

NOTES ON CHURCH AND STATE IN THE EUROPEAN ECONOMIC AREA 2011

Frank Cranmer

Fellow, St Chad's College, Durham

Honorary Research Fellow, Centre for Law and Religion, Cardiff Law School

Introduction

These notes are intended as a very brief introductory survey of the considerable degree of variation in relations between governments and religious organisations across the member States of the European Economic Area together with Switzerland (which has a treaty relationship with the EEA). They began life as an Appendix to *Church and State: a mapping exercise* (Cranmer, Lucas and Morris 2006) and their purpose as originally conceived was merely to provide a broader context for the discussion of Church-State relationships within the United Kingdom. As before, *they make no claim either to be exhaustive or to be in any way whatsoever a work of original scholarship*. Their purpose is solely to provide an accessible point of entry into the subject for those unfamiliar with the issues.

The notes are written primarily from a United Kingdom perspective and in previous versions I omitted the UK from the survey. Purely for the purposes of comparison, however, this latest version includes an extremely brief sketch of the differing relationships between the Churches and the four UK jurisdictions, based on an expanded and updated version of my [evidence](#) to the Council of Europe's Colloquium on Questions related to State and Religion held in Strasbourg in February 2007

Hyperlinks to sources and to further information are provided wherever possible. For a fuller description of the various countries' Church-State relationships the reader is referred to *State and Church in the European Union* (2005), edited by Gerhard Robbers on behalf of the [European Consortium for Church and State Research](#).

The following websites are useful sources of reference:

- the US Department of State's annual [International Religious Freedom Reports](#) (cited below as *IRFR*) which are updated annually;
- the [Religion and Law Consortium](#), which has useful links to original documents;
- the brief notes on the website of European Studies on Religion & State Interaction: [EuReSIS NET](#);
- the [case database](#) of the Law and Religion Scholars Network;
- a helpful [summary of material relating to Article 10 \(thought, conscience and religion\)](#) of the Charter of Fundamental Rights of the European Union from the European Parliament; and
- the [adopted texts](#) of the Parliamentary Assembly of the Council of Europe, many of which touch on issues of religion and the State.

Whether in these notes or in other published sources, *estimates for membership of religious groups should be treated with extreme caution*. Some Churches are very precise and realistic about their membership statistics; others simply indulge in wishful thinking.

Austria

Article 7(1) of the [Constitution](#) (Equality, Political Rights) declares that Austria is a secular State: 'All federal nationals are equal before the law. Privileges based upon birth, sex, estate, class or religion are excluded.' The status of religious organisations is governed by the 1874 Law on Recognition of Churches and by the [1998 Law on the Status of Religious Confessional Communities](#). Relations between the State of Austria and the Roman Catholic Church are governed by treaties with the Holy See that are recognised in public international law and may be transposed into domestic law under Article 50 of the Constitution. The treaties provide, *inter alia*, that the Roman Catholic Church may make laws within its own sphere of competence and that those institutions that have legal personality in canon law also have legal personality in public law (Potz 2005: 397).

There are three distinct kinds of religious organisation: officially-recognised religious societies, religious confessional communities, and associations. The following are recognised under the 1874 Law: the Roman Catholic Church, the Lutheran Church, the Reformed Church, the Old Catholic Church, the Islamic community, the Jewish community, the Orthodox (Russian, Greek, Serbian, Romanian and Bulgarian), the Oriental Orthodox (Armenian, Coptic and Syrian), the Methodist Church, the New Apostolic Church, the Buddhists, the Mormons and the Jehovah's Witnesses (who were recognised as a religious society in May 2009). An application for recognition by the [Alevis](#) was rejected in August 2009, the Government arguing that the Alevi belief was merely part of Islam – which was already a recognized religious society. ([IRFR 2010: Austria](#)).

Communities recognised under the 1874 Law on Recognition of Churches benefit from the church tax and may provide religious instruction in State schools. The Government also provides religious societies recognised under the 1874 Law with financial support for religious teachers at both public and private schools – but does not provide funding for those of other religious organisations. It also gives financial support to private schools run by the officially-recognised religious societies with 'public corporation' status, permitting them to engage in a number of public or quasi-public activities that are denied to confessional communities and associations.

The 1998 Law established 'confessional communities' alongside 'religious societies'. Religious societies established under the 1874 Law retained their previous status; but a new religious group seeking to achieve the status as a religious society must fulfil stringent criteria for recognition: a 20-year period of existence and membership of at least 0.2 per cent of the population (approximately 16,000 people).

Recognition as a confessional community does not carry the fiscal and educational privileges available to a religious society, though a recognised confessional community acquires legal personality and may therefore hold land and enter into contracts. To qualify, a group must have at least 300 members and get Government approval for its constitution, its membership regulations and a summary of its religious doctrines. The Ministry of Education examines applicant organisations' doctrines to ensure compliance with public policy. Currently there are ten confessional communities: the Baha'i, the Baptists, the Evangelical Alliance, the Movement for Religious Renewal/Community of Christians, the Free Christian Community (Pentecostals), the Pentecostal Community of God, the ELAIA Christian Community, the Seventh-day Adventists, the Hindu Religious Community, and the Mennonites. The Ministry rejected the application of the Sahaja Yoga group in 1998 – a decision subsequently upheld in the Constitutional Court and Administrative Court. ([IRFR 2009: Austria](#)). Most recently, the applications of The Movement for Religious Renewal--Community of Christians for recognition as a religious society was rejected by the Education Ministry and the group filed an appeal with the Constitutional Court. ([IRFR 2010: Austria](#)).

Religious groups not recognised either as religious societies or as confessional communities may apply to become associations under the Law of Associations, thereby enabling them to hold property.

The situation in Austria with regard to the length of the registration process has been criticised by the European Court of Human Rights: see *Religionsgemeinschaft Der Zeugen Jehovas & Ors v Austria*

[\[2008\] ECtHR 762 \(No. 40825/98\) \(31 July 2008\)](#) and *Verein Der Freunde Der Christengemeinschaft & Ors v Austria* [\[2009\] ECtHR \(No. 76581/01\) \(26 February 2009\)](#). In the latter case, it was held that the requirement of a ten-year waiting period in order to register as a religious community was unreasonable and in breach of Article 14 ECHR (discrimination) taken in conjunction with Article 9.

Belgium

The Belgian [Constitution](#) provides that–

Freedom of worship, public practice of the latter... are guaranteed' (Article 19).

The State does not have the right to intervene either in the nomination or in the installation of ministers of any religion whatsoever (Article 21).

The State awards remuneration and pensions to religious leaders; those amounts required are included in the budget... (Article 181).

In addition, Article 20 of the present Constitution guarantees freedom *from* religion as much as freedom *of* religion:

No-one can be obliged to contribute in any way whatsoever to the acts and ceremonies of a religion, nor to observe the days of rest.

However, the State recognises and finances certain religious groups and 'life stances': Roman Catholics (law of 8 April 1802), Protestants (law of 8 April 1802), Anglicans (law of 4 March 1870), Jews (law of 4 March 1870), Muslims (law of 19 July 1974), and Orthodox (law of 17 April 1985). Since 5 May 1993 non-confessional organisations have been recognised on an equal footing with the others. Rik Torfs suggests that though there are six recognised religions, the Roman Catholic Church is *primus inter pares* (Torfs 2005: 15), citing as evidence its role in the funeral of King Baudouin in 1993 – though it should be remembered that Baudouin was devout Roman Catholic who, with the agreement of the Government, abdicated for two days in 1990 so as to avoid having to give Royal Assent to a measure liberalising the abortion laws.

Initially, the Roman Catholic Church, the Protestant Churches and the Jews benefited from Article 181. The Anglican Church was later added by King Leopold I – presumably because he was a lifelong Anglican who regarded the resident Church of England clergyman in Brussels as the 'Royal Chaplain!' The provision authorises State funding (the *traitement*) for the salaries and pensions of representatives of those organisations that are recognised by law, including those that offer moral services based on a non-confessional ideology. In addition, faith communities may appoint army and prison chaplains who are paid by the State. (Torfs 2005: 15).

In 2010 the Federal Government paid €105.8 million to the recognised religious groups – which included €17.4 million to non-confessional organisations and €4.9 million to Islamic religious groups. ([IRFR 2010: Belgium](#)). Local and central government also support faith education and the construction and maintenance of religious buildings. According to the Justice Ministry, in 2009 the Federal Government paid the *traitement* to 2,712 Catholic priests, 118 Protestant/Evangelical ministers, 48 Orthodox priests, 12 Anglican priests, 33 rabbis, 285 lay consultants and 23 Muslim imams including clerical staff of the Muslim Executive. According to the research institute of the Inter-University Centre for Permanent Education, total outlays by all levels of government (excluding expenditure on religious education) amounted to €240.1 million in 2008. With pensions and tax waivers included, the total subsidy amounted to €320.6 million. 85 percent of all budget outlays for religion went to the Roman Catholic Church. ([IRFR 2010: Belgium](#)).

In 2009 the Justice Minister announced a financial reform to encompass both recognised and non-recognised religions and deal with anomalies regarding salaries, retirement age and retirement pay for ministers of the faiths that receive Government support. A working group would report on the matter by 1 October 2010 but, at the time of writing, no further information is available on the issue. At

the same time, the Government agreed to finance more parish assistants for the Roman Catholic Church to help compensate for the dwindling number of priests. ([IRFR 2009: Belgium](#)).

Since July 2001, the regional governments rather than the Government of Belgium have been responsible for the 'material organisation' of recognised religions. (Torfs 2005: 11).

Bulgaria

About 85 per cent of Bulgarian residents describe themselves as Orthodox and about 13 per cent are Muslims ([IRFR 2009: Bulgaria](#)). Article 6 of the [Constitution](#) (Human dignity, freedom, equality) provides that there shall be no privileges or restriction of rights on the grounds, *inter alia*, of religion. More specifically, Article 13 (Religion) reads as follows:

- (1) The practice of any religion shall be unrestricted.
- (2) Religious institutions shall be separate from the State.
- (3) Eastern Orthodox Christianity shall be considered the traditional religion in the Republic of Bulgaria.
- (4) Religious institutions and communities and religious beliefs shall not be used to political ends.

The governing legislation is the [Law on Religions 2002](#) (otherwise known as the Confessions Act or the Denominations Act), chapter 3 of which provides for a system of registration supervised by the Sofia City Court for all religious groups other than the Bulgarian Orthodox Church that wish to acquire national legal recognition. The implication of Article 36 of the Law of 2002 is that only members of registered religious groups are permitted to manifest their religion outside their places of worship.

The Law on Religions has been much criticised, not least by a Council of Europe review prepared in early 2003 which highlighted the fact that the provisions dealing with the process of registration specify neither the criteria of registration, the grounds on which registration may be withheld, nor the mechanism for recourse in the event of refusal to grant registration. The report also noted that the Law is silent on the consequences of failure to register. In a text adopted on 7 September 2004 the Standing Committee of the Parliamentary Assembly of the Council of Europe ([Doc. 10065 and Corrigendum](#)) described the law as 'an important step forward' but noted that many religious communities regretted the special position granted to the Bulgarian Orthodox Church.

In various recent judgments the European Court of Human Rights has held Bulgaria to be in breach of the ECHR on religious issues. In *Ivanova v Bulgaria* [\[2007\] ECtHR \(No. 52435/99\)](#), the dismissal of the applicant, a member of a Evangelical Christian group 'Word of Life', for refusing to resign from the group had been in breach of Article 9 ECHR (thought, conscience and religion). While Article 9 recognised that in a democratic society with several coexisting religions it might be necessary to restrict the freedom to manifest one's beliefs in order to reconcile the interests of the various religious groups and to ensure mutual respect, the State could not dictate what a person should believe or exert coercion. In *Glas Nadezhda EOOD and Elenkov v Bulgaria* [\[2007\] ECtHR 11 October 2007 \(No 14134/02\)](#) the refusal of the authorities without adequate reason to grant a broadcasting licence to the applicant religious radio station violated Article 10 ECHR (expression) and the refusal to review that decision fell short of the requirements of Article 13 (effective remedy).

There also appears to be a tendency for the Government to try to 'organise' religion to fit its preconceived notions of how it should operate. In *Holy Synod of the Bulgarian Orthodox Church (Metropolitan Inokentiy) & Ors v Bulgaria* [\[2009\] ECtHR \(Nos. 412/03 & 35677/04\) \(22 January 2009\)](#) the Government was found to have breached its duty of neutrality in a dispute between two competing factions of the Orthodox Church – the 'alternative' Holy Synod under Patriarch Pimen (who died before the case came to court) and Metropolitan Inokentiy and the 'official' Holy Synod under Patriarch Maxim – by taking sides in the controversy and evicting clergy and believers of the 'alternative' Synod from their church property, contrary to Article 9. In a reserved judgment on

damages and costs, the Court concluded by six votes to one that the 'alternative Synod' headed by Metropolitan Inokentiy had no separate proprietary interest in the buildings or other assets that were the property of its adherent parishes or of the Orthodox Church; however, the Government had interfered with the free choice of the Church's leadership and the Court awarded the applicant organisation €50,000 in respect of non-pecuniary damage: see *Holy Synod of the Bulgarian Orthodox Church (Metropolitan Inokentiy) & Ors v Bulgaria* [2010] ECtHR(Nos. 412/03 and 35677/04) (16 September 2010).

This was not the first time that the Government had interfered in the internal affairs of a faith-community. In *Supreme Holy Council of the Muslim Community v Bulgaria* [2004] ECtHR (No. 39023/97) (16 December 2004) it had breached Article 9 by attempting to engineer the unification of two rival groups claiming leadership of the Bulgarian Muslim community: the Government's activities included appointing an interim governing body for the Muslim community and declaring the election of the Chief Mufti null and void. For a third case on similar facts see *Hasan and Chaush v Bulgaria* [2000] ECtHR (No. 30985/96) (26 October 2000).

Cyprus

Perhaps not surprisingly, given its history, Article 2 of the General Provisions of the 1960 [Constitution of Cyprus](#) provides for a racial and religious definition of the two largest communities:

For the purposes of this Constitution:

- (1) the Greek Community comprises all citizens of the Republic who are of Greek origin and whose mother tongue is Greek or who share the Greek cultural traditions or who are members of the Greek Orthodox Church;
- (2) the Turkish Community comprises all citizens of the Republic who are of Turkish origin and whose mother tongue is Turkish or who share the Turkish cultural traditions or who are Moslems.

Moreover:

- (3) citizens of the Republic who do not come within the provisions of paragraph (1) or (2) of this Article shall, within three months of the date of the coming into operation of this Constitution, opt to belong to either the Greek or the Turkish Community as individuals, but, if they belong to a religious group, shall so opt as a religious group and upon such option they shall be deemed to be members of such Community.

Article 18 provides for freedom of religion. However, Article 110 gives special recognition to the Autocephalous Orthodox [Church of Cyprus](#) and to the Turkish Cypriot religious trust, the *Vakf*, both of which have the right to regulate and administer their internal affairs and property in accordance with their own internal rules. They are immune from legislative and executive acts and benefit from tax exemption on their religious activities, though not on their commercial ones. Instruction in the Orthodox faith is mandatory for all Orthodox children and is provided in all public primary and secondary schools.

The Cypriot legal system gives a degree of legal recognition to the internal juridical norms of five religious groups. In addition to Greek Orthodoxy and Islam, three other religious groups have legal recognition and benefit from tax-exemption: the [Armenians](#), the [Maronites](#) and the [Latin Catholics](#). All five groups are eligible for government subsidies, which in 2003 amounted to some £2.7 million (Emilianides 2005: 247). There are about 6000 Maronite Cypriots, about 2500 Armenians and about 700 Latin Catholic citizens, together with about a further 7000 Latin Catholic permanent residents. A faith-community that is not one of the five recognised religions is not required to register with the Government; however, if it wishes, for example, to maintain a bank account it will have to register as a not-for-profit company.

Article 110 confers a considerable degree of autonomy on the Orthodox Church and the *Vakf* in particular:

1. The Autocephalous Greek Orthodox Church of Cyprus shall continue to have the exclusive right of regulating and administering its own internal affairs and property in accordance with the Holy Canons and its Charter in force for the time being and the Greek Communal Chamber shall not act inconsistently with such right.
2. The institution of *Vakf* and the Principles and Laws of, and relating to, *Vakfs* are recognised by this Constitution. All matters relating to or in any way affecting the institution or foundation of *Vakf* or the *vakfs* or any *vakf* properties, including properties belonging to Mosques and any other Moslem religious institution, shall be governed solely by and under the Laws and Principles of *Vakfs* (*ahkamul evkaf*) and the laws and regulations enacted or made by the Turkish Communal Chamber, and no legislative, executive or other act whatsoever shall contravene or override or interfere with such Laws or Principles of *Vakfs* and with such laws and regulations of the Turkish Communal Chamber.
3. Any right with regard to religious matters possessed in accordance with the law of the Colony of Cyprus in force immediately before the date of the coming into operation of this Constitution by the Church of a religious group to which the provisions of paragraph 3 of Article 2 shall apply shall continue to be so possessed by such Church on and after the date of the coming into operation of this Constitution.

Furthermore, Article 111 provides that

Subject to the provisions of this Constitution any matter relating to betrothal, marriage, divorce, nullity of marriage, judicial separation or restitution of conjugal rights or to family relations other than legitimation by order of the court or adoption of members of the Greek-Orthodox Church or of a religious group to which the provisions of paragraph 3 of Article 2 shall apply shall ...be governed by the law of the Greek Orthodox Church or of the Church of such religious group, as the case may be, and shall be cognizable by a tribunal of such Church and no Communal Chamber shall act inconsistently with the provisions of such law.

