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Note on certain aspects of the Portuguese Law on religion¹

Introduction

1 – Criminal offences against religion are in Portugal historically dependant on the constitutional evolution. The Penal Code from 1852 until the present date reflects, in fact, the way relations between state and religion have been treated in the various constitutional times

2 – Until 1910 (date of the first republic) there was a state religion – Catholic religion. From 1910 to 1933 (date of the Constitution of Salazar regime) there was a period of separation, but in 1940 with the Concordat with the Vatican, this system of separation has been put to question, if not in law, at least in practice.

The Catholic Church has in fact since 1926, with the new authoritarian regime of Salazar, been the “privileged” church, notwithstanding the constitutional principle of separation of state and church, being written in the law.² Even before the Concordat of 1940, the Constitution has been amended to proclaim that the catholic religion was “the religion of the Portuguese nation”.³

3 – With the democratic revolution of 1974, the new Constitution of 1976 declares the principle of “freedom of conscience, religion and cult” as well as equality of rights and duties, for all members of all faiths; non discrimination and separation of state and churches.⁴

4 – But the real situation of inequality among religions, has in the practice been maintained until the law 16/2001 and the new Concordat of 2004, have been signed.

I

Law on religious freedom

The main principles of the law, reflect the constitutional principles but, developing some of them and introducing new principles.

1 Attached version in English of the Law on religious freedom.

2 Vitalino Canas , State and church in the European Union, 2005, 459.

3 Amendment of 1951; later in 1971 another amendment said the Catholic Religion “is the traditional religion of the Portuguese Nation”.

4 See attached articles of the Portuguese Constitution of 1976.

Special attention shall be given to article 4 (principle of non-denominational state), article 5 (principle of cooperation between state and church and religion communities), and article 7 (principle of tolerance).

The principle of cooperation states, without violating the principle of separation, that the state and the church or religion communities cooperate in order to “promote human rights, complement development of each person and the values of peace, freedom, solidarity and tolerance”.

The cooperation principle creates to the state and to churches and religions community a duty to cooperate with those aims. The article on principle of tolerance is of major interest for resolving conflicts between persons belonging to different religions.

This principle is in a pluralistic society also complementary to the right of religious freedom, and it gives a “norm” to solve in a balanced form, the conflict between persons, or religion (one or more), the criterion being the “respect of each person’s freedom as much as possible”.

II

Religion and criminal law

As stated above, the evolution of the protection of religion through criminal law is historically dependent on the constitutional order of each time.

Until 1911 (after the law of separation of 1914) defamation reflecting upon any dogma, act or object of cult of the catholic religion made in public or by publication was punishable. Also punishable was proselytising for a different religion reproved by the Catholic Church; apostasy was also a crime (obviously also by a Catholic).

A – Crimes in the Penal Code from 1982 (substantially revised in 1998)^{5 6}

Religious discrimination and defamation or outrage by reference to religion

Following the “Joint action of the European Council of July 1996”, concerning the combat to racism and xenophobia (96/434/JMA) new articles have been approved to criminalise certain types of behaviour (In the revision of 1998).

a) Religious discrimination

Article 240 of the Penal Code is included in a chapter under the name “crimes against cultural (identity) and personal integrity” and states that “a person who in a public reunion, by writing destined to publication or by any mean of social communication.....

5 The code had several changes and has been republished in 1886, and is also of Penal Code of 1886.

6 The English version of Penal Code is based on a paper of José Sousa e Brito, “Religion and Criminal law in Portugal”, not published report to the Conference for Church and State research. Report in Helsinki, 2008.

defames or outrages a person, or a group of persons, on grounds of her, or their, race, colour, ethnic or national origin religion, sex or sexual orientation, namely through denial of war crimes or of crimes against peace and humanity, intending to incite to racial or religious discrimination or to encourage it, shall be punished with imprisonment from 6 months to 5 years”.

This type of crime is intended to protect equality, freedom and honour between persons.

The psychological element is intention, knowledge or reckless knowledge of the objective elements of the crime.

b) Outrage of a person or group of persons by reference to religion

Article 251 of the Penal Code included in a chapter whose name is “... crimes against religious feelings and the respect due to the dead”, states that, “a person who in public offends another person or mocks her on grounds of her belief or religious function, in a way appropriate to disturb public peace, shall be punished with imprisonment up to 1 year or a fine to 120 days”.

The offence must be brought to the knowledge of the public, and must be appropriate to disturb public peace (not necessarily disturbing the peace).

