

The Legal Status of Religious Institutions in Peru

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El estatuto jurídico de las instituciones religiosas en Perú

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ABSTRACT

Peru is a country with a predominantly religious population, with traditions and culture directly linked to religion, especially Catholicism, which is one of its fundamental elements that has a decisive influence on the formation of Peruvian society's values and basic legal principles. In this context, Peru has created a system of relations with religious entities, established in the Constitution, which has been progressively developed through laws and regulations on religious freedom and case law; except for the agreement concluded with the Holy See, the State has not signed specific agreements with other religious entities, and it is not expected that such agreements will be concluded in the near future. The purpose of this article is to clarify the current system of relations between the state and religious associations in Peru, with particular reference to the issue of the legal personality of religious entities.

KEYWORDS: *Peru, religious associations, concordat, registration, constitution.*

RESUMEN

Perú es un país con una población predominantemente religiosa, con tradiciones y cultura directamente vinculadas a la religión, especialmente al catolicismo, que es uno de sus elementos fundamentales que influye decisivamente en la formación de los valores y principios jurídicos básicos de la sociedad peruana. En este contexto, Perú ha creado un sistema de relaciones con las entidades religiosas, establecido en la Constitución, que ha sido desarrollado progresivamente a través de leyes y reglamentos de libertad religiosa y de la jurisprudencia; salvo el acuerdo celebrado con la Santa Sede, el Estado no ha suscrito acuerdos específicos con otras entidades

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religiosas, y no se espera que se celebren en un futuro próximo. El objetivo de este artículo es aclarar el actual sistema de relaciones entre el Estado y las asociaciones religiosas en Perú, con especial referencia al tema de la personalidad jurídica de las entidades religiosas.

PALABRAS CLAVE: *Perú, asociaciones religiosas, concordato, registro, constitución.*

Introduction

The historical process of development of the system of religion-state relations in Peru has been influenced by the state's relationship with the Catholic Church. To this day, this religious association has a separate legal status from other religious communities in Peru. The long-lasting patronage regime that prevailed in Peru for several centuries influenced the specific shape of the secular state model, which guarantees freedom of conscience and religion and the equality of religious associations, but, due to history and tradition, grants the Catholic Church a separate place among them. The basic principles of state-church relations, which, in the secular religious-friendly model, consist of autonomy and independence of both entities, began to develop only in the second half of the 20th century. Their legal basis is found in the Constitutions of 1979 and 1993, the Concordat of 1980 and the Religious Freedom Law (*Ley de Libertad Religiosa*) of 2010 (Rodríguez Ruiz, 2018, pp. 147–156; García-Montúfar Sarmiento, Alegre Porras, 2009, pp. 597–650).

Peru is the society in which the Catholic Church is historically the most rooted and the most active among other religious communities. According to census data, about 76% of the population professes Catholicism (INEL, 2018). Alongside the Catholic Church, Judaism and Islam also belong to the so-called historic faiths, whose origins in Peru date back to the 18th and 19th centuries. The last 50 years have seen a significant increase in the number of different evangelical denominations, grouped mainly in the National Evangelical Council (Concilio Nacional Evangélico del Perú, CONEP) and in the federation Union of Evangelical Christian Churches of Peru (Unión de Iglesias Cristianas Evangélicas del Perú, UNICEP).

Apart from the fact that the population is predominantly Catholic, the presence of Catholicism in the public sphere is widespread, such as images of the Virgin Mary and saints in parks and squares, as well as on religious festivals, Mass and *Te Deum*, attended by the President of the Republic and the leading authorities of the country (Sánchez, 2002, p. 75). Peru also hosts one of the most important Catholic religious manifestations in the world, i.e. the celebration of the procession of the Lord of Miracles (Señor de los Milagros), whose image parades through the streets of Lima every October and which is attended by more than one million faithful during the procession. By Law 29.602, the Lord of Miracles was declared the patron of Catholic religious spirituality

in Peru (Vinces Arbulú, 2014, pp. 135–164). The elements of religious manifestation have created and perpetuated social customs and legal institutions around the Catholic religion, which is part of the cultural identity of Peru¹.

It must be emphasized that the Constitution of Peru recognizes the right to freedom of conscience and religion, individually or in concert with others, as a fundamental human right, and the state guarantees its respect. The limit of its exercise is that it does not offend morality or disturb public order. Peru has ratified all multilateral treaties that recognize the right to religious freedom, and the Constitution of Peru provides that treaties are part of national law. Moreover, the norms relating to the rights and freedoms recognized by the Constitution are interpreted under the Universal Declaration of Human Rights and the international treaties and agreements ratified by Peru².

On the other hand, in terms of institutional relations, within a system of independence and autonomy, Peru recognizes the Catholic Church as an important element in its historical, cultural, and moral formation. The state respects other religions and can also establish cooperation with them. The Constitutional Court indicated the Peruvian constitutional model. However, it is not a religious state. It recognizes the Catholic Church as an integral part of a historical, cultural, and moral formation having a decisive influence on building many of society's values³. Peru signed an international agreement with the Holy See on July 19, 1980, which recognizes the independence and autonomy of the Catholic Church and establishes cooperation as a system to regulate mutual relations. To date, Peru has not concluded agreements with non-Catholic religious denominations. Their legal framework is limited to the Constitution and the Law on Religious Freedom and implementing acts (Adrianzén Olivos, 2013; Valderrama Adriansén, 2015, pp. 574–578; Valderrama Adriansén, 2010, pp. 551–555).

