Managing religious diversity: a handbook for local authorities

KAICIID DIALOGUE CENTRE

observatorio del pluralismo religioso en España

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- Spanish Federation of Municipalities and Provinces (FEMP – Federación Española de Municipios y Provincias)
- Fundación Pluralismo y Convivencia
- Advisory Committee of the Fundación Pluralismo y Convivencia (regional governments of Catalonia, Aragon, Castilla-La Mancha, Valencia, Extremadura, Ceuta and the Basque Country)
- Ministry of Justice
- Federation of Evangelical Religious Entities of Spain
- Islamic Council of Spain
- Federation of Jewish Communities of Spain
- Jehovah's Witnesses
- Orthodox Episcopal Assembly of Spain and Portugal
- Church of Jesus Christ of Latter-day Saints
- Federation of Buddhist Communities of Spain

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INTRODUCTION

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Anyone leafing through this handbook for the first time may well ask why the public authorities need to be involved in managing religious pluralism –more specifically, the local authorities– if religious beliefs belong to the private sphere.

Religious beliefs are clearly an integral part of the individual's private sphere. The public authorities should remain impartial in matters concerning citizens' convictions and beliefs, and the separation between the State and the different religious confessions should be guaranteed. But it is also true that the regulatory framework governing the regional and local authorities and any actions they may take within their various fields of competence will have a bearing on the exercise of the right to religious freedom. Article 25 of the Law on the Basic Principles of Local Government shows that the responsibility of the local administrations and the services they provide can condition the effective implementation of this right.

What happens, for example, when a religious community asks for permission to use a municipal facility for the celebration of a massive event? Can a religious entity organize activities at municipal level just like any other organization? Can a religious body register itself as such in the municipal register of associations?

Can religious entities conduct activities on the streets without authorization? How should we go about accommodating the demands of religious groups? Which departments are responsible for this?

What permits are required for building and opening a place of worship? Can urban management issues concerning places of worship be dealt with proactively?

What changes need to be made to guarantee observance of the burial rites of different religious confessions in municipal cemeteries?

These are just some examples that throw the spotlight on the public dimension of religion and religious affairs. These are the types of questions this handbook examines and attempts to solve. The public authorities' scope of action is not limited to guaranteeing religious freedom; they also have an obligation to create the conditions required for the full and effective implementation of this right (a responsibility clearly enunciated in Article 9.2 of the Spanish Constitution), while at the same time allowing for society's beliefs and maintaining cooperative relations with the different religious confessions (Article 16.3 of the Spanish Constitution).

Good local administration therefore requires a sound understanding of reality coupled with legal knowledge, not only of the pertinent rules and regulations, but also of the general principles of good administration.

Managing religious diversity: a handbook for local authorities is based on the results of research into religious pluralism spearheaded by the *Fundación Pluralismo y Convivencia*[1] in the different regions of Spain[2] and, more particularly, the results of a research study entitled "Public management of religious diversity" (GESDIVERE), conducted in the period 2009-2010 in collaboration with the Spanish Federation of Municipalities and Provinces. This study, involving eight research teams from different universities and research centres in Spain[3], analysed how religious diversity is managed in 26 municipalities in seven autonomous communities.

Generally speaking, this study brought two important issues into focus:

1. Religious pluralism is steadily becoming more widespread all over Spain. The Register of Religious Entities, administered by the Ministry of Justice, attests to the quantitative dimension of religious pluralism in the country. By 1 September 2015, 3,771 religious entities belonging to minority confessions had been registered, not counting places of worship linked with different religious entities. The Protestant or Evangelical denomination is the minority confession with the biggest number of religious bodies in the register with 2,086. Islam comes next with 1,408 religious bodies entered in the register on this date. Jehovah's Witnesses rank third with 727 places of worship for just one religious entity. Next comes the Church of Jesus Christ of Latter-day Saints (Mormons) with 121 places of worship, again, for a single religious entity; orthodox creeds with 112 places of worship, Buddhists with 69 and Jews with 26. Another 68 entities appear in the register, corresponding to Bahá'ís, Christian Scientists, Hinduists, Sikhs, Scientologists, other Christian faiths and other minority faiths.
2. Despite the dynamic nature of religious pluralism and owing to the increase in the number of demands local administrations are fielding in relation to the exercise of the right to religious freedom, very few town halls have actually implemented measures to articulate these demands and develop an active policy for managing religious diversity. It is therefore vital that instruments be developed and disseminated to provide the public administrations with the backup they need in this field.

1. *Convivencia,* generally translated into English as coexistence or living together, is frequently used in Spanish legal, community and institutional contexts. Originally used to refer to the cultural interplay between Catholics, Muslims and Jews in Spain from the eighth century onwards, it means sharing activities and life on a day-to-day basis, with the guarantee that nobody is attacked or intimidated.
2. See regional studies published in Colección Pluralismo y Convivencia in www.observatorioreligion.es
3. University of Castilla-La Mancha (dir. Miguel Hernando de Larramendi), University of Granada (dir. Rafael Briones), University of La Laguna (dir. Francisco Díez de Velasco), University of Deusto-Ellacuría Foundation (Eduardo J. Ruiz Vieytez), University of Zaragoza (dir. Carlos Gómez), ACSAR Foundation-University of Barcelona (dir. José Antonio Cabanillas-Juli Ponce), CeiMigra (dir. Joseph Buades), Comillas Pontifical University (dir. Fernando Vidal).

It was for this purpose that the Observatory for Religious Pluralism in Spain was created in 2011[4] on the initiative of the Ministry of Justice, the Spanish Federation of Municipalities and Provinces and the Fundación Pluralismo y Convivencia. Its main aim is to guide public administrations in implementing management models that are in line with constitutional principles and the regulatory framework governing the exercise of the right to religious freedom in Spain. To this end, the Observatory:

- Provides updated information at municipal level about places of worship corresponding to the different religious confessions in Spain and analyses their development;
- Standardizes regulations with a bearing on the exercise of religious freedom;
- Prepares guidelines for the public management of religious diversity;
- Identifies and promotes good practices for the public management of religious diversity;
- Provides the public administrations with expert advice;
- Promotes research and documentary output on religious pluralism and its impact on Spanish society; and
- Reports on the training programmes and initiatives available in relation with religious pluralism and its public management.

Managing religious diversity: a handbook for local authorities is the first publication in the Observatory's collection of "Guides for the public management of religious diversity". Data have been refreshed for this revised edition, as have the regulations appearing herein, updated to September 2015. This is a basic reference work that includes information on the regulatory framework governing the right to freedom of conscience and religion in Spain. It also examines how religious pluralism affects different municipal services and provides guiding principles and insights into good management. The contents of the handbook have been verified by the Ministry of Justice, the Spanish Federation of Municipalities and Provinces, the advisory committee of the *Fundación Pluralismo y Convivencia* and also by the well-established religious confessions in Spain, making it a good starting point for developing municipal action in this field.

It is nonetheless a basic tool. We therefore recommend the thematic guidebooks published in this collection, focusing on the management of specific issues linked with the exercise of religious freedom. These guidebooks contain reference standards and information on the specificities of religious confessions and their demands, in addition to mapping out criteria and guidelines for good management in a wide range of relevant fields.

We also recommend the "Local Management" backup tool that local governments can access on the Observatory's webpage. A five-point tool that is constantly being updated, it enables users to gauge the number and location of places of worship at municipal level, access the basic information they need concerning different religious confessions, seek advice regarding the management of specific topics, access reference standards and information reflecting the status of public opinion, as well as learning about other local experiences.

4. www.observatorioreligion.es

PART ONE:
LEGAL FRAMEWORK
AND GUIDING PRINCIPLES

THE RIGHT TO FREEDOM OF CONSCIENCE AND RELIGION: LEGAL FRAMEWORK

THE RIGHT TO FREEDOM OF CONSCIENCE AND RELIGION: LEGAL FRAMEWORK

INTRODUCTION: FRAMEWORK OF POWERS

When a local administration is asked how it deals with what we might term "religious issues", the answer almost invariably trotted out is that it has no jurisdiction in this field. On drawing attention to certain issues, however, it quickly becomes clear that religion has far-reaching implications in terms of local government action. For this reason, it is a good idea to begin this section on the normative framework governing the right to freedom of conscience and religion by outlining the distribution of competences that may influence the exercise of this freedom.

Religious freedom is a fundamental right enshrined in Article 16 of the Spanish Constitution along with ideological freedom, a right that is further developed in Organic Law 7/1980 of 5 July on Religious Freedom. In addition, agreements have been signed with religious confessions, taking the form of an international covenant in the case of the Catholic Church and state laws in the case of the agreements signed under the Law on Religious Freedom. If regional and local administrations appear to lack jurisdiction in the area of religious freedom, it is precisely because of its status as a fundamental right and one that has been developed at state level. It should also be noted that although regional and local administrations cannot encroach on the key contents of a right that is regulated by an organic law, they do have jurisdiction over matters where the religious factor may introduce particularities or raise demands that require a response. Not an arbitrary response, but rather one that is clearly in line with constitutional principles and the general normative framework regulating the right to ideological and religious freedom and other concomitant rights such as the right of assembly and demonstration, freedom of speech and information, the right to education and the right to privacy. Furthermore and depending on the issue in question, this response may not necessarily be limited to management and implementation; the regional or local administration may be required to provide a policy response if it has the required legislative powers.

The exercise of religious freedom, both individual and collective, has a bearing on the competence of local governments and their functions. According to the competences listed in Article 25 of Law 7/1985 of 2 April

on the Basic Principles of Local Government, amended by Article 1.8 of Law 27/2013 of 27 December on the Rationalization and Sustainability of the Local Administration, local governments provide services that either have a direct impact on the exercise of religious freedom or are affected by the presence of the religious element, factors they must take into account if they are to function more efficiently.

Among the areas that are within the competence of local governments, there is call to highlight the following:

- **Planning, management, execution and regulation of urban development:** local regulations relative to planning permission can affect the installation and construction or rehabilitation of places of worship.

- **Cemeteries and funeral activities:** burials raise a number of issues requiring the intervention of the town hall. The ritual purification of bodies, religious services in funeral parlours or cemeteries and actual burials require specific action. Town halls should respond to these matters in the framework of regional or local state regulations governing town planning and mortuary health.

- **Protection of public health and hygiene,** affecting services such as abattoirs, with consideration being given as to how to meet religious requirements relative to animal slaughter while adhering to animal health regulations.

- **Participation in supervising** compulsory school attendance and cooperation with the relevant education administrations with a view to securing the land required for building new educational facilities. Conservation, maintenance and supervision of publicly owned buildings used to house public pre-school, primary and special education facilities.

The management of various services may be affected by the religious particularities of their users, among which:

- The tasks of evaluating social requirements and making information available in this respect, and immediately attending to people who are socially excluded or at risk of social exclusion may be facilitated if more is known about the religious reality of users and with the collaboration of the religious communities themselves.

- Providing local police and civil defence actors with suitable training regarding religious affairs, taking account of local experience in each case,

will doubtless increase their effectiveness and pave the way for more fluid relations with the people and communities concerned.

- Promoting cultural, sports and tourism activities, which involves providing appropriate facilities and providing recreational activities at local level.

- Recognizing religious entities and securing their participation in the life of the municipality and, vice versa, the possible participation of local corporations in the activities conducted by religious bodies are also matters that need to be addressed at municipal level.

Broadly speaking, local government intervention is regulated by the provisions of Article 2.1 of the Law on the Basic Principles of Local Government:

"In order that the autonomy guaranteed by the Constitution to local bodies can take effect, the legislation of the State and of the autonomous communities regulating different sectors of public activity, according to the distribution of powers by the Constitution, must guarantee the right of the municipalities, provinces and islands to act in all matters which have a direct bearing on their interests, granting them appropriate powers according to the nature of the public activity in question and according to the administrative capacity of the local body, following principles of decentralization, proximity, efficiency and effectiveness, while strictly adhering to the rules governing budgetary stability and financial sustainability".

These powers and functions are therefore exercised within the constitutional framework of the distribution of powers between the State and the autonomous communities, and in compliance with the rules governing these powers.

Meanwhile, in accordance with Article 25.1 of the Law on the Basic Principles of Local Government, as amended in Law 27/2013 of 27 December:

"the Municipality, for the purpose of managing its interests and within the scope of its powers, may develop activities and provide public services that contribute to fulfilling the needs and aspirations of the community of neighbours, under the terms specified in this article."

The Constitution's distribution of power leaves the State and the autonomous communities with exclusive competence in certain areas.

With regard to **state powers,** Article 149 of the Constitution confers on the State those required, *inter alia,* to guarantee the equality of all individuals; those relative to nationality, immigration, status of aliens and right of asylum; international relations; defence and the armed forces; administration of justice; the overall coordination of the public health system; basic labour standards, and the basic rules of the legal system of the public administrations.

Article 148, on the other hand, defines as the **exclusive competence of the autonomous communities,** *inter alia:* land-use planning, town planning and housing; architectural heritage of interest to the community, museums and archives; handicrafts, the promotion of culture and research, and the teaching of the regional language; tourism promotion; health, hygiene and social assistance.

Attention should also be drawn to the powers vested in the autonomous communities by virtue of their Statutes of Autonomy in compliance with paragraph 3 of Article 149 of the Constitution concerning matters not expressly assigned to the State and the powers transferred or delegated to the autonomous communities by virtue of Article 150. Exclusive competences include legislative and enforcement powers, but in the case of shared competences, basic legislative authority is reserved for the State (in education and health, for example) whereas the autonomous communities have authority for legislative development and enforcement.

What we have, in effect, is a complex model where it is necessary to determine who is responsible for what. This cannot be achieved by resorting to the Constitution alone but rather by referring to the Statute of Autonomy of each self-governing community. It must be emphasized here that the autonomous communities have taken over responsibility, either exclusive or shared, in areas where the religious factor is relevant: teaching of religion; use of symbols in public schools; choice of physician or conscientious objection to medical treatment; protecting and promoting cultural interests and religious heritage; legislation on town planning and determining how land should be used for religious purposes; mortuary sanitary police; social assistance and regulating the right to access regional television and radio, to cite a few examples.

In conclusion, all the public administrations exercise powers or provide services that affect the exercise of religious freedom to some extent. Where local authorities are concerned, these services are:

- Urban development, management, implementation and discipline
- Cemeteries and funeral services
- Public teaching establishments
- Social services
- Citizen safety
- Citizen participation

The State, then, is responsible for guaranteeing the fundamental right to ideological and religious freedom, to which end it requires the cooperation of these same administrations in managing religious diversity to the extent and degree delimited by their respective fields of competence and services.

We have already seen how the exercise of religious freedom raises a number of specific issues, requirements and problems in terms of how these powers should be managed. And the closer the administration is to citizens' needs, the more important it is to deal with these matters, not least because this is the administration to which citizens will initially turn in order to resolve the issue that concerns them. Many of these administrations have been aware of this situation for some time and have already begun to take matters in hand. Others are only just beginning to take stock of the situation and are thinking about ways of addressing it. The first thing to do is to establish the most basic elements of the Spanish regulatory framework –at State and regional government level– relative to the right to freedom of religion since it is in this context that these issues will be dealt with.

ARTICLE 16 OF SPANISH CONSTITUTION

It is no accident that this handbook begins with a reference to the regulatory framework governing freedom of conscience and religion since this is the cornerstone for the proposals that follow for managing religious diversity, both defining and delimiting them. This may appear to be stating the obvious, but it is worth driving this point home because this regulatory framework is not always well known and occasionally solutions are tried out that do not always comply with legal norms.

The characteristics of this handbook compel us to be concise whilst striving to present as comprehensive a picture as possible. As constitutional principles are dealt with separately, we will limit ourselves to citing the sources that have contributed to the development of the right to religious freedom.

Article 16 of the Spanish Constitution recognizes the right to freedom of ideology, *religion and worship,* understood as a fundamental subjective right[5]. According to settled case law, this right "is not limited to an internal dimension of the right to adopt a specific intellectual stand towards life and everything concerning life and to represent or judge reality according to one's personal convictions. It also includes an external dimension of legitimate behaviour (*agere licere*) whereby individuals may behave in a manner that is commensurate with their ideas without facing any penalty or demerit as a result, or the compulsion or interference of the public authorities"[6]. This means that the State and third parties acknowledge that individuals and the groups to which they belong enjoy a sphere of autonomy, thus recognizing the power of the individual to shape his or her conscience and hold his or her own convictions, with full immunity from coercion. From this standpoint, it is up to the public authorities to guarantee that no-one invade or violate the legitimate sphere of each person or each group to exercise their religious, ideological, philosophical or devotional practices, and to take appropriate action if this sphere is violated[7].

5. Constitutional Court Judgement 24/1982, of 13 May, Legal Grounds 1.
6. Constitutional Court Judgement 137/1990, of 19 June, Legal Grounds 8; Constitutional Court Judgement 120/1990, of 27 June, Legal Grounds 5; Constitutional Court Judgement 20/1990, of 15 February.
7. The safeguarding of the right to religious freedom is also contemplated from a criminal perspective in Section IV of the 1995 Criminal Code, taking into account its new wording by virtue of the amendments introduced in Organic Law 1/2015, of 30 March. Article 510, concerning crimes committed against the exercise of fundamental rights and public freedoms, defines so-called hate crimes, ie, those breaching criminal and administrative order and committed against persons on account of their religion or religious practice (and/or for reasons of racism or anti-Semitism or on grounds connected with ideology, family circumstances, ethnicity, race or nation, national origins, sex, sexual orientation or identity, gender, illness or disability). Articles 522 to 526 address crimes against freedom of conscience, religious sentiments and respect for the dead, penalizing, *inter alia,* the conduct of those who use violence, intimidation or any other unlawful imposition to prevent a member or members of a religious confession from carrying out or attending the acts inherent to the beliefs they profess, or who force others to profess a specific faith or to change the religion they profess; and those who perpetrate profane acts that offend the feelings of a religious confession

This right is based on human dignity and free development of personality, as referred to in Article 10.1 of the Constitution and which the Constitutional Court has defined as a "spiritual and moral value inherent in human beings, displayed uniquely in the conscious and responsible self-determination to live our lives as we choose, and which should command the respect of others[8].

The right to ideological and religious freedom enshrined in Article 16 of the Constitution therefore encompasses a threefold dimension which is encapsulated in long-standing international declarations: the right to hold any convictions and the right to change them, implying at the same time the right to freedom of conscience; the right to express or refrain from expressing one's convictions, and thirdly, the right to behave in keeping with one's conscience within the limits of the law[9]. This threefold dimension explains the connection between the right recognized in Article 16 of the Spanish Constitution and other fundamental rights: the right to privacy and personal image; the right to education and academic freedom; freedom of expression and information; right of association; right of assembly and demonstration, and the right to conscientious objection in cases recognized by law[10].

This conceptualization of the right to ideological and religious freedom means that:

The activity of the public authorities is not limited to guaranteeing the right to religious freedom of individuals and confessions, but must also extend to creating social conditions conducive to ensuring that this right may be exercised satisfactorily, in line with the full emancipation of other human values, both individually and collectively. This does not mean that the public authorities can make a positive appraisal of religion or religious affairs as such, since this interpretation would run counter to the principle of aconfessionality as enshrined in the Constitution. Rather the exercise of this fundamental right should be recognized positively and understood in terms of the obligation of the public authorities to promote conditions guaranteeing the freedom and equality of individuals to make proper use of their fundamental rights (Article 9.2 of the Constitution).

8. Constitutional Court Judgement 53/1985, of 11 April, Legal Grounds 8.
9. Article 18 of the Universal Declaration of Human Rights, of 10 December 1948: *"Everyone has the right 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 teaching, practice, worship and observance"*. See also Article 9 of the European Convention on Human Rights, of 4 November 1950, and Article 18 of the International Covenant on Civil and Political Rights, of 19 December 1966.
10. See LLAMAZARES, D. (2007): Derecho de la libertad de conciencia, Volume I, Editorial Aranzadi, Madrid, pp 22 ff.

In this respect, its is the responsibility of the Administration to guarantee real and effective conditions for the exercise of this right, and remove any obstacles preventing or hindering its individual and collective fulfilment.

To conclude this initial approach to ideological and religious freedom as characterized in the Constitution, it should also be noted that whereas the internal dimension of the right to freedom is absolute in that it is essentially incoercible, its external dimension can be subject to **legal limits** as recognized in the very same Article 16 of the Constitution, insofar as *"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".*

But let us go one step further and examine how this right has been developed in Spanish law.

RELIGIOUS FREEDOM IN ORGANIC LAW 7/1980 OF 5 JULY

Article 16 of the Constitution has been partially developed in Organic Law 7/1980 of 5 July. Partially because it only refers to religious freedom even though this article and equivalent articles in international texts (Article 18 ICCPR; Article 9 ECHR) jointly refer to *freedom of thought, conscience and religion,* which is a single right with distinct manifestations according to settled case law. The UN Human Rights Committee stresses the far-reaching conception of this right when it notes that Article 18 of the International Covenant on Civil and Political Rights refers as much to theist beliefs as atheist or agnostic beliefs, and urges States to protect new religious movements in addition to traditional religions[11]. This means that, despite the restrictions of the present law, some of its contents may be extended to non-religious beliefs or convictions.

The traditional approach to this subject consists of examining the legal development of the right to religious freedom by distinguishing between the subjects, content and limits thereof.

The **subjects** of the right to religious freedom are, as provided for in the Constitution and the Law on Religious Freedom, individuals and groups or collectives. It is important to highlight the relationship between these two categories because it has a number of repercussions, as we shall see. Rights are recognized primarily where individuals are concerned; then, subsidiarily and to the extent required by the individual right, collective rights are recognized, in such a way that these become instruments at the service of the individual. The public authorities should therefore take into account that:

Relations with groups, in this case religious groups, are based on their ability to increase the effectiveness of individual rights (Article 9.2 of the Constitution). No religious group should therefore be favoured over another, religious or not. This is a basic principle and it must govern decisions corresponding to the public authorities in relation with the exercise of the right to religious freedom since it will determine the purpose of their intervention and, occasionally, the form this intervention should take.

11. 2. Article 18 protects theistic, non-theistic and atheistic beliefs, as well as the right not to profess any religion or belief. The terms "belief" and "religion" are to be broadly construed. Article 18 is not limited in its application to traditional religions or to religions and beliefs with institutional characteristics or practices analogous to those of traditional religions. The Committee therefore views with concern any tendency to discriminate against any religion or belief for any reason, including the fact that they are newly established, or represent religious minorities that may be the subject of hostility on the part of a predominant religious community. General Comment No. 22: The right to freedom of thought, conscience and religion (Art. 18): 30/07/93. CCPR/C/21/Rev.1/Add.4, General Comment No. 22.

