

This book contains the contributions to the Conference 'Churches and Other Religious Organisations as Legal Persons', organised in 2005 by the European Consortium for Church and State Research.

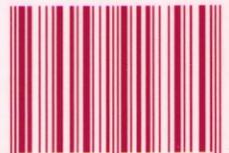
The contributions cover the conference subject in nearly all EU member states. Experts from the different countries have described the situation in their states.

This book contains an analysis of the legal status of churches and other religious organisations on a regional basis as well. Such regional analysis is given for Northern Europe, Western Europe, Southern Europe, and the "new" EU states.

An overall analysis was written by professor Silvio Ferrari, Milan.

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Churches and Other Religious Organisations as Legal Persons

Edited by:

LARS FRIEDNER



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2007

**CHURCHES AND OTHER RELIGIOUS
ORGANISATIONS AS LEGAL PERSONS**



**CHURCHES AND OTHER RELIGIOUS
ORGANISATIONS AS LEGAL PERSONS**

**Proceedings of the 17th Meeting of the European
Consortium for Church and State Research
Höör (Sweden), 17-20 November 2005**

The European Consortium dedicates these Proceedings to Joseph Listl
(Bonn/Augsburg) in honour of his active membership in the Consortium.

Edited by

LARS FRIEDNER



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PREFACE

This book contains the documentation from the 17th meeting of the European Consortium for Church and State Research. It was held in Höör, Sweden, on 17-20 November 2005. The theme for the meeting was ‘Churches and other religious organisations as legal persons’.

The aim of the conference was to give an overview of the different legal ways in which churches and other religious organisations appear in various European countries.

The meeting comprised participants – members of the Consortium and invited guests – from nearly all the EU member states. This widespread participation is mirrored in the contributions to this book.

The book consists of three parts. Firstly, Professor Silvio Ferrari of Milan, Italy, President of the Consortium, provides an overall introduction to the subject. In the second part, there are reports aimed at summarising the state of things in a specific region of Europe. The country reports follow in the final part. In this aspect, this volume differs from earlier proceedings of the Consortium. This is the first time that regional reports have been used. The innovation is due to the view taken by the Executive Committee of the Consortium that the number of EU member states is now so big that it would be useful to the reader to have the country reports summarised in bigger blocks. As a reader, you may have your own opinion on this matter.

It is my hope that you, as a reader, will find answers to any question you may have concerning the legal status of churches and other religious organisations in the various EU member states. I also hope that you will find the views expressed in the analysis interesting.

I wish to thank all those who have made contributions to this volume and to the meeting of the Consortium: members, rapporteurs, and invited guests. Special thanks go to those who helped me in organising the meeting: my secretaries Ms Gunnel Lantz and Mrs Kristina Nilsved, Student of political science Samuel Sandberg, and my daughter Lotta (Master of Political Science). I also received a lot of valuable advice from Silvio Ferrari.

I thank Peeters in Leuven, Belgium, for publishing this work.

Uppsala July 27 2006
Lars FRIEDNER

SILVIO FERRARI

RELIGIOUS COMMUNITIES AS LEGAL PERSONS:
AN INTRODUCTION TO THE NATIONAL REPORTS

The basic level or the larger circle

1. The right of a religious association to obtain legal personality is increasingly recognised as part of the collective right of religious liberty. Although this point is not explicitly settled in international conventions and national constitutions, recent decisions of the European Court of Human Rights have stated that denying legal personality can amount to a breach of religious freedom as protected by Article 9 of the European Convention on Human Rights¹.
2. This right can be recognised in different ways. Contemporary legal systems are more and more complex and articulated, as they have to respond to different requests. Since the needs of religious associations are not identical to those of other associations (political parties, trade unions, etc.), many legal systems provide for a specific type of legal personality reserved exclusively for religious associations. In many cases, religious groups have the option to choose between being granted the 'general' legal personality available to all associations (or large groups of them)² or the 'specific' legal personality reserved for religious associations; in some states (for example in the Czech Republic) only the latter option is available.
3. Providing for a specific form of legal personality reserved for religious associations is nothing extraordinary and the same system is

¹ See Metropolitan Church of Bessarabia and others v. Moldova -45701/99 [2001] ECHR 860 (13 December 2001). The Court, after noting that "only a recognised denomination has legal personality" according to the law of Moldova, stated that "not being recognised, the applicant Church cannot operate. In particular, its priests may not conduct divine service, its members may not meet to practise their religion and, not having legal personality, it is not entitled to judicial protection of its assets. The Court therefore considers that the government's refusal to recognise the applicant Church [...] constituted interference with the right of the applicant Church and the other applicants to freedom of religion, as guaranteed by Article 9 §1 of the Convention".

² In some legal systems religious communities can incorporate as non-profitmaking organisations, foundations and even commercial companies.

applied to many other associations. But this choice entails a definition of religious association: without it, it is impossible to establish whether the association requesting to make use of this specific type of personality has the right to obtain it. To solve this problem, European legal systems have followed different paths: while the notion of association is (relatively) clear, what defines a religion is one of the most difficult questions that legal science has to answer³. Sometimes it is possible to rely on the work of sociologists, philosophers and theologians but their conclusions (which are far from being unanimous) are not always useful to lawyers.

4. Being a religious association is seldom sufficient for obtaining the legal personality reserved for religious associations. Many legal systems demand further requirements such as: a minimum number of faithful; a minimum number of years during which the association must have been active in the country; a minimum number of local congregations pertaining to the applicant religious group; some guarantees of financial solidity; and so on. Sometimes these requirements are rigidly established; sometimes they are formulated in a way that leaves flexibility for discretion on the part of the state institutions (courts, government departments, etc.), which have the task of dealing with the applications from the religious association. The nature and the number of these requirements raise at least a couple of questions.
 - a) First of all, should they have regard only to the structure of the religious association or also to its doctrine and the corresponding behaviour of its faithful? In some states, legal personality is refused if the religion's articles of faith are contrary to human rights. This condition sounds reasonable, but it could lead to far-reaching results: is equality between men and women a human right that could prevent the acquisition of legal personality if it is not respected by a religious group in its own internal organisation? What about, for example, Jehovah's Witnesses' refusal of blood transfusions? Is that enough to deny that religious community the enjoyment of the form of legal personality reserved for religious associations?
 - b) What kind of 'structural' (as opposed to 'doctrinal') requirements are admissible? Some legal systems, for example, require a few hundred members as the minimum number for obtaining legal

personality. Is that a form of discrimination against small religious communities, which are deprived of this ability just because they are small?

These requirements have a reduced impact on the religious community's life if the option to obtain the 'general' legal personality is available to them; but if a religious community can gain legal personality only in the specific form reserved for religious associations, the requirements can amount to preventing that religious group from performing basic activities that are indispensable for its survival.

5. In some states, legal personality is automatically obtained if a time span (for example, one year) has passed since the filing of the application by the religious group and no answer has been given by the state body in charge of evaluating that request. But some legal systems do not fix any time limit within which the application from a religious association has to be dealt with. Sometimes this means that applications are left pending for a long time and the association is kept in a sort of 'limbo' for a number of years. In these cases, the lack of a time frame may work as a hidden but effective way of rejecting undesired applications without having to face the consequences of an explicit rejection.
6. It is not completely clear what remedies are available to a religious association whose application for obtaining legal personality has been rejected. The national reports collected in this volume state that, in some countries, it is possible to appeal to courts while, in some others, the only way to appeal is an administrative procedure; but, in most cases, this topic is not dealt with and one has the impression that national legal systems are not completely transparent on this point.
7. Finally, there are religious communities that object to any form of registration or state recognition. Some legal systems give unincorporated associations the right to perform a few basic legal activities: consequently, these religious communities have the ability to organise and act, although their legal status is somewhat limited. In other cases, no such option is available. As a rule, religious activities such as gathering for prayer etc. can be performed without the need for any legal organisation: but, according to some scholars, the inability to obtain legal personality can indirectly affect religious liberty when it prevents the religious community from owning or renting a place of worship, opening a bank account, etc.

³ The Finnish report contains an example of an interesting approach to this problem.

The upper level(s) or the inner circle(s)

8. Legal personality is valuable both in terms of the freedom of the religious communities and of cooperation by the State. Without legal personality, a religious community may be unable to perform acts and activities that are essential to its life; it is a matter of basic freedoms. But obtaining legal personality may also pave the way to receiving support from the State in the form of advantageous tax regimes, access to public institutions like schools, etc. It is hard to pinpoint exactly where freedom ends and cooperation starts and, however, this position is differently located in each national legal system. But in most of them, state cooperation is not evenly distributed among religious communities: each state cooperates with some religions more than with others.
9. The selection of which religious communities will receive state support, and how this support is divided among them, frequently results from subdividing the religious communities that enjoy legal personality as religious associations into further categories, each of which has its own legal status. There is no European pattern here and each state has its own structure of legal categories and its own way of distributing religious associations within them. In Finland, three different types of legal person can be distinguished, namely, those of the Evangelical Lutheran Church, the Finnish Orthodox Church and the registered religious associations. In Italy, there are about 30 religious groups that have the status of recognised religious associations according to a law of 1929, six communities that have concluded an agreement with the Italian State, and the Roman Catholic Church whose legal position is defined through a concordat. In Denmark, there are five different categories of religious organisation: religious groups recognised by the tax authorities; religious bodies without recognition or approval; approved religious entities; recognised religious entities; the official Church.
10. How religious communities are placed in these different categories again depends on the national legal systems. Everywhere some conditions need to be fulfilled but they vary from state to state. Generally speaking, they are not different from the requirements to obtain legal personality as a religious association (see *supra*, paragraph 4) but the demand is higher: more members of the religious community; more years of presence in the country, etc., are required. In the Czech Republic, 300 members are enough for a religious community to obtain registration, but about 10,000 (0.1% of the country's population) are required to get the 'special rights' reserved for some

religions⁴. In Portugal, registration is available to all religious communities that have an organised presence in the country, but a presence of at least 30 years is required to obtain the higher status of 'religion settled in the country'⁵.

11. Also the type of state cooperation relating to each category differs according to the national legal system. In Portugal, registered religious communities enjoy tax exemptions, but only 'settled' religious communities can receive state subsidies, conclude agreements with the State, celebrate religious marriages that have effect in the state legal system, etc. In the Czech Republic, only religious communities with 'special rights' can teach religion in the schools, receive state support to pay the salaries of their ministers, have chaplains in the army and in prisons, etc.
12. Scholars are divided about the merits of this system. Some compare it with those pyramids that can be found in Latin America and have platforms placed at different levels; at each level the number of religious communities decreases and the amount of state support increases. Some lawyers object to this description: they prefer to depict the system in terms of inner circles, implying that the differentiation between the various categories does not reflect an intent to 'hierarchise' religious groups and to give a privilege to some of them but only to provide adequate answers to their needs, which can be different according to the size, history, and cultural roots of each group. Be that as it may, it is a fact that most European legal systems differentiate among religious communities and provide for different legal disciplines. Again, there is nothing extraordinary here. Looking at other parts of the world, it is difficult to find a legal system that does not differentiate among religious communities: even those systems that stress equal treatment, like that of the United States, cannot avoid making distinctions between religious communities when it comes to issues like tax exemption. Once the basic freedoms are granted to any religious community, a reasonable degree of differentiation in favour of those groups that are more deeply rooted in the history and culture of a country can be defended.

⁴ In the Czech Republic, there are two categories of religious communities with legal personality: registered religious communities and registered religious communities "with special rights".

⁵ In Portugal, religious communities are distributed among the following categories: unincorporated associations; private corporations; religious corporations (that is, registered religious communities); religious communities settled in the country.

But not any kind of differentiation is acceptable: it must be (at least) rational and transparent.

13. These two conditions are not always respected by the European legal systems. To some observers they appear exceedingly baroque in their structure and sometimes they are based on requirements that cannot be precisely assessed. In Austria, for example, the 1998 reform created one more category of religious communities (officially registered religious communities) and established that only religious communities characterised by “a positive attitude to the society and the State” can be legally recognised⁶. The exact meaning of this requirement is open to debate: conscientious objection to military service and refusal of blood transfusions could be interpreted as signs of a negative attitude towards (respectively) the State and the society. In Belgium, religious communities can have legal personality as non-profitmaking associations or as recognised religions; to obtain recognition, “no formal requirements exist. All norms are unwritten. They are just informal guidelines inspiring and steering administrative praxis”. The Belgian report affirms that “there should be ‘enough’ members: probably some tens of thousands” and stresses that the existence of hierarchical religious structures is ‘helpful’ in obtaining recognition. The system may work well, but it seems to be very vaguely structured and to leave a lot of room for discretionary judgment by the public administration authority.

⁶ In Austria, there are three categories of religious communities: a) religious communities with legal personality under private law; b) state-registered religious communities; c) legally recognised churches and religious communities.

BALÁZS SCHANDA

RELIGIOUS ENTITIES AS LEGAL PERSONS – EASTERN
CENTRAL EUROPE (CZECH REPUBLIC, HUNGARY, POLAND,
SLOVAKIA, SLOVENIA)

Basic observations

The countries of eastern Central Europe share much common history. The Czech Kingdom, Hungary, Poland and Slovakia are also referred to as the countries of the Holy Adalbert – the majority of these peoples were Catholic in the last millennium and the Catholic Church is still the largest denomination in all of the countries covered. Modern political coordination (the Visegrád countries) goes back to 1335 when the Czech, Polish and Hungarian kings agreed a trade arrangement in Visegrád, Hungary, and beyond. The countries covered also share the legacy of Habsburg Austria; Austrian legal and bureaucratic traditions may still have influences on the way states approach issues. But the communist rule constitutes a common element of our history as well. Transition to constitutional democracy respecting human rights has already brought new legislation on religious communities (Poland 1989, Hungary 1990, Czechoslovakia 1991) or later (2002 Czech Republic) – but, in Slovenia, new legislation is still being drafted. A comparative analysis of the legal personality of religious entities permits the following observations.

1. All countries covered provide a special status for religious entities

Religious entities can enjoy legal personality as such, and not as associations or trusts. At least a basic-level legal personality provided for religious communities is easily available in all of the countries except Slovakia.

No country links the free exercise of religion with others in the community to this special legal form provided for religious communities. Alternative legal forms are generally available in all countries for communities that do not wish to register as religious communities or do not meet the formal criteria. Exceptions are the Czech Republic and Slovakia, where religious communities cannot act as associations although, in

Slovakia, religious communities can act as foundations or registered non-profit-making organizations; civic associations because of their *de facto* religious nature could be dissolved, but in fact are tolerated.

The nature of juridical personality tends to be a *sui generis* one. It contains all the elements of a private law entity status (the ability to acquire property, enter into contractual relations, including labour contracts), with some special elements taking religious practice into regard, but the German notion of corporations of public law does not appear in the countries covered (whereas it does in Croatia).

2. Several countries apply a two-tier system

The two-tier system is an outspoken one in the Czech Republic, where acquiring a basic-level entity status is not especially burdensome, but getting access to 'special rights' in the Czech Republic seems to be quite difficult.

In Poland, there are differences between religious communities that are merely registered (registration seems to be relatively easy) and religious communities that have a statute to regulate their relation with the State: no community has the subjective right to get a statute on its relation to the state – historic traditions determine government discretion.

In Hungary, besides the highly formal requirements for registration, all registered communities enjoy the same rights, but the four largest religious communities are treated in a special way in some respects (army and prison chaplains, public media). The situation is similar in Slovenia where all religious communities enjoy equal rights although factual differences can be taken into consideration. Registration in Slovakia is rather difficult, but the 16 entities registered have equal rights – although not all of them made use of the ability to sign a contract with the Government.

3. It is a government agency that provides legal status to religious entities, except in Hungary, where courts register such entities

In the Czech Republic and in Slovakia, the Ministry of Culture registers denominations; in Poland, it is the Minister of Interior and Administration whereas, in Slovenia, it is a special agency, the Office for Religious Communities. In Hungary, registration is done at the county courts, as in the case of the registration of associations, foundations, etc. – the Government only has a liaison secretariat to communicate with churches.

4. Minimum requirements for registration are accessible relatively easily, except in Slovakia

Poland and Hungary require 100 members for registration – in Poland they have to be citizens. Further requirements are highly formal in Hungary (the community has to declare that it has religious aims, that conform with the legal order) whereas, in Poland, the statute has to be submitted to the Ministry and information on religious life, aims and rites has to be provided. Similar requirements apply in Slovenia, but, at present there is no minimum membership – draft legislation foresees 100 members and some years of pre-existence in the country. In Slovakia, the minimum number of members is 'somewhat' higher (20,000). To achieve the basic-level legal entity status, 300 members and a religious aim are required in the Czech Republic.

5. Internal units of religious communities can have legal personality in state law – regulation differs

Internal entities usually obtain legal entity status depending on the religious community: in some countries they enjoy legal personality automatically, without further registration, in others they have to be registered one by one. Internal entities need to be registered with the Ministry in the Czech Republic. Similarly, religious communities can register their internal units with the competent government agency to gain legal personality. In Hungary and Poland, the statute of the community is usually sufficient but, in Poland, acknowledgement of internal entities can also happen by regulation of the competent minister. In Slovakia, internal entities are constituted by the community itself. In Hungary, only the independent internal bodies (like religious orders) have to be registered by the courts to gain legal personality, whereas the organizational units (like parishes) have legal personality through the statute of the church and they are not registered at court – consequently, higher church organs certify the legal personality of internal units, as well as the representative of the unit. Generally speaking – although there are technical differences – the legal personality of internal units is not an issue in the countries covered: states are not ungenerous in this regard.

6. Religious communities enjoy special/different/more rights than other voluntary associations

Numerous rights of religious communities are enjoyed by non-governmental organizations, associations and foundations. For example, the rights to

own property, enter contracts (including employment), be exempt from real estate taxes and some kind of tax deduction from donations are not special features enjoyed by religious entities only.

Registered religious communities, however, enjoy a special legal regime that makes them different from associations or other voluntary organizations but, in the Czech Republic, only those that have 'special rights' benefit in this way.

Religious education in public schools is a right for registered religious communities (except in Slovenia where the current legislation does not enable this, but draft legislation does) although unregistered communities are not likely to have adherents in sufficient numbers and proportions to provide religion classes in schools. Access to the public schools is a significant privilege for registered communities – even if small communities are not likely to make use of this right for practical reasons.

Access to army, prison and health care institutions is guaranteed for registered religious communities. Inviolability of holy places and the seal of confession is expressly protected in more than one country – the latter is bound to a consistent doctrine of 50 years in the Czech Republic.

Registered religious communities have access to the public media; their representatives sit on media boards in Hungary and Slovenia.

Public funding for the salaries of the clergy of registered communities is granted in the Czech Republic (for the communities enjoying 'special rights') and Slovakia whereas, in Slovenia, the budget covers their social security contributions.

Religious communities in Slovakia, religious communities in the Czech Republic enjoying this 'special right' and 11 out of the 15 religious communities in Poland having a separate statute are entitled to officiate at marriages with civil effect.

Being registered as a religious entity may not benefit smaller communities in practice, but the status of a religious entity may seem to be more prestigious to them than any other legal form. On the one hand, the special status may appeal to newly emerging groups but, on the other hand, states may prefer to have all the faith communities they communicate with in the same legal category.

LISBET CHRISTOFFERSEN

RELIGIOUS ENTITIES AS LEGAL PERSONS – NORTHERN EUROPE (NORDIC AND BALTIC COUNTRIES)

1. Widely differing!

The Nordic and Baltic Countries, in the context of the European Consortium for Church and State Research, cover Denmark, Sweden, Finland, Estonia, Latvia and Lithuania. To cover the region better in order to tell a full story, I have also drawn in material from Iceland and Norway into my regional report in the belief that this would give me better opportunities to group these countries within some models in relation to the question raised: How do religious entities get legal personality and what advantages are there in registration systems?

And, of course, there are some common answers which could be related to historically or sociologically based common models – but the main result is that these eight countries vary much more; in relation to whether registration systems are necessary or not and why; when the question is about legal personality for religious entities than I could have realised before.

Of course, the fact that in Denmark (and, maybe therefore, also in Norway and Iceland) no private association needs to register anywhere to get legal personality itself changes the picture. In these three west-Nordic countries, freedom of association is derived directly from the constitutions and registration is not necessary to operate or to get legal personality; registration does not come into the picture until the association needs to get in contact with public authorities in relation to, for example, tax questions, etc. This also means that religious entities in these countries can establish themselves and live their whole lives without giving any information at all to public authorities.

Contrary to this, the Baltic countries and partly of Finland for a very long time, not only during communism, but also during the tsarist regime, have had legal systems in which associations had to be registered – either to get permission to work or at least to get legal personality. This is still obvious in the legal systems concerning religious entities but, of course, the new constitutions created during the 1990s in all the four aforementioned countries have been written in accordance with an understanding

of religious freedom derived from the European Convention on Human Rights thus acknowledging the freedom of religious belief and practice, including collectively, with no registration necessary for the practice. In all these four countries, however, legal personality requires registration. In Estonia, for example, it is not possible for an organization with the identity of a church to register as a common non-profit-making organization, whereas in Sweden a church in principle can instead choose to identify itself as an economic association, a company foundation or to act without legal personality.

2. The oldest and the newest constitutions in Europe

What is most common for this region might be that four of the five countries in the eastern part – Finland, Estonia, Latvia, Lithuania – all got new constitutions during the 1990s, after the collapse of the Soviet Union. These constitutions have been written with very close reference to the European Convention on Human Rights as this Convention has been understood to date. That can be seen most obviously in the Estonian Constitution, which directly quotes the European Convention in respect of religious freedom. Estonia is thus also the only country in this region which, in principle, has totally equal treatment in the legal sense for all religious communities but then, of course, Estonia also has a couple of small advantages for the Evangelical Lutheran Church (state aid for a paper, etc).

Only two countries still have constitutions from the 19th century. These uphold the National Church in Norway (constitution 1814) that has no legal personality but has a national level steering body that is distinct from the state, and in Denmark (constitution 1849) whose National Church has no legal personality and no national level steering body. Iceland, on the other hand (which changed its 1864 constitution in 1995) gave the Lutheran Church legal personality by law in 1998.

3. National churches – sociologically

Changing constitutions in the 1990s with a huge impact from the European Convention on Human Rights of course makes a difference. It is, however, not enough to provide the reasons for the differences in this region.

For example, even though Latvia and Lithuania had the possibility of equal treatment on the same footing as Estonia, they have chosen other

solutions with an Agreement with the Holy See. This is, of course, because the Catholic Church is of a much more remarkable size in these countries. And even though Finland has wanted to shape a model of church/state relations based on religious freedom and equal treatment, the Orthodox Church and the Evangelical Lutheran Church are still public legal entities, whereas all other religious entities are regulated under private law. The new model (2000) in Sweden has been an attempt to establish a new system between private law and public law, but the legislature still makes decisions about the Church of Sweden with respect to national structure and basic demands on organizational structure.

The point is that new constitutions have to relate as well to historical as to sociological realities such as the fact that more than 80 % of the population are members of the Lutheran National Churches in Iceland, Norway, Denmark, Sweden and Finland, and more than 80 % of the population are Catholics in Lithuania, whereas the situation in Estonia is that only 25 % of the population is relating to a church at all, half of them as members of the Orthodox Church and half of them as Lutherans.

4. Advantages of registration systems

All eight countries in the region, however, have registration systems for religious entities but they have different goals. As mentioned in respect of the eastern part of the region, the first advantage there is to get legal personality (which means the ability to establish the community without letting a natural person bear the entire legal responsibility related to buying real estate, banking affairs, etc). This is not the goal in the western part.

All countries in the region, including Denmark, make use of some sort of evaluation or registration system in order to give religious communities, churches or individual ministers varying ability to conduct religious marriages with civil legally binding effect. All countries in the region have some sort of economic advantage related to the tax system as an advantage of being registered. Some pay the registered religious entities money related to the number of members (Norway, suggested in Finland, legally (but not economically) possible in Lithuania); some let the tax system collect member fees (Iceland, Sweden); some give tax benefits for donors (Denmark, Estonia, Latvia); discounts on VAT and/or land tax (Estonia, Lithuania), etc.

Whether registration has an impact on the legal system for employers is discussed in all countries. The differences here are between the countries that have an agreement with the Holy See (they acknowledge the possibility

of letting employers operate outside the common labour law) and the six Lutheran countries in the region, who all recognise the common labour law as a starting point and only accept few and very narrow exemptions, if any (Sweden?). Also the issue of religious education in the public school systems shows differences between old Lutheran countries and countries with an agreement with the See. Finland has now also decided that no confessional demands are necessary (or allowed) for teachers of religion in the public schools, since it is the curriculum that is important rather than the teacher.

Some countries specify registration as a church as necessary in order to have the opportunity to establish theological seminaries, monasteries, deaconate institutions, etc. and one country specifies "easing of the rules of public gathering" as an advantage of registration as a religious association. Here, obviously, the old tsarist and communist way of thinking is evident.

The formal requirements for getting approval from the state authorities within some sort of registration system are very much alike: information on statutes or bylaws; organization system; leader or members of board (normally with personal identity number); address of the organization, etc.

Some systems, however, also demand a list of members with names, addresses and personal identity numbers. Some demand that the members (or the leaders, or the ministers) are citizens – or that the religious organization has its domicile in the country. And some, on the other hand, demand more knowledge about the organization, such as, information on the procedure for becoming a member and leaving the organization, the decision-making procedure, etc. Here is a very clear distinction between the Nordic countries (who demand more open information from the organization) and the Baltic countries (who seem to focus more on the individual people who are members).

As for the question about whether the approval system also implies a matter of doctrine, all Nordic and Baltic countries are obviously concerned to limit the concept of religious entities to religious entities, but with different methods and different results. The Baltic countries simply define within the law, what they understand by church, congregation, religious association, etc. Finland, Denmark and Iceland demand a faith and a ritual, which means that atheists are not able to get registered; only Norway allows this. Estonia has denied the Church of Satan registration on the basis of a concept of God being part of the registration process. Only Sweden seems to have no control related to doctrines but, when it comes

to the advantages of being registered, very few of them are an automatic result of the registration process and all discretionary decisions are related to a more detailed investigation, not only of doctrines but also in relation to society norms such as equal treatment of men and women, etc.

5. Private law – public law – the law of the land – church law

One thing is common to a very wide extent in this region: the national state wants religious people and religious associations, churches, etc. to follow the law of the land. Of course there are exemptions in all countries such as equal treatment related to labour law within the churches but it is characteristic that the very open system of Sweden has its narrow limits precisely here: if a church wants to get advantages, it must also relate to the common Swedish legislation especially in relation to how it treats the people working within the church or relating to the church.

This rather strict focus on the law of the land being in force for all citizens (while accepting narrow exemptions based on religious freedom) might also be the way to understand rules of loyalty in Latvia (re-registration for 10 years for new religious movements) or an interest in and a rather narrow understanding of the concept of religion in nearly all the countries. Only the agreements with the Holy See change this picture slightly.

Another common aspect in the region is that, although there is an interest in the content of the religious communities, such as doctrine, etc., the focus is on formal rules and not least on rules protecting members and on rules making it difficult to use the label of being a religious community for profit. Here the old tradition of churches within the public arena shows up in a legal context although, of course, within the limits of collective and organizational religious freedom, as this has been set in a European context. But, within these borders, one could say that this region has a focus on formal rules or rules on the legal procedure related to religious entities. This is in parallel with the fact that these countries are those within the European Union that have the greatest extent of openness in public administration. The advantages of traditionally having religion in the public arena or as part of public administration are obviously sought rather than being abandoned.

6. History matters – confession matters

It is obvious that historical changes matter in this region when comparing such a simple subject as how religious entities get legal personality.

As a result of historical differences, I have already mentioned the obvious differences between post-Russian areas and other parts of the region related to the position of the Orthodox churches in Finland and Estonia as well as to the post-absolutistic view of non-traditional religions in, not least, Latvia.

As a result of confessional differences, I could point to the Catholic understanding of the old story of giving unto Caesar what belongs to Caesar and unto God what belongs to Him as resulting in what could be called a tendency towards a double legal system – one for the church and one for the state.

As a result of a combination of confessional and historical reasons behind the differences, I could mention the fact that the Church of Sweden always had an organization of its own distinct from the organization of the state. This is simply a result of the fact that the church organization at the diocesan and national levels was not changed in the Church of Sweden at the time of the Reformation as it was in Denmark, Norway and Iceland. In these three countries, during absolutism, it was possible to speak, not of the church but of the state administration of the religion. This difference maybe came about because of a longer and thereby later reformation in Sweden, preserving more of the old church organization than in the western part of Scandinavia.

7. Comparative law on religion matters –

This overview of the Nordic and Baltic countries with respect to religious entities as legal persons shows that law on religion in Europe differs but also that it has a tendency to converge towards some basic common ideas and that there are limits to what can be seen as legitimate within European standards. Even though history and old constitutions matter, it is of course special once again to realize that two, and only two, churches in Europe have no legal personality (the Church of Denmark and the Church of Norway) and one of them even has no steering body at national level which means that it is not possible to distinguish between the government and 'the church'. It might be even more special to realize that no one seems to care – until the focus changes to the other religious entities who have their most free status in precisely these two countries, partly by getting municipality taxes on an equal footing with the National Church (Norway) or by getting legal personality without any registration system (Denmark). That big amount of financial and formal religious freedom for members of non-state churches in these two countries,

combined with the very huge differences between the Nordic and Baltic countries, might be the reason. There simply have been other things to focus on within law and religion in this region.

SILVIO FERRARI

RELIGIOUS ENTITIES AS LEGAL PERSONS –
SOUTHERN EUROPE (CYPRUS, FRANCE, GREECE, ITALY,
SPAIN, PORTUGAL)

As regards the constitution and the activity of religious entities, there is no common pattern noticeable in the southern European countries (Cyprus, France, Greece, Italy, Spain, Portugal) that have been taken into consideration in this report. This outcome could be an indication that geography is not so important and that other elements (religion, history, etc.) have much more weight in shaping Church-State relations and should guide the subdivision of the European countries for the purpose of examining their legal systems. Nevertheless, two features are common to the countries of southern Europe, although it is possible that they also characterize other European countries.

**a) The right of a religious group to become a legal entity
(according to the general law on associations)**

1. *Constitution of religious entities as legal persons*

Freedom of association and equal treatment are the basic requirements that a fair legal system should respect in this field: therefore the right to create a legal person should be granted to religious and non-religious groups equally. This right is respected in all the countries that have been examined: nowhere is a religious group prevented from becoming a legal person in compliance with the legal provisions on associations (France, Italy, Spain), private corporations (Portugal) or non-profit-making organizations (Cyprus).

2. *Constitution of religious entities as legal persons and state control*

As far as the legal system allows non-religious groups to become legal entities without any state interference or control, the same right should be extended to religious groups (or religious groups should at least be subject to the same degree of state control and interference applied to non-religious groups). This seems to be the situation in France, Italy, Portugal and Spain and, at least *de facto*, in Cyprus, where “so far all

applications by religious organizations [to register as non-profit-making organizations] have been accepted by the authorities of the Republic of Cyprus”¹.

3. *Range of activities available to religious entities constituted as legal entities*

In many countries, these groups can do a fair amount of things: for example in France “les associations culturelles ou non, les congrégations reconues ou non, les sociétés, fondations, à orientation confessionnelle possèdent la personnalité juridique [et] peuvent donc posséder un patrimoine, acquérir des biens, ester en justice, employer des salariés, etc.” (similar rules apply to the ‘cultes non statutaires’ in the region of Alsace-Moselle); in Italy they have “la capacité d’acheter, de posséder et de vendre des biens (même immobiliers), de souscrire des contrats, recevoir donations, etc.”; in Cyprus, religious groups registered as non-profit-making organizations can “conclude contracts, own real property, or act as employers, without any restrictions, other than those provided by law for all legal persons that engage in financial transactions”; in Greece, private law entities (including religious groups) are entitled “to make contracts, to own real property (places of worship, or other), to act as an employer”. In Spain, “if the religious entity is constituted as an association of common law, it can be registered in the National Registry of Associations, with the general legislation regulating said associations being applicable”: therefore such associations “can acquire and possess all types of assets, possessions, and real property” and “act as employers”. No details are provided concerning private corporations in Portugal, apart from the remark that they enjoy the rights “which depend for their exercise on the legal personality”. Generally speaking, it seems that religious groups can perform the basic activities that are needed for their life and development in the countries examined in this report.

b) The possibility of a religious group to become a religious legal entity (according to a particular law on religious organizations)

1. *Constitution of religious entities as religious legal persons*

All the legal systems that have been examined give some religious entities the option to become legal persons (‘associations culturelles’ and

¹ Quotations are taken from the national reports presented at the Höör conference (it is possible they slightly differ from the revised versions published in this volume).

‘cultes statutaires’ in France; recognized religious entities in Greece; ‘cultes reconnus’ according to the 1929 law in Italy; registered religious corporations in Portugal and religious entities in Spain; recognized religions in Cyprus) under a specific law reserved to religious groups and generally more favourable than the common law.

In France, the entities of four religious denominations (Catholic, Jewish, Muslim, and Protestant) are religious legal entities according to the 1905 law (and the entities of three religious denominations – Catholic, Jewish and Protestant – are ‘cultes statutaires’ in the region of Alsace-Moselle). The entities of five religious denominations in Cyprus (Orthodox, Maronite, Armenian, Catholic and Muslim) and of three religious denominations in Greece (Orthodox, Jewish and Muslim) are recognized by law and enjoy a special legal position that is different from that of entities of other religions, which need to organize as private law associations or non-profit-making organizations. The situation in Portugal, Spain and Italy is more complicated. About 30 religious entities have been recognized in Italy according to the 1929 law on ‘admitted cults’, 76 religious groups have been registered as religious corporations in Portugal (law of June 22, 2001) and a much larger number (more than 400) have been registered in Spain according to the 1980 law on religious liberty: in this way they become religious legal persons. But, in these three countries, there are religious entities that can become religious legal entities without the need to be registered or recognized: the entities pertaining to the hierarchical structure of the Catholic Church in Spain and Portugal, and the same entities of the Catholic Church and of the denominations that concluded an agreement with the State in Italy.

2. *How religious entities can become religious legal persons*

There are states that created a specific type of association reserved to religious groups (France), states that opted for a registration system (Portugal and Spain), and states that prefer to recognize religious groups (Cyprus, Greece and Italy). In each case, some requirements have to be met by the group that wants to become a religious legal entity (it is a reasonable condition, given the advantages connected with this legal status). Here I see two problems: the types of requirement and their assessment by the state authorities.

In Cyprus and Greece, religious legal entities are recognized by law. The reports on these countries do not say whether the enacting of the law is conditional to some requirements; moreover, I wonder whether the law

is a completely discretionary act or whether religious denominations have the right to be recognized by law (and so to acquire the status of religious legal entities) if they meet the necessary requirements. In Spain, a registration system is in force: to be registered, a religious entity has to declare that its purposes are religious and its activities do not breach public law and order. Basically the same conditions are required in Italy to get a decree of recognition from the Ministry of the Interior; in Portugal, registration is possible when there is proof of "an organized social presence and a religious practice in the country" and the religious corporation doctrine, personal and patrimonial organization are made known to state authorities. In France, religious entities can constitute as 'associations cultuelles' provided they have "exclusivement pour objet l'exercice d'un culte" and they provide "aux frais, à l'entretien et à l'exercice public d'un culte".

The existence of these requirements is assessed by the public administration, whose judgment is subject to review by the courts in France, Spain and, within certain limits, in Italy. Such review might be more problematic in Greece and Cyprus, where recognition is granted by law.

3. *The advantages of being a religious legal person*

Obtaining the status of a religious legal entity has its advantages; they differ from country to country and therefore they cannot be listed here. However, it is possible to say that, as regards labour law, tax law, financing by the state, respect for internal autonomy, etc., religious legal entities are better placed than the religious groups that operate as common law associations or non-profit-making organizations. Here the main problem is the balance between what is possible for groups that have the status of religious legal entities and for groups that are organized according to common law. If the gap between the two groups is too large, not only equal treatment but also religious freedom can be in danger as, where there is a plurality of denominations, the concept of religious freedom takes on a relative status, in the sense that it can no longer be defined except in terms of correlation between what is granted to the followers of each *communitas*.

c) **A Greek problem?**

The Greek legal system seems to pose a peculiar problem. "All religious entities in Greece, except the established religion, are obliged by law to

request a permit for the foundation and operation of places of worship". This permit is granted provided there is a minimum number of believers (7 people), a designated pastor and "a confession of faith, from which it ensues: (a) that the religious entity is a known religion, meaning that it has no secret doctrines or mystic worship, and (b) that its doctrine does not contradict public order or virtuous morals". These requirements, which limit the activity of religious entities and could infringe on religious liberty, have no equivalents in the legal systems of the other countries, where the foundation and operation of a place of worship is not subjected to particular limitations.

d) **Final remarks**

The legal regulation of religious entities in the southern European countries is based on a two-(or three- or four-)tier system and a mechanism of recognition (or registration). This model has recently become the target of criticism from various quarters and, particularly, from the U.S. political and cultural *milieu*. Personally, I think this way of disciplining religious entities has deep roots in European history and society. At the same time, there is a real need to simplify a system that is very complicated.

The problem does not primarily concern freedom of religious groups but rather their cooperation with the state. Almost without exception, basic freedoms are granted by the laws on associations and non-profit-making organizations that are in force in each country; they give religious groups the fundamental rights required for their operation. But things get really complicated when we come to the upper levels, where states start cooperating with religious groups. Portugal, Italy and Spain provide good examples of such complication. In these countries, we find at the top the Catholic Church (with a concordat), then the religious denominations that have concluded an agreement with the state (Italy and Spain) or have the status of communities settled in the country (Portugal), then the registered (Spain and Portugal) or recognized (Italy) religious entities and finally the groups that are common law associations: a four-tier system where the passage from one level to the next is not always regulated in a predictable and transparent way. Each tier is characterized by its own legal discipline, with different sets of rights and obligations. Simplifying this byzantine structure and making it more transparent to external assessment is the best way to answer criticisms that suggest that the European system is discriminatory.

RICHARD POTZ AND WOLFGANG WIESHAIDER

RELIGIOUS ENTITIES AS LEGAL PERSONS –
PARTS OF WESTERN AND CENTRAL EUROPE (BELGIUM,
GERMANY, IRELAND, LUXEMBOURG, THE NETHERLANDS,
AUSTRIA, THE UNITED KINGDOM OF GREAT BRITAIN AND
NORTHERN IRELAND)

The following text will compare the country reports from Belgium, Germany, Ireland, Luxembourg, the Netherlands, Austria, and the United Kingdom of Great Britain and Northern Ireland and try to systematically categorise the local legal institutions within a broader European scope. The headings are taken from the Consortium's questionnaire distributed among the national reporters to the conference.

1. The constitution of a religious entity

On principle, religious entities may be established in the countries in question without official approval and with no regard to whether their headquarters are situated in the country or outside. The same goes for institutions within religious communities and organisational umbrella structures of religious communities.

However, religious groups do not automatically enjoy legal personality, but may – just like other entities – choose one of the structures for which the legal order provides. These kinds of organisations include general types open to any sort of group as well as special types reserved to religious entities. The organisational possibilities hence range from

- associations without a legal status;
- private voluntary non profit associations; or
- foundations, company structures and the like; to
- legal forms for religious communities *sui generis*.

In addition to this, a hitherto highly hypothetical question has to be raised in this place: the dissolution of religious entities. The rise of new religious movements on the one side and the fear of Islamic extremism and fundamentalism made the legislators propose or introduce provisions for dissolving religious entities. In the Netherlands, a draft law seeks to confirm

that general provisions about the dissolution of legal persons in conjunction with a prohibition declared by a criminal court are applicable to religious entities, too, a claim which has been partly contested in scholarly discussion so far.

a) *Association without Legal Personality*

When a religious entity is organised as an association without a legal status, the entity cannot be considered to be distinct from its members. Hence, the property is jointly held by some or all of its members, legal transactions are carried out on the responsibility of the transactors themselves. Due to the lack of legal personality, this organisational structure is of minor practical importance. Such organisations may be called non registered associations (Germany), unincorporated associations (Ireland), permitted societies (Austria), or the like.

b) *Private Voluntary Non Profit Associations*

In all seven countries religious communities can obtain legal personality as private voluntary associations. These non profit associations are not identified as religious by State authorities. Whenever such associations refer to the freedom of religion, their right to it and their qualification as a religion has to be scrutinised separately in each case by the competent administrative or judicial body.

In countries where special organisational structures are offered to religious communities, the organisational form of private voluntary associations are chosen by communities which either do not fulfil the legal requirements to be recognised or the like, or which do not want too close a relationship with the State. This goes for Germany (where religious communities may associate in all forms of private law organisational structures, but most of them choose the status of a registered association), Luxembourg, the Netherlands, Austria, and the United Kingdom.

Ireland does not recognise any religious communities, nor does it have established Churches, or provide for a special legal status, which is why all communities have to associate under private law as voluntary and unincorporated associations.

Belgium recognises Churches and Religious Societies, but does not automatically confer legal personality on them. That is why even the recognised Churches and Religious Societies must organise as associations or, less usually, in other general forms of private law.

c) *Foundations, Company Structures and the Like*

As for the organisational form of religious communities, kinds of business structures are closely related to the type of private voluntary associations. Both kinds provide for a legal personality which is crucial for the community to become a legal actor distinct from its members. A common structure, especially for Muslim entities is the foundation. Yet, it is astonishing that in some countries religious communities or their charitable, educational institutions or the like organise as companies or trusts for the purpose of holding property or employing personnel. While in Belgium such companies must comply with the rules applicable to companies in general, particularly regarding their profitability, larger British Churches, having organised accordingly, do have many characteristics of a company, but not necessarily all of them. The financial affairs of some Churches are even regulated by Private Acts of Parliament¹ which accommodate the specific needs of the respective Church.

In Ireland the form of a (registered) company was common until 1963 and is still so for some smaller religious communities, such as the Baptist Church.

Trusts are used likewise, sometimes in junction with limited companies. Such a model may be chosen by small British Congregational Churches, on whose behalf the trustees hold the property.

2. Legal forms for religious communities *sui generis*

The legislation of most European countries provides for a particular organisational structure for religious communities. If such a form exists, it will be available to the predominant religious community and a group of other traditional religious communities. Some State legislations enacted laws establishing a second level of organisational structure reserved to religious communities, some parliaments passed bills to individually recognise a religious community or regulate its legal status. Britons would call such laws Private Acts of Parliament.

The conditions for being vested with the status religious of a community *sui generis*, which may be called "Church", "Religious Society" or

¹ See e.g. Calvinistic Methodist or Presbyterian Church of Wales Act, c. xxxvii, 1933, Calvinistic Methodist or Presbyterian Church of Wales (Amendment) Act, c. xix, 1959, Presbyterian Church of England Act, c. xxxii, 1960, Methodist Church Act, c. xxx, 1976, United Reformed Church Act, c. xviii, 1972, United Reformed Church Act, c. xxiv, 1981, United Reformed Church Act, c. ii, 2000, Dawat-e-Hadiyah Act, c. x, 1993.

the like, are often formulated in a general way nowadays. Such general conditions may be aimed at communities to be vested in the future, but sometimes do not really apply to traditionally vested communities. The conditions were reformulated in the late 20th century in the face of new religious movements queuing to apply for recognition and the challenge of growing Muslim communities throughout Europe.

While the State authorities who vest the community with the special status, require strict compliance with the legal requirements for recognition, the legislator seems to be granted a wider margin while still respecting the freedom of religion pursuant to Art. 9 ECHR.

Religious communities primarily opt for such a special legal status, because

- the organisation will hence be labelled religious;
- it encompasses the guaranteed autonomy to freely administer its internal affairs;
- it is most likely linked with additional rights which are not necessarily considered to be the core of the exercise of religion, but very often go together as a result of co-operation between the State and the religious community in coping with societal challenges.

Hence, although the seven States in question seem to have quite unique systems each, they may appear quite similar from a comparative angle.

At present, Belgium offers the status of a recognised religion to six communities: the Catholic Church, the Protestant Church, the Jewish Community, the Anglican Church, the Islamic Community, and the Greek and Russian Orthodox Churches. On the one hand, the Buddhist Community and the Armenian Orthodox Church are currently candidates to be vested with the same status in the near future. On the other hand, Scientology was openly rejected. The status of a recognised religion does however not comprise legal personality. The above mentioned communities had to register as voluntary associations, in order to obtain it.

The German peculiarity is that the specific status of a public law corporation encompasses rights which private corporations do not usually have, for instance the right to State collection of membership fees. While the Catholic Church, the Protestant Church and the Jewish Communities were traditionally vested with this public law status, it may be granted, according to the Constitution, to other religious communities, provided there is a certain permanence regarding their statutes and the number of their members.

In Luxembourg recognition of religious communities is achieved by means of contract laid down in the Constitution. Despite the general

wording of the corresponding provision, both legislation and administration agreed on informal conditions with which religious communities must comply, in order to gain contractual recognition. To date, such conditions were met by the Catholic Church, the Protestant Church, the Greek Orthodox Church, and the Jewish Community. The contractual recognition results in a public law status.

The Dutch Civil Code provides for the specific status of a Church Society, furthermore for “independent units of a Church”, and “structures in which churches are united”. Although the word “church” suggests a Christian entity, the form is principally open to any kind of religion. The Code does not stipulate any requirements to have a Church Society established. General provisions concerning legal entities tend to be applied analogously.

In Austria, religious communities traditionally had public law status, regardless of the way they had been recognised: traditionally, by ordinance, or exceptionally by Act of Parliament. Such, currently thirteen communities are called legally recognised Churches and Religious Societies. Recent legislation introduced a second organisational structure particularly meant for religious communities, this time a private law status. Such, currently ten communities are called state-registered Denominational Communities. In one go, the conditions for being legally recognised were tightened to an extent actually rendering impossible a further recognition. After this shift of paradigm, only the Coptic Orthodox Church was legally recognised by Act of Parliament.

The most distinct status may be found in the United Kingdom of Great Britain and Northern Ireland with the Established Churches. While the Church of England can be perceived from a certain angle as part of the State, the Church of Scotland is completely autonomous, this status being guaranteed by a special Act of Parliament. Neither Church is a legal entity – at least this is doubtful in the case of the Church of Scotland – English parochial church councils have corporate personalities, though. Somewhat similar to Austrian Acts of Parliament regulating the status of one specific religious community, the status of British religious communities, regardless of size and age, may also be settled by a Private Act of Parliament².

In Ireland there is no special status at all, despite the explicit constitutional reference to Christianity.

To sum up, formal recognition does not necessarily entail legal personality. Recognition and a specific even public law status is a traditional

² See above note 1.

way of acknowledging the societal importance of a religious community. The free exercise of religion is not strictly linked to recognition, which mostly implies additional legal or societal advantages for the recognised communities then again.