Relations of the state with the Catholic Church – a historical and legal perspective

Christianity as the official religion of the Spanish Empire, of which the Viceroyalty of Peru (Virreinato del Perú) was a part, was the only permitted worship

¹ Sentence 06111-2009-PA/TC in the Linares Bustamante case, where the removal of crucifixes from court offices was requested. In this case, the Court held that the religious freedom of non-Catholics is not violated, nor does the State give up its secular status, since crucifixes not only have religious significance in public spaces, but also express values of cultural identity, linked to the history, culture and traditions of Peru.

² Fourth final and transitory disposition: “Las normas relativas a los derechos y a las libertades que la Constitución reconoce se interpretan de conformidad con la Declaración Universal de Derechos Humanos y con los tratados y acuerdos internacionales sobre las mismas materias ratificados por el Perú”.

³ Sentence 06111-2009-PA/TC pt. 26.

specified in the Spanish monarchical constitution better known as the Constitution of Cadiz (Constitución Monárquica Española, Constitución de Cádiz) of 1812. After independence, Peru continued to recognize it as the official religion in most of its constitutions, including 1933 in force until 1979 (Abad Yupanqui, 2008, p. 171–175). The Catholic Church is part of most countries' historical and cultural heritage in the Western world. In this sense, this is also the case in Peru, which in its 1993 Constitution recognizes it as an important part of the country's historical, cultural, and moral formation. Today, in terms of the number of adherents, it is the majority religion in the American continent and Peru (Carpio, 1999).

For centuries, Latin American countries have shared a common history as heirs to the Spanish Crown. What stands out during this historical period is the close relationship between the Catholic Church and the monarchical power, organized legally by royal patronage, which included the economic support of the Church by the monarchy (Flores Caldas, 2018, pp. 343–353). Peru gained independence in 1821, but the new republican government did not propose breaking with the monarchical patronage system. It decided to maintain it as a prerogative and privilege inherited from the Crown, still sticking to the confessional model of interference in the government of the Church and returning to supporting the cult and its clergy⁴. The national patronage in Peru has two peculiarities: on the one hand, it is its duration, since it was formally in force for a hundred years; on the other hand, it was recognized by the Holy See as the only one among Latin American countries (Valderrama Adriansén, 2007, p. 137). This continuity of the old legal framework of the monarchy was possible because there was a collective mentality that took for granted the link and cooperation between Peru and the Catholic Church and the assistance that had to be given to the latter to carry out its mission. In this context, it is necessary to analyze all the legal acts, including constitutions, that Peru had in the nineteenth and early twentieth centuries (Vargas Ugarte, 1962, p. 291)⁵.

In turn, Peruvian constitutions of the twentieth century defined the state's relations with religious denominations differently, depending on the politics of the time. Thus, in 1915, Law 2193 repealed the constitutional norm that did not allow other religions to manifest themselves publicly. The 1920 Constitu-

⁴ This is evidenced by the Provisional Statute (Estatuto Provisional) of 1821, which targeted the religious aspect by declaring Peru a denominational Catholic nation. In turn, Christians who did not adhere to the Catholic religion were given the opportunity to obtain permission from the government to worship.

⁵ R. Vargas Ugarte, *Historia de la Iglesia en el Perú*, 5 vol., (Lima – Burgos 1953–1962), vol. 5, p. 291. For example, the Constitution of 1823 declared in art. 8 that „La religión de la República es la católica, apostólica, romana, con exclusión del ejercicio de cualquier otra”. Subsequently, the Constitution of 1860 prohibited the public practice of any religion other than Catholicism. Until 1895 the propaganda activities of the Protestant Churches were not noticed by the population. At the same time, the Catholic Church tolerated the new Republic's exercise of *de facto* patronage. It was only in 1878 that Pope Pius IX explicitly approved the Patronage of the Republic, which remained in force until 1978.

tion, on the other hand, was confessional, although it prohibited persecution on the grounds of opinion or belief⁶. The 1979 Constitution, which came into force with the end of military rule, established a new model for the state's relations with the Catholic Church and other religions and, most significantly, ended the system of national patronage. Religious freedom was introduced as a fundamental right, and a separation system was established, along with the principles of independence and autonomy with cooperation. Explicit mention was made of the Catholic Church, recognizing it as an important element in Peru's historical, cultural, and moral formation (Flores Santana, 2016, pp. 2–6).

The legal status of the institutions that make up the Catholic Church

Peru signed an international agreement with the Holy See on July 19, 1980, which recognizes the independence and autonomy of the Catholic Church and establishes cooperation as a system for regulating mutual relations. According to the provisions of the Concordat, the Catholic Church has a legal personality of a public nature. The enjoyment of such status extends to the Peruvian Episcopal Conference, archbishoprics, episcopal offices, prelates, and apostolic vicariates, both those existing at the time of the entry into force of the Concordat and those that the Holy See may subsequently create⁷. Entities dependent on them, such as parishes, missions, diocesan seminaries, and ecclesiastical councils, are also covered by the above status (Santos Loyola, 2008, pp. 360–363).

