic, Lutheran, and Orthodox. Also in Wroclaw, there is a "quarter of mutual respect", in which within a range of about 1,000 metres there are Roman Catholic, Lutheran, and Orthodox churches, and a Jewish synagogue.

The financial issues still remain to be clarified: while a significant amount of church properties and real estates was returned to churches by the special (asset) regulation commissions (see point VIII), the Church Fund, which was created in 1950 in compensation for the confiscations, should have been abolished. Instead, the budget of the Church Fund has been doubled since 2011, while no inflation/devaluation could justify such a development.

XV. Literature

Basic reference books in the Polish language:


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A. Mezglewski (ed.), Leksykon prawa wyznaniowego, 100 podstawowych pojęć, Warszawa 2014 [Dictionary of the ecclesiastical law. 100 most important notions].

M. Pietrzak, Prawo wyznaniowe [Confessional Law], Warszawa 2013.


D. Walencik, Rewindykacja nieruchomości Kościoła katolickiego w postępowaniu przed Komisją Majątkową, Lublin 2008 [return of the real estates of the Catholic Church in the processes of the Asset Commission].
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A. Czohara, T.J. Zieliński, Ustawa o stosunku Państwa do gmin wyznaniowych żydowskich w Polsce, [The Law on relations between the State and the Jewish religious communities in Poland], Warszawa 2012.


1050 lat chrześcijaństwa w Polsce [1050 years of Christianity in Poland]: by Main Statistical Office and the Institute of the Statistics of the Catholic Church Warsaw 2016.

Contributions and articles in foreign languages:


State and Church in Portugal

Vitalino Canas

I. Social Facts

According to official figures (the 2011 Census), 81% of Portuguese citizens aged over 15 years still reckon themselves to be Roman Catholics,\(^1\) despite an decrease in actual attendance at and participation in religious ceremonies and events. There are a few other religious groups with some social importance and organisation, especially in urban centres (Lisbon, Oporto, Setúbal, Braga): Orthodox, numerous Protestant churches, Muslims (mainly Shia Ismailis and Sunnis), Jews, Hindus and a number of more recent denominations such as the Maná Church and the Universal Church of God’s Kingdom.\(^2\) However, some of them, particularly the less traditional, are often seen as sects rather than alternatives challenging the majority religious groups. This situation derives from the historical background of religion in Portugal.

II. Historical Background

Portuguese independence from its Iberian neighbours in the twelfth century (1143) was of course decisive in the creation of a new political body. But without recognition by the Pope in Rome, Portugal could not be considered to have a real independent existence. Over approximately the first two centuries of its existence as a new independent entity, Portuguese sovereigns were vassals of the Catholic Popes. And the latter used their prerogatives more than once, even to excommunicate and replace kings. How-

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1 The percentage of Catholics is decreasing; it was 85% in 2001. The highest concentration of Catholics is in the Azores and Madeira accounting for around 91% of the population.
2 Some figures from the 2011 Census: Orthodox: 56,550; Protestants: 75,571; Muslims (Shia and Sunni) 20,640; Jews: 3,061; Maná and Universal Church of God’s Kingdom probably account for most of the 163338 members of other Christian denominations. When compared with the 2001 census these figures show an overall increase of non catholic believers.
ever, throughout the following centuries the relative positions changed (into the so-called jurisdicionalismo, or control of local Church institutions by the King). By the end of the Middle Ages we still find the State and the Catholic Church intertwined. However, these two powers tried to balance the mutual benefits they could achieve. The State would use religion as legitimation and a social control device; the Church would use State power as a secular arm for the propagation of the Faith and for facilitating its mission.

The Reformation and the conflicts between Catholics and Protestants hardly reached Portugal. The ideas of Luther, Calvin, and others were not popular either at the Court or among the general population.

Hence, when we arrive at the first liberal revolution (1820) and to the enactment of a Constitution based on liberal ideals we cannot be surprised at the statement in Article 25 of the first Portuguese Constitution (1822): "the religion of the Portuguese nation is the Roman Catholic". Other religions were allowed only to foreigners. Furthermore, their cult could not be exercised in public places or in public temples.

During the last eightyfour years of the Monarchy, two further Constitutions were enacted: one in 1826 which was to remain in force, with some interruptions, for most of the time until the Republican revolution (October, 1910); the other in 1838 which was in force for a mere couple of years. They were both emphatic: the Catholic religion was the official religion of the State. However the author of the Constitution of 1826 (King Pedro IV

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himself) granted to all, for the first time in Portugal, the right of not "being persecuted for religious motives provided the State religion is respected and morality is not offended" (Art. 145(4)).

During the final decades of the nineteenth century, legal concessions to the freedom of religion and conscience were few despite the de facto political liberalisation.

The Republican revolution (1910) was also a religious revolution. One of the most significant decisions of the new republican authorities was the proclamation of the principle of separation of Church and State (Decree of 20 April 1911, "Law of Separation"), obviously inspired by the homologous French Law of 1905. The Constitution of 1911 confirmed this principle.

Due to some radical Jacobin pressures and probably also to the conservatism of the Catholic Church, the principle of separation was not interpreted as prescribing the neutrality of State institutions towards the Church. Separation in many instances simply meant opposition. Instead of being neutral, the State often adopted a negative position on religion and on the existence of God, and became involved in a permanent feud with the Catholic Church. But despite some lack of moderation, this was the beginning of a long process leading to a civil rights approach. Freedom of religion and conscience began to be recognised as a fundamental aspect of human dignity.

On 28 May 1926 an authoritarian uprising put an end to the liberal-republican regime. The Constitution of 1933 was a creation of Salazar. His connections with the Church hierarchy and the Catholic movement were obvious. However his Constitution was cautious in religious matters and the previous liberal-republican achievements were not completely erased. Article 46 of the Constitution stated that the State remained separate from the Catholic Church and any other religion. And Article 45 stressed the principle of equal treatment of the different denominations, freedom of organisation and worship, and the neutrality of teaching in State schools.

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5 See however a moderate interpretation in João T. Magalhães Collaço, "O regi-
men...", p. 654.
6 This feud was attenuated after 1918: legislation such as Decree 3856, of 22 Febru-
ary 1918, encouraged the détente. The debate on the "Law of Separation" (Decree
of 20 April 1911) remains emotional. See the position of the Catholic Church de-
scribed in Mário Bigotte Chorão, "Formação eclesiástica e educação católica", in
7 Disagreeing, Paulo Adragão, A liberdade..., p. 322.
This constitutional balance was soon disrupted. Through consecutive constitutional amendments, from 1935 (Law 1910) to 1971, the Roman Catholic religion recovered its position as "the religion of the Portuguese nation" (amendment of 1951, Law 2048) or "as the traditional religion of the Portuguese nation" (amendment of 1971, Law 3/71).\(^8\)

But the wording changes in the Constitution were strictly semantic as they were not really important. This is because the relations between State and Catholic Church were set out in the Concordat agreed between Portugal and the Holy See (as two subjects of public international law) in 1940.\(^9\)

This Concordat was partially in force until December 2004.

The Concordat system was unquestionably a system of inequality. In 1971, during the "liberal phase" of the authoritarian regime, Law 4/71 tried to mitigate these inequalities by acknowledging in general terms some institutional rights to be enjoyed by other denominations and some civil rights by their believers, though not equal rights compared with those enjoyed by the Catholic believers.

Nearly equal treatment was only achieved through the Constitution of 1976, further especially by Law 16/2001 of 22 June (Law of Religious Liberty). Another step towards this aim was taken with the new Concordat between the Portuguese State and the Holy See, which was signed on 18 March 2004.

### III. Legal Sources

For an overview of the status of the relations between State and Church in Portugal the most relevant legal sources are:

- The Constitution of the Portuguese Republic of 1976 (hereinafter CPR), Articles 13, 19(6), 35(3), 41, 43(2), 51(3), 55(4), 59(1), and 288(c);
- Law 16/2001 of 22 June, Law of Religious Liberty (cited hereinafter as LRL), complemented by: DecreeLaw 134/2003 of 28 June, on the registration of religious legal entities; DecreeLaw 194/2003 of 23 August, re-

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8 Disagreeing with Paulo Adragão, A Liberdade..., p. 357, arguing that "the constitutional revisions were never more than a mere description of the sociological facts".

9 This Concordat is just one of a long series of agreements between the Holy See and Portugal. For an account of those that are especially relevant, see António Leite, "Acordos entre a Santa Sé e Portugal anteriores à Concordata de 1940", in AAVV, A Concordata de 1940 PortugalSanta Sé, Lisboa, 1993, p. 493.
The normative pillars of the system are the Constitution of the Portuguese Republic (CPR) and the Law of Religious Liberty (LRL). The LRL may be supplemented by Concordats with the Roman Catholic Church and agree-

10 The Concordat of 7 May 1940, amended and confirmed by the Protocol of 15 February 1975 (Conc. 1940) was replaced by the Concordat of 2004 which was signed by the Portuguese prime minister and the permanent secretary of the Holy See on 18 May 2004 in the Vatican and ratified on 16 November 2004. The new Concordat has been in force since December 2004.
ments (both national and international) between the State and non-Catholic churches or religious communities.

The institutional pillar of the system is the Commission of Religious Liberty (hereinafter CRL).

2. Basic normative pillars of the system

2.1. The CPR approach is new in the historical context of Portuguese constitutionalism\(^1\); freedom of conscience and religion are inalienable rights of all citizens of all denominations; individuals with and without religious convictions should be treated equally\(^2\); state bodies must remain neutral on the question of God and his dignitaries on earth. The concept of "traditional religion of the nation" related to the Catholic religion which could be found in previous constitutions was abandoned by the CPR. The system established by the CPR is seemingly a system of equality and separation between the State and the denominations (Art. 41, especially para. 4).\(^3\)

2.2. Notwithstanding the above, the expression 'neither complete equality nor full separation' summarises better what prevails in practice. The LRL grants to all denominations a number of rights and privileges which were formerly given only to the Catholic Church (by the Concordat of 1940). In that way a reasonable level of equal treatment between the various denominations was achieved. But the combination of actual legal framework, sociological factors and history still give ground to two ideas: (a) the principle of equal treatment is not entirely observed and enforced; (b) the principle of separation is interpreted as 'co-operative separation' (Art. 5, LRL).

\(^1\) Jônatas Eduardo Mendes Machado, O regime concordatário..., n.3, above, p. 41, uses the apt expression "new paradigm of the Portuguese constitutionalism". See also Liberdade Religiosa..., 183 e segs.

\(^2\) There is the challenge of facilitating or extending some rights traditionally enjoyed specifically by the churches to those citizens who do not have religious convictions, or are agnostic about religion and God. For instance the right to maintain classes in State schools based on humanist views. See further argument in the dissenting opinions of judges Luis Nunes de Almeida, Armando Ribeiro Mendes and António Vitorino to sentence 174/93 of CC. Disagreeing Paulo P. Adragão, A Liberdade..., p. 427.

\(^3\) This principle is even a material limit to constitutional revision: Art. 288(c), CPR.
3. Basic institutional pillar of the system

The Commission of Religious Liberty is an independent body composed of five members chosen by the denominations (two of these are nominated by the Catholic Church) and five chosen by Government, who must be people of acknowledged scientific competence. The President is chosen and appointed by the Government. Under its remit the CRL has to: (i) control the application, development and revision of the LRL; (ii) give opinions on the legal status of denominations; (iii) promote the study and scientific research on churches, religious communities and movements in Portugal. This includes, for example, that the CRL gives its opinion on planned agreements between churches/religious communities and the Government, on the question of whether a church or religious community is settled in Portugal and about the registration of these churches/religious communities in the register for religious legal entities. Among other duties, the CRL is obliged to report to the appropriate authorities any possible violations of or attacks on religious liberty or religious discrimination (Art. 54 of LRL; Art. 2 of DecreeLaw no. 308/2003).

4. Basic categories of churches and religious communities

The law defines churches and religious communities as "organized social communities that promise a lasting existence in which the believers can pursue the religious aims which their religion dictates" (Art. 20 LRL).

Within the churches or religious communities the basic distinction is between (i) those which are not religious legal persons and (ii) those which are legal persons. Within the second group or category there are four different situations: (iia) churches and religious communities which are legal persons but are not one of the following cases; (iib) settled or rooted churches and religious communities; (iic) the Ismaili Imamat; (iid) the Catholic Church. The legal status of each will vary according to their group or situation.
V. Legal Status of Religious Bodies

1. General considerations

1.1. The churches and religious communities may choose not to be religious legal persons. They may be either de facto churches and religious communities without legal personality, or simply common civil legal persons with religious goals. For being considered as churches or religious communities it is not obligatory to acquire legal personality or to register as a religious legal person. Churches or religious communities which are not religious legal persons are not prevented from acting as religious entities. In such situations it might be that they cannot benefit from some of the general rights listed below. However the core rights should apply: for instance, the right to free organisation or the right to carry out acts of worship.

1.2. If they choose to seek legal status as religious legal persons, churches and religious communities may have their legal personality recognised through one of two ways: (i) registration or (ii) international agreement.

1.3. According to Art. 33 of the LRL, churches and religious communities as a general rule acquire legal personality as collective religious persons through registration (not acknowledgement or acceptance by the State authorities). International, national or regional and local churches and religious communities may register. International churches and religious communities may choose whether to register a separate organisation which represents their believers in Portugal or to register simply that part of their church (or religious community) which exists in Portugal.

Registration is performed at the Registry of Collective Religious Persons, a special registry created by DecreeLaw 134/2003 of 28 June, in the Minister of Justice. The Registry may ask a legal opinion of CRL (see above and Art. 54 LRL).

After registration the church or religious community become a religious collective person.

The grounds for dissolution of religious collective persons are set in Art. 42 of the LRL: deliberation of their representative organs; elapse of time limit, if they have been set up temporarily; verification of other causes laid down in the deed of constitution or in their internal regulations; or court decision.
1.4. The Constitution and the LRL do not prevent the celebration of concordats with the Catholic Church or other international agreements between the State and non-Catholic churches or religious communities with a global structure. This was the legal basis for the celebration of a Concordat which recognised the Catholic Church as a legal entity (Art. 1 of the Concordat of 1940 and the new Concordat of 2004). This was also the basis for the international agreement – a concordat-like agreement – celebrated by the Portuguese Republic and the Ismaili Imamat in 2009, through which the legal personality of the latter was recognised.

2. Differentiation of Legal Status

2.1. Although churches or religious communities which are not religious legal persons are in principle on a level with churches and religious communities which are legal persons as far as rights, freedoms, liberties and duties are concerned, it is not easy task to define the borderline. Hence we will focus on the second category, as it is by far the most relevant. Four different regimes of rights, freedoms, liberties and duties should be distinguished: (i) one applicable to all churches and religious communities which are legal persons, regardless of their specific legal status; (ii) one specifically applicable to settled or rooted churches and religious communities; (iii) the Ismaili Imamat’s international agreement regime; (iv) the Catholic Church’s concordat regime.

2.2. The LRL of 2001 was a milestone on the path to equal treatment: it grants to all collective religious bodies a number of rights and privileges which were formerly given only to the Catholic Church by the Concordat of 1940. They include (Articles 2, 4, 5, 22, 23, 24, 25, 26, 27, 28, 30, 31, 32 LRL):

The right to equal treatment and to treatment as equals;
The right to non-interference by the State in the religious field, and the right to the neutrality of State institutions;
The prohibition on the State performing any religious act, function, or ceremony or governmental act that follows religious rules or principles;
The right to co-operation by the State, according to their respective representativeness;
The right to non-denominational teaching in State schools;
The right to acquire the status of a legal person through a special registration;
The right to free organisation, including the right to define autonomously:
• The formation, composition, competence and functioning of their organs;
• The selection, duties and powers of their representatives, ministers, missionaries and religious auxiliaries;
• The religious rights and duties of believers, without prejudice to their religious freedom;
• The participation in the establishment of federations or interdenominational associations, holding their head offices in the Country or abroad;
The right to establish or recognise either churches or religious communities of local or regional scope, consecrated life institutes and other institutes with the character of associations or foundations, for the exercise or maintenance of their religious duties;
The right to carry out freely their religious activities and worship, without the interference of the State or third parties, namely the right to:
• Carry out acts of worship, in private or public, without prejudice to the police and traffic requirements;
• Establish places of worship or meetings for religious purposes;
• Teach according to the format and through the persons authorised by the doctrine of the professed denomination;
• Disseminate the professed denomination and seek for new believers;
• Religiously assist its own members;
• Communicate and publish documents on religious matters and on worship;
• Connect and communicate with organisations belonging to the same denomination or to others in national territories or abroad;
• Appoint and train their ministers;
• Establish seminaries or any other training or religious education establishment, without supervision or control by the state;
The right to ask the Minister of Education to be allowed to minister religious education in primary and secondary public schools;

The right to broadcasting time in television and radio public services according to the social importance of the denomination concerned;

The right to religious slaughtering of animals under some conditions;

The right to carry out some non-religious activities, including:

• To create special schools and co-operatives, under the supervision of the State; the right to teach religion in those schools;
• To do charitable work for believers, or any other persons;
• To promote their own cultural expressions or education and culture in general;
• To use the appropriate means of social communication in the pursuit of their activities;

The right to be heard regarding town planning;

The right to ownership of real estate and of being consulted when the State plans to demolish or to give another use to a building hitherto reserved for public worship;

The right to freely, and without being subject to any tax:

• Receive contributions from believers for the exercise of worship and rites, as well as donations for the fulfilment of their religious purposes, with a regular or casual nature;
• Make public collections, specifically within or at the door of the places of worship, as well as in the buildings or places that belong to them;
• Distribute free of charge publications with declarations, notices or instructions on religious matters and display them in places of worship;

The right to tax benefits.

In order to keep the independence and the freedom of the churches and religious communities some of their officials have specific guarantees (Art. 16, 17, 18 LRL). For instance, the ministers of churches and religious communities may not be cross-examined on facts known through confession and are exempt from jury service.

Churches and religious communities are submitted to general constraints also. For instance they cannot interfere in the organisation or government of the State. This explains why ministers and priests are ineligible for political appointments (see Law 14/79 of 16 May, Art. 6(1); DecreeLaw 701B/76, 20 September).
2.3. Over the past few years all major churches and religious communities have obtained the status of settled or rooted church or religious community. A church or religious community obtains the settled (or rooted) status if it has been present in Portugal in an organised form for at least 30 years and is expected to be permanent, taking into account the number of believers and its history in Portugal. The requirement of 30 years of existence in Portugal may be omitted if the church or religious community can demonstrate that it was founded abroad more than 60 years ago. The status of settled church is awarded by the Government, after obtaining an opinion from the Commission of Religious Liberty.

Settled or rooted churches and religious communities benefit from some additional rights, namely: (i) the power to perform marriage ceremonies with direct civil law effects according to the rules of the respective religion; (ii) the right to participate in the Commission of Religious Liberty and in the Commission for Broadcasting Time for Religious Communities; (iii) the right of receiving 0.5 % of income tax from their believers; (iv) the right to be repaid the VAT in certain circumstances; (v) the power to conclude agreements with the Government regarding questions of common interest.

These later rights are not international law agreements. They have an atypical structure and format (see Art. 45 to 51 LRL). Only settled churches and religious communities may take the initiative for starting negotiations for such agreements. The Government itself may not open such negotiations. Once negotiations have been opened by a proposal of the church or religious community and once the Government has agreed to negotiate (it may refuse only for certain reasons), the negotiations are led by a "Negotiation Commission" appointed by the Minister of Justice. After the negotiations come to an end the agreement is approved by the Council of Ministers and signed by the Prime Minister and other Ministers. Next it is presented to Parliament, together with a proposal for a ratification law. The Parliament may neither alter the agreement unilaterally nor negotiate modifications to it. Nevertheless, the agreement may be changed before ratification if both parties concur. Therefore, Parliament may ask the Government to renegotiate the agreement if it wants changes to be made. The agreement comes into force only after its ratification by Parliament.

These agreements are a dramatic innovation from the point of view of Constitutional Law theory. For the first time it has been admitted that a law can be the direct outcome of a formal negotiation between the Parliament, the Government and a private person, the settled collective religious body.
By means of the "settled" criterion the law prevents new religious groups whose aims and intentions are perhaps doubtful having access to various privileges and rights. On the other hand, this system leaves the decision as to whether a church or religious community is registered as settled or only as nonsettled to the older and established churches and religious communities, since registration as settled depends on the opinion of the Commission of Religious Liberty which, as mentioned above, is composed of representatives of the government, the Catholic Church and settled churches and religious communities (Art. 54 LRL). This avoids the possibility of embarrassment for the Government because its duty of absolute neutrality basically prevents it from defining what "religion" means.

2.4. The rights of the Ismaili Imamat are set in the Agreement between the Portuguese Republic and the Ismaili Imamat signed on 8th May 2009. This was probably the first religious agreement signed ever by a Muslim denomination with a non majority Muslim State. Through this international treaty the Portuguese Republic acknowledges the legal personality of the Ismaili Imamat as the utmost manifestation of the Community of Shia Imami Ismaili Muslims. The Ismaili Imamat is understood to mean the institution (or office) of the Imam of the Shia Imami Ismaili Muslims, chosen by successional designation in the terms of the applicable customary law. The treaty includes provisions on co-operation (Art. 2), protection of religious identity (Art. 3), organisation (Art. 4), religious schools and ecclesiastical culture (Art. 5), non-religious schools (Art. 6), designation of representatives for various organs (Art. 7). LRL is applicable as subsidiary law to all matters which are not covered by the agreement.

On 3 June 2015 an Agreement between the Portuguese Republic and the Ismaili Imamat for the Establishment of the Seat of the Ismaili Imamat in Portugal was celebrated.

2.5. Although the Constitution does not mention any specific religion, contrary to other constitutions in Europe, Art. 58 of LRL states that its provisions concerning churches or religious communities are not applicable to the Roman Catholic Church. Art. 58 reflects the general option of the Portuguese State and the Catholic Church: the relations between them are framed by the Concordat14. Therefore the status of the

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14 The Concordat is almost unanimously taken as a treaty under international law. Cf. the examination of some difficulties in this assumption in Jónatas Eduardo Mendes Machado, O regime concordatário..., p. 87.
Catholic Church need not be identical to the status of other denominations. This status has been most recently reaffirmed in the Concordat of 2004. Notwithstanding, the differences arising from the special status (controversial for some authors\(^{15}\)) may not exceed what is justified by the traditional position and importance of the Catholic Church in Portugal. Accordingly, although the Catholic Church still enjoys a privileged position in some realms (see for instance Art. 22 and 23 of the Concordat on religious property and the composition of the Commission of Religious Liberty), the Concordat of 2004 was an important step in the direction of equal treatment: many provisions are indeed quite similar to those included in the LRL\(^{16}\).

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15 In the dissenting opinions of judges Luis Nunes de Almeida, Armando Ribeiro Mendes and António Vitorino to judgment 174/93 of the Constitutional Court, there is a vehement attack on the assumption (apparently adopted in the judgment) that the major denomination in Portugal, simply on the ground of its being the most popular, has a right to special consideration. They stress that the equal treatment principle should be used to protect minorities against the majority rather than the other way round; cf. Jónatas E. M. Machado, O regime concordatário..., p. 45.

16 The first equalising step was performed by the Law of Religious Liberty of 2001 which approximated the status of the other denominations to that of the Catholic Church. Therefore some of the provisions of the Concordat of 1940 which formerly had been unconstitutional ceased to be so, thus the principle of equal treatment was no longer violated. But there were other provisions of the Concordat of 1940, confirmed or amended in 1975, which were not extended to the other denominations by the LRL. These provisions were null and void due to their violation of constitutional rules and principles. This applies to the following provisions: (i) Article IX (obligation for most of the dignitaries of the Church in Portugal to have Portuguese nationality); (ii) Article X (power of the Portuguese Government to object to the appointment of archbishops and bishops); (iii) Articles XI and XV (protection by the State of the clergy as if they were public officials); (iv) Article XXI (teaching in State schools must be guided by Catholic principles and all pupils whose parents do not ask for exemption must attend regular classes in religion in those schools; the State is bound to teach religion in some institutions). The exemption for priests from paying income tax (Art. VIII), was also unconstitutional: it violated the principle of equal treatment as other denominations had not been granted comparable advantages. All these provisions were declared null and void, and were revoked by the Concordat of 2004.

Some other provisions of the Concordat of 1940 were only partially unconstitutional, such as Article XVIII (duty of the Portuguese Republic to provide Catholic chaplaincy to the members of the Army). This duty of the Portuguese Republic was also abolished by the Concordat of 2004.
As mentioned previously, Art. 58 of LRL states that its provisions concerning churches or religious communities are not applicable to the Catholic Church. This provision says more than it should (or wanted to) say. The regulations regarding the principles (Chapter I/LRL) and the rights of the individual concerning religious liberty (Chap. II/LRL) may be applied to the practice of the Catholic faith. Therefore it may be argued that the provisions of the LRL are not directly applicable except when there are no specific provisions on the issue at the Concordat.

VI. Religious Communities within the Political System

Summing up the relevant provisions of the Portuguese Constitution of 1976 we conclude that the involvement of the State in the area of religion is limited. Principles of (i) separation between State and denominations, (ii) neutrality, and (iii) equal treatment (or treatment as equals) are duly defined and adopted. Unlike the Constitution of 1911, the Constitution of 1976 avoids radicalism and hostility to religion and religious institutions. And unlike the Constitutions of 1822, 1826, 1838 and 1933, it avoids any reference to specific religions, churches and confessions. Hence, constitutional sympathy towards religion as a socially beneficial phenomenon is coupled with complete neutrality towards the churches as such.

However, the social-factual and political weight of Roman Catholic religion has been enough to warrant the Catholic Church enjoying a special status based on instruments and provisions on a level different from that of the Constitution. The combined effect of these instruments and provisions has led to a situation of de facto inequality in a number of respects, and to a somewhat inconsistent interpretation of the principle of separation. This situation of de facto inequality – which some consider to be, after all, the very expression of the principle of equality because it corresponds to the social and political importance of the Catholic Church in Portugal – was significantly mitigated by the Law of Religious Liberty of 2001 and by the new Concordat of 18 May 2004.

As a general conclusion, it seems appropriate to describe the current system of relations between State and Church in Portugal as a mitigated separation system.
1.1. For centuries the Roman Catholic Church has been one of the most important centres of education – and until the last century probably the major centre – in Portugal. Today, besides the confessional schools of theology, which face serious problems due to a lack of people with the necessary vocation, the Catholic Church is the owner of a prestigious university (Universidade Católica) with branches in different cities. It also runs many colleges and private schools. In State schools, including universities, there is a good number of teachers coming from the Catholic Church.

1.2. The Constitution expressly guarantees the right to religious education to every denomination (Art. 41(5)). This includes the foundation of seminaries or other establishments for education, training or religious culture (Art. 23(i) of the LRL; Art. 19(1) of the Conc. 2004). Although this right does not derive from the Constitution, the Catholic Church (Art. 21 of the Conc. 2004) as well as other churches or religious communities (Art. 27(a)) of the LRL) may further found private or cooperative schools which children may attend as an alternative to public schools.

1.3. Religious education in public schools has been the subject of controversy. Over more than forty years in Portugal the touchstone of the relationship between the State and the churches (especially the Catholic Church) has been mainly the question of teaching religion in State schools.

Until 1976 the State had the obligation of teaching Catholic morals and religion at some levels in school. After 1976 (CPR) a consensus was reached: the principle of separation precludes such an obligation. This is virtually unanimously agreed.

But the debate was not over. Another topic was raised: could the State allow the Catholic Church to teach its religion and morals in State schools? The legislator stated that it could, and the Constitutional Court was asked to decide the constitutionality of the legislator’s decision. A judgment of 1987 (acórdão 423/87) declared the authorisation of religious

17 On the legal status of this University, see Decree-Law 307/71 of 15 July amended by Decree-Law 128/90 of 17 April. This regulation has not been changed by the Concordat of 2004 (Art. 21(3)).
classes at these schools not to be against the constitutional principles of separation (Art. 41(4), CPR) and nonconfessional nature of teaching in State schools (Art. 43(3), CPR).

For the Court such authorisation is not only allowed but also mandatory since the Constitution deals with the freedom of religion as something demanding the creation by the State of real conditions for the exercise of religion by all. Consequently the State must give the opportunity to the Catholic Church as the major Church in Portugal to teach morals and religion in State schools.

Respect for the principles of separation and nonconfessionality would require only that religious classes were the sole responsibility of the Catholic Church, and also that they were given only to the students whose parents formally requested attendance at those classes.

Furthermore the principle of equal treatment was not damaged by the fact that these facilities were given *in casu* uniquely to the Catholic Church. The principle is damaged only by the fact that the legislator omitted to grant the same facilities to the other denominations.

This judgment of the Constitutional Court did not settle the matter. Of the ten voting members of the Court no fewer than nine indicated partially dissenting opinions. Actually the judgment tried to strike a balance between a radical and a soft approach to the principles of separation, nonconfessionality and equal treatment. At the end of the day neither of these two tendencies was satisfied with the legal reasoning adopted by the Court.

Subsequently a further opportunity for discussion was provided by a new case. But on this occasion the soft approach prevailed. Using some arguments (and forgetting others) already developed in judgment 423/87, the judgment 174/93 of the Constitutional Court rested upon a (maybe unconvincing) new interpretation of the principles of separation, nonconfessionality and equal treatment, and came to the conclusion that from the constitutional point of view there is nothing wrong with provisions which, taken together, would allow: (i) the teaching of Catholic morals and religion; (ii) as a regular curricular subject; (iii) by civil servants (the regular teachers) or others; (iv) properly trained, funded, and appointed by the State (on the nomination of the Church); (v) in State schools; (vi) during

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18 Cf. the dissenting opinions of judges Luis Nunes de Almeida, Armando Ribeiro Mendes and António Vitorino to judgment 174/93 of the Constitutional Court quoted above.

the regular school day; (vii) and using teaching materials and textbooks prepared by the Church but adopted by the State. For the Constitutional Court this is teaching of religion in school and not by the school (or by the State). For the Court, teaching of religion in State schools would be tolerable; teaching of religion by State schools is not.

The Constitutional Court stated clearly that attendance of pupils at Religious or Moral Education depends on a positive declaration of each pupil or his or her legal guardian. Therefore only those who have expressly chosen to do so may attend the lessons.

Since then, Catholic Religious and Moral Education has not been subject to relevant juridical controversy and the legislation has built on and developed the judgment of the Constitutional Court. The new Concordat of 2004 also tried to adapt to this jurisprudence. (Art. 19(2)).

Immediately after the verdict of the Constitutional Court in 1987, laws were enacted in order to realise the principle that only those pupils who have expressly agreed may attend the lessons. More recently this principle was confirmed by Decree-Law 70/2013 of 23 May.

1.4. While it was not considered a violation of the Constitution to teach Catholic Religion in public schools, the Constitutional Court judged that nonCatholic denominations have a right to equivalent educational possibilities. This principle has been put into effect gradually. There has unquestionably been an approximation which ended the violation of the principle of equal treatment (see Decree-Law 329/98 of 2 November).

The LRL (Art. 24) has consolidated this development: (i) nonCatholic denominations may demand permission to teach religious education in public primary and secondary schools; (ii) classes in moral and religious education are optional; (iii) the running of classes depends on whether there is a minimum number of pupils (ten, according to the relevant statutory rules); (iv) the pupils or their legal guardians must state expressly their wish to participate in the classes; (v) teachers of religious education may not teach other subjects to those pupils who participate in religious education – except in special circumstances; (vi) teachers are nominated and engaged by the State in agreement with the church or religious community – teachers who are not considered suitable by them may not be engaged;
(vii) the churches and religious communities train the teachers, develop the curriculum, and must approve the teaching materials.\textsuperscript{20}

2. Culture

The cultural influence of the Catholic Church is still huge. One of vehicles of that influence is the national radiobroadcasting channel Rádio Renascença. In the past the Catholic Church owned a private television channel (channel 4),\textsuperscript{21} which has been sold mainly because of its high running costs.

The influence of other denominations is minor, despite their militancy.

A critical point concerns the ownership of historic buildings. In many aspects the history of Portugal and the history of the Catholic Church are inextricably connected. Hence many historically significant buildings initially owned by the Church are constantly in danger of being declared national monuments or national buildings and consequently appropriated by the State. This is a delicate matter. Many of the conflicts in the aftermath of the liberal (1820) and the republican (1910) revolutions were induced by the expropriation of Catholic Church property. This experience prompts the need for a careful balance between public interests and Church interests through a system of fair "separation of rights and duties".

In general, the Church keeps the right to permanent use of the buildings even when they are classified as "national monuments" or "of national interest". The State is the owner and is in charge of all works of conservation and repair (Art. 22(1) of the new Concordat).\textsuperscript{22} This \textit{modus vivendi} was laid down in Law no. 107/2001 of 8 September (basics of the politics and...
provisions concerning protection and preservation of Portuguese cultural possessions), which further strengthens the principle of contract with regard to the protection of cultural possessions owned by the Catholic Church and other denominations (Art. 4 of the aforementioned Law).

VIII. Labour Law within the Religious Communities

From the CPR derives a duty of the employer to reconcile the religious liberty of the employee with his or her own rights as an employer, by means of the principle of practical concordance. Labour Law (Law 7/2009 of 12 February, Código do Trabalho [Code of Labour Law]) contains some provisions concerning the consequences of the practice of religious liberty or functions. The Code protects the freedom of workers to choose their religion (Art. 16 (2)), prohibits privilege or discrimination on religious grounds (Art. 24 and 25) and forbids dismissal on religious grounds (Art. 381(a) and 392(2)).

Unsurprisingly, the weekly restday coincides with that determined by tradition and Catholic culture. Some of the more important days with religious significance for the Catholic Church are also official holidays (Art. 234 of the Code of Labour Law). Notwithstanding, the LRL introduced some significant innovations for members of other denominations. Article 14 grants to civil servants and representatives of the State or other public legal entities, and to contracted workers, the right to claim exemption from work on the weekly restday, holidays, and special hours prescribed by their religion.

These rights, however, depend on given conditions. The employee must: (i) have flexible working time; (ii) be a member of a registered church or religious community which has submitted to the Government a list of their days and hours of religious importance; (iii) make up in full the time during which he or she has not worked.

IX. Legal Status of Clergy and Members of Religious Orders

The LRL prescribes that all ministers of all denominations have the right to: (i) refuse to give evidence to judges or other authorities about facts they have come to know solely in the exercise of their office (Art. 16(2)); (ii) social security payments and coverage (Art. 16(4)); (iii) substitution of mili-
military service by chaplaincy work in the army (Art. 17(1)); (iv) exemption from jury service (Art. 18).

The status of Catholic clergy is set in the Concordat of 2004 which preserved some of the provisions of the Concordat of 1940: (i) the right to maintain the seal of the confessional before judges or other public entities about facts which came to be known through their office (Conc. 2004, Art. 5); (ii) exemption from jury service and other comparable duties (Conc. 2004, Art. 6); (iii) substitution of military service by chaplaincy work in the army (Conc. 2004, Art. 17(4), being allowed only for conscientious reasons). Through the changes introduced by the Concordat of 2004, the position of Catholic clergy became quite similar to the position of the clergy of other denominations, as prescribed by the LRL.

These provisions are supplemented by others laid down in the social security statutes as, for example, those granting to all clergy a specific regime of social security (see Law 110/2009 of 28 December, Art. 122/128).

X. Finances of Religious Communities

Portugal has no system of public financing of the churches. However, there are some indirect funding mechanisms, by means of a generous exemption from major taxes. And occasionally the State agrees to endorse and fund some specific initiatives with a social impact, mainly those of the Catholic Church, such as providing funds for the construction of important church buildings.

The Concordat of 2004 left the tax provisions for the Catholic Church as defined in the Concordat of 1940 practically unchanged (Art. 26). This means a general exemption from taxes, both local and national, including the taxes on income and consumption, on real estate, stamp duty and so on. Due to European Union rules the most delicate aspect of these provisions concerns VAT. After Portugal introduced this tax, in order to avoid a substantial change in the tax benefits of the Catholic Church, a special mechanism was created to repay the amount of VAT which is raised at the time of the acquisition and import of goods by the Catholic Church and its related institutions (DecreeLaw no. 20/90 of 13 January, with many amendments since that date).

23 However, as mentioned above, clergy are now taxed according to general provisions.
In 2001 the LRL extended these tax provisions to the other churches and religious communities, though it reserved some of the tax exemptions for registered and settled churches and religious communities.

Thus, churches and religious communities, whatever their status, are exempted from taxes on services provided to or donations from their believers for the pursuit of their religious aims or if they make collections (Art. 31(1)). The law, however, contains an exception: tax is levied on services with a business-like character such as formation, therapy, or spiritual advice (Art. 31(2)).

Article 32(1) of the LRL further exempts registered collective religious bodies from taxes regarding locations and buildings which are mainly or partially used for ritual acts or religious aims (e.g. exemption from municipal tax). Moreover Article 32(2) of the LRL exempts them from taxes concerning transaction of property both in life and due to death.

Furthermore, settled churches and religious communities are refunded VAT payments (a privilege that was granted, as previously mentioned, to the Catholic Church since 1990) in some cases (Art. 65(1) of the LRL). Alternatively these settled churches and religious communities may use another innovative tax privilege provided for in Article 32(4) of the LRL: annually they may receive a share of 0.5% of the income tax of natural persons (fiscal remittance). This privilege of settled churches depends upon various conditions: (i) the church or religious community must have applied for this tax benefit, forfeiting the aforementioned repayment of VAT; (ii) the taxpayers must declare expressly that this part of their tax will be used for religious aims or charity (if they do not make this declaration, the State will receive the whole tax); (iii) the taxpayer has to choose a particular church or religious community which will receive only the tax shares which were expressly designated to them. The amounts designated by the taxpayers to each church or religious community are raised by the State, which pays them to the chosen church or religious community.

It is worth noting that the taxpayers may as an alternative choose not to make this declaration or to make it in favour of legal entities of benefit to the public with charitable, pastoral or humanitarian character, or to private institutions with social aims (Art. 32(6) of the LRL).

One should avoid confusing this mechanism with the church tax which exists in other systems of law. Also, this new mechanism is not directly applicable to the Catholic Church. A subsequent agreement between the State and the Church concerning this point was necessary (see article 27 of Conc. 2004).
Religious Assistance in Public Institutions

Art. 13 of the LLR, inserted in the chapter on individual rights, grants the right to spiritual welfare and the celebration of religious acts: to members of the armed and security forces, paying military or civil service; to those interned in hospitals, asylums, colleges, health, educational or welfare institutions or establishments, or similar; to those detained in prison or other places of detention. With due deference to the principle of separation and in accordance with the principle of co-operation, the State is obliged to "create adequate conditions for the pastoral assistance". However this obligation may be waived for security or functional reasons.

The LRL does not elaborate on what is understood by the term "to create adequate conditions for the pastoral assistance". But one can assume that those conditions should be equivalent to the conditions enjoyed by the Catholic Church under the Concordat.

In general the Concordat of 1940 granted free access to clergy of the Catholic Church to hospitals, State schools, asylums, prisons, and the like in order to supply spiritual assistance (Conc. 1940, Art. XVII). Moreover, the Concordat was highly detailed regarding chaplaincy work for the military, guaranteeing it in the field (Conc. 1940, Art. XVIII).24

The underlying philosophy of the Concordat of 2004 introduced contrasting changes over the Catholic assistance in health, care, education or imprisonment public institutions. Remarkably article 18 grants only the free delivery of Catholic spiritual welfare, and no longer free access.

The changes within the framework of the Catholic spiritual welfare for members of the armed and security forces are even more substantial. According to Article 17 of the new Concordat, the State no longer grants either Catholic spiritual welfare, nor is it obliged to provide a corps of chaplains. The possibility of nominating an army chaplain and vicar general by way of an agreement between Government and organs of the Catholic Church has been abolished. The State restricts itself to granting to the members of the armed forces – and to the members of the security forces – the right of free exercise of religious liberty by means of Catholic spiritual

24 This provision was connected to Article XIV of the Concordat of 1940 which provided that ministers of the Church were exempted from some military duties, and that such duties were replaced by the obligation to do chaplaincy work for the Army (Conc. 1940 Art. XIV; see also Art. 17 (4) of the Concordat of 2004). See Miguel Falcão, "A Concordata de 1940 e a assistência religiosa às Forças Armadas", in AAVV, A Concordata de 1940 PortugalSanta Sé, Lisboa, 1993, p. 197.
welfare; the spiritual welfare is provided and guaranteed by the Catholic Church. Only those who wish to have such spiritual welfare will receive it.

The specific conditions of the implementation of the abovementioned provisions depend on further agreements and regulations. As shown above the norms of the LRL and the Concordat were developed and completed by several Decree-Laws enacted in 2009: Decree-Law 251/2009 of 23 September, on military chaplaincy; Decree-Law 252/2009 of 23 September, on chaplaincy work in prisons, applicable with adaptations in educational centres for children and young people (see also Decree-Law 323-D/2000 of 20 December, Art. 75); Decree-Law 253/2009 of 23 September, on health service chaplaincy.

XII. Matrimonial and Family Law

The Concordat confers on the Catholic Church power to solemnise marriages under Canon Law to which the civil law assigns full legal force (Conc. 1940, Art. XXII, XXIII; Conc. 2004, Art. 13, 14). Since the revision of 1975 which changed Article XXIV of the Concordat of 1940, it has been possible for such marriages to be dissolved under civil law.

The Concordat of 2004 recognises the rights of the ecclesiastical authorities to determine whether a marriage is null and void and to give dispensation from a marriage that has not yet been consummated. In contrast with Article XXV of the Concordat of 1940, the decisions of these authorities take effect only after being examined and confirmed by the competent court of the Portuguese Republic (Art. 16).

Until 2001 other denominations were, however, prohibited by law from solemnising marriages. The LRL substantially changed this situation by acknowledging the legal force in civil law of such marriages (Art. 19). Requirements for this acknowledgement are: that the marriage has been carried out by an officeholder of a settled church or religious community; that a certain procedure has been observed; and that the officeholder fulfils certain conditions.