The values defended are the religious sentiments of a person and the public peace (“paz pública”).

c) Outrage to an act of cult

Article 252 n°2 (number one refers to hindering or disturbance through violence or menace) states that, “A person... who vilifies in public any act of religious worship or mocks it shall be punished with imprisonment...”. The value defended is religious freedom.

d) Other types of crimes protecting religion

- Hindering or disturbance of or outrage to religious worship (article 252 Penal Code);
- Hindering or disturbance of a funeral (article 253 Penal Code);
- Desecration of a place of worship or of sacred objects (251.2 Penal Code);
- Desecration of a corpse or of graves (art 254 Penal Code).

e) Religious aggravated offenses

In relation to some criminal offences, the circumstance of “being determined by religious hate”⁷ is susceptible of revealing a special censurability or perversity. Such offences are:

Qualified homicide; qualified offence to physical integrity; criminal damage of a thing linked to religious worship. Defamation or injury as referred to in article 240.2.b. if qualified, is punishable with imprisonment from 6 months to five years instead of to 2 years (when not qualified).

ANNEX 1: Articles of the Portuguese Constitution on religions freedom

Article 2

(Democratic state based on the rule of law)

The Portuguese Republic shall be a democratic state based on the rule of law, the sovereignty of the people, plural democratic expression and organization, respect for and the guarantee of the effective implementation of fundamental rights and freedoms, and the separation and interdependence of powers, all with a view to achieving economic, social and cultural democracy and deepening participatory democracy.

Article 13

(Principle of equality)

1. Every citizen shall possess the same social dignity and shall be equal before the law.
2. No one shall be privileged, favorable, prejudiced, deprived of any right or exempted from any duty on the basis of ancestry, sex, race, language, place of origin, religion, political or ideological beliefs, education, economic situation, social circumstances or sexual orientation.

Article 26

(Other personal rights)

1. Everyone shall possess the right to a personal identity, to the development of their personality, to civil capacity, to citizenship, to a good name and reputation, to their likeness, to speak out, to protect the privacy of their personal and family life, and to legal protection against any form of discrimination.
2. The law shall lay down effective guarantees against the procurement and misuse of information concerning persons and families and its use contrary to human dignity.
3. The law shall guarantee the personal dignity and genetic identity of the human person, particularly in the creation, development and use of technologies and in scientific experimentation.
4. Deprivation of citizenship and restrictions on civil capacity may only occur in such cases and under such terms as may be provided for by law, and shall not be based on political motives.

Article 41

(Freedom of conscience, religion and worship)

⁷ As well as racial, sexual and nationality determined acts.

1. Freedom of conscience, religion and worship shall be inviolable.
2. No one shall be persecuted, deprived of rights or exempted from civic obligations or duties because of his convictions or religious observance.
3. No authority shall question anyone in relation to his convictions or religious observance, save in order to gather statistical data that cannot be individually identified, nor shall anyone be prejudiced in any way for refusing to answer.
4. Churches and other religious communities shall be separate from the state and free to organize themselves and to perform their ceremonies and their worship.
5. Freedom to teach any religion within the denomination in question and to use appropriate media for the pursuit of its activities shall be guaranteed.
6. The right to be a conscientious objector, as laid down by law, shall be guaranteed.

Article 43

(Freedom to learn and to teach)

1. The freedom to learn and to teach shall be guaranteed.
2. The state shall not lay down educational and cultural programmes in accordance with any philosophical, aesthetic, political, ideological or religious directives.
3. Public education shall not be denominational.
4. The right to create private and cooperative schools shall be guaranteed.

ANNEX 2: Portuguese Law on Religious Freedom

LAW Nº 16/2001

of June 22

LAW ON RELIGIOUS FREEDOM

Under the terms of paragraph c) of the article 161 of the Constitution, the Assembly of the Republic hereby decrees the following general law of the Republic as valid:

CHAPTER I

PRINCIPLES

Article 1

Freedom of conscience, religion and worship

The freedom of conscience, religion and 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.

Article 2

Principle of equality

1. No one can be privileged, benefited, aggrieved, persecuted, deprived of any right or exempt from any duty on account of his or her convictions or religious practice.
2. The State shall not discriminate any church or religious community in relation to others.

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 practice of their activities and worship.

Article 4

Principle of non-denominational State

1. The State does not adopt any religion whatsoever, nor pronounce itself regarding religious issues.
2. In official ceremonies and the State protocol the non-denominational principle shall be respected.
3. The State cannot plan education and culture according to any religious directives whatsoever.
4. The State education shall not be denominational.

