

# LEGAL ASPECTS OF THE FINANCING OF RELIGIOUS GROUPS IN SPAIN

ÓSCAR CELADOR ANGÓN<sup>1</sup>

**Abstract:** The purpose of this paper is to analyze the Spanish public policies in the financing of churches and religious organizations. According to this approach, and taking in account that the Spanish legal frame lack of a common regulation for all religious groups, this paper aims to provide analysis of the following issues: the constitutional principles of the Spanish political system relevant to the religious freedom, the cooperation agreements between the State and the religious groups, and the economic and fiscal regime of the Catholic Church and the religious minorities.

**Keywords:** financing of religious groups, fiscal neutrality, religious minorities, cooperation agreements between the State and the religious groups.

**Summary:** I. INTRODUCTION; II. CONSTITUTIONAL MODEL OF CHURCH-STATE RELATIONS; III. FISCAL NEUTRALITY, RELIGIOUS FREEDOM AND RELIGIOUS PLURALISM; IV. DEVELOPMENT OF THE CONSTITUTIONAL PRINCIPLES: COOPERATION AGREEMENTS BETWEEN THE STATE AND THE RELIGIOUS GROUPS; V. ECONOMIC AND FISCAL REGIME OF THE RELIGIOUS GROUPS; IV. CONCLUSIONS.

## I. INTRODUCTION

The 1978 Spanish Constitution created a new model of relationships between the State and the religious organizations, breaking the model of catholic confessional State characteristic of the Spanish constitutional history. The main ingredients of the 1978 constitutional frame were the protection of ideological and religious freedom guaranteed in the article 16.1 of the Spanish Constitution, the equality of individuals ordained in the article 14 of the Spanish Constitution, and the ideological and religious neutrality established in the article 16.3 of the Spanish Constitution.

The Spanish Constitution also protects the individual against the discrimination for religious reasons in his article 14. However, as we will see, reality shows that in the context of public funding the Catholic Church, the religious groups that signed agreements of cooperation with the State in 1992 (Evangelicals, Muslims and Jews), and the remaining religious groups have a different status.

---

<sup>1</sup> Professor of Public Law on Freedom of Thought, Conscience and Religion, Universidad Carlos III de Madrid, Spain (ocelador@der-pu.uc3m.es).

As an introductory remark, it may be useful to note that the criterion used in this paper for classifying religious groups as majority or minority, depend if the relation between the religious groups and the State are organized by means of especial agreements.

According to this approach, and taking in account that the Spanish regulation lack of a common regulation for all religious groups, this paper aims to provide analysis of the following issues: the constitutional principles of the Spanish political system relevant to the religious freedom, the cooperation agreements between the State and the religious groups, and the economic and fiscal regime of the Catholic Church and the religious minorities.

## **II. CONSTITUTIONAL MODEL OF CHURCH-STATE RELATIONS**

On December 28, 1978, after many years of dictatorial government, Spain adopted a democratic government and approved a legal frame that guides the current pattern of relationships between the State and the religious groups (Pelayo Olmedo 2007). The Spanish Constitution of 1978, in providing for a democratic and pluralistic State, entailed a profound change in the State's traditional attitude towards religious matters. The 1978 Constitution recognizes and protects the rights to equality and freedom of religion; and the practice of these rights is guaranteed under the broadest possible terms, subject only to the limitations of public order and the respect of the Constitution and the public liberties and fundamental rights.

Since the disestablishment of the Catholic Church in 1978, in theory all religious organizations stand on the same legal footing. However, the tradition of the Catholic Church as the only establish church has had consequences in the formulation of the current model of relations between the State and religious groups.

The keywords of the model of church and State relations are formulated in the articles 14 and 16 of the Spanish Constitution:

Article 14: - Equality- Spaniards are equal before the law and may not in any way be discriminated against on account of birth, race, sex, religion, opinion or any other personal or social condition or circumstance.

Article 16: - No faith shall be the official State religion- 1. Freedom of ideology, religion and worship of individuals and communities is guaranteed, with no other restriction on their expression than may be necessary to maintain public order as protected by law. 2. No one may be compelled to make statements regarding his or her ideology, religion or beliefs. 3. No religion shall have a state character. The public authorities shall take into account the religious beliefs of Spanish society and shall consequently maintain appropriate cooperation relations with the Catholic Church and other religious organizations.

The reference to the Catholic Church in the Spanish constitution should not be interpreted as a way of favoring this religious group on the others, but as the way to break up with the historical precedent of the military dictatorship. During the Franco years, Roman Catholicism was the only religion with legal status, other worship services could not be advertised, and the Catholic Church was the only religious group that could own property and exercise rights. This close cooperation was formalized through a Concordat with the Vatican in 1953 that granted an extraordinary set of privileges to the Catholic Church: mandatory canonical marriages for all Catholics; exemption from government taxation and the establishment of a budget for the church (for example for the payment of priests salaries); subsidies for new building construction and the reconstruction of church buildings damaged by the war; censorship of materials the church deemed offensive; the right to establish universities, to operate radio stations, and to publish newspapers and magazines; protection from police intrusion into church properties; mandatory Catholic religious instruction, even in public schools; and exemption of clergy from military service. Franco secured in return the right to name Roman Catholic bishops in Spain, as well as veto power over appointments of clergy down to the parish priest level<sup>2</sup>.