3. Religious communities and federalism

Among the seven countries in question, Belgium, Germany, Austria, and the United Kingdom have a federal system. Law of religion is however only affected in Belgium, Germany, and the United Kingdom. In Belgium, the competence for determining the conditions for obtaining legal personality remain a federal matter, though.

4. The registration of ecclesiastical and charitable institutions, and places of worship

In the countries in question, there is no all inclusive register of religious institutions. The State generally keeps registers for the different types of bodies corporate, i.e. the aforementioned voluntary associations, foundations, companies, trusts, and the various kinds of religious communities. Religious entities, the recognition of which is pronounced on the grounds of (Private) Acts of Parliament, of ordinances, or of separate contracts, do not register specifically as such. If subordinated ecclesiastical, charitable or similar institutions are organised as associations or other general kinds of bodies corporate, they register as such. This is the case for Belgium, Germany, Luxembourg, and Austria.

In the United Kingdom and in Ireland, religious communities themselves may register as charities because of tax advantages. Currently under discussion is a requirement for religious communities to do more than merely advance religion, i.e. provide an additional public benefit, in order to be considered charitable. This charitable status is additional to the status as a body corporate.

5. The legal requirements for recognition

As types of organisational structures vary, so do requirements for registration. There are some entities for the establishment of which (be it a registration or a recognition) the law does not stipulate a single requirement, as for instance the Dutch Church Society. And there are some entities for whose establishment the law enumerates a detailed set of conditions, as

for instance the Austrian legally recognised Churches and Religious Societies after the shift of paradigm a few years ago.

A third group deserves particular attention. Hitherto traditional forms of associations for religious communities were regulated only by Constitution or a very generally formulated law. Due to the formation of additional religious groups and movements, the States had to open these structures to possible new candidates. Additional criteria were introduced; not always directly by legislation, but also indirectly by administrative practice. As an extreme example Luxembourg may serve. Its government and parliament informally agreed on the following criteria:

- the religion must be dispersed throughout the world;
- it must be officially recognised by at least one further Member State of the European Union, before having applied for recognition in Luxembourg;
- it must respect Luxembourg's public order;
- it must be historically grounded in Luxembourg;
- it must have sufficient members in Luxembourg.

Such practice aims at excluding further recognitions especially of new religious movements, and at maintaining a somewhat historical status quo of society on the legal level.

Thus, law of registration and recognition presents itself as a kind of formally stable instrument to preserve traditional positions of long-term active religions in a given country, only slowly opening the way for further minorities to be vested with the same position offering additional rights. Nowadays, some of these specific legal advantages depend on the co-operational spirit in civil society.

A certain, but smaller number of members, a constitution, and a doctrine is often required with basic registrations, resulting in corporate bodies of private law enjoying the collective aspects of religious freedom, but (almost) no additional rights. As an example the state-registered Denominational Communities in Austria may serve.

6. The advantages of becoming recognised as a religious entity

One general advantage of being legally identified as a religious entity is that the competent State authority has officially scrutinised the entity's character as a religion. As aforementioned, additional rights are sometimes linked to a superior grade of recognition, as for instance to the religious communities being public law corporations in Germany or Austria.

The following paragraphs will discuss single legal advantages and compare the seven countries in question.

a) *Tax Provisions*

Tax advantages do not belong to the core of religious freedom. On the basis of equal treatment, they may however be granted to religious communities. Whereas some States connect these specific rights with the status as a religious community itself, others require an (additional) charitable status, such as Ireland and the United Kingdom. The Austrian two level system connects tax advantages with legally recognised Churches and Religious Societies, while private law state-registered Denominational Communities are treated differently.

A German particularity is the Church Tax, which is collected by the State based on civil tax lists for the public law religious communities.

b) *The Right to Officiate at Marriages with Civil Effects*

The right to officiate at marriages with civil effects is granted to recognised religious communities in Ireland and the United Kingdom. A special corresponding registration to solemnise marriages is necessary, namely in England, Wales, and Ireland of buildings, in Scotland of persons. The Irish situation will change in 2006, from when on religious bodies may nominate and have specially registered solemnisers of marriages.

Among the States who do not link civil effects to religious marriages, Belgium, Germany, Luxembourg, and the Netherlands require the civil marriages to be concluded before a religious marriage, while Austria is indifferent towards religious marriages and towards whether they are concluded before, after or without a civil marriage.

c) *State Contributions to Religious Communities*

The States contribute to the finances of recognised religious communities. Subsidies can be divided into two major categories:

- primary subsidies on the grounds of religious activities in religious premises, as for instance remunerations to ministers, or to chaplains in the army *mutatis mutandis*.
- subsidies under primarily non-religious titles, such as for instance subsidies for the renovation of historical monuments, which can be

profane or ecclesiastical, of course, or for the running cost of hospitals.

States which do not subsidise religious communities under primarily religious titles, will still do so under general titles, such as Ireland, the Netherlands, or the United Kingdom.

Germany does not directly subsidise religious activities on the one hand, but the aforementioned Church Tax is a major civil administrative tool for the public law religious communities to raise their funds.

The other States in question subsidise religious communities in both forms. These subsidies are limited to recognised communities – in Austria on the public law level only.

Belgium pays moderate salaries to the ministers of a governmentally approved parish or bishopric. The municipalities bear the deficits incurred by ecclesiastical administrations of temporal goods. They, or the provinces, care for an appropriate housing for ministers.

Luxembourg's ministers are remunerated by the State. Despite the restriction to recognised religion, the construction of a church of the Russian Orthodox Church, which has not concluded a contract with the State, was subsidised by the municipality of Luxembourg.

Austria pays for the salaries of teachers of religion. Other direct payments are indemnifications for property losses during the Nazi era. Such compensations are paid exclusively to the Catholic Church, the Protestant Church, the Old Catholic Church and the Jewish Community.

d) *Exemptions from Labour Law*

A special labour law status is generally granted to the pastoral minister's office. In addition, employees in religiously sensitive working places, such as teachers of religion, may be expected to conform to the community's doctrine and to live according to its code of conduct. This goes more for labour law, less for social security law, where ministers, too, are more likely to be considered employees without distinction to other employees, as the Dutch developments clearly show regarding both Muslim imams and Christian clergy.

The specific ideological character of a religious community is accommodated by collective labour law, too. It does not apply insofar as it conflicts with the genuine religious purposes of the community.

A German particularity which comes with the public law status of religious communities, is that such communities are entitled to employ civil servants whose labour relations are of public law nature.

e) *Special Burial-Grounds*

It is usual for cemeteries to belong to the State or the municipality on the one side or to the predominant religious community on the other side. In addition, there may be Protestant grave yards in Catholic countries and vice versa. And there are separate Jewish cemeteries, due both to the long Jewish tradition in Europe and to the different legal rules respecting their eternal status. With the growing Islamic communities, Muslim cemeteries are established or their establishment is at least under discussion. The right to own a proper burial ground may, however, be connected to a recognised (superior) status.

f) *The Recognition of the Internal Dispute Resolution System*

Internal dispute resolution of religious communities may be set up according to the State arbitration rules, similar to commercial arbitration for instance. The Dutch practice shows a partial inconsistency in the State courts' rulings about this issue.

7. Statistics

Statistics are not always officially collected. This is the case for the Benelux. The other countries in question generally count religious affiliation with the census, whereby an answer to the query is not obligatory. As an exception, the United Kingdom lists only religions, but not affiliations to denominations.

8. Particular issues of contract law

Religious communities may legally act in any domain, if they just enjoy one of the aforementioned legal statuses. They, hence, sign contracts, own real estate and act as employers.

Still, some particularities exist in regard to their transactions. The Austrian Civil Code equates legally recognised ecclesiastical bodies to municipalities in contract law. Consequently, a contract can be void if concluded without consent of the competent ecclesiastical authorities. A similar issue exists in the Netherlands. Due to the specific status of the Church of England, a Parochial Church Council can hold and sell land only in conjunction with the Diocesan Board of Finance.

The German public law status enables the religious communities concerned to create public ecclesiastical property, to which the public law of the State applies.

BRIGITTE SCHINKELE

RELIGIOUS ENTITIES AS LEGAL PERSONS – AUSTRIA

I. Three Categories of Religious Communities

In Austria there exist three categories of religious communities:¹

1. 'Legally recognized churches and religious societies' with public law status²
2. 'State-registered religious communities' with legal entity under private law according to a special law on religious associations³
3. Religious communities with legal entity under private law on the basis of the general Law on Associations.⁴

In theory, there is also the possibility to found a 'permissible society' (*erlaubte Gesellschaft*) according to §26 ABGB (*Allgemeines Bürgerliches Gesetzbuch*) without any state involvement. However, apart from the fact that this possibility is not of any practical importance, the acquisition of legal entity is not undisputed.

The law concerning the legal status of religious communities falls within the federation's legislative and administrative power. That is the

¹ According to the 2001 Census the religious and denominational structure of the population of Austria presents the following picture: Roman Catholic 73.66 %, Protestant 4.68 %, Islamic 4.30 %, Orthodox 2.17 %, Old Catholic 0.18 %, Buddhist 0.13 %, Jewish 0.10 %, Oriental-Orthodox 0.06 %, New Apostolic 0.05 %, Pentecostal 0.09 %, Evangelical 0.06 %, Seventh Day Adventist 0.05 %, Jehovah's Witnesses 0.29 %, belonging to no denomination 11.99 %.

² Catholic Church, Protestant Church, Greek Oriental Churches, Oriental Orthodox Churches (Armenian Orthodox Church, Syrian Orthodox Church, Coptic Orthodox Church), Jewish Religious Community, Islamic Religious Community, Old Catholic Church, Evangelic Methodist Church, Mormons, New Apostolic Church, Buddhist Religious Community.

³ Registered religious communities are: Bahá'i Religion, Federation of Baptist Communities in Austria, Federation of Evangelic Communities, Christian Community – Movement for religious Revival in Austria, Free Christian Community/Pentecostal Community, Hindu Mandir Society, Jehovah's Witnesses, Church of Seventh Day Adventists, Mennonite Free Church of Austria, Pentecostal Church Community of God in Austria.

⁴ It is to be assumed that all religious communities operating within the federal territory, which are neither legally recognized nor registered, are organized on the basis of the Law on Associations.

reason why there are no differences between the individual Federal States (*Bundesstaaten*).

I.1. *Legally recognized churches and religious societies*

Legally recognized churches and religious societies are recognized by means of a *ministerial ordinance* according to the Recognition Act 1874 or – as an exception – by a *special Act*⁵ respectively (Islam 1912, Oriental Orthodox Churches 2003). The constitutional basis of these religious communities is laid down in Article 15 StGG (Constitutional Act on the Fundamental Rights of Citizens, *Staatsgrundgesetz*): “Every Church and religious Society recognized by law has the right to order and administer its internal affairs independently,... but is like every society subject to the general laws of the State”. The right of self-determination, as it is encompassed there, implies the status of an incorporated body under public law (corporations *sui generis*). They are generally included whenever state legislation relates to corporations under public law, except where the law explicitly excludes them.

The provisions concerning churches and religious societies legally recognized according to the Recognition Act 1874 are to be found there. The law on religion regarding the ‘*historically recognized*’ churches and religious communities has been developed by way of special laws (*Concordat between the Holy See and the Austrian Republic 1933, Protestantengesetz 1961, Orthodoxengesetz 1967, Israelitengesetz 1890*).

Of course the system of special laws for several recognized churches and religious communities causes the danger of distortion. Actually there seem to be some disparities, which mainly have historical causes. Therefore, it has to be examined in each case whether a different regulation is in accordance with the principle of substantive parity.

As far as the *preconditions for recognition* are concerned, pursuant to Section 1 *Anerkennungsgesetz*, adherents of a hitherto not legally recognized faith are granted recognition as a religious community provided that the following conditions are met: (1) that their religious doctrine, forms of worship, statutes and chosen name do not contain anything illegal or morally offensive; and (2) that the establishment and the

⁵ Especially Islam according to *Islamgesetz 1912* and the Oriental-Orthodox Churches (2003).

continued existence of at least one religious community, fulfilling the requirements of this law, is guaranteed.

Provisions concerning the inner structure of the religious communities, the appointment of the board members and their sphere of competence must be included in the Constitution or Statutes respectively. The members of the board and the authorized representatives are to be announced formally with the administrative body.

By means of the Law concerning the legal personality of religious communities 1998 (*BekGG*), comprising an amendment to the Recognition Act 1874, supplementary preconditions for recognition were decreed, so that the law renders the conditions for the public law status more difficult. One of the most problematic regulations of this amendment is Section 11 (1) Nr 2 *BekGG*, which requires a number of followers equal to at least 2/1000 of the population of Austria according to the most recent census. For the future, this additional precondition almost amounts to a *de facto* abolition of the legal institute of recognition.

Further preconditions are: a ten-year period of existence as a registered religious community (cf. I.2.); use of income and assets for religious purposes; a positive attitude to the society and the State; no illegal disturbance of relations with existing legally recognized churches and religious societies or any other religious communities.

Another problematic regulation (Section 11 (2)) includes the retroactive force of the *BekGG* for those religious communities that have filed their application for recognition before the *BekGG* was brought into force. In connection with the precondition just mentioned, these communities are excluded from being legally recognized even after the ten-year period had passed, in fact – which must be accentuated – owing to arbitrary acts of the competent administrative body (cf. VfSlg 15.124/1998).

Since 1988, the Constitutional Court has acknowledged a legally enforceable right to be recognized. In the event of non-recognition, an appeal can be lodged with the High Administrative Court. However, with regard to the number of followers demanded according to Section 11 (1) Nr 2 *BekGG*, this enforceable claim is almost completely undermined. This situation is in contradiction to the fundamental right of freedom of religion as well as the principle of equality. However, the Constitutional Court does not share this opinion, deviating from its established case law concerning the ‘constitution principle of confidence’ without giving convincing reasons (VfSlg 16131/2001).

I.2. Officially registered religious communities

The *BekGG* created the legal basis for religious communities to obtain legal entity without giving them at the same time the status of a public law corporation. Registered religious communities have legal personality under private law and therefore do not enjoy the 'privileges' granted by law to legally recognized churches and religious societies. This law does not apply to philosophical communities (*Weltanschauungsgemeinschaften*).

The applicant must prove that at least 300 followers residing in Austria belong to the religious community and that they do not belong to another religious community with legal personality or legally recognized church or religious society respectively. This number seems to be too high, especially with regard to New Religious Movements. The application must include statutes (comprising board and representing bodies) as well as supplementary materials showing the content and practice of the religious community concerned.

The administrative body is obliged to deny acquisition of legal personality, if this is necessary with regard to the doctrine or its practice for the protection of the interests of public safety, public order, health and morals or the protection of the rights and freedoms of others in a democratic society (Article 9 (2) ECHR); especially in respect of incitement to commit an illegal punishable action, of preventing the psychological development of young adults, damaging psychological integrity and using psychotherapeutic methods, especially for the purposes of winning converts.

Registration implies a qualification as a *religious* community and a sort of 'seal of approval', which has legal relevance whenever the legal order draws consequences from the fact of being a religious community and not from the status of legal recognition (for instance the Law regulating public meetings or penal law protection). However, the legal position of registered religious communities is quite different from that of the legally recognized churches and religious societies (cf. I.3.).

I.3. Differentiation between the two categories of religious communities and its impact on the individual believer

The differentiation between legally recognized and non-recognized religious communities is constitutionally laid down in Article 15 StGG (cf. I.1.). However, legal consequences of the public law status provided for in the 'ordinary law' can only be legitimate if there are reasonable prerequisites for recognition and if there is an enforceable claim to gain

recognition for those who comply with the legal preconditions. However, owing to the supplementary preconditions for recognition (cf. I.1.) this legal claim is almost completely undermined (VfSlg 9185/1981, VfSlg 11.931/1988).

The most important fields of law containing different regulations for both categories of religious communities are the right of self-determination (Article 15 StGG, I.1.), subsidising private denominational schools, religious instruction classes, revenue law, labour law (cf. III.), personal status, military and non-military service and exemptions concerning employment of foreigners. These considerable differences between the two categories of religious groups in various legal spheres do have remarkable consequences for the individual adherent of a religious community as well.

Therefore this system can only be justified if there were no differentiation between the legal status of religious communities as far as legal positions are concerned, which directly derive from the fundamental right of religious freedom. Consequently, the whole legal system has to be scrutinized whether the consequences emanating from the fact of being legally recognized can be deemed legitimate from that point of view. Thereby the principle of equality serves as a special measure. The differentiations provided for by the legal order have to be justified on objective and reasonable grounds; otherwise they represent non-objective infringements of the fundamental rights' guarantees and have to be abolished.

Unfortunately, for the time being, neither the legislature nor the High Courts seem to be prepared to interpret the laws concerned in a dynamic way due to a substantive comprehension of fundamental rights. Therefore, this question is nowadays the most crucial issue of the Austrian law on religion (cf. I.1.).

I.4. Non-profit-making Associations

Non-profit-making (ideological) associations are voluntary organizations of at least two persons set up for a long period of time on the basis of statutes pursuing certain non-profit-making purposes (Section 1 (1) Act on Associations 2002). According to 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. From that it is made clear that religious communities can also obtain legal personality under private law on the basis of the Act on Associations 2002, which was not possible (or at least not undisputed) under the previous law.

Religious communities will refer to this possibility if they do not fulfil the conditions for legal recognition or state-registration, or if legal entity under public law is not in concordance with their self-understanding. These organizations enjoy equal status with other private associations. Contrary to the categories of 'recognized' religious communities in a broader sense – comprising legally recognized and state-registered religious communities – non-profit-making associations are not identified by state bodies as being 'religious'. Therefore, if they want legal consequences to be drawn from this qualification, it has to be examined by the responsible administrative or judicial body in each case.

I.5. *Associations with partly religious functions*

Apart from this, every religious community independent of its legal status has the ability to found associations with partly religious functions (*religiöse Hilfsvereine*), primarily relevant to the social and charitable activities of religious communities. According to the revenue law benefits (reductions or exemptions) are attributed, beyond 'ecclesiastical' aims, to public utility and charitable purposes.

As far as legally recognized churches and religious societies are concerned, the right to self-determination is not only conferred on a church or religious society itself but also on its institutions which are in any way connected with it regardless of how this link is legally framed.

II. Contractual capacity of ecclesiastical legal entities

Religious entities are capable of owning real property (church buildings and other assets) and taking part in the ordinary course of legal transactions in the same way as other legal entities without any restrictions. However, there is a specific Austrian problem arising from Section 867 *Allgemeines Bürgerliches Gesetzbuch* (ABGB), which – according to the Supreme Court's case law – amounts to a 'privilege' (in practice for the Catholic Church). According to Section 867 ABGB, "presuppositions for validity of contracts with communities upon those the special providence of the public administration is conferred are determined by their constitutions or the political laws". This provision is to be seen in connection with Article XIII Concordat between the Holy See and the Austrian Republic 1933, which refers to canon law on the one hand and comprises – deviating from canon law – special norms on the power of representation concerning religious orders on the other.

On the basis of this legal situation, one can ask how far bodies appointed to represent ecclesiastical legal entities can be limited in their power to act and how far rights of assent provided for in canon law, especially in statutes of religious orders and in other particulars norms, are necessary preconditions for the validity of contracts.

Pursuant to the unchanged Supreme Court's case law – criticized by the doctrine – ecclesiastical legal entities are to be subsumed under the term 'communities' in the sense of Section 867 ABGB, equal to municipalities. The ensuing insufficiency of their power to act could render a legal transaction void if it has been concluded without the explicit notices of assent of the competent authorities. A 'confidence in the external matter of fact' (*Vertrauen in den äußeren Tatbestand*) does not come into consideration. According to the merits of the case, this Supreme Court practice can have bad consequences for parties contracting with ecclesiastical legal entities, especially with regard to statutes of religious orders that are not promulgated and are regularly unavailable or are only available on making a great effort. Briefly described, this situation raises many intrinsic legal problems that, up to now, have not been settled.

III. Religious Communities as employers

Church employment is part of the 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 (*lex contractus*). This law can be modified within optional law and even compulsory labour law is to be interpreted in the light of the right of self-determination (Article 15 StGG). There exists a special allegiance of the employees regarding acceptance of the doctrine and teaching of the church or religious societies and an appropriate way of life, relating to the specific task of the employee in question on the one hand and to the church's spiritual mandate on the other.

The Law concerning employees' representation and co-determination in business and industry (*Arbeitsverfassungsgesetz, ArbVG*) takes into account the 'internal affairs' of legally recognized churches and religious societies by implementing a 'consideration clause' (*Tendenzschutz*). According to Section 132 (4) *ArbVG*, the provisions on the organization of industrial relations are not applicable to businesses and enterprises that serve the denominational purposes of a recognized church or religious society insofar as these regulations are in conflict with the specific nature

of the business or enterprise emanating from the true mandate of the community concerned. This has to be examined in each case. The wording of the legal regulation infers that the legal framing of the connection does not matter. Moreover, provisions on company agreements in certain matters and some further provisions are not applicable in any case to enterprises and administrative organizations charged with managing the internal affairs of churches and legally recognized religious societies.

As far as the other religious communities are concerned, a certain *Tendenzschutz* is also provided for (Section 132 (1) *ArbVG*), although not so far reaching, which is to be disputed from a constitutional point of view (cf. I.3.).

RIK TORFS

RELIGIOUS ENTITIES AS LEGAL PERSONS – BELGIUM

Constitution of a religious entity

The constitution of a church or a religious denomination in Belgium does not require any approval by the government.

Religious groups do not automatically enjoy legal personality. This is true for all of them, including the Roman Catholic Church, which is the largest. In order to obtain legal personality and to participate actively in legal life, religious groups need to organize themselves as an association. The ideal form is a V.Z.W./A.S.B.L. (Vereniging zonder winstoogmerk/Association sans but lucrative), a legal form existing since 1921¹.

In theory, religious groups are not forbidden to use other legal forms in order to participate in legal life. The formula of a company can be chosen, as long as all requirements (including a profit, and not a non-profit orientation) are fulfilled. No differences exist between long-established and emerging religious entities.

Regionalization has affected religion since the law of 13 July 2001. From then on, the regions (and not the federal state) have been responsible for the material organization of the recognized religions. This gradual evolution towards greater competence for the regions does not affect the requirements and conditions for obtaining legal personality, which remains a federal matter.

Registration of a religious entity

No registration requirements exist in Belgium. What exists, however, is the status of *recognized religion (culte reconnu)*.

The main basis for such recognition is the social value of the religion as a service to the population². Currently, six denominations enjoy this

¹ Article 4 of the Law of 13 July 2001, *Moniteur Belge*, 3 August 2001.

² For the concrete criteria with regard to recognition, see *Questions and Answers*, Chamber, 1999-2000, 4th September 2000, 5120, (Question no. 44, Borginon); *Questions and Answers*, Chamber, 1996-1997, 4th July 1997, 12970 (Question no. 631, Borginon). The religious group should be: (a) considerably large; (b) well structured; (c) present in

status: Catholicism, Protestantism, Judaism, Anglicanism (Law of 4 March 1870 on the organization of the temporal needs of religions)³, Islam (Law of 19 July 1974 amending the said law of 1870) and the (Greek and Russian) Orthodox Church (Law of 17 April 1985 amending the same law of 1870). Buddhism and the Armenian Orthodox Church, as the Minister of Justice Laurette Onckelinx said in 2005, will be invited for discussions possibly leading to recognition. Scientology has been openly rejected as a possible candidate by the same minister.

A change to the Constitution on 5 June 1993⁴ specified that groups of non-believing humanists⁵ were also to be financed⁶.

Apart from the modest salaries (foreseen by Article 181 of the Constitution) for the ministers of religion of a government-approved parish or bishopric⁷ provided in the State budget, recognition also entails a few other benefits for the religions concerned. Legal personality is attributed to the ecclesiastical administrations responsible for the temporal needs of the Church⁸. The Church and church structures themselves do not enjoy any legal personality. A striking point also is the fact that deficits incurred by ecclesiastical administrations for temporal goods must be paid for by the municipalities. This escape route does not always encourage proper responsibility on the part of the administrations⁹.

the country for some decades; (d) socially important; and (e) free of any action threatening social order.

³ This law is not the only source. The recognition of Catholicism is a direct result of the Concordat of 1801, confirmed by the law of 18th Germinal X (8th April 1802). Protestantism also obtained recognition as a result of the law of 18th Germinal X, whereas Judaism found its recognition through the decrees of 17th March 1808. Finally, Anglicanism obtained recognition through the decrees of 18th and 24th April 1835. All this was confirmed by the law of 4th March 1870.

⁴ For an overview of the evolution leading to the change of the Constitution, see J.-P. MARTIN, "La Belgique: de l'affrontement laïques-confessionnels au pluralisme institutionnel", in J. BAUBEROT (ed.), *Religions et laïcité dans l'Europe des Douze*, Paris, Syros, 1994, 29-39.

⁵ Their representative bodies are the Centrale Vrijzinnige Raad/Conseil Central Laïque.

⁶ For an overview of all the financial consequences, see P. De Pooter, *De rechtspositie van erkende erediensten en levensbeschouwingen in Staat en maatschappij*, Brussels, Larcier, 2003, 207-214.

⁷ Around 1,000 euros a month for a catholic pastor.

⁸ The legal basis for these 'kerkfabrieken'/'fabriques d'églises' was for a long time constituted by the Imperial Decree of 20th December 1809 and by the Law of 4th March 1870, *Moniteur belge*, 8th March 1870. After the regionalization of the topic, a new Flemish decree is expected soon. For possible evolutions, see F. AMEZ, "Un aspect oublié de la réforme de l'État: le régime des cultes", *Journal des Tribunaux*, 2002, 509-537.

⁹ In Wallonia, the municipalities spend 1.2 % of their average expenditure on religion, cf. R. COLLINET, "À propos des fabriques d'églises, des secours communaux et de quelques

Another advantage is that the Church may request state subsidies for the construction or renovation of its buildings¹⁰.

Pastors and bishops must be given appropriate¹¹ housing and any expenditure for this purpose is chargeable to the municipalities or provinces. Furthermore, recognized religions get free public radio and television broadcasting time¹². Finally, religions may appoint army and prison chaplains, whose salaries are borne by the State budget¹³.

As *registration* is not necessary, there are no further conditions to cope with. For obtaining *recognition*, statistics are important. There should be 'enough' members: probably 'some tens of thousands'. Yet no formal requirements exist. All norms are unwritten. They are just informal guidelines inspiring and steering administrative praxis.

No formal provisions are required. No bylaws should be submitted, as no registration is needed. With regard to recognized religions, no formal leadership is required either. However, in case recognized religions want to benefit from all the advantages that religious groups usually enjoy, including the payment of ministers, it is important to have a credible interlocutor with the State. Hierarchical structures are helpful in that regard. Consequently, the Catholic Church has always been in an easier position than the Protestants.

No statistics are available with regard to the number of associations with a religious goal or origin. Yet there are many, as Catholic schools and hospitals are very prominently present in the Belgian education and healthcare environments.

A Religious Entity in Contractual Relationship

In order to be part of a contractual relationship, a religious group needs to constitute itself as a legal person. If it does not do so, the physical persons who act in the name of the religious group bind themselves and remain personally liable.

subsidies", in *Le Semeur sorti pour semer. Grand Séminaire de Liège 1592-1992*, Liège-Bressoux, Éditions Dricot, 1992, 407.

¹⁰ The legal sources are: Article 92, 3° of the Imperial Decree of 30th December 1809; the law of 4th March 1870 (*Moniteur belge*, 9th March 1870) and the law of 7th August 1931 (*Moniteur belge*, 5th September 1931), as well as the Royal Decree of 2nd July 1949 and 1st July 1952.

¹¹ 'Appropriate' means: in accordance with his social status. See e.g. Council of State, 2nd April 1953, *Rechtskundig Weekblad*, 1952-1953, 1691.

¹² See E. HENAU, *God op de buis. Over religieuze uitzendingen in de openbare omroep*, Leuven, Davidsfonds, 1993, 112 p.

¹³ *Pandectes belges*, Aumônerie, Aumôniers, no. 1-16.

Ownership of real estate is related to an organization being a legal person. Legal persons can acquire real estate. Both a physical and a legal person can be an employer.

No specific restrictions on religious entities exist.

ACHILLES EMILIANIDES

RELIGIOUS ENTITIES AS LEGAL PERSONS – CYPRUS

I. Introduction

The 1914 Charter of the Orthodox Church of Cyprus was drafted and put into effect by the Church itself, without the intervention of the British authorities¹. It lasted for 66 years, until the enactment of the 1980 Charter, which is still in force. According to Article 94 of the 1914 Charter, the Church of Cyprus was established as a legal entity, but it did not further determine its nature. It is safe to assume, however, that the Church considered itself to be a legal entity under private law². The Charter was never vested with state authority, nor was the Church subjected to control by the state, which ought to have happened, if the Church had been regarded as a legal entity under public law.

Acts of the Church that were of a legislative and administrative nature, the decisions issued by ecclesiastical courts on any subject and marriages celebrated only in a church ceremony, were recognized by the state administration and justice, as a result of the competencies granted by the Imperial rescript, Hatt – i – Humayun (1856) to the Churches and religious authorities of Cyprus during Ottoman rule. The aforementioned state of affairs, which was established by the Hatt – i – Humayun, was preserved by Great Britain after it acquired the rights of possession and administration of Cyprus by signing the 1878 Treaty of Alliance with the Ottoman Empire³. It would also seem that all other recognized Christian or Jewish religions were also considered to be legal entities under private law.

It should be observed that since 1974, the Republic of Turkey occupies the northern part of the island with its armed forces and therefore the

¹ Charter of the Orthodox Church of Cyprus, Nicosia, 1914 (in Greek), ALIVISATOS, H., 'Die Kirchenordnung der Autocephalen Kirche von Cypem' (1964) 35 *Theologie*, σ. 529-541.

² Also PAPANATHIS, C., *On the Administrative Organization of the Church of Cyprus*, Thessaloniki, 1981 (in Greek).

³ *Parapano and Others v. Happaz* (1893) 3 *Cyprus Law Reports* 69, *Tano v. Tano* (1910) 9 *Cyprus Law Reports* 94. See also the observations of SERGHIDES, G., *Internal and External Conflict of Laws in Regard to Family Relations in Cyprus*, *Studies in Cyprus Law*, Nicosia, 1988, p. 32ff.

Republic of Cyprus is prevented from exercising its powers over the occupied territory. There is little data concerning recognition of the 'legal status' of religions in the occupied territories, since any acts of the 'Turkish Republic of Northern Cyprus' are not recognized by either the Republic of Cyprus or the international community.

II. The Legal Status of the Five Constitutionally Recognized Religions

The current Charter of the Orthodox Church does not contain a provision similar to Article 94 of the pre-existing Charter, with regard to the Orthodox Church per se; however, it contains a similar provision with regard to particular ecclesiastical corporations, namely, metropolises (Article 153), parish churches (Articles 80, §3 and 160), monasteries (Article 184), collective bodies of administration of Church property (Article 210) and a number of Church-run charitable foundations (Article 190). It is indisputable, however, that the Orthodox Church remains a legal entity, since the pre-existing Charter maintained its force twenty years after the coming into operation of the Constitution and the institutional status of the Orthodox Church is determined by Article 110, §1 of the Constitution, which provides that the Autocephalous Greek Orthodox Church of Cyprus shall continue to have the exclusive right of regulating and administering its own internal affairs and property in accordance with the Holy Canons and its Charter in force for the time being⁴.

A more difficult question was whether the Orthodox Church should be properly viewed as a legal person under private law, or under public law. According to one view, the Orthodox Church ought to be viewed as a legal person under public law, due to the fact that the Constitution conferred upon it powers, that appertain to the state, especially with regard to the implementation of its religious law on institutions of family law and to the adjudication of the relevant disputes by the appropriate religious tribunals, prior to the First Amendment of the Constitution in 1989.

Following the First Amendment of the Constitution, the family matters that were under the jurisdiction of the ecclesiastical courts of the Orthodox Church came under the jurisdiction of the family courts. It would perhaps be even more accurate to characterize the Orthodox Church as a legal person of unique and peculiar nature to which the Constitution

explicitly conferred powers that appertain to the state. Therefore, it was suggested that the Orthodox Church should be regarded as an 'authority' of the Republic in the sense of Article 139 of the Constitution⁵. 'Organs' or 'authorities' in the sense of Article 139 means specific juridical creations, bearing the features of individual and concrete organic institutions of Government and functioning for, and on behalf of, a primary legal entity, such as the Republic of Cyprus⁶.

However, the majority of the Supreme Court of Cyprus held that the Orthodox Church was not an authority of the Republic of Cyprus, since it did not function as a governmental body or organ, nor did it exercise any state powers, nor was it subject to the control of the state. It was, therefore, held that the competences of the Orthodox Church with regard to family matters of its members should not be considered to be powers that appertain to the state and that the Orthodox Church should be considered to be a peculiar legal person under private law⁷.

The above judgment of the majority of the Supreme Court seems to be highly problematic with regard to the period prior to the First Amendment of the Constitution in 1989, since the aforementioned competence of the Orthodox Church with regard to family matters were taken out of the competence of the Greek Communal Chamber, which is considered to be an 'authority' of the Republic in the sense of Article 139 of the Constitution. In addition, the execution of the decisions of the ecclesiastical courts should be carried out, according to Article 111 §2 of the Constitution, by the public authorities of the Republic. It is highly unlikely that the Constitution would provide that the public authorities of the Republic should carry out the execution of the decisions of a legal person under private law.

Since the Orthodox Church's legislative and judicial competence with regard to family matters is now exercised by the House of Representatives (with the exception of laws regarding validity of marriages celebrated in the Greek Orthodox Church) and the family courts, it is suggested that there is no real possibility that the Supreme Court would change its view in the future with regard to the legal status of the Orthodox Church. Thus, the Orthodox Church of Cyprus should be properly considered as a peculiar legal person under private law.

⁵ PAPANATHAS, C., 'The Power of the Church to Have Recourse in the Supreme Court under Article 139' (1990) 34 Review of Public Law and Administrative Law, p. 321-325 (in Greek).

⁶ *Fuat Celaledin and Others v. The Council of Ministers* 5 RSCC 102.

⁷ *Autocephalous Orthodox Church of Cyprus v. The House of Representatives* [1990] 3 CLR 338 (in Greek).

⁴ PAPANATHAS, On the Administrative Organisation, n. 2 above, p. 37.

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 with regard to the three constitutionally recognized religious groups of the Republic, namely, the Maronites, the Armenians and the Roman Catholics. This is due to the fact that all the aforementioned rights of the Orthodox Church are also granted to the three religious groups, according to Articles 110 §3 and 111 §1 of the Constitution. The view suggested above is in line with the principles of the system of coordination, as applied in the Republic of Cyprus⁸. Therefore, the three religious groups of the Republic should also be properly considered as peculiar legal persons under private law.

It is further suggested that the same legal status should also be accorded to the Islamic religion, since Article 110 §2 of the Constitution recognizes the institution of Vakf and the principles and laws of Vakfs and stipulates that all matters relating to, or in any way affecting the institution or foundation of Vakfs or any Vakf properties, including properties belonging to mosques and any other Moslem religious institution, shall be governed solely by the laws and principles of Vakfs and the laws and regulations enacted or made by the Turkish Communal Chamber. Therefore, the Vakfs should be considered as legal persons under private law⁹.

III. The Legal Status of Other Religions

It should be noted that the members of the five constitutionally recognized religions represent approximately 97.5 % of the population (83 % are members of the Orthodox Church, 13 % are members of the Moslem religion and 1.5 % are members of the three religious groups of the Republic). Therefore, only 2.5 % of the population belongs to religions other than the five constitutionally recognized religions. Such other religions and rites, like Jehovah's Witnesses, Orthodox Christians who follow the Old Calendar, Jews and Protestants, enjoy religious freedom, but do not enjoy the special constitutional privileges of the five main religions of the island.

Religions other than the five recognized religions are not required to register with the authorities. Their members enjoy religious freedom

⁸ See EMILIANIDES, A., 'State and Church in Cyprus' in Robbers, G., *State and Church in the European Union*, Nomos Verlagsgesellschaft: Baden – Baden, 2005, p. 237ff.

⁹ See EMILIANIDES, A., 'Islamic Faith as a one of the Main Religions: The Case of Cyprus' in *Islam in Europe*, Bratislava, 2005, p. 220-229.

according to the constitutional provisions, even if such religious organizations have not registered with the authorities. However, if they desire to engage in financial transactions, such as maintaining a bank account, they must register as a non-profit-making company. In order to register, a religious organization must submit an application to the Council of Ministers stating the purpose of the non-profit-making organization and providing the names of the organization's directors. So far, all applications by religious organizations have been accepted by the authorities of the Republic of Cyprus without any particular problems. Therefore, there has been no legislative or judicial attempt to define 'religion'.

It should be noted that the provisions on registering are the same for both emerging religious entities and historical majority churches, with the exception of the five constitutionally recognized religions. However, it is suggested that the authorities would refuse to register any religion whose doctrines or rites are secret, in order to comply with the provisions of Article 18 §2 of the Constitution, which stipulates that all religions whose doctrines or rites are not secret are free. A religion could also register as a charitable foundation; such charitable foundations are the 'Charitable Foundation of the Church of the Grace of Jesus Christ' and the 'Charitable Foundation of the Church of the God of Prophecy'. Religions could also register as private associations or clubs, although this would not seem to have occurred in practice.

Once approved, non-profit-making organizations are tax-exempt and are required to provide annual reports of their activities. All religious institutions enjoy exemption from income tax (Article 8 §13, Law 118 (1)/2002), while all constructional materials, fittings and furniture for churches and mosques and all vestments and other articles that are imported for religious purposes by any Ecclesiastical and Religious Authorities are eligible for relief from import duty and excise duty.

The priests or religious ministers of any registered religion may also perform religious marriages according to the rites of their religion, so long as they are also registered with the Ministry of Interior, according to the provisions of the Marriage Law 104(I)/2003 (or if they registered according to the provisions of the pre-existing Marriage Law, Cap. 279). In practice, the Ministry of Interior promptly registers religious ministers of any recognized churches. Registered religious entities may conclude contracts, own real property, or act as employers, without any restrictions, other than those provided by law for all legal persons that engage in financial transactions.

JIRÍ RAJMUND TRETERA

RELIGIOUS ENTITIES AS LEGAL PERSONS –
CZECH REPUBLIC

Introduction

In the Czech Republic, we must firstly distinguish between religious entities *per se* (churches and religious societies, namely, denominations) and other religious entities, whose legal personality is *derived* from the religious entities *per se* (parishes, dioceses, monasteries and priories, church lay organizations, charities or diaconates, etc.). The former, denominations, obtain legal personality by state registration, the latter by the creation of a registered denomination according to its own provisions.

Denominations in the Czech Republic can associate into unions. These unions obtain legal personality by special registration. They do not have the right to establish another legal person.

1. Constitution of denominations in the Czech Republic

a) Citizens and foreigners have the right to confess any religion either alone or along with others. Part of this freedom is, of course, founding denominations. This right is based on the constitutional law, under the Charter of Fundamental Rights and Liberties of January 1991, which was introduced into the legal order of the contemporary Czech Republic on the date of its foundation, namely, January 1, 1993.

In the Czech Republic, a denomination can be founded without any approval of the public authorities. But, such an organization acquires legal personality by registration according to the special law.

b) The only legal form for a denomination to be a legal person is in the form of a registered church or religious society. Registration is an administrative act by a State agency (at the moment, the Ministry of Culture).

There are no differences between churches and religious societies: The words 'church' and 'religious society' are only two traditional expressions used for a denomination in the Czech Lands as in the whole of Central Europe.

Denominations are not obliged to use the words 'church' or 'religious society' in their names. It is a matter of their free choice, whether they use one of these two terms, or neither of them. They may not, of course, use the name of any previously registered denomination.

A denomination can acquire legal personality only as a religious entity: a special type of a legal person. It means that it cannot acquire legal personality as a civic association, commercial company, trust or foundation.

c) There was no difference between 21 registered denominations in the Czech Republic until the proclamation of the (new) Churches and Religious Societies Law, in January 2002. Since this law has entered into force, new denominations can acquire legal personality, but do not possess all the rights belonging to the former registered churches. New denominations can acquire all the rights of a religious entity including so-called 'special rights' after ten years since their registration if they fulfil additional prerequisites of the law: number of members to be at least 0.1 % of residents of the Czech Republic; publishing an annual financial report for the last ten years and due fulfilment of obligations. During recent years, five denominations have been registered in the Czech Republic. There are, therefore, 26 registered religious entities in our country, of which 21 possess 'special rights'.

d) There are no legal differences between different parts of the Czech Republic.

2. Registration of denominations and the evidence of derived legal persons in the Czech Republic

A denomination can be registered by a request to the Ministry of Culture, subject to the conditions prescribed by the law. The Ministry of Culture holds a public register of denominations and a public register of the unions of denominations.

Denominations themselves can create places of worship (parishes, monasteries) or charitable institutions (all of which in law are designated as 'church legal persons') according to their own provisions. All registered denominations (including those that do not use the name 'church') can found church legal persons.

The Ministry of Culture keeps evidence of such institutions in a special public list of 'church legal persons'. It is not registration as a constitutive administrative act, but rather 'evidence' only.

a) A denomination can worship and manage other religious activities even without state registration. But it obtains legal personality only by registration and, from the moment of registration, it can possess property, employ people, create church legal persons, etc.

b) There are several provisions for being registered as a denomination. The denomination has to attach to the application for registration a petition signed by 300 adult residents of the Czech Republic. There must be a specified mission of the denomination and basic articles of its faith in the application. The State agency does not give any approval to the doctrine (such approval would be contrary to constitutional law): it only assures that the articles of faith are not contrary to human rights.

c) The denomination also attaches its statutes, namely, its constitution and other regulatory instruments to the application for registration. The denomination has to notify the registering State agency of every change to its statutes. The denomination has to provide information about individuals who are empowered with statutory powers, as well as about legal persons derived from this denomination. The identification of those individuals is a part of the public registers held by the Ministry.

d) A registered denomination has certain tax advantages (for example, no tax on collection income and no customs tariff on religious facilities). The employment of its employees in a spiritual sphere is ruled by its own statutes; only employment in a secular sphere (vergers, gardeners, etc.) is ruled by labour law. A registered denomination entity with so-called special rights also has the right to: officiate at marriages; teach religion in public schools; create public or private church schools; propose chaplains in the Army and detention facilities; receive state financial support for salaries of pastors (a temporary right until the restitution of the property expropriated in the time of the Communist regime). The State recognizes the secrecy of confession because of denomination doctrine going back more than 50 years.

e) There are no legal differences between emerging denominations and historical majority churches in the Czech Republic, if the newly based (2002) difference between those with and without 'special rights' is ignored. There are only problems with the remaining influences of the atheistic ideology on public opinion. Atheism was an established 'confession' for a very long time during the rule of the Communist party (1948-1989).

f) There are no legal differences between different parts of the Czech Republic.

g) There are 21 registered denominations with so-called special rights, five registered denominations and two unions of denominations (The Ecumenical Council of Churches in the Czech Republic and the Military Spiritual Service). The precise number of unregistered denominations is not available, of course. There are perhaps about ten denominations and some movements. Some of them use the form of a civic association, formally founded for cultural aims, some use the form of a foundation (both cases can be considered as behaviour *in fraudem legis*) and some use no legal person form.

There are no official statistics of the number of denomination members. Some denominations hold their own statistics or members list.

The National Statistics Agency ascertains the number of people with no denomination, adherents to some religion or denomination and non-respondents once every ten years. According to these statistics, the number of members of denominations is lower than that declared by some denominations themselves. The figures of the National Statistics Agency from 2001 are as follows: 59 % with no denomination; 32 % adherents to some religion or denomination and 9 % non-respondents. Out of 32 % adherents to some religion or denomination, circa 90 % of these are Catholics and circa 10 % of the respondents declared themselves as adhering to other denominations¹.

3. Religious Entity Acting

a) Registered denominations and church legal persons have full legal capacity which means that they can also contract.

b) Registered denominations and church legal persons can own real estate property without legal limitations. Denominations own mainly church buildings (churches, parish houses, monasteries and priories). Until now, much real estate expropriated during the Communist regime has not been given back to denominations. In the case of the Catholic legal persons, it is mainly woods and agriculture land; in the case of the Protestant legal persons, it is mainly rental houses.

¹ For precise figures see, for example, Robbers, Gerhard (ed.), *State and Church in the European Union*, Second Edition, Baden-Baden, 2005, p. 35-37.

c) Registered denominations and church legal persons can act as employers.

d) There are no special restrictions on denominations, but denominations are limited to religious aims which means that a denomination cannot be a profit-making organization. To provide an assurance of its religious character, a denomination with so-called special rights has to publish an annual financial report.

DITLEV TAMM

RELIGIOUS ENTITIES AS LEGAL PERSONS – DENMARK

I.

The Danish legal regulation of legal persons in a religious context is essentially determined by two factors. The first one is the existence of an official church, namely, the Danish People's Church (Folkekirken), with its privileged position guaranteed by the Danish Constitution. The second determining factor has to do with the informality of Danish law that generally does not require any specific official recognition for the establishment of a legal personality. A religious entity thus can be freely constituted without any official approval. Religious entities could be constituted as companies or foundations but in Denmark the association is generally the preferred model. There are no regional differences.

II.

The Danish official church – as is well known – is the institutional framework of the religious life of an overwhelming majority of the Danish population (estimated at about 85 %). The official Danish church forms part of the Danish administrative system and thus has no legal status of its own that can be compared to legal personality. The Church can be sued and take part in legal transactions as can other state organs, it can be liable for damages or for not carrying out duties in contracts or in matters of employment but in this respect its legal position does not differ from that of other state organs. The Minister of Ecclesiastical Affairs is the chief administrator of the Church within the boundaries set up by Danish legislation and he is politically responsible for church affairs. The Church in itself, however, has no such independence to be considered as having the status of a legal person. The legal status of the Church might have been different with it regarded as an independent administrative entity if the Danish Church had had a proper constitution as envisaged by the Danish constitution (Article 66). However this Article has not been fulfilled according to the original intentions of the founding fathers of the Danish constitution

and thus the Danish People's Church basically falls outside the scope of the following legal survey. It should, however, be mentioned that the Church is basically organized as congregations or communities. Some of these have a special status. Within the official Church, there is certain freedom to constitute elective communities outside the parish boundaries with a minister elected by the community. Such communities are associations of members of the official Church who themselves administer church buildings and the employment of ministers and other employees.

III.

In Denmark there is no legislation determining the legal status of religious entities. In the absence of such legislation, religious entities have the status of associations. According to the Danish Constitution, Article 67, citizens have a right "to congregate in communities to worship God in the way that corresponds with their conviction".

