



WORSHIP CENTRES THE ACTUAL PROBLEM AND PROPOSAL FOR SOLUTIONS

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I.- THE ISSUE OF WORSHIP CENTRES FOR THE EVANGELICAL CHURCHES

INTRODUCTION

There are more than 28.000 worship centres in Spain. Of these, 23.074 worship centres belong to the Catholic Church and the other 5.549 to minor religious communities, which, more than 3.000 are Evangelicals o Protestants, approximately 1.000 are Muslims, 700 Jehovah's witnesses and the rest belong to other religious confessions.

Generally, the openings and operations of the Catholic worship centres have elapsed pacifically and progressively with a high stand of cultural and social acceptance. Besides, this religious community usually has a lot of facilities from the Public Administration, which eases the settlement of new worship centre. As a consequence, there is a low conflict level, and maybe, because of that, the Religious legislation hasn't experimented development concerning worship centres.

This position collides with what is happening with the minor religious communities that have more than 5.000 worship centres. These ones are characterized with another situation:

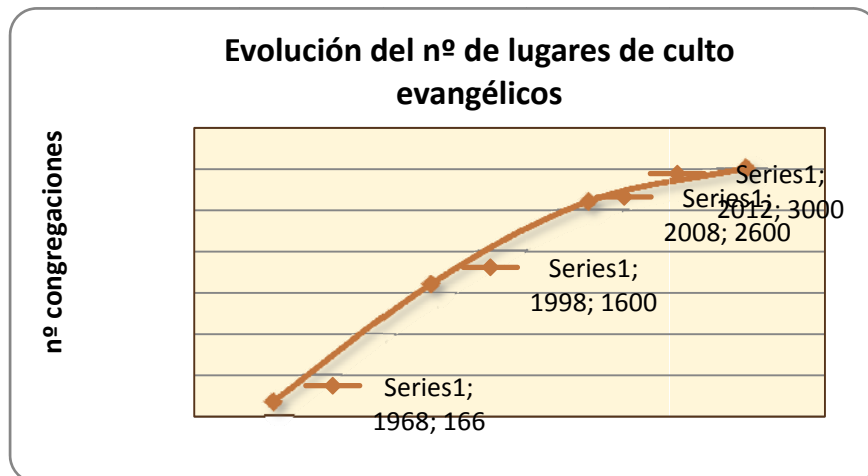
- A quickly growth of their worship centres.
- There is no a national law that regulates the openings and operations of worship centres.
- Deficient perspective and social acceptance. According to the last inquiry in the Basque Country, between 20% to 37% of the population declared them as nuisances just because there is a worship centre near their homes.
- There are very limited facilities from the Public Administration and a high level of incidences that revealed resistance or covert harassment to avert the opening of a worship centre in a locality.

The legislative deficiency concerning the worship centres and the social and administrative response, considering the progressive increment of the new worship centres, most of which are from minor religious communities, are not congruent according to our constitutional values. Being a problem that affects the minority, this matter has not received a proper treatment from the Public Administration and the mass media.

Although this matter could include other minor religious communities, through this document we preferred to expose the issue from FEREDe's perspective, offering alternatives and proposals that can contribute solutions to these problems.

A. GROWTH OF THE EVANGELICAL CHURCHES AND THE ISSUE OF THE WORSHIP CENTRES.

There are more than 3.000 Evangelical congregations in Spain, what means that there is approximately 13% respect to the Catholic worship centres.



The Protestant worship centres have experienced a constant progressive growth. Although there is not much official data from the Public Administration, our Federation made an inquiry in 1997 that revealed there were 1600 Evangelicals or Protestants centres. Ten years later, we made the same inquiry and it showed an increment of a 1.000 new congregations.

Meanwhile, the Catholic Church experienced an increment of 1.000 new worship centres, but in a much longer period. In 1998, the Ministry of Justice Guide of Religious Entities revealed that there were 22.000 Catholic worship centres, the same data showed in 2011 the figure of 23.074.

This important growth rate has gone along with a progressive increment of problems that affect the opening and function of the Evangelical churches. So much so, that at present, this is the most worrisome matter for the majority of the Evangelicals and Protestant churches in Spain. To illustrate this concern, we will highlight the most relevant legal aspects about the right to Religious freedom.