XIII. Criminal Law and Religious Communities

Chapter I (on crimes against family, religious feelings and respect to the deceased) of Title IV (on crimes against life in society), of the Penal Code (Código Penal) includes a section on crimes against religious feelings: the crime of insult because of religious beliefs (Art. 251) and the crime of preventing, disturbing or insulting (by belittling) ritual acts (Art. 252). Other crimes with a religious factor: first degree murder for religious hate (Art. 132, 2, f)) or of religious ministers (Art. 132, 2, l)); creating, keeping
or using files on religious convictions of individuals (Art. 193, 1); first degree damage of things or animals used in cult activities (Art. 213, 1, e)); fomentation of discrimination, hate or violence against individuals or groups because of their religion (Art. 240, 1, a)).

XIV. Major Developments and Trends

No major developments are expected in the near future, as the legal framework seems very stable and there is no evident social pressure for its change. The legal framework is quite open, progressive and tolerant and provide for good conditions for all denominations in almost equal footing with the Catholic Church. An important role of clarification, development and deepening of the legal framework is being and will be played by the Commission of Religious Liberty. Probably most developments in the fields of ecclesiastical law and exercise of religious liberty if any will have their origin in the CRL.

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State and Church in Romania

Emanuel Tâvală

I. Social Facts

According to its 2003 constitution, Romania is a republic and since 1st January 2007 Romania has been one of the 28 member states of the European Union. The country has a total population of 20,121,641 (according to the latest census in 2011), but many have migrated to other EU countries (and countries further afield) to work there. Out of this number a large majority of inhabitants are Romanian (90.6%), 6.7% are Hungarian, 1.3% are Roma and 0.1% are German. Regarding their religious denomination, 85.9% are Orthodox Christians, 4.6% of inhabitants are Roman Catholic, 3.2% belong to Protestant Churches and 0.8% are members of the Greek Catholic Church. The percentage of those declaring themselves atheist or having no religion in Romania was 0.19%, the lowest in Europe. Subsequent censuses have highlighted the relatively stable trend in the evolution of the population’s religious affiliation structure, over 99% of the population declaring they belonged to a faith.

<table>
<thead>
<tr>
<th>Religious affiliation</th>
<th>Year</th>
<th>1992</th>
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<td>Total</td>
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<td></td>
<td></td>
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<td>15. Serbian Orthodox Church</td>
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<td>16. Romanian Evangelical</td>
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<td>17. Evangelical Church of Augustan Confession in Romania</td>
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<td>21. Atheist</td>
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*In 1992 the Christian Church of the Gospel and the Romanian Evangelical Church were one denomination; the Jehovah’s Witnesses were officially recognised in 2003.

It is important to stress that the social facts of South Eastern European countries are hard to grasp. People have a different identity to than in the West, and that identity influences society. Religion and religious denomination, history and a sense of home (*Heimat*)\(^2\) shape the people much more strongly in Romania than in the West. For over 800 years, Germans in Transylvania proudly cultivated and preserved their German identity, which was closely connected to the Protestant Church. People’s identity in South Eastern Europe is defined primarily by ethnicity and religion, and

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less by the economic success of individuals. The founding of nations themselves is often closely connected to religious denomination and the establishment of churches. This is not a unique result or a late consequence of the Orthodox, but rather a Byzantine symphony between throne and altar; the Protestant Transylvanian Saxons also became a nation through their religious denomination. Especially during the Ottoman oppression, churches formed a girdle of identity holding the respective ethnic groups together; and they were a refuge in times of oppression. This feeling survived into communist times. That is the reason why the young revolutionaries of 1989, who had been raised in an atheist manner, faced the communist security forces in Timișoara and other revolutionary cities with candles, crosses and prayers.³

The decidedly religious-denominationally defined identity of the respective ethnic groups is exemplified in the West Romanian Banat as well as in Transylvania. There, ethnicity and denomination remain practically identical even today. The Transylvanian Saxons, for example, have been Protestant since the Reformation. The Romanians (89.5% of the population) are almost invariably Orthodox (85.9% of the total population) or Greek-Catholic (0.8%). With its believers in Romania alone (excluding the diaspora), the Romanian Orthodox Church (ROC) is the second largest Orthodox Church in the world after the Russian Orthodox Church. The Hungarians traditionally belong to the Roman Catholic Church (especially in the dioceses of Charlesburg/Alba Iulia, Temesvar/Tимиşoara, and Sathmar/Satu Mare) or to branches of Protestantism.

II. Historical Background

The area of what is now Romania was inhabited as early as the Bronze Age by the polytheistic Geto-Dacians. The Roman emperor Trajan conquered it with his troops in 106 AD. The troops settled down in the area and led to the Geto-Dacians’ acceptance of the Latin language (Romanisation) and the Christian faith (Christianisation). The Latin language and Christian faith may be seen as key factors in “contributing to the consolidation and

merger of indigenous people and those who had come to Dacia from different places with different faiths.”

**The new province was called “Dacia Traiana” around that time.**

The oldest diocese in today’s Romania is the diocese of Tomis (today: Constanța), which was first mentioned in official records in 369 AD. In the beginning of the 6th century, there were an additional 14 dioceses mentioned in Scythia Minor. Two important figures for Christianity came from this region. One is Saint John Cassian who is the author of the West’s first monastic rules. The other is Dionysius Exiguus who translated important writings by Church fathers into Latin and laid the foundation for the Anno Domini dating system, by calculating Christ’s birth year.

The next major phase in the development of the Romanian people was the **Slavic invasion of the Byzantine Empire** between the 6th and the 9th centuries. The influx of Slavs in the Daco-Romans’ area loosened the bond between the inhabitants north of the Danube and those south of it. However, because Romanisation and Christianisation had already taken place, the new Slavic population was assimilated by the Daco-Romans. The influences were reciprocal: while the settlers became Christians, the strictly Roman language of the Daco-Romans was modified by the Slavic language, e.g. by way of introducing Slavic words into the liturgy or by switching to the Cyrillic alphabet.

When, in the 14th century, the principalities of Wallachia and Moldavia were founded south and east of the Carpathian Mountains, ecclesiastic organisation followed soon thereafter. In Wallachia, a metropolitan was installed in Curtea de Argeș in 1359, and a second one in Severin in 1370. The first metropolitan in Moldavia was founded in 1386 in Suceava. As princely centres, they were important cultural centres and the monasteries and church buildings are world-renowned even today, mainly for their architecture and frescoes. There are records of further dioceses founded in the 15th and 16th centuries.

During the later rule of the Ottomans (at the beginning of the 18th century), the Sublime Porte introduced Phanariote rule in Moldavia and Wallachia which inhibited or rather delayed those two Principalities’ processes of national liberation. These Greek princes from Constantinople ruled the two Principalities from 1711 and 1715 until 1821 on behalf of Turkey. During the middle of the 18th century an increasingly nationalistic con-

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4 Mircea Pacurariu, Geschichte der Rumänischen Orthodoxen Kirche (Engl.: History of the Romanian Orthodox Church), Oikonomia Vol. 33, Erlangen 1994, pp. 70 et seq.
sciousness emerged, but only the War of Liberation of 1877/78 led to an actual break from Ottoman rule and the re-establishment of independence. This paved the way for creating a nation state as well as a Romanian national church.

While still under Ottoman rule, the principalities of Moldavia and Wallachia were finally incorporated into one nation state, today’s Romania, by the ruler Alexandru Ioan Cuza (1859-1866). This also led to ecclesiastical changes. Firstly, both metropolitan churches were unified as one national Orthodox Church. The Metropolitan of Bucharest received the title “Pri-
mate” of Romania. In 1872, the Holy Synod was established as the central administrative organ. Yet Romania remained canonically dependent on the “Mother Church of Constantinople”. This dependency was terminated only in 1885, when the Romanian Orthodox Church received autocephaly. This marked the ultimate independence from Constantinople.

In 1918, the provinces of Bessarabia (27 March), Bukovina (28 November) and Transylvania (1 December) united with the Kingdom of Romania to form one Romanian State. The establishment of an independent Patriarchy in 1925, with Miron Cristea as first Patriarch of Romania, can be seen as “the result of national unity, but it can also be seen as the natural illustration of the role that the church has played in the history of the Romanian people”.

Legislation for Great Romania on the rights and duties of ecclesiastical communities became of the utmost importance in the new reality. On 31st March 1928 Parliament passed a Law on Cults. Article 1 of the law held as a core principle: “The State grants all Churches the same freedom and protection, insofar as their practice of religion does not violate the public order, moral law or the system of government”. Besides the Romanian Orthodox Church, the law listed eight communities: the Romanian United Church, the Catholic Church (with Latin, Ukrainian and Armenian Rite), the Reformed Church, the Lutheran Church, Unitarian Church, the Armenian Church, the Jewish cult community and Islam. For other communities, movements, sects etc., Article 22 contained the possibility of recognition “if their articles of faith and their moral-religious principles do not conflict with the pub-

5 Gunther Barth, Laura Dobrescu, Alina Păru, Die Rumänisch-Orthodoxe Kirche (Engl.: The Romanian Orthodox Church), Hanover 2004, p. 11.
6 In fact, it is only seven cult communities. Because of the special constitutional law status of the Romanian United Church, Catholics received two numbers in the Law.
lic order, moral law and law of the State and when their system of organization, leadership and administration is in accordance with this Law.”

Preparations for a Concordat between the Holy See and the Kingdom of Romania had been started by Romanian politicians in the hope of acquiring territory north of the Carpathian Mountains immediately after the war (1920). Negotiations began shortly after the end of the war. In the summer of 1921, a treaty text was drafted, which greatly outraged Orthodox circles in old Romania. Ratification was significantly delayed because of continued strong opposition by the Orthodox side, and the Concordat only became effective on 7th July 1929, long after the Law on Cults had been promulgated.

The Act of 23rd August 1944 brought deep social, political and economic changes. After that date, the majority of political forces in the country tried to return to the path of democratic development, but “games” of other powers marked Romanian history for the next 50 years. Through the installation of the so called “democratic government” in Romania on 6th March 1945 “the communist-atheist regime was inaugurated in our country”.

It was normal for political changes to be reflected in the life of the Church. The Church became a “tolerated institution”, which could only find its place on the borders of society. This new reality forced the Church to adapt to the new age. The Church’s administration had two options: either to fulfil its full mission (i.e. also insist on social services, which would have led to a conflict with the new government) or to accept the state’s interference in its administrative life, but thereby retain the possibility of fulfilling its ecclesiastical mission. The ROC chose the second option because it was aware of the Russian-Orthodox Church’s experiences. It had chosen the first option which in turn had provoked politicians and had brought them one step away from being abolished. The second option mentioned above allowed the Church to retain the possibility of being active among the faithful. Avoiding conflict with the government meant that the Church stopped giving differ-

7 Iorgu Ivan, Organizarea si administrarea BOR in ultimii 50 de ani (1925-1975) (Engl.: Organization and administration of the Romanian Orthodox Church during the last 50 years), in: BOR 92 (1975), p. 1409.
10 Dorin Oancea, Biserica Ortodoxa Romana in raport cu regimul comunist din România (Engl.: The Romanian Orthodox Church against the communist regime in Romania), in: Revista Teologica, No. 4/1997, Sibiu, p. 43.
ing opinions or publicly commenting on what happened in the country or its prisons. After the communist takeover, communist policies were carried out. However, the 45 years of communism do not form a uniform era in Romania’s history.\textsuperscript{11} Initially, from 1948 until 1963, Romania was Sovietised. 1963 to 1978/1982 saw a time that led to a “mutt”: national communism. From then until December 1989, a cult surrounding the leader in the form of a Romanian Stalinism developed.\textsuperscript{12}

The Church was forced to live in a “liturgical ghetto”. The Church’s organisation was put under the strictest state control and the Church was thus subjugated. First, “cleansings” happened by which Church leaders and reactionary clerics were put into prison or silenced. On 22\textsuperscript{nd} July 1947 the Moldavian Metropolitan Irineu Mihălcescu was forced to abdicate. In 1947 a law was passed that forced all priests over 70 years of age to retire. Anyone who went against the government in any way was severely punished. In 1948, the Patriarch Nicodim as well as the Metropolitan Irineu Mihălcescu and the bishop Grigorie Leu died under mysterious circumstances. This created the opportunity to elect a person to the Patriarchal See, who understood the “new times”. This man was Justinian Marina, who was first elected Metropolitan of Iaşi (1947), and then, on 24\textsuperscript{th} May 1948, became Patriarch.

In 1989, the wave of anti-communist revolutions in Eastern and South Eastern Europe overthrew the communist dictator Nicolae Ceaușescu and his regime. There are disputes among historians today about this revolution. It is called the “stolen revolution” or “unfinished revolution”, or “a coup d’État” or still an “exchange of leading personnel”. People were killed, citizens participated in the streets and there was systematic change caused by force. Nobody seriously disputes these facts nowadays.

After such a brutal era, it was unclear whether the Church would be able to retain its credibility in society. One can be surprised however, how closely the faithful were attached to their Church. The Romanian census of 1992 proved this: of over 22 million inhabitants, 90\% were Romanian and of those, 87\% were members of the Romanian Orthodox Church.

The Church had to change its relations with the state. The Church demanded “full autonomy” and “assurance of a statutory framework for the

\textsuperscript{12} Ioan Vasile Leb, Die Rumänische Orthodoxe Kirche im Wandel der Zeiten (Engl.: The Romanian Orthodox Church in the change of times), Cluj 1998, p. 99.
free development of its duties”. It also demanded “significant participation” in the drafting of the new constitution, which was at the time being prepared, as well as participation in formulating the laws regarding the Church. Religious education was reintroduced and was seen as an “achievement of the revolution”\textsuperscript{13}. Religious education in public schools meant a special ecclesiastical proclamation in public for the ROC, in an area where for 50 years the Church had had no permission to fulfil its duties.\textsuperscript{14} The reintroduction of religious education as a subject in Romania’s public schools was not seen as a novelty, but as a return to what had been normal before 1948.

In the new democracy it was possible to restore some dioceses that had been destroyed by the communists after 1948 as well as to create some new dioceses, in the country or in diaspora. At the same time, new bishops were appointed, in Romania or abroad, in the years following the revolution, who had studied abroad or gathered rich experiences in the Romanian Church. In order to meet the actual needs of the Church, theological seminaries and university education were re-organised. The number of Orthodox theological schools increased from 6 to 38, while the number of theological faculties rose from 2 to 15.\textsuperscript{15}

It was also during that time that hermitages and monasteries, which had been closed by the communists, were reopened; new monasteries were founded and erected; hundreds of churches were built all over the country. One also has to take note of the ROC’s activities in some areas of social life, in which the Church had not been allowed to be active for 50 years: in hospitals, old people’s homes, orphanages, in the military, prisons, etc. At the same time the relations and theological dialogue between the ROC, the other Christian churches and other international ecumenical organisations continued. A reference to the Third Ecumenical Assembly of European Churches, which was held in Sibiu in September 2007, will suffice.


\textsuperscript{14} Art. 30 of the Romanian Constitution (20. August 1965): “School and church are separate. No confession, congregation or religious community may found or sustain educational establishments.”.

\textsuperscript{15} The numbers are taken from Alexandru Moraru, Biserica Ortodoxa Romana intre anii 19902000 (Engl.: The Romanian Orthodox Church between 1990-2000), in: Studia Universitatis Babes-Bolyai-Theologia Orthodoxa, No. 1-2/2002, p. 43.
State and Church in Romania

III. Legal Sources

The most important Romanian legal source is the constitution. Romania’s current constitution was passed by the Constitutional Assembly of 21st November 1991 and came into effect after the referendum of 8th December 1991 had approved it. It was amended by Act No. 429/2003 to revise the Constitution, which was approved by a referendum on 18/19th October 2003 and came into effect after publication in the Official Gazette of Romania on 29th October 2003.

It states in **Art 4, Par. 2** that “Romania is the common and indivisible homeland of all its citizens, without any discrimination based on race, nationality, ethnic origin, language, religion, sex, opinion, political adherence, property or social origin” in this way being recognised and guaranteed the right of all citizens, majorities or minorities, the protection, evolution and manifestation of their own identity

**Article 29** guarantees religious freedom and includes: freedom of religious cults, freedom of conscience, the principle governing the relationship between state and churches and between religious cults themselves, the autonomy of the churches and religious cults, the right to religious assistance in the public sphere (Par.5) and the right to religious education in public schools (Par. 6).

An analysis of Article 29 shows that freedom of conscience means to guarantee the possibility of having one’s own opinion about the world and, particularly, the possibility of expressing it publicly. This includes being free to be a member of a church and to participate in religious services and rituals of that church. There is no national church in Romania, but neither is there a strict separation between Church and State. There is the autonomy of the religious cults as a principle of collaboration between the two entities, but in the same time the duty of the State to support religious assistance in public institutions (hospitals, prisons, asylums, orphanages etc) and religious education in public schools. Religious references may also be found in public life such as in the oath of dignitaries or civil servants.16

**Article 30** guarantees **freedom of expression** of thoughts, opinions, and beliefs, and freedom of any creation (Par. 1) but any instigation to …religious hatred, any incitement to discrimination… shall be prohibited by law (Par. 7). The text provides specific limitations because freedom of expression can-

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not prejudice other rights to dignity, honour, private life or the right to one’s image. The Constitution prohibits any kind of censorship because this was the well known instrument of the communist regime for almost half a century.

By guaranteeing freedom of conscience, the constitution achieves equality between the faithful and non-believers. **Article 32** guarantees the right to education, and in its final paragraph it states that: *The State shall ensure the freedom of religious education, in accordance with the specific requirements of each religious cult. In public schools, religious education is organized and guaranteed by law.* Recently the Constitutional Court has ruled (Decision 669/2014) that religious education classes should not be compulsory in schools *ex officio*, but only by written requests of the parents or legal tutors (for pupils under 16) and of the pupils themselves aged 16 and over.

**Article 44** of the constitution is also important because it prohibits “nationalization or any other measures of forcible transfer of assets to public property based on the owners’ social, ethnic, religious, political, or other discriminatory features”. Religious organisations and cults in Romania had experienced the nationalisation of their properties during the communist period, some of them not yet having been restored to them.

Religious cults are regulated in accordance with the rules of the constitution. The cults are “free and organised in accordance with their own statutes, under the terms laid down by law”. Regarding the relations between cults, “any forms, means, acts or actions of religious enmity are prohibited”. These stipulations show that the special term “ruling or leading religion” (as used for the Orthodox Church in the first Romanian Constitution from 1866, while the 1923 constitution also mentioned the Greek Catholic Church) no longer exists in Romania. The Romanian State protects and guarantees the religious freedom of its citizens, no matter what confession they belong to.

**IV. Legal Status of Religious Communities**

In Article 29, the Romanian Constitution speaks of religious communities and cults. The term “cult” has a double meaning in Romanian: It can stand for a church or a religious organisation, but it can also mean church services or rituals. Both meanings encompass the proclamation of a religious faith to the outside world, either by becoming a member of a “cult” or participating in the rituals of that “cult” (such as processions, religious meet-
ings, etc.)  

According to Article 29 of the Constitution, religious communities may organise themselves freely. They are to be guided by their own statutes. These statutes should be approved by the government, because the constitution states that the organisation must follow the terms laid down by law. The approval of statutes shows the level of co-operation between churches and the state, and is an extension of the Byzantine principle of nomokanones.

After 16 years of debate and discussion, and after two other bills that had been introduced in Parliament (which had not been debated), on 13th December 2006 the plenum of the Chamber of Deputies approved the Law on Religious Freedom and the General Status of Faith Communities. Romania’s president ratified the act by ordinance no. 1437/27.12.2006, which gave the act the number 489/2006. It was published in the Law Gazette No. 11/8.01.2007.

In the light of European integration, it was important that Romania pass a law to regulate religious communities which corresponds with laws in other member states, while at the same time taking into account its specific internal conditions. The law enacted 40 years after the previous regulation updates and clarifies some controversial issues. It gives a formal definition of religious freedom, being the right of a person to have or to adopt a religion and to manifest it individually or collectively, in public or in private, by specific rituals and practices, including by religious education as well as the right to keep or to change his or her religion. The law recognises the religious cults as public utility legal persons, whereas the other collective religious entities (which may be religious associations or religious groups) are either private law legal persons or associations without legal personality.

The negotiations for the final form of the law began with representatives of the religious communities after a 6 year break and were reopened in March 2005; four rounds of talks with organised in April/May 2005. Representatives of 16 religious communities signed the law’s text together with representatives of the Ministry for Culture and Cults on 31st May

2005. The Greek Catholic Church and Jehovah’s Witnesses did not approve this draft for different reasons. The Greek Catholic Church approved the project but wanted to achieve a simultaneous solution for the patrimonial disputes; the Jehovah’s Witnesses did not even accept the invitation to the talks. The bill was presented to the public and many amendments were proposed at this stage, several of which were included in the final version of the bill.\(^\text{19}\)

\textbf{V. Religious Communities within the Political System}

The autonomy of Church and State, a principle common to many European countries, was first introduced in Romania by Andrei Şaguna through the Organic Statute of 1869. Thus, the very first article of the Statute states that the Romanian Greek-Orthodox Church in Hungary and Transylvania, as an autonomous Church, regulates, administers and conducts its ecclesiastic, educational and foundational affairs independently, in keeping with its canonical legislation and in all its constituent parts and aspects, according to its representative form.\(^\text{20}\) After the Great Union of 1918, this principle was to be taken up and implemented in order to regulate church affairs around the country, although it is not mentioned either in the 1923 Constitution, or in the 1928 Law on the General Regime of Religions, or in the 1925 Law and Statute of Church Organisation.

During the communist period when the relevant legislation was quite restrictive, state control over religion was present at all levels; however, article 3 of the Statute of Eastern Orthodox Church Organisation, in force since 1948, provides that the Church governs itself independently, by its own representative bodies.\(^\text{21}\) In Romania, the State, by dint of its sovereignty, has assumed a number of rights in its relationship with the Church, ever since the recognition of the latter as a separate body within the state.\(^\text{22}\)

\(\text{\textsuperscript{19} F. Funza, Das Gesetz über die Religionsfreiheit und den allgemeinen Status der Glaubensgemeinschaften – eine unerlässliche/notwendige/unumgängliche Umorientierung der Beziehungen zwischen Kirche und Staat in Rumänien, in Holger Dix, Jürgen Henkel (Hrsg.), op.cit., p. 191.}\)

\(\text{\textsuperscript{20} Ibidem.}\)

\(\text{\textsuperscript{21} M. Păcurariu, Geschichte der Rumänischen Orthodoxen Kirche, Oikonomia, Quellen und Studien zur orthodoxen Theologie, Band 33, Erlangen, 1994, p. 270.}\)

\(\text{\textsuperscript{22} Radu Carp, Politograma, Ed. Institutul European, p. 175-250.}\)
Autonomy is both a relational and a jurisdictional concept. A body can only be seen as autonomous in relation to another jurisdiction, within a wider community in which they both operate. In this connection, the Romanian Constitution clearly states that: *Religious denominations are autonomous from the state and enjoy its support* (Art. 29, par. 5). However, whether religious denominations should be granted autonomy raises numerous questions.

The religious autonomy of religious organisations in Romania is reflected in their right to have their own statutes for organising their activity. According to Article 23(2) of the Law of Cults, the personnel of religious organisations shall face disciplinary action for violating their doctrinal or moral principles, according to their statutes, canonical codes or regulations. Article 26(1) *leg. cit.* recognises the religious organisations’ right to establish their own courts for internal disciplinary problems, in accordance with their own statutes and regulations. Pursuant to Article 26(2) *leg. cit.*, statutory and canonical provisions are exclusively applicable to matters of internal discipline. Article 26(3) *leg. cit.* states that the existence of their own judicial bodies does not exempt religious organisations from the application of national legislation concerning misdemeanours and felonies. These articles, as well as the corresponding provisions of the statutes of the officially recognised religious organisations, constitute special norms of labour law, norms which are supplemented by the common labour law, but only to the extent in which the applicable special norms do not contain specific derogatory provisions, as is established by Article 1(2) of the Labour Code. In this way, all religious organisations in Romania have their own ecclesiastical courts.

VI. Culture

1. Religious education in public schools

**Article 32** of the Romanian Constitution of 2003 guarantees the right to instruction. Par. 7 is important for the role of religious instruction: *The State shall ensure the freedom of religious education, in accordance with the specific requirements of each religious cult. In public schools, religious education is organized and guaranteed by law.*

The freedom of religious instruction is guaranteed according to the specific needs of each religious community. Additionally, parents and legal guardians have the right to “determine the education of minors, for whom they are responsible, according to their own convictions”.
The Education Law of 2011 is one of the most important laws enacted in Romania after 1990. According to this Act, education is a national priority in Romania. Universal compulsory education exists for the first eight years of school. Education offered by general schools is free of charge. The schools can levy fees for some activities according to conditions that have previously been specified by law.

According to Article 9(1) religious instruction is an optional subject in primary, secondary and grammar schools, as part of the general curricula. The same article provides that pupils may opt out of this subject. Pupils under 16 who do not wish to attend religious instruction have to obtain their parents’ or guardians’ consent. There is no substitute subject for those who opt out of religious education.

Article 9(3) of the Act states that religious instruction may only be taught by trained teachers in accordance with the agreements between the Ministry of Education and the recognised Churches.

In 2014 the Romanian Constitutional Court, after a complaint from the Romanian Secular-Humanist Association, decided (Decision 669/2014) that this article was not in accordance with the fundamental law. This meant that the freedom of conscience should be positively interpreted and the religious education classes should not be compulsory ex officio, only by written request of the parents. As a result all pupils or their parents had to decide to take religious education classes or not by the middle of the winter semester 2015. The decision of the Constitutional Court triggered many discussions, talk-shows and placed in a common position all the religious organisations in Romania recognised by law. A clear implication in civil society was the creation of the Association “Parents for the Religious Education Classes” which rapidly spread its network all over in the country, naturally with the help of the church and other religious organisations. 88% of the pupils decided to follow the religious education classes. Seen as a campaign against the Orthodox Church especially, it was not really a negative ending of the problem, but was characterised as a “silent revolution”23.

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2. Theological Education

The religious group’s personnel’s education takes place in state-run institutions on different levels from that in institutions established and financed by religious communities.

After the changes in 1989, the Orthodox faculties became part of state universities in the academic year 1991/1992. An agreement between the Romanian Ministry of Education and Science, the then Secretariat for Cults and the Romanian Patriarchate was concluded in May 1991. The theological university institutes became faculties of theology in 1991, being included in state universities, following a protocol between the Ministry of Education, the State Secretariat for Religious Affairs (SSRA) and the Romanian Patriarchate. The Protocol signed in May 1991 took into account three existing institutes at the time: Bucharest, Sibiu and Iaşi (established in 1990). The provisions of the Protocol were implemented with the start of the new academic year (1991-1992).

From the Church’s perspective, this protocol has solved several issues simultaneously. First, it has solved the problem of financing theological institutes. Passed into the patronage of the State, the problem of funds for organising theological studies will never be a problem again, having been automatically transferred to the universities and public authorities. The solution of transforming private theological institutions into public faculties allowed, as a result, for the development of academic theology. Within a decade, the number of Orthodox theological schools increased from three (the date of the signing the Protocol) to fifteen (eleven faculties and four departments of Orthodox theology). The number of students and teachers has also increased, along with institutional and financial capacity of the Orthodox theology to finance research, organise congresses, edit publications, etc.

What should be mentioned here is the fact that the number of theology faculties is more than needed and many graduates do not find a place to work in the system. In this context of too many theology faculties and the financial support of the state for these institutions, we witness the appearance of the so-called “priests-factory” or “diploma-factory” (such as Pitești, Târgoviște or Constanța).

Currently in Romania there are over 30 faculties, departments and institutes of theology in public and private institutions, most of them being Orthodox (15). In addition there are three Roman Catholic Faculties of Theology and a Faculty – separate and older – of Greek Catholic Theology. The University of Cluj holds "the record of ecumenism" regarding the faculties of theology, with four faculties of theology: Orthodox, Roman Catholic, Greek Catholic and Reformed.

More particularly, in the Romanian academic settings, is Emanuel University of Oradea (EUO). A private university with Baptist affiliation, established since the 1990s, the EUO offers, besides Baptist theology, several other degree courses for "theology" and management degrees. The other private institutions offering accredited theological specialisations are: the Roman Catholic Theological Institute, the Pentecostal Theological Institute and the Baptist Theological Institute, all three in Bucharest, along with the Roman Catholic Theological Institute in Alba Iulia. Finally, among the more than 10 courses at the Partium Christian University from Oradea – separated in the mid-1990s from the Reformed Theological Institute in Cluj – we also include Reformed pastoral theology.

Apart from the accredited higher education institutions mentioned above, there are several authorised theological institutes in Romania: the Adventist Theological Institute (Cernica), the Protestant Theological Institute (Cluj), the Roman Catholic Theological Institute (Iași), the Franciscan Roman Catholic Theological Institute (Roman), and the Timotheus Christian Evangelical Theological Institute (Bucharest).

As shown in the previous paragraphs, the academic theology from Romania represents a well-developed academic field. Almost all of the religions recognised, each one with a substantial number of believers, have one or more institutions providing theological training for the church’s needs. The principal Romanian churches are almost all represented in academic theology in state universities (mostly in the largest and oldest universities) and in this way the necessary personnel for serving the church(es) and religious organisations is provided.

VII. Labour Law within the Religious Communities

In Romania, according to Art. 23 par. 1 of Law 489/2006 regarding religious freedom and the general regime of religious cults, the cults elect, appoint, hire or terminate the appropriate staff according to its bylaws, canonic codes or regulations.
According to art. 122 of the Statute of the Romanian Orthodox Church (ROC), church singers and catechists are recruited, usually, from graduates of schools of religious singers. They are appointed or dismissed at the proposal of the priest and the parish council, by the bishop, in a meeting of the Standing Archdiocesan Council. For reasons of indiscipline, they can be sanctioned.

Regarding priests, they are appointed, and the ROC Statute does not provide for the conclusion of an individual employment contract, but states in art. 123 para. 2 that priests and deacons are appointed by the Diocesan Bishop in the parish, in a meeting of the Standing Archdiocesan Council, complying with the statutory and regulatory church provisions, and the priests only sign a confession of faith.

Except for the Gospel Christian Church in Romania where staff have individual contracts of employment, all other recognised religious cults in Romania have the same kind of legal relationship with their clergy as the Orthodox Church, the ratio being one of service and freely assumed mission. At the beginning of the pastoral work in the community for which he was ordained, the church staff member receives from the bishop a document which regulates the rights and duties that must be met. Therefore the ROC Statute (recognised by Government Decision no. 58/2003) does not result in individual labour contracts between clergy and ROC, but rather between them relationships of free service and assumed mission are involved. The rights and duties of priests, deacons, and singers are determined by a unilateral decision of the bishop. From this perspective, the legal relations of clergy from Romania resemble those of civil servants, who are appointed and take an oath, than those of workers with individual employment contracts which state the obligation to inform the terms of the contract, negotiating these terms and signing the individual employment contract. Therefore, the relations between clergy and religious cults in Romania are built on the provisions of its own statutes and not on the specific legal rules of labour relations.

The situation of those who work in nursing homes, prisons or schools falls under laws governing the staffing situation in those institutions, but at the same time have a working relationship with the religious cult that they represent (most often the Orthodox Church). In these cases we are talking about a case of res mixta. Law 489/2006 makes a single mention regarding the individual employment contract in Article 32 para. 3, this pro-

27 Ibidem, p.252.
vision is designed for the religious teachers or professors from the faculties of theology stating that if a teacher commits serious violations of moral doctrine or worship, the religious cult can withdraw their consent to teach religion, which leads to the termination of the individual employment contract.

It is clear that where the legislature intended to regulate an individual employment contract it did so directly. It is therefore clear that where a person has an individual employment contract with an educational institution, the cult to which that person belongs may, in given conditions, withdraw its consent, so recognising the supremacy of the specific cult rules over labour law standards. To the extent that the cult of which the professor is part finds that a teacher who teaches religion or works in theology faculties, has committed serious violations of moral doctrine or religion can withdraw its agreement. This basically equates to the withdrawal of the authorisations provided as a legal basis for the termination of the individual employment contract in art. 56 par. 1 letter G of the Labour Code.

In the field of labour law the case of “The Good Shepherd” Union is well known. On 4th April 2008, 31 priests and 4 lay employees of the Metropolitan of Oltenia decided to establish the aforementioned labour union. Once constituted, the union asked the Craiova Court to grant legal personality and register the union in the special register of trade unions. The representative of the Metropolitan of Oltenia opposed to this request, given that the internal status of the Romanian Orthodox Church, recognised by the Romanian state authorities by Government Decision No. 53/2008, prohibits the creation of any form of association without the prior consent of the local bishop.

On appeal, through a decision on 11th July 2008, the Dolj Court, taking into account the principle of autonomy of the religious communities and their right to organise themselves according to their own statutes, as guaranteed by the Romanian Constitution and Law 489/2006, rejected the union’s constitution request. The Court mentioned that the concept of union is foreign to the Church’s status and that based on the hierarchy that works in the Church, priests are in a relationship of obedience to their superiors, a relationship assumed by oath when becoming priests. The Court also stated that the prohibition to create any form of association within the Church, without prior approval of the hierarchy is justified by the necessary to protect the Christian Orthodox tradition and doctrine of faith, therefore by creating a union, the hierarchy would be obliged to collaborate with a new body that is foreign to traditions and canons regarding decision-making in the Church (having violated the synod and hierarchical principle of the Church). Dissatisfied with these resolutions, the unionists
appealed to the ECHR alleging the breach of Article 11 of the European Convention on Human Rights on the freedom of association.

On 13th December 2011, the First Chamber found a violation of Article 11, condemning Romania for respecting the domestic and international rules on the distinction between the state and the church, forcing the state to intervene in an internal matter of the Church and to impose the recognition of the union, also forcing it to pay the sum of EUR 10,000 to the applicant.

The Grand Chamber did not agree with that conclusion and observed that the County Court had refused to register the union after noting that its application did not satisfy the requirements of the Church’s Statute because its members had not complied with the special procedure in place for setting up an association. The County Court’s refusal to register the union for failure to comply with the requirement of obtaining the archbishop’s permission had been a direct consequence of the right of the religious community concerned to make its own organisational arrangements and to operate in accordance with the provisions of its Statute.

VIII. Legal Status of Clergy and Members of Religious Orders

State labour law applies to all employees of cults. Religious communities may employ persons only in accordance with all relevant state regulations, and remuneration must comply with state-set rates. Based on their income, employees pay the required taxes and contributions to unemployment and social insurance. Their pensions are determined by the relevant state regulations. The state recognises and protects the First and Second Day of Easter as well as Christmas Day as public holidays. Non-Christian religious communities are granted two other religious holidays instead, as determined by themselves.28 Anyone who has to work in the medical field or in the field of grocery logistics on these particular days is entitled to other days off work. Employees who have to work on a public holiday in other fields are granted double payment for that time.29

29 Ibidem.
IX. Finances of Religious Communities

All Romanian political regimes, since the establishment of the modern state, have stipulated some form of financial support for religious activities. This was felt to be especially important after the secularisation of the church’s assets, when the Orthodox Church was left without any financial means to support its activities. The Romanian state undertook to partially compensate it for losses suffered by covering the costs of the church’s activities. The current situation, where there is a partial support by the state of the activities of religions and faiths is driven on the one hand by the Romanian legal tradition and on the other by current social needs and existing European models.

Taking into account the particularity of religions and faiths and their different needs, Law no. 489/2006 stipulates that financing depends not only on the number of their believers but also on the real needs of these religions and faiths, estimated annually in collaboration with them.

The money necessary for maintaining religious organisations and their activities is raised and administered by the income of these organisations in accordance with their statutes (Art. 10(1) of Law No. 489/2006). According to Article 10(2), religious organisations may levy financial contributions from their members in order to maintain their activities. The Romanian State encourages community members’ and citizens’ financial support for religious organisations by making it tax-deductible (Article 10(3)). At the same time, the Law 489/2006 stipulates that no one can be forced to make contributions to religious organisations.

According to the judicial principles and legal provisions mentioned above and based on existing openness, the Romanian state offers monthly contributions for the salaries of about 16,600 employees of recognised religions and faiths (priests, pastors, imams, rabbis, deacons, etc. and leadership staff). Due to the fact that salary assistance is offered on the basis of proportionality, each religion or faith receives an amount directly proportional to the number of believers reported in the last census. The differentiated distribution of funds is an expression of the fact that the Romanian state recognises the different needs of minority faiths among each other and with the majority religions (principle of respecting real needs of religions/faiths). The state’s contribution to the remuneration of religious personnel (15,237 positions) is partial, covering 65% of the full amount of

30 State Secretariat for Religious Affairs, State and Religions in Romania, Bucharest 2015, p. 63-64.
salaries for most positions (10,683 positions), or 80% for units with lower incomes (4,554 posts or 30% of the total thereof).\textsuperscript{31}

The state provides full salaries for the higher management personnel of religions and faiths, besides those of public dignitary grade, from Vice President of the union to Abbot (1,272 positions). Religions make up the difference of salaries for clerical staff from their own funds, and pay income tax, health insurance, and social taxes to the state. Salaries for military clergy are covered by the institutions to which they are posted.

As concerns non-clerical staff salary contributions, based on provisions in Government Ordinance no. 82/2001, as of 2002, these are to come from the local budgets (for 18,951 positions).

According to Act No. 142/1999, the State is especially interested in supporting the Romanian Orthodox Church abroad to preserve its cultural, lingual, and religious identity. By Act No. 114/27.4.2007 the Romanian skete Prodromou on Holy Mount Athos receives €250,000 annually (Article 2) for restoration, reconstruction and maintenance of buildings and its four churches (Article 4) as well as for advertising material and the upkeep of the resident monks' activities.

Article 15 lit. E of the Romanian Tax Code determines that only those religious communities which gain their income through economic activities and use it only for the upkeep of their charitable and social activities are exempt from taxation. Religious communities have the exclusive right to produce, sell and trade liturgical products (Act No. 103/1992). Also, the production and marketing of products necessary for sacred services is tax-exempt.

The same exemption exists for religious communities' income from letting real estate as long as that money is used for the upkeep, construction or reconstruction of ecclesiastical buildings. Construction, consolidation, expansion, reconstruction, and restoration of ecclesiastical buildings or buildings used for other religious purposes are exempt from value added tax.

Churches are also exempt from taxation on buildings, areas on which buildings are being constructed, and all landholdings (fields, forests etc.) which are church property (Act No. 571/2003, Article 250(1) and Article 257 lit. b).

In addition to tax exemption, Romanian tax payers are allowed to donate 2% of their income tax to a non-profit organisation or a religious

\textsuperscript{31} Ibid.
community according to Article 57(4-6) and 84(2-4) Fiscal Code. This provision offers religious organisations additional income. The Romanian State, through the State Secretariat for Cults, contributes to the construction of new churches and the restoration of old or historical monuments belonging to religious communities. The most important debate currently is the building of the new patriarchal cathedral in Bucharest. The payment was covered by the dioceses of the Romanian Patriarchate through donations, but also by the Government, the Bucharest City Hall and the district halls (approx. €82.5 million). The reasons for the financial support provided by the Romanian state for the construction of the new cathedral include not only the historical importance of this enterprise, but are also symbolic and practical. The cathedral was consecrated on 25 November 2018 after €110 million were spent.

X. Religious Assistance in Public Institutions

The social presence of the religious element, extra murros ecclesiae, other than the military, hospital or prison religious assistance, has been in existence ever since organisations of this kind began. This happened as a consequence of Church involvement into organising such services sine qua non, the Church being present in one way or another in the life of these institutions ever since it was founded.

Regarding the religious assistance in hospitals, this was initially provided by the hospitals themselves, since hospitals first appeared under the aegis of the Church. Philanthropic work appeared in Romania around monasteries and fared similar to those in other neighbouring countries. The first settlements to carry out social activities were the so-called monastery infirmaries, where monks were cared for when they fell ill.

Regarding the regulation of religious assistance in the army, hospitals and prisons in Romania, the fundamental law in art. 29 par. 5 clearly states: Religious denominations are autonomous from the State and enjoy support from it, including the facilitation of religious assistance in the army, hospitals, prisons, asylums and orphanages. These constitutional provisions are strengthened by the religious denominations law (Law 489/2006), which in Article 10 states that: (7) The State supports the work of recognized denominations as providers of social services.

For the purposes of regulatory legal acts in force, the military clergy phrase refers to a socio-professional category consisting of military priests who work in the structures of the Ministry of Defence in order to meet spiritual and religious needs of the military staff. Consequently, military priests contribute
through specific means, without proselytising, to cultivating virtues in the military, to the training of civic responsibility and patriotic feelings among them. The law entitles recognised religious denominations to train priests to assist soldiers in their religion.

Priests work here being appointed by the religious group they represent and they must meet all conditions of theological training for a priest. In terms of chaplain recruitment, the above mentioned normative document provides that recruitment will be done by the Ministry of National Defence, the religious Assistance Department and Personnel Directorate of the General Staff and mobilisation under the law. The minimum age for recruitment of candidates is 25 years and the maximum age is 30 years.

Military priests are assimilated to senior officer corps, ranging from Major to Brigadier General. Chaplaincy remuneration is made from the ministry funds in which they are active.

In accordance with Art. 29, para. (5) of the Constitution, for the facilitation of religious assistance in the army, considering the “traditions of the Romanian people”, in 1995, permanent religious assistance in the army was resumed with a Protocol on the organization and conduct of religious attendants in the Romanian Army under no. A.4868/7242.