Article 5

Principle of cooperation

The State will cooperate with the churches and religious communities settled in Portugal, taking into consideration their representativeness, namely in view of the promotion of human rights, of the integral development of each person and the values of peace, freedom, solidarity and tolerance.

Article 6

Legal force

1. Freedom of conscience, religion and worship admits only of the restrictions which are necessary to safeguard constitutionally protected rights or interests.
2. Freedom of conscience, religion and worship does not authorize criminal practice.
3. The limits of the right to conscientious objections trace the permitted conduct for the objector.
4. The law can regulate, whenever necessary, the exercise of freedom of conscience, religion and worship, without prejudice to the existence of this right.
5. The declaration of a state of siege or a state of emergency cannot, in any event, affect freedom of conscience and religion.

Article 7

Principle of tolerance

The conflicts between freedom of conscience, religion and worship from one person to another, or others, shall be settled with tolerance, in order to respect each person's liberty as much as possible.

CHAPTER II

INDIVIDUAL RIGHTS OF RELIGIOUS FREEDOM

Article 8

The meaning of freedom of conscience, religion and worship

Freedom of conscience, religion and worship include the right to:

- a) Hold, not hold and to cease to hold a religion;
- b) Freely choose, change or abandon one's own religious beliefs;
- c) Practice or not to practice the worship deeds, in private or in public, that belong to the professed religion;
- d) Profess one's own religious beliefs, to seek for new believers, express and freely reveal one's thoughts on religious matters through the usage of words, images or by any other means;
- e) Be informed and inform others about religion, to learn and teach religion;

- f) Meet, manifest and associate oneself with others, in accordance with one's own convictions on religious matters, bearing no other limits than those foreseen in the articles 45 and 46 of the Constitution;
- g) Act or not to act in compliance with the norms of the professed religion, regarding the respect for human rights and the law;
- h) Choose names for one's children that belong to the religious onomasticon of the professed religion.
- i) Produce scientific, literary and artistic works on the subject of religion.

Article 9

Negative meaning of religious freedom

1. No one can:
 - a) Be obliged to profess a religious creed, practice or attend acts of worship, receive ministerial assistance or propaganda on religious matter;
 - b) Be coerced into taking part, remaining or leaving a religious association, church or religious community, without prejudice of the respective norms on affiliation and the exclusion of members;
 - c) Be questioned by any authority whatsoever about one's convictions or religious practice, except for the collection of statistical data, not individually identifiable, nor be discriminated if one refuses to respond;
 - d) Be obliged to take a religious oath.
2. Computing cannot be used to process data referring personal convictions or religious faith, except through one's explicit consent or for the processing of statistical data, not individually identifiable.

Article 10

Right to religious participation

In agreement with the respective religious ministers and according to the chosen church's or religious community's norms, freedom of religion and worship include the right to:

- a) Join the chosen church or the religious community, participate in the internal life and the religious rites practiced in communion and receive the ministerial assistance that one requests;
- b) Celebrate marriage and be interred according to the rites of one's own religion;
- c) Publicly commemorate the religious festivals of one's own religion.

Article 11

Religious education of minors

1. Parents have the right to educate their children in coherence with their own convictions on religious matters, with respect for the moral and physical integrity of the children and without prejudice to their health.
2. Minors, from the age of 16, have the right to make their own choices relating to freedom of conscience, religion and worship.

Article 12

Conscientious objection

1. Freedom of conscience includes the right to object to the compliance of laws that contradict the imperative doctrines of one's own conscience, within the limits of the rights and duties imposed by the Constitution and under the terms of the law that will possibly rule the exercise of the conscientious objection.

2. The doctrines of conscience that are considered as imperative are those whose infringement involve a serious offense to one's moral integrity and, consequently make any other behavior as not demandable.

3. Conscientious objectors to military service, without excluding those who also invoke a conscientious objection to civil service, have the right to a civil service system, which respects the doctrine of their conscience, as long as it is compatible with the principle of equality.

Article 13

Ministerial assistance in special situations

1. Being a member of the armed forces, security forces or the police, rendering military or civil service, being interned in hospitals, asylums, colleges, health, educational or welfare institutions or establishments, or similar, being in detention in prison or other places of detention does not prevent the exercise of religious freedom and, particularly, the right to ministerial assistance and the practice of acts of worship.

