

Ecuador

I. Social Facts

In Ecuador, as in other Latin American countries, the religious phenomenon has been part of the national identity since its formation as one of the republics independent from Spain. According to studies performed by the Ecuadorian Institute of Statistics and Censuses, 91.95% of the population claims to belong to a religion, while only 8.05% said they do not ascribe to any religion. Both urban and rural areas are characterized by the presence of churches, temples, and shrines dedicated to active religious worship. There are many processions organized around particular religious celebrations that attract thousands of faithful each year and have the support of government authorities.

Of those who profess to be religious, 80.44% declare that they belong to the Catholic Church while 11.3% declare they belong to Evangelical Christian churches of various denominations. The total percentage of those declaring that they follow Judaism, Islam, and Buddhism does not even reach one percent of the population. The Jehovah's Witnesses have slightly more than one percent and their number is growing. In recent years, the practice of ancestral religions that existed prior to the introduction of Christianity has increased. This development is, however, better framed in the context of the cultural and sociological elements of Ecuador and not within the religious sphere itself. In fact, there is no specific legal religious structure encompassing ancestral rites.

The pronouncements of religious authorities on issues of common interest are usually respected by the public. The religious factor is influential among the population for promoting educational or social initiatives such as schools, colleges or universities, rural training centers, hospitals, and public soup kitchens, in both urban and rural areas.

The rulings of the Ecuadorian courts in matters of religious freedom are few. The academic study of the freedom of religion and the legal implications of the religious phenomenon within the state has been scarce. The intellectual study of religious freedom owes its origin and continued progress to the lawyer Juan Larrea Holguín. In 2006, the Universidad de Los Hemisferios established a program on Ecclesiastical Law of the State, for law students. There are no similar programs at other Ecuadorian universities.

II. Historical Background

Since the birth of Ecuador as an independent republic, the religious factor has influenced the legal system of the nation, probably as an inheritance from the Spanish Empire, which empowered the authorities of the Spanish crown to intervene directly in ecclesiastical affairs such as the provision of episcopal headquarters, the construction of seminaries, and the promotion of educational centers set up by religious groups. On the other hand, with the jarring and constant political changes originating from a conflicted republican life, there have been eras in which attempts were made to eliminate all religious references in the Ecuadorian legal framework.

The Constitution, the supreme law of the state, has undergone more than 20 different revisions. In the beginning, its framers dictated this important document in the name of God. This reference is found in the failed Constitution of 1812 and in the Constitutions of 1830, 1835, 1843, 1845, 1851, 1852, 1869, 1884 and 1946. In some cases there was an additional phrase designating God as Author and Lawgiver of the universe. In other cases, God was mentioned as the Creator and Supreme Lawgiver. From 1967 onward, the constitutional text invoked God in its preamble; the same formula was present in the constitutions of 1967, 1978 (as revised in 1984), 1998, and in the current constitution. There was no reference to God in the constitutions of 1906, 1929, 1945, or the original text of the *Carta magna* of 1978.

The constitutional text has not always included the fundamental right of religious freedom. All constitutions from the 19th century mentioned the Catholic Church as the official religion of the State, some of them in an exclusive sense. The Constitution of 1897 expressly admitted the possibility of practicing religions other than Catholicism. A reference to freedom of religion first appeared as a constitutional rule in 1945. Article 141, paragraph 11 determined that the state did not recognize any official religion and that all might practice a religion as they saw fit. The Constitution of 1946 deleted the reference to the freedom of religion, noting only the freedom of conscience, similar to the constitutions of 1906 and 1929.

The Constitution of 1967 introduced a more elaborate wording, noting in its Article 28 that the State undertakes to ensure the freedom of religious belief

and worship, individually or collectively, in public or in private. The Constitution of 1978 was the first that jointly mentioned the freedoms of conscience and religion.