Article 109 of the Constitution of 1960 provided for elected representatives from the minority religious groups 'in the Communal Chamber of the Community to which such group has opted to belong'; however, the Greek Communal Chamber was abolished in 1965 and replaced by the present House of Representatives. Currently, the Armenians, the Maronites, and the Latin Catholics each elect a community representative for a five-year term to attend plenary meetings of the House of Representatives and to be consulted about matters affecting his or her community. The communal representatives have the right to speak on issues concerning their religious groups but do not have the right to vote. They are members of the House Standing Committee on Education *ex officio*s and can attend and speak at the meetings of the other Committees. ([Government of Cyprus 2007](#)).

Finally, the existence of the (unrecognised) Turkish Republic of Northern Cyprus continues to be a major problem. Most recently, in *Chrysostomos v Turkey* [2011] ECtHR (No. 66611/09) (4 Jan 2011); the ECtHR rejected an application by Chrysostomos II, Archbishop of the Church of Cyprus, complaining of violations of Article 1 of Protocol No. 1 ECHR (property) in relation to property and places of worship that the Church had been forced to abandon during the events in northern Cyprus in 1974 because available domestic remedies had not been exhausted. Neither Archbishop Chrysostomos nor any other duly authorised representative of the Church had made use of the available mechanisms of that Turkey had provided for the resolution of such disputes: the Immoveable Property Commission and the possibility of further appeal to the High Administrative Court provided for in Law 67/2005 – which, ruled the ECtHR, were to be regarded as 'domestic remedies'.

The Czech Republic

Article 2(1) of the [Charter of Fundamental Rights and Basic Freedoms 1992](#) declares that the State 'may not be bound either by an exclusive ideology or by a particular religion'. Article 15 guarantees freedom of religion and from religion and Article 16 guarantees the right to profess and manifest that religion through religious services. Religious affairs are the responsibility of the [Department of Churches](#) at the Ministry of Culture. All religious groups officially registered with the Ministry of Culture are eligible to receive subsidies from the State. There are currently 31 State-recognised religious organisations: an appeal by the Unification Church against denial of registration was dismissed by the Constitutional Court in 2004. ([IRFR 2010: Czech Republic](#)).

The 2002 law on Religious Freedom and the Position of Churches and Religious Associations created a two-tier system of registration for religious organisations. A first-tier group, which must have at least 300 adult members, receives limited tax benefits and must fulfil annual reporting requirements. A second-tier group must have a membership of at least 0.1 percent of the population (approximately 10,000 persons) and have been registered at the first tier for at least 10 years. Unregistered groups may not own community property in their own right but may form civic-interest associations in order to hold property until they can meet the qualifications for registration; apart from this restriction they may worship in the manner of their choice. Religious groups registered prior to 1991, such as the Jewish community, are not required to meet the current conditions for registration.

Second-tier registration entitles the organisation to a share of State funding proportionate to the number of its clergy. According to US Department of State, the total funding for churches and religious communities is almost £50 million, of which £46 million went to pay clergy stipends. ([IRFR 2010: Czech Republic](#)). In addition, only ministers of registered second-tier organisations may perform officially-recognised marriage ceremonies and serve as chaplains in the military and prisons, although prisoners of other faiths may receive visits from their respective clergy. ([IRFR 2010: Czech Republic](#)).

In November 2005, the Chamber of Deputies passed an amended Church Law governing the establishment and regulation of church-sponsored charities, schools and other institutions. In January 2006 a group of Senators sought judicial review of the new law before the Constitutional Court, arguing that it contravened Article 16, Paragraph 2 of the Charter of Fundamental Rights and Basic Freedoms, which states that '...churches and religious societies... establish... their own bodies... [and] found religious orders and other church institutions, independent of State authorities'. The move was unsuccessful and the Constitutional Court refused to overturn the provision. (TK 2007: '[Czech Constitutional Court does not abolish church law amendment](#)').

Denmark

The [Constitution Act 1953](#) defines the position of the Church as follows:

The Evangelical Lutheran Church shall be the Danish *folkekirke* and, as such, it shall be supported by the state. [Part I s 4]. [*Den evangelisk-lutherske kirke er den danske folkekirke og understøttes som sådan af staten*].

Moreover:

The King shall be a member of the Evangelical Lutheran Church. [Part II s 6]

In addition, Part VII s 66 declares that '[t]he constitution of the Established Church shall be laid down by Statute'. Part VII s 69 also provides for public regulation of other religious organisations:

Rules for religious bodies dissenting from the Established Church shall be laid down by Statute.¹

The very description of the Church in the Constitution – *den danske folkekirke* – presents a problem. Precisely what does that mean? Lisbet Christoffersen (Christoffersen 2010b:145–148) offers several potential translations of *folkekirke*: “Established Church”, “People’s Church”, “Popular Church”, “National Church” are some of the possibilities. Ultimately, it is untranslatable, being bound up with the peculiarly-Scandinavian concept of the “Folk-Church” (as a demonstration of the way in which the expression is assumed to convey its own meaning, see, for example, *Nordic Folk Churches: A Contemporary Church History*).

Of all the State Churches in Europe, the Church of Denmark is subject to the greatest degree of parliamentary and governmental control. The Established Church has no privileged position in terms of particular religious freedoms and civil rights; moreover, in spite of the declaration in s 66 of the Constitution, it still has no national system of synodical government, the Ministry of Ecclesiastical Affairs [*Kirkeministeriet*] is its supreme administrative authority, its canons are promulgated by *Folketinget* and its regulations are part of public law (Dübeck 2005:60; Christoffersen 2010b:152) – though there is a very strong convention that church legislation will only be enacted if there is broad cross-party agreement about its content. (Lausten 2002:282).

The Church’s most important source of income is the church tax, payable only by members of the National Church and accounting for about three-quarters of the Church’s budget. In addition, the Government makes grants directly to the Church, which accounted in 2002 for some 12 per cent of the Church’s total operating costs.

Bishops and deans are appointed by the Crown in accordance with the recommendation of the Minister (and, when appointed, are part of ‘Official Denmark’ and hold equivalent ranks to senior civil servants: Christoffersen 2010b:153); but a new bishop is appointed only after an election in which all clergy and parish council members of the diocese can nominate candidates and vote – and a candidate receiving more than 50 per cent of the votes will be appointed automatically. The Ministry also approves the construction of churches and functions as a court of appeal from decisions of diocesan or other authorities.

As well as their purely ecclesiastical functions, the parish clergy also act as civil registrars. In order to gain official recognition to maintain legal registers and issue legally-valid certificates of marriage and baptism, a religious group must either be ‘recognised’ by Royal Decree or ‘approved’ under the Formation and Dissolution of Marriage Act 1969, as consolidated and amended by the [Formation and Dissolution of Marriage Act 1999](#). Under s 21(3) of the latter,

[t]he rules of procedure governing marriage ceremonies in the Danish National Church... shall be laid down by the Minister of Ecclesiastical Affairs ... Recognised religious communities shall be subject to their own special rules. For other religious communities the procedure governing marriage ceremonies... shall be approved by the Minister of Ecclesiastical Affairs.

Since 1970 the Ministry of Ecclesiastical Affairs has approved 116 religious communities and churches under the 1969 Act, as amended, including several Muslim groups, Jehovah’s Witnesses, the LDS, Seventh-day Adventists, Sikhs, Buddhists, Orthodox Christians, Hindus, Baha’i, Hare Krishna and followers of the indigenous Norse belief system Forn Sidr. ([IRFR 2010: Denmark](#))

Generally speaking, there seems to be little enthusiasm for giving more autonomy to the Church of Denmark, partly out of an anxiety that an independent Church leadership might tend to be destabilising for society as a whole and partly for fear that a self-governing Church would become overtly confessional (Christoffersen 2010b:160).

¹ In one sense, of course, this last provision is true for the United Kingdom as well; within the limits of EU law and the European Convention on Human Rights, Parliament can pass whatever laws it likes: hence the Methodist Church Act 1976 and the United Reformed Church Act 2000. But those were private Acts passed at the request of the two Churches as petitioners.

The Faroes and Greenland

Traditionally, the Church of Denmark had twelve dioceses: ten in Denmark itself and one each for the Faroes and for Greenland. Although the extra-territorial dioceses were fully a part of the Church, they were not subject to domestic regulation.

Until 2007, legislative authority for the Diocese of the Faroes was devolved to the Faroese Parliament [*Løgtingið*], while administrative responsibility for Church affairs continued to rest with the Minister of Education and Culture in Copenhagen. The [Assumption Act of Matters and Fields of Responsibility by the Faroese Authorities 2005](#) (commonly known as the Takeover Act) provided for the negotiated transfer to the Faroese Government of responsibility for a range of domestic matters including Church affairs. It was decided that the Church in the Faroes should become completely independent of Denmark; and autonomy was achieved on St Olaf's Day, 29 July 2007. Church affairs now come under the supervision of the Faroese Minister of Education, Research and Culture.

The legislative authority for the Diocese of Greenland is the Greenlandic Parliament [*Landstingið*], which by Order No. 15 of 28 October 1993 introduced considerable changes in the Church's organisational structure. Purely ecclesiastical functions are the responsibility of the Bishop (who is appointed by the Danish Crown and who is responsible for the ecclesiastical and doctrinal supervision of the three regional deans, the parish clergy and the catechists) while the administration of ecclesiastical affairs has been integrated into the Greenlandic Government's [Ministry of Culture, Education, Research and The Church](#), which also provides financial support for the Diocese.

Estonia

Article 40 of the [Constitution](#) provides for freedom of thought, conscience and religion, decrees that there shall be no state church and declares that people are free to exercise their religions both alone and in community with others, in public or in private, unless that exercise is detrimental to public order, health or morals. There is no church tax, but religious organisations are exempt from property tax. (Kiviorg 2005: 109)

The Churches and Religious Organisations Act 1993 required that all religious organisations should have at least twelve members and register with the Religious Affairs Department under the Ministry of Interior Affairs. Religious organisations were required to submit their constitutions for scrutiny and their leaders had to be citizens with at least 5 years' residence. However, the [Churches and Congregations Act 2002, as amended](#) has repealed the 1993 Act. The 2002 Act provides in section 2 for the existence of 'churches, congregations, associations of congregations, and monasteries' as 'religious associations', while section 4(1) makes provision for 'religious societies' – voluntary associations of natural or legal persons whose main activities include

... confessional or ecumenical activities relating to morals, ethics, education, culture and..., diaconal and social rehabilitation activities outside the traditional forms of religious rites of a church or congregation and which need not be connected with a specific church, association of congregations or congregation.

Section 8 of the Act guarantees the right freely to exercise one's religion.

Sections 11 to 13 of the 2002 Act continue to require that a religious organisation should have a memorandum and statutes and should register. Since 2001 clergy of registered religious organisations have been able to apply to have marriage ceremonies conducted by them recognised in civil law.

Traditionally, because the [Estonian Evangelical Lutheran Church](#) has attracted the largest following among ethnic Estonians it has tended to function in some respects as the 'National Church'. But Estonia also has a large ethnic Russian population and the US State Department estimated that in 2008 there were probably more Orthodox in Estonia than Lutherans: about 200,000 members of the [Estonian Orthodox Church of the Moscow Patriarchate](#) and about 27,000 members of the [Orthodox](#)

[Church of Estonia](#) under the jurisdiction of the Ecumenical Patriarch, whereas the Evangelical Lutheran Church, by comparison, had about 180,000 members. (*IRFR 2009: Estonia*). It is suggested, however, that Lutherans are currently have a slight majority: 13.6 per cent as against 12.8 per cent Orthodox. (*IRFR 2010: Estonia*).

Finland

Section 76 (The Church Act) of the [Constitution](#) that came into force on 1 March 2000 states that:

Provisions on the organisation and administration of the Evangelical Lutheran Church are laid down in the Church Act. The legislative procedure for enactment of the Church Act and the right to submit legislative proposals relating to the Church Act are governed by the specific provisions in that Code.

Finland has *two* Established Churches: the [Evangelical-Lutheran Church of Finland](#) and an autonomous [Finnish Orthodox Church](#) of about 60,000 members under the ultimate jurisdiction of the Ecumenical Patriarch; and decisions of the Synod of the Church of Finland and of the General Assembly of the Orthodox Church have legal effect only if approved by the State.

The supreme legislative authority for the Church of Finland is Parliament [*Eduskunta*] but it exercises this authority in a rather unusual form. It has no right to initiate church legislation: under the Church Act 1869 that power rests exclusively with the Synod. Although Parliament must ultimately ratify church laws it has no right to amend the proposals it receives from the Synod; they must either be accepted in their original form or rejected altogether. However, since changes to church law must be presented to Parliament by the Government it is always possible for ministers to prevent a proposal of Synod from coming before Parliament in the first place. This has happened, though extremely rarely; but Parliament has never rejected a change in church law proposed by the Synod. An example of the kind of legislation approved by the *Eduskunta* is the Act on Amending the Church Act 2001, chapter 6.1 of which provides that offices within the Church may only be held by Evangelical-Lutherans.²

Until the mid 1990s, the diocesan administrations were, in effect, part of the civil service. The present situation, however, is that 'These days Finland no longer has a state-church structure in the precise sense of the term' (*Evangelical Church of Finland: Church and State*). At the beginning of 1997, diocesan employees ceased to be State officials and the maintenance of the diocesan chapters, employment contracts and payroll expenses gradually became the responsibility of the Church. The method of appointing bishops also underwent a change: under the current procedure, instead of being appointed by the President of Finland, an election is held, with two rounds of voting if necessary, after which the winning candidate receives a letter of appointment from the diocesan chapter.

Both State Churches are beneficiaries of the church tax, which all citizens belonging to either of them pay as part of their income tax. The Churches reimburse the State for the cost of collection and those who do not want to pay the tax must resign from their Church. In addition, the Church of Finland receives part of the corporate tax that is levied on private companies and public communities; in 2005 the parishes' share of the corporate tax was 1.94 per cent. (Heitakangas: 2005).

The legal framework for faith-communities other than the Church of Finland and the Orthodox Church is set out in the [Freedom of Religion Act 2003](#). Chapter 1 §2 of the Act states that

'religious community' refers to the Evangelical Lutheran and Orthodox Churches and to a religious community registered in the manner laid down in Chapter 2,

while chapter 2 §7 defines the purpose of a religious community as

² Juha Seppo: 'Church and State in Finland in 2001' (2002) *European Journal for Church and State Research* 145–156 155: chapter 6.2 provides for dispensation in the case of clergy of churches with whom the Church Assembly has approved reciprocal arrangements for recognition of clergy.

to organise and support the individual, community and public activity relating to the professing and practising of religion which is based on confession of faith, scriptures regarded as holy, or other specified, established grounds of activity regarded as sacred.

Under chapter 2 §8 of the Act, any group of twenty persons or more aged 18 or over may acquire legal personality by registering as a religious community with the National Board of Patents and Registration, while 2 §9 and 10 set out a series of obligatory heads for the by-laws of any group applying for registration.

France

Church and State have been separated since the 1905 [Loi de la Séparation](#): the principle of *laïcité*. Nevertheless, under what remains of the former 1801 Napoleonic Concordat with the Vatican the President of the Republic is consulted about the appointment of Roman Catholic bishops (Lamont 1989:160). The result of the Law of 1905 is that, from day to day, France has practised a fairly strict separation between religion and the State; therefore, for example, a religious marriage (unless contracted abroad) is not recognised as valid in French law and must be validated by a civil wedding.

The law provides for registration of religious organisations: registration is not compulsory but it is a necessary prerequisite for tax-exempt status and official recognition. The Government defines two categories under which religious groups may register: *associations cultuelles* or *paroissalles* ('worship' associations, which are exempt from taxes) and *associations culturelles* (cultural associations, which are not). Associations in these two categories are subject to certain management and financial disclosure requirements. A worship association may organise only religious activities, defined as liturgical services and practices. A cultural association may engage in profit-making activity. Although a cultural association is not exempt from taxes, it may receive government subsidies for its cultural and educational operations, such as schools. Religious groups normally register under both of these categories; the Mormons, for example, run strictly religious activities through their worship association and operate a school under their cultural association. ([IRFR 2010: France](#)).

Under the Law of 1905, a religious group must apply to the local prefecture for recognition as an *association cultuelle*. To qualify, the group's purpose must be solely the practice of some form of religious ritual: such activities as running a publishing company or running a school may disqualify an applicant group. On the other hand, private confessional education is recognised under the 1959 [Loi Debré](#) (*Loi sur les rapports entre l'État et les établissements d'enseignement privés*) and schools run by religious organisations can enter into contracts with the State, provided that they agree not to impose any religious test on admissions. (Basdevant-Gaudemet 2005: 171).

Under the amending Law of 1908, the State assumed ownership of Roman Catholic places of worship built before the 1905 *Loi de la Séparation* and undertook to bear the cost of maintaining them, with the result that a considerable part of the building maintenance costs of the Roman Catholic Church is met from public funds. (Basdevant-Gaudemet 2005: 163 n6, 178).