The 1978 Constitution recognized the historical role of the Catholic Church, and opened the doors for a relationship of independence and cooperation between the State and the religious groups. According with the Spanish conception of religious freedom, all the religious groups are able to practice their religion freely, and nothing impedes to the individuals live and develops their personality according to their faith (Souto Paz 1995: pp. 17-20, 35-39).

Freedom of religion implies that the State should not intervene (neither by acting nor by failing to act) in the process of forming religious convictions or in manifesting them. The religious freedom protected in the article 16 of the Spanish Constitution is defined as an individual private and personal affair, which must be exercised without fear of persecution or discrimination.

Religious freedom has been developed through the General Law 7/1980 on religious freedom, and defined as the right to:

- a) Profess whatever religious beliefs they freely choose or profess none at all; change or relinquish their faith; freely express their own religious beliefs or lack thereof or refrain from making any statement in such regard.
- b) Take part in the liturgy and receive spiritual support in their own faith; celebrate their festivities; hold their marriage ceremonies; receive decent burial, with no discrimination for reasons of religion; be free from any obligation to receive spiritual support or participate in religious services that are contrary to their personal convictions.

---

<sup>2</sup> [http://www.vatican.va/roman\\_curia/secretariat\\_state/archivio/documents/rc\\_seg-st\\_19530827\\_concordato-spagna\\_sp.html](http://www.vatican.va/roman_curia/secretariat_state/archivio/documents/rc_seg-st_19530827_concordato-spagna_sp.html).

c) Receive and deliver religious teaching and information of any kind, orally, in writing or any other means; choose religious and moral education in keeping with their own convictions for themselves and any non-emancipated minors or legally incompetent persons, in and outside the academic domain.

d) Meet or assemble publicly for religious purposes and form associations to undertake their religious activities in community in accordance with ordinary legislation and the provisions of this General Act.

e) The right of Churches, Faiths and Religious Communities to establish places of worship or assembly for religious purposes, appoint and train their ministers, promulgate and propagate their own beliefs and maintain relations with their own organisations or other religious faiths, within the national boundaries or abroad.

### **III. FISCAL NEUTRALITY, RELIGIOUS FREEDOM AND RELIGIOUS PLURALISM**

The full exercise of religious freedom demands a complete separation between church and State, because all the citizens have the same right to the religious freedom. The State must play the role of a neutral actor and should not promote one religion over the other, or promote a religion over another ideology (Rodriguez Garcia 2009; Castro Jover 2005). The State can promote religious freedom as a fundamental right, but not a concrete ideology or religion, because all religions are equal for the State. The limit to the religious freedom is to infringe the rules protecting fundamental values, so that a person that violates these rules can't invoke the obedience to a religious obligation as a cause of impunity (Torres Del Moral 1998: pp. 50-51).

The coexistence of a plurality of religious groups and cultures in States that recognizes in their Constitution the legal principle of church and State separation doesn't outline problems, when these religious groups can practice their religion freely. However, the problems appear when a State (theoretically neutral) favors a group on the others (Tarodo Soria 2007: pp. 227-278).

Religious pluralism can be defined as a plurality of religious groups and cultures coexisting within common society. The responsibility of a democratic government is to promote religious diversity, because more religious groups mean more possibility of choice and in consequence more individual freedom. This conception of State appears in the Spanish Constitution, as one of the fundamental values of the democracy<sup>3</sup>. The State support of religious freedom and the targets of a democratic State are connected, because both policies are founded in the achievement of peaceful coexistence, and promote the full inclusion in the society of those having different beliefs as members of the civil society (Torres Gutiérrez 1999: pp. 24-33).

---

<sup>3</sup> Article 1.1 establishes that "Spain constitutes itself into a social and democratic state of law which advocates liberty, justice, equality, and political pluralism as the superior values of its legal order".

Religious groups can act and organize their activities, they are free to acquire and to sell property, to accept dispositions of individuals under the civil law, and the contributions and other income that religious groups registered in the Ministry of Justice receive are exempt from taxation. In addition, individuals making contribution to religious groups may deduct part of the amount of their contribution from the gross income on which they must pay income taxes (Torres Gutiérrez 2000a: pp. 303-331).

However, from a constitutional perspective it is not clear whether the direct or indirect public financing of religious groups is consistent with the constitutional model. The debate about the public policies in the financing of religious organizations is a very complex one, and there is not a common agreement in the doctrine about this topic.

One sector of the authors argues that the State ideological and religious neutrality forbids Government to provide any form of economic assistance to religious groups, independently of their number of members or age (Torres Gutiérrez 1996: pp. 75-88). it doesn't matter what form aid takes, whether the economic assistance is direct or indirect, or when the economic assistance is directed to all the religious groups and all are benefit equally. The central idea is that any class of economic assistance from the public sector designated to the religious groups tends to establish a religion and is therefore unconstitutional<sup>4</sup>. The defenders of the separation between church and State prefer that the State doesn't finance any religious or ideological group at all, in order to avoid discriminating against their citizens because they have a concrete religious belief, or because they do not have religious beliefs (Rodríguez García 2005: p. 112).

Other sector of the authors argues that the Government has an obligation, supported in the exercise of the religious freedom, to accommodate the desires of the population to exercise their religious beliefs. According with this point of view, the government may provide economic assistance to the religious groups, because with this policy public powers are promoting religious freedom (Motilla de la Calle 1989: p. 197).

