

# THE SPANISH CASE ABOUT THE CHURCH OF SCIENTOLOGY: A COMMENT

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## 1. Preliminaries

Religious denominations in Spain must be registered in an official register, known as “State Register of Religious Entities”, to be recognized as juridical entities. According to Spanish Organic Law on Religious Freedom (1980)<sup>1</sup>, registration is not mandatory, yet necessary for the purpose of obtaining certain legal benefits. Due to these advantages, religious entities must meet some requirements, specified on the Royal Decree 142/1981<sup>2</sup>, to be eligible for registration. Two major problems stem from this process of registration: the exigency of a “religious aim” and its

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<sup>1</sup> Ley Orgánica 7/1980, July 5<sup>th</sup> (hereinafter LOLR).

<sup>2</sup> Royal Decree 142/1981, January 9<sup>th</sup> (hereinafter RRER). Article 3 of this Royal Decree states in the first paragraphs: “1. Inscription shall be made by request of the respective Entity, in writing, and accompanied by the literal certificate of the document of establishment, duly authenticated, or the corresponding document of foundation or establishment in Spain. 2. The following information is necessary for inscription: a) Denomination of the Entity, in such a way as to be appropriate for distinguishing it from any other Entity. b) Address. c) Religious objectives with respect to the limits established in Article 2 of Organic Law 7/1980 of Religious Freedom. In the cases of the associative religious Entities referred to in Section c) of the previous article, the fulfilment of this requirement should be accredited with suitable certification from the superior agency in Spain of the respective Churches or Confessions. d) Rules of operation and representative organisms, stating their power and requirements for valid designation. e) Optionally, a list of names of persons who legally represent the organization. The corresponding certification of registration shall be sufficient proof for accreditation of said representation.”

assessment by the public authority (the General Secretary for Religious Affairs).

Pursuing a religious aim is a condition to obtain the legal status of religious denomination. Neither the Organic Law on Religious Freedom nor the Royal Decree state which aims can be considered “religious” for the purpose of becoming such an entity. After some doubts, the case law linked the religious aims mainly to worship activities; other elements, such as a doctrinal body and a moral system are occasionally –not always- taking into account to grant registration. On the contrary, a certain number of adherents or the geographical spread are not unavoidable exigencies for recognition, although having “well known roots” in Spain is necessary to be able to sign an agreement with the State, once the religious denomination has been registered<sup>3</sup>.

Other difficult issue is whether the public authority must exercise just a formal control over the application, or may also check its contents, that is to say, deciding on the truly concurrence of the legal requirements. Yet Courts, even the Supreme Court, had decided on this matter for years on the grounds of a substantive control<sup>4</sup>, the Constitutional Court set up a precedent in a 2001 opinion, stating that only a formal control can be exercised to grant or deny access to the State Register<sup>5</sup>. This decision

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<sup>3</sup> Article 7-1 LOLR: “The State, taking account of the religious beliefs existing in Spanish society, shall establish, as appropriate, cooperation agreements and conventions with the Churches, Faiths or religious Communities enrolled in the Registry where warranted by their well known roots in Spanish society, due to their domain or number of followers. Such agreements shall, in any case, be subject to approval by an Act of Parliament”.

<sup>4</sup> Among others, see Sentencia de la Audiencia Nacional de 8 de noviembre de 1985, Sentencias del Tribunal Supremo de 28 de octubre de 1988, 25 de junio de 1990 y 12 de junio de 1996.

<sup>5</sup> Sentencia del Tribunal Constitucional 46/2001, de 15 de febrero. Other previous cases, the Sentencia del Tribunal Supremo de 2 de noviembre de 1987, had already joined this stance, but it was an isolated precedent, not followed afterwards. Furthermore, the special nature of the Constitutional Court gives its arguments a particular strength.

brought about a new approach to the problem that would become decisive for some entities, including the Church of Scientology.