A protocol of co-operation between the Romanian Patriarchate and the Ministry of Health was agreed in 1995, and signed on 15th March 1995 by the Patriarchate (no. 1968/15th March 1995) and on 23rd March 1995 by the Ministry of Health (no. 13702/23rd March 1995). This Protocol did not cover the activity of the Church in asylums, orphanages and social institutions that have been co-ordinated by other than the health ministry. According to the protocol, the chaplain in a hospital depends at church level on the local bishop and administratively he depends on the medical unit leadership. The chaplain is appointed by Orthodox Church dioceses in agreement with the responsible ministry, having a co-ordinator chaplain of religious assistance activities in hospitals.32

Religious assistance in prisons was governed by Law 195 of 6th November 2000 on the establishment and organisation of military clergy, by which the institution of the military chaplain is established in the Ministry of Defence, Ministry of the Interior, Romanian Intelligence Service, the Foreign Intelligence Service, Protection and Guard Service, the Special Telecommunications Service and the Justice Ministry – the General Direc-

torate of Penitentiaries. Under the law, prison priest activity was coordinat-
ed by a priest in charge with the activities of religious assistance in prisons.

On 1st August 2005, the position of the priest coordinating the activities of religious assistance in prisons was abolished by the Ministry of Justice, without prior consultation with the Romanian Patriarchate and eluding legal provisions in force (art. 10 and 11 of Law no. 195/2000), the Romanian Patriarchate asking on several occasions to solve this situation. As of 17th February 2006 the Ministry of Justice drafted and approved by Order no. 610/C-17th February 2006 a new regulation on religious assistance in detention, repealing the old regulation in force on 15th December 2000. By Emergency Ordinance no. 47/28th June 2006 amending and supplementing Law no. 293/2004 on the status of civil servants from the National Administration of Penitentiaries, the prison priest activity was regulated by introducing Article 80.

When someone belongs to another religious organisation recognised by the State they may seek religious representatives from that organisation. The same is the case with Muslims working in the Romanian army or found in detention.

XI. Matrimonial and Family Law

The Romanian language knows three words to define the act of founding a family: matrimony, marriage and wedding. All these terms fundamentally define the same reality, but there is a difference that rests on the influence of historical relationships between the Church and State.

Matrimony and wedding were distinguished in Byzantine times because the wedding, which took place in a church, was recognised as matrimony by the State. The Church was the registrar of married couples. There is a distinction between civil marriage and religious marriage. This distinction, which is not very praiseworthy from a religious standpoint, is still in force today, and makes it necessary to have a clear distinction between state marriage and church marriage. Article 48(2) of the Romanian Constitution of 2003 establishes that a “religious wedding may be celebrated only after the civil marriage”.

33 Liviu Stan, Tradiția pravilnică a Bisericii. Însemnătatea și folosul cunoașterii legilor după care se conduce Biserica (Engl. The Church's nomocanon tradition...), in: Studii Teologice, No. 5-6/1960, p. 37.
One of the most sensitive points regarding the Church’s influence on Romanian social life is the interference in ethical matters by representatives of ecclesiastical institutions, which influences attitudes on life and community in general. After the fall of communism, abortion was legalised and millions of unborn children were killed. The fight of ideas against abortion and for a culture of life in Romania is being led by the Orthodox together with the Catholics of both rites, as well as Protestants and Neo-Protestants.

Over the last years, the Church had to react very assertively in another highly sensitive and debated area: the topic of “same-sex couples”. Although Romania does not have civil law recognition of such couples, an ever increasing campaign is being waged by certain non-governmental organisations despite obvious rejection by the vast majority of society and a lack of political support. The seemingly growing misconception between these “couples” and the institution of the family is real and may be understood from the experiences in other member states. Far from discriminating against a person, the Church is fighting for the protection of the idea of marriage in society, an idea that under no circumstance can be based on anything but the “mutual agreement to a loving relationship between a man and a woman, before God and the civil authority, in the framework of the institution of marriage”. Over three million signatures were collected in Romania in order to change the Art. 48 of the fundamental law (as a popular initiative) and to make it clearer that the family is based on the free-will engagement between a man and a woman (as it is stated in art. 259 of the new Civil Code), not as it is stated today that the family is based on the free will engagement between the spouses.

All of the religions in Romania joined the Coalition for the family and they asked the Government to organise a referendum on this issue. On 6th and 7th October 2018 it was organised but was not validated because there were not enough participants (approx. 21.5%, instead of 30% necessary for validating it) and for the Constitution to be changed.

XII. Criminal Law and Religious Communities

Freedom of religion is first and foremost regulated and protected in Article 29 of the Romanian Constitution. The content of religious freedom is complex and the term contains several guarantees which also include the separation and co-operation between Church and State. It is further stipulated that the expression of freedom of conscience is only permissible “in the spirit of tolerance and mutual respect.” According to the Criminal Code (Article 247 and 318) it is punishable with imprisonment to discrim-
inate against someone, inter alia because of religious affiliation, or restrict religious freedom by preventing or disturbing religious events, or by forcing someone to participate.

These aspects were also protected during communism. Article 318 of the Socialist Republic of Romania’s Criminal Code of 1960 names the possible sentence for forced participation in religious expressions of faith. It reads: “Whosoever blockades or disturbs the freedom to exercise any cult that is organised and functioning according to the law, is being punished with imprisonment between one month and six months or with a fine. The same sentence applies, when a person is being led by force to participate in a religious service of any cult or to perform a religious act that is connected with any cult.”

These same provisions are contained in the current Criminal Code.

A person using the uniform of a statutorily recognised religious community’s clergy member without authorisation can be punished with one to three months of imprisonment or a fine (Article 241).

XIII. Major Developments and Trends

Romania may be a model for the co-operation between the religious organisations. Before 1989 these organisations were forced to survive in a liturgical ghetto, and after 1990 they struggled to find their own public identity. This was, and still is, not very simple. Religious organisations had to face an ongoing secularising society and the permanent use of the past models (We want to come back to the normality of 1948) was not the best example to be invoked.

“Helped” by different influences, disappointments and some vocal representatives of a part of the civil society, Romania is nowadays facing a real “Christophobia”. This is due to wrong decisions by the Church or simply because of the attitude of one or another of the clerics of different religious organisations. It is worth mentioning some elements:

1. The intellectuals and lay people in general do not find themselves in the Orthodox Church any more because of a lack of communication (even if the Church has its own Press Agency, TV, radio and newspaper) and because of renouncing of the principles of Andrei Saguna who stated that the lay persons should be represented in the decision-mak-

34 Berthold W. Köber, p. 378.
ing of church organisations. Since 2008 they have had no voice, for example, in the elections for bishops, metropolitans or the patriarch.

2. In November 2015, because of the tragedy in a rock club in Bucharest where 63 persons died, the lack of church reaction (especially the reaction of the Orthodox Church, which came very late and was catastrophic) provoked the younger generation who went on the streets to ask not only for the resignation of the Government, but also for the retirement of the patriarch. The two institutions, politics and church, were seen together because of their good co-operation, though this was not always on the side of the citizens. The costs of the patriarchal cathedral in Bucharest, and the numerous churches built after 1990, were seen as a cause for the lack of hospitals, of schools and so on, even if this was a false argument. The comparison is disproportionate and inaccurate. Actually we have to say that those who were demonstrating on the streets were the former pupils who attended religious education classes after 1990. We may then ask ourselves: is this the result? Or this is the result of the absence of catechesis in the church and in these conditions the younger generation does not realise the importance of a church in a community and the fact that churches are not hospitals in the way they perceive them?

3. In October 2018 an initiative for constitutionalisation of the traditional family highly supported by all religious cults and religious organisations was rejected because of the lack of participants. It was seen as a turning point for the Churches, especially for the majority Orthodox Church which could not convince those almost 86% who declared themselves as orthodox to sustain it. It was the moment when people actually made it clear that they are expecting something else from the religious organisations and cults. Even if the theme was one of impact, Romanians associated it with the political figures present all the time at religious events and honoured by the church.

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State and Church in Slovenia

Lovro Šturm and Blaž Ivanc

I. Social Facts

In January 2018, Slovenia had a population of 2,066,880. In all, there are 51 registered churches and other religious communities. The 2002 Census data on religious and denominational structure of the population of Slovenia show that Catholicism is a major religion in Slovenia:

Table 1: Slovenian religious demographics according to the 2002 census

<table>
<thead>
<tr>
<th>Confession</th>
<th>Percentage of Population</th>
</tr>
</thead>
<tbody>
<tr>
<td>Catholics</td>
<td>57.80 %</td>
</tr>
<tr>
<td>Muslims</td>
<td>2.40 %</td>
</tr>
<tr>
<td>Orthodox Christians</td>
<td>2.30 %</td>
</tr>
<tr>
<td>Protestants</td>
<td>0.80 %</td>
</tr>
<tr>
<td>Other religions</td>
<td>0.30 %</td>
</tr>
<tr>
<td>Believers without specific religion</td>
<td>3.50 %</td>
</tr>
<tr>
<td>Atheists</td>
<td>10.10 %</td>
</tr>
<tr>
<td>Response denied</td>
<td>15.70 %</td>
</tr>
<tr>
<td>No response known</td>
<td>7.10 %</td>
</tr>
</tbody>
</table>

Because a much higher number (15.70 %) of respondents refused to provide an answer to a facultative question on their religious affiliation than during the 1991 Census (4.2%), the statistical data can not provide a reliable image of religious affiliation, especially concerning the number of adherents of the (Roman) Catholic Church.¹

¹ According to the Annual report of the Catholic Church in Slovenia for the year 2017 the total number of its believers in the year 2016 was 1,523,113 (73.78% of the total population). Retrieved May 2, 2018, from http://katoliska-cerkev.si/media/datoke/Dokumenti%20in%20publikacije/LETNO%20POROC%CC%8CILOR%20KA
TOLIS%CC%8CKE%20CERKVE%20V%20SLOVENIJI%202017_SPLET.pdf.
II. Historical Background

Within the boundaries of the Habsburg Empire, which included Slovenia, Catholicism was for a long time considered to be the state church. By the end of the 18th century, the state had become secularised (Josephinism), but the Church retained a special position in society long after that – educational and charitable activities, for example, have remained almost completely in its hands. After World War II, the Catholic Church in the Socialist Federal Republic of Yugoslavia (hereinafter: the SFRY) was heavily persecuted by the State, and relations between Church and State did not improve until the Holy See and Yugoslavia re-established diplomatic relations in 1966.

Despite the declared principle of separation between church and state, from 1945 to 1990 every church in Slovenia was actually under strict state control. The legal status and the actual position of religious communities in the former Yugoslav communist régime were not solely determined by generally known and published legal rules. They were, in fact, primarily determined – especially in the case of the Catholic Church – by strictly confidential legal rules which, together with other confidential regulations, formed a parallel secret legal system. For instance, National Security Service documents from 1967, 1970, 1982, and 1985 dealt extensively with the Catholic Church. The common idea binding these secret internal rules together is that the Catholic Church is a "permanent internal enemy" that, after the signed protocol between the SFRY and the Holy See, renounced the idea of directly opposing socialism, yet also "opened an ideological confrontation with then current socio-political conceptions".2 Even though free profession of religion was constitutionally guaranteed, the Catholic Church and other religions were not allowed to play a part in public life.

From 1945, the former Yugoslavia prohibited the operation of any kind of private school. Many private schools that had operated before this time were nationalised at the time of prohibition. This prohibition lasted until 1991 in the territory of present day Slovenia. Religious communities could establish religious schools only to train ordinands. Diplomas from these religious schools were not publicly recognised. Between 1945 and 1991 religious communities were forbidden to engage in "activities of a general or social significance." Forbidden activities included educational activities.

2 see OdlUS VI, 69, p. 390.
Atheism was the privileged ideology in Slovenia for almost half a century and was encouraged throughout the educational system.

The Republic of Slovenia has become a sovereign state in June 1991, when it proclaimed its independence and commitment to the principles of democracy, pluralism, tolerance, the rule of law and full observance and promotion of human rights and fundamental freedoms. In 2004, Slovenia became a member state of the European Union.

III. Legal Sources

The Constitution of the Republic of Slovenia (adopted in December 1991) regulates in Article 7 the relations between the state and religious communities. The legal position of religious communities is based on the following fundamental principles: (1) separation of the state and religious communities, (2) equality of religious communities and (3) free activity of religious communities within the legal order.

In the Slovenian legal system, freedom of conscience and belief is provided for under Article 41 of the Constitution and is entitled "freedom of conscience." This provision broadly protects the freedom of self-definition; it refers not only to religious beliefs but also to moral, philosophical and other views of life. The Article comprises three provisions: the assurance of freedom of conscience or the positive entitlement; the right for a person not to have any religious or other beliefs, or to not manifest such, or the negative entitlement; and the right of parents to determine their children’s upbringing in the area of freedom of conscience. The first provision protects the particular right of every individual to profess freely his or her religion and other self-definitions in his or her private and public life. The Constitution does not define in more detail which activities are embraced by freedom of conscience. The individual’s freedom of conscience implies both the positive entitlement – the opportunity for individuals to have, change and manifest their optional religious and other beliefs – and also the negative entitlement – the right for a person not to have any religious or other beliefs, or to not manifest them. The Constitution formulates this negative entitlement in such a manner that no individual is obliged to admit to religious or other beliefs.

As a special aspect of freedom of conscience, the Constitution provides for the right of parents to give their children a moral and religious upbringing in accordance with their beliefs. Religious and moral guidance given to a child must be appropriate to his or her age and maturity. The
guidance must also be consistent with the child’s free conscience and religious and other beliefs or convictions.

According to the explicit provisions of Article 16 of the Constitution, freedom of conscience is one of seven special constitutional rights and freedoms that can never be temporarily suspended, not even in war.

The right of conscientious objection is also protected by the Constitution under Article 46. This right is permitted in such circumstances as are determined by statute, to the extent that the rights and freedoms of others are not adversely affected. Conscientious objection is allowed only in two areas: state defence and health care. More precisely, citizens who, because of their religious, philosophical or humanitarian beliefs, are not willing to perform military duty are assured the opportunity of participating in the defence of the state in some other manner. In deciding whether to accept claims of conscientious objection, one of the factors that must be considered is religious belief. The right to conscientious objection is given to everyone who is obliged to participate in performing military duties: recruits, soldiers during their military service, and commissioned officers. Physicians may refuse to operate on patients, except in emergencies, if the operation is contrary to their conscience and to the international rules of medical ethics. In order to exercise this right, they must first inform the medical facility concerned of their objection. That facility must respect their decision and, at the same time, ensure that its patients can exercise their health care rights.

Further Constitutional provisions regulate not only the relations between individuals and the state but also the religious relations among individuals. Under the provision of Article 63, inciting religious discrimination and inflaming religious hatred and intolerance are prohibited. The provisions of Article 14, as a reflection of the principle of equality before the law, prohibit discrimination on the basis of religion or other belief. The violation of this principle of equality and the prohibition of discrimination in the area of freedom of religion have been criminalised under the Penal Code 2008 (hereinafter: the PC) of the Republic of Slovenia because they violate human rights and freedoms.

The Slovenian legal system addresses the churches and religious communities only in general; it does not include statutes regulating individual churches or religious communities. State-church agreements are important source of Slovene law on religion. The Government of Slovenia signed mu-

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3 These rights are further detailed in the Health Services Act (1992) and in the Patients’ Rights Act (2008).
tual agreements on legal questions with the Catholic Church in 1999 and the Protestant Church in 2000, followed by agreements with the Serbian Orthodox Church (2004), the Seventh Day Adventist Church (2004), the Islamic Religious Community in Slovenia (2007), and the Buddhist Congregation Dharmaling (2008). The first international agreement between the Government of Slovenia and the Holy See was signed in 2001. The Agreement was under constitutional review till 19 November 2003 when the Constitutional Court declared it in accordance with the Constitution.

In 2007, the National Assembly passed the Religious Freedom Act (hereinafter: the RF Act)⁴ that provides more detailed regulations concerning the legal position of churches and religious communities. The RF Act replaced the Legal Status of Religious Communities Act 1976 (hereinafter: the LSRC Act) that considered religious freedom to be an individual’s private concern only. Differently and in accordance with the democratic Constitution of 1991, the RF Act provides that religious freedom shall be inviolable and guaranteed not only in private life but also in public life (Art. 2). Thus, the modern Slovene legal order provides for the state neutrality and puts an end to the promotion of atheism as the state ideology that was supported by the former Socialist Constitution.⁶ Accordingly, the statute first provides for the positive aspect of religious freedom that encompasses the right to the free choice or acceptance of a religion, freedom of expressing religious belief and refusal of its expression and freedom for everybody to express, either by himself/herself or together with other people, privately or publicly, his/her religious belief through religious service, religious instructions, practice and religious rites or in some other way (RF Act Art. 29 para. 2). The negative aspect of religious freedom is assured under the provision of Art. 29 para. 3 RF Act that determines that nobody may be forced to become or remain a member of the church or some other religious community, to participate or not participate in the religious service, religious rites and other forms of religious expression. In addition, the RF Act contains a general assurance of the freedom of conscientious objection (RF Act Art. 29 para. 4). The RF Act provides that the state has a positive and general obligation to guarantee smooth exercise of religious freedom (RF Act Art. 29 para. 5). In addition to the RF Act, a series of statutes dealing

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⁵ Official Gazette RS, Nos. 14/07, 46/10 – odl. US, 40/12 – ZUJF and 100/13.
⁶ See Constitution of the Socialist Federative Republic of Yugoslavia, Part V (February 1974), which provided for upbringing and education to be based on the achievements of contemporary science and especially on Marxism.
with different areas of law also defines the legal position of religious communities in the Republic of Slovenia.\footnote{In their provisions, these Statutes explicitly mention religious communities, and protect the freedom of religious belief, e.g. some protect certain religious values (The Media Act, The Film Fund Act, The Penal Code, The Military Service Act, The Health Activities Act, The Patients’ Rights Act); some protect the confidential relationship between an individual and his or her confessor (The Criminal Procedure Act, The Civil Procedure Act, The General Administrative Procedure Act); some enable the implementation of freedom of religion in various areas (The Public Meetings and Performances Act, The Act on Graveyard and Burial Activities and on the Arrangement of Graveyards); some make possible and restrict the participation of religious communities in certain activities and in public life (The Act on the Organization and Financing of Child Rearing and Education, The Radio-Television of Slovenia Act, The Election Campaign Act, The Political Parties Act, The Institutes Act); some determine the special tax status of religious communities or priests (The Tax on Legal Entities’ Profits, The Sales Tax Act, The Building Lands Act, The Foreign Trade Act, The Income Tax Act) and a special system for priests’ insurance (The Social Protection Act, The Retirement Pension and Disability Insurance Act); and some regulate the return of property in denationalization proceedings and to religious communities (The Denationalization Act). Also relevant are all those general legal acts which apply to a generic legal entity or a legal entity under civil law.}

The Constitution (Art. 63) and the FR Act (Art. 3) prohibit any incitement to religious discrimination, inflaming of religious hatred and intolerance, as well as any direct or indirect discrimination on the basis of religious belief, expression or exercise of such belief. Discrimination on the basis of religious belief may constitute a criminal offence under Article 131 Penal Code 2008.\footnote{Art. 171 of the PC 2008 provides that any individual who, because of a difference in religious beliefs, deprives another individual of any human right or fundamental freedom recognized by the international community or determined by the Constitution and Statutes, or who restricts such a right or freedom, or who grants someone some special right or benefit on the basis of discrimination, violates the principle of equality. A fine or imprisonment for up to one year is prescribed for such an offence. If the offence is committed by an official abusing his or her official position or the rights associated with it, the penalty is imprisonment for up to three years.}

Public incitement to hatred, violence or intolerance is punishable under Art. 297 of the PC 2008.\footnote{See more in Ivanc, 2015, p. 119.}
IV. Basic Categories of the System

1. General Perspectives

Article 7 of the Constitution and the RF Act provide for the separation of the state and religious communities, which separation has three basic elements. This provision has been interpreted as meaning that the state remains neutral to all religions, that it does not take a position concerning world views, and that it does not identify itself with any one religion or religious community (Art. 4 paras. 3 and 4 RF Act). Because of the religious or ideological neutrality of the state, there can be no state church. The second element of the principle of church-state separation stipulates that churches and religious communities are autonomous in their own sphere. While religious communities act separately from the state and are free to organise and implement their activities, they must conform to the Constitution, Statutes, and other regulations. Thus, the state must not interfere with the organisation and activities of churches and religious communities, except in cases laid down by the law (Art. 4 para. 1 RF Act). The third element of the church-state separation is a demand for equal treatment by the state of all churches and religious communities that have equal rights and obligations, each of them being independent and autonomous in its order. The RF Act not only provides that the state shall undertake to fully respect this principle in mutual relations, but it also has to cooperate with churches and religious communities for the benefit of the personal development of the individual and for the common good (Art. 4 para. 2 RF Act).

2. Constitutional Review

The Constitutional Court (hereinafter: the Court) in the period between 1991 and 2018 delivered the following important decisions regarding religious freedom:

The Military Service Act was not consistent with the Constitution insofar as the Act allowed one to claim the right of conscientious objection at conscription but not at a later date10.

Church organisations and institutions are bound by State law and also depend, in the matter of their legal status, upon State regulations. These

bodies are treated as domestic legal entities, and are as such also governed by positive law.\textsuperscript{11}

Churches and religious communities are universally beneficent institutions.\textsuperscript{12}

Churches and religious communities perform an important function in society.\textsuperscript{13}

After 1999 the Court dealt in more detail with the principle of the separation of the state and religious communities and initially demanded an ultra-strict separation.

The prohibition under the Organisation and Financing of Education Act (hereinafter: the OFEA)\textsuperscript{14} of religious activities in private kindergartens and schools that had been granted state licenses was held to be unconstitutional.\textsuperscript{15} The Court confirmed the validity of the existing enactment that prohibited all religious activity in public kindergartens and schools. The Court's reasoning was that the rights of non-believers and the principle of the separation made it necessary in a democratic society to ban religion completely from public educational institutions, not only from the curriculum, but also from school premises.

The 2001 Census Act ensured that the person counted has the freedom to declare their religion and, indeed, whether or not they are willing to answer that question at all. Collecting data by the state on the religious belief of its inhabitants is not contrary to the principle of the separation of religious communities and the state.\textsuperscript{16}

In 2003, the Court declared in its interpretative decision the Agreement between the Government of Slovenia and the Holy See to be in accordance with the Constitution insofar as the court's recent interpretation of the principle of separation is obligatory for all state organs not only in implementing that agreement but also for all future agreements.\textsuperscript{17}

\textsuperscript{11} OdlUS II, 23 (Decision No. U-I-25/95 dated 4 March 1993).
\textsuperscript{14} Official Gazette RS Nos. 16/07 –oficially consolidated text, 36/08, 58/09, 64/09 – popr., 65/09 – popr., 20/11, 40/12 – ZUJF, 57/12 – ZPCP-2D, 47/15, 46/16, 49/16 – popr. and 25/17 – ZVaj.
\textsuperscript{17} Decision No. Rm-I/02-21 dated 19 Nov 2003.
The Court annulled the Ljubljana local community resolution calling a referendum that could prevent the building of a mosque at the planned location, because it has interfered with the right to freely profess a religion.\textsuperscript{18}

The Court found no violations of the Constitution when reviewing the legislation that prevented the return of the entire island of Bled to the local parish of the Catholic Church. However, the claimant filed an application to the European Court of Human Rights and the parties agreed to the extra-judicial settlement of the issue.\textsuperscript{19}

In 2008, the Court decided to annul the Moravče commune decree on burials that determined the rules for a Christian burial, because the decree interfered with the principle of separation and the exclusive right of a church or a religious community autonomy to regulate religious rules on burials.\textsuperscript{20}

The decision on the RF Act 2007 is the most comprehensive decision of the Court in the area of religious freedom in which the Court provided a detailed interpretation of the most important principles and stressed that the state-church separation may be supplemented by different forms of mutual cooperation.\textsuperscript{21} Although the Court evidently departed from ultra-strict interpretation of the separation principle, some parts of the RF Act were proclaimed not to be in accordance with the Constitution (e.g. the provision that called for at least 100 adult believers and at least ten years of continuous activities in Slovenia as basic criteria for the registration of a religious community, and provisions that enabled employment of religious workers in hospitals and in prisons).

In 2014, the Court established that the provision of Article 86 of the OFEA that provided private schools carrying out state-approved education programmes with only 85% of public funding is not accordance with the second paragraph of Article 57 of the Constitution that ensures pupils the right to attend compulsory state-approved primary education programmes free of charge in public and private schools.\textsuperscript{22} At the moment, the National Assembly has still did not amended the OFEA.

Recently, the Court reviewed the Act on national holidays and free days from the perspective of alleged discrimination due to the fact that some days free of work were are also Christian holidays. The Court stressed two arguments for the dismissal of the petition. First, the regulation of days

\begin{itemize}
  \item \textsuperscript{18} OdlUS XIII, 54 (Decision No. U-I-111/04 dated 8 July 2004).
  \item \textsuperscript{19} OdlUS XVI, 100 (Decision No. Up-395/06, U-I-64/07 dated June 2007).
  \item \textsuperscript{20} OdlUS XVII, 52 (Decision No. U-I-354/06 dated 9 October 2008).
  \item \textsuperscript{21} OdlUS XIX, 4 (Decision No. U-I-92/07 dated 15 April 2010).
  \item \textsuperscript{22} OdlUS XX/29 (Decision No. U-I-269/12 dated 4. December 2014).
\end{itemize}
free of work was not based on denomination, but on traditional, family, cultural and historical values and identity that are shared among vast majority. Second, the subject matter is not linked with the individual aspect of religious freedom.²³

The last decision of the Court in the area of religious freedom was the annulment of judicial decisions that did not sanction a discrimination – concerning conditions of a public tender in the area of social and humanitarian work – of a charitable institution “Slovenska karitas” that was established by the Catholic Church. The Court established that the condition that prevented charity institutions established by religious communities from applying for public support, interfered with the equal treatment guarantees enshrined in Arts 2 and 13 of the Agreement with the Holy See.²⁴

V. Legal Status of Religious Communities

Although the Constitution only refers to religious communities (Art. 7), the RF Act explicitly refers to churches as well. However, the RF Act does not make a distinction between a church and a religious community (Art. 1). Under Article 7 para. 2 RF Act a church or any other religious community is defined as “…a voluntary, non-profit association of natural persons of identical religious belief, established with the purpose of public and private profession of this religion and having its proper structure, bodies and autonomous internal rules, proper religious service or other religious rites and profession of religion”. The acquisition – via registration – of a legal personality of a church or a religious community is not mandatory. However, a church or a religious community has a legal right to register, if fulfilling statutory conditions that are not demanding (Arts. 6 and 8 RF Act). According to the Art. 13 RF Act, a church or other religious community may be registered if it has at least 10 adult members, citizens of the Republic of Slovenia or foreigners with permanent residence, registered in its territory.

The RF Act provides that the establishment (or dissolution) of religious communities is to be decided by the Competent Authority (at the moment this is the Office for Religious Communities situated within the Ministry of Culture; hereinafter also: the Office). The Office issues a decision on reg-

istration according to the Administrative Procedure Act. By registration churches and religious communities acquire legal personality as entities governed by private law, whereas their component parts (e.g. parishes) may also acquire a separate legal personality (Article 6 para. 3 RF Act. Registration entails not only an opportunity to carry out activities as a church or a religious community, but also provides for additional rights for registered churches and religious communities (Chapter IV RF Act). These additional rights are related to various aspects of religious freedom such as: 1. the conclusion of special agreements between the state and a church or a religious community (Art. 21); 2. the assurance of religious spiritual care in the army (Art. 22), in the police (Art. 23), in prisons (Art. 24) and in hospitals and social welfare institutions performing institutional care (Art. 25); 3. the freedom of construction and use of premises and buildings for religious purposes (Art. 26); 4. state financial support for the payment of contributions of an insured person for the social security of employees of churches and other religious communities (Art. 27); 5. the financing of state support for the payment of social security contributions for the insured person (Art. 28); and 6. the state financing of registered churches and other religious communities (Art. 29 para. 3).

Registered religious communities are not under any special supervision of the state. They are, however, subject to the same general supervision as other legal entities because their activities must conform to the Constitution, Statutes and other regulations. For example, the registration of religious communities is intended to protect third parties, and religious communities must carry out financial transactions through banks and under the supervision of the Tax Authorities.

Various forms of religious gathering are in principle free (e.g. in religious building, customary religious processions, religious burials, congresses) and there is no duty to report such a gathering (Art. 12), though in very exceptional cases the Public Assembly Act demands that a (religious) gathering must be have a special permission (e.g. attendance of more than 3,000 people, use of public roads, use of open fire or other objects or devices that might endanger life or health of participants of such public gathering; see Art. 13).  

Although, Slovenian legislation has no explicit mention of the right to observe and celebrate religious holidays, the data about religious holidays is gathered by the State when deciding an application for the registration of a religious community (Art. 14 RF Act). That right is encompassed by
the right to profess one’s religion privately and publicly (Art. 2 RF Act). Under Art. 2 of the Public Holidays and Work-off Days in the Republic of Slovenia Act\textsuperscript{26} certain church holidays are regulated not as State public holidays, but as work-off days: Christmas (December 25), Easter Monday, Whitsuntide, Pentecost, the Assumption of the Virgin Mary (August 15), and the Protestant Day of Reformation (October 31).

VI. Culture

1. Education

The main Statute in this area is the OFEA that established the separation of public and private educational institutions. Private institutions may perform educational programmes certified under the same standards as public programmes. Accordingly, the diplomas issued by private institutions are recognised as public documents if their conferring institutions fulfil the same standards as public schools. These statutory standards require certain minimum levels in the training and education of employees, upkeep of premises, and availability of equipment. In Slovenia, municipalities and local communities establish public kindergartens and elementary schools, while the state generally establishes and finances secondary schools. Urban municipalities may also establish general secondary schools by agreement with the state. Public schools (and kindergartens) must be neutral vis à vis religion. The OFEA, on the basis of the strict interpretation of the constitutional provision separating the state and religious communities explicitly prohibits denominational activities (Art. 72 paras. 3 and 4). Initially, these prohibitions applied both to public kindergartens and schools, as well as private kindergartens and schools that had been granted state licences. The only exceptions to this were the private schools which were licensed prior to the coming into force of the Education Act. After the Constitutional Court held in 2001 that the prohibition concerning private kindergartens and schools that had been granted state licences was unconstitutional, the OFEA was consequently amended in 2002. However, certain restrictions remain. Religious activities in private schools must be extracurricular, so that the regular programme must not be interrupted in time or for a change of premises (Art. 72 para. 3).

\textsuperscript{26} Official Gazette RS, No. 112/05.
The restrictions applicable to public schools prohibit:

- lessons in religion with the aim of educating children in a particular religion,
- lessons where religious communities decide on the content of the syllabus, textbooks, educational criteria of teachers, and the suitability of a particular teacher for teaching, and
- the organisation of religious observances (Art. 72 para. 4).

In special cases, the Minister of Education may allow religious lessons on the premises of kindergartens and schools. Such lessons are allowed only if there are no other "appropriate premises" in the local community (Art. 72 para. 5). Additionally, such religious instruction requires the headmaster's approval and must be given outside the regular curriculum and regular operation of the school. In practice, no other "appropriate premises" in the local community means that: no premises whatsoever are available in the local community; premises exist but their condition is bad enough to pose a health and security risk; the premises are more than four kilometres away from the kindergarten or the school; or if the premises are less than four kilometres away from the kindergarten or school but travel to those premises threatens the safety of the children.

The OFEA lists autonomy as one of the goals of child-rearing and education. Under the Act, this concern for autonomy is shown in extracurricular "types and varieties of knowledge and persuasion," and by ensuring the optimal development of individuals irrespective of their religious belief. Accordingly, the Act requires that schools be religiously neutral and independent of religious communities. Additionally, this principle of autonomy prohibits discrimination against any religious belief and urges principled tolerance.

While the Constitution does not regulate religious lessons, the OFEA explicitly prohibits lessons whose aim is to teach children to follow a particular religion. This prohibition applies to public schools and kindergartens. The Elementary School Act obliges schools to provide non-religious lessons on religion and ethics within the framework of their elective courses. All religious communities have the opportunity to organise religious lessons on their premises at any time, but this is not a concern of the school or the state. The nub of this issue is that it is a private matter for students. Regarding religious lessons, the OFEA states that religious communities may hold them on premises designated for observances and other

27 The Elementary Schools Act, Art. 17, para. 2.
premises where a religious community permanently carries out its religious activities. Minors, however, can attend these lessons only if they consent and have the consent of their parents or guardian.

As previously described, the OFEA prohibits religious lessons in public schools where religious communities decide on syllabus, the textbooks, the educational requirements of teachers, and the suitability of a particular teacher for teaching. Accordingly, this legislation prevents the churches from designing religious lessons for public schools and from nominating the teachers of these courses.

In unlicensed private (religious) schools, they may be, and usually are, a mandatory course. Statutes prohibit religious observances, such as prayer meetings, from being held in public schools and kindergartens. This prohibition, however, does not extend to private schools that were granted licences before the statute came into force. Among these private schools licensed before the statute entered into force are three Catholic general secondary schools. In these schools prayers are permitted but not mandatory.

While legislation does not explicitly prohibit or allow displaying a crucifix or the cross (there is no distinction between them) in schools, these symbols are prohibited in practice as violating the principle of separation of the state and religious communities. However, there is no information indicating that any public school has ever tried to hang a cross or a crucifix nor has the Constitutional Court yet adjudicated in such a case.

The Slovenian legal order envisages no difference between private religious kindergartens and schools and other private kindergartens and schools; the OFEA, for example, exclusively regulates private schools in general and does not mention religious schools. Religious communities may establish kindergartens and schools under the same conditions as other private law subjects.

For the private religious schools that were granted licences before adoption of the OFEA, there were special transitional rules governing their funding and they have – by adjusting their curriculum and the execution of their programme according to the autonomy requirements – kept 100% state funding.28 Private schools may be freely established. This means that on the basis of the Act on Establishment it is necessary to enter an educational organisation into the court register or another appropriate register.

28 These schools were organized and operate under the 1991 Act on the Organization and Financing of Child Rearing and Education. Their licences are dependent on meeting the state educational and instructional requirements that were in force before the Education Act.
Private schools are free to follow their own educational programmes, unless they wish to obtain state licensing. In that case, they must obtain approval from the Government of Slovenia, or from its competent professional council, that their educational programme meets the same educational standard as the public educational programme. Founders of schools may be either domestic or foreign legal entities; however, only domestic natural persons or legal entities may establish elementary schools.

In Slovenia there are 6 private elementary schools; there are 771 public elementary schools with branches and 57 public elementary schools for pupils with special needs. Among 124 secondary schools there are 4 private religious general secondary schools and 2 private non-religious general secondary schools (i.e. 4% of secondary schools). Evidently, the share of private educational institutions on primary and secondary level is only 1.3%. Consequently, a vast majority of pupils in Slovenia (98% or more) attend public educational institutions.

The State supervises the registration of schools. It also supervises their educational programmes when schools are licensed, that is, when they want their diplomas to be recognised as public documents. The State does not, however, control the internal organisation of schools, except when it grants licences, and then statutory provisions apply ex lege to licensees. If the State, on the basis of a public call for tenders, makes licence contracts with private educational institutions for operating public services, all the provisions of the OFEA apply to licensed public kindergartens and schools. The most significant of these provisions concern the equal rights and obligations of students and their parents; the same quality in implementing the programmes; the internal organisation; the financing of programmes; and the educational conditions for professional employees.

The rules concerning the enrolment of students and admission criteria that apply for public schools also, in principle, apply for licensed private schools, whereas religious (or world view) orientation of a student is not important. The certificates of religious private schools (general secondary schools) are recognised as public documents. Private educational institutions may be financed in two ways: they are either granted licences or financed directly under statute. The receipt of a licence means that the formally private school or kindergarten is part of the public network. Consequently, all conditions that apply to public schools or kindergartens also apply equally to the licensed school – they must carry out the same educa-

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tional programme and fulfil all other conditions (and equally regulate the
rights and obligations of students and their parents, maintain the same
quality in implementing programs, have equal internal organisation and
provide the equal financing of programs and educational conditions for
professional employees).

According to the statute itself, if private kindergartens, private elemen-
tary and music schools, and private general secondary schools (but not in-
cluding professional schools) which carry out public programmes and are
not licensees comply with statutory conditions, they have the right to pub-
lic funds to a maximum of 85% of the funds that the State or local commu-
nity designate for salaries and material costs per student in public schools.
The only condition is that the existence of public elementary schools in the
same area is not thereby threatened. The legislator still has to implement
the decision of the Court that demands full financing educational pro-
grammes of primary private schools. Private schools carrying out public
programmes must comply with conditions prescribed for professional em-
ployees of schools. If teachers comply with the statutory conditions (partic-
ularly concerning their education), private schools are free to choose their
own staff. Thus far, in Slovenia, there have been no cases concerning the
possibility of terminating an employment contract because of the nature of
the school.

2. Media

Churches and religious communities are entitled to freedom of expression
(Art. 39 Constitution) and have the freedom to establish and own the pu-
bic media. The Media Act, which regulates the manner of realising the
freedom of public information and the rights and duties of the media and
journalists, explicitly exempts bulletins, press, and other forms of publish-
ing information intended exclusively for use within Church organisations
from the domain of (public) media (Art. 2). A religious community can
publish a public gazette, if this is related to its activities.

The dissemination of a programme that encourages ethnic, racial, reli-
gious, sexual or other discrimination, violence and war, or that incites
racial, sexual, religious or other hatred and intolerance is not allowed
(Art. 8 Media Act). In addition, advertising in public media may not en-
courage religious discrimination or religious intolerance or offend reli-
gious beliefs (Art. 47 para 3). A publisher of a radio or television program
has the right to short reporting on major events and all other events that
are open to the public, with the exception of religious ceremonies (Article
The integrity of religious ceremonies is protected under Art. 93 Media Act, which assures that broadcasting of a religious ceremony may not be interrupted due to advertising.

The Radio-Television of Slovenia (hereinafter: the RTV Slovenia) is Slovenia's national public broadcasting organisation with a public function. Its activities are regulated by the RadioTelevision of Slovenia Act (hereinafter: the RTV Slovenia Act). The mission of RTV Slovenia is of special importance for churches and other religious communities. In principle, the RTV Slovenia Act does not allow for religious propaganda in its programmes, whereas the term “religious propaganda” only relates to paid advertisements of religious communities (Art. 11). However, RTV Slovenia has several important tasks: 1. it must take into account the importance of religious issues and public activities of churches and religious communities; 2. it has to deliver high-quality educational programs and transmit a full range of issues related to not only to social, scientific and technological topics, but also to religious issues; 3. a special attention must be given to the functioning of registered churches and religious communities. ³⁰

Noticeably, churches and religious communities do have some influence on the composition and on decision-making process of the programme board of the RTV Slovenia, because the President of the Republic is empowered to appoints two members of the programme Board on the proposal of registered churches and religious communities (Art. 17).

VII. Labour Law within the Religious Communities

General labour law applies to the (very few) church employees; these are mainly in church sponsored private schools. The RF Act (Art. 3) and the Equal Treatment Act provide for exceptions from general prohibition of discrimination in the field of employment within religious communities. Under Art. 2.a of the Equal Treatment Act, occupational activities within churches and other public or private organisations the ethos of which is based on religion or belief do not constitute inadmissible discrimination based on religion or belief, if by reason of the nature of these activities or of the context in which they are carried out, a person’s religion or belief constitutes a genuine, legitimate, and justified occupational requirement, considering the organisation’s ethos.

VIII. Financing of the Religious Communities

Because of the absence of a church tax system, the main financial source remains self-financing of churches and religious communities. Consequently, churches and religious communities mainly rely on donations and other contributions of natural and legal persons on the one hand, and on the use of their property rights on the other hand. They are equally entitled to private property and inheritance as other persons governed by private law. The Denationalisation Act (1991) to some extent remedied injustices related to the violation of the property rights of religious communities, but the process of returning the nationalised property or compensations has still has not been completed. Registered churches and religious communities are free to receive voluntary contributions and may also receive contributions from religious organisations abroad. The Slovene Law on Religion provides for direct and indirect financing of religious entities from the state and local authorities. The provision in Article 20 of the Legal Status of Religious Communities Act (1976) remains in force and provides for such direct financing. In addition, the RF Act enables states financial support (with or without a specific purpose), if registered churches and religious communities are involved in activities of general benefit. An important direct state aid is targeted financial support for the payment of contributions for the social security of priests and members of religious orders (RF Act, Art. 27). The six largest religious communities benefit from state remuneration of their staff in proportion to the number of their personnel. The total amount of such direct financial aid in 2017 was around EUR 1.7 million.

Indirect financing is mostly provided by certain exemptions in fiscal and customs matters. Priests and members of religious orders have to file tax returns, but may claim a 40% business expense deduction. In principle, churches and religious communities may also receive financial support by participating in humanitarian, non-profit, or charitable projects financed by the state or local authorities. As evident from the above mentioned decision of the Court on Slovenska Karitas, the state had a discriminatory policy in this area. Public co-financing of activities in the areas of culture, art, social care, and healthcare, is also enabled by the Slovene Law on Religion. Reconstruction of sacred buildings (mostly owned by the Catholic Church) are usually co-financed up to 30% or 50% and given with a sole purpose of preservation of objects of Slovenian cultural heritage. Religious communities are exempted from paying income tax. In practice this statute is usually interpreted to mean that while religious communities and societies as a rule do not pay taxes, since it is assumed that they were estab-
lished with non-profit intentions, they must however pay taxes on all profit generating activity, e.g. on publishing and selling books. Religious communities are also exempted from paying property tax on buildings used for their religious activities.\textsuperscript{31}

**IX. Religious Assistance in Public Institutions**

Constitutional protection of the right to religious freedom also includes religious assistance to persons that work, reside or are being held in public institutions of different types. In 2007, the RF Act in a comprehensive manner regulated religious assistance in and access to the following types of public institutions: in the Army (Art. 22), in the Police (Art. 23), in prisons (Art. 24), in hospitals, and in social welfare institutions (Art. 25). Beside statutory rules, special agreements with registered churches and religious communities also regulate some areas of religious assistance in public institutions. Already in 2000, the government signed two agreements with the Catholic Church and the Evangelical Church that provide for religious spiritual care in the Army. This has led to the establishment of military chaplaincies and employment of military chaplains as public servants within the Army. Under Art. 52 of the Defence Act all members of the Slovenian Army enjoy the right to religious spiritual assistance during their military service. The Police Act was supplemented after the adoption of the RF Act and now provides that religious or spiritual care must be given to police officers in circumstances that make the exercise of their religious freedom difficult (Art. 73.a). In the decision on the constitutionality of the RF Act (in 2010), the Court held that such special circumstances that limit the individuals’ access to religious assistance, by raising burdens and provoking different life conditions, justify the employment of religious workers in the Army and in the Police. However, the Court was of different opinion concerning the employment of religious workers as public servants in public hospitals, social welfare institutions and in prisons. Thus, the Court annulled the provisions of the RF Act that made this possible. In general, the right to religious assistance in public institutions guarantees: 1. that a priest has a free access to the institution – although he or she must respect its internal rules – and may perform his or her work undisturbed and may visit individuals of the relevant religious belief without supervision at the appropriate time, 2. participation in religious cere-

\textsuperscript{31} See Ivanc, Šturm, 2016, p. 373.
monies organised in the institution to the extent practicable, and 3. access to books with religious content and instruction. Public institutions have positive obligations to make the exercise of religious assistance possible (e.g. providing material conditions, premises and technical conditions).