2. Indispensable restrictions due to functional or security reasons may only be imposed by way of prior consultation, whenever possible, by the minister of the respective religion.

3. The State, with due deference to the principle of separation and in accordance with the principle of cooperation, should create adequate conditions for the exercise of ministerial assistance in public institutions referred in no. 1.

Article 14

Exemption from work, lessons and examinations for religious reasons

1. The employees and agents of the State and other public entities, as well as contract workers, have the right to, on request, suspend work on the day of the weekly rest, on the days of festivals and during hourly periods that are prescribed for them by the denomination that they profess, under the following conditions:

a) They shall work according to a flexible schedule;

b) They shall be members of a church or a registered religious community, that has sent a list of the aforementioned days and hourly periods for the current year, to the Minister of Justice during the previous year;

c) There shall be full compensation for the respective work period.

2. Under the conditions foreseen in subparagraph b) of the above paragraph, students in state or private education, who profess their religion are exempted from attendance of lessons on the holy day of the week, devoted to rest and worship by the respective religious denominations, as long as the normal conditions of scholastic progress are safeguarded.

3. If the date for the assessment of students coincides with the day devoted to rest or worship by the respective religious denominations, these tests can be carried out at a second calling, or at a later calling, on a day in which the same objection does not arise.

Article 15

Ministers of Religion

1. The ministers of religion are people who are considered as such according to the norms of the respective church or religious community.

2. The status of the minister of religion is certified by the competent bodies of the respective church or religious community, which also accredit the respective ministers for the practice of specific acts.

3. The authentication of certificates and credentials mentioned in the above point belongs to the registration office of religious corporate bodies.

Article 16

Rights due to the Ministers of religion

1. The ministers of religion have the freedom to carry out their ministry.
2. Magistrates or other authorities cannot ask the Ministers of religion about the facts and matters that have come to their knowledge by reason of their ministry.
3. The exercise of the ministry is considered a professional activity of the minister of religion when it provides him with a means of support; as sufficient evidence of such, for the purposes of authorization of residence to foreign ministers of religion, is the guarantee heeded by the respective church or religious community.
4. Ministers of religion of churches and other registered religious communities have the right to usufruct of the service of the general social security system under the terms of the law, their registry being compulsory by the church or religious community to which they belong, unless their religious activity is of a secondary nature and the exercise of the principal, non-religious activity requires a compulsory registration in a social security scheme.
5. For the purposes of the two previous points, the ministers of religion are equalized with the members of holy institutions and other persons who professionally exercise religious activities and who, as such, are certified by the church or by the religious community in which they belong.

Article 17

Military service of ministers of religion

1. The military obligations of students belonging to the training establishment for ministers of religion, members of the holy institutions, as well as ministers of religion of churches and other registered religious communities, are fulfilled through ministerial assistance, health services and social activities of the Armed Forces, unless they express a desire to join the effective service.
2. The attendance of training courses for ministers of religion of a church or registered religious community is considered grounds for release of the tests for classification and selection for military service, as well as a postponement of incorporation.^{3.} The right to conscientious objection to military service in general terms is safeguarded.

Article 18

Exemption from jury service

Ministers of religion, members of the holy institutions and other persons who professionally carry out religious activities of churches or other registered religious communities, can require an exemption from jury service.

Article 19

Religious marriage ceremony

1. A religious marriage ceremony conducted by the minister of religion of a church or registered religious community settled in the country is recognized for civil purposes. The minister of religion must have a Portuguese nationality or, if he is a foreigner, must hold an authorization of temporary or permanent residence in Portugal.
2. Those who intend to contract a religious marriage ceremony should declare their intent, either personally or by proxy, through a request of the instauration of the respective process of published documents in the registry office of the competent civil register, indicating the minister of religion accredited for the deed. The marriage declaration may also be carried out by the minister of religion, by means of a request signed by him.
3. Once the marriage has been authorized, the registrar issues the marriage certificate under the terms of articles 146 and 147 of the Code of Civil Register, with the necessary adjustments. The certificate is only emitted if the registrar is certain that the betrothed have acknowledged the Articles 1577, 1600, 1671 and 1672 of the Civil Code. The

certificate must mention this fact, as well as the name and accreditation of the minister of religion. The certificate is officiously dispatched to the minister of religion, who is equally informed of the supervening known impediments

4. The presence of the following people is indispensable for the celebration of a marriage:

- a) The contracting parties, or of one of them and the proxy of the other;
- b) The minister of religion, duly accredited.
- c) Two witnesses.