For example, when a request is made to bury somebody according to their religious beliefs, the public authorities must act to fulfil that person's right, a task that is likely to be facilitated if they sit down and talk to the religious community, which will inform them of its requirements in this respect. The aim of the ensuing decision as to what measures should be adopted is not to allow the group to decide how or who should exercise this right, but rather to guarantee that it is properly exercised by the individuals in question.

Regarding the individual subject, it should be noted that religious freedom is a right granted to everyone, which therefore includes foreigners living in Spain legally, ie, within the terms of the immigration law. Indeed, the latest amendment of this law states that religious, ideological or cultural convictions cannot run counter to guarantees of these basic rights, interpreted in accordance with international standards[12].

The law uses three terms to designate **collective subjects:** church, confession and religious community. Although it does not define them, this plurality is considered to embrace the organizational diversity of the religious phenomenon. These collective subjects can in turn create other religious bodies as well as other types of bodies for purposes that are not religious, in accordance with ordinary law. In principle, the collective exercise of religious freedom does not require the establishment of a legal personality. A group of people can share beliefs, assemble, pray, worship together and disseminate their beliefs without having to form a legal entity in order to do so. If they wish to adopt a specific structure and create a separate entity with its own legal capacity, then they must constitute a legal entity in the form of a church, confession or religious community. To this end, the Law on Religious Freedom requires them to enrol in the Register of Religious Entities, which gives them full legal capacity in addition to the rights stipulated in this law.

The Register of Religious Entities is a single register for the whole of Spain, which means that these entities do not need to re-register elsewhere to comply with the law. What is more, under the current setup, the Organic Law on the Right of Association excludes from its scope religious bodies among others with special arrangements[13]. Consequently:

12. Organic Law 4/2000, of 11 January, regarding the rights and freedoms of foreign nationals living in Spain and their social integration, states in Article 3 that aliens in Spain shall enjoy the rights and freedoms set out in Part I of the Spanish Constitution. The most recent amendment of this law, Organic Law 2/2009, of 11 December, includes a second paragraph which states that: "The regulations relating to the fundamental rights of foreign nationals shall be interpreted in accordance with the Universal Declaration of Human Rights and the international treaties and agreements on these same issues which are applicable in Spain; no religious beliefs or ideological or cultural convictions of a different nature may be put forward to justify any action or conduct contrary thereto".
13. Organic Law 1/2002, of 22 March, on the Right of Association: Article 1. Subject matter and scope. (…) 3. Political parties, trade unions and business associations, churches, confessions and religious communities, sports federations, and consumer and user associations shall be covered by their own specific legislation, in addition to any other associations regulated by specific laws.
Associations set up by churches, confessions and religious communities for purely religious purposes shall be governed by the provisions of international treaties and specific laws, without prejudice to the supplementary application of the provisions of this Organic Law.

Regional and local governments should recognize this personality just as they would political parties or unions, for example. The religious body has full capacity to engage with the competent authorities and answer public calls for proposals by virtue of the social or cultural activities it conducts as a religious entity and to the extent that these activities are not only not incompatible with its religious nature, but in most cases correspond to the purposes or faculties and activities stated in its by laws.

In addition to the rights listed in Article 2 of the Law on Religious Freedom as "essential content", registration in the Register of Religious Entities entitles the entity to full internal autonomy which, according to Article 6, allows it to establish its own rules of internal organization and staff regulations, with the inclusion of clauses to safeguard its religious identity and nature, without detriment to its constitutional rights, particularly liberty, equality and non-discrimination.

Turning now to the **contents** of the right to religious freedom as guaranteed by the Law on Religious Freedom, it is important to distinguish between the individual and collective dimensions. Article 2.1 of the Law on Religious Freedom lists the **rights encompassed in the individual content of the right to religious freedom:**

One. *Freedom of worship and religion guaranteed by the Constitution encompasses the right, to be exercised without duress, of all persons 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 that 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 on religious grounds; be free from any obligation to receive spiritual support or participate in religious services that are contrary to their personal convictions.*

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

d. *Meet or assemble publicly for religious purposes and form associations to conduct their religious activities as a community, in accordance with ordinary legislation and the provisions of this Organic Law.*

Article 2.2 of the Law on Religious Freedom refers to the **collective content:**

> ***Two.*** *also comprises the right of churches, confessions and religious communities to:*
>
> **e.** *Establish places of worship or assembly for religious purposes,*
>
> **f.** *appoint and train their ministers,*
>
> **g.** *promulgate and propagate their own beliefs, and*
>
> **h.** *maintain relations with their own organizations or other religious confessions in Spain or abroad.*

All these rights, both individual and collective, are stated positively and they may be exercised freely by all persons, who are also free not to exercise them or to abstain from exercising them, which does not mean –and cannot mean– that they are renouncing these rights.

Finally, the Law on Religious Freedom refers to the **exercise of religious freedom in certain specific spheres such as religious assistance and education.** In this respect, Article 2.3 states:

> *To ensure true and effective application of these rights, public authorities shall adopt the necessary measures to facilitate assistance at religious services in public military, hospital, community and penitentiary establishments and any other under their aegis, as well as religious training in public schools.*

Clearly, then, legal developments and the way autonomous communities and local governments manage their competences will affect the exercise of some of these rights: worship, religious teaching, burials, celebration of feast days and the right to gather or demonstrate publicly for religious purposes. In exercising their powers, the relevant administrations should take into account, in addition to their own legislation, implementing legislation vis-à-vis the right to religious freedom, the right to education and the rights of assembly and demonstration. In particular, in the case of rights of assembly and demonstration, it should also be noted that religious purposes do not alter the general regulations and that religious confessions should be treated just like any other group or person asking to occupy a public thoroughfare or area to exercise these rights, which means that religious purposes cannot serve as an excuse to impose restrictions other than those applicable to everyone.

With regard to **public demonstrations for religious purposes,** Constitutional Court Judgement 195/2003, of 27 October, analysed the hypothesis of what we might term in this case a "political" demonstration–concentration and the government restrictions applicable, more specifically limits on the use of public address systems and the ban on installing tables and a Sahrawi tent or jaima. It is interesting to highlight some of the pronouncements made in the judgement, which draws on constitutional case law:

a. *"The right to assembly (…) is a collective manifestation of freedom of expression exercised by means of a collective association of persons" (Constitutional Court Judgement 195/2003, Legal Grounds 3), and its most important function is none other than "to serve as a channel for the democratic principle of participation" (Constitutional Court Judgement 85/1998).*

b. *Its exercise is subject to compliance with a prerequisite: the duty to provide the competent authority with advance notification thereof (Constitutional Court Judgement 36/1982, Legal Grounds 6), which should not be construed as a request for authorization, "rather as a declaration of intent enabling the administrative authorities to take appropriate actions to make possible both the free exercise of the protestors' rights and the protection of the rights and property of third parties" (Constitutional Court Judgement 66/1995, Legal Grounds 2).*

c. *We are therefore dealing with a right that is neither absolute nor unlimited (Constitutional Court Judgements 2/1982, 36/1982, 59/1990, 66/1995, Constitutional Court Order 103/1982), but its limits are not absolute either (Constitutional Court Judgement 20/1990), nor may they "obstruct the right beyond reasonable measure" (Constitutional Court Judgement 53/1986, Legal Grounds 3). "If the public authorities are to impinge on the right to assembly guaranteed by the Constitution, either restricting it by changing the circumstances in which it may be exercised or even prohibiting it, there must be reasonable grounds for doing so, which means they are obliged to give reasons for the decision they take" (Constitutional Court Judgement 36/1982, Constitutional Court Judgement 195/2003, Legal Grounds 4).*

e. *Regarding the competent authority's refusal to allow stands (for collecting donations and suchlike) to be installed, the judgement provides that "the exercise of the right of assembly, by its very nature, requires the use of public places and (…) all meetings in public places will necessarily restrict the right of freedom of movement of citizens who are not demonstrating and who will be prevented from walking*

or moving freely on the path followed by the demonstration and for the duration thereof [Constitutional Court Judgement 59/1990, Legal Grounds 8]. In a democratic society, urban areas are not only areas for movement but also areas for participation [Constitutional Court Judgement 66/1995, Legal Grounds 3], prohibiting the installation of tables or tents by those assembled (…) therefore cannot be justified simply on the grounds that it hinders or upsets the movement of people passing through (…), just as it cannot be reasoned (…) that it is the holders of the right of assembly who must provide 'sufficient justification' of the need to install a tent, (…) since it falls to the competent authority to give reasons based on constitutional criteria of proportionality to explain why it was necessary to eliminate or restrict the freedom of those holding the right set out in Article 21.1 of the Spanish Constitution to choose the instruments they consider suitable to disseminate their message" (Legal Grounds 9).

Finally, we should discuss the extent to which **these rights are restricted.** As noted earlier, Article 16.1 of the Spanish Constitution provides that no restriction shall be placed on the expression of freedom of ideology, religion and worship other than may be necessary to maintain public order as protected by law. The Law on Religious Freedom considers the subject of restrictions in Article 3.1: *The exercise of the rights arising from freedom of religion and worship may only be restricted in order to protect the right of others to exercise their public freedoms and fundamental rights, and to safeguard public safety, health and morality, elements constituting public order guaranteed by law in democratic societies.*

It should therefore be noted that:

- Restrictions on the right to religious freedom only affect external manifestations of that right.
- They must be provided for by law.
- The public order clause has a legal definition containing the following elements:
  – The protection of the rights and freedoms of others.
  –The safeguarding of public safety, health and morality.
- The elements constituting public order must be interpreted in the context of a democratic society.

COOPERATION AGREEMENTS WITH RELIGIOUS CONFESSIONS

Article 7 of the Law on Religious Freedom refers to the State Agreements with confessions: *The State, taking account of the religious beliefs existing in Spanish society, shall establish, as appropriate, cooperation agreements or conventions with the churches, faiths and religious communities enrolled in the Register and with obvious or notorious influence in Spanish society due to the number of their followers or the impact of their beliefs. Such agreements shall, in all events, be subject to approval by an Act of Parliament.*

These Agreements are one form of cooperation, but not the only one. The public authorities may establish cooperation –they are constitutionally bound to do so– unilaterally without resorting to one of these agreements, a procedure that occasionally raises doubts in the sense that it can give rise to differences in the way faiths are treated, differences that are not always justified. From the standpoint of the principle of equality, availing oneself of general rules that define objective criteria for obtaining a certain legal status poses fewer problems. What, then, is the sense of the agreement? The agreements allow the public authorities to gauge the most singular requirements of a religious faith, requirements which are not covered by the general rules, so they are ultimately designed to promote conditions ensuring the effective exercise of the right to religious freedom and remove any obstacles to this. The agreements are designed to guarantee the full exercise of both individual and group rights. This is their aim and also the limit of their scope, otherwise they would risk undermining the principle of equality and the secular nature of the State.

Religious confessions must meet two requirements to qualify for these agreements: they must be entered in the Register of Religious Entities (RER) and they must have *"notorio arraigo"* or deeply-rooted status. Nonetheless, compliance with these two requirements does not mean the State is obliged to sign the agreement insofar as this is its potestative right. There are religious confessions whose deeply-rooted status has been recognized by the Advisory Committee on Religious Freedom but which do not have an agreement, namely the Church of Jesus Christ of Latter-day Saints (Mormons), Jehovah's Witnesses, the Federation of Buddhist Communities in Spain and the Orthodox Church. Recognition of their deeply-rooted status does not have any legal implications beyond determining their right to sit on the Advisory Committee on Religious Freedom. This does not mean to say that the public authorities should not take account of this condition when holding talks with religious confessions or managing their areas of competence, without prejudice to future legal amendments providing for this condition in the interests of equality.

It is interesting to note that in the case of the confessions that have acceded to the cooperation agreements, deeply-rooted status was conferred on the faith generically (Protestantism, Judaism and Islam), but it was deemed suitable to group them into federations for the purpose of creating a structure encompassing all the denominations and communities that comprise each confession, thus facilitating dialogue with the State[14]. It is these federations that have signed the cooperation agreements, which are therefore only applicable to the entities that form part of the respective federations.

To date, cooperation agreements have been signed with four faiths: the Catholic Church (Agreements of 3 January 1979), the Evangelical churches (Law 24/1992, of 10 November), the Jewish Communities (Law 25/1992, of 10 November) and the Muslim communities (Law 26/1992, of 10 November).

From a formal perspective, we are dealing with a set of rules stemming from pacts whose legal nature is not univocal. The agreements signed by the Spanish State with the Holy See are international treaties, whereas the cooperation agreements signed by the Spanish State with the Evangelists, Muslims and Jews are considered –as stated in Article 7 of the Law on Religious Freedom – *acts of parliament.* From this standpoint, it is therefore necessary to distinguish between the two types of agreement. These are formal differences, the effect of which is to strengthen the principle of bilateralism in the former vis-à-vis the latter, in which the State has broader scope for unilateral action.

In effect, **the Agreements with the Holy See** are international treaties, which means that the provisions of Articles 94 and 96 of the Spanish Constitution apply. The agreements are negotiated through diplomatic channels and signed by the head of State following their ratification by parliament. They only become legally effective after they have been incorporated into Spanish domestic law, which requires their publication in the Official State Gazette (*Boletín Oficial del Estado*) under the terms of Article 1.6 of the Spanish Civil Code. More significantly, this means they may only be amended or repealed as provided for in the treaties themselves or in accordance with the general rules of international law, under Article 96 of the Constitution. Presently in force are the Agreement with the Holy See of 5 April 1962 on recognition for civil purposes of non-ecclesiastical studies carried out in Church universities; the Agreement of 28 January 1976; the Agreement of 3 January 1979 on legal affairs; the Agreement of 3 January 1979 on education and cultural affairs; the Agreement of 3 January 1979 on religious attendance of the armed forces and the military service of the clergy and members of religious orders; Agreement of 3 January 1979 on economic affairs, and the agreement of 21 December 1994 on matters of common interest in the Holy Land.

14. These are the Federation of Evangelical Religious Entities of Spain (FEREDE), the Federation of Jewish Communities of Spain (FCJE) and the Islamic Commission of Spain (CIE).

Meanwhile, the **Agreements with all the other confessions** are signed pursuant to Article 7 of the Law on Religious Freedom and have the legal status of a special ordinary law. They are negotiated by the government and the national representatives of the respective religious confessions, and processed as ordinary laws in parliament. The agreement in question is signed on the basis of a single reading in parliament which means that the agreement must be accepted in full or not at all, but cannot be modified when it passes through parliament, thus guaranteeing compliance with the agreement reached. The agreements take the form of a law that does not require a formal enactment procedure, as in the case of the agreements with the Holy See, and although this is a special law, its contents can be affected by subsequent legislative initiatives which would have to be communicated to the confession in question so that it may express its opinion thereof (First Additional Provision, Laws 24, 25 and 26/1992).

Regarding the **substance of the agreements,** a distinction should be made between individual and collective rights. The former encompass rights such as the civil effects of religious marriage (Article VI, Agreement on legal affairs, Article 7 of Laws 24, 25 and 26/1992), spiritual support in public centres, particularly the armed forces (Agreement on religious assistance, Article 8 of Laws 24, 25 and 26/1992), religious teaching in public schools (Agreement on education and cultural affairs, Article 10 of Laws 24, 25 and 26/1992, and the celebration of religious feast days and weekly rest (Article III, Agreement on legal affairs, Article 12 of Laws 24, 25 and 26/1992).

Collective rights encompass the right to worship and to establish places of worship and cemeteries (Article I, Agreement on legal affairs; Article 2 of Laws 24, 25 and 26/1992), the right to appoint and designate ministers of religion and to professional secrecy (Article 3 of Laws 24, 25 and 26/1992), the right to be included in the general social security system (Article 5 of Laws 24, 25 and 26/1992), to receive and organize offerings and other contributions (Article 11 of Laws 24, 25 and 26/1992), exemption from certain taxes and levies (Articles III and IV, Agreement on economic affairs, Article 11 of Laws 24, 25 and 26/1992), the right to establish centres and conduct charity and welfare activities (Article V, Agreement on legal affairs), and to take up relations with their own organizations and other religious confessions in Spain and abroad (Article II, Agreement on legal affairs). They also guarantee the protection and promotion of cultural heritage sites of religious interest (Article XV, Agreement on education and cultural affairs; Article 13 of Laws 25 and 26/1992). And, last but not least, they guarantee that issues concerning food requirements will be respected (Article 14 of Laws 25 and 26/1992).

The cooperation agreements are laws of state and, as such, regional and local authorities must respect and take into account this special legal regulation when exercising powers that are affected by the content of these agreements.

REGIONAL LEGISLATION

Some autonomous communities have specific legislation affecting, directly or indirectly, relations between town halls and religious entities. Under Article 161 of Catalonia's Statute of Autonomy, the Catalan parliament approved Law 16/2009 of 22 July on Places of Worship and, in compliance with the provisions of this law, the regional government or Generalitat approved Decree 94/2010 developing the law on places of worship.

The legal basis for **Law 16/2009, of 22 July, on Places of Worship** is to be found in Catalonia's Statute of Autonomy, which states that "the *Generalitat* has exclusive power over religious entities that conduct their activities in Catalonia".

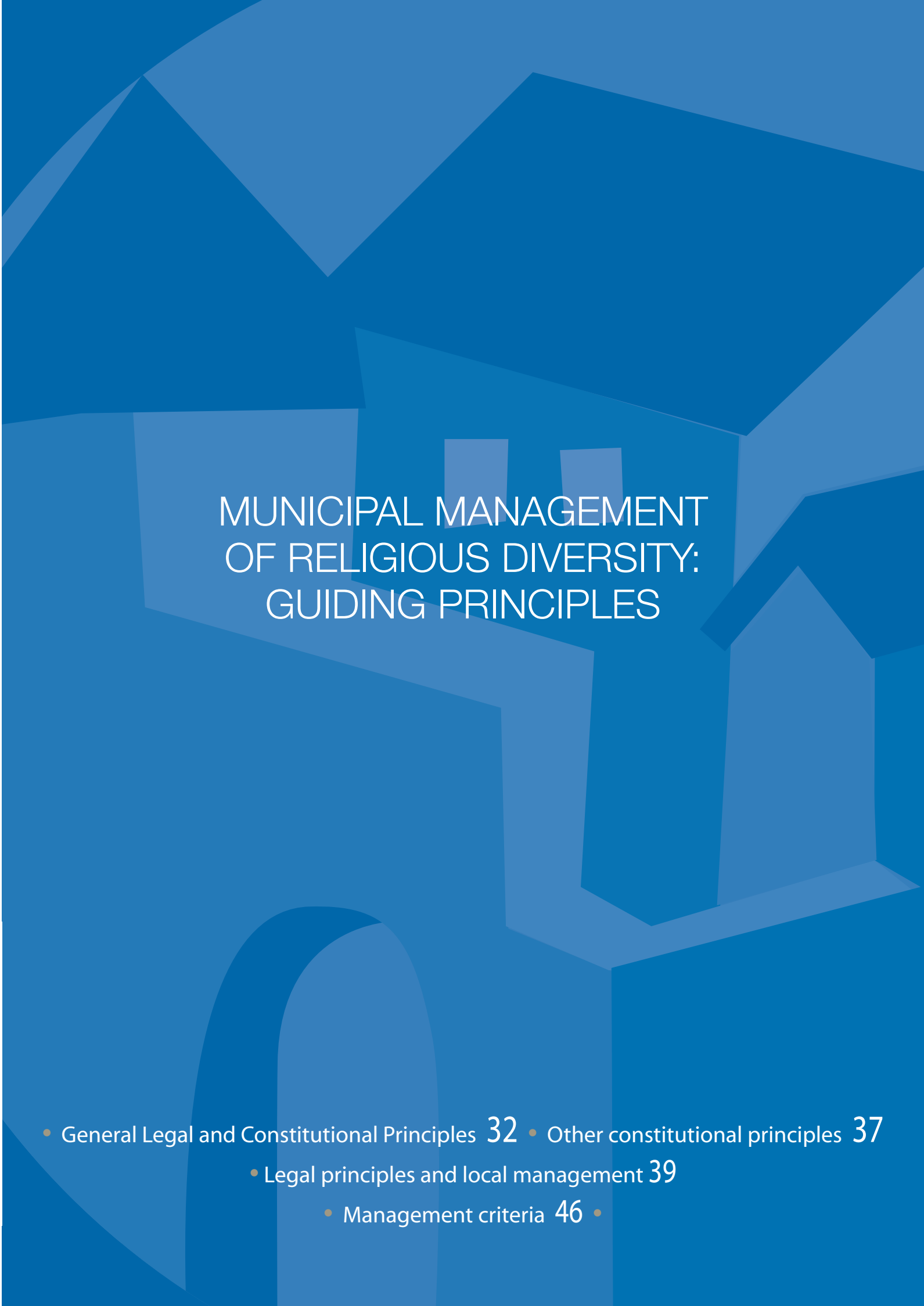
A significant number of municipalities in various areas of Catalonia had asked the General Directorate for Religious Affairs for help, advice and mediation regarding requests for opening new places of worship, with some demanding that this matter be regulated at regional level.

One of the main problems was the occasional clash between the fundamental right to exercise freedom of religion and worship and local opposition, mainly stemming from ignorance of what it really means to share the neighbourhood with a place of worship. Another problem was the disparity of municipal criteria regarding the granting of permits, effectively disorientating the religious confessions established all over Catalonia, some of which asked for a specific regulation on the subject. And a third problem stemmed from the poor material and technical conditions of some places of worship.

This law has two main objectives: to contribute to guaranteeing the exercise of the basic right to freedom of worship –urban management plans must provide for plots to be allocated for religious uses (Article 4)– and to guarantee that places of worship meet safety and health requirements and do not cause inconveniences to third parties, to which end a municipal licence must be obtained to open and function as a place of worship (Articles 8 and 9). This licence is supposed to replace the permits that were previously required, for example, under the mandatory rules that form part of the entertainment and environmental laws, which were not deemed appropriate in the case of places of worship. Other indirect aims are to support local governments and unify criteria at municipal level.

The regulation provided for in this law was approved in **Decree 94/2010, aimed at implementing the law on places of worship,** which lays down the material and technical requirements places of worship must meet in terms of

safety, seating space, hygiene, access and soundproofing. This decree clearly distinguishes between new and existing centres, which simply need to meet basic safety requirements (third transitional provision of the Decree).