X. The Legal Status of Priests and Members of the Religious Orders

A special legal status for priests and members of religious orders is provided under RF Act that sets two conditions for a “religious employee”: 1. he/she must be a member of a registered church or other religious community, 2. he/she must be dedicated in his/her religious community exclusively and fully to the religious-ritual, religious-charitable, religious-educational and religious-organisational activities in compliance with the order, regulations, required qualifications and powers of the supreme authority of his/her church or other religious community (Art. 7). The RF Act provides for a targeted financial support for the payment of contributions for the social security of priests and members of religious orders, by which the state covers a certain part of the costs of mandatory health, social, and pension insurance. The legislator based such a solution more on the intention to protect corporative religious freedom of religious communities (Art. 41 in connection to Art. 7 para. 2 Constitution) than on the individual's constitutional right to social security (Art. 50 Constitution).

To protect individual religious freedom and confidential relations between individuals and religious confessors, confidential religious communications are privileged in criminal, civil (litigious and non-litigious), and administrative procedures. Clergy are exempted from the duty to testify on what they have heard as the defendant's or party's confessor. It is left to religious confessors to decide for themselves whether to testify, but if they do testify they must tell the truth. Religious confessors are exempted from the general duty to report criminal offences or their perpetrators.

The crime of the unauthorised betrayal of a business secret may also be committed by priests, if they without authorisation betray a secret they heard while carrying out their profession, unless they do this for the general good or the good of an individual, this being greater than the good of keeping the secret. It is considered that they must keep such information confidential even after they cease to follow their profession (Art. 142 PC 2008). Prosecution in such cases is brought by a private action (Art. 142 para. 3 PC 2008).
XI. Matrimonial and Family Law

Article 53 of the Constitution and Arts. 33 and 38 of the Family Code\(^{32}\) provide for mandatory civil marriage that has to be solemnised before an empowered state authority (e.g. the registrar, head of the administrative unit, mayor). The state holds that religious communities cannot be granted any public authorisation. Accordingly, they have no authority to conduct legally binding civil marriages. They may marry or divorce couples only according to their internal law, which has no civil law consequences; \textit{i.e.} from the state's position, these acts are not binding.

Registers concerning marital and family status are kept by the state. The archives of religious communities are defined as private archives. The archival material of the Catholic Church (historical documents, \textit{e.g.} records of births, deaths, and marriages) must be selected from church documentary materials according to its regulations. However the Minister of Culture, in agreement with the Slovenian Bishops' Conference, determines the special conditions and the means for carrying out the archival activities of the Church.\(^{33}\)

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I. Social Facts

The census of 21 May 2011 shows that 75.97% of Slovak citizens belong to a church or religious society. The most numerous groups are Roman Catholics at 62.02%, followed by the Evangelical Church at 5.86% and the Greek Catholic Church at 3.83%. The Reformed Christian Church represents 1.83% of the population. Some 13.44% of the population do not belong to any religious confession. For comparison, we present some data from the census of 1 March 1950: at that time, the percentage of believers was 99.72%. Roman Catholics represented 76.2%, the Evangelical Church 12.88%, Greek Catholics 6.55% and Reformed Christians 3.25% of the population, while only 0.28% of the population had no confession. A comparison of censuses in Slovakia’s modern history, e.g., in 1991, 2001 and 2011, suggests only a slight regrouping of believers within traditional churches, i.e., a slight decrease in the number of believers of all churches.\footnote{Table 14 – Population of the Slovak Republic by Religion, Statistical Office of the Slovak Republic, Undated. <https://census2011.statistics.sk/tabulky.html>(accesed 3 May 2018).} Newly registered churches and religious communities include Jehovah’s Witnesses (1993), the New Apostolic Church (2001), Mormons (2006) and the Baha’i Community (2007). Furthermore, there are dozens or even hundreds of entities\footnote{Based on an unpublished survey of the statutes of civil associations (40,000 records), direct or indirect reference to religious activity has been found in more than 200 associations.} that have been set up and registered under Act 83/1990 Coll on Civic Associations. This law’s first provisions (Section 1) state that the Act does not cover associations of citizens in churches or religious communities. Instead, civic associations are used mainly by religious communities with only a small number of members.
Population of the Slovak Republic by Religion, absolute number, percent.

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II. Historical Background

1. Early Times

Historically reliable beginnings of Christianity in the territory where present-day Slovakia is situated date back to the period of Great Moravia, to the first half of the 9th century. This was the time when the unifying process of kindred Slavic tribes was completed in this territory. Mojmír stood at the head of a multi-tribal, well-organised principality with several economic and political centres. He maintained good relationships with Franks and allowed Frankish clergy to enter the principality as missionaries. At the same time, another western Slovak multi-tribal centre around Nitra came into existence in the territory of the present-day Slovakia. The Nitra principality, which gradually spread its rule over the whole of the present-day Western and a part of Central Slovakia, had thirty economic and political centres.

Pribina was the first historically recognised Slavic prince. His originally dismissive attitude towards Christianity was a reaction against the Frankish expansion. Even though he accepted the activities of Bavarian missionaries on the Slovak territory, he himself remained a pagan. During his reign, in 828, the Salzburg archbishop Adalram consecrated the first Christian church at the Nitra castle in this territory. In 835 Moravian Prince Mojmír I, being already Christian himself, conquered Nitra and expelled Pribina so the two principalities became one territorial unit, which was later named Great Moravia. Later, East Frankish king Louis II the German, deposing Mojmír I, entrusted the crown to his son Rastislav. Rastislav sought to build up the new Moravian-Slavic unit. From the economic and military point of view, he tried to disentangle it completely from Bavarian influence and to create a separate Great Moravian church administration that would be independent from the Bavarian episcopacy. In 861 he sent a message to Pope Nicholas I with a request to send him back a bishop and missionaries with knowledge of the Slavon language. The Pope did not satisfy the plea, probably because he did not have such missionaries available.

3 Pribina took refuge in Pannonia at the seat of the Frankish governor Radbod, who administrated the eastern region. This is where he and his son Kočeľ were baptised. The life of Prince Pribina and his son is described in De conversione Bagoariorum et Carantanorum script. Šolle, Miloš. Od úsvitu křesťanství k sv. Vojtěchu. Prague: Vyšehrad, 1996, p. 72.

4 Rastislav’s request is not mentioned until by Pope Hadrian II, the successor of Nicholas, did so in the letter called Gloria in excelsis Deo of 869.
Since Prince Rastislav wanted to realise the idea of an independent Great Moravian church administration as soon as possible, he turned in 862 to the Byzantine emperor Michael III. One can assume that he was trying to get help in both church and political fields from Constantinople. Due to territory expansion, Great Moravia found itself in the direct neighbourhood of the then strong Bulgarian kingdom. Simultaneously, Louis II the German started to establish intensive contacts with the Bulgarians. Rastislav, probably fearing attack, hoped for possible protection to be provided as well as missionaries. One year later, Michael III sent the brothers Cyril and Methodius to Great Moravia. They were originally Greeks from Thessalonica who spoke a Slavic language, a southern Macedonian dialect. Constantine created the Slavic alphabet, the Glagolitic, which he used when translating sacred books into the Slavon language (ancient Slav). This mission also produced works by the legally trained Methodius, such as “Laws for People” (Zákon sudny ljudem) and “Guidance to a Governor” (Nomokanon). The first described the church and legal organisation of land and the other the duties of a governor and a moral critique of the nobility, including the king. The important role the church played to strengthen the position of Great Moravia and state power is reflected in the fact that archbishop Methodius became the chief advisor to the king of Great Moravia. Pope Hadrian II appointed Methodius the first Pannonian and Great Moravian archbishop and Papal legate in Slavonic countries in the winter of 869-870.

Pope John VIII wrote an epistle Industriae tue (June 880), addressed to Svátopluk (Sventibald) the Great Moravian governor, in which, inter alia, he approved the liturgy in the Slavon language. In the 9th century Great Moravia was a relatively stable State, quite a large kingdom around the Moravia-Nitra centre. This kingdom played a significant role in Central Europe. Great Moravian – Slavon cultural values survived well into the Middle Ages and contributed to the formation of the feudal European civilisation, spreading mainly in Slavic world.

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7 Gospel was to be first read in Latin.
2. In Hungarian kingdom and Habsburg monarchy

After the fall of Great Moravia in 906, the whole Slavon world gradually disappeared. It took from two to three centuries for the territory with Slav inhabitants to become integrated into the newly formed Hungary, in which it remained for almost a thousand years. The part of the territory in which in the 9th century the Pribina principality had been situated, remained the historical core of the Slovak country\(^8\). Teofilaktos (933-956), the Byzantine patriarch, sent Bulgarian monks to Hungary to maintain the liturgical language as well as the whole Eastern Rite. The first bishop of Hungary, Hieroteos, was consecrated as part of this venture.

The territory of the present-day Slovakia, as integrated into the Hungarian kingdom, was gradually falling under the influence of the Western Church. In the 10th to 12th century the territory of present-day Slovakia was covered with a network of Benedictine, Cistercian and Premonstratensian monasteries that were centres of cultural and economic development.

During the reign of the first Hungarian king Stephen I (1000-1038) a state structure covering the whole of Hungary was formed, in many areas building on the former Great Moravian one. Thanks to his efforts to Christianise his country and his personal virtues, Stephen I was canonised at the end of the 11th century. The state as a whole was built as a European Christian state with Latin as both its official and its liturgical language. It represented the eastern border of the Latin-Catholic civilisation. The Hungarian church province had two archdioceses; the majority of Slovak territory was under the authority of the archdiocese with the seat in Esztergom, while eastern Slovakia fell under the Eger diocese. In the early part of the 12th century the Nitra diocese was restored. There is a historically reliable evidence of Jewish religious communities in the territory of Slovakia in the early 11th century. Their number rose especially after the expulsion of the Jews from Bohemia and Moravia in the second half of the 11th century.

The Hussite movement in Bohemia met with a reaction in Slovakia, especially because of the long-lasting conflict between the Hussites and King Zigmund. They found him the archenemy and the reason Jan Hus was burned at stake. In 1428-1432 the Hussite armies made several raids into Slovakia and captured a number of fortified castles and towns. Hussite ideas met with a certain response especially among townsmen, poor countrymen and the urban poor. Hussite preachers were active but the Hussite movement did not get major public support. The main reason for that was

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that Hussite armies tried to economically ruin the kingdom of their arch-enemy as far as possible. They demolished several villages and some towns, that gave the people a justifiable fear of the Hussites.

In the times of the struggles between the Habsburgs and the aristocracy, accompanied by the pressure of the strong Ottoman Empire and the battle of between reformation and counter-reformation, Slovakia became a core part of Habsburg Hungary. Pressburg (Bratislava) became its capital as the City where the meetings of legislative bodies and the coronation of Hungarian kings took place.

The enlightened absolutism exercised by the Habsburgs in the 18th century brought interference by the monarchs into the internal business of the church. In 1723, Emperor Charles VI forbade religious institutions from acquiring estates. Maria Theresia established state inspection over the administration of church and monastery property. The profit of church foundations was transferred for the benefit of the army and the public education system. Joseph II even issued decrees which referred to liturgical issues. He closed down contemplative monasteries the property of which he used when endowing new parishes. During the reign of Emperor Joseph II, clergy became subject to secular courts. In 1781 the Patent of Toleration gave freedom of worship to Protestants and Jews.

In 1848, a Constitution, which guaranteed freedom of religion and conscience, took effect in the Austrian monarchy. A process of church emancipation began. The 1855 concordat gave the Catholic Church great autonomy in several areas of its life. In 1870, the concordat was terminated by the Austrian state because of the approval of the dogma on papal infallibility at the First Vatican Council. In 1874, the government passed a law which restated the relations between the Holy See and the monarchy. A parity between Catholic Church and state was generally accepted. The same stance was taken by state towards non-Catholics.

Hungarian law differentiated between churches incorporated by law, recognised by law and not recognised by law. The basic difference was that state help and support was fully provided only to incorporated churches, while the recognised churches were treated almost as private law associations. Non-recognised churches were not even treated as private law entities and were subject to the regulations on public gatherings. The March revolution in 1848 ensured the complete equality of all incorporated churches, regulation XX/1848 requiring the state to meet the costs of churches and schools of incorporated churches. The crucial provision set-

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ting out the attitude of state towards religion was Law 43 of 1895, which enacted reforms essentially identical to those in Austria.

3. The Czechoslovak Republic and the Slovak Military State

The creation of the independent Czechoslovak Republic raised complicated and controversial issues about State-Church relations, it did not bring any significant changes in legislature. However, neither the temporary Constitution of 1918, nor its replacement in 1919 dealt with religious issues. The position of recognised and incorporated churches as public entities remained unchanged.

The law provided certain advantages to incorporated and recognised churches in relation to taxation. The clergy of the recognised and incorporated churches were provided with a stipend which replaced payments under earlier regulations but other rights to so-called local incomes. The same law provided for pensions for priests and their dependants on the analogy of pension regulations for state employees. The state treated priests as public officers, as long as they provided state administration services by conducting marriages, maintaining records of civil status, teaching religion at all general educational schools and dealing with other issues of administrative and political character.

After the creation of the independent Czechoslovak Republic, a Modus Vivendi was agreed in 1928, an agreement between Czechoslovakia and the Holy See, which guaranteed mutual respect between the parties. In fact, the mutual relationship between the state and church did not change significantly.

Among the most burdensome periods of Slovak history is the era of the military Slovak state. It was created on March 14, 1939 as Hitler's satellite. In the preamble of its Constitution it defined itself as a Christian state. Jozef Tiso, a Catholic priest, became its president. One fifth of the members of the parliament of the Slovak republic was comprised of clergy. On March 25, 1939 the Holy See recognised the Slovak Republic. The Slovak government naturally attached much importance to this act. Diplomatic relations between the Holy See and Slovakia were established in June 1939. Relations cooled almost immediately when the German ambassador\textsuperscript{10} became the Dean of the diplomatic corps in the Slovak Republic. Pope Pius

\textsuperscript{10} At that time, Vatican nuncios Cesare Orsegio was the Dean of diplomatic corps also in Berlin.
had this to say about it: “We had been considering whether or not to send a nuncio to Slovakia. After neglecting the traditional rights of the Holy See it will no longer be possible.” 11 Diplomatic relations gradually got worse. After the Jewish Codex was passed12 and the anti-Hitler Banská Bystrica uprising suppressed, the Holy See sent several protest notes to President Tiso. A Vatican nuncio Burzio was heard saying that President Tiso was regarded with disgust especially in the Slovak episcopacy and religious orders. The era of the military Slovak state and the attitude of President Tiso towards “solving the Jewish issue” is one of the most difficult issues in Slovak history. It continues to influence the emotions of, especially but not only, the older generation. When it comes to current political parties and social groups, their attitude towards this era in Slovak history is varied; some nationalist groups interpret this period as an effort by Tiso and his co-workers to protect the Slovak nation and territory.

4. Socialistic Czechoslovakia

During the post-war period churches represented an influential political power. According to a population census13, 99.72 % of inhabitants identified with a church and only 0.28 % claimed to have no religion. The Catholic Church (of Latin and Byzantine rites) was the biggest and most influential, comprising 82.75%14 of inhabitants. Other significant churches were the Evangelical Church of Augsburg Confession, and Calvinists. Baptists, Adventists, Methodists, Orthodox and other churches had only minimum number of followers. Within the People’s Democratic Regime, the government proclaimed and actually ensured the freedom of religion in practice. All churches showed the loyalty towards the restored Czechoslovak Republic.

In Slovakia, the situation of Catholic Church was a bit more complicated and its relations with state more tense when compared with other churches. It paid its bitter price for its ties with the Hlinka Party, the domi-

13 For a period until March 1, 1950.
nant force in the Slovak Republic between 1939 and 1945. The dissolution of the Hlinka Party and the trial of Tiso and other state officials harmed the Catholic Church, since the dividing line between the Catholic Church and political Catholicism was not firmly laid. The government had a negative attitude towards majority of Catholic bishops who were closely connected with Tiso’s former regime. Chief representatives of Evangelical Church of the Augsburg Confession had close political contacts with the post-war, predominantly Evangelical leadership of the Democratic Party. The Reformed Church was divided after the war in connection with the then sharpened Slovak-Hungarian relations: Slovak clergy led that church, whose members were mainly of Hungarian nationality. The majority of clergy of Hungarian nationality did not have Slovak state citizenship and could not perform official functions within the church. Thus the church’s impact on social events was minimal.

By the February subversion in 1948 and what followed, what was left of democracy in Czechoslovakia was destroyed. Communists took power. The prime interest of the Communist regime was in manipulating churches according to its own interests through their agents. When these steps did not prove effective, the Communist made it a priority to minimise the social influence of the churches and to establish strict state control.

The Act no. 217/1949 Coll. created the State Office for Church Affairs as a central organ of state administration. One year later a law on economic provision for churches and religious associations by the state was passed. This regulation enabled the state to adopt a differentiated approach towards clergy, introducing a system of “state approval” for clergy. Churches and religious associations ceased to have the character of subjects of public law and became completely dependent on the State economically. A majority of church property, and church schools, were nationalised. The State had control over liturgical, pastoral, social, charity, educational, economic and any other activity of the churches. It established the compulsory registration of churches; the clergy could officiate only if approved by state. This approval was conditioned on their vow of loyalty to the Republic.

The Communist state never considered separation of church from state. It assumed that such a step within given historical conditions would raise the social influence of churches. It would also strengthen the discipline of the clergy and their loyalty to the church hierarchy. This would be counter-productive element for the State power in its attempt to disintegrate churches from within. Naturally, the strict totalitarian control of churches prompted some illegal activities by individual believers, clergy or various groups that were out of the reach of state control. They became the target of persecution by the national security forces.
The period 1948-1953 was a time of acute conflict in state-church relations. Churches resisted with a remarkable intensity interference into their internal affairs and the restriction of religious freedom. During the following period, the State concentrated on “overcoming religious relics” through governmental interventions as well as party and state structures supporting the secularisation and atheisation of society. Some bishops, priests and monks were imprisoned. The vacant positions in church hierarchies were occupied by administrators appointed by the Communist government. The government also had its appointees working with bishops and so controlling episcopal activities.

In August 1948 the Communists came up with an idea to create a national Catholic Church. Because of the ritual and canon law differences between Roman Catholics and Greek Catholics, they began to address the “Greek Catholic issue”. They proposed “return” of Greek Catholics into the Orthodox Church. In 1946, a so-called “sobor” (council) took place in Lvov, western Ukraine. Here, union with Rome was abolished and a return of Greek Catholics to the belief of their ancestors, to the Orthodox Church15 was proclaimed. Since the policies and actions of Russian Communists were authoritative for Slovak Communists, a similar procedure was chosen in Slovakia as well. After a Russian Orthodox Church delegation visit to Czechoslovakia (whose aim was to prepare the union of Greek Catholic and Orthodox church in Slovakia), this political plan was given a name Action P. On April 28, 1950, a sobor (council) of Greek Catholics with participation of Greek Catholic delegates appointed by the State took place in Prešov. It agreed on the abolition of the Uzhhorod Union of 1646, separation from Rome, and return to “father” Orthodox Church. At the same time it addressed the Orthodox Patriarch of Moscow and All Russia to accept it under his jurisdiction. On May 27, the Exarch of the Orthodox Church in Czechoslovakia, Jelefterij, received a letter from the State Office for Church Affairs. The letter acknowledged the legitimacy of decisions taken by Prešov sobor. From the point of view of the State, the Greek Catholic church ceased to exist in Slovakia. Greek Catholic clergy who refused to enter Orthodox Church had to give up their ministry. In most cases they were interned and later transferred to the Czech-German border region to work in agriculture or blue-collar jobs. The two Greek Catholic bishops were convicted of seditious activities and sentenced to long terms of imprisonment.

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15 Later on, similar actions of liquidation were taken against Uniat Church in Romania and Carpathian-Ukraine.
Along with the liquidation of the Greek Catholic Church, monasteries and religious orders were closed. The year 1968 followed. A new, state-collaboration movement of Catholic clergy, *Pacem in terris*\textsuperscript{16}, was formed. Through this, Communist Party sought to infiltrate the Church and influence its activities according to the Party’s interests. State-church relations were reduced to church-political control and suppression of any church activities and public religious manifestations. The time-consuming negotiations between Czechoslovakia and the Holy See were an exception. They negotiated about filling the vacant sees, about theological faculties and the reorganisation of diocesan boundaries so they did not extend over the state boundaries. Pope Paul VI used the *Praescriptorum Sacrosancti* constitution from December 30, 1977 to create a Slovak church down. This came as the response to their significance within the Catholic Church and influence they had on society.

In March and April 1950, in an artificially contrived lawsuit against monastery and religious order representatives, “revealed” monasteries as centres of sedition, where espionage was organised, weapons collected, and provocations prepared. *Action K* took place in the night of April 12-13, 1950. Security forces seized the majority of monasteries and the monks were placed in detention camps. Even though massive security forces were used, several sharp crashes occurred. Similar intervention against women's religious orders followed as part of *Action R*. Interned nuns and monks were first re-educated, afterwards transferred to work in factories, and nuns especially to Czech border region to work in the textile industry.

After 1950, theological studies were available only at the Cyril and Methodius Theological Faculty in Bratislava and at Orthodox Theological Faculty in Prešov. All the other theological institutes were closed down. The State took strict actions against “reactionary” priests, who were often imprisoned without trial or sentenced to military service to carry out hard labour in subsidiary technical battalions of army forces.

At the beginning of the fifties, hundreds of clergy were imprisoned or interned. Bishops were isolated and interned in their bishops’ houses or imprisoned. As for the Catholic Church a parallel church structure began to flourish underground. It overtook some functions of official Church.

\textsuperscript{16} John Paul II issued the *Quidam episcopi* bull (Manifest of Holy Congregation for the Clergy about some associations and movements prohibited to clergy) in the beginning of March 1982. According to the bull, those associations and movements are alien to priestly service, which directly or indirectly, openly or secretly pursue political goals, even though they sometimes present them in a way as if they tried to support humanistic ideals, peace and social progress.
The State, on the other hand, organised a “Catholic clergy peace movement”, in which it strived to unite priests who were willing to cooperate with the State. Doing so, the State could undermine the Catholic Church in Czechoslovakia; however, membership of the movement was very low and it had no significant influence in society. Evangelical churches, in this period, did show any strong resistance against the State; the Calvin Church concentrated on the national problem and not the problem of loyalty towards the regime. The Church press was a subject to State control to such an extent that in fact it ceased to have a religious character\textsuperscript{17}.

Before 1968, the first symptoms of change in the church-political situation appeared. It was mainly under the influence of Marxist-Christian dialogue that was popular especially with French and Italian Communists. The dialogue with Christians was found one of the specific instruments of ideological battle for the suppression of religious belief. Sporadically, there were requests to acknowledge the wrongdoing to believers and churches. The Prague Spring in 1968, when Alexander Dubček became the first secretary of Communist Party, started off a certain democratisation process and new state-church policy. The censorship of church press was eased, “cadre ceiling” for the religious was cancelled and communication between Catholic ordinaries and the Holy See was allowed. The government passed a decree that approved the activity of Greek Catholic Church. Limits on the number of candidates for priesthood entering theological faculties were cancelled. The Supreme Court was asked to go through the process with the Catholic hierarchy, representatives of monasteries and the like. These processes were much more striking in the Czech Republic than in Slovakia. The dialogue between the Marxists and Christians did not take place at all in Slovakia. Occupation of Czechoslovakia by armies of five Warsaw Pact states in 1969 put on the brake to the state democratisation processes. A process of the so-called normalisation was started. Hard-liners replaced pro-reform Party and State officials. A return to state-church relations as before 1968 followed. A new, state-collaboration movement of Catholic clergy, \textit{Pacem in terris}\textsuperscript{18}, was formed. Through this, Communist...


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used the *Praescriptorum Sacrosancti* constitution from December 30, 1977 to create a Slovak church province with its seat in Trnava\(^{21}\). The pressure of the Holy See as well as international-political pressure to realise Helsinki commitments in Czechoslovakia became stronger after Karol Wojtyla’s election to the papacy. Church activity was increasing; believers showed their discontent with the actions of the State towards churches and religion and demanded real religious freedom. Religious pilgrimages were becoming the events of revolt; the number of lay religious activists was growing. On March 25, 1988, a manifestation that entered the history as the “candle manifestation” took place in Bratislava. Some thousand people from the whole republic found courage to gather at the Hviezdoslav Square. Carrying candles in their hands, they demonstrated their support for requests to defend religious and human rights. After the crowd did not respond to a call to disperse, a strong intervention by security forces followed. It was one of the last acts of state power before its eventual downfall. In spite of the fact that external events\(^{22}\) influenced the downfall of the regime, we must mention the role of the churches and Catholic dissent. The latest mentioned was one of the strongest elements in resistance to the communist regime in Slovakia. province with its seat in Trnava\(^{23}\).

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\(^{21}\) The *Qui divino* constitution from the same day promoted the Trnava diocese to archdiocese.

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5. **Slovakia after the Fall of Communism**

After November 1989, the transformation of state church policy and a change in the position of churches and religious associations was a natural part of social-political change. They regained independence. Besides demands for abolishing the leading role of the Communist Party, transformation of politics, freedom of press and so on, a demand for religious freedom and separation of churches from the State appeared among the demands of demonstrators during so-called Velvet revolution\textsuperscript{25}. The new legislature granted churches full self-administration; it did not however, release them from a direct economic link to the State. It brought a partial separation, abolished State control over churches and gave them a freedom of choice over their own affairs. The link to the State in the economic sphere still persists, as the obligatory State contribution to religious services (especially to cover the salary of the clergy) prevents the link being broken. It does not represent real financial security for the churches, but only a support in a complicated situation after restitution. The Slovak Republic, the first from among the post-communist Countries, addressed the issue of church property restitution, by a law on redressing some property wrongdoings to churches and religious associations. It regulated the way and conditions of returning the major part of property, of which churches were deprived in the period from 8 May 1945 to 1 January 1990 and the Jewish religious communities in the period from 2 November 1938. Even though the restored property brought churches a source of potential future income, it represented an immediate burden. The owners of cultural monuments, forests and land reserves are obliged by law to provide proper maintenance, renovation and protection of these estates. Many estates, land reserves and forests that used to be in State ownership, required con-

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siderable investment from those to whom they had been restored. The per-
sistent problematic property relations between the Greek Catholic and the
Orthodox Church that concerned people in Eastern Slovakia for a long
time were sorted out in a satisfactory way. The government decided to
calm the situation in mixed Orthodox-Greek Catholic settlements of East-
ern Slovakia mainly through significant financial support for construction
of new church buildings. As a result of these and other measures to correct
the injustices caused by the Communist regime, churches and religious
associations became present in various areas of social life after a long time.

As the Czech and Slovak Federative Republic broke up and a sovereign
Slovak state came to existence on 1 January 1993, a “repeated national
identification process” was under way in Slovakia. It seems that the signifi-
cant areas of religious life appeared to be especially those perceived as na-
tional symbols.

III. Legal Sources

The 1992 Constitution of the Slovak Republic\textsuperscript{26} follows the ideas and the
spirit of the Universal Declaration of Human Rights from 10 December
1948; the Charter of Fundamental Rights and Freedoms, principles and
agreements on the integration process in Europe; principles of cooperation
by the spirit of the equality of states.

The 1992 Constitution of the Slovak Republic, in its preamble acknowled-
ges the spiritual heritage of Cyril and Methodius and the historical lega-
cy of the Great Moravian Empire. In Chapter One of the Constitution of
the Slovak Republic (General Provisions) in Article 1 (1) the basic princi-
ple is to be found: \textit{“The Slovak Republic is a sovereign, democratic state gov-
erned by the rule of law. It is not bound by any ideology or religion.”} Article 24
of the Constitution guarantees freedom of thought, conscience, religion
and faith. This right includes the right to change religion or faith. Every-
body has the right to refrain from a religious affiliation. Every person has
the right to express freely his or her own religious conviction or faith, ei-
ther alone or in association with others, privately or publicly, by worship,
religious services and ceremonies, or participate in religious instruction.\textsuperscript{27}

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\textsuperscript{26} No. 460/1992 Coll. as implemented in Constitutional Act no. 244/1998 Coll.,
Constitutional Act no. 9/1999 Coll., Constitutional Act no. 90/2001 Coll., Constitution-

\textsuperscript{27} (1) Freedom of thought, conscience, religion and faith shall be guaranteed. This right
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The Article 24 is part of the Chapter Two of the Constitution of the Slovak Republic, and it deals with fundamental rights and freedoms. It contains general provisions, fundamental human rights and freedoms, political rights, rights of national minorities and ethnic groups, economic, social and cultural rights, rights to environmental protection and cultural heritage, rights to judicial and other protection. The fundamental rights and freedoms form the most extensive part of the Constitution of the Slovak Republic, which follows from the need to enshrine the regulation of these rights in the Constitution directly and is one of the most characteristic features of constitutions of democratic countries.

Principal questions of status and activities of churches and religious societies in the Slovak Republic are regulated by the Freedom of Belief Act (no. 308/1991 Coll.). The financing of churches and religious societies is regulated by the Financial Support of Churches Act (no. 16/1991 Coll.). The Freedom of Belief Act, as amended by Act no. 394/2000 Coll., Act no. 201/2007 Coll. and Act no. 39/2017, adopts the provisions of Article 24 of the Constitution and elaborates them. It stipulates that confession of religious belief must not be the reason for restriction of constitutionally guaranteed rights and freedoms of citizens which include the right to education, the right to work and free choice of employment, and the right of access to information. It also stipulates that the believer has the right to celebrate festivals and services according to the requirements of his or her own religious belief as long as they are in accordance with generally binding laws.

**IV. Bilateral Relations between the State and Churches and Religious Societies**

The possibility of concluding agreements with the State was granted to churches and religious societies by the Act no. 394/2000 coll. amending
the Act no. 308/1991 coll. on the freedom of belief and the position of churches and religious societies. The Catholic Church and eleven other churches made use of this possibility.

An important highlight in the Slovak church policy and the international law was the signing of the Basic Treaty between the Holy See and the Slovak Republic. The National Council (the Parliament) granted its consent to the Basic Treaty on 30 November 2000 (Resolution of the National Council of the Slovak Republic no. 1159). It is a political, international treaty of presidential type. As for the content, it comprehensively regulates the relations between Slovakia and the Holy See. It was signed on 24 November 2000 and came into force upon the exchange of ratification instruments in the Vatican on 18 December 2000.

On 11 April 2002 the President signed the Agreement between the Slovak Republic and the Registered Churches and Religious Societies in the Slovak Republic no. 250/2002 Coll., which had been granted prior consent by the Government and the National Council. Although of different nature, the wording of this Agreement is almost identical with the Basic Treaty between the Slovak Republic and the Holy See.

The Basic Treaty between the Slovak Republic and the Holy See has settled, inter alia, that the parties would conclude four other partial treaties. The first one, the Treaty between the Slovak Republic and the Holy See on Pastoral Care for Catholic Believers in the Armed Forces and Armed Units of the Slovak Republic no. 648/2002 coll., came into force on 27 November 2002. On the basis of this Treaty, the Ordinariate of Armed Forces and Armed Units was established, having the status of a diocese, and the Ordinary was appointed, having the status of a bishop. The Treaty regulates the pastoral care for Catholics in Armed Forces, Police Corps, in the Unit of Penitentiary Guard and Railway Guards, and for persons deprived of freedom by a decision of a State authority. Similar is the Agreement between the Slovak Republic and Registered Churches and Religious Societies on Pastoral Care for Believers in Armed Forces and Armed Units of the Slovak Republic no. 270/2005 coll. The Central Office of Ecumenical Pastoral Care in the Armed Forces and Armed Units of the

28 · Published on 23 August 2001, under no. 326/2001 coll. (part 136).
29 · The President of the Slovak Republic signed the treaty on 11 October 2002, and the instruments of ratification were exchanged in the Vatican on 28 October 2002.
30 · The Ordinariate has a status under both canon and State law. The Ordinary is appointed by the Holy See, he is member of the Bishops’ Conference of Slovakia and organisationally is included in the Armed Forces of the Slovak Republic.
Slovak Republic was officially opened by a ceremonial service on 10 March 2007. It is the supreme body of the second structure of pastoral care in the armed forces and armed units and a parallel structure to the Ordinariate.

Another important source of confessional law is the Treaty between the Slovak Republic and the Holy See on Catholic Upbringing and Education no. 394/2004 coll. The similar Agreement between the Slovak Republic and Registered Churches and Religious Societies on Religious Upbringing and Education no. 395/2004 coll. was adopted by the Slovak Government by the resolution No. 794 on 21 August 2003 and subsequently by the National Council. The wording of this Agreement considers the specifics of the eleven registered churches and religious societies and ensures their status is equal of those of the Roman Catholic Church and the Greek Catholic Church in establishing church schools and in providing religious education.31

The Basic Treaty between the Slovak Republic and the Holy See has anticipated the making of two further, so called partial treaties, and we can presume that also the other registered churches would be interested in making analogous agreements. It’s a case of the right to exercise objections in conscience according to the doctrinal and ethical principles of the Catholic Church, and the financial support of the Catholic Church, as anticipated by articles 7 and 20 of the Basic Treaty between the SR and the Holy See.32

V. Basic Categories of the System

Among European systems the Slovak approach to churches and religious communities may be seen as "a middle of the road approach" between strict separation and a State church system. It is a relationship of coordination and parity. None of the churches is a State Church with special privileges. The Constitution declares that the Slovak Republic is a neutral state as far as religion and ideology are concerned. In its preamble the Constitution acknowledges the Ss. Cyril and Methodius spiritual heritage, and the historical legacy of Great Moravia. In Section 1 it stipulates that the Slovak Republic is not committed to any ideology or religion. Section 24 guaran-

tes freedom of thinking, conscience and religious freedom. Everyone has the right to have no religious confession. Everyone also has the right to manifest their religion or beliefs, either on their own or together with others, in private or in public, by means of worship, religious acts, services, and to receive religious education.

Churches and religious communities are autonomous: they establish their own institutions, appoint clergy, provide religious instruction, and found monastic and other church institutions independent of the State. These may, according to the Constitution, be restricted only by an Act, if measures necessary for protection of public order, health and morals or rights and freedoms, are involved.

According to Section 11 of the Slovak Republic Constitution, international agreements on human rights and basic freedoms that the SR has ratified and which have been proclaimed in a way stipulated by law, take precedence over Slovak Republic Acts if they secure a broader scope of basic rights and freedoms.

Act no. 308/1991 Coll., on the freedom of religious beliefs and the status of churches and religious communities, adopts and supplements the provisions of Section 24 of the Constitution. It stipulates that a confession of religious belief must not be a reason for restricting the rights and freedoms of citizens guaranteed by the Constitution, especially rights to education, job choice and performance, and access to information. Further it stipulates that believers have a right to celebrate festivals and services according to the requirements of their own religious belief, in accordance with generally binding legal rules.

At present the Slovak Republic has five national holidays, of which one has a religious basis – the feast day of Ss. Cyril and Methodius (5 July). There are 11 work rest days, of which nine are religious: the Revelation of God, Good Friday, Easter Sunday, Easter Monday, Our Lady of Sorrows Day – patroness of Slovakia, All Saints Day, Christmas Eve, and the first and second days of Christmas. Remembrance days are 9 September – day of Holocaust victims and racial violence, 31 October – Reformation Day, and 30 December – declaration day for the independent church province of Slovakia.

In the Basic Agreement between the SR and the Holy See, the SR is committed to respecting Sundays as days of rest from work, 1 January (which is the national holiday marking the anniversary of the establishment of SR), Virgin Mary Mother of God, the Circumcision of Jesus, the feastday of Basil the Great, and the holy days mentioned above.

Rights and freedoms stipulated by SR law may be invoked in general courts, including the administrative courts, or at the Constitutional Court.
If these avenues have been exhausted, it is possible to appeal to the European Court of Human Rights in Strasbourg.

The Freedom of Belief Act no. 308/1991 Coll. considers a voluntary association of persons of the same belief, in an organisation with its own structure, bodies, internal regulations, and services, to be a Church or religious society. Churches and religious societies are legal entities, and can associate freely. They may create communities, religious orders, associations, and similar institutions. Churches and religious societies are special types of legal entities and are able to take advantage of a special status (according to Article 24 of the Constitution) and also other rights enjoyed by legal entities in general. Their advantages include privacy; protection of property, name, and inheritance; freedom of movement and residence; freedom of expression; and the rights to information, to petition, to assemble and associate, and to judicial and legal protection. For the purposes of the Act no. 308/1991 Coll., everyone who is professing a religious belief is considered as a believer.

VI. Legal Status of Religious Communities

The Act on Freedom of Religion and the Status of Churches and Religious Societies defines a church or a religious society as a voluntary association of persons of the same belief within an organisation created on the grounds of affiliation to a belief, on the basis of the internal regulations of the relevant church or religious society.

All churches and religious societies have the same legal status before the law, are legal persons, may associate, create communities, monastic orders, societies and similar communities. The Law also stipulates that the State recognises only those churches and religious societies which are registered, and it may conclude agreements on mutual cooperation with them.33

Every new religious entity not having the status of a registered church from the period before the year 1989 which wishes to enjoy the rights of the "recognised" churches and religious societies must undergo the process of registration. The proposal for registration is to be submitted by a preparatory body (of at least a three-members) of the church or religious society; the members must be persons of legal age. The preparatory body must demonstrate that the church or religious society to be registered has a

minimum of fifty thousand adult members with permanent residence in the Slovak Republic who are citizens of the Slovak Republic. A proposal for registration must contain the name and the seat of the church, identification data of the members of the preparatory committee, basic characteristics of the church being established, its teaching, mission and the territory it intends to act in, also the affidavit of at least twenty thousand adult members who have permanent residence in Slovakia and are its citizens, confirming that they are affiliated to the church or religious society, support the proposal for its registration, are its members, know the basic tenets of the belief and its teaching and are aware of the rights and duties resulting from their membership in the church or religious society.

If the proposal meets all the requirements and has been reviewed by the registration body and has shown that the establishment and activity of the church or religious freedom is not in contradiction with the laws, protection of security of citizens and public order, health, moral, the principles of humanity and tolerance, and that the rights of other legal persons and citizens are not endangered, the registration body will decide whether the church or religious society will be registered.34

The State suffers some criticism for the high, 50,000 membership requirement. This was introduced in 2017. The change was brought about by Act no. 39/2017 Coll. amending Act no. 308/1991 Coll. on the freedom of religious belief and the status of churches and religious societies as amended. The required number of members was increased from twenty thousand to fifty thousand. The Slovak Parliament discussed the new issue in the autumn of 2016.

The essence of the draft amendment was the increase of the required number of the members of the newly established church from 20 thousand to 50 thousand of adult citizens of the State. The Slovak Republic had been criticised for the previous legal regulation.as small churches had no real chance of achieving this legal status. As a main reason for the proposed change, the explanatory memorandum to the parliamentary draft amendment of 2016 stated that “the aim of the submitted draft is to eliminate speculative registrations of alleged churches and religious societies see-

ing the main aim of registration – getting funds from the State”. The proposers also presented an extensive portfolio of benefits which, in addition to the funds from the national budget, are brought by the status of registered church or religious society. They stressed the access of the registered churches’ clerics to public facilities, especially schools and the right to teach religions in public schools and carry out pastoral activities in health care, social and other facilities. More than in the explanatory memorandum, the real motives were discussed within the parliamentary debate focused on Islam and migration. Another group of MPs submitted an amending draft, requiring the increase of the number of the members necessary for the registration up to 250,000. This proposal was not accepted.

The draft amendment was approved by the National Council of the Slovak Republic on 30 November 2016 with the expected date of effect 1 January 2017. The President used his right to return the act for further discussion. He explained his decision by concerns about the effect on the right to religious freedom in the country. The members of parliament did not adopt the President’s arguments and approved the act again on 31 January 2017. Act no. 39/2017 Coll. amending Act no. 308/1991 Coll. on the Freedom of Belief and the Position of Churches and Religious Societies as amended became effective on 1 March 2017. Section 23 of this Act contains a transitional provision providing that proceedings concerning the registration of churches or religious societies started before 28 February 2017 would be completed according to laws effective until that day. In fact, this transitional provision concerns only the registration of Church Christian Communities of Slovakia which has been seeking the status of the registered church and religious society since 2007. The relevant national authority twice rejected the application of this entity, which has lodged an appeal to the Supreme Court. The impact of the amendment is broader, significantly changing for the criteria for the registration of churches. Considering the number of citizens of the country, another application for registration of a new church or religious society does not appear likely, unless it were a branch of the existing traditional church which separated from such a church. Bearing in mind the statements of political representatives and deputies of political parties which submitted and supported the amendment, concerns about religious extremism and terrorism played a significant role in its drafting. The new confessional regulation de facto

does not enable the formation of new churches and religious societies
recognised by the State, however in no way it limits religious freedom of
persons, autonomy and activities of already existing churches and religious
societies, any exercise of the right of freedom of belief, especially pastoral
care. It provokes a debate on the right to autonomy of churches which are
active within the society but are not registered under Act no. 308/1991
Coll, i.e. they do not have legal personality as do churches and religious
societies. They function as civil associations or foundations (e.g. Islamic
foundation) and do not enjoy the rights of registered societies.