The Danish Constitution, Article 69, does foresee that the relationship between religious entities and the state, including the conditions under which a religious entity could merit official recognition and thus the status as a so-called recognized religious entity, should be subject to regulation by statute. However, like the situation concerning the official Church, no such legislation was actually carried out. Nevertheless, there does not seem to have been any serious demand for such a statute to determine the status of such religious entities that differ from the official Church. The present legal situation is, therefore, that religious entities are conceived as private associations subject to general legislation covering associations with the exception that some religious entities under certain circumstances may perform ritual acts with official authority.

As will be seen, no registration or approval is required in order for a religious entity to work in Denmark. However, certain advantages can be obtained if a religious entity is in fact registered.

Religious entities can currently be distinguished as five different categories of religious organization according to the degree and kind of official registration:

- 1) The official church (as mentioned above).
- 2) So-called *recognized* religious entities according to the recognition given by a royal decree (administered through the Ministry of Ecclesiastical Affairs) until 1970. Such recognition has been given to

the Roman Catholic Church, the Jewish community, three reformed congregations, the Methodists, the Baptists and the Russian, Swedish, Norwegian and Anglican communities. Recognized religious entities have all the rights and privileges mentioned in relation to the so-called approved entities mentioned below 3).

- 3) After 1970, the practice of giving recognition by royal decree was substituted by the *approval* of certain other religious entities as such and/or of the right of specific ministers within that religious community to perform the wedding ceremony with official authority.
- 4) Religious entities (without recognition or approval) or
- 5) Religious groups (without formal organization) recognized by *tax* authorities.

In the absence of further recognitions (above 2)), interest today concentrates basically on the condition for obtaining an official approval of a certain religious community (in Danish: *godkendelse*). The approval (above 3)) of a religious entity is within the competence of the Ministry of Ecclesiastical Affairs on the recommendation of a committee consisting of experts in religion and law. It has been a general principle of Danish administration that certain decisions are not made directly by a Minister but, in order to exclude political influence in such decisions, either by a committee or following a recommendation. The approval relates to an article in the Danish Matrimonial Act (Article 16) that foresees the possibility of weddings being performed within religious entities other than the official Church when one of the parties belongs to this religious entity and a minister from this religious entity has been approved by the Minister of Ecclesiastical Affairs to perform such an act.

The group of approved religious entities is varied and comprises more than fifty different entities such as the Salvation Army, Islamic communities, Jehovah's Witnesses, missionary communities and believers in ancient Norse religion (Forn Sidr-Asa og Vanetrosamfundet I Danmark).

It is not possible to give any exact indication of the actual number of members of these religious entities comprised within the status of approved religious entities. Islam is obviously not registered as such but certain communities are registered. It is (unofficially) estimated that around 170,000 Muslims actually live in Denmark. Most of these entities, however, are very small.

Christian religious entities that are approved include the so-called free Lutheran communities that come very close to the official Church in their

beliefs but require a status separate from the official Church as they want to distance themselves from certain elements of the Church.

Among the recognized religious entities, the Roman Catholic is the biggest community with about 35,000 members (less than 1 % of the Danish population of 5.3 million; the Jewish community is estimated at fewer than 10,000). It may thus be estimated that, apart from Islam, the religious entities in Denmark only represent around 1 % of the population.

In order to obtain an approval, the religious entity must fulfill certain *conditions* as to the number of members, doctrine, bylaws, etc. A document containing written bylaws must be presented as well as a leader, a board or someone else who can be identified as a representative in relation to official authorities. The Danish word for religious entities ("*trossamfund*") is understood as requiring religious content and a certain organization. Religion in this sense is defined as a specific belief in the dependence of humans on a power above man and the laws of nature and a belief that includes certain ethical and moral guidelines. A confession of faith, a common belief and certain rituals are therefore required. The decision to approve a certain religious entity is not made out of religious considerations but is based on an administrative conviction that the religious entity in question will be able to perform weddings in a way acceptable as an official act.

In considering whether to grant an approval it may be of importance whether the community asking for approval belongs to an existing religion. Thus there is a difference in fact between emerging religious entities and communities that belong to existing religions. In the latter case, a size of about 50 people is normally required whereas complete independent religious entities based on a faith outside known religions are required to represent at least 150 persons. As regards organization, it is required that the entity is of a certain size (50-150 members as minimum), can secure its survival and has a system of education of priests who can be trusted in performing acts of baptism and marriage. As already mentioned, it may be taken into consideration whether the religious entity belongs to a world religion and in fact the committee has taken such adherence into consideration. Christian, Jewish, Hindu, Islamic and Buddhist communities have thus been preferred. Whether a religious community exists is also taken into consideration. Religious or philosophical 'movements' have not been approved. For obvious reasons, another requirement is that nothing contrary to *bonos mores* is taught and that the entity in fact has competent officers who are able to represent the entity before official authorities. The entity must also have rules on formal membership, conditions for being accepted as a member and rules on

how to leave the entity. Board members as a body need not be registered. Only the person approved to perform official acts needs to be registered; other members do not.

As an example of a religious community that has recently been approved, the so-called *Forn Sidr* can be mentioned here as a 'case study'. The approval given in 2003 to the *Forn Sidr*, which is a religious community that believes in ancient Nordic gods, actually gave rise to some discussion and doubts as to whether conditions for approval were fulfilled. The entity, however, was approved. The entity defines itself as a religious community aimed at the "gathering of people who worship the old Nordic gods". The belief is called '*asetru*' and even if the entity does not control "the way in which members practice their faith", it is based on the idea that the old Nordic belief in Thor and other gods never disappeared completely. The entity has its bylaws and ceremonies (called *blot*) and believes in divine powers and spirits in nature as recorded in old Nordic literature and poetry. It has contacts with similar entities in other Nordic countries. It is difficult to say whether this religious entity represents the extreme of what can be expected as an approved religious society.

IV.

The legal status obtained by an approved legal entity only differs from the right of other religious entities in the right to perform marriages and, in certain cases, the right to dispose of parts of a graveyard for its own use. In addition, priests from such an entity are entitled to permission to stay in Denmark. Certain other benefices are common for approved entities and the entities are allowed by the tax authorities to receive, either as a gift or on a permanent basis, economic support from the members with the effect that such support may be tax deductible. Approved entities also have privileges regarding company tax, tax on foundations, property tax, death duty and certain other duties paid by entities that are not registered as VAT payers.

Religious entities are also protected by the criminal law against blasphemous attacks (an article however that has not been used for more than 70 years) and their priests have the same right as ministers in the official Church to keep silent about secrets obtained in the confessional if they are called as witnesses in court.

Religious entities can act as other legal persons. They may make contracts irrespective of any registration, own religious and secular buildings, and act as employers. There are no restrictions that apply to religious

entities specifically. The constitution mentions the duty to observe law and order and not to avoid any public duty on religious grounds.

Finally, it should be mentioned that the existence of a growing number of religious entities outside the official Church has accelerated discussion based on the concept of human rights as to the legitimacy of the privileged status of the official Church. In this discussion, it is sometimes maintained that the absence of religious *discrimination* is not sufficient protection and that actual *equality* between the official Church and other religious communities should also be demanded. The Danish constitution gives the official Church a prerogative. The official Church, for example, benefits from official support in the collection of membership taxes. As will be seen, other religious communities have a well-protected legal status, tax privileges and a right to perform marriages (if approved). This does not mean that the present Danish organization of the Church cannot be modified. It should, however, be noted that there are few complaints as to the legal status of approved religious entities. Certain entities still ask for approval. In general, however, the administration of approval seems to be accepted as fair and satisfactory.

MERILIN KIVIORG

RELIGIOUS ENTITIES AS LEGAL PERSONS – ESTONIA

I. Constitutional Rights and Principles that Affect Legal Personality of Religious Communities

a) *Religious Freedom / Freedom of Association*

The right to freedom of religion in Estonia is, first of all, protected by the Constitution of 1992 and by the international human rights instruments that have been incorporated into Estonian law.

The Estonian Constitution provides express protection for freedom of religion. Section 40 states that:

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, both alone and in a community with others, in public or in private, unless this is detrimental to public order, health or morals.

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. In addition, other constitutional provisions complement basic freedom of religion. For example, Article 45 concerning the right of freedom of expression, Article 47 concerning the right of assembly and Article 48 concerning the right of association, each provides specific protection for aspects of religious freedom.

The Estonian Constitution protects both individual and collective (including corporate) freedom of religion. Article 9 (2) of the Constitution stipulates that:

The rights, freedoms and duties set out in the Constitution shall extend to legal persons in so far as this is in accordance with the general aims of legal persons and with the nature of such rights, freedoms and duties.

The freedom of association is protected by the Article 48 (1) of the Constitution: 'Everyone has the right to form non-profit undertakings and unions'.

b) *Model of the State and Church (religious communities) Relationship*

Although the 1992 Constitution of the Estonian Republic sets forth the separation of state and church (“there is no state church” – Article 40 of the Constitution), it has not been interpreted in constitutional and administrative practice as a very strict separation. The co-operation between state and church (religious communities) has been accepted to a certain extent. The Constitution does not *expressis verbis* provide any legal basis for co-operation, but it can be deduced from a positive obligation of the State to guarantee the freedom of religion set forth in Article 40. At the same time, questions have been raised about whether all forms of currently existing cooperation can be accepted in the light of the constitutional principles of separation of state and church and equal treatment.

c) *Equality*

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 Section 12 of the Constitution sets forth the principle of non-discrimination, prohibiting discrimination *inter alia* on the basis of religion or belief. As the Constitution protects both individual and collective freedom of religion, these principles also have to be applied to religious communities. The principle of non-discrimination is a special equality right and is deemed to protect minorities. In the constitutional interpretation, both direct and indirect discrimination are prohibited.¹ The concept of substantive equality has been endorsed in the Estonian Supreme Court practice.² This means that Estonian constitutional practice is not blind to differences and accepts the fact that formal equality or equality as consistency may not be sufficient and in some cases may lead to injustice and discrimination. Estonia has positive international and constitutional duties to promote equality. Nevertheless, the scope and limits of the positive obligations are debatable.

d) *Self-determination/Autonomy*

The general right to self-determination of persons (both individuals and groups) stems from Article 19 of the Estonian Constitution. Article 19,

¹ Eesti Vabariigi Põhiseadus. Kommenteeritud väljaanne [Commentaries on the Estonian Constitution], Tallinn: Juura, 2002, p. 121.

² RKPJKo 03.04.2002 – RT III 2002, 11, 108.

section 1 of the Constitution states that: “all persons shall have the right to free self-realisation.” The right of religious (church) autonomy 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).³ Autonomy of religious associations means also the right of self-administration in accordance with religious law and prescription.

e) *Limits to Freedom of Religion or Belief*

Article 40 itself states that freedom of religion, “alone or in community,” is assured “unless it endangers public order, health, or morals.” In addition, the Constitution contains four general limitation clauses: the first sentence of Article 3(1)⁴, Article 11, Article 13(2),⁵ and Article 19(2). Article 11, however, is a central and most important limitations clause: “Rights and liberties may be restricted only in accordance with the Constitution. Restrictions may be implemented only insofar as they are necessary in a democratic society, and their imposition may not distort the nature of the rights and liberties.” Thus, every case of restriction of rights and liberties has to be justified and pass the test of proportionality. Article 19(2) constitutionalizes the common sense idea that, in exercising their rights and liberties, all persons must respect and consider the rights and liberties of others (“and observe the law”).⁶

Although the freedom of religion clause in Article 40 permits limitations only with the legitimate aim of protecting public order, health or morals, the general limitation clauses should also be taken into account. In addition the rights of assembly (Article 47) and association (Article 48) have their own forms of limitation. Article 47 allows restriction of assembly in accordance with “procedures determined by law for the purpose of national security, public order or morals, traffic safety... the safety of the participants... or to prevent the spread of infectious diseases.” Article 48 has specific bars on certain military associations as well as associations for rebellion or criminal activity.”

³ Presidential veto to the 2002 Churches and Congregations Act in RTL, 03.07.2001, 82, 1120.

⁴ “State power shall be exercised solely on the basis of the constitution and such laws which are in accordance with the constitution”.

⁵ The law shall protect all persons against arbitrary treatment by state authorities.”

⁶ See also ALEXY, R. Põhiõigused Eesti põhiseaduses [Fundamental Rights in the Estonian Constitution].- Iuridica 2001, eriväljaanne [the special issue].

II. Legal Sources

The legal sources of law on religion in Estonia are: (1) provisions set forth in national law⁷ (the Constitution of Republic of Estonia, the Non-profit Organizations Act⁸, 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 1 May 2004.⁹ European Union law takes precedence over Estonian law, as long as it does not contradict the Estonian Constitution's basic principles.¹⁰

III. Legal Status of Religious Bodies

The principal statutes regulating religious organizations are Non-profit Organizations Act 1996¹¹ and the Churches and Congregations Act 2002 (hereinafter the CCA). The Non-profit Organizations Act¹² and 2002 CCA are related as general and special legislation (2002 CCA, Article 5(1)). As Estonia is a unitary state the same law applies throughout the country.

In Estonia, a religious association is a legal person in private law to which the Non-profit Associations Act applies in so far as the Churches and Congregations Act does not otherwise provide (2002 CCA, Article 5(1)). Transformation of a religious association into a legal person of a different type is prohibited (2002 CCA, Article 5(3)). This provision is a result of the debate over granting public legal personality to the two largest churches in Estonia.

According to Article 3(2) of the CCA, the objective or main activity of churches, congregations, associations of congregations and monasteries must not be the earning of income from economic activity. For example, the minister whose area of government includes management of issues relating to religious associations will request compulsory dissolution of a

⁷ Translations of selected Estonian legal acts can be found at www.legaltext.ee. It should be noted that these translations are unofficial translations (there are no official translations of the legal acts in Estonia) and these translations do not sometimes take account latest amendments of the law.

⁸ RT I 1996, 42, 811; RT I 1998, 96, 1515 (revised text); RT I 2002, 53, 336.

⁹ Treaty of Accession, RT II, 2004, 3, 8.

¹⁰ Amendments to the Constitution of Estonian Republic, RT I 2003, 64, 429.

¹¹ RT I 1996, 42, 811; RT I 1998, 96, 1515 (revised text); RT I 2002, 53, 336.

¹² RT I 1996, 42, 811; RT I 1998, 96, 1515 (revised text); RT I 2002, 53, 336.

religious association by a court if economic activity becomes the main activity of the religious association. In principle it is possible for a religious organization to register itself as a profit-making organization. However, in that case it would not be able to present itself as a religious association or religious society as defined in the CCA. Also it would not be able to use benefits that follow from being a non-profit-making organization.

The CCA addresses five different types of religious organization: (1) churches, (2) congregations, (3) associations of congregations, (4) monasteries, and (5) religious societies. Quite uniquely in Europe, the 2002 CCA gives legal definitions of all five categories of religious organization.¹³ The 2002 CCA regulates the activities of the first four only. The first four are called religious associations. The activities of religious societies are not regulated by the CCA (as special law) but by the Non-profit Organizations Act.

IV. Registration/Authorization of Religious Entities

The legal capacity of a religious association commences as soon as the religious association is registered in the register of religious associations.

¹³ 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 basis of its statutes, is managed by an elected or appointed management board and is entered in the register in the cases and pursuant to the procedure prescribed by this Act (Art. 2(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 in the cases and pursuant to the procedure prescribed by this Act (Art. 2(3)).

An association of congregations is an association of at least three voluntarily joined congregations which profess 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 pursuant to the procedure prescribed by this Act (Art. 2(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 in the cases and pursuant to the procedure prescribed by this Act (Art. 2(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 rites of a church or congregation and which need not be connected with a specific church, association of congregations or congregation (Art 4(1)).

The register of religious associations is a distinct part of the non-profit-making associations and foundations register with regard to which the provisions of legislation concerning the non-profit-making associations and foundations register apply with differences provided by the 2002 CCA. Unlike religious associations, religious societies must be registered by a court in the register of non-profit organisations and foundations.

The difference between religious associations (the first four categories) and religious societies is defined in the CCA.¹⁴ The definition is debatable, but has not so far caused serious problems in practice.

The law does not prohibit the activity of religious associations that are not registered. The main disadvantage for these unregistered entities is rather that they cannot present themselves as legal persons and, therefore, cannot exercise the rights or seek the protections accorded to a religious legal entity. Nevertheless, they still enjoy their constitutionally protected collective freedom of religion as a religious group.

Congregations that belong to a church or association of congregations do not have to have legal personality. It is up to a religious association to decide. Moreover, a religious association may have departments and agencies if this is prescribed in the statutes. However, departments and agencies are not legal persons. The bodies of departments and agencies and their competence are described in the religious associations' statutes.

In order to found a religious association, the founders enter into a memorandum of association. The founders also need to approve the statutes (bylaws) of their religious association. The statutes are among the documents required for registration.

At least twelve adult members who have active legal capacity can found and register a congregation. For instance, at least 36 members are needed to establish a church, as the legal definition of church requires it to have a minimum of three congregations.

¹⁴ The main activities of churches, congregations, associations of congregations, and monasteries include professing and practising their faith, primarily in the form of religious services, meetings and rites, and confessional or ecumenical activities relating to morals, ethics, education, culture, and confessional or ecumenical, diaconal and social rehabilitation activities and other activities outside the traditional religious rites and services of the churches or congregations (Art 3(1)).

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 rites of a church or congregation and which need not be connected with a specific church, association of congregations or congregation (Art. 4(1)).

The memorandum of association has to list the names and addresses, and the personal identification codes or registry codes of the founders (Article 11 (2.2)). It also lists the names, personal identification codes and addresses of the members of the management board. According to the definitions, all religious associations need to have an elected or appointed management board.

The law requires that a minister of a religious association must be a person who has the right to vote in local government elections. Other requirements in relation to the minister are imposed by the religious association itself. This provision is mitigated by allowing the management board of a religious association the right to invite a minister of religion from outside Estonia and to apply for a work and residence permit for any minister of religion who is an alien pursuant to the provisions of the Aliens Act.¹⁵ Similarly, the law provides that board members of a religious association have to be people who have the right to vote in local government elections. However, there is no exemption from this provision given in the CCA. At the same time, the Non-profit Organizations Act requires that only half of the board members of a non-profit-making organization (including religious societies), need to be resident in Estonia or in another EEA country or in Switzerland.¹⁶

The emerging principle of neutrality and autonomy requires the state not to interfere in doctrinal matters of a religious association. However, the statutes of a religious association should describe the objective and doctrinal bases of the association, as well as, obligatory rites. The registrar must not enter a religious association in the register if the statutes submitted by the religious association are not in compliance with the requirements of law. Additionally, the association must not be registered if the activities of the religious association damage public order, health, morals, or the rights and freedoms of others. These two requirements became an obstacle to registration of the Church of Satanists.

In the current law, there is no difference in registration of emerging religious entities and registration of historical majority churches. In this sense, there have been no major problems in practice either. Estonia has so far been very liberal towards the so-called non-traditional religious movements. Nevertheless, just before the adoption of the 2002 CCA by the Estonian parliament, the Estonian Council of Churches sent a letter

¹⁵ RT I 1993, 44, 637; RT I 2001, 58, 352.

¹⁶ 2004 Amendment to the Non-Profit Organisations Act, RT I, 2004, 89, 613

to the parliamentary commission asking it to include measures in the new law to limit the activities of "non-constructive religious communities". Fortunately, these proposals were not enacted into law. The Council's intention was probably a bona fide attempt to avoid harmful experiences for individuals but it raised questions about obstructing activities of minor religious communities.

The legislature has potentially extended the scope of (*ex ante*) control over religious organizations. For example, in order to determine compliance by a religious association with the requirements of the law, the chief judge of the court that maintains the register may suspend registration proceedings for two months and request the opinion of the ministry whose area of government includes management of issues relating to religious associations or request an expert opinion from a competent agency (Article 14 (1)). On refusing to enter a religious association in the register, the registrar must indicate the reason for the refusal. The same authority is given to the courts in relation to religious societies (Article 4(2)).

V. Advantages of Legal Personality

a) Financial Advantages

There are several ways in which the State supports registered religious organizations.

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 additional finances to support the churches and other religious organizations in the preservation of these buildings. Provision of such funds, of course, very much depends on the availability of financial resources.

On the basis of the Income Tax Act¹⁷ and by Government of the Republic Regulation No. 89 of 21 March 2000, the Estonian Government has established an order that regulates the list of non taxable organizations.¹⁸ In accordance with Article 11(2) of the Income Tax Act, religious associations are automatically exempt from income tax. Other non profit making organizations (including humanist associations and religious societies) have to apply to be included on the list of non taxable non profit

making organizations. This means that this status can also be refused on certain grounds. In practice, it has not been very difficult to get on the list.

Religious associations also have certain privileges concerning Value Added Tax (VAT), usually applied as discounts against the ordinary tax rate. For example, until 1 July 2007, religious organizations can buy electricity attracting a rate of 5 % VAT (instead of the normal 18 %).¹⁹ The same does not apply to most non profit making organizations, including religious societies.

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)). This exemption does not apply to the properties of secular non profit making organizations.

The above mentioned examples also illustrate differences in the treatment of religious associations and that of other non profit making organizations, including religious societies.

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 the Estonian Apostolic Orthodox Church. The Council decides according to its own statutes which churches it admits. The progress in allocating more funds to the Council can be seen State budgets over the years are compared. For example, 4,900,000 million EEK (about €314,103) was allocated from the 2004 State budget,²⁰ compared with 1,945,000 EEK in 2000.²¹ The State does not prescribe how the money has to be used by the Council.

In addition, allocations have been made to support the publication of the newspaper of the Estonian Evangelical Lutheran Church. The constitutionality of these allocations to and preferential treatment of the Estonian Council of Churches and the Lutheran Church have been questioned by non Christian religious communities.

Significant compensation has been paid to the Estonian Apostolic Orthodox Church – 35,500,000 million EEK.²² This is connected with the fulfilment of the agreement between the Estonian State, the Estonian

¹⁷ RT I 1993, 79, 1184.

¹⁸ RT I 1996, 48, 946.

¹⁹ RT I 2001, 64, 368 (in force 1. Jan. 2002).

²⁰ RT I 2004, 1, 1.

²¹ RT I 2000, 1, 1.

²² RT I, 2003, 3, 18; RT I, 2004, 1, 1.

Apostolic Orthodox Church and the Russian Orthodox Church to settle a legal dispute between these two Orthodox Churches over property.²³

b) *Religious Marriages*

Only churches, congregations, or associations of congregations registered under the CCA may apply for authorization to perform civil marriages. It has to be noted that the State has not recognized the concept of religious marriage *per se* but, instead, has established the possibility of delegating the obligations of the registry office to a clergyman of a church, congregation, or association of congregations.

c) *Labour Law*

According to Article 7 of the Labour Contract Act, labour law does not apply to persons who conduct religious activities in religious organizations, unless prescribed by the bylaws of the religious organization.²⁴ This would be the case when the bylaws prescribe entering into an employment contract with these persons. The religious organizations are free to choose whether or not to enter into an employment contract with such persons. Different religious organizations have different approaches.²⁵ The purpose of the law is to give more autonomy to religious organizations in employment decisions.

The religious entities can be employers. There are no specific restrictions in this regard.

d) *Other*

Religious associations and religious societies have different degrees of autonomy in their internal affairs. Religious societies are treated as regular non-profit-making organizations and enjoy considerably less autonomy than religious associations (for example, the requirement for democratic governance in their internal affairs). The distinction, however,

²³ The two agreements (protocols) were signed by Estonian Republic and Estonian Apostolic Orthodox Church and Estonian Republic and Estonian Orthodox Church of the Moscow Patriarchate on 4 October 2002.

²⁴ RT I 1992, 15, 241; RT I 2000, 25, 144.

²⁵ For example, in the Estonian Evangelical Lutheran Church, priests do not have labour contracts. Their stipends are generally determined by the Board of Congregation. Thus the protocols of the board meetings are the main basis for paying social tax and income tax.

between religious associations and religious societies may appear problematic in some cases. Moreover, the definitions do not take account of the fact that some religious societies (such as schools, hospitals and rehabilitation centres) are *de facto* spiritually connected to the church although they have independent legal personality.

Some special provisions have been made to protect the professional attire of a minister of religion. Only a person to whom a registered 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).

Religious entities as legal persons can enter into various types of contract (administrative, civil and international).²⁶ According to Article 2(2) of the Non-profit Organizations Act, the associations of persons with non-profit-making characteristics that are not entered in the register are not legal persons and the provisions of civil law partnerships apply to them. Persons who enter into transactions in the name of such associations are jointly and severally liable for such transactions. The same principle is related to transactions with and ownership of property.

VI. Statistics

Today, only approximately 23 % of the Estonian population (estimated to be 1,356,045 people in January 2003²⁷) is officially connected with the various Christian churches. The Estonian Evangelical Lutheran Church has been the dominant church in Estonia since the middle of the 16th century. Today, only about 11 % of the population officially belongs to this Church. The next in size, and also with a long historical tradition,

²⁶ 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 organizations may also have the nature of administrative agreements or cooperation agreements under civil law. The purpose of these 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 important source for regulating the relationship between religious communities and the State.

²⁷ Statistical Office of Estonia. Data available at <http://www.stat.ee>.

is the Orthodox community (about 10 % of the population). The percentages presented reflect both active and passive membership of the Churches. There are smaller communities of Roman Catholics, Baptists, Jews, Methodists, Muslims, Buddhists, and others.

In total, there are 8 churches with 461 congregations registered in Estonia. In addition, there are 76 congregations that do not belong to any church. Among these 76 congregations are included non-Christian communities (for example, Buddhists, Jews, Muslims, etc.).

Many religious groups have chosen not to obtain legal personality. Statistical information about these groups is not available.

MATTI KOTIRANTA

RELIGIOUS ENTITIES AS LEGAL PERSONS – FINLAND

1. Legal basis

When studying churches and religious bodies as legal persons in Finland, the new Freedom of Religion Act approved by Parliament on February 11th, 2003 (HE 170/2002 vp) is its basis in administrative law.¹ Although the purpose of the Freedom of Religion Act is primarily to ensure the freedom of religion enshrined in the Constitution (731/1999), the law 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.² 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 subsection 2 § of the Freedom of Religion Act, the reference to religious associations in the law indicates the Evangelical Lutheran Church, the Orthodox Church and religious associations registered in accordance with subsection 2. Religious activities can also be practised in the form of an ideological association or entirely without organizing in the form of a legal person. Under the new Freedom of Religion Act, the Evangelical Lutheran and Orthodox Churches are also religious associations in the sense intended in the Act; additional special ecclesiastical laws are enacted in respect of these associations. However, as concerns registered religious associations, the procedure is that they themselves accept their order of association, and then it must be approved by the authorities, namely the National Patent and Register Board, provided it is not illegal.

In the Finnish context, three different types of legal person can be distinguished in religious associations:

¹ I am most grateful to Mr. Matti Halttunen, Church Counsellor of the Evangelical Lutheran Church of Finland for his help in the preparation of this survey.

² The Act also includes some changes to regulations concerning religious and moral education in basic education and in high schools.

(1) The status of the Evangelical Lutheran Church under public law is ensured 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 (skeleton) law (521/1969) and a supplementary statute (179/1970). (3) In Finland, a registered religious association is, however, a special type of community. Its foundation and legal status are enacted in subsection 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 Finnish community law, whereby the community achieves legal capacity once it is entered in the register of associations kept by the authorities, in this case the National Patent and Register Board.³ Next we shall briefly examine each type of religious body.

The Evangelical Lutheran Church as a legal person

Differing from the general European ecclesiastical context, the status of the Evangelical Lutheran Church of Finland under public law is still ensured in the new Constitution that came into force on March 1st, 2000 (731/1999).⁴ This strong constitutional status is derived historically from the fact that the legal system of the Evangelical Lutheran Church of Finland, based on the Constitution, is older than the 1917 Constitution of the Republic of Finland, because Schauman's Church Act (1869) was enacted by the Finnish Diet during the period of Finnish autonomy, with the Swedish Constitution of 1772 being positive law. Because the church legal system is based on the constitutional principle in existence before the first constitution of the Republic of Finland, this has given the continuity of the system a strong position in later constitutional reforms.

The main hallmarks of the status of the Evangelical Lutheran Church of Finland under public law are considered to be the special mention of church law in the Constitution (PL 76 §).⁵ From the point of view of

³ 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.

⁴ See <http://www.eduskunta.fi>. => In English/The Constitution of Finland.

⁵ PL 76 § reads as follows: "In church law is enacted the constitution and administration of the Evangelical Lutheran Church. As concerns the order of enactment of church

the Evangelical Lutheran Church, the most important is the order of enactment of church law (CL 2:2 subsection 1 §), which includes the exclusive initiative of the General Synod and non-interference by government legislative bodies in the content of ecclesiastical bills introduced by the General Synod. In practice this means that the Church's own organ, the General Synod, has power to introduce bills enacting and changing church law. Parliament, which finally enacts the law, only has the right to approve or reject an ecclesiastical bill.⁶

Under public law, the Evangelical Lutheran Church of Finland and its parishes is a self-administered body like the municipalities. Legislatively, church administration is mainly organized with church law provisions, but provisions concerning church administration are also contained in other ecclesiastical laws, in general administrative laws and in ecclesiastical statutes with the authority of church law.

The Finnish Orthodox Church as a legal person

When comparing the legislative status of the Orthodox Church with the Lutheran Church, one must recognize that the Orthodox Church is affected by the Orthodox Church Act (521/1969) and its supplementary statute (179/1970) and, in addition, the Freedom of Religion Act and other general administrative legislation. Problems of application between the Orthodox Church Act and Statute and by other regulations in society hardly ever occur, because the Orthodox Church Act is government-enacted law and its content when enacted more clearly as a skeleton law was already adapted to general legislation.⁷ According to statute 171 §

law and the initiative concerning church law, that which is in force is laid down in the aforementioned law separately." Subsection 76 § of the present constitution corresponds to the special mention of church law in the old constitution before 1999 (Const. 83 subsection 1 § 1 and Parliament Act (PA 31 subsection 2 § 2). The new constitution does not contain special provisions corresponding to constitution 83 subsections 2 and 3 §, which apply to other religious associations than the Evangelical Lutheran Church. It was considered unnecessary to include the regulation concerning the right to found new associations in the constitution, because regulation 13 § of the constitution concerning freedom of association also applies to the founding of religious associations (PeVM 10/1998 vp).

⁶ When the 1917 Constitution was in preparation the older church law principle was accepted of the exclusive initiative of the General Synod, although it remained in formal conflict with the Constitution and parliamentary order.

⁷ It is interesting to note that in this the legislative arrangement of the Finnish Orthodox Church is in some sense reminiscent of the arrangement adopted in the Church of Sweden in the sense that after the reform of the Church of Sweden at the beginning of 2000 (whereby State and Church were separated and the Church gained the status of an

concerning the Church, the task of the General Synod is to introduce bills to the Government on laws and statutes concerning the Church. The initiative for new regulations thus most often comes from the Orthodox Synod. The Government is not, however, bound by the content of the bill, but the provisions concerning the Orthodox Church can be given in the form desired by the Government. Thus the Orthodox Church cannot influence the enactment of laws concerning itself with a similar bill procedure as in the case of the (Evangelical Lutheran) church law system. Legislation concerning the Orthodox Church usually arises when law is in the process of being drafted and passed. Then it remains at the discretion of the Government as to whether during the preparation of the law there was willingness to listen to the Orthodox Church.

The new law concerning the Orthodox Church (to the extent of subsection 118 §) may come into force at the beginning of 2007. A committee of the Ministry of Education has drawn up a bill concerning the Orthodox Church to replace the present legislation.⁸

The Orthodox Church would remain basically as at present with special status under public law. According to the bill, the Orthodox Church would adopt a church constitution which would provide more precise stipulations for church activities and administration. The church constitution would be given by the General Synod. The status of the central and diocesan administration of the Orthodox Church would be altered to be more independent of the State so that its expenses would no longer be paid directly from state funds. The Church's economic activities would be ensured, however, by a corresponding amount of state aid. Some internal affairs and administrative matters which are today the responsibility of the Ministry of Education would be transferred to the Church's own organs. Several changes are proposed to regulations concerning church and parish administration. The basic structure of church administration would remain, however, largely as at present.

The Orthodox Church and parishes would shift to one type of employment relationship so that the civil servants of the Central Church Board and parish clergy would shift to a contract relationship. The terms of the personnel employment relationship would be negotiated with a collective bargaining agreement.

independent legal person) it is affected, in addition to legislation on other faiths, only by a brief skeleton law.

⁸ Bill concerning the Orthodox Church, Ministry of Education working group memorandum and reports 2004:32.

In church administration, a procedure of claim for rectification would be adopted in which the obligatory preliminary stage of a complaint would be a claim for rectification to the Central Church Board. Application for alteration of the decision taken by the Central Church Board could be made by an administrative law complaint.

Registered religious associations as legal persons

In Finland a registered religious association has its own special type.⁹ A registered religious association is a type of independent special legal subject, like a registered association, corporation, cooperative or trust. Subsection 2 (7-28 §) of the Freedom of Religion Act creates a legislative framework for the founding and activities of registered religious associations.

Subsection 7 § 1 lays down the purpose of a registered religious association, which distinguishes registered religious associations from the other aforementioned legal subjects. According to the subsection, "the purpose of a registered religious association is to organize and support individual, corporate and public activities pertaining to religious profession and religious observance, based on confession of faith, scriptures or other individualized established sacred activities." The bases of the activities of a registered religious association should thus be individualized, established and regarded as sacred by the community.

A registered religious body may be founded and registered as a religious association only if its purpose is in accordance with subsection 7 § 1. A body founded for other purposes, even though it may include religious activities, can be registered, for example, as an association under the law of associations. The right to profess and practise religion or the right to express one's convictions *per se* are not dependent on whether the body in question is registered as a religious association.

For some religious bodies, the requirement of a basis of faith has been an obstacle to registering as a religious association under the Freedom of Religion Act, because a basis of faith is considered to be contrary to the religious principles of the organization. Not all religious bodies have their activities based on a confession of faith nor is there always a desire to

⁹ Historically the term 'registered religious association' goes back to the 1923 Freedom of Religion Act, which defined a specific type of legal person or 'religious association' By nature it is a community under civil law and a legal person under civil law, with a great number of features of an ideological association.

formulate a basis of faith beyond the scriptures. The purpose of a registered religious association does not, however, require that activities be based on a religious confession. It suffices that the bases of established religious activities can otherwise be sufficiently individualized. Confession, however, is mentioned in subsection 1 as one kind of basis of established activity.

Registration as a religious association does affect, however, among other things, the right to receive religious education.¹⁰ In addition, registration has an effect on taxation, penal protection and the possibility of applying for the right to solemnize matrimony. From this point of view, assessment of the purpose and types of activity of the organization are important for the authorities (the National Patent and Register Board).¹¹

Some bodies engaging in religious activities have not organized as registered religious associations but as ideological associations, for example. The largest group are Pentecostal assemblies, which in 1999 had approximately 49,000 baptized members and, if children are included, a total of approximately 55,000 members. At present the Pentecostal movement is, however, organizing as religious bodies. From the beginning of 2002 the Ministry of Education received notification concerning the founding of two Pentecostal religious associations.¹²

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 responsible for all their commitments personally.

There are no regional differences in the legal status of religious bodies as far as registration is concerned, because in Finland there is not a federal system.

¹⁰ The organizer of instruction also has the responsibility to arrange *confessional* religious education for pupils other than those of the Evangelical Lutheran or Orthodox Churches. This obligation arises if the guardians of at least three pupils of the same faith who are exempted from religious education demand it. Religious education must be arranged on the aforementioned terms in accordance with the basis of faith of a religious association *registered* under subsection 13 § of the Freedom of Religion Act. Confessional religious education need not, however, be arranged on the basis of the teachings of other registered or unregistered religious associations. A pupil from a religious association for whom his or her own religious education is not arranged may be taught moral education at the request of the guardian.

¹¹ On notification of foundation to the register of religious associations, see in more detail Appendix 1.

¹² Registration of a religious association decided before the new Freedom of Religion Act was approved by the Ministry of Education.

2. Registration of religious bodies and the relevant formal requirements

The new Freedom of Religion Act gives clear descriptions of the legal status and basis, rights and duties of registered religious associations.

The founding and registration of a religious association

Charter of foundation and order of association

In order to register as a religious association under subsection 15 § of the Freedom of Religion Act the National Patent and Register Board must be notified in a document signed by a minimum of twenty persons. In practice, under 18-year-olds are not accepted as founding members because their right of religious self-determination is limited. When founding an association, a charter of foundation is drawn up to be signed by the founding members. Attached to the charter of foundation is an order of association (§ 10), which is delivered to the National Patent and Register Board in connection with notification of foundation of an association.¹³ The content of the regulations concerning the charter of foundation and the order of association correspond in many respects to the regulations concerning association law in force when founding a registered association and those concerning the order of association of a religious association.

Subsection 10 § lays down the minimum content of the order of association of a registered religious association. Accordingly: (1) an association must have a domicile in Finland¹⁴; (2) the order of association must mention the purpose and types of activity of the association in accordance with subsection 7 §; (3) the grounds whereby a person may be accepted as a member of the association, (4) which organs and which persons exercise power of decision in the association in each matter; (5) the number or minimum and maximum number of board members and auditors and their term of office; (6) the accounting period of the association, confirming of the balancing of the accounts and the discharging of personal liability; (7) the responsibility to pay membership fees and other fees to the association; (8) the procedure for altering the order of association and dissolution of the association; and (9) the use

¹³ See in more detail Appendix 1.

¹⁴ The regulation corresponds to the Freedom of Religion Act and the law of associations in force.

of funds in the event of the dissolution or termination of the association.

The National Patent and Register Board (previously the Ministry of Education) must approve the entry of a religious association in the register and see that the order of association is drawn up in accordance with the Freedom of Religion Act, that the basis of faith and type of religious observance of the association are not contrary to law and good manners, and that the board of the association and the associated parish council (§ 12) fulfil the stipulations laid down in subsection 10 § of the Freedom of Religion Act.¹⁵

Members and the membership register

A member of a registered religious association may be a private individual. Unlike the case of other associations, organizations or trusts cannot be members of a religious association. The subsection 11 § of the Freedom of Religion Act also lays down the duty of the association to maintain a register of its members. Regulations on membership registers of religious bodies, on information contained in the register, on keeping a register and on the divulging of information contained in the register are laid down specifically in a relevant law. Under the aforesaid law, the keeper of the membership register of a religious association is an association, a parish or body whose task it is to keep a register as laid down or specified in the order of association. Thus in a registered religious association, a body other than the board of the organization may be responsible for keeping a register. As far as the Evangelical Lutheran Church is concerned, the responsibility to maintain a membership register is based on Church Law 16 subsection 2 §, and as concerns the Orthodox Church subsection 12 a § of the Orthodox Church Act.

Decision-making and administration in registered religious associations

The regulations of the Freedom of Religion Act concerning the organization and administration of a registered religious association are very scant. The associations can thus very freely decree on these matters in the

¹⁵ The Ministry of Education has rejected notification of founding in only a few cases. It may be that the activities of the community are not considered to be religious observance or that an account of the basis of faith or types of public religious observance is lacking or the notification has been insufficient or unclear and the association has not, in spite of repeated requests, provided the missing documents.

order of associations. The organization of an association and the administrative requirements set are mainly apparent from subsection 10 § of the Freedom of Religion Act concerning the minimum content of an order of association.

An association must have a board comprising one or more members. Requirements for members of the board are laid down in subsection 12 § of the Act. A member cannot be a person under 18 years of age or one almost 18. The majority of members of the board (the chairman and at least half of the other members of the board) must have a domicile in Finland, unless the Ministry of Education grants permission to diverge from this. The board must by law and the order of association carefully tend to association affairs and represent the association.

The authority belonging to the board of the association can also be exercised by some other organ. The regulation ensures that registered religious associations have the ability to appoint the board in line with their religious views. The order of association must then mention what organ acts as a board in the sense intended by the Freedom of Religion Act.

Local communities as registered religious associations

A registered religious association may be a parish or other local body. It is legally competent and may be entered in the register of religious bodies under the association in question.

Subsection 13 § concerning local communities, lays down regulations for parishes or branches of the registered religious association and other local bodies. The aim of the clause is to increase opportunities for religious associations to organize the status of local communities as compared with the old Freedom of Religion Act (1923). The old Freedom of Religion Act was based on the dominant way of thinking that the organization and administration of all local communities was regulated uniformly in the order of association. The new Freedom of Religion Act makes it possible for each religious association itself to define much more loosely than at present relations between the association and local communities in accordance with its own views and needs.

Accordingly, subsection 1 of the clause on the division of the association into parishes or other local bodies should be defined in the order of association. Under subsection 2 of the clause, a local body can be entered in the register of religious associations under the religious association in question. Such a registered local body is legally competent, that is, it may acquire rights and enter into commitments and be a litigant

in court and before other authorities. Subsection 3 of the clause lays down the minimum requirements as to what kinds of stipulation should be contained in the order of association concerning the organization and administration of registered local bodies. The regulation naturally concerns only such associations whose order of association permits registered local bodies. According to subsection 4 of the clause, in the order of association it is, however, possible to delegate the issuing of regulations intended in subsection 3 either in part or in total to the local bodies themselves. Local bodies could then mostly decide for themselves on how to organize their decision-making and administration. The aforementioned stipulations are issued by the local body in a document called local regulations.

Economy of a registered religious association and members' liability to pay fees

Members' obligation to pay fees to a registered religious association must be stipulated in the order of association. It includes under subsection 10 § (5-7) of the Freedom of Religion Act stipulations concerning the care and inspection of properties owned by the association. No other regulations on the financial management of the association are contained in the Freedom of Religion Act. An association is not accountable unless it conducts business or engages in professional activities.

According to subsection 14 §, a person who resigns from the association is obliged to pay before resigning any fees due, based on the order of association. This would be the case even without the regulation in question. A person's obligation to pay church tax is determined according to the situation at the beginning of the fiscal year. Thus a person who has left the Evangelical Lutheran Church or the Orthodox Church during the fiscal year is obliged to pay church tax for the entire fiscal year. The order of association of a registered religious association can correspondingly stipulate that a member is obliged to pay to the association, based on the order of association, fees for the entire calendar year during which the member has resigned. A member cannot be obliged to pay fees for a longer time after his or her resignation. Liability to pay may, however, only apply to such fees as were decided on before the date of resignation.

According to the new Freedom of Religion Act, fees may not be recovered by bailiffs without a specific court decision or a decision to recover tax and fees by bailiffs under the law of recovery of debt by enforcement order. In practice, this facility has previously been resorted

to by only a very small number of religious associations. Of the twenty-three associations that responded to a questionnaire from the Ministry of Education sent to all registered religious associations in February 2000, only one stated that it recovered membership fees by enforcement order.

Dissolution and termination of a registered religious association

An order of association must contain stipulations on the manner of possible dissolution of the association and the procedure to be followed with respect to the disposal of its property in the event that the association cease to exist. Under subsection 20 § of the Freedom of Religion Act, the chairman of the board or liquidator must send notification of dissolution of the association or registered local body to the National Patent and Register Board indicating the person or persons acting as liquidators and informing that liquidation measures have been concluded. After the dissolution of the association, termination of activities and liquidation measures are subject to the relevant parts of what subsection 16 § 1 lays down concerning the entering of a religious association in the register, that is, the National Patent and Register Board notifies the civil register centre, which records the information on the population information system concerning the dissolution and termination of the association.

The right of inspection of the National Patent and Register Board – preliminary examination and expert committee

Under subsection 21 § of the Freedom of Religion Act, the National Patent and Register Board, on application by the association or its founder members, may conduct a preliminary examination of the order of association or its alteration, if there is reason, whether with respect to the size of the association, the significance of the alteration to the order of association or another similar reason. The decision concerning preliminary examination is binding, unless the association has changed the order of association in the preliminary examination. The decision is in force for two years from the date it is made.

Subsection 23 § of the Freedom of Religion Act provides for the setting up of a committee of experts whose task it is to provide the Patent and Register Board with a statement as to whether the purpose and types of activities of a registered religious association are in accordance with

subsection 7 §. The committee acts as an expert body evaluating the religious nature of the activities of the association. A statement must be procured when registering the association for the first time and when altering the purpose and type of activities mentioned in the order of association.

The task of the committee is primarily to assess whether the body applying for registration is religious or whether it represents non-religious world views and convictions. Secondly, the committee is to assess the nature of the activities of the organization in relation to basic rights and human rights. Thirdly, the committee assesses whether the organization complies with the restrictions imposed on economic activities in the Freedom of Religion Act and checks that the association is not organized in a military fashion and that its purpose is not to organize drills in the use of firearms. The tasks of the committee of experts are limited solely to the assessment of the purpose and types of activity of an association that has made notification of foundation or later altered the order of association on the basis of subsection 7 §.

3. Tax regulations and state aid for churches and registered religious associations

Approximately 84 per cent of the Finnish population belongs to the Evangelical Lutheran Church, approximately 1.1 per cent to the Orthodox Church and approximately 1.1 per cent to registered religious associations. Membership of registered religious associations can be seen in more detail in the appended table.¹⁶

The most important source of income for Evangelical Lutheran and Orthodox parishes is church tax, which is levied from parishioners in municipal tax 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, parishes receive a share of the proceeds of corporation tax. In connection with the reform of corporation taxation that came into force at the beginning of 1993, parishes' share of corporation tax was replaced by the previous obligation of associations to pay church tax. Behind the obligation of associations to pay church tax was the fact that the church did not from the outset make a distinction in taxation between natural

¹⁶ See Appendix 2.

and legal persons. Later the obligation of associations to pay church tax and parishes' share of corporation tax began to be justified by the fact that parishes provide a wide variety of social services.¹⁷ As far as burials are concerned, parishes' share of corporation tax is linked to the responsibility of Evangelical Lutheran parishes to maintain public cemeteries and in the preliminary work of the new Cemeteries Act.¹⁸

Parishes' share of the proceeds of corporation tax has been altered several times during the time that the Income Tax Act has been in force. At present, parishes' share is 1.94 per cent. The following table sets out the amount of corporation tax income received by parishes. Parishes' share is divided between Evangelical Lutheran and Orthodox parishes so that Evangelical Lutheran parishes receive 99.92 per cent and Orthodox parishes 0.08 per cent.

Parishes' corporation tax income by payment, mill. euros

Year	1993	1994	1995	1996	1997	1998	1999	2000	2001	2002	2003	Average
	39	59	85	106	149	144	130	127	93	89	89	101

(source: VM, corrected to 2003 value on the basis of the cost of living index) corporation tax income

The expenditure of the central and diocesan administration of the Orthodox Church is paid principally from state funds. In addition, the Government has supported some Orthodox parishes and institutions with state aid. The 2005 budget of the Central Church Board assigns to activities 1.787 million euros and to the aforementioned aid 152,000 euros.

