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## Religious Freedom in Spain

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It is difficult to grasp the legal solutions in the area of religious freedom that are currently in force in Spain without the knowledge of the history of Spanish legislation in this regard. It is not necessarily a long story, albeit very turbulent and causing much controversy up to this day. Since 2015 marked the 50th anniversary of the Vatican Council's Declaration on Religious Freedom, *Dignitatis Humanae*,<sup>1</sup> in the following analysis I would like to focus on the role it played in the historical process of forming and changing the regulations concerning religious freedom in Spain.<sup>2</sup>

### 1. Religious freedom in Spain before *Dignitatis Humanae*

For the first time, constitutional separation of the state and Church, as well as the guarantee of “freedom of conscience and the right to freely

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<sup>1</sup> The text of the Declaration was adopted in a vote on 19 November 1965, on the eve of the end of the Council.

<sup>2</sup> In this paper I will, for the most part, rely on the following monograph: P. RYGUŁA: *Wolność religijna w Hiszpanii na tle przemian społeczno-politycznych w latach 1931—1992* (Religious Freedom in Spain against the backdrop of socio-political changes in the years 1931—1992). Katowice 2009.

practice any religion,”<sup>3</sup> were contained in Art. 27 of the Republican Constitution of 9 December 1931. The Spanish republican system of the 1920s and 30s was built upon the pre-existing notion of negating the monarchy’s legal and political solutions. Thus, paradoxically, apart from legislation designed to guarantee freedom of conscience and religious practice, the legislator would also put forward provisions which granted the state far-reaching interference and restriction of a substantive scope of freedoms of natural and legal persons based on religious beliefs, membership in a particular religious community, or a positions held by them therein.<sup>4</sup>

The constitution declared secularity of the state in Art. 3, according to which “the Spanish state shall have no official religion.” The desire to move away from the existing practice of regulating state-Church relations through bilateral arrangements was expressed by this Act in Art. 14, where it is said that “exclusive competence of the Spanish state shall be legislation” with respect to the state-Church relations and religious worship. Article 27 of the Fundamental Law on the one hand granted all religions the right to private practice of religious rites; on the other hand, however, it also claimed that “public demonstrations of worship shall, in every case, be authorized by the government.” The cited regulations indicate the legislator’s desire to restrict the scope of religion’s presence in public life, and exercise control over those manifestations of religious life which have remained in the public sphere of social life.

Along with the fall of the Second Republic, the Spanish legislator was gradually returning to the religious state system and to religious uniformity, where Catholicism was the foundation of unity — not only of the political community, but also the national one. Constitutional foundations of Francoist Spain were established in the long process of adopting new *leyes fundamentales*. For this reason, the regulations of “religious affairs” included in the laws provide an insight into the evolution of the legislator’s approach toward this particular case. The first two fundamental laws, introduced in the period which can be defined as a time of political exploration (the Labor Charter of 1938<sup>5</sup> and the Law Constituting the Cortes of 1942<sup>6</sup>) did not include provisions on religious character of the state. Catholicism was recognized as “the religion of the Spanish State” in

<sup>3</sup> See: “Constitución de la República Española.” *Gaceta de Madrid* 1931, n.º 344 (de 10 de diciembre), pp. 1578—1588.

<sup>4</sup> P. RYGULA: *Wolność religijna...*, p. 138.

<sup>5</sup> Fuero del Trabajo. *Boletín Oficial del Estado* 1938, n.º 505 (de 10 de marzo), pp. 6178—6181.

<sup>6</sup> Ley de 17 de julio de 1942 de creación de las Cortes Españolas. *Boletín Oficial del Estado* 1942, n.º 200 (de 19 de julio), pp. 5301—5303.

Art. 6 of the Charter of the Spanish of 1945.<sup>7</sup> Also, Art. 1 of the The Law of Leadership Succession of 1947<sup>8</sup> stated that “Spain, as a political unity, shall be a Catholic state.” Finally, within the second rule contained in the Law of the Principles of the *Movimiento Nacional* of 1958,<sup>9</sup> the legislator declared the following: “the Spanish nation prides itself on respecting the law of God, according to the doctrine of the holy Catholic Church.” Under these political circumstances, it is hardly a surprise that the convocation of the Second Vatican Council, as well as resulting deliberations and documents, were of great interest to Spain — a country whose fundamental laws were committed to shape their own legislation in accordance with the doctrine of the Catholic Church.

The followers of other religions in Francoist Spain were guaranteed religious tolerance. The aforementioned Art. 6 of the Charter of the Spanish stated that “no one shall be persecuted based on their religious beliefs or private practice of worship.” However, the same article went on to claim that “other ceremonies or external manifestations outside the Catholic religion shall not be permitted.”<sup>10</sup>

## 2. The impact of the Vatican Council’s doctrine on the regulations concerning religious freedom in Spain

When speaking about the impact of the Vatican Council on the Spanish political system, one should first point to *Dignitatis Humanae* promulgated on 9 December 1965. According to the authors of the Declaration, the foundation of religious liberty is to be sought in man’s dignity (or rather *human* dignity); this dignity — says the Declaration — “is recognized by the revealed word of God and reason.” Because of this dignity, all men, “[as] persons, that is beings endowed with reason and free will,

<sup>7</sup> Fuero de los Españoles. *Boletín Oficial del Estado* 1945 n.º 199 (de 18 de julio), pp. 358—360.