Earlier, in 2008, the Prosecutor General of the Slovak Republic chal-

lenged the legal requirement of the large number of members affiliated to
the church or religious society seeking registration.36 The Constitutional
Court did not accept his arguments and, among other things, observed
that it followed from the principle of a democratic rule of law that the Slo-
vak Republic as a State has the authority to define the conditions for activi-
ties of churches in its territory and to express these conditions in the form
of registration. The situation when a certain church or religious society is
not registered does not mean and does not imply the fact that the mem-
bers of such groupings are limited in their right to freedom of religion and
its manifestation. The church registration and the setting of the number of
members are, according to the Constitutional Court, not a necessary con-
deration for the exercise of the freedom of religion pursuant to Article 24,
but concern only the conditions for their establishment as churches and re-
ligious societies recognised by the State.37

It is significant that one of the judges of the Constitutional Court did
not agree with the finding of the Court and requested the publication of

36 He reasoned that by setting a required number of members of a church or reli-
gious society which is too high in the European context and difficult to achieve in
Slovakia, the legislation prevents the acquisition of a legal personality by small
churches and religious societies. The State obviously does not fulfill its duty to
create the legal conditions for the execution of the right to freedom of religious
belief manifestation in accordance with an individual’s own choice, and by this
restriction it directly intervenes the freedom of religion.

37 Equally, the Constitutional Court has not not found a correlation between Act
no. 308/1991 and Declaration on the Protection of Human Rights cited by the
Prosecutor General because by registration the Law does not regulate religious
freedom as an individual right. If it concerns the execution of religious freedom
by refugees, the possible registration of the church they affiliate to is not a neces-
sary condition for the execution of their religious freedom in Slovakia as stated by
the Court. Press release no. 3/2010 of the Constitutional Court of the Slovak Re-
public sp. zn. PL.ÚS 10/08 of 3 February 2010.
his dissenting opinion. Judge Lajos Mészáros states in his differing opinion that: “For the assessment of an intervention into the freedom of manifestation of one’s religion by requiring a high minimum size, one should view it from the perspective that the requirement of twenty thousand members could be accepted for the acquisition of special rights; however, it should be tested from the viewpoint that it is a condition for the acquisition of pure legal personality since our legislation does not draw a distinction between the acquisition of pure legal personality (basic legal standard) and a legal personality with special rights. This means that there is no possibility of acquiring legal personality with a low number of members; one can only acquire a legal personality with a high number of members, together with special rights.” 38 39 In the past, it seemed that in this specific Slovakian case, it might be that the issue of non-registered churches could be resolved by a system of multi-tier registration, given that the proportionality test and maintenance of the mechanisms for the protection of both the society and the individual are necessary. 40 Today, following the adoption of Act no. 39/2017 Coll. significant qualitative changes cannot be expected in the near future.

At present there are 18 churches registered in the Slovak Republic: the Apostolic Church in Slovakia, the Unitas Fratrum of Baptists in the Slovak Republic, the Bahá’í Community in the Slovak Republic, the Church of the Seventh-day Adventists, Slovak Association, the Brethren Church in the Slovak Republic, the Church of Jesus Christ of Latter-day Saints, the Czechoslovak Hussite Church in Slovakia, the Evangelical (Lutheran) Church of the Augsburg Confession in Slovakia, the Evangelical Methodist Church, Slovak Area, the Greek Catholic Church in the Slovak Republic, the Christian Congregations in Slovakia, the Religious Society of Jehovah’s Witnesses, and the Seventh-day Adventist Church.

38 The dissenting position of the judge of the Constitutional Court Lajos Mészáros on the decision of the plenary of the Constitutional Court of the Slovak Republic in the matter sp. zn. PL. ÚS 10/08.
40 In this context one may refer to the statement of the European Court for Human Rights of 3 March 2009 in the matter Lajda a spol. v. Czech Republic. The ECHR rejected the complaint as inadmissible since it considered the requirement of the previous applicable law of ten thousand church adherents too high. Wieshaider, Wolfgang. ESEP a početný cenzus pre registráciu náboženských spoločností. In Moravčíková, Michaela, Valová, Eleonóra (eds.) Ročenka Ústavu pre vzťahy štátu a cirkví 2010. Bratislava: Ústav pre vzťahy štátu a cirkví, 2011, p. 191. The Court, however, did not offer any suitable example of a reasonable required number.

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Witnesses, the New Apostolic Church in the Slovak Republic, the Orthodox Church in Slovakia, the Reformed Christian Church in Slovakia, the Roman Catholic Church in Slovakia, the Old Catholic Church in Slovakia, and the Central Union of Jewish Religious Communities in the Slovak Republic.

VII. Religious Communities within the Political System

The programme statements of the governments of the Slovak Republic since 1989, after the fall of Communism, have all declared the willingness of the government of the Slovak Republic to co-operate with registered churches and religious societies. In these documents, churches and religious societies are referred to as sui generis subjects. The Constitution of the Slovak Republic, which respects the Charter of Fundamental Rights and Freedoms, declares the Slovak Republic as a state that is laic, ideologically and religiously neutral and not bound to any ideology or religion.41 The State provides significant support to registered churches and religious societies in the performance of their religious and public service activities, guarantees their legal status and their opportunities for action in public life. The aim of the Slovak Republic is to continue developing these relations and legislate them in order to fully meet the needs of the society. “The government recognises the importance of the social status of churches and religious societies and encourages them to engage in matters of public interest. The government is keen to continue a professional partnership dialogue with churches and to prepare a new legislative settlement for church funding.”42 In general, the relationship between the State and churches and religious societies can be termed as a parity and cooperation partnership.

VIII. Culture

Churches and religious communities are present in various sectors of cultural life. They have a right to broadcast on the public service media. About 3% of broadcasting time is devoted to religious programmes on Slovak Television and Slovak Radio. Religious broadcasting must not be interrupted by commercial breaks. Religious programmes are produced by the religious broadcasting staff of Slovak Radio and by the Slovak Television spiritual life programme centre.

Churches and religious societies may also propose members of the Council for Broadcasting and Retransmission. The Council is an administrative body which carries out State regulation in the field of radio and television broadcasting, retransmission and on-demand audio-visual media services. The Catholic Church owns and runs Radio Lumen and the Television Lux. Churches and religious communities own publishing houses; the oldest are the Catholic publishing house of the St Adalbert Fraternity and the Protestant publishing house Tranoscius. At present more than 100 different religious periodicals are on sale in Slovakia. An important annual cultural event is Fra Angelico's award ceremony, organized by the Catholic Church. It highlights the most important cultural figures and artists of the country.

The Church owns about 23% of the real estate, and movable cultural treasures that are a significant part of Slovak cultural heritage.

IX. Religious Education

According to Article 24 of the Constitution, churches and religious societies “organise the teaching of religion” and, according to the Freedom of Belief Act, and the wording of later regulations, believers have the right to

43 The mission of the Council is to enforce the public interest in the exercise of the right to information, freedom of expression, and the rights of access to cultural values and education. The Council must ensure the maintenance of plurality of information in the news programmes of public service broadcasters and licensed broadcasters.

The Council is a legal entity with its seat in Bratislava. For the purposes of performance of the state administration in the areas of broadcasting, retransmission, and the provision of on-demand audiovisual media services, it has the status of a state administration authority on the national level to the extent determined by the Act on Broadcasting and Retransmission and other specific legislation.
religious education and, on fulfilment of conditions established by the internal rules of churches and religious societies as well as by generally binding legal regulations, to teach religion. This issue is further clarified by the Basic Treaty between the Slovak Republic and the Holy See, and the Agreement between the Slovak Republic and the Registered Churches and Religious Societies. The contracting parties also provide for more detailed provisions through special agreements. The right to religious education is also guaranteed by Act no. 29/1984 Coll. on the System of Primary and Secondary Schools and the wording of later regulations. Persons appointed by churches and religious societies may teach religion at all schools and educational institutions that are part of the educational system of the Slovak Republic. Act no. 596/2003 Coll. on State Administration in Education and Educational Self-government defines the competence, organisation, duties, and functions of state administrative bodies in the educational system, towns, municipalities, and educational boards. The state administrative authorities organise the network of schools and educational institutions and decide on the location of schools, school facilities, or vocational education centres in the network, and can exclude schools from the network. The Act designates the bodies authorized to establish schools, educational institutions, or centres of vocational education. Such bodies include towns, municipalities, regional boards, registered churches or religious societies, other corporate bodies, and individuals.

Education provided at denominational or private schools is comparable to the education provided at public schools. The aim of denominational and private schools is to provide, in addition to quality education and training, alternative content, methods, and formats. These schools allow parents to exercise their right to choose a school or educational institution for their children according to their belief and conscience, as well as create a competitive environment for higher motivation to improve the educational system. Churches and religious societies have the right, for educational purposes, to establish, administer, and employ teachers at primary schools, secondary schools, universities, and other educational institutions in compliance with relevant provisions of the law. These schools and educational institutions have the same position as state schools and educational institutions and they are an important part of the educational system of the country. The Slovak Republic gives full recognition to diplomas, academic degrees, and titles issued by these schools and institutions and considers them equal to those issued by state schools of the same kind, field, or level.

State funding is also provided to private and denominational schools equivalent to the funding of state schools. Government funding of educa-

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tional institutions is established on normative principles. Financing per student per year is the same for both denominational and state schools. However, state educational institutions (kindergartens, canteens, after-school nurseries, etc.) and state artistic schools still have financial advantages in comparison with the same kinds of schools founded by churches (or other private entities).

Most State universities include theological faculties. There are also theological institutes and seminaries for future priests in Slovakia. These seminaries are specialised departments of public universities or theological faculties in which university students are taught the values promoted by the respective church in accordance with the internal policies of the church. Seminaries can also be autonomous legal entities that have an agreement with a university. *Missio canonica*, or authorisation of the church, is an essential condition for any educational activity at these institutions. Internal policies of theological faculties and denominational universities are approved by the academic senate only following the church’s or religious community’s pronouncement. Act no. 131/2002 Coll. on Higher Education and on the Changes and Supplements to other Acts has 22 articles that refer to denominational public universities and theological faculties. They pertain mainly to academic rights and freedoms, establishment of schools, academic self-government and its scope, rectors, deans, admission, disciplinary proceedings, and the rights and responsibilities of students, university teachers, and agencies of the scientific council and executive board of a public university.

The Treaty between the Slovak Republic and the Holy See on Catholic Education and the Agreement between the Slovak Republic and the Registered Churches and Religious Societies on Religious Education are integral parts of the state-church legal system in Slovakia. These documents also introduce religious education into the Slovak educational system as a mandatory subject, with students having the option to attend ethics classes as an alternative. The lowest possible number of students in a religious education class is twelve. Registered churches and religious societies may also include students from different classes and of different beliefs in religious education classes with their permission. If the number of students is lower than the required 12, the principal can give consent to the teaching of religious classes during religious lessons of other denominations or ethics lessons, or after school. Teachers of religion have the same status under labour law as teachers of other subjects; however, they have to be appointed by their church or religious society. Parents or guardians decide on the religious education of the child until the age of 15. In both the Treaty and the Agreement, the Slovak Republic guarantees, in accordance with the
will of parents or guardians, to enable religious education in preschool facilities as well. The curriculum of religion and religious education has to be approved by the respective church. Besides expert qualification, the religious education must have authorisation by the church or religious society according to the legal regulations of the Slovak Republic. This condition also applies to university teachers of theological disciplines.

X. Labour Law within the Religious Communities

The Slovak Republic guarantees religious freedom in the area of labour and labour relations mainly by the Constitution of the Slovak Republic, Constitutional Act no. 23/1991 Coll. Introducing the Charter of Fundamental Rights and Freedoms and Act no. 308/1991 Coll. on the Freedom of Belief and the Position of Churches and Religious Societies. The Slovak Republic is also bound by the international legal instruments, i.e. the Universal Declaration of Human Rights, the Convention for the Protection of Human Rights and Fundamental Freedoms, the International Covenant on Civil and Political Rights, the European Social Charter and the primary law of the European Union.

Another source of labour relations regulation in the area of religious freedom and churches and religious societies is the Basic Treaty between the Holy See and the Republic of Slovakia which, according to Article 7(5) of the Constitution of the Slovak Republic, has precedence over laws. Non-Catholic registered churches and religious societies deal with this issue *mutatis mutandis* in the national normative treaty of analogous content: the Agreement between the Slovak Republic and Registered Churches and Religious Societies.44

The primary source of labour law is the *Labour Code*, Act no. 311/2001 Coll. as amended. Also, we have to mention Act no. 5/2004 Coll. on Employment Services and Act no. 365/2004 Coll. on Equal Treatment in Certain Areas and Protection against Discrimination. This anti-discrimination act regulates the application of the principle of equal treatment and defines methods of legal protection if this principle is not respected. In its introductory

provisions\textsuperscript{45} the Act declares that the application of the equal treatment principle prohibits discrimination on the grounds of sex, religion or belief, race, national or ethnic affiliation, adverse health condition or disability, age, sexual orientation, marital status, colour of skin, language, political or other views, national or social origin, property, gender or any other status or on the grounds of whistleblowing or reporting criminal activity.

Discrimination on the grounds of a relationship with a person of certain religion or belief and discrimination of a natural person without religion is also considered as discrimination on the grounds of religion or belief.\textsuperscript{46}

Section 8(2) explains the admissible unequal treatment: “\textit{In case of registered churches, religious societies or other legal persons whose activity is based on religion or belief, unequal treatment shall not be considered as discrimination based on religion if a person is an employee of such organisation or carries out activities for such organisation, and depending on the nature of such activities or in the context in which they are carried out, religion or belief represent an eligible and justified requirement of occupation.}”

The Regulation no. 299/2007 Coll. of the Government of the Slovak Republic on Personal Benefits for Clerics of Churches and Religious Societies specifies basic salaries for clergy of churches and religious societies, according to the category of office and the pensionable service performed in the pastoral work, church administration or in the institutions for the education of the clergy. The offices of clerics are categorised according to complexity and difficulty of the performed activity. There are A, B, C, D, E, F and G categories, defined in the annex to the Act.\textsuperscript{47} For example Jewish church communities in Slovakia have the following categories: A. Mashgiach, Shojet, B. Schammes, C. Hazzan, D. Chief Hazzan, E. –, F. Rabbi, G. Chief Rabbi.

The issue of financing churches and/or religious churches is the subject of discussions before every parliamentary election.

Labour relations of these employees are dealt with in Labour Code, treaties between the Slovak Republic and the Holy See, agreements between the Slovak Republic and registered churches and religious societies, regulations of churches and registered churches, and relevant laws and regulations regulating the exercise of occupation in specific area (e.g. the so-called Education Act, Act on Higher Education – Miisio Canonica, church mandate etc.).

\textsuperscript{45} Article 1, section 2.
\textsuperscript{46} Article 1, section 2a(c).
\textsuperscript{47} § 1 1) a 2.).
The clergy of churches and religious societies which are registered enjoy the same labour status as far as claims of churches and religious societies on the national budget are concerned. Also those who serve in public institutions as chaplains or teachers enjoy the same status. In practice clerics are often in the legal position of an employee, for example as catechists in the relevant state and/or church schools. According to the present applicable legal status, they fall under the subsidiary authority of Labour Code. The Labour Code applies to certain labour relations only when the regulations of the churches do not exclude the authority of Labour Code and the specific issue is not dealt with otherwise.

Because the work of the clergy is rather specific in nature, they are not fully covered by Labour Code. In fact, priests have a labour relationship established by employment contract, but some of its provisions result from internal regulation of the relevant church (place of performance, appointment to the office, competence assessment, change and termination of employment etc.), and some provisions result from Labour Code (obstacles at work, liability for damage, occupational safety and health, liability for occupational injuries; the same applies to annual leave if the relevant church does not have a rule governing annual leave).

If the employee of a church or religious society is a person that does not perform clerical activity (i.e. “laic” technical, administrative and auxiliary staff), the direct subject-matter scope of Labour Code applies.

The Basic Treaty between the Holy See and the Slovak Republic deals with the principles in Article 6, paragraph 1: “The Holy See has the exclusive right to provide for its ecclesiastical offices according to Canon Law, and in particular to make decisions independently and exclusively in the selection of candidates for the Episcopal ministry, including the appointment, the transfer, the renunciation, and the removal of Bishops”, and in paragraph 3: “The Catholic Church has the exclusive right to decide on the appointment, transfer, renunciation and removal of a person with reference to other ecclesiastical offices or ministers relevant to its apostolic mission.”

According to Article 7 of The Treaty between the Slovak Republic and the Holy See on Pastoral Care for Catholic Believers in the Armed Forces

and Armed Units of the Slovak Republic, the priests and the deacons permanently authorised to provide pastoral care in the Ordinariate have certain rights and duties, which have been outlined by Canon Law for diocesan ministers and deacons, and they assume the position of employees within the relevant unit of the Armed Forces and Armed Units. The service of the Ordinariate is specified in detail in the Statute of the Ordinariate produced by the Ordinary and issued by the Holy See and is in line with the legal order of the Slovak Republic and the principles of this Treaty.

The Treaty between the Slovak Republic and the Holy See on Catholic Upbringing and Education, Article 2, paragraph 1 stipulates that the subject matter “religious education” taught in other than Catholic schools conforms with the subject “Roman Catholic religion” or “Greek-Catholic religion” in Catholic schools, if it is taught by a person authorised by the Catholic Church, and paragraph 8 stipulates that “Persons authorised by the proper ruling body of the Catholic Church act as observers in classes for Catholic religion. The headmasters shall enable them to perform this activity“.

Article 3(1) reads: “The Catholic religion is taught by teachers with professional and pedagogical qualifications in accordance with legal regulations of the Slovak Republic, who also have ecclesiastical authorisation, namely a canonical mission issued by the proper Church ruling body. Revocation of this authorisation leads to loss of the right to teach Catholic religion“.

Article 4(4) reads: “Teachers of Catholic theological disciplines in the universities must have a canonical mission as their personal authorisation from the proper ruling body of the Catholic Church“.

The Agreement between the Slovak Republic and the Registered Churches and Religious Societies in the Slovak Republic has almost the identical wording with the one of the Basic Treaty between the Holy See and the Republic of Slovakia. Article 6(1) reads: “Registered churches and religious societies have exclusive right to provide for its ecclesiastical positions and offices in line with their internal rules. (2) Registered churches and religious societies have exclusive right, according to their own internal rules, elect, appoint their members to the ministry, transfer and remove them and decide on the termination of their ministry.” The particularity of this Agreement is Article 4, paragraph 5: “The Ministry of Foreign Affairs of the Slovak Republic shall appoint a diplomatic employee of the Permanent Mission of the Slovak Republic to the United Nations Office and other international organisations in Geneva or to other centres according to special agreement, who will be responsible for the agenda resulting from the representation of the Slovak Republic before international governmental organisations, development of cooperation between churches and registered societies with international church organisations. The diplomatic em-
ployee shall be appointed following the previous consultations with registered churches and religious societies.”

The Agreement between the Slovak Republic and Registered Churches and Religious Societies on Pastoral Care for Believers in Armed Forces and Armed Units of the Slovak Republic regulates the conditions for the pastoral service of non-Catholic clerics in armed forces and armed units. According the article 5(2) “Only the Chaplain General may appoint priests and deacons in armed forces and armed units, decide on their transfer, renunciation or removal from ministry, in line with internal rules of the concerned churches and religious societies. (3) Appointment and removal of priests and deacons in armed forces and armed units, in line with internal regulations of the concerned churches and religious societies, is subject to prior approval by the Ecumenical Council of Churches.” Article 8 reads: “Priests and deacons who provide pastoral service in armed forces and armed units shall have rights and obligations as defined in internal regulations of their churches and religious societies and competences of the Central Office and are employees of armed forces and armed units.”

The Agreement between the Slovak Republic and Registered Churches and Religious Societies on Religious Upbringing and Education considers the specifics of the eleven registered churches and religious societies and ensures their statuses equal of those of the Roman Catholic Church and the Greek Catholic Church in establishing church schools and in providing religious education. With a certain degree of simplification, it is possible to state that the legislation in the area under examination respects the autonomy of the churches.50

XI. Legal Status of Clergy and Members of Religious Orders

Neither administrative nor civil law give any special status to the clergy; their status in administrative or civil proceedings is the same as that of the laity. If a minister acts on behalf of a church legal entity, he or she will have the status of a agent of a private law entity. This is also the case in the field of criminal law, with the exception of the issue of confessional secrets.

According to Section 8 of Act no. 308/1991 Coll. the State acknowledges a pledge to secrecy of persons commissioned to perform spiritual work. The Criminal Act provision as to the duty of each citizen with knowledge of a criminal act does not apply to a person who would violate the confidentiality of the confessional, or to information that has been confided to them orally or on paper under conditions of secrecy. Criminal Rule no. 141/1961 Coll. enables clergy called as witnesses to refuse to testify for the same reason.

The inviolability of the confessional and the right to refuse to give evidence before State bodies is guaranteed by the Basic Agreement between the Slovak Republic and the Holy See, and the Agreement between the Slovak Republic and registered churches and religious communities in the Slovak Republic, in addition to the Criminal Rule.

Act no. 308/1991 Coll. on the freedom of religious belief and the status of churches and religious communities lays down that persons performing spiritual work must be authorised by those churches and religious communities according to their internal directives and generally binding legal rules. Churches and religious communities must deploy clergy and others according to their qualifications. In accordance with their internal directives, churches appoint persons performing spiritual work and teachers of religion to a specific position, or a particular territorial district.

The Agreement between the Slovak Republic and the Holy See on spiritual service for Catholic worshippers in the armed forces and armed corps of the Slovak Republic guarantees clergy the right to perform national service in the form of spiritual service. Clergy in the armed forces and armed corps are given a salary on the scale for army officers or police officers according to their rank and length of service. Social benefits for armed forces members also apply to clergy.

XII. Finances of Religious Communities

After the Velvet Revolution in 1989, new legislation enabled churches and religious communities to have full internal self-government, but it did not eliminate their direct financial dependence on the State. The Financial Provision for Churches Act no. 218/1949 Coll. had eliminated discrimination and state control over the churches, but still maintained a paternalistic approach to churches in the field of finance. By means of the Act the Communist State imposed a unified form of direct state subsidy on churches and religious communities. The subsidy was intended to supersede the whole spectrum of individually differentiated traditional sources.
of income. In the period between 25 February 1948 and 1 November 1949 when the Financial Provision for Churches Act came into force, a crucial part of the churches’ productive property was nationalised without redress, particularly by means of a unilateral implementation of land and agrarian reforms. Restitution of church property is one of the processes enabling churches to start working towards economic independence. On the basis of Act no. 298/1990 Coll. on the Regulation of Some Property Relations of Monastic Orders and Congregations and the Olomouc Archbishopric as spelled out in Act no. 338/1991 Coll., some property of monastic orders and congregations was returned. This Act affected 95 monasteries in the Slovak Republic. Act no. 282/1993 Coll. on the Mitigation of Some of the Legal Injustices Regarding Property Committed against Churches and Religious Communities restored some ownership rights to the churches. The Act related to movable and immovable property of which churches and religious communities were dispossessed by State bodies, civil law, and administrative acts in the period between 8 May 1945 (2 November 1938 in the case of Jewish communities) and 1 January 1990. The Act stipulated that proceedings relating to the surrender of immovable property be exempt from administrative and court fees, and that compensation for costs connected with the geographical location of surrendered real estate must be paid by the State. Act no. 97/2002 Coll., amending Act no. 282/1993 Coll., added to the property to be restored some forest land in national parks.

At present, on the basis of the Financial Provision for Churches Act and its amendment by Act no. 522/1992 Coll., the State must provide, if requested, funds for payment of clergy stipends (including contributions to social and healthcare funds and the employment fund) for churches and religious communities. Churches and religious communities that were provided with personal benefits for their clergy up to 31 December 1989 are not obliged to submit a request. The classification and levels of clergy stipends are regulated by governmental decree. The State contributes to the operation of the headquarters of registered churches and religious communities. The Ministry of Culture is the administrator of the financial support assigned in the national budget for churches and religious communities. It remits assigned funds to each church’s headquarters on a monthly basis.

All proceeds of church collections, income from church activities, and regular contributions of members of registered churches and religious communities are tax exempt. The value of gifts provided for humanitarian, charitable, and religious purposes of the registered churches and religious communities may be deducted from the taxable income of natural persons.
and legal entities to the amount stipulated by law. Lands forming one functional unit with a building or part of a building used for the performance of religious ceremonies, and with the whole or part of a building used as offices for church administration, are exempt from property tax. Cemeteries are also exempt from property tax. Buildings and those parts of buildings used exclusively for the performance of religious ceremonies or as the offices of church administrators are exempt from the tax on buildings. Legacies and gifts earmarked for the development of registered churches and religious communities are exempt from inheritance tax. Under conditions stipulated by Ordinance no. 17/1994 Coll., religious objects and gifts for churches and religious communities are exempt from import duty.

On the basis of Section 48 of Act no. 366/1999 Coll. on Income Taxation, as amended by later regulations, each taxpayer is entitled to remit, through the tax administrator, a sum of money equivalent to 2% of his or her income tax to one of the specified legal entities among which are agencies of churches and religious communities. In addition to this, churches and religious communities, as well as entities with legal personality derived from them, may apply for various grants and subsidies. Churches may apply for grants towards the preservation and restoration of cultural landmarks that they own, as well as for social, charitable, educational, and cultural projects.

XIII. Religious Assistance in Public Institutions

The first Czechoslovak Republic (1918-1938) took over the legislation of the Austro-Hungarian Monarchy, which enshrined the cooperation between the State and churches in many areas of social life. This also included the service of chaplains in the army and prisons. The Austro-Hungarian legislation was repealed by a brief derogation clause included in the section 14 of Act no. 218/1949 Coll. on State Economic Support for Churches and Religious Communities. By Act no. 217/1949 Coll., the National Office for Church Affairs was established, to serve as a central body of the State administration which took over competences in all church issues performed by other state bodies until then. Later, in 1956 this Office was dissolved and its competences passed to the Ministry of Education and Culture. In the totalitarian regime the clerics were employees of the Church. This regime liquidated church schools and stopped activities of churches in many areas of social life. Religious teaching in schools was reduced to a minimum level, positions of chaplains in the army and prisons were can-
celled, and their presence in health and social care facilities was only tolerated to a different extent depending on the specific case. The ruling Communist party initiated the systematic atheisation of the society, including liquidation of church associations, orders and even entire Greek-Catholic Church for some time. Comprehensive legislation governing state-church relations was adopted only after the fall of communism in 1990.

Religious assistance in public institutions in the Slovak Republic is organised by churches and religious societies in cooperation by the State (Ministry of Interior, Ministry of Defence, Ministry of Health, Ministry of Social Affairs and Family) and public institutions.

According to Basic Treaty between the Holy See and the Slovak Republic, Article 5, The Catholic Church has the right to perform apostolic missions, particularly liturgical rites and religious practices, to proclaim and teach Catholic doctrine. According to Article 14, the Catholic Church has the right to perform pastoral service in the armed forces and police corps. Armed forces officers and police officers have the right to participate in worship services on Sundays and days of religious holidays, unless this is inconsistent with the fulfilment of serious duties. They may participate in other religious rites at the time of employment, with the consent of the relevant service body. According to Article 15, the Catholic Church has the right to perform pastoral care for the faithful in the institutions of detention and in the correctional institutions. As Article 16 provides, the Catholic Church has the right to develop activity of a pastoral and spiritual nature, and religious training and upbringing in all formative state institutions, educational and medical institutions, state institutions providing social services, including those used for obligatory institutional education, and for the care and social reinstatement of drug dependent persons, in accordance with conditions agreed between the Catholic Church and the respective institution. The Republic of Slovakia will ensure that conditions are fit for the exercising of this right. Persons who are under the care of these institutions have the right to attend Mass on Sundays and on days of obligation and are granted the liberty to fulfil all religious acts. Nearly identical provisions can be found in the Agreement between the Slovak Republic and the Registered Churches and Religious Societies in the Slovak Republic. The Act no. 308/1991 Coll. on the Freedom of Belief and the Position of Churches and Religious Societies in its section 9 reads: “Persons appointed to carry out clerical activities have the right to enter buildings of public social care and health care establishments and homes for children, 51 1950-1968.
as well as buildings designed to accommodate military units and provide detention or imprisonment, and places of mandatory curative treatment and protective education. Churches and religious societies shall, in absence of rules applying to the entry of such buildings and/or places under generally binding regulations, negotiate such rules with the respective establishments and/or units. All persons in such buildings and/or places have the right, particularly in cases endangering life and health, to spiritual service usually provided by a cleric of their own choice. In addition, they are entitled to keep spiritual and religious literature of their own choice.” Sacred premises, especially chapels and pastoral centres, are built according to the rules of churches and religious societies and in line with the rules which are followed by the public institutions concerned. In general, we can say that the organisation of the service of chaplains in public institutions is carried out by churches which seek to constructively cooperate with the State and public organisations.

1. Religious Assistance in the Armed Forces and Armed Units

Armed forces are the Army of the Slovak Republic and armed units are Police Corps, Fire and Rescue Corps, and the Unit of Penitentiary Guard.

In the modern history of the Slovak Republic, the service of clerics in the Army of the Slovak Republic began only in 1994; a year after the Slovak Republic was established. In the same year, two clerics started carrying out their activities at the Ministry of Defence of the Slovak Republic: one was appointed by the Slovak Bishops’ Conference and the other was appointed by the Ecumenical Council of Churches. A year later, a common Office for Military Clerics was set up with the Ministry of Defence; the Office started its activity on 1 February 1995. Systemised vacancies for military clerics were created in the General Staff of the Slovak Army, commands of corps and in the military universities. Organisationally, the military clerics were subject to the relevant commanding officer, professionally to the director of the Office for Military Clerics irrespective of confession. As the concept defined, the military clerics were to perform their activities in the spirit of ecumenism and respect for other religious traditions. Care for soldiers of other religious orientation was to be ensured individually and in cooperation with representatives of the relevant church. The main role of the Office of Military Clerics was to fill systemised vacancies in the Department of Defence and prepare clerics for such work. When the Basic Treaty between the Holy See and the Slovak Republic was adopted, in which the parties agreed to enter into a partial agreement on the service of clerics
in the armed forces, its preparation started almost immediately. On 28 November 2002 the Treaty between the Slovak Republic and the Holy See on Pastoral Care for Catholic Believers in the Armed Forces and Armed Units of the Slovak Republic was ratified. On the basis of the Treaty between the Slovak Republic and the Holy See on Pastoral Care for Catholic Believers in the Armed Forces and Armed Units of the Slovak Republic no. 648/2002 Coll., in January 2003 the Ordinariate of Armed Forces and Armed Units of the Slovak Republic was established, having the status of a diocese, and the Ordinary was appointed on 1 March 2003, having the status of a bishop.\footnote{The Ordinariate has both canonical and state legal subjectivity. The Ordinary is appointed by the Holy See, he is member of the Bishops´ Conference of Slovakia and organisationally is included in the Armed Forces of the Slovak Republic.} The Treaty regulates the pastoral care for Catholics in Armed Forces, Police Corps, in the Unit of Penitentiary Guard and Railway Guards, and for persons deprived of freedom by a decision of a State authority. Similar is the Agreement between the Slovak Republic and Registered Churches and Religious Societies on Pastoral Care for Believers in Armed Forces and Armed Units of the Slovak Republic no. 270/2005 Coll. The Centre of the Ecumenical Pastoral Service in the Armed Forces and Armed Units of the Slovak Republic was officially opened by ceremony services on 10 March 2007. It is the supreme body of the second structure of pastoral care in the armed forces and armed units and a parallel structure of the Ordinariate. Both structures are financed by the State.

The chaplains of the Ordinariate of Armed Forces and Armed Units are the clerics of the Roman Catholic Church and Greek Catholic Church. The priests of the Ordinariate are in the service in the individual units of the armed forces, armed units and rescue corps and respect the regulations corresponding to their service class. The legal status of the clerics of the Ordinariate is guaranteed by Canon law, laws of the Apostolic Constitution “Spirituali militum curae”, the Treaty between the Slovak Republic and the Holy See on Pastoral Care for Catholic Believers in the Armed Forces and Armed Units of the Slovak Republic and applicable laws of the Slovak Republic, fully respecting their special clerical status. The military clerics may not be charged with duties which would be in contradiction with their service performance. The clerics of the Ordinariate may not have service weapons; they may not carry them nor use them.\footnote{Article 27, Statute of the Ordinariate of Armed Forces and Armed Units of the Slovak republic.}

The Ordinary appoints the clerics to the service and offices in the Ordinariate according to the rules of the Canon law. Such appointed clerics are
accepted to the service relationship and offices by relevant service superiors in the armed forces, armed units or rescue corps.\textsuperscript{54} The Ordinariate has three vicariates: Vicariate for the Armed Forces, Vicariate for the Ministry of Interior and the Vicariate for the Unit of Penitentiary Guard.

Currently, the Slovak Bishops’ Conference is involved in intense discussions with the Ministry of Defence and the Ministry of Interior about the exercise of rights resulting from the \textit{Treaty between the Slovak Republic and the Holy See on Pastoral Care for Catholic Believers in the Armed Forces and Armed Units of the Slovak Republic}. The Centre of the Ecumenical Pastoral Service covers activities of several churches. By percentage, the number of the clerics of individual churches is as follows: 49\% Lutherans, 20\% Reformed Christian Church, 15\% Orthodox Church, 2\% Methodists, 2\% clerics of Brethren Church, 2\% Baptists, 2\% Old Catholics, 2\% Hussite Church, 2\% Jewish Communities. Like the Ordinariate, it has three offices: Office of the Ecumenical Pastoral Service in the Armed Forces of the Slovak Republic, Office of the Ecumenical Pastoral Service of the Ministry of Interior of the Slovak Republic, and Office of the Ecumenical Pastoral Service of the Unit of Penitentiary Guard. The clerics of the Centre are obliged to perform the service in the spirit of ecumenism irrespective of their confessional affiliation. The Centre is led by General Pastor appointed by the Ecumenical Council of Churches. The General Pastor decides about the acceptance, reassignment or removal of the clerics, according to internal rules of the churches and religious societies involved. Pastors who perform pastoral service in the armed forces and armed units have the rights and obligations defined by internal rules of their churches and competences of the Centre and are in the service employment relationship of the armed forces and armed units. Chaplains hold ranks of officers in line with the positions within the armed forces.

2. \textit{Religious Assistance in the Hospitals}

The presence of chaplains in hospitals and pastoral activity is not regulated in Acts on health care. It is implied in the constitutional right to freedom of religion, under Article 24 of the Constitution of the Slovak Republic. Section 6 of \textit{Act no. 308/1991 Coll. on the Freedom of Belief and the Position of Churches and Religious Societies} reads that churches and religious societies
may establish and operate their own health care and social care establish-
ments, and participate in the provision of related services, in accordance
with the applicable laws. The main legal confession regulation does not
stipulate the right to pastoral, but rather health care activity. The Basic
Treaty between the Holy See and the Slovak Republic and the Agreement be-
tween the Slovak Republic and the Registered Churches and Religious Societies
in the Slovak Republic guarantee this right.\textsuperscript{55}

In every health care facility, religious services are performed by the local
clerics, however, recently, there is a trend to appoint hospital chaplains, es-
pecially within the Roman Catholic Church. The hospitals for which the
clerics have been appointed establish spiritual administrations. The chap-
lains are financed by the sending church or religious society. To support
and develop this service, the Slovak Bishops’ Conference has set up a
Council for Health Pastoral Care. It is led by the bishop charged with pas-
toral care in the health care area.

3. Religious Assistance in the Penitentiaries

The legal bases for the operation of chaplains in the penitentiaries the Basic
Treaty between the Holy See and the Slovak Republic (Article 15), Act no.
308/1991 Coll. on the Freedom of Belief and the Position of Churches and Reli-
gious Societies, Article 9, the Agreement between the Slovak Republic and the
Registered Churches and Religious Societies in the Slovak Republic, (Article 15),
the Treaty between the Slovak Republic and the Holy See on Pastoral Care for
Catholic Believers in the Armed Forces and Armed Units of the Slovak Republic
and the Agreement between the Slovak Republic and Registered Churches and
Religious Societies on Pastoral Care for Believers in Armed Forces and Armed
Units of the Slovak Republic. As part of the church administration, the Vi-
cariate of the Unit of Penitentiary Guard and the Centre of the Ecumenical
Pastoral Service of the Unit of Penitentiary Guard have been established.
The Vicariate is divided in deaneries and parishes, in line with the Canon
law. The organisational structure of the Centre is identical with the one of
those institutions where prison pastors perform their activities. Chaplains
hold ranks of officers in line with the positions within the armed forces.

\textsuperscript{55} Article 16 in both documents.
4. Religious Assistance in the other Public Institutions

Chaplaincy in Police Corps, Railway Guards and Rescue Corps (fire brigade, mountain rescuers) is on the same legal basis as Chaplaincy in armed forces. The clerics hold the ranks of officers according to their category in the armed units. Within the existing church administration, the Vicariate of the Ministry of Interior of the Slovak Republic has been set up, and it organises the service of Catholic chaplains. The service of chaplains of churches and religious societies associated in the Ecumenical Council of Churches is controlled by the Office of the Ecumenical Pastoral Service of the Ministry of Interior of the Slovak Republic. The Catholic structure is divided in deaneries and parishes, the Ecumenical structure copies the selected bodies of the Ministry of Interior in which pastors of the Centre perform their activities (Police Academy, District Police Directorates).

According to the Article 24 of the Constitution, churches and religious societies organise the teaching of religion and, according to Act no. 308/1991 Coll. on the Freedom of Religious Faith and the Position of Churches and Religious Societies, believers have the right to be educated in a religious spirit and, on fulfilment of conditions established by internal rules of churches and religious societies as well as by the applicable laws, to teach religion. This issue is amended in more detail by the Basic Treaty between the Slovak Republic and the Holy See, and the Agreement between the Slovak Republic and the Registered Churches and Religious Societies; the contracting parties refer to a more detailed amendment in special agreements, the Treaty between the Slovak Republic and the Holy See on Catholic Upbringing and Education no. 394/2004 Coll. and the Agreement between the Slovak Republic and Registered Churches and Religious Societies on Religious Upbringing and Education no. 395/2004 Coll. In addition to the conditions for establishment of church schools and religious teaching in public schools, they enshrine the activity of the university pastoral centres. The university pastoral centre is a special-purpose facility run by one or more registered churches or registered societies. It can be run on premises of the given university based on the agreement between the relevant authority of the registered church or religious society and the relevant university. The religious service in the university pastoral centre is performed by the rector of the centre and his colleagues based on the appointment by the relevant authority of the registered church.\footnote{56} Except for that, chaplains are active also in church and private schools. Catholic churches establish their spiritual ad-
ministrations which are in charge of pastoral care for students and pedagogical and other employees of schools.  

XIV. Matrimonial and Family Law

On June 4, 2014, the proposal of members of the National Council of the Slovak Republic for an amendment the Constitution of the Slovak Republic was approved. The Constitution has been supplemented by this Constitutional Act with effect from 1 September 2014 in such a way that marriage is according to section 41 of the Constitution defined as a unique bond between man and woman. Amending the section 41 of the Constitution did not bring into our legal framework a new approach, as also under the basic principles on which the Act no. 36/2005 Coll. about the family we find the provision of section 1, which stipulates that matrimony is a bond between men and women, and this one uniquely protects and promotes its good.

In the Slovak Republic matrimony is entered into by the declaration of a man and a woman before a State authority or an authority of a church or religious community that they enter the marriage publicly, solemnly, and in the presence of two witnesses. If it is a church ceremony, it must be solemnised by a person authorised to perform ecclesiastical functions or a minister of that religious community, and a church form of service must be used. According to the Act on the Family no. 94/1963 Coll, as implemented in later regulations, the church authority must deliver a certificate of the marriage to a body authorised to administer registration in the district where the wedding was held.

Issues of marriage according to canon law are regulated by Section 10 of the Basic Agreement between the SR and the Holy See. If a marriage fulfils the conditions stipulated in Slovak Republic law, it has the same legal status and effects as a civil marriage taking place within the territory of the Slovak Republic. The same provision is found in Section 10 of the Agreement between the SR and registered churches and religious communities.

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Article V, Treaty between the Slovak Republic and the Holy See on Catholic Upbringing and Education no 394/2004 Coll. Article 5; Agreement between the Slovak Republic and the Registered Churches and Religious Societies.  

Freedom of expression is one of the political rights enshrined in the Constitution of the Slovak Republic, Article 26. The meaning of freedom of expression and its characteristics were set out by the Constitutional Court in its ruling of 12 May 1997: ‘Freedom of expression enables a person to express or not to express their feelings, thoughts or views.’ Although this is a fundamental human right, it can be restricted by law and if the measures are required in a democratic society for the protection of the rights and freedoms of others, national security, public order, or the protection of public health and morality. Two sections of Criminal Act no. 300/2005 Coll. deal with hateful expressions: Section 423 (Defamation of a nation, race or belief) reads that: ‘(1) Any person who publicly defames a) any nation, its language, any race or ethnic group, or b) any individual or a group of people because of their affiliation with any race, nation, nationality, skin colour, ethnic group, family origin, religion or because they have no religion shall be liable to a term of imprisonment of one to three years.’ Section 424 (Incitement to national, racial or ethnic hatred) reads that ‘(1) Any person who publicly threatens an individual or a group of people because of their affiliation with any race, nation, nationality, skin colour, ethnic group, family origin or religion, if they constitute a pretext for making threats on the aforementioned grounds, by committing a felony, restricting their rights or freedoms or whoever imposes such restriction or incites others to the restriction of the rights or freedoms of any nation, nationality, race or ethnic group, shall be liable to a term of imprisonment of up to three years. (2) The perpetrator shall be liable to a term of imprisonment of two to six years if they commit the offence of defamation of a nation, race and belief (a) in association with another power or other agent, (b) publicly, (c) for a special reason, (d) as a public official, e) as a member of an extremist group or f) in a crisis situation.’