Freedom of association appeared for the first time in the Constitution of 1869. Its Article 109 granted the right of association, under the supervision of the authorities, as long as public religion, morality, and order were respected. The Constitution of 1878 outlined the wording of the right of association; its formulation has been emulated by the majority of subsequent constitutions and signifies a right of association for purposes not prohibited by law.

Beyond the constitutional rule, the religious factor suffered a setback after 1905, a period in which some restrictive laws were enacted. Religious groups were transformed into something alien to the existing legal framework and, due to certain legal reforms, ceased to have legal existence. In 1935, a rule was promulgated that extended the legal vacuum in which religious entities suffered: ministers of religion were placed outside the legal framework by an institution called “civil death”—that is, they could only act within the legal framework by means of another person and could not fend for themselves. Faced with such extreme circumstances, Ecuadorian ecclesiastical leaders and lawyers turned to the Holy See for help, which, timid at first and careful insofar as it was given a minimum assurance of diplomatic seriousness on the part of Ecuador, intervened directly in advising on the development of the legislation currently in force.

III. Legal Sources and Basic Approaches to Religion and Belief

The current Constitution of the Republic of Ecuador came into force on 28 September 2008. The place of the state in religious matters is prefigured from the beginning by the reference to Divinity in its preamble, which explicitly invokes the name of God and recognizes the diverse forms of religiosity and spirituality of the Ecuadorian people.

Secondly, the constitution recognizes the fundamental rights of freedom of thought, religion, and association. The constitution also supports the full enforcement and application of the international instruments on human rights signed by Ecuador.

In a legal formula unprecedented in Ecuadorian law, Article 417 of the constitution requires special respect for principles that favor human rights. It

requires that national or international human rights standards deserve direct and non-restrictive application. In addition, it introduces for the first time the so-called “open clause”, declaring that the international human rights treaties ratified by the State that recognize rights more favorable than those contained in the constitution shall prevail over any other rule or act of public power.

Ecuador has signed many international documents that protect the fundamental rights of thought, conscience, and religion, such as the International Covenant on Civil and Political Rights (ICCPR) of 16 December 1966, ratified by Ecuador on 6 March 1969; the International Covenant on Economic, Social and Cultural Rights (ICESCR) of 16 December 1966, ratified by Ecuador on 6 March 1969; the American Convention on Human Rights (ACHR) signed in Costa Rica on 28 November 1969 and ratified by Ecuador on 12 August 1977; and the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights (“Protocol of San Salvador”), signed in San Salvador on 17 November 1988, ratified by Ecuador on 25 March 1993 and in force in the country since 16 November 1999. With the exception mentioned above for human rights provisions, these rules of international law rank just below the Constitution.

The development of a specific law on religious matters, the Law of Religion (*Ley de Cultos*, or LC) did not occur until July 1937 (*Decreto Supremo* 212). The LC, although brief, set up an adequate legal space within Ecuadorian legislation for religious denominations of any kind.

At the same time as some were making efforts to draft the Religion Law, others were working in parallel on the preparation of the *Modus Vivendi* between Ecuador and the Holy See. This international law document came into force some hours after the LC. This document restored diplomatic relations between Ecuador and the Holy See, which had been unilaterally interrupted for more than forty years despite several failed attempts at reconciliation. It remains in full force.

In 2000, a lower-ranking but significant rule came into force—the Regulation of Religious Groups (*Reglamento de Cultos Religiosos*, or RCR). The RCR is a body of rules that introduced into Ecuadorian law the European legal advances over recent decades on the subject of religious freedom. The RCR adopts several of the traditional legal institutions of Italy and Spain. In general, it adopts some tenets of the German doctrine concerning the

public role of churches or *Öffentlichkeitsauftrag*. It sets aside the old terminology used by the LC and begins using a new expression already integrated into more advanced legislation to denote the religious groups covered in the legal system, namely, “religious entity”.