<sup>8</sup> Ley de Sucesión en la Jefatura del Estado, Art. 9. *Boletín Oficial del Estado* 1947, n.º 208 (de 27 de julio), pp. 4238—4239.

<sup>9</sup> Ley fundamental de 17 de mayo de 1958 por la que se promulgan los principios del Movimiento Nacional. *Boletín Oficial del Estado* 1958, n.º 119 (de 19 de mayo), pp. 4511—4513.

<sup>10</sup> This formulation stems from the Spanish Constitution of 1876, with the only difference being that Art. 11 of the 19th-century Fundamental Law used the expression “public manifestations” instead of “external manifestaions”; for more information on Art. 11 of the Constitution of 1876, see: G. BARBERINI: *El artículo 11 de la Constitución de 1876. La controversia diplomática entre España y la Santa Sede*. Rome 1962.

and thus personal responsibility, shall be impelled by their nature and the moral obligation to seek the truth, especially in the field of religion.” By admitting that religious liberty includes freedom to profess faith at the individual and social level, *Dignitatis Humanae* called for the recognition of this right in the state legislation forum as the right enjoyed by individuals and entire religious communities.<sup>11</sup>

Further, “the government is to see to it that equality of citizens before the law, which is itself an element of the common good, is never violated, whether openly or covertly, for religious reasons, nor is there to occur any discrimination among citizens.” Finally, considering the specific historical and social background of some countries, the Council Fathers agreed to the following: “If, in view of peculiar circumstances obtaining among peoples, special civil recognition is given to one religious community in the constitutional order of society, it is at the same time imperative that the right of all citizens and religious communities to religious freedom shall be recognized and made effective in practice.” This statement, in relation to the countries adopting Catholicism as their official religion, constituted a reminder on the part of the Council Fathers to respect equality of non-Catholics in Catholic states.

Changes in statutory regulations in Spain, introduced under the influence of the Council’s teachings, meant that former binomial, that is, *profession of faith — religious tolerance*, had been replaced by a new one, namely *profession of faith — religious freedom*. This correspondence was supposed to be the foundation of a new shape of the Spanish religious system. In the preamble to Ley Orgánica del Estado of 10 January 1967,<sup>12</sup> the legislator, referring to the need of legislation change with respect to creed, first cited the second principle of the *Movimiento Nacional*, according to which “the doctrine of the Church shall serve as an inspiration to [...] the legislation” of Spain, only to go on and cite *Dignitatis Humanae* which “demands [...] explicit recognition of this right and the resulting modification of Article 6 of the Charter of the Spanish.” In making this modification, the legislator still recognized Catholicism as the official religion of the state and granted it “official protection,” whilst providing “effective legal protection” to religious freedom.

<sup>11</sup> This postulate has already been indirectly hinted in the very title of the document: *Declaration on Religious Freedom, on the right of the person and of communities to social and civil freedom in religious matters*. In the second issue of the Declaration, the Council Fathers wrote the following: “[...] this right of the human person to religious freedom is to be recognized in the constitutional law whereby society is governed and thus it is to become a civil right.”

<sup>12</sup> Ley Orgánica del Estado. n.º 1/1967, de 10 de enero. *Boletín Oficial del Estado* 1967, n.º 9 (de 11 de enero), pp. 466—477.

After the approval of Ley Orgánica del Estado (along with the amended text of Art. 6 “Fuero de los Españoles”) in the Cortes (the Spanish parliament) and holding a national referendum on 24 February 1967, the Council of Ministers enacted the bill on religious freedom. This document, approved at the plenary session of Parliament on 26 June 1967, and signed two days later by *caudillo* (Francisco Franco), became the first act in the history of Spanish law on religious freedom.<sup>13</sup> Referring to *Dignitas Humanae*, the legislator stated the following in Art. 1 of the said act: “[...] the Spanish state recognizes the right to religious freedom rooted in man’s dignity and offers them, together with the necessary protection, freedom from coercion in the exercise of their rights” (Art. 1.1). In the same article, however, it is added that “exercising the right to religious freedom, understood in accordance with the teaching of the Catholic doctrine, shall be, in every case, consistent with the religious character of the Spanish State” (Art. 1.3). Thus, the legislator departed from the Council’s teaching on such an important issue as the extent of that freedom, introducing legal regulations in this regard from their own political standpoint.

Writing about the impact of the Vatican II on the shape of the church-state relations and records relating to religious freedom, it is hard not to notice the slow but effective influence of the Council with regard to the transformation of the entire political system in Spain. The efforts of the Holy See aiming to regulate those relations in accordance with the doctrine of Vatican II, while simultaneously resisting political transformations proposed by supporters of the authoritarian system, resulted in the transformation process of the entire political system after General Franco’s death, having been initiated with an amendment in religious law. Less than a month after taking over as the prime minister by reform-oriented Adolph Suárez, and a year before the elections to the new parliament that were to adopt a new constitution, state political structures would undergo the process of secularization.

On 28 July 1976, accompanied by the undergoing transformation, a concordat between the Holy See and the Government of Spain — commonly referred to as the basic agreement (*Acuerdo básico*) — was signed.<sup>14</sup> The text of the preamble stressed that change in the existing regulatory relations between the state and the Church had been made possible thanks to the transformations that had taken place in the Spanish society in the postconciliar Catholic Church, and also in the attitude of the state legislator who “allowed into their legislation the right to religious freedom

<sup>13</sup> P. RYGUŁA: *Wolność religijna...*, p. 259.