MUNICIPAL MANAGEMENT OF RELIGIOUS DIVERSITY: GUIDING PRINCIPLES

MUNICIPAL MANAGEMENT OF RELIGIOUS DIVERSITY: GUIDING PRINCIPLES

GENERAL LEGAL AND CONSTITUTIONAL PRINCIPLES

Freedom of ideology, religion and worship

Guaranteed in Article 16 of the Spanish Constitution, this freedom should be considered from a twofold perspective in the Spanish political system: as a basic guiding principle of the Spanish legal system and as a basic subjective right, referred to earlier on.

As a **guiding principle,** it binds all the public powers, which should direct their action towards ensuring that this freedom is exercised to the full (Article 9.1 in relation with Article 9.2 of the Spanish Constitution). It should also be viewed as an institutional guarantee, as stated by the Constitutional Court: *"the freedoms guaranteed in Article 16.1 transcend the personal sphere owing to their institutional dimension and because they entail recognizing and guaranteeing free public opinion and, therefore, the political pluralism pursued in Article 1.1 of the Constitution as one of the highest values of the legal system"*[15].

As a **legal principle,** ideological and religious freedom takes the form of "a principle of social and political organization which contains an idea of how the Spanish State is defined", with the result that:

1. The public authorities cannot impose themselves on individuals through coercion or substitution, or participate with them in the practice of religious faith or ideological convictions. This effectively precludes any declaration of faith or other means of demonstrating religious belief, whether negative (atheism), agnostic or indifferent, since this would be tantamount to the State coercing, standing in for or participating with citizens as the holder of a specific belief. Democratic rule of law has the function of guaranteeing people's basic right to freedom of conscience and religion.

2. The public authorities cannot force individuals to make statements regarding their faith, religion, beliefs or ideological or religious convictions[16],

15. Constitutional Court Judgement 20/1990, of 15 February, Legal Grounds 4c).

16. Article 16.2 of the Spanish Constitution: "No one may be compelled to make statements regarding his or her ideology, religion or beliefs.

although they may be required to state their religion or beliefs in order to exercise certain aspects of this right (eg, religious education or religious assistance). In all events, any such statement is always freely expressed and its sole purpose is to facilitate the exercise of the individual's basic freedoms.

3. In addition to its role as guarantor, if falls to the State to promote fundamental rights in the sense provided for in Article 9.2, as stated earlier, and which, in the case of religious freedom, is specifically enshrined in the principle of cooperation with religious confessions, referred to in Article 16.3 of the Constitution.

Equality in freedom

Equality in freedom refers to justice: everyone is entitled to the same freedom, both as holders of rights and in the exercise of rights. With regard to the **content** of this equality, a distinction should be made between formal equality and material equality.

Formal equality represents equality before the law, which can be examined at two levels: the right to be treated equally by the law and the right to the equal application of the same law.

- At the first level, equality before the law means that no *"arbitrary, unjustified or disproportionate differentiations may be established"*[17]. This is a mandate for the legislator and the executive authority with the power to frame laws governing de facto situations, barring them from giving legal weight to situations expressly prohibited by the Constitution in Article 14 (discrimination on grounds of birth, race, sex, religion or opinion) or situations that will have an arbitrary outcome because they have no relation with the regulation.

- On the other hand, equality is a relational concept that fully makes sense when two terms are compared: there are only grounds to speak of equality when referring to another term with which this comparison is established. This is particularly relevant in relation with equality in the application of the law. Indeed, judicial officers must apply the law equally to all those who find themselves in the same situation. This is the Constitutional Court doctrine that applies when the acts or decisions being compared spring from the same judicial organ, which will be obliged to observe its precedents. Administrative precedents, however, must be corroborated by a legal decision. There is one exception to this obligation to respect precedent: the legal body may change its criterion provided it has sufficient grounds for doing so, with a view to eliminating oversights or arbitrariness.

17. Constitutional Court Judgement, 8 June 1998, Legal Grounds 1.

***Material equality* is provided for in Article 9.2 of the Constitution:**

> It is the responsibility of the public authorities to promote conditions ensuring that freedom and equality of individuals and of the groups to which they belong are real and effective, and to remove obstacles preventing or hindering their full enjoyment. Formal equality, the conquest of the liberal State, becomes meaningless if social, economic or cultural conditions prevent or preclude the exercise of equally recognized rights. It is incumbent on the public powers to guarantee material equality, which is a yardstick for measuring the constitutionality of the laws, as understood by the Constitutional Court from its earliest rulings[18].

Regarding the **subjects,** the right to equality and non-discrimination is enjoyed both by natural persons and legal entities, a premise consistently upheld by the Constitutional Court and specifically provided for in Article 9.2 of the Constitution in regard of material equality. In principle, both the special right to religious freedom and the singular content of the Cooperation Agreements should be considered compatible with equality, to the extent that they allow a fuller exercise of the individual's fundamental right. This doubtless entails risks that must be navigated on the basis of interpreting this legal regime in the manner most consistent with the principles of equality and secularism.

Secularism

> This principle is provided for in Article 16.3 of the Constitution, which states that no religion shall have a State character, a principle that defines a neutral State along with the principles of freedom and equality of ideology and religion.

The Constitution does not expressly refer to the principle of secularism (*laicidad* in Spanish), but the positive attribute of this term has come into its own right in the case law of the Constitutional Court, which has indeed added the adjective "positive" -as in positive secularism- explained thus: "and as a special expression of this positive attitude with respect to the collective exercise of religious freedom in its plural manifestations or behaviours, Article 16.3 of the Constitution, after formulating a declaration of neutrality, considers that the religious component is perceivable in Spanish society and instructs the public authorities to *"maintain appropriate cooperation relations with the Catholic Church and other confessions",* thereby introducing a notion of aconfessionality or positive secularism that "prohibits

18. Constitutional Court Judgement, 20 June 1980 and Constitutional Court Judgement, 8 April 1982.

any type of confusion between religious and State functions (Constitutional Court Judgement 177/1996)"[19]. The principle of secularism means two things: neutrality and separation, in which respect the Constitutional Court has pronounced itself at great length[20].

State neutrality is a correlate of freedom and equality of conscience and religion, and it translates as the impartiality of the public authorities towards citizens' convictions and beliefs. The most positive appraisal of religious matters (which would bring us closer to sociological or historical confessionalism), as much as the most negative (characteristic of exclusionary secularism), equally compromise the rights protected in Articles 14 and 16.3 of the Constitution.

> It is nonetheless important to point out that neutrality does not amount to an absence of values: the public authorities must defend and promote values that are common, *"the common ethical minimum in a society governed by law"*[21], ie, those that embody a social and democratic state subject to the rule of law (Article 1.1 of the Constitution). Neutrality does not mean moral relativism, but rather, and as expressed by the Constitutional Court, *"neutrality in religious affairs thus becomes a premise for peaceful coexistence between the different religious convictions existing in a plural and democratic society"*[22].

Neutrality therefore means:

- The independence of religious confessions to lay down their own organizational rules and internal bylaws (Article 6.1 Law on Religious Freedom).
- Religious values and interests cannot be brandished as "parameters for measuring the legitimacy or justice of the rules and actions of the public authorities"[23].

The separation between State and Church is a guarantee of their mutual independence, with the following results:

- Separation "prohibits any kind of confusion between religious functions and State functions"[24].
- Separation means that confessions are not entities on a par with the State, nor do they have the same legal standing[25].
- The State and the public authorities are not subordinate to any religious confession.

19. Constitutional Court Judgement 128/2001, of 4 June, Legal Grounds 2.
20. On the contents of secularism, see LLAMAZARES, D. Derecho..., op.cit. pp 356 and ff.
21. Constitutional Court Judgement 62/1982, of 4 June, Legal Grounds 2.
22. Constitutional Court Judgement 177/1996, of 11 November, Legal Grounds 9.
23. Constitutional Court Judgement 24/1982, of 13 May, Legal Grounds 1.
24. Constitutional Court Judgement 24/1982, of 13 May, Legal Grounds 1.
25. Constitutional Court Judgement 340/1993, of 16 November.

Cooperation

The principle of cooperation is provided for in Article 16.3 of the Constitution, by virtue of which *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 confessions.*

The cooperation principle is based on freedom of conscience and religion, more specifically on the public authorities' obligation to create conditions that will enable both individuals and groups to exercise this freedom more fully. The cooperation principle finds expression in Article 9.2 of the Constitution. This legal basis also determines the actual sphere of cooperation, which does not refer to religious activities as such since this is prohibited by the principle of secularism, or social activities (educational, outreach, etc.) where religious confessions collaborate with other organizations, which the State does not discriminate between on religious grounds, in line with the principle of equality.

The aim of cooperation between the State and religious confessions is to promote the right to religious freedom. In this respect, the Law on Religious Freedom singles out various vehicles for promoting this right, among which religious assistance in public establishments and religious training in public schools (Article 2.3, Law on Religious Freedom). But there is also room for cooperation in other spheres of freedom of conscience and religion, referred to in Article 2 of the Law on Religious Freedom which acknowledges, inter alia, the legal personality of religious entities, the possible civil validity of religious marriage, the application of the most favourable tax arrangements to non-profit bodies, extending social security to religious ministers, the possibility of being buried according to one's beliefs and religious feast days, as well as recognizing the studies and training completed by religious ministers.

The Constitution does not make any provisions with respect to forms or channels of cooperation, thus allowing both for unilateral action by the State and agreements with religious confessions, as provided for in Article 7 of the Law on Religious Freedom. The agreements have advantages in terms of ensuring that the aims of the principle of cooperation and also of participation are met, notably by providing the public authorities with the chance to engage directly with the interested parties and learn about specific requirements deriving from their religious beliefs, thereby eliminating, as far as possible, inconsistencies between legal regulations and dictates of conscience, as per the principles of equality and secularism. But this does not mean that the public authorities can use the agreements to shirk their responsibility for managing religious affairs. Ideally, then, cooperation should spring from the unilateral action of the public authorities, which is a better guarantee of equality in that it results in more general solutions being found, solutions that neither obviate the need for each case to be given the special attention it deserves nor are subject to the procedural complexities of an accord or agreement. It therefore falls to the public authority in question to discern what instrument is best suited to meeting the aim pursued, while simultaneously weighing up these risks and advantages.

OTHER CONSTITUTIONAL PRINCIPLES

Pluralism

Article 1.1 of the Constitution refers to *political pluralism* as one of the supreme values of Spain's legal system. Pluralism is a requirement for liberty and it is also a result of defining Spain as a *social and democratic State subject to the rule of law.* Consequently, despite the use of the adjective political, doctrine holds that pluralism refers to pluralism in general. This principle is gaining ground in the European societies that are witnessing the disintegration of their cultural, religious and racial secular monism, hence the need to move beyond this constitutional expression and turn pluralism into a fundamental principle of the legal system in general and of the right-to-freedom-of-conscience legal subsystem in particular.

Participation

The principle of participation stems from the so-called promotional function of rights provided for in Article 9.2 of the Constitution, which, in addition to making it incumbent on the public authorities to promote conditions guaranteeing the real and effective exercise of the right to freedom and equality and to remove any obstacles that may prevent or hinder this, also instructs them to *facilitate the participation of all citizens in political, economic, cultural and social life.*

The principle of participation should be construed not only in the sense of partaking of the benefits afforded by political, cultural and economic life, but also as the chance to actively participate in and enhance political, social, cultural and economic decision-making.

Regarding freedom of conscience, the principle of participation finds overt expression in a number of significant areas: a) education (Article 27.5 and 27.7 of the Constitution), through the action of the educational community in the management bodies of schools or of the actual Administration in its capacity as the State Board of Education; b) religious, political and trade union groups participate in controlling mass media and their right of access to these media is guaranteed (Article 20.3 of the Constitution); c) through the exercise of the right to rectify incorrect or inaccurate information; d) the Cooperation Agreements with the State represent another form of participation for religious confessions, which also participate as members of the Advisory Committee on Religious Freedom; and e) the exercise of the right to petition, both individually and collectively (Article 29 of the Constitution).

Tolerance

Tolerance, coupled with pluralism, entails respect for diversity; it means accepting and embracing those who are ideologically, culturally or religiously distinct. We are not speaking about tolerance in a historical sense, where those who thought they possessed the truth were condescending towards those who "remained in error", but rather tolerance as the embodiment of the modern concept of democratic coexistence, where pluralism –when tolerance comes into play– means that different social groups, religious groups included, can live together in peace, with no discrimination against individuals or groups that dissent from the majority[26].

If pluralism is more connected to the action of the public authorities, tolerance refers to the attitude of citizens. Tolerance does not translate as indifference or relativism alone, which per se accept diversity. Rather, tolerance is projected onto issues that are important to one person, which therefore means that the right of others to be different or to think differently must also be recognized.

Although tolerance is not specifically mentioned in the Constitution, it can be inferred from the principle of political pluralism (Article 1.1), freedom of conscience (Article 16.1) and respect for human dignity and the rights of others (Article 10.1). It is the task of the public authorities to promote tolerant attitudes, in which sense the recommendation made by the Constitutional Court to the public authorities is highly significant in that it urges them to steer clear of ethnic references, even for descriptive purposes, because these may encourage prejudices and xenophobic or intolerant attitudes[27].

26. CUBILLAS RECIO, L.M. (1999), "Sobre la tolerancia", in *Estudios Jurídicos de homenaje al profesor Vidal Guitarte,* Vol. 1, Provincial Council of Castellón, pp. 275-282.

27. See Constitutional Court Judgement of 22 October 1986.

LEGAL PRINCIPLES AND LOCAL PUBLIC MANAGEMENT

Right to good local management and administration

If religious diversity is to be managed on the basis of diverse local public policies, elected representatives and public employees must have a sound understanding of what can and cannot be done (because it is forbidden by law) and what is appropriate technically or for other reasons (social, cultural, etc.) We are therefore talking about the sphere of **political-administrative discretion** that exists in relation to religious pluralism in different circumstances and at different levels.

Discretion is not a problem but rather an opportunity for the public authorities to comply with their obligation to provide good administration. This is now set forth in Article 41 of the EU Charter of Fundamental Rights[28], implicitly in several parts of the Spanish Constitution and explicitly in various regional constitutions (Article 30 of Catalonia's new Statute of Autonomy, approved through Organic Law 6/2006 of 19 July, Article 31 of Andalusia's new Statute of Autonomy, approved through Organic Law 2/2007 of 19 March, Article 14 of the Balearic Islands' new Statute of Autonomy, approved by Organic Law 1/2007 of 28 February, and Article 9 of the Valencian Statute of Autonomy as amended by Organic Law 1/2006 of 10 April). Discretion has already been cited by Spain's Supreme Court for the purpose of monitoring and overturning diverse local decisions in varying policy sectors.

Knowledge in different fields –architectural, sociological, etc.– is a prerequisite for sound local administration. Legal knowledge is important too, not only of the rules but also of the general principles of good administration –both explicit and implicit– that play a positive role in guiding public management.

28. Article 41 of the Charter:
Right to good administration
1. Every person has the right to have his or her affairs handled impartially, fairly and within a reasonable time by the institutions and bodies of the Union.
2. This right includes:
- the right of every person to be heard, before any individual measure which would affect him or her adversely is taken;
- the right of every person to have access to his or her file, while respecting the legitimate interests of confidentiality and of professional and business secrecy;
- the obligation of the administration to give reasons for its decisions.
3. Every person has the right to have the Community make good any damage caused by its institutions or by its servants in the performance of their duties, in accordance with the general principles common to the laws of the Member States.
4. Every person may write to the institutions of the Union in one of the languages of the Treaties and must have an answer in the same language.

Non-arbitrariness (rationality and justification)

Among the principles of good administration at constitutional level, there is call to mention the principle that forbids arbitrary action. Article 9.3 of the Constitution[29] calls for public interventions to be justified, motivated and rational.

Public decision-makers should give reasons for and justify their decisions concerning the management of religious diversity by providing serious motivations for the decisions they adopt (administrative acts such as permits, licences, etc; municipal regulations, town planning), complying with the legal obligation specified in each case (eg, Article 54 of Law 30/1992 of 26 November, for administrative acts). If they fail to do so, the case law of Spain's Supreme Court shows how various local decisions regarding religious management can be quashed[30].

Non-discrimination

Article 14 of the Constitution[31] recognizes equality before the law, both "in the law" (which means legal rules cannot engender situations of inequality or that amount to discrimination between citizens), and "of the law" (which means that the legal consequences derived from such de facto situations must also be equal). At the same time, the equality principle is stated in its negative form, ie, non-discrimination, which prohibits any attitude and attempted justification thereof on ideological or religious grounds that, were they considered valid, would not allow citizens to exercise fundamental rights on an equal footing.

It can therefore only be argued that the principle of legal equality has been breached when different treatment is meted out to individuals who are in equal *de facto* situations but who are treated arbitrarily or in a way that cannot be justified because of their ideological or religious beliefs or convictions, in the event that this treatment undermines or eliminates their status as the holder of the right to freedom of conscience or any other fundamental rights and/or undermines or prevents them from exercising these rights.

29. "The Constitution guarantees (…) and the prohibition of arbitrary action on the part of the public authorities".

30. The case law of Spain's Supreme Court repeatedly points out that the principle of prohibiting arbitrariness is geared to "ensuring that the steps taken by the Administration rationally serve the general interests" (Supreme Court Judgement of 11 June 1991, assuming that public decisions are "coherent and rational" (Supreme Court Judgement of 27 February 1987), rationality "enforceable from the standpoint" of this principle (Supreme Court Judgement of 21 February 1994), whereby "the public authority is required to justify at all times its action" (Supreme Court Judgement of 17 April 1990), since the exercise of all power "is justified on the basis of the presumption of rationality in that this has been exercised in relation with the facts, technical means and many different aspects and values that this decision must take account of, in such a way that the discretional activity may be neither fanciful nor arbitrary, nor may it be used to divert power but rather, on the contrary, it must be based on a proven factual situation, appraised on the basis of previous reports to be determined by the applicable legal rule, and interpreted and appraised in keeping with the rationality of the aim pursued by this decision" (Supreme Court Judgements of 2 April 1996 and 25 February 1998).

31. "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".

Direct and indirect discrimination are prohibited.

Article 28 of Law 62/2003 (transposing Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin):

"One. *For the purposes of this section, the following definitions shall apply Principle of equal treatment: the absence of all direct or indirect discrimination on grounds of racial or ethnic origin, religion or convictions, disability, age or sexual orientation.*

Direct discrimination: where a person is treated less favourably than another in a comparable situation on grounds of racial or ethnic origin, religion or convictions, disability, age or sexual orientation

Indirect discrimination: where a legal or administrative provision, a clause of a collective agreement or contract, an individual agreement or a unilateral decision, though apparently neutral, would put a person of a certain racial or ethnic origin, religion or convictions, disability, age or sexual orientation at a particular disadvantage in relation to others, provided that such provision is not objectively justified by a legitimate aim and the means of achieving that aim are not appropriate and necessary.

Harassment: all unwanted conduct related to racial or ethnic origin, religion or convictions, disability, age or sexual orientation that takes place with the purpose or effect of violating the dignity of a person and creating an intimidating, humiliating or offensive environment.

Two. *Any instruction to discriminate against persons on grounds of racial or ethnic origin, religion or convictions, disability, age or sexual orientation, will be considered discrimination.*

Harassment on grounds of racial or ethnic origin, religion or convictions, disability, age or sexual orientation will be considered as discriminatory actions".

That said, prohibiting discrimination does not preclude the adoption of affirmative action measures designed to eliminate or mitigate pre-existing de *facto* discrimination and enable individuals and groups to exercise their right to religious freedom on a truly equal footing (Article 9.2 of the Constitution).

Article 9.2. Spanish Constitution:

"It is the responsibility of the public authorities to promote conditions ensuring that freedom and equality of individuals and of the groups to which they belong are real and effective, to remove the obstacles preventing or hindering their full enjoyment, and to facilitate the participation of all citizens in political, economic, cultural and social life."

Article 30 of Law 62/2003 (transposing Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin):

"Measures for positive action in relation with racial or ethnic origin.In order to guarantee full equality irrespective of racial or ethnic origin, the principle of equal treatment shall not prevent the maintenance or adoption of special measures benefiting certain groups, designed to prevent or to offset any disadvantages that they suffer as a result of their racial or ethnic origin."

Proportionality

Implicitly provided for in the Rule of Law clause in Article 1.1 of the Constitution, the principle of proportionality requires that public intervention must be suitable, necessary and proportionate, as follows:

- it must pursue purposes of general interest (suitability test);
- it should represent the least restrictive means possible in terms of guaranteeing people's rights and achieving the intended objective (necessity test); and
- the benefits should outweigh the charges, both for the community and the individuals specifically concerned (proportionality stricto sensu test or cost benefit analysis).

It should be noted that the adaption of Spanish legislation to the EU Services Directive has led to the amendment of Law 30/1992 of 26 November, with the addition of a new Article 39 bis specifying the scope of this principle:

Article 39 bis. Principles of intervention of the Public Administrations for the development of an activity (added to Law 25/2009, of 22 December, modifying various laws so that they may be adapted to the Law on free access to service activities and the exercise thereof).

"1. The Public Administrations that, in the exercise of their respective competences, establish measures limiting the exercise of individual or collective rights or requiring that conditions be met for an activity to take place, should choose the least restrictive measure, explain why it is necessary for the protection of public interest and justify its suitability in terms of meeting the aims pursued, without any discriminatory differences of treatment."

Social and territorial cohesion

The legal principles of social and territorial cohesion are designed to guide public policy linked with the notion of solidarity, enshrined in various constitutional precepts (Articles 2, 45, 138, 156 and 158 of the Spanish Constitution[32]). Social cohesion implies strengthening community links by integrating minorities and guaranteeing the right to equality and dignity in the interests of social peace (referred to in Article 10.1 of the Spanish Constitution). Territorial cohesion means the balanced distribution of responsibilities, benefits and costs, and of the necessary infrastructure between the different parts of a territory (for example, different districts in a single municipality and different municipalities in a single metropolitan area).

