

# **The principle of cooperation as an instrument for the development of the right to religious freedom: the Spanish model.**

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When religion is used as an excuse to attack the fundamental rights of individuals, it is necessary that political and religious leaders speak and cooperate in the search for a legal framework in which individuals and communities can exercise religious freedom, the first of liberties.

Perhaps one of the most important aims of supranational and international law, to which they devote most of their intervention strategies, is to protect those who, for structural reasons, face discrimination under the national laws of their countries. In fact, EU law has a series of provisions that protect individuals belonging to a minority.

Currently, the European Union is searching for a legal system that can harmonise the systems of the various member countries. Thus, regulating the religious phenomenon cannot disregard the efforts made in the search for common legislation. However, we need to take into account the fact that the idiosyncrasies of the member countries are the result of their respective legal systems.

In this context, Spain is one of the countries that have sought to grant individuals and religious confessions a legal system in which they could develop and exercise the right to religious freedom, regardless of their beliefs, and the confessions would enjoy a similar status under national law.

Thus, with the advent of democracy and the enactment of the Constitution in 1978, Spain experienced a change in the way the State construed the religious phenomenon. Article 16 of the Constitution guarantees freedom of ideology, religion and worship for individuals and organisations, with the sole limitation of maintaining public order. It states that no-one may be obliged to state their ideology, religion or beliefs. Finally, it establishes the model of a secular State in which the public authorities take into account the religious beliefs of society and maintain a relationship of cooperation with the Catholic Church and other religious confessions.

Moreover, four principles derive from the Constitution and direct the relationship between the State and Churches: the principle of religious freedom; the principle of neutrality and secularity; the principle of equality and non-discrimination; and the principle cooperation that gives meaning to the system of State-Churches relations in Spain.

The State construes cooperation as a predisposition to facilitate and promote the conditions to make faith possible, as well as the diverse aspects or manifestations arising from faith. The State assumed its duty to promote religious freedom and recognised religious organisations as the spheres through which individuals could develop their religious freedom.

If individuals find their right to exercise religious freedom guaranteed by

the State, the latter is guaranteeing the right of the religious community at the same time. If the State allows the believer to practice religious rites, it cannot deny a confession the right to organise said rites without falling into a contradiction. Therefore, if the system guarantees individuals the right to exercise religious freedom concerning its essential content, it will have to do the same with all religious confessions.

The Organic Law on Religious Freedom (LOLR) was enacted in 1980 for that reason and it has created some instruments that enable the State to cooperate effectively with religious confessions. These instruments are: a) the Registry of Religious Entities; b) the Religious Freedom Advisory Committee; c) and, finally, the possibility for religious confessions to conclude cooperation agreements with the State.

#### **a) The Registry of Religious Entities**

With the register they obtain legal personality and enjoy a legal status that recognises its legal rights and grants them a series of advantages that they would not have otherwise. The Registry becomes a means of facilitating religious confessions' right to religious freedom.

The Registry are in the Ministry of Justice and currently contains more than 17,000 religious organisations.

#### **b) The Religious Freedom Advisory Committee**

Envisaged in article 8 of the Organic Law on Religious Freedom, the Advisory Committee is a stable committee made up of an equal number of by representatives of the State Administration, Churches, Confessions or

their Religious Communities or Federations and eminently competent individuals whose advice is deemed to be of interest in affairs related to the current law.

The presence of religious confessions in the Advisory Committee reinforces the idea expressed by Independent Expert Ms Gay McDougall, the Human Rights Committee and the United Nations in several documents that religious groups were becoming more integrated and social cohesion had improved. The fact is the dialogue between confessions and with the Administration that takes place in a body of this nature can serve to resolve disputes and give stability to a multi-religion society.

**c) The possibility of concluding cooperation agreements with the State**

This possibility was set out in article 7.1 of the Organic Law on Religious Freedom. Agreements between the Spanish State and the Federation of Evangelical Religious Entities of Spain, the Federation of Jewish Communities of Spain and the Islamic Commission of Spain were signed in 1992. Contrary to the Organic Law on Religious Freedom, the agreements have created a specific framework of rights for confessions offering the possibility of obtaining tax benefits; give religious assistance in the Armed Forces, hospitals and prisons; teaching religion in schools; food and animal slaughter in accordance with specific religious rites; the civil effect of marriages entered into with a religious ceremony; burials according to specific religious rites; and the establishment of religious holidays in the work year calendar.

**d) Foundation for Pluralism and Coexistence**

However, there is one last instrument, also created by the Ministry of Justice in 2004, which is the Foundation for Pluralism and Coexistence. It reinforces the idea of the participation of minority groups in political and social processes and, as a result, in matters pertaining to religions. Thus, the communities can take part in the decisions that affect them.

To carry out its objectives, the Foundation works in three main areas: a) with minority confessions, supporting their representative bodies and activities, as well as their communities and local entities; b) with the wider community, promoting better knowledge of the minority confessions and respect for religious freedom; and c) with the administrations, equipping them with the necessary resources to manage religious diversity. With that aim in mind, in 2011, the Ministry of Justice, the Spanish Federation of Municipalities and Provinces (FEMP) and the Foundation for Pluralism and Coexistence set up an Observatory of Religious Plurality in Spain.

Evidently, much remains to be done but it is also true that in a very short span of time, Spanish society has adopted a legal framework in which individuals and organisations can exercise their right to religious freedom freely.

Moreover, the State has also wanted to give religious organisations importance as spokespeople for the civil society to which they belong. Apart from managing and seeking solutions to the demands of their faithful, they also need to create an area of safety and coexistence in what has become a society with multiple religions. Thus, the recognition of the legal personality of religious confessions not only recognises their rights but also allows them to participate in political and social processes. Among other things, their contribution can be useful in combating marginalisation

and the exclusion of religious groups compared to the predominant religion, and to prevent attacks against them by adopting legislative measures.

Participation of this nature by minorities has become an essential condition for securing collective identity, membership in a community, social cohesion and, in short, security. As a result of the legal framework created, individuals can develop as believers within the private and public spheres. The public authorities, exercising their promotional functions, have permitted the exercise of the right to religious freedom to be real and effective within the limits of public order.

Thus, an individual's membership in a religion recedes into the background and the term "citizenship" acquires true importance. It is that term, citizenship; membership in a political community, which recognises an individual's fundamental rights and allows them to be exercised in freedom. So it has been pronounced on several occasions by the United Nations Human Rights Council, the Forum on Minority affairs, and several European regional bodies.