<sup>14</sup> Acuerdo entre la Santa Sede y el Estado Español. *Boletín Oficial del Estado* 1976, n.º 230 (de 24 de septiembre), pp. 18664—18665.

on the basis of human dignity.” Addressing the necessity of signing new agreements based on the principles of “independence of both parties to an appropriate extent” and “healthy cooperation” between the state and the Church, the text of the preamble reflects the desire of the signatories to develop such a concordat system that would directly correspond to the emerging socio-political reality of the country as well as the Council’s doctrine.<sup>15</sup>

The impact of the Council’s doctrine was also evident during the Constituent Assembly’s works on the text containing the provisions governing the constitutional guarantees of religious freedom. *Dignitatis Humanae* indicated the possibility to regulate the “issue of religion” not from the perspective of a political system (the only one then known to the Spanish society due to their legislative practice). During the parliamentary debate, devoted to Art. 16 of the Fundamental Law, the Council’s teaching was therefore cited by those who wanted to move away from the solutions applied in the Republican period, and under Franco’s rule. They comprised a large group of deputies, both supporters and opponents of the current wording of Art. 16 of the Constitution. It is because, for the most part, both camps strove to establish a new model of the Church-state relations. Finally, recognizing the impact of the Council’s teaching on the works of the Constituent Assembly, it can also be said that the Council’s doctrine served as an inspiration for the solutions contained in Ley Orgánica on Religious Freedom of 5 July 1980, being — after all — an extension of the provisions contained in Art. 16 of the Fundamental Law of 1978.<sup>16</sup>

### 3. Religious freedom in Spain — the current legal situation

#### 3.1. Introduction

Basic constitutional provisions concerning religious freedom were concluded by the legislator in the aforementioned Art. 16 of the Fundamental Law, reading the following:

1. Individuals and communities shall be guaranteed freedom in the realm of ideology, religion and worship. Exercising these freedoms shall be subject only to such limitations regarding external mani-

<sup>15</sup> P. RYGUŁA: *Wolność religijna...*, pp. 294—295.

<sup>16</sup> *Ibidem*, p. 417.



festations of professed beliefs that are necessary to maintain public order protected by law.

2. No one shall be obliged to declare their ideology, religion or beliefs.
3. No religion shall be considered a state religion. Public authorities should account for religious beliefs of the Spanish society and maintain the consequent relations of cooperation with the Catholic Church and other denominations.<sup>17</sup>

The content of Art. 16 is proof to the legislator's desire to deviate from the existing system solutions in the field of the Church-state relations (both from the ones that characterized Francoist Spain as well as the Second Republic) and develop such a secular state model which, rooted in the experiences of Spain's own history, remains consistent with the current beliefs of the Spanish society. In other words, the article reflects the attitude of the government's departure from perceiving religion in political and systemic terms in favour of the social dimension which — as stated in par. 3 of the cited article — that government is to take into account.<sup>18</sup>

Article 1 of the Constitution states that the Spanish state is to “protect the highest values of its legal freedom, justice, equality, and political pluralism.” In the literature (and not just the Spanish one), there is an opinion that these values determine the axiological foundations of the entire constitutional system.<sup>19</sup> Then, Art. 9.2 states that “public authorities shall be responsible for providing such conditions so that the freedom and equality of individuals and groups [...] could be effectively and efficiently implemented.” It also speaks of “removing obstacles that prevent or hinder their full implementation, and facilitating the participation of all citizens in political, economic, cultural, and social life.” These guarantees also apply to religious freedom as one of the constitutionally protected freedoms.<sup>20</sup>

It is, at the same time, worth bearing in mind that the inclusion of Art. 16 of the Constitution in Chapter 1 on fundamental rights and pub-

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<sup>17</sup> “1. Se garantiza la libertad ideológica, religiosa y de culto de los individuos y las comunidades sin más limitación, en sus manifestaciones, que la necesaria para el mantenimiento del orden público protegido por la ley.

2. Nadie podrá ser obligado a declarar sobre su ideología, religión o creencias.

3. Ninguna confesión tendrá carácter estatal. Los poderes públicos tendrán en cuenta las creencias religiosas de la sociedad española y mantendrán las consiguientes relaciones de cooperación con la Iglesia Católica y las demás confesiones.” *Boletín Oficial de las Cortes* 1978, n.º 170 (de 28 de octubre), p. 3704.

<sup>18</sup> P. RYGUŁA: *Wolność religijna...*, p. 319.

<sup>19</sup> A. ŁABNO-JABŁOŃSKA: *Iberyjska droga do demokracji. Studium prawnokonstytucyjne*. Warszawa 1996, p. 42.

<sup>20</sup> P. RYGUŁA: *Wolność religijna...*, p. 319.



lic freedoms (*De los derechos y de las fundamentales libertades públicas*) of Section 2, “Rights and Freedoms” (*Derechos y libertades*), is synonymous with the understanding of the right to religious freedom as a fundamental right.<sup>21</sup>

### 3.2. The limitations of the constitutionally guaranteed religious freedom

Determining the scope of freedom guaranteed by Art. 16.1, the legislator states that the use of it “is subject only to such limitations regarding external manifestations of professed beliefs that are necessary to maintain public order protected by law.” Therefore, the restrictions on the use of that freedom do not apply to the same content of ideological and religious beliefs (i.e. the internal scope of freedom in the realm of ideology, religion and worship), but only to external manifestations of those freedoms, and only those that could possibly disrupt public order.

