

THE LEGAL STATUS OF THE ORTHODOX CHURCHES IN SPAIN: THE CURRENT SITUATION BEFORE THE LAW OF THE SPANISH STATE

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Abstract. From a historical point of view, Spain has practically always been a confessional country in which the Catholic Church has been united with the State. However, in recent times, there has been a radical change motivated by the secularism of society, the arrival of immigrants who profess other religions, the secularism proclaimed in the current Constitution of 1978 and the normative development of religious freedom and conscience, that favors religious pluralism. In this context, the different Orthodox churches are having a strong presence in Spain, currently being the third largest group in number of faithful, with one and a half million Orthodox believers. In this paper we analyze various issues related to the regulation of religious confessions in Spain and how it applies to Orthodox Churches, both with regard to the legal status of the Orthodox entities themselves and the status of their clergy and their centers of worship and, in particular, we analyze the possibilities for Orthodoxy to reach a general agreement of collaboration with the Spanish State, which would be beneficial for Orthodox churches, such as the one currently held by Jews, Muslims and Evangelicals.

Keywords: Orthodoxy in Spain, Orthodox Federation in Spain, Orthodox Churches in Spain, Russian Orthodox Church-Moscow Patriarchate in Spain, freedom of religion, the legal status *notorio arraigo*.

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The legal recognition of religious confessions in Spain

The presence of Christianity in Spain dates back to apostolic times¹. Since the Visigothic King Recaredo abandoned Arianism to become Roman Catholic (589), Spain has been, practically always, a confessionally Catholic country until recent times. The Constitutions of the 19th century declared the Catholic confessionalism of the State², protected the Catholic Church and signed Concordats with the Holy See (Concordat of 1783 (Ferdinand VI and Benedict XIV) and Concordat of 1851 (Isabelle II and Pius IX). On the contrary, the Constitution of the Second Republic (1931) proclaimed the secularism of the State. The religious question was one of the reasons for the Civil War (1936–39), in which many bishops and priests were martyred on the Republican side [Cárcel Ortí (2000)]. General Franco (1936/39-1975) created the “national-Catholicism” political system, reinstated the confessionalism and signed a new Concordat with the Holy See (1953). The national-Catholicism evolved after the Declaration *Dignitatis Humanae* (1965) of the Vatican Council II: Law 44/1967, of June 28, was enacted, which regulated the exercise of the civil right to freedom in religious matters and a Registry of Non-Catholic confessional associations.

Under his successor, Juan Carlos I (1975–2014), a consensus Constitution was drawn up in 1978, which declared religious freedom (art. 16.1), the non-denominational nature of the State, and its collaboration with the Catholic Church and with the other religions (art. 16.3). The Catholic Church played a fundamental role, as a mediator, in the political transition process. The jurisprudence of the Constitutional Court has interpreted the constitutional non-denominationalism as a positive secularism (Judgment of the Constitutional Court (STC)

¹ Tradition affirms that the Apostle Saint James the Greater evangelized Spain and that the Virgin Mary appeared to him in Zaragoza. It is clear that Saint Paul wanted to come to Hispania (Rom 15:28) and, with certainty, that the 7 apostolic men evangelized Spain. The Spanish emperor Theodosius I the Greater declared Christianity the official religion of the Roman Empire (380).

² Excluding confessionalism in the Statute of Bayonne of 1808 and in the Constitution of 1812. Tolerance of the private worship of other religions in the Royal Statute of 1834, in the Constitution of 1837, 1845 and 1876 and in the constitutional Projects of 1852 and 1856. Tolerance of religious freedom in the Constitution of 1869 and in the draft of the Federal Constitution in the Republic of 1873.

46/2001, of February 15, and STC 34/2011, of March 28) that, in practice, maintains some privileges for the Catholic Church and distances the State from the concept of state neutrality (Judgment of the Constitutional Court (STC) 46/2001, of February 15, and STC 34/2011, of March 28).

To develop religious freedom, a new Organic Law on Religious Freedom, LOLR (Organic Law 7/1980, of July 5, on Religious Freedom) was enacted in 1980 and remains in effect. This Law has united beliefs and religions, although many jurists highlight its internal contradictions, the different categories of religions that it generates, and its maladjustment to new social and religious realities. The LOLR created a new Register of Religious Entities (RER) (art. 5.1)³, in which groups with religious purposes could register (art. 5.2). At the request of the registered faiths, the Government can grant them the administrative declaration of the “well-established roots” (*notorio arraigo*) if they meet the requirements (Royal Decree 593/2015, of July 3). Finally, the Government can establish general Cooperation Agreements with “well-established” confessions (art. 7.1), extending to them the tax benefits provided for non-profit entities (art. 7.2).