Offenses and criminal acts directly or indirectly concerning religious denominations or religious manifestations are covered by the Criminal Code no. 140/1961 Coll. The Code stipulates that one who by violence, threat of violence, or threat of other detriment shall force another person to take part in a religious act, hinder another person without permission in such participation, or hinder another person in the use of freedom of confession

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in any other way, shall be sentenced to imprisonment for up to two years or a fine. A “religious act” is any act or ceremony that relates to a church or religious community’s belief or confession (e.g. worship service, confession, sacrament, Eucharist, etc.). The Act also criminalises violence against a group of citizens or against an individual because of their denomination, or because they are non-denominational. “Denomination” implies active or passive adherence to a general theory and explanation of the world given by particular church or religious community. The crime may include violence, the threat of violence, or incitement of others to violence. The crime of religious defamation is based on public defamation (vituperation, belittlement of a citizen or group) because of their denomination or because they are non-denominational.

The laws governing imprisonment forbid prisoners to acquire or own media or objects promoting religious intolerance, and stipulates possibilities and conditions of organized church participation in prisoner rehabilitation. The law also confirms the right of an accused person to receive spiritual service, although the right is subject to certain limitations based on the nature and purpose of the imprisonment and the risks involved.

XVI. Major Developments and Trends

After the collapse of communism, the Slovak Republic addressed several key issues within the State-Church relations legal framework. They are primarily financing of churches, registration of churches and religious societies, and the restitution of church property. Apart from some exceptions, the question of the restitution of church property Slovakia has been dealt with. Since 2000 there has been a third board of experts, or third seria of boards of experts (from the side of the State and from the side of churches and religious societies too) working on the preparation of the new act on the financing of churches and religious societies, which are related not only with the preparation of the act, but also with two so-called partial agreements (between the State and Holy See and between the State and eleven churches and religious societies) – as the parties have committed themselves in the so called basic treaty and basic agreement. It seems that the social debate on this issue is not over yet. Nowadays, problems are concerning to the relatively high minimum membership for the acknowledgement of churches or religious societies by the State. The question is often raised especially (but not only) by the Islamic community.

Others unresolved issues are a treaty between the State and Holy See on the right to exercise objection in conscience and agreement with the same
subject matter between State and eleven registered churches and religious societies, as the parties have committed themselves in the so-called basic treaty and basic agreement. In the recent past, the issue of the right to exercise objection in conscience and draft text of the treaty and agreement in the recent past, have appeared in election campaigns. It seems that a well-established system of contractual relations between the State and churches and religious societies, besides adjusting and concretising cooperation in different areas of social life such as armed corps and armed units or the area of education, remains as it is.

It is to be appreciated that registered and unregistered churches in Slovakia are active in building a multi-confessional society. This is done through their joint programmes, with the support of the Ministry of the Interior and the Ministry of Justice, focused on dialogue and tolerance, especially for children of elementary and secondary schools.

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State and Church in Finland

Matti Kotiranta

I. Social Facts

At the beginning of the 21st century, Finland was still a relatively religiously homogenous country, although the change brought by multiculturalism has also been reflected in the development of membership of denominations and religious communities. In this, Finland has followed the same trends as in the other Nordic Countries, albeit at a slower pace.

It is a characteristic of the Finnish religious landscape that despite of the dominance of two major churches – Lutheran and Orthodox – most of the world religions that have found their way to Continental Europe also have followers in Finland, though only in very small numbers. In recent years, the rising numbers of refugees and asylum seekers have resulted in increasing religious diversity.¹

Finnish membership of registered religious denominations in 1990, 2000 and 2015 was as follows²:

<table>
<thead>
<tr>
<th></th>
<th>1990</th>
<th>2000</th>
<th>2015</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total population</td>
<td>4,998,478</td>
<td>5,181,115</td>
<td>5,487,308</td>
</tr>
<tr>
<td>Evangelical Lutheran Church of Finland</td>
<td>4,389,230</td>
<td>4,409,576</td>
<td>4,004,369</td>
</tr>
<tr>
<td>Other Lutheran Churches</td>
<td>2,588</td>
<td>2,228</td>
<td>1,317</td>
</tr>
<tr>
<td>Greek Orthodox Church of Finland</td>
<td>52,627</td>
<td>56,807</td>
<td>60,877</td>
</tr>
<tr>
<td>Other Orthodox Churches</td>
<td>800</td>
<td>1,088</td>
<td>813</td>
</tr>
<tr>
<td>Jehovah’s Witnesses</td>
<td>12,157</td>
<td>18,492</td>
<td>18,286</td>
</tr>
<tr>
<td>Free Church in Finland</td>
<td>12,189</td>
<td>13,474</td>
<td>15,409</td>
</tr>
</tbody>
</table>

In 2015 the majority of the Finnish population (5,505,257) still belonged to the Evangelical-Lutheran Church of Finland (73.0 per cent in 2015). The second biggest religious denomination in Finland was the Finnish Orthodox Church (just over 1 per cent with 60,877 members).

Between 2000 and 2015 the membership of the Lutheran Church decreased considerably; specific societal events over the years have reflected more clearly than before in departures from the church, and also new members joining it. The proportion of those belonging to ‘other’ religious communities has increased to some degree during the 21st century to date, but within this group there are some very different trends. Jehovah’s Witnesses and the Free Church of Finland are among those whose membership has grown. They were the largest of the registered communities. A similar trend was observed in the Catholic Church in Finland: its membership has more than tripled (1990: 4,247 and 2015: 13,069), yet it is still a relatively small community. In contrast, the membership of the Seventh Day Adventist was falling. The membership of the Mormons (Church of Jesus Christ of LDS) remained much as before.

The membership of Pentecostal congregations is at approximately the same level as the Orthodox Church; it is currently estimated at around 50,000 baptized members, and if children are included a total of approximately 60,000 members. However, Pentecostals are not registered as religious communities but as ideological associations, for example. But the Pentecostal movement is becoming organised more and more as a religious body. From the beginning of 2002 its organisational structure was

<table>
<thead>
<tr>
<th></th>
<th>1990</th>
<th>%</th>
<th>2000</th>
<th>%</th>
<th>2015</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>Roman Catholic Church</td>
<td>4,247</td>
<td>0.1</td>
<td>7,227</td>
<td>0.1</td>
<td>13,069</td>
<td>0.2</td>
</tr>
<tr>
<td>Islamic congregations</td>
<td>810</td>
<td>0.0</td>
<td>1,199</td>
<td>0.0</td>
<td>10,088</td>
<td>0.2</td>
</tr>
<tr>
<td>Adventist Churches</td>
<td>4,805</td>
<td>0.1</td>
<td>4,316</td>
<td>0.1</td>
<td>3,553</td>
<td>0.1</td>
</tr>
<tr>
<td>Pentecostal Church in Finland</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>6,876</td>
<td>0.1</td>
</tr>
<tr>
<td>Church of Jesus Christ of Latter Day Saints</td>
<td>2,883</td>
<td>0.1</td>
<td>3,307</td>
<td>0.1</td>
<td>3,208</td>
<td>0.1</td>
</tr>
<tr>
<td>Baptist congregations</td>
<td>2,565</td>
<td>0.1</td>
<td>2,395</td>
<td>0.0</td>
<td>2,320</td>
<td>0.0</td>
</tr>
<tr>
<td>Methodist Churches</td>
<td>1,251</td>
<td>0.0</td>
<td>1,260</td>
<td>0.0</td>
<td>1,415</td>
<td>0.0</td>
</tr>
<tr>
<td>Jewish congregations</td>
<td>1,006</td>
<td>0.0</td>
<td>1,157</td>
<td>0.0</td>
<td>1,133</td>
<td>0.0</td>
</tr>
<tr>
<td>Other registered communitities</td>
<td>712</td>
<td>0.0</td>
<td>720</td>
<td>0.0</td>
<td>3,278</td>
<td>0.0</td>
</tr>
<tr>
<td>No religious affiliation</td>
<td>510,608</td>
<td>10.2</td>
<td>659,979</td>
<td>12.7</td>
<td>1,336,106</td>
<td>24.3</td>
</tr>
</tbody>
</table>

supplemented with the establishment of a registered religious community, the Finnish Pentecostal Church (Suomen Helluntaikirkko), to enhance inter-parish co-operation and to promote the Pentecostal movement within Finnish society and internationally. The number of registered Pentecostals members was 6,876 in 2015.

Followers of Islam are the largest non-Christian movement in Finland. The number of Muslims increased tenfold between 1990 and 2011. It is currently estimated at around 60,000. At first, few of them organised themselves into registered religious groups. However, their registrations have clearly increased in the early 21st century (1990: 810; 2000: 1,199; and 2015: 10,088). In 2015 there were six registered Buddhist communities, with a total of 956 members and two registered Hindu communities with 324 members. According to recent research, in 2015 there were 1,336,106 inhabitants of Finland who do not belong to any religious community. Its total number has almost tripled over 25 years (1990: 510,608).

II. Historical Background

The religious situation in Finland, even today, is strongly influenced by the historical legacy – on the one hand the significance of Lutheranism in the history of Finland since 1527, and on the other hand the influence of the state church in the Scandinavian tradition more generally – and the religious distribution of the population. Since almost the whole population of Finland once belonged to the Lutheran Church, and the Orthodox Church had a stronghold in Ladoga Karelia, Olonets Karelia, and Russian Karelia, Syväri, and Petsamo, these two churches have gained a special position in relation to the State through the course of history.

Finland’s centuries-long state connection with Sweden was severed in 1809, and Finland was incorporated into the Russian Empire as an autonomous Grand Duchy. Paradoxically, the Period of Autonomy created the basis for independence for the Church. While the Lutheran Church emphasised the Western ecclesiastical tradition in its Nordic form along-
side the different church of the Orthodox Emperor (Czar), holding that it was the representative of Western Christianity in Finland, it was successful in ensuring for itself a new, legally guaranteed status of non-interference. Before the increasing integration of the European Union – including also the time of the independence of Finland prior to joining the EU (1917-1995) – there was indeed no perceived need to open the special preserve enjoyed by the Evangelical Lutheran Church of Finland and the Orthodox Church of Finland, with their associated co-operation with the state, to outsiders in any significant way.

Since Finland joined the European Union (in 1995), the issue of state-church relations became a matter of interest in Finland in a new way. The deepening integration of the European Union, the associated intergovernmental co-operation, and the development of legislation raised questions concerning the importance of freedom of religion and the position of the churches and religious bodies in the Finland of the future.

In the religiously uniform Scandinavia and Finland of the past there was no urgent need to re-evaluate church-state relations. In the Nordic countries, political and social development has taken place without abrupt crises in the position of the churches. A fixed state church system has gradually disintegrated in most Nordic countries. In comparison with Norway and Sweden, Finland can be regarded as a good example of a country where traditional church-state relations have been dismantled in stages without complete separation between church and state.

The Evangelical Lutheran Church of Finland today is clearly a separate institution from the state, with its own legal status. Nevertheless, in Finland there has been constant debate as to whether and in what sense the Lutheran Church is a “state church”. The Lutheran Church has certain links with the state, and in Finland has retained certain features of the state church. The special position of a state church is clearly shown by certain features of ecclesiastical legislation, such as the legal status of the church; until 1995, the state’s obligation to maintain the diocesan chapters; until 2000, the President’s right to nominate bishops; many economic ties to the government, the right to levy a church tax, the employment of chaplains (army, prison, and for the blind and deaf), etc. In the true sense of the word the Evangelical Lutheran Church of Finland has not, however, been a state church since the Church Law of 1869 (by F.L. Schauman) and the Constitution of 1919, when denominational neutrality of the State and the
freedom of religion were enshrined in the Constitution Act. The Finnish State is neutral in matters of religion, and the Evangelical Lutheran Church is legally and administratively independent of the state.

Only as recently as the 1990s did the human rights documents of the Council of Europe (CE) and the Organisation for Security and Cooperation in Europe (CSCE, now OSCE) and European integration genuinely force the Nordic churches to evaluate church-state relations on the basis of the principle of freedom of religion, albeit from a quite new perspective.

On the one hand, in the 1990s church-state relations were evaluated in human rights documents primarily from the point of view of the religious freedom of the individual. Does the close relationship between the Lutheran Church and the state infringe the religious freedom of the individual – or to what extent does the privileged position of one or two churches in a country encroach upon the rights and freedom of other religious bodies?

On the other hand, the whole discussion of church-state relations has altered in nature. The old-fashioned idea of “freedom from religion” and an ideological antithesis between church and state is losing ground. Similarly, the antithesis between Christian values and the values of society is also losing ground. They have been replaced by a positive interpretation of freedom of religion that has been in high profile in international documents on the subject of freedom of religion since the Second World War. Citizens have the right to religion and its communal practice and not only the right to be detached from anything to do with religion.

Relations between the state and the Evangelical Lutheran Church of Finland went through a degree of change during the years from 1993 to 2000. In the field of politics as well as in the Church, there is now greater independence of the Church on the one hand and the State on the other. For this reason, in 1993 Lutheran Church law was divided into two parts: a Church Code passed by the State regulates the relations between Church and State, while a Church Ordinance passed by the Church regulates the Church itself – its doctrines as well as its life. The latest stage in the Finnish Church Code work created two appointed committees: the Church Act 2010 Committee (2005) and the Codification of Church Law Committee (2007).

5 For more about historical background of state-church relations in Finland and the centuries-long state connections with Sweden (from the 1150s to 1809) and the so-called era of Autonomy (1809-1917), when Finland was incorporated into the Russian Empire as an autonomous Grand Duchy, see Kotiranta, Finland, ibid., 110.
The new Constitution of Finland was passed in 1999 (731/1999) and came into force on 1 March 2000. In this Constitution, the freedom of the individual has been emphasised. Because of this, the Law on Religious Freedom (1922) has been updated. A new Religious Freedom Act was passed in 2003. This Act deals with various issues relating to state and church. The new Law will make all Christian churches and other religious communities more equal in society. Also the dominant status of the Evangelical Lutheran Church of Finland has decreased.

III. Legal Sources

1. Constitutional provisions – the freedom of religion

The principle of freedom of religion was laid down at the level of constitutional law in the Finnish Constitution of 1919. It guaranteed citizens freedom of religious practice, and made their rights and obligations independent of the religious community to which they belonged. This provision was revisited in the major revision of the Constitution in 2000 (731/1999)\(^6\). It included also the revision of the Fundamental rights chapter of 1995 (within the framework of the 1919 Constitution Act). The new legislation brought all constitutional provisions together into a single law. Section 11 of the Finnish Constitution of 2000 which deals with freedom of religion and conscience, mirrors the provisions of Article 9 of the European Convention to a considerable extent, stating that

- everyone has freedom of religion and conscience, implying the right to profess and practise a religion, the right to express one’s convictions, and the right to be a member or decline to be a member of a religious community, and

- no-one shall be under any obligation to participate in the practice of a religion against his or her conscience.

The basic content of the provision remained unchanged in revision, but it emphasised that the law as a whole applied to all persons living in Finland, not just Finnish citizens. The concept of freedom of conscience was stated now explicitly; in line with the recent international agreements on human rights, the law mentioned personal convictions and the right to express them (i.e. a positive interpretation of freedom of religion).

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2. *Other Acts of Parliament concerning the State and Church relations*

After multiple rounds of debate and discussion, the special public law status of the Finnish Lutheran Church and Orthodox Church was not changed by the new legislation. However, the constitutional recognition of the special status of the Lutheran Church is less prominent in the framework of the new Constitution than formerly. Nevertheless, a constitutionally protected autonomy is still guaranteed in Section 76, which concerns the Church Act:

Section 76 – The Church Act

Provisions on organisation and administration of the Evangelical Lutheran Church are laid down in the Church Act.

The legislative procedure of the Church Act⁷ (or Church Code) – the ‘Constitution’ of the Lutheran Church – is governed by specific provisions in that Act.

According to Chapter 2, Section 2

only the General Synod of the Evangelical Lutheran Church may propose amendments to the Church Act.

This means that the General Synod retains the exclusive right to initiate legislation on Church-related matters. President and Parliament have no right to change the content of proposed legislation, which must be approved or rejected without amendment.

An amended Orthodox Church Law came into force in 2007 (985/2006). Parallel to the Lutheran church, the Orthodox church’s legal status vis-à-vis the state remained as before. The church has the right to submit proposals for amendments to its Law and other legislation affecting it.

The new Constitution no longer provides that the President of Republic appoint the bishops of the Lutheran Church. Under the amendments to Orthodox Church Law, the function of the appointment of bishops has also been transferred to the Orthodox church itself, in the same way as for the Lutheran church. The Holy Synod of the Ecumenical Patriarchate and the Ecumenical Patriarch must also endorse the election of the archbishop under canon law. The (Finnish) Synod of Bishops endorses the election of other bishops. These nuances reflect the general atmosphere of change in the state-church relations to more neutral direction.

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Relations between state and church are also involved in legislation of school education, taxation and marriage.


In the new Constitution of 2000, the freedom of the individual has been emphasised. It was clear that the Law on Religious Freedom had to be updated from the former Freedom of Religion Act passed in 1922. A new Religious Freedom Act came into force on 1 August 2003 (453/2003). The committee responsible for preparing the new law on the freedom of religion discussed in its report the question of freedom of religion as a fundamental civil right and the freedom of religion and conscience as laid down in section 11 of the Finnish Constitution. The committee concluded that this latter provision should form the basis for all legislation in Finland that concerns freedom of religion and conscience.

The freedom of religion legislation as such retained its original structure of 1922 law, but with numerous adjustments on matters of detail. Under the new law of religious freedom (2003), a religious community could decide for itself whether it members were also allowed to join other religious communities. According to the old law it was only possible to be a member of one community at any one time. In addition, it was now possible to leave a community by providing written notification rather than in person.8

Amendments concerning how a child joined a religious community also changed. According to the old law, a child became a member of the community by special announcement by her/his parents. Under the new law, a young person from the age 15 could now join or leave a religious community with the written consent of parent or guardian. 9 After reaching the age of 18, a person could make her/his own decisions regarding religious affiliation.

IV. Basic Categories of the System – International Dimension

The Republic of Finland has signed numerous international treaties protecting the freedom of religion or belief. Finland joined the Council of Europe in 1989 and ratified the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) on 10 May 1990. Finland had established relatively close relations with the Council of Europe

8 Section 4(2) of the Freedom of Religion Act 2003.
9 Section 3(3) of the Freedom of Religion Act 2003.
before joining it formally. Finland signed the European General Agreement on Culture in 1970, which was the first Council of Europe general agreement that it ratified, and it had subsequently signed numerous other such agreements prior to becoming a full Council member. Some of these agreements have had a substantial influence on the development of the country’s internal legislation. For example, the International Covenant on civil and Political Rights, the Convention on the Rights of Child and the Convention for Elimination on Discrimination against Women, have been incorporated into Finnish Law through Act of Parliament.

As noted before, the Finnish State is neutral in matters of religion, and both the Evangelical Lutheran Church and the Orthodox Church are legally and administratively independent in relation to the state. The Finnish Orthodox Church is an archdiocese under the Ecumenical Patriarchate operating in the territory of the Republic of Finland, which is divided into three dioceses and the parishes within their respective territories. Under the church governance are the monasteries of New Valaam and Lintula. Other registered religious associations, on the other hand, not being governed by public law, are subject to the legislation that applies to private corporations.

The modern interpretation of religious freedom specifically as a positive right has gradually appeared in Finland through the approval of international agreements. This means that in the field of fundamental civil rights, the Evangelical Lutheran Church of Finland and the Finnish Orthodox Church, as communities governed by public law, are also required to be actively responsible for the implementation of fundamental civil rights within their own communities. Other registered religious associations, not being governed by public law, are subject to the legislation that applies to private corporations and have the responsibilities laid down in other legal areas, e.g. the law on equality and the labour legislation, that lead them to act in conformity with the principles of human rights and fundamental freedoms.

The Finnish State is neither nondenominational nor denominational. However, there are still constitutional and legislative links between the State and the Lutheran and the Orthodox churches. One may conclude that the Church Acts of the Finnish Lutheran and Orthodox churches include provisions with a clear denominational character as regulated through Acts of Parliament. In this special matter, it is easy to agree with the opinion of Professor Martin Scheinin in the second edition of this book, that “there still are two State Churches in Finland despite a gradual
process towards fewer constitutional or other official links between the State and the two Churches”.

V. Legal Status of Religious Bodies

Legal basis

The new Freedom of Religion Act (453/2003) contains provisions that concern membership of religious associations, the procedure when joining or leaving a religious association, the oath and affirmation, and application of the law of assembly to the public practice of religion. To put it more precisely, the Freedom of Religion Act enacts in detail and exhaustively the legal status and foundation, rights and obligations of churches and registered religious associations.

According to section 2 of the Freedom of Religion Act, a reference to religious associations in the law means the Evangelical Lutheran Church, the Orthodox Church and religious associations registered in accordance with section 2. Religious activities can also be practised using the form of an ideological association or entirely without organising in the form of a legal person. Under the new Freedom of Religion Act the Evangelical Lutheran and Orthodox Churches are subject to special ecclesiastical laws; registered religious associations, however, draw up their own rules which must be approved by the authorities, i.e. the National Patent and Register Board, so long as they are conformity with the law.

In Finnish law, context three different types of legal person can be found amongst the religious associations:

1. The status of the Evangelical Lutheran Church under public law is enshrined in the constitution.
2. In the new constitution there is no direct provision for the Finnish Orthodox Church to regulate its position in society. In this respect the legislative status of the Orthodox Church differs from that of the Lutheran Church. The Orthodox Church is the subject of a new law concerning the Orthodox Church, 2007 (985/2006).


11 The Act also includes some changes to regulations concerning religious and moral education in basic education and in high schools.
3. In Finland a registered religious association is, however, a special type of community. Its foundation and legal status are enacted in section 2 of the Freedom of Religion Act. Such a religious body gains the status of a legal person, that is, it can acquire property, enter into commitments and be a litigant in court and with other authorities once it is entered in the register of religious associations. In this respect the regulation observes the principle otherwise observed in the Finnish law of associations, under which legal capacity is acquired once the association is entered in the register of associations kept by the authorities, in this case the National Patent and Register Board. If the religious association (or any other body) is not registered, it cannot receive competent legal person status nor gain rights and obligations. Persons acting on behalf of such an unregistered body are personally responsible for all their commitments.

There are no regional differences in the legal status of religious bodies as far as registration is concerned, because in Finland there is no federal system.

VI. Religious Communities within the Political System

No statutes or case law exist regarding the involvement of churches and religious communities or members of the clergy in political life. Therefore, there is no obstacle to members of the clergy participating in politics in Finland. Similarly, churches and religious communities can and do participate in public debate; the way in which such participation takes place varies between the different religious denominations and religious communities.

The Finnish Ecumenical Council is a forum on which Christian Churches of wide variety of denominations and religious communities cooperate with a view of developing joint policy. A concrete demonstration of common objective was in June 2006, on the eve of the start of the Finnish EU Presidency, when Finnish Churches published a brief document Finnish Churches and the Finnish EU-Presidency 2006, which was drafted by the Finnish Ecumenical Council. It was handed to the Prime Minister and to the Foreign Minister by representatives of the Church.

12 In the Finnish system all legal persons – associations, trusts, corporations, limited partnership companies and various bodies – need ratification by the state authorities in order to gain legal status and legal capacity.
Council at the traditional CEC/COMECE Presidency Meeting in the end of June of that year. The common objective of the churches and religious communities for the Finnish EU-Presidency was to generally present their perspectives and take a stance on the ideological goals they wanted the EU to represent.

The Islamic community in Finland has not so far been active in politics although the state authorities have maintained contact with them.

In addition to this, it is worth mentioning that various political parties represented in the Finnish Parliament have no confessional basis, except for one, that of the Christian Democratic Parliamentary Group with 5 members as at 3 May 2018. The Parliament has two hundred members in total, elected for a term of four years, so the Christian Democrats are a relatively minor factor in Finnish politics.

VII. Churches and Culture

Religious education is one of the most contested issues regarding religion and culture in Finland today, and, has been throughout its history as an independent State. However, most of the debates have been related to religious education in comprehensive and upper secondary schools.

The system of comprehensive schools carries the main responsibility for providing compulsory education in Finland. At the moment religious education is a compulsory school subject both in Finnish comprehensive schools (7–16 years) and in senior/upper secondary schools (16–18/19 years). There are few private schools in Finland. Compared with the total number of schools, the proportion of licensed private schools is small. The English school in Helsinki is a Catholic foundation. Licences have also been granted for a few comprehensive schools which are based on religious faiths: there are 17 Christian schools and two other faith-related

13 The key issues were:

* Strengthening the value dimension of the Union and keeping the discussion about the future of the Union alive.
* The need for inter-religious dialogue based on mutual tolerance and respect and knowledge of one’s own identity and conviction.
* Enhancing the social and environmental dimension of the Union, combating human trafficking and promoting a human immigration and refugee policy.

See the document Finnish Churches and the Finnish EU-Presidency 2006 at 2-4.
schools. For children attending these schools, the teaching and educational equipment are free of charge. There are some 25 religious pre-schools.14

Religious education is delivered in the religion of the majority. Because the majority of Finns are members of the Evangelical Lutheran Church of Finland, in practice the instruction in religious education is given mostly according to the Lutheran majority.

However, the new law of religious freedom (2003) links religious education to membership of a denomination. As required by the new law, the term “education according to individual religious affiliation” in the law on comprehensive and upper secondary education was replaced with “teaching the pupil’s own religion”15 According to current legislation, all pupils in Finland have the right to receive education according to their own religion, providing that the minimum criteria on the number of pupils is met.16 If religious education for one’s own religion or denomination is available the pupil has no right to opt out of it. Students who do not belong to a church or religious community participate in world view studies (ethics). The status of Orthodox instruction differs from that of other religious minorities. If there is a minimum of three Orthodox children in a municipal school, instruction is automatically provided and the parents’ request is not necessary.

Teacher education in Finland is situated in universities. Religious education is given by two types of teachers: classroom teachers and subject teachers. The classroom teachers complete a five-year M.Ed. degree. The training includes a minimum of 2 credits in religious education. Classroom teachers are qualified to teach all subjects at grades 1–6 in basic education, including religious education.

The training for subject teachers lasts for one year. In contrast to many European systems, the training is given by the Departments of Applied Sciences of Education and not by a faculty of theology. It includes studies

16 Religious education of other religious denominations will be organised if three conditions hold. First, the denomination must be a registered religious community in Finland. Second, the denomination must have a curriculum (so-called National Framework Curriculum) approved by the National Board of Education. The approval is not automatic and some Christian minority groups participate in Lutheran religious education lessons. Third, instruction is implemented if there is a minimum of three pupils in one municipality who belong to the community and who will take part in this instruction.
such as Educational Philosophy, Psychology of Learning, Special Education, Didactics in Religious Education, and three teaching practices.

Theological education is provided by faculties of theology at the University of Helsinki and Åbo Akademi (Turku), as well as the School of Theology (the former faculty in Joensuu University established in 2002) at the University of Eastern Finland, where in 2010 the universities of Joensuu and Kuopio merged into a single University of Eastern Finland.\(^\text{17}\) The last mentioned School offers includes units in Western theology and Orthodox theology; it is also responsible for the education of priests and church musicians for the Orthodox Church. Theological faculties in Finland are non-confessional and non-denominational.

Religion is also a relevant factor in the field of mass media. Broadcasting time is allotted to broadcasting companies, mainly to YLE, a national broadcasting TV and radio channel. Under the current contracts, the Communications Centre of the Lutheran Church co-ordinates the provision of religious programmes on TV and radio channels with YLE. Sunday services and hours of devotion of major churches and minority denominations are broadcast in accordance with a jointly agreed programme. Congregations and religious associations may also buy air time from regional and local TV and radio channels.

VIII. Labour Law within the Religious Communities

In Finland, the collective agreement system in its current form was introduced in the public sector in the 1970s. These agreements were made in the national, municipal and church sectors for the Evangelical-Lutheran Church (ELCF) and Orthodox Church (OCF) until 2005.

The conditions of service for those holding ELCF offices are determined in chapter 6 section 5 of the Church Law, and by collective agreements both for office-holders and employees made according to the law governing ELCF collective agreements.

Collective agreements are made by the Commission for Church Employers (Kirkon työmarkkinalaitos) for parishes, parish unions and the

Church. This is done according to section 1 of the Evangelical Lutheran Church’s statute (827/2005) governing the Commission.

Working and leisure time are based on the Working Hours Act and through the collective agreements made possible by that Act.

In the law concerning the OCF (985/2006), paragraph 1 of section 114 states that the Church’s administration is responsible for the collective agreement for the Church, its parishes and its monasteries. The Union of Service Employees, Palta, negotiates the collective agreement with the OCF administration and the OCF employers. The collective agreement is negotiated by the principal negotiators in lead groups, which manage the negotiation process and any other work concerning the development of working conditions. This agreement does not apply to archbishops, bishops, the Church’s legal counsel, individuals who work in positions equivalent to Church administration’s leadership positions, or to monastery personnel.

Registered religious communities are governed by civil laws and agreements based on those laws. The employees of these communities belong to trade unions (e.g. Palta), a member of the Confederation of Finnish Industries, that negotiate collective agreements on behalf of their members; and what is noteworthy is that Palta, could have agreed universally binding labour decisions on behalf of religious communities. However, unionising employees working in Muslim religious communities has been weak. Few Muslim communities have full-time imams. In Finland, there is only one paid imam. The rest work on a volunteer basis, some only a few hours a week, but many work over 20 hours a week.18

IX. Legal Status of Clergy and Members of Religious Orders

There is in general no special status in Finnish (State) law for priests, ministers, and members of religious orders. In the major churches, clergy are subject to both civil and ecclesiastical law. If a minister or bishop/priest/deacon (in Orthodox and Catholic churches) acts against the common law or The criminal code, the case is heard in the Court of Justice. If a minister is accused of disciplinary offence, the case is heard in the Lutheran Church by the Cathedral chapter and in the Orthodox and Catholic Churches by the local Synod. In the Lutheran Church, other church workers, such as a

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Deacon or cantor, is accused of a disciplinary offence, the case is heard by
the local Church Council or Parish Board in the particular parish where the defendant is working.

In accordance with the Church Code and Church Ordinance of the
Evangelical Lutheran Church of Finland, pastors do not have to give evi-
dence, especially in court, concerning events which were made known to
them in a personal confession as a confessional secret. This regulation is
protected by law in the common code of legal proceedings (Trial Arch
17:23,2). The same applies to the Orthodox and the Catholic Churches in
Finland.

The Orthodox Church of Finland is an autonomous archdiocese con-
nected to the Ecumenical Patriarchate of Constantinople. Therefore, the
Church is simultaneously a Finnish organisation governed by public law as
well as a part of an international Orthodox church. This makes the pos-
tion of the Orthodox Church in Finnish law unique and problematic in
terms of civil and labour laws. The clergy’s job security is weakened be-
cause of the Church’s right to interpret the employee’s position based on
Orthodox canons. The Church Council and ultimately, the Synod, led by
the Archbishop, have the right to interpret canons to the employee’s detri-
ment.

There are two interesting cases of this in Finland. The first concerned a
Member of the European Parliament Mitro Repo, and the other a priest
who was dismissed after remarrying. The Synod found Repo’s candidature
for the European Parliament to be against canonical tradition, and voted 2
to 1 against Repo exercising his priest’s office during his campaign in 2009
and during his term in the Parliament. The other case concerned a wid-
owed Orthodox priest, who was suspended from service for a year, and in
November 2012 lost his priest and provost designations because he had be-

19 The position of the Orthodox Church’s canons and other spiritual regulations has
been strengthened in the Orthodox Church Act (985/2006). Paragraph 1 of sec-
tion 1 states that “the Orthodox Church of Finland is founded on the Bible, tradi-
tional knowledge, Orthodox dogma, canons and other Church regulations”. Para-
graph 3 of section 1 also defines the Church canons’ relationship to the Ecumeni-
cal Patriarchate of Constantinople. This relationship is referenced in the Ecu-
menical Patriarchate’s decision of June 6th, 1923 in what is known as the Tomos
document.

20 Repo appealed against the decision made by the Synod to the Supreme Adminis-
trative Court (SAC). In December 2009 the SAC denied his appeal. In the SAC’s
opinion, it was an internal matter of the Orthodox Church and it is its responsi-
bility to interpret Church doctrine. Repo returned to service as a priest in Helsin-
ki’s Orthodox parish in August 2014.
come engaged to a widow. The Orthodox Church holds its canon law in higher esteem than secular law; however, many schooled in Finnish law feel that canon law cannot be given priority over civil law and basic human rights.

With respect to political rights, especially concerning the right to stand for public office, there are no restrictions in State law. Such a rule would not be in harmony with Article 14 of the Constitution which contains the fundamental provisions on the right to vote in state elections and referendums (subsection 1), elections to the European Parliament (subsection 2) and municipal elections and municipal referendums (subsection 3).

X. Finances of Religious Communities

The most important source of income for the Evangelical Lutheran and Orthodox parishes is the church tax, which is levied from parishioners on the basis of taxable income. The levy of tax is carried out by the state tax authorities, but parishes pay a proportion of the expenses involved.

In addition, until 2015 parishes received a share of the proceeds of corporation tax. In connection with the reform of corporation tax that came into force at the beginning of 1993, the parishes’ share of corporation tax replaced the previous obligation of associations to pay church tax. Behind the obligation of associations to pay church tax was the fact that from the outset the Church did not make a distinction in taxation between natural and legal persons. Later the obligation of associations to pay church tax and the parishes’ share of corporation tax began to be justified by the fact that parishes provide a wide variety of social services. As far as burials are concerned, the parishes’ share of corporation tax is linked to the responsibility of Evangelical Lutheran parishes for the maintenance of public cemeteries, also in the preliminary work of the new Cemeteries Act.

Parishes’ share of the proceeds of corporation tax has been altered several times during the time that the Tax Act has been in force. The latest reform of corporation taxation came into force as the beginning of 2016. The financing of the Church’s social services was reformed so, that from 2016 onwards the parishes no longer received share of corporation tax.
In the law (430/2015)\textsuperscript{21}, state statutory funding for the Church’s social services amounted to 114 million euros per year.\textsuperscript{22} The aim was to raise the amount of funding annually in line with the change in the consumer price index. As part of the balancing of central government finances, this indexed increase was frozen for the current parliamentary term.

For the Orthodox Church the loss of the corporation tax was replaced by an increase in the amount of State Aid of an equivalent amount.

Since the beginning of 2008 registered religious associations have received financial aid from the government to support their activities. Associations had earlier funded their activities principally through donations, membership fees, and their own fundraising activities. According to the State Aid Act, state aid is received by registered religious associations according to the number of their members. State aid is not to be granted to associations with fewer than 100 members and not to associations that have very few activities, or indeed none at all. The goal is to provide clear criteria so that as little discretion has to be exercised in the assessment.

In the same reform of 2016, the level of state aid to registered religious associations increased. Originally, the amount was intended to increase by 1 million euros, but because of the savings to be made in the State budget, the increase was in fact smaller. The payment for 2016 was 532,000 euros and for each of 2017 and 2018 524,000 euros.


XI. Religious Assistance in Public Institutions

Religious assistance in public institutions is conducted mainly by the Lutheran and Orthodox Churches.

Chaplaincy in hospitals

In the 19\textsuperscript{th} century, the number of hospitals grew rapidly. Following Finland’s independence, pastoral care was organised by Evangelical Lutheran parishes as early as 1925, when the first hospital chaplain started his work.

Training in pastoral care and counselling has been offered since 1952, when the first training course for parish pastors in giving marital coun-

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\textsuperscript{21} https://www.finlex.fi/fi/laki/smur/2015/20150430.
selling was offered.\textsuperscript{23} The training of hospital chaplains was developed at the same time as the training of family counsellors.

Today, the hospital chaplaincy maintained by the Evangelical Lutheran Church of Finland works hand in hand with the healthcare system.\textsuperscript{24} The aim of health care is the promotion of health, prevention and treatment of disease, and alleviation of suffering. The objective of pastoral care is to address the religious, spiritual, and life-view questions of the sick and suffering. A pastoral caregiver respects the human dignity, beliefs, and integrity of the patient regardless of his/her background or view of life. In order to work as a hospital chaplain, one must pass an aptitude test and complete a specialisation programme approved by the Church. Self-determination is clearly stated in the Constitution of Finland and in the Act on the Status and Rights of Patients.

The Evangelical Lutheran Church of Finland currently has 120 full-time and 17 part-time hospital chaplains, with more than half being women. In addition, more than half of hospital chaplains also act as supervisors.

The Unit of Diaconia and Pastoral Counselling (Kirkon diakonian ja sielunhoidon yksikkö, KDS) is an expert and co-operative body that plans and develops pastoral care in hospitals, institutions and outpatient care. It maintains contact with the health care field. It belongs to the Department for Parish Services at the Office of the National Church Council in the Evangelical Lutheran Church of Finland, and it is a member of the European Network of Healthcare Chaplaincy.

\textit{Chaplaincy in the armed forces}

Ever since the 16\textsuperscript{th} century, there have been chaplains serving Finnish soldiers in the armed forces, which at that time meant within the Swedish armed forces. During the era of Autonomy (as part of the Russian Empire), the formation of the field chaplain office and its duties in the Finnish army were based on Finnish laws, especially ecclesiastical law (Schauman’s Church Law of 1869), and based on the heritage of the long period of Swedish rule.

Today, the chaplaincy work in the Finnish Defence Forces (FDF) is mainly done by the Lutheran and Orthodox Churches. They are available

\begin{enumerate}
\item Pirjo Hakala, ”Learning by Caring. A Follow-Up Study of Participants in a Specialized Training Program in Pastoral Care and Counseling”. Diss, Helsinki, 2000, 11.
\item The latest stage in the detailed specialisation of hospital chaplaincy is represented by the document \textit{Hospital Chaplaincy Specialisation Program}, accepted by the Bishops’ Council on 13 September 2011.
\end{enumerate}
for all members of the Forces regardless of denomination or conviction. Military chaplains have the status of state officials. The FDF employ Lutheran and Orthodox chaplains. The Evangelical Church of Finland and Orthodox Church have taken financial responsibility for the costs of military deacons.

There is also co-operation with other churches and Christian organisations and with the civil defence organisations. In 2015 there were 28 members of the Lutheran and Orthodox clergy in the service of the military, and a further 15 serving on a part-time or fee-paying basis; four of these are Orthodox. There are also Church sector conscripts and reserve military chaplains and military deaconesses used in military refresher courses and crisis management troops.25

Religious assistance in the armed forces is subordinated to the general chaplain (field bishop), who is comparable in rank to generals. In the organisation of the FDF military, chaplains have the status of officers. During military service chaplains wear uniforms, but at masses and services they are dressed in liturgical attire.

In the Finnish Defence Forces for international missions there is always a chaplain/s working among the UN peace-keeping forces. Finnish peacekeepers have served in Kosovo, Afghanistan, Bosnia-Herzegovina, Chad, Ethiopia and Eritrea, Lebanon, Macedonia and Somalia.26

Chaplaincy in prisons

In 1925, the Evangelical Lutheran Church of Finland integrated the prison chaplaincy into its regular organisation. The very first prison chaplaincies were founded in the 1820s, in the era of Autonomy. In a statute from 1925 concerning prison administration, the old title “a prison preacher” was changed to “a prison chaplain”27. The position of pastoral care in prisons was strengthened in the 1970s and 1980s.

The State funds the salaries of the prison chaplains, and the Evangelical Lutheran Church funds those of prison deacons. In 2012, the Correctional Services Department proposed transferring the employment of prison chaplains from the state to the Church. However, the Ministry of Justice

26 Ibid.
decided to continue hiring prison chaplains as employees of the Correctional Services Department.

In 2015 there were 14 full-time prison chaplains and three deaconesses in the largest prisons in Finland. All full-time prison chaplains are ministers of the Evangelical-Lutheran Church. In prisons, the pastors are employees of the Correctional Services Institution and are part of the prison’s rehabilitation activities. Prison deaconesses hold office in the dioceses. In addition, there were three part-time chaplains and one deacon who maintained contact with the prison over and above the duties of their own parishes. Free churches and different religious organisations also have their own widespread network for doing prison work. Each year they organise in prisons an average of more than 100 sessions, 50–80 group meetings, as well as more than 100 individual meetings for prisoners.\footnote{Sami Puumala, “The study of pastoral care and ecclesiastical work in prisons 2011–2012” (Selvitys vankilasielunhoidosta ja kirkollisesta vankilatyöstä 2011–2012), see in electronic form: http://sakasti.evl.fi/julkaisut.nsf/05892BAE40E8902DC2257E2E0012D529/$FILE/S%20Puumala%20-%20Selvitys%20vankilasielunhoidosta%20ja%20kirkollisesta%20vankilatyöstä%202011-2012.pdf.}

Chaplaincy in other public institutions – police, airports, parliament, municipalities

Finland has examples of chaplaincies in public institutions other than those already mentioned. This includes chaplaincies within universities, shopping centres, the police force and airports.

There are chaplains at Finnish universities and at universities of applied sciences. Most are priests who belong to the Evangelical Lutheran Church of Finland. At some of bigger universities – such as the University of Eastern Finland – priests of the Lutheran Church are full-time university chaplains and are normally paid by local parishes.