Paragraph 2 of the cited article also provides that no one should be obliged to declare their ideology or religious beliefs. This provision should be understood not only as open prohibition of forcing individuals to submit verbal declarations relating to personal religious and non-religious convictions, but also as prohibition applicable to other kinds of manifesting those beliefs, such as participation in religious ceremonies.<sup>22</sup>

### 3.3. Religious neutrality of the state

Religious neutrality of the state<sup>23</sup> stems from Art. 16.3., which states the following: “No religion shall be considered a state religion.” This for-

<sup>21</sup> J. MANTECÓN SANCHO: *El derecho fundamental de libertad religiosa. Textos, comentarios y bibliografía*. Pamplona 1996, p. 121.

<sup>22</sup> Together with Art. 14, which states that “the Spanish shall be equal before the law,” Art. 16.2. is also a guarantee of non-discrimination for reasons related to the beliefs of the individual. See: P. RYGUŁA: *Wolność religijna...*, pp. 323—324. See also: Z. COMBALÍA: “Los límites del Derecho de libertad religiosa.” In: *Tratado de Derecho eclesiástico [VVAA]*. Pamplona 1994, p. 470.

<sup>23</sup> In reference to Art. 16.3 the term *neutralidad religiosa del Estado* is used, among others, by Giménez y Martínez de Carvajal and Goti Ordeñana. Satorras Fioretti uses the term *aconfesionalidad*, while Martínez Blanco opts for *no confesionalidad*. Molano

mulation determines not so much the state's secularity, but rather a non-state nature of all faiths existing in Spain. It represents departure from the principle of *cuius regio eius religio* in favour of *cuius non-regio eius religio*.<sup>24</sup> In negative terms, such formulation of religious neutrality of the state signifies departure from the belief system put into effect, among others, during the rule of General Franco. By stating that “no religion shall be considered the state religion,” the legislator also moves away from state-church relations that prevailed in the Second Republic.<sup>25</sup>

The legislator's departure from the existing political solutions in terms of the freedom concerned is also apparent when analyzing the positive dimension of the principle of neutrality. Guarantees of freedom in this dimension order public authorities to account for religious beliefs of the entire society as well as protect and promote religious freedom in this sense. Pursuing this constitutionally declared protection and promotion is to be practiced through cooperation with collective entities of religious freedom. In Art. 16.3, we read: “Public authorities shall account for religious beliefs of the Spanish society and maintain the consequent relations of cooperation with the Catholic Church and other denominations.”<sup>26</sup>

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uses the term *laicidad*, while José María Porras Ramírez refers to it as *laicidad positiva*. See: J. GIMÉNEZ Y MARTÍNEZ DE CARVAJAL: “Principios informadores actual Régimen del español de Relaciones entre la Iglesia y el Estado.” In: *Iglesia y Estado en España. Régimen jurídico de sus relaciones*. Eds. J. GIMÉNEZ Y MARTÍNEZ DE CARVAJAL, C. SALVADOR CORRAL. Madrid 1980, p. 42; E. MOLANO: “La laicidad del Estado en la Constitución española.” *Anuario de Derecho Eclesiástico del Estado* 1986, vol. 2, pp. 239—256; J.M. PORRAS RAMÍREZ: *Libertad religiosa, laicidad y cooperación con las confesiones en el Estado democrático de Derecho*. Cizur Menor 2006, pp. 121—138.

<sup>24</sup> See: R. M. SATORRAS FIORETTI: *Aconfesionalidad del Estado y cooperación con las confesiones religiosas (Art. 16.3 CE)*. Barcelona 2001.

<sup>25</sup> Developed in 1977 by the parliamentary subcommittee, a preliminary draft of the Constitution in Art. 3 shared similarities with the text of the Republican Constitution. Due to strong opposition of large segments of society, to whom the wording of Art. 3 of the draft sounded very much alike to the provisions of the Republican Constitution, it was decided to amend the text of the said article from “The Spanish State shall not be a religious state” to the text being currently in force. Furthermore, the already amended article was attached to Art. 16, giving rise to a new wording of the text, that is, one article composed of three, instead of two, paragraphs. See: P. RYGUŁA: *Wolność religijna...*, p. 325.

<sup>26</sup> On the one hand, Art. 16 of the Constitution obliges public authorities to the neutrality in the so-called issue of religion; on the other hand, however, it forces them to account for religious beliefs of the society which, in this particular case, is not neutral. The state is therefore religiously neutral when it offers its citizens freedom in the sphere of religious life, and ceases to be so when — whether religious or secular — tries to impose its own point of view with respect to the national religious reality. *Ibidem*, p. 326.

In describing the approach to religious neutrality of the Spanish state, it should be noted that, in many of the comments from the field of Spanish religious law, religion is often qualified as a positive phenomenon (*fenómeno social religioso*) in the text of the Constitution being currently in force.<sup>27</sup> It would be difficult — as emphasized by the authors — to imagine the real protection of the right to religious freedom if the government negatively perceived the very notion of religion, and thus that part of social life that this freedom is concerned with.<sup>28</sup>

In addition to this positive (or at least neutral) qualification of religion, the provisions contained in already cited Art. 16 and Art. 9.2 also lead to protection of religious pluralism.<sup>29</sup> The duties of a neutral state should therefore include ensuring individuals and religious communities the possibility of exercising the right to religious freedom in conditions of social peace, so that no one is discriminated against by the state authorities and the general public because of their beliefs. The public authorities are also responsible for “removing obstacles that prevent or hinder [...] full exercise” of the right to freedom, including religious freedom (Art. 9.2). It translates into providing such an environment which fosters actual exercise of the right to religious freedom, including the support for social atmosphere of religious pluralism.<sup>30</sup>