The Holy See notifies the creation of archbishoprics, bishoprics, prelates and apostolic vicariates to the President of the Republic. The notification itself causes the diocese or ecclesiastical jurisdiction to have a public legal personality in Peru⁸. In the case of parishes, diocesan seminaries, church councils and missions, the Concordat has not established a notification requirement. They enjoy this status from the moment of their creation by the competent authority they depend on. In practice, however, this has created a problem of legal security since the Peruvian state cannot verify the authenticity and vali-

⁶ It was accepted that the Nation adhered to the Catholic religion and that the state protected it, but did not prohibit other faiths from publicly manifesting their own worship. Also new was art. 23, which stated that “Nadie podrá ser perseguido por razón de sus ideas ni por razón de sus creencias.”

⁷ Concordat art. 2: “La Iglesia Católica en el Perú continuará gozando de la personería jurídica de carácter público, con plena capacidad y libertad para la adquisición y disposición de bienes, así como recibir ayudas del exterior”.

⁸ Concordat art. 6: “La Santa Sede comunicará al Presidente de la República la creación de cualquier diócesis o jurisdicción eclesiástica, sin cuya notificación no gozarán de la situación jurídica que le reconoce el numeral III de este Acuerdo. Trámite similar se realizará para la supresión de jurisdicciones eclesiásticas”.

dity of founding documents of a purely canonical nature. The difficulty lies in the fact that no system has been developed to confirm the existence of these institutions to the Peruvian authorities. It is important to stress that all the aforementioned entities do not have to be registered in public registers. Despite the clarity of the norms mentioned earlier, the above-mentioned ecclesiastical institutions are often treated as private entities, which requires them to be registered in the public registers and present civil statutes indicating the members who manage them⁹.

In the case of religious and secular institutes and associations of apostolic life, the Concordat states that religious orders, congregations, and secular institutes may organize themselves as associations according to the Peruvian Civil Code, respecting their internal canonical regime¹⁰. It means that their development in the Peruvian legal system will take place in the sphere of private law. According to the Civil Code, they can organize themselves as associations, and their internal canonical regime is respected. This formula has given rise to a debate about whether the said institutions become Peruvian civil associations or remain in their activities as ecclesiastical institutions (Flores Santana, 2009, pp. 180–181).

As a rule, each norm operates and produces its effects in its legal sphere. However, in those countries where the legal system corresponds to the principle of cooperation and religious freedom, it is common for their particular law on religious matters to take into account and attribute certain effects to norms of confessional origin, provided that agreements have been concluded with the religion in question or other cooperation mechanisms have been established. Such an example is Peru, whose international agreement with the Catholic Church refers to the canonical regime. Therefore, if a state regulation speaks, for example, of religious communities, dioceses, parishes, places of worship, or churches, it has in mind those entities that canon law regulates in its legal sphere. The Concordat in this aspect referred to the Peruvian Civil Code of 1936, in force at the date of its conclusion, which had an explicit provision on religious institutions¹¹. It indicated that to register a religious community, it was sufficient for the relevant superior to declare in a public act what its objectives were and to confirm that it was an association approved by the Church. Given the fact that Peruvian law observes provisions coming from the internal canonical regime, according to which the provisions of the constitutions and canonical statutes are applied, as well as in the Code of Canon

⁹ Some vicariates and prelates are registered in public registers in the Peruvian highlands and jungles.

¹⁰ Concordat art. 9: “Las Órdenes y Congregaciones Religiosas y los Institutos Seculares podrán organizarse como Asociaciones, conforme al Código Civil Peruano, respetándose su régimen canónico interno”.

¹¹ Civil Code art. 1057: “Para la inscripción de una comunidad religiosa, basta que el respectivo superior declare en escritura pública cuáles son sus fines y que es una asociación permitida por la Iglesia”.

Law itself, it is necessary to favour the position that these institutions are an ecclesiastical entity that is not transformed into a civil association but rather changes its form through the entry in the public registers of legal entities. The explanation for this formula is that the parties chose not to create a separate register for the institutions of the Catholic Church and preferred to align them with the register of associations. It refers to the registration formalities of the Civil Code, which allows ecclesiastical institutions to operate in Peruvian law without giving up their canonical nature, with Peru committing to respect the legal system of the Holy See. Non-Catholic religious institutions do not have their legal status, in which case the provisions of the Civil Code regarding civil associations apply to them, according to which, if the association is religious, its internal structure is governed by statutes approved by the relevant ecclesiastical authority (Santos Loyola, 2014).

Given the above, it must be considered that the Peruvian Episcopal Conference, archbishops, bishops, prelates, and vicariates are jurisdictions of the Catholic Church created by the Holy See and, as such, have a legal personality of a canonical nature. They are not Peruvian juridical persons and therefore act exclusively on behalf of the Catholic Church and are governed by canon law, including the Concordat. The norms of the Civil Code do not apply to them, nor can they be treated as NGOs. In Peru, they have a public status, which allows them to function within the Peruvian legal system, but this does not mean that they lose their canonical nature and status. They are not obliged to register in public registers. Their authority and legal representative is the cleric appointed by the Holy See as archbishop, bishop, coadjutor, prelate, or vicar apostolic. It is worth mentioning that an appointment to any of these positions is notified by the Apostolic Nunciature to the President of the Republic, who grants the appropriate recognition for it to have civil effects¹². The same criteria apply to church councils, diocesan seminaries, parishes, and missions, with a public juridical personality.