Alsace-Lorraine

Because they were German territories from 1870 to 1918, during which time the *Loi de la Séparation* was enacted, the Napoleonic Concordat remains largely in force in the three *départements* of Haut-Rhin, Bas-Rhin and Moselle. Four *cultes reconnus* have official status: the Lutheran and Reformed Churches, the Roman Catholic Church and the Jewish community. Clergy whose offices are recognised by the Concordat are paid by the State and the law allows the local governments to provide support for the building of places of worship. Authorised representatives of the four *cultes* provide religious instruction in schools, and, uniquely, the University of Strasbourg has Catholic and Protestant Faculties of Theology with the right to award the *Diplôme d'État*. Adherents of the four *cultes* may choose to have a portion of their income tax allocated to their religious organisation in a system administered by the central government that is not unlike the German church tax. ([IRFR 2010: France](#)). Finally, no doubt because their holders' stipends are paid by the State, the President has a

role in appointments to the more important ecclesiastical offices. Lutheran superintendents are appointed subject to his approval, and the President and the Pope jointly appoint the Archbishop of Strasbourg and Bishop of Metz. (Greenacre 1996:14).³

Religious symbols

In September 2004 [Loi n° 2004-228 du 15 mars 2004](#) (*Loi encadrant, en application du principe de laïcité, le port de signes ou de tenues manifestant une appartenance religieuse dans les écoles, collèges et lycées publics*) came into effect. It inserted [Article L141-5-1](#) in to the *Code de l'éducation* and banned students from wearing 'conspicuous' religious attire and symbols in public schools:

The wearing of symbols or dress in schools, colleges and public high schools by which pupils overtly manifest a religious affiliation is prohibited: *Dans les écoles, les collèges et les lycées publics, le port de signes ou tenues par lesquels les élèves manifestent ostensiblement une appartenance religieuse est interdit.*

In practice, the ban applies to Muslim headscarves, Sikh turbans, Jewish skullcaps and large Christian crosses. It was thought that the ban might be incompatible with the right to manifest under Article 9 ECHR (thought, conscience and religion). However, subsequent case-law has come down on the side of the French State.

In virtually identical judgments, in *Dogru v France* [\[2008\] ECtHR \(No. 27058/05\) \(4 December 2008\)](#) and *Kervanci v France* [\[2008\] ECtHR \(No. 31645/04\) \(4 December 2008\)](#) the Fifth Section ECtHR decided that the conclusion of the French authorities that wearing of a veil, such as an Islamic headscarf, was incompatible with sports classes for reasons of health or safety was not unreasonable. The penalty was not the consequence of the applicants' religious convictions but of their refusal to comply with rules of which they had been properly informed. The interference was therefore justified and proportionate and there had been no breach of Article 9. Subsequently, in a group of linked cases – *Aktas v France, Bayrak v France, Gamaleddyn v France, Ghazal v France, Jasvir Singh v France, Ranjit Singh v France* [\[2009\] ECtHR 1142 \(Nos. 43563/08, 14308/08, 18527/08, 29134/08, 25463/08, 27561/08\) \(17 July 2009\)](#) – the Law of 2004 and the subsequent Ministerial circular of 18 May 2004 were held to be justified and proportionate to the aim pursued and the complaints were declared inadmissible.

On 29 January 2010 the Prime Minister requested an opinion from the *Conseil d'Etat* on the legality of a ban on wearing the full veil in public places. In its opinion of 30 March 2010, [Étude relative aux possibilités juridiques d'interdiction du port du voile intégral](#), the *Conseil* concluded that no clear legal basis could be found for a general and absolute prohibition on wearing the full veil. The *Conseil* also considered the possibility of a ban on the concealment of the face in all public places regardless of the dress adopted and concluded that such a ban could still be in breach of the rights and freedoms guaranteed under the French Constitution and the ECHR. However, an obligation to keep one's face uncovered, whether in certain places or to perform certain procedures, could be justified in some circumstances on grounds of public safety and the prevention of fraud.

Germany

Germany has two large Churches of roughly equal size: the Roman Catholic Church a membership of 25.2 million and the *Evangelische Kirche in Deutschland* (EKD) with 24.5 million.

The [Grundgesetz \(Basic Law\) of 1949](#) begins with the words 'Conscious of their responsibility before God and humanity': *Im Bewußtsein seiner Verantwortung vor Gott und den Menschen*. Article 3(3) of the Basic Law outlaws discrimination on grounds, *inter alia*, of religion and Article 4 guarantees freedom of religion. Church and State are separate; but various Concordats have been concluded

³ Nor does the *Loi de la Séparation* apply in the *départements d'outre-mer* of Réunion, Martinique and Guadeloupe (Basdevant-Gaudemet 2005: 169) – but their legal position is not entirely relevant to a discussion of Church-State relations in Western Europe!

with individual Churches, both by the Federal Government and by the *Länder*, while the [Reichskonkordat of 1933](#) is still regarded as a valid treaty under international law. Gerhard Robbers describes the legal basis of the German system as resting on three basic principles: neutrality, tolerance and parity. (Robbers 2005: 79–80).

Religious communities may be granted the status of a 'corporation under public law', (*Körperschaften des öffentlichen Rechts*) which, *inter alia*, entitles them to levy a church tax (*Kirchensteuer*) on their members. The State collects this as a proportion of the income tax at rates of 8–9% and for doing so it charges a fee, currently 3–4% of the sum collected. (Monsma and Soper 1997).

The yield of the *Kirchensteuer*, put at DM16,000 million (about £546 million) in 2000, still accounts for some 80 per cent of the Churches' income (Robbers 2005: 89) but has been declining since reunification. There are various reasons for this. More citizens are simply opting out of the Churches (*Kirchenaustritt*, a formal legal process of renunciation of membership) on the one hand while, on the other, an ageing population and high levels of unemployment have reduced the number of income-tax payers – and only those who pay income-tax are liable for the *Kirchensteuer*. The result is that in 2004 only about 35 per cent of the population was paying the tax. (Barker 2004). The [Goethe-Institut](#) (the German equivalent of the British Council) suggests that in Germany 'the church and state are more intimately entwined... than in other countries' but concedes that people are leaving the churches partly because they do not want to pay the *Kirchensteuer*. According to the *Goethe-Institut*, the EKD has lost 4 million members since 1973.

As well as what is raised through the *Kirchensteuer*, the State provides financial support for repairing and restoring some of the religious buildings that existed at the time of the expropriation of church lands in 1803. The *Länder* governments also subsidise certain religious schools and hospitals and, in addition to the church tax, the majority of *Länder* operate a local system of 'church money' (*Kirchgeld*): a low, flat-rate contribution unrelated to income that is devoted entirely to the benefit of the payer's local church community. Because of the decline of the *Kirchensteuer*, the *Kirchgeld* has assumed a growing significance. (Barker 2004)

After World War II, the experience of the Churches in the former Federal Republic (FRG) and the Democratic Republic (GDR) diverged. Both States continued the *Kirchensteuer* but in the GDR its collection was inhibited by various means and the yield fell considerably. It has not recovered following reunification; and although the Churches in the former FRG continue to give some assistance, church fabric in the former GDR is generally not in as good condition as in the former FRG – and remains so. In addition, the considerable loss of church membership experienced in the GDR continued, with the result that the majority in the former GDR *Länder* now have no religious affiliation. Whereas they were once overwhelmingly Evangelical, the *Goethe-Institut* estimates that only 28 per cent of the population are still church members.

The Roman Catholic Church and the EKD provide religious education in schools and, through the Roman Catholic *Caritas* and the Protestant *Diakonie* provide important medical and social services supported by State funds. Between them they employ some 950,000 people – which makes them the second largest employers after the public sector. The issue of the autonomy of the Churches in relation to the discipline of lay employees recently came before the ECtHR, with mixed results: see *Obst v Germany* [2010] ECtHR (No. 425/03) *Schüth v Germany* [2010] ECtHR (No. 1620/03 and *Siebenhaar v Germany* [2011] ECtHR (No. 18136/02) – all of which, unfortunately, are available only in French. In *Obst* it was held that the dismissal by the Church of Jesus Christ of Latter-day Saints of its European Director of Public Relations on grounds of adultery had not breached Article 8 ECHR (private and family life), in *Schüth* it was held that the dismissal of a Roman Catholic parish and deanery organist and choirmaster for adultery *had* breached his rights under Article 8, while in *Siebenhaar* it was held that a Roman Catholic childcare assistant in a Protestant day-nursery had been properly dismissed on the grounds of her involvement in a religious community – the 'Church Universal / Brotherhood of Mankind' – whose teachings were deemed incompatible with those of the *Evangelischen Kirche in Deutschland*.

Germany has a significant number of religious schools and kindergartens (Robbers 2005: 85); however, the provision of religious education continues to be the subject of litigation. In the former FRG, religious education was provided and dominated by the two main Christian Churches whereas there was no such tradition in the GDR. Differences remain between individual *Länder* on the nature of provision and the extent to which they accommodate non-Christian religions, especially Islam. (Barker 2004). Many of the State universities have confessional theological faculties whose staffs, though largely chosen by the Church whose theology they teach, are employed by the State. (Robbers 2005: 86).

Religious symbols

Perhaps following France's lead, several *Länder* have passed laws banning *teachers* (but not pupils) from wearing religious symbols in schools, in reaction to a ruling by the Constitutional Court in 2003 that teachers could wear head-coverings if they so wished because there was no statute forbidding them to do so. Berlin and Hesse passed laws to ban headscarves not just for teachers but for all civil servants. The legality of the ban has appeared to be in question since the Federal Administrative Court ruled on 26 June 2008 that the *Land* of Bremen's ban on the wearing of headscarves was a disproportionate limitation on the basic freedom to manifest one's religion. For a recent review of the situation, see Tobias Lock: '[Religious Symbols in Germany](#)'.

Greece

The overwhelming majority of Greeks are Orthodox Christians, and it is probably for that reason as much as any residual caesaro-papalism that the [Constitution](#) (which begins 'In the name of the Holy and Consubstantial and Indivisible Trinity') gives special recognition to the Orthodox [Church of Greece](#). Article 3 (Relations of Church and State) is worth quoting in full:

- (1) The prevailing religion in Greece is that of the Eastern Orthodox Church of Christ. The Orthodox Church of Greece, acknowledging our Lord Jesus Christ as its head, is inseparably united in doctrine with the Great Church of Christ in Constantinople and with every other Church of Christ of the same doctrine, observing unwaveringly, as they do, the holy apostolic and synodal canons and sacred traditions. It is autocephalous and is administered by the Holy Synod of serving Bishops and the Permanent Holy Synod originating thereof and assembled as specified by the Statutory Charter of the Church in compliance with the provisions of the Patriarchal Tome of June 29, 1850 and the Synodal Act of September 4, 1928.
- (2) The ecclesiastical regime existing in certain districts of the State shall not be deemed contrary to the provisions of the preceding paragraph.
- (3) The text of the Holy Scripture shall be maintained unaltered. Official translation of the text into any other form of language, without prior sanction by the Autocephalous Church of Greece and the Great Church of Christ in Constantinople, is prohibited.

Moreover, the effect of Article 33 (2) (Election of the President) is to make it virtually impossible for a conscientious non-Christian to assume the office of President:

- (2) Before assuming the exercise of his duties, the President of the Republic shall take the following oath before Parliament:

"I do swear *in the name of the Holy and consubstantial and Indivisible Trinity* to safeguard the Constitution and the laws, to care for the faithful observance thereof, to defend the national independence and territorial integrity of the Country, to protect the rights and liberties of the Greeks and to serve the general interest and the progress of the Greek People".

The Orthodox Christian faith is therefore the official religion of the Republic, the Orthodox Church has its own legal status with legal personality under public law and the State gives the Church a degree of special consideration that is not extended to other denominations or faiths. (Papastathis 2005: 117).

The Government pays for the salaries, pensions and religious training of Orthodox clergy, finances the maintenance of Orthodox religious buildings and gives special recognition to Orthodox canon law.

Though Article 13(2) of the Constitution provides for freedom of religion, it also stipulates that worship must not disturb public order or offend moral principles and prohibits proselytising. That prohibition was the subject of litigation before the European Court of Human Rights in *Kokkinakis v Greece* [1993] ECtHR 20 (No. 14307/88) (25 May 1993), which held that the sentence passed on a Jehovah's Witness for engaging in religious discussion with the wife of the cantor of the local Orthodox Church was contrary to Article 9 ECHR, since the right to try to persuade one's neighbour as to religious belief was part of the general right to manifest. In *Larissis & Ors v Greece* [1998] ECtHR (Nos. 23372/94, 26377/94 & 26378/94) (24 February 1998), the convictions of three Pentecostal Air Force officers for proselytising servicemen were held not to have violated Article 9 ECHR but the measures taken in relation to them proselytising *civilians* were held to be unjustified and in breach of Article 9.

The Orthodox Church, Judaism, and Islam are the only groups that have legal personality in public law. Other religious groups have legal personality only in private law and cannot own property as religious entities; instead, they must create specific legal entities to hold property on their behalf. On the other hand, the laws that provide property-tax exemptions for religious organisations apply equally to Orthodox and non-Orthodox Churches and monasteries. (Papastathis 2005: 118). Roman Catholic churches and related religious bodies established prior to 1946 are legally recognised as private entities; but Roman Catholic institutions built since 1946 are not extended the same recognition. The Church has been seeking Government recognition of its canon law since 1999, but without success. Moreover, non-Orthodox religious groups claimed that taxes on their organizations were discriminatory because the government subsidizes Orthodox Church activities and Orthodox religious instruction in public schools and provides a preferential tax rate for income received from Orthodox Church-owned properties'. (*IRFR 2010: Greece*).

The position of the Turkish-speaking Muslim minority in Thrace is protected under the Treaty of Lausanne of 1923. Muslims in Thrace have the right to maintain social and charitable organisations and limited recognition is given to Islamic family law. The Government also pays the salaries of the three official Muslim religious leaders. Muslims resident outside Thrace are not covered by the terms of the Treaty. In 2006 the European Court of Human Rights held that an attempt by the Government to interfere in the appointment of the Mufti of Xanthi had violated Article 9 § 2 ECHR: *Agga v Greece* (Nos. 3) [2006] ECtHR (Nos. 32186/02 (13 July 2006) & (No. 4) [2006] ECtHR 33331/02 (13 July 2006). For an earlier case on rather similar facts, see *Serif v Greece* [1999] ECtHR (No. 38178/97) (14 December 1999).

The issue of freedom of religion and human rights for the Muslim minority in Thrace (and for non-Muslim minorities in Turkey) was the subject of [Recommendation 1704](#) adopted by the Parliamentary Assembly of the Council of Europe on 27 January 2010. Paragraph 18 called on the Greek Government to implement a series of measures: on religious matters specifically, these included the full implementation of Law No. 3647 of February 2008 on the legal status of *vafks* (Muslim foundations), allowing Muslims freely to choose their muftis as religious leaders without judicial powers, full implementation of the judgments of the ECtHR on freedom of religion and of association, and permitting associations to use the adjective 'Turkish' in their titles if they so wish.⁴

There have also been disputes over the property of non-Orthodox churches: see *Canea Catholic Church v Greece* [1997] ECtHR 100 (No. 25528/94) (16 December 1997), affirming the legal personality of the Roman Catholic Church contrary to a ruling of the Court of Cassation – which, if not set aside, would have prevented the Church from taking legal action to protect its land and buildings.

Finally, there have been successful challenges in the ECtHR against the caesaro-papalist tendencies of Greek civil law: see *Dimitras & Ors v Greece* [2010] ECtHR (Nos. 42837/06, 3269/07, 35793/07

⁴ Paragraph 18 also included a long list of recommendations for action by the Turkish Government – but that is outside the scope of the present discussion.

[and 6099/08 \(3 June 2010\)](#) and *Alexandridis v Greece* [2008] ECtHR (No. 19516/06), in both of which the obligation to reveal one's religious convictions in order to make an affirmation rather than taking the oath on the Bible in court was held to violate Article 9 ECHR (thought, conscience and religion).

Hungary

Article 60 of the [Constitution](#) guarantees freedom of thought, conscience and religion and entrenches this with a two-thirds majority:

- (1) In the Republic of Hungary everyone has the right to freedom of thought, freedom of conscience and freedom of religion.
- (2) This right shall include the free choice or acceptance of a religion or belief, and the freedom to publicly or privately express or decline to express, exercise and teach such religions and beliefs by way of religious actions, rites or in any other way, either individually or in a group.
- (3) The church and the State shall operate in separation in the Republic of Hungary.
- (4) A majority of two-thirds of the votes of the Members of Parliament present is required to pass the law on the freedom of belief and religion.

It should be noted that, like Belgium, Hungary by virtue of Article 60(2) guarantees freedom *from* religion as well as freedom *of* religion.

The majority of Hungarians are Roman Catholics; however, about fifteen per cent of the population belongs to the Reformed Church and about three per cent is Lutheran: those three communities, together with the Jewish community, being regarded as the four 'historic religions'. There are about as many Eastern-Rite Catholics in Hungary as Lutherans but they are not regarded as an 'historic religion'.

Churches 'enjoy legal personality as *sui generis* entities. Their internal organisational units... are also legal entities if the "charter" of the church so provides.' (Schanda 2005: 331). The result of this is that the legal status of individual Latin and Eastern Catholic churches is determined by their status under their respective Codes of Canons. (Schanda 2005: 331). The [Law on the Freedom of Conscience and Religion and the Churches 1990](#) regulates the activities of religious communities. There are over a hundred religious groups; under section 9 of the 1990 Act, to become registered by the courts a group must have at least 100 followers and produce a basic charter or organisational memorandum.

While any group is free to practice its faith whether it is registered or not, formal registration gives a religious group privileges and access State funding. Section 19 (1) provides that

... the State shall provide a rate of subsidies from the central budget corresponding to that received by similar State institutions, defined in a normative way, for the operation of the educational, teaching, social and health care, sports, children's and youth protection institutions of a church legal entity, and subsidies shall be granted from the funds allocated for the above purposes.

By 2010 there were 368 registered religious entities. ([IRFR 2010: Hungary](#)).

Hungary operates what is, in effect 'voluntary church tax': a taxpayer who is a member of a registered religious group may donate 1 per cent of income tax to that group and receive a tax deduction. The Government also supports registered religious groups from public funds, currently on a one-for-one matching grant, which in 2009 amounted to some £35 million (HUF 9.8 bn). ([IRFR 2009: Hungary](#)). In addition, funding has until recently been provided for a range of activities, such as the maintenance of public art collections, reconstruction and renovation of religious institutions, support for religious instruction, compensation for religious property confiscated and not yet returned, and assistance to church personnel serving the smallest villages. In 2009 this amounted to £59 million (HUF 16.1 bn)

but, due to fiscal constraints, decreased to £55 million (HUF 15 bn) in 2010. The Government also discontinued financial support for reconstruction and renovation of religious institutions. ([IRFR 2010: Hungary](#)).