In January 1979 the State signed four partial Agreements with the Holy See that repealed the 1953 Concordat. In 1992 the Government, after recognizing the legal status *notorio arraigo* in Spain, approved with the “minority” religions (Jews, Evangelicals and Muslims) Ordinary Laws that contained a Cooperation Agreement with each of them⁴. Since then, the following have obtained *notorio arraigo* although they do not have Agreements with the Government: Mormons (in 2003), Jehovah’s Witnesses (2006), Buddhists (2007) and Orthodox Churches (2010).

The Orthodox Churches in Spain and their current legal status

Spanish society has evolved a lot from a religious point of view. The latest Report of the Centre for Sociological Research (CIS) of October 2021, shows that 55.4% declare themselves Catholics (17.5% practicing and 37.9%

³ Currently, Royal Decree 594/2015, of July 3.

⁴ Ordinary Laws 24, 25 and 26/1992, of November 10, which approve, respectively, the Cooperation Agreements with the Federation of Evangelical Religious Entities (FEREDE), with the Federation of Israelite Communities (FCI) and with the Spanish Islamic Commission (CIE).

non-practicing), 39.9% professing no religion (agnostic, atheist or indifferent), 3.2% are of a religion other than the Catholic and 1.5% do not respond⁵. Spain is no longer Catholic⁶, but Catholicism is still present in culture and traditions⁷. Spain has a multicultural and multireligious society as a consequence of globalization and migration, with a strong presence of Muslims (2M) and Orthodox (1.5M), of which 670,000 are Romanians [Moldovan (2008)].

Between 552 and 625 AD, the Byzantine Empire dominated southern Spain [Vallejo Girvés (2016)]. The Russian Embassy in Madrid established the Chapel of St. Mary Magdalene there in 1761. Since the mid-19th century there have been stable Orthodox communities made up of Greek emigrants [Martínez Carrasco (2017)] and, since 1970, by Russians and Romanians and by Spanish converts from Catholicism.

In the 1960s, Greek emigrants created the Parish of Saints Andrew and Demetrios in Madrid and registered it in the Registry in 1968; hence the Ecumenical Patriarchate of Constantinople was formed and with it, the Sacred Orthodox Metropolis of Spain and Portugal. In Barcelona, converts from Catholicism and foreign Orthodox created the Spanish Orthodox Church which they registered in 1973⁸ and which in 1988 was integrated into the Patriarchate of Serbia. These two Orthodox Churches — the Greek and the Serbian⁹ — enjoy the so-called “legal hospitality” within the FEREDE, for which the Orthodox Serbs and Greeks receive the beneficial regime of the Evangelicals, Adventists, Anglicans and Protestants in the Cooperation Agreement that they reached with the State in 1992¹⁰

⁵ CIS. Question nº 38. Preview of results. October 2021 Barometer. Study nº 3337. http://datos.cis.es/pdf/Es3337marMT_A.pdf [accessed on 24-10-2021]

⁶ Currently only 35% of marriages are Catholic.

⁷ Family celebrations of baptisms, communions, weddings and funerals; town festivals and mass pilgrimages (such as “El Rocío”) and pilgrimages along Saint James’ Way to Santiago de Compostela.

⁸ This group created in Barcelona both the Saint Gregory Palamás School of Orthodox Theology (under the direction of the St. Serge Orthodox Institute in Paris), and the Orthodox Foundation.

⁹ The Romanian Orthodox Church did not want to associate itself with this anomalous solution.

¹⁰ Among others, they are exempt from paying the Real Estate Tax (IBI) of their places of worship.

and can receive financial aid from the Pluralism and Coexistence Foundation¹¹, which belongs to the State Public Sector.

Currently in Spain there are parishioners, centres of worship, and ministers of worship of the Greek, Russian, Bulgarian, Georgian, Romanian, Moldovan, Syriac, Coptic, Armenian and Ukrainian and Spanish Orthodox Churches in the Hispanic Orthodox Church and in the Spanish Orthodox Church-Patriarchate of Serbia¹² [Díez de Velasco (2015)]. The Patriarchates of Serbia, Georgia, Constantinople, Romania, Bulgaria and Moscow have Archbishops or Diocesan Bishops, some of them reside in Spain¹³. The two autochthonous Orthodox Churches (the Hispanic¹⁴ and Spanish Orthodox Churches) have mainly Spanish parishioners and celebrate the Divine Liturgy in Spanish, unlike the other Orthodox Churches.

The greatest obstacles for Spanish Orthodoxy to be publicly recognized and valued are national fragmentation, the lack of a single leadership recognized by all, transnational migratory flows, and the repercussions of international political conflicts, such as the Russian-Ukrainian conflict, since in Spain there

¹¹ <https://www.pluralismoyconvivencia.es/fundacion/> [accessed on 23-10-2021]

¹² F. Díez de Velasco (ed.), *Las Iglesias Ortodoxas en España: retos y perspectivas*, Clásica, 2020, 352; ID., *Las iglesias ortodoxas en España*, Akal, 2015, 404. The Armenian, Syriac and Coptic Eastern Christian Churches are not in communion with the Orthodox Churches, although they themselves consider themselves Orthodox and they are registered in the RER, in 2004, 2017 and 2018, respectively.