B. RELEVANT LEGAL ASPECTS CONCERNING THE WORSHIP CENTRES.

1. The worship centres are vital for the complete efficiency of fundamental rights to religious freedom.

It is known, that since the adoption of our Constitution, the right to religious freedom was avowed and well regulated by law in 1980. Despite the recognition of this fundamental right, nowadays there are many problems that haven't been resolved concerning the religious practice, especially for the minor religious communities.

The religious practice is related to the **collective dimension of this right** that is essential for the religious freedom fullness and existence. This dimension is explicit in the article 2 of the Ley Orgánica de Libertad Religiosa that regulates this right, saying ***“the right for the Churches, Confessions and religious Communities to establishing worship centres and having meetings with religious aims”***.

The exercise of this right is intimately connected to the worship centres where the religious practice is developed, matter that affects the collective exercise of religious freedom. This is understood by the Supreme Court of Spain in the **Judgments of June the 24th 1988 (RAJ 4724) and June the 18th 1992 (RAJ 6004)**, and also by the European Human Rights Court in the Judgment of September the 26th 1996 (Manoussakis and others c. Greece).

2. The only limit that can be imposed to the right to open worship centres is the protection to other fundamental rights and the public order protected by law.

The exercise of the collective dimension of the fundamental right to religious freedom has limits defined in the law, article 3 of the Ley Orgánica de religious freedom, that says: “the exercise of the rights derived from Religious freedom is limited only by the protection of other fundamental rights and public freedoms exercises, as well as the security, health and public morality safeguard, constituent factors of the public order protected by law in a democratic society”.

In practice, this means that the right of a church to open a worship centre can be limited only when there is a reason based in the protection to other fundamentals rights or the public order safeguard protected by law, considering into the bargain that our Constitutional Court has said, repeatedly, that those limits have to be interpreted with a restrictive criteria and in the most favorable purport for the right’s efficiency and essence (“favor libertatis” interpretation).

Nevertheless, reality is very different and nowadays, is increasingly frequent, that to open worship centre requirements are demanded that overstepped the mentioned limits for the free exercise of this fundamental right, generating an infringement of it.

Through this document, it is proposed actions to amend this situation, so the right to religious freedom can be guaranteed and protected properly.

C. SPECIFIC PROBLEMS OF WORSHIP CENTRES

1. Adverse historical and social starting point.

The starting point of the Spanish’s minor religious communities is unfavorable compared to the mayor ones. The Evangelicals and Protestants are part of historical reality of persecution and discrimination in addition of an actual unknown and difficult visibility of churches in society.



Until 1978, the right to religious freedom wasn't fully recognized, so actually, we don't really have a tradition of freedom and religious tolerance in Spain. The consequence of this is that many Municipalities are not accustomed to the present plural reality, not showing enough sensibility to treat the matters that affect the minor religious communities.

In addition to the unfavorable historical reality, this adverse starting point is aggravated by the following issues that affect specifically the possibility to opening a worship centre:

- There is an insufficient space destined to religious uses in the municipal urban plans, therefore the Evangelical churches have problems to find a worship centre.
- Often, the spaces where the churches can be opened are inadequate because they are outside the towns, with poor communication, creating "ghettos" for the minor religious communities, something that does not favor the normalization of religious diversity.
- The land granted to temple constructions are very few compared to the grants for Catholic churches.
- The churches are financed by their member's donations, without an economical support from the State. All this, generates difficulties to find proper premises.

Therefore, it is not easy to establish a worship centre in Spain for an Evangelical Church.

Because of the reasons of discrimination already described, and to compensate the unfavorable historical situation for the minor religious communities, preventing possible discriminations, the Public Administration has to legislate about this matter, adopting **arrangements of positive discrimination**. This way it fulfills what is set in the article 9.2 of our Constitution, about promoting the conditions for freedom and equality of individuals and groups in a real and effective manner, removing all the obstacles that difficult their fullness.

It should be noted that the finality of these positive arrangements is to remediate the negative aspects of an ingrained discrimination in our society that comes from the XVI century.

The adoption of positive discrimination arrangements is not strange or unknown in our legal system, not only in matters related to gender equality, also in other older examples, like the arrangement related to the disabled collective in the Judgment 269/1994 of the Constitutional Court.

2. Inexistence of legal standards for opening worship centres, infringing equality for the exercise of a fundamental right.