32. Regarding social cohesion, note, for example, Articles 42 and 45 of Organic Law 6/2006 of 19 June, Catalonia's Statute of Autonomy, plus various building laws: Article 33 of Basque Law 2/2006; Article 3 of Catalan Legislative Decree 1/2005 of 26 July, on town planning; Articles 4e and 47 of Galician law 9/2002 of 30 December; and Articles 4 and 38 of Law 5/1999 of 8 April of Castile and Leon, which refers to "the social cohesion of the population" among its public town planning objectives.
Territorial cohesion, on the other hand, is referred to explicitly in the Lisbon Treaty and implicitly in the Spanish Constitution (Article 40, for example), and also at legislative level in Article 46.4 of Catalonia's Statute of Autonomy, Article 2.3 of the State Building Law, making it incumbent on the public authorities to guarantee the "balanced outcome" of urban development; Article 4 of Law 5/1999 of 8 April of Castile and Leon refers to balanced development; Article 3.1d of Legislative Decree 1/2000 of the Canary Islands and Articles 56.1e and 85.3a of Catalan Legislative Decree 1/2005, which mention solidarity among municipalities in terms of implementing accessible housing policies, in reference to master urban development plans at supra-municipal level, and territorial cohesion, as an aspect of supra-local interest, respectively.

Concept of reasonable adjustments in international, EU and Spanish law

Although reasonable accommodation or adjustment is not explicitly recognized in the Constitution, it is provided for in various State and regional laws currently in force, albeit outside the religious sphere[33].

The reasonable accommodation technique is a useful legal tool for tackling the management of religious diversity insofar as it is a corollary of the right to equality and the principle of proportionality. Meanwhile, the "reasonableness" of the adjustment should take account of elements linked with efficiency and economy when using (scarce) public resources.

> Very succinctly then, reasonable adjustments are understood to be the measures designed to adapt the physical, social and attitudinal environment to the specific requirements of religious confessions, thus facilitating practically and effectively the exercise of rights on equal terms, and without creating a disproportionate burden.

To determine whether a burden is proportionate, the costs of the measure shall be taken into consideration, along with the discriminatory effects failure to adopt it would imply, the structure and characteristics of the person, entity or organization that should implement it (for the purposes of this handbook, this is understood as local entities), and the possibility of obtaining official financing (at non-local level) or any other assistance.

33. Article 7.c of Law 51/2003 of 2 December on Equal Opportunities, Non-discrimination and Universal Access by Persons with Disabilities:
Reasonable adjustment: Measures of accommodating the physical, social and attitudinal environment to the specific needs of persons with disabilities which, in effective and practical form and without imposing a disproportionate burden, facilitate the accessibility or participation of a person with disabilities on an equal footing with all other citizens.
To determine whether a burden is proportionate or not, account shall be taken of the costs of the measure, the discriminatory effects failure to adopt the measure would imply for persons with disabilities, the structure and characteristics of the person, entity or organization that should implement the measure and the possibility of obtaining official financing or other assistance.
To this end, the competent public administrations may establish a state aid scheme to contribute to meeting the costs associated with the obligation to make reasonable adjustments.
Any discrepancies arising between the applicant for the reasonable adjustment and the party liable to make this adjustment may be resolved through the arbitration system provided for in Article 17 of this law, without prejudice to the administrative or legal protection applicable in each case.
Article 46 of Catalonia's Law 18/2007 of 28 December, on the Right to Housing:
" 2. Reasonable adjustments shall be understood as measures designed to meet the particular requirements of certain people with a view to facilitating their social inclusion and right to housing on an equal footing with all other individuals and without imposing a disproportionate burden.
3. To determine whether a burden is proportionate, the public administrations should take into consideration the costs of the measure, the discriminatory effects failure to adopt the measure would imply, the characteristics of the physical or legal person, entity or organization that should implement these measures and the possibility of obtaining official financing or other assistance.
4. The competent public administrations may establish a state aid scheme to contribute to financing the costs associated with the obligation to apply the reasonable adjustments to which this article refers".

To this end, the competent public authorities (beyond the level of town halls) may establish a public aid scheme to contribute to covering any possible public costs associated with the obligation to make reasonable adjustments.

An example of reasonable adjustment in relation with religious freedom may be found in the decision reached on 21 June 2001 by the Quebec Superior Court in Rosenberg versus Outremont (File No. 500-05-060659-008, 21 June 2001).

This legal decision concerns a conflict that arose in Canada, a country that has seen rapid development in the reasonable adjustment technique. In this particular case, Hasidic Jews in the city of Outremont built a structure of barely visible wires –similar to fishing lines– connecting the roofs of their houses. This activity sparked a protest from the Mouvement Laïque Québecoise on the grounds that the presence of these wires modified the streets, which lost their neutral status since they had been turned into a symbolic-religious enclave affecting a number of non-Jewish residents in an essentially public sphere that should be open to everyone.

Despite these arguments, the Superior Court of Quebec ultimately ruled in favour of the Jewish community, highlighting that on weighing religious freedom against the public interest the claimants were out to defend, the former took precedence over the latter. The ruling emphasizes that Canada's multicultural policy makes it incumbent on the country's legal practitioners to ensure –where basic rights such as religious freedom are concerned– *"reasonable accommodation".*

MANAGEMENT CRITERIA

Understanding religious diversity

Managing a specific set of social circumstances or social reality requires, first and foremost, a profound and thorough knowledge of that reality. Knowledge of the religious diversity that exists in each municipality or community is a prerequisite for understanding the dimension of this reality, what constitutes it and the requirements and problems it raises or may raise. Knowledge in this case is not limited to what can be gleaned from objective data concerning the presence of various churches, religious confessions or communities in a given territory, but also the specific characteristics of these religious entities, since these will give us an indication of the issues that are likely to be raised and that must be tackled.

A number of variables need to be weighed up when designing local models for managing religious diversity, among which:

- Volume of organized religious groups of the various confessions present in the municipality.
- Number and location of places of worship.
- Characteristics of places of worship.
- Socio-demographic profile of religious communities and growth forecasts.
- Ethnic and national specificities of the different groups.
- Means and degree of coordination among the religious groups in the same confession and in the territory.
- Existence -or otherwise- of actors legitimately entitled to speak on behalf of different religious groups belonging to the same confession.
- Profile of educational, social and cultural activities of the religious communities.
- Groups targeted by the educational, social and cultural activities of the religious communities.

Planning and anticipation

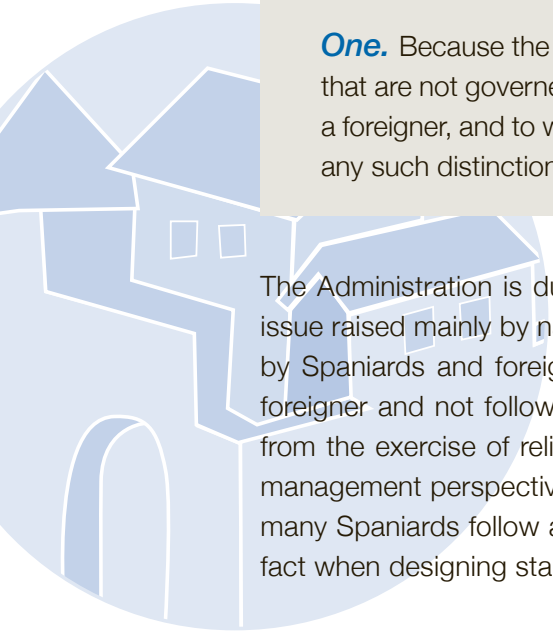
Knowledge, then, is what will enable us to anticipate and plan for the problems that may arise and act accordingly. Planning and anticipation enables us to exert greater control over situations and avoid problems. Management is made simpler with the result that social cohesion is enhanced.

> If we know, for example, that a large Muslim community exists, it follows that it will need a place of worship. Planning means choosing the most suitable place and means for accommodating this requirement and anticipating any problems that may be triggered by the social response that may follow, allowing for time to explain what rights are recognized by law, the main aspects of the project in question and its potentially positive impact on the surrounding area, plus any measures that will be adopted to prevent inconveniences and disturbances to the neighbours, complaints and other similar incidences. Unless these steps are taken, there would be no means of containing problems once they arise and it would be far more difficult to explain and apply appropriate solutions.

Managing religion as opposed to cultural migration

There is no doubt that the migration phenomenon is partly responsible for the significant growth of certain religious confessions, which in turn explains why many of the measures concerning religion and religious affairs are adopted by the immigration authorities. In this respect, it is important to distinguish between the management of religion and the management of immigration, for various reasons.

> ***One.*** Because the exercise of religious freedom engenders requirements that are not governed by the condition of the rights holder as a national or a foreigner, and to which the Administration must respond without making any such distinction.



The Administration is duty bound to tackle this issue just as it would were it an issue raised mainly by nationals. Religious freedom is a fundamental right enjoyed by Spaniards and foreigners; no association should be made between being a foreigner and not following the religion of the majority. The requirements derived from the exercise of religious freedom cannot be dealt with from an immigration management perspective because this would be overlooking the fact that a great many Spaniards follow a religion other than Catholicism. It is crucial to grasp this fact when designing stable management models designed to enable regional and

local administrations to develop the skills they need to deal with the specificities of any given religion.

Two. Because it sets the religious "speciality" apart from the condition of being a foreigner, which in turn contributes to eradicating xenophobia and facilitating social cohesion.

From the standpoint of the relevant policy-making bodies, it is important that the population identifies with the group as a whole and actively participates in social and cultural life, paving the way for real and effective peaceful and harmonious co-existence.

Three. *B*ecause the condition of being an immigrant changes over time, generally with ever-deeper roots being created in Spanish society as a result and, therefore, the gradual loss of this identity as an immigrant, new arrival and foreigner. Creating a family, having children born on Spanish soil or, in some cases, being granted Spanish nationality are some examples of how this identity can change.

As the public institutions closest to the citizen, local authorities can do much to contribute to fostering dynamics of belonging that are compatible with respect for diversity, always within the limits laid down in the Constitution. These dynamics will enable people from different cultural, social, religious or ethnic surroundings to put down the roots they need to gain a sense of belonging and feel part of a group. The proximity of local authorities makes them particularly well placed to promote integration and prevent the creation of ghettoes and the emergence of defensive attitudes related to identity, provided steps are taken to ensure respect for differences, within the legal and constitutional framework that defines Spain. The religious element is a powerful ally in this respect insofar as one of the elements these groups identify with most clearly is none other than their religious beliefs and practices.

Recognition and visibilization

People and groups crave recognition. Being recognized is a basic requirement; it makes you visible to others, it gives you a place in society and allows you to play an active role in that society. This phenomenon is particularly important in a society with a history such as that of Spain, which has never enjoyed such a long and consolidated period of freedom of thought, conscience and religion as since the enactment of the Constitution in 1978 following the transition to democracy.

Centuries of persecution followed by abject acceptance caused the followers of religious confessions other than the official State religion to become ostracized and go underground. There is no doubt that the plurality of beliefs and convictions, religious or otherwise, has enjoyed full legal recognition in Spain since the Constitution of 1978. But these are still minority religions and, as such, their recognition by society is still required to eradicate any lingering traces of distrust. The growth in recent years of religious communities other than Catholic has only served to reinforce this need.

At the very least, recognition and visibilization of religious diversity means that:

- churches, confessions and religious communities are entitled to use legal forms of recognition as religious entities and, once achieved, with full legal effects where all the public administrations are concerned; and
- they have the right to participate as social partners in community life, on an equal footing with all other social stakeholders, without being discriminated against because of their religious nature and within the limits of the principle of secularism.

Legal personality is acquired through enrolment in the Register of Religious Entities with the Ministry of Justice. This is a single register for the whole of Spain and enables religious entities to acquire the special status provided for in the Law on Religious Freedom. Registration alone is sufficient to allow religious bodies to enjoy full capacity to operate and they are not required to re-register elsewhere to obtain the benefits and services provided by the public administrations for the activities they conduct, just like any other entity.

By publicly acknowledging the religious diversity that exists within their territory, the civil authorities can significantly contribute to normalizing the presence of these groups and entities in the community. A number of steps can be taken to make this recognition and visibilization effective, such as establishing suitable channels of communications with their legal representatives and encouraging their participation in municipal life.

General management framework as opposed to specific negotiations

The preferred criterion for managing religious diversity should be the use of general instruments generated by common provisions. This is not incompatible with specific agreements designed to respond to a specific issue concerning a specific group, but these should be the exception to the rule and must be justified by the singular nature of the issue in question, with a view to avoiding the risk of discrimination or excessive ties with a specific entity. For this reason:

The more general a measure, action or resolution, the easier it will be to explain to citizens and for them to understand it, thus avoiding the risk of making exceptions that lead to accusations of unfair treatment, however unfounded such claims may be.

It should be emphasized, however, that

General measures fit in best with the personalist principle, which primarily entails recognizing rights for people in their capacity as individuals rather than collectively. Individuals are the original rights holders (Article 10.1 Spanish Constitution) and rights are only extended derivatively to groups to the extent that this will contribute to a fuller realization thereof.

Specific negotiations with a group invert this relationship. This would be legitimate if the aim is to get that group to participate in decisions that affect it, particularly when they have a bearing on issues related to their religious convictions and in which respect the public authorities have no competence and require the support and assistance of the confessions. In other words, the confessions act as go-betweens for the persons who are targeted by a specific rule or action, so it is therefore necessary to ensure that the group in question does not become the filter for enabling the exercise of what are essentially individual rights. And resorting to general provisions makes it easier to ensure this objective is best achieved.

Inter and intra-administrative coordination and cooperation

Good municipal management of religious diversity should be based on municipal actions coordinated internally and with other public administrations, as per the guidelines offered in the coordination principle established in numerous sets of rules, among which the European Charter for Local Self-government (especially Article 3.1 on the concept of local self-government, Article 4 on the scope of local self-government and, above all, Article 8 on administrative supervision of local authorities' activities), the Spanish Constitution (Article 103.1), and Law 7/1985 on the Basic Principles of Local Government (Articles 7.2 and 7.3, 10, 55, 58, 59 and 62). Always, of course, with all due respect for constitutionally guaranteed local autonomies, as stated in Article 140 of the Spanish Constitution.

Intra-administrative coordination and cooperation. Issues linked with the management of religious diversity can be tied in with various municipal policy areas, and the prevention and satisfactory resolution of conflicts will sometimes require

a cross-sectoral approach involving experts in different fields and in relation with various local public policies (city planning, public safety, funeral services, etc). Approaching these matters from the unilateral professional perspective of the expert –from a purely architectural or a purely legal standpoint, for example– or with a narrow sector focus –from a purely city-planning or public safety perspective– often falls short of the mark, with a more eclectic approach being required. Decision-making in relation with religious diversity should therefore be preceded by an internal assessment based on informal contacts (work meetings and consultations, etc.) and/or formal contacts (requests for information about specific aspects) within the local administration.

Inter-administrative coordination and cooperation. Likewise, municipal action should be coordinated with other public administrations and especially, albeit not uniquely, with the regional administration. This goes from requesting information on which to base informed decisions that take account of all the relevant facts and interests, to seeking assistance with the implementation of these decisions once adopted, involving the intervention of other administrations where supra-municipal interests come into play (think town planning and the final approval of local plans by the regional authority). To this end, interaction between various levels of authority is inevitable and will doubtless contribute to achieving sound administration.

As noted in numerous examples of Supreme Court case law, the presence of supra-local interests may justify the need for coordinating these with local interests, when strictly necessary, but always with due consideration for the municipal autonomy guaranteed by the Constitution.

Administrative coordination, cooperation and organization. The cross-sector cooperation and coordination required to manage religious diversity should prompt consideration as to what is the most appropriate administrative structure for meeting this need flexibly and appropriately. Solutions may range from creating a body to deal with this matter from a cross-sector perspective and assigning flexible work teams to each case, but it ultimately falls to the local authorities to decide on the most appropriate organizational formula.

Ex-post efficiency, celerity and evaluation

Like any administrative activity, the administrative management of religious diversity is geared to meeting the general interests pursued in each case as efficiently as possible, interests that are linked with the constitutional rights and principles mentioned earlier on. Efficiency means responding promptly to demands, consultations and any other situations that may arise. In addition, an assessment should be made of the real impact of the public policies developed in this sphere.

Efficient administrative management of religious diversity. Efficient administrative conduct is a constitutional mandate, enshrined in Article 103.1 of the Spanish Constitution[34], and one that should guarantee the right to good administration of religious diversity. Efficiency means effectively meeting the general interest objectives pursued by the administrative decisions adopted (permits, ordinances, plans, etc.).

This legal principle implies applying various administrative management techniques (simplification and pursuit of quality, by adhering to service charters for example, reducing the time taken to make decisions, etc.). In this case, law and management should go hand-in-hand to contribute to guaranteeing the right to religious freedom through good administration.

Celerity and management of religious diversity. Administrative action cannot be efficient if it is out of time. What is more, the effectiveness of certain constitutional rights –among which freedom of ideology, religion and worship– may in practice depend on the speed at which the corresponding administrative functions are performed. Celerity, then, is a key criterion in terms of measuring administrative efficiency, as stated in Article 74 of Law 30/1992 in relation with the principle of urgency regarding administrative procedures.

Where legally-formalized decisions are concerned, the minimum timeframe is determined by the regulations in force (eg, resolution timescale and administrative silence techniques in the case of applications). Municipal practices, then, must be resolved without undue delay, within the minimum prescribed timeframe. The speed with which informal activities, contacts, etc. are handled will depend on the seriousness of the matter and the scope of the local authorities to take action, hence the importance of inter-administrative cooperation.

Public activity should steer a middle course between being so slow as to undermine the right to religious freedom and so fast as to prevent an adequate appraisal of all the interests at stake.

Some decisions relative to the management of religious diversity may spark massive citizen protests and high local tensions. The extent to which the decision ultimately adopted is really effective may broadly depend on the extent to which it is accepted by society, which is in turn linked with real and effective participation in the decision-making process and the transparency of that process. Lack of social acceptance may give rise to the all-too-familiar subsequent legal appeals, making it really difficult to implement the decision adopted.

34. "The public administration shall serve the general interest in a spirit of objectivity and shall act in accordance with the principles of efficiency, hierarchy, decentralization, deconcentration and coordination, and in full subordination to the law".

Ex-post evaluation. It will not, however, be possible to gauge the real efficiency of any public policies in this field -and the need to modify them, should this be the case- without an ex-post evaluation of the decisions adopted and the results actually achieved. It is therefore essential to analyse the decisions adopted and their impact (administrative acts, ordinances, town planning, etc). Once again, inter-administrative cooperation (with other levels of the public hierarchy, including the National Agency for the Evaluation of Public Policies and Public Services or the public universities, for example) is both possible and desirable.

Generally speaking there is little tradition of appraising the real-life impacts of public policies, a situation that must be remedied since this is what will generate the knowledge required to alter and/or pursue, as appropriate, the public policy initiated in a given area.

Efficiency and economy

Effective management of religious diversity is not enough in itself. If it is to be properly administered, it must also be efficient and economical as expressly laid down in Article 31.2 of the Constitution[35] insofar as public resources –always scarce– will obviously come into play one way or another.

Managing religious diversity may require the direct use of public resources (investments in public services, subsidies and other means of promoting the activities of the different religious confessions, including, for example, land transfers), just as these resources may be used indirectly (eg, approval of an ordinance or plan that requires the investment of both time and personnel resources). In both cases, however, it will once again be necessary to conduct an *ex-ante* and *ex-post* evaluation of how these resources have been employed.

In this case, efficiency dictates that public resources should be used in such a way as to achieve the most urgent general-interest objectives with a given level of resources, or that the minimum possible resources be employed when specific aims are being pursued. The principle of economy, on the other hand, requires that the resources used be kept to a minimum, provided they are sufficient to ensure that these public-interest objectives are effectively met. This means that in the process of making decisions concerning the management of religious diversity, steps must be taken to analyse the economic feasibility of the decision to be taken and its cost, which should be the lowest possible of all the equally effective options available.

35. "Public expenditure shall make an equitable allocation of public resources, and its programming and execution shall comply with criteria of efficiency and economy".

The efficient management of religious diversity therefore requires:

- Analysing the feasibility of the options available: the principle of efficiency means, inter alia, using minimum possible public resources while guaranteeing the same level of efficiency.

- Analysing the lowest possible cost among the options available: application of cost-benefit analyses or similar techniques (cost-effectiveness) would make good sense.

PART TWO:
TOWARDS A BETTER MANAGEMENT

BUREAUCRATIC PROCEDURES

BUREAUCRATIC PROCEDURES

Bureaucratic procedures can often be quite disorientating, both for the religious communities that have to formulate and submit their applications and requests, and also for the administrative staff who have to deal with them, hence the need for a specific section on this subject. Religious pluralism raises demands that are quite baffling for local administrations, which are not always initially quite sure what procedures should be followed even though they are often no different from those they follow when dealing with other groups or entities, except that in this case the source of the demand is a religious group. So what should be done? Who is competent to deal with the matter in question? This bewilderment, sometimes also influenced by preconceived ideas, can delay and even paralyse the processing of these demands, thus undermining the generally good administration required of the local authority.

Although this handbook consistently refers to town halls as the direct and immediate managers of all the measures and proposals it contains, it is nonetheless highly advisable that these measures also be taken into account by all the bodies that constitute the local administration and which might well be affected by the problems raised here. This would apply to *comarcas* (counties), metropolitan areas, *mancomunidades* (municipal associations), *entidades de ámbito territorial inferior al municipio* (territorial entities smaller than municipalities), and –importantly– the *diputaciones provinciales* (provincial councils) which play an important role in the field of judicial, economic and technical assistance and cooperation[36].

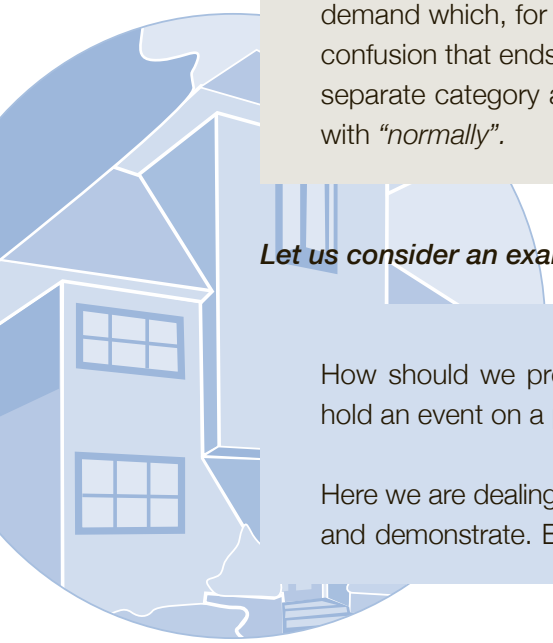
36. For a full explanation of the composition and functions of local government bodies in Spain, see Local and Regional Democracy in Spain, Explanatory Memorandum: https://wcd.coe.int/ViewDoc.jsp?id=2041471&Site=Congress#P142_12713

WHAT ARE RELIGIOUS BODIES DEMANDING?