Registered religious associations *do not at present receive* financial aid from the Government to support their activities. Associations fund their activities principally through donations, membership fees and their own fund-raising activities.

On May 9th, 2005 the Ministry of Education's 'State aid to registered religious associations' working group delivered its report on the extension of state financial aid to include not only the Evangelical Lutheran and

¹⁷ E.g. Church and State committee (KM 1977:21), set up by the Ministry of Education's 'Church and State' working group (KM 1982:47), the 'State and Church' economic relations committee (KM 1997:7) and the 'Religious freedom' committee (KM 2001:1).

¹⁸ HE 204/2002 vp. See in more detail the report of the 'State aid to registered religious communities' working group, memoranda and reports of the Ministry of Education working group 2005:15.

Orthodox Churches but also registered religious associations. The working group introduced a proposal to put the system into practice.

According to the proposal of the working group, state aid could be received by registered religious associations on a numerical basis according to the number of members. State aid would not be granted to associations with fewer than one hundred members nor to associations that in fact do not have any or have very few activities. The goal is to provide clear criteria concerning aid so that as little assessment-based discretion as possible is required.

The working group considers that state aid to registered religious associations does not require special regulation. In the granting of state aid, the State Aid Act would be applied. According to the proposal of the working group, the amount of state aid would be decided in connection with the annual government budget. The starting point might be the amount of corporation tax income received by Evangelical Lutheran parishes with burial expenses deducted. Then the amount of state aid would be approximately 5-7.7 euros per member of the association. The working group also proposes that consideration be given to whether state aid authorities might be at a lower level than the Ministry of Education, such as one of the provincial administrative boards.

4. The central functions of religious associations – the right to solemnize matrimony, burials and exemptions concerning the law on working hours

The right to solemnize matrimony

The right of the Evangelical Lutheran and Orthodox Churches to solemnize matrimony is directly based on law. Permission has been granted to other religious associations under subsection 14 § of the Matrimony Act (234/1929) by the Ministry of Education. The right to solemnize matrimony may be granted, however, only to registered religious associations. The right to solemnize matrimony is granted to associations and not to individuals.

Burials

The maintenance of cemeteries in Finland has traditionally been the responsibility of the Evangelical Lutheran and Orthodox Churches. In the new Cemeteries Act (HE 204/2002 vp), the management of burials is

divided into two: cemeteries maintained by the Evangelical Lutheran Church or parish federations and other cemeteries. Other cemeteries are maintained by *the Orthodox parish, the Government, the municipality or federation of municipalities or by a registered religious association or other registered body or trust.*

Evangelical Lutheran parishes and parish federations are ultimately responsible for the maintenance of public cemeteries. This also applies to the maintenance of non-religious burial areas, which are intended as a religiously neutral option for those who, for religious or ideological reasons, do not wish to be buried in an Evangelical Lutheran cemetery. Providing a burial plot in a non-religious area always requires a specific request. It is in accordance with good administrative practice and the principle of freedom of religion that the relatives of the deceased are informed of this possibility, unless the will of the deceased person is unclear. Also, a deceased person who did not belong to the Evangelical Lutheran Church must be buried in a religious Evangelical Lutheran cemetery unless a burial plot in a non-religious area is specifically requested. A member of an Evangelical Lutheran Church can, on request, be buried in a non-religious area. A non-religious burial area is religiously neutral so that the parish or parish federation acts solely as the body responsible for the technical maintenance of the area.

Providing a burial plot in a non-religious burial area is the legal public duty of the parish or parish federation maintaining the cemetery. Consequently, the person or persons responsible for the maintenance of the cemetery are obliged by the constitutional rights of the individual and the general principles of legal protection in administration.

The Evangelical Lutheran parish or parish federation is also responsible, if requested, to provide a burial plot for a deceased person whose domicile under the Domicile Act (201/1994) was at the time of death located in the parish or in the area of the parish federation. It is also responsible for providing a burial plot for any Finnish citizen who at the time of death was living abroad and whose last domicile, as specified in the Domicile Act, before moving abroad was in the parish or in the area of the parish federation.

An Orthodox parish, the Government, a municipality or federation of municipalities may maintain a cemetery without special permission. To establish a cemetery, all that is required under subsection 13 § of the Health Protection Act is notification and possible construction, operation and landscape work permits.

A registered religious association or other registered body or trust may also maintain a cemetery. Subsection 8 § 1 of the Cemeteries Act lists

bodies and trusts that may maintain cemeteries with the permission of the provincial administrative board. The regulation applies in practice to all registered bodies and trusts. For the sake of clarity, the clause specifically mentions registered religious associations and their registered local bodies for whom the ability to establish a cemetery is especially important. Before permission is granted, the applicant must demonstrate its ability to maintain the cemetery correctly and prove that other requirements for establishing a cemetery are fulfilled. A cemetery may not be maintained for financial gain.

Crematoria and cremation

The provincial administrative board may grant to a municipality, an Evangelical Lutheran or Orthodox parish or parish federation, a registered religious association or its parish or branch or other registered body or trust permission to maintain a crematorium. Before permission is granted, the applicant must demonstrate its ability to maintain a crematorium correctly. The requirement for the granting of a maintenance permit is that the crematorium has an environmental permit issued under the Environmental Protection Act (86/2000). A crematorium may not be maintained for financial gain.

In addition to the Freedom of Religion Act, there are several different types of regulation concerning burials. Subsection 9 of the Health Protection Act (763/1994) and subsection 7 of the Health Protection Statute (1280/1994) contain regulations on prevention of health hazards caused by burials. Church law and the Church Constitution (1055/1993) contain some regulations concerning the cemeteries of the Evangelical Lutheran Church.¹⁹ The Orthodox Church Act and the statute of the same name (179/1970) similarly contain some regulations concerning Orthodox cemeteries.²⁰

Exemptions from employment laws

Most of the personnel of the Evangelical Lutheran and Orthodox Churches are in full-time permanent employment, but there are also staff

¹⁹ Evangelical Lutheran cemeteries are mentioned in clause 17 of church law, which contains regulations on establishing cemeteries, the right to burial, maintenance of graves and monuments, and the church constitution.

²⁰ These pertain to, among other things, maintenance of cemeteries and graves, the loss of right to a grave, burial registers and the establishment of cemeteries.

under contract. All personnel of registered religious associations are under contract. All churches and religious bodies are equally affected by the law on general contracts. As far as the Lutheran Church is concerned, however, there exists a working hours statute, which allows employees exceptional working hours. In a church, parish or parish federation, personnel are either full-time permanent employees or they work under contract. Under church law (CL 6 subsection 1 §) holders of church, parish or parish federation posts and persons in permanent employment connected with public worship, occasional services, the diaconate or education may, however, only be members of the Evangelical Lutheran Church. The diocesan chapter may grant exemption from this qualification requirement for a priest or pastor of another Christian church or religious association if the General Synod has approved an agreement with that church or religious association on reciprocity of ministry. Exemption may be granted temporarily or for a set period. (28.12.2001/1473). The working hours statute on exceptional working hours also applies to other religious associations.

The law on equal opportunities also applies to churches and religious associations, where Article 4 of the directive has been implemented, outlawing all discrimination, including on the basis of religion, and this applies to all member states of the European Union. Setting a different status is not, however, considered discrimination in the workplace when it is based on job qualifications. The law on equal opportunities is also obligatory on the church. The provisions of the law on equality do not, however, apply to the Evangelical Lutheran and Orthodox Churches and the religious activities of other religious associations.

5. A registered religious association as an agent under public law – contracts, property, acting as an employer, restrictions

The right to make commitments and contracts

Subsection 17 § of the Freedom of Religion Act applies to the legal implications of the registration of religious associations. A registered religious association – as has been stated – is an independent special type of legal subject, such as a registered association, corporation, cooperative or trust. A registered religious association may thus in its own name acquire rights, enter into commitments and be a litigant in court and before other authorities. Members of the association do not have personal responsibility for financial and other commitments made in the name of the association.

The clause corresponds to the legislation in force. The clause is also applied to local communities registered as religious associations, which thus also have legal capacity in the sense mentioned in this clause.

The ability to own property

When a religious association gains legal person status, it may acquire property, enter into commitments and be a litigant in court and before other authorities, provided that it is entered in the register of religious associations. Under subsection 14 § of the Freedom of Religion Act, an association order must also contain stipulations on the maintenance and inspection of association properties. No other regulations on the financial administration of the association are contained in the Freedom of Religion Act. The association is not required to keep accounts unless it conducts business or engages in professional activities.

An association order must also contain stipulations on possible dissolution of the association and the procedure to be followed with respect to its property in the event that the association ceases to exist.

Acting as an employer

Registered religious bodies as employers have the same status as any other legal person, with all the associated rights and obligations.

Possible restrictions

The new Freedom of Religion Act successfully removed restrictions. In this context, it suffices to refer to the abolished *law on the right of Finnish citizens to serve their country irrespective of religious affiliation* (173/1921). Under the old 1923 Freedom of Religion Act, a person who did not belong to the Evangelical Lutheran Church, an Evangelical Lutheran association or the Orthodox Church, might not give confessional religious education. The Ministry of Education might, however, grant exemption to provide religious education also in the aforementioned cases, having consulted the diocesan chapter on the matter of instruction in the Evangelical Lutheran faith and the Orthodox Episcopal conference on the matter of instruction in the Orthodox faith. Teachers of other religions were not required to be members of the churches or religious groups in question.

When the Government introduced the bill, it was observed that in the new Freedom of Religion Act basing education on law and approved curricula and requiring that teachers of religious education should belong to the Church was at odds with the religious freedom enshrined in the Constitution. Also, from the point of view of equal opportunities, applying such a restriction to only two religious associations was difficult to justify. Therefore the law concerning the right of Finnish citizens to serve their country irrespective of their religious affiliation was abolished. Similar regulations were omitted from the prospectus law and the High Schools Act. According to this bill, all persons who fulfil the special qualification requirements for teachers of religious education under the relevant legislation are qualified to give basic education and religious education in high schools irrespective of whether they are members of the Evangelical Lutheran or Orthodox Churches. The bill emphasizes the principle that the content of religious education is regulated by legislation and the syllabus and not by the teacher's personal religious views.

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Appendix 1

Registered religious associations

Name of the Community	Number of members 31.12.2004
Jehovah's Witnesses	18 224
The Evangelical Free Church	13 471
Catholic Church in Finland (Diocese of Helsinki)	8 083
Seventh-day Adventist Church of Finland	4 030
The Church of Jesus Christ of Latter-day Saints (The Mormons)	3 309
The Baptist community of Finland	1 562
Pentecostalic Church of Finland	1 240
Orthodox St. Nicolas Church in Helsinki	1 181
Jewish Community of Helsinki	1 072
Finlands svenska baptistsamfund	881
Helsinki Islamic Center	778
The Methodist Church of Finland	644
The Islamic Society of Tampere	615
Finlands svenska metodistkyrka	603
Islamic-congregation of Finland	591
The Evangelical-Lutheran Free Parish Union (Suomen vapaa evankelisluterilainen seurakuntaliitto)	537
Bahai community of Finland	493
The Islamic Society of Finland	446
The private Greek-Catholic Church in Vyborg (Pokrova)	340
Confessional Lutheran Church of Finland (Suomen Tunnustuksellinen Luterilainen Kirkko)	305
Lutheran Community of Word (Luterilainen Sanan yhdyskunta)	169
The Liberal Catholic Church Province of Finland	132
Jewish Community of Turku (Åbo)	131
The Islamic Society of Savo	115
The Anglican Church in Finland	97
Islamic-congregation of Tampere	85

Name of the Community	Number of members 31.12.2004
ANJUMAN-E-ISLAHUL-MUSLIMEEN OF TURKU	83
The Christian Community in Finland	76
Finnish Islamic Center	74
International society for Krishna Consciousness in Finland	64
The Shiia Muslims of Finland	51
Vörå Frikyrkoförsamling	46
The Islamic Society of Central Finland	41
The Buddish Dharma Center	40
The Islamic Rahma Center in Finland	39
Missionkyrkan i Finland	35
The Congregation of God (Jumalan seurakunta)	30
New Apostolic Church of Finland	29
Linkkiseurakunta	28
Finlands svenska pingstsamfund	26
Spaso-Preobrazenskaja	24
Islam and Love	20
The Islamic Society of Al-Risala	20
The Islamic Society of Al-Hudaa	less than 20
The Kimbangu Church (Kimbangun Kirkkokunta)	less than 20
The Church of Christian Acts (Kristillisten Tekojen Kirkko)	less than 20
The Islamic Society of Northern Finland	less than 20
Redeemed Christian Church of God	less than 20
Seventh-day Adventist Church Reformation movement	less than 20
Friends of the Truth (Totuuden Ystävät)	less than 20
TOGETHER:	circa 59000

BRIGITTE BASDEVANT-GAUDEMET ET FRANCIS MESSNER

ENTITES RELIGIEUSES COMME PERSONNES JURIDIQUES – FRANCE

I. Modalités de constitution d'une entité religieuse

A. Régime général

La loi du 9 décembre 1905 dispose dans son article 2 que la République «ne reconnaît, ne salarie, ne subventionne aucun culte...». Le principe de séparation des Églises et de l'État qui caractérise le régime français a comme conséquence nécessaire que l'État ne peut «reconnaître» au sens juridique du terme aucune religion. Cette affirmation théorique fondamentale et absolue s'accompagne néanmoins de nombreux aménagements dans son application pratique. Les groupements et entités religieuses peuvent s'organiser dans le cadre des divers mécanismes de droit français et certaines structures sont particulièrement prévues pour les religions. Toutefois, ce n'est pas une confession religieuse en tant que telle, dans sa globalité, qui peut obtenir un statut juridique de droit français. L'Église catholique ou les Églises protestantes, luthérienne ou réformée ne possèdent pas, au regard du droit français, la personnalité juridique. Il en va de même de chacune des confessions religieuses. Aucune n'a, en tant que telle et dans sa globalité, un statut juridique.

Pourtant, les mouvements religieux, des groupements à l'intérieur des confessions, peuvent acquérir une existence juridique, être dotés de la personnalité juridique et avoir un statut de droit français précis. Divers mécanismes et structures sont à la disposition des religions.

Le droit des associations offre les cadres les plus couramment utilisés par les religions. Deux mécanismes coexistent:

- la loi de 1905 prévoit (art. 4, 18 et 19) la constitution d'associations cultuelles qui «devront avoir exclusivement pour objet l'exercice d'un culte» et devront «subvenir aux frais, à l'entretien et à l'exercice public d'un culte». Par cette mesure, le législateur de 1905 n'entendait pas accorder un statut de droit français à une confession religieuse, mais permettre à des associations de recueillir les biens des anciens établissements publics des cultes supprimés par cette même loi. Des associations cultuelles furent constituées, dès 1906, par les

Églises protestantes et par les communautés juives. L'Église catholique refusa la loi de 1905 et ne forma pas d'association culturelle. Mais, en 1924, furent constituées des associations culturelles diocésaines, conformes à la loi de 1905 et à la constitution de l'Église. Ces associations fonctionnent dans le cadre de chaque diocèse; elles sont présidées par l'évêque. Les autres confessions peuvent, elles aussi, former des associations culturelles; il existe notamment quelques associations culturelles musulmanes, conformes aux dispositions de la loi de 1905.

– le droit commun des associations, régi par la loi du 1^o juillet 1901, est également ouvert aux religions. De telles associations peuvent être constituées à des fins très diverses (éducatives, caritatives,...) et avoir une orientation confessionnelle précise. Les communautés musulmanes s'organisent généralement dans ce cadre. Il existe en France de très nombreuses associations musulmanes, conformes à la loi de 1901. Pendant longtemps, les «associations étrangères» étaient soumises à un régime spécifique, restrictif. Elles ne pouvaient se constituer qu'avec autorisation des pouvoirs publics. Cette condition fut supprimée par une loi de 1981. La réforme toucha notamment un grand nombre d'associations musulmanes, qui rassemblaient souvent une majorité d'étrangers et dont le conseil d'administration était aux mains d'étrangers. Ces associations musulmanes comptent, aujourd'hui, proportionnellement plus de Français mais, en tout état de cause, elles obéissent au droit commun des associations.

Si l'utilisation des divers mécanismes du droit associatif offre de larges possibilités, il n'exclut pas le recours à d'autres cadres juridiques: des sociétés peuvent être constituées, et prévoir expressément l'orientation religieuse de l'organisation; c'est généralement le cas des hôpitaux à orientation confessionnelle. La situation est tout à fait comparable dans les hypothèses de recours à des fondations.

D'autre part, les congrégations religieuses ont un statut spécifique en droit français, statut qui a considérablement évolué au cours de l'histoire et qui, aujourd'hui, n'est pas le même pour toutes les congrégations. Deux grandes catégories doivent être distinguées. Les religions peuvent créer des congrégations, dont la licéité fut expressément admise en 1942. Certaines congrégations bénéficient d'un régime de «reconnaissance», qui confère des avantages (fiscaux notamment) et implique l'exercice d'un droit de tutelle de la part de l'autorité publique.

Le droit français ne distingue pas expressément entre «anciennes» ou «nouvelles» religions. Toutefois, les pouvoirs publics tentent de protéger

les populations contre la «dangerosité» de «dérives sectaires» dues à certains «nouveaux mouvements religieux socialement controversés». La loi du 10 juin 2001, insérée au Code pénal, doit permettre de punir les dérives sectaires.

En outre, les pouvoirs publics, contrôlés sur ce point par les cours suprêmes (Conseil d'État et Cour de Cassation) se prononcent sur le bien fondé de l'appellation d'association culturelle. Si une association souhaite être qualifiée de culturelle, il appartient aux pouvoirs publics (à l'administration fiscale le plus souvent) de dire si l'association a pour objet l'exercice d'un culte, et de vérifier ainsi son orientation religieuse. L'Église de Scientologie, les Témoins de Jéhovah ne se voient pas autoriser à créer des associations culturelles. Par ces décisions, indirectement, l'autorité publique leur refuse la qualité de «religion», sans s'exprimer directement en ces termes, ce qui serait une formule inadmissible puisque l'État ne «reconnaît» aucune religion.

Le régime de la loi de 1905 s'applique sur la plus grande partie du territoire national français. Pourtant, dans certaines régions, il existe des régimes particuliers, fruits de l'histoire.

B. Régimes particuliers

a) Droit local des Départements et Territoires d'Outre-Mer.

La loi du 9 décembre 1905 n'a pas été étendue au département de la Guyane et au Territoires d'Outre-Mer où les cultes sont respectivement régis par une ordonnance de 1828 et un décret de 1939.

Le droit local guyanais découle de l'article 36 de l'ordonnance du 27 août 1828. Il soutient et organise le seul culte catholique. Certaines paroisses sont encore administrées par des fabriques qui sont des établissements publics du culte. Mais le diocèse a également recours aux décrets Mandel du 16 janvier 1939 modifiés, introduits en Guyane française par un arrêté du 26 août 1939. Ce texte permet de surcroît aux cultes non catholiques ne bénéficiant pas des avantages de l'ordonnance de 1828 d'exercer leur culte dans le cadre des conseils de missions.

Le décret-loi du 16 janvier 1939, modifié par le décret du 6 décembre 1939, dont l'article 1er précise qu'il s'applique à des missions religieuses implantées dans des territoires «non placés sous le régime de séparation», trouve application dans les collectivités territoriales de Saint-Pierre-et-Miquelon, les Territoires d'Outre-Mer, de Polynésie française (Tahiti et les Iles Marquises), de Wallis-et-Futuna et de Nouvelle Calédonie.

Les cultes sont organisés dans le cadre de conseils d'administration. Les conseils d'administration qui se réunissent sur la convocation de leur président sont des personnes morales privées investies de la personnalité civile. Ils peuvent acquérir, posséder ou aliéner au nom et pour le compte de la mission tout bien meuble et immeuble. Les acquisitions sont soumises à l'autorisation préalable de l'administration.

Ces institutions bénéficient d'une capacité étendue et leurs acquisitions ne sont pas limitées par le principe de spécialité. Elles peuvent acquérir à titre gratuit ou onéreux tous biens meubles ou immeubles.

b) En droit local alsacien-mosellan, les «entités religieuses» sont organisées dans le cadre du droit public (cultes statutaires, encore appelés cultes reconnus) ou dans le cadre du droit privé (cultes non statutaires).

– *Cultes statutaires.* Les cultes statutaires comprennent l'Église catholique, deux Églises protestantes (luthériens et réformés) et la religion juive. Certaines institutions de ces religions précitées ont la personnalité juridique de droit public en vertu de divers textes juridiques datant du début du 19^e siècle.

Les diocèses catholiques (Strasbourg et Metz) n'ont pas de personnalité juridique. Pour remédier à cette absence, les évêques utilisent, avec l'accord de l'administration, la mense épiscopale qui est un établissement public du culte représentant les intérêts du titre épiscopal (décret du 6 novembre 1813) pour gérer les biens diocésains. Les séminaires, petits et grands, ainsi que la mense du chapitre cathédral sont des établissements publics du culte (décret du 6 novembre 1813).

Les fabriques servent de support juridique aux paroisses. Ces établissements publics sont chargés de l'administration des biens et de l'entretien des édifices paroissiaux consacrés à l'exercice du culte: église et logement du ministre des cultes (loi du 18 germinal an X et décret du 30 décembre 1809). Les deux Églises protestantes organisées par l'État disposent de deux établissements publics du culte: les paroisses et les consistoires qui sont des regroupements de paroisses. Enfin, le culte juif s'appuie sur un établissement public par département (décret du 17 mars 1808 et ordonnance du 25 mai 1844).

Les organes de ces établissements publics sont des autorités administratives. Ils prennent des actes administratifs, qui sont soumis à l'ensemble des règles régissant ceux-ci en vertu du droit administratif. Ils peuvent être déférés au juge administratif pour un recours pour excès de pouvoir et peuvent être annulés par celui-ci pour illégalité, y compris pour erreur

manifeste d'appréciation (TA Strasbourg, 19 mars 1981, Keppi c/ Conseil de fabrique de Berstheim, n° 1278/78).

Les établissements publics du culte sont des établissements *sui generis*. Leur nature culturelle, leur vocation pastorale et religieuse et leur organisation propre font obstacle à ce qu'ils puissent être qualifiés d'établissement public de l'État. Le contrôle de l'État sur ces établissements ne peut être exercé conformément au principe constitutionnel de laïcité, qu'en vue de sauvegarder l'ordre public ou les intérêts propres de l'établissement culturel concerné (TA Strasbourg, 27 juin 1996, Mense épiscopale c/ Commune d'Ottrot, Préfet du Bas-Rhin, ministère de la culture).

Les établissements publics du culte, qui peuvent acquérir et recevoir des biens dans les limites de leur spécialité, sont créés et supprimés par voie réglementaire.

Aucun culte n'a plus été reconnu depuis le début du 19^e siècle et il n'existe pas de texte fixant une procédure de reconnaissance.

– *Cultes non statutaires.* Les cultes non statutaires forment un ensemble disparate. Il comporte toutes les religions organisées (Églises protestantes libres, communautés musulmanes, bouddhistes), qualifiées de culte par le juge ou l'administration, à l'exception des cultes statutaires.

Les cultes non statutaires sont organisés dans le cadre du droit privé. Ils peuvent bénéficier de mécanismes de soutien des collectivités territoriales. Ils ne relèvent pas du droit général. La loi du 9 décembre 1905 sur la séparation des Églises et de l'État, ainsi que celle du 1^{er} juillet 1901 sur les associations n'ont pas été introduites dans les trois départements du Rhin et de la Moselle.

Les cultes, qui ne bénéficient pas d'un statut de droit public, s'organisent dans le cadre du droit local des associations (articles 21 à 79 du Code civil local). Ces textes ont été maintenus en vigueur dans les départements du Rhin et de la Moselle par l'article 5 alinéa 9 de la loi du 1^{er} juin 1924.

L'association de droit local jouit de la personnalité morale dotée d'une capacité élargie, après son inscription au registre des associations du Tribunal d'instance ou au greffe permanent du siège de l'association. Elle peut librement acquérir à titre onéreux tous les biens meubles et immeubles nécessaires à l'accomplissement de son but. La capacité de recevoir des biens mobiliers ou immobiliers à titre gratuit est régie par le droit commun et des règles spéciales édictées par le décret du 13 juin 1966 relatif à la tutelle administrative des associations, fondations et congrégations. A la différence du droit général (titre IV de la loi du

9 décembre 1905), le Code civil local ne prévoit pas de statut associatif particulier pour l'exercice du culte. Le droit local offre cependant des possibilités similaires. L'association inscrite jouit *de jure* de la grande capacité sans se voir imposer l'adoption de statuts-types. Elle peut bénéficier en outre des mêmes exonérations fiscales que les associations cultuelles de la loi de 1905, lorsque son objet est exclusivement cultuel (TA Strasbourg, 30 décembre 1998, Église néo-apostolique de France, n° 952542).

II. L'enregistrement des confessions religieuses

Le droit français ne «reconnait» aucun culte, aucun mécanisme «d'enregistrement» n'est concevable. Deux remarques s'imposent néanmoins :

- Certaines structures d'organisation à caractère confessionnel bénéficient d'un statut juridique spécifique, souvent avantageux. Les associations cultuelles, ou les congrégations reconnues, peuvent recevoir des dons et legs selon un régime fiscal très avantageux qui constitue une aide financière, indirecte mais importante, de la part de l'autorité publique.
- Si aucune religion n'est reconnue ou enregistrée, il existe cependant plusieurs religions, avec lesquels les pouvoirs publics dialoguent habituellement et qui sont considérées comme «connues» par l'autorité étatique et les partenaires sociaux. L'identification de ces religions résulte d'un consensus tacite, et la liste peut évoluer. Il s'agit de l'Église catholique, de l'Islam, des Églises protestantes (fédération protestante de France et fédération évangélique de France), des Églises orthodoxes, du culte israélite, du Bouddhisme. Chacune de ces confessions possède une instance acceptée tant par les fidèles ou la hiérarchie de la religion que par les autorités publiques et qui joue le rôle d'organe représentatif de la confession auprès des pouvoirs publics.

III. Capacité juridique

Chaque religion, en tant que telle, n'a pas, en droit français, de personnalité juridique. En revanche, les associations cultuelles ou non, les congrégations reconnues ou non, les sociétés, fondations, à orientation confessionnelle possèdent la personnalité juridique. Dans certains cas, il s'agit d'une «grande personnalité juridique».

Ces groupements peuvent donc posséder un patrimoine, acquérir des biens, ester en justice, employer des salariés, etc. Ils doivent, dans ces diverses opérations, respecter les prescriptions du droit français.

Signalons les questions de droit du travail, particulièrement délicates. Les associations à orientation confessionnelle fonctionnent souvent grâce à de nombreux «bénévoles» dont le statut n'est pas toujours clair. D'autre part, elles demandent généralement à leurs salariés un certain engagement, ou du moins une certaine loyauté à l'égard des doctrines religieuses professées. Le manquement à cette loyauté (qui se traduit souvent, dans l'Église catholique, par le retrait de la lettre de mission accordée par l'évêque) permet-il à l'employeur de licencier son salarié? Le droit français du travail se doit d'assurer la protection du salarié contre un licenciement abusif.

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STEFAN MÜCKL

RELIGIOUS ENTITIES AS LEGAL PERSONS – GERMANY

1.

The German legal system allows churches and religious communities to obtain legal status in two ways. One has to distinguish between the status of private law and public law:

- According to Article 140 of the Basic Law (BL) and Article 137 Section 4 of the Constitution of the Weimar Republic (CWR), religious communities may obtain legal status by the general provisions of civil law. Through these regulations, all forms of organization under private law are made available to churches and religious communities (the chosen term ‘general provisions’ bans any specific regulations concerning churches and religious communities that applied before 1919). In practice however, the majority opt for the status of a registered association (§§ 21 ss. BGB [Civil Code]). Another possibility is the status of a non-registered association (§ 54 BGB) which is not a legal person but, apart from this, is equal to a registered association in most aspects.
- A specific feature German law is the status of a public law corporation. Article 140 BL and Article 137 Section 5, Subsection 1 CWR states that those churches and religious communities that were given a certain legal status before 1919 may maintain the status they held before that date. According to Subsection 2 of the same provision, that status has to be granted to other religious communities if they guarantee durability by their constitution and by the number of their members.

What is common to both options is that churches and religious communities have a legal title as one or the other. The institute of an ‘approval’ or ‘recognition’ is an out-dated category that has not existed since 1919. Although the State necessarily has to cooperate in constituting a Church or religious community as a legal person (registration in the register of associations, granting of the status of a public law corporation), that cooperation is limited to the scrutiny of the legal conditions. No margin of discretion or appreciation is given to the State.

Where a religious community is constituted as a registered association, the community itself has a legal title either by means of statute or derived from constitutional law. Moreover, the individual adherents of the community may appeal to the constitutionally guaranteed freedom of association (Article 9 Section 1 BL). This basic right is inferior to that of religious freedom (Article 4 Section 1 and 2 BL; Article 140 BL and Article 137 Section 2 CWR) if the community is exclusively a religious community (and not a mere religious association which observes only some isolated religious aims). As foreigners are equally entitled to appeal to religious freedom, citizenship is not relevant for the constitution of a Church or religious community as a registered association.

As opposed to the granting of status as a registered association, the granting of status as a public law corporation is not an act of exercising basic laws. Citizens cannot associate with each other in order to form a legal person under public law. However, the Constitution grants religious communities the corresponding legal position as institutional ones (Article 140 BL and Article 137 Section 5 Subsection 2 CWR) which depends on the specified conditions.

Historically, the majority of churches in Germany were constituted as public law corporations before 1919 (Catholic Church, Protestant *Landeskirchen*, Jewish communities). The above-mentioned institutional guarantee of continued recognition as a public law corporation applies to all of them (Article 140 BL and Article 137 Section 5 Subsection 1 CWR). Apart from that, there is no difference in law between 'historical' Churches and 'new' religious communities: the latter may also apply for the granting of public law corporation status. In order to obtain this status, they need not have proved 'good' as for private law status for a certain time. The legal requirement of 'guarantee of durability', however, means that only religious communities that have consolidated in Germany can obtain public law status.

That bipolar system of legal status concerning churches and religious communities applies in principle throughout the whole country. The competence of the federal states (*Länder*) is limited to the regulation of details, especially about the rules of procedure (as regards the status of a public law corporation, see Article 140 BL and Article 137 Section 8 CWR).

2.

The fact that a Church or religious community has been constituted as a legal person is, of course, documented (as legal consequences depend on

that fact). There is nonetheless no general 'register of religious communities'. There are various reasons for this: since there are different options for churches and religious communities to obtain legal status, several registers exist. The register of associations contains all registered associations without any further specification whether they are religious ones or not. In a similar way, the authorities concerned hold registers of all churches and religious communities that are public law corporations. But all the registers are decentralized and not, at least officially, consolidated in a general, central register. Competence in respect of the register of associations lies with the Magistrates' Courts and with the Departments of Education of the *Länder* in respect of the register of public law corporations.

Registration, however, is never a condition for being allowed to work in the country as a church or religious community. Religious freedom (or, to be precise, freedom of religious association) does not depend on registration. Registration is, on the other hand, relevant for the assertion of legal positions as well as for general legal actions.

In order to obtain the status of a legal person, certain criteria have to be met depending on the legal status in question. The criteria for the most common legal status can be distinguished as follows:

- In order to be granted the status of a registered association, a church or religious community has to fulfil the requirements of the Civil Code (§§ 55 ss.). The minimum number of members is seven (§ 56). Moreover, by laws containing at least the association's aims, name and address are required (§ 57). Furthermore, there should be provisions on granting and terminating membership, on fees to be paid by the members, on the constitution of the board and on the convocation of the members' assembly (§ 58). It is the board's duty to deposit a registration request on behalf of the association at the Magistrates' Court, which is obliged to register the association if the specified formal requirements are fulfilled. There is no control over the association's aims in practice, especially in respect of its doctrine. On the other hand, the association's aims and actions must not contravene criminal law, constitutional order or the spirit of international friendship (Article 9 Section 2 BL). An association may, for these reasons, be forbidden in accordance with the provisions of public company law (§ 3 Public Companies' Statute). Consequently, it is in line with the principle of the coherence of legal order if an association that could be forbidden for the above-mentioned reasons is not immediately registered.

– The criterion for granting status as a public law corporation is the ‘guarantee of durability’ (Article 140 BL and Article 137 Section 5 Subsection 2 CWR). The first requirement in this context is a temporal one. According to the law, it is fulfilled if a religious community has either existed for at least 30 years or has been present in Germany for at least 30 years. The BL specifies a ‘constitution’ and the ‘number of members’ as further indications of ‘guarantee of durability’. ‘Constitution’ not only means provisions on organization in the sense of bylaws but also the existence of the community in law and in fact. A religious community applying for that status is therefore required to have clear organizational structures and competent hierarchies that are able to decide on internal matters of doctrine, to issue orders authoritatively and to act as competent partners of the State. As for the ‘number of members’, the guide is one per thousand of the population of the *Land* that is competent to grant that status. According to unanimous opinion, the BL furthermore contains an unwritten requirement of legal loyalty: a religious community applying for public law status may not revolt against the legal order or interfere with existing law. On the other hand, a specific loyalty to the State is not required as the Federal Constitutional Court held in a quite controversial verdict (‘the Jehovah’s Witnesses Case’, 2000).

The status of a public law corporation is connected with a number of legal advantages. The only explicit one is listed in Article 140 BL and Article 137 Section 6 CWR that grant the right to raise church tax with the support of the State in the administration and execution of that right. Moreover, having the status of a public law corporation provides several so-called corporation rights such as:

- the right to employ civil servants and to constitute an employment regime of a public law nature;
- the competence to install sub-entities of public law;
- the right to establish autonomous legislation in respect of churches’ and religious communities’ own affairs which forms a binding part of the legal order of the State;
- the parish right (i.e. the right of the church to oblige *ipso iure* all the members living in a certain area);
- the right to create public ecclesiastical property, especially church buildings and church bells, to which the public property law of the State applies.

Moreover, statute law also contains a number of provisions granting legal advantages to churches and religious communities that have public law

corporation status. The reasons for those advantages vary and they are usually referred to as a ‘bundle of privileges’ since there are advantages in tax law, employment law, social law, building law and media law.

In the area of tax benefits especially, religious communities under civil law are in practice treated in the same way as those under public law. The common requirement is the granting of charitable status to which religious communities organized as registered associations are also entitled. Every taxpayer may reduce his/her income tax by the amount he/she donates to civil law communities as well as by the church tax he/she pays to public law corporations.

Contrary to these regulations, State contributions are not linked to the legal status of the churches or religious communities concerned (in practice, the Catholic Church, the Protestant *Landeskirchen* and the Jewish communities are entitled). Nor are exemption clauses under general employment law which, in principle, are applicable to all churches and religious communities. As German law introduced obligatory civil marriage in the 1870s (Kulturkampf) the State does not allow any church or religious community to perform weddings that have the effect of civil marriages. On the other hand, only churches and religious communities with the status of public law corporations are entitled to own special burial grounds.

Civil company law and provisions concerning the status of public law corporations are part of the federal legal order. Consequently, the federal system of Germany is irrelevant. The ‘historical’ churches are therefore privileged since they are granted the maintenance of their status as public law corporations directly by the BL. Apart from this, legal requirements for the granting of legal status (civil or public) law are identical.

Due to the lack of a general, central ‘register of religious communities’, only approximate statistics on the organizational and legal structure of churches and religious communities can be provided: the most commonly known public law corporations are the Catholic Church (or, to be precise, their dioceses and parishes, of about 26.5 million inhabitants or 32.1 %), the Protestant *Landeskirchen* (about 26.2 million inhabitants or 31.7%) and the Jewish communities (about 100,000 inhabitants or 0.1 %). Furthermore, several smaller Christian churches (Evangelical Free Churches, Orthodox Churches) as well as non-Christian communities (some philosophical organizations) are organized as public law corporations¹.

¹ See an actual and complete overview in the web: www.uni-trier.de/~ievrt/religions-gemeinschaften.htm.

As regards civil law communities, there are only some very approximate *estimates* which roughly add up to about 2.5 million inhabitants (most of whom are members of Muslim communities).

3.

Churches and religious communities may take legal actions in nearly every domain regardless of their legal status: they may sign contracts, own real property and act as an employer. Special restrictions applying exclusively to religious entities do not exist. As the law treats non-registered associations in the same way as registered ones, the former may also benefit from the whole available set of legal actions.

IOANNIS KONIDARIS

RELIGIOUS ENTITIES AS LEGAL PERSONS – GREECE

Introductory comment

The particularities in relations between the State and the Church in Greece and the effort for better understanding the issues relating to our subject impose some slight deviations from the 'questionnaire for the rapporteurs'.

I

1. A religious entity can be constituted in Greece only after approval by the authorities. This approval may concern either recognition of the legal personality of the specific religious entity by the competent local court, or permission for the establishment of a place of worship by the competent administrative authority.

Of course, any person, either native or foreigner, is free to believe in any religion or religious entity he/she wishes, without approval by the authorities, on the condition that he/she does so in private.

2. The legal recognition of religious entities follows the basic distinction between legal persons of public and private law. The Orthodox Church, which is the established religion in Greece, the Jewish Communities and the Mufti offices are legal persons of public law. All other religious entities, regardless of the time of their appearance in the Greek law, are legal persons of private law.

More specifically, according to its Charter (Law N° 590/1977, Article 1 §4), the Orthodox Church of Greece and each of its divisions, namely, dioceses, parishes and monasteries, are legal persons of public law. The same applies to the religious entities of the Church of Crete and to the Monasteries of Mount Athos.

Moreover, according to Law N° 2455/1920, a Jewish entity can be instituted in any city with more than 20 Jewish families and a synagogue, and it is recognized as a legal person of public law.

The Mufti offices (in Comotini, Xanthi and Didimotiho) are also legal persons of public law. More specifically, they are public services, since

the Muftis, who are designated by decree-law, on the proposition of the Minister of Education and Cults, have jurisdictional competence over their believers, with a ten-year tenure (Law N° 1920/1991).

Courts recognize the legal personality of a religious entity either in the form of a corporation or in the form of a civil association. With this recognition, the religious entity is empowered to act legally.

However, in order to carry out its religious ceremonies (worship), the religious entity needs a special permit from the Ministry of Education and Cults.

II

1. In Greece, there is no registration system of religious entities.
2. However, we could say that the permits that are granted for the foundation and operation of churches or worship places constitute an informal registration

Indeed, all religious entities in Greece, except the established religion, are obliged by law to request a permit for the foundation and operation of places of worship. The relevant application is submitted to the competent General Secretariat of Cults of the Ministry of Education and Cults, based on legislation (mainly, Law N° 1363/1938 and Law N° 1672/1939) dating back to the period of the Dictatorship of General Metaxas, under the Constitution of 1911. This legislation is strongly questioned today by a large part of the legal community, based on the current Constitution of 1975/1986/2001 and on international treaties, especially the Treaty of Rome on human rights.

Based on these permits, the public administration has an image and an informal register of the religious entities that have requested and were granted a permit to found places of worship in Greece.

3. There are, of course, some preconditions needed by the Government to grant such a permit:
 - a minimal number of believers which, according to the supreme administrative court of Greece, the Council of State, is seven persons,
 - a confession of faith, from which it ensures (a) that the religious entity is a known religion, meaning that it has no secret doctrines or mystic worship, and (b) that its doctrine does not contradict public order or virtuous morals,
 - designation of a shepherd who, among other things, has the right to officiate at marriages, etc.

4. Since there is no registration system in Greece, we cannot say with certainty how many religious entities are working within the country.

However, according to the informal list drawn up in December 2001 by the competent service of the Ministry of Education and Cults in Greece – which I am in a position to know as the then Secretary General of Cults –, apart from the Orthodox Church, there are four more religions (the Jewish, the Muslim, the Buddhist and the Bahai), as well as 47 doctrines of the Christian religion (including the Jehovah's Witnesses).

The number of believers of these religious entities is not known. During the last census, the religion of the inhabitants was not recorded, because of the need to protect the rights of the individual. It is common knowledge, however, that a large majority of Greek citizens are Christian Orthodox, while a small percentage is Muslim (mainly the Muslim minority in Thrace). The Catholic Church, according to its estimates, includes about 200,000 believers, among whom only 45,000-50,000 are Greeks, while the others are immigrants (mainly Polish and Filipinos) or refugees. The Jehovah's Witnesses declare about 30,000 believers in their formal data and Jews are estimated to be about 7,000 (Communities of Athens, Thessaloniki and Larissa, with synagogues).

III

Any religious entity, as a legal person of public or private law, may act freely:

- to make contracts,
- to own real property (places of worship, or other)
- to act as an employer (especially the established Orthodox Church which has its own Code [special bylaw] of Church Employees).

Final remarks

1. All the above applies to the whole of the Greek State, as there is no federal system in Greece; the only self-governing place in the Greek State is Mount Athos.
2. In recent years, more and more law specialists, as well as the Catholic Church of Greece, have supported the view that a special, *sui generis*, ecclesiastical legal person could be instituted, constituting a third category between legal persons of public and private law. Lately, this view has also been discussed among certain political parties.

RELIGIOUS ENTITIES AS LEGAL PERSONS – HUNGARY

1. The constitution of religious entities in Hungary

There are no limitations on the constitution of a religious entity, as this is regarded to be an essential element of the freedom of religion. There is no differentiation regarding citizenship: neither citizens nor foreigners need an approval to establish a congregation. The free exercise of religion (in private, public, alone, or in community with others) is not bound to any kind of legal form: unregistered groups enjoy the same freedom as registered ones.¹

Religious communities do not need to make use of a certain legal form, but they can do so. To found an association, ten individuals are required² whereas a group with a hundred members can register as a 'church'³. Registration (both for associations and for churches) is carried out at county courts.

All churches that are registered as a 'church' have the same rights and the same obligations⁴. Equality, however, is a matter of legal status and not of social significance. As the Constitutional Court stated: "*Also, treating the Churches equally does not exclude taking the actual social roles of the individual Churches into account.*"⁵ Consequently, external, social differences between religious communities can be taken into account by the legislature, if these are of relevance in the given issue. Differentiation would be arbitrary and unconstitutional if the aspect taken into consideration by the legislator was irrelevant. As churches play highly different roles in society, (some maintain schools, others not, some run theological colleges, others not, some have lost property during communism, others not etc.)

¹ Consequently the Constitutional Court rejected the petition that argued that the minimum membership of a religious community to be registered as such violated the right to free exercise of religion: Decision 8/1993. (II. 27.) AB.

² Act II/1989. (on the right of association) § 3 (4).

³ Act IV/1990. (on the freedom of conscience and religion, and the churches) § 9 (1) a).

⁴ Act IV/1990. § 15 (3).

⁵ Decision No. 4/1993. (II. 12.) AB. commentary and text in English: *Sólyom, László – Brunner, Georg* (Eds.): *Constitutional Jurisdiction in a New Democracy. The Hungarian Constitutional Court*, The University of Michigan Press 2000, 246-266.

a number of laws may only apply to some of them. Practically the four largest denominations (the Catholic Church, the Reformed Church, the Lutheran Church and the Alliance of Jewish Communities) often receive special attention – which does not mean that they had a privileged status.

Hungary, being a unitarian state, knows no regional differences in respect of legal regimes.

2. The status of religious entities

Registration is not required to work, but may facilitate certain functions. The requirements for registration as a church are highly formal: churches recognized prior to 1990 (the present law was passed in early 1990) were registered automatically;⁶ other religions wishing to be registered need to submit the names of 100 private individuals as founding members, and a charter (containing at least the name, the headquarters address, the internal organizational structure and specifying those internal units of the church that enjoy legal entity status) and it has to have an elected system of administration and representation. The founders also have to submit a declaration that the organization they have set up has a religious character and its activities comply with the Constitution and the law⁷. It is important to underline that in Hungary, according to the present legal regime, religious communities are not recognized, but registered: doctrines have to exist (founders declare only that these comply with the law), but are neither subject to approval, nor submission. Consequently, the government only has information on religious communities, if these decide to cooperate on certain issues, but a religious community – even a registered one – may keep doctrines and services secret.

The system of registration of religious communities has been the target of criticism almost since the law on churches was passed in 1990. Some representatives of traditional churches felt offended having been put into the same legal category as 'sects'. It is true that an unexpectedly large number of 'churches' have been registered and, in a number of cases, the genuine religious nature of these organizations is doubtful (the Church of Scientology – controversial in many European countries – is registered in Hungary as a church, but UFO believers and the

⁶ Act IV/1990. § 22.

⁷ Act IV/1990. §§ 9-10.

association of witches could also be mentioned as examples of the broadness of the requirements). Amendments were occasionally disputed⁸, but as changing the law would require a 2/3rd majority of Members of Parliament voting, the (over)generous regulation is not likely to change.

The internal organizational units (like institutions, parishes) are legal entities as well if the 'charter' of the church provides so⁹. This means that the internal law of the religious communities determines whether legal persons acknowledged by the State come into existence or not – no further state registration of these persons is required (in the case of the Catholic Church, the Code of Canon Law and the Code of Canons of the Eastern Churches determine which church entities have legal personality in the Hungarian legal system). Legal personality in these cases is certified by a superior church organ (that is registered with the court). 'Independent organizations of churches set up for religious purposes' (like religious orders) are legal entities as well, but they need a court registration. To get them registered a declaration by the competent church organ is required, whereby the organization to be registered has been established and operates within the framework of the church.

Being registered as a church provides a certain degree of social respect and also some rights and benefits. Church autonomy can be seen as the most important difference between entities registered as churches and other registered legal entities¹⁰, like associations, political parties or trade unions. Autonomy, in the stricter legal sense, means that the internal actions of organizations registered as 'churches' are not subject to any kind of state interference. Whereas a resolution of an association can be brought before a court (and courts have the power of striking it down if these internal actions are unlawful or violate the charter of the association), a resolution of a bishop or a synod cannot be challenged before state courts. Churches are also not bound by the principle of democratic internal structure, while associations have to be democratic. If a church violates the law (not just its internal charter/statute/law), the public prosecutor has the right to sue the church. The court has to call upon the church to restore the lawfulness of its operation. If the church does not comply with the court order it will be deleted from the register of churches.¹¹

⁸ Schanda, Balázs: Church and State in Hungary in 2000 = *European Journal for Church and State Research* 8 (2001), 279.

⁹ Act IV/1990. § 13.

¹⁰ Decision 8/1990. (II. 27.)

¹¹ Act IV/1990. § 16 (2).

This means the loss of the status of being a 'church' but there is no ban on the activities. The unlawful actions themselves cannot be challenged, but they may lead to the deletion of the church from the register.

Churches – as well as other non-public entities – can maintain all kinds of schools, institutions of higher education, health or social care and also can engage in economic activities, under special funding and taxation regimes.