#### **IV. DEVELOPMENT OF THE CONSTITUTIONAL PRINCIPLES: COOPERATION AGREEMENTS BETWEEN THE STATE AND THE RELIGIOUS GROUPS**

Statistical evidence indicates that the number of minority religions in Spain is growing. This actual growth is taking place within a general framework of legal freedom which possesses both a domestic and a European side. From a European point of view, it is necessary take in account that the article 10.2 of the Spanish Constitution establishes that: “the principles relating to the fundamental rights and liberties recognized by the Constitution shall be interpreted in conformity with the Universal Declaration of Human Rights and the international treaties and agreements thereon ratified by Spain”. The European Convention on Human Rights (ECHR) is one of the treaties ratified for Spain in this field, and his article 9 says that: “Everyone has the right

---

<sup>4</sup> About this topic, see Torres Gutiérrez (2000b); Torres Gutiérrez (2001b); Martín Sánchez (1990); Panizo y Romo de Arce (1991-1992).

to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief and freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance. Freedom to manifest one's religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others".

According with the constitutional frame and the ECHR, all the religious organizations don't matter their size or number of members, enjoy full religious freedom and equality under the law (Tarodo Soria 2005: pp. 353-388). However, as we will see, reality shows that a clear distinction exists between the Catholic Church, religious minorities (Jews, Evangelists and Muslims) and the rest of the registered religious groups. All of them have the right to free exercise of religion, but the status of each religious group depends of the existence of an agreement of cooperation with the State.

The article 16 of the Constitution establishes that "the public powers will keep in mind the religious beliefs of the Spanish society and maintain cooperation relationships with the Catholic Church and the other religious groups". This means that public authorities must be neutral in its relationships with the religious groups, and cooperate with the religious groups but not because the State values their religious beliefs positively, but because the State values positively the exercise of the fundamental right of religious freedom (Albiñana García 1997; Amerigo Cuervo 2004: pp. 11-36).

This form of understanding the relationships between the State and the religious groups has been developed through the article 7 of the Spanish Organic Law of Religious Freedom, which establishes that: "1. The State, taking account of the religious beliefs existing in Spanish society, shall establish, as appropriate, Co-operation Agreements or Conventions with the Churches, Faiths or Religious Communities enrolled in the Registry where warranted by their notorious influence in Spanish society, due to their domain or number of followers. Such Agreements shall, in any case, be subject to approval by an Act of Parliament. 2. Subject to the principle of equality, such Agreements or Conventions may confer upon Churches, Faiths or Religious Communities the tax benefits applied by ordinary legislation to non-profit Entities and other charitable organizations".

Spain has a long tradition using special agreements between the State and the religious groups, and until 1992 the beneficiary of such agreements has been exclusively the Catholic Church (Amérigo Cuervo 2001: pp. 433-442). These special agreements use to work in three areas: First area is education, and usually the special agreements permits to religious groups get money to finance its private religious schools, or to teach their religion in the public school. The second area is the accommodation of canon law to the civil law, in areas as family law and marriage law.

The third typical example is the using of special agreements to finance the salary of the clergy or the maintenance of the religious buildings<sup>5</sup>.

The application of the principle of cooperation implied that the State is obliged by the constitution to maintain co-operative relations with the religious groups, to the extent that religious beliefs prevailing in Spanish society demand (Motilla de la Calle 1989: p. 197). According with this legal frame is possible to differentiate three levels of church and State relations:

First, the Catholic Church legal status is established in 4 International agreements between Spain and the Holy See of 1979. Those agreements, together with the one signed in 1976, replaced the Spanish Concordat of 1953. The 1979 Agreements are: 1) Agreement on Legal Affairs; 2) Agreement on Education and Cultural Affairs; 3) Agreement on Economic Affairs; and 4) Agreement on Religious Assistance in the Armed Forces and Military Service for Clergy and Religious Persons. These agreements provides certain benefits to the Catholic Church that have not been yet made available to other religious entities, or for not religious groups, in areas as, for example, economic assistance, religious education in public school, or religious assistance in the public institutions, as the Army Forces, hospitals or penitentiary institutions (Satorras Fioretti 2000: p. 21).

Second, in 1992, as a result of the negotiations between the religious minorities (Muslims, Jews and Protestants) and the Government, it was approved three Cooperation Agreements, one for each religious minority. The religious organizations were the Federation of Evangelical Entities of Spain (FEREDE), the Federation of Israelite Communities of Spain (FCIE), and the Islamic Commission of Spain (CIE). Jews, Muslims, and Protestants have their own official status through these bilateral agreements, but enjoy fewer privileges than the Catholic Church.

The three agreements are identical in their content, and provide benefits in matters of great importance to citizens professing these faiths, as for example: the status of their religious leaders in areas of such importance as Social Security and ways of complying with their military duties, legal protection for their religious places, civil validity of marriage ceremonies held pursuant to their religious rites, religious services in public centres or establishments, religious education in schools, tax benefits applicable to religious properties, or the commemoration of religious holidays.

And third, the other religious groups recognized by the State and registered in the Ministry of Justice, but without agreements of cooperation with the State, enjoy fewer privileges than the Jews, Muslims, and Protestants.