The demands most frequently raised by religious entities with Spanish town halls concern:

- Opening places of worship (land transfers, permits to open and use such places, etc.).
- Granting plots for Islamic and Jewish burials.
- Making public spaces available for the celebration of faith festivals or educational, cultural and social activities promoted by religious entities.
- Holding events on public thoroughfares.
- Inviting authorities to public acts organized by religious entities.
- Accessing public subsidies and grants.

In most cases, these demands are no different from those made by any other group or entity in the district and should therefore be processed similarly. The only difference is the religious nature of the body making the demand which, for one reason or another, seems to be a source of initial confusion that ends up acting as a barrier, relegating these demands to a separate category and preventing them from being processed and dealt with *"normally"*.



Let us consider an example:

How should we proceed when a religious body asks for permission to hold an event on a public thoroughfare?

Here we are dealing with the exercise of the fundamental right to assemble and demonstrate. By law, this does not require prior authorization, simply

prior notification, and the event may only be prohibited when there are well-founded grounds to expect a breach of public order, involving danger to persons or property. As such, this application should be dealt with in such a way as to protect and facilitate the exercise of this right, and any decisions taken should be as least restrictive as possible. But here another fundamental right comes into play, namely the right to religious freedom.

These rights, however, seem to generate different appraisals owing to the religious nature of the applicant and the event in question, with more importance being attached to the obvious inconveniences it will cause – eg, traffic problems– and how it may affect other rights. When the religious element comes into play, there is therefore a risk that the inconveniences will be overstated.

HOW SHOULD THESE DEMANDS BE MET?

Should specific services be available? What are the most appropriate departments or town hall offices? In order to answer these questions, the various territorial and organizational characteristics of Spanish municipalities must be taken into account, as must the ground already covered by some of them in the context of religious management. However, various other elements should also be considered when defining models for organizing the public management of religious diversity, irrespective of the specific population characteristics of each municipality.

A good starting point in this respect would be to consider the way the migration phenomenon has been handled. It may be helpful to examine how the management of immigration has been dealt with in our municipalities and how it works in practice. This can provide us with useful tools that can also be applied to the management of public policies in relation with religious diversity.

Irrespective of the logical consequences that result from the differences that exist between municipalities, their handling of the immigration issue has remained organizationally and conceptually consistent. To cope with the marked and relatively sudden increase in demands linked with immigration, steps were taken to assign experts, departments and specific town hall offices to deal with them, either exclusively or by sharing other types of competences. Their cross-sector nature quickly became evident, with more coherent and ambitious policies that were broader in scope being formulated to deal with these issues. It was not long before there was talk of managing diversity in our cities, moving beyond the foreigner/autochthon dichotomy and referring instead to the inhabitants of our cities, to neighbours and to citizens as the members of the highest form of political community, the city.

A lot of common ground therefore exists regarding the municipal management of religious diversity:

1. We are dealing with a specific feature of present-day societies: managing diversity in relation to citizens exercising their rights.

2. What we have is an issue that crosses over into public life and that therefore needs to be dealt with and resolved by the pertinent public authority.
3. The management of religious diversity touches on many different areas (town planning, education, social action, health, citizen participation, etc.) and, as such, its cross-sector nature should be taken into account from the outset.

Specific attention must be devoted to the management of religious pluralism, at least for the time being, especially in view of the relative lack of attention it has commanded to date –barring concrete experiences and certain geographical areas– and its obvious contribution to social cohesion and coexistence.

As stated earlier, managing religious diversity at municipal level involves a broad range of experts, departments, town hall offices and other different areas, all of which are interconnected and related. What is more, the prevention and resolution of conflicts often requires the intervention of all these actors, hence **the need to institutionalize this transversality** and bring it into the mainstream.

For all these reasons, it is suggested that tasks related to the public management of religious diversity be assigned to a specific department, expert or town hall office –depending on the real organizational capacity of each municipality– albeit not exclusively, since this would be neither desirable nor necessary. These competences should fall within the sphere of the authority that is best qualified to guarantee this cross-sector collaboration (mayor's office, citizen participation office, etc). This form of organization is even recommended in small municipalities or those with a single centralized citizen service department. The aim is not to create a unique and exclusive new customer-service counter, but rather to dispose of an ad hoc instrument managed by specially trained staff and designed to facilitate the access of religious entities to the different spheres of municipal management and processing, while simultaneously guaranteeing this cross-sector collaboration.

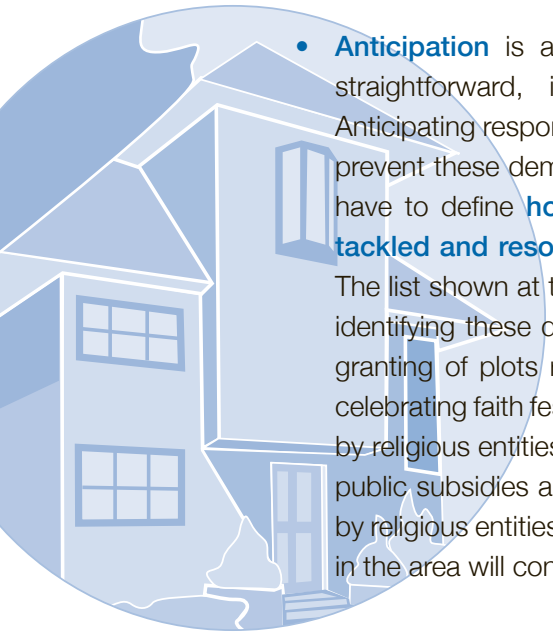
ADMINISTRATIVE SERVICES AND PROCEDURES

The message this handbook is therefore trying to drive home is that today's management of religious diversity is not so much characterized by any massive shortage of relevant public policies –if by this we mean the preliminary phases of parliamentary decision-making– but rather by the absence of any decisions concerning the scheduling, delivery and implementation of these policies.

What has hitherto been missing, with notable exceptions, is the political will to anticipate and respond to immediate demands, to schedule and bring policies into line with concrete decisions and actions in each field, and to implement already-existing resources and procedures. This involves **identifying and defining the appropriate administrative procedures necessary to respond to these requirements.** In this sense and in relation with the services that need to be provided and the procedures followed, the following guidelines are proposed for scheduling, delivering and implementing these policies:

- **Specific training for the municipal staff responsible for handling these matters is vital.** This refers to staff working in practically all the administrative areas of the town hall. It is recommended that the religious confessions be asked to help develop these training activities.

- It is equally important for **town halls to encourage inter-administrative relations and cooperation** on a regular and systematic basis, with a view to sharing experiences and staying abreast of new developments.



- **Anticipation** is also a key element. These demands are generally fairly straightforward, initially raising few technical-administrative difficulties. Anticipating responses will contribute to avoiding conflict situations that could prevent these demands from being handled properly. In other words, we will have to define **how these demands should be formulated, processed, tackled and resolved from an administrative management perspective.** The list shown at the beginning of this section can be used as a blueprint for identifying these demands: opening and regularization of places of worship, granting of plots reserved for Islamic burials, granting of public spaces for celebrating faith festivals or educational, cultural and social activities promoted by religious entities, the holding of events on public thoroughfares, accessing public subsidies and grants, and inviting authorities to public acts organized by religious entities. Regular dialogue with the religious bodies that are present in the area will contribute to facilitating this task.

- Steps must also be taken to **identify resources and instruments for responding to these demands,** both from the internal perspective of the municipal staff responsible for processing them, and **from an external perspective** to guarantee that enough information is made available to the groups and citizens who come to the administration demanding specific services.

The traditional lack of effective communication between religious minorities and local governments makes it imperative to design a **special strategy for disseminating this information.** Initially, making this information available on municipal websites may not be enough. Conducting specific information campaigns and making this information available in all the relevant municipal departments would be a very positive step towards bringing about the much-desired institutionalization of relations between religious minorities and local authorities. More particularly, the aim of this exercise would be to enable the different religious entities and individual citizens to envisage the kinds of procedures they will be dealing with and provide them with the information they need to submit the pertinent demands.

A positive step in this direction would be to **prepare guides to resources, rights and responsibilities.** Beyond their specific content, these should at least include the following information:

- Current regulations relative to religious freedom rights in relation with the sphere in question.
- Legal framework governing the matters that need to be processed and the requirements the applicant must meet.
- Practical aspects that may emerge in connection with the demand being made and/or service required (requirements the application must meet, technical-administrative documents that must accompany the application, etc).

Finally, a **systematic evaluation** is required, providing us with the elements we need to analyse with a view to appraising and enhancing the suitability, pertinence, effectiveness and efficacy of these measures.
As stated earlier, the existence of a cross-sector municipal body responsible for handling matters related to the management of religious diversity would make all these tasks considerably easier.

Summary

- It is proposed that tasks linked with the public management of religious diversity be assigned to an expert, department or town hall office, albeit not exclusively since this is neither necessary nor desirable.
- Administrative instruments must be put in place for processing and meeting demands with a view to the management of religious pluralism in our municipalities.
- A special strategy for disseminating this information must be designed.

SERVICES

SERVICES

URBAN PLANNING AND MANAGEMENT

Religions require a physical space for the manifestation of their collective expression (church, mosque, synagogue, etc.), one that is located in an urban area, hence the connection between religion and urban planning. Urban planning is an element that can both facilitate and obstruct the free exercise of religious practices, or even prevent it. The right to establish places of worship is a fundamental right, one of the cornerstones of the right to religious freedom, governed by the Law on Religious Freedom.

The existence of the fundamental right to religious freedom will determine the possibilities (and the duty) of the municipal authorities to regulate places of worship through suitable urban planning and regulations, thus safeguarding general interests.

Good administration in the framework of the current legal system legitimizes the decisions adopted in this sphere, facilitating their social acceptance and therefore their final efficacy.

Politics and much less party-political debates should not be mixed up in the development of public policies for managing religious diversity in relation with land use. This should take place irrespective of the political party in power and always in conformity with the existing and future legal framework, with due respect for the Constitution and the statutes of autonomy.

When discretion needs to be exercised in decision making, ie, choosing from among various possible legal alternatives, the appraisal that is conducive to adopting the final decisions should be guided by the general principles of law.

Spanish law places foreigners on an equal footing with nationals in terms of exercising the right to religious freedom which means that public policies may not, under any circumstances, be based on an absence of reciprocity in the country of origin concerning the freedom to establish places of worship.

The analyses and suggestions contained in this handbook are based on what town-planning institutions in Spain have in common. In other words, they draw

on the tenets of what may be termed common urban law in Spain, stemming from Royal legislative decree 7/2015 of 30 October, approving the consolidated text of the Land and Urban Rehabilitation Law, the town-planning tradition common to all autonomous communities and references in case law to institutions that are common to all of Spain's 17 autonomous communities.

How does town planning accommodate places of worship?

The existence of the fundamental right to religious freedom will determine the possibilities (and the duty) of the municipal authorities to regulate places of worship through suitable urban planning and regulations, thus safeguarding general interests, within the framework of their competences and with due respect for the legal order in force and any existing regional regulations geared to safeguarding supra-municipal general interests. Two decisions regarding places of worship fall within the remit of town planning: one concerns their treatment as **community facilities** (since this is how they are traditionally perceived in Spanish town planning law, irrespective of whether they are publicly or privately owned, but always considered as a matter of general interest); the other concerns their possible location in terms of **zoning classifications** within the municipality (in other words, besides being considered as a facility, a place of worship may also be considered as corresponding to the **use of land for purely private purposes,** such as land for residential or commercial purposes).

Where should they be located?

> Urban planning should avoid (through public policies governing facilities and zoning classification) solutions that engender segregation since these undermine social harmony and breach principles of equality concerning land use and social and territorial cohesion, which makes them illegal.

To determine whether a decision may lead to segregation, it will have to be examined in the light of the physical layout of the municipality, existing zoning criteria and any disproportionate de facto constraints that may be placed on those who wish to practise their religion (distance to the place of worship, public transport connections, etc.).

Generally speaking, it can be argued that relegating all new religious facilities solely to land qualified for industrial use located in peripheral areas set well apart from the city centre and claiming that this is compatible with religious use may be an indication of segregation, although this possibility should either be confirmed or belied in the light of all the other factors that come into play. Furthermore, the town hall must provide clear and explicit justification to the effect that no such segregation exists.

In this respect, it is interesting to draw attention to the well-known article on the relationship between architecture and crime by the prominent US lawyer Neal Kumar Katyal, who argues that land uses that are known to decrease crime, such as religious buildings, should be strategically placed. Apparently, various studies in America have shown that places of worship lower crime rates by cultivating social organization and a sense of order, thus contributing to social and territorial cohesion: "An architectural perspective suggests that planners can incorporate these insights by encouraging houses of worship to be centrally located. By making churchgoing part of the daily fabric of life, instead of something requiring a special trip, social organization will expand"[37].

How should we go about this?

1. From the perspective of places of worship as community facilities

With regard to the municipal regulation of religious facilities, **urban development plans should contain information about the existence of religious facilities, and their location and characteristics,** since these facilities can and should exist if the community needs them[38].

Spain has no numerical town-planning standards in terms of the land that must be set aside for religious facilities. This should therefore be established in municipal plans in a proportion that is in line with the requirements of the population, to which end discretion may be exercised but never arbitrariness.

Urban planning and setting aside land for places or worship

In its judgement of 4 February 1987 (Law Report 1987/2067 examining the constitutional admissibility of locating facilities for religious use on public land), the Supreme Court stated that land may be earmarked for publicly-owned religious facilities in town-planning development plans without entailing a breach of Article 16.3 of the Spanish Constitution, arguing that just because the Constitution says that "no religion shall have

37. KATYAL, N.K. (2002), "Architecture as Crime Control", 111 Yale Law Journal, pp. 1-109.

38. In some cases, regional laws have followed the 1978 Urban Discipline Regulations, where religious use is considered as one possible use of public social facilities, in addition to outreach, cultural and health purposes, etc. Although not widespread, urban development plans can include minimum numerical standards for religious use. This is the case of Palma de Mallorca, which stipulates 0.20 square metres per inhabitant at local level, and 0.01 square metres per inhabitant at general level, which means that these numerical standards are obligatory in this city and must be taken into account in future urban development plans. See RODRIGUEZ GARCIA, A.J. (2009) "Los problemas urbanísticas derivados del establecimiento de lugares de culto y la realización de ritos funerarios de las minorías religiosas en cementerios municipals", in Igor Minteguia Arregui (coord.) *Human rights in the city: Meeting organized by the Law Faculty of the University of the Basque Country-Euskal Herriko Unibertsitatea and the Bilbao Town Hall,* University of the Basque Country, Bilbao, pp. 77-114. On this matter see PONCE, J. (coord.) (2010): *Cities, town planning law and religious freedom: comparative elements in Europe and America,* Fundació Carles Pi i Sunyer d'Estudis Autonòmics i Locals, Barcelona.

a state character", this does not mean the administration cannot or should not meet the religious needs of Spanish society.

On the other hand, Supreme Court Judgement of 28 March 1990 (Law Report 1990/2265) makes it clear that the absence of a specific legal standard, beyond any reference to the proportion needed to meet social requirements, as seen earlier, does not mean to say that town halls have a free hand because the use of discretion can always be controlled by law. (In this particular case, a provision to locate a facility on a piece of land was subsequently annulled by the court on the grounds that the land set aside was oversized).

2. From the perspective of places of worship as private activities to be developed on land with the pertinent urban classification

From this perspective, local urban plans **should classify land for religious purposes in such a way as to meet the population's requirements and in line with the physical context of the area or municipality,** guaranteeing the right to religious freedom, social and territorial cohesion and non-discrimination in terms of territory. This will require a very careful prior analysis which should be included in the town planning report (justification statement for the ordinance plan), to avoid arbitrariness.

In accordance with Article 25.2d of the Law on the Basic Principles of Local Government, any decision taken by local authorities regarding the religious use of land in the district must be well founded (here the planning report will play a key role), it may not entail any kind of discrimination (care must be taken to ensure there is no indirect discrimination), and it must respect the principle of proportionality, which means adopting the alternative that represents the least onerous method of advancing the right to religious freedom, provided it effectively protects the general interest.

In this sense, religious confessions should be taken into account in urban planning when regulating issues such as the religious use or opening of places of worship.

Type of land

Places of worship may be **located on any type of land,** always in compliance with state and regional town planning regulations: both on **urbanized land,** ie, land that is legally integrated in an urban network made up of a network of roads, services and plots inherent to the population nucleus or settlement it forms part of (Article 21.3 of Royal Legislative Decree 7/2015 of 30 October, approving the consolidated text of the Land and Urban Rehabilitation Law); and on **land included in a traditional rural nucleus** that is legally established in a rural area, provided that town and land-planning legislation qualifies it as urban land or land treated as such, and provided,

in compliance therewith, it disposes of the infrastructure, services and equipment required to this end (Article 21.4 Land and Urban Rehabilitation Law)[39].

Zones where land may be used for these purposes are considered as **community facilities** and depending on their initial ownership, will be considered as **publicly or privately owned facilities.**

The municipal body must previously decide whether it will consider transferring the land and whether it is suitable to do so. The legal regulations and the possibilities these afford the town hall are described in more detail in the section headed "Land transfers", distinguishing between public property, property that belongs to a public body but not for public use or service, and assets that form part of the municipal land heritage.

It stands to reason that legally established procedures will vary depending on the legal nature of the land. And it should be specified that in the case of land belonging to a public body, it must be determined at the outset whether or not the facilities will continue to be publicly owned. If these do remain under public ownership, it is interesting to note that municipal bodies have the possibility of establishing surface rights.

If the land to be set aside for a religious facility is **publicly owned** (ie, the facility is to be erected on publicly-owned territory and built for public use and service) and this facility is to be considered a **public asset,** from a strictly legal standpoint these centres will be treated as **community facilities** that form part of either the general or local **town-planning system,** depending on their outreach (to the entire municipality or even supra-local spheres if general, and to one sector or unit only if local), which will obviously condition **the way in which the land is acquired** (in the event of a new construction). In the case of **local town-planning systems,** the acquisition should take place through **expropriation of urban land** not classified for development, as an isolated action, whereas on urban land that is not consolidated or suitable for development, the land should, in principle, be **granted** by the owner (Article 18.1,b) Land and Urban Rehabilitation Law, since the land set aside will be included in a unit that will share charges and benefits. In the case of **general town-planning systems,** in principle the land set aside should be acquired through **expropriation**[40]**.**

39. The conditions provided for in Article 21.3 of the Land and Urban Rehabilitation Law are:
a) That the land has been urbanized by implementing the corresponding land-use planning instrument.
b) That the necessary services and infrastructure are installed and operational, in compliance with the provisions of applicable land laws, through networking and in order to meet needs for existing purposes and buildings and those provided for in urban planning, or to be able to dispose of these without any other works other than those involving connection with pre-existing facilities. The fact that this land may be adjacent to ring roads, bypasses or commuter communication routes does not mean it will be considered as urbanized land.

40. We say "in principle" in both cases because in practice, this information should be far more nuanced in accordance with the regional town-planning legislation that would apply in each case.

As far as the **construction and management of the centre** is concerned, all the **public-private cooperation** techniques recognized by the Spanish legal system –more specifically in Public Sector Contract Law 30/2007 of 30 October– could be deployed: public works contract, public works concession contracts (in which case it should be noted that the Administration can take it upon itself to pay the contractor), or public-private cooperation. Likewise, it should also be remembered that to attract the interest of private collaborators, perhaps profit-oriented institutions, urban development operations could be designed to include a possible underground use (underground garage, etc.).

An **ex novo construction** would be a **public property belonging to the municipality,** destined for public use (but **not as a public service,** since providing worship and associated services in these centres does not amount to providing a public service).

Finally, we should not forget opinions that limit this possibility in the case of *ecumenical* or *multi-faith* spaces to the service of the different religious confessions, seeking, as they see it, greater equilibrium between the principle of secularism and the need to make existing religious pluralism effective[41].

Architectural design

The urban design of places of worship is all-important in terms of integrating, dignifying and making them visible in the urban landscape. However, design regulation requirements cannot be a potential source of disproportionate burdens or discrimination (especially indirect). The location of places of worship in basements should not be ruled out a priori but rather studied on a case-by-case basis, and if appraised negatively, duly justified.

In this sense, architectural design should respect existing town-planning development. Architectural creativity, meanwhile, will be limited by so-called directly applicable rules, now set out in Article 20 of the Land and Urban Rehabilitation Law and applicable all over Spain.

41. RODRÍGUEZ-GARCÍA, J.A. (2003): *Urbanismo y Confesiones Religiosas,* Montecorvo, Madrid, and (2007): "A vueltas con 'urbanismo y confesiones religiosas'", in Mar Moreno Rebato (coord): *Estudios jurídicos de Derecho urbanístico y medioambiental, Libro-Homenaje al Profesor Joaquín Mª Peñarrubia Iza,* AJE-Universidad Rey Juan Carlos, Madrid, pp. 151 ff.

Legal limits to architectural creativity

Article 20.2 Land and Urban Rehabilitation Law:

"Facilities, constructions and buildings should essentially be adapted to the environment in which they are to be located, to which end, in areas of open and natural landscapes, whether rural or maritime, or within sight of typical or traditional artistic and historical sites, or in the immediate vicinity of scenic roads and paths, the situation, mass and height of buildings, walls and enclosures, or the installation of other elements, may not limit the field of vision for contemplating beautiful landscapes, or disrupt the scenic harmony, or disfigure the perspective of this landscape".

This rule is clearly brimming over with undefined legal assessment concepts, offering town councils a degree of discretion. However, these concepts may be subject to legal controls in the event that conflicts arise, in accordance with Supreme Court case law (eg, Supreme Court Judgement of 4 May 2004).

Signage

Town halls should take care with signage, ensuring that it conveys the required information and at the same time respecting standards of equality and safety. Analyses of existing signage show that it contributes to guaranteeing the right to equality and improves the free movement of people insofar as they dispose of more information about the urban area. In this respect, an **inclusive public policy** would be appropriate, providing information on all types of places of worship, provided they all comply with the laws in force.

Local autonomy: possibilities and limits

What role should town halls play and what is the role of local town planning? **Cooperation and coordination** between the different levels of power with jurisdiction over the territory is indispensable (Article 103.1 of the Spanish Constitution and related legislation), and the best guarantee of good governance and good administration. In all events, **municipal autonomy,** guaranteed by the Constitution, must be respected, as should its projection in the field of town planning, which should not act as a barrier to supra-local interests. The Constitutional Court and the Supreme Court have repeatedly emphasized that the presence of **supra-local interests** in relation with places of worship can justify action on the part of supra-local authorities (in the form of town-planning development and land-use plans), which can adopt directives, but always with full respect for municipal authority.

