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## **Registration of Religious Organizations in the European Union Member States**

**SOMMARIO: 1. Introduction - 2. The first level or the larger circle – 3. The second level(s) or the inner circle(s).**

### **1- Introduction**

The Church-State relations of the European Union countries are based on a two level system.

The key word which defines the first level is liberty. Any religious community – from the largest to the smallest, from the most mainstream and traditional to the most unconventional and innovative - can engage in religious activities without the need of any State registration and without any special control. This platform of rights and freedoms is available to any religious group and includes, for example, the right to have a place of worship, to celebrate religious ceremonies, to teach their own doctrine, to receive the economic support of their faithful, to select and train the religious staff, and so on. Anybody living in the EU countries (not only their citizens) is entitled to enjoy these rights, which are part of the right to religious freedom. These rights are part both of freedom of religion and of freedom of association and they do not depend on the registration or recognition of the religious community by the State nor they are subject to

The key words of the second level are cooperation and control. If a religious group wants to receive support and cooperation by the State, it needs to be registered or recognized or to structure according to some legal models which imply a certain degree of State control. In other words, the right to teach religion in public schools, to enjoy tax exemptions, to have free access to the public mass-media – just to make a few examples - is not granted to any religious group but only to those groups which are recognised by the State as suitable partners.

This two level system concerns also legal personality. In many States legal personality is a pre-requisite to open a bank account, to rent or buy premises, to receive donations by the members of the group, etc.



A religious group can obtain religious personality as any other association and is not subject to particular requirements nor to a State control different or more pervasive than the control exercised on associations in general. But when a religious group want to receive State support and cooperation, a particular type of legal personality can be required: obtaining this type of legal personality can be subject to some specific conditions and to a particular scrutiny by the State.

The following remarks explain this mechanism more in details and highlight some of its more problematic features.

## **2. The first level or the larger circle**

1. The right of a religious association to obtain legal personality is increasingly recognized as part of the collective right of religious liberty. Although this point is not explicitly settled in international conventions and national constitutions, recent decisions of the European Court of Human Rights have stated that denying legal personality can amount to a breach of religious freedom as protected in art. 9 of the European Convention on Human Rights<sup>1</sup>.

2. This right can be recognized in different ways. Contemporary legal systems are more and more complex and articulated as they have to respond to different requests. As the needs of religious associations are not identical to those of other associations (political parties, trade unions, etc.), many legal systems provide for a specific type of legal personality reserved exclusively to religious associations. In many cases religious groups have the option to choose between getting the “general” legal personality available to all associations (or large groups of them)<sup>2</sup> or the “specific” legal personality reserved to religious associations; in some States (for example in the Czech Republic) they have only the second option.

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<sup>1</sup> See *Metropolitan Church of Bessarabia and others v. Moldova* -45701/99 [2001] ECHR 860 (13 December 2001). The Court, after noting that “only a recognised denomination has legal personality” according to the law of Moldova, stated that “not being recognised, the applicant Church cannot operate. In particular, its priests may not conduct divine service, its members may not meet to practise their religion and, not having legal personality, it is not entitled to judicial protection of its assets. The Court therefore considers that the government’s refusal to recognise the applicant Church [...] constituted interference with the right of the applicant Church and the other applicants to freedom of religion, as guaranteed by Article 9 § 1 of the Convention”. See also *United Communist Party of Turkey v. Turkey*, 30 January 1998; *Sidiropoulos and others v. Greece*, 10 July 1998.

<sup>2</sup> In some legal systems religious communities can incorporate as non profit organizations, foundations and even commercial companies.



3. Providing for a specific form of legal personality reserved to religious associations is nothing extraordinary and the same system is applied to many other associations. But this choice entails a definition of religious association: without it, it is impossible to establish whether the association requesting to make use of this specific type of personality has the right to obtain it. To solve this problem, European legal systems have followed different paths: while the notion of association is (relatively) clear, what is a religion is one of the most difficult questions the legal science has to answer. Sometimes it is possible to rely on the work of sociologists, philosophers and theologians but their conclusions (which are far from being unanimous) are not always useful to lawyers. For this reason it seems preferable to give religious communities the choice between getting the “general” of the “specific” legal personality (see. *supra* n. 2).