In addition to the fundamental laws mentioned above, the most important bodies of law of the Ecuadorian legal system that contain explicit references to religious matters are the Civil Code, the Criminal Code, the Labor Code, and procedural, commercial, and tax laws. The differences that exist between the dates of promulgation of these rules, as well as the differences in thinking between these laws, renders treatment of religious matters in Ecuadorian law non-uniform. The rules that have been enacted in the last five years show predispositions toward a degree of unification, at least in terminology, in the treatment of religion in Ecuador.

IV. Individual Freedom of Religion or Belief

A. General Scope of Protection

As the supreme law of the state, the Constitution ensures the right of every citizen to express his or her own opinions and thoughts freely in all forms and manifestations, and the right to practice one’s own religion and beliefs in public or in private, individually or collectively (Art. 66). The State is also charged with ensuring the fundamental right of association, as the Constitution proclaims the right to associate, assemble, and demonstrate in a free and voluntary manner.

In addition to the aforementioned fundamental rights of freedom of thought, religion, and association, the Constitution ensures conscientious objection and maintains the principle of secularism, that is, the explicit determination that Ecuador is a secular state.

B. Status of Minors

The age of majority is 18 years. The Code on Childhood and Adolescence specifically establishes the right to non-discrimination against minors on religious grounds. A 1995 judgment of the National Court of Justice affirms the right of parents to control the religious education of their children. There are no legal or jurisprudential references regarding religious choice by minors.

C. Activities Protected

Through the constitution, the state undertakes to provide protection both of voluntary religious practice and of the expression of those who do not profess any religion, and to foster an environment of plurality and tolerance. The constitution codifies the right to conscientious objection and the right to remain silent about one’s beliefs and their consequences. The constitution provides that no one may be compelled to testify about their beliefs, and that in no case may a person require or use without the consent of the holder or their legitimate representatives the personal information on religious beliefs of third parties.

Regarding the above-mentioned rights, it is a common practice of various religious groups to manifest in public places with total spontaneity, with no restrictions beyond the protection of the common good and the rights of others. When it is expected that the demonstrations will be very large, permission from the National Police is required. In such cases, the authorities of the state typically deploy security forces to ensure order at such events, never to limit them.

D. Limitations to Freedom of Religion or Belief

Consistent with certain legal currents in vogue, the constitution mentions as the only limitation on the exercise of fundamental rights those restrictions imposed by respect for human rights. The expression is not very clear; it highlights rights and omits duties. Previous constitutional standards had more appropriate wording, establishing as a limit on the exercise of one’s own rights the safety and rights of others. From 1998 onward, the traditional constitutional limitation that made reference to public morals was also eliminated.

V. The Legal Status of Religious Communities

In accordance with the LC, the recognition of a religious entity by the state authority is achieved by submitting to the appropriate ministry the organizational statute of the entity in charge of the governance and management of the assets of the religious group, as well as the name of the person providing legal representation to the entity. In turn, the state authority must see that this statute is published in the Official Register and recorded in the Office of

the Registrar of the canton where the assets of the religious entity are located. As of 2009, the applicable ministry in religious matters is the Ministry of Justice, Human Rights, and Religious Groups.

The provisions of the RCR set forth in more detail the powers of the administrative authority when qualifying a religious group as such. First, the authority must become convinced of the religious character of the requesting entity, before proceeding to the recognition of its legal status, which recognition is required for the free exercise of rights and obligations in the Ecuadorian legal framework. The RCR grants authority to the certification by the competent state authority: this is the document verifying the religious character of an entity. This is treated as a recognition and not as an approval or legal charter.

The RCR distinguishes between two types of religious groups seeking recognition of their legal personality in the civil sphere. First are those belonging to the Catholic Church, a Christian church, or a religion previously recognized in Ecuador. These are required to undergo a fairly simple process in which the certification of religious character plays a decisive role; if the certificate is in order, the minister must proceed to register the applying group in the Registry of Religious Entities, without major discretionary powers. On the other hand, if the entity that is applying for recognition under Ecuadorian law is a new denomination in the country, it is obligated to submit supporting documentation of its religious character. In this second case, the state authority enjoys some degree of discretion in deciding whether to register the relevant group, after listening to the opinion of experts.