## **2. The Church of Scientology in Spain: background**

The Church of Scientology had already applied for recognition almost twenty-five years before the intent that led to the case commented. In 1983, the “Iglesia Universal de la Cienciología” made an attempt to become a legal religious denomination, asking for recognition before the Register of Religious Entities. The request was denied, first of all by the General Secretary for Religious Affairs, on November 13<sup>th</sup> 1983 (denegation confirmed on April 24<sup>th</sup> 1984), and, afterwards, by the Courts<sup>6</sup>. The reasons for denegation were that the entity had not religious aims, and some of their activities might clash with public order<sup>7</sup>.

Two years after the first petition, another request for recognition, made by the “Iglesia Cienciológica de España”, was also denied<sup>8</sup>, both by the General Secretary for Religious Affairs (decision April 22<sup>nd</sup> 1985, confirmed September 10<sup>th</sup> 1985) and the Courts (Sentencia de la Audiencia Nacional June 23<sup>rd</sup> 1988, Sentencia del Tribunal Supremo June 25<sup>th</sup> 1990, certiorari denied May 27<sup>th</sup> 1994). The main reason for denegation, in this case, was that the petitioner had not religious aims, so, as the Court’s opinion said, there were no basis for analysis of potential danger of its activities as a religious body.

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<sup>6</sup> Sentencia de la Audiencia Nacional de 25 de abril de 1986.

<sup>7</sup> “Public order” is an undetermined juridical concept. It includes public morals, health and safety, but it is not always easy to decide, on a given situation, if there is a real threat against them.

<sup>8</sup> The “Iglesia Universal de la Cienciología” appeared to be a schismatic entity expelled from the “Iglesia Cienciológica de España” (see Sentencia de la Audiencia Nacional November 11<sup>th</sup> 2007, Fundamento Jurídico Segundo).

Although they had nothing to do with the registering process, another two cases that were set up years later must be mentioned, because they might have contributed to the final decision in the 2007 case: two cases from a Madrid Court (Sentencias de la Audiencia Provincial September 28<sup>th</sup> 2001 and April 5<sup>th</sup> 2002) absolved several members of the “Iglesia de la Cienciología” of crimes and illegal activities.

Other factors, not strictly juridical, might contribute to explain the different approach to the most recent petition of the Church of Scientology to be registered in Spain; for example, a new perception of this Church in Western countries. However, I will leave apart these elements, and will centre my commentary on the analysis of the recent case that recognizes the right of the Scientology to be registered as a religious denomination in Spain.

### **3. The recognition of the Church of Scientology**

On October 27<sup>th</sup> 2004, the “Iglesia de Scientology de España” applied for registration as a religious denomination. The request was denied on February 11<sup>th</sup> 2005 (denegation confirmed on May 17<sup>th</sup> 2005). The reason to deny the petition was that the matter had been already decided on a negative sense (an implied reference to the 1986 and 1988 cases), and nothing new or unknown justified a reconsideration of the decision. Applicants turned to Courts, which finally decided on October 17<sup>th</sup>, 2007<sup>9</sup>, granting the Church of the Scientology the right to be registered in the Register of Religious Entities.

There are two questions at issue in this case: 1) if there is “res iudicata”, that is, an identity between this lawsuit and the previous ones

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<sup>9</sup> As far as there had been no appeal against the case before the deadline, the ruling became into definitive.

against “Iglesia Cientológica” and “Iglesia Universal de la Cientología”, and 2) if the freedom of religion has been infringed because of denegation of registration.

In regard to the first problem, the Court’s opinion is clear in its conclusion: the petitioner is not the same that had asked for legal recognition as “Iglesia Cientológica” or “Iglesia Universal de la Cientología”. However, this seems to be not so clear, if we consider all the elements. Certainly the name of the church is different, yet not so much, and also the tenets, but nobody could deny that there is a link between all these entities. “Scientology” refers to a particular spiritual doctrine, shaped by specific features based on L. R. Hubbard’s philosophies<sup>10</sup>; the three mentioned entities claimed they follow Hubbard’s teachings, so, it would be easier asserting they are similar than they are different.