Permits

What permits are required to build and open a place of worship and to develop its activity?

The opening of any religious centre, whether in an already-existing building or one that has yet to be built, raises the question of what kind of authorization needs to be sought for construction and enabling worship.

The approval of Law 27/2013 of 27 December on Rationalization and Sustainability of Local Administration clarified this issue by introducing a specific set of regulations concerning the opening of places of worship. By virtue of its seventeenth additional provision and with reference to Article 84.1.c) of Law 7/1985 of 2 April on the Basic Principles of Local Government, the procedure for opening a place worship does not involve any obligation to secure a permit in advance, being based on prior communication or declaration of responsibility.

Law 27/2013 of 27 December. Seventeenth additional provision. Opening of places of worship.

"In order to open places of worship, churches, confessions or religious communities must ***accredit their civil legal status with a certificate from the Register of Religious Entities, issued for this purpose, stating the location of the place of worship in question.*** *Once this certificate has been obtained, it will be processed in accordance with the provisions of Article 84.1.c) of Law 7/1985 of 2 April on the Basic Principles of Local Government,* ***subject to obtaining the corresponding planning permission".***

Law 7/1985 of 2 April. Article 84

1. *"Local entities may intervene in the activity of citizens through the following mechanisms:*
   a) By-laws and edicts.
   b) By previously requiring them to obtain a licence and through other acts of preventive control. However, access to and exercise of service activities included in the sphere of application of Law 17/2009, of 23 November, on free access to service activities and the exercise thereof, shall be subject to the provisions of that law.
   c) Requiring them to provide prior communication or declaration of responsibility, *in accordance with the provisions of Article 71 bis of Law 30/1992, of 26 November, on the Legal System Applicable to Public Administrations and the Common Administrative Procedure.*

d) Ex-post control after the activity has been initiated, to verify compliance with the regulations governing this activity.
e) Single orders constituting a mandate for the execution of an act or its prohibition.

2. *Intervention by local governments will in all events comply with the principles of equal treatment, necessity and proportionality.*
3. *The permits or authorizations granted by the public administrations do not release the holders from the obligation to obtain the corresponding permits from the local government, always in compliance with the provisions of the relevant sector-specific laws".*

Law 30/1992, of 26 November. Article 71 bis. Declaration of responsibility and prior communication.

1. *"For the purposes of this law,* **declaration of responsibility** *shall be understood as the* **document signed by an interested party stating, under its responsibility, that it meets the requirements established in the regulations in force to gain recognition of, or to exercise, a right or faculty, that it disposes of the supporting documentation and that it undertakes to ensure compliance therewith for the period inherent in this recognition or exercise.**
The requirements to which the previous paragraph refer should be expressly, clearly and precisely stated in the corresponding declaration of responsibility.
2. *For the purposes of this law, prior communication shall be understood as the* **document in which the interested parties inform the competent Public Administration of their identification data and other requirements demanded to exercise a right or initiate an activity,** *in accordance with the provisions of Article 70.1.*
3. *Declarations of responsibility and prior communication shall have the effects determined in each case by the corresponding legislation and will, in general, allow recognition or the exercise of a right or the initiation of an activity, from the day on which they are submitted, without prejudice to the power of the Public Administrations to check, control or inspect these.*
Notwithstanding the provisions of the previous paragraph, this communication may be submitted within a period subsequent to the initiation of the activity if this is expressly provided for in the corresponding legislation.
4. *The essential inaccuracy, falsehood or omission of any information, manifestation or document accompanying or incorporated in a declaration of responsibility or prior communication, or failure to submit the declaration of responsibility or prior communication to the*

competent Administration, will preclude the continued exercise of the right or activity from the moment these circumstances become known, without detriment to any criminal, civil or administrative liabilities that may be incurred.

Likewise, any resolution handed down by the Public Administration determining any such circumstances may also determine the obligation of the interested party to restore the legal status to what it was just before recognition or the exercise of the right or the initiation of the corresponding activity, and also the impossibility of pursuing any new proceedings for the same purpose for a specific period of time, under the terms established in the sector-specific rules that apply.

5. *Models of declarations of responsibility and prior communication shall be published and updated on a permanent basis by the Public Administrations, and they shall be made available clearly and unequivocally, and may in all events be submitted from a distance or electronically".*

Therefore, **any church, confession or religious community that wishes to open a place of worship will require a certificate issued by the Register of Religious Entities stating that it is registered and setting forth the location of the place of worship to be opened, and incorporating the prior communication or declaration of responsibility concerning this opening. It must also provide supporting technical documents certifying that it meets the applicable requirements guaranteeing the safeguarding of public order protected by law.** In other words, the regulatory change does not exempt religious communities from the obligation to provide the relevant technical documentation when they build, extend, refurbish or modify or renovate buildings, or from the need to comply with the regulations governing soundproofing and health and safety requirements.

In the event that some kind of planning permission is required, we should not forget that settled case law of Spain's Supreme Court has declared that it has the **force of a rule,** ie, **there is no room for discretion in terms of granting or denying this permission,** any decision in this case being adopted on the basis of applying existing regulations to the request for planning permission. If the conditions set out in the town-planning regulations are met, planning permission must be granted insofar as this is the applicant's right. This straightforward but important piece of information must not be overlooked.

In the case of a change of use, a permit or previous communication to this effect is required, depending on how this situation is regulated in the corresponding regional legislation.

In this same sphere, there is also call to mention two equally important issues. Considering that religious communities should be able to provide documents or statements attesting to compliance with the requirements set out in municipal ordinances, it might be worth analysing exactly what these requirements consist

of. They must, first and foremost, be linked with the religious activity that will be undertaken and not with any other type of activity; secondly, the requirements places of worship are expected to meet should be proportionately adapted to the characteristics of these venues.

Take soundproofing, for example. It is not proportionate to demand the maximum level of soundproofing of all religious communities without taking into account respective devotional or worship practices. The adoption of technical measures must be demanded (output limiters, etc.) to ensure that permissible noise levels are not exceeded, depending on the characteristics of the community. If the community fails to comply with what it has declared in the corresponding statements or documents, or if it exceeds permissible noise levels, the local government can sanction it and demand that it install more efficient soundproofing.

The other issue that should be considered concerns religious communities that started operating before any of these permits were required or at a time when the permits that were required would no longer be valid today. In these circumstances, a case-by-case study would be required, since it would also be disproportionate to simply demand that these communities comply with the laws presently in force without taking any other circumstances into consideration.

The exception of the legal system in Catalonia

This section will conclude with a reference to the model in Catalonia, established by virtue of Law 16/2009, of 22 July, on Centres of Worship.

The second part of this law deals with the establishment of a measure of administrative restriction, namely the issue of a permit for the opening and use of all premises being used for religious practice. This permit is designed to ensure that the centre of worship meets the technical and material conditions required to guarantee the safety of users and hygiene of the premises, and ensure that it is not a source of community disturbance. To this end, the law lays down minimum requirements (leaving the door open to the role of local ordinances) concerning safety, health, access, capacity, evacuation and soundproofing (Articles 8.1 and 10). These conditions should be “adequate and proportionate” with a view to ensuring that “the activity of these centres is neither prevented nor obstructed”, (Article 8.1, expressing in legal terms a requirement derived from the principle of proportionality), and they shall be established by Catalan government regulation, although they cannot under any circumstances be stricter than the conditions already established for premises intended for public use (Article 8.3).

In the light of legal regulations and in accordance with the classic classification employed in legal theory and case law in Spain, the awarding of this licence is straightforward, functional, regulated (expressly in Article 9.1) and mixed, insofar as

the granting of this licence will also take account of the inscription of the applicant in the register of religious entities. This may be done directly or, if need be, through the intermediary of the competent body of the Catalan regional government. Alternatively, advance communication may suffice in the case of venues that do not exceed a specific public capacity or in other circumstances that may be determined.

This licence naturally needs to be added to all the other permits a place of worship must apply for, in compliance with specific legislation (building permit, first occupancy licence, change of use permit, etc, Article 12). Whenever major works requiring planning permission are carried out, this permit must be applied for again even if the municipal licence for the opening and use of a centre of worship has already been granted (Article 9.2). In the case of premises that require planning permission in addition to a municipal licence to open and operate as places of worship, in compliance with the present law, the person or property developer acting on behalf of the corresponding church, faith or religious community should request both permits in a single application. This application should be accompanied by a single works project that shows that all the applicable planning regulations have been complied with (Article 9.3). Both licences shall be processed in a single file.

None of the above exempts places of worship from the obligation to dispose of the authorizations established by sector-specific legislation regarding other specific activities they may wish to conduct. Exceptions to this rule are conferences, concerts, choral performances and leisure activities (Article 13). But in terms of the establishment of a place of worship, the administrations may not demand more licences or permits than those set out in this law (Additional Provision 4).

The law concludes with a series of provisions referring to agreements with the Holy See and with churches, faiths and religious communities, a discretionary provision concerning the granting of subsidies for adapting premises and a transitional provision concerning planning permission, giving municipalities ten years in which to bring their town-planning development plans into line with the requirement to set aside land for community facilities which can be used for newly-established religious purposes. The places of worship to which this law applies have five years in which to adapt their premises, if necessary, to meet the conditions that will be legally established and approved by the regional government, and they are required to inform the town hall that they meet these requirements (Transitional Provision 3).

This law was implemented by Decree 94/2010 (Official Journal of the Catalan Government nº 5676, of 22 July 2010) and amended in Article 210 of the Law on Fiscal, Administrative, Financial and Public Sector Measures approved by Catalonia's parliament on 22 January 2014 (Official Journal of the Catalan Government nº 6551, of 30 January 2014), which has extended the five-year adaptation period to ten years[42].

42. For comprehensive information concerning the Catalan law, see http://governacio.gencat.cat/ca/pgov_ambits_d_actuacio/pgov_afers-religiosos

Town planning and places of worship: a proactive approach

It is possible to take a proactive approach towards guaranteeing the effectiveness, in practice, of the right to religious freedom (and it may also be necessary in compliance with Article 9.2 of the Spanish Constitution). According to the Constitutional Court, Spain's "positive secularism" allows for this kind of proactive action.

Equality and positive actions

Article 16 of the Spanish Constitution provides for religious freedom, but does not establish any simple form of protection against interference in this respect (negative aspect), requiring rather that a *"positive attitude"* be taken from what we might term an assistential perspective, enshrining the notion of aconfessionality or positive secularism (Constitutional Court Judgement 46/2001, of 15 February, Legal Grounds 4). Along exactly these same lines, the European Court of Human Rights in its judgement of 31 July 2001, states that *"The State has a positive obligation to ensure that everyone within its jurisdiction enjoys in full, and without being able to waive them, the rights and freedoms guaranteed by the Convention".*

Various legal mandates to this effect should also be borne in mind, see Article 9.2 of the Spanish Constitution, Article 30 of Law 62/2003, of 30 December, Article 8 of Law 51/2003, and Article 11 of Organic Law 3/2007, of 22 March[43].

43. Article 9.2, Spanish Constitution: *"It is the responsibility of the public authorities to promote conditions ensuring that freedom and equality of individuals and of the groups to which they belong are real and effective, to remove the obstacles preventing or hindering their full enjoyment, and to facilitate the participation of all citizens in political, economic, cultural and social life."*
Article 30 of Law 62/2003, of 30 December, on Fiscal, Social and Administrative Measures: *"To guarantee in practice full equality on grounds of racial or ethnic origin, the principle of equal treatment shall not prevent specific measures being maintained or adopted in favour of certain groups, measures that are designed to prevent or compensate for the disadvantages that affect them because of their racial or ethnic origin".*
Article 8 of Law 51/2003, amended by Article 1.5 of Law 26/2011, of 1 August, on the normative adaptation to the UN Convention on the Rights of Persons with Disabilities, in another context: *"Positive action measures. 1. Positive action measures shall be considered as specific support designed to prevent or compensate for the disadvantages or special difficulties faced by people with disabilities in terms of their incorporation and full participation in all fields of political, economical, cultural and social life, taking account of different types and levels of disability. 2. The public authorities shall adopt additional positive action measures for persons with disabilities who objectively suffer from more discrimination or enjoy less equality of opportunities, such as women with disabilities, children with disabilities, disabled people who have greater need for support to exercise their autonomy or freely take decisions, and those who suffer from a higher degree of social exclusion owing to their disability, and persons with disabilities who generally live in rural areas. 3. Likewise, in the framework of the official family protection policy, the public authorities will adopt special positive action measures with respect to families whose members include a disabled person."*
Article 11 of Organic Law 3/2007, of 22 March, on Effective Equality Between Women and Men, in another context. "Positive actions. 1. With the aim of guaranteeing the constitutional right to equality, the public authorities will adopt specific measures in favour of women in order to correct patent situations of de facto inequality with respect to men. These measures, which will be applicable as long as such situations continue to exist, must be reasonable and in proportion with the aim pursued in each case. 2. Private physical and legal persons may also adopt this type of measure in the terms established in this law."

These positive action measures can be articulated through various channels:

- Providing those interested in opening places of worship with **information and advice.**

- **Training** members of religious confessions.
  – Training activities
  – Disseminating information

- **Public consultations** in planning development with the aim of strengthening informed and well-founded participation.

- **Public subsidies** to contribute to covering the expenses required by reasonable accommodation.

- **Transfers of publicly-owned land and/or buildings:** this is a legal technique used in the urban environment, enabling a Spanish town hall to guarantee real and effective equality in keeping with Article 16 of the Constitution, by implementing positive actions to this end. The technique used will depend on the type of asset in question:

a. Public property

This may be awarded for private use, for a maximum period of 75 years, either directly or on the basis of a call for tenders, freely or as a concession, depending on the case in question, a decision that falls to the town hall, in keeping with the regulations governing the property in question.

b. State-owned property

Land classified as state-owned property may be freely granted to, or exchanged with, a religious faith, in accordance with local regulations and the various legal decisions that have been used to interpret these regulations, providing all statutory requirements are met.

c. Municipal land assets

Municipal land assets may also be made over to religious confessions, under the terms of the Land and Urban Rehabilitation Law, where permitted by the specific regional town planning laws in question.

Combating the NIMBY phenomenon

Planning with a view to the issues that concern us should be as participatory and specific as possible with a view to minimizing the risk of not-in-my-back-yard opposition. A number of initiatives can be recommended in this respect:

- Taking steps to establish **protocols for action** when faced with NIMBY opposition.

- Implementing **training activities** designed to hone and enhance **mediation skills** for dealing with conflicts between religious communities and citizen groups.

- Appointing people representing all stakeholders (town hall, supra-municipal authorities, private sector) to **mediate on behalf of the community** in the event of NIMBY opposition.

This pro-active approach has obvious advantages in that it enables us to make sure that we are technically prepared to stay on top of a potential conflict and find ways of avoiding social fractures and/or ad hoc public decisions that can engender or aggravate the segregation of places of worship.

Dealing with situations ranging from the illegal to the alegal

One of the challenges local authorities face today and which will doubtless increase in coming years is how to manage situations involving places of worship in illegal locations, or places of worship in legal locations but with dubious health and safety conditions, and which may have other consequences, being a nuisance to neighbours, for example (no declaration of responsibility of prior communication, lack of planning permission or other permits, existence of a licence to conduct an activity that does not take place, etc).

Obviously the principle of legality, which is part and parcel of the rule of law, makes it impossible to turn a blind eye to situations that are illegal for one reason or another because the legality that is being contravened exists precisely to safeguard individual rights (right to life, right to physical integrity) and general interests (safety, health, etc.).

Reestablishing urbanistic legality and the legality of the activities conducted can be achieved in a reasonable manner considering the resources actually available to town halls, (generally scant, lack of inspectors, etc.) and the alternatives available in terms of the location of a place of worship. The law makes reasonable provision for buildings that no longer comply with applicable land regulation schemes, in that they can be declared *"fuera de ordenación"* or as having a *"volumen disconforme"*[44].

44. *"Fuera de ordenación"* refers to buildings that have been constructed with all the proper permits but in an area whose town-planning development status has changed since the time of building, or to buildings that have been erected without the proper permits and where the infringement is time-barred. *"Volumen disconforme"* applies to a building that exceeds the limits of the planning regulations, for example one built at what was a statutory distance of 6 metres from the road but is no longer in order because the planning regulations have changed and now stipulate a minimum distance of 7 metres from the road.

1. Absence or infringement of building permits

In the event that a building does not dispose of the required permit or does not comply with the licencing conditions, the town hall must first determine which of the two definitions apply, ie, *fuera de ordenación* or *volumen disconforme.* When deciding what action to take, the town hall must take into account any transitional rules that may exist in this respect, stated in the town planning regulation or in a specific municipal ordinance. The **reasonable accommodation technique** should be taken into account with a view to legalizing the activity in terms of all the opportunities that are opened up and subject to appraisal by virtue of regional town planning laws (eg, the "manifest" illegality of what has been built, without or in violation of a licence), since a measure of municipal discretion exists in this respect.

Let us imagine for example, that the administration is faced with a situation where building works have taken place without the required building licence or that they breach the conditions of this licence. Some regional town planning laws make provisions for the city council to declare whether or not these works can be legalized (Article 205 of Catalonia's town planning law), depending on whether they are manifestly illegal. If this is the case, the solution may entail demolishing what has been built and going back to square one.

2. Restructuring and improving existing places or worship

Decisions leading to such drastic conclusions should, however, be balanced by prudent administrative behaviour, to which end town halls should first examine all the opportunities opened up to them by the law in the light of the particular circumstances of the case in question.

If the initial conclusion is that the building erected cannot be legalized under any circumstances, there may be a margin for appraisal giving the local administration room for manoeuvre **in collaboration with the owner of the place of worship,** who will be asked to take the necessary steps to apply for the required licence, all in the context of reasonable adjustments as a corollary of the application of the principles of proportionality and equality. Or, if the works carried out infringe the licence granted, the owner of the property will be required to take corrective action, adjusting them as required (eg, the so-called "rehabilitation programme" provided for in Article 267 of Decree 305/2006, of 18 July, approving the regulation of Catalonia's town planning law, which must be submitted by the interested party and approved by the town hall, making it possible for the legal deadline for implementing the programme to be extended by as long as necessary for the work to be completed).

These measures can be implemented through mechanisms provided for in the legal system governing town planning and development in each autonomous community, or for want of an express reference, through an agreed settlement concerning the procedure for correcting illegal urbanistic alterations (Article 88 of Law 30/1992, of 26 November, on the Legal System Applicable to Public Administrations and the Common Administrative Procedure).

Public administrations may establish a system of **public subsidies to contribute to covering the costs arising from the obligation to make reasonable adjustments.**

What is more, steps should be taken to examine the possibility of integrating these specific interventions in the systematic global framework of a **plan for the restructuring and improvement of precarious places of worship,** analysing the overall situation, scheduling interventions, establishing the conditions for granting subsidies and reordering this sphere overall. This could consist of devising a special town planning scheme for places of worship, depending on the possibilities open to each regional legislation and always in keeping with the general town planning regulations in force.

Summary

- Land use has an impact on the effective exercise of the fundamental right to freedom of ideology, religion and worship.
- The Law on Religious Freedom guarantees the right of churches, confessions and religious communities to establish centres of worship. No general legal framework exists in this respect, competence in this area lying solely with the autonomous communities. However, Law 27/2013, of 27 December, on Rationalization and Sustainability of Local Administration, has introduced for the first time a specific set of regulations concerning the opening of places of worship.
- Churches, confessions or religious communities wishing to open a place of worship must present a certificate from the Register of Religious Entities showing that they are registered and stating the location of the place of worship in question, and they must provide prior communication or a declaration of responsibility concerning this opening. They must also provide supporting technical documents certifying that they meet the applicable requirements guaranteeing the safeguarding of public order protected by law.
- In the case of Catalonia, regional law (Law 16/2009, of 22 July) makes it obligatory to obtain a municipal permit to open and use places of worship.
- Local urban management of places of worship can represent an opportunity to define criteria that contribute to social and territorial cohesion.
- Town halls can and should provide for and set aside land for religious community facilities if they detect this need among the population.
- Town halls may apply strategies to reinstate the legality of premises and implement plans to provide religious confessions with backup and advice.

CEMETERIES AND FUNERAL SERVICES

As noted at the beginning of this handbook, applications concerning cemeteries and/or plots of land reserved for Islamic and Jewish burials are one of the foremost demands of religious groups. To tackle this subject, we will begin by examining the existing regulatory scenario and the main demands of religious confessions, and subsequently examine ways and means of dealing with the issue of cemeteries and funeral services from a municipal management perspective.

The confessionality of the Spanish state initially gave the Catholic Church jurisdiction over cemeteries in Spain, occasionally shared with the town halls that owned the land on which the cemetery stood. From the nineteenth century onwards, the creation of non-Catholic cemeteries was authorized to allow those who had not had religious burials to be buried in a closed space set well apart from the Catholic cemetery. Article 27 of the 1931 Constitution of the second Spanish Republic made cemeteries subject solely to civil jurisdiction, prohibiting the separation of compounds in them for religious reasons. In 1938, before the end of the Spanish civil war, the Republican legislation was repealed and the barriers separating Catholic cemeteries from the so-called civil cemeteries were removed. Cemeteries were returned to the parishes and jurisdiction over Catholic cemeteries was returned to the ecclesiastical authority, the civil authorities only having jurisdiction for civil cemeteries. Law 44/1967, of 28 June, regulating the exercise of the civil right of freedom in religious matters granted non-Catholic religious associations the right to acquire their own cemeteries and to set aside, if necessary, a compound suitable for non-Catholic burials.

As far as death is concerned, the principles of freedom of conscience, equality and secularism were specified before the approval of the Constitution. **Law 49/1978, of 3 November, on Cemeteries** revoked Franco's legislation on cemeteries, providing that:

1. *Town halls must ensure that the burials that take place in their cemeteries are not a source of discrimination on religious or any other grounds.*

2. *Funeral rites shall be performed in accordance with the wishes of the deceased or as determined by the deceased's family. Likewise acts of worship may take place in the chapels or places set aside for this purpose in these cemeteries.*

   The establishment of these chapels or places of worship shall be authorized in municipal cemeteries for those who request it.