Since 2000, registration has taken on greater importance. The RCR establishes that the submission of a religious entity's governing document to the Registry of Religious Entities is the moment that constitutes the legal personality of a religious group in the civil sphere. The RCR also creates a special Register within the Ministry of Justice for religious entities. This new Registry implements the order and classification of religious institutions at the national level.

Finally, the RCR mentions the grounds for dissolution of religious entities. They can cease to exist either by way of cancellation of the registration by the Minister of State if they meet the conditions foreseen in the LC or the RCR, or of their own volition. The RCR further designates that the assets of the dissolved religious entity be moved to another

religious or charitable entity, and that the dissolved entity has a certain time period to indicate the recipient of its property. If it fails to do so, the government authority will proceed to designate the recipient of the assets.

VI. Religious Autonomy

Under Ecuadorian law, religious institutions are classified as legal persons of social, charitable, or educational utility, as set forth in the RCR. However, the above definition has been expanded and placed within a particular legal framework, namely that of legal persons of special right, as entities of a nature that surpasses the powers of the secular state, and whose purposes go beyond a mere charitable, educational, or benevolent foundation, although often these are included. In any case, the legal status of religious institutions, framed within the principle of the secular state, allows them to work with full autonomy in all matters concerning their religious purposes, in which the State does not interfere.

The right to resort to the courts of the state through various judicial recourses could be considered a protection of the autonomy of religious entities. Certain legal actions are available in case of attacks on their free development. A challenge to an administrative act can be raised either by appealing to the authority that issued the administrative act, or raising the appeal before a higher authority, namely, the President of the Republic. An appeal may also be raised before the District Administrative Court; there is no need to first exhaust all administrative remedies.

Finally, for the sake of the preservation of fundamental rights, the Constitution provides for protective actions and actions for noncompliance in addition to recourse *in extremis* for the extraordinary action of protection before the Constitutional Court.

VII. Education

Under the constitution, education is secular and secularism is one of the primary duties of the state. Education must be centered in the human being and in the framework of respect for human rights. The constitution guarantees the necessary freedoms of education and teaching, as well as ensures

the participation of families and the community in the educational process of students and the freedom of parents to choose for their children education consistent with their principles, beliefs, and pedagogical preferences.

For the specific case of the Catholic Church, the *Modus Vivendi* recognizes, in its Article 2, the right to establish educational institutions with sufficiently qualified staff and to maintain existing ones. Catholic universities in Quito, Guayaquil, Cuenca, and Loja have been established pursuant to these rules. For the pre-primary, primary, and middle school levels, charter schools have been created, which provide educational services in economically and culturally depressed areas and are run by representatives of the Catholic Church but are sustained either totally or partially by the national treasury. Their teachers are considered part of the public education system.

Agreements have been reached between the state and Catholic missions working in the Ecuadorian Amazon to foster the human and cultural development of the social groups most in need. Through these agreements, the state economically sustains a large part of the educational activities of the Catholic Church in the historically designated mission territories. These agreements are consistently renewed.

In addition, there is an agreement of mutual cooperation between Ecuador's Ministry of Education and Culture and the Confederation of Ecuadorian Establishments of Catholic Education, a private legal entity that has a permanent commission from the Conference of Ecuadorian Bishops to represent the interests of Catholic education at levels prior to higher education.

VIII. Religion and Personnel Matters

In accordance with the labor rights guaranteed by the constitution, no one may be discriminated against in their workplace for religious reasons.

On the other hand, the classification under the RCR of religious entities as private legal persons of social, charitable, or educational utility implies their nonprofit character. It follows that religious groups are entitled to reward the work of their members; but if the wages, salaries, fees, or any other type of remuneration considerably exceeds what is usual in the country, it will be regarded as a breach of its nonprofit character.