Regarding religious orders, congregations, and secular institutes, these institutions remain canonical legal persons whose internal the State must respect the canonical regime. This norm stems from the fact that these institutions are not constituted as civil associations since they cannot have a civil and a canonical character at the same time. It should be stressed that the concordat norm relating to their legal status, organized as associations in accordance with the Peruvian Civil Code, refers to the code in force at the time of the treaty's conclusion, namely the 1936 documents, which contained an explicit provision on religious entities. According to the same Civil Code,

¹² Concordat art. 7: "Nombrado un eclesiástico por la Santa Sede para ocupar algún cargo de Arzobispo u Obispo o Coadjutor con derecho a sucesión, Prelado o Vicario Apostólico, o para regir alguna diócesis temporalmente, la Nunciatura Apostólica comunicará el nombre del mismo al Presidente de la República antes de su publicación ; producida ésta el Gobierno le dará el correspondiente reconocimiento para los efectos civiles".

Catholic religious communities of an associative nature were registered as religious communities according to a public act issued by the relevant superior. Therefore, this concordat norm must be interpreted concerning the registration formalities established in the now-defunct Civil Code, which allowed institutions of consecrated life to operate with full legal force under Peruvian law without giving up their canonical nature. The international agreement states that their internal canonical regime will be respected for these institutions, and consequently, there is a reference to canon law as statutory law. In other words, since these institutions operate in the civil sphere, the binding sources of law will be the constitutions or canonical statutes of these institutions and the Code of Canon Law. For this reason, it is necessary to consider the content of the registered statutes and the provisions of canon law that applies to them.

The parties' common intention to the Concordat was to bring the legal activity of religious orders and congregations into line with the regime provided for in the Civil Code of 1936. Still, the introduction of the new code does not change what has been agreed upon about religious orders and congregations of the Catholic Church. Indeed, the Concordat, as an act of international law, is a hierarchically higher source of law than national legislation. It cannot be maintained that, in light of the promulgation of this code and because of the provisions of its norms, all religious orders, congregations, institutes of consecrated life, and associations of apostolic life of the Catholic Church in Peru should be considered Peruvian civil associations. Such an interpretation would mean that Peru would not respect what has been agreed upon in an international agreement through an internal norm. Therefore, the current Civil Code provisions under the regime of religious freedom should be interpreted as norms addressed to institutions of non-Catholic faiths, and in any case, to civil associations with religious purposes (Valderrama Adriansén, 1998, p. 18).

Religious administration in Peru

Religious denominations in Peru are non-profit civil associations. However, in practice, problems arise at the time of their registration because there is no administrative entity to certify who the ecclesiastical authorities of the religious denominations appointed to approve the statutes of the religious association are. For this reason, the state found it necessary to introduce a unit in its structure that could be responsible at the administrative level for the relations between it and various denominations other than Catholicism. A corresponding change in the structure of the Ministry of Justice (Ministerio de Justicia) was introduced in 2002 when the Directorate for Interconfessional Affairs (Dirección de Asuntos Interconfesionales) was incorporated into the National Directorate of Justice (Dirección Nacional de Justicia), whose main objective is the administrative task of "coordinating and promoting executive relations with other

denominations”¹³. Obviously, in this situation, denominations other than Catholicism are involved. The main justification for such a change is to strengthen religious freedom by the normative imperatives described in the Peruvian Constitution and the international norms to which Peru is a signatory.

The Directorate for Interfaith Affairs was initially tasked with responding to enquiries and coordinating on matters within its competence, drafting reports and the process of approving donations from abroad to religions, and other functions assigned to it by its superiors. It was also entrusted with legalizing the signatures of the ecclesiastical authorities of denominations other than Catholicism, which had previously been registered in the relevant register, in the migration documents of their personnel and other ecclesiastical documents, for use abroad for civil purposes. The Directorate for Interfaith Affairs was responsible for maintaining the Register of Non-Catholic Religions. In addition, it issued an opinion on the suitability or inappropriateness of registering a denomination in the Register and was responsible for enabling the registration of a denomination by order of the National Directorate of Justice (Dirección General, 2021. pp. 121–125).

The Peruvian Ministry of Justice and Human Rights currently has the Directorate General of Justice and Religious Freedom (Dirección General de Justicia y Libertad Religiosa, formerly Dirección General de Justicia y Cultos). It consists of two separate departments: one for matters relating to the Catholic religion and the other for matters relating to other religious organizations. Both were created in 2002.