### 3.4. The cooperation of public authorities with the Catholic Church and other denominations

The provision regarding cooperation prevents interpreting the neutrality of public authorities as indifference of the state, characterized by a passive attitude towards religion or even hindering full exercise of the fundamental right guaranteed in Art. 16 of the Fundamental Law. It also does not allow for limiting the scope of religious freedom to the private sphere of life as a result of the marginalization of the religion’s com-

<sup>27</sup> J. CALVO-ÁLVAREZ: *Los principios del Derecho eclesiástico español en las sentencias del Tribunal Constitucional*. Pamplona 1999, pp. 56—57; M. LÓPEZ ALARCÓN: “Relevancia específica del factor social religioso.” In: *Las relaciones entre la Iglesia y el 27 Estado. Estudios en memoria del profesor Pedro Lombardía* [VVAA]. Madrid 1989, pp. 465—478.

<sup>28</sup> R. M. SATORRAS FIORETTI: *Aconfesionalidad del Estado...*, p. 76.

<sup>29</sup> J. A. SOUTO PAZ: *Derecho eclesiástico del Estado. El Derecho de la libertad de ideas y creencias*. Madrid 1995, pp. 81—94.

<sup>30</sup> This, of course, does not include supporting of certain religious communities with the sole purpose of creating a situation of the said pluralism.

munal dimension. An obligation to maintain “cooperative relations with the Catholic Church and other denominations”<sup>31</sup> clearly shows that the legislator, forcing public authorities to account for “religious beliefs of the Spanish society,” did not refer solely to the views of society understood as a collection of individuals.<sup>32</sup> It is because, by using the freedom of association in accordance with their religious beliefs, those individuals form, in fact, a religious community.<sup>33</sup> Religious communities may, in turn, acquire legal personality under Spanish law in accordance with Art. 22 of the Constitution, where the right to freedom of association is considered a fundamental right.

However, Art. 16.3 of the Constitution does not oblige public authorities to cooperate with any legal entity resulting from exercising the right to freedom of association, but only with those religious communities that gained the status of religion in the state law forum. Therefore, this obligation does not apply to those entities governed by Spanish law whose (not necessarily the sole) reason for establishment were commonly shared religious beliefs, and even more so the communities constituted on the foundation of non-religious ideologies. The ability to cooperate with these legal entities is granted to public authorities under the provision contained in Art. 9.2 of the Constitution.<sup>34</sup>

The cooperation declared in Art. 16.3 of the Constitution is achieved via two basic instruments — the first one of legislative nature, and the second of institutional nature. These are the conventions or agreements concluded between registered Churches, denominations, and religious communities and the state as well as the Advisory Committee operating under the Ministry of Justice. It is the Spanish Ley Orgánica on Religious

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<sup>31</sup> By recognizing the Catholic Church in the text of the Constitution as a legal entity that is in a position to establish relations of cooperation with public authorities, the legislator — acting in accordance with Art. 16.3 — “accounts for religious beliefs of the Spanish society.” They thus refer to the Spanish socio-religious reality, strongly influenced by history, culture, and the current role of various religious communities in the social life of Spain. By citing the record on the Catholic Church, the legislator does not violate equality before the law of all religions legally existing in Spain. All they do is capture the actual disparity between the said Church and other religious communities. Reflecting the status quo, they simultaneously grant all religions equal scope of religious freedom. Cf. P. RYGUEA: *Wolność religijna...*, p. 330.

<sup>32</sup> *Ibidem*, p. 326.

<sup>33</sup> As noted by Agustín Motilla, the majority of Spanish doctrine recognizes that religious communities date back earlier than the state itself, and are formed independently of it. See for example: A. MOTILLA DE LA CALLE: *El concepto de confesión religiosa en el Derecho español. Práctica administrativa y doctrina jurisprudencial*. Madrid 1999, p. 73; J. GOTI ORDEÑANA: *Sistema de Derecho eclesiástico del Estado*. Donostia 1992, pp. 6 f.

<sup>34</sup> P. RYGUEA: *Wolność religijna...*, p. 329.

Freedom of 1980 that describes them as the two main “instruments” of the said cooperation.<sup>35</sup>

### 3.4.1. The Advisory Committee on Religious Freedom

In Art. 8 of Ley Orgánica, the legislator announces the establishment of an Advisory Committee on Religious Freedom, which, operating under the Ministry of Justice, is to be made up of state administration representatives, representatives of Churches, religious denominations and communities as well as “competent persons” in matters governed by this act. This Committee was established by Royal Decree of 19 June 1981.<sup>36</sup> Currently enforceable instructions relating to the composition and operation of the Committee are contained in Royal Decree 932/2013 of 29 November 2013.<sup>37</sup>

According to the above-cited Royal Decree, the Committee is to comprise Chairman and Deputy Chairman, Secretary and ordinary members, that is: representatives of state administration,<sup>38</sup> Churches, denominations, and religious communities,<sup>39</sup> as well as experts appointed to assist in the interpretation and implementation of the right to religious freedom.<sup>40</sup> Plenary meetings of the Committee are convened by its Chairman or at the request of a majority of its members. In addition, the Committee operates in a permanent manner within the framework of the Permanent Committee and working groups. Chairman of the Committee is General Director for Religious Affairs.