In the Helsinki metropolitan area (Helsinki, Espoo and Vantaa) there have also been chaplains working at large shopping centres and with the police, paid by local parishes. There has also been a long and lively discussion for more than ten years about having pastoral activities at Helsinki–Vantaa airport.

Finnish Muslims

Finnish Muslims do not yet have Islamic chaplains. Finnish Muslims have in several contexts expressed their concern for securing trained imams in order for the communities to continue their spiritual life and to remain a community of faith. That means guaranteeing that an imam and spiritual workers have a proper knowledge of the Islamic sciences. It is noteworthy,
that according to a survey on *Imams in Finland*, the demand for this type of formal education arises from within the Islamic communities in Finland and from imams themselves.\(^\text{29}\)

**XII. Matrimonial and Family Law**

In Finland, secular law recognises the legal effect of acts performed according to religious law. Matrimonial and family law provide important examples. After the independence of Finland in 1917 marriage in a register office became an alternative to marriage in church, by means of the Laws on Civil Marriage of 1917, on the Freedom of Religion of 1922, and on Marriage of 1929.

*The right to solemnise matrimony*

The right to solemnise matrimony in the Evangelical Lutheran and Orthodox Churches is directly based on law. Permission has been granted to other religious associations under section 14 of the Matrimony Act (234/1929) by the Ministry of Education and Culture. The Act governs the preconditions of marriage (e.g. capacity to marry, the banns), the legal position of family members, and divorce. The right to solemnise matrimony may be granted, however, only to registered religious associations and not to individuals.\(^\text{30}\)

Cohabitation of persons of the same sex was agreed by the Finnish Parliament in 2001 to have the same legal status as marriage (having reached the age of 18). In accordance with this law, which came into force on 1 March 2002, persons of the same sex were able to formalise their partnerships by registering a civil partnership.

By the amendment to the Marriage Act, same-sex persons have been able to enter into marriage since 1 March 2017. At the same time, registration of partnerships was abolished. Along with the amendment, persons in a registered partnership can change their partnership into a marriage by making a joint notification concerning it to the local register office.\(^\text{31}\)

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\(^{29}\) The study is written in Finnish with an English summary. Open access document available email address: http://www.kulttuurifoorumi.fi/fin/julkaisut/?id=125.


\(^{31}\) Concepts of Family, cohabitation of couple, and marriage, see http://www.stat.fi =&gt; Quality description, families 2017.
Evangelical-Lutheran Church has the right under secular law to solemnise marriages, but its General Synod does not allow its priests to conduct same-sex marriages.

Respect for private life is ensured in accordance with section 6 of the Finnish Constitution, which states that “[e]veryone is equal before the law”, in that it is forbidden to discriminate between persons on the grounds of their sex, state of health or possible handicap, or other personal grounds without good reason. Questions of the human rights of sexual minorities can be regarded as falling within the scope of this anti-discrimination legislation.

Concerning a marriage – and also in wider sense – Sharia law has no role in Finland.

XIII. Criminal Law and Religious Communities

Chapter 17 of the Criminal Code includes several provisions that protect religious communities and the free exercise of religion. The current Finnish penal provisions no longer protect God’s honour, but rather religious convictions and feelings and religious peace. The offence of breach of the sanctity of religion was reformed in 1998. The provisions have been placed in Chapter 17 on Offences against Public Order (563/1998), which means that these provisions have finally lost their position as the opening chapter of the penal code, as well as their separate nature as offences with a religious content.

Section 11 of the same Chapter criminalises the prevention of worship, and section 12 establishes a penalty for a breach of the sanctity of the grave.

With regard to blasphemy against God, no specific form of intent is required. No intent to offend needs to be present, whereas in other instances, such purposive intent is required. This difference indicates that the protection of God against blasphemy covers a wider range of actions than those with an intent requirement. The point – according to Kimmo Nuo-tio – is that an act will be considered deliberately offensive if those who do not share the religious belief itself still regard the action as offensive, namely hurting the religious feelings of the community. For this reason, efforts
have been made to abolish the special clause on blasphemy against God, but the legislature has not yet been persuaded to do so.\textsuperscript{32} Clergy are not obliged to report under any circumstances what they have learned in performing spiritual care.

\textit{XV. Major Developments and Trends}

We can only guess what the future developments and trends in state-church relations will ultimately be in Finland by the end of the 21st century.

If some conclusions may be drawn from Finnish debates in recent years, there are to my mind the following:

- The biggest change in the history of state-church relations at the time of the independence of Finland is that 1990s human rights documents of the Council of Europe and the Organisation for Security and Co-operation in Europe and European integration have genuinely forced the State – and Lutheran and Orthodox major churches as public entities – to evaluate church-state relations on the basis of the principle of freedom of religion.
- The Republic of Finland has signed numerous international treaties protecting freedom of religion or belief. Some of these agreements – for example the International Covenant on Civil and Political Rights, the Convention on the Rights of Child and the Convention for Elimination on Discrimination against Women – have had a substantial influence on the development of the country’s internal legislation and have in fact been incorporated into Finnish Law through Acts of Parliament. In church policy, this means that major churches and registered religious communities are required to be actively responsible for the implementation of fundamental civil rights within their own communities.
- Also a great change has taken place in the general atmosphere of the debate, which is seen as an openness to a new approach to church-state relations: Traditional considerations, the realisation of religious freedom (positive religious freedom) and the religious neutrality of the state are to be interpreted in a manner appropriate

to the civil society of a modern democratic state, if one truly believes that the state, the church and religious communities must work together, because ultimately it is about the same citizens.

- A positive interpretation of freedom of religion which has had a high profile in international documents on the subject of freedom of religion since the Second World War, has been reflected particularly in the new Finnish Religious Freedom Act of 2003. This Act has a very important influence on the future development on relations between state and church.

- The formulation of church policy, as presented in the new Finnish Constitution 2000 maintaining the status quo and thus supporting the relevant section 76 concerning the Lutheran Church, does not, however, suggest that the state has adopted a more favourable attitude towards the Lutheran Church in particular. It seems inevitable that gradual process towards fewer constitutional or other official links between the State and the two Churches will continue. The most interesting question is – although not in the near future – will the special status of the Lutheran Church (§ 76) disappear in the next revision of the Constitution?

- It seems inevitable that the membership of the Evangelical Lutheran Church will continue to decrease considerably from the 73% (2015) in next two or three decades. My hypothesis is for about 50-60% of the whole Finnish population.

- The judicial position of the church does not reveal the profound nature of the relationship between the state and the church, not to mention the overall value attached to religious values in Finnish society. This means that old traditions and ceremonies (for example the opening ceremonies of new sessions of Parliament and the hour of devotion on Finnish Independence Day) will probably remain in some form.

- In terms of state and decision-making on church policy, it is less crucial to what extent church-state relations reflect links between the State, Church and constitution, but whether a particular governmental decision does justice to the church's and religious community's relations with the state. It is then crucial for the churches and the religious communities, that they themselves interpret their own confessions and de-
velop their “own constitutions” (i.e. Church Acts or Church Codes) in a manner appropriate to the civil society of a modern democratic state.

XV. Bibliography

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Church and State in Sweden

Lars Friedner

I. Social Facts

The majority of the Swedish population belongs to the Evangelical-Lutheran Church of Sweden (61.2% 2016), even though that church’s number of members has decreased in recent years. The percentage of the population has also been affected by the bigger influx of immigrants, not normally Lutherans. The Roman Catholic Church, the Uniting Church in Sweden, different Orthodox churches, and different Muslim communities each has about 1% of the population as members. There are also small numbers of other faiths, Jews, Buddhists, and Hindus, in Sweden.

These facts show that an increasing group of Swedish inhabitants has no affiliation to any church or other religious community. On the other hand, the main atheist organisation in Sweden only numbers some 5,000 members.

Even though a large number of Swedish inhabitants are members of a church or another religious community, this does not reflect religious activity. Only a minority of members regularly attend services, and this applies especially to the Church of Sweden. Whether a lower or higher degree of church activity mirrors a difference in the beliefs of the members is a matter for debate.

1 www.svenskakyrkan.se.
2 Sw. Equmeniakyrkan; the Uniting Church is a merger of the former Swedish Mission Covenant Church, the Baptist Church, and the Methodist Church.
3 www.sst.a.se; in fact the number of members aim at the number of persons being served by the community, as some churches and communities do not have a system for membership.
4 Ibid.
5 Sw. Humanisterna; the Swedish Humanist Association.
6 See congress papers 2016.
7 www.svenskakyrkan.se.
II. Historical Background

Sweden became a Christian country in about the year 1000. The first Swedish king to be a Christian was Olof Skötkonung, who is said to have reigned at this time. Christianity, in its Roman Catholic form, became the state religion.

The Lutheran reformation came to Sweden in 1527, when the Swedish Parliament, on a proposal of king Gustav Vasa, decided that the “surplus estate” of the Church should be transferred to the State, thus confirming the interventions made somewhat earlier against bishops and monasteries. The matter of doctrine was mostly left aside for the time being.

During the reign of the sons of Gustav Vasa, the religious situation changed. The grandson of Gustav Vasa, Sigismund, was also king of Poland (and a Catholic). He was deposed by his uncle, later King Karl IX, who was a Lutheran. Karl IX convened the Uppsala meeting in 1593, where the Augsburg Confession was adopted by the Swedish church. This decision marked the foundation of the Swedish Evangelical-Lutheran Church.

During the following centuries, the Evangelical-Lutheran Church was the only permitted denomination. From the middle of the 18th century, the situation gradually changed. Foreign citizens, living in Sweden, were allowed to belong to other Christian churches. The same freedom was granted to Jews.

In 1860 Swedish citizens were given the right to leave the Evangelical-Lutheran Church, if they declared that they were going to join another accepted church or other religious community. From 1951 full religious freedom was granted to all Swedes. At that time they were given the right to leave the Evangelical-Lutheran Church without stating any reason.

A short time after Parliament’s decision on religious freedom, discussions began regarding the abolition of the State-Church system. In 1958, the Government appointed a committee which had the task of analysing the problems and suggesting possible solutions. After ten years, the committee presented four different proposals: one retaining the existing system, while the other three involved greater changes. As the political parties had diverging views on the question, further committees followed. In 1994, a committee came up with proposals on a new relationship between State and Church in Sweden, including an end to the State-Church system. In 1995, the General Synod of the Church of Sweden (at this time still a State body), approved by an overwhelming majority a government proposal for new relations between the State and the Church of Sweden. Later the same year, the proposal was also approved by Parliament.
After that came a period of implementation. The new relationship was worked out in detail, and several Acts, including amendments to the Constitution, were passed by the General Synod (where applicable) and Parliament. On January 1, 2000 the new state-church system came into effect.

III. Basic Structure

1. Legal Sources

The Swedish legal system consists of constitutional acts, other Acts of Parliament, Statutes, decided by the Government, and Directions, given by central or regional authorities, on behalf of the Government.

In the constitutional Acts the state-church system in Sweden is reflected in the Instrument of Government 1973 as well as in the old Instrument of Government 1809, of which the relevant aspect is still in force. The Act on Succession to the Throne 1810 also contains some church provisions.

The 1973 Instrument of Government (amended in this regard in 1998) states that legal provisions relating to the Church of Sweden as well as to other religious communities should be decided through Acts of Parliament. It is also stated that Parliament may decide on such Acts only either by double, identical decisions, when there has been a general election between those decisions, or a single decision by Parliament with a 75 per cent majority. The Instrument of Government 1809 and the Act on Succession state that the King and the heirs to the Throne must confess the “pure evangelical doctrine, as it is approved and explained in the unaltered confession of Augsburg and the decision of the Uppsala meeting in 1593”.

The Instrument of Government 1973 also grants religious freedom to Sweden. The right is expressed as “the freedom (for anyone), alone or together with others, to practise his or her religion”. Swedes are also, in relation to the State and other authorities, protected from any obligation to state their religious opinion as well as any obligation to belong to a church.
or other religious community. The freedom of religion is also granted through Sweden’s adherence to the European Convention of Protection of Human Rights and Basic Freedoms, which is – through an Act of Parliament – valid in Swedish law.

The two central Acts of Parliament – aside from the constitutional Acts – in the field of religion are the Act on Denominations and the Church of Sweden Act. Both are part of the post-2000 system of state-church relations in Sweden. The Act on Denominations states that the Church of Sweden is a registered denomination; it also gives other churches and religious communities the opportunity to become registered as denominations. As such, the religious community acquires a legal personality as a denomination. Apart from the Church of Sweden registration is, however, not compulsory. A religious community may choose to act using another legal form. Apart from acquiring a legal personality as a denomination, registration does not give any special advantages. However, only registered denominations may use the taxation system for levies from members.

The Church of Sweden Act provides for the Church of Sweden to be an Evangelical-Lutheran, open church of the whole nation, which – in a partnership between a democratic organisation and the ministry of the Church – pursues activities that cover the whole country. These provisions express the identity of the Church of Sweden, which – as a matter of fact – is enshrined in an Act of Parliament. This arrangement may be seen as a state guarantee of the Church’s unchanged identity. The Church of Sweden Act also contains provisions regarding the internal organisation of the

15 Section 2:2.
17 Before Sweden became a member of the European Union, the Swedish legal position was that an international convention had to be adopted through Swedish legislation in order to become directly applicable within Sweden.
18 Sw. lagen (1998:1593) om trossamfund.
20 Act on Denominations, s 9; Church of Sweden Act, s 3.
21 The religious community may before registering have had the legal status of an association with idealistic aims (Sw. ideell förening), see Act on Denominations, ss 8 and 10; there is also an Act giving the right to transform a trust into a registered denomination, Act on Dissolving Trusts in Certain Cases (Sw. lagen (2001:845) om upplösning av stiftelser i vissa fall).
22 Act on Denominations, s 16.
23 Sections 1-2.
24 Sections 1-2.
Church. The aim of these provisions is to guarantee the prevailing basic organisation of the Church.

In the new state-church relations from the year 2000 there is also provision for the former Church estates. Most of these were legally transferred to the Church of Sweden and its parishes. Only parts of the estates, originally granted as allowances for the priests, still remain as distinct legal entities. These estates are, however, held on trust by the Church of Sweden.

Another act of importance for the religious situation in Sweden is the Funeral Act, which states that funerals are carried out mainly by Church of Sweden parishes (in two towns, though, the municipalities are responsible). Aside from these two towns the parishes are also responsible for providing burial-grounds for those who are not members of the Church of Sweden. There is, however, no obligation for the Church of Sweden to open its church buildings for burial ceremonies for non-members. The Church of Sweden must, on the other hand, when needed, provide for some other premises for non-Christian burial ceremonies. Funeral activities are financed through a special annual funeral tax, which is proportionate to income and collected by the tax authorities together with other income taxes. For Church of Sweden parishes, the level of the funeral tax is uniform for the whole country, but the municipalities in question decide on the level independently.

The Cultural Environment Act contains provisions in respect of cultural church heritage. Church buildings which belong to the Church of Sweden and were erected before the year 1940 as well as newer church buildings which have been declared as particularly important may be al-

25 Sections 1 and 4-6.
26 Act on Introducing the Church of Sweden Act, s 9; Sw. lagen (1998:1592) om införande av lagen om Svenska kyrkan.
27 Sw. Prästlönetillgångar.
28 Act on Introducing the Church of Sweden Act, s 10.
29 Church of Sweden Act, s 9.
30 Sw. begravningslagen (1990:1144).
31 Section 2:1.
32 Section 2:2.
33 Section 9:6.
34 Section 9:1.
35 Section 9:3.
36 Act on Tax Procedure (Sw. skatteförfarandelagen (2011:1244), s 2:2.
37 Funeral Act, s 9:4.
38 Sw. kulturmiljölagen (1988:950.).
tered only with permission from the cultural heritage authorities\textsuperscript{39}. Also church inventories of cultural historical value are affected\textsuperscript{40}. On the other hand, the Church of Sweden is granted state contributions for the maintenance of its church buildings\textsuperscript{41}. There is also a special agreement between the Swedish State (through the Government) and the Church of Sweden concerning co-operation in this field.

The Church of Sweden has the right to use the state taxation system for collecting church levies\textsuperscript{42}. The Government may also make this opportunity available to other religious communities\textsuperscript{43}. At present, 14 religious communities beside the Church of Sweden have asked for and received the right to use the taxation system\textsuperscript{44}. Religious communities other than the Church of Sweden must have written consent from each member if the taxation system is to be used or – as an alternative – it has to be stated in the communities’ by-laws that the taxation system will be used for collecting the levies\textsuperscript{45}. At the moment, only the Roman Catholic Church uses the alternative of a by-laws provision\textsuperscript{46}. (For Church of Sweden members, the obligation to pay the church levies is stated in the Church of Sweden Act\textsuperscript{47}.)

The Act on Contributions to Denominations\textsuperscript{48} allows for financial state contributions to churches and other religious communities. A church or other religious community which has chosen to use the taxation system for collecting levies (and received governmental approval for this) will have their direct economic contributions reduced\textsuperscript{49}. The Church of Sweden does not receive any financial contributions under this Act (but it has, as already mentioned, the right to use the taxation system).

Most churches and religious communities in Sweden have been granted the right to solemnise marriages\textsuperscript{50}. Permissions for religious communities

\begin{thebibliography}{9}
\bibitem{39} Section 4:3-4.
\bibitem{40} Sections 4:6, 7 and 9.
\bibitem{41} Section 4:16.
\bibitem{42} Act on Denominations, s 16.
\bibitem{43} Ibid.
\bibitem{44} \url{www.skatteverket.se}.
\bibitem{45} Act on Levies to Registered Denominations (Sw. lagen (1999:291) om avgift till registrerat trossamfund) s 6.
\bibitem{46} \url{www.skatteverket.se}.
\bibitem{47} Section 7.
\bibitem{48} Sw. lagen (1999:932) om stöd till trossamfund.
\bibitem{49} Act on Contributions to Denominations, s 4.
\bibitem{50} Act on Right to Officiating Marriages within Denominations (Sw. lagen (1993:305) om rätt att förrätta vigsel inom trossamfund).
\end{thebibliography}
to solemnise marriages are given by the state’s Legal, Financial, and Administrative Service Agency\textsuperscript{51}. For a religious community which has this permission, the Agency also appoints (on the proposal of the community) priests or other religious representatives who are eligible for solemnising marriages\textsuperscript{52}. The legal system for solemnising marriages is nowadays the same for the Church of Sweden and other religious communities.

Beside the provisions mentioned, there are no rights granted to the churches and other religious communities in Sweden that are not applicable to Swedish society as a whole.

2. State-Church System

The state-church decisions in Sweden, which came into effect in the year 2000, are often described as a separation of state and church in Sweden. As is obvious from what is mentioned in the section Legal Sources, this is not the whole truth. There are still several links between the Swedish State and the Church of Sweden. The changes have also, somewhat unexpectedly, led to closer relations between the state and the other religious communities.

One of the cornerstones of the new state-church-relationship in Sweden is that the different churches and other religious communities are to be regarded as equal. Though this is mostly true from a theoretical point of view, the reality is somewhat different. Of course, the Church of Sweden with its size, economic strength, and history is difficult to compare with other religious communities in Sweden. On the other hand, members of other religious communities are often much more active than Church of Sweden members, i.e. the rate of church-goers is much higher.

Legally, the Church of Sweden is treated in a special way, through the Church of Sweden Act. The Act could be – and has been by some people – regarded as a special privilege granted to the Church of Sweden. But the act contains, as mentioned, provisions as to the identity of the Church and to its organisation. So another way of regarding the Act is that it restricts the Church of Sweden in essential matters. You could then ask why the state has wanted to apply such restrictions to the Church of Sweden, but not to any other religious community. The answer is that the Church of Sweden, through its synod – at that time still a state body – requested

\textsuperscript{51} Sw. Kammarkollegiet.
\textsuperscript{52} Act on Right to Officiating Marriages within Denominations, sections 1 and 2.
those restrictions. The likely reason for this request was the desire of sever-
al different groups within the church that – when the church ceased to be a state church – the church should remain unchanged in identity and organ-
isation. The request to the state may also mirror a desire from the differ-
ent groups that no other group for the future should have the possibility of gaining supremacy over the church.

As also mentioned above, the Church of Sweden has a special position in the Swedish funeral system and with regard to its old church buildings. The reason for the Church of Sweden’s responsibility in the area of funerals is mainly historical – the burial-grounds have been, ever since Sweden became Christian, a task for the church. When the new relations between state and church were created, only the Church of Sweden was ready to take – and maintain – this responsibility. The church is however obliged to act respectfully towards those inhabitants who are not its members. The Church of Sweden has also to arrange for special burial-grounds for those who do not wish to be buried in a Christian burial-ground.

The Cultural Environment Act applies in church matters only to the Church of Sweden. The reason for this is that there are no really old church buildings belonging to any other church in Sweden. As men-
tioned, there were practically no other churches or other religious commu-
nities in Sweden before the 19th century.

The new state-church relationship enabled the Church of Sweden, as well as other religious communities, to receive legal status as registered de-
nominations. Equality between the religious communities also applies to the possibility of receiving financial support from the state or using the taxation system for collecting member levies and solemnising marriages. Even if the Church of Sweden is responsible for public burial-grounds in most parts of the country, any religious community may establish a private burial-ground.

IV. Legal Status of Religious Bodies

As already mentioned, the new state-church relationship in Sweden en-
ables churches and other religious communities to appear as legal persons – registered denominations. For the Church of Sweden, this was a big
change, as the Church *per se* – as a part of the State – had not previously had a legal persona. As also mentioned, the Church of Sweden achieved the status of a registered denomination through legislation, whereas other religious communities have to register to achieve this status.

The question of registration is handled by the State’s Legal, Financial, and Administrative Services Agency. The decision of the Agency does not involve any assessment of the community’s doctrine. On the other hand, the only provision for becoming registered as a denomination – besides some formalities – is that the religious community states itself as such and as an arranger of divine services. An organisational part of a religious community may also become registered. At the end of the year 2016 more than 130 denominations were registered, many of them quite unknown to the public. The expression “divine service” is interpreted quite widely, as Buddhist organisations – where the element of direct worship is quite limited – have been accepted for registration.

There are no special rights granted to churches or other religious communities in Sweden. A church or a religious community may start a school – and some do – but under the same conditions as other organisations in Swedish society. A church or other religious community may also run a hospital or home for abusers or for elderly people – and some do – but again under the same provisions as other organisations. The Swedish systems for schools and health-care are closely linked to the financial contributions to these activities from the State, the municipalities, the regions, and the public social security system. In fact, it is practically impossible for anyone to run a school or a hospital without public financial support. Thus, the question of a “right” to carry on such activities is of little interest in Sweden. Instead, the “right to public contributions” is much more discussed.

No direct right to such contributions exists, however, in the field of hospitals and other social activities. The matter of contributions is decided locally or regionally, and often against a background of political debate. Thus, religious social activities are quite rare in Sweden.

As regards schools, Sweden has a system of private schools – in addition to the municipal schools. Fulfilling formal criteria, anyone is eligible to start and run a school, including religious communities. And every private school is in principle granted the same financial support from the state and

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56 Sections 2 and 7.
57 Section 13.
58 www.kammarkollegiet.se.
the municipality as are the municipal schools. A number of religious communities has started private schools of different levels. All schools have to follow the curriculum laid down by the state, and the schools are under the supervision of state authorities. The subject of religion is compulsory in primary as well as in secondary schools. Religion is taught as a non-confessional subject.

There are no special provisions regarding religious communities’ contacts with the political system. Clergy are not prohibited from political engagement. On the other hand, there are no special religious movements in Swedish politics. Sweden has a Christian Democratic Party, which holds 16 seats in Parliament (out of 349)\(^{59}\). The party is, however, not linked with any particular church or religious community.

V. Church and Culture

As already mentioned, there are in Sweden no specific rights for churches or other religious communities to run schools. On the other hand, there are schools run by religious communities, but under the general law. Education in municipal schools is non-confessional.

The Church of Sweden, as well as certain other churches, has its own educational institutions for clergy and other parish workers. These educations sometimes receive financial contributions from the State. This is the case when the education is organised as a university of the people\(^{60}\), which is a special Nordic form of high-school education, run mostly by political, religious, or other associations with an idealistic aim. For the ordination training of priests etc., there are no state subsidies, neither to the Church of Sweden nor to other religious communities.

State universities are non-confessional. There are also a few private university colleges, run by church-affiliated bodies. Church of Sweden priests are normally supposed to pass an examination in theology at a university before starting the ordination training. Most other churches with ministerial training do not require university studies as a prerequisite.

There are no special provisions regarding churches and other religious communities in relation to the media. The religious communities are not granted any special rights regarding the broadcasting companies. However, the main radio and television channels cover the religious field quite well,

\(^{59}\) Election 2014.
\(^{60}\) Sw. folkhögskola.
this as a part of their task as public-service broadcasters. Every Sunday, ser-

vices are broadcast on radio and on television, alternating between the

Church of Sweden and other churches.

The religious communities have no representation in media companies.

VI. Labour Law

Sweden has no special labour law provisions regarding the churches and

other religious communities. Thus, the same labour law applies to them as
to all other legal bodies. This means that a Church of Sweden priest comes
under the same labour law provisions as all employees. In its intention not
to have doctrinal matters scrutinised according to labour law, the Church
of Sweden in its new legal position has tried to avoid this by making the
ordination of a priest no longer a part of his or her employment contract
(which remains under labour law). This, quite new legal way, has not yet
been fully tested through a case in the national Labour Court.

The whole Swedish labour market is covered by collective agreements.
So the churches and other religious communities are mostly members of
different employers’ associations; the Church of Sweden has its own. Em-
employees of churches and other religious communities are also often mem-
bers of various trade unions. Priests (and some other groups of employees)
in the Church of Sweden have formed the Association of University Grad-
uates Employees in the Church61.

VII. Matrimonial and Family Law

Matrimonial and family law in Sweden is part of Swedish state law. But, as
mentioned, most churches and religious communities have been granted
the right to officiate at marriages. Divorce or separation is legally not a
matter for churches or religious communities.

VIII. Finances of the Churches

As already mentioned, the new relationship between state and church in
Sweden from the year 2000 included a provision for certain churches and

61 Sw. Kyrkans Akademikerförbund.
other religious communities to use the taxation system for collecting their membership levies. The State also makes grants to other religious communities, amounting to about 90 Million SEK (Swedish Krona) annually\(^\text{62}\). The Church of Sweden is granted allowances to maintain the church cultural heritage, of 460 Million SEK perannum. Parliament has undertaken to make these grants until the year 2019\(^\text{63}\).

Several churches and other religious communities count the return from property as part of their income. As mentioned, the Church of Sweden received the existing church property, some on trust, as a part of the new relationship to the State. As the ownership of this property earlier was somewhat unclear, the Act on Introducing the Church of Sweden Act contains a provision granting anyone who can prove a right to any part of this property financial compensation from the State\(^\text{64}\). Up till now, no one has claimed such a right.

Churches and other religious communities in Sweden are free to receive grants from abroad.

**IX. Religious Assistance in Public Institutions**

For religious assistance within the Swedish armed forces, there is an agreement between the armed forces and the Church of Sweden. The agreement obliges the Church to make payments to the armed forces, mainly for the services of a military dean. The dean is a part of the staff of the commander-in-chief. The dean is appointed by the armed forces in consultation with the Church of Sweden.

In the peace-time military organisation, part-time employed chaplains provide religious assistance in the various military units. The military dean supervises these chaplains. A chaplain may be either a Church of Sweden priest or from any other Christian church. The military authorities – in consultation with the local church, where the chaplain is mainly employed – appoint the chaplain. So far, no Islamic or Jewish chaplains have been appointed.

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\(^{62}\) www.sst.a.se; the Swedish Humanist Association has been denied the right to state contributions, due to the fact that it is not a religious community; Jehovah’s Witnesses have also been denied state contributions, due to several reasons, but the matter is still pending after a decision in the Supreme Administrative Court (HFD 2013 ref. 72).


\(^{64}\) Section 11.
In war-time, the Swedish armed forces rely on compulsory military duty for everyone. This includes priests and other religious leaders, who are often placed as chaplains.

Religious services and the cure of souls for prisoners and those in custody are organised by the Swedish Christian Council on behalf of the National Prison and Probation Administration\(^{65}\). The council is a joint association of almost all Christian churches and religious communities in Sweden\(^{66}\). The council maintains close relations with the Islamic and Jewish organisations. Every prison and place of custody is supposed to have two chaplains, one from the Church of Sweden and one from any of the other Christian churches or religious communities. The chaplains are responsible for inter-faith contacts. If, for example, the visit of an imam or a Buddhist monk is needed, it is the chaplain who makes the arrangements.

Religious assistance, through priests, deacons, and other people, is offered in almost every institution for health care in Sweden. The task is organised ecumenically by the Church of Sweden together with the other Christian churches or religious communities. Within the Church of Sweden the local parish in which the hospital or other health-care institution is situated is responsible. When needed, the chaplains call for representatives from other religions. Due to the Swedish social security system, there are practically no private hospitals in Sweden. The public hospitals are mostly run by the regions.

The churches and other religious communities in Sweden have no particular right to religious assistance in schools or by the police. Anyway, there are, of course, contacts between schools and police authorities and the churches.

As mentioned, some churches and other religious communities run their own schools, but under the same provisions as do other non-public school enterprises.

X. Criminal Law and Religion

Swedish criminal legislation does not contain any provisions that apply particularly in a religious context. As in most countries, however, discrimination as well as agitation against special groups of people, because of their

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\(^{65}\) Sw. Kriminalvården.
\(^{66}\) www.skr.org.
race or faith, is a criminal offence. People publicly using Nazi symbols have been convicted under those provisions. There are no exemptions on religious grounds from the application of criminal law.

XI. Legal Status of the Clergy

In criminal and civil procedures in the Swedish courts, a priest (or a person who has a position similar to a priest) cannot be heard as a witness about what he or she has come to know under confession or individual cure of souls. This provision was the subject of much public discussion, when a court was criticised by the Ombudsman for Public Affairs. The court had heard a priest as witness, on request from the defendant, who had confessed to a priest and wanted to use this as evidence. But, according to the Ombudsman, this was not fair, as a priest’s obligation to observe secrecy has to be regarded as ‘absolute’. Thus, the court had no choice, whatever, but to respect this obligation.

Aside from the aforementioned provision in the Procedure Code, there are no particular legal rules applying to priests or other religious leaders in Sweden.

XII. Bibliography


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67 Penal Code (Sw. brottsbalken), s 16:8 and 9.

68 Supreme Court (Sw. Högsta domstolen) 1996 p. 577.

69 It could be noted, however, that a pastor in a Pentecostal church was acquitted for speaking disrespectfully about homosexuals in a sermon; even though he committed agitation against a group of people, his utterances were – in the specific case – regarded as within the bounds of religious freedom (Supreme Court 2005 p. 805).

70 Procedure Code (Sw. Rättegångsbalken), s 36:5.

71 Sw. Justitieombudsmannen.

Church and State in Sweden


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State and Church in the United Kingdom

David McClean

The United Kingdom of Great Britain and Northern Ireland is a composite State, made up of four distinct countries, England, Wales and Scotland on the island of Great Britain, together with Northern Ireland, the six Irish counties that refused to be part of the Irish Free State when it was created in 1922. Three parts of the United Kingdom have devolved legislatures: Northern Ireland since 1922; Scotland and Wales since 1999. The Scottish Parliament has extensive powers but those aspects of the (unwritten) constitution dealing with the Crown and the Union of England and Scotland are reserved to the UK Parliament and this includes constitutional questions affecting Church and State. The Welsh Assembly has very limited powers to enact primary legislation.

In the field of Church and State the complications are even greater. There is an Established Church in England (the Church of England) of which the Queen is Supreme Governor. But the Anglican churches in Wales and Northern Ireland have been disestablished, and that in Scotland, the Episcopal Church of Scotland, is small by comparison with the (Established) Church of Scotland. The Queen, Supreme Governor of an episcopal church in the southern part of her kingdom, is also a member of a reformed, presbyterian, church in the north.

Because of this complexity, the reader must be aware that some statements made below will apply to the whole United Kingdom, but some to Great Britain and many only to England, or England and Wales (which for many purposes form a single unit), or Scotland. Some aspects of the situation in Northern Ireland reflect the history of Ireland as a whole.

1 The current Northern Ireland Assembly dates from the Northern Ireland Act 1998 but it has been suspended from time to time owing to continuing political difficulties in Northern Ireland.
3 The Church in Wales, created in 1920 from the Welsh dioceses of the Church of England.
4 The Church of Ireland, whose dioceses cover the whole of Ireland and not just Northern Ireland.
I. Social Facts

A question about religion was included in the censuses in 2001 and 2011, after a gap of 150 years. The 2011 statistics are set out in Table 1 below.

Table 1: Religious Allegiance in the UK, 2011 (percentages of total population)

<table>
<thead>
<tr>
<th></th>
<th>England</th>
<th>Wales</th>
<th>Scotland</th>
<th>N Ireland</th>
<th>UK</th>
</tr>
</thead>
<tbody>
<tr>
<td>Christianity</td>
<td>59.4</td>
<td>57.6</td>
<td>53.8</td>
<td>82.3</td>
<td>59.5</td>
</tr>
<tr>
<td>Islam</td>
<td>5.0</td>
<td>1.5</td>
<td>1.4</td>
<td>0.21</td>
<td>4.4</td>
</tr>
<tr>
<td>Other</td>
<td>3.7</td>
<td>1.2</td>
<td>1.2</td>
<td>0.69</td>
<td>3.3</td>
</tr>
<tr>
<td>No religion</td>
<td>24.7</td>
<td>32.1</td>
<td>36.7</td>
<td>10.1</td>
<td>25.7</td>
</tr>
<tr>
<td>None stated</td>
<td>7.2</td>
<td>7.6</td>
<td>7.0</td>
<td>6.8</td>
<td>7.2</td>
</tr>
</tbody>
</table>

In the earlier 2001 census, 71.6% of the UK population answered that they were Christians, a figure greeted with some surprise, as many commentators had expected a lower figure. There was a marked fall in the number of Christians recorded in 2011 and a rise in those saying that they had no religion. The Muslim share of the population rose from 2.7% in 2001 to 4.4% ten years later, and reflects immigration both in size and geographical distribution.

Information about the relative strengths of the various Christian denominations is notoriously difficult to obtain and interpret. The information about congregations (usually represented by a building) and ministers is more reliable than the membership figures which often reflect a particular legal status. For example, the Church of England figures are only of those who register themselves on the church electoral rolls, and some other churches distinguish between the formal ‘membership’ and the much larger ‘community’. The Roman Catholic figure is of mass attendance. Even the ministerial data can be misleading: Methodism, for example, has a strong tradition of lay ‘Local Preachers’, whose numbers are not included in the Table which includes only ordained ministers.

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5 The statistics in the text are based on those collected from the various churches by Dr Peter Brierley and published in his UK Church Statistics 3 (2018).
Table 2: Major Christian Denominations in the UK, 2015

<table>
<thead>
<tr>
<th></th>
<th>Membership</th>
<th>Congregations</th>
<th>Ministers</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>ENGLAND</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Individual churches</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Church of England</td>
<td>1,033,100</td>
<td>15,685</td>
<td>10.842</td>
</tr>
<tr>
<td>Roman Catholic Church</td>
<td>817,170</td>
<td>2,832</td>
<td>3,580</td>
</tr>
<tr>
<td>Methodist Church of Great Britain</td>
<td>184,917</td>
<td>4,222</td>
<td>1,899</td>
</tr>
<tr>
<td>Baptist Union of Great Britain</td>
<td>123,950</td>
<td>1,961</td>
<td>1,977</td>
</tr>
<tr>
<td>United Reformed Church</td>
<td>50,590</td>
<td>1,302</td>
<td>448</td>
</tr>
<tr>
<td>Groups of churches</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>All Pentecostal churches⁶</td>
<td>343,372</td>
<td>3,578</td>
<td>7,952</td>
</tr>
<tr>
<td>All Orthodox churches⁷</td>
<td>421,290</td>
<td>273</td>
<td>320</td>
</tr>
<tr>
<td>All independent churches</td>
<td>161,945</td>
<td>2,578</td>
<td>1,687</td>
</tr>
<tr>
<td><strong>WALES</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Church in Wales (Anglican)</td>
<td>46,576</td>
<td>1,328</td>
<td>441</td>
</tr>
<tr>
<td>Presbyterian/Reformed churches</td>
<td>23,948</td>
<td>734</td>
<td>78</td>
</tr>
<tr>
<td>Roman Catholic Church</td>
<td>27,070</td>
<td>171</td>
<td>262</td>
</tr>
<tr>
<td>Methodist churches</td>
<td>7,936</td>
<td>265</td>
<td>80</td>
</tr>
</tbody>
</table>

⁶ Major churches are the Elim Pentecostal Church (48,200 members) and the Assemblies of God (44,610). Also included are a large number of small Afro-Caribbean churches.

⁷ Greek Orthodox (208,000) form the largest group. The Orthodox figures are estimates which may not be reliable.
There is a sharp contrast between the membership figures given by the churches, which totalled some 5.5 million in 2015, and the 2011 census figures in which 37.5 million declared themselves to be Christian. This points to a large number of nominal, or inactive, or lapsed members who still identify themselves not just with Christianity but with a particular expression of it: as is sometimes said, they know which church it is they do not attend.

For completeness, it may be noted that there are a number of adherents of non-trinitarian churches in Britain, including some 186,000 Mormons, and 136,000 Jehovah’s Witnesses.

The trend in church attendance is clearly downward. The available statistics show that 9.6% of the population of Great Britain attended church on an average Sunday in 1980 but only 5.4% in 2015. Research by the Church of England suggests that there is a smaller drop in the number of ‘church-goers’ but they tend to attend less frequently. Baptisms show a similar trend: in 2000 baptisms equated to 48% of all births; in 2015 the figure was 32%. The proportion of marriages taking place in church has also fallen, changes in the law having made it possible for hotels and historic country houses to host civil marriages and the attendant celebrations. Most funerals are still taken by ministers of religion.
II. Historical Background

The pre-Reformation Church in England, Ecclesia Anglicana, had a certain independence from Rome. Canon law in England was modified by provincial ‘constitutions’ and there were assemblies of bishops and clergy in the Convocations of Canterbury and York (which still exist as part of the General Synod, the Church of England’s governing body). Under King Henry VIII, Papal authority was abrogated and royal supremacy over the Church of England asserted in the Act of Supremacy 1534. This first stage in the English Reformation was political rather than doctrinal, but notably under Edward VI (1547-1553) the Church adopted a more Protestant position. The Roman jurisdiction was restored on Queen Mary I’s accession in 1553 but Anglican independence and a classical Anglican theology which was ‘both Catholic and Reformed’ was put in place in the Elizabethan settlement from 1558 onwards. In Scotland, the Reformation dates from 1560. The Scottish Parliament guaranteed the liberties of the church and its presbyterian form of government in 1592; the latter was restored, after an episcopal interlude, in 1690. The episcopalian then formed the (Anglican) Episcopal Church of Scotland.

In Ireland, English domination saw the creation of the (Anglican) Church of Ireland, finally disestablished in 1871 but retaining the ancient cathedrals and parish churches. It was always a minority church, the majority of the Irish remaining Roman Catholic in allegiance. The presence of large numbers of Scottish settlers in the north contributed not only to the continuing political difficulties but to the growth of the Presbyterian Church of Ireland which is centred in Ulster.

III. Legal Sources

The United Kingdom has no written Constitution, but there are particular Acts of Parliament that can be seen as having constitutional significance, and these include those dealing with the union of England and Scotland in 1707. In preparation for that union, the Scottish Parliament passed the Protestant Religion and Presbyterian Church Act 1706 (‘the Act of Security’), requiring that its terms be expressly declared to be a fundamental and essential condition of the Treaty of Union in all time to come. An English Act of 1706, sometimes known as the Maintenance of the Church of Eng-

8 The General Assembly Act 1592 (of the Scottish Parliament).
land Act, made equivalent provision for the position of the Church of England. A new Sovereign must make declarations immediately on his or her accession\(^9\) and an oath in the coronation service to maintain in the United Kingdom the Protestant Reformed Religion established by law, and to maintain and preserve inviolably the settlement of the two Established Churches.

The ecclesiastical law relating to the Church of England (including its Canon law) is regarded as an integral part of the law of England. Its continuity with the pre-Reformation church is recognised in the principle that a rule of pre-Reformation ecclesiastical law can be relied upon if it is proved to have been recognised, continued and acted upon in England since the Reformation; if that test is met, the rule is treated as part of the ecclesiastical common law of England.\(^{10}\) From the 16th to the early 20th century, much legislation affecting the Church was passed in the usual way by Parliament.

The power to make changes in this body of law is now vested in the General Synod.\(^{11}\) The Synod consists of three Houses, a House of Bishops (which has special powers in matters of doctrine), a House of Clergy\(^{12}\) and a House of Laity, the two latter each comprising some 200 elected members; all three Houses must assent to any proposal.

The Synod has power to pass Measures on any matter affecting the Church of England, and a Measure has the same effect as an Act of Parliament and can amend or repeal existing Acts. In effect, the Synod enjoys some of the powers otherwise reserved exclusively to Parliament. Parliament retains some control: a Measure passed by the Synod can only be presented for the Royal Assent required to make it law if each House of Parliament resolves that this should be done; but while Parliament may (but very seldom does) reject a Measure it has no power to amend the text of a Measure. It is now recognised as a constitutional convention that legislation affecting the Church should be introduced into the General Synod and not into either House of Parliament.