Churches are exempt from fees and local taxes and enjoy a variety of taxation benefits. The same taxation benefits, however, are enjoyed by other non-profit-making organizations, such as associations or foundations.

A special benefit for churches is a kind of public funding since income tax payers have the right to assign 1 % of their income tax to a church of their choice. Another 1 % of the income tax may be assigned to a non-governmental organization (that may be affiliated to a religious community, registered or not).

Churches – and only registered churches – have the right to offer optional religious education in public schools. Certainly only the more numerous denominations are likely to make use of this right. The religious education takes place at the school in these cases, but it does not become part of the school's curriculum.

The number of religious communities is about 150. The 2001 census provides some information on membership of religious communities. According to this, the denominational proportions are as follows:

Catholic	5 558 961	54.5 %
– Roman Catholic	5 289 521	51.9 %
– Greek Catholic	268 935	2.6 %
Reformed (Calvinist)	1 622 796	15.9 %
Lutheran	303 864	3.0 %
Jewish	12 871	0.1 %
Other	112 121	1.1 %
– Orthodox	15 298	0.2 %
– Baptist	17 705	0.2 %
– Adventist	5 840	0.1 %
– Other Christians	24 340	0.2 %
No denomination	1 483 369	14.5 %
No answer	1 034 767	10.1 %
No data	69 566	0.7 %
Total population	10 198 315	100 %

It can be said, in general, that the proportion of people having a religious affiliation grows with age. Generally, women stated a higher affiliation to churches than men. The affiliation to mainstream Christian denominations is stronger in rural areas than in towns. The proportion of people having no denomination or not responding to the question was the highest in Budapest whereas, the smaller a settlement becomes, the lower this percentage became. Presumably Jews and adherents of some 'new religious movements' are overrepresented among those providing no answer (some estimations put the number of Jews ten times higher than the census results). Some further interesting data: 21,688 confessed to belonging to the Jehovah's Witnesses and 6,541 to the Unitarian Church, 7,408 declared themselves to be Pentecostals and 2,907 to be Muslims. Altogether the population stated affiliation to 260 different religious communities and beliefs.¹²

3. Religious entities acting

A church as a legal entity enjoys full legal personality in civil law. That means that there are no restrictions on contracts, property and employment. In civil law, there are no special provisions relating to churches (neither restrictions nor privileges). A non-registered community, however, is not subject to the law as a community, but only as a group of individuals. In such a case, for example, a property would be the shared private property of individuals, not of the community itself (with the consequence that dissidents could take their 'share' with them).

It does not qualify as a violation of the principle of equal treatment if religious entities (or entities based on a certain ideology) when acting as employers take religious factors into account, provided that these are reasonable, genuine and proportionate.¹³

Political engagement by churches is often unwelcome but there are no such public restrictions; there are only self-restrictions of churches and clergy in this respect.

¹² Data were published indicating regions, settlements, correlation to marital status and age. *Központi Statisztikai Hivatal*, 2001. évi népszámlálás. 5. Vallás, felekezet. Budapest, Központi Statisztikai Hivatal 2002.; Hungarian Central Statistical Office, Population census 2001. 5. Religion, denomination, Budapest, Hungarian Central Statistical Office, 2002; <http://www.nepszamlalas2001.hu/dokumentumok/pdfs/vallas.pdf>.

¹³ Act CXXV/2003. § 22.

PAUL COLTON

RELIGIOUS ENTITIES AS LEGAL PERSONS – IRELAND¹

Introduction

The Preamble to *Bunreacht na hÉireann*² commences with an invocation of 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." It has been pointed out that this reflects "... a firm conviction that ... [the Irish people] ...are a religious people....a Christian people;"³ and also that the people "...were proclaiming a deeply religious conviction and faith and an intention to adopt a Constitution consistent with that conviction and faith and with Christian beliefs."⁴

The nature of religious entities in Ireland cannot be understood without initial recourse to the Constitution. Indeed, such is the lack of homogeneity among and within religious entities in Ireland in relation to their character as legal persons that the provisions in Article 44 appear to be the only overarching framework impinging on churches and faith communities, and which provide the principal legal common ground between them.

1. Constituting religious entities and their legal form

The State in Ireland appears essentially to have acquiesced in the existence of churches as an historical and sociological reality: churches, religious entities and movements have always been present in the country.⁵

¹ This paper will deal solely with the Republic of Ireland.

² *Bunreacht na hÉireann* – The Constitution of Ireland (referred to hereafter as "the Constitution").

³ per Walsh, J in *Quinn's Supermarket Ltd v Attorney General* [1972] IR 1 at 23. For similar inferences from the Preamble see: *Maguire v Attorney General* [1943] IR 238; *McGee v Attorney General* [1974] IR 284 (Walsh, J at 317-8); *Norris v Attorney General* [1984] IR 36 (O'Higgins, CJ); and *Attorney General (Society for the Protection of unborn Children (Ireland) Ltd) v Open-Door Counselling Ltd* [1988] IR 593.

⁴ Per O'Higgins, CJ in *Norris v Attorney General* [1984] IR 36 at 64.

⁵ At least since the Fifth Century.

Since 1871 no Church has been established,⁶ and Article 44 of the Constitution, taken as a whole, appears to prohibit "... any legal establishment, in the sense of setting up or recognising a national church."⁷

1.1. *The Constitution and Religion*⁸

The Irish Constitution guarantees freedom of conscience⁹ to profess and practise one's religion, subject to public order and morality.¹⁰ This fundamental right is consonant with Article 9 of the European Convention on Human Rights. (Moreover, the European Convention on Human Rights Act 2003 requires Irish courts to interpret Irish law in a manner compatible with the State's obligations under the EHCR, in so far as is possible.¹¹)

Under Article 44.1 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."¹²

While this has been interpreted as underpinning Christianity,¹³ the courts have also made clear that the benefits are not confined to Christians.¹⁴ The current constitutional position is well summarised in *Corway v Independent Newspapers (Ireland) Ltd*¹⁵ by Barrington J:

"The effect of these various guarantees is that the State acknowledges that the homage of public worship is due to Almighty God. It promises to hold his name in reverence and to respect and honour religion. At the same time it guarantees freedom of conscience, the free profession and practice of religion and equality before the law to all citizens, be they Roman Catholics,

⁶ Irish Church Act, 1869.

⁷ CASEY, J., *Constitutional Law in Ireland* (2000, Sweet and Maxwell, Dublin) 686 and 695; also *Campaign to Separate Church and State v Minister for Education* [1998] 2 ILRM 81.

⁸ For a full discussion of Article 44 (Freedom of Religion) see generally: CASEY, J., *Constitutional Law in Ireland* (2000, Sweet and Maxwell, Dublin); and HOGAN, G.W. and WHYTE, G.F., *J.M. Kelly: The Irish Constitution* (4th edition, 2004, LexisNexis, Dublin).

⁹ For freedom of conscience in terms of one's religion, see *McGee v Attorney General* [1974] IR 284.

¹⁰ *Bunreacht na hÉireann* Article 44.2.1.

¹¹ European Convention on Human Rights Act, 2003 s. 2.

¹² *Bunreacht na hÉireann* Article 44.1. The Constitutional Review Group, by majority decision, called in 1996 for the deletion of Article 44.1 and its replacement by the phrase "The State guarantees to respect religion."

¹³ *Norris v Attorney General* [1984] IR 36.

¹⁴ *Quinn's Supermarket v Attorney General* [1972] IR 1; *McGee v Attorney General* [1974] IR 284 and in *Norris v Attorney General* [1984] IR 36.

¹⁵ *Corway v Independent Newspapers (Ireland) Ltd* [1999] 4 IR 484.

Protestants, Jews, Muslims, agnostics or atheists. But Article 44.1 goes further and places the duty on the State to respect and honour religion as such. At the same time the State is not placed in the position of an arbiter of religious truth. Its only function is to protect public order and morality."

The State is precluded from endowing any religion,¹⁶ from discriminating not only on the ground of religious profession, belief or status,¹⁷ but also, where there is legislation providing State aid for schools under the management of different religious denominations; it shall not discriminate between those schools.¹⁸ Restrictions are placed in principle, subject to certain exceptions, on State acquisition of the property of religious denominations and educational institutions.¹⁹

1.3. *The formation and existence of churches in Ireland*

The long-standing Christian denominations – Roman Catholicism, Anglicanism, Presbyterianism, Methodism, Baptists, Lutheranism and the Society of Friends, for example – have been active in Ireland for centuries, and their history within the country reflects the dynamics of a more universal timeline: pre-reformation Christianity, reform, counter-reformation, religious controversy, disunity, uniformity, toleration, suppression, emancipation, leading ultimately to the pluralism and post-modernism that is so manifest today. Similarly there has been a Jewish community in Ireland since the 11th Century.

The State would appear to pay little attention to how these religious groupings were constituted or came to be in Ireland: they are accepted as existing *de facto*. In the majority of cases, it is likely the State's obligations under Article 44 "... would be discharged through a policy of non-interference with religious views and practices."²⁰ Accordingly, the autonomy of religious denominations is guaranteed in relation to the management of its own affairs,²¹ and "... the primary aim of the constitutional guarantee is to give vitality, independence and freedom to religion."²²

¹⁶ *Id* Article 44.2.2.

¹⁷ *Id* Article 44.2.3.

¹⁸ *Id* Article 44.2.4.

¹⁹ *Id* Article 44.2.6.

²⁰ HOGAN, G.W. and WHYTE, G.F., *J.M. Kelly: The Irish Constitution* (4th edition, 2004, LexisNexis, Dublin), 2045 at 7.8.40.

²¹ *Id* Article 44.2.5.

²² HENCHY, J in *McGrath and Ó Ruairc v Trustees of the College of Maynooth* [1979] ILRM 166 at 187.

Moreover, there is a common law presumption against the interference by the Courts in church affairs which are designated as voluntary associations. In *State (Colquhoun) v d'Arcy*²³ (quoting Lord Davey in *General Assembly of the Free Church of Scotland v Lord Overtoun*²⁴) Hanna J,²⁵ said of voluntary associations that

“...[i]t is, indeed almost a truism that an unestablished religious association is free from State control as regards doctrine, government and discipline.”²⁶

This view has, in the main, prevailed. In *Buckley v Cahal Daly*²⁷ Campbell J underlines the principle of non-interference:

“There is no direct power in the Courts to decide whether A or B holds a particular station according to the rules of a voluntary association.”²⁸

Quoting *Forbes v Eden*²⁹ he continued:

“A Court of Law will not interfere with the rules of a voluntary association unless to protect some civil right or interest which is said to be infringed by their operation.”³⁰

The acknowledgement of the initiative and independence of religious bodies on the one hand and the corresponding acquiescence of the State is seen in *Re Article 26 and the Employment Equality Bill 1996*³¹ in which it was considered that the term “religious denomination” was “... intended to be a generic term wide enough to cover the various churches, religious societies or religious congregations under whatever name they wished to describe themselves.... [and also] ... that each religious denomination should be respected when it says what its ethos is.”³²

A similar acceptance appears to be the approach to new religious groupings and communities. The religion report of the Irish Census of 2002 was issued in 2004.³³ It indicated that through net migration all of the main Christian denominations had increased in size since the previous census

²³ *The State (Colquhoun) v D'Arcy* [1936] IR 641.

²⁴ *General Assembly of the Free Church of Scotland v Lord Overtoun* [1904] AC 515.

²⁵ He also cited *Long v The Bishop of Capetown* 1 Moo. P. C. (N.S.) 411.

²⁶ *Id* at 515 and 648.

²⁷ *Buckley v Cahal Daly* [1990] NIJB 8.

²⁸ *Id*

²⁹ *Forbes v Eden* [1867] LR 1HL Sc and Div 568 per Lord Colonsay at 588.

³⁰ *Buckley v Cahal Daly* [1990] NIJB 8.

³¹ *In re Article 26 and the Employment Equality Bill 1996* [1997] IR 321.

³² *Id* at 359.

³³ Volume 12 Census 2002 published on 8th April, 2004. It may be found at www.cso.ie/census/results.htm or at www.eirestat.cso.ie/census/ReportFolders/reportfolders.aspx.

in 1991. Of greatest interest is the increase in the number of newer Christian denominations in Ireland and members from the world's other faiths: for example, Orthodox, Evangelical, Pentecostal, Lutheran (increased since 1991 by 2815 %, 362 %, 1006 % and 203 % respectively); and Muslims, Hindus, Buddhists and adherents of other stated religions (increased since 1991 by 394 %, 225 %, 295 % and 306 % respectively).

An empirically observable aspect of new religious groupings is the involvement of other nationalities, some of whom are new Irish citizens and others who are asylum seekers. Some join existing churches, others set up their own, and their freedom to do so is afforded constitutional protection.³⁴

This acceptance of religious groupings should not be thought of as having no parameters. Freedom to profess and practise religion is “subject to public order and morality” and is “guaranteed to every citizen.”³⁵ It has been suggested that taking into account the meaning of “religion” when the Constitution was written, it “... would presumably cover only traditional theistic religion.”³⁶

1.4. *Religious entities as voluntary associations*

All churches in Ireland (and by analogy other faith communities), none of which is established, are voluntary and unincorporated associations. The formation of such “associations” is also a right protected generally by the Irish Constitution,³⁷ which also protects the freedom of expression³⁸ and assembly.³⁹ All three rights are subject to public order and morality.⁴⁰

In *State (Colquhoun) v d'Arcy*⁴¹, in the High Court, citing Barry, J in *O'Keefe v Cullen*⁴², Sullivan P described the status of a church not established by law as

³⁴ e.g. In my own city (Cork) the long-standing churches have established contacts with new groupings such as the Father's Bosom Church (multi-racial), the Redeemed Christian Church of God (mostly Nigerian), Celestial Church of the White City, the Church of Christ Apostolic Vineyard of Comfort (Cork Branch), Congeese Christian Fellowship; Grace Christian Fellowship; Donnybrook Christian Fellowship; Cork Community Church (Assemblies of God); and, longer established, is Upper Room (also Assemblies of God).

³⁵ Article 44.2.1.

³⁶ Casey, J., *op cit*, 691.

³⁷ *Bunreacht na hÉireann*, Article 40.6.1.iii.

³⁸ *Bunreacht na hÉireann*, Article 40.6.1.i.

³⁹ *Bunreacht na hÉireann*, Article 40.6.1.ii.

⁴⁰ *Bunreacht na hÉireann*, Article 40.6.1.

⁴¹ *The State (Colquhoun) v. D'Arcy* [1936] IR 641.

⁴² *O'Keefe v. Cullen* I.R. 7 C.L. 319 at p. 339

“...the status of a voluntary association the members of which subscribe or assent to certain rules and regulations and bind themselves to each other to conform to certain laws and principles, the obligation to such conformity and observance resting wholly in the mutual contract of the members enforceable only as a matter of contract by the ordinary tribunal of the land....”⁴³

The Roman Catholic Church was referred to as a voluntary association by Campbell J in *Buckley v Cahal Daly*:⁴⁴

“There is no direct power in the Courts to decide whether A or B holds a particular station according to the rules of a voluntary association.”⁴⁵

Unincorporated associations “...do not, in general, possess legal personality and are not considered to be distinct from their members. The property is jointly held by each of the members, rather than the association itself. Acts performed and transactions entered into on behalf of the group are considered to be the joint (all the members) and several (any particular member) responsibility of the members. In theory any individual members could be held liable for all the acts of the association in his or her own right.”⁴⁶

1.6. *Legal form of religious entities*

All religious entities in Ireland are, therefore, voluntary associations. The principal characteristic of them all is the absence of homogeneity both within and between organisations in the manner in which they espouse legal forms for the fulfilling of their work.

Prior to 1972,⁴⁷ the Roman Catholic Church was ascribed a special position in the Constitution, however this was deemed to confer no juridical privilege,⁴⁸ and the universal nature of the constitutional guarantees has subsequently been reiterated.⁴⁹ In 1925 the Supreme Court held that Roman Catholic Canon law is to be categorised as foreign law.⁵⁰ Prior to 1963,⁵¹ property tended to be bought in the name of the Bishop, the Parish

⁴³ *The State (Colquhoun) v D'Arcy* [1936] IR 641 at 650.

⁴⁴ *Buckley v Cahal Daly* [1990] NIJB 8.

⁴⁵ *Id*

⁴⁶ BYRNE, R and McCUTCHEON, J.P., *The Irish Legal System* (2003, Butterworths, Dublin) 12-13.

⁴⁷ Fifth Amendment of the Constitution Act 1972.

⁴⁸ see *Quinn's Supermarket v Attorney General* [1972] IR 1; *McGee v Attorney General* [1974] IR 284 and *Campaign to Separate Church and State Ltd v Minister for Education* [1998] 3 IR 321, [1998] 2 ILRM 81.

⁴⁹ *Corway v Independent Newspapers (Ireland) Ltd* [1999] 4 IR 484.

⁵⁰ *O'Callaghan v O'Sullivan* [1925] 1 IR 90.

⁵¹ Companies Act 1963.

Priest and another senior priest and was vested in them as trustees which were unlimited companies. This pattern persists in some dioceses, and in others registered companies have been set up to hold the property of the diocese. In still others some property is held as private trusts. Canon Law makes specific provision for juridic personality,⁵² which provides that funds, contracts of employment and contracts generally are to be framed observing civil law.⁵³

In the case of the episcopal churches – the Roman Catholic Church and the Church of Ireland (Anglican) – neither dioceses nor bishops *virtute officii* have legal personality.

It seems that small, locally based churches, some of which are styled house churches or fellowships are simply that: *ad hoc* informal groupings of like minded individuals. The Religious Society of Friends with its system of Yearly, Quarterly and Monthly meetings has simply a voluntary committee structure, but for the purposes of holding property operates through a limited company: Friends Trusts (Eire) Ltd. Similarly, the national work of the Baptist churches is coordinated nationally by the Southern Baptist Corporation Ltd, also a registered company.

Church of Ireland bishops ceased to be corporations sole when it was disestablished in 1871 under the Irish Church Act 1869. It also provided for the incorporation of a Representative Church Body,⁵⁴ a chartered corporation which fulfils *inter alia* the functions of trustee. It is a body with perpetual succession which holds the property of the church, and also holds and manages finances including 21,158 separate trusts and a Clergy Pension Fund in its care. In addition, the Church of Ireland has a number of charitable companies.⁵⁵

Both the Presbyterian Church in Ireland and the Methodist Church in Ireland have a similar statutory basis. The Presbyterian Church in Ireland is a statutory trust under the Irish Presbyterian Church Act 1871 which established the “The Trustees of the Presbyterian Church in Ireland.”⁵⁶ Under the Methodist Church in Ireland Act 1915 a body

⁵² See especially *Code of Canon Law* Canons 114; 116; 373; 515 (parishes); 634 (religious institutes); 238 (seminaries); 432 (ecclesiastical provinces); 449(2)(Episcopal Conference); 120; 1254-6; e.

⁵³ *Code of Canon Law*: Canons 1274, 1284, 1286, 1290, 1296 and 1299.

⁵⁴ Irish Church Act 1869, s. 22. Charter of Incorporation on 15th October, 1870.

⁵⁵ Avenue Properties (registered in both Northern Ireland and the Republic of Ireland); and also the Bishops' Appeal (NI) Ltd which facilitates the collection in Northern Ireland of tax refunds on donations in that jurisdiction to the Bishops' Appeal for aid in the developing world.

⁵⁶ Irish Presbyterian Church Act 1871, s. 2.

corporate (a statutory trust) was created with perpetual succession and a common seal under the name of "The Trustees of the Methodist Church in Ireland" and the Constitution of the Church was given statutory effect by the Methodist Church in Ireland Act 1928.

Muslims began arriving in larger numbers in the 1950's, mostly as students. They formed the Dublin Islamic Society in 1959, (now renamed as the Islamic Foundation of Ireland). It has charitable status and is registered as a Friendly Society,⁵⁷ which enables it *inter alia* to receive voluntary subscriptions for the relief or maintenance of members.⁵⁸

The manner of being a church and doing the work of the Church in Ireland is, therefore, expressed in a range of legal forms: unincorporated voluntary associations, public and private trusts, a friendly society, unlimited companies, statutory trusts, chartered companies and registered companies. Many smaller and newer churches have no manifest legal form.

In addition, and separately, most Irish churches attract charitable status. Indeed, the question of whether or not the element of public benefit innate to charity law exists does not arise in the case of trusts for the advancement of religion. Section 45 of the Charities Act 1961 lays down that such gifts are valid charitable gifts and that "...it shall be conclusively presumed that the purpose includes and will occasion public benefit."⁵⁹ However, "...charities do not have legal status as such.... Official recognition is extended to charities by the Revenue Commission purely as a technical device to clarify eligibility for charitable tax exemption."⁶⁰ Charitable status is also attractive: since 6th April 2001 tax is repayable to donors to eligible charities of amounts in excess of €250.⁶¹

2. The Registration of Religious Entities

There is no definitive, whole or unified register of churches in Ireland, nor is there a requirement that they be registered *qua* church. In order to

⁵⁷ Friendly Societies Act 1896 as amended by the Friendly Societies (Amendment) Acts 1953 and 1977. See also the Registry of Friendly Societies Act 1936. In 1998 there were 438 credit unions, 96 friendly societies, 75 trade unions and 1032 industrial and provident societies (mainly co-operatives), registered in the State. (Source: Report of the Registrar of Friendly Societies, 2000).

⁵⁸ Friendly Societies Act 1896, s. 8.

⁵⁹ Charities' Act 1961 s. 45 (1).

⁶⁰ O'HALLORAN, K., *Charity Law* (2000, Round Hall Sweet and Maxwell, Dublin) 13.

⁶¹ Taxes Consolidation Act 1997, s. 848.

fulfil certain roles (in relation to marriage) or comply with specific legislation (education and planning law) or to avail of certain advantages (exemption from rates) churches are required to register. Those which are registered companies are, of course, registered in that respect.

2.1. Recognition

From time to time, open-ended lists of churches receive public recognition. Until 1972 the list with highest standing was contained in sub-sections of the Constitution which were removed followed a referendum.⁶² The two sub-sections of Article 44 were:

"2° The State recognises 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.

3° The State also recognises the Church of Ireland, the Presbyterian Church in Ireland, the Methodist Church in Ireland, the Religious Society of Friends in Ireland, as well as the Jewish Congregations and the other religious denominations existing in Ireland at the date of the coming into operation of this Constitution."

These constitutional provisions (removed in 1972) which reflect an era of less variety in religious practice in Ireland had been drafted, nonetheless, in the 1930's as a "skilful reflection of religious pluralism..." following consultation between the government and the leaders of the minority religious communities.⁶³

Last year (thirty two years later) in *Dáil Éireann*⁶⁴ the *Taoiseach*⁶⁵ enumerated a much longer list of churches and religious bodies in response to a question concerning "...the Government's intention to institute arrangements for an open, transparent and regular dialogue with churches and with philosophical and non-confessional organizations..."⁶⁶

"The views being sought on the proposed structured dialogue are those of the Roman Catholic Church, the Church of Ireland, the Presbyterian Church,

⁶² Fifth Amendment of the Constitution Act 1972.

⁶³ HOGAN, G.W. and WHYTE, G.F., *J.M. Kelly: The Irish Constitution* (4th edition, 2004, LexisNexis, Dublin) 2034 at 7.8.13 and also a full account of the consultation with the Church of Ireland Archbishop – J.A.F. GREGG – may be found in SEAVER, G., *John Allen Fitzgerald Gregg: Archbishop* (1963, Allen Figgis, Dublin) at 127 to 129.

⁶⁴ *Dáil Éireann* (the lower house in the *Oireachtas* – Irish Parliament).

⁶⁵ *Taoiseach* – Prime Minister.

⁶⁶ *Irish Times* Monday, 15th November, 2004.

the Methodist Church, the Religious Society of Friends, the Salvation Army, the Unitarian Church, the Lutheran Church of Ireland, the Moravian Church, the Baptist Church, the Orthodox Church, which is the Coptic, Greek, Romanian and Russian Church, the Church of Jesus Christ of Latter-Day Saints, Jehovah's Witnesses, the Jewish community, the Islamic foundation of Ireland, the Baha'i Faith, the Buddhist centres and the Association of Irish Humanists. We are happy to engage with other churches and faith communities that may wish to be involved..."⁶⁷

It is not clear how the recent list was drawn up by the Government. It would appear simply to be a list of most of those who exist *de facto* as religious entities in Irish society. The omission of the Church of Scientology is noteworthy.⁶⁸ Furthermore the State is "...happy to engage with other churches and faith communities that may wish to be involved..." Clearly the State simply acknowledges, as a matter of reality, that these bodies exist and work in Ireland: their presence is noted and engaged with.

2.2. Registration for specific purposes

Under Irish Marriage law⁶⁹ marriages conducted by churches (with certain limited exceptions) have to take place in registered buildings, usually churches or meeting houses.⁷⁰ This situation will continue to pertain until the commencement in full (in 2006) of the Civil Registration Act 2004. For the purposes of that Act a religious body "...is an organised group of people members of which meet regularly for public worship."⁷¹ For the purposes of the solemnisation of marriages such a religious body

⁶⁷ *An Taoiseach* (Prime Minister), Bertie Ahern, T.D. at question time in *Dáil Éireann* (the lower house of the Irish Parliament – *Oireachtas*) on Tuesday, 14th December, 2004.

⁶⁸ For the Church of Scientology in the U.K. see, for example, *Schmidt v Secretary of State* [1969] 2 Ch 149; *Van Duyn v The Home Office*, [1975] Ch 358; *R v Registrar General, ex parte Segerdal*, [1970] 2 QB 697. See also *X and Church of Scientology v Sweden*, (1979) 16 DR 68, E Com HR.

⁶⁹ See generally Shatter, A.J., *Family Law* (4th Ed., 1997, Butterworths, Dublin); and also the Marriages (Ireland Act) 1884; the Marriage Law (Ireland) Amendment Act 1863; Matrimonial Causes and Marriage Law (Ireland) Amendment Act 1870; the Matrimonial Causes and Marriage Law (Ireland) Amendment Act 1871; the Marriage Law (Ireland) Amendment Act 1873 and in the Republic of Ireland the Marriages Act 1936, the Marriages Act 1972, the Family Law Act 1995 and the Family Law (Miscellaneous Provisions) Act 1997.

⁷⁰ Marriages (Ireland) Act 1844; Marriage Law (Ireland) Amendment Act 1863, s. 12; Matrimonial Causes and Marriage Law (Ireland) Amendment Act 1870, s. 34 and s. 39; Marriages Act 1972, s. 15.

⁷¹ Civil Registration Act 2004, s. 45.

may nominate solemnisers of marriages⁷² who will be included on a Register of Solemnisers.⁷³

Education (at primary and post-primary levels) in Ireland continues mainly to be denominationally based: the vast majority of schools have a religious patron: individual office holders (usually bishops) or churches (the Presbyterian Church, the Methodist Church) the Religious Society of Friends, the Jewish Community or the Islamic Foundation of Ireland. The Minister for Education enters the names of such patrons on a register.⁷⁴

The Planning and Development Act 2000 provides for the creation of a record of protected structures (which are of special architectural, historical, archaeological, artistic, cultural, scientific, social or technical interest) within each local authority's development plan.⁷⁵ Many older church buildings fall within the scope of this provision resulting in extensive obligations on church authorities as owners or occupiers.⁷⁶

Churches which have been accorded charitable status are on a list retained by the Revenue Commissioners, however, there is no national register of charities. A comprehensive reform of charity law (there has been no legislation in this area since 1973) is under way which is expected to include the compilation of a Register of Charities on which churches with charitable status will be included.⁷⁷

3. The activities of religious entities

As has been seen the regional and national presence of the larger Irish churches espouses many legal forms. However, it is not only these bodies or persons who conduct business or enter into legal transactions. While the nomenclature differs between churches, such activity occurs at every level of church life. There are examples of business being conducted (contracts being entered into, employment arranged and day to day expenditure of finance) by national, regional, and parochial/congregational

⁷² *Id* at s. 54 (1).

⁷³ *Id* at s. 53.

⁷⁴ Education Act 1998, s. 8.

⁷⁵ Planning and Development Act 2000, s. 51.

⁷⁶ Planning and Development Act 2000, Ss. 51-80 as amended by the Planning and Development (Amendment) Act 2002.

⁷⁷ See "Establishing a Modern Statutory Framework for Charities" – Consultation Paper (December 2003, Department of Community, Rural and Gaeltacht Affairs, Dublin).

bodies, together with internal church trustees and committees, as well as individual officers.

3.1. *Contracts, Ownership and Employment*

The complexity of ownership of property and entering into contracts is best illustrated, by taking one church as an example: the Church of Ireland. In that instance most property is vested in the Representative Church Body, but some may be held by local trustees. The parochial committee (the Select Vestry), a body without civil legal personality, however, embarks on various enterprising initiatives or building projects, for example, to which end it raises monies, undertakes borrowings and signs contracts (often following the leadership or guidance of an individual priest or leading lay person) doing so in partial fulfilment of the role of the Representative Body, which within the terms of the Church's rules⁷⁸ approves the development and provides a letter of comfort to the lending institution.

Similar diversity of practice relates to employment issues. Most clergy are not employees: they are atypical workers or office holders.⁷⁹ In practical terms, clergy in Ireland are taxed under Case II of Schedule D (the self-employed) yet office holders are taxed under Schedule E!⁸⁰ Since 1975, following the passing of the Social Welfare Act 1974, Church of Ireland clergy, for Pay Related Social Insurance (PRSI) purposes, are levied under Class E (a class which includes only clergy of the Church of Ireland).

In the case of the employment context the pattern within the Church of Ireland is again illustrative. The Representative Church Body employs national executive and administrative staff (whether lay or ordained); and also teaching and administrative staff (lay and ordained) for certain church institutions such as the Church of Ireland Theological College. At local level, a Diocesan Council (again a body with no civil legal personality) employs diocesan administrative staff or a youth worker, for example. Parochial councils (the Select Vestry) are employers of cleaners, organists or other paid lay parochial workers. An individual bishop or priest may be an employer in respect of his or her own secretary or housekeeper.

⁷⁸ *The Constitution of the Church of Ireland* (2003, General Synod of the Church of Ireland, Dublin).

⁷⁹ See *O'Callaghan v O'Sullivan* [1925] 1 IR 90; *Dolan v K* [1994] IR 470; *O'Dea v Briain* [1992] ILRM 364; *Millen v Presbyterian Church in Ireland* [2000] ELR 292.

⁸⁰ see Taxes Consolidation Act 1997 s 19 (2).

3.2. *Restrictions*

Among the main restrictions on religious entities is a specific ban on the broadcasting of religious advertisements.⁸¹ This does not include, however, the broadcasting of a notice of the fact that a particular religious newspaper, magazine or periodical is available for sale or supply, or that any event or ceremony associated with any particular religion will take place, provided the contents of the notice do not address the issue of the merits or otherwise of adhering to any religious faith or belief or of becoming a member of any religion or religious organisation.⁸²

A further restriction relates to jury service. Persons in Holy Orders or the regular minister of any religious denomination or community, as well as vowed members of any religious order living in a monastery, convent or other religious community may be excused, as of right, from serving on a jury.⁸³

3.3. *Privileges*

Churches which have been accorded charitable status by the Revenue Commissioners are exempt from payment of taxes. There is, however, no general exemption from VAT (Value Added Tax) for churches, as charities.⁸⁴ However, any land, building or part of a building used exclusively for the purposes of public religious worship is exempted from payment of rates,⁸⁵ which is a significant privilege. The same exemption applies to burial grounds, hospitals, schools, homes for the elderly, community halls, and any land, buildings or part of a building used exclusively by "charitable organisations" for charitable purposes.⁸⁶ Appeals against rulings by the Commissioner of Valuation are heard by the Valuation Tribunal.⁸⁷ Other exemptions arise under the Street and House to House Collections Act 1962 (where church grounds are not included in the definition of a public place⁸⁸); and also the Casual Trading Act 1995

⁸¹ Radio and Television Act 1988, s. 10(3). See also *Murphy v Independent Radio and Television Commission* [1999] 1 IR 12.

⁸² Broadcasting Act 2001, s. 65.

⁸³ Juries Act 1976, s. 9 (First Schedule of the Act, Part II).

⁸⁴ See generally O'HALLORAN, K., *op cit*, 313.

⁸⁵ Valuation Act 2001, s. 15 (2) See Schedule 4 See also The Poor Relief (Ireland) Act 1838, s. 63 (repealed by the 2001 Act).

⁸⁶ Valuation Act 2001, s. 15 (2) Schedule 4.

⁸⁷ Valuation Act 1988 and Valuation Act 2001, s. 12 and Ss. 30-40.

⁸⁸ Street and House to House Collections Act 1962, s. 1.

which exempts selling for charitable purposes from the need for a casual trading licence.⁸⁹

4. Conclusion

In the course of research for this paper the queries I put to various church or religious authorities or members were met with perplexed looks or a variety of responses: "that's a hard question"; "a grey area"; "hard to say"; and "no homogenous pattern."

The responses indicate the complexity and lack of homogeneity in addressing the question of religious entities in Ireland as legal persons. The complexity is manifested in court actions where plaintiffs have tended to (or indeed found it necessary) to join as parties to the same action many parties jointly and severally.⁹⁰ Since so many church-related cases have been settled out of court many of the unclear issues in this area have not been settled.

As Ireland becomes an ever more pluralist society, as the constitutional protection of the freedom to practise and profess one's religion is guarded, and as the State seeks to fulfil its promise to enter more formally into relationship with religious entities, the current situation which eludes concise definition promises only a future which is even less homogenous.

⁸⁹ Casual Trading Act 1995, s. 2 (2)(c)(i).

⁹⁰ See *Irish Rules of the Superior Courts* (1986).

SILVIO FERRARI

ENTITES RELIGIEUSES COMME PERSONNES JURIDIQUES – ITALIE

1. Introduction

Le système italien de relation Eglise-Etat est un système à plusieurs niveaux. Au niveau le plus haut, il y a l'Eglise catholique qui jouit d'une position préférentielle grâce aux Accords de Villa Madama et autres dispositions législatives¹. En deuxième place, on trouve les confessions religieuses qui ont stipulé une entente avec l'Etat italien. Le troisième groupe est constitué par les communautés religieuses qui ont été reconnues selon la loi du 24 juin 1929 sur les cultes admis et finalement on arrive aux communautés qui sont réglées par le droit commun des associations (associations reconnues et associations non reconnues selon le Code civil).

2. Les associations de droit commun

Le point de départ d'une réflexion sur le régime juridique des cultes en Italie est l'article 8 de la Constitution qui contient trois dispositions:

- a) il assure à toutes les confessions religieuses une «égale liberté devant la loi»;
- b) il déclare que les confessions religieuses autres que la catholique ont le droit de s'organiser selon leur propres statuts, s'ils ne sont pas contraires à l'ordre juridique italien;
- c) il prévoit que ces mêmes confessions peuvent conclure des ententes destinées à régir leurs relations avec l'Etat.

Ces droits (à une égale liberté devant la loi et à l'autonomie interne) et cette possibilité (celle de conclure des ententes avec l'Etat) sont reconnus aux confessions religieuses par le seul fait qu'elle soient des confessions religieuses, sans nécessiter une quelconque reconnaissance étatique².

¹ Je ne parlerai pas dans cet exposé du statut juridique de l'Eglise catholique.

² Au moins en théorie. Dans les faits, les ententes ont été stipulées seulement avec les confessions religieuses qui avaient été reconnues selon la loi du 1929. V. G. Peyrot, *Confessioni religiose diverse dalla cattolica*, in *Digesto delle discipline pubblicistiche*, v. III, Torino, Utet, 1989, p. 355. Pour une analyse détaillée de l'article 8 de la Constitution v.

Ainsi, les droits, facultés et garanties accordés par la Constitution ne dépendent pas d'une reconnaissance par l'Etat, mais sont directement liés, selon le cas, à la nature de communauté religieuse et, en ce qui concerne le droit à l'auto-organisation interne, au respect de l'ordre juridique italien par les statuts des confessions religieuses. Bien sûr, quand un groupe social invoque l'application de l'article 8 de la Constitution, il doit démontrer sa nature de communauté religieuse et le respect de l'ordre juridique italien, tandis que la confession religieuse «reconnue» selon la loi du 24 juin 1929³ n'a plus cette obligation. Mais cela ne peut faire oublier cette donnée fondamentale que les sujets titulaires des droits prévus par la Constitution sont les communautés religieuses, et non les communautés religieuses reconnues.

Si nous laissons de côté le domaine du droit constitutionnel pour examiner celui des lois ordinaires le panorama ne change pas. La loi du 24 juin 1929⁴, qui régit les cultes admis en Italie, déclare que les cultes différents de la religion catholique sont admis dans l'Etat à condition qu'ils ne professent pas de principes et ne suivent pas de rites contraires à l'ordre public et aux bonnes moeurs. Mais ce contrôle est exercé *a posteriori* et l'admission de la confession en Italie ne dépend pas d'un acte de reconnaissance de la part de l'Etat: en outre presque la totalité de la doctrine est d'avis que le contrôle (même *a posteriori*) sur les principes d'une religion n'est plus admis, étant donné que l'article 19 de la Constitution a posé comme seule limite à la liberté de profession et de pratique religieuse – même en forme associée – que les rites ne soient pas contraires aux bonnes moeurs⁵.

En ce qui concerne la capacité juridique, une confession religieuse non reconnue peut l'obtenir en constituant une association non reconnue (Code civ.: art. 36 à 38) ou une association reconnue (Code civ.: art. 14 à 35 et Dpr 10 février 2000, n. 36)⁶ selon le droit commun. La procédure

N. Colaiani, *Confessioni religiose e intese. Contributo all'interpretazione dell'art. 8 della Costituzione*, Bari, Cacucci, 1990 et la bibliographie ici rappelée.

³ V. infra, par. 2.

⁴ V. sur cette loi G. Long, *Le confessioni religiose «diverse dalla cattolica». Ordinamenti interni e rapporti con lo Stato*, Bologna, il Mulino, 1991, p. 255 ss. Est encore utile l'ancien texte de M. Piacentini, *I culti ammessi nello Stato italiano*, Milano, Hoepli, 1934.

⁵ V. G. Long, *op. cit.*, pp. 68-69; F. Finocchiaro, *Articolo 8*, en *Commentario della Costituzione*, a cura di G. Branca, Bologna-Roma, Zanichelli-Il Foro Italiano, 1978, pp. 412-414.

⁶ Au régime prévu pour les associations reconnues sont soumises les confessions religieuses étrangères qui obtiennent la personnalité juridique en Italie en vertu de la règle de réciprocité (art. 16 des Dispositions sur la loi en général) et en vertu du Traité d'amitié, commerce et navigation entre l'Italie et les Etats-Unis ratifié par l'Italie avec la loi n° 385 du 18 juin 1949. Etant plus facile d'obtenir la personnalité juridique par cette voie que par la loi n° 1159 du 24 juin 1929, beaucoup de confessions ont choisi cette solution; jusqu'aux

à suivre pour constituer une association non reconnue est très simple: il suffit que les membres fondateurs déclarent devant notaire leur volonté de créer l'association. Cela confère à l'association la capacité d'acheter, de posséder et de vendre des biens (même immobiliers), de souscrire des contrats, recevoir des donations, etc., c'est-à-dire de gérer les affaires temporelles qui peuvent intéresser la confession religieuse. Bien sûr, en tant qu'association de droit commun, la confession religieuse ne jouit d'aucun des avantages réservés aux confessions religieuses reconnues comme telles; en outre les possibilités d'action des associations non reconnues sont limitées et la structure associative est un peu rudimentaire: mais – si on considère qu'en Italie même les partis politiques et les syndicats sont des associations non reconnues – l'on comprend que ce type d'association peut également satisfaire les besoins essentiels des confessions religieuses⁷.

Mais ce qui vient d'être énoncé jusqu'ici ne signifie pas que les cultes organisés comme associations non reconnues échappent à un quelconque contrôle de l'Etat: cela veut simplement dire qu'ils ne sont pas soumis à un contrôle particulier ou à des restrictions plus graves (en terme de respect de la loi pénale, de l'ordre public et des bonnes moeurs) que toute personne juridique.

L'on peut alors conclure à l'existence d'un premier niveau où une confession religieuse peut exister et même se développer sans nécessiter une reconnaissance étatique et à l'abri de quelque intervention répressive que ce soit des pouvoirs publics: mais cela n'est pas encore suffisant, parce que le système juridique italien, en considérant le phénomène religieux en termes globalement favorables, ne veut pas assurer seulement le respect des confessions religieuses, mais aussi consentir qu'elles participent activement, par leur conception spécifique de la vie et de la société, au développement de l'entière communauté nationale.

Dans cette perspective, les confessions religieuses – même à ce premier et plus élémentaire niveau – présentent deux particularités par rapport aux groupes non religieux. En premier lieu, l'article 8,2 de la Constitution confère à toutes les confessions religieuses un degré d'autonomie interne supérieur à celui des associations non religieuses: pour conséquence les

années '80 ces confessions jouissaient des avantages prévus par la loi n° 1159 du 24 juin 1929 mais plus tard on a établi qu'elles sont assujetties aux dispositions de droit commun valables pour toutes les associations.

⁷ Sur les associations non reconnues, v. M. Basile, *Associazione. III) Associazioni non riconosciute*, in *Enciclopedia giuridica*, Roma, Istituto della Enciclopedia Italiana, 1988.

confessions peuvent s'organiser librement avec pour seule limite les principes fondamentaux de l'ordre juridique italien⁸. En second lieu, la loi du 24 juin 1929 prévoit la possibilité que les actes accomplis par un ministre d'un culte admis – par exemple un mariage – peuvent valablement produire des effets civils à condition que la nomination du ministre par le culte ait été notifiée au Ministère de l'Intérieur et approuvée par celui-ci⁹. A défaut d'approbation, le ministre peut accomplir des actes qui seront efficaces selon le droit confessionnel, mais qui n'auront aucune valeur au regard de l'Etat. A ce propos, il faut souligner que lorsque la confession qui notifie la nomination d'un ministre du culte n'est pas connue du Ministère, celui-ci peut demander – avant de donner son approbation – des informations sur la dénomination, les buts, les rites, les disponibilités financières de la confession et les autorités qui la dirigent (art. 20 du R.D. 28 février 1930). C'est une forme de connaissance que le Ministère juge utile d'avoir, mais l'approbation n'est pas subordonnée à la reconnaissance préalable de la confession: elle a été attribuée et continue à être donnée à ministres de confessions qui ne sont pas reconnues par l'Etat. Dans les faits, l'on commence à approuver les nominations des ministres du culte et, après quelques années, on donne la reconnaissance juridique à la confession¹⁰.

3. Les cultes reconnus

Si l'on compare les confessions religieuses en Italie à une pyramide, les cultes admis (organisés comme associations de droit commun) constituent

⁸ V. G. Long, *op. cit.*, pp. 68-69; F. Finocchiaro, *op. cit.*, pp. 412-414. Le principe selon lequel la limite est uniquement constituée par les «principes fondamentaux» de l'ordre juridique italien a été affirmé par la Cour constitutionnelle dans la décision n° 43 du 21 janvier 1988 (v. N. Colaianni, *op. cit.*, p. 126 s.).

⁹ Selon la loi de 1929, l'approbation conférerait d'autres avantages aussi: dans leurs églises les ministres approuvés pouvaient organiser des collectes, publier et afficher les actes qui concernaient la direction spirituelle des fidèles (mais ces facultés sont désormais contenues dans le droit de liberté religieuse constitutionnellement garanti) et, en cas de mobilisation générale, être autorisés à prêter assistance religieuse aux militaires et être dispensés de l'appel aux armes; une autre loi (n° 329 du 24 février 1938) prévoit l'exemption du service militaire pour les ministres approuvés. V. F. Onida, *Ministri di culto*, en *Enciclopedia giuridica*, Roma, Istituto della Enciclopedia Italiana, 1990, où l'on précise aussi les limites du pouvoir discrétionnaire de l'Etat en relation avec l'approbation des ministres du culte.

¹⁰ Par exemple, les nominations des ministres par les Témoins de Jéhovah ont commencé à être approuvées à partir de 1977 tandis que la confession a été «reconnue» sur la base de la loi de 1929 qu'en 1986.

la base de la pyramide; au-dessus d'eux sont les cultes «reconnus» selon la loi du 24 juin 1929¹¹.

Il faut préciser tout de suite que l'expression «culte reconnu» n'est pas exacte. La reconnaissance de l'Etat ne concerne pas le culte mais seulement un établissement du culte qui – une fois reconnu – acquiert la personnalité morale: on ne reconnaît pas la confession religieuse islamique mais seulement le Centre islamique culturel d'Italie, pas la confession religieuse adventiste mais l'Institut patrimonial de l'Union italienne des Eglises chrétiennes adventistes du septième jour. Le législateur savait qu'il existait des confessions religieuses qui, par principe, refusaient toute reconnaissance de l'Etat et, pour ne pas les exclure du système, il a choisi de limiter sa reconnaissance à leurs instituts. Mais, même si le choix du législateur est appréciable, il faut reconnaître qu'elle est en large mesure confinée à la théorie. En fait, quand on demande la reconnaissance d'un institut d'une confession religieuse, il faut en présenter l'acte constitutif et les statuts qui doivent contenir l'indication de son but, de ses organes d'administration et de ses règles de fonctionnement; l'indication des moyens financier dont dispose l'institut; une relation sur les principes religieux et les activités de la confession religieuse. Moyennant l'examen des ces éléments le Ministère de l'Intérieur, le Conseil d'Etat¹² et le Conseil des Ministres (qui doivent donner leur avis avant la reconnaissance) peuvent évaluer non seulement l'organisation mais aussi la doctrine de la confession et refuser la reconnaissance si elle ne présente pas les qualités requises.

Quelle sont ces qualités, en d'autres termes, quels sont les éléments qui font l'objet du contrôle du Ministère et du Conseil d'Etat?

En premier lieu, le groupe qui demande la reconnaissance d'un de ses instituts doit être une véritable confession religieuse, c'est-à-dire un groupe doté d'un minimum d'organisation et qualifié par un but religieux. On sait que définir juridiquement la religion est presque impossible: en tout cas, les tribunaux italiens ont longtemps été orientés à identifier l'élément distinctif de la religion dans la foi en un Dieu et dans l'existence de rites qui mettent en rapport l'homme avec Dieu. Mais cette position a été dépassée par le Conseil d'Etat qui a reconnu en 1989 comme

¹¹ Actuellement, l'on recense en Italie une trentaine de confessions religieuses «reconnues» aux sens de la loi n° 1159 du 24 juin 1929 (parmi eux les musulmans, les mormons et les orthodoxes sont les plus importantes).