In conclusion, the Spanish Constitution and the legal regulation provide for freedom of religion, and in theory there is no any official religion and religious

---

<sup>5</sup> See: Torres Gutiérrez (2003) pp. 197-223; Torres Gutiérrez (2001a) p. 97-109; Torres Gutiérrez (2002) pp. 877-892.

discrimination is illegal. However, in the practice the Catholic Church enjoys some privileges unavailable to other religious groups; and Muslims, Jews and Protestants enjoy some privileges unavailable to other religious groups (Torres Gutiérrez 2003a: pp. 243-268).

## **V. ECONOMIC AND FISCAL REGIME OF THE RELIGIOUS GROUPS**

The financing of religious groups in Spain is operated through direct economic assistance exclusively in the case of the Catholic Church. There is no state direct financial support either for the religious minorities or the religious groups registered in the Ministry of Justice, which must find their own funds for their religious functions, as for example, the salary or stipends of the clergy and other church officers, or the building and maintenance of places for the practice of the religious worship.

In common with the charities, the religious organizations do receive certain tax advantages, and their contributors get tax deductions for their contributions. Religious organizations are exempt from the payment of major taxes, when such taxes affect their religious activities. The religious organizations are collective manifestations of the right of religious freedom; therefore, from the constitutional perspective, the State is forced to value positively the exercise of the fundamental rights, and should exempt these entities from the payment of taxes.

### **V. 1. Economic and fiscal regime of the Catholic Church**

#### **V. 1. 1. Economic regime**

In 1979 it was approved an Agreement Concerning Economic Affairs between the Spain and the Holy See of special importance, since it substituted the Concordat of 1953. The preamble of the agreement is very clear, and says that, on the one hand, the State cannot indefinitely ignore or prolong legal obligations undertaken in the past; and on the other hand, given the spirit shaping the relations between the Catholic Church and the State, it is necessary to give a new meaning to both the sections concerning economic contributions as well as to the common system according to which said contributions shall be made<sup>6</sup>.

The agreement of 1979 tried to adapt the confessional system of financing of the Catholic Church, established in the Concordat of 1953, to the constitutional model of 1978. The agreement designs a transitional system of public financing of the Catholic Church, expiring with the self-financing of the Church and its financial independence.

---

<sup>6</sup> Vid. Preamble of the Instrument of ratification, dated 4 December 1979, of the agreement of 3 January 1979 concerning economic affairs (BOE nº 300, 15 December). Fernández Coronado (1991) pp. 541-77.

Respect to the duration of the State direct funding, the terms of the agreement were the following ones: “Three complete fiscal years after this Agreement is signed, the State may assign to the Catholic Church a percentage from income taxes or net patrimony or other taxes of a personal nature following the most suitable technical method. To do this, each taxpayer must, on the respective tax form, expressly declare his decision concerning the use he wishes to make of the money concerned. In the absence of such a declaration, the corresponding amount shall be assigned to other purposes. As long as the new system is not applied, the State, in the General Budget, shall consign a suitable bequest to the Catholic Church, in the form of one lump sum, which shall be updated yearly. During the substitution process, which shall take place over a period of three years, the budgetary bequest shall be decreased in proportion to the tax assignment received by the Catholic Church. Therefore, the State guaranteed every year to the Catholic Church the same economic revenues, with independence of the number of taxpayers that indicates in the declaration of IRPF its desire to finance to the Catholic Church”<sup>7</sup>.

Until 2007, the income tax form included a box that allows taxpayers to assign a percent of their taxes to the Catholic Church. Public financial assistance to the Catholic Church it has been a difficult and contentious issue. The church argued that, in return for the public subsidy, the State had received the social, health, and educational services of tens of thousands of priests and nuns who fulfilled vital functions that the State itself could not have performed. But the affirmation of the Catholic Church it is not complete true, because that money is dedicated to pay the salary of the catholic priest, and the State financial assistance for catholic education, charities or social services, are provided with other State budget.

Additionally, the Catholic Church may freely obtain payment or donations from the private sector, organize public collections and receive offerings<sup>8</sup>. The amounts donated to the Catholic Church have the same fiscal regime for donors than the donations to organizations classified or declared as charitable or of public utility (Rodríguez García 2005: p. 113).

#### V. 1. 2. Fiscal regime

The fiscal status of the religious activities developed by the Catholic Church is regulated in the 1979 Agreement Concerning Economic Affairs<sup>9</sup>, which established that:

A) The following income shall not be subject to income tax or value-added tax:  
1. The publication of instructions, statutes, pastoral letters, diocesan bulletins and any other document written by the competent church authorities. 2. Teaching activities in

---

<sup>7</sup> Instrument of ratification, dated 4 December 1979, of the agreement of 3 January 1979 concerning economic affairs (Boe nº 300, 15 December), art. 2.

<sup>8</sup> Instrument of ratification, dated 4 December 1979, of the agreement of 3 January 1979 concerning economic affairs (Boe nº 300, 15 December), art. 1.

<sup>9</sup> Instrument of ratification, dated 4 December 1979, of the agreement of 3 January 1979 concerning economic affairs (Boe nº 300, 15 December), arts. 4 and 5.

diocesan and religious Seminaries, as well as ecclesiastical disciplines at Church Universities. 3. The purchase of objects dedicated to the worship.