¹³ The current Archbishop of the Sacred Orthodox Metropolis of Spain and Portugal and the Exarchate of the Mediterranean Sea is Metropolitan H.E. Besarión (Komziás), with residence in Spain. At the head of the diocese of Spain and Portugal of the Moscow Patriarchate is Archbishop Nestor of Madrid and Lisbon. The Romanian Church has two Bishops, P. Timoteo is the Head and P. Teofil of Iberia is the Vicar Bishop. The Spanish Orthodox Church (Serbian) depends on the Bishop of Western Europe Mons. Lyka and the archpriest of Barcelona M.R.P. Joan García acts as Vicar General in Spain. The Bulgarian Orthodox Church in Spain is headed by Bishop Antoni Constantiysky, who does not reside in Spain.

¹⁴ The Hispanic Orthodox Church-Isidorian diocese of Spain, Portugal and the Americas, belonged to the Russian Orthodox Church abroad (Rocor), led by Metropolitan Hilarión Kapral +16/05/2022), from 2011 to 2016. Since 2016 it has been autonomously integrated into the Ecumenical Patriarchate of Constantinople. In Spain it was directed by Pablo Manuel of Itálica.

are 110,000 Ukrainians and 80,000 Russians¹⁵ [Díez de Velasco, Salguero (2020)].

Díez de Velasco has called it the “Spanish orthodox labyrinth” [Díez de Velasco (2021)], which is a heterogeneous and complex puzzle. Some authors, such as Llamazares and Torres, advocate suppressing the current system of Agreements and replacing it with a Freedom of Conscience Law that would create a common law system applicable to all religious faiths from State neutrality and equality [Llamazares, Torres (2020)]¹⁶. In any case, the Orthodox Churches are in a moment of expansion and reflection on their future challenges [Baltaretu (2020)].

In the RER¹⁷ there are 146 orthodox registration inscriptions, both for Churches and Federations¹⁸, as well as for cathedrals, parishes, temples, communities and monasteries and, finally, for associations. The vast majority are inscriptions of the Romanian Orthodox Church, mainly parishes that they have in various Spanish cities and towns. There are currently 226 Orthodox

¹⁵ F. Díez de Velasco-O. Salguero, “Las Iglesias Ortodoxas entre lo global, lo nacional y lo transnacional: apuntes sobre el caso español”, *Revista Cultura & Religión*, XIV/I (2020) 41-57. At the international level, the Patriarchate of Constantinople recognized in January 2019 the autocephaly of the Orthodox Church of Ukraine.

¹⁶ D. Llamazares, *Libertad religiosa e igualdad: los Acuerdos del Estado con las Confesiones de 1992*, in A. Torres Gutiérrez, “Estatuto jurídico de las Iglesias ortodoxas en España: autonomía, límites y propuestas *de lege ferenda*”, Dykinson, 2020, 125-146. This monograph contains the sociological and legal analysis of some of the Orthodox Churches in Spain.

¹⁷ <https://maper.mjusticia.gob.es/Maper/buscarRER.action> [accessed on 24-10-2021]

¹⁸ The Armenian Apostolic Church of Spain, the Antioch Apostolic Orthodox Church of Spain, the Coptic Orthodox Church of Saint Moses the Black and Saint Barsum, the Church of the Patriarchate of Constantinople of Russian tradition, the Bulgarian Orthodox Church of Spain, the Georgian Orthodox Church of Saint George, the Russian Orthodox Church of the Moscow Patriarchate, the Syriac Orthodox Church of Antioch and the whole East in Spain, the Patriarchate of the Orthodox Copts in Spain, the Orthodox Church in Spain and the Sacred Orthodox Metropolis of Spain and Portugal and Exarchate of the Mediterranean Sea. Finally, the Orthodox Federation of Spain is registered.

places of worship in Spain in 159 Spanish municipalities¹⁹, of which 120 are Romanian parishes²⁰. The Moscow Patriarchate opened its first worship centre in 2003 in Mallorca and currently has 30 churches²¹.

All the Orthodox Churches — whether they are in communion with each other or not — obtained in 2010 the declaration of *notorio arraigo*, but they have not signed any general Cooperation Agreement with the State. If the Orthodox reached an Agreement with the State like the one that Catholics, Jews, Muslims and Evangelicals have, they could, in their case, receive a tax allowance; be permitted to teach Orthodox religion classes in public schools; have Orthodox chaplains in the Armed Forces, hospitals, prisons and other similar centres; have tax deductions and exemptions on taxes and other benefits.