¹² Selon la loi 127/1997 (art. 17), l'avis du Conseil d'Etat n'est plus obligatoire, mais peut être demandé par l'Administration publique quand la demande de reconnaissance présente des éléments complexes et délicats.

établissement culturel l'Union bouddhiste italienne¹³, admettant implicitement que le bouddhisme est une religion même s'il est pour le moins réticent à propos de l'existence de Dieu. Dans le même avis, le Conseil d'Etat déclare explicitement que l'existence de rites n'est pas nécessaire pour la qualification d'un groupe comme confession religieuse.

Deuxièmement, on examine l'organisation de l'établissement qui veut être reconnu (organes administratifs, règles de fonctionnement, moyens financiers) pour vérifier qu'elle n'est pas en contradiction avec l'ordre juridique italien et qu'elle est à même de réaliser les buts propres de l'établissement.

Du point de vue strictement juridique, telles sont les seules exigences; mais dans la réalité, étant donné que la reconnaissance d'un établissement culturel d'une confession a aussi une valeur politique (comme cela est prouvé par l'intervention dans la procédure de reconnaissance du Conseil des Ministres, qui doit donner son avis), on procède aussi à une évaluation de caractère général qui concerne la confession dans sa totalité et donc même les conséquences pratiques de ses principes doctrinaux.

Ce point est très délicat et le Conseil d'Etat, dans son avis concernant les Témoins de Jéhovah, a précisé que la responsabilité pénale des Témoins de Jéhovah qui refusent le service militaire, la participation aux jurys populaires et aux élections n'implique pas la responsabilité de l'entière confession, mais reste confinée au niveau individuel¹⁴. Cette précision n'empêche pas que les pouvoirs publics peuvent refuser la reconnaissance pour des raisons liées aux principes d'une religion¹⁵: par exemple, le fait que la religion sikh prévoit pour les fidèles masculins l'obligation de porter un petite épée rend difficile la reconnaissance de cette religion selon la loi du 1929.

Enfin, il faut souligner que la confession religieuse n'a pas un droit à obtenir la reconnaissance de son établissement culturel mais seulement un intérêt juridique: et, en conséquence, le refus de reconnaissance ne peut pas faire l'objet d'un recours devant le juge ordinaire mais seulement devant le juge administratif qui, en dernière instance, est le même Conseil d'Etat ayant émis l'avis négatif sur lequel est fondé le refus de reconnaissance qui est saisi¹⁶.

¹³ V. Conseil d'Etat, avis n. 2158 du 29 novembre 1989, en Quaderni di diritto e politica ecclesiastica, 1991-92/1, pp. 531-33.

¹⁴ V. Conseil d'Etat, avis n. 1390 du 30 juillet 1986, en Quaderni di diritto e politica ecclesiastica, 1986, p. 509.

¹⁵ Voir pour exemple Giuseppe Casuscelli, *Le attuali prospettive del diritto ecclesiastico italiano*, in www.olir.it/areetematiche/1996/documents/Casuscelli_Prospettive.pdf.

¹⁶ Mais v. la note 12.

Un dernier point doit être éclairci: quel avantage la confession religieuse obtient-elle par la reconnaissance? La réponse est simple: un peu d'argent.

Sur le plan fiscal, les confessions «reconnues» sont mises au même niveau que les institutions de bienfaisance et d'instruction, avec cette conséquence que les exemptions appliquées à ces dernières sont étendues aux confessions «reconnues» aussi. De l'autre côté, il faut rappeler que cet avantage est contrebalancé par une série de contrôles sur l'activité de l'établissement confessionnel reconnu, contrôles qui peuvent aller jusqu'à la dissolution de ses organes administratifs et l'annulation de ses actes.

4. Les communautés religieuses avec entente

Le troisième niveau de la pyramide des confessions religieuses est constitué par les confessions ayant passé une entente avec l'Etat.

Dans les faits, pour accéder à l'entente une confession religieuse doit avoir préalablement obtenu la reconnaissance prévue par la loi du 1929. L'entente ouvre la voie à la partie la plus grande des avantages prévus pour les confessions religieuses: par exemple, le droit de recevoir la part d'impôts affectée par l'Etat aux besoins religieux et d'envoyer des enseignants de religion dans les écoles publiques. En outre l'entente, une fois signée, ne peut pas être changée sans l'accord des deux parties qui l'ont stipulée: par conséquence la confession religieuse a la garantie que sa position juridique ne peut pas être modifiée contre sa volonté.

Plus les avantages deviennent importants, plus large devient aussi le pouvoir discrétionnaire de l'Etat de conclure ou non une entente avec une confession. Il n'existe pas un droit ni un intérêt juridiquement protégé des confessions religieuses à obtenir une entente avec l'Etat: selon la doctrine majoritaire, celui-ci dépend d'un choix de caractère politique qui n'échappe pas seulement au recours judiciaire mais aussi au recours administratif¹⁷.

Cette conclusion ne peut pas être partagée sans réserves.

L'article 8,1 de la Constitution italienne garantit à toutes les confessions religieuses – «reconnues» ou non «reconnues», avec ou sans entente – une «égale liberté devant la loi». Cela signifie que, si le refus de conclure l'entente (ou même de la reconnaissance: le problème est le

¹⁷ V. G. Long, *op. cit.*, p. 70; F. Finocchiaro, *op. cit.*, p. 428. *Contra*: R. Botta, *Manuale di diritto ecclesiastico. Valori religiosi e società civile*, Torino, Giappichelli, 1998, p. 83.

même) détermine une inégalité qui se réfléchit négativement sur les droits fondamentaux de liberté d'une confession, ce refus n'est pas légitime.

Cette dernière affirmation me semble pouvoir être étendue à l'entier système de classification des confessions religieuses et touche, à mon avis, le point le plus sensible des systèmes fondés sur la reconnaissance ou l'enregistrement des cultes, qu'est celui de la compatibilité de ces systèmes avec le principe d'égalité des confessions religieuses.

Communautés religieuses reconnues selon la loi du 1929 (source: S. Berlingò – G. Casuscelli, *Codice del diritto ecclesiastico*, Milano, Giuffrè, 2003)

- Chiesa ortodossa russa in Roma (1929)
- Comunità armena dei fedeli di rito armeno gregoriano (1956)
- Assemblee di Dio in Italia (1959)
- Ente Patrimoniale dell'Unione Cristiana Evangelica Battista d'Italia (1961)
- Chiesa evangelica luterana in Italia (1961)
- Chiesa ortodossa russa a San Remo (1966)
- Fondazione dell'Assemblea Spirituale Nazionale dei Baha'i d'Italia (1966)
- Movimento evangelico internazionale Fiumi di Potenza (1971)
- Centro islamico culturale d'Italia (1974)
- Congregazione cristiana evangelica italiana (1976)
- Chiesa di Cristo di Milano (1977)
- Ente patrimoniale dell'Unione italiana delle Chiese cristiane avventiste del 7 giorno (1979)
- Chiesa cristiana millenarista (1979)
- Congregazione cristiana dei Testimoni di Geova (1986)
- Chiesa del Regno di Dio (1988)
- Chiesa cristiana evangelica pentecostale (1988)
- Unione buddhista italiana (1991)
- Ente patrimoniale della Chiesa di Gesù Cristo dei Santi degli ultimi giorni (1993)
- Ente cristiano evangelico dei fratelli (1997)
- Associazione cristiana ortodossa dei Santi Agapito Martire e Serafino di Sarov (1998)
- Ente della Chiesa della fratellanza nella realizzazione del Sé (1998)
- Sacra arcidiocesi ortodossa d'Italia ed Esarcato per l'Europa meridionale (1998)
- Istituto Italiano Zen Soto Shobozan Fudenji (1999)

- F.P.M.T. Italia – Fondazione per la preservazione della tradizione Mahayana (1999)
- Ente Consulta Evangelica (1999)
- Chiesa cristiana evangelica indipendente «Berea» (1999)
- Unione Induista Italiana (U.I.I.) Sanatana Dharma Sangha (2000)

Communautés religieuses qui ont stipulé une entente avec l'Etat italien

- Tavola Valdese (1984)
- Unione italiana delle Chiese cristiane avventiste del settimo giorno (1988)
- Assemblee di Dio in Italia (1988)
- Unione delle Comunità ebraiche italiane (1989)
- Unione Cristiana Evangelica Battista d'Italia (1995)
- Chiesa evangelica luterana in Italia (1996)

Deux ententes ont été stipulées avec l'Unione Buddhista Italiana (2000) et la Congregazione cristiana dei Testimoni di Geova (2000), mais le Parlement n'a pas approuvé la loi qui donne exécution à ces ententes.

RINGOLDS BALODIS

RELIGIOUS ENTITIES AS LEGAL PERSONS – LATVIA

Religious organizations, their status and their activities in the state in a broad sense reflect not only the level of religious freedom in the country, but also the development of 'human rights'. Each state has rules under its national law about registration of religious organizations. Citizens establish religious organizations in order to successfully realize their religious freedom, which cannot be separated from the equality of all people before the state. In brief, these are natural rights of people or human rights.¹

Religious freedom has two aspects:

- 1) the freedom of individual,
- 2) the freedom of a church as an association – the freedom of the legal entity, social and charitable institution.

Unions of people, including religious associations, are an essential condition for people to carry out their objective rights. On receiving legal entity status, human religious rights acquire a new quality. Rights and freedoms, which belong to an individual, become broader when an individual joins with others like him/her. A new, broader perspective of realizations of their rights appears. People and unions of people are essential elements of the democratic system and it is hard to picture a modern state without them. The relationship between these two elements and the state will always be the basis of classification, because the level of these relationships determines the character of the state. They are also the guarantors of the legal progress of the state. Finally, guaranteed rights are the social and economical conditions, as well as the political and legal means, which ensure the observance of the legal rights. They create the reality of rights for citizens and unions of citizens.

In the Constitution of the Republic of Latvia religion/church is mentioned only in Article 99, where the state declares that: "*Everyone has the right to freedom of thought, conscience and religion. The Church*

¹ Balodis R. Church and State Law's Collaboration in Latvia/ Eastern European Community (European) Law Journal// http://www.eelj.com/eec_eljenglish.htm.

shall be separate from the State.”² The Latvian government does not require the registration of religious groups; the law accords religious organizations certain rights and privileges when they register, such as status as a separate legal entity for owning property or conducting other financial transactions, as well as tax benefits for donors. Registration also eases the rules for public gatherings. Only churches with religious association status may establish theological schools or monasteries. It should be noted that a church can freely constitute some religious entity, but the state will only recognise this entity after registration (that is, after it has become a legal entity). Every unregistered religious group therefore has the right to conduct services, religious rituals and ceremonies and to carry out charitable work, unless those break the law.

Latvia is a multi-confessional country, where the three largest denominations are the Catholics, the Lutherans and the Orthodox Church. In general, there are about 170 different denominations and religious groups.³ Under Article 7 of the Law on Religious Organizations, a congregation may be established by at least 20 citizens of Latvia or persons who have been registered in the Population Register and have reached 18 years of age. The Latvian Population Register registered every person who legally crossed the Latvian border which means that foreigners have no problem in constituting any religious entity. The religious procedure for establishing such religious organizations is, of course, the same as for Latvian citizens.

The legal status of legal entities in Latvia is defined by the Civil Law, but the status and the registration of religious organizations are regulated by the Law on Religious Organizations of 7 September 1995. Other public organizations (except trade unions and businesses, which are subject to a different law) are regulated by the Law on Public Organizations and their Associations. Under the Law on Religious Organizations, religious organizations are a specific form of legal entity. According to the Law on Religious Organizations, religious organizations must be 1) church congregations, 2) religious associations (churches) or 3) dioceses.

² Latvijas Republikas Satversme (*The Constitution of the Republic of Latvia*) //Latvijas Vēstnesis, 01.07.1993, Nr.43.

³ Balodis R. State and Church in the Latvia//State and Church in the Baltic States: 2001. – Riga, Latvian Association for Freedom of Religion, 2001. p. 15-17.; Теоретические установки отделения церкви от государства и допустимый интерес государства к образованию, регистрации и деятельности религиозных УТВЕРЖДЕНИЯ// НАУКОВИЙ ЩОРІЧНИК № 5 Відділення релігієзнавства Інституту філософії імені Г.С.Сковороди НАН України Київ – 2001.

- 1) Twenty persons aged 18 or over, registered in the Latvian Citizens Register⁴ and sharing one confessional affiliation, may establish a church congregation.⁵
- 2) A minimum of ten church congregations belonging to the same denomination, and which are registered, can establish a religious association (church).⁶
- 3) A religious association (church) may establish a diocese by making a relevant decision. A diocese shall be a territorial and administrative unit of a certain organizational structure of a religious association (church) in accordance with the canonical rules of a particular denomination, which is overseen by a bishop (at this moment only the Catholic Church has dioceses).

In accordance with the procedure provided by the Law on Religious Organizations (Article 7.1.) and for the purpose of reaching goals set by their charters, registered religious organizations may create institutions that do not make profit: educational institutions for ecclesiastics, monasteries, missions, deaconate institutions and similar organizations.⁷

An institution established by a religious organization functions in accordance with existing legislative acts and its charter constitution, regulations) approved by the respective religious organization. Religious organizations may create, reorganize or dissolve their institutions if the founder makes a decision about it in accordance with its charter (constitution, regulations).

The Latvian approach of the re registration of religious organizations under Article 8(4) of the Law on Religious Organizations applies only to congregations of denominations that first start their activities in the Republic of Latvia and do not belong to religious communities already registered in Latvia. The aim of re registration is to ascertain the loyalty of a certain congregation towards the Latvian state and that its activities comply with the applicable legislation. It should be added that after its

⁴ Every inhabitant of Latvia shall have the right to join a congregation and to be its active member. One and the same person shall be entitled to be the founder of only one congregation. Young persons under 18 may become congregation members only with a written consent of their parents or guardians.

⁵ Balodis R. The Constitution of Latvia/ Rechtspolitisches Forum Legal Policy Forum Institut für Rechtspolitik an der Universität Trier, 2004. Nr.26. p. 47

⁶ Congregations of the same denomination may establish only one religious association (church) in the country.

⁷ Balodis R. Church and State in Latvia/ Law and Religion in Post-Communist Europe (Ed. Silvio Ferrari, W. Cole Durham). PEETERS, LEUVEN – PARIS – DUDLEY, MA 2003 142-143.

tenth re registration, a religious organization obtains the status of being permanently registered.⁸ At present 1,160 religious organizations and their establishments are registered at the Board of Religious Affairs; 81 congregations of those have to be re registered annually.

Otherwise, there are no differences between historical Latvian churches and new religious movements. At the moment, the question of Catholic entities' registration is not clear. The problem arose after the 9 October 2000 agreement with the Holy See was signed. In accordance with Article 2 of the Agreement with the Holy See, the institutions of the Catholic Church in the Republic of Latvia, which in accordance with Canon Law have the status of public juridical persons, will also enjoy juridical personality under civil law, according to the legislation of the Republic of Latvia. This Article also provides that the competent ecclesiastical authority may – in accordance with the pertinent canonical norms – establish, modify, recognize and suppress ecclesiastical juridical public persons. In the event of such changes affecting the existing situation of the Catholic Church in the Republic of Latvia, they shall be communicated to the competent civil authorities, in accordance with the existing legislation of the Republic of Latvia.⁹

The Catholic Church in Latvia interprets Article 2 of the Agreement with the Holy See as permission to constitute religious entities without registration, but the Ministry of Justice and the Religious Affairs Board do not agree with that and consider that this article does not say anything and is just declarative.

According to Articles 8 and 9 of the Law on Religious Organizations, religious organizations¹⁰ and religious institutions must be registered with the Board of Religious Affairs. The Board of Religious Affairs must examine the documents submitted for registration within one month.¹¹

⁸ Balodis R. Church and State in Latvia/ State and Church in the European Union/European Consortium for State and Church research, Nomos Verlagsgesellschaft, Baden – Baden second ed., 2005. p. 260.

⁹ Kościół i państwo w krajach bałtyckich. Rejestracja i podstawowe zasady kształtowania się organizacji religijnych / ROCZNIK TEologiczny.- CHRZEŚCJAŃSKA AKADEMIA TEologiczna Warszawa Rok XLIV ZESZYT 2, 2002. 147-163; Church and State in the Baltic States: registration and basic principles of formation of religious organisations/ European journal for Church and state Research/European Consortium for Church-State research Belgium 2000. 339-358.

¹⁰ 1995.gada 7.septembra Reliģisko organizāciju likums (Law on Religious Organizations of 7th September 1995) //Latvijas Vēstnesis, 26.09.1995, Nr.146.

¹¹ Latvijas Republikas Ministru kabineta 2000.gada 19.septembra noteikumi Nr. 321 "Reliģisko lietu pārvaldes nolikums" (Regulations of Cabinet of Ministers of the Republic of Latvia of 19th September 2000 "Rule of the Board of Religious Affairs")//Latvijas Vēstnesis, 22.09.2000, Nr. 331/333.

When examining the documents submitted by congregations of those denominations and religions which first began functioning in the Republic of Latvia and which do not belong to the religious associations (churches) already registered in the country, the Board of Religious Affairs may extend the period for examining the documents by one month and notify the applicant accordingly.

An authorized person of a religious organization must submit to the Board of Religious Affairs a registration application and a written authorization entitling this person to handle matters concerning registration.

The application submitted by a congregation must be accompanied by:

- the charter (constitution, regulations);
- the list of the founders of the congregation including their full names, residential addresses, identification numbers and signature; an extract from the minutes of the foundation meeting of the congregation, the adoption of the charter (constitution, regulations), information about the governing body of the congregation and the Audit Committee members;
- the document proving payment of stamp duty on registration of the congregation.

The application submitted by a religious association (church) must be accompanied by:

- the charter (constitution, regulations);
- the list of congregations – founders of the religious association (church) which is to be confirmed by the congregation leaders;
- an extract from the conference (synod) minutes recording the foundation of the association (church), its administrative institutions, governing body and Audit Committee members;
- the document proving payment of stamp duty on registration of the religious association (church).

The application to register a diocese must be accompanied by:

- the charter (constitution, regulations);
- the decision of a religious association to create a diocese;
- information regarding the leaders;
- the document proving payment of stamp duty on registration of the diocese.

The application submitted by an educational establishment for ecclesiastics, monastery, mission or deaconate institution must be accompanied by:

- the charter (constitution, regulations);

- the decision of a religious association to establish an educational institution for ecclesiastics, monastery, mission or deaconic institution;
- information regarding the leaders;
- the document proving payment of stamp duty on the registration of an educational institution for ecclesiastics, monastery, convent, mission, or charitable institution.
- the charter (constitution, regulations) of a religious organization must include the following information:
 - the name of the religious organization and its denomination, and, moreover, this name must be unambiguously different from the names of enterprises, institutions and organizations registered in the State in orders prescribed by laws;
 - the pledge of the religious organization to abide by the Constitution (Satversme) and the laws of the Republic of Latvia in its activities; the description of teaching (Holy Scripture, doctrine and characteristic features of the denomination), forms of the religious ceremonies, aims and purposes of religious activities;
 - the structure of the religious organization, the procedure of electing the leadership and the Audit Committee members, and their respective powers;
 - the territory where the religious organization functions and where its leadership is based;
 - the procedure by which members join and leave the congregation, members' rights and obligations; the rights and obligations of the religious organization, its property and financial resources;
 - the procedure for the dissolution of the religious organization and for the further use of the property remaining after dissolution.

By means of the charter (constitution, regulations), a religious organization may also regulate its other internal matters. If a congregation recognizes its adherence to some denomination functioning in the territory of the country, this must be stated in the application submitted by this congregation and approved by the governing body of the respective religious association (church) or, if authorized by it, the leadership of the diocese. If a congregation is unwilling to join any of the existing religious associations (churches), this should be stated in the charter (constitution, regulations), explaining that the congregation will function autonomously. This provision will not apply to those denominations whose canonical rules do not permit autonomous functioning of congregations.

Having been registered at the Board of Religious Affairs, religious organizations are given the status of legal persons. The legislation of the Republic of Latvia does not require that registration is obligatory in order to express freedom of belief. According to Article 13 of the Law on Religious Organizations, only registered religious associations (churches) or dioceses are entitled to establish educational institutions for ecclesiastics, monasteries, missions and deaconate institutions. In addition, only registered religious organizations and establishments formed by such organizations are entitled to use the names and emblems of religious organization in their official forms and stamps.

There is no single law in Latvia dealing with taxation as it affects the churches. The financial and tax issues of the churches are dealt with in many laws and regulations. Particular laws which address a number of issues related to the financial activities of religious organizations include the following:

- the Law on Entrepreneurship provides that religious organizations are entitled to engage in business activities, establish companies, and acquire shares in companies.

The next important issue is related to tax relief for religious organizations:

- according to the Law on Real Estate Tax, real property owned by a religious organization and used for performing religious activities is not taxable with effect from 1 January 2001;
- the Law on Value Added Tax envisages that religious, ceremonial and other not for profit services of religious organizations are exempt from Value Added Tax. Money contributions and donations to religious organizations are also exempt from Value Added Tax;
- companies that make donations to religious organizations in accordance with permissions issued by the Ministry of Finance may claim tax relief of 85 % as provided under Article 20 of the Law on Corporate Income Tax. This tax relief is not applied to companies that have a continuing tax liability for the previous fiscal year as at the first day of the second month of the new taxation period. In accordance with the law, the total tax relief may not exceed 20% of the total tax liability of the company;
- under the Law on Individual Income Tax, a physical person who has made donations to a public or religious organization (which has a licence issued by the Ministry of Finance) can deduct this amount from his or her taxable income before accounting for individual income tax. This amount should not exceed 20% of the individual's taxable income.

It should be pointed out that religious organizations do not pay corporate or individual income tax. If religious organizations receive foreign technical assistance, they are granted customs tax and Value Added Tax relief.

- religious organizations have the right to receive humanitarian aid. Car-goes of humanitarian aid are tax and duty exempt according to the procedure provided under the law. Religious organizations that are entitled to be beneficiaries of humanitarian aid are listed on an annual basis according to special regulations issued by the Council of Ministers.

Under Article 16 of the Law on Religious Organizations, religious organizations may possess movable property and real estate. The right to manage real estate is vested only in the leadership institutions of religious organizations unless the charter (constitution, regulations) prescribes other procedures. If the income of a religious organization from business activities during one calendar year exceeds 500 minimum monthly salaries (based on the minimum monthly salary set by the Government for the respective period), the religious organization, according to Article 15 of the Law on Religious Organizations, must establish its own business which shall be registered according to the existing legislative acts. Income from business activities and profit made as a result of entrepreneurial activities must be used for the purposes prescribed by the charter (constitution, regulations) of the religious organization and in compliance with the existing legislative acts. If the spiritual centre of a religious organization registered in the Republic of Latvia is situated in a foreign country, in Latvia the said centre may not possess either the real estate of this organization, or any property recognised as a monument of culture. Church buildings, objects of art and other property recognized, as monuments of culture shall be maintained by religious organizations in accordance with the requirements prescribed by the Law on the Protection of Monuments of Culture. Under Article 16 of the Law on Religious Organizations, religious organizations may own movable and real property but they are prohibited from mortgaging church buildings or ritual artefacts and creditors may not foreclose on the same.

JOLANTA KUZNECOVIENE

RELIGIOUS ENTITIES AS LEGAL PERSONS – LITHUANIA

The legal forms of religious body are defined in the Constitution of the Republic of Lithuania and in the Law on Religious Communities and Associations (LRCA)¹. According to Article 2 of LRCA, a *religious community* is a unity comprised of a group of individuals seeking to implement the aims of the same religion. A *religious association* has to be comprised of no fewer than two religious communities having a common leadership. A *religious centre* is the governing body of a religious association.

The LRCA specifies three different categories of religious community and association: 'traditional religious communities and associations', 'state recognized religious communities and associations' and 'other (non-traditional)' religious communities and associations.

Under the LRCA, the basic condition for creating any religious group is the aspiration of group members to put into practice the aim of common religion. Accordingly, the registration of religious communities and associations is not compulsory. However, unregistered religious communities are not subjects of law.

Recognition of a religious group as a legal entity requires its registration. Automatically on registration they acquire the rights of a legal personality.

The procedure for 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.

According to Article 11 of the LRCA, non-traditional religious communities and associations acquire the rights of a legal personality on registration of their statutes. The community can be registered if it unites at least 15 members who are adult citizens of Lithuania. A religious association can be registered if it unites at least two communities. The religious centre can be registered if it is established according to the statute of the religious association or other corresponding document.

¹ Law on Religious Communities and Associations, adopted on 4 October 1995// Valstybes zinios, 1995, No. 89-1985. Amendments are published in Valstybes zinios 1997, No. 66-1618, 2000, No. 40-1115.

In order to be registered, a religious community/association has to submit to the Ministry of Justice an application, initiative meeting protocol, membership list and statute or corresponding documents (Article 11, LRCA). The statute or corresponding documents must include the name of the community, its main office, its legal form, activity directions and aims of professed religion, organizational structure and authorities of the community or association, procedure of management, procedures of amendment of the statute, order of joining and seceding from the community, members' rights and duties, order of reorganization and distribution of its property following its liquidation.

The Ministry draws inferences from correspondence of documents to the Law and the conclusion that professing religion does not violate human rights, freedom and public order. Statutes of a religious association can be registered within six months from their submission.

The Ministry of Justice may refuse to register statutes of religious communities and associations if: "(1) necessary data are not provided; (2) the activity of the religious community/association violates human rights and freedoms or public order; (3) when the statutes of the same name have already been registered "(Article12, LRCA).

Article 43 of the Constitution provides that state-recognized religious communities enjoy the right of legal personality and the law does not require the registration of the statutes or documents corresponding to them of the traditional communities and associations. Newly established (re-established) traditional religious communities and associations acquire the rights of legal personality when the authorities of the religious association acknowledge their existence and notify the Ministry of Justice in written form (Article10, LRCA).

According to the Civil Code, Book Two, Chapter 4, Article 2.34, religious communities and associations are public (non-profit-making) legal persons.²

According to the LRCA, all religious communities and associations possessing rights of legal personality may receive financial support from the State for culture, education and charity (Article7). However, the Law enables, rather than obliges, the State to grant support. As already mentioned, unregistered religious communities are not subjects of law.

Although the law provides all registered religious organizations the opportunity to receive State support, it is easier for traditional religious

associations to obtain it. For example, the Amendment to Article 14 of the LRCA (May, 2000) declares that educational establishments of traditional religious communities and associations that provide education in compliance with the state standard are financed and maintained by the State. Confessional schools of other religious communities and associations offering state-required education may apply for financial and other support from the national and municipal budgets as well.

Although the Constitution of the Lithuanian Republic stipulates that the State registers marriages, births and deaths and recognizes marriages registered in church (Article 38), this statement actually relates only to registered religious communities. Accordingly, the Civil Code, defining the procedure for the registration of marriage, states that marriage has civil effect as a legal act of the State if it has "been celebrated according to the order established by the canons of religious organizations registered and recognized by the Lithuanian State".

Article 16 of the LRCA stipulates that all religious communities, associations and centres are exempt from taxes as regards their received contributions. According to the Law, income from contributions and income resulting from the sale of property acquired through charitable means are not taxable, if they are intended for the construction, repair or restoration of houses of prayer, charity, culture or education. The income received by the clergy, assistants at religious rites and service staff (except individuals performing construction, repair and restoration work), from the funds indicated above, is not subject to tax in the same way as a natural person. Charity and support received for religious development projects are also exempt from taxes.

Nevertheless, according to Article 16 of the LRCA, enterprises (organizations) established by religious communities /associations are subject to taxation in accordance with the laws regulating the activities of an economic enterprise or an organization. A legal personality's income tax must be paid on any income received from economic-commercial activities of the religious community or association.

Religious communities/associations are exempt from real estate tax when they use their buildings and facilities only for religious purposes or for the production of religious necessities. When religious communities/associations lease the above-mentioned property or use it for other purposes, they have to pay real-estate tax.³

² Civil Code of the Republic of Lithuania//Valstybes zinios, 2000, No. 74-2262.

³ R.Ziliute, D.Glodenis, State and Church in Lithuania, in: R.Balodis (ed.), State and Church in the Baltic States: 2001, p. 83.

Most of the above-mentioned taxes are not applied to the Catholic Church. According to the Agreement between the Holy See and Lithuania on the Legal Aspects of Relationships between the Catholic Church and the State, the property of legal persons established in accordance with the Canon law and used for pastoral care, charitable, social, educational or cultural purposes (including revenues from economic-commercial activities) is not subject to state taxes.

According to the paper of the State Tax Inspectorate, services provided by traditional religious communities are not subject to VAT provided that the services are paid for from donation funds.⁴

According to the LRCA, religious communities and associations have the right to employ individuals on work contracts. Most churches in Lithuania have employees who are considered to be civil servants. For the majority of the employees, the normal labour laws are in effect (Article 17).

Individuals, employed according to labour contract by religious communities or association have rights to social insurance and other guarantees established by laws. For these purposes, religious organizations must contribute to the State Social Insurance Fund from their income the same amount as state enterprises. Priests in a paid occupation share the same social rights and benefits as other employees.

Registered religious communities and associations have the right to own houses of prayer, residential houses, other buildings and edifices, production, social and charity objects and other types of property (Article 13, LRCA).

The context of the above-analyzed situation can be illustrated by the following statistics. There are 967 registered traditional and 148 registered non-traditional religious communities in Lithuania. There are no data on non-registered religious communities.

The religious affiliation of the inhabitants of Lithuania:⁵

Religion	Number	Percentage
In all	3 483 972	100 %
Roman Catholic	2 752 447	79 %
Orthodox (Russian)	141 821	4.07 %
Old Believers	27 073	0.78 %
Evangelical Lutheran	19 637	0.56 %

Religion	Number	Percentage
Evangelical Reformed	7 082	0.2 %
Jehovah Witnesses	3 512	0.1 %
Sunni Muslim	2 860	0.08 %
Full Gospel Church	2 207	0.06 %
Pentecostal	1 307	0.04 %
Jew	1 272	0.04 %
Baltic faith	1 270	0.04 %
Baptist (and free church)	1 249	0.04 %
Seventh Day Adventist	547	0.02 %
New Apostolic Church	436	0.01 %
Buddhist	408	0.01 %
Eastern rite Catholic Church	364	0.01 %
Krishna movement (ISKCON)	265	0.01 %
Karaite	258	0.01 %
Methodist	211	0.01 %
Church of Jesus Christ of Latter Day Saints (mormons)	197	< 0.01 %
Shri Sathya Sai Baba organization	107	< 0.01 %
Non-denominational Christian Churches	75	< 0.01 %
Churches of Christ	52	< 0.01 %
Bahikh	31	< 0.01 %
Armenian Apostolic Church	30	< 0.01 %
Church of Scientology	15	< 0.01 %
Osho (Rajneesh) movement	12	< 0.01 %
Unification Church	4	< 0.01 %
Said to be "evangelical" or "protestant"	660	0.02 %
Said to be "Christian"	275	< 0.01 %
Other faiths	515	< 0.01 %
Unbeliever	239	0.01 %
None	331 087	9.50 %
Did not indicate	186 447	5,0 %

⁴ Paper of the State Tax Inspectorate, 12 January 2000, No. 08-01-06/470.

⁵ Data from 2001 census. Source: www.std.lt.

ENTITES RELIGIEUSES COMME PERSONNES JURIDIQUES –
LUXEMBOURG

**I. Constitution d'une entité religieuse au Grand-Duché
de Luxembourg**

a) La constitution d'une entité religieuse, qu'elle porte la dénomination d'Eglise ou toute autre dénomination, n'est pas subordonnée à une autorisation administrative. C'est ce qui découle du principe de la liberté religieuse, défini à l'article 19 de la Constitution du 17 octobre 1868: «La liberté des cultes, celle de leur exercice public, ainsi que la liberté de manifester ses opinions religieuses, sont garanties, sauf la répression des délits commis à l'occasion de l'usage de ces libertés».

Certes, aux termes de l'article 22 de la Constitution,

«L'intervention de l'Etat dans la nomination et l'installation des chefs des cultes, le mode de nomination et de révocation des autres ministres des cultes, la faculté pour les uns et les autres de correspondre avec leurs supérieurs et de publier leurs actes, ainsi que les rapports de l'Eglise avec l'Etat, font l'objet de conventions à soumettre à la Chambre des Députés pour les dispositions qui nécessitent son intervention».

Mais ce texte ne doit pas être interprété en ce sens qu'une convention entre l'Etat et une entité religieuse serait nécessaire afin que l'entité religieuse puisse exister, ou être constituée, au Luxembourg. Les entités religieuses qui ne souhaitent pas conclure une convention avec l'Etat (ou qui ne parviennent pas à en conclure une) peuvent être librement constituées, sans toutefois bénéficier, dans ce cas, de certains des avantages prévus par les conventions (sur ces avantages, v. *infra* II, d).

La liberté des constituer des entités religieuses s'étend aux étrangers: aux termes de l'article 111 de la Constitution, «tout étranger qui se trouve sur le territoire du Grand-Duché, jouit de la protection accordée aux personnes et aux biens, sauf les exceptions établies par la loi». Ce texte doit être interprété en ce sens que les différentes libertés publiques prévues par la Constitution peuvent être invoquée par les étrangers comme par les Luxembourgeois, sauf exceptions prévues par la loi;

aucune loi n'introduit, au détriment des étrangers, une dérogation à la liberté religieuse.¹

b) Sous quelle forme une entité religieuse peut-elle être constituée? Nous distinguerons entre les cultes (officiellement «reconnus» par l'Etat ou non) d'une part et, d'autre part, les entités infra-culturelles (par exemple les institutions charitables qui dépendent d'une Eglise).

1. Cultes

Les cultes qui font l'objet d'une «reconnaissance» par l'Etat, laquelle se traduira de nos jours² par la conclusion d'une convention conforme à l'article 22 de la Constitution (*supra* I, a), seront constitués sous forme de personnes juridiques de droit public³. Depuis 1981, l'évêché possède en vertu d'une loi spéciale la personnalité de droit public.⁴ C'est un emprunt au droit allemand.⁵

Quant aux autres cultes, ils ne bénéficieront pas de la personnalité juridique de droit public. Ils seront constitués, au gré de leurs membres, soit sous forme d'associations sans but lucratif (bénéficiant de la personnalité juridique de droit privé), soit sous forme d'associations de fait, dépourvues de la personnalité juridique.

¹ Voir A. Pauly et R. Diederich, «Migrant workers and civil liberties», EUI, 1983.

² Historiquement, le lien entre reconnaissance d'une Eglise et conclusion d'une convention au sens de l'article 22 de la Constitution était moins clair; à propos de la situation des Eglises protestantes voir ainsi A. Pauly, «Religions et Etat Grand-Duché de Luxembourg en 1998», cette *Revue* 1999, 145-147.

³ Article 2 de la loi de 10 juillet 1998 portant approbation de la convention entre le gouvernement et les communautés israélites du Luxembourg; article 2 de la loi du 23 novembre 1982 portant approbation de la convention de reconnaissance de l'Eglise protestante réformée du Luxembourg, octroi de la personnalité juridique à celle-ci et détermination des fonctions et emplois rémunérés par l'Etat; article 2 de la loi du 10 juillet 1998 portant approbation de la convention entre le gouvernement et l'Eglise protestante du Luxembourg; article 2 de la loi du 10 juillet 1998 portant approbation de la convention entre le gouvernement et l'Eglise orthodoxe hellénique du Luxembourg; article 1er de la loi du 11 juin 2004 autorisant l'Etat à prendre en charge les traitements et pensions des ministres du culte de l'Eglise anglicane du Luxembourg et conférant la personnalité juridique de droit public à ladite Eglise; article 1er de la loi du 11 juin 2004 autorisant l'Etat à prendre en charge les traitements et pensions des ministres du culte des Eglises orthodoxes roumaine et serbe du Luxembourg et conférant la personnalité juridique de droit public auxdites Eglises.

⁴ Loi du 13 mai 1981, conférant la personnalité juridique à l'évêché de Luxembourg, *Mémorial A* 1981 p. 692.

⁵ A. Pauly, *Les cultes au Luxembourg*, Forum, Luxembourg, 1989, p. 95-99.

2. Entités religieuses infra-culturelles, spécialement institutions charitables

Ces institutions pourront être gérées comme simples émanations ou départements (dépourvus d'une personnalité juridique distincte) des cultes, soit sous forme de personnes juridiques autonomes. Dans ce dernier cas, leur personnalité juridique sera – à l'exception du cas particulier des fabriques des églises, discuté à l'alinéa suivant – une personnalité juridique de droit privé, indépendante de toute convention avec l'Etat. L'association sans but lucratif, ou la fondation, constituent les formes juridiques normalement choisies (exemple: la fondation Caritas Luxembourg). Mais le recours à la forme juridique de la société commerciale n'est pas inédit. Ainsi, il existe une société anonyme «Congrégation des Sœurs du Tiers Ordre Régulier de Notre-Dame du Mont Carmel S.A.», responsable de la gestion d'une maison de soins.⁶ La forme juridique du «trust», quant à elle, n'est pas connue en droit luxembourgeois.

Le décret (datant de l'époque au cours de laquelle le Luxembourg était un département français) du 30 décembre 1809 concernant les fabriques des églises reste en vigueur. Les fabriques des églises sont des établissements rattachés au culte catholique, chargés de «veiller à l'entretien et à la conservation des temples, d'administrer les aumônes et les biens, rentes et perceptions autorisés par les règlements, les sommes supplémentaires fournies par les communes et généralement tous les fonds qui sont affectés à l'exercice du culte; enfin d'assurer cet exercice et le maintien de sa dignité, dans les églises auxquelles elles sont attachées soit en réglant les dépenses qui y sont nécessaires, soit en assurant les moyens d'y pourvoir» (article 1er). Selon un arrêt du Conseil d'Etat du 13 juillet 1938, *Fabrique d'église de Notre-Dame*, les fabriques d'églises sont des établissements publics.

c) Y a-t-il des différences entre la situation des cultes «reconnus» et des nouveaux mouvements religieux?

Aucune différence n'existe en ce qui concerne les institutions infra-culturelles (*supra* I, b, 2), à l'exception du cas particulier des fabriques d'églises qui sont nécessairement rattachées au culte catholique. En ce qui concerne les cultes eux-mêmes (I, b, 1), une différence est incontestable, dans la mesure où seuls des cultes historiquement reconnus ont jusqu'à présent pu conclure une convention avec l'Etat, conformément à l'article 22 de la Constitution. En 1998, lors de la conclusion des conventions

⁶ Dernière publication au *Mémorial C* 2005, p. 9553.

avec l'archevêché de l'Eglise catholique, l'Eglise protestante, l'Eglise orthodoxe hellénique et le culte israélite, quatre critères avaient été définis – de manière informelle – par le gouvernement et par la Chambre des députés⁷: 1) le culte en question doit représenter une religion répandue au niveau mondial; 2) le culte doit avoir été reconnu officiellement par un autre Etat membre de l'Union européenne, avant de solliciter sa reconnaissance au Luxembourg; 3) le culte doit respecter l'ordre public luxembourgeois; 4) le culte doit être présent, de manière historique, au Grand-Duché de Luxembourg, et doit réunir un nombre suffisant de fidèles au Luxembourg.

Il est évident que ces critères-là tendront à exclure *de facto* les nouveaux mouvements religieux.

d) Le Grand-Duché de Luxembourg est un Etat unitaire et non un Etat fédéral, si bien que la même législation s'applique sur tout le territoire national.

II. Modalités pratiques de l'enregistrement d'une entité religieuse au Luxembourg

a) L'enregistrement n'est pas nécessaire pour qu'une entité religieuse puisse exercer son activité au Luxembourg; et même les groupements de personnes dépourvus de personnalité juridique distincte et non organisés par la loi peuvent exercer des activités. Ceci est vrai dans le domaine religieux comme dans les autres domaines.

b) Il n'y a pas de disposition législative qui régirait les modalités de l'«enregistrement» d'une entité religieuse au Luxembourg. Pour autant qu'on comprend l'«enregistrement», dans le contexte luxembourgeois, comme se référant à la reconnaissance par l'Etat, aux termes d'une convention conclue conformément à l'article 22 de la Constitution (*supra* I, a), il existe effectivement des critères informels (pour les quatre critères en question, *supra* I, c) à la fois quantitatifs (mais sans qu'un nombre minimum ait jamais été défini avec précision), et qualitatifs d'implantation historique au Luxembourg et de compatibilité des enseignements de l'unité religieuse avec l'ordre public luxembourgeois.

c) Lorsqu'une unité religieuse est reconnue moyennant une convention conclue conformément à l'article 22 de la Constitution, elle ne doit pas

⁷ Voir A. Pauly, cette *Revue* 1999, 145-147. Ces conditions se trouvent rappelées dans une récente intervention de M. Alex Bodry, député, à la tribune de la Chambre des députés (*Compte-rendu des séances publiques*, 59e séance, 2004, p. 731).

nécessairement disposer de statuts écrits, ou d'un règlement d'ordre intérieur. La convention entre l'Etat et l'entité religieuse, et la loi d'approbation, en tiendront lieu dans une certaine mesure. Cependant, les conventions avec l'Eglise protestante réformée du Luxembourg, l'Eglise protestante du Luxembourg et les communautés israélites du Luxembourg prévoient que dans un délai ne dépassant pas douze mois après l'entrée en vigueur de la convention, les Eglises, respectivement le culte israélite, se donneront un statut réglementant leur organisation intérieure. Des dispositions similaires ne se trouvent pas insérées dans la convention avec l'archevêché du Luxembourg, le culte anglican et les cultes orthodoxes.

Un chef du culte est systématiquement désigné par les conventions (l'archevêque en ce qui concerne le culte catholique, le pasteur titulaire en ce qui concerne les deux Eglises protestantes, le grand rabbin...). L'identité du chef du culte doit être notifiée à l'Etat.

Les conventions avec les Eglises protestantes et avec les communautés israélites prévoient la nomination d'autres membres du consistoire, sans imposer que leur identité soit nécessairement notifiée au gouvernement.

d) Les avantages juridiques qui sont attachés à la qualité d'entité religieuse «reconnue», au sens d'entité religieuse reconnue par une convention conclue conformément à l'article 22 de la Constitution, sont inexistantes dans la plupart des domaines, mais importants dans le domaine financier.

Aucun culte n'a le droit de célébrer des mariages ayant des effets civils; l'article 21 de la Constitution prévoit d'ailleurs que le mariage civil devra toujours précéder la bénédiction nuptiale. De même les entités religieuses ne sont pas exemptées du champ d'application de la réglementation du travail. Il n'est pas d'usage au Luxembourg de prévoir des cimetières particuliers pour les défunts ayant appartenu à l'un ou l'autre culte, à l'exception du culte israélite qui entretient effectivement deux cimetières particuliers au Luxembourg. Enfin, l'exonération fiscale dont bénéficient les unités religieuses ne paraît pas dépendre de leur reconnaissance par l'Etat conformément à l'article 22 de la Constitution⁸.

⁸ Cf. S. Schroeder et E. Fort, rapport national luxembourgeois sur «L'imposition des organismes sans but lucratif», *Cahiers de droit fiscal international*, volume LXXXIVa (1999), p. 577: aux termes de l'article 19 de la loi d'adaptation fiscale, seules les personnes morales de droit public sont visées par l'exonération fiscale des organismes à *but culturel*; or, l'acquisition de la personnalité morale de droit public est subordonnée à une reconnaissance par le gouvernement conformément à l'article 22 de la Constitution. Cependant, comme l'écrivent les deux auteurs, les organismes religieux qui n'ont pas la qualité de personne morale de droit public «peuvent néanmoins se voir reconnaître comme tendant

L'avantage réel de la reconnaissance qui prend la forme d'une convention régie par l'article 22 de la Constitution est un *avantage d'ordre financier* (prise en charge, par l'Etat, des rémunérations des ministres du culte). Mais il existe parfois des accommodements en dehors d'une reconnaissance conformément à l'article 22 de la Constitution. Ainsi l'Eglise orthodoxe russe, qui n'a pas conclu de convention avec l'Etat, bénéficie d'une espèce de «reconnaissance» officieuse par la Ville de Luxembourg qui a contribué financièrement à la construction de son église (en revanche, le prêtre de cette église n'est pas rémunéré).

L'enseignement de la religion à l'école publique est réservé, pour des raisons sociologiques (faible nombre des fidèles des autres confessions), à l'Eglise catholique.

e) voir I, c

f) voir I, d

g) Il n'y pas de statistiques officielles sur le nombre d'entités religieuses qui existent au Luxembourg, ni sur le nombre de leurs membres. Tout ce qu'on peut faire, c'est se référer à des sondages d'opinion. En 1999, une équipe de recherche sociologique luxembourgeoise a participé à la recherche européenne sur les valeurs REV (European Values Studies: EVS)⁹. Sur les 72 % de la population luxembourgeoise qui considèrent qu'ils «appartiennent à une religion», 65,7 % se considèrent comme appartenant à la religion catholique, 0,2 % se rattachent à l'anglicanisme, 1,2 % au protestantisme, 0,5 % à la religion juive, 0,7 % à la religion musulmane, 0,5 % à la confession orthodoxe, 0,2 % à la religion bouddhiste, 0,1 % à la religion bahaïe, 0,4 % au mouvement néo-apostolique et 0,8 % aux témoins de Jehova.

III. L'activité de droit privé des unités religieuses

Il n'y a aucune disposition législative qui limiterait les activités des unités religieuses en matière de droit privé (l'article 19 de la Constitution

à un *but d'intérêt général*», ce qui justifie également leur exemption fiscale par application de l'article 161, paragraphe 1er, n° 1 de la loi sur l'impôt sur le revenu. D'ailleurs, l'article 159 de la loi sur l'impôt sur le revenu prévoit expressément l'identité du régime fiscal des congrégations et associations religieuses «tant reconnues ou non reconnues par l'Etat, quelle qu'en soit la forme juridique».

⁹ Le résultat de l'exploitation des données recueillies au Luxembourg a été publié sous le titre *Les valeurs au Luxembourg – Portrait d'une société au tournant du 3e millénaire* sous la direction de M. Legrand, édition Saint Paul, Luxembourg, 2002.

– cité *supra*, II, d – qui interdit aux ministres des cultes de donner la bénédiction nuptiale avant la célébration du mariage civil, n'a pas trait à une activité de droit privé des entités religieuses). Rien ne s'oppose à ce que les unités religieuses concluent des contrats, deviennent propriétaires d'immeubles ou employeurs de personnes. Leurs contrats, de travail ou autres, de même que leurs droits réels relèveront du droit commun et des juridictions ordinaires.