5. Immediately after the marriage ceremony, the minister of religion makes a duplicate entry in the church register or that of the religious community and sends the duplicate record to the competent registry office, within the time limit of three days, so that it can be transcribed into the marriage records register.

6. The registrar should carry out the transcription of the duplicate within the time limit of two days and duly inform the minister of religion, up to the utmost of the following day, from which it took place.

CHAPTER III COLLECTIVE RIGHTS OF RELIGIOUS FREEDOM

Article 20

Churches and religious communities

Churches and religious communities are organized and enduring social communities, in which believers can fulfill all the religious purposes that are offered by the respective denomination

Article 21

Religious objectives

1. Irrespective of whether they are proposed as religious by the denomination, for the purposes of the determination under the legal system, the following shall be considered:

- a) Religious objectives are those that exercise acts of worship or rites, religious assistance, training of ministers of religion, missionary work and dissemination of the professed denomination and religious education;
- b) Amongst the objectives that dissimilar of the religious ones, there are those of relief and acts of charity, education and culture, in addition to objectives for commercial or lucrative gain.

2. Activities with non-religious objectives of churches and religious communities are subject to the legal system and, in particular, the tax system for this type of activity.

Article 22

Freedom to organize churches and religious communities

1. Churches and other religious communities are free to organize themselves, having the right to autonomously arrange:

- a) The formation, composition, competence and functionality of their organs;
- b) The selection, duties and powers of their representatives, ministers, missionaries and religious auxiliaries;
- c) The religious rights and duties of the believers, without prejudice to their religious freedom;
- d) The adherence or participation in the establishment of federations or inter-denominational associations, holding their head-offices in the Country or abroad.

2. Clauses to safeguard religious identity and the specific character of the professed denomination are allowed.

3. Churches and other registered religious communities can autonomously establish or recognize either churches or religious communities of local or regional scope, consecrated life institutes and other institutes with the character of associations or foundations, for the exercise or maintenance of their religious duties.

Article 23

Freedom to carry out religious activities and worship

Churches and other religious communities are free to carry out their religious activities and to worship, namely being able to do so, without the interference of the State or third parties, to:

- a) Carry out acts of worship, in private or public, without prejudice to the police and traffic requirements.
- b) Establish places of worship or meetings for religious purposes;
- c) Teach according to the format and through the persons authorized by the doctrine of the professed denomination;
- d) Disseminate the professed denomination and seek for new believers;
- e) Religiously assist its own members;
- f) Communicate and publish documents on religious matters and on worship;
- g) Connect and communicate with organizations belonging to the same denomination or to others in national territories or abroad;
- h) Appoint and train their ministers;
- i) Establish seminaries or any other training or religious education establishment.

Article 24

Religious education in public schools

1. Churches and other religious communities or, on their behalf, representative organizations of believers, residing on national territories, can ask the Minister of Education to be allowed to minister religious education in primary and secondary public schools indicated by them, so long as they're registered individually, or conjointly, professing to only one denomination or agree on a common program for the purpose.

2. Religious and moral education is optional and not an alternative to any curricular area or subject.

3. The functionality of these classes on religious education of a certain denomination depends on whether there are a minimum number of pupils who have either expressly and positively shown a desire to attend these classes, in this case, they should be above the age of 16, or their education commissioner has.

4. The teachers in charge of the ministration of the religious classes will not cumulatively teach the same students in other curricular subjects or provide training, except in situations duly recognized of a manifest difficulty when applying the principle, and thus, will be appointed or hired, transferred and excluded of teaching the subject by the State, in compliance with the representatives of the churches, communities or the representative organizations. In no such case will a person who is not considered suitable by the respective representatives minister the teaching.

5. It is of the incumbency of the churches and other religious communities to train teachers, draw-up programs and approve the didactic material, in consonance with the general guidelines of the educational system.

Article 25

Times of religious broadcasts

1. Television and radio public services guarantee a period of broadcasting time for churches and other registered religious communities, per se, through the respective

representative organization, or conjointly when they prefer to participate as a single denomination, for them to pursue their religious objectives.

2. The attribution and distribution of the broadcasting time mentioned in the previous point, takes into account the representativeness of the respective denominations and the principle of tolerance, by means of agreements between the Religious Denomination Broadcast Time Committee and the incumbent companies of the public television and radio services.