The curriculum of State schools does not include religious instruction; however, optional religious instruction is usually held in State schools at the end of the normal school day and is taught by representatives of the religious groups. As to tertiary education, the churches operate their own theological colleges and private universities but there are no theological faculties in the State universities: 'courses *on* religion may be delivered at State institutions, but courses *of* religion may not'. (Schanda 2005: 335).

A 1994 government decree provided for military chaplains and prison chaplains from the four 'historic' religious groups. The Government also provides financial support for church-run social services and schools. State schools and private religious educational establishments receive the same *per capita* funding.

Iceland

Iceland is overwhelmingly Evangelical-Lutheran: about 80 per cent of Icelanders are members of the [Evangelical Lutheran Church of Iceland](#) and a further 4 per cent members of various Evangelical Lutheran Free Churches. Chapter VI of the Icelandic [Constitution](#) includes the following:

The Evangelical Lutheran Church shall be the State Church in Iceland and, as such, it shall be supported and protected by the State. This may be amended by law. [Article 62]

All persons have the right to form religious associations and to practice their religion in conformity with their individual convictions. Nothing may however be preached or practised which is prejudicial to good morals or public order. [Article 63]

In addition, Article 64 guarantees the freedom to exercise a religion or not to do so:

No one may lose any of his civil or national rights on account of his religion, nor may anyone refuse to perform any generally applicable civil duty on religious grounds.

Everyone shall be free to remain outside religious associations. No one shall be obliged to pay any personal dues to any religious association of which he is not a member.

Formerly, legislation for the Church was the responsibility of the Icelandic Parliament [*Alþingi*]. Under legislation that came into force on 1 January 1998, however, most of the legislation that would previously have been enacted by *Alþingi* is now the province of the annual Church Assembly. That said, however, the state still exercises at least a nominal role in senior appointments: though the Church holds an election when there is an episcopal vacancy, it is the President of Iceland that signs the successful candidate into office.⁵

The highest executive authority is the Church Council [*kirkjurád*] of two clergy and two laymen elected by the *kirkjubing* together with the Bishop of Iceland as chairman. (Sigurbjörnsson 2000). The Council is responsible for day-to-day decision-making over a wide range of matters referred to it by the Church Assembly, the Bishop himself, *Alþingi* or the Government. Together with the Bishop it prepares the meetings of the Church Assembly and follows up its resolutions. It may also take the initiative in proposing legislation for the Church, and is consulted by the Government on its own proposals for legislation. Finally, it prepares the Church's budget proposals.

The church tax (approximately £55 in 2010) is payable in one form or another by all taxpayers and under Article 64 of the Constitution, those who are not members of any religious association must nevertheless pay an equivalent sum to the state itself: prior to an amendment to the law on church taxes passed in June 2009 the default payment was made to the University of Iceland.

⁵ I am grateful to Arna Bang, of *Alþingi* Secretariat, for this information.

In addition to the proceeds of the church tax, the State pays the salaries of the Church of Iceland's clergy directly from central government funds and the clergy are regarded as public servants under the aegis of the Ministry of the Interior. During 2010, the Government funded the Church to the tune of approximately £29.4 million (ISK 4.8 bn), of which the church tax accounted for £11 million (ISK 1.8 bn) ([IRFR 2010: Iceland](#)).

Ireland

The Constitution as adopted in 1937 gave special recognition to the Roman Catholic Church as 'the guardian of the faith professed by the majority of the citizens'.⁶ This statement was removed after a referendum in 1972;⁷ but the Preamble to the present [Constitution](#), *Bunreacht na hÉireann*, still begins,

In the name of the Most Holy Trinity, from Whom is all authority and to Whom, as our final end, all actions both of men and States must be referred, We, the people of Éire...

Though Article 44 of the Constitution starts by acknowledging 'that the homage of public worship is due to Almighty God' it also provides for freedom of conscience and the free profession and practice of religion and declares that the State guarantees not to endow any religion. Article 44 also prohibits religious discrimination both on a personal level and within the education system and entitles religious denominations to hold property and to manage their own affairs. For the purposes of secular law, religious organisations are voluntary organisations⁸ and their internal regulations are regarded by the courts as foreign law whose rules must be proved in evidence if they are to be cited in argument.⁹

Though the churches are regarded as voluntary organisations, primary education is almost entirely denominational and is supported by the State either through direct financial assistance for individual schools or the provision of free transport to take children to the nearest school run by their faith-community. (Casey 2005: 197) The majority of secondary schools have a religious ethos and, again, the Government meets a very high proportion of their building and staff costs. (Casey 2005:199). Given the separationist nature of the Irish Constitution this policy might seem rather surprising – but its ultimate legal basis is Article 44 of the Constitution itself, subsection 4° of which provides that

Legislation providing State aid for schools shall not discriminate between schools under the management of different religious denominations, nor be such as to affect prejudicially the right of any child to attend a school receiving public money without attending religious instruction at that school.

The Department of Education therefore provides equal funding to schools of different religious denominations; for example, it funds an Islamic school in Dublin.

Blasphemy law

Article 40.6.1° of the Constitution states *inter alia* that

The publication or utterance of blasphemous, seditious, or indecent matter is an offence which shall be punishable in accordance with law.

Nevertheless, the common law offence of blasphemy was thought to be for all practical purposes defunct – until the then Minister of Justice, Dermot Ahern, decided to put it on a statutory footing by way of an amendment to the Bill which duly became section 36 of the [Defamation Act 2009](#) as follows:

⁶ Article 44.1 s 2. S 3 of that Article also made specific reference to the Church of Ireland, the Presbyterian Church, the Methodist Church, the Quakers and the Jewish Congregations,

⁷ Fifth Amendment of the Constitution Act 1972.

⁸ *State (Colquhoun) v D'Arcy* [1936] IR 641.

⁹ *O'Callaghan v O'Sullivan* [1925] 1 IR 90.

36.—(1) A person who publishes or utters blasphemous matter shall be guilty of an offence and shall be liable upon conviction on indictment to a fine not exceeding €25,000.

(2) For the purposes of this section, a person publishes or utters blasphemous matter if—

(a) he or she publishes or utters matter that is grossly abusive or insulting in relation to matters held sacred by any religion, thereby causing outrage among a substantial number of the adherents of that religion, and

(b) he or she intends, by the publication or utterance of the matter concerned, to cause such outrage.

(3) It shall be a defence to proceedings for an offence under this section for the defendant to prove that a reasonable person would find genuine literary, artistic, political, scientific, or academic value in the matter to which the offence relates.

The move caused something approaching outrage. Ahern defended himself on the basis that he was acting in accordance with the express provision of the Constitution; nevertheless, President McAleese consulted the Council of State as to whether the constitutionality of the Bill should be considered by the Supreme Court. The Bill was signed into law on 23 July 2009 and came into effect on 1 January 2010.

Italy

Article 3 of the [Constitution](#) guarantees all citizens equality before the law ‘without distinction of sex, race, language, religion, political opinion, personal and social conditions’. Article 8 provides that—

(1) All religious denominations are equally free before the law.

(2) Denominations other than Catholicism have the right to self-organisation according to their own statutes, provided these do not conflict with Italian law.

(3) Their relations with the State are regulated by law, based on agreements [*intese*] with their respective representatives.

Article 19 guarantees the right freely to profess ‘religious belief in any form, individually or with others, and to promote them and celebrate rites in public or in private, provided they are not offensive to public morality’, while Article 20 guarantees freedom from limitations or special fiscal burdens ‘on the establishment, legal capacity or activities of any organisation on the ground of its religious nature or its religious or confessional aims’.

Prior to the adoption of the 1947 Constitution, Italy’s relations with the Roman Catholic Church were governed by the [Lateran Pacts](#) of 1929. Article 1 of the Conciliation Treaty declared that

Italy recognizes and reaffirms the principle established in the first Article of the Italian Constitution dated March 4, 1848, according to which the Catholic Apostolic Roman religion is the only State religion.

A 1984 revision of the Concordat, the [Accord of Villa Madama](#) ratified in 1985, formalised the principle of a non-confessional State as follows:

On the occasion of the signing of the Agreement that modifies the Lateran Concordat, the Holy See and the Italian Republic, desiring to assure, by means of appropriate specifications, the best application of the Lateran Pacts and the agreed upon amendments, and willing to avoid any difficulties of interpretation thereof, herein jointly declare: In relation to Article 1 [t]he principle of the Catholic religion as the sole religion of the Italian State, originally referred to by the Lateran Pacts, shall be considered to be no longer in force...

Nevertheless, the practice of State support for religion was maintained, including payment for teachers of religion appointed by the Church to give religious instruction in State schools – though there are no theological faculties in State universities.

Under the revised arrangements, the Government has the power to conclude an accord [*intesa*] with an individual denomination, whose ministers then gain access to State hospitals, prisons, and military barracks. The signing of an accord, which requires parliamentary approval, also results, *inter alia*, in civil registration of religious marriages by the denomination concerned. The 1984 revision also made it possible to provide State support for non-Catholic denominations: 0.8 per cent of the income-tax paid is handed over at the option of the taxpayer either to the Roman Catholic Church, to one of the other denominations that has concluded an *intesa* with the Italian State or, as a default, to the Italian State itself to be used for the relief of world hunger and natural disasters, assistance to refugees and the conservation of cultural property. The first such accord was made with the Waldensian Church.

Currently, the Government has concluded *intese* with the Confederation of Methodist and Waldensian Churches, the Seventh-Day Adventists, the Assemblies of God, the Jews, the Baptists and the Lutherans. In 2007 the Government signed draft accords with the Buddhist Union, the Jehovah's Witnesses, the Mormons, the Apostolic Church, the Orthodox Church of the Constantinople Patriarchate and the Hindus, and at the same time amended previous *intese* with the Confederation of Methodist and Waldensian Churches and the Adventists. In May 2010 the Council of Ministers approved the new and the amended *intese* but they were not ratified by Parliament in 2010. Negotiations remained suspended with the Soka Gakkai pending their reorganisation. ([IRFR 2010: Italy](#)).

The legality of the 0.8 per cent income-tax transfer was challenged before the European Court of Human Rights in *Spampinato v Italy* [2010] ECtHR 644 (No. 23123/04) (29 April 2010). In that case the Court concluded that the provision was within the margin of appreciation accorded to national authorities. Its grounds for doing so were that decisions on such matters would commonly involve political, economic and social questions which the Convention left to the competence of the states parties – *a fortiori* in the area of religion because there was no common European standard governing the financing of churches. Nevertheless, at the time of writing the European Commission was investigating some of the tax concessions that the Italian State makes to “non-commercial entities”, among which is included the Roman Catholic Church. In particular, the Commission has expressed concern that the municipal tax exemption granted by Italy for real property used by non-commercial entities for specific purposes might constitute a state aid in contravention of EU law, as its [formal communication with the Italian Government](#) demonstrates. It has been suggested that the Roman Catholic Church is a particular target for the Commission's investigation; according to [a report by Aoife White in Business Week](#) the overall concessions are worth €2 bn to the Holy See.

Silvio Ferrari suggests that Italian public law divides religious organisations into three categories. The Roman Catholic Church has a preferential position, partly because of its traditional significance in civil society and partly because of the 1984 Accord. The groups that have concluded *intese* occupy an intermediate position. At the lowest level are the unrecognised groups, which are regulated by the general law on associations and which do not, therefore, benefit from any particular financial privileges. (Ferrari 2005: 213).

Ferrari's contention that the Roman Catholic Church enjoys a preferential position over other religious groups is given some support by the facts in *Lautsi & Ors v Italy*. In 2009¹⁰ the Second Section ECHR had held that routinely to display crucifixes in State schools was incompatible with the State's duty of neutrality in the provision of education and in breach of Article 2 of Protocol No. 1 ECHR (education) in conjunction with Article 9. On appeal to the Grand Chamber, however, that decision was reversed by fifteen votes to two (Malinverni and Kalaydjieva JJ dissenting): see [\[2011\] ECtHR \(GC\) \(No. 30814/06\) \(18 March 2011\)](#) on the grounds that the display of crucifixes in the classrooms of Italian state schools was within the margin of appreciation accorded to member states of the Council of Europe.

¹⁰ [\[2009\] ECtHR \(No. 30814/06\) \(3 November 2009\)](#)

Latvia

Latvia has three churches of very roughly similar size: 22 per cent of the population is Roman Catholic, 20 per cent Lutheran and 17 per cent Orthodox. ([IRFR 2010: Latvia](#)).

Article 99 of the [Constitution](#) provides that

Everyone has the right to freedom of thought, conscience and religion. The church shall be separate from the State.

S 5 (Basis for the Relationships of State and Religious Organisations) of the Law on Religious Organisations 1995 (available from [this link](#)) reflects the constitutional provision as follows:

(1) In the Republic of Latvia, the State is separate from the church. State institutions have a secular nature and religious organisations shall only perform State functions in cases prescribed by laws.

(2) The State shall protect the rights of religious organisations provided for in the Law. The State and local governments and the institutions thereof, as well as public and other organisations shall have no right to intervene in the religious activities of religious organisations.

(3) The State recognises the right of parents and guardians to raise their children in accordance with the religious convictions thereof.

There is therefore no State religion; however, the Government distinguishes between 'traditional' religions (Lutherans, Roman Catholics, Orthodox, Old Believers, Baptists, Methodists, Seventh Day Adventists and Jews) and 'new' religions and concluded agreements with the seven 'traditional' churches in 2004. (Balodis 2005: 261).

Under the Law of 2005, any twenty citizens or persons over the age of eighteen who have been registered in the Population Register may apply to register a congregation; and ten or more congregations of the same denomination and with permanent registration status may form a religious association. Only groups with religious association status may establish theological schools or monasteries. Religious groups are not *required* to register, but registration brings with it certain rights and privileges, such as legal personality and tax benefits. ([IRFR 2010: Latvia](#)). Registration is under the supervision of the Ministry of Justice and the list is maintained by the Enterprise Register of the Republic of Latvia (whose primary purpose is company registration).

Only representatives of the 'traditional' religions may teach religion in State schools. The Government provides funds for this; but attendance on the part of students is voluntary. ([IRFR 2009: Latvia](#)). There is an ecumenical theology faculty at the University of Latvia. (Balodis 2005: 268).

In 2009 the European Court of Human Rights held by six votes to one that the Latvian Government had failed in its duty of neutrality by intervening in an internal leadership dispute between two groups of (Orthodox) Old Believers. In *Miroļubovs & Ors v Latvia* [2009] ECtHR (No. 798/05) the ECtHR concluded that the Government's action had been in breach of Article 9 ECHR (thought, conscience and belief). According to the US Department of State ([IRFR 2009: Latvia](#)), in November 2009 the Law of 2005 was amended to remove that part of section 10 which required any parish seeking independence from its parent church's hierarchy to receive the authorization of that church's leadership before establishing an autonomous parish ('This provision shall not apply to those denominations whose canonical rules do not allow the autonomous operation of a congregation.');

however, this amendment is not reflected in the website version of the Law..

Liechtenstein

About three-quarters of the population of Liechtenstein is Roman Catholic. Article 37 of the [Constitution](#) states that:

- (1) Freedom of belief and conscience are guaranteed for all.
- (2) The Roman Catholic Church is the National Church and as such shall enjoy the full protection of the State; other denominations shall be entitled to practice their creeds and to hold religious services within the limits of morality and public order.

Moreover, under Article 38:

Ownership and all other proprietary rights of religious communities and associations in respect of their institutes, foundations and other possessions devoted to worship, instruction, and charity shall be guaranteed. The administration of church property in the parishes shall be regulated by a specific law; the agreement of the church authorities shall be sought before the law is enacted.

Under Article 39:

The enjoyment of civil and political rights shall be independent of religious creed; religious creed may not be detrimental to civil obligations.

Churches are funded by the Government in proportion to the size of their membership as determined in the census count of 2000; smaller religious groups are eligible to apply for grants for specific projects. In his [Report of 4 May 2005](#), the Council of Europe's Commissioner for Human Rights noted that all religious groups enjoyed tax-exempt status and were eligible for State subsidies; however, with regard to State subsidies he urged the Government

... to monitor the situation so as to ensure that communities representing minority religions are not discriminated against on procedural or other grounds. (Council of Europe 2005).

The criticism was reiterated in December 2008. ([IRFR 2010: Liechtenstein](#)).

Until 1997 the Roman Catholic Church in Liechtenstein was a deanery within the (Swiss) Diocese of Chur. By a Papal Bull of 2 December 1997 the territory of the Principality was separated from the Diocese of Chur as an independent Archdiocese of Vaduz/Liechtenstein in its own right; Wolfgang Haas, former Bishop of Chur and a native of Liechtenstein, was appointed as the first Archbishop. Pope John Paul II's action caused considerable controversy, so much so that a petition signed by 8,400 people (out of a total population of some 34,000) calling for Liechtenstein to remain part of the Diocese of Chur was presented to Parliament at its meeting on 17 December 1997.

The result of the *contretemps* over the diocesan reorganisation was that the wider relationship between Church and State was brought into question; and in 2007 the Government brought forward proposals to 'disentangle' the Church-State relationship. According an official statement on the tenth anniversary of the Archdiocese of Vaduz by the Government Information Office:

The close ties between the Roman Catholic Church and the Liechtenstein municipalities made it appear advisable not to separate Church and State completely, but rather to initiate a disentanglement. The revision of the Church-State law provides for an institutional separation of the relationship between the Church and the State. In this way, the State recognizes the Roman Catholic Church, but also other churches and religious communities as independent institutions.