The Directorate for Catholic Church Affairs (Dirección de Asuntos de la Iglesia Católica) is the body that replaced the General Directorate for Ecclesiastical Affairs (Dirección General de Asuntos Eclesiásticos), and its purpose is specifically to manage relations with the religious denomination, which has been the dominant religion in Peru since its inception as a state. In turn, the Directorate for Interconfessional Affairs (Dirección de Asuntos Interconfesionales) is the body primarily responsible for managing the Register of Religious Entities. It also coordinates relations between the state and religious institutions. It promotes religious freedom in the country and directs and coordinates actions to deepen the state’s cooperation and relations with religious entities other than the Catholic Church within a framework of healthy secularism and state neutrality. Its objectives are: to disseminate the normative framework on religious freedom in Peru; to make public officials aware of the state’s treatment of religious entities within the framework of human rights, tolerance, and non-discrimination, as well as religious diversity and pluralism; to orient people in the exercise of religious freedom, in its individual and collective dimensions, in its derived rights and its relations with state entities, within the framework of the legislation on this matter; to maintain the Register of Religious Entities (Sánchez-Lasheras, 2016, pp. 170–172).

¹³ Decreto Supremo núm. 026-2002-TUS, 25 de julio de 2002.

The 2011 Decree created the Advisory Commission for Religious Affairs (Comisión Asesora en Asuntos Religiosos), composed of persons with expertise in matters related to the Registry's remit. This body was advisory. The Commission's task was to report and give opinions on matters relating to the application of the relevant provisions of the Religion Act and matters relating to the signing of cooperation agreements and consultations carried out by the Directorate for Interfaith Affairs in relation to the Register of Religions¹⁴. Thus, its activities were limited in particular to matters related to the registration of religious entities. The new implementing act of the Religious Act no longer provided for its operation.

Peru already had consultative commissions on religious matters, which had been established in the working group established by Ministerial Resolution 070-2005-JUS, in which representatives of both the Ministry of Justice and religious denominations participated, intending to develop legislative and administrative proposals to promote state policy and action in the area of religious freedom, which was achieved when, at the end of its mandate, the working group presented, among other reports, a proposal for a Religious Freedom Act. The difference between the working group and the advisory commission was the permanent nature of the latter, the composition, and purpose of the commission, which was limited to registration matters.

Legal personality of non-Catholic religious associations

The first religious law in Peru was only passed in 2010¹⁵. Under constitutional norms, it recognizes the right to freedom of conscience and religion. With regard to religious entities, it states that they equally enjoy the same rights and have the same obligations¹⁶. These rights are granted to duly registered religious entities, i.e., civil personality and full autonomy and freedom in religious matters. They may establish their own organizational rules, internal structure, and regulations for their members without infringing the fundamental rights

¹⁴ Decreto Supremo núm. 010-2011-JUS art. 25: "La Comisión Asesora en Asuntos Religiosos, en adelante la Comisión, está conformada por personas de reconocida experiencia en materias relacionadas al ámbito de competencia del Registro. Es una Comisión de carácter consultivo. Corresponden a la Comisión las funciones de estudio, informe y opinión de las cuestiones relativas a la aplicación de los artículos 13º y 14º de la ley, así como a las cuestiones referidas a la suscripción de convenios de colaboración y acerca de las consultas que le formule la Dirección de Asuntos Interconfesionales, respecto al Registro de Entidades Religiosas. Las disposiciones referidas a la composición, organización y funcionamiento de la Comisión serán establecidas por el Ministerio de Justicia mediante la expedición de la respectiva Resolución Suprema, en un plazo máximo de 60 días posteriores a la entrada en vigencia del presente Reglamento"

¹⁵ Ley de Libertad Religiosa 29.635, and the following year its regulations were approved by Decreto Supremo núm. 010-2011-JUS.

¹⁶ Ley 29.635 art. 2: "El Estado reconoce la diversidad de las entidades religiosas. En igualdad de condiciones, gozan de los mismos derechos, obligaciones y beneficios".

recognized by the Constitution¹⁷. Furthermore, they may establish and operate their centers for training in religious ministry¹⁸.

In turn, the executive regulations establish a prohibition on interference by the state authorities in the internal affairs of religious entities, i.e. those they carry out according to their statutes to pursue strictly religious purposes. The state exercises authority over all religious manifestations, individual or collective, only with regard to the observance of the law and the preservation of public order, health, and morals¹⁹. As can be seen, the Religious Freedom Law creates a framework for the autonomy of religious denominations. However, it must be stressed that as long as religious denominations are not registered, political authorities can limit their autonomy.

REGISTER

In Peru, many religious denominations have constituted themselves as civil associations and have obtained legal personality through registration in public registers. By choosing to get legal personality, they provide legal security to third parties and the state entering a legal relationship with them. In addition,

¹⁷ Ley 29.635 art. 6: “Son derechos colectivos de las entidades religiosas debidamente inscritas, entre otros, los siguientes: Gozar de personería jurídica civil, así como de plena autonomía y libertad en asuntos religiosos, pudiendo establecer sus propias normas de organización, régimen interno y disposiciones para sus miembros, sin perjuicio de los derechos y libertades reconocidos en la Constitución Política del Perú. Crear fundaciones y asociaciones para fines religiosos, educacionales y de asistencia social conforme a la legislación nacional. Formar, designar o elegir libremente a sus ministros de culto, dirigentes religiosos y establecer su propia jerarquía, según sus normas internas. La condición de ministro de culto se acredita con documento auténtico expedido por la autoridad competente de la entidad religiosa. Ejercer libremente su ministerio, practicar su culto, celebrar reuniones relacionadas con su religión y establecer lugares de culto o de reunión con fines religiosos. Divulgar y propagar su propio credo. Solicitar, recibir y otorgar todo tipo de contribuciones voluntarias. Mantener relaciones con sus propias organizaciones o con otras entidades religiosas, sea en territorio nacional o extranjero”.