This argument may appear not fully convincing to the Court, because other reasoning was added in support of the ruling. The case states that there might have been certain “changes” in the period between the former and latter demands that would exclude the consideration of the “res iudicata” -even if the entities were deemed identical, it should have added-. It could have been, it says, a considerable variation in the number of the adherents to the denomination, and an evolution of its doctrine, organization and aims. These is quite a surprising reasoning, because the number of adherents has never been a requirement to recognize a religious denomination; and the change in the nature of an entity –from non religious to religious, as the case seems to understand- not without hesitation can be considered an “evolving process”: it is much more a radical change of the entity itself.

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<sup>10</sup> The word “philosophies” is used on the Scientology webpage to describe Hubbard’s teachings (see <http://www.scientology.org>).

What is, foremost, the main reason for a rehearing appears in the ruling only in the last place: the new interpretation of the aim of the RER stated by the Constitutional Court<sup>11</sup>. In my opinion, this is the rational for a further consideration of the application made by the Church of Scientology, whether it were the same or a different denomination than the previous ones which demanded the legal recognition. Precisely because the denial was based upon the “old” interpretation, a different conclusion can be reached according to the “new” one; and, in fact, that is what happened. We could affirm that, yet the name, tenets, and managers in this new “Church of Scientology” and in the previous “Iglesia Cienciológica de España” and “Iglesia Universal de la Cienciológica” are different, the three are branches of the Scientology, and, therefore, they would deserve the same treatment. However, the last case was decided on opposite grounds than the previous ones; then, what has clearly changed is the Court’s opinion about the State’s role on recognition of religious denominations. Perhaps, if this case were analyzed on the old grounds, the judgement might have been a different one, similar to the others.

Let us see, then, how the Court relates the right to religious freedom to the registration in the State Register of Religious Entities.

As the Court remembers, recognition of religious freedom must be construed as broad as possible<sup>12</sup>; restrictions on this right must be construed

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<sup>11</sup> See Sentencia del Tribunal Constitucional 46/2001, de 15 de febrero.

<sup>12</sup> The Spanish Constitution, Article 16 (“Freedom of ideology, religion, and cult of individuals and communities is guaranteed without any limitation in their demonstrations other than that which is necessary for the maintenance of public order protected by law. No one may be obliged to make a declaration on his ideology, religion, or beliefs. No religion shall have a state character. The public powers shall take into account the religious beliefs of Spanish society and maintain the appropriate relations of cooperation, with the Catholic Church and other denominations.”) and the European Convention on Human Rights and Fundamental Freedoms, Article 9 (“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

as narrow as possible, and always justified by proportionate and compelling reasons. In this regard, denying access to the Register implies a restriction to the religious liberty, because the entity or denomination will not enjoy the civil personality. More precisely, we can say that the entity will not be able to enjoy the legal benefits corresponding, specifically, to religious entities and denominations. And in the Court's opinion, it means that the exercise of the religious liberty would be restricted for that entity. Hence, the Court considers that it is more correct, according to this principle, an interpretation *pro libertate*, which requires granting the recognition.

The Court's opinion refers to several judgements delivered by the European Court of Human Rights stating that religious freedom prevents the public authorities from evaluating the legitimation of beliefs<sup>13</sup>; the State cannot define "religion", or decide if a certain denomination is "religious enough" in its external manifestations as for granting it legal recognition. It may check if the applicant meets all the formal requirements to be registered, and registration can be denied only if the denomination fails to prove one or more requirements. It implies that the authorities in charge of the State Register of Religious Entities have a task of verification, not

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community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance. Freedom to manifest one's religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others.") assert this principle with a special strength. According to Article 10-2 of Spanish Constitution, "The norms relative to basic rights and liberties which are recognized by the Constitution shall be interpreted in conformity with the Universal Declaration of Human Rights and the international treaties and agreements on those matters ratified by Spain"

<sup>13</sup> Case *Hassan and Tchaouch v. Bulgaria*, October 26<sup>th</sup> 2000; case *Manoussakis v. Greece*, September 26<sup>th</sup> 1996; case *Besarabia Metropolitan Church v. Moldavia*, December 13<sup>th</sup> 2001; case *Salvation Army v. Russia*, October 5<sup>th</sup> 2006, and, specially, *Church of Scientology v. Moscow*, April, 5<sup>th</sup> 2007.

assessment, of the applications; and its margin to decide does not depend on their own judgement; on the contrary, it is abided by the legislation.