La seule restriction qui doit être signalée tient au fait que lorsqu'une entité religieuse n'est ni une personne morale de droit public (ce qu'elle devient que par sa reconnaissance par l'Etat conformément à l'article 22 de la Constitution) ni une personne morale de droit privé, elle ne pourra évidemment ni devenir partie à un contrat, ni devenir propriétaire d'un immeuble. Dans ce cas, on peut envisager que des membres individuels de la religion concernée se chargent, fiduciairement pour l'ensemble des fidèles, de conclure des contrats ou d'acquérir des immeubles qu'ils mettront ensuite à la disposition du culte.

RELIGIOUS ENTITIES AS LEGAL PERSONS – NETHERLANDS

1. Introduction

The Dutch Civil Code operates with a closed system of legal entities. Legal entities can only be established according to predetermined models. Nevertheless, the opportunities for religious communities¹ to acquire legal status are varied. The Civil Code introduces a specific category “church” [*kerkgenootschap*] as well as the categories “independent unit of a church” and “structures in which churches are united”. Apart from these categories *sui generis*, religious entities can choose to organise themselves as a foundation [*stichting*] or an association [*vereniging*]. Other models would not be a likely choice.

This brief contribution deals with the basic features of religious entities as legal persons in Dutch law.² It will focus on the ‘church’ and its sub- and superstructures. Foundations or associations as legal entities for religious purposes will be commented on cursorily. The Netherlands is a unitary state; no regional differences apply.

2. The ‘church’³

The legal notion of a ‘church’ [*kerkgenootschap*] is indifferent to religious content. The word ‘church’ and the legal organisation form is strongly connected with (traditional) Christian churches, but is also

¹ Throughout this contribution, this term is used in the general sense of a religious entity.

² For Dutch Church and State relationships and freedom of religion in the Netherlands in the context of other European systems, see Sophie van Bijsterveld, *Godsdienstvrijheid in Europees Perspectief*, Deventer 1998. On freedom of religion, see also B.P. Vermeulen, ‘Artikel 6’, in A.K. KOEKKOEK (ed.), *De Grondwet. Een systematisch en artikelsgewijs commentaar*, Deventer 2000, p. 93-108.

³ See also Sophie VAN BIJSTERVELD, ‘State and Church in the Netherlands’, in Gerhard Robbers (ed.), *State and Church in the European Union*, 2nd ed. Baden-Baden 2005, p. 367-390; and id, ‘Religious Liberty and Church Autonomy in the Netherlands’, in Gerhard Robbers (ed.), *Church Autonomy. A Comparative Survey*, Frankfurt am Main 2001, p. 59-75.

available to any newly constituted Christian community and any other than Christian community, such as a Jewish or Islamic community. In practice, one Jewish community uses the 'church' form. Islamic communities tend to be organised as a foundation or an association for the management of the mosque and the employment of an imam. The communities are free to choose the form. In the latter case, the legal and the spiritual dimensions are clearly more distinct.

The law with regard to legal persons sets no formal requirements for the establishment of a 'church'. Article 2:2 of the Civil Code merely states that: "Churches, their independent units, and structures in which churches are united shall have legal personality".⁴ The second Section of this Article states that they are governed by their own statutes as long as these statutes do not conflict with the law. The precise meaning of the term 'law' in this context is debatable. The general provisions of the law on legal entities are not applicable to churches. Analogous application is allowed, in so far as this does not conflict with the churches' statutes or with the nature of their internal relations. This clause is not very clear-cut and its interpretation is the subject of discussion. The tendency of the courts is to favour analogous application.⁵ Significant in this respect is the obligation to operate in good faith, which is also relevant in internal church decision-making and policy processes, including employment issues.

Until recently, the dissolution of religious entities was a highly hypothetical question. The general provisions of the law on legal entities enable the dissolution of legal persons in conjunction with a prohibition declared by a criminal court. For churches, the 'analogous application' of the possibility of dissolution is not definite, although it can be argued that it is possible under current law. In view of Islamic extremism, the discussion is no longer merely hypothetical. A parliamentary initiative for a Bill aims to clarify the issue by making it explicit that the provision of dissolution also can apply to churches.⁶ The Minister of Justice had previously warned not to expect much from such a law; according to the Minister of Justice, this was not an effective way to tackle the real problem.⁷ According to long-standing tradition, the courts are quite reluctant to apply mechanisms of dissolution and prohibition to organisations.

⁴ See also J.J.M. MAEIJER, *Rechtspersoon, godsdienst en levensovertuiging*, Mededelingen der KNAW, Afd. Letterkunde, Amsterdam 1986.

⁵ See for instance, HR 15 March 1985, NJ 1986, 191.

⁶ Tweede Kamer, 2003-2004, 29 757, nrs. 1-3.

⁷ Kamerstukken II, 27 925, nr.115 (Bestrijding Internationaal Terrorisme).

No general obligations to register exist; nor are there requirements as to a minimum number of members. No prior approval by public authorities is needed. A precondition, however, is that the community wishes to establish itself as a 'church'.

No definition of a 'church' exists. Therefore, in concrete cases, the administration or, if necessary, the court must decide whether a 'church' exists. Courts have given no overall definitions, but merely formulate characteristics or requirements necessary to determine the case in hand. An often quoted older Supreme Court ruling speaks of "a church, which has as its purpose the joint worship of God on the basis of shared religious convictions ...".⁸ However, it is doubtful whether this was meant as a definition. A more recent ruling of the Supreme Court formulated minimum requirements that "religion is concerned" and that a "structured organisation" must exist. There is no room for theological-doctrinal tests.

Similar freedom as for churches exists for independent units and structures in which churches are united. These combined categories enable both decentralised church models (Reformed tradition) and more centralised models (Roman Catholic tradition) to operate on the basis of a similar position under civil law. For the latter two categories, no fixed definitions exist either. Even in the legal academic literature there is some difference of opinion as to whether a religious purpose must exist (especially with regard to 'independent units' such as monastic beer breweries) or not. A precondition for both of these entities is that there must be the will to organise itself as such. More informally structured church umbrella organisations, therefore, do not qualify as such. It is also accepted that the church or churches involved must recognise a unit as an independent unit or as structures in which they are united.⁹

The primary reason for choosing a 'church' as a legal form is that it provides freedom of internal organisation. Religious communities that are organised as a foundation or an association are in principle subject to the general law relating to those types of legal persons; however, the religious quality of associations or foundations is taken into account in Dutch law in various ways. Law thus protects the religious identity of organisations, such as hospitals, schools and other organisations operating in the field of religion.¹⁰

⁸ HR 23 juli 1946, NJ 1947, 1.

⁹ A recent (series of) opinion(s) of the General Equal Treatment Commission denying a Roman Catholic Pension Fund the status of 'independent unit' can be indeed criticised; Opinions 2002-111 and 2002-113.

¹⁰ See Sophie VAN BIJSTERVERELD, 'Church-Related, Charitable, Non-Profit Making Institutions and their Relations to Church, State, Civil Society and the Market. The Dutch

3. Day-to-day functioning

Obviously, if a church wishes to take part in socioeconomic life, in buying and selling (immovable) property and in employing personnel, it needs funds, bank accounts, and persons designated to act on its behalf, according to procedures determined by it.

Although churches like any other organisation need to comply with the generally applicable law in this respect, some special arrangements exist. Churches, for instance, are not required to register with a Chamber of Commerce. Differences of opinion exist as to whether this exception is always beneficial. The argument runs that church statutes are often very distinct from each other and, furthermore not always easy for outsiders to comprehend. Besides, as opposed to the applicable regime for other legal entities, a defect in the internal representation of a church does have external effect; this means that in the event of such defect, the third party is not protected. Churches, according to that view, would benefit from enhanced clarity and would either opt for registration or make a serious effort to make their regulations easily available (the latter option being so easy now in the age of the Internet).

Every now and again, other issues appear that can be mentioned under the heading of day-to-day functioning of the church. A few years ago, for example, a European Directive was issued to counter money laundering. This had the effect in the Netherlands of tightening the law concerning proof of identity requirements for individuals acting on behalf of a legal person in financial transactions. Banks and other financial institutions were obliged to require certain authenticated proof of identity. A practical way has been worked out to counter costs and bureaucratic procedures.

4. (Other) legal consequences

In the Dutch system of separation of church and state, there are not many consequences attached to the legal status of 'church', apart from those in the Civil Code itself. The status does not provide entitlements to state subsidies, for instance, or to officiate at marriages with legal effect.¹¹ Only in a few instances is the "church" expressly

Perspective', in Inger Dübeck, Frans Ole Overgaard (ed.), *Social Welfare, Religious Organizations and the State*, Milaan 2003, p. 137-155.

¹¹ The state has the monopoly on officiating at marriages with legal effect.

mentioned. This is notably the case in the General Equal Treatment Act.¹²

For the very few special arrangements that also regard the church as an entity, the legal linchpin is often another notion, such as that of 'spiritual office' in the employment field. Thus, the General Equal Treatment Act is not applicable to the spiritual office either. Likewise, a public authority permit for dismissal of a holder of a spiritual office is not required. In the field of tax deduction, the criterion is that of benefit to religious purposes, along with other good causes.

The special position of the spiritual office as a distinct category in law, however, is subject to erosion in certain respects. In the context of social security legislation, for example, from the late 1970s a tendency manifested itself towards regarding the holder of a spiritual office as an 'employee' for the purpose of the application of the law (thus bringing them within the reach of this legislation). Islamic imams are regularly regarded by courts as employees, with the result that they are provided with protection against dismissal. More than once, members of the clergy of Christian churches have also been regarded as such, with the same result. Further developments are still awaited.¹³

The internal dispute resolution system that churches may have stands in a delicate relationship to the Dutch civil court system. Court rulings dealing with this relationship are not always consistent.¹⁴ The topic of this relationship, however, is beyond the purpose of this contribution.

5. Conclusion

The Dutch system with regard to legal entities provides a good opportunity for churches to organise themselves as entities with legal personality. Separation of church and state in conjunction with freedom of religion secures church autonomy in the field of legal entities. Obviously, the

¹² For other institutions with a religious background operating in society (schools, hospitals, youth organisations, etc.) the Act contains specific nuanced provisions to balance equal treatment requirements with organisational freedom as regards religious identity.

¹³ See also A. JACOBS, 'Labour and social security law and the churches in the Netherlands', in: *Churches and Labour Law in the EC Countries*, European Consortium for Church and State Research, Milan/Madrid 1993, p. 215-230.

¹⁴ See A.H. SANTING-WUBS, *Kerken in geding: de burgerlijke rechter en kerkelijke geschillen*, Den Haag 2002. See also Sophie van Bijsterveld, 'Church Autonomy in the Netherlands. The Distinctiveness of the Church. The Interplay between Legal, Popular, and Ecclesiastical Perspectives. Church Autonomy as a 'Test Case'', in Hildegard Warnink (ed.), *Legal Position of Churches and Church Autonomy*, Leuven 2001, p. 147-163.

system intersects with ordinary law. Basically, three types of development occur. Firstly, there is always pressure to enact administrative measures often with regard to day-to-day functioning, which are often justified, but which must occasionally be assessed critically. Secondly, the law is a dynamic process, and the legislator and the courts are constantly testing and exploring limits. This often results in acceptable judgments, but the developments must also be followed critically. Thirdly, there is a new set of measures in connection with Islam, which initially were more or less in terms of accommodating this in the legal framework but recently have been especially in connection with Islamic extremism. It is clear that these developments need careful scrutiny.

MICHAŁ RYNKOWSKI

RELIGIOUS ENTITIES AS LEGAL PERSONS – POLAND

1. Constitution of church or other religious community

The criteria and conditions for registration of a church or religious community are not severe. As is shown below, for the purpose of registration, 100 members are required which, in a state with a population of 38 million is not really demanding. As a result, almost all existing religions are registered, either by virtue of a separate statute on relations between the State and the given denomination, or as result of a successful application, according to the Statute on Freedom of Conscience and Religion of 1989¹ (referred to below as the Statute of 1989). None of the non-registered entities has any social or economic importance or influence.

Since Poland is a unitary state (Article 3 of the Constitution of 2 April 1997²), there are no differences between regional units, called 'voivodships'. There is no explicit provision in the Constitution prohibiting the existence of a State Church³, but Article 25 states clearly that churches and other religious communities have equal rights. All registered denominations are subjects of private law – the concept of a corporation under public law is not present in the Polish legal system. The public law status of the Catholic Church was definitely denied in a judgment of the Supreme Court in 1958; since then, there have been no attempts to change this precedent. Churches and religious communities may establish foundations, but there are rather few of them, those that do exist, however, are well known, such as Caritas, Diakonia and a few others.

2. Registration of church or religious community

Churches and religious communities that neither want to register nor attempt to do so from time to time organize meetings and lectures. (Such an example is the Church of Scientology, that is allegedly based in

¹ Dziennik Ustaw (Polish O.J.) 2000, No 26, it. 319.

² Dziennik Ustaw, 1997, No. 78, item 483.

³ As it is in some German constitutions of Länder (Landesverfassungen).

Wrocław, but the author of this paper who is an inhabitant of this city has never seen any kind of posters, invitations or so on.) Generally there is hardly any news about their activities. They are free to gather and to pray together, but they do not enjoy rights provided by the Statute on Freedom of Conscience and Religion of 17 May 1989.

The statute of 1989 provides the legal framework for establishing a new church or religious community. Strictly speaking, Polish ecclesiastical law uses permanently the wording "churches and other faith communities". In this context, it seems worth underlining that establishing a faith community or even an entity with the word 'church' in its name⁴ is allowed.

According to Articles 30-34 of the Statute of 1989, the application must contain:

1. the above-mentioned list of the 100 founders – who must be Polish citizens with full legal capacity and who must sign the list, including their names, surnames, dates of birth, addresses, ID numbers in the presence of a notary. The Statute leaves scope for interpretation since according to Article 7 (1), foreigners living within the territory of the Republic of Poland and apatrids enjoy freedom of conscience and religion equally with Polish citizens.
2. information about the religious life and activities of the church or religious community within the territory of the Republic of Poland to date
3. data concerning general aims, sources and principles of doctrine and religious rites
4. address of the headquarters of the denomination and the names, addresses and ID numbers of persons who are members of managing boards, councils or respective leading bodies
5. a statute of the church or religious community including the following data:
 - 5.1. denomination name that must differ from any already existing
 - 5.2. headquarters and territory of activities
 - 5.3. aims of activities and the forms and ways of carrying them out
 - 5.4. management/representative bodies, the procedures for electing them, their powers, and the methods of recalling them
 - 5.5. sources of financing
 - 5.6. procedures for changing a statute

- 5.7. persons/bodies entitled to represent it and undertake obligations on its behalf
- 5.8. procedures for acquiring and losing membership of the denomination
- 5.9. procedures for nominating the clergy and their areas of competence
- 5.10. procedure for the dissolution of the church and rules concerning redistribution of its assets in such a case.

If a denomination intends to create other entities and units, the statute should include the following data: names; headquarters; powers; managing bodies; methods of undertaking obligations, etc. The regulation issued by the Minister of Interior and Administration on registering churches and other religious communities⁵ lists 18 columns that relate to every religion. Those should include features mentioned above, such as name, address, headquarters, management bodies, entities with legal capacity, entities without legal capacity, including persons/bodies entitled to represent and undertake obligations on behalf of the given entity.

In the case of a new denomination, the Minister of Interior and Administration checks the application whether the formal criteria were fulfilled. If any documents are missing or incorrect, the Minister allows two months for them to be delivered or corrected. If the applicant fails to act in that time, this results in the denial of registration. The doctrine is also examined and, in a few cases, the Minister refused to register: there were about 48 denials between 1995 and 2002; four applications were rejected because of "danger for public security, order, health, public moral and freedoms and rights of citizens"⁶ (one of which was the case of the Raelians) and four rejected because of "lacking features of a religion"⁷. The applicant has the right of appeal against such a decision to the Chief Administrative Court (NSA) but only in one case has the Court suspended the decision of the Minister and suggested asking an expert to express an opinion⁸.

Registration procedure refers only to churches or religious communities that do not have a separate statute on the relation between the State

⁵ Dz. U. 1999, No. 38, it. 374.

⁶ International Tantric Association 'Satori' 1995, Polish Evolutional Church 1995, Church of Believers of the Sign 1997, Polish Raelian Movement 1998 – List collected by Krzysztof Wiktor, 2002.

⁷ Church of Miracles – National Federation of Spiritual Healing Persons 1997, Order of Knights of the Line of the Spiral Ring 1998, Church of Divine Grace 2001, Order of Contemplars of the Power, 2002 – List collected by Krzysztof Wiktor, 2002.

⁸ Order of Knights of the Line of the Spiral Ring, decision of the NSA 1999.

⁴ Currently, there are some 65 churches registered according to the Statute of 1989 with the word 'church' in their names.

and given denomination. There are 15 such statutes relating to the major (and/or oldest) churches and religious communities and they have become registered by the virtue of law; no additional application is required. The Concordat between Poland and the Holy See, signed in 1993⁹, stresses in Article 4 (1) that the Republic of Poland recognizes the legal personality of the Catholic Church. According to Article 4 (2), the State recognizes the legal personality of all church entities that acquired legal personality by virtue of canon law.

3. Registration of other religious entities

Legal personality of dioceses, parishes and other church entities or units may be obtained in one of three ways:

- 1) a statute on relations between the State and the given denomination names specific entities having legal capacity (e.g. publishing houses, radio stations, institutes of higher education, etc.)
- 2) the same statute includes lists of different kinds and categories of entities, units (parishes, dioceses, seminaries, etc.). They are created according to the internal law of a denomination, namely, canon law for the Catholic Church or another legal system of a church/religious community.
- 3) The church or religious community submits an application to the Minister of Interior and Administration, asking him to grant legal personality to a specific institution/entity. The Minister issues an ordinance, published in the Official Journal of the Republic of Poland.

In most cases, statutes contain a general list of types of entity and some specific entities as well. If a church wants to create an additional entity that was not listed as one of the types or was not mentioned individually, it submits an application to the Minister of Interior. This solution is generally applicable in respect of youth or charity centres, etc. It is interesting to note that the vast majority of entities (154) created by the ministerial regulations were Catholic institutions whose creation was not foreseen by the canon law. It does not infer any kind of discrimination, nor does it give rise to an assumption to claim that other denominations are less active (they founded eight entities in this way)¹⁰. It is much more a consequence of the fact that statutes with other churches and religious

communities were adopted a few years after the first statute on relations with the Catholic Church; they are much more precise in this respect, so fewer additional regulations are required.

4. Rights and privileges of churches and other religious communities

A change introduced by the Concordat of 1993 that an entity created according to canon law automatically acquires a legal personality in state law seemed to many to be revolutionary. The Church is merely supposed to inform the State about a newly created unit; no approval is required. When creating a diocese or any entity exceeding the territory of one voivodship, the Minister of Interior and Administration is to be informed; if a new entity is to function in the territory of only one voivodship, the person to inform is the voivod (local representative of the government). This concept was repeated in statutes on relations with other churches and religious communities, adopted after the Concordat was signed in 1993.

When considering churches functioning on the basis of a separate statute, it is easy to notice that the decisive factor was the tradition and history rather than the number of adherents. Otherwise, it would be difficult to explain why small churches, such as the Mariavits, have a separate statute, while some major denominations (such as the Jehovah's Witnesses who are the third or fourth biggest religious group), do not have one. Only denominations that have a separate statute on relations with the State have the right to perform marriages (in Poland these are called 'concordat-marriages'; actually, only 11 out of 15 denominations decided to apply for this form when the amendment of the Family Code was being prepared).

All registered denominations enjoy some tax exemptions and have the right to give religious instruction, according to the wishes of pupils or their parents. They can found schools, schools for priests, etc. They can establish publishing houses, issue newspapers and magazines, and receive duty-free machines and equipment for printing religious publications. Currently, there are 159 registered religions: 15 churches and religious organizations that have separate statutes and 144 registered according to the Statute of 1989. In the period between 1989 and 30 May 1998, a group of 15 citizens could establish a religion; because of some abuses (mostly in the field of exemption from military service and taxation) this number was raised to 100 citizens, but those registered prior to 1998 did not have

⁹ Dziennik Ustaw 1998, No. 51, item 318.

¹⁰ S. Uruszczak, Z. Zarzycki, *Prawo wyznaniowe*, Kraków 2003, 597 f.

to re-register (*lex retro non agit*). Concerning the number of adherents, there are only five denominations uniting more than 0.1 % of the population (38,000): the Catholic Church (Latin rite); the Orthodox Church; the Catholic Church (Byzantine rite); Jehovah's Witnesses and the Lutheran Church. Nine other religions claim to have more than 5,000 members.

Registered religious entities are legal persons and they can conclude contracts like any other legal persons. They are owners of real estate: mainly churches, parish houses and cemeteries. Currently, churches are trying to get back some of the real estate confiscated by the government after World War II. As regards contracts for real estate, some restrictions are derived from canon law: the incumbent is entitled to represent the parish on a purchase but, for a sale of real estate, the consent of a local bishop is required. There are no special state provisions for religious entities as employers.

JOSÉ DE SOUSA E BRITO

RELIGIOUS ENTITIES AS LEGAL PERSONS – PORTUGAL

1. Legal forms of religious entities

Religious entities may have one of the following *legal forms* in accordance with Portuguese law: unincorporated associations; private corporations; religious corporations; churches and religious communities settled in the country or canonical legal persons. The last class includes associations, foundations and entities of a special legal nature, such as the Catholic Church and the Catholic University. It is understandably by far the largest class, since in Portugal these are: Catholic 92.9 %; Christian Orthodox 0.22 %; Protestant and other Christians 2.16 %; Muslim 0.1 %, Hindu and other non-Christians 0.18 %, Jewish 0.02 % and without religion 4.33 % of the population, according to the 2001 census.

a) *Unincorporated associations*

A group of people can join together with religious aims. This is a consequence of the fundamental individual rights of religious freedom, to assemble and to demonstrate (Articles 41, 44 and 45 of the Constitution, Article 8, f) of the Religious Liberty Act – Lei n.º 16/2001: Lei da Liberdade Religiosa, in the following RLA – of June 22, 2001). They can therefore *without approval of the authorities* constitute a church or a religious community in the legal sense of an organized and enduring social community; in which believers can fulfil all the religious aims that are offered by the respective denomination (Article 20 of the RLA), without the need for legal personality to enjoy the fundamental collective rights of religious freedom (Articles 22 and 23 of the RLA). This is the first possible situation.

b) *Private corporations*

Until the Decree 134/2003 (Decreto-Lei n.º 134/2003) of June 28, 2003, which regulated registration of religious entities, was applied, all legal persons with religious aims, which were not Catholic, had the status of

associations of private law, which are private corporations. Before then, 597 of them were *registered in the Register of religious denominations and non-Catholic religious associations of the Ministry of Justice*, which will be abolished. These associations can request their conversion to a religious corporation by way of compliance with the respective requirements, within the time limit of three years from the entry into force of Decree 143/2003, namely until December 1, 2006. If they have not done this, they must only be registered in the National Register of Corporations as private corporations (Article 63 of the RLA). This ability will also be maintained in the future for the current religious associations that do not want to change status, as for every new group of people that does wish to do so. As such, they have all the collective rights of religious freedom of the groups of people in the first situation, *including those that depend on legal personality in order to act. They are not entitled to public, and therefore automatic recognition, of these rights and may have to provide proof of their religious nature to be able to exert them.*

c) *Religious corporations*

The religious churches or communities that provide proof of their existence in Portugal, that is, can prove an organized social presence and a religious practice in the country, and also make known their doctrines and their personal and patrimonial organization, can be registered as religious corporations (*peçoas colectivas religiosas*). They may have a national, regional or local character (Article 35 of the RLA). As a consequence, and depending on how they choose to organize themselves, the same denomination may be constituted by one registered national church or religious community or by many registered local or regional churches or religious communities. Churches and religious communities of supra-national scope can set up a representative organization of the resident believers in the national territory, which shall require its own registration in the register, instead of the registration of the part of the church or religious community existing on national territory (Article 36 of the RLA). Being *registered churches or religious communities*, they can create or recognize other types of religious corporations and obtain their registration, namely:

- *institutes of consecrated life and other institutes, with the character of associations or foundations, established or recognized by the churches and religious communities in the pursuit of their religious purposes;*

- *federations or associations of religious corporations (Article 33 c) and d) of the RLA).*

Since the registration of the last two types of registered religious corporation depends in practice on the previous registration of the churches and religious communities that originated them, most of the *76 non-Catholic religious corporations that have been registered* as such since the Decree-Law (Decreto-Lei) 134/2003 of June 28, 2005 established the Register of Religious Corporations (Registo de Pessoas Colectivas Religiosas) are registered churches or religious communities. Of these 76 non-Catholic religious corporations, 35 originate from the conversion of former non-Catholic religious private associations and 41 were at least formally newly constituted.

Religious corporations are entitled to the public recognition of their collective rights of religious freedom. They benefit from tax exemptions, but not from State subsidies (Article 32 of the RLA). They may provide religious teaching in state schools (Article 24 of the RLA), participate in the broadcasting time for churches and other religious communities on the public television and radio services (Article 25 of the RLA) and have the right to be heard in respect of town planning (Article 28 of the RLA). Their ministers of religion are certified by the State and are included in the national social security system (Article 16 of the RLA). These are the advantages of becoming a registered religious corporation rather than being unregistered.

d) *Churches and religious communities settled in the country*

The registered churches or religious communities that present a guarantee of duration by the number of their believers and the fact of having existed and been organized in the country for more than 30 years – or less if it is a church or religious community founded abroad more than 60 years ago – can be considered settled in the country (Article 37 of the RLA). *This status allows for forms of collaboration with the State* which do not rise from religious liberty but which are compatible with it and which become a constitutional requirement by the principle of equality, because of the legal status of the Catholic Church. These forms are: *the celebration of civil marriages with a religious form (Article 19 of the RLA); collaboration in management or advisory bodies of the sector (Committee of the Broadcasting Time of the Religious Confessions – Article 25, 3 and Committee of the Religious Liberty – Article 56, 1, a) of*

the RLA); conclusion of agreements with the State (Article 45 of the RLA) and the benefit of the voluntary consignment by individual taxpayers of 0.5 % of income tax (Article 32, s. 4-7 of the RLA). The idea is that the neutral State should not interfere in competition between the confessions, by contributing to the establishment in the country of new confessions by means allowing cooperation with it. This is the fourth situation.

e) Legal persons of the Catholic Church

The 2004 Concordat (Article 1, 2) recognizes, with the same words as the 1940 Concordat (Article I, 1), the legal personality of the *Catholic Church*. The recognition here must be related to legal personality under international law, which is a precondition of the concordats.

It recognizes equally (Article 8), which is new, the legal personality (in Portuguese civil law) of the *Portuguese Bishops Conference* (Conferência Episcopal Portuguesa), according to its internal rules approved by the Holy See. These internal rules – constituting the Charter or the Statutes of the association – were ratified by the Pope in 1967 and adjusted to the new Code of Canon Law in 1985. According to them, the Conference “is the representative entity of the Church in Portugal” (Article 2 of the Charter).

In other cases, the 2004 Concordat establishes that the recognition of civil legal personality for entities that are ‘juridical persons’ under canon law depends on the notification of the competent State authority, which is the National Register of Corporations (Registo Nacional das Pessoas Colectivas). Within this register is located the National Register of Religious Corporations (Article 1, Nr. 1 of the Decree 134/2003). The Concordat does not determine the competent State authority, but it implies the existence in the State of a “register of canonical juridic persons” (Article 11, 2). There is no register with such a name, but a part of the database of the National Register of Corporations is entitled ‘Catholic Religious Corporations’, distinguishing those with the legal nature of religious corporations (8265 in September 2005) from those with the legal nature of civil associations (366 in September 2005).

The State, according to the 2004 Concordat (Article 9, 2), “recognizes the legal personality of the *dioceses, parishes and other ecclesiastic jurisdictions*, as soon as the act constitutive of its canonical juridic personality is notified to the competent State organ”. Since the legal personality of such entities is established directly by canon law, and the establishment of some dioceses is antecedent to the existence of the Portuguese State

and not precisely dated, presumably the notification of the existence of the dioceses by the Holy See and of the existence of the parishes by the bishop should be considered sufficient. They are the Church competent authorities for the erection, modification and extinction of these public canonical juridic persons in the future (Article 9, 1 and 4 of the Concordat and Canon 515, §2 of the Code of Canon Law).

The civil legal personality of the other canonical juridic persons “is recognized through the registration in the register owned by the State, by means of an authentic document drawn up by the competent ecclesiastic authority, where its erection, ends, identification, representative organs and respective competences are imparted” (Article 10, 3 of the Concordat). Such was already the system under the 1940 Concordat (Article III), which originated most of the above-mentioned 8265 religious corporations and 366 associations through notification to the bishop of the place where they were situated. Among them are the *foundations (fábricas) of parish churches*. Usually each parish has such a foundation, which constitutes its main patrimonial structure to support the cult and other religious activities. There are also other foundations: the ‘*parochial benefices*’ (benefícios paroquiais), intended to support the pastors. Both are canonical autonomous foundations (Canon 1272 of the Code of Canon Law) regulated by statutes (Regulamento Geral da Fábrica da Igreja e do Benefício Paroquial) established by the Portuguese Bishops College in 1962 (Decree of January 17, 1962). Until the 2004 Concordat, the parishes themselves had no civil legal personality. It remains to be seen if the ‘*fábrica*’ and/or the ‘*benefício*’ will be absorbed by the parish as the new civil legal personality.

f) The Catholic University

The legal nature of the Catholic University is controversial. The 2004 Concordat says about the Portuguese Catholic University that it was “erected by the Holy See on October 13, 1967 and recognized by the Portuguese State on July 15, 1971” and that it develops its activity according to Portuguese law, without discrimination, “respecting its institutional specificity” (Article 21, 3). The facts are that the Catholic University was initiated through the constitution of the Philosophical Faculty – which had been erected by the Jesuits in 1947 in Braga as a private school and, as such, obtained legal personality through notification to the Bishop of the Diocese of Braga according to Article III of the 1940 Concordat – as the first Faculty of that University, through the

Decree *Lusitanorum nobilissima gens* of October 13, 1967 of the Sacred Congregation of Seminaries and Universities. The Catholic University, as such, with three faculties of Philosophy, Theology¹ and Humane Sciences, was only erected (*penitus nunc canonice ad normam can. 1376 C.I.C. erigitur*, that is, “is now completely erected canonically according to canon 1376 C.I.C.”) by the Decree *Humanam eruditionem* of October 1, 1971, of the Sacred Congregation for Catholic Education, after it had been legally established as a ‘legal person of public utility’, according to civil law, by the Decree-Law 307/71 of July 15, 1971. What is the ‘institutional specificity’ of the Portuguese Catholic University? Is it that it was *concordatária*, namely, in accordance with the 1940 Concordat? This implies, as was said in the preamble of the Decree-Law 307/71, that, according to 3 of Article XX of that Concordat, in ecclesiastical educational establishments, namely, the Faculty of Theology, the Faculty of Philosophy and a future School of Canon Law, the internal regime and the teaching of the theological and philosophical disciplines are not controlled by the State and that, according to 1 of the same Article, the establishments analogous to those of the State are, like other ‘private schools’ of the Church, subject to State control and to the general law (nowadays in Portugal there is a *diritto commune* of the private universities). However, in 1990, the Church obtained from the State a Decree (Decreto-Lei n.º 128/90, of April 17, 1990) saying that the Portuguese Catholic University “was canonically erected according to Article XX of the Concordat” – which was thoroughly false or thoroughly misleading, since the University was erected canonically according to Canon 1376 after being established by the State according to administrative law and respecting Article XX – and that not only the ecclesiastical faculties, establishments, disciplines, degrees, etc., but the non-ecclesiastical ones are free from State control and not regulated by the law common to private universities. Since then the ‘institutional specificity’ of the later faculties, etc. is a matter of conflicting opinions that will remain after 2004. In my opinion, the only relevant institutional specificity relates to the ecclesiastical establishments. The non-ecclesiastical ones are subject to Portuguese law “according to the precedent numbers” (3 of Article 21 of the 2004 Concordat), that is, without any form of discrimination” (1) and “as established by the Portuguese law for similar schools” (2).

¹ Erected simultaneously by the Decree *Ampla cum sedes* of October 1, 1971 of the Sacred Congregation for Catholic Education.

2. Registration of religious entities

Religious entities of any legal form, including unincorporated associations, have to register in the National Register of Corporations, which includes, within the larger class of ‘entities assimilated into corporations’, societies without legal personality and entities that prosecute their own aims and activities as distinct from those of their members but do not have legal personality, such as factual associations (Decree-Law 144/83 of March 31, 1983, Article 2). It also includes international and foreign corporations, which develop their activity in Portugal, and their representations in Portugal (Article 5, 1, a) and b) of Decree-Law 144/83). Registration must occur within 30 days of constitution or of the beginning of activity (Article 31) and provide information about identification number, name, head office address, legal form, main activity and date of constitution and, eventually, of publication in the official journal of the constitutive instrument (Article 6, 1). In the case of factual associations, the registration must indicate the identity of a maximum of five members (Article 7, 3).

In the case of religious corporations (above 1.c)) the application for registration is presented with the statutes and other documents that are necessary for registration and providing:

- a) The name, which must be distinguishable from any other religious corporate body existing in Portugal;
- b) The constitution, institution or establishment in Portugal of the organization corresponding to the church or religious community or the deed of the constitution of association or establishment and, eventually also, the recognition of the religious corporate body;
- c) The registered head office in Portugal;
- d) The religious aims;
- e) The goods or services that complete or will complete the estate;
- f) The formation, composition, competence and operational rules of their organs;
- g) The provisions to apply on dissolution of the corporate body;
- h) The method of appointment and the powers of their representatives;
- i) The identification of the incumbents of the bodies in association with their functions and the identification of the representatives together with a specification of their competence (article 34 of the RLA).

Registration of churches or religious communities of national scope, or regional or local scope when they have not been created or recognized nationally, is also applied for with documentary evidence of:

- a) The general principles of the doctrine and description of religious practices and acts of worship, particularly the rights and duties of the believers related to the church or religious community, as well as a summary of the aforementioned elements;
- b) Its existence in Portugal, with particular emphasis on the facts that bear witness to the organized social presence, religious practice and length of time in Portugal (Article 35 of the RLA).

Registration can only be rejected through:

- a) Lack of legal requirements;
- b) Falsification of documents;
- c) Violation of the constitutional limits of religious freedom (Article 39 of the RLA).

Registration becomes mandatory after a year has passed since the delivery of the application for registration, if in the meantime a notification letter of rejection of the registration has not been sent to the applicant (Article 40, 1 of the RLA).

The registration of canonical juridical persons is made through notification to the competent ecclesiastical authority as explained above (1, e).

3. Powers, rights and duties of religious entities

Religious entities of every legal form have all the rights and duties necessary for or convenient to the prosecution of their aims, except those that are inseparable from individual persons (Article 160 of the Civil Code, Article 43 of the RLA) and, in the case of incorporated associations, those that presuppose the legal personality (Article 195 of the Civil Code).

JANA MARTINKOVÁ

RELIGIOUS ENTITIES AS LEGAL PERSONS – SLOVAKIA

Note: The following text is a synthesis of various norms of Slovak legal order – Constitution, laws and bylaws, as well as treaties concluded between the Slovak Republic and registered religious entities. This synthesis is uniformly applicable to the whole territory of Slovakia in that there are no differences in the respective legal regulation within the State.

According to the Slovak legal order, people can associate freely (that is, without the approval of the authorities), and also in associations of a religious nature. However, if they want their religious entity to change from an informal association without legal personality into a legal person acknowledged by the State (which is, as such, entitled to act in all sorts of legal relationship), it is necessary to obtain state registration in one of the available legal forms. In other words, the (freely constituted) religious entity may choose to apply for registration (subject to conditions set by the State) as a specific kind of legal person.

The most obvious and straightforward way is to become registered as a *religious entity*. (There are two concepts used in the Slovak legal order to describe religious entities: 'church' and 'religious society'. However, since Slovak law in fact does not establish any difference between these two concepts, my report will use the term 'religious entity' to cover both 'church' and 'religious society'.) This kind of legal person is defined by law as a voluntary association of persons of the same religious belief. The Ministry of Culture is in charge of registration of religious entities. In the proposal for registration, the religious entity must prove that it has at least 20.000 members who are over 18 years of age and have a permanent residence in Slovak territory. The proposal is made by a preparatory committee consisting of at least 3 members of the respective religious entity (who fulfil the above-mentioned conditions).

The proposal must include:

- name and residence of the religious entity;
- signatures and personal data both of the members of the preparatory committee and of the necessary number of members of the religious entity;

- basic characteristics of the religious entity, its teaching and mission;
- declaration that the religious entity shall fully respect the Slovak legal order;
- basic internal document of the religious entity, covering *inter alia* its internal structure and functioning.

The Ministry denies or subsequently cancels the registration if it finds that the establishment or activity of the relevant religious entity is illegal or contrary to public safety or public order, health and morals, principles of humanity and tolerance or protection of the rights of others. A decision of the Ministry denying or cancelling the registration of a religious entity may be appealed against at the Supreme Court of the Slovak Republic.

According to a very important provision of the 'Law on religious freedom and on the position of churches and religious societies', religious entities officially operating in Slovakia at the time when the Law entered into force (September 1, 1991) are automatically considered as registered according to the Law. In other words, these 'old' religious entities did not have to undergo the process of registration under the new law; above all, they did not have to prove that they had at least 20,000 members in order to become registered. Indeed, this threshold proved to be so high that only one religious entity has so far succeeded in overcoming it, namely, the Jehovah's Witnesses registered in March 1993. All the other currently registered religious entities simply 'transferred' their status from the previous regime.

The privileges for registered religious entities (RREs) are mainly the following:

- the State provides a financial contribution to the salaries of the RREs' clergy, as well as to the functioning of their central bodies;
- RREs have a right to own property (including real property); they are also entitled to claim restitution of the property taken from them during the communist era;
- financial contributions to RRE are exempt from income tax;
- RREs may be exempted from real-property tax, or may pay only a part of it, if it is so decided by the respective tax administrator (municipality);
- items of a religious nature, imported into Slovakia to be used for the purposes of RREs, are duty free;
- RREs have a right to constitute their external bodies (for example, for educational, scientific, charitable, health, social or missionary activities) which may take the form of 'derivative' ('subordinated') legal persons;

- RREs have a right to teach religion in state schools;
- RREs have a right to provide pastoral care to the army and police and to prisoners, as well as in various other public bodies (for example, in institutions of a social, health and educational nature);
- marriages concluded under internal norms of a religious entity (which also fulfil the conditions set by the Slovak legal order) have the same legal effect as civil marriages;
- legal relationships between RREs and their employees are governed by the Labor Code only if there is no specific regulation of the respective matter in the internal norms of the individual RRE or in the treaties between the Slovak Republic and RREs; RREs have an exclusive right to appoint, transfer and remove persons in relation to their functions, offices and missions;
- RREs' places of worship enjoy special protection (they are basically untouchable and may be interfered with only in cases of utmost emergency);
- every member of RREs has a right to a 'reservation of conscience' (a right to refuse to act in contradiction to his or her religious belief in various fields of legal relationships), which is to be further specified in a special treaty between the Slovak Republic and RREs (not yet concluded);
- secrecy of confession or of other information provided to a person charged with pastoral care under the condition of confidentiality (which includes the right not to disclose this information to state bodies) is guaranteed;
- RREs may organize assemblies without announcement to the State authorities;
- RREs have a right of access to public media.

If a religious entity cannot fulfil the conditions for registration as a religious entity, or if for some reason it does not wish to do obtain this status, it can either function without a legal personality – with obvious disadvantages of such a situation – or operate under another legal form. The most likely choice is to register as a *foundation* or as a *non-profit-making organization*. This route also has its drawbacks as: the religious entity does obtain a legal personality, but it does not enjoy the privileges granted by law to registered religious entities. Moreover, it is bound by the whole complex of rather strict obligations prescribed by the respective laws for the above-mentioned two legal forms (based on the fact that, according to Slovak law, a foundation has to provide financial support for the purposes of public good, and a non-profit-making organization has to provide services for the same purposes). On the other hand, the more

'relaxed' legal form of a *civic association* is not available to a religious entity. According to the 'Law on civic associations', if the Ministry of Interior discovers that a registered association operates in a way that is reserved for a religious entity, and if this association does not stop its activities after having been officially asked to do so, it is dissolved by the Ministry.

There are currently 16 registered religious entities in Slovakia. The following data are based on the census carried out in 2001:

Total number of inhabitants: 5 379 455

1. Roman Catholic Church: 3 708 120 members – 68.9 % of the population
2. Evangelical Church of Augsburg Confession: 372 858 – 6.9 %
3. Greek Catholic Church: 219 831 – 4.1 %
4. Reformed Christian Church: 109 735 – 2.0 %
5. Orthodox Church: 50 363 – 0.9 %
6. Jehovah's Witnesses: 20 630 – 0.4 %
7. Evangelical Methodist Church: 7 347 – 0.1 %
8. Christian Communities: 6 519 – 0.1 %
9. Apostolic Church: 3 905 – 0.1 %
10. Baptist Church: 3 562 – 0.1 %
11. Seventh Day Adventist Church: 3 429 – 0.1 %
12. Church of Brethren: 3 217 – 0.1 %
13. Jewish Religious Congregations: 2 310 – 0.0 %
14. Old Catholic Church: 1 733 – 0.0 %
15. Czechoslovak Hussite Church: 1 696 – 0.0 %

[The 16th registered religious entity is the New Apostolic Church: it was registered as one of the religious entities officially operating in Slovakia at the time when the 'Law on religious freedom and on the position of churches and religious societies' entered into force. However, for technical reasons, this registration had actually taken place as late as in September 2001; therefore, the New Apostolic Church is not separately covered by the 2001 census. According to its own sources, this Church has about 300 members.]

Other: 6294 – 0.1 %

No denomination: 697 308 – 13.0 %

Unknown: 160 598 – 3.0 %

As can be seen from this overview, the number of members of unregistered religious entities is not significant; these entities include mainly

various Protestant denominations that have their centre and origin in neighbouring countries (above all, in the Czech Republic – for example, the Evangelical Church of Czech Brethren), but also some of the more 'exotic' religious societies (for example, the Bahá'í community).

RELIGIOUS ENTITIES AS LEGAL PERSONS – SLOVENIA

Introductory comment

There has been an attempt to change legal regulation of religious entities in the Republic of Slovenia (RS) from the former legal regime for the past 14 years. After secession from Yugoslavia, a new democratic Constitution of the Republic of Slovenia of 1991 (Official Gazette RS, Nos. 33/91-I, 42/97, 66/2000 and 24/03) adopted several provisions regarding freedom of religion and the legal status of religious entities. Specific rules were expected to be enacted in a new law which would replace the existing Act of Legal Status of Religious Communities in the Republic of Slovenia of 1976 (ALSRC – *Zakon o pravnem položaju verskih skupnosti v Republiki Sloveniji*, Official Gazette SRS, Nos. 15/76, 42/86 and 5/90, as well as Official Gazette RS, Nos. 10/91-ZP, 22/91, 17/91-I-ZUDE, 13/93-ZP, 66/93-ZP in 29/95-ZPDF). To date, however, this has not occurred and this field of law remains one of the very last that has not been changed during the transition.

The ALSRC was enacted in 1976, in the then Socialist Republic of Slovenia, which was an entirely different legal and political system. The law of this communist era presumed that everything was forbidden unless it was expressly allowed, and the 23 articles of the ALSRC allowed very little. Many of its provisions became obsolete after the adoption of a new democratic constitutional system in 1991, which is based on the presumption of freedom. Other provisions may be inconsistent and even in contradiction with constitutional requirements, but most are simply inadequate and characterized by noticeable deficiencies. Minor changes were made to this law in the years 1991-2005, but they did not establish a coherent system for religious entities.

The Slovenian Government is trying to adopt a new Act on Freedom of Religion and Religious Communities as this is published (*Zakon o verski svobodi in verskih skupnostih*, <http://www.gov.si/uvs>). This presentation is therefore going to include both the old regulations, which are unfortunately still valid, as well as the system proposed in the new draft law. One should, however, keep in mind the big gap currently existing in

the field of freedom of religion in Slovenia that especially affects religious entities and their rights.

The system described in this report applies to the whole territory of Slovenia since it is a unitary country with no federal units.

1. Constitution of a Religious Entity

In accordance with the Article 7 §2 of the Constitution, religious communities in Slovenia can be founded without any approval of the authorities, and can pursue their activities freely within the limits of general legal order. Freedom of conscience and freedom of religion are deemed to be individual human rights with a collective aspect, since believers can freely associate into religious communities. Article 42 of the Constitution also provides for freedom of religious assembly, which is enshrined in the right of peaceful assembly and public meetings as well as the right to freedom of association with others.

If religious communities want to acquire legal status, however, they are required to register their establishment with the Government. Registered religious entities obtain the status of a special legal entity under civil law. The form of a registered religious community represents therefore, a *sui generis* civil legal entity. They could, of course, register as some other entities of civil law such as associations, trusts or foundations if they satisfy the prescribed criteria for the establishment of one of these institutions. Since such institutions do not obtain special rights and benefits, which are foreseen for religious communities exclusively, this usually only happens when they cannot meet the statutory requirements for registering as a religious community.

While the right to constitute a religious entity as a reflection of an individual's right to free assembly undoubtedly belongs to all human beings, the right to register a religious community is limited to citizens and permanent residents of Slovenia. The underlying rationale of this provision can be explained by the desire of the State to avoid possible exploitation of benefits granted to religious communities, such as tax benefits, by groups of individuals who do not even reside in the country.

There are no legal distinctions between the emerging religious entities and the historical majority Roman Catholic Church, or other established churches with regards to their establishment or constitution at this time. The Constitution of the Republic of Slovenia, in fact, places important value on the principle of equal rights for all religious communities (Article 7 §2). The new draft law is proposing some distinction in this area, but it remains questionable whether the changes will be adopted.

In the light of the equality principle, the Slovenian legal system (the Constitution, statutes, and bylaws) strictly uses the term '*religious community*' for all religious entities. This includes all churches, associations, and other religious communities regardless of their beliefs and organization. It also avoids any terms that might sound pejorative, such as sect. The new draft law, on the other hand, mentions both terms '*church*' and '*religious community*', but generally uses just the latter.

2. Registration of a Religious Entity

As already mentioned, religious communities do not need to be registered in order to pursue their mission and practise their beliefs freely. There is, however, a practical aspect to the registration: it provides them with a legal status, which any organization needs to buy or rent premises, open bank accounts, purchase goods, or sign contracts in their name, etc. Moreover, only if they register in the form of a religious community are they entitled to some special benefits, like tax exemptions, state contributions and other special rights.

The registration of religious communities is relatively free and uncomplicated. Registration is executed by a special governmental body, the Office for Religious Communities of the Government of the Republic of Slovenia (Office), which also maintains a register of religious communities active in Slovenia, and issues certificates of their establishment and cessation. Their doctrine needs no approval since the State has no intention to examine the content of their religion and beliefs, or to even judge their merits. The State also has no right to examine or to evaluate their beliefs because of the principle of separation of State and church.