There have been two attempts to unite all the Orthodox to have a single interlocutor with the Government. The first was a failed attempt, the Orthodox Episcopal Assembly of Spain and Portugal — chaired *ex officio* by the representative of the Ecumenical Patriarchate of Constantinople — which sought to integrate all the canonical Orthodox bishops (Romanians, Russians, Bulgarians, Serbians and Georgians)²². As a result of the Russian-Ukrainian conflict, the Russian and Romanian representatives left the Episcopal Assembly and they created the Orthodox Federation of Spain (made up of the Romanian Orthodox Bishopric of Spain and Portugal and the Russian Orthodox Church-Moscow Patriarchate), whose Statutes were approved on October 4, 2018. Their legal representative is the Romanian Bishop Lauran Felician Timotei and they registered it in the RER on October 8, 2018²³.

¹⁹ <https://www.observatorioreligion.es/directorio-lugares-culto/?confesion=Ortodoxos> [accessed on 22-10-2021] In addition, the Orthodox Divine Liturgy is celebrated in some Catholic Churches that are ceded occasionally or permanently to various Orthodox Churches.

²⁰ In 1992 they only had 1 church and currently they have 120. The Cathedral of the Romanian Orthodox Church in Madrid was inaugurated in 2017.

²¹ The Cathedral was inaugurated in Madrid at the end of 2018.

²² As they did not correct the statutory defects, they could not be registered in the RER.

²³ Its Statutes recognize two types of members, the canonical churches in communion (which have full rights, voice and vote) and the Churches without Orthodox communion, which are associate members, without voice or vote, but who could enjoy the rights recognized in the future Cooperation Agreement. Even so, as of today, only the Russian Orthodox and Romanians are part of this Federation.

Both groups (the one led by the Greeks and the one led by the Romanian-Russian bicephaly) intend to be recognized by the Government as the only interlocutor to negotiate the possible Cooperation Agreement, for which they should integrate the rest of the Orthodox groups, which has not been achieved so far.

Although the State has not signed a general Agreement with all the Orthodox on Voluntary Jurisdiction, Law 15/2015, it has recognized the civil effects of marriages celebrated according to the Orthodox form. Royal Decree 594/2015, of July 3, created a Registry of ministers of worship, of voluntary registration except for those who are authorized by their religious confessions to perform religious acts with civil effects, and in March 2018 it had 98 registered Orthodox clergy²⁴, although the number of Orthodox ministers listed in the RER has recently increased to 107 [González (2022)]. Finally, in 2001 the Patriarchate of Moscow obtained a ruling from the Government that those who dedicate themselves in a stable, exclusive and remunerated way to the functions of worship or to religious assistance were included in the scope of protection of the Spanish Social Security Regime (Royal Decree 822/2005, of July 8).

The art. 8 of the LOLR created a Commission to advise the Government on religious freedom (Royal Decree 932/2013, of November 29). This Commission is made up of representatives of the General State Administration and of representatives of religious confessions. The current representative of the Orthodox Churches is Fr. Andrey Kordochkin from the Moscow Patriarchate (Orden JUS/304/2019, of March 14)²⁵.

²⁴ https://www.congreso.es/entradap/l12p/e8/e_0080633_n_000.pdf [accessed on 22-10-2021]

²⁵ https://www.mpr.gob.es/mpr/subse/libertad-religiosa/Documents/Comision-Asesora/Comision/BOE-A-2019-3916_vocales%20CALR.pdf [accessed on 19-10-2021]

Church name	Registration date	Approval of Statutes	Official Website and Official Facebook
Serbian	01/10/1973	03/04/2002	http://www.iglesiaortodoxa.es/ https://www.facebook.com/iglesiaortodoxaespanola/
Russian	30/06/2003	---	http://orthodoxspain.com/es/ https://www.facebook.com/iberian.orthodoxy
Romanian	03/06/2004	13/02/2020	https://obispadoortodoxo.es/ https://www.facebook.com/Obispado-Ortodoxo-572735746433577/
Greek	31/03/2006	24/01/2012	https://www.metropoliespo.com/ https://www.facebook.com/sacrametropolisortodoxa
Bulgarian	11/09/2009	---	https://bg-tzarkva-ispania.blogspot.com/?fbclid=IwAR1YpP4Ds3rhKykMxdtIWMtO2gnKl9km-nxrDhaBHqQX_SgBDW1BDQhf6sQ Страница Facebook отсутствует
Georgian	10/03/2011	---	Вебсайт отсутствует Страница Facebook отсутствует
Orthodox Federation of Spain	08/10/2018	04/10/2018	Вебсайт отсутствует Страница Facebook отсутствует

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