B) The Holy See, the Episcopal Conference, the Diocese, Parishes and other territorial Districts, religious Orders and Congregations and religious Institutions and their Provincials and their convents and monasteries are entitled to the following exemption: 1. Total and permanent exemption from property taxes on the following real estate: churches and chapels designated as places of worship, and their branches and annexed local buildings designated for pastoral purposes; residences of bishops and parish priests; premises designated as offices for the diocesan Curia and parish offices; seminaries designated for training diocesan and religious clergy, and Church Universities, as long as they impart teaching related to church disciplines; and the buildings designated fundamentally as houses or convents of the orders, congregations and religious Institutions. 2. Total and permanent exemption from excise duties, income tax and capital gains taxes. This exemption does not include those products obtained through financial operations, or those derived from its patrimony, when it has been transferred, nor to capital gains, nor to earnings subject of withholding at the source on income tax. 3. Total exemption from taxes on succession, donations and transfer taxes, as long as the acquired goods or rights are used exclusively for worship, maintenance of the Clergy, the sacred apostolate or charitable purposes.

The catholic religious associations dedicated to religious, charitable, teaching, medical, hospitable or social care shall enjoy the fiscal benefits provided for non-profit organizations, or those granted to private charitable organizations<sup>10</sup>.

V. 1. 3. The negotiations between the Government and the Catholic Church of 2006

The negotiations between the Government and the Catholic Church of 2006 in the area of public funding were carried out by the technique of the exchange of Notes between the Nuncio of Their Sanctity in Spain and the Ministry of External Affairs. The negotiations concluded with the emission of a combined Note in December 2006.

The result of the negotiations can be summarized in three points:

First, the Catholic Church will receive from the State exclusively the 0, 7% (before this agreement it was the 0,52%) of the personal income taxes of those taxpayers that, on their tax form, expressly declare their decision concerning the use he wishes to make of the money concerned. In absence of such a declaration, the corresponding amount shall be assigned to other social purposes. It is important to indicate that the contributors that indicate their desire to finance to the Catholic Church do not pay any more taxes that those who choose not to do it, because they can destine one part of the taxes that are forced to pay to the State to the Catholic Church.

---

<sup>10</sup> Instrument of ratification, dated 4 December 1979, of the agreement of 3 January 1979 concerning economic affairs (Boe nº 300, 15 December), art. 5.

The negotiation was satisfactory for both parts. The Government got that the Catholic Church accepts to pass to the penultimate phase designed in the 1979 Agreement Concerning Economic Affairs (the last one is self-financing); while the Church has gotten a new financing system but the Church didn't refuse anything what did not have to refuse, and made it 16 years after the conventional date, and in exchange it has gotten a financing model that, contrary to the previous financing system, doesn't have date of expiration.

Second, the Catholic Church commits to present an economic annual memory, explaining the destination of the revenues received through the system of tributary assignment.

And third, the Catholic Church accepted to pay the value-added tax (IVA). The Catholic Church refused to be exempted to the IVA after a long process. The European Commission remitted a report to Spain in December of 2005, requesting that the Catholic Church were charged with the IVA. The Spanish Government responded to the Commission that the Agreement Concerning Economic Affairs between Spain and the Holy See of 1979 is an International Treaty that was signed before the entrance of Spain in the European Union, and by virtue of this international agreement Spain cannot charge with the IVA the religious activities of the Catholic Church, unless the religious group accepts its subjection voluntarily to the tax. The answer of the European Commission was that the European regulation forces Spain to appeal to all the appropriate means to eliminate the incompatibilities between the European legislation and the national one<sup>11</sup>.

## **V. 2. Financing of religious minorities**

### **V. 2. 1. Economic regime**

The religious minorities may request services and donations of their followers, organize public donation campaigns and receive offerings and other contributions, as establishes the Organic Law of Religious Freedom of 1980. The amounts donated to the religious groups will have the same fiscal regimen for the donor in their income tax as those amounts given to organizations classified or declared as charitable or of public utility.

The religious minorities do not receive direct economic subsidies as happen with the Catholic Church, for this reason religious minorities have requested repeatedly to receive public funding. Protestant and Muslim leaders would like their communities to receive government support, through an income tax allocation as the Catholic Church. In answer to these petitions, the Government created in 2005 the Foundation Pluralism and Coexistence, dependent of the Ministry of Justice, in order to promote the integration of the Muslim, Jewish and Protestant minorities.

---

<sup>11</sup> The Commission recommended to the Spanish Government to the amount that the Catholic Church was saved, and that Spain, without charging the tax directly to the Church, fulfils the community legislation and paid the IVA. See Félix Ballesta and Martínez Félix (2007) p. 66; Llamazares Fernández (1991) p. 909.

The Foundation was constituted by the Ministry of Justice with a double purpose. On the one hand, it seeks to contribute to the execution of programs of cultural, educational and social interest of the non-Catholics religious groups with cooperation Agreement with the Spanish State, or with notorious character due to their number of followers. And on the other hand, to improve the knowledge that the society has of the religious minorities, avoiding negative stereotypes and favouring its integration in the Spanish society.

The beneficiaries of the foundation are exclusively the religious groups that signed agreements with the State in 1992 (Evangelicals, Jewish and Muslims), and the religious groups that the Ministry of Justice has recognized as notorious (at the moment: Mormons, Jehovah Witness and Buddhists). The political character of the foundation is appreciated in the composition of the foundation's board, which includes representatives of most government ministries as well as members of concerned religious groups.