<sup>35</sup> Ley orgánica 7/1980, de 5 de julio, de Libertad Religiosa. *Boletín Oficial del Estado* 1980, n.º177 (de 24 de julio), pp. 16804—16805.

<sup>36</sup> Real decreto 1890/1981, de 19 de junio, sobre constitución de la Comisión Asesora de Libertad Religiosa en el Ministerio de Justicia. *Boletín Oficial del Estado* 1981, n.º 213 (de 5 de septiembre), pp. 20450—20451.

<sup>37</sup> Real Decreto 932/2013, de 29 de noviembre, por el que se regula la Comisión Asesora de Libertad Religiosa. *Boletín Oficial del Estado* 2013, n.º 300 (de 16 de diciembre), pp. 98994—99002.

<sup>38</sup> The aforementioned Royal Decree of 2013 (see Art. 8) lists those ministries involved in the protection and promotion of the fundamental rights to religious freedom which are to be represented within the Committee.

<sup>39</sup> According to the Art. 8 of Ley Orgánica, among those representatives. there should, “in any case,” be persons representing Churches and religious associations, “which are permanently rooted in the Spanish society.”

<sup>40</sup> These experts are appointed by the Council of Ministers from among the candidates proposed by the Minister of Justice.

According to Art. 8 of Ley Orgánica of 1980, the Committee is to be responsible for “analyzing, informing, and submitting proposals” on the implementation of the provisions of Ley Orgánica. Its task is also to help with the drafting of texts of the agreements referred to in Art. 7 of the Act.<sup>41</sup> More information and specific responsibilities of the Committee are governed by Art. 3 of the cited Royal Decree of 2013. Among the tasks mentioned are: assessment of the degree of “rootedness” of specific religion in Spanish society on which depends the assessment of the possibility of signing a cooperation agreement with the state by a particular denomination. In what refers to the concordats with the Catholic Church, the Committee’s action is complementary, that is, excluded from the remit of the Joint Church-State Committee.<sup>42</sup>

### 3.4.2. Agreements on cooperation between the State and religious associations

In Art. 7.1 of the said Ley Orgánica it is stated that: “The State, considering religious beliefs of the Spanish society, shall conclude [...] agreements or conventions on cooperation with the Churches, denominations and religious communities entered in the register, who, through their scope and number of followers, have become firmly “rooted”<sup>43</sup> in the social reality of Spain. As for the State, the authority competent to negotiate the content of the contracts in question shall be the Ministry of Justice which acts on behalf of the General Directorate of Religious Affairs. As for the Church or a particular denomination, these authorities are the ones which are entitled to represent religious communities in accordance with their internal legislation. The legislator makes the entry into force of the bilateral arrangements contained in the agreement conditional on the approval of the Cortes Generales, as expressed in the act.<sup>44</sup>

In the case of the Catholic Church — which is subject of international law — cooperation agreements with the Spanish State are given the rank

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<sup>41</sup> In practice, this task has been extended to include analysis of the implementation of these agreements after their entry into force; it also applies to agreements concluded prior to Ley Orgánica 7/1980.

<sup>42</sup> J. M. CONTRERAS MAZARIO: “La Comisión Asesora de Libertad Religiosa.” *Revista Española de Derecho Canónico* 43 (1987), pp. 142—144.

<sup>43</sup> According to Art. 8 of the abovementioned Act, the assessment of the level of “rootedness” is left by the legislator to the Advisory Committee on Religious Freedom (*Comisión Asesora de Libertad Religiosa*).

<sup>44</sup> P. RYGUEA: *Wolność religijna...*, p. 349.

of a concordat.<sup>45</sup> State relations with other religions, devoid of such legal personality, are governed by the provisions of internal law.

The concordat system being currently in force comprises five international agreements signed by the Holy See and Spain. This system, perceived by the Spanish doctrine of religious law as one normative *corpus*, consists of five formally separate and mutually independent texts governing different aspects of the Church-state relations. The first of them, referred to as the basic agreement (*Acuerdo básico*), was signed on 15 August 1976.<sup>46</sup> Like the rest of the contracts, it contains a preamble where it presents the reasons for departure from the concordat regulations of 1953 in order to shape the Church-state relations in the spirit of the Second Vatican Council's teachings. The four other agreements were signed on 3 January 1979. They regulate legal issues,<sup>47</sup> economic issues,<sup>48</sup> matters related to teaching and culture,<sup>49</sup> as well as issues concerning military chaplaincy and military service of clerics.<sup>50</sup>

Speaking of international agreements underpinning relations between the state and the Catholic Church in contemporary Spain, in addition to the above five concordats, one should also mention the convention on the recognition of the civil effects of non-ecclesiastical studies completed at Catholic universities<sup>51</sup> (signed on 5 April 1962) as well as the agreement regulating issues of common interest to the state and the Church in the Holy Land (signed on 21 December 1994).<sup>52</sup>

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<sup>45</sup> In practice, bilateral agreements on cooperation with the Catholic Church are also concluded by autonomous communities and regional governments in their respective fields of activities and responsibilities, for instance, in matters regarding the protection of cultural heritage.

<sup>46</sup> Acuerdo entre la Santa Sede y el Estado español. *Boletín Oficial del Estado* 1976, n.º 230 (de 24 de septiembre), pp. 18664—18665.

<sup>47</sup> Acuerdo entre el Estado español y la Santa Sede sobre asuntos jurídicos. *Boletín Oficial del Estado* 1979, n.º 300 (de 15 de diciembre), pp. 28781—28782.