4. Being a religious association is seldom sufficient to obtain the legal personality reserved to religious associations. Many legal systems demand further requirements such as: a minimum number of faithful, a minimum number of years in which the association must have been active in the country, a minimum number of local congregations pertaining to the applicant religious group, some guarantees of financial solidity, and so on. Sometimes these requirements are rigidly established, sometimes they are formulated in a way which leaves room for the more or less discretionary appreciation of the State institutions (courts, Ministry departments, etc.) which have the task of dealing with the applications of the religious association. The nature and the number of these requirements raise at least a couple of questions.

a) First of all, should they regard only the structure of the religious association or also its doctrine and the corresponding behaviours of its faithful? In some States legal personality is refused if the religion’s articles of faith are contrary to human rights. This condition sounds reasonable, but it could lead to far-reaching results: is equality between man and woman a human right which could prevent the acquisition of legal personality if it is not respected by a religious group in its own internal organization? What about, for example, the Jehovah’s Witnesses’ refusal of blood transfusions? Is that enough to deny that religious community the enjoyment of the form of legal personality reserved to religious associations?

b) What kind of “structural” (as opposed to “doctrinal”) requirements are admissible? Some legal systems, for example, require a few hundred members as the minimum number to obtain legal personality. Is that a form of discrimination against small religious



communities, which are deprived of this possibility just because they are small? The prevailing opinion among lawyers affirms that the number of faithful of a religious group should not constitute an obstacle to getting legal personality; in any case the required number should be proportionate and adequate.

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

5. In some States legal personality is automatically obtained if a time span (for example, one month) has passed since the filing of the application by the religious group and no answer has been given by the State body in charge of evaluating that request. But some legal systems do not fix any time limit within which the application of a religious association has to be dealt with. Sometimes this means that applications are left pending for a long time and the association is kept in a sort of "limbo" for a number of years. In these cases the lack of a time frame may work as a hidden but effective way of rejecting undesired applications without having to face the consequences of an explicit rejection. This practice is hardly compatible with a system based on the rule of law.

6. Finally, there are religious communities which object to any form of registration or State recognition. Some legal systems give unincorporated associations the right to perform a few basic legal activities: consequently these religious communities have the possibility to organize and act, although their legal status is somewhat limited. In other cases, no such option is available. As a rule, religious activities such as gathering for prayer, teaching a religious doctrine, and, more generally, engaging in religious activities can be performed without the need of any legal organization: but, according to most scholars, the impossibility of obtaining legal personality can indirectly affect religious liberty when it prevents the religious community from owning or renting a place of worship, opening a bank account, etc.

### **3 - The second level(s) or the inner circle(s)**

7. Legal personality is valuable both in terms of the freedom of the religious communities and of cooperation by the State. Without legal personality a religious community may be unable to perform acts and activities which are essential to its life: it is a matter of basic



freedoms. But obtaining legal personality may also pave the way to receiving support from the State, in the form of advantageous tax regimes, access to public institutions like schools, etc. It is hard to locate exactly where freedom ends and cooperation starts and, however, this point is differently placed in each national legal system. But in most of them State cooperation is not evenly distributed among religious communities: each State cooperates more with some religions and less with others.

8. The selection of the religious communities admitted to receive State support and the graduation of this support among them is frequently attained by subdividing the religious communities which enjoy legal personality as religious associations into further categories, each of which has its own legal status. There is no European pattern here and each State has its own architecture of legal categories and its own way of distributing religious associations within them. In Finland three different types of legal persons can be distinguished, namely those of the Evangelical Lutheran Church, of the Finnish Orthodox Church and of the registered religious associations. In Italy there are about 30 religious groups which have the status of recognized religious associations according to a law of 1929, and six communities which have concluded an agreement with the Italian State and the Roman Catholic Church whose legal position is defined through a concordat. In Denmark there are five different categories of religious organizations (religious groups recognized by the tax authorities, religious bodies without recognition or approval, approved religious entities; recognized religious entities; official Church).