While the Roman Catholic Church was indisputably considered the 'national church' when the Constitution of 1921 was drafted, the newly-represented religious communities now demand equal treatment with respect to public funds and recognition. The most important change requiring a constitutional amendment will be the recognition of religious communities under public law as entities with autonomy under public law and their own legal personality. The funding of the religious communities recognized under public law will be governed by a

separate law. The Government is proposing a two-pillar model: the first pillar will be the payment of public funds for services rendered on behalf of the general welfare, while the second pillar will be an allocation of tax revenue.

The proposal for 'disentanglement' duly appeared in the published [Government Program 2005–2009](#):

Freedom of religion is one of the fundamental human rights guaranteed by the Constitution. The Government is therefore committed to peaceful coexistence of religious communities under the umbrella of the Constitution.

The disentanglement of the State and the Catholic Church continues to be under discussion in cooperation with the municipalities, and the necessary constitutional and legislative foundations are being prepared. The effects of a disentanglement must be carefully assessed.

In 2007 the Prime Minister told Parliament that a provisional constitutional amendment had been drafted that would regulate a new relationship between the State and the religious communities. The proposal was that the Roman Catholic Church would cease to be the official National Church: instead, the Roman Catholic, Protestant and Lutheran Churches would be granted official recognition as religious communities. ([IRFR 2008: Liechtenstein](#)). Given that the latest English text of the Constitution, dated February 2009, does not include such an amendment it appears that the matter is still under consideration.

Lithuania

Almost 80 per cent of Lithuanians are Roman Catholic. (Kuznecoviene 2005: 283). Article 26 of the [Constitution](#) provides for freedom of thought, conscience and religion; the right to profess and propagate a religion or faith

... may be subject only to those limitations prescribed by law and only when such restrictions are necessary to protect the safety of society, public order, a person's health or morals, or the fundamental rights and freedoms of others.

Article 43(1) declares that the State

... shall recognise traditional Lithuanian churches and religious organisations, as well as other churches and religious organisations provided that they have a basis in society and their teaching and rituals do not contradict morality or the law. Churches and religious organisations recognised by the State shall have the rights of legal persons.

However, Article 43(7) provides for separation of Church and State.

The religious teaching of churches and other religious organisations, their religious activities and their buildings may not be used for purposes that contradict the Constitution and the law. The Government may also temporarily restrict freedom of expression of religious conviction during a period of martial law or a state of emergency.

Though there is no State religion, Article 43 of the Constitution divides religious communities into State-recognised traditional Lithuanian churches and 'other churches and religious organisations'. In practice, a four-tiered system exists: traditional, State-recognised, registered, and unregistered communities.

Under the [1995 Law on Religious Communities and Associations](#), some religious groups enjoy government benefits not available to others. Article 5 recognises nine 'traditional' religious communities and associations: Roman Catholic, Greek Catholic, Evangelical Lutheran, Evangelical Reformed, Orthodox, the Old Believers, the Jews, the Sunni Muslims and the Karaites.

Traditional religious communities and associations possess legal personality and are not required to register their bylaws with the Ministry of Justice in order to receive legal recognition. *Non-traditional*

religious communities must present an application, a founding statement signed by no fewer than 15 members who are adult citizens of the country, and a description of their religious teachings and their aims. Legally, the status of a 'State-recognised' religious community is higher than that of a 'registered' community but lower than that of a 'traditional' community.

As well as being able to register marriages and teach in State schools, the nine 'traditional' communities qualify for government assistance through, for example, limited relief from VAT, they do not have to pay social and health insurance taxes for their clergy and other employees and their clergy and theological students are exempt from military service. ([IRFR 2010: Lithuania](#)).

The two 'State-recognised' religious associations – the Evangelical Baptist Union and the Seventh Day Adventist Church – are entitled to perform marriages and are relieved from social security and health care taxes for clergy and employees; however, they do not qualify for annual Government subsidies and their clergy and theological students are liable for military service. ([IRFR 2010: Lithuania](#)).

Registered religious communities do not receive regular subsidies or tax exemptions but have legal personality and may rent land for religious buildings. Unregistered communities have no juridical status or State privileges whatsoever. Moreover, registration is a necessary prerequisite for opening a bank account, owning property, or acting in any legal or official capacity as a community. ([IRFR 2010: Lithuania](#)).

It appears to extremely difficult to progress from 'non-traditional' and to achieve recognition as 'traditional'. In June 2000 the Constitutional Court ruled that

The constitutional establishment of... recognition of churches and religious organisations as traditional means that such recognition by the state is irrevocable. Tradition is neither created nor abolished by an act of the will of the legislator. Naming of churches and religious organisations as traditional is not an act of their establishment as traditional organisations but an act stating both their tradition and the status of their relations with society, which does not depend on the willpower of the legislator. Such an act reflects the development and the situation of the religious culture in society.¹¹

According to Jolanta Kuznecoviene, the effect of the ruling had been to close the list. (Kuznecoviene 2005: 290) – and on a careful reading of the original ruling that would seem to be confirm that so far as 'traditional' communities are concerned. In December 2007 the Constitutional Court revisited the matter and in [Cases Nos. 10/95 & 23/98](#) at paragraph 8 reinforced its original ruling as follows:

The constitutional provision that "the status of churches and other religious organisations in the State shall be established by agreement or by law" may not be interpreted as an obligation for the state to make respective agreements with all churches and religious organisations traditional in Lithuania [and] also with other churches and religious organisations recognised by the state. The state freely decides regarding entering into respective agreements or not, and if to be entered, whom they will be entered with. The said constitutional provision may not be interpreted in such a way that once the state has entered into a specific agreement with a certain church or a religious organisation, it has to enter into respective agreements with other churches and religious organisations acting in Lithuania.

Since then, in July 2008 Parliament granted recognition to the Seventh-day Adventists. Three further applications are still pending: from the New Apostolic Church (applied in 2003), from the (Pentecostal) Evangelical Belief Christian Union (applied in 2002) and from the United Methodist Church of Lithuania (applied in 2001). ([IRFR 2010: Lithuania](#)).

But the matter does not end there. According to the US State Department,

¹¹ Ruling of 13 June 2000 Case No. 49-1424.

[o]n October 29, 2009, the parliamentary ombudsperson completed an investigation and recommended that parliament ask the Constitutional Court to decide whether the legal acts that enable bureaucrats to decide on the traditional character of a religious community are in line with the country's main law. In January 2010 parliament's Legal Affairs Committee registered a draft address to the Constitutional Court, asking it to give its opinion about a provision in the Law on Religious Communities, which enables the MOJ [Ministry of Justice] to decide on continuity of traditions of a specific religious community. ([IRFR 2010: Lithuania](#)).

Luxembourg

In 1801 Luxembourg was a *département* of France, with the result that the Concordat of that year between France and the Holy See is still in some sense in force – though it is not clear exactly *how* it is in force. What is important, however, is not the precise status of the Concordat, but the fact that it has provided a flexible foundation for later developments.

There is no State religion and Article 19 of the [Constitution](#) provides for the free exercise of religion:

The freedom of religious groups, their public practice and the freedom to express their religious views are guaranteed, subject to the repression of crimes committed during the use of these freedoms: *La liberté des cultes, celle de leur exercice public, ainsi que la liberté de manifester ses opinions religieuses, sont garanties, sauf la répression des délits commis à l'occasion de l'usage de ces libertés.*

Article 106, however, provides for the salaries and pensions of clergy to be borne by the State. The Government does not register religions or religious groups but, as a result of Article 106, some religious groups that have signed agreements with the State receive financial support: the Roman Catholic Church, the Greek, Russian, Romanian, and Serbian Orthodox, the Anglicans,¹² the Reformed Protestant Church of Luxembourg, the Protestant Church of Luxembourg and Jewish congregations. At the time of writing, an application for formal recognition from the Muslim Convention was pending. ([IRFR Luxembourg: 2010](#)).

The vast majority of Luxembourgers are Roman Catholics. There is a single Diocese founded in 1870; and under a Law of 1873 the Bishop must be a citizen of Luxembourg and the Government must approve the Pope's nominee before he can be appointed. (Pauly 2005: 312).¹³

There is a long tradition of religious education in public schools and the State subsidises private religious schools. All private, religious, and non-sectarian schools are eligible for and receive government subsidies.

Malta

Though the vast majority of Maltese are Roman Catholics, the position of the Roman Catholic Church leading up to and after Independence in 1967 was a matter of some dispute; the Prime Minister of the day, Dom Mintoff, wanted a fairly clear separation between Church and State. (Mifsud Bonnici 2005: 352).

Article 40 of the [Constitution](#) provides for freedom of religion:

(1) All persons in Malta shall have full freedom of conscience and enjoy the free exercise of their respective mode of religious worship

and there is no system of registration for religious communities. Notwithstanding that section, however, Article 2, which was inserted into the Independence Constitution by an amending Act in

¹² The sole licensed Anglican priest in Luxembourg receives a *traitement* from the state: personal communication from the Diocesan Secretary of the Diocese of Europe.

¹³ The Pope raised Luxembourg to the status of an Archdiocese in 1988.

1974 as a result of a compromise between the Labour Government and the Nationalist Opposition, establishes Roman Catholicism as the State religion:

- (1) The religion of Malta is the Roman Catholic Apostolic Religion.
- (2) The authorities of the Roman Catholic Apostolic Church have the duty and the right to teach which principles are right and which are wrong.
- (3) Religious teaching of the Roman Catholic Apostolic Faith shall be provided in all State schools as part of compulsory education.

Articles 2(1) and (3) are not entrenched under Article 66 (which requires a two-thirds majority in the House of Representatives to amend certain specified parts of the Constitution) but Article 2(2) *is* so entrenched.¹⁴

The special position of the Roman Catholic Church means that there is currently no domestic provision for divorce in Maltese family law – though the law recognises the validity of a divorce granted by a foreign court where either party is a citizen of the country concerned. Malta does, however, recognise the validity of annulments granted under Roman Catholic canon law. The legislative history is quite complex. Originally, the secular law had recognised the exclusive jurisdiction of ecclesiastical tribunals over Roman Catholic marriages. This was set aside by the Marriage Act 1975. The Marriage Law Amendment Act 1995 restored the previous recognition; it did so by inserting the Agreement and Protocols on the Recognition of Civil Effects to Canonical Marriages and to the Decisions of the Ecclesiastical Authorities and Tribunals into the 1975 Act as a Schedule. The current statute law can be found in the [Marriage Act 1975, as amended](#).

On 28 May 2011, however, in a [referendum](#) on the question, “Do you agree with the introduction of the choice of divorce in the case of a married couple who has been separated or has been living apart for at least four (4) years, and where there is no reasonable hope for reconciliation between the spouses, whilst at the same time ensuring that adequate maintenance is guaranteed and the welfare of the children is safeguarded?” there was a fairly narrow majority in favour of legislating for divorce: 52.67 per cent in favour and 46.4 per cent against on an overall turnout of 72 per cent.

The Government provides partial finance for Roman Catholic schools. Roman Catholic religious instruction is compulsory in all State schools, but Section 40(2) of the Constitution ensures a right of conscientious objection for those who are not Roman Catholics.

Since 1991 all religious organisations have been able to own property. Perhaps surprisingly, however, neither the Roman Catholic Church nor the other faith-communities enjoy any particular tax exemptions beyond those given to charities generally. (Mifsud Bonnici 2005: 359).

The Netherlands

Separation of church and state was established during the Batavian Revolution of 1795. Article 1 of the [Constitution](#) outlaws religious discrimination and Article 6(1) provides that everyone ‘shall have the right to manifest freely his religion or belief, either individually or in community with others, without prejudice to his responsibility under the law’.

In the past, the religious makeup of the Netherlands was roughly one-third Protestant, one-third Roman Catholic and one-third secular. The three groups operated through their own institutions: a situation traditionally described as *Verzuiling* or ‘pillarisation’, under which members of the three pillars maintained their own political parties, trades unions, newspapers, hospitals and other organisations. However, Dutch society has become increasingly secular and the Protestant denominations, in particular, have suffered a considerable decline in membership. In the 1970s two Protestant political parties united with the Roman Catholic KVP to form the CDA (*Christen*

¹⁴ On the grounds that the right of the Roman Catholic Church to teach should continue be recognised even if it were to cease to be the church of the majority of Maltese. (Mifsud Bonnici 2005: 355).

Democratisch Appèl), which took part in the elections of 1977, while the Catholic trade union NKV merged with the Socialist NVV in 1982. Although remnants remain, pillarisation is now all but dead. In 2006 the Netherlands Social Cultural Planning Bureau estimated that the number of church members had declined from 76 percent of the population in 1958 to 30 percent in 2006, of which 16 per cent were Roman Catholic and 14 per cent Protestant. ([IRFR 2010: Netherlands](#)).

On the face of it, the Dutch model of Church-State relations is rather at the separatist end of the spectrum so that, for example, religious marriages contracted in the Netherlands must be validated by a civil ceremony. Religious groups are not required to register with the Government; however, the law grants religious denominations certain rights and privileges, including tax exemptions. The Government also provides subsidies to religious organisations that maintain educational facilities and health-care facilities, but it does not aid religious organisations as such. In reality, however, the position is more fluid than the formal situation might suggest; and Minister of Justice Ernst Hirsch Ballin (2009) has described it as 'pluralistic cooperation, *par excellence*'. Under the Care Institutions (Quality) Act 1996, for example, care institutions must provide for the spiritual needs of patients in ways compatible with their religion or belief.

As to education, a private school founded on religious or philosophical convictions will be eligible for government subsidy provided it demonstrates that it can serve a sufficient number of students and satisfy the quality criteria and funding regulations. Once established, it will be financed on the same basis as the public schools. (Ballin 2009). At the Government's initiative, the Free University Amsterdam, the University of Leiden and *Hogeschool In Holland* established training courses for imams in the hope of ensuring a supply of 'home-grown' Muslim clergy who would speak Dutch and understand Dutch society. However, it was reported in July 2009 that no graduate of the training-courses had succeeded in securing appointment by a mosque: partly because of lack of confidence in their training and partly on financial grounds. ([NIS 2009](#)).

Religious symbols

On 7 January 2011 the Equal Opportunities Commission declared a Roman Catholic high school in Volendam, Don Bosco College, guilty of discrimination on religious grounds for banning a Muslim pupil from wearing a headscarf. The Commission said that school pupils should, in principle, be free to wear a headscarf, a skullcap or Christian cross. It was possible for a school to introduce a ban if it was necessary to preserve its special identity but that was not the case for Don Bosco College. On 4 April, however, Haarlem District Court ruled¹⁵ that, in principle, schools were free to incorporate such a prohibition into their regulations. The headscarf ban was consonant with the Roman Catholic character of the College under which diverse expressions of faith were not allowed. The ban did not restrict freedom of expression and the College was not discriminating on the basis of religion. ([NIS 2010](#)).

Norway

In two rather incompatible provisions, Article 2 of the [Constitution](#) states that:

All inhabitants of the Realm shall have the right to free exercise of their religion.

and that

The Evangelical-Lutheran religion shall remain the official religion of the State. The inhabitants professing it are bound to bring up their children in the same.¹⁶

¹⁵ LJN BQ0063, Rechtbank Haarlem, zaak/rolnr.: 502067 / VV EXPL 11-29.

¹⁶ The second part of Article 2 was promulgated in 1814 at the separation from Denmark; the first part was added in 1964 on the 150th anniversary of the Constitution. (Plesner 2001:317–8). In 1994 and again in 1999 the UN Human Rights Committee concluded that the second part of Article 2 was in contravention of Article 18 of the UN Convention on Civil and Political Rights (Plesner 2001:322). The order of the two parts was recently reversed.

Article 4 further states that the King 'shall at all times profess the Evangelical-Lutheran religion, and uphold and protect the same', and Article 12 still requires that at least half of the Government shall be members of the [Church of Norway](#). Under Article 27, those members of the Government are responsible for Church matters, and the King (in practice, those ministers who are members of the Church) is required by Article 16 to provide statutes governing liturgy and to ensure that the teaching of the Church is in accordance with Lutheran confessional standards. During the early part of its history the clergy of the Established Church were civil servants; however, the nineteenth and twentieth centuries saw a gradual democratisation of the Church; parish councils were established in 1920, diocesan councils in 1933, the National Council in 1969, in 1984 and the General Synod and diocesan synods in 1984.

Legislation concerning the Church still has to go through *Stortinget* and responsibility within government rests with the [Ministry of Government Administration, Reform and Church Affairs](#); but under the Church Act 1996 the authority to determine the content of the liturgy and the right to regulate the use of church buildings have been delegated to the General Synod. (Plesner 2001:318). Article 2 of that Act also gave legal personality to the parishes – but the financing of the activities of the local church, the maintenance of church buildings and cemeteries and the payment of those church staff not paid by the State remains the responsibility of the secular municipal authorities. (Plesner 2001:318–319). Since 1989 parish pastors, who had been appointed by the King since 1660, have once again been appointed by diocesan councils; as in England, however, bishops and deans are still appointed by the Crown. (Plesner 2002: 265).

Where Norway differs from the prevailing custom in Scandinavia is over finance. Instead of receiving the proceeds of a separate church tax, the Church is directly funded, partly by the State and partly by the municipalities. This right to State support was extended to non-established churches and other faith-communities by the Act on Faith Communities 1969 (Plesner 2001:320–21); they receive equivalent *per capita* funding to that of the Church of Norway. (Aarflot 2004:168).

The position of the Church *vis-à-vis* the State is currently under review. In 2002 a Church of Norway Commission on Church-State relations presented a report, *Samme kirke – ny ordning* ([The Same Church - A New Church Structure](#)) after four years' work which recommended that the strong ties between Church and State should be loosened. A multi-party State-Church Committee under the chairmanship of Kåre Gjønnes, a former minister and a Christian Democrat, considered the matter from the State's point of view and [reported in January 2006](#) in favour of a loosening of Church-State ties. At its annual meeting at Oyer in November 2006, General Synod voted in favour of a proposal that the Constitution should be amended, that the Church should be founded on a new Act of *Stortinget*, and that the Synod should assume all the responsibilities currently exercised by the King and the Government. (Østang 2006b). It is likely that the Gjønnes Commission's proposals will be implemented in due course – but the process is likely to take five or six years from 2006 at the very least. (Østang 2006a).