The Foundation funds are used for cultural, educational, and social integration programs (not religious activities). The Foundation's bylaw establishes the Foundation's objectives: "to contribute to the implementation of programs and projects of a cultural, educational, and social-integration nature" (article 7). The Foundation supports activities that pursue these goals as, for example, cultural, social integration and educational activities that reinforce values like democracy, social justice, and respect for human rights, especially among young persons<sup>12</sup>.

The Foundation does not finance worship services; rather it seeks to benefit religious groups as they carry out activities relating to education, cultural development, and community service. The measure adopted by the Government in 2005 doesn't have precedents in the Spanish constitutional history, and it supposes that the State finances the cultural activities of the non-Catholic religious groups, using a specific institution for the pursuit and attainment of this result.

In the words of the first Director of the Foundation, "Because it receives public funding, the Foundation represents an entirely new *modus operandi* in this field and consequently involves the incurrance of some uncertainties. Nevertheless, the Foundation's mission may prove to be of interest and may ultimately improve how Spain's constitutional system treats religion. Specifically, the Foundation seeks to achieve equality by supporting measures designed to fully integrate religious minorities into Spanish society. This goal will be met as the Foundation's resources are used to help minority religions conduct social-welfare and charity programs, to provide

---

<sup>12</sup> To realize these objectives, the following actions may be proposed by the Foundation: "1. Creating teaching materials (manuals, textbooks, audiovisual aids, etc.) that reflect the cultural diversity of Spanish and European society as well as the exchange of experiences in this field; 2. Creating integration initiatives- especially specific programs for areas where the rate of social exclusion is highest- principally targeting students who, due to their social situation, may act under racist and xenophobic influences; 3. Supporting educational content that can help to better comprehend the characteristics of a multicultural society, especially in areas or subjects like history, human sciences, or languages; and 4. Promoting the formation of associations, for young persons in particular, with the purpose of encouraging activities meant to slow the growth of racist and xenophobic attitudes". See Contreras Mazario (2007) pp. 575ff.

education and diffusion of information about minority cultures, and to train and educate members of minority cultures”<sup>13</sup>.

Another argument that would justify the State funding of the cultural activities of the religious minorities would be the absence of social or cultural integration of these communities, but it ignores that other religious or not religious groups (as for example the gypsy minority) are excluded of this type of measures.

#### V. 2. 2. Fiscal regime of the religious minorities

The fiscal regime of the religious minority groups is regulated in the article 11 of the Cooperation Agreement between the Spanish State and the Islamic, Jewish and Protestant minorities<sup>14</sup>.

The following operations realized for the religious minorities shall be subject to no taxation whatsoever: the income proceeding from the distribution of religious publications and internal religious bulletins directly to the religious communities; and religious teaching in centres belonging to the religious minorities, or devoted to training religious leaders.

The religious minorities as a legal person are exempt:

A) From real estate tax in the case of: places of worship and outbuildings or ancillary premises devoted to religious services or spiritual; premises used for the religious minorities as community offices; and institutions devoted solely to training of religious leaders.

B) From the Corporation Tax when the income, property and rights so acquired, are devoted to worship or social services.

---

<sup>13</sup> According to Contreras, “greater difficulties arise with the exclusion of religious entities that qualify and register in the Register of Religious Entities yet are nonetheless excluded because they do not have a conspicuous and well established presence in Spain. This exclusion gives us pause, for it represents a limit in the range of possible beneficiaries and eliminates minority religious groups who are equally capable of carrying out many of the Foundation's aims. Nevertheless, the limitation can be justified by the need for proportionality and the need to identify the most representative groups. Both of these restrictions are necessary because the Foundation distributes economic assistance from a pool of scarce resources. Therefore, there is ample justification for limiting economic resources to groups that, while minorities, enjoy special legal recognition such as notorious character, despite the uncertainty this concept may have. While this exclusion could arguably be seen as breaking the principle of equality guaranteed in Article 14 of the Constitution, such differential treatment for religious groups has not been criticized as unconstitutional. Even so, the application of notorious character to certain religious groups should be understood as transitory; in the future, all religious groups registered in the Register of Religious Entities will enjoy notorious character” (Contreras Mazario 2007: p. 610).

<sup>14</sup> In 1992 agreements on cooperation with the State were signed by three organizations on behalf of Protestants, Jews, and Muslims. The organizations were the Federation of Evangelical Entities of Spain (FEREDE), the Federation of Israelite Communities of Spain (FCIE), and the Islamic Commission of Spain (CIE). Laws 26, 27, 28, November 10, 1992, (BOE N°1 272, of 12 November 1992).

C) From the Transfer Tax when the respective property or rights acquired are devoted to religious services or spiritual support.

The associations and entities created and managed by the religious minorities for charitable-educational, medical and hospital or social service activities, also enjoy the tax benefits that Spanish State ordinary legislation on taxes applies to non-profit organizations, and those granted to private charitable organizations.

### **V. 3. Other religious groups**

The organizations inscribed in the Ministry of justice and recognized by the State as religious do not enjoy the benefits of the “Foundation Pluralism and Coexistence” for the development of their cultural, educational and social integration activities, except if the Ministry of Justice has recognized them notorious character (at the moment: Mormons, Jehovah Witness and Buddhists), or they have signed cooperation agreements with the State.