Religious entities that employ workers are subject to all requirements of the Labor Code and their workers must join the Ecuadorian Institute of Social Security. Nevertheless, being nonprofit entities, religious organizations are not obliged to share profits among employees.

Religious ministers are prevented from engaging in commercial activities, holding public office, engaging in political propaganda, or pronouncing sermons that threaten the rule of law. The law exempts them from military service.

The RCR also determines that, outside of the cases in which a religious entity requests the provision of services of workers through an employment contract, there is no employment relationship between a religious entity and its members who fulfill religious roles, such as between a diocese and its priests, or between a religious order or congregation and its members that carry on activities of worship, education, or social promotion.

IX. Finance

According to the rules of the RCR, no religious entity can be for profit. Any potential economic benefits from activities that occur in the commercial or financial fields, within the framework of the law, must be applied toward the internal purposes of the same entity. In addition, any kind of economic benefit among members is forbidden.

Religious entities are eligible for tax exemptions through various tax laws dealing with private legal entities of social, charitable, or educational utility. However, such entities must pay the minimum rates and contributions stipulated in these rules. The Municipal System Act (*Ley de Régimen Municipal*) exempts them from the tax on urban property, the tax on rural property, and the excise tax. They must pay half fees for the services of light and drinking water. Religious services themselves are not encumbered with the value-added tax.

In accordance with the RCR, as nonprofit corporations religious entities are not required to submit accounts or cash flow balances to state authorities.

The Civil Aviation Act (*Ley de Aviación Civil*) exempts from payment of landing rights private aircraft designated exclusively for religious missions in the Ecuadorian Amazon region or for relief, cultural, or health missions.

X. Religious Assistance in and Access to Public Institutions

In 1978, an agreement was entered into between Ecuador and the Holy See for religious assistance to the armed forces. It established a Military Bishopric, an entity that existed before the liberal revolution. The Military Bishop presides over it and is ultimately responsible for the spiritual care of the active and inactive members of the armed forces and national police, as well as their families and service personnel.

In other public institutions, the performance of religious activities is governed by common law and the rules of each institution. It is relatively common to find religious images in state-owned facilities, as well as the spiritual care of the sick and elderly in public hospitals by ministers of those religions most widespread in the country. There are often celebrations of simple religious rites in state offices around Christmas. Sometimes ceremonies for the deceased are held in these same places.

XI. Religion and Family Matters

Religious entities do not have competency in legal questions of marriage and family. The constitution, without making explicit references to religious matters, provides that all persons are equal and enjoy the same duties and opportunities. It recognizes and guarantees individuals the right to formal equality, material equality, and non-discrimination. In addition, it mentions that the state will formulate and implement policies to achieve equality between women and men, through specialized mechanisms in accordance with the law, and will incorporate a gender focus in its plans and programs.

The state assumes the power to promote responsible motherhood and fatherhood. The constitution grants parents the right to make free, responsible, and informed decisions about their health and reproductive life and to decide when to have children and how many to have.

Article 23 of the Civil Registration Act (*Ley de Registro Civil*) establishes that birth registration and civil marriage must precede corresponding religious ceremonies, except where there is danger of death. In light of this standard, and against the repeated arguments of several authors, religious marriage lacks civil recognition, regardless of the religion.

XII. Religion in Criminal Law and Other Public Regulations

Among the offenses and crimes set forth in the Ecuadorian Penal Code and the RCR are acts that violate sacred places such as cemeteries and churches, as well as the disruption of worship ceremonies, whether indoors or in public.

It is deemed criminal for one who lacks clerical status or authorization to fraudulently engage in activities that are typical of a religious minister. Ministers of worship may not engage in any kind of political propaganda or instigate civil disobedience. Finally, the status of a religious minister is considered an aggravating factor in crimes involving sexual offenses.

XIII. Select Bibliography and Leading Cases

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