\(^{9}\) See the Accession Declaration Act 1910 for the current text.
\(^{10}\) See Lord Westbury in Bishop of Exeter v Marshall (1868) LR 3 HL 17.
\(^{11}\) Church of England Assembly (Powers) Act 1919; Synodical Government Measure 1969. The General Synod is the successor body to the Church Assembly created by the 1919 Act.
\(^{12}\) The House of Bishops and the House of Clergy are technically formed by the union of the Upper and Lower Houses of the ancient Convocations of Canterbury and York, which now meet separately only occasionally.
The Church of England also has a body of Canons which are made by the Synod without reference to Parliament, though the formal promulgation of a new Canon requires the Royal Assent and Licence, a formal act expressing the Queen’s position as Supreme Governor of the Church of England. The legal significance of this is that the Queen will not be advised to assent to a Canon if it would conflict with English law in a wider sense. It is often necessary, therefore, for the Synod to pass two types of legislation on the same topic: a Measure which removes any legal obstacle to the making of a proposed Canon, and then the Canon itself making the desired change.

In the absence of a written Constitution there can no formal constitutional guarantees of religious freedom. However, the United Kingdom was one of the first signatories of the European Convention on Human Rights and effect was eventually given to that Convention as part of the domestic law of England by the Human Rights Act 1998. The effect of the 1998 Act was that the freedoms guaranteed by the Convention, including the freedom of thought, conscience and religion in Article 9, can be relied upon in the English courts which can make ‘declarations of incompatibility’, that a provision in primary legislation is incompatible with the Convention. If such a declaration is made, corrective action can be taken by an order of a Government minister, but if the primary legislation in question is a Measure of the General Synod only the Synod can take the necessary action.

A number of cases on freedom of religion have reached the highest court (formerly the House of Lords and now the Supreme Court of the UK); in none has an argument based on freedom of religion succeeded. In *R (Williamson and others) v Secretary of State for Education and Employment* the prohibition of corporal punishment in schools upheld as ‘necessary in a democratic society … for the protection of the rights and freedoms of others’. *R (on the application of SB) v Governors of Denbigh High School* concerned the dress of a Muslim pupil. The school had rules, drawn up after consultation with the local mosques, which allowed the wearing of the *shalwar kameeze* but the claimant decided that the *shalwar kameeze* was not an appropriate form of dress for her and wished to wear the *jilbab*, which covered her more fully. It was held that if there were an interference with the right guaranteed by article 9, it was justified and proportionate. In *Bull*

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13 Human Rights Act 1998, ss. 4, 21(1).
15 [2006] UKHL 15.
the defendants ran a small hotel; on religious grounds they would only let double rooms to heterosexual married couples. The claimants were a same-sex couple in a civil partnership who had been refused a double room. The prohibition of direct discrimination on the grounds of their sexual orientation limited the right of the defendants to manifest their religion but was a proportionate means of achieving the legitimate aim of protecting the rights and freedoms of the claimants. A further case from Northern Ireland, involving the defendants’ refusal on religious grounds to bake a cake with the words ‘Support gay marriage’ will be heard by the Supreme Court in 2018.

There is little doubt that even before the European Convention, there was a recognised right to religious freedom. One encyclopaedic work on the Law of England asserts as follows:

The civil power, while exercising complete control over all estates and degrees, whether ecclesiastical or temporal, and affording all necessary protection from wrongful acts, refrains from exercising any purely spiritual functions, and, save insofar as positive law may otherwise provide, recognises and has always recognised the right of all to follow the dictates of their consciences in the religious opinion they hold.

IV. Basic Features of the Church and State System

Both in England and in Scotland there is an Established Church. But the effect is very different.

In England, the Church of England is closely bound up with the business of the State, so that there could be no ‘concordat’ or treaty-like relationship between Church and State. The two archbishops and 24 diocesan bishops are members of the House of Lords. Many senior church appointments involve Crown patronage, though this power is exercised by officials acting in close consultation with the church authorities; no political influence is brought to bear. So, the Crown, the Queen acting on the advice of the Prime Minister, nominates the archbishops and diocesan bishops for formal election to office. The Prime Minister agreed in 2008 always to put

16 [2013] UKSC 73.
17 Lee v McArthur. The N Ireland Court of Appeal rejected the defendants’ reliance on their freedom of religion: what was otherwise direct discrimination could not be justified, in circumstances such as those of the instant case, on the basis of religious or political beliefs: [2016] NICA 55.
forward to the Queen the name recommended by a Church body, the
Crown Nominations Commission consisting of the two archbishops, 3
clergy and 3 lay people elected by and from the General Synod and 6 peo-
ple elected by the diocese concerned.

In Scotland, the Established Church has such a high degree of autono-
my from the State that it can appear more like a case of separation. The
background is that the nineteenth century saw a number of disputes with-
in the Kirk, some of the most acute concerning the right of the State to in-
tervene in church affairs to disallow church decisions and legislation. A
number of separate churches came into being, most of which were re-unit-
ed in 1921. To facilitate the reunion, Parliament passed the Church of
Scotland Act 1921 which declares lawful the Articles Declaratory of the
Constitution of the Church of Scotland in Matters Spiritual. The Articles
contain a statement of the separate jurisdiction of the Church in matters
spiritual and give the church very considerable freedom in its government.
The key provision is Article IV:

IV. This Church, as part of the Universal Church wherein the Lord Je-
sus Christ has appointed a government in the hands of Church office-
bearers, receives from Him, its Divine King and Head, and from Him
alone, the right and power subject to no civil authority to legislate, and
to adjudicate finally, in all matters of doctrine, worship, government,
and discipline in the Church, including the right to determine all
questions concerning membership and office in the Church, the con-
stitution and membership of its Courts, and the mode of election of its
office-bearers, and to define the boundaries of the spheres of labour of
its ministers and other office-bearers. Recognition by civil authority of
the separate and independent government and jurisdiction of this
Church in matters spiritual, in whatever manner such recognition be
expressed, does not in any way affect the character of this government
and jurisdiction as derived from the Divine Head of the Church alone,
or give to the civil authority any right of interference with the proceed-
ings or judgments of the Church within the sphere of its spiritual gov-
ernment and jurisdiction.

The Act is relied on by the authorities of the Church of Scotland to resist
any court action concerning its affairs. However, this protection is limited:
a contract of employment between the Church and an individual brings the matter within the jurisdiction of the civil courts.\textsuperscript{19}

There remain in England certain constitutional rules directed against Roman Catholics and designed to secure the Protestant succession to the Throne. The Sovereign is required to join in communion with the Church of England of which she is Supreme Governor, and anyone who becomes a Roman Catholic is excluded from succession to the Throne; the former rule excluding anyone who married a Roman Catholic was abrogated by the Succession to the Crown Act 2013. These rules reflect historical events (and some residual popular prejudice) but do not hinder the close working relationship between the Catholic Church and the other churches, or between that Church and the State. A Papal Pro-Nuncio is accredited as part of the diplomatic corps, a situation which would have been unacceptable in past decades.

V. Legal Status of Religious Bodies

For most of the churches, all but the Church of England and the Church of Scotland, the applicable legal principles are those of the general law of charities and especially of charitable trusts. The non-Established churches are essentially organised as voluntary associations. Their Canon Law (if they use this term; most do not) has the status of a contract between their members. Property matters are generally managed through the ‘trust’, that ubiquitous device of English property law (in some cases the trustees will be a registered company), but, especially in the larger churches where some complex division of functions is required as between national and local organs of the church, this may be supplemented by a private Act of Parliament. Nor has English law a fully-developed notion of public law status or rights; the notion of a church as a ‘corporation under public law’ is meaningless to the English lawyer.

There is no formal listing of churches ‘recognised’ as such by the State. Places of worship may be registered for a variety of purposes, mainly the solemnisation of marriages.\textsuperscript{20} There can, of course, be problems in determining whether a particular body does constitute a church. In a case involving the Church of Scientology, the UK Supreme Court held that, for

\textsuperscript{19} Percy v Board of National Mission of the Church of Scotland [2005] UKHL 73, [2006] 2 AC 28 (allegations of sex discrimination).

\textsuperscript{20} Places of Worship Registration Act 1855.
the purposes of registration for conducting marriages, religion was to be described as a spiritual or non-secular belief system held by a group of adherents, which claimed to explain the place of mankind in the universe and relationship with the infinite, and to teach its adherents how they were to live their lives in conformity with the spiritual understanding associated with the belief system.\textsuperscript{21} There may be different considerations in deciding whether a body exists for the charitable purpose of ‘the advancement of religion’,\textsuperscript{22} or whether a building is a place of public religious worship for rating (local tax) purposes.\textsuperscript{23}

The general position, therefore, is that the churches have the same rights as any other voluntary association to enter into contracts and hold property, to discipline their officers and members (using internal tribunals if they so wish), and to operate social welfare or other charitable (or indeed commercial) enterprises.

\textbf{VI. Churches within the Political System}

Although a number of Church of England bishops serve in the House of Lords, they sit as ‘Lords Spiritual’ and have no political allegiance. There is no sense in which the churches are associated with any political party, except in Northern Ireland where Roman Catholics tend to support the Republican or Nationalist parties and Protestants the Unionist parties.

\textbf{VII. Church and Culture}

1. \textit{Schools}

In England schools are either ‘maintained’ (i.e. State) schools or independent (confusingly, these are often called ‘Public Schools’). The churches were the main provider of education for many centuries, and many schools continue to have a church affiliation: within the category of maintained schools they are ‘voluntary controlled’ or ‘voluntary aided’ schools. In the

\begin{itemize}
\item \textsuperscript{21} R (Hodkin) v Registrar General of Births, Deaths and Marriages [2013] UKSC 77 (Scientology passed the test).
\item \textsuperscript{22} Barralet v Attorney-General [1980] 3 All ER 918 (a humanist society did not).
\item \textsuperscript{23} Church of Jesus Christ of Latter-Day Saints v Henning (Valuation Officer) [1963] 2 All ER 733 (HL) (Mormon temple did not qualify).
\end{itemize}
latter group, the Church accepts responsibility for 15 per cent of the cost of any building works and has in return a stronger position on the school’s board of managers.

In every maintained school the ‘basic curriculum’ includes religious education for all pupils24 and a National Curriculum comprising a range of other subjects; religious education thus enjoys a special status. England has since 1870 had non-denominational religious education in its State schools. The construction of local ‘agreed syllabuses’ is governed by a complex procedure first introduced in 1944. A conference is convened made up of four committees, each of which must consent to the syllabus. The committees represent (a) the Church of England (except in relation to an area in Wales); (b) such Christian and other religions as reflect the principal religious traditions of the area; (c) teachers’ associations; and (d) the local educational authority.25 This procedure gives the Church of England representatives the right of veto, but they cannot insist on any element in the syllabus unacceptable to the other groups, and cannot obtain anything approaching ‘confessional’ religious teaching. Every agreed syllabus must reflect the fact that the religious traditions in Great Britain are in the main Christian whilst taking account of the teaching and practices of the other principal religions represented in Great Britain.26

The School Standards and Framework Act 1998 contains provisions concerning the appointment of ‘reserved teachers’. Where a State school has ‘a religious character’ and has more than two teachers, the school must have at least one teacher appointed as competent to give religious education in accordance with the tenets of the church concerned; the numbers change with that of the total staff complement.27 In non-denominational schools, however, it is expressly provided that religious opinions or attendance or non-attendance at religious worship may not affect appointment, salary or promotion as a teacher.28

The School Standards and Framework Act 1998 also contains provisions as to religious worship in maintained schools. All pupils must take part in an act of collective worship on each school day.29 It must be ‘of a broadly Christian character’, but not distinctive of any particular Christian denomination. Not every act of worship need be Christian, as the social circum-

24 Education Act 2002, s. 80(1).
26 Education Act 1996, s. 375(3).
28 Ibid., s. 59.
29 Ibid, s. 70. It is known that this provision is not always observed.
stances of some areas mean that a majority of pupils may be from other faiths; but a majority of acts of worship in any school term must be.\textsuperscript{30}

Churches are free to establish their own independent schools, and can use denominational forms of worship and conduct religious education in accordance with their own requirements. The churches have also made a major contribution to the training of teachers through church Colleges of Education. Many of these have now become universities and form the ‘Cathedrals Group’ of sixteen universities and colleges, mostly with Anglican but some with Roman Catholic origins.

In Scotland, there is no statutory curriculum but a Government-sponsored ‘Curriculum for Excellence’ was implemented in 2010. It includes religious education. In Northern Ireland, there is a statutory curriculum, including religious education to a syllabus agreed by the four main churches in Northern Ireland.

2. Universities

There are now no religious tests for entry into any University. There are however some posts in certain Theology Faculties, notably in Oxford and Durham, which are held with canonries of a Church of England cathedral church\textsuperscript{31} and so are effectively restricted to Anglican priests. In other universities, the staff of theological faculties or departments are appointed under the usual university procedures with no Church involvement; and indeed no religious allegiance is required.

Theological colleges provide ministerial training and, in some cases, other theological education (for example, distance learning programmes for lay students). Typically, a theological college is owned by a trust, but is subject to inspection by the church authorities which decide at which colleges clergy training may take place and the number of places to be taken up in this way. Increasingly, colleges are entering into relationships with local universities. The colleges remain independent but the relevant University may admit college students to its degree courses.

\textsuperscript{30} Ibid, Sched. 20, para. 3.
\textsuperscript{31} In Oxford the cathedral actually stands within a college of the University and serves as the college chapel; in Durham the ancient cathedral is in the physical heart of the University area.
3. The Media

The British Broadcasting Corporation, the main public service broadcaster, has long taken a major interest in religious broadcasting. For example, a daily service is broadcast each weekday morning and there are regular periods of religious programming on television (as there are in the other television channels). Radio and television stations, national and local, have religious advisory committees on which the major churches in the relevant area will have representation. This is all a matter of practice, as is the involvement of the major cathedrals in local tourist agencies.

So far as licences for other radio, television and teletext operations are concerned, the Communications Act 2003 prohibits a body whose objects are wholly or mainly of a religious nature from being given certain types of licence (e.g., those for national sound broadcasting and public teletext services) and to allow such bodies to hold other licences only with the permission of the Office of Communications (‘OFCOM’) established by the Act. There are also guidelines, dating from 2009, to assist broadcasters in interpreting and applying the OFCOM Broadcasting Code, and this has a section on religious programmes.

VIII. Labour Law within the Churches

Under English law, as in the legislation of the European Union, not all workers are employees; some are self-employed or in the category of ‘office-holders’. To be an employee, the individual must be employed under a contract of employment; whether a contract of employment exists is discerned by examining a whole series of factors, including matters of recruitment and payment. The method of recruitment and method of payment, and the way in which such matters as the provision of clothing or tools necessary for the work, are arranged. Some office holders may well not be regarded as employed, and will therefore fall outside much employment law. Parish clergy, of all churches, are generally held to be ‘office-holders’ and not employees.32

In the Church of England, the incumbent (vicar or rector) of a parish holds ‘the benefice’, a legal concept which includes rights to the office and its stipend and to the house provided for its holder; this is regarded as a

piece of property to which the vicar has freehold title and of which he or she cannot be deprived without due process of law, usually involving resort to the disciplinary procedures now set out in the Clergy Discipline Measure 2003. The Ecclesiastical Offices (Terms of Service) Measure 2009 and regulations made under it give Church of England clergy rights equivalent in most respects to those of an employee, but section 9(6) of the Measure states that it does not create an employment relationship between office holders and any other person.

In other churches, the freehold concept does not exist, and there is more need to invoke the protection of the secular law and the issue as to employment or office-holding is more commonly raised in those churches. There have been similar cases involving non-Christian bodies, one concerning the 

The churches at present enjoy certain exemptions from the scope of anti-discrimination legislation. There are special provisions in Schedule 23 to the Equality Act 2010 exempting organisations the purpose of which is to practise or advance a religion or belief from the rules as to discrimination on the ground of religion or belief or sexual orientation so as to respect the doctrines of the religion or the strongly held religious convictions of a significant number of the religion’s followers.

IX. Finances of the Churches

State financial support for the churches in the United Kingdom is extremely limited. They enjoy certain advantages in common with other charities, in respect of certain tax exemptions (but not, for example, from Value Added Tax) and by an arrangement under which certain gifts by individuals to the charity also transfer to the charity the income tax paid by the donor in respect of the sum given. However, there are no payments by the State in respect of clergy stipends or pensions or of the operating costs of the churches. Although the law requires Church of England clergy to conduct weddings and funerals and a fee is fixed by law, the payment of that fee is a matter for the parties and not the State.

33 President of the Methodist Conference v Parfitt [1984] QB 368 (CA); Preston (formerly Moore) v President of the Methodist Conference [2013] UKSC 29; Davies v Presbyterian Church of Wales [1986] 1 WLR 323 (HL).
The only State finance is in respect of the maintenance of historic buildings. This is a particular issue for the Church of England: some 13,000 of its 16,000 parish churches are ‘listed’ under the planning legislation, and 4,000 are in the highest grade, Grade I. Some 350 redundant churches of architectural or historic interest are in the care of the Churches Conservation Trust. Much of its income comes from the public but some 45% from the Government and the Church of England. Since 1978, the State has, through an agency called English Heritage, made grants towards the repair of churches (and, recently, cathedrals) in use. The Government announced in 2002 that it hoped to reduce Value Added tax on repairs to listed churches from 17.5% to 5%. Although this was disallowed by the European authorities, the same effect has been achieved by making grants equivalent to the proposed saving. The amount of State money remains small compared with that from Church funds. The parishes of the Church of England spend some £115 million a year on the repair and maintenance of their church buildings.

X. Religious Assistance to Public Institutions

The Armed Forces, the National Health Service, and the Prison Service all employ chaplains. They are recruited from the ordained clergy of the various denominations, and in the two latter cases most are part-time. Stipends for full-time chaplains (and fees in respect of part-time chaplains) are paid by the employing service; the churches have of course paid the costs of the initial training of the clergy and provide, in various forms, pastoral oversight of their work.

XI. Matrimonial and Family Law

Throughout the United Kingdom, parties wishing to marry may do so either by a religious ceremony or by a secular ceremony conducted by a State-appointed registrar of marriages at a register office or some other location (such as a hotel) licensed for the purpose. In the case of weddings in the Church of England and the Church in Wales the whole procedure, including the preliminaries as to notices and licences, is carried out by the church. In other cases a religious ceremony requires certain civil preliminaries, usually the grant of a ‘superintendent registrar’s certificate’ after notice has been given 21 days beforehand. In England (but not in Scotland
where different rules apply) a non-Anglican religious ceremony must be held in a registered building (or, for historical reasons, a synagogue or a Meeting House of the Society of Friends) and registered either by the minister if he or she is authorised for the purpose or by a registrar of marriages. Same-sex marriages are now permitted in both England and Scotland, but may not take place in a church of the Church of England.\(^\text{36}\)

Although the Roman Catholic Church maintains its system of diocesan tribunals to hear nullity of marriage cases, the decisions of those tribunals have no legal status in United Kingdom law. There is a matrimonial jurisdiction, equally denied direct recognition by English law, in the rabbinical courts. Provision was made to deal with some of the consequences of the existence of this jurisdiction in the Divorce (Religious Marriages) Act 2002. This sought to remedy the plight of some Jewish women who may have their marriages ended by a divorce in the civil courts but who find themselves in grave difficulty because the other spouse refuses to enter into the religious divorce procedure of a get from the rabbinical court. The Act enables the courts to issue an order that the civil divorce decree shall not be made absolute until both parties certify that the required religious procedures have been complied with.\(^\text{37}\)

There is growing concern at the number of Muslim marriages taking place in mosques with no civil preliminaries. Such marriages are invalid and the wife may find that she has none of a wife’s legal rights.

**XII. Criminal Law and Religion**

The English common law had offences of blasphemy and blasphemous libel. These have been abolished and the Racial and Religious Hatred Act 2008\(^\text{38}\) created offences involving stirring up hatred against persons on religious grounds. It provides that nothing in the legislation is to be read or given effect in a way which prohibits or restricts discussion, criticism or expressions of antipathy, dislike, ridicule, insult or abuse of particular religions or the beliefs or practices of their adherents, or of any other belief system or the beliefs or practices of its adherents, or proselytising or urging

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\(^{36}\) Marriage (Same Sex Couples) Act 2013; Marriage and Civil Partnership (Scotland) Act 2014.

\(^{37}\) Matrimonial Causes Act 1973, s.10A as inserted by the Divorce (Religious Marriages) Act 2002, s.1(1).

\(^{38}\) Technically making amendments to the Public Order Act 1986.
adherents of a different religion or belief system to cease practising their religion or belief system.

**XIII. Legal Status of Clergy**

It was formerly the case that certain of the clergy were unable to seek election to the House of Commons. The origins of this rule lay in the representation of the clergy in the Convocations of Canterbury and York rather than in Parliament, but after the union with Scotland it was put on a statutory basis. The House of Commons (Clergy Disqualification) Act 1801 barred ‘persons having been ordained to the office of priest or deacon, or being a minister of the Church of Scotland’. This excluded not only the clergy of the Churches of England and of Scotland but also of other Anglican churches\(^{39}\) and of the Roman Catholic Church.\(^{40}\)

After full consultation with the churches, the Government secured the enactment of the House of Commons (Removal of Clergy Disqualification) Act 2001 which applied to the Parliament at Westminster the position which had already been accepted in respect of the Welsh Assembly and the Scottish Parliament.\(^{41}\) All clergy are now eligible for election except the Anglican bishops who are members of the House of Lords. Those bishops cannot vote in elections for the House of Commons.

The clergy appear to enjoy no special privilege in respect of confessional secrets. This statement rests on very limited authority beyond obiter dicta and statements of writers, and is open to challenge in that the (Anglican) Canon Law, which is seen as part of the law of the land, contains a provision, the only part of the Canons adopted in 1603 still unrepealed, forbidding disclosure of such secrets ‘except they be such crimes as by the laws of this realm his own life may be called into question for concealing the same’, an exception which since the abolition of capital punishment for treason has no meaning.\(^{42}\)

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39 *Re MacManaway* [1951] AC 161, concerning a priest of the Church of Ireland.
40 The exclusion of Roman Catholic clergy was expressly preserved by section 9 of the Roman Catholic Relief Act 1829 which removed the disqualification of Catholic laity to allow Daniel O’Connell to serve as the elected member for Co. Clare in Ireland.
41 Government of Wales Act 1998, s. 13(1)(b); Scotland Act 1998, s. 16(1)(b).
XIV. Major Developments and Trends

The nature of English law, emphasised by the absence of a written Constitution, is such that changes happen slowly and incrementally, almost without anyone noticing. The gradual decline of the Christian churches has had little effect on their relationship with the State. It has also not prevented religion being prominent in public debate, principally due to the rising number of Muslims but also to the publication of a number of popular atheist books. There has been some questioning of the role of the Church of England, with some of its bishops in the House of Lords (a House itself the subject of many reform proposals). At the time of the last coronation in 1953, few questioned that it took place in the context of a Church of England Eucharist: that may not be the case again. The disclosures of child abuse by some members of the clergy have brought adverse publicity to the churches but there is no significant evidence of ‘anti-clericalism’. The churches are generally quite liked, if often ignored, and there is no immediate prospect of any radical change.

XV. Bibliography

Many valuable articles are to be found in the *Ecclesiastical Law Journal* (published by Cambridge University Press for the Ecclesiastical Law Society). Books, mainly dealing with the Anglican churches, include

*Law and Religion* (Current Legal Issues volume 4) (ed R O’Dair and A Lewis), Oxford University Press, 2001;


*Legal Opinions Concerning the Church of England* (available on the Church of England website);

State and Church in the European Union

Gerhard Robbers

I. Social and Historical Background

Religion is again a foremost factor in European politics and law. Recent Muslim immigration is one but not the only reason for this development. In most European countries developments in the law on religion try to open the traditional structures to accommodate these new needs. There are few other areas of law in which historic experience, emotional ties and basic convictions have as direct an influence as in the law on religion. The diversity of the law and religion systems in the European Union mirrors the diversity of the national cultures and identities.

On the other hand the different systems have common roots in the basic experiences of shared history. All the systems are based on the common background of Christianity. As can be said of European law in general, the law on religion particularly is rooted in Christianity. At the same time, however, the contribution made by Islam and Judaism to European culture must not be forgotten. Both religions are also important factors of today in most of the Member States of the European Union to which the law on religion must give adequate consideration. And finally there is a multitude of small religious communities, often linked with larger communities in other parts of the world, which has its place in the law on religion.

Statistical data in the Member States of the European Union differ strongly according to the basis of the inquiry and the social background; generally speaking there exist little more than plausible estimates.
The following table will give a more or less realistic view of the situation in 2015:

<table>
<thead>
<tr>
<th>Religious Group</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>Roman Catholics</td>
<td>45.30%</td>
</tr>
<tr>
<td>Protestants</td>
<td>11.10%</td>
</tr>
<tr>
<td>Orthodox Christians</td>
<td>9.60%</td>
</tr>
<tr>
<td>Other Christians</td>
<td>5.6%</td>
</tr>
<tr>
<td>Muslims</td>
<td>1.80%</td>
</tr>
<tr>
<td>Non-believer/Agnostic</td>
<td>13.6%</td>
</tr>
<tr>
<td>Atheist</td>
<td>10.4%</td>
</tr>
<tr>
<td>Other religion</td>
<td>2.6%</td>
</tr>
</tbody>
</table>

The differences between the systems of law and religion go back mainly to the varying results of the Reformation and the ensuing Wars of Religion in Central Europe during the 16th and 17th centuries. Whereas some States, for instance Spain and Portugal, remained largely untouched by these events, the Reformation prevailed almost completely in other countries and sometimes established a system limited strictly to the existence of a State Church. The results were different again, though of no less consequence, in those countries where the different denominations coexisted and were of approximately equal strength, particularly in Germany and the Netherlands.

The continental European States have for the most part a common experience of absolutist State Church sovereignty in the 17th and 18th centuries. A number of the Member States of the European Union took part to various degrees and with differing consequences in the *Kulturkampf* at the end of the 19th century; its results are particularly evident in France today.

The German persecution of the European Jewish population during Nazi rule has caused immense suffering and led to a severe setback of the formerly flourishing Jewish religion and culture on the continent. It has been slowly recovering since the end of World War II in 1945.

Several Member States of the European Union have experienced communist rule with a variety of anti-religious policies. It may be a fair assumption that churches have had an important share in ending this rule.

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1 "Discrimination in the EU in 2015", Special Eurobarometer, 437, European Union: European Commission, 2015, – via GESIS.
Consequences of anti-religious policies are visible to varying extents still today.

Recent Muslim immigration raises new questions as to the law on religion throughout Europe.

The European Union, while initially being rather reluctant to act in the field of religion, has adopted a more active stance in the area within the most recent decades.

II. Types of Systems

In the European Union it is possible to differentiate between three basic types of law and religion systems. The first basic type is characterised by the existence of a State Church or predominant religion. In this system there are close links between State power and the existence of the Church. The systems of England, Denmark and, to some extent, Greece, Malta and Finland belong to this basic category. On the other hand there are systems founded on the idea of a strict separation of State and religion, for instance in France with the exception of the eastern départements and a number of overseas territories, and also in the Netherlands. There is to a great extent a legal separation in Ireland also. The third type features the basic separation of State and religion while simultaneously recognising a multitude of common tasks, in the fulfilment of which State and religions activity are linked: Belgium, Poland, Spain and Italy, Hungary, Austria, the Baltic States and Portugal belong to this group. In some of these States, agreements between State and religious communities play an important role, and therefore some speak of States with a covenantal system of State-Church relations. However, the impact of such agreements must not be overestimated, important as they certainly are; it seems that they mirror a system of co-operation rather than wanting to establish it.

This classification according to legal and theoretical considerations is instantly overlaid and rendered questionable by social circumstances which suggest different groupings. The religious influence on the State in mainly Catholic Ireland is probably still stronger and more direct than the wording of the constitutional provisions suggests. In the same way there would be a closer similarity in the social relevance of religion as between Greece, Spain and Italy than would be revealed in a comparison of Greece with Denmark or the United Kingdom. In all Member States of the European Union, there is a rapid and strong development in the relation between State and religion on the social and political levels, slowly influencing the legal setting.
Despite all the differences between the systems there does, however, seem to be a measure of convergence. In some countries the earlier anti-Church and anticlerical attitudes faded as the centuries passed and their legal consequences are being gradually reduced. Religious communities are given space for action and allowed greater freedom. Religion is acknowledged as an important element of social life; and, further, the conditions for meeting religious needs are created by the State. Often this follows from a more comprehensive understanding of the function of fundamental and human rights, according to which it is the task of the community positively to create the preconditions for human rights, and human rights are no longer held to be mere protective rights against State infringement. Finally it is generally acknowledged that, given a comprehensive support by the State of social activities, the religious communities may not be excluded from such support and so discriminated against.

On the other hand there are clear moves towards the disestablishment of the established churches. This may be exemplified by the power of decision which is increasingly being granted to the General Synod of the Church of England. Sweden has to a very large extent cut the close ties between the State and the Lutheran Church.

There also is a general tendency towards acknowledging the right of self-determination of religious communities. Even if in some systems still strongly influenced by the tradition of a State Church the power of making final decisions on some genuinely religious questions remains with State bodies, those who do not wish to be subject to such a decision appear to be completely free to form their own independent communities. Religious freedom as an individual right is generally and completely recognised. Nowhere are there legal provisions as to what the individual must or must not believe.

Significant differences in the legal mode of existence of religious communities are immediately apparent. While in some systems the religious communities themselves, their associations and subdivisions, are legal entities, other systems do without any legal classification of religious communities as such. Everywhere, however, legal instruments are provided to allow the religious communities to act in the legal system, even if only indirectly by way of associations cultuelles or diocésaines or trustees.

A religious community's right to self-determination in a stricter sense is also commonly found. A number of Constitutions expressly mention this right. However the extent to which this right is granted differs greatly. The right of self-determination may be accorded to all institutions which are quite remotely connected with the term "religious community" or
“Church”. It can on the other hand be limited to the official Church itself or similar institutions.

III. Law on Religion in the European Union

1. Basic Structures

Up to now there has not been a relationship between the European Union and religions that could be regarded as a system proper. Notwithstanding this, certain structures governing its stance towards religion may be identified which amount to a growing European law on religion. Moreover, countless provisions of primary and secondary European Union law affect religions within the Member States.

The Churches’ right to self-determination finds a first means of support in religious freedom. The European Court of Justice has acknowledged it. According to Art. 6 (3) TEU fundamental rights, as guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms and as they result from the constitutional traditions common to the Member States, constitute general principles of the Union’s law.

Since the European Union has acceded to the European Convention for the Protection of Human Rights and Fundamental Freedoms, the Convention’s protection of religion also applies directly within the European Union. Art. 9 ECHR protects freedom of religion as a right of the individual and of communities. Churches and religious communities have a right of complaint in their own right before the bodies of the ECHR which are charged with giving legal redress if they can claim to be injured in their rights under Art. 9 ECHR.

A restriction on the action of Union law in matters of the law of religion in the Member States is formed in particular by the principle of subsidiarity. Art. 5 TEU provides that the European Union, according to the principle of subsidiarity, takes action only if and insofar as the goals of the intended measures cannot adequately be achieved at the level of the Member States and so because of their scale or their effects may be achieved better at Union level. In the area of religious matters a better achievement of goals usually means that the needs of historically developed religious beliefs determined by national and regional circumstances, emotional ties and historic experience must be adequately given space. In consequence, the realisation of goals in these matters may be achieved at the level of the Member States and their subdivisions, not however at Union level.
Art. 4 (2) TEU obliges the Union to respect the national identities of its Member States. The variety of the religious circumstances and their legal treatment in the Member States of the European Union shows how great the formative influence of the churches on the national identity of the Member States is. History, culture and tradition of the Member States are always influenced by the system of law and religion.

The idea of common constitutional traditions of the Member States still forms a basis for the development of religious law structures in Union law in other matters apart from those of human rights. The contributions in this book clearly show that such common Constitutional traditions exist to a great extent. Everywhere religious freedom is recognised in general, everywhere the churches possess institutional independence. That is true even where the system includes a State Church, at least for those religious communities in the Member State which are not State churches. It is clear that for instance in labour law the churches' religious conception of themselves as an employer must be taken into consideration.

2. The Legal Setting

The European Union law is fully facing the question of religion. The preamble of the Treaty on European Union explicitly states that the treaty has been concluded “drawing inspiration from the cultural, religious and humanist inheritance of Europe, from which have developed the universal values of the inviolable and inalienable rights of the human person, freedom, democracy, equality and the rule of law.”

The reference in the preamble to the TEU to religious inheritance is not directly linked to the question of state religion relations. However, in indicating that Europe will continue on the path of civilisation directly after the reference to the religious inheritance, the constitution implicitly refers to the important function of religious communities within this kind of civilisation.

In broadly acknowledging fundamental rights in Art. 6 TEU the European Union refers also to religiously relevant fundamental rights within the Charter of Fundamental Rights, the European Convention of Human Rights, and as they stand as common constitutional traditions of the Member States.

The European Union pays specific attention to churches and other religious communities in the Treaty on the Functioning of the European Union. Of particular relevance is Art. 17 TFEU concerning the status of churches and religious communities, although the European Court of Jus-
tice has up to now attributed only limited importance to the provision. It reads:

1. The Union respects and does not prejudice the status under national law of churches and religious associations or communities in the Member States.
2. The Union equally respects the status of philosophical and nonconfessional organisations.
3. Recognising their identity and their specific contribution, the Union shall maintain an open, transparent and regular dialogue with these churches and organisations.

The provision recognises the institutional aspect of freedom of religion. It acknowledges the existences of religion within institutions and their impact on the life of the European Union. Art. 17 TFEU is an expression of the existing neutrality of the European Union in religious and philosophical matters. This neutrality according to the wording of the provision relates to the Member States’ law on religion; indirectly this neutrality also relates to churches, religious and philosophical communities.

The provision acknowledges churches as factors within community law. It respects the competence of the Member States in the field of religion. Whenever the European institutions exercise their competences they must respect and not prejudice the Member States’ law on religion within the scope of European Union law. Because of the principle of unity of the European Union the institutions are bound also by the other provisions of European constitutional law. This gives an impact of e.g. freedom of religion, equality, nondiscrimination and democracy in this field.

Art. 17 TFEU does not perpetuate State religion relations within the Member States. They are free to develop these relations. It is the status of churches and religious communities as it stands at the respective time that has to be respected.

The provision obliges the institutions of the European Union to take into account the Member State’s law on religion in their decision making. Moreover, in doing so the institutions of the European Union must pay adequate attention to the status of churches and religious communities in the Member State's law on religion. Furthermore, they must adequately value the importance of that status within the Member State's law in balancing the various and sometimes conflicting interests in European Union law requirements.

Art. 17 (3) TFEU provides for a dialogue between the European Union and all of its institutions with those churches and religious communities. The European Commission has adopted Guidelines on the implementa-
tion of Article 17 TFEU, according to which all relevant topics related to the EU agenda can be raised within this dialogue. This broad perspective acknowledges the specific contribution of churches and religious communities to all aspects of life.

The dialogue has to be developed in full respect of the identities, special needs and relevance of the religious entities. This includes the possibility of making agreements with them. The dialogue must be open, transparent and regular. In acknowledging the special contribution of those churches and communities the constitution does in fact acknowledge their spiritual, social, and cultural contribution. However, it also acknowledges openly the impact of Christianity on the existing European Union without disregarding the contributions of other religions and philosophies. By explicitly using the term churches, special reference is being made to Christianity, this term being exclusively Christian.

Art. 17 TFEU carries interesting parallels and differences in relation to Art. 11 TEU. The latter provision relates to an open, transparent and regular dialogue with the representative institutions of civil society. The dialogue with churches, religious and philosophical communities is based on similar principles as is the dialogue with institutions of the civil society. Churches and similar communities must not be placed in an inferior position. By giving them a special place in the constitution the Union recognises that churches, religious and philosophical communities are not just part of civil society. On the contrary, the constitution acknowledges the special contribution and the specific identities of these churches, religious and philosophical communities.

Churches, religious and philosophical communities are relevant and suitable partners for hearings according to Art. 11 (3) TEU, and a relevant number of citizens of the Union can initiate a referendum also in religiously relevant matters according to Art. 11 (4) TEU.

The Charter of Fundamental Rights provides for far reaching religious freedom. Art. 6 TEU states that the Union recognises the rights, freedoms and principles set out in the Charter of Fundamental Rights of the European Union, which shall have the same legal value as the Treaties. Freedom of religion is thus an integral part of the constitutional law of the European Union as laid out in the three basic treaties.

The Charter guarantees freedom of religion in its Art. 10 in the same wording and basically the same meaning as does Art. 9 ECHR. Since the provision on restrictions to fundamental rights according to Art. 52 of the Charter are somewhat stricter than Art. 9 (2) ECHR Art. 52 (3) of the Charter is of particular relevance: restrictions to freedom of religion according
to Art. 10 can be based on Art. 9 (2) ECHR only, further limitations do not apply.

Art. 21 of the Charter prohibits discrimination on the grounds of religion or belief. The Union respects the multitude of cultures, religions and languages according to Art. 22.

European unification in its very existence must depend on the churches if it wishes to give the necessary anchoring in culture, in tradition and history a secure long-term future. Such culture is based on autonomy and self-determination. Community law must not monopolise the religious communities, it must not eradicate the differences between them. Anything else would provoke the opposition of the churches, thus endangering European unification, because internal disagreements would create confrontations the destructive energy of which the otherwise mainly economic unity would not be able to counteract with anything substantial.²

According to Art. 351 TFEU the rights and obligations created by treaties made between a Member State and a third State before the Treaty came into force are not affected by the Treaty. Insofar as the agreements are not compatible with the EC the Member States are obliged to remedy these incompatibilities, if necessary by renegotiation. According to Art. 216 TFEU the European Community may enact treaties with other States. According to the ratio legis, this also applies to the Holy See as a subject of international law. Because of the Community law principle of equal treatment of all religious communities, similar contractual relationships may be entered into with other religious communities. Because of their lack of legal status in international law, this does not result directly from Art. 216 TFEU, but from Art. 352 TFEU in connection with Art. 216, 335 TFEU as well as the general principle of equality. The clearer the implications of Community law for the position of the religious communities become, the more it becomes reasonable to take the possibility of contractual regulation into consideration.

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² See Gerhard Robbers, Die Fortentwicklung des Europarechts und seine Auswirkungen auf die Beziehungen zwischen Staat und Kirche in der Bundesrepublik Deutschland, in: Essener Gespräche zum Thema Staat und Kirche (27), ed. by Heribert Heinemann and Heiner Marré, Münster 1993, p. 81.
Art. 167 TFEU confers responsibility for the protection of cultural variety upon the Community. The law of State and religion is very much part of this culture. According to Art. 167 TFEU the Community itself contributes to the development of the cultures of the Member States while safeguarding their national and regional diversity. In this, the common cultural heritage of Europe is emphasised. This also and especially points to the religious roots and traditions of Europe. Art. 167 TFEU is however based on a restricted understanding of culture. Cultural competences refer to research and education, to general and professional education, to artistic and literary creation, to the protection of historic monuments, literature, architecture and the mass media. Competences of the Community may be derived from Art. 165 TFEU for the area of professional and general education. In this way all educational institutions run by religions, such as private schools, theological faculties and Church academies and not least religious education classes, benefit from support according to Community law. Art. 165 TFEU at the same time strictly excludes any harmonisation of legal or administrative provisions of the Member States. The Community promotes and recommends, supports and complements the activity and cooperation of the Member States, as far as this is necessary.

The so-called European Schools are designed to educate together children of the staff of the European Union. According to the European Schools' Educational Principles, the conscience and convictions of individuals are respected, and religious education or education in non-confessional ethics is an integral part of the curriculum. Religion is an ordinary, but a non-progression subject, as is ethics; thus, if a pupil receives an unsatisfactory mark, he or she is still promoted to the next higher class. Pupils may opt out of religious instruction, but then they are automatically opted in for ethics. Up to the age of 18, parents or guardians make that decision on behalf of their children. The classes on religion are denominational: Roman Catholic, Christian-Orthodox, Protestant, Jewish or Muslim. Classes are offered at the request of at least five pupils of the given denomination or religion. Teachers are mostly recruited regionally. Curricula for religion are developed under the supervision of the school authority and need the approval of the relevant religious authority as well as the higher school authorities.
4. Labour Law

Of major impact on the churches’ right of self-determination is Art. 4 of the directive concerning equal treatment in employment and occupation.³

In applying this provision, the European Court of Justice has held⁴ that Art. 4 (2) must be interpreted in a specific way: A church or other organisation whose ethos is based on religion or belief can assert that by reason of the nature of the activities concerned or the context in which the activities are to be carried out, religion constitutes a genuine, legitimate and justified occupational requirement, having regard to the ethos of the church or organisation. However, in this case it must be possible for such an assertion to be the subject, if need be, of effective judicial review by which it can be ensured that the criteria set out in Article 4(2) of that directive are satisfied in the particular case. The final decision thus is handed over to the state court.

The provision must furthermore be interpreted as meaning that the genuine, legitimate and justified occupational requirement it refers to is a requirement that is necessary and objectively dictated, having regard to the ethos of the church or organisation concerned, by the nature of the occu-

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1. Occupational requirements
2. Member States may maintain national legislation in force at the date of adoption of this Directive or provide for future legislation incorporating national practices existing at the date of adoption of this Directive pursuant to which, in the case of occupational activities within churches and other public or private organisations the ethos of which is based on religion or belief, a difference of treatment based on a person’s religion or belief shall not constitute discrimination where, by reason of the nature of these activities or of the context in which they are carried out, a person’s religion or belief constitute a genuine, legitimate and justified occupational requirement, having regard to the organisation’s ethos. This difference of treatment shall be implemented taking account of Member States’ constitutional provisions and principles, as well as the general principles of Community law, and should not justify discrimination on another ground.

Provided that its provisions are otherwise complied with, this Directive shall thus not prejudice the right of churches and other public or private organisations, the ethos of which is based on religion or belief, acting in conformity with national constitutions and laws, to require individuals working for them to act in good faith and with loyalty to the organisation’s ethos.

⁴ ECJ C 414/16 – Egenberger; ECJ C68/17.
pational activity concerned or the circumstances in which it is carried out. That requirement must comply with the principle of proportionality.

**IV. Bibliography**


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