3. *Town halls should build municipal cemeteries in the event that no place for burials exists in their district making it possible for the provisions of this law to be met.*

Article 2.1 b) of the 1980 Law on Religious Freedom provides for the right of everyone to *receive decent burial, with no discrimination for reasons of religion; and to be free from any obligation to participate in religious services and receive spiritual support contrary to their personal convictions.*

Meanwhile, the **Agreements** between the Spanish State and the Federation of Jewish Communities of Spain (FCJE) and the Islamic Commission of Spain (CIE) cover this issue in Articles 2.6 and 2.5 respectively, providing for:

- The application to Jewish and Islamic cemeteries of the legal benefits of places of worship.
- The setting aside of areas in municipal cemeteries and the right to own Jewish and Islamic cemeteries.
- The adoption of measures for observing funeral rites.
- The possibility of transferring the remains of a deceased person to a Muslim or Jewish cemetery if that person has been buried in a municipal cemetery or when there is no Muslim or Jewish cemetery in that person's area.

For the most part, the burial of Muslim and Jewish believers has hitherto been solved by repatriation or burial in private cemeteries. In the case of Muslims, use is also being made of the Muslim cemeteries created during the civil war for burying the Moroccan soldiers who died on the battlefront. A case in point is the Muslim cemetery in Griñón, the only one available for Islamic burials thus far in the Madrid region. However, it should be noted that a great many Muslim immigrants have settled in Spain permanently and that the number of those who have obtained Spanish nationality and/or Muslims born in Spanish territory is also increasing. Neither should we ignore the existence of a large group of Spanish converts to Islam. Where the Jewish communities are concerned, it is common practice to use private cemeteries for burials.

But **what are the main demands of these groups?** The following is a summary of the main burial practices demanded by Muslim and Jewish believers and which have an impact on the management of municipal cemeteries and funeral services:

- Purification and shrouding of the deceased.
- Inhumation in contact with the earth.
- Specific orientation of graves (towards Mecca and Jerusalem respectively).
- Some groups ask for a separation between graves of different religion and for perpetual burials.

How can we meet these demands?

Managing cemeteries is one of the minimum services municipalities are obliged to provide in keeping with Article 26.1a of the Law on the Basic Principles of Local Government. It therefore falls to local governments to respond to demands concerning cemeteries.

> Cemeteries should be managed in a manner that is consistent with the territorial and population characteristics of each municipality. However, the fact that a demand may spring from a relatively small group cannot be used as an excuse not to tackle the management of religious diversity in the field of funeral services. One option in this respect would be to seek supra-municipal solutions.

Royal Decree-Law 7/1996 of 7 June on Measures to Liberalize Economic Activity provides for the **liberalization of funeral services** in Article 22, albeit allowing town halls to authorize a company to provide these services.

> Among the conditions that should govern the municipal granting of this authorization, funeral service providers should be asked to provide specific references regarding the observance of religious rites with a view to guaranteeing that all citizens can be buried according to specific religious funeral rites.

We will now put forward a set of proposals geared to guiding the management of local governments in the sphere of funeral services. These proposals are grouped around three questions which encapsulate the main issues that need to be tackled from a municipal management perspective: setting aside plots for burial, managing these plots and guaranteeing observance of burial rites.

Is it best to set aside plots in municipal cemeteries or create confessional cemeteries?

The aforementioned cooperation agreements recognize the right of local Islamic and Jewish communities to have plots reserved for them in municipal cemeteries and to own their own cemeteries. What is the best option?

Setting aside plots in municipal cemeteries is the formula best suited to reconciling the exercise of the individual right to religious freedom with the principle of equality and non-segregation.

This is a feasible option and there are no norms precluding the integration of the different religious faiths in municipal cemeteries. Law 49/1978, of 3 November, on Cemeteries, repealed Franco's legislation concerning cemeteries and eliminated the separation of graves on grounds of religious beliefs, a practice that attested to the confessionality of the State and amounted to discrimination on grounds of conscience.

It would not therefore be a good idea to erect walls separating areas for different faiths. If it is necessary to physically separate these areas in order to reach an agreement with local religious communities, symbolic architectural devices, hedges or other vegetation are recommended.

Who should be responsible for managing these plots?

Municipal management is the best means of guaranteeing the exercise of this right by all citizens. We should not forget that granting a plot of land directly to a local community could deprive believers who do not form part of that community of the individual exercise of this right. Furthermore, the number of religious bodies has increased substantially in recent years (the number of Islamic religious entities has increased threefold in the last five years) and the existence of more than one local community of the same faith in the same municipality is now commonplace. Which local community should be granted the concession for managing these plots and on the basis of what criteria?

The most advisable course of action –since it is most consistent with the law– would be to hand this task over to the municipal mortuary services or companies that have been granted a concession to provide municipal services.

How can observance of traditional practices concerning inhumations and funeral rites be guaranteed?

What is required of municipal mortuary services in order to guarantee observance of traditional practices relative to inhumations and funeral rites?

1. The purification and shrouding of corpses makes it necessary for municipal chapels of rest to be adapted to provide this service.

It is recommended that thanatopraxy rooms in municipal chapels of rest be adapted to provide these rituals rather than creating specific centres for this purpose.

2. The Islamic and Jewish practice of burying their dead without the use of a coffin raises problems in that it is not compatible with the health and safety regulations in force in some autonomous communities.

Two possibilities are proposed to guarantee this practice:

- Modifying health and safety regulations to allow for uncoffined burials on religious grounds, provided the cause of death is not one of those listed in Group 1 of the classification of corpses. This, for example, was the procedure adopted by the regional government of Andalusia[45].
- Using alternatives such as the use of biodegradable coffins, thus making it possible to reconcile health and safety regulations with religious practice and observance.

3. Observance of traditional Islamic and Jewish rites requires that corpses be in direct contact with the earth.

Compliance with this specific requirement poses a problem, a priori, owing to the amount of space that would have to be set aside. The requirement could be met by burying corpses at different levels separated by earth or by using methods that prevent leachate contamination.

4. Finally, the diversity of religious beliefs in our municipalities makes it necessary to adapt places of worship both in cemeteries and in municipal chapels of rest.

45. Decree 95/2001, of 3 April, approving mortuary health and safety regulations.

The creation of multiconfessional spaces is considered to be the most feasible alternative when it comes to accommodating the celebration of acts of worship by the different faiths, as provided for in Law 49/1978, of 3 November, on Cemeteries.

Summary

- Setting aside plots of land for Jewish and Muslim burials in municipal cemeteries and the municipal management of these areas is the most feasible way of reconciling the exercise of the individual right to religious freedom and the principle of equality and non-segregation.

- To guarantee observance of funeral rites in cemeteries and chapels of rest, municipal authorization for granting a funeral service concession should include specific references to the funeral service provider's ability to meet these conditions, which would be one of the prerequisites governing the granting of this concession.

SOCIAL INTERVENTION

Belonging to a faith –either in the sense of practising one's beliefs individually, or collectively as a member of a structured religious community– is an important element of the experiential dimension and identity of groups and individuals. As such, it constitutes a variable that must be appraised when defining diagnoses and social interventions, provided it is pertinent for a specific reason.

The reason for highlighting the pertinence of this appraisal is that religious belonging –irrespective of the faith professed– should not be approached, *a priori,* as the cause or explanation for a situation where social intervention is required. By incorporating the religious variable in social action, we run the risk of magnifying the scope of this variable, of giving it an attribute value to explain the situation experienced by an individual or group, systematically relegating areas of social information to the back seat.

Social work professionals and social service users have traditionally been thought to share the values of a homogenous society in terms of religious beliefs. It was the arrival in our municipalities of neighbours from other countries that began to make it clear that these parameters had to be revised. Our social services and the units created to assist the immigrant population were pioneers in this area.

With no tools at their disposal, many social work professionals in our municipalities began to exchange views and cooperate with different faith communities as a way of tackling this challenge, often engendering exceptional scenarios for conducting social work. They not only engaged with immigrant communities but also with the autochthonous population, as evidenced by the cooperation that has been developed between Evangelical churches, for example, and many of our town halls. This is the case of the gypsy Evangelical Church of Philadelphia, in the framework of social intervention with the gypsy population, among others.

As we have tried to make clear throughout this handbook, belonging to a minority religious community is not a label that can be pinned exclusively on the "other", the newcomer, the holder of a different culture – beyond the fact that it may involve certain specificities which can be taken into account in processes of integration and negotiation with the host society. Spain has long been a plural society, and from a religious standpoint too. The arrival of the immigrant population has merely strengthened this dimension of diversity in the public arena and made it more visible.

Religion as a component of social work with individuals and groups

Religion should be considered as an important facet of social work for several reasons:

- Because failure to take the religious factor into account could constitute a violation of the exercise of the right to freedom of conscience and religion. This could apply, for example, to measures and/or strategies for action that are incompatible with the beliefs of social service users.

- Because failure to take the religious specificity into account can sometimes cause an intervention to fail.

- Because if social intervention is diagnosed without any a priori assumptions, moving beyond stereotyped and clichéd images, religious belief and the fact of belonging to a community can constitute very valuable resources in terms of social intervention.

- Because social workers are bound by their ethical codes to take religion into account.

The training and empowerment of social workers is a key factor in this process. However, the diversity of religious beliefs and practices coupled with the legal framework regulating the field of religion in Spain are subjects that are not yet on the social work course syllabus. Initiatives taking account of religious diversity are also few and far between in the framework of ongoing training and those that do exist are often tackled from an immigration perspective. It would therefore be highly advisable to encourage specific training initiatives in this area. Evidently, these training courses would be greatly enhanced by the participation of religious confessions.

Religion as a component of social work with the community

Managing religious diversity in the context of community social work is all-important from the perspective of social cohesion. The presence of religion in our municipalities is becoming increasingly widespread in the public sphere. The opening of new places of worship is doubtless the most visible facet of this reality and occasionally a source of hostile reactions and tensions between neighbours, but not the only one. Although these situations are the exception rather than the rule, they can seriously undermine peaceful coexistence and social cohesion unless they are promptly detected and dealt with.

Most of the time common sense prevails and the problems that arise are generally resolved through dialogue between mayors, local council leaders and religious

communities. However, **specialized mediation in resolving conflicts somehow related to religion and its manifestations in the public domain –often not religious conflicts *per se*–** would be another viable alternative for managing such situations. But once again, this points to the need to focus on providing our professionals with the required training in subjects related with religious pluralism. It also suggests the **need to design and implement specific management protocols** for addressing these types of conflict.

As we were saying, incorporating the specificity of religion into areas of social intervention is not only occasionally necessary, but can also be a valuable asset in terms of social action. **Understanding the reality of religious pluralism in the municipality, particularly its forms of collective expression** – the map of religious communities and the network of relations between them– will increase the chances of success of any social intervention.

But while of vital importance, being in touch with the religious reality of the municipality is not always sufficient. To maximize the chances of success, particularly when it comes to managing neighbourhood conflicts, we would encourage the **creation of networks for effective dialogue** made up of the members representing the different confessions at local level. The creation of these networks would not be necessary if steps were taken to promote the involvement of religious entities in the different platforms and systems for citizen participation in our municipalities, as recommended in various sections of this handbook.

Last but not least, there is call to mention the **social work conducted by the different religious communities themselves, occasionally reaching out to sectors of the population and addressing issues that are beyond the reach of public institutions,** and the potential of **incorporating some of these initiatives into the mainstream networks of municipal resources.** This subject will be taken up again in the section on citizen participation.

Summary

- Whenever pertinent because of some specific facet, the religious singularity should be incorporated in social work targeting individuals and groups.
- Specialized mediation is a good tool for managing conflicts related with religion and their manifestations in the public arena.
- Knowledge of the social activities developed by the different faith communities can be put to good effect as another social intervention tool.

FOOD

Food plays a major role in religions and religious practices. The eating habits of believers of a good many religious confessions are guided by various precepts, among which the prohibition of certain foodstuffs, fasting and the encouragement of certain diets because they are considered to be beneficial. The question of food, as such, is provided for in the legal framework governing religious affairs in Spain.

Food is regulated in Article 14 of the respective Cooperation agreements between the Spanish State and the Islamic Commission of Spain and the Federation of Jewish Communities of Spain.

In both cases, the possibility of slaughtering animals in accordance with Jewish and Islamic laws is allowed, the only restriction being compliance with Spanish health and safety standards. In the case of the Muslim faith, the agreement also provides for the food served to the inmates of public centres and establishments and to Muslim pupils in public and state-subsidized private schools to be adapted to Islamic religious precepts.

Cooperation agreement between the Spanish State and the Federation of Jewish Communities of Spain (Law 25/1992, of 10 November):

Article 14:

1. *In accordance with the spiritual dimension and specific particularities of Jewish tradition, the denomination "Kosher" and its variations, "Casher", "Kosher", "Kashrut", displaying the letter "U" or "K" or the term "Parve", shall be used to distinguish food products and cosmetics prepared in accordance with Jewish law.*

2. *To ensure correct use of this denomination, the Federation of Jewish Communities of Spain must request and obtain the corresponding trademark from the Patent and Trademark office, in compliance with the laws in force.*
   Once these requirements have been met, these products must bear the mark of the Federation of Jewish Communities of Spain on their packaging as a guarantee that they have been prepared in accordance with Jewish tradition, for the purpose of their sale, import and export.

3. *The slaughter of animals in accordance with Jewish laws must meet prevailing health standards.*

Cooperation agreement between the Spanish State and the Islamic Commission of Spain (Law 25/1992, of 10 November):

Article 14:

1. *In accordance with the spiritual dimension and specific particularities of Islamic law, the "halal" denomination shall be used to distinguish food products prepared on this basis.*

2. *To ensure correct use of this denomination, the Islamic Commission of Spain must request and obtain the corresponding trademark from the Patent and Trademark office, in compliance with the laws in force.*
   Once these requirements have been met, these products must bear the mark of the Islamic Commission of Spain on their packaging as a guarantee that they have been prepared in accordance with Islamic law, for the purpose of their sale, import and export.

3. *The slaughter of animals in accordance with Islamic laws must meet prevailing health standards.*

4. *Every effort will be made to provide food that complies with Islamic dietary laws to Muslim interns in public centres or establishments and military barracks, and to Muslim pupils in public schools and state-subsidized private schools, at their request, and to adapt meal times during the month of Ramadan.*

The Agreement does not make any specific provisions for Protestants, although the Seventh-Day Adventist Church, a member of the Federation of Evangelical Religious Entities of Spain, has very special food requirements.

Local governments and religious dietary requirements

The distinction between food products that are permitted and those that are prohibited established in Judaism (*kosher/non-kosher*) and Islam (*halal/haram*) raises specific demands where the different public administrations are concerned. In this sense, local governments have to come up with responses that are both suitable and commensurate, particularly in terms of:

- guaranteeing supplies of meat from animals slaughtered in accordance with Islamic and Jewish laws, and
- adapting menus in public and state-subsidized private schools to religious requirements.

Guaranteeing supplies of meat from animals slaughtered according to religious precepts

Muslim communities are seeking the cooperation of the public administrations with a view to guaranteeing compliance with the religious precepts Muslim believers should obey concerning food. Despite the increase in recent years of the volume of meat-processing industries that have incorporated halal production, it is still very difficult to procure supplies of meat from animals slaughtered according to Islamic laws in much of Spanish territory. Very few municipal abattoirs produce *halal* meat, a demand that is presently being met by small local *halal* butchers.

This situation is further aggravated during the celebration of one of the main Islamic festivals, *Eid al-Adha*[46], commemorating Abraham's sacrifice. As the festival of sacrifice approaches, demand for mutton soars. The tradition is for each Muslim family to slaughter a sheep, keeping one third to feed themselves and sharing the other two thirds among the poor and relatives and friends.

Many municipal abattoirs cannot perform halal slaughter. This, coupled with the tendency of much of the Muslim immigrant population to reproduce the traditional practices of their countries of origin, can lead them –indeed, is leading them– to seek alternative solutions such as slaughtering animals in private homes or in the country, a practice that flies in the face of existing health and safety standards.

How do we go about guaranteeing halal and kosher meat supplies?

Broadly speaking, we would recommend two courses of action:

- The first, best suited to municipalities with high percentages of Muslim and/or Jewish inhabitants, would consist of making ritual slaughter one of the conditions set out in tender documents when calling for bids for companies to manage municipal abattoirs, to which end the company awarded the contract would have to adapt its facilities to halal/kosher production.

46. This festival, known as the *Fiesta del Cordero* in Spain, goes by different names throughout the Islamic world, among which *Eid al-Kebir* in the Maghreb, Tabaski in the countries of sub-Saharan Africa and *Eid Zoha* in Pakistan.

- The second focuses on guaranteeing supplies of halal meat during the annual celebration of Eid al-Adha and puts the accent on cooperation with local religious communities through the signing of specific protocols and agreements.

Responses should be adjusted to the specific requirements and profile of each municipality. In this particular sphere of public management of religious diversity, it would therefore be highly advisable to seek supra-municipal solutions.

Adapting meals in public and state-subsidized private schools

The second issue raised in this context is the need to adapt the meals served in school canteens to religious dietary requirements. Until 2007, regional health rules did not address religious issues when considering grounds for providing alternative menus. In 2007, however, the Ministry of Health reached an agreement with the regional governments to re-examine school lunches with a view to promoting healthy eating habits. This agreement highlighted the importance of adapting meals to cater for children with health problems or food allergies, but also to adapt them on religious grounds.

Of all the public establishments in Spain, it is the schools that are making the greatest effort to ensure that the meals they serve are compatible with religious precepts. That said, however, this issue is still at the heart of the demands being made by the Muslim community and it is rapidly gaining ground. The demand for more suitable menus is channelled through local Muslim communities, which argue that adapting meals is not just a question of substituting forbidden food products –adapting school lunches for Muslim pupils generally consists of replacing pork with something else or simply removing it from the plate– but that it should take into account all the substances and ingredients used to prepare these meals and should also ensure that preparation and storage processes are suitable.

The mistrust that exists among Muslim families in this respect has occasionally sparked a proliferation of alternatives, among which encouraging the withdrawal of children from school canteens. This would be counterproductive since it would undermine the contribution schools make to social cohesion as key socialization areas for children.

How do we go about this?

Once again, there is no single solution. Potential solutions will largely depend on the profile of the student body and the ground already covered by local governments with responsibility for school meals.

Broadly speaking, recommendations include:

- Putting in place procedures designed to determine and respond to pupils' specific dietary requirements stemming from religious beliefs.
- Making the awarding of contracts to school meal providers conditional on their ability to supply alternative menus adapted to religious precepts, provided this demand exists.
- Designing and implementing processes to provide families with information with the aim of quelling any qualms or fears they may have in this respect.

Summary

- Local governments must provide responses that are both suitable and commensurate in terms of guaranteeing supplies of meat from animals slaughtered in accordance with Islamic and Jewish laws, and adapting menus in public and state-subsidized private schools to meet religious requirements.
- The annual celebration of Eid al-Adha may call for special measures. Supra-municipal solutions are often the best option.

CITIZEN SAFETY

Although people generally profess their faith in accordance with their individual beliefs, all religious confessions provide for shared manifestations of faith. As with any other social phenomena of this type, the communal dimension to exercising religious beliefs will have a clear impact on the social life of local communities, both from the standpoint of guaranteeing the exercise of basic rights and from the standpoint of guaranteeing citizen safety, something that anyone with public responsibilities should be aware of.

The public police services, particularly the local police, play a pivotal role in enabling citizens to freely exercise their rights to freedom of religion and freedom of conscience, and also in terms of guaranteeing citizen safety and peaceful coexistence, in compliance with constitutional principles and the existing legal framework.

If religious activities respect these premises, then equal treatment and respect for the basic freedoms of believers can be guaranteed along with the rights of all other citizens. There are also obvious benefits in terms of social cohesion and the normalization of religious diversity within the local community.

While this appears to be obvious in the case of the activities of Catholic believers, the same does not hold true for other faiths as evidenced by the frequently adopted arbitrary, unreasonable and unwarranted decisions that reinforce stereotypes and pose a challenge to peaceful coexistence.

Just as with any other private activity that has or may have public repercussions, the local authorities must act accordingly. The local police service can be called on, provided the religious celebration is a mass event or at the request of the organizers (and in cooperation with them).

Furthermore, religious communities often need access to **public thoroughfares** to celebrate their activities. There are a number of reasons for this, perhaps because they are important religious events attracting large numbers of people that cannot be accommodated in the habitual place of worship, or because they may involve a parade through the streets, or because the religious community in question wants to share its activity with all the other citizens in the neighbourhood, among others.

It is important to highlight in this respect that in accordance with Organic Law 9/1983, of 15 July, regulating the right of assembly, activities of this type do not require

government authorization, although *"the government authority must be notified prior to the event",* in this case the local authorities. The law also states that these may only ban such events when they have legitimate grounds for believing that *"they will create public disturbances, putting people or property at risk".* The law also specifies what form this notification should take and the deadlines for submitting it[47], and that the prohibition order, as the case may be, must be well founded[48].

Meanwhile, *"The competent authority shall inform the municipal government of the contents of the written notification, except in urgent cases as provided for in paragraph 2 of the previous article, giving it 24 hours in which to report back on the circumstances of the planned route. If this report is not provided within this deadline, it will be considered favourable. The report shall include subjective causes such as the condition of the areas where the event is scheduled to take place, whether it will take place at the same time as other events and compliance with security conditions in accordance with the legislation in force and other analogue technical conditions. The report will not be binding and must be substantiated"* (Article 9.2 of Organic Law 9/1983).

In other words, the rights of assembly and demonstration are not subject to authorization, and any decision in this regard must take the public interest into account. Just because an event restricts (or may restrict) the freedom of movement of other citizens, this is not sufficient ground for banning it altogether. Before taking any decisions in this respect, the authorities must weigh up specific circumstances and they must apply the principle of proportionality (least possible restriction of the right to hold meetings and the right to religious freedom). Once again, it is important to stress that these decisions must be substantiated.

For all these reasons, information and training sessions directed at private individuals and public managers in these areas should include guidelines on methods for drafting local reports, based on checklists. The straightforward nature of these checklists (used for plenty of other public policy purposes, such as regulatory decision-making) makes them an ideal tool for standardizing detailed analyses of the specific circumstances of each case[49].

It is also common practice for religious communities to ask the local authorities for permission to **use venues belonging to the municipality,** such as sports centres, stadiums, cultural centres, etc. With a view to avoiding arbitrariness and

47. Articles 9 and 8, respectively of Organic Law 9/1983, of 15 July.
48. Article 10 of Organic Law 9/1983, of 15 July.
49. The OECD has developed a well known *ex ante* evaluation tool which, duly adapted, could be used in the area that concerns us. See the *OECD Reference Checklist for Regulatory Decision-making,* 1995. http://www.oecd.org/dataoecd/20/10/35220214.pdf

discrimination, municipal corporations would be well advised to regulate the use of these venues, guaranteeing equal treatment of all the bodies that seek permission to use them, including religious entities. This regulation should encompass forms and conditions of access and the conditions users of the facilities will be required to meet. This matter will be dealt with in more detail in the section on citizen participation.