Today, there is not a common national regulation about places of worship establishments, what has caused that each regional (Comunidades Autónomas) and local administration are responding to these problems from their own experience and competence.

As an example, Catalonia approved its own worship centres law in 2009, and nowadays the Basque Country Government is considering approving a similar law. Therefore in these regions or others, each municipality regulates this matter through bylaws limiting, often, the exercise of this right without colliding public order or other fundamental rights.

Moreover, in some municipalities, to open a worship centre, an administrative license is needed, while in others, that is not required. Nonetheless, no license is required to Catholic temples, arguing that a preview communication act is sufficient. Regarding municipalities that require an administrative license, they don't have a common criterion; actually some of them decide that a religious activity is innocuous, while others compare it with discotheques and public kindred spectacles, enforcing disproportionate requirements that have nothing to do with religious activities. Some consider that religious activities have an environmental impact, while others not, etc. There are more than 8.000 towns in Spain, and each has its particular criterion about how to exercise the fundamental right to religious freedom.

Not even the Catalanian worship centres law is successful in unifying criterion, because its text makes a referral to each bylaw, prevailing each municipality's criteria.

As a consequence of this disperse regulation; there is an infringement of equality in the exercise of a fundamental right. In fact, if this situation continues, in the future there will be more than 17 different laws and bylaws with a multiplicity of criteria. This doesn't seem the best solution.

3. The exercise of the right to open a worship centre often in the town council's hands.

As a consequence of the inexistence of national criteria, discussed above, each town council treats the opening of worship centres in different ways. Some town councils treat positively this matter, but at other times, the treatments are disrespectful with this fundamental right protected by the Constitution. These are the focused cases in this document, which aim is to analyze the issue of worship centres exposing solutions at the same time. Consequently, we adduce to three kinds of frequent problems:

- Unjustified requirements and limits
Thereby, we find many bylaws that prevent the compatibility of religious activities with others, or establishing that between different worship centres, there has to be a specific distance, or allowing the religious activity if it's exercised in secluded buildings, etc., without legal reasons based in public order protected by law, blocking the opening of worship centres for the minor religious communities in their municipalities.
- Misapplication of analogy
It is frequent that the town councils, in their dealing with the opening of worship centres, apply analogy rules that were established for activities that nothing having to do with the religious ones (rules for discos, commercial activities, public entertainment, irritating, dangerous and unhealthy activities, etc.) And they do it, when there is jurisprudence that forbid the application by analogy of these rules, may be cited the Judgment of June 18th 1992 of the Supreme Court. The application by analogy of these kinds of rules entails the demand of disproportionate requirements that often cannot be accomplished by churches, enforcing to close worship centres.
- Arbitrariness in some municipal administrations
There are arbitrariness cases, where municipal administrations decide to block or deny licenses, demanding again and again requirements to religious congregations, dilating



enormously the administrative processing, finally denying it, because of the non-completion of impossible requirements. These are real cases that we could display if necessary.

The exposed situations, in our opinion, are **indirect discrimination postulations because of religious reasons**. Into the bargain, we are witnessing municipalities that are denying or stopping directly the administrative processing for licenses, preventing the exercise of a fundamental right in their territory (as an example we cite different municipalities: Salt, Santa Coloma de Gramanet, Tarragona, Bilbao, etc.)

We consider basic that the national Government, Regions, Municipalities and the different Political Parties have to know this issue, reflecting about it and making arrangements to bring solutions, accomplishing the constitutional order to promote all the needed conditions for equality for individuals and groups, so the minor religious communities can open their worship centres, something befitting of a Democratic State that advocates supreme values legally, in liberty, justice, equality and pluralism.

II- THE PROPOSAL FOR SOLUTIONS OF FEREDe

A. A NATIONAL REGULATION OF THE REQUIREMENTS TO OPENING AND ESTABLISHING WORSHIP CENTRES.

To treat this issue, respecting the Municipalities and Regions competences, we consider that the ideal solution is making a **national regulation (preferable by Act) of the requirements and procedure to opening and operation of the worship centre in Spain**.