<sup>48</sup> Acuerdo entre el Estado español y la Santa Sede sobre asuntos económicos. *Boletín Oficial del Estado* 1979, n.º 300 (de 15 de diciembre), pp. 28782—28783.

<sup>49</sup> Acuerdo entre el Estado español y la Santa Sede sobre enseñanza y asuntos culturales. *Boletín Oficial del Estado* 1979, n.º 300 (de 15 de diciembre), pp. 28784—28785.

<sup>50</sup> Acuerdo entre el Estado español y la Santa Sede sobre la asistencia religiosa a las fuerzas armadas y servicio militar de clérigos y religiosos. *Boletín Oficial del Estado* 1979, n.º 300 (de 15 de diciembre), pp. 28785—28787.

<sup>51</sup> Instrumento de ratificación del Convenio entre la Santa Sede y le Estado español sobre el reconocimiento, a efectos civiles, de los estudios de ciencias no eclesiásticas realizadas en España en Universidades de la Iglesia. *Boletín Oficial del Estado* 1963, n.º 173 (de 20 de julio), pp. 10132—10134.

<sup>52</sup> Acuerdo entre el Reino de España y la Santa Sede sobre asuntos de interés común en Tierra Santa. *Boletín Oficial del Estado* 1995, n.º 179 (de 28 de julio), pp. 23027—23028.



The state also entered into cooperation agreements with other faiths and religions. However, Art. 7 of Ley Orgánica on Religious Freedom of 1980 allows for conclusion of such agreement only with those Churches, denominations, and religious communities which have been entered into the relevant register, and which, through their scope and number of followers, have become permanently rooted in the social reality of Spain. For this reason — to be able to reveal those roots — agreements between the state and non-Catholic denominations were signed not by individual, registered religious associations which, for various reasons, lacked a sufficiently large number of followers or have not been present in Spain for a long enough period of time, but instead by federations and committees associating them.

A large part of the registered Islamic religious communities belongs to<sup>53</sup> the Spanish Federation of Islamic Religious Associations and the Association of Islamic Communities of Spain. They both form the superior Islamic Commission of Spain (*Comisión Islámica de España*) which, having been entered into the Register of Religious Associations, is the legal representative of these communities in the relations between the state and the Commission. Most of the registered Jewish communities are part of the Federation of Israeli Communities of Spain (*Federación de Comunidades Israelitas de España*). Churches and associations derived from the evangelical tradition are mainly concentrated within the Federation of Evangelical Religious Associations (*Federación de Entidades Religiosas Evangélicas de España*). All registered religious associations forming part of a commission or federation may withdraw and no longer be subject to the regulations contained in the agreements signed by them. Similarly, each registered Church or community should be free to join a relevant commission or federation and thus be subject to the regulations contained in the agreements.<sup>54</sup>

Currently, there are three agreements between the Government of Spain and the said federations. These are:

1. Cooperation agreement between the Spanish state and the Federation of Evangelical Religious Associations of Spain<sup>55</sup>;
2. Cooperation agreement between the Spanish state and the Federation of Israeli Communities of Spain<sup>56</sup>;

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<sup>53</sup> P. RYGUŁA: *Wolność religijna...*, p. 386.

<sup>54</sup> *Ibidem*, p. 387.

<sup>55</sup> Ley 24/1992, de 10 de noviembre, por la que se aprueba el Acuerdo de Cooperación del Estado con la Federación de Entidades Religiosas Evangélicas de España. *Boletín Oficial del Estado* 1992, n.º 272 (de 12 de noviembre), pp. 38209—38211.

<sup>56</sup> Ley 25/1992, de 10 de noviembre, por la que se aprueba el Acuerdo de Cooperación del Estado con la Federación de Comunidades Israelitas de España. *Boletín Oficial del Estado* 1992, n.º 272 (de 12 de noviembre), pp. 38211—38214.

3. Cooperation agreement between the Spanish state and the Islamic Commission of Spain.<sup>57</sup>

Reading of these agreements points to parallelism of all three texts. This editorial convergence is a testament to the willingness of equal treatment of all faiths, which are to be subject to the arrangements contained in those agreements, in the state law forum. The Spanish legal doctrine stresses that normative issues governed in those texts, forming the subject of each of the agreements, are common to all of them, albeit “adapted to the specifics of each religion.”<sup>58</sup>

<sup>57</sup> Ley 26/1992, de 10 de noviembre, por la que se aprueba el Acuerdo de Cooperación del Estado con la Comisión Islámica de España. *Boletín Oficial del Estado* 1992, n.º 272 (de 12 de noviembre), pp. 38214—38217.

<sup>58</sup> P. RYGULA: *Wolność religijna...*, p 388.

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PIOTR RYGUŁA

## Religious Freedom in Spain

### Summary

The article opens with a historical analysis of the sources of contemporary legal regulations concerning religious freedom in Spain. Thus, the author discusses the legislation from the period of the Second Spanish Republic and General Franco's Spain. The text points to the fact that the political separation of Church and state, as well as the guaranty of "the freedom of conscience and the right to practice any religion in freedom" were included for the first time in the Republican Constitution of 9 December 1931 while the first law on religious freedom in Spain was introduced in 1967 during the period of General Franco's rule. However, in both cases the freedom declared in the documents was limited by the Spanish legislator because of the axiological assumptions of contemporary political systems.