In all events, the security measures that must be guaranteed by local governments in these situations should be the same as those established in protocols governing events with similar characteristics, irrespective of the specific nature of the event.

Conflict situations must also be taken into account when managing diversity. While everything possible should be done to prevent these situations, it is equally important to know how to deal with them when they do occur.

All conflicts that spring from or are related with religious issues should be dealt with, as required, by the local police force whose conduct is regulated by a series of basic principles: they must never overstep the boundaries of the law, they must prevent abusive and arbitrary practices and discrimination, treat citizens humanely, exercise due diligence, etc.[50]

There have occasionally been attacks on places of worship and on believers. Society's view of what is different –often fuelled by prejudice and stereotyping– causes aggressiveness and social dissatisfaction to be channelled in this direction, leading to actions that endanger property, physical integrity and individual rights.

In these cases, local police, along with all the other security forces, are bound by their constitutional duty to guarantee the free exercise of fundamental rights and the integrity and safety of people and places of worship. In the event of criminal offences or administrative infringements, they must identify the alleged perpetrators and process complaints and submit them to the pertinent authority. In the case of so-called "hate crimes" and discrimination, great care should be exercised when taking down statements and/or collecting evidence that will enable the judicial authority to adopt the pertinent decisions in accordance with the provisions of the Criminal Code.

50. And all those set out in Organic Law 2/1986, of 13 March, on Security and Police Forces, and regional laws governing local police forces.

Conflicts can also be triggered as a result of complaints concerning the celebration of religious acts. Some venues used for religious worship have inadequate soundproofing, leading to complaints from neighbours. Turning a blind eye to situations such as these does not resolve the problem but rather exacerbates it. Likewise, imposing conditions that religious communities cannot meet for one reason or another simply causes the problem to be shifted from one place to another. It is therefore necessary to find solutions that are not only in keeping with the law, but also practical and commensurate, solutions that guarantee the rights of all the parties to a conflict (believers, neighbours, etc). Local police officers often act as mediators after being called in by one or other of the parties to the conflict. The ability to manage these situations positively and "educate" the parties to the conflict can often contribute to enhancing peaceful and harmonious coexistence among local communities. Local police officers must therefore dispose of the tools they require (eg, management and training tools) to perform these tasks efficiently.

Citizen demonstrations against a religious confession constitute another potential conflict scenario since they are likely to generate serious rifts within the local community. Rather than dealing with these situations as one-off incidents, municipal governments should tackle them from the broader perspective of mutual understanding, social cohesion and coexistence.

Key issues

- Getting to know and working closely with the different religious communities in the municipality with the aim of gauging their requirements and accessing the necessary information. This would make it easier to anticipate potentially undesirable situations and further guarantee the right to exercise religious freedom. Various municipal initiatives have proved to be very successful in this respect, among which the creation of intercultural citizen safety forums and the designation of a local police officer to deal specifically with diverse society relations.

- When necessary and as is normally the case with Catholic events and processions, the local police should be on hand to ensure the smooth flow of road traffic and guarantee road safety. When feasible, provisional parking areas should be designated for large numbers of vehicles.

- In the event of large-scale events, or at the request of religious communities, the local police shall contribute to:
  - guaranteeing the physical safety of those attending the service or activity, especially those with special difficulties or requirements: children, the elderly and the disabled, etc.
  - facilitating orderly and safe access, and identifying critical control points depending on the characteristics of the area where the event will take place.

- When dealing with conflict situations, the local police will guarantee the rights of all the parties involved, plus the integrity and safety of people and places of worship. A number of steps can be taken to help guarantee that these situations are tackled properly:
  - Learning about and forging institutional relations with the religious communities, providing diversity training, learning about diversity and how it works, how to identify and harness its potential, the main difficulties and challenges it represents... All these measures will pave the way for a more accurate analysis of what may be going on and the best way of resolving the situation.
  - Working with social actors specializing in issues linked with diversity and conflict resolution, and with leading figures in the religious communities or mediators, when necessary.
  - Understanding techniques for resolving conflicts and seeking mutually acceptable solutions.

General proposals for improving the management of religious diversity from the perspective of citizen safety

Beyond specific actions designed to enhance the day-to-day management of diversity, substantial efforts need to be made to create initiatives that will improve the way these issues are dealt with over the medium-term, without entailing high costs. More specifically:

- Local police should receive **specific training** in religious diversity, diversity management in general and conflict resolution, which should form part of both trainee programmes and ongoing professional development programmes.

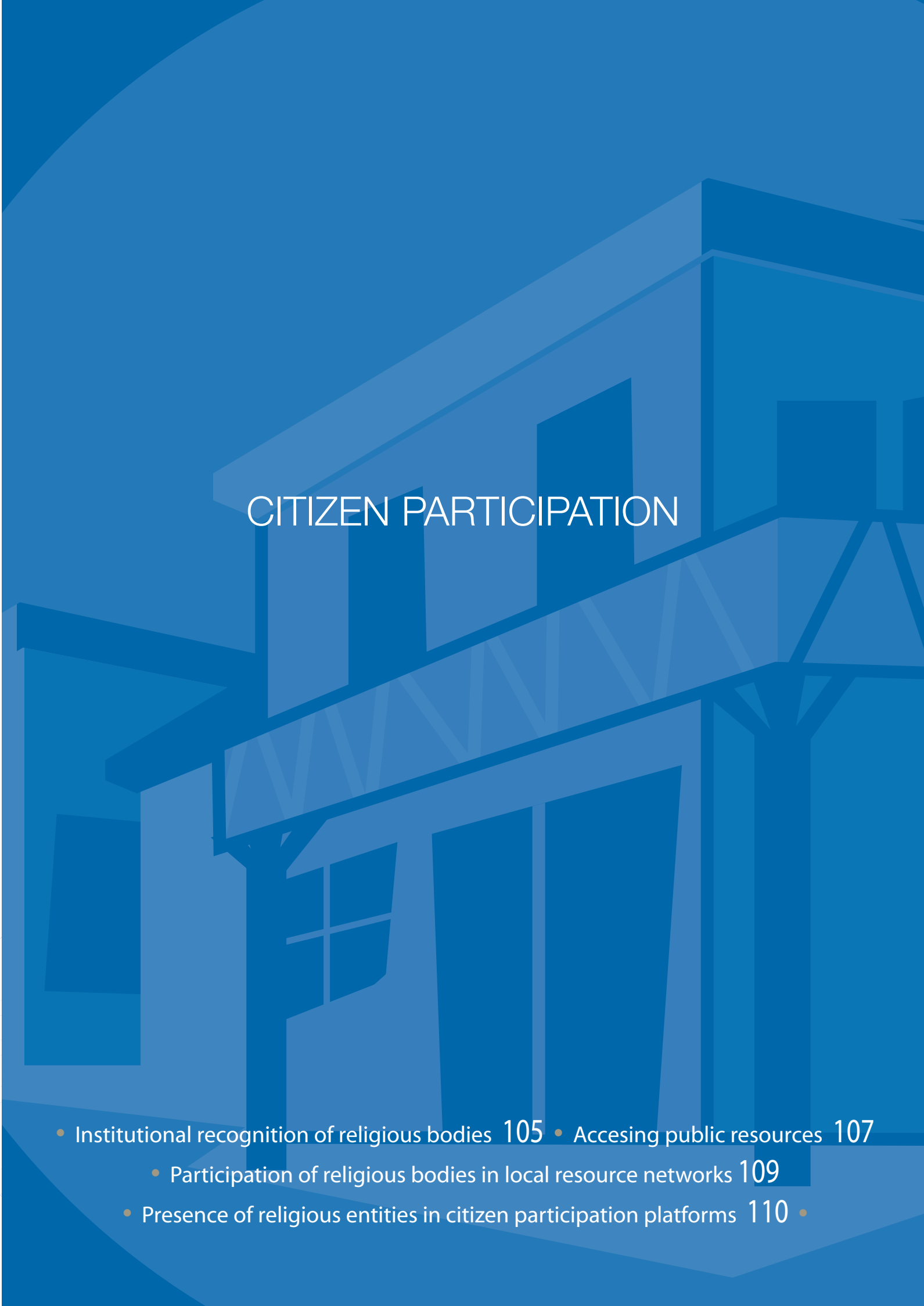
- Development of **protocols for non-discrimination in police work** when dealing, *inter alia,* with hate crimes or discrimination for religious reasons, and police procedures in relation with religious diversity (criteria for asking for ID's and searching people, unjustified presence at places of worship, dealing with the specific safety/security problems of religious communities, etc.).

- Creating **platforms for dialogue** and communication with religious communities and **involving them** in community and city planning relevant to issues such as citizen safety, coexistence and governance of municipalities. As well as being a source of information about security and prevention, this is a mutually beneficial initiative that will enable local police officers to build up their knowledge of these communities and vice versa.

Summary

- The police in general and particularly the local police play a key role in terms of enabling citizens to freely exercise their right to religious freedom, by guaranteeing citizen safety.

- The municipal authorities should act appropriately, calling on the local police force:
  - in the case of massive religious celebrations or at the request of the organizers and in collaboration with them,
  - in situations of conflict related with the exercise of religious freedom, and
  - when the religious communities seek their intervention in other circumstances and for other reasons.



CITIZEN PARTICIPATION

CITIZEN PARTICIPATION

Participation is a guiding principle of the public administration, by virtue of which the public authorities are duty-bound to *facilitate the participation of all citizens in political, economic, cultural and social life* (Article 9.2 of the Constitution). It is also the duty of the public authorities to create opportunities for institutional participation giving representatives of legally constituted civil society groups the capacity to act in an advisory capacity and to influence political decision-making. Encouraging citizen participation is a form of social justice because it strengthens equality for all.

> Associative bodies –groups of people bound together by common goals, who have freely decided to come together formally and legally in order to act collectively– are stakeholders in citizen participation. Religious entities are also civil society stakeholders and, as such, they are fully entitled to participate in public activity. This right is enshrined in Spanish case law and is an effective measure for promoting social cohesion and integration.

However and as illustrated throughout this handbook, many specific factors are having a negative impact on the process of normalizing religious diversity at local level: the weakness of the entities themselves, ostracism, lack of knowledge of the channels available for interfacing with the local authorities, lack of any such channels, lack of institutionalized relations between the municipality and these entities, communication difficulties (dialogue is either inexistent or artificial, or it is weak, sporadic and inappropriate), the lumping together of many issues with problems generated by immigration, (with the result that these problems are affected by the vicissitudes of this phenomenon and get mixed up in partisan debates, which are sometimes neither appropriate nor fitting), etc.

By “normalization process”, we are referring not to the process of increasing control of religious entities or their homogenization, but rather the application to religious entities of the standards formally applied to other citizen bodies. Understood thus, the normalization process is designed to achieve a better management of religion and religious affairs by incorporating/including religious pluralism in the day-to-day running of the municipality, these entities being involved in a host of activities –educational, cultural, social and sports– in addition to carrying out their religious work, all of which can contribute to social cohesion and counteract exclusion.

INSTITUTIONAL RECOGNITION OF RELIGIOUS BODIES

In most medium-sized and big municipalities in Spain, the municipal register of citizen associations and bodies (the name varies as the case may be) is the instrument used to monitor the "associative" reality in the area and gauge the relationship between these associations and the municipality. Registration clearly determines many different aspects of this relationship with the municipality and the city, among which access to public grants and aid, access to citizen participation bodies, assignment of municipal premises, etc.

What needs to be taken into account in the case of religious entities?

First, a reminder:

- The Register of Religious Entities is a single register for the whole of Spain, enrolment in which qualifies religious entities to receive special treatment, as provided for in the Law on Religious Freedom. The register is located at the Sub-Directorate General for Relations with Religious Confessions, which comes under the Ministry of Justice.

- Registering in the Register of Religious Entities gives the religious confession a civil legal personality. Registration is therefore enough to give the entity full capacity to act and enjoy the same rights as all other entities in terms of being eligible for the benefits and actions provided by the public administrations.

For the municipality to recognize a religious body's full legal capacity, accreditation of the religious body's prior registration in the Register of Religious Entities must appear in the municipal register. Not only should this suffice for the municipality to recognize the body's registration in the Register of Religious Entities, it will also allow the religious entity to participate as such in the framework of the municipality.

With this in mind, considering that most municipal registers work in a similar way, it should be noted that there are many mechanisms for facilitating and promoting the participation of religious entities in public life. Some municipal ordinances merely require the delegation or centre-headquarters to be registered in the area for the aforementioned purposes, whereas others require them to be registered in the Register of Religious Entities, making an exception for those that have been unable to register for legal reasons.

In all events, both alternatives are consistent with the aim of the municipal ordinance, which is simply to place on record the existence of all the entities or groups operating in the district and encourage citizen participation in the broadest sense possible. Their widespread use, even in ordinances that do not contain them and their general application in the case of religious entities would resolve this problem satisfactorily.

Do religious entities as such qualify for municipal support?

Local administrations often require that religious entities appear in the municipal register as associations of another nature (cultural, gender, sports, youth, social action associations, etc.) in order to establish a vehicle for processing specific issues. Besides complicating relations with the local administration enormously from a formal legal perspective, this requirement distorts the very nature of these religious entities and how they are considered.

There is nothing linked with the principle of secularism to prevent religious communities qualifying for municipal support in the same conditions as any other entity without necessarily having to change their status to this end. It is another matter altogether if a religious entity decides to create an ad hoc subsidiary branch for carrying out specific social, educational, cultural or outreach activities. More importantly, what concerns the administration in question is not the religious nature of the subject, but rather the social, educational or outreach activities it conducts.

Presence of religious entities in public local events

One of the most effective ways of normalizing religious diversity is by strengthening ties between religious entities and public representatives, securing the participation of both the majority faith and the minority confessions in official forums where their presence is warranted or deemed advisable.

In a traditionally Catholic country where political power and religious power have long been intertwined in the public arena, the presence of Catholic representatives in official public acts has remained a constant. This does not hold true for all the other religious confessions.

Inviting representatives of non-Catholic confessions and religious entities to stand alongside Catholic bodies in municipal public events can be an effective formula for achieving recognition and normalization of religious pluralism, thereby strengthening social cohesion.

It should be noted that it may be necessary to incorporate new guidelines in the rules of protocol and etiquette with a view to accommodating the presence of representatives of religious confessions and communities in municipal public events.

ACCESSING PUBLIC RESOURCES

Religious entities that belong to minority confessions find it difficult to obtain subsidies and other types of public resources such as access to training programmes or permission to use venues for social, educational, cultural or other activities. This is because treatment of these entities is determined/conditioned by their religious status. This in turn encourages religious entities to create ad hoc associative branches with the aim of accessing public resources. This does not only complicate relations with the local administration from a formal legal standpoint, as stated earlier, but it also renders invisible the important role religious communities often play in the social, educational and cultural life of our municipalities.

Religious entities do not need to change their status in order to participate actively in the social and community life of municipalities. It is not the religious nature of the subject that is important, but rather the action it takes and in which the respective administration has an interest. Public administrations are not breaching the principle of separation between State and Church because they are not financing religious activities, but rather social, educational, cultural and other activities conducted by a religious entity just as if it were a civil association, NGO or foundation.

If a religious entity presents a youth scheme or a project concerning the elderly or drug addicts, or any other kind of project in response to a call for proposals, it does not need to create a separate entity in order to qualify insofar as these activities are stipulated in its articles of association. It stands to reason that a religious entity can create associations specifically for educational, cultural or outreach purposes, but this is not a prerequisite for accessing public resources, particularly in the case of small local religious communities where the outcome would be a duplication of their personality.

Public administrations cannot differentiate negatively citing the ideological or religious convictions of an entity that answers a call for proposals if that entity's proposal meets all the formal eligibility criteria. If the entity disposes of the necessary and adequate resources to win the call for proposals, legal or regulatory provisions may not be established putting one group at a disadvantage because of its religious nature.

Changes must be made and criteria established with the aim of giving all associative bodies the same possibilities of accessing resources and winning calls for proposals, irrespective of their profile. This is what will enable local governments to pass the arbitrariness, equality and proportionality tests, as well as guaranteeing the constitutional principle of cooperation with religious confessions. It will also contribute to broadening the visibility of the social, cultural, educational and other activities conducted by religious entities, and help standardize their presence in the municipality and their participation in networks of municipal resources and platforms for citizen participation.

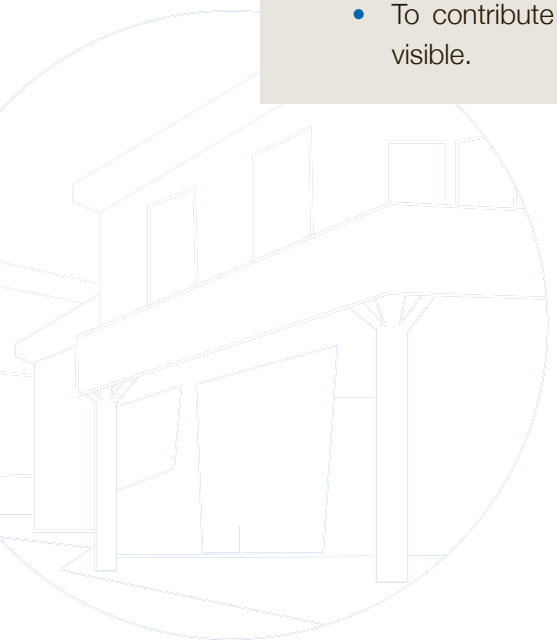
PARTICIPATION OF RELIGIOUS ENTITIES IN LOCAL RESOURCE NETWORKS

A great many religious entities of different denominations engage in basic social service activities: distributing food, providing legal counselling, helping people back to employment, etc. These entities play an important role in the cultural and educational sphere, providing literacy and adult education programmes, language teaching, training workshops, etc.

For the most part, the social, cultural and educational work carried out by religious entities almost exclusively targets members of the same community. That said, increasingly more religious entities of different confessions are willing to participate in local resource networks, particularly in the field of social action. Coordination with other entities is one of the keys to developing integral municipal strategies. Without coordination, it is highly likely that certain types of intervention will overlap and that other resources will be in short supply or simply not available.

Acknowledging the social, educational and cultural work religious entities engage in and encouraging their participation in local resource networks makes possible:

- To map out resources more effectively and comprehensively, thus enhancing the quality of social interventions in our municipalities; and
- To contribute to normalizing religious pluralism and making more visible.



PRESENCE OF RELIGIOUS ENTITIES IN CITIZEN PARTICIPATION PLATFORMS

It is commonly thought that interreligious dialogue is the natural sphere of participation where religious entities are concerned, to the exclusion of all else. There is no doubt that dialogue between the different confessions in an area has a positive impact on social cohesion and coexistence. But by promoting interfaith dialogue as the only platform available to religious entities, the public administrations are failing to allow for their participation in public life.

The involvement of religious entities in forums for dialogues linked with immigrant groups and/or forums designed to encourage intercultural exchanges promoted by the town hall is also commonplace. Evidently, this should not be considered as an exclusive sphere of citizen participation for religious entities and confessions. This does not mean to say religious entities cannot take part in this type of forum, although their participation will only be deemed pertinent if they say so, particularly in cases where the entity in question engages in social and cultural activities targeting immigrant groups and/or designed to foster interculturality.

Strategic plans for engagement developed by the local authorities should provide for religious entities in their capacity as citizen bodies and on the same terms as all the other entities in the area.

By fostering the participation of religious entities in consultative and advisory bodies (town councils, territorial councils, sector bodies, equipment councils, specific commissions, etc.) and in all the other municipal platforms for engaging citizens, we are contributing to opening new channels for dialogue, one that will give us a solid grasp of the local reality, even occasionally serving as a tool for managing religious diversity itself.

Interreligious dialogue is a potentially useful resource for channelling dialogue with religious entities and fostering their participation as discussion partners in local and municipal life.

As stated above, the presence of religious entities in platforms for citizen participation can contribute to the creation of institutional channels of dialogue between the religious confessions in the area and the public administrations. This is an effective vehicle for channelling demands and managing religion and religious affairs. It also enables us to anticipate potential conflicts such as neighbourhood opposition to the opening of a new place of worship.

It should be remembered that forums for citizen participation are conducive to promoting diversity and social cohesion. They are also instrumental in generating awareness and recognition of organizations and their potential contribution to the common good.

Summary

- Religious entities are full-fledged civil society stakeholders just like any other, with the right to participate in public activity.
- Entities that are entered in the justice ministry's Register of Religious Entities do not need to re-enrol in municipal registers. If the local authorities require proof of an entity's full legal capacity, the municipality would be well advised to identify formulas making this accreditation possible.
- There are no reasons connected with the principle of secularity that prevent religious communities from qualifying for municipal support under the same conditions as any other entity.

ANNEX

ANNEX

KEY ORGANIZATIONS CONCERNED WITH THE PUBLIC MANAGEMENT OF RELIGIOUS DIVERSITY IN SPAIN

What public institutions can local governments lean on for assistance in developing effective strategies for managing religious pluralism?

Municipalities

Federación Española de Municipios y Provincias
Subdirecciones de Coordinación Ciudadana y Cohesión y Convivencia Social de la FEMP

Address: Calle Nuncio 8, 28005 Madrid
Tel: +34 913643700
Fax: +34 913655482
Email: serviciosciudadania@femp.es
Web: www.femp.es

Autonomous Communities

Direcció General d'Afers Religiosos, Generalitat de Cataluña

Address: Carrer de Rivadeneyra, 6, 08002 Barcelona
Tel: +34 935545852
Fax: +34 935676868
Email: dgar.vicepresidencia@gencat.cat
Web: www.gencat.cat/governacio/afersreligiosos

State level

Fundación Pluralismo y Convivencia

Address: Calle Fernández de los Ríos 2, 1ª planta, 28015 Madrid
Tel: +34 911858944
Fax: +34 914461227
Email: fundacion@pluralismoyconvivencia.es
Web: www.pluralismoyconvivencia.es

Subdirección General de Relaciones con las Confesiones Religiosas, Ministerio de Justicia

Address: Calle los Madrazo, 28, 4ª planta, 28014 Madrid
Tel: +34 911121720
Email: relaciones.confesiones@mjusticia.es
Web: http://www.mjusticia.gob.es/cs/Satellite/Portal/es/ministerio/organigrama/secretaria-estado-justicia/subdireccion-general1