¹⁸ Ley 29.635 art. 7: “Las entidades religiosas, inscritas en el registro al que se refieren los artículos 13 y 14, pueden crear y dirigir autónomamente sus propios centros de formación para el ministerio religioso y para estudios teológicos. El reconocimiento oficial de los títulos académicos expedidos por estos centros puede ser objeto de convenio entre el Estado, a través del Ministerio de Educación, y la correspondiente entidad religiosa, siempre que esta cumpla con los requisitos académicos establecidos por la Ley núm. 29394, Ley de Institutos y Escuelas de Educación Superior. Asimismo, aquellas que cumplen con los requisitos de la Ley núm. 23733, Ley Universitaria, pueden acceder a entregar dichos títulos”.

¹⁹ Decreto Supremo núm. 010-2011-JUS art. 13: “Las autoridades del Estado, no tendrán injerencia en los asuntos internos de las entidades religiosas. Para los efectos de la Ley y del presente Reglamento, se entenderán como asuntos internos todos aquellos actos que las entidades religiosas realicen conforme a sus estatutos para el cumplimiento de sus fines estrictamente religiosos. El Estado ejercerá su autoridad sobre toda manifestación religiosa, individual o colectiva, sólo en lo relativo a la observancia de las leyes, conservación del orden, la salud y la moral públicos”.

many of them, after obtaining legal personality and fulfilling other requirements provided by law, are documented in a special register.

In 2003, the Register of Religious Denominations other than Catholicism (*Registro de confesiones religiosas distintas a la católica*) was created in Peru, which institutionally belongs to the Ministry of Justice and Human Rights²⁰. Its name was only changed by the Religion Act and is now the Register of Religious Entities (*Registro de Entidades Religiosas, RER*). The main purpose of the Register is to recognize the civil law status of religious entities and facilitate their relations with the state, as it was established as voluntary and non-constitutive. The Register is administrative, and it presupposes that the applying denomination is constituted as a non-profit civil association and registered in the relevant public register. Denominations have the right to apply for registration and not the obligation to do so, as registration is not compulsory (Revilla Izquierdo, 2017, pp. 68–70).

Irrespective of registration, churches, denominations and religious communities constituted as a civil association acquire legal personality under private law upon registration in the relevant public register. One of the requirements for entry in the current RER is that denominations wishing to be entered in it must be legal persons. The creation of the RER and the inclusion of a denomination is intended to facilitate the exercise of religious freedom by religious communities. In no way should this legal instrument be regarded as a means of controlling and restricting rights (Flores Santana, 2016, pp. 15–17). In this situation, we are dealing with religious groups exercising the right to freedom of association and the right to freedom of religion, both fundamental rights that cannot be subject to prior registration to exercise them, nor excessive restrictions that do not comply with international law human rights standards. Therefore, registration is voluntary and is intended to help manifest religious freedom. Thus, the current Register of Religions other than Catholicism was created for administrative purposes and is not constitutive of the registered religions (Revilla Izquierdo, 2017, pp. 106–107).

There are currently 158 religious denominations registered in the Register. Until 2021, they fell into two categories: religious denominations and missionary entities. In line with the changes introduced in 2021, the RER has expanded the type of entities that can be registered to include confessional federations or associations or confederations. They will be entered in the special section of the RER. Therefore, the RER currently has a main section in which churches and religious associations are registered and a special section in which religious communities, defined as missionary organizations with social purposes in their statutes, and/or federations and/or confessional associations and/or confederations are registered²¹. Among the religious denominations listed in the Register, evangelical communities predominate.

²⁰ Decreto Supremo núm. 003-2003-JUS.

²¹ Decreto Supremo núm. 014-2021-JUS Disposiciones Complementarias Finales, Tercera. Sección Especial del Registro.

The rights set out in the open statutory catalogue are only recognized for the religious denominations listed in the RER, which could be regarded as an infringement of the exercise of collective religious freedom by making it dependent on an administrative act such as an entry in the register²². However, this is not the case, as the administrative act of registration facilitates the exercise of religious freedom rather than preventing it if the religious denomination in question were not registered. However, when it comes to private legal personality, the law states that entities registered in the RER are entitled to enjoy civil legal personality, which does not take into account the fact that, in Peru, religious denominations acquire private legal personality once they are already constituted as civil associations and registered in public registers. In other words, a religious denomination that already has a civil legal personality does not need to be registered in the RER to acquire a legal personality (Santos Loyola, 2018a)²³.