A beginning was made to the process in April 2008. *Aftenposten* reported that all political parties in Parliament had agreed to a new relationship between Church and State. ([IRFR 2009: Norway](#)). [The agreement](#), which was described as 'historic', would require amendment of the Constitution, replacing the declaration in Article 2 that 'The Evangelical-Lutheran religion shall remain the official religion of the State' with a statement that 'The value foundations shall remain our Christian and Humanistic heritage' [*Vædiggründlaget forbliver vot kristne og humanistike Arv*]. The package, which Tore Lindholm (2010) has dubbed the 'IPSaC Deal' (Inter-Party State and Church Deal), contains the following elements:

- amendment of Article 2 of the Constitution, as above;
- revision of Articles 4, 21, 22, 12 and 27 to end the Church of Norway's position as the state church;
- appointment of bishops and deans by the Church of Norway rather than by the Crown;

- clergy salaries will continue to be paid by the state; and
- democratisation of the Church itself as a necessary prerequisite of implementation.

In principle, the reforms will be adopted by 2012 assuming that the Church of Norway's internal democratisation measures are implemented to the satisfaction of the Church itself and by *Stortinget* and the political parties (Lindholm 2010:227–228).

The proposal would not, however, remove the requirement in Article 4 that the King should profess the Evangelical-Lutheran faith. The necessary changes to the Constitution would require a two-thirds majority in *Stortinget* and are expected to be made in 2012.

Poland

Faith-communities in Poland are divided into two groups for the purposes of recognition and legal status: those that operate on the basis of a special law regulating their relationship with the State, and those subject to the Law on Freedom of Conscience and Confession 1989 and the general laws relating to voluntary associations. The first group includes all the larger Christian communities, the Jews, the Muslims and the [Karaites](#). (Rynkowski 2005: 427).

Article 53 of the [Constitution](#) provides for freedom of religion and respect for conscience, with the result that religious communities may register with the Government if they wish but are not *required* to do so.

Article 25 provides for a fairly level playing-field between faith-communities:

- (1) Churches and other religious organisations shall have equal rights.
- (2) Public authorities in the Republic of Poland shall be impartial in matters of personal conviction, whether religious or philosophical, or in relation to outlooks on life, and shall ensure their freedom of expression within public life.
- (3) The relationship between the State and churches and other religious organisations shall be based on the principle of respect for their autonomy and the mutual independence of each in its own sphere, as well as on the principle of cooperation for the individual and the common good.
- (4) The relations between the Republic of Poland and the Roman Catholic Church shall be determined by international treaty concluded with the Holy See, and by statute.
- (5) The relations between the Republic of Poland and other churches and religious organisations shall be determined by statutes adopted pursuant to agreements concluded between their appropriate representatives and the Council of Ministers.

Article 53 guarantees freedom of and freedom from religion:

- (1) Freedom of faith and religion shall be ensured to everyone.
- (2) Freedom of religion shall include the freedom to profess or to accept a religion by personal choice as well as to manifest such religion, either individually or collectively, publicly or privately, by worshipping, praying, participating in ceremonies, performing of rites or teaching. Freedom of religion shall also include possession of sanctuaries and other places of worship for the satisfaction of the needs of believers as well as the right of individuals, wherever they may be, to benefit from religious services.
- (3) Parents shall have the right to ensure their children a moral and religious upbringing and teaching in accordance with their convictions. The provisions of Article 48, para. 1 [*which states that 'Parents shall have the right to rear their children in accordance with their own convictions'...*] shall apply as appropriate.

- (4) The religion of a church or other legally recognized religious organization may be taught in schools, but other peoples' freedom of religion and conscience shall not be infringed thereby.
- (5) The freedom to publicly express religion may be limited only by means of statute and only where this is necessary for the defence of State security, public order, health, morals or the freedoms and rights of others.
- (7) No one shall be compelled to participate or not participate in religious practices.
- (8) No one may be compelled by organs of public authority to disclose his philosophy of life, religious convictions or belief.

Church-State relations are regulated by two Acts of 1989: the Statute on the Relationship between the Catholic Church and the State and the Statute on Freedom of Conscience and Religion, as amended. It is the latter that defines the basic relationship between the State and churches other than the Roman Catholic Church. In particular, Article 2 defines the meaning of freedom of conscience and guarantees, *inter alia*, the right to establish churches, the right of citizens manifest their beliefs and educate their children in accordance with their own convictions and the right to remain silent on matters of religious belief. Article 10.2.1 declares there are to be no State endowments or subsidies for churches; but there is also a provision permitting financial aid to churches according to specific regulations. Article 11.1 establishes the autonomous character of churches and denominations while Article 11.3 gives them *locus* before the Constitutional Tribunal. ([Daniel 1995](#)).

Those rather bald statements of the law can only give a massively over-simplified impression of the complicated relationship between the majority Roman Catholic Church and the Polish State. During the post-War Communist regime, the Roman Catholic Church, under the leadership first of Cardinal Wyszyński then of Cardinal Woytyła (later Pope John Paul II), was perhaps the only institution strong enough to attempt to act as a serious counterweight to the Communist Party. During and after the period of martial law that was declared by General Jaruzelski in December 1981 and lasted until July 1983, the Church was heavily involved with the activities of Lech Wałęsa and *Solidarność*. One result of the close relationship between *Solidarność* and the Roman Catholic Church was that when the Communist Government fell in 1989 and the devoutly-Catholic Wałęsa came to power, the social policies of the new Government had a decidedly pro-Church stance: in particular, the reintroduction of religious instruction in public schools (which happened in 1990 without any prior parliamentary discussion), a prohibition on abortion and restrictions on contraception.

That situation still continues to some extent. Relations between Poland and the Roman Catholic Church are regulated by a [Concordat](#) signed in 1993 and ratified in 1998. In the view of members of religious minorities, the Concordat unduly favours the Roman Catholic Church over other religions and denominations and strengthens its position. Two points are perceived as particularly controversial: the obligation under Article 12 for the State to provide Roman Catholic religious education in public schools if requested and the recognition in Article 10 of marriages solemnised under Roman Catholic canon law. In addition to the Concordat, separate regulations have been created for the religious groups that enjoy a special status as 'historic churches'. ([Zielinska 2003](#)).

As to religious education, in *Grzelak v Poland* [[2010](#)] [ECtHR \(No. 7710/02\) \(15 June 2010\)](#) the ECtHR held that the failure by the authorities to provide a primary-school child with a course in ethics as an alternative to religious education classes breached his rights under Articles 14 (discrimination) and 9 (thought, conscience and religion) ECHR. But perhaps even more controversial is the position of the Polish State with regard to issues of of sexual morality, two aspects of which have come under scrutiny by the ECtHR.

The current law permits abortion only when the pregnancy has resulted from rape, when giving birth would put the mother's life at risk or when there is a serious possibility of birth defects. In February 2006 Ms Alicja Tysiąc claimed before the ECtHR that the effect of the Polish abortion law had been to violate her rights under Articles 8 (private and family life) and 14 (discrimination) ECHR, because as a result of its operation her third pregnancy (which, in her view, should have been terminated) had

severely damaged her eyesight and rendered her disabled. In *Tysi c v Poland* [2007] ECtHR (No. 5410/03) the Court unanimously rejected her allegation that there had been a violation of Article 3 (inhuman or degrading treatment) but held by six votes to one (Borrego Borrego J dissenting and Bonello J expressing a separate opinion) that there had been a violation of Article 8: the State had failed to comply with its positive obligations to secure to Ms Tysi c effective respect for her private life.

A similar conservative attitude has been apparent in relation to homosexuality. In *B czkowski & Ors v Poland* [2007] ECtHR (No. 1543/06) (3 May 2007) the refusal by the Mayor of Warsaw to allow a demonstration to protest about discrimination against homosexuals – while at the same time allowing six other demonstrations *against* homosexuals – was held to have contravened the applicants' rights under Article 11 ECHR (peaceful assembly and association). They had also been denied an effective remedy under Article 13. More recently, in *Kozak v Poland* [2010] ECtHR (Application No. 13102/02 280) (2 March 2010) it was held that a blanket refusal to allow surviving same-sex partners to succeed to social housing tenancies on the grounds that only a relationship between a woman and a man could constitute *de facto* marital cohabitation violated Article 14 (discrimination) ECHR in conjunction with Article 8 (private and family life).

One legacy of Communism has positively benefited the Church: the Church Fund established in 1950 by the Communist Government in compensation for confiscated Church land. In 2003 the Church received about  12 million in State aid for priests' pensions and church building maintenance. This became a political issue at the election in September 2005 (won by the conservative Law and Justice Party) when the Alliance of the Democratic Left (SLD) proposed the Church Fund's abolition. (Easton: 2004).

Portugal

Article 41 of the Constitution provides for freedom of religion and prohibits religious discrimination. Other than the Constitution, the two most important documents relating to religious freedom are the Religious Freedom Act 2001 and the Concordat with the Holy See concluded in 1940. Much the largest religious group in Portugal, with about 85 per cent of the population, is the Roman Catholic Church. The Government signed a new Concordat with the Vatican in May 2004 which abrogated the previous Concordat of 1940 and recognised the legal personality of the Portuguese Episcopal Conference.

The [Law on Religious Freedom 2001](#) (Law n  16/2001) was implemented after a two-year delay by Decree-Law 134/2003. Article 1 declares that

... freedom of conscience, of religion and of worship is inviolable and guaranteed to all in accordance with the Constitution, the Universal Declaration of Human Rights, the applicable international law and the present law

while Article 2 declares the principle of equality. Articles 3 and 4 espouse the principles of separation and impartiality as between religious groups, as follows:

Article 3: Principle of separation

Churches and other religious communities are separate from the State and are free in their manner of organization and in the exercise of their activities and worship.

Article 4: Principle of the non-denominational State

1. The State neither adopts any religion whatsoever nor pronounces on religious issues.
2. The non-denominational principle shall be respected in official ceremonies and State protocol.
3. The State shall not organise education and culture according to any religious directives whatsoever.

4. State education shall be non-confessional.

The Decree-Law of 2003 creates a legislative framework for the registration of religious groups established in the country for at least 30 years and for those recognised internationally for at least 60 years and gives them many of the rights that were previously enjoyed only by the Roman Catholic Church. ([2003: CFR–CDF](#)). The legislation establishes a register of ‘collective religious bodies’ and, while not obligatory, registration entitles qualifying religious groups to full tax-exempt status and to give moral and religious instruction in State schools, gives legal recognition to their marriage ceremonies and other rites and gives them access to chaplaincy facilities in prisons and hospitals. (Canas 2005: 446–8). In addition, each religious group may conclude its own ‘Concordat’ with the Government.

Romania

Much the largest religious community in Romania is the Orthodox Church, which claims the allegiance of about 80 per cent of the population. There are also significant numbers of Latin-rite Catholics, together with a smaller Eastern-rite ‘Greek-Catholic’ Church.¹⁷ Article 29 (Freedom of conscience) of the [Constitution](#) provides that–

- (1) Freedom of thought, opinion, and religious beliefs shall not be restricted in any form whatsoever. No one shall be compelled to embrace an opinion or religion contrary to his own convictions.
- (2) Freedom of conscience is guaranteed; it must be manifested in a spirit of tolerance and mutual respect.
- (3) All religions shall be free and organised in accordance with their own statutes, under the terms laid down by law.
- (4) Any forms, means, acts or actions of religious enmity shall be prohibited in the relationships among the cults.
- (5) Religious cults shall be autonomous from the State and shall enjoy support from it, including the facilitation of religious assistance in the army, in hospitals, prisons, homes and orphanages.

The Government officially recognises eighteen religious communities; however, the law differentiates between ‘recognised’ and ‘unrecognised’ religions. Decree 177/1948 ‘for the General Regime of Religions’, enacted by the Communist Government, has never been formally abrogated and remains the basic law governing the status of religious communities. According to [a 2005 study for the Council of Europe](#), several of its provisions no longer appear to be implemented in practice; however, the current situation causes legal uncertainty because there does not seem to be a clear procedure for the registration of religious groups. (Venice Commission 2005:2).

A law on religious freedom took effect in January 2007 that provides for a three-level system of recognition: ‘cults’ (which will receive financial support), ‘religious associations’, and ‘religious groups’, each with specific rights and obligations. The status of ‘cult’ is reserved for long-established religious communities with a large number of members, though under the proposal it would be possible – in due course – for a religious association to achieve the status of a cult. ‘Religious groups’ are groups of people who share the same beliefs but who do not receive tax exemptions or support from the State.

A draft of the law (which, *inter alia*, describes the Romanian Orthodox Church as the ‘National Church’) was criticised by the Venice Commission of the Council of Europe on the grounds that, if enacted, it would create impediments for many unrecognised religious groups seeking official

¹⁷ *Biserica Română Unită cu Roma, Greco-Catolică*: ‘The Romanian Church United with Rome, Greek-Catholic’. In spite of the name, the language of the rite is Romanian rather than Greek.

recognition. The Venice Commission had no great problem with the description of the Orthodox Church but gave the rest of it what can only be described as grudging approval:

...despite certain excessive interferences with the autonomy of the religious communities which would need to be addressed... the draft law is likely to constitute a marked improvement as compared to the current situation, which is characterised by a lack of legal certainty. The draft law will in particular better circumscribe and limit the role of the Government in controlling the activities of religious communities, while reiterating – although at length – key elements of the freedom of thought, conscience and religion. (Venice Commission 2005:3).

The study did, however, suggest that the threshold for registration might have been set too high and expressed doubts about the compatibility of the provisions on property with the European Convention of Human Rights (Venice Commission 2005:4, 6). It concluded that increased efforts should be made fully to respect the autonomy of religious communities and that the provisions dealing with judicial protection needed to be strengthened in order to ensure right of access to a court. (Venice Commission 2005:8).

The issue of property belonging to Greek-Catholic parishes expropriated and transferred to the Orthodox Church by the Communist Government in 1948 also remains unresolved: though many buildings have been returned, the Greek-Catholics are still claiming ownership of about 300 churches. In *Sfântul Vasile Polonă Greek Catholic Parish v Romania* [2009] ECtHR (No. 65965/01) (7 April 2009), protracted delays in proceedings for the return of the applicant parish's property given to the Orthodox Church by the Romanian Government when the Greek Catholic Church was suppressed in 1948 were held to have violated its rights under Article 6 ECHR (fair hearing) and Article 13 (effective remedy). Similarly, in *Sâmbata Bihor Greek Catholic Parish v Romania* [2010] ECtHR (No. 48107/99) (12 January), a refusal by the domestic courts to hear an application from a Greek Catholic parish for an order requiring the Orthodox parish to allow it to hold services in its former church was held to have breached Article 6.

In its latest report on religious freedom in Romania the US Department of State concludes that there have been 'reports of societal abuses or discrimination based on religious affiliation, belief, or practice'. (*IRFR 2010: Romania*).

The Slovak Republic

Article 1 of the [Constitution](#) declares that the Republic 'is not bound to any ideology or religious belief'. Article 24 guarantees freedom of religion and states that churches and religious communities shall administer their own affairs independently of State institutions. Laws passed in 1991, 1992 and 2007 regulate registration. The register is maintained by the Church Department of Ministry of Culture and the threshold for registration is very high. Originally registration required 20,000 adherents who must be permanent residents, but after the amendments of 2007 new religious groups need to demonstrate that they have at least 20,000 *members* (out of a population of about 5.4 million) before being allowed to register – though the religious groups already established before the 1991 law was passed were exempted from the membership threshold.¹⁸

The strictness of the registration criteria have been criticised as discriminatory: 'Presently, there are eighteen registered churches in Slovakia and it is noteworthy that only six of them have actually reached the threshold of 20,000 members'. (Ondrasek 2009). The Prosecutor General of the Slovak Republic, Dobroslav Trnka, decided to test the registration law and filed a complaint with the Constitutional Court, arguing that the law was discriminatory and unconstitutional. In February 2010,

¹⁸ The registration threshold in Austria is 0.2 per cent of the population: about 16,000 people. In percentage terms, the registration threshold in Slovakia, based on the 2001 Census return, is 0.37 per cent.

however, the Constitutional Court ruled that the complaint was unsubstantiated and as a result, the religious registration law will stay intact for the time being. (Ondrasek 2010).

Religious groups are not *required* to register, but only registered faith-communities have the explicit right to hold public worship,¹⁹ to conduct marriages that can be subsequently registered with the civil authorities and to receive tax concessions. Unregistered religious groups may not build public places of worship, nor are their wedding ceremonies recognised as valid in civil law. Although the Church of the Nazarene and the Muslim communities existed in the country prior to 1991 they were never properly registered; therefore, they were not given registered status under the 1991 law.

Registered groups receive government subsidies for clergy stipends and office expenses. State funding is based on the number of clergy rather than the number of adherents; the Roman Catholic Church (which has by far the largest number of adherents: about two-thirds of the population) receives much the greatest Government subsidy because it has the most clergy. Government funding is also provided to religious schools and to teachers of religion in State schools.

In 2008, Government funding for registered groups totalled some £30,000,000. (Ondrasek 2009). However, State funding is a matter of controversy and, according to the General Secretary of the Ecumenical Council of Churches in Slovakia, 'it remains only a question of time until a total withdrawal of State support to churches will gain necessary political support in the public'. (Prostredník 2003).

Slovenia

Article 7 of the [Constitution](#) provides for freedom of religion and separation of Church and State:

The state and religious communities shall be separate.

Religious communities shall enjoy equal rights; they shall pursue their activities freely.