According to this construction, the Church of Scientology can be registered, as the Court says, because both its tenets and its doctrinal body prove it is a religious nature denomination. But the judgment also calls for other reason to grant the right to registration: the treatment this church has received in other countries, mainly in some European countries, where, after some years of trouble, it has become a legal religious entity. This is really amazing, because it is not usual, in Spanish case-law, calling for other countries regulation in order to establish the legal status of a religious entity.

#### **4. A reference to the European Court of Human Rights case *Church of Scientology Moscow v. Russia***

Several circumstances plead for a reference to the European Court of Human Rights case *Church of Scientology Moscow v. Russia* after the comment on the Spanish case: both deal with recognition of Scientology; their deliverance was close in time, and the Spanish Court's opinion quotes the European case. Although the cases are different, those analogies, and, mainly, the topic at issue –religious freedom- allow the comparison.

In the Russian case, we find out an obstruction to the legal registration of the Scientology, because public authorities had no legal basis to deny its access to the Register. Applicants sustained that they asked for registration more than ten different times, all of them, as they said, in compliance with the law in force. The European Court of Human Rights inferred from the proven facts that Moscow authorities did not act in good faith and neglected their duty of neutrality and impartiality.

This was not the case in Spain. Strictly, it was the first time the Iglesia de Scientology de España applied for registration. The previous ones do not share the identity with this branch of Scientology. So, we can consider the procedure, and the final decision, as a regular way of proceeding.

But even if we consider the “Scientology” case in Spain as a whole, we can assess that prior to 2001, this case would have probably received a different treatment, because of the case law then in force. There were no negligence on the part of the public authorities, but just an adjustment to the Court’s interpretation of a law that is, at least, confuse in its words. The Organic Law on Religious Freedom, and the Royal Decree of 1981, are bewildered in what refers to exigencies to become a legal religious entity. So, dissimilar constructions of the legal requirements do not imply bad faith, but the Court’s exercise of their own functions.

## **Conclusion**

The case of Scientology is a landmark decision because of the new perspective introduced in the construction of the exigencies to become a recognized religious denomination. Certainly, there was a previous decision of the Constitutional Court, but in the Scientology case, there was a negative history that has been amended. Its importance is more evident if we take into account that access to State Register of Religious Entities has been denied to a significant number of religious entities on similar basis than Scientology; so, a practical problem is lying ahead: it is reasonable expecting that now, at least some of those entities will apply again for legal recognition; and, surely, they will appeal to Courts if their request is denied.

We cannot forget, on the other hand, that not all controversial issues have been solved in the Scientology case. The Supreme Court accepts that a precautionary control can be exercised, denying the registration to a religious denomination if authorities find that public order is at risk. But unless a criminal offence can be proved, there is little room for that kind of control, so, virtually all petitioners would find a positive answer to their request, even dangerous entities: nobody will set out the practice of illegal or harmful activities as an institutional purpose. The public authorities must accept the religious nature as the denomination understands it, that is to say, it will be quite difficult denying the access to the State Register of Religious Entities to an entity that claims to be religious.

#### LITERATURE

Motilla, Agustín, *Sobre la inscripción de la Iglesia de la Cienciología en el Registro de Entidades Religiosas*, in 16 “Revista General de Derecho Canónico y Derecho Eclesiástico del Estado” (on line, <http://www.iustel.com>).

Tirapu, Daniel and López-Sidro, Angel, *La cienciología en España: el camino hasta la personalidad jurídica*, in 16 “Revista General de Derecho Canónico y Derecho Eclesiástico del Estado” (on line, <http://www.iustel.com>).