The requirements and procedure for registration with the RER are detailed in the religion act and its implementing rules²⁴. Entities applying for registration must provide their name and address on the national territory. Furthermore, a description of the confession of faith, the doctrinal basis, and the sacred texts or books are required. In addition, the person who signed the application for registration must make a declaration²⁵ under oath that he does not engage in activities related to astrophysical, psychological, parapsychological phenomena, divination, astrology, spiritism, dissemination of purely philosophical, humanistic, spiritism ideas, or values; does not engage in the development of evil rites, satanic cults or similar²⁶. It is necessary to include a description of the organization and history that allows appreciation of the conduct of its religious activities and accurately identifies the origin, foundation, and active presence of the religious entity in Peru for not less than seven years, which guarantees its stability and permanence in the national territory (Mosquera, 2012, pp. 179–180). The provision regarding the number of faithful adult members in the national ter-

²² Article 6 of the Act speaks of the rights of religious entities. Among other things, it lists those concerning the right to freedom of association, freedom to choose ministers, to worship, to spread one's religion, to seek and receive voluntary assistance, to maintain relations with one's own organizations or other religious entities, both within the territory and abroad.

²³ In one of the draft reforms, 2211/2012-CR (of 10 May 2013), it was proposed to remove the condition of entry in the said register in the declaration of collective rights.

²⁴ Law 29635 art. 14, Decreto Supremo núm. 006-2016-JUS art. 13, Directive 01-2016-JUS/DGJLR art. 6.

²⁵ The affidavit and all declarative information are subject to civil, administrative, and criminal consequences in accordance with the Criminal code and the General Administrative Procedure Act.

²⁶ Ley 29.635 art. 5: "No se consideran religiosos los fines o actividades relacionados con fenómenos astrofísicos, psicológicos, parapsicológicos, adivinación, astrología, espiritismo, difusión de ideas o valores puramente filosóficos, humanísticos, espiritualistas u otro tipo de actividades análogas. Las entidades dedicadas al desarrollo de ritos maléficos, cultos satánicos o análogos se encuentran al margen de la presente Ley".

ritory was amended in 2021, and there is now no longer a requirement of at least 500²⁷. Previously, religious denominations were historically exempt from this limit. A list of ministers of worship and a list and current address of temples or places of worship and houses of worship, centers for theological and religious education, schools, and other premises or premises, if any, must also be shown. A copy of the constitution indicating the religious purposes, doctrinal or denominational basis, and church or denominational structure, organizational chart, and representative bodies together with their powers and the requirements for their appointment shall also be attached (Santos Loyola, 2015, pp. 3–13). A legalized or notarized copy of the articles of association and a certificate of current registration in the public registers, and a certificate of the validity of the representative’s power of attorney must also be provided (Santos Loyola, 2017, pp. 90–94; Santos Loyola, 2018b).

A religious entity in the RER may exercise the collective rights of religious entities, independently establish and operate training centers for religious pastoral care and theological studies, and enter into cooperation agreements with the state at the national level (Revilla Izquierdo, 2017, pp. 122–125).

LEGAL STATUS – AGREEMENTS

Given the specific factual and legal situation of religious associations in Peru, the legal position of “minority religions or denominations” is increasingly emphasized in doctrine. This formulation considers that, despite the recognition of religious freedom and the secularity of the state, in practice, there are vulnerable religious groups that need more intensive protection for the right to religious freedom. In this sense, the concept of religious minorities is related to disadvantaged groups not only because of their numbers but also because of the historical situation of exclusion they have experienced. Until a few decades ago in Peru, they were either banned, or their presence was limited at the legal and constitutional level.

In Peru, minority religions, as well as Andean and Amazonian peoples, can be further guaranteed the right to express their religious beliefs through laws that promote material or real equality, correcting structural inequalities in the difficulties they have had and continue to have in the exercise of freedom of religion or religious belief²⁸. The Religious Freedom Law explicitly states that

²⁷ Decreto Supremo núm. 014-2021-JUS art 2. According to Constitutional Court decision 00175-2017-PA/TC, the requirement of a minimum number of believers for registration in the register of religious entities was eliminated, as the highest court found that the constitutionally justified number of believers for a religious entity may be determined based on other objective requirements, such as the list of ministers of worship, church or confessional structure, organizational chart and representative bodies, among others.

²⁸ This does not violate the principle of the secularity of the state and is in line with art. 27 of the ICCPR, which imposes an additional guarantee on states to protect the right to practice and

Peru respects and guarantees the religious expression of Andean, Amazonian and Afro-Peruvian peoples and their right to exercise it individually or collectively (Palomino Lozano, 2018, pp. 115–136)²⁹.

Minority religions in Peru, to better pursue their goals, also currently benefit from a special system of donations and tax benefits provided for in laws.

The starting point for considering Peru's non-confessionalism is distinguishing between legal measures aimed at correcting or avoiding inequality and the conclusion of agreements as one of the forms of cooperation with religions that the Constitution provides for³⁰. Therefore, the purpose of forms of cooperation or agreement is not to eliminate inequalities that would correspond to them by law but rather to facilitate the exercise of religious freedom by considering the specificities of a particular denomination, whether it is a majority or minority denomination (Estela Vargas, 2019).

Due to the existence of many minority faiths and for legal security reasons, the state cannot enter into agreements or other legal forms of cooperation with each of the minority faiths. Minority denominations that share a common basis join together in federations to facilitate relations and coordination with the state, which may allow them to exercise religious freedom in what they share.