Article 41 guarantees the free profession of belief and declares that 'No one shall be obliged to declare his religious or other beliefs'. Because of that provision there are no precise figures for the relative sizes of the various religious communities; however, according to the 2002 Census 58 per cent of the population was Roman Catholic. The current law governing Church-State relations is to be found in the Religious Freedom Act 2007, available at [this link](#) on the website of the [Office for Religious Communities](#).

An Agreement Between The Republic of Slovenia and The Holy See on Legal Issues was concluded in 2001. In addition, however, Agreements have been concluded with the Evangelical Church (2000), the Pentecostal Church (2004), the Serbian Orthodox Church (2004) and the Buddhist Congregation Dharmaling (2007). *Laïcité* notwithstanding, Sergej Flere suggests that the size of the Roman Catholic population coupled with the fact that the Government of Slovenia conducts formal diplomatic negotiations with the Holy See (while negotiating informally with other religious groups) means that, *de facto*, the State 'extends privileges to just one religion, namely the one already in the majority and historically entrenched'. (Flere 2004:172).

Article 6(1) of the 2007 Act declares that 'The activities of churches and other religious communities are free regardless of the fact whether they are registered or non-registered'. Though there are no formal legal requirements for recognition as a religion and faith-communities are not subject to State supervision, religious groups must register with the Office for Religious Communities if they wish to be regarded as legal entities and benefit from quarterly VAT rebates. However, the registration threshold is minimal: Article 13(1) of the 2007 Act provides that in order to register, a faith-group must have been active in Slovenia for at least ten years and have at least 100 adult members who are either citizens or foreigners with permanent residence.

Article 29 of the 2007 Act (Financing of registered churches and other religious communities) states that

¹⁹ Though, in practice, there is no interference by the authorities with unregistered worship.

(1) Registered churches and other religious communities shall be financed mostly by donations and other contributions made by natural and legal persons and from their other property as well as by the contributions of international religious organizations whose members they are.

(2) Registered church or other religious community may collect voluntary contributions in compliance with its rules and effective legislation.

(3) The state may provide material support to registered churches and other religious communities because of their general benefit as defined in Article 5 hereof.

Under the terms of Article 29(3), the state provides targeted financial support for the social security contributions of clergy and certain lay employees of registered churches and other religious communities: currently 21.86 per cent of the basic contribution. In 2008 the total amount of support was €2,433,025 [some £2.15 million], paid to 1,118 Adventist, Roman Catholic, Evangelical, Muslim, Orthodox and Pentecostal religious employees. In addition, the state provides modest financial support for religious communities: in 2008 a total of €58,550 [some £50,000]. ([Office for Religious Communities of the Republic of Slovenia 2009](#)).

Faith-communities are, in essence, private voluntary associations, and Lovro Šturm describes Church-State relations in Slovenia as ‘an ultra-strict model of separation’ (Šturm 2005: 475). For example, there is no religious education in State schools, though the State co-finances the activities of such private kindergartens and schools established by religious communities, by funding 85 per cent of salaries and material costs of the programme in a comparable public institution and 100 per cent of for certain long-established schools.

Spain

Chapter 2, Article 16(1) of the [Constitution](#) provides for freedom of religion and freedom of worship; moreover, under Article 16(3) *Ninguna confesión tendrá carácter estatal*: ‘There shall be no State religion’. That said, however, under the same Article 16(3) ‘[t]he public authorities shall take into account the religious beliefs of Spanish society and maintain the appropriate relations of cooperation with the Catholic Church and other denominations’.

Because Article 16(2) declares that no-one may be obliged to make a declaration of ideology, religion, or belief, there are no formal Government statistics on religious demography. Iván Ibán suggests that though four Spaniards in five regard themselves as Roman Catholics, this ‘should be seen in the context of an increasingly secular society which considers that standards of conduct should not be determined by any official religion’. (Ibán 2005: 140). Nevertheless, as a result of four Accords with the Holy See signed in 1979, the Roman Catholic Church has a special status with respect to finance, religious education, involvement with the armed forces, and judicial matters.

Article 1 of the [General Act on Religious Freedom 1980](#) (*Ley orgánica 7/1980 de 5 de julio de libertad religiosa*) guarantees the fundamental right to freedom of worship and religion under the Constitution, ensures equal treatment before the law and reiterates the secular nature of the State.²⁰ Article 2 expands on freedom of worship, asserts the right of faith-communities to establish places of worship, to appoint and train their ministers, to promulgate and propagate their own beliefs and to maintain relations with their own organisations or other religious faiths whether in Spain or beyond. Article 3.3 obliges public authorities to facilitate attendance at religious services in public, military, hospital, community establishments and prisons and to facilitate religious training in State schools. Article 5 confers legal personality on registered faith-groups provided that they are entered on the public Registry kept by the Ministry of Justice, Article 6 guarantees independence and internal self-regulation and Article 7 provides for cooperation agreements which, subject to approval by statute,

²⁰ There has been speculation that a new General Act on Religious Freedom might be brought before the *Cortes* in 2010.

may confer upon faith-groups the same tax benefits that apply to not-for-profit entities and charitable organisations. Article 8 establishes an advisory Committee on Freedom of Worship within the Ministry of Justice consisting of equal numbers of representatives of central government and of the faith-communities – with expert assistance – to review, report on and make proposals on the enforcement of the Act and with a mandatory role in the preparation of and recommendations for cooperation agreements under Article 7.

Article 3.2 of the Act, however, makes an important reservation: organisations involved in the study or practice of psychic or parapsychological phenomena or the dissemination of humanistic or spiritualistic values or other similar non-religious aims do not qualify for the protection provided under the Act. This does not, however, constitute a blanket rejection of ‘new religious movements’. In 2007 the *Audiencia Nacional de España* (roughly equivalent to the English Court of Appeal) ruled on the status of Scientology in Spain and concluded that its new statutes did *not* satisfy the test of exclusion under Article 3.2 – and thereby declared its activities legal.²¹

As noted above, under Articles 5.1 and 5.2, in order to acquire legal personality a faith community must register with the Ministry of Justice, submitting evidence its foundation or establishment in Spain, a declaration of religious purpose, and its rules. However, if such a group is judged *not* to be a religion, it may nevertheless be included on a Register of Associations maintained by the Ministry of the Interior, which gives it legal status under the law regulating the right of association. (*IRFR 2006: Spain*). The first section of the Register of Religious Entities lists religious entities of the Roman Catholic Church and those non-Catholic churches, denominations and communities that have a cooperation agreement with the State.

As regards finance, the Roman Catholic Church is supported both through direct payments and through voluntary tax contributions of up to 0.5 per cent of income tax. In 2003 voluntary taxpayer contributions amounted to some £90 million (€135 million) while the Government also provided an additional £18 million (€28 million) in direct payments – a figure that does not include support for the teaching of religion in public schools nor for military and hospital chaplains (*IRFR 2005: Spain*). Representatives of Protestant, Jewish, and Islamic faiths have also signed bilateral agreements with the Government and are seeking parity of treatment on the matter of voluntary income tax contributions.

Sweden

Article 1.6 of Chapter 2 (Fundamental rights and freedoms) of the [Instrument of Government 1974](#) guarantees ‘freedom of worship: that is, the freedom to practise one’s religion alone or in the company of others’.

Prior to 1 January 2000 the [Church of Sweden](#) was the Established Church; bishops and cathedral deans were appointed by the Crown on the advice of the Government and, in addition, the Crown appointed the new rector on every third occasion on which a parish became vacant. However, though it remains a major player within Swedish society, the legal status of the Church changed radically at midnight on 31 December 1999 (Cranmer 2000:417; Gustafsson 2003), when it was disestablished.

Prior to disestablishment there was a long series of consultations, culminating in two major pieces of legislation which are regarded as part of the ‘fundamental law’ of the State: the [Religious Communities Act 1998](#) and the [Church of Sweden Act 1998](#).

The Church of Sweden Act is framework legislation, section 3 of which gave the Church full legal personality in its own right for the first time: ‘The Church of Sweden may acquire rights and assume liabilities as well as plead a cause in court’. The detail was provided by the Church Ordinance that came into force on 1 January 2000 (replacing the Church Code 1992 and its associated legislation). It

²¹ *Iglesia de Scientology de España v Ministerio de Justicia* [2007] *Audencia Nacional* 11 October 2007 (No 0000352/2005).

has five constituent parts: the Confession of Faith, Order of Services and the General Synod [*kyrkomöte*]; working structures at the various levels; elections, parish boundaries, church registers and archives; finance and property; and staff, structures of authority and complaint procedures.

The two Acts of 1998 and the Church Ordinance put clergy of the Church of Sweden on the same footing as clergy of other denominations. Since the passing of the Act on Religious Communities, any religious organisation that fulfils a few very basic criteria has been able to register as a religious community and acquire legal personality. The purpose of the change was to enable dissenting churches who wished to do so to formalise their position as *churches*; prior to the Act, the Roman Catholic and Orthodox Churches had described themselves as 'foundations'. Registration is not compulsory and those faith-communities that do not wish to register are free to continue as foundations – but registration is a necessary prerequisite for any church that wants its membership dues collected through the tax system or wishes to solemnize marriages that are recognised in civil law. (Friedner 2005: 545). All religious institutions, including the Church of Sweden, are now taxed as not-for-profit organisations. (Persenius 1996: 135).

Switzerland

According to the 2000 Census returns, about 40 per cent of Swiss are Roman Catholics and about 35 per cent Protestants. The religious demography varies considerably as between the cantons. Berne, for example, has a substantial majority of Protestants while Italian-speaking Ticino is very largely Roman Catholic.

Article 15 of the [Federal Constitution of the Swiss Confederation](#) provides for freedom of creed and conscience, and the Federal Penal Code prohibits any form of discrimination against any religion or its adherents. However, the Swiss Confederation does not make laws on Church-State relations: instead, according to Article 72 of the Federal Constitution:

- (1) The regulation of the relationship between the church and the State shall be the responsibility of the Cantons.
- (2) The Confederation and the Cantons may within the scope of their powers take measures to preserve public peace between the members of different religious communities.

The result is that the position across the Cantons is by no means uniform, as the following examples indicate.

Perhaps surprisingly in view of its religious history as the cradle of Calvinism (or there again, perhaps because of it), Geneva has no national church at all and espouses strict separation. Article 164(1) of the [Constitution](#) guarantees freedom of religion; but Article 164(2) states that 'Neither the State nor the municipalities funds nor subsidises any religious organisation': *L'Etat et les communes ne salarient ni ne subventionnent aucun culte*. The activities of religious communities in the Canton are regulated by private rather than public law.

Like Geneva, the Canton of Neuchâtel rejects establishment but in a less-extreme way. Article 1.1 of its [Constitution](#) declares it to be 'a democratic, non-religious and social republic and guarantees fundamental rights': *une république démocratique, laïque, sociale et garante des droits fondamentaux*. On the other hand, separation does not involve non-recognition or non-cooperation. Article 98 declares that:

- (1) The State recognizes the Evangelical Reformed Church, the Roman Catholic Church and the Catholic Christian Church [ie the Swiss element of the Old Catholic Union of Utrecht] of the Canton of Neuchâtel as public institutions representing the country's Christian traditions.
- (2) The State recognises with gratitude the voluntary church contribution that the recognised Churches ask of their members.

- (3) Services that the recognised Churches make to the community give rise to a financial contribution from the State or from the municipalities.
- (4) The recognised Churches are exempt from taxes on property used for religious activities and for the services they provide to the community.
- (5) The State may conclude Concordats with recognized churches.²²

In [Underlying principles of the Republic and Canton of Neuchâtel](#) the Cantonal Government explains its stance on *laïcité* like this:

How is a secular State defined? It is a State where public institutions are separated from the church. There is no State religion but a government recognising religious freedom. This freedom includes both freedom of thought and of belief as well as that of the freedom of religious services. By virtue of this liberty, a commune in Neuchâtel cannot forbid Muslim pupils in wearing headscarves in class. Nevertheless, it is not the same for... a teacher because this contradicts the principles of non-denomination of public schools. The State has an obligation to be open to all religious and philosophic beliefs. Nonetheless, that does not prevent [it] from recognising the three Christian churches [in] the statute of institutions of public interests.

Under Article 121 of the [Constitution of the Canton of Berne](#), the Reformed Church, the Roman Catholic Church and *l'Eglise catholique chrétienne* (which are generally regarded as the three 'traditional denominations') are 'officially recognised' by the Canton with legal personality as public corporations. Within the boundaries laid down by cantonal law they administer their own property and direct their own internal affairs, defined in the Law on the National Churches of Berne, Article 3 as

... everything concerned with preaching, doctrine, the cure of souls, worship, the religious task of the national Churches, of parishes and clergy, the diaconate and mission: *...tout ce qui concerne la prédication, la doctrine, la cure d'âmes, le culte, la tâche religieuse des Eglises nationales, des paroisses et des ecclésiastiques, la diaconie ainsi que la mission.*

Article 122 of the Constitution also gives the three churches the right to be consulted and to comment on cantonal and inter-cantonal matters that affect their interests. In addition to the three national churches, Article 126(1) recognises the Jewish community as a body in public law.

Article 141 of the [Constitution of the Canton of Fribourg](#) recognises the Roman Catholic Church and the Evangelical-Reformed Church as institutions under public law. Other religious communities are regarded as private institutions; but Article 142(2) provides that if they respect fundamental rights and their social importance justifies such action 'they can obtain the prerogatives of public law or may be given a public statute'.

Articles 91–92 of the [Cantonal Constitution of Thurgau](#) recognise the Reformed and Roman Catholic Churches as *Landeskirchen* with the right to regulate their internal affairs. Article 93 accords legal personality to parishes [*Kirchgemeinden*] and authorises them to impose a church tax.

In 2005, the Canton of Zurich adopted a new [Constitution](#) that grants the Roman Catholic Church, *l'Eglise catholique chrétienne* and the Reformed Church greater autonomy in regulating their internal affairs and gives official recognition (though without the benefit of the church tax) to two local Jewish

²² (1) *L'Etat reconnaît l'Eglise réformée évangélique, l'Eglise catholique romaine et l'Eglise catholique chrétienne du canton de Neuchâtel comme des institutions d'intérêt public représentant les traditions chrétiennes du pays.*

(2) *L'Etat perçoit gratuitement la contribution ecclésiastique volontaire que les Eglises reconnues demandent à leurs membres.*

(3) *Les services que les Eglises reconnues rendent à la collectivité donnent lieu à une participation financière de l'Etat ou des communes.*

(4) *Les Eglises reconnues sont exemptes d'impôts sur les biens affectés à leurs activités religieuses et aux services qu'elles rendent à la collectivité.*

(5) *L'Etat peut passer des concordats avec les Eglises reconnues.*

communities. An amendment to the previous Cantonal Constitution that would have provided for the recognition of non-traditional religious communities had been rejected in 2003. ([IRFR 2005: Switzerland](#)).

With the obvious exceptions of Geneva and Neuchâtel, most cantons support at least one of the three traditional denominations financially through the church tax; and certain cantons support the Jewish community as well. In order to receive preferential tax treatment, religious organisations must be registered. In some cantons the church tax is entirely voluntary; in others, it is compulsory for church members and, as in Germany, an individual who chooses not to pay it may have to leave his or her church. In some cantons private companies must also pay the church tax. Again with the exception of Geneva and Neuchâtel, religious instruction is given in cantonal schools.

The United Kingdom

The United Kingdom of Great Britain and Northern Ireland (to give it its full title, for reason which will soon become clear) consists of three separate jurisdictions: England & Wales, Northern Ireland and Scotland, each with its own legal system.

The [Parliament of the United Kingdom](#) is responsible for legislation on a range of reserved matters such as defence and taxation, while the UK Government is responsible for areas of policy such as defence, foreign affairs and economic regulation. For the precise distribution of powers between the UK Parliament and the devolved Parliaments reference should be made to the relevant devolution legislation: and further elaboration would be outside the scope of these *Notes*. That said, however, domestic [legislation](#) (particularly on social issues) is very largely made separately for each country through the UK Parliament (for England), the [Scottish Parliament](#), the [National Assembly for Wales](#) and the [Northern Ireland Assembly](#) – though the UK Parliament frequently legislates for Scotland on devolved matters with the agreement of the Scottish Parliament as signified by a legislative consent resolution.

In addition, England & Wales, Northern Ireland and Scotland each has its own system of domestic courts, with appeal lying to the [Supreme Court](#) (except in criminal causes in Scotland where there is normally no further right of appeal from the Court of Criminal Appeal other than on human rights points: see, for example, *Cadder v HM Advocate* [\[2010\] UKSC 43 \(26 October 2010\)](#)).

Though the foregoing might appear to have been cut and pasted from a press release by the [Department of the Bleeding Obvious](#), it is not, unfortunately, always obvious to commentators on Church and State affairs who (to put it at its most charitable) sometimes appear to be slightly confused about the difference between “Great Britain” and “The United Kingdom”. The problem is particularly acute in relation to Scotland. Even before the [Scotland Act 1998](#), much domestic legislation for Scotland was made by either by separate Acts of the UK Parliament or by separate Parts within UK Acts: therefore, before citing a UK Act as authority for some proposition about the legal position in Scotland it is necessary to make a careful check as to whether or not the particular section of the Act in question extends to Scotland. As the National Assembly in Cardiff acquires increased powers to legislate on domestic matters the same will become the case in respect of Wales. So far as Northern Ireland is concerned, much of the legislation made at Westminster during direct rule (almost all of it by Order in Council rather than by Act) is still in force; but, again, the revival of the Northern Ireland Assembly means that the majority of domestic issues will once more be regulated by local legislation rather than by legislation enacted at Westminster.