This category of religious groups have the same source of resources than the private ideological organizations to finance their activities, and can improve their tax and fiscal situation by becoming non-profit entities, but not for their religious character but for lacking of profit interest. In the case that the religious groups acquire the status of non-profit entities, they are exempt from certain taxes, which would normally be considered taxable corporate income and which would apply to income received from collections, offerings, and fixed contributions. The same status applies to distribution of text for religious and theological instruction in religious education centers. But, in any case their fiscal status will be worse than the status of the religious group with agreements of cooperation.

This situation is incongruous with the constitutional model of equality and non discrimination ordered in the article 14 of the Spanish Constitution, because the fiscal equality in the exercise of the religious freedom cannot be made depend on the signature of an agreement of cooperation with the State, that which, in turn, depends on elements as the notorious character of the groups, that are subjective and depend excessively on the political interest of the Government.

## **VI. CONCLUSIONS**

The political and social transformation of the Spanish society operated by the Constitution of 1978 should in theory have had a profound impact on the model of relations between the State and the religious organizations. The constitutional change was radical, as was the passing from a Catholic confessional State to a model of full religious freedom. To avoid a traumatic change in this context, the State has carried out cooperation agreements with the religious organizations. These agreements have promoted the integration of religious groups in civil society, but have legitimized a

discriminatory system in which some religious organizations enjoy economic benefits and privileges not available for ideological (non-religious) and other religious groups.

At the moment, religious groups enjoys different methods of financing. The Catholic Church is funded by private donations, and public money coming from the personal income taxes of those taxpayers that, on their tax form, expressly declare their decision concerning the use he wishes to make of the money concerned. Religious minorities with agreement of cooperation, and the religious groups that the Ministry of Justice has recognized as relevant, are funded by private donations and public money coming from the public Foundation Pluralism and Coexistence. Religious groups recognized by the Ministry of Justice -but not recognized as relevant- are financed exclusively by private donations. And religious organizations that have not been recognized as such by the Ministry of Justice are financed by the same mechanisms than ideological associations.

The direct public financing of the Catholic Church supposes that the State discriminates among its citizens for reason of its beliefs, and this discrimination doesn't disappear because the State finances other religious groups (for example, by the public Foundation Pluralism and Coexistence). The system used in Spain to finance the Catholic Church it is not the Church tax in the way of the German system, were citizens freely decide to finance their religious organizations using the State structures but without cost for the State. In Germany church members pay an extra tax plus their income tax, and the extra amount is the money designated to finance their religious organization. The Spanish system is a direct economic assistance to the Catholic Church that, in consequence, is financed by all the contributors.

The fiscal regime of religious organizations also raises serious questions about its constitutionality. Cooperation agreements between the State and religious organizations have established a discriminatory system in which the Catholic Church enjoys a privileged status. However, unlike what happens with direct public funding, in this context there is a slow process of equalization between religious groups, and between religious groups, charities and nonprofit organizations. The best example of this situation is the acceptance of the Catholic Church to pay the value-added tax since 2006. There is also a slow process of fiscal equalization between the non-profit organizations and the religious groups that signed agreements of cooperation with the State in 1992, characterized by the access of non-profit entities to the tax status enjoyed by religious minorities.

From a constitutional perspective, is the exemption of religious groups from taxation a matter of legislative grace or a consequence of the religious freedom? There is a constitutional basis for tax exemptions when the income is used for the promotion of religious freedom. As long as taxes have had any potential negative impact on the religious activities of the religious organizations, they have been expressly exempted from such taxes. The amount of the exemptions is not an impermissible sponsorship of religion, since the Government does not transfer part of its revenue to the religious organizations, but simply abstains from demanding that the religious organizations

support to the State. The exemption of religious organizations from taxes may be rooted in the article 16 of the Spanish Constitution (freedom of religion and State ideological and religious neutrality), because the taxation of religious organization would prevent the exercise of the fundamental right of religious freedom.

As we have seen, religious organizations enjoy different models of public financing depending on the agreements of cooperation that they have negotiated with the State. This situation supposes a religious discrimination prohibited by the Constitution, which can only be justified on the need to address a slow transition in this context, due to the deep confessional past of the Spanish society, but it's been 35 years since the adoption of the Constitution.

For all these reasons, it seems necessary to change the financing model of religious groups in Spain according with three principles. First, direct public funding of religious organizations must disappear in the case of the Catholic Church and the religious minorities, as a way to prevent that public money will be used to finance private beliefs and to avoid discrimination among religious groups. Second, the State can encourage through tax deductions private donations to religious institutions. This model should be the same for all religious and ideological groups, and tax benefits should be identical for all citizens, regardless of what religious group they want to fund. And third, it is necessary to equate the tax status of religious organizations, charities and non-profit organizations that perform activities of public interest.