The current legislation – Act on Legal Status of Religious Communities (ALSRC) – contains virtually no criteria or requirements for registration of a religious community, such as the minimum number of its members, an act of establishment or a charter with defined contents, presentation of representative bodies, etc. It does not even define the meaning of the 'registration', or determine its procedure. This is without doubt the most striking deficiency of the present law.

In order to overcome this lack of statutory criteria in the registration procedure, the Office developed a pragmatic but benevolent practice with respect to religious communities. It informs every applicant of the assumption that every religious community – as any other legal entity under civil law – is deemed to have a special legal framework that determines its purpose, means, manner of operation and organizational

structure. The said legal framework should contain the charter of rules, which must define at least the name and registered office of the religious community, its leader or representative(s), structure of its bodies, means of financing, the intent and manner of its operation with a short description of its beliefs, rituals, holidays, and similar. The Office has struggled with some applications of groups whose activities evidently bore no relation to religion, but on the other hand, no community that has shown at least some extent of religious activity has been refused registration.

The draft Act of Freedom of Religion and Religious Communities (AFRRC) provides much more precise criteria for registration of religious entities. A religious entity shall still register with the above mentioned Office for Religious Communities, and can be registered as a religious community if it:

1. was constituted by at least 100 adult citizens or permanent residents of Slovenia;
2. submits its fundamental religious texts, which describe its beliefs, including a description of its doctrine, religious practices, rites, and the basic characteristics of its activity;
3. appoints and registers its executive bodies and individuals who can represent it externally;
4. shows that it has had a presence in the Republic of Slovenia in the past 5 years (alternatively 10 or 20), which is not necessary for religious communities known around the world over 100 years.

In their application, a religious entity must also indicate other information important for the registration and/or its functioning, such as: its name and registered office; description of rights and duties of its members; ways of securing publicity; list of religious holidays; ways of securing funds for its operation; rules of ordination of its priests, clergy and personnel; manners of its cessation and transfer of assets in case of cessation. In addition to this, an applicant has to supply its charter, fundamental religious texts, proof of its presence in Slovenia, its internal rules which also indicate its internal structure, competencies and workings of its bodies, as well as titles of its components. On registration, a religious entity must submit a statement regarding its internal components, their functions and representatives.

The existing law is vague with regard to registration of institutions or organizational units, which are a part of a religious community law. It provides that "religious communities or *their components* are legal

entities under civil law". The Office nevertheless established a very similar registration system, and they may obtain legal personality insofar as they are not already organized and registered in some other existing legal form (such as an institute, society, or company pursuant to the corresponding acts). Currently, the Office issues certificates conferring legal status to representative constituent parts of religious communities on the basis of a certificate issued by the competent body according to internal rules of individual religious communities. Thus, for example, parishes may be registered as independent legal entities if this is approved by the competent body of a religious community.

The new draft law does not purport to be changing the basic principle of their registration, although it contains much more precise rules about documents and information that need to be provided for their registration. These are basically the same for the registration of a religious community itself, except for the rules regarding membership, internal structure of the community, provision of a charter, a proof of presence, fundamental religious texts, as well as general descriptions of its beliefs and practices. It also requires that the communities fix the territorial boundaries if they want to register territorial institutions as separate legal entities, such as parishes, dioceses, and the like.

There are presently no differences between emerging religious entities and historical majority churches or established churches concerning the provisions on registering. Since the constitutional system became democratic in 1991, 25 new religious communities have been registered, including some that are designated as sects, such as scientology, and are denied registration in other countries. Although the Constitution of the Republic of Slovenia emphasizes the principle of equality, there are some factual differences between the existing religious communities that are a result of their different historical development and presence in the territory of the State. In the light of those differences, the new draft law requires proof that a candidate religious community has been present in the territory of the Republic of Slovenia for a certain number of years (the exact number – 5, 10 or 20 years – shall be determined in the parliamentary discussion). The draft law even foresees that, when it becomes effective, all religious entities in Slovenia, including those already registered under the current legislation, have to meet all of the new requirements. If they do not provide the Office with the required documents and evidence of their compliance under the new conditions within 3 years, they will be expunged from the official registry and will therefore lose their legal status.

3. Facts and figures regarding religious entities in Slovenia

Since the current law (ALSRC) was adopted in 1976, 40 religious communities to date have been registered in Slovenia in accordance with its provisions. Among these, 15 religious communities were registered during the communist times (1976-1991), while, in recent years, the numbers illustrate an increasing interest in registration. There is no official data regarding the unregistered religious communities acting within the territory of the Republic of Slovenia.

There is also no accurate information on how many members religious communities have. Since Article 41 §2 of the Constitution of the Republic of Slovenia determines that nobody must be required to reveal their religious or other beliefs, there is no official database indicating the religious affiliation of individuals. The available data originates from the regular population censuses, which were highly disputable; especially the census of 2002. The latter was resolved by a decision of the Constitutional Court, which allowed the question about religion on the census questionnaire, but at the same time emphasized that, in the light of the aforementioned constitutional provision, any data regarding religion can only be voluntarily submitted by the respondents. The results therefore have limited reliability. In addition to population censuses data, there have been a couple of social science research surveys on smaller statistical samples. (For additional information, see data on the website of the Office for Religious Communities of the Government of the Republic of Slovenia; <http://www.gov.si/uvsl/ang/aindex.htm>.)

Data on the religion of the population of the Republic of Slovenia from the census of population of 1991

Religion	Number of inhabitants	Percentage
Catholic	1,403,014	71.36 %
Orthodox	46,819	2.38 %
Islam	29,719	1.51 %
Protestant	19,000	0.97 %
Oriental cults	346	0.02 %
Jewish	201	0.01 %
Other religions	254	0.01 %
Believers who belong to no religion (non-denominational)	3,993	0.2 %
Not a believer (atheist)	85,485	4.35 %
Does not wish to answer	82,837	4.21 %
Unknown	294,318	14.97 %

Source: Research Results, No. 617/1994, Zavod RS za statistiko, p. 118.

Data on the religion of the population of the Republic of Slovenia from the census of population of 2002

Religion	Percentage
Catholic	57.8 %
Islam	2.4 %
Orthodox	2.3 %
Protestant	0.8 %
Other Christian	0.1 %
Other Protestant	0.1 %
Oriental cults	0.1 %
Jewish	0.0 %
Other religions	0.0 %
Believers who belong to no religion (non-denominational)	3.5 %
Not a believer (atheist)	10.1 %
Does not wish to answer	15.7 %
Unknown	7.1 %

Statistical Data, No. 92/2003, Statistični Urad Republike Slovenije

4. Religious Communities Acting

Registration provides religious communities with a legal personality and in this way enables them to function like other legal entities within the state. This is especially important from a practical point of view, because it makes a lot of things possible – they can, for example, open bank accounts, sign contracts and thus buy and sell things, employ personnel, hire contractors, import and export objects, etc. They are entitled to purchase and own any kind of private property, including real estate. They are also free to dispose of all funds which they obtain in a legally permissible way, such as income from their own property and activities, donations received as gifts or inheritances, contributions and rewards from their members for performed religious rites or other religious services as well as support from state and/or local governments.

The property rights of religious communities changed with the introduction of de-nationalization in 1991. The process of returning land and other real estate that was unlawfully nationalized after the Second World War benefits mostly the Roman Catholic Church as one of the biggest claimants. This is not running smoothly since the Government was not very cooperative for the first decade. It seemed that it tried to delay the process by objecting to the de-nationalization claims even when they were justified.

These rights are, however, not specifically attached to the nature of religious entities, but belong to all legal entities under civil law. Religious entities that are not registered in any legal form at all (not even, for example, as a charitable society or foundation) lack legal status, which prevents them from engaging in legal transactions.

A religious entity can act as an employer and may employ people in any form legally admissible in Slovenia (in full-time or part-time employment, contractual work, etc.). They are generally free to determine the employment rules by their own internal rules.

5. Benefits of Registered Religious Communities

There are some benefits granted exclusively to religious entities and not to other legal entities under civil law. In the current Slovenian legislation, provisions regarding these benefits are scattered throughout numerous statutes and bylaws. The draft law is trying to summarize the most important ones in one statute, but nonetheless leaving some details in the original areas of law.

5.1. *Spiritual care in the armed forces, prisons and hospitals*

The authorities of the armed forces must ensure that representatives of religious communities have equal opportunities and access to military bases under rules that apply to civilians. Military personnel may take part in religious services in their free time, when their duties do not require their presence in the unit. To this end, military authorities must display a list of religious buildings in the area and schedules of their services, as well as allow priests to visit recruits and provide premises for religious meetings on military bases. The carrying of printed religious material and literature into military facilities is not restricted. The draft law introduces special religious curates and other clergy in charge of the spiritual care of the armed forces, who must be employees of the Slovenian Armed Forces – and thus paid by the Government – and must abide by the rules of military service. The number of such employees for an individual religious community is to be determined in accordance with the number of their members in the military. If the number of members of a certain religious community is so small that it does not justify employment of a special curate, the spiritual care must be provided in other ways in agreement with the respective religious community.

Representatives of religious communities regularly visit prisons and other penal institutions. The frequency of their visits depends on the type

of institution and the needs and wishes of prisoners or detainees. At the time of major religious festivals or special occasions, they also prepare divine service or other events in prisons, although no special premises are equipped for this purpose. Religious literature is available in prison libraries. The draft AFRRRC suggests that in future the Government will be responsible for providing and financing adequate individual and collective spiritual care. As in the armed forces, it must employ a priest if a large number of members of the same religious community justifies that or it must in other ways reward performance of services. Representatives of religious communities appointed by the Government are to be entitled to visit prisoners any time when appropriate. The provisions of the proposed law specify the right of prisoners to attend the religious services within the institution and to receive religious literature and instruction.

People in hospitals, retirement homes, asylum centers and similar establishments, who cannot attend services outside these institutions, may be visited by representatives of religious communities on the request of the patients or their relatives. Currently, hospitals provide space for religious services or undisturbed discussion between priests and patients, where there is scope to do so including under the in-house rules, and the doctor's judgment in individual cases. The proposed law gives individuals in such establishments the same right to individual and collective spiritual care as in the above-mentioned institutions. As with prisons, a large number of members of the same religious community can justify employment of a priest who is entitled to visit individuals at any appropriate time. It is for the Government or the management of such establishments to finance spiritual care or to reward performance of services by the non-employed clergy in other ways. All individuals residing in these establishments must have a right to attend the religious services organized within the institution and to receive religious literature and instruction.

5.2. *Financing*

5.2.1. Direct financing

Direct financing of religious communities by the State or local government is currently allowed and primarily consists of grants for specific purposes or projects, as well as social transfers. In 2003, for example, the total amount of grants distributed among all registered religious communities was a little over 19,000 EUR. The grants were distributed

proportionately to the registered projects following the internal criteria of the Office regarding general cultural significance of the activities and their openness to wider society (for example by publishing books, organizing exhibitions and performances, etc.). In addition to this, the State and local communities occasionally co-finance the reconstruction of sacred objects that are declared to be national cultural heritage. The greatest form of state aid at the moment is represented by social transfers, which means that the State covers the employers' social security contributions (health and pension insurance) for priests, monks and other clerics employed by the religious communities and for whom this is their only employment. This amounted to around 1,440,000 EUR in 2003, of which 95 % was in respect of priests and monks of the Roman Catholic Church.

The new draft AFRRRC, if enacted as proposed, will retain the existing system and add more detailed rules. According to this notion, the registered religious communities may obtain state financing for the minimum disability, pension and health insurance of their employees. The State must achieve reasonable proportionality in determining the numbers of such employees for individual communities with respect to the number of their members and the resources of the State. Proposed financing foresees 1 insured employee per 750 members of the religious community (alternatively 500 or 1,000), or at least 70 years of activity in the territory of the Republic of Slovenia.

In addition to this, the draft law explicitly provides that the State can financially support the registered religious communities as they generally benefit society by striving for spirituality and human dignity in private and public life. They consequently occupy an important place in public life by developing the cultural, educational, social, charitable, humanitarian and other activities of a welfare state and by enriching national identity.

5.2.2. Indirect financing

Indirect financing occurs mostly in the form of various fiscal exemptions and relief. The religious communities in Slovenia as a rule do not pay taxes because it is assumed that they are established for non-profit-making purposes. Currently, the religious communities as legal entities are entitled to a variety of tax exemptions, such as: taxes on received gifts; sales tax on religious services; real estate taxes for buildings used for religious activities; sales tax on products for the protection of the old and handicapped people and children and import and export customs duty for goods intended for religious and other non-profit-making purposes. Some

of the exemptions apply generally to all non-profit-making organizations in Slovenia, and not only to religious entities.

There is no church tax in Slovenia, but donations to religious communities by individuals and other legal entities (for example, companies) count as tax deductions to a certain extent. Priests and other people employed by the religious communities are regarded, for the purposes of the income taxes, as being in the same category as freelancers.

These indirect forms of financing would remain in place even under the proposed draft law which, in addition, expressly exempts religious communities from property tax if they use the income from the property to finance their specific religious, educational, cultural, social or humanitarian activities. They are also exempt if they use the income for restoration of premises, objects or collections that they own and which are declared by the State to be cultural, historical, or architectural monuments.

5.3. *Other Rights of the Registered Religious Communities*

Religious communities may, like any other legal entity, publish media and establish other legal entities for publishing, book distribution, and similar (for example, own publishing houses, radio stations, TV channels, etc.). National television has a department of religious affairs. One place on the Council of the national radio and television house, RTV, is reserved for a representative of religious communities.

The proposed draft law explicitly mentions the right of religious communities to build and maintain structures for worship, other religious rites and meetings, as well as a right to freely access them. Religious communities also ought to be consulted when preparing the future zoning plans; the existing plans must be edited accordingly.

Religious education intended to teach a particular religion is forbidden in public kindergartens and schools, although a non-confessional subject, Religion and Ethics, was introduced into the school syllabus in order to familiarize pupils with some universal religions. Public kindergartens and schools may not display religious symbols or conduct prayers but they do not control religious symbols worn by students. The draft AFRRRC contains a specific provision according to which the elementary schools have to consider a schedule of the religious education in their school district when planning the school activities. This applies to all registered religious communities if requested by the students or their parents, and obliges the school to adjust their activities so as to effectively enable the students to attend religious education.

Participation in such religious education must count as an elective course, not only for elementary school students, but also for those in high schools.

Religious communities can found private kindergartens and schools of all levels where religious lessons may be, and actually are, a mandatory course. The state co-finances the activities of such kindergartens and schools, generally to a level of 85 % of the cost of programmes in comparable public institutions if the said institutions are organized in compliance with the law and implement publicly valid programmes. If they carry out such public programmes, they must obtain approval from the Government that their educational programme meets the same educational standard as the public educational programme.

The only institution of higher education founded by a religious community in Slovenia is the Theological Faculty of the Roman Catholic Church, which is a member of the state university and therefore it is financed in the same way as other public colleges.

No religious communities, regardless of their registration, can perform marriages with civil validity in the Republic of Slovenia. They can, of course, conclude religious marriages but civil marriages can only be concluded by the competent state body.

6. Restrictions

The proposed draft law includes an explicit restriction, which is deemed to be valid even under the present legal system. It consequently forbids registration of a religious community whose purpose, goals, or methods of religious doctrine, mission, rites or other activities are contrary to the State legal system. This concerns generally unlawful or impermissible activities that are based on violence or violent means, endanger the life, health, rights or freedoms of its members or other individuals, incite or inflame national, racial, religious or other discrimination, or incite violence or war. These types of doctrine or activity are not only unconstitutional, but are also specifically forbidden by provisions of other statutes in the Republic of Slovenia.

AGUSTIN MOTILLA

RELIGIOUS ENTITIES AS LEGAL PERSONS – SPAIN

1. The constitution of religious entities as legal persons

a) A religious entity can be constituted as an association under common law from the moment that there is an agreement among three or more physical persons and statutes approving the group's organization and functioning are formalized in a public or private document¹. Intervention or approval, as such, by a public authority is not necessary. The physical persons may be Spanish citizens or non-citizens but, in the latter case, they must be legally resident in Spain².

If they wish to be subject to a special law favourable to their activities which fall under our civil code for entities with religious purposes, they must be registered in a special register, the Register of Religious Entities (RRE) which gives them that right, provided they fulfil a series of requisites contemplated under law³, and which are then verified by the public authority.

b) The legal form of religious entities is that of *associations*, whether pertaining to the common law of association, or having registered in the RRE, and are recognized as religious denominations, which can thus benefit from special protection.

The religious associations that are subject to common law, as well as other denominations, can create other associations or foundations to meet these ends, or they can become federated. In the latter case, and if these associations, foundations and federations are derived from religions registered in the RRE, they may also be registered in the RRE with the purpose of obtaining the protection of a special law governing religious entities.

c) The most noteworthy difference stems from the way in which an entity pertaining to the Catholic Church – whose statutes are based on a series

¹ Art. 5 Organic Law 1/2002, March 22, regulating right of association.

² Art. 8 Organic Law 4/2000, January 11, regarding rights and liberties of foreigners in Spain and their social integration.

³ Art. 5 Organic Law 7/1980, July 5, of religious liberty, and Art.3.2 of the Royal Decree 142/1981, of January 9.

of agreements between the Holy See and the Spanish State having the nature of international treaties becomes a legal entity. The ecclesiastical entities pertaining to the hierarchical structure of the church institutions as religious entities become legal persons. As such, they are subject to their special law without needing to be registered in the RRE, either because the covenant agreements themselves provide for it – as in the case of the Spanish Episcopal Conference – or because, according to the bilateral norms, it is sufficient for them to become legal persons according to Canonical law, provided that they also notify the proper governing body, the General Bureau of Religious Affairs, such as dioceses, parishes and other circumscribed territories⁴. Other entities of the church, such as religious orders and other institutions of holy life, or Catholic associations and foundations, should be registered in the RRE in order to become legal persons, although with some exceptions as far as the completion requirements for other entities created within the inscribed religions are concerned⁵. Moreover, only the foundations of the Catholic Church – by virtue of these particular regulations – and not those created within other registered religions, can be registered in the RER and enjoy the special law deriving from the said Act.

d) The system of constituting religious entities through registration in the RRE is applicable within the entire national territory. Until now, registers of religious entities do not exist in the regions into which Spain is divided, the so-called Autonomic Communities.

If the religious entity is constituted as an association under common law, it can be registered in the National Registry of Associations, with the general legislation regulating said associations being applicable, or in some autonomic register, depending on the Autonomous Community concerned, in which case, the autonomic regulation would also be applicable.

2. The registering of religious entities in public registries

a) The religious entities need not register in order to act freely within the country. The Constitution guarantees the right of religious freedom to the communities without any other limitation except respect for public

⁴ Arts. 2 and 3 of the Agreement, January 3, 1979, regarding legal matters between the Spanish State and the Holy See.

⁵ Mainly contained in Art.1 of the Agreement regarding legal matters, Resolution of entities of the Catholic Church in the RER and the Royal Decree 589/1984, of February 8, regarding religious foundations of the Catholic Church.

law and order⁶. The Law of Religious Freedom, in expounding on the content of this law, and in relation to the rights of religious groups, specifies, among other rights, the rights to practise acts of worship, commemorate feast days, celebrate marriage rites, impart religious teaching, meet in order to communally carry out religious activities, establish places of worship, designate and train ministers of religion, spread the group's creed, and maintain relations with the individual group's own organizations or with other religious denominations⁷.

Moreover, they can be constituted as associations under common law and, without the need to register, can become legal persons.

b) The Law of Religious Freedom and the rules of the RRE⁸ require the following information for registration of the religious denominations: the entity's name; its domicile; an assertion that the entity's purposes are religious, and that neither the groups nor their activities breach public law and order, the type of operations and representative bodies, and optionally, the nominal relation of the persons who legally represent the entity. In the case of associations or foundations created by the registered denominations, the religious purpose of the group must be accredited by certification of a superior governing body of the religion. The courts have considered the actions of the Administration in demanding further requisites, such as a minimum number of members, or the monitoring of a religion's beliefs, except where activities infringe upon public law and order, as illegal. Registration in the RRE is considered to be a right of religious groups which the Administration can only refuse if the aforementioned requisites are not accredited⁹. The registration of federations constituted by various denominations is also permitted to satisfy the requisites.

If the entity wishes to be constituted as an association under common law, the following should be recorded in its memorandum of association: its statutes, name, domicile, activities and purposes, the status of members whether they are included in their payroll or not, and these members' rights and obligations, organization and system of representation – which in any case must respect the democratic functioning of the association –, administrative and documentation systems, economic resources and the causes for dissolution of the same¹⁰.

⁶ Art. 16.1.

⁷ Art. 2 Organic Law 7/1980, July 5.

⁸ Art. 5.2 Organic Law 7/1980, July 5 and Art. 3.2 of the Royal Decree 142/1981.

⁹ Arts 4.2 and 6 of the Royal Decree 142/1981.

¹⁰ Arts 6 and 10 of the Organic Law 1/2002, of March 22.

c) In the case of the entities that wish to register in the RRE, the fundamental requisites mentioned should be contained within the memorandum of association, accompanied by the entity's statutes, as a public document whose authenticity is accredited by a public notary¹¹. Any type of organization that the entity freely decides on is permitted in the statutes.

If the religious entities wish to choose the path of common associations, the agreement of the constitution and the statutes must be formalized through a notarised memorandum of constitution as a public or private document¹².

d) Reference will now be made to registration in the RRE which, as has been stated above, grants the entities certain advantages and benefits that common associations do not possess.

Immediate effects of registry in the RRE are becoming a legal person, total autonomy of the organization, internal and personnel systems, being able to include clauses safeguarding religious identity – a right particularly important in matters of labour relations –, the possibility of creating associations and foundations, the protection of its acts, functions and ceremonies by defining as an offence the disturbance of acts of worship, exemption from VAT in the provision of personnel and certain goods, exemption for ministers of religion from the requirement to have a residence permit in order to reside in Spain, entitlement for the religious group's high-ranking members to make written declarations in legal matters without the need to appear before military courts of law, and finally, the possibility of carrying out religious activity in the Armed Forces.

For consequential effects, namely, those for which registration constitutes a condition for obtaining advantages or recognition, there is the need to register so that the State will concede, by unilateral act or through an agreement with the religious group, civil consequences for religious matrimony, or so that the religion is also recognized as being "firmly rooted in Spain" and can reach an agreement with the State. The basis of the agreements, set out in Article 7 of the Organic Law of Religious Freedom, has come to be the legal framework through which registered religious groups are actually conceded substantial legal or economic advantages or benefits.

e) Concerning the various provisions for registering historical majority churches and other religious denominations, the most significant differences are found in the special system that exists for the entities of the Catholic Church and other denominations. In summary:

¹¹ Art. 3.1 Royal Decree 142/1981.

¹² Art. 5 Organic Law 1/2002, of March 22.

1. The entities which possess hierarchical power in the Catholic Church do not need to register in the RRE, but rather acquire civil legal person status by direct concessions from the covenant agreements – the case of the Spanish Episcopal Conference – or by mere notification to the public authorities of having previously obtained canonical personality – the dioceses, the parishes, and other circumscribed territories.
2. The religious orders and other institutions of holy life must register in the RRE, but with some differences with respect to other registered non-Catholic entities. These differences are regulated by special norms.
3. Only Catholic foundations, and not those created by other denominations, have access to the RRE.

f) As was stated previously, the statute of religious denominations has been, until now, a matter reserved for central Government regulation. There is only one public register of a national nature for religions and it is located in the Ministry of Justice. No other registers under the jurisdiction of the Autonomous Communities have been created.

g) The majority of the Spanish population, around 90 %, has been baptized in the Catholic Church and, as such, are formal members. Nevertheless, the number of Catholics who practise their religion by attending Mass on Sundays, is around 25 % of the total membership. A large majority declare themselves to be non-practising Catholics.

With respect to other religious denominations, it is calculated that only 2 or 3 % of the population describe themselves as belonging to a religion other than Catholicism. However, in recent years, this number has increased due to the sharp rise in immigration, particularly from countries where Islam is the major religion. The numbers that are referred to here, while there is no official data in this regard, are 500,000 Muslims, approximately 100,000 Jehovah's Witnesses, 60,000 Evangelical Christians and 15,000 of the Jewish faith, if the most common religions are cited.

As for the data of the RRE¹³, as of January 1, 2004, excluding the Catholic Church, there were 419 religions registered without an agreement with the State. With respect to those who have reached an agreement with the State, they are grouped into three Federations: the Evangelicals, who are composed of more than 80 churches with distinct denominations;

¹³ *Confesiones minoritarias en España. Guía de entidades y vademécum normativo*, (coord. J. Mantecón), Dirección General de Asuntos Religiosos, Ministerio de Justicia, Madrid 2004.

Jews, composed of 15 communities, and Muslims, composed of two different federations. These comprise a total of 160 communities.

No data exists on non-registered religious entities or on the number of their members.

3. Proceedings of religious entities with civil effects

a) Entities registered in the RRE become, from the moment of registration, full legal persons. This permits them to undertake contractual obligations¹⁴, which means full capacity to make all types of contracts through their legal representatives, to which the entity is obliged, actively or passively.

If the entity is constituted as an association under common law, but is not registered in the National Register of Associations, it does have civil legal person status, and consequently the capacity to be bound by all types of contract that its legal representatives sign. Furthermore, in that case, the founding board of the association that is not registered, is likewise personally and jointly responsible with the association, for obligations contracted with a third party¹⁵. If they had registered, the association would be the only one responsible for its obligations with its own assets.

In the case of entities not constituted as associations and not registered in any register (*de facto* associations), the contracts made by their representatives make the representatives themselves the only responsible party for the obligations contracted with their personal assets.

b) On becoming civil legal persons, the entities registered in the RRE can acquire and possess all types of asset, possession, and real property; the entities constituted as common associations have the same capacity, whether or not they are registered in the National Register of Associations¹⁶. If the religious entities are not registered in a public register or are not constituted as common associations, it would be the physical persons pertaining to them, with sufficient legal capacity, who may acquire and have possessions and real property, which, if they so wish, they may cede for the religious use of the community.

c) On becoming legal persons, the entities registered in the RER can act as employers, by themselves, or by creating specific profit-making or

¹⁴ Art. 38 Civil Code.

¹⁵ Art. 10.4 Organic Law 1/2002, of March 22.

¹⁶ Art. 38 Civil Code.

non-profit-making institutions which, they register as such in the system of the corresponding economic activity just like any legal person. Spanish legislation recognizes their right to establish their own norms as to their personnel system, for the sake of guaranteeing their doctrine and individual character, without prejudice to the rights and liberties recognized in the Constitution¹⁷.

The religious entities constituted as common associations and registered in the National Register of Associations can act as employers in keeping with general legislation and labour and fiscal law. If they are not registered, the founding board would have to be personally and jointly responsible for meeting third party obligations, whether they be creditors or workers contracted by the entity.

d) The general limitation on the proceedings of religious entities, as stated in Article 16 of the Constitution with respect to the individual or collective exercise of the right to religious freedom, is public law and order, protected by the law, whose constitutive elements are the protection of the rights and liberties of others, and the safeguarding of public safety, health and morality¹⁸.

Nevertheless, other specific restrictions do remain referring to the proceedings of ministers of worship in exercising religious functions with civil relevance. These include the offences of a minister of religion authorizing a marriage in which some cause for nullity is known to the said minister¹⁹, altering documents which produce civil effects in the status of persons or in the civil order²⁰, or limiting the civil capacity of the clergy of the Catholic Church which supposed the nullity *ex lege* of the dispositions regarding the last will and testament in a will made during an illness in favour of a priest who has been confessed to, or his relatives, or to the church or religious institution to which the priest pertains²¹.

In essence, Spanish Law maintains favourable treatment for religious entities which register in the RRE and for those entities of the Catholic Church for whom registration is not required. Nonetheless, religious entities likewise can choose the course of association under common law in order to become civil legal persons, as well as permitting them to act freely within the legal framework.

¹⁷ Art. 6 Organic Law 7/1980, of July 5.

¹⁸ Art. 3.1 Organic Law 7/1980, of July 5.

¹⁹ Art. 219 Penal Code.

²⁰ Art. 390.2 Penal Code.

²¹ Art. 752 Civil Code.

LARS FRIEDNER

RELIGIOUS ENTITIES AS LEGAL PERSONS – SWEDEN

By the turn of the millennium, new relations between the state and the churches had been established in Sweden. These new relations meant that the earlier state-church system was abolished.¹ The earlier state church, the evangelical-Lutheran Church of Sweden, was changed through legislation into a *registered denomination*. Other churches and denominations were also invited to use this new legal form.² Beside the Church of Sweden, about 50 churches and denominations have registered to date.³

The requirements for being registered are that the church (or other denomination) has statutes or by-laws, which state the purpose of the denomination and the decision-making process within it, and a board (or a corresponding body).⁴ It is not demanded that a denomination must be democratic to be registered. One of the ideas of the new legal form was that a denomination should be given the possibility to appear legally according to its self-understanding. There should be no more pressure to force the denominations into legal forms that did not suit them.⁵

A denomination is defined as a community for religious activities, of which an integral part is to arrange divine services.⁶ Thus, the *Swedish Humanist Association*, an organisation for atheists, can not be accepted for registration.

There are also provisions concerning the name of a denomination. A name that cannot distinguish the denomination from another will not be registered. Neither will a name that is contrary to good manners or

¹ Ekström, *Makten över kyrkan – om Svenska kyrkan, folket och staten* [Power over the Church – the Church of Sweden, People and State] (2003), p. 246.

² Section 5 Denominations Act (*lagen om trossamfund*) (1998:1593).

³ Edqvist & al, *Kyrkoordning för Svenska kyrkan med kommentarer och angränsande lagstiftning*, [The Church Rules for the Church of Sweden with commentary and associated legislation] 2nd ed. (2005), p. 919f.

⁴ Section 7 Denominations Act (1998:1593).

⁵ Prop. 1997/98:116, p. 20.

⁶ Section 2 Denominations Act (1998:1593).

public order or is misleading be registered.⁷ But there is no control from the authorities as to the doctrine of the denomination. As long as it arranges divine services, it is accepted.⁸

When a denomination applies for registration, it must announce the address of the denomination and the names of the persons that are on the board or otherwise entitled to represent the denomination, their addresses and personal identity numbers.⁹

Through the registration, the denomination receives legal personality.¹⁰ But it must have legal personality as an idealistic (not-for-profit) association before being registered. Companies, economic associations or foundations cannot be registered.¹¹

A denomination can also register different organisational parts, i.e. local parishes, dioceses, districts etc. For these "parts of a denomination" the same provisions apply for registration as for a denomination. A "part of a denomination" also obtains legal personality through the registration. The parishes, associations of parishes, and dioceses of the Church of Sweden are registered parts of the Church of Sweden already through legislation. A "part of a denomination" is linked to the denomination of which it is a part, and cannot remain as a registered part of a denomination if the denomination, of which it was a part, ceases to be registered.¹²

There is no requirement for a church or other denomination to register. You could start a denomination without any consent from the authorities. And a denomination is free to act in other legal forms than the registered denomination. Quite a lot of them do so, mostly as idealistic associations. But there is no obstacle, if a denomination, for one reason or another, wants to act in the legal form of an economic association, a company or a foundation.¹³ Probably, you could find denominations that have no legal personality at all. Swedish legislation presents no obstacles to such denominations either. Needless to say, the denominations of course must comply with civil and criminal law.

There are no statistical figures on the number of unregistered denominations in Sweden. But there are a few, well-known denominations, that have not registered.

⁷ Section 7 Denominations Act (1998:1593); Section 10 Trade Names Act (*firmalagen*) (1974:156).

⁸ Edqvist, *ib.*, p. 918.

⁹ Section 8 Denominations Act (1998:1593).

¹⁰ Section 9 Denominations Act (1998:1593).

¹¹ Section 7 Denominations Act (1998:1593); Edqvist, *ib.*, p. 919.

¹² Section 13 Denominations Act (1998:1593).

¹³ Edqvist, *ib.*, p. 914.

As you are free to register or not, you might ask what the advantages of being registered are. And the only real advantage is the possibility of appearance in the legal form of a registered denomination. No other advantages are linked with registration.¹⁴

There is, however, one state option available to the denominations, provided that they are registered. Only registered denominations are entitled to use the tax system for collecting their membership fees. A denomination could get this right through a government decision, but only if it "contributes to the fundamental values on which the society lies being maintained and strengthened" and "is stable and has its own vital power".¹⁵ Beside the Church of Sweden this right has only been granted to seven churches and denominations.¹⁶ The provisions for being allowed to use the tax system mean that a denomination, to get this right, must work to combat all types of racism and other forms of discrimination as well as violence and brutality. The denomination must also work to develop equality between women and men. Nor is there in this case any requirement for democracy within the denomination. However, it is of essential significance that the denomination works for its members to participate in the life of the society and clearly states that it opposes anti-democratic sentiments in society.¹⁷

The same provisions applicable for a denomination that wants to use the tax system also have a relevance to state subsidies, except where the denomination is not registered.¹⁸ The latter is due to the fact that the system of state subsidies was established a long time before the establishment of the new relations between state and church, and some of the denominations that were already granted state subsidies did not want to register.¹⁹ The systems are now coordinated, so that a denomination that wants to use the tax system receives less in direct subsidies.²⁰ At the moment there are 22 denominations receiving state subsidies.²¹ The Church of Sweden receives no subsidies under this legislation.

A denomination can also be granted the right to officiate marriages, provided that the work of the denomination is enduring and the

¹⁴ Edqvist, *ib.*, p. 914, 918.

¹⁵ Section 16 Denominations Act (1998:1593).

¹⁶ Edqvist, *ib.*, p. 931.

¹⁷ Edqvist, *ib.*

¹⁸ Section 3 Denominations Support Act (*lagen om stöd till trossamfund*) (1999:932).

¹⁹ Edqvist, *ib.*, p. 914.

²⁰ Section 9 Denominations State Subsidies Ordinance (*förordningen om statsbidrag till trossamfund*) (1999:974).

²¹ Section 3 Denominations State Subsidies Ordinance (1999:974).

denomination has "such an organisation that it for excellent reasons can be taken for granted that the provisions concerning weddings and connected measures will be complied with".²² About 40 denominations have been granted this right. The Church of Sweden has the right to officiate marriages according to the Marriage Code.²³

Finally, a denomination could be granted the right to hold private cemeteries, if "there are special reasons and it can be assumed that the denomination can keep the cemetery and fulfil the obligations incumbent on a possessor of a cemetery".²⁴ Only a few private cemeteries in Sweden are held by denominations. The Church of Sweden is responsible for the public cemeteries in most parts of Sweden.²⁵ It is only in Stockholm city and the town of Tranås that the local councils (municipalities) are responsible.²⁶

Other religious entities than churches and denominations cannot use the legal form of registered denomination. And there is nothing resembling charities in Swedish law. Thus, these religious entities must appear legally as idealistic associations, economic associations, companies, or foundations. Or they could be without any legal capacity, which means – according to Swedish law – that only the persons acting will be bound by contracts, etc. On the other hand, the persons acting are themselves financially responsible. They cannot hide behind any legal person.

Religious entities in Sweden are not restricted in their work in any special way. They could act as any non-religious entity. They are, for example, free to make contracts, to own real property and to act as employers. On the other hand the normal laws of the society also apply to the religious entities. There are, for example, no exemptions from the labour laws that give the religious entities any special status.

Statistics

The Church of Sweden is by no means the biggest denomination in Sweden. It amounts to over 7 million members, corresponding to about 80 per

²² Section 1 Act on officiating marriages within other denominations than the Church of Sweden (1993:305) (*lagen om rätt att förrätta vigsel inom andra trossamfund än svenska kyrkan*).

²³ Chapter 4, Section 3 Marriage Code (*äktenskapsbalken*).

²⁴ Chapter 2, Sections 6-7 Funeral Act (*begravningslagen*) (1990:1144).

²⁵ Chapter 2, Section 1 Funeral Act (1990:1144).

²⁶ Official Government Report on Funeral Operations (*betänkandet Begravningsverksamheten*) (SOU 1997:42), p. 54f.

cent of the population.²⁷ This high amount is partly, of course, a result of the earlier state-church system. The number of active members of the Church of Sweden is apparently lower.²⁸

Five different religious groups are next, the Swedish Mission Covenant Church, the Pentecostal Movement, various Orthodox Churches, the Roman Catholic Church, and various Muslim denominations. Each of these groups has about 100,000 members, a little more than 1 per cent of the population.²⁹ It is a little difficult, though, to compare the number of members from different denominations. Some denominations have real membership, while others do not. Thus, the National Committee for State Contributions to the Denominations³⁰ has created the term "served", which refers to the number of people that normally attend the services of the denomination. The Committee has sometimes carried out its own investigations to find out the proper number of served persons in relation to a particular denomination. The figures above are counted in that manner.³¹

Other religious groups in Sweden comprise in total about one per cent of the population.³²

²⁷ www.svenskakyrkan.se/statistik.

²⁸ *ib.*

²⁹ www.sst.a.se.

³⁰ Sw. *Samarbetsnämnden för statsbidrag till trossamfund*.

³¹ www.sst.a.se.

³² *ib.*

DAVID McCLEAN

RELIGIOUS ENTITIES AS LEGAL PERSONS –
UNITED KINGDOM

The formation and continued existence of churches within the United Kingdom is a wholly unregulated matter. No official approval is needed, no registration is required, and the statutes of a church do not appear in any official database; it is immaterial whether the church has headquarters within the United Kingdom or is a branch of an essentially foreign body. It may be that this relaxed approach is due to the existence of two Established Churches, the Church of England and the Church of Scotland¹, so that the existence of other religious bodies was of minimal interest to the State.

The two Established Churches are not in a strict sense legal entities at all. Although this was not a matter of any doubt it was authoritatively restated in the recent House of Lords decision in *Percy v Church of Scotland Board of National Mission*².

The Church of England is in some sense part of the State apparatus, many senior church appointments involving Crown patronage and the two archbishops and a number of diocesan bishops sitting as of right in the House of Lords. It has no legal personality, nor have its 44 dioceses. This lack of legal personality has implications for the holding of property, and there are a number of legal devices which enable the Church or its component parts to hold property.

One is an ancient notion of English law under which certain offices in the Church are held by a 'corporation sole': bishops and the incumbents of individual parishes are examples. If there is a person holding the office, he or she is the single member of the corporation. If the office is vacant, the property is still held by the ('empty') corporation, and various arrangements are made by statute for someone to deal with the property during

¹ The remaining parts of the United Kingdom formerly also had Established Churches: there were dioceses of the Church of England in Wales, until they formed the distinct and disestablished Church in Wales in 1920; the Church of Ireland, also Anglican, was established in 1967.

² [2006] 2 AC 28; [2005] UKHL 73.

the vacancy. Technically much parish property (the parish church, the churchyard and the house in which the incumbent lives) is owned by the incumbent in this way³.

Another device is the use of corporate bodies to hold property. They may be corporations established by statute, such as the Church Commissioners which hold some of the national endowments of the Church and property such as bishops' houses⁴ and all 16,000 parochial church councils in the Church of England which may own parish halls and investments⁵, by Royal Charter, such as the Corporation of the Church House which owns the building which houses the main offices of the national church, or by registration under the Companies Acts as a company 'limited by guarantee'⁶. This last device is used, for example, by the dioceses of the Church of England each of which has a Diocesan Board of Finance⁷ to hold property. Such a Board will have an annual turnover of some millions of pounds, principally in connection with clergy stipends.

As in so many areas of English law, the device of the 'trust' is very much used. Under a trust, property is held by an individual, or in the church context usually a group of persons or a corporate body, but this property is held for the benefit of others and does not form part of the personal assets of the trustee or trustees. There are many obligations binding on charity trustees (for example, that any sale of charity property must be for the best price obtainable, in the interests of the beneficiaries under the trust) but there are no rules peculiar to church trusts. All sorts of property is held on charitable trusts for religious purposes⁸. In the Church of England, many trusts are administered by Diocesan Boards of Finance or parochial church councils; in many parishes there are trusts of which the incumbent and the churchwardens⁹ are trustees.

In Scotland, the relationship between Church and State is very different. The Church of Scotland Act 1921 contains 'Articles Declaratory of the Constitution of the Church of Scotland in Matters Spiritual' contain

³ Legislation is being prepared which will alter this position, as part of a general review of the terms of service of the clergy, but the church and churchyard will remain under the existing property regime.

⁴ Established under the Church Commissioners Measure 1947, which amalgamated two earlier bodies.

⁵ See the Parochial Church Councils (Powers) Measure 1954.

⁶ This is a company which is without shareholders and is typically not for profit.

⁷ There are variant names in some dioceses.

⁸ There are limits of what may be regarded as 'religion' for this purpose. It was in this context that the English courts examined the position of the Church of Scientology.

⁹ Lay officers elected annually by the parishioners.

a statement of the separate jurisdiction of the Church in matters spiritual and give the church very considerable freedom in its government. The extent to which this placed the Church outside the jurisdiction of the ordinary courts was one of the issues in the case of *Percy v Church of Scotland Board of National Mission* already mentioned: the House of Lords held that there were greater limits on this exemption than the Church had argued¹⁰.

The Church of Scotland also makes use of a range of devices in terms of property holding. Although Scots law is not the same as English law, the trust exists in Scotland. From time to time specific Parliamentary legislation is used to deal with certain questions relating to the Church's property¹¹.

The many other churches within the United Kingdom, from the Roman Catholic Church and the Church of Ireland to the smallest independent group, are in law 'voluntary associations'. In *Percy v Church of Scotland Board of National Mission*, Lord Hope of Craighead even described the Church of Scotland in those terms. The larger churches use corporate bodies to hold property; the smaller tend to have bodies of trustees. The corporate route is 'safer' in that the directors of the relevant company or other corporate body are likely to be elected and so reflect the views and policies of the membership. A body of trustees may be self-perpetuating (that is, a vacancy amongst the trustees is filled by the remaining trustees without reference to anyone else) and so the policies of the trustees of, say, a local church building may come to differ from the active members of the worshipping congregation.

It is always possible for churches to obtain 'private' Acts of Parliament to regulate their governance and especially property affairs. Several of the major churches have done this. A recent example is the United Reformed Church Act 2000; the union of two churches involved changes to property holdings, some held by trusts and some by companies; an Act was the only effective way of dealing with the issues. The same device is available to even the smallest body, although the costs are considerable. In 1993 an Act known as the Dawat-e-Hadiyah (England) Act 1993 made provision for a very small Hindu sect and even created a corporation sole for the holder of the office of Dal al-Mutlaq.

¹⁰ The case concerned a disciplinary issue and the effect of the sex discrimination legislation derived from European Directives. It is not exactly surprising that the House of Lords was unwilling to see the Church outside the jurisdiction of courts dealing with claims under that legislation.

¹¹ For an example, see the Church of Scotland (Property and Endowments) Amendment Order Confirmation Act 1995.

Through the various devices described above, a church can enter into contracts, act as employer, and generally engage in the whole range of legal transactions. There may be special rules within a particular church, having effect under the trust deed or the relevant legislation. For example, a parochial church council acting as trustee of land cannot dispose of the land without the consent of the diocesan authority; other churches will have similar rules depending on their organisational structure.

The absence of any general requirement, or even possibility, of registering churches has already been noted. There is no arrangement in any part of the United Kingdom for State finance for churches¹², nor for the use of the tax system by churches. Unlike some other countries, there is no body of legislation about burial grounds owned by churches. In general, ministers of religion engaged in pastoral work are treated as 'office-holders' and are not within the scope of much employment law¹³.

The one area in which a form of registration is practised is in relation to marriages. In England and Wales, the solemnisation of marriages takes place in registered *buildings*; in Scotland individual *persons* (the ministers of a particular church in the typical case) are registered.

It is very difficult, in the absence of any system of registering churches, to ascertain the number of churches or the size of their membership. Some details were obtained in the most recent census and the following tables (reproduced from Robbers, *Church and State in the European Union* (2nd edition) reflect those data.

¹² A scheme for refunding some payments of value added tax depends on the 'listing' of a church under the legislation dealing with the protection of buildings of historic or architectural interests, but that listing is not done by the churches. Similarly, grants are made to fund certain works of repair of historic buildings, including cathedrals and churches, but the allocation of money depends on the quality of the building and not its religious character (if any).

¹³ This is another matter clarified in *Percy v Church of Scotland Board of National Mission*: the minister involved in that case was held not to be an employee (in the sense of one working under a contract of service) but was within the wider scope of the Sex Discrimination Act 1975. It is also a matter closely examined in the reports of the Church of England study of clergy terms of service: GS 1527 (2004) and GS 1564 (2005).

TABLE 1: RELIGIOUS ALLEGIANCE IN GREAT BRITAIN, 200
(Percentages of total population)

	England	Wales	Scotland	Total for Great Britain
Christianity	71.74	71.90	65.08	71.16
Islam	3.10	0.75	0.84	2.78
Hinduism	1.11	0.19	0.11	0.98
Sikhism	0.67	0.07	0.13	0.59
Judaism	0.52	0.08	0.13	0.47
Buddhism	0.28	0.19	0.13	0.26
Other	0.29	0.24	0.53	0.31
No religion	14.59	18.53	27.55	15.94
None stated	7.69	8.07	5.49	7.51

TABLE 2: CHRISTIAN DENOMINATIONS IN BRITAIN, 2001

	Membership	Congregations	Ministers
ENGLAND			
Church of England	1,372,000	16,220	12,587
Roman Catholic Church	930,000	3,351	5,144
Methodist churches	308,300	5,906	2,200
Pentecostal churches	225,700	2,414	3,805
Orthodox churches	225,500	253	217
Baptist churches	164,800	2,586	2,382
Salvation Army	43,600	657	1,253
Other trinitarian denominations	314,800	4,963	3,420
WALES			
Church in Wales (Anglican)	80,900	1,510	653
Presbyterian/Reformed churches	44,300	974	139
Roman Catholic Church	39,500	231	253
Methodist churches	15,300	402	98
Other trinitarian denominations	70,300	1,000	452
SCOTLAND			
Church of Scotland	587,700	1,543	1,090
Roman Catholic Church	212,500	461	851
Episcopal Church of Scotland	48,000	310	158
Other Presbyterian churches	31,000	399	218
Methodist churches	5,700	75	35
Other trinitarian denominations	79,300	911	689

TABLE 3: MAJOR CHRISTIAN CHURCHES IN
NORTHERN IRELAND, 2001

	Allegiance in Census return	Church membership	Number of ministers
Roman Catholic Church	678,462	522,000	547
Presbyterian Church in Ireland	348,742	189,000	370
Church of Ireland (Anglican)	257,788	160,700	300
Methodist Church in Ireland	59,173	14,300	93