9. How religious communities are placed in these different categories depends once more on the national legal systems. Everywhere some conditions need to be fulfilled but they change from State to State. Generally speaking, they are not different from the requirements to obtain legal personality as a religious association (see *supra*, n. 4) but the stake is higher: more members of the religious community, more years of presence in the country, etc., are required. In the Czech Republic 300 members are enough for a religious community to obtain registration, but about 10,000 (0.1% of the country's population) are required to get the "special rights" reserved to some religions<sup>3</sup>. In Portugal, registration is available to all religious communities which have an organized presence in the country, but a

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<sup>3</sup> In the Czech Republic there are two categories of religious communities with legal personality: registered religious communities and registered religious communities "with special rights".



presence of at least 30 years is required to obtain the higher status of “religion settled in the country”<sup>4</sup>. Again, when these conditions are exceedingly onerous to be fulfilled by a consistent number of religious communities of a country, one can wonder whether religious freedom and equal treatment are really respected.

10. Also the type of State cooperation corresponding to each category differs according to the national legal systems. In Portugal registered religious communities enjoy tax exemptions, but only “settled” religious communities can receive State subsidies, conclude agreements with the State, celebrate religious marriages which have effects in the State legal system, etc. In the Czech Republic only religious communities with “special rights” can teach religion in the schools, receive State support to pay the salaries of their ministers, have chaplains in the Army and in prisons, etc.

11. Scholars are divided about the merits of this system. Some compare it to those pyramids that can be found in Latin-America, with platforms placed at different levels: at each level the number of religious communities decreases and the amount of State support increases. Some lawyers object to this description: they prefer to depict the system in terms of inner circles, implying that the differentiation between the various categories does not reflect an intent to “hierarchize” religious groups and to privilege some of them but only to provide adequate answers to their needs, which can be different according to the size, history, cultural roots of each group. Be that as it may, it is a fact that most European legal systems differentiate among religious communities, providing for different legal disciplines. Again, there is nothing extraordinary here. Looking at other parts of the world, it is difficult to find a legal system which does not differentiate among religious communities: even those systems which stress equal treatment, like that of the United States, cannot avoid making distinctions among religious communities when they come to issues like tax exemption. Once the basic freedoms are granted to any religious community, a reasonable degree of differentiation in favour of those groups which are more deeply rooted in the history and culture of a country can be defended. But not any kind of differentiation is acceptable: it must be (at least) rational and transparent.

12. These two conditions are not always respected by the legal systems of the EU States. To some observers they appear

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<sup>4</sup> In Portugal religious communities are distributed in the following categories: unincorporated associations, private corporations, religious corporations (that is registered religious communities), religious communities settled in the country.



exceedingly baroque in their structure and sometimes they are based on requirements which cannot be precisely assessed. In Austria, for example, the 1998 reform created one more category of religious communities (officially registered religious communities) and established that only religious communities characterised by “a positive attitude to the society and the State” can be legally recognized<sup>5</sup>. The exact meaning of this requirement is open to debate: conscientious objection to military service and refusal of blood transfusions could be interpreted as signs of a negative attitude towards (respectively) the State and the society? In Belgium religious communities can have legal personality as non profit associations or as recognised religions: to get recognition, no formal requirements exist. There are no written norms, but only informal guidelines inspiring and steering administrative praxis: they require there are “enough” members (probably some tens of thousands) and underlines that the existence of hierarchical religious structures is “helpful” in getting recognition. The system may work well, but it seems to be very vaguely structured and to leave a lot of room for the discretionary judgment of the public administration.

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<sup>5</sup> In Austria there are three categories of religious communities: a) religious communities with legal personality under private law; b) State registered religious communities; c) legally recognized churches and religious communities.