## REFERENCES

- ALBIÑANA GARCÍA C. (1997) “La financiación de las Iglesias”. In: *Revista Española de Derecho Financiero*, Vol. 14.
- AMÉRIGO CUERVO F. (2001) “A propósito de la Sentencia del tribunal constitucional de 15 de febrero de 2001”. In: *Laicidad y libertades. Escritos jurídicos*, Nº. 1.
- AMERIGO CUERVO F. (2004) “La financiación de las confesiones religiosas en los países de la Unión Europea”. In: *Laicidad y libertades. Escritos jurídicos*, Nº. 4.
- CASTRO JOVER, A. (2005) *La Utilización de los signos de Identidad religiosa en las relaciones de trabajo en el derecho de Estados Unidos*. Madrid: Servicio de Publicaciones de la Universidad Complutense.
- CONTRERAS MAZARIO, J. M. (2007) “Direct Financing of Religious Minorities in Spain”. In: *The Brigham Young University Law Review*, Nº 3.
- FÉLIX BALLESTA, M.A. and MARTÍNEZ FÉLIX C. (2007) “¿Es contraria al Derecho Comunitario la exención del impuesto sobre construcciones, instalaciones y obras (ICIO), de que goza la Iglesia Católica en España?”. In: *Cuadernos de integración europea*, Nº. 7.
- FERNÁNDEZ CORONADO A. (1991) “ Los Acuerdos del Estado Español con la Federación de Entidades Religiosas Evangélicas de España (FEREDE) y la Federación de Comunidades Israelitas, (FCI). Consideraciones sobre los textos

- definitivos”. In: *Anuario de Derecho Eclesiástico del Estado*, Vol. VII.
- LLAMAZARES FERNÁNDEZ D. (1991) *Derecho Eclesiástico del Estado. Derecho de la Libertad de Conciencia*. Madrid: Servicio de Publicaciones de la Universidad Complutense.
- MARTÍN SÁNCHEZ I. (1990) “La financiación de las confesiones religiosas en el derecho español”. In: *Anuario de Derecho Eclesiástico del Estado*, Vol. VI.
- MOTILLA DE LA CALLE A. (1989) “Notas sobre Problemas Fundamentales de Derecho Eclesiástico Contemporáneo”. In: *Anuario de Derecho Eclesiástico del Estado*, Vol. V.
- PANIZO Y ROMO DE ARCE, A. (1991-1992) “Soluciones conceptuales al actual sistema económico de la Iglesia Católica”. In: *Revista de la Facultad de Derecho de la Universidad Complutense de Madrid*. Nº 79.
- PELAYO OLMEDO, J.D. (2007) *Las comunidades ideológicas y religiosas, la personalidad jurídica y la actividad registral*. Madrid: Ministerio de Justicia.
- RODRÍGUEZ GARCÍA, J.A. (2005) “La protección jurídica de las minorías culturales en el Derecho Comunitario”. In: *Revista Europea de Derechos Fundamentales*, Nº 5.
- RODRIGUEZ GARCIA, J. A. (2009) *Laicità, Interculturalità e Il Meticciano Costituzionale Democratico in Spagna*. In: *Stato, Chiese e Pluralismo Confessionale*.
- SATORRAS FIORETTI, R.M. (2000) *Lecciones de Derecho eclesiástico del Estado*. Barcelona: Bosch.
- SOUTO PAZ, J.A. (1995) *Derecho eclesiástico del Estado. El Derecho de la Libertad de Ideas y Creencias*, 3rd ed. Madrid: Marcial Pons
- TARODO SORIA, S. (2005) “Los recientes Convenios de colaboración entre la Generalitat de Catalunya y confesiones minoritarias”. In: *Laicidad y Libertades. Estudios jurídicos*, Nº 5.
- TARODO SORIA, S. (2007) “Federalismo fiscale, principio di sussidiarietà e neutralità dei servizi sociali erogati”. In *Esperienze a confronto*, a cura di Antonello de Oto e Federica Botti, Bologna: Bologna University Press.
- TORRES DEL MORAL, A. (1998) *Principios de Derecho Constitucional Español*. Madrid: Servicio de Publicaciones de la Universidad Complutense.
- TORRES GUTIÉRREZ, A. (1996) “Consideraciones generales sobre el Régimen Fiscal de las Confesiones Religiosas en España”. In: *Revista de Contabilidad y Tributación*, Nº 165.
- TORRES GUTIÉRREZ, A. (1999) “La asignación tributaria en España. Una quiebra del principio de laicidad del Estado”. In: *Boletín de la Sociedad Española de Ciencias de las Religiones*.
- TORRES GUTIÉRREZ, A. (2000a) “El art. 7 de la Ley Orgánica de Libertad Religiosa y la discriminación de las confesiones religiosas en España en la tributación por IVA”. In: *Laicidad y Libertades. Escritos Jurídicos*. Nº 0.
- TORRES GUTIÉRREZ, A. (2000b) *Iglesia y Fisco en la Historia de España*. Madrid: Servicio de Publicaciones de la Facultad de Derecho de la Universidad Complutense.
- TORRES GUTIÉRREZ, A. (2001a) “Los beneficios fiscales de las viviendas de los ministros de culto católico en España y el principio de laicidad del Estado. La Sentencia del Tribunal Supremo de 19 de marzo de 2001”. In: *Boletín de la*

- Sociedad Española de Ciencias de las Religiones*, Nº 15.
- TORRES GUTIÉRREZ, A. (2001b) *Régimen Fiscal de las Confesiones Religiosas en España*. Madrid: Colex.
- TORRES GUTIÉRREZ, A. (2002) “La financiación de la Iglesia Católica en España”. In: *Revista Española de Derecho Canónico*, Vol. 59.
- TORRES GUTIÉRREZ, A. (2003a) “El desarrollo postconstitucional del derecho fundamental de libertad religiosa en España”. In: *Revista de Estudios Políticos*, Vol. 120.
- TORRES GUTIÉRREZ, A. (2003b) “La Asignación Tributaria en España. Un estudio crítico”. In: *Revista Jurídica de Navarra*, Nº 34.