The state can establish forms of cooperation with religions other than the Catholic Church. Cooperation with the Catholic religion takes the form of an agreement between the Holy See and Peru and agreements between the state and the various Catholic religious bodies established in the state. Cooperation through agreements or conventions with non-Catholic denominations is therefore particularly relevant to the principle of the right to equality of all

profess the religion of a religious minority by requiring the state to take special and necessary measures to avoid „indirect assimilation” that would occur through education that promotes the majority religion or economic benefits granted to the majority religion that facilitate its existence but are not provided to the minority. Therefore, when freedom of religion is recognized for all, additional guarantees must be provided to these minorities because they are at a real and historical, and even legal, disadvantage in exercising their right to religion. In this connection, it may also be necessary for the state to take positive measures to protect the identity of the minority and the rights of its members to the extent that they are aimed at ameliorating a situation that prevents or impedes the exercise of rights, provided that they are based on reasonable and objective criteria (General Comment No. 23, n. 6.2, Human Rights Committee).

²⁹ Ley 29.635 art. 3: “El Estado respeta y garantiza las expresiones religiosas de los pueblos andinos, amazónicos y afroperuanos, así como su derecho de ejercerlas de manera individual o colectiva”. This norm came in response to Law 02395 proposing equality between Andean and Amazonian religious beliefs. <https://www2.congreso.gob.pe/Sicr/TraDocEstProc/CLProLey2006.nsf/5cc43e368a4ac726052571b600695c3a/cdd3763c0ce53e21052574430056899f?OpenDocument>; <https://www2.congreso.gob.pe/Sicr/Prensa/heraldo.nsf/CNtitulares2/640DECC3C240C3100525729B0054752E/?OpenDocument>

³⁰ Constitution art. 50: „Dentro de un régimen de independencia y autonomía, el Estado reconoce a la Iglesia Católica como elemento importante en la formación histórica, cultural y moral del Perú, y le presta su colaboración. El Estado respeta otras confesiones y puede establecer formas de colaboración con ellas”.

religious denominations when it concerns matters relating to the facilitation of activities that are similar because they pursue the same objectives, such as religious instruction, spiritual assistance to their members, social welfare services, etc. The usual cooperation between non-Catholic religious denominations is established through an agreement, which follows a procedure provided only in Peruvian legislation since religious denominations do not have international legal personality. Cooperation cannot be imposed on either party to the agreement. The reason for its conclusion is to facilitate coordination between the state and a particular religious denomination or even between the state and a federation of religious denominations so that the latter can pursue its objectives (Mosquera, 2018, pp. 71–72). Failure to enter into a form of cooperation or agreement does not violate or should not limit the rights recognized by the Constitution for all religious denominations, as they are manifestations of both the right to religious freedom and the right to freedom of association. Nor should it give rise to discrimination between religious denominations that have agreed and those that have not, since the conclusion of an agreement or contract depends on the consent of each party and is not an obligation of the state or the religious denomination. However, such action must not be hindered or prevented by laying down unattainable requirements in the law or its regulations for religious denominations should they wish to enter into an agreement or other form of cooperation. The Religious Freedom Act refers to agreements between religious denominations and the state. The agreement takes place between religious entities registered in the register of religious entities and the state through specific ministries³¹. In addition to being listed in the register of religious entities, religious entities must also be nationally established and provide a guarantee of stability and sustainability in terms of membership and activities (Dirección General 2019).

Conclusions

The activity of the religious administration in Peru and the activity of the legislator in creating and amending laws on the activities of religious associations and religious freedom gives hope for the recognition and possibility of full enjoyment of rights for all religious denominations present on Peruvian territory and not only for the entity that until recently was presented as the main religion. It would solve some of the problems in the Peruvian legal system regarding the possibility for members of religious communities to exercise their religious rights.

³¹ Article 7 concerns an agreement on the official recognition of degrees issued by training centers for religious pastoral care and theological studies of the religious denominations that have established them. It is concluded between the state through the Ministry of Education and the relevant registered religious entity that has fulfilled the requirements set out in the same article. Article 15 refers to agreements of national scope on matters of common interest and legal nature.

However, there is still a lack of clarity and consistency throughout the regulatory system, including in the registration and control of these entities, which would allow for equal treatment for all. Problems will continue to arise in practice, as Catholicism is and will continue to be the majority religion in Peru. Still, with the recognition of other faiths by the Peruvian legal system, some current problems will find their solution on legal grounds (Mosquera, 2004, pp. 346–348).

In terms of *de lege ferenda* postulates, the provisions of the Religious Freedom Law and its implementing acts should be subjected to a more realistic analysis, since in practice, a situation of limited access to the RER and, consequently, to the system of prerogatives that arise from the state's recognition of churches, denominations, and communities as religious entities is being created. Otherwise, instead of facilitating relations between the state and religious denominations, they would be hindered by the regulation itself, which would make the perception that the much sought-after legal framework for the protection of religious freedom creates new legal difficulties (Dirección General, 2016).

It should be remembered that the legal system for recognizing the legal personality of religious associations in Peru is intended to facilitate the state's relations with religious denominations. Therefore, it is worth examining the creation of new legislation that would provide a real opportunity for the collective exercise of religious freedom and the state's relations with collective subjects of religious freedom, overcoming the possible arbitrariness and distrust of the state towards collective forms of religious expression and subjects that seek recognition of their rights (Revilla Izquierdo, 2013, pp. 467–468).

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