Then we expose, using an order of preference, different proposals for a regulation, that in our opinion, are the appropriate ones to resolve this issue:

1. A regulation of the requirements by the Act of Religious Freedom as the right legal instrument to capturing a fundamental right content. However, because of the actual conjuncture, we consider that this option is difficult to develop.
2. An adoption of a National Law for worship centres that could serve as a base for the opening and maintenance of worship centres in Spain. This law is possible from the State's competence perspective, as we see in the recent Royal Decree Law 19/2012 of May the 25th, which regulates urgently the freedom of trade and certain services. Precisely this law doesn't violate the regional or municipal competences, and has the objective of boosting the market unity in Spain, avoids ambiguities about opening these activities in each municipality and also greater legal certainty. It could be possible to include the religious activity in this Real-Decreto Law scope, as the same time it could be modified in the future.

The adoption of this National Law for worship centres is also justified, by analogy, after the promulgation of the Law 25/2009 of December the 22nd and the Law 2/2011 of March the 4th, as both modified the Law 7/85 of April the 2nd (LBRL) that regulates the local government bases, modifying and adding the articles 84, 84bis and 84ter, establishing the unenforceability of administrative license and other control means for the exercise of activities except when its necessary for protecting public health or

safety, environment or the historical-artistic patrimony, or when the exercise of the activities carries a privative use and occupation of the public space or, in any case, obeying a necessity and proportional reason. Therefore, in connection with the licenses, there is nothing to prevent making the same for worshipcentre.

3. A regulation of the requirements by the Land Law, because it is the law that regulates the general aspects of the urban development, provided it respects the fundamental right content, prevailing the right to open and establish a worshipcentre in case of conflict.

The national regulation benefit is evident, since on one hand the Government would have general criteria for establishing worship centres in the Spanish municipalities, **guaranteeing in real and effective way equality for the exercise of the right to opening a worship centre in Spain**. This national law makes unnecessary the regional and municipal law adoptions. There is no sense in adopting new regional laws that regulate that which is regulated in a national law.

On the other hand, the adoption of a basic national law won't prevent, if it is necessary, a further regional or municipal development of it, because the law objective is to establish a legal framework for the regulation. Therefore, by virtue of the delegated powers in urban planning, if the regions or municipalities want to develop the national law content, they may respect it, avoiding as far as possible municipal technicians interpretation, achieving a greater legal certainty.

Last, in case that all we exposed couldn't be possible, we suggest the possibility to modify or develop by law the Cooperation Agreements between FEREDe and the Spanish State that were approved by the Law 24/1992, including in it, by virtue of its second additional and last dispositions, a specific regulation for worship centres of FEREDe'S members, including the aspects we are exposing in the next paragraphs. We know that it won't carry the equal exercise of the right to opening a worship centre as we pretend, but at least, it will protect the existing Evangelical worshipcentres, which would be a progress.

B. THE NATIONAL LAW CONTENT

The law content should include the next points:

- 1. Declare, by and large, that the religious use of the land is compatible with other uses contained in the land law.**

It should be noted that the specific location of a worship centre in an urban planning is very important. Inappropriate locations (poorly connected, without services, without accesses to social life) can carry restrictions on the fundamental right to religious freedom.

Possibility of establishing different worship centre for diverse religious confessions in the same municipality, not just in specific places destined to religious uses, but in distinct spaces, facilitates the religious activity. Moreover, in this way the services can be offered to the whole municipality, avoiding large distances to travel by believers.

2. Substitute the exigency of an administrative license to a preview communication act.

Traditionally, Public Administration chooses the option to require a license (religious activity) to open worship centres in Spanish municipalities. Nonetheless, we consider that this intervention (administrative authorization) non-observes the provisions of the article 39.bis of the Law 30/1992 (LRJ-PAC) that regulates the general Administrative Legal System. It says that **between various means of intervention, Public Administration should choose the least restrictive** (justifying the necessity to protect public interest and its suitability to achieving the served purposes), especially when we mean the exercise of a fundamental right, that has as its only limit, the public order protected by law (safeguarding security, health and public morality).

The previous exigency of licenses (or other authorizations) **to open a worship centres is not the least restrictive measure** Public Administration could choose. Instead, it supposes an excessive control of the documents the promoter has to present, often preventing the intended purpose of Public Administration that is the legalization of the activity. In addition to this, many times, the exercise of a fundamental right is prevented⁵ (to deny the license) without evidence that the activity threatens the security, health or public morality.