Next, the author discusses the present-day legal regulations concerning religious freedom and religious neutrality of the Spanish state. The text analyzes Article 16 of the 1978 Constitution, which guarantees "individuals and communities [...] the freedom of ideology, religion and worship," as well as religious neutrality of the state. At the same time, the authorities are obliged "to consider religious beliefs of the Spanish people," and "as a result, to maintain a cooperative relationship with the Catholic Church and other denominations." The analysis encompasses also the activity of the Advisory Commit-

tee on Religious Freedom, as well as the content of cooperation agreements between the state and the particular confessional associations.

The reader's attention can be drawn to the point of view assumed by the author in order to present the historical process of creating the Spanish legislation concerning religious freedom. The author emphasizes the role of Vatican II's teaching, especially the declaration *Dignitatis Humanae*, which allowed the Spanish legislator "to get free" from the restrictions imposed on the declared right to religious freedom, which were present in both the republican regime and General Franco's rule.

PIOTR RYGULA

## La liberté religieuse en Espagne

### Résumé

L'article commence par l'analyse historique des sources de l'état juridique actuel en Espagne dans le domaine de la liberté religieuse. En l'occurrence, l'auteur décrit la législation de l'époque de la Seconde République espagnole et de l'Espagne où Francisco Franco était au pouvoir. Il dénote que la séparation de l'État et de l'Église ainsi que les garanties concernant la liberté de conscience et le droit à pratiquer de manière libre n'importe quelle religion ont été incluses, pour la première fois, dans la constitution républicaine du 9 décembre 1931. Par contre, la première loi sur la liberté religieuse en Espagne a été introduite en 1967, sous le régime de Franco. Cependant, dans les deux cas, la liberté, bien que légalement déclarée, était limitée par le législateur espagnol pour des raisons liées à la situation politique.

Ensuite, l'auteur décrit l'état juridique étant actuellement en vigueur en Espagne dans le domaine de la liberté religieuse et la neutralité religieuse de l'État. Il analyse le contenu de l'article 16 de la constitution de 1978 qui garantit « la liberté d'opinion, de religion et de culte des individus et des communautés » et la neutralité religieuse de l'État ; les pouvoirs publics sont obligés de tenir « compte des croyances religieuses de la société espagnole » et de maintenir « les relations de coopération poursuivies avec l'Église catholique et les autres confessions ». L'analyse englobe également l'activité de la Comisión consultative relative à la liberté religieuse ainsi que le contenu des contrats concernant la coopération de l'État avec des organisations religieuses particulières.

Ce qui mérite l'attention du lecteur, c'est la perspective dans laquelle l'auteur essaie de présenter le procédé historique de la formation de la législation espagnole dans le domaine de la liberté religieuse. Il évoque le rôle de la doctrine du Concile Vatican II et, en particulier, la déclaration *Dignitatis humanae* qui a permis au législateur espagnol de « se libérer » des restrictions — provenant du système républicain et franquiste — du droit à la liberté religieuse déclaré dans les deux systèmes.

**Mots clés:** Église catholique, Églises orientales, droit canonique, CIC, CCEO, oecuménisme, doctrine sociale de l'Église catholique, pluralisme

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PIOTR RYGUŁA

## La libertà religiosa in Spagna

### Sommario

L'articolo inizia con un'analisi storica delle fonti dell'attuale stato giuridico nel campo della libertà religiosa in Spagna. L'autore tratta quindi la legislazione del periodo della II Repubblica e della Spagna del gen. Franco. Mostra che per la prima volta la separazione politica dello stato dalla Chiesa ed anche le garanzie della "libertà di coscienza e il diritto a praticare in modo libero una qualsiasi religione" furono incluse nella costituzione repubblicana del 9 dicembre 1931. Invece la prima legge sulla libertà religiosa in Spagna fu introdotta nel 1967 durante il periodo del governo del gen. Franco. Tuttavia in entrambi i casi la libertà dichiarata per legge era limitata dal legislatore spagnolo per cause legate alla natura del regime politico.

Successivamente l'autore tratta lo stato giuridico attualmente vigente in Spagna nel campo della libertà religiosa e della neutralità religiosa dello stato. Analizza ciò che è prescritto nell'art. 16 della costituzione del 1978 che garantisce alle "diverse persone e comunità [...] la libertà nella sfera dell'ideologia, della religione e del culto", ed anche la neutralità religiosa dello stato; impegna invece le autorità pubbliche a "considerare le fedi religiose della società spagnola" ed a "mantenere i rapporti, che risultano dalle stesse, di collaborazione con la Chiesa cattolica e le altre religioni". L'analisi include anche l'attività della Commissione di Consulenza per la Libertà Religiosa e i contenuti degli accordi di collaborazione tra lo stato e le diverse organizzazioni religiose.

Merita l'attenzione del lettore la prospettiva dalla quale l'autore cerca di presentare il processo storico di formazione della legislazione spagnola nel campo della libertà religiosa. Essa indica il ruolo della dottrina del Concilio Vaticano II, ed in particolare della dichiarazione conciliare *Dignitatis humanae*, che permise al legislatore spagnolo di "liberarsi" dalle limitazioni ereditate dal sistema repubblicano e franchista del diritto alla libertà religiosa, dichiarato in entrambi i sistemi.

**Parole chiave:** Chiesa Cattolica, Chiese orientali, diritto canonico, CIC, CCEO, ecumenismo, dottrina sociale della Chiesa cattolica, pluralismo