Generally speaking, in the UK faith communities are free to operate as they see fit, *so long as they do so within the general law*. As we have seen, several European jurisdictions have registration requirements for religious organisations to a greater or lesser degree. In one or two cases the requirements are quite onerous; and even where requirements are minimal they are sometimes necessary as a prerequisite to fairly simple transactions such as opening a bank account. In the UK there is no coercive system of official registration of religious communities: under the common law in

all three jurisdictions the liberty of the subject is simply *assumed*: ‘the starting point of our domestic law is that every citizen has a right to do what he likes, unless restrained by the common law ... or by statute’.²³ Moreover, the courts in England and Wales have been very reluctant to involve themselves in internal religious issues or to make judgments as to the worth of particular religions or their teachings; and they will uphold the internal rules of the association upon assenting members but will generally only interfere to protect a civil right or to administer property.²⁴

That said, however, if a new religious group wishes to take advantage of the tax benefits of charitable status it will normally be required to register with the appropriate charity regulator²⁵ and, in addition, because tax law is not, currently, a devolved matter it will have to satisfy HM Revenue & Customs (which administers tax reliefs throughout the UK) that it meets the criteria of *English* charity law even if based in Scotland or Northern Ireland. In order to register as a charity the group will have to demonstrate to the appropriate regulator that it provides benefit to the public and in one instance, the Church of Scientology, recognition as a charity has been refused: see *Church of Scientology (England and Wales)* [Decision of the Charity Commissioners of 17 December 1999](#).

For historical reasons each of the four territories within the UK has a different religious settlement:

- The [Church of England](#) broke with Rome at the Reformation and King Henry VIII assumed the powers of governance previously exercised by the Pope: the Royal Supremacy. At first, the Reformation was about the exercise of authority: a political reformation, not a theological one. Not until Henry was dead, with the publication of the Prayer Book of 1552 in the reign of Edward VI, did the Church adopt an overtly Calvinist/Protestant theological stance.
- The territory of *Northern Ireland* includes the northern part of the [Church of Ireland](#), which was also reformed and “established” by Henry VIII in the sixteenth century. The Church was disestablished and became independent by virtue of the [Irish Church Act 1869](#). The modern Church of Ireland is an All-Ireland institution across the two jurisdictions, North and South.
- After the Reformation, the dioceses in *Wales* were part of the Church of England. In 1921 the Welsh part of the Church of England was disestablished by virtue of the [Welsh Church Act 1914](#), becoming a separate Province in its own right as the [Church in Wales](#) (*Yr Eglwys yng Nghymru*), independent of the Church of England.
- *Scotland* was an independent country at the Reformation and went along a different path entirely. The Scots Reformation is generally regarded as beginning in 1560 with the publication of the *Scots Confession* (see the [Confession of Faith Ratification Act 1560](#)) but the Presbyterian form of government of the [Church of Scotland](#) was not finally settled until the enactment of the [Claim of Right 1689](#).

The Church of England

The constitutional position of the Church of England is partly a matter of common law and partly a matter of statute. It is by no means the only Church in Europe that is “established by law” – there are also state Churches in Denmark Iceland, Finland (the Church of Finland and the Autocephalous Orthodox Church) and Norway, together with the Autocephalous Orthodox Church in Greece and the

²³ *Attorney-General v Guardian Newspapers Ltd (No.2)* [1990] 1 AC 109 *per* Donaldson MR.

²⁴ See *Forbes v Eden* (1867) LR Sc & Div 568 – a case originating in Scotland which came before the House of Lords: ‘Save for the due...administration of property, there is no authority... to take cognisance of the rules of a voluntary society’ (at 581). Domestically, the Scottish courts are much more ready than those of England and Wales to review the actings of the tribunals of voluntary associations because in Scots law one does not have to demonstrate a public law element in a decision in order for it to be reviewable: see *West v Secretary of State for Scotland* 1992 SLT 636. For a recent (ongoing) example of judicial review of the decision of a private church tribunal see *MacDonald, Re Application for Judicial Review* [2010] ScotCS CSOH 55 (28 April 2010).

²⁵ The Charity Commission for England and Wales, the Office of the Scottish Charity Regulator or the Charity Commission for Northern Ireland. It should be noted that registration has not yet begun in Northern Ireland because of a technical flaw in the Charities (Northern Ireland) Act 2008 which requires an amending Act to correct it.

Roman Catholic Church in Malta. But the nature of the relationship between Church and State in England is very unusual.

- The Monarch is crowned in Westminster Abbey by the Archbishop of Canterbury.
- Under the [Act of Settlement 1700/01](#) the Monarch is required to 'join in communion with the Church of England as by law established' and may not be a Roman Catholic.
- the Archbishops of Canterbury and York, the Bishops of London, Durham and Winchester and the twenty-one senior diocesan bishops²⁶ sit in the House of Lords as full voting members.
- New bishops swear an Oath of Homage to the Monarch in person.
- The Crown appoints bishops and cathedral deans (and about 700 parish priests) on the advice of the Prime Minister (or, as appropriate, the Lord Chancellor).
- The law of the Church is part of the general law of England rather than a separate set of internal ecclesiastical rules.
- Under the terms of the [Church of England Assembly \(Powers\) Act 1919](#), major items of legislation (Measures) of the General Synod of the Church are made in the first instance by Synod but have to be approved by a Resolution of each House of Parliament before they become law – and when they *do* become law they are printed along with the Parliamentary statutes.
- The Church of England has a special position in providing chaplains to prisons, hospitals and the armed services in England.
- Parishioners, irrespective of whether or not they attend the church, have common law rights to be married in the parish church and to be buried in the churchyard should there be one.

However, notwithstanding its established status, the Church of England is not considered to be a public authority for the purposes of the Human Rights Act 1998 or the ECHR: see *PCC of the Parish of Aston Cantlow and Wilmcote with Billesley, Warwickshire v Wallbank & Anor* [2003] UKHL 37; [2004] 1 AC 546. Moreover, though separate institutions within it, such as the Church Commissioners and the Archbishops' Council, have legal personality, the Church does not possess an overarching legal personality *qua* Church of England.

The Church of Scotland

The Church of Scotland is Reformed in theology and Presbyterian in government. After considerable internal argument over the precise relationship of Church and State, the matter was resolved by the [Church of Scotland Act 1921](#) which, in the [Schedule](#) annexed to it, set out the understanding of Church and State on their mutual relationship. Three things stand out

Article III: ... As a national Church representative of the Christian Faith of the Scottish people it acknowledges its distinctive call and duty to bring the ordinances of religion to the people in every parish of Scotland through a territorial ministry.

Article IV: This Church as part of the Universal Church wherein the Lord Jesus Christ has appointed a government in the hands of Church office-bearers, receives from Him, its Divine King and Head, and from Him alone, the right and power subject to no civil authority to legislate, and to adjudicate finally, in all matters of doctrine, worship, government, and discipline in the Church ... Recognition by civil authority of the separate and independent government and jurisdiction of this Church in matters spiritual, does not in any way affect the character of this government ... or give to the civil authority any right of interference with the proceedings or judgments of the Church within the sphere of its spiritual government and jurisdiction.

²⁶ Other than the Bishop of Sodor & Man and the Bishop of Gibraltar in Europe.

Article VI: This Church acknowledges the divine appointment and authority of the civil magistrate within his own sphere ... The Church and the State owe mutual duties to each other, and acting within their respective spheres may signally promote each other's welfare. The Church and the State have the right to determine each for itself all questions concerning the extent and the continuance of their mutual relations in the discharge of these duties and the obligations arising therefrom.

It should be noted that Article III does not describe the Church of Scotland as an 'Established Church' but as a 'National Church'; and while academic commentators have argued over whether or not the Kirk is, in fact, 'Established' the argument is fruitless because its legal position is *sui generis*: the State supports the Church but does not legislate for it and certainly does not attempt to direct it in any way or to interfere in spiritual matters. However, the position of the Kirk is entrenched by the Act of Security 1704 and the Preamble to the [Treaty of Union](#), which declares that the 'Act for securing of the Protestant Religion and Presbyterian Church Government which by the Tenor thereof is appointed to be insert in any Act ratifying the Treaty' is 'expressly declared to be a fundamentall and essentiall Condition of the said Treaty or Union in all time coming'.

Uniquely, the Queen appoints the Lord High Commissioner to the General Assembly "to supply Our Presence and to hold Our Place" at meetings of the General Assembly. Moreover, unless and until the Court of Session or the Supreme Court takes a view entirely contrary to previous decided cases, the courts of the Kirk are free from judicial review. The unresolved question, however, remains: 'But precisely what are "matters spiritual" for the purposes of Article IV?' and that issue falls to be determined case by case: for a partial answer see *Percy (AP) v Board of National Mission of the Church of Scotland* [2005] UKHL 73; [2006] 2 AC 28.

As to religion in Scotland more generally, the Roman Catholic Church probably receives a greater degree of financial support from the Scottish Executive than does the Church of Scotland: Roman Catholics operate a separate and parallel system of church schools that is largely financed from public funds, while Church of Scotland children attend secular state schools.

The Church in Wales

Under the terms of the Welsh Church Act 1914 s 3:

(1) As from the date of disestablishment ecclesiastical courts and persons in Wales and Monmouthshire shall cease to exercise any jurisdiction, and the ecclesiastical law of the Church in Wales shall cease to exist as law.

The coercive jurisdiction of the church courts and the pre-1920 ecclesiastical law applicable to the Church of England therefore ceased to exist as part of public law in Wales. Nevertheless, the Church retains what Thomas Glyn Watkin (1990) has described as 'vestiges of Establishment'.

Baptised persons residents in Welsh parishes, whether members of the Church or not, retain the right at common law, inherited from the time when the Church was part of the Church of England, to be married in the parish church. Similarly, residents generally have a common law right to be buried in the churchyard should there be one. It should also be noted that the Church in Wales fulfils a similar role in education to that of the Church of England. About 60,000 children are educated in the [church schools](#) of the two major denominations in Wales: about 25,000 by the Church in Wales and about 35,000 by the Roman Catholic Church.

The Crown Dependencies

The [The Isle of Man](#), [Jersey](#) and [Guernsey](#) s are not part of the United Kingdom but self-governing Crown dependencies – though the UK Government is responsible for their defence and foreign relations.

The territory of The Isle of Man constitutes the Church of England [Diocese of Sodor & Man](#) – Sodor (*Suðreyjar*: the Southern Islands *alias* the Hebrides) no longer being part of the Church of England. The Bishop of Sodor and Man is a voting member *ex officio* of the Legislative Council (the upper

house of the Manx Parliament) and of [Tynwald](#) (the Legislative Council sitting together with the House of Keys).

Jersey and Guernsey are part of the Church of England [Diocese of Winchester](#). The Dean of Jersey is a member *ex officio* of the [States of Jersey](#), with the right to speak but not to vote.²⁷ In Guernsey the incumbents of the thirteen ancient rectorial benefices were members of the States of Deliberation until 1948. They are still members *ex officio*s of the States of Election which elects the Jurats (the permanent jurors for civil and serious criminal causes) to the Royal Court. The States of Election consists of the Bailiff, who presides, the existing Jurats themselves, the rectors or priests-in-charge, the Deputies to the States of Deliberation, 34 representatives of the Douzaines (one from each parish, equivalent to local councillors in the UK) and HM Procureur and HM Comptroller (ie the Law Officers): see Mellor (2005) and Hanson (2010).

Constitutional change?

For the past twenty years or so the position of the House of Lords as an unelected legislative chamber has been a matter of controversy. The Labour Party came to power in with a Manifesto pledge that ‘... the right of hereditary Peers to sit and vote in the House of Lords will be ended by statute’. The [House of Lords Act 1999](#) removed the vast majority of hereditary Peers from the House, leaving a rump of 92 representative hereditaries – intended as a purely temporary arrangement until the second stage of reform was complete. At the same time, a Royal Commission, chaired by Lord Wakeham, was appointed to examine proposals for further Lords reform. Its report published in January 2000, [A House for the Future](#), concluded that the House of Lords should be largely appointed but with an elected element.

It goes without saying that a wholly-elected Upper House would have no place for the bishops; and whether or not a reformed House of Lords should include an appointed element has continued to vex successive Governments. [House of Lords: Reform](#), published in February 2007, took the view that changing the status of the Church of England was, in the first instance, a matter for the Church itself and rejected the bishops’ outright removal but proposed a reduction in their numbers.

One of Gordon Brown’s first acts as Prime Minister was to issue a Green Paper, [The Governance of Britain](#), which, *inter alia*, addressed the question of senior church appointments; and in a statement to the House of Commons he said that ‘The Church of England is, and should remain, the established church in England. Establishment does not, however, justify the Prime Minister influencing senior church appointments, including bishops.’²⁸

The Green Paper set out his proposals more fully as follows:

- i. the Government’s commitment to the position of the Church of England by law established, with the Sovereign as its Supreme Governor, and the relationship between the Church and State;
- ii. that the Queen should continue to be advised on the exercise of her powers of appointment by one of her Ministers, which usually means the Prime Minister;
- iii. that, in choosing how best to advise the Queen, the Prime Minister should not play an active role in the selection of individual candidates and should not, therefore, use the Prerogative to recommend senior church appointments, including diocesan bishops; and
- iv. the Church should be consulted about new arrangements for selecting candidates.

In future, therefore, the Prime Minister would ask the Crown Nominations Commission for a single nomination for a vacant diocesan bishopric which he would then convey to the Queen – and that is the system that is now in place.

²⁷ [States of Jersey Law 2005](#) s 2.

²⁸ HC Deb (2006–07) 3 July 2007 c 817.

In the first session of Prime Minister's Questions after the general election in May 2010 the new Prime Minister, David Cameron, declared that he had always supported a predominantly elected House of Lords; and it was later announced that a cross-party committee would present proposals for a 'wholly or mainly elected' Upper House by December 2010.

The proposals for reform were duly published on 15 May 2011 in a document entitled [House of Lords Reform Draft Bill](#). The document envisages a House with 240 elected members and 60 appointed members nominated by a statutory Appointments Commission and recommended to the Queen for appointment by the Prime Minister. *In addition* to the 60 appointed members, however, a maximum of twelve Church of England bishops would continue to sit in the reformed House *ex officio*s. The number would be gradually reduced over time from the initial twelve to seven. That said, however, the document states explicitly that 'it is a draft and we will consider options including a wholly elected House'.

Postscript: Church and State in the Council of Europe

Whatever the topic, any comparative institutional study always runs the risk of failing to compare like with like – and the briefer and more impressionistic the study, the greater the risk of oversimplification. What *is* apparent from this kind of very general overview, however, is that even in avowedly-secular states some degree of accommodation is often made with religious organisations.

In [Recommendation 1804](#) of 2007, the Parliamentary Assembly of the Council of Europe concluded that

... one of Europe's shared values, transcending national differences, is the separation of Church and State. This is a generally accepted principle that prevails in politics and institutions in democratic countries. (para 4).

The evidence simply does not support that contention. It is certainly not the case for the United Kingdom, where the Church of England and the Church of Scotland each has a particular (and different) relationship with the State. As we have seen, even the Church in Wales, though disestablished, is by no means simply a private voluntary organisation with the power to order its own affairs subject to the general law. On the contrary, in order to make it easier for people to be married in a Church in Wales parish in which they are not normally resident it was necessary to seek primary legislation from Parliament: the [Marriage \(Wales\) Act 2010](#). The Church of England was able to relax its residence requirements for marriage by means of the [Church of England Marriage Measure 2008](#); but it was not within the powers of the Church in Wales to reform its own residence rules simply by amending its own Canons.

Of the countries surveyed in the foregoing notes, Denmark, Iceland and Norway all have a State Churches, Finland has *two*, and in 2007 the Church of the Faroes became the newest State Church in Europe. Greece gives a particular position in its Constitution to Orthodoxy, while the Constitutions of Liechtenstein and Malta both give special recognition to Roman Catholicism. Several countries operate a church tax, either for the benefit of a particular Church or to be distributed as the individual taxpayer requests. In some countries the tax is levied only on church members while, as we have seen, in Iceland not even atheists escape.

Other countries, while remaining neutral as between religious communities, support them financially through grant-in-aid. Viewed from the United Kingdom, the £50 million that the Czech Government gave as subsidy to religious groups in 2010 – most of which was for clergy salaries – looks extraordinarily generous: scaled up for the relative populations of the two countries, an equivalent grant for the UK would be some £290 million. Even in separationist France, where *laïcité* is so deeply engrained in the national psyche, the annual Government contribution to the upkeep of religious buildings is on a scale that faith communities in the United Kingdom can only dream of; and since 1959 a system of State-supervised and State-subsidised Roman Catholic schools has operated alongside the secular school system. Nothing remarkable about any of that from a United Kingdom

perspective: but the United Kingdom has not (yet) espoused separation of Church and State – still less secularism.

There are also countries where certain provisions of the secular law reflect the prevailing religious ethos. As we have seen, in Malta there is currently no domestic provision for civil divorce – though that may change as a result of the recent referendum – and the secular law recognises the exclusive jurisdiction of ecclesiastical tribunals over Roman Catholic marriages. Similarly, notwithstanding the fact that Ireland espouses a separationist model of Church-State relations, access to abortion is extremely limited – though that may change as a result of the Grand Chamber judgment in *A, B and C v Ireland* [2010] ECtHR (No. 25579/05) (16 December 2010) – and the constitutional bar on civil divorce was not lifted until after a referendum in 1995.

The reality is that Church-State relations across Western Europe exhibit a wide degree of variation – and given its patchwork political, social and theological history that should surprise no-one. The European Commission on Human Rights conceded as much when it concluded in *Darby v Sweden* [1989] ECommHR No. 11581/85 (9 May 1989) that

[a] State Church system cannot in itself be considered to violate Article 9... such a system exists in several Contracting States and existed there already when the Convention was drafted and when they became parties to it. However, a State Church system must, in order to satisfy the requirements of Article 9, include specific safeguards for the individual's freedom of religion. In particular, no one may be forced to enter, or be prohibited from leaving, a State Church. (para 45).

Few would quarrel with the proviso: but the separation of Church and State is certainly not yet 'a generally accepted principle'.

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