We consider that the communication act is the least restrictive control measure, since it facilitates the religious activity's starting, not requiring a previous authorization, simplifying the administrative procedure, giving a greater protection to the protected assets by legal, thus complying the Administration objectives. It is also the most appropriated measure, if we consider the recent legal reform of the Law (Ley de Bases de Régimen Local) that says in the article 84.bis⁶ that **generally, the exercise of activities will not be subjected to a license or other preventive control measure.**

Therefore, we defend the substitution of an administrative license for a **previous communication act along with a responsible declaration** (technical documents that proof safety and salubrity conditions) as ideal administrative intervention instruments to facilitate the exercise of the fundamental right to religious freedom.

To complement this, we also uphold to include a **later reinforcement legal measure**; through inspections and disciplinary measures in case of rule breaches of the law that regulates the activity. These sanctions should respect the limits to exercise the fundamental right to religious freedom, so closure of worship centre has to be the last Administration resource and not the first one, and only for imminent dangerous cases. Is not possible to apply this kind of sanctions for minimum non-compliances, it should noted that religious activity is not held every day during long hours, but is used in a discontinuous way and always during fewer hours than a workday, never in ill-timed moments and rarely at night time, and all this should be considered when a drastic measure is taken. This is provided by our Constitutional Court doctrine through the judgment number 119/2001 of May the 19th.

Communication act is not new in our Legal system, it is included in the exercise of the right to assemble and demonstrate provided in the article 21 of our Constitution. This concept is been

applied for services activities, according to the recent inclusion in our Legal system of the **Directive 2006/123/CE of the European Parliament and of the Council, of 12 December 2006**, which has given a new twist to the intervention techniques of Public Administration.

Substitution of a previous license system into a later control measure is the chosen formula by the 2012 Places of Worship Basque Bill, as announced recently by the Basque Government, now being a national and European referent.

It is no foreign to our Government, as noted above across the Royal Decree Law 19/2012 enactment of May the 25th that regulates this legal concepts. And if it is intended for services activities, it is more for a fundamental right regulation than right to religious freedom.

3. Include in the law the technical requirements needed for opening a worship centre.

Law has to include the requirements for opening worship centres (at least in its basic statement). This regulation has to respect, in any case, the fundamental right content, taking into account the religious activity peculiarity (fire safety, building structure, capacity of people, health services, ventilation, inconveniences to third parties, bearing in mind when there is noise). In this way, we avoid that each municipality regulates according its own worship centres requirements criteria, avoiding also discrimination that religious confessions often suffer compared to worship centres of major religious confession.

4. Destine by law, mandatorily, religious uses in urban planning's.

In this manner, the religious activity use is guaranteed specifically by the municipal urban planning.

5. Include procedural systems in the urban legislation, so the religious communities can participate in approval procedures of urban general plans.

Nowadays, although the possibility for any religious confession to formulate suggestions and allegations in the urban planning elaboration exists, there are no procedural systems for guarantying this. As a consequence, capacity to express the land reserve needs of the religious confessions in municipalities is difficult.

As an example, procedural moments for urban planning elaboration related to religious aspects could been reinforced (through designations of instructors that have specific knowledge in mediation of public information procedures, also across development of positive participation techniques and not just an acceptance of its absence or mere formal written defense of rights...).

6. Include by law specific arrangements in favor of equality to opening worship centres.

The article 16 of the Constitution does not provide just a simple protection from interferences (negative side), but also requires a "positive attitude" from a perspective that is called "care or welfare", consolidating establishment clause as pointed by different judgments (Constitutional Court 46/2001 of February 15th, or European Human Rights Court of July 31st 2001).



We understand that the peculiar historical Catholicconfessionalism and Spanish situation of persecution, as well as establishment clause, should carry the State to **adopt specific positive measures** destined to other confessions with the aim to compensate its historical situation, preventing possible discriminations and making possible their normalized development. These positive measures are possible according to the article 9.2 of the Spanish Constitution and its interpretation given by the Constitutional Court (Judgment 216/1991 of November 14th), as well as the articles 27 of the Law 62/2003 of December 30th, that define legally the positive measures concept (article 30), providing the possibility of guarantying in practice the full equality, between others, of religion.

These measures could be materialized in grants of land or public buildings, subventions destined to lands and premises acquisitions, and adapting them to the health and safety requirements.