3. The Religious Denomination Broadcast Time Committee is constituted by representatives of the Catholic Church and of the Churches and other religious communities settled in the Country or the federations in which they are integrated, appointed for three years by joint dispatch of the members of the Government responsible for the areas of Justice and the social communication, after a hearing from the Committee of Religious Freedom.

Article 26

Religious slaughter

The religious slaughter of animals must comply with the applicable legal provisions concerning the protection of animals.

Article 27

Non-religious activities of churches and other religious communities

Churches and other religious communities may also carry out non-religious activities, which are instrumental, consequential or complementary to their religious activities, namely:

- a) To create special schools and cooperatives;
- b) To do charitable work for believers, or any other persons;
- c) To promote their own cultural expressions or education and culture in general;
- d) To use the appropriate means of social communication in the pursuit of their activities;

Article 28

Right to be heard regarding town planning

1. Churches and other registered religious communities have the right to be heard, regarding their decisions in relation to the affectation of space for religious purposes in the town planning of those areas in which they have an organized social presence.

2. The municipal territory regulations and other instruments for the regulation of the territory should foresee the granting of spaces for religious purposes.

Article 29

Use for religious purposes of property intended for other purposes

1. Once having an agreement with the landlord, or the majority of joint owners, in the case of a building in a horizontal property, the usage of the building or a parcel of the land for religious purposes, when such is not intended, cannot be the basis of an objection, nor for an application of penalties, by the administrative or autonomous authorities, if a suitable alternative to this situation and objectives does not exist.

2. The statement made in paragraph 1 does not impair the rights of the joint owners to appeal in the general terms.

Article 30

Religious assets

1. Places of worship, buildings, annexes or worship objects cannot be demolished or used for any other purpose, except with the prior agreement of the respective church or religious community, by expropriation for public use or by requisition, in case of urgent public

need, with the exception of the case when a demolition becomes necessary due to the buildings being in danger of a collapse or place danger to public health.

2. In the cases of expropriation, requisition and demolition referred in the previous paragraph, whenever possible, the respective church or religious community is always heard-out. The latter is equally entitled to a previous hearing in the determination of the execution of the works necessary to correct bad health conditions, solidity or security against the risk of fire and in the classification of religious assets such as cultural value.

3. In any case, appropriation or non-religious usage shall not be practiced, unless the assets have been deprived of their religious nature by the respective church or religious community.

Article 31

Tax-free contributions

1. Churches and other religious communities can freely, and without being subject to any tax:

- a) Receive contributions from believers for the exercise of worship and rites, as well as donations for the fulfillment of their religious purposes, with a regular or casual nature;
- b) Make public collections, specifically within or at the door of the places of worship, as well as in the buildings or places that belong to them;
- c) Distribute free of charge publications with declarations, notices or instructions on religious matters and display them in places of worship.

2. The cost of training, therapy or spiritual counseling offered by enterprises is not included in the exemption of the previous paragraph.

Article 32

Fiscal benefits

1. Registered religious corporate bodies are exempt of any tax or general, regional or local contribution on the following:

- a) Places of worship or other property or parts of properties directly intended for the realization of religious objectives;
- b) Installations of direct and exclusive support for activities with religious purposes;
- c) Seminaries or any establishments effectively destined for the training of ministers of religion or religious education;
- d) Outbuildings or annexes of the properties described in sub-paragraphs a) to d) for the usage of special social welfare institutions;
- e) Gardens and parks of the property described in sub-paragraphs a) to e) provided they are not intended for profit purposes

2. Registered religious collective entities are also exempted from the municipal "sisa" tax as well as from donations and successions, or any other taxes on goods and assets that replace these with respect to:

- a) Purchase of goods for religious purposes;
- b) Deeds of incorporation of foundations, once registered as religious corporate bodies

3. Donations made by individuals to the religious collective entities for the purposes of income tax are deductible in 25% of the amounts delivered, up to 15% of the assessment.

4. An amount equivalent to 0,5% of the income tax of individuals, settled on the basis of annual statements, can be intended by the taxpayer for religious objectives or acts of charity, a church or religious community settled in the country, which they shall indicate in the income tax return, provided that the church or religious community has requested the tax benefit.

5. Items intended, under the terms of the previous point, for church and religious communities are delivered to same or their representative organizations which shall present the Inland Revenue with an annual report on the destination of the amounts received.

6. The taxpayer who does not use the right foreseen in no. 4 may make an equivalent fiscal donation in favor of a collective entity of public utility for charity, assistance or humanitarian purposes or a private institution of social solidarity, which he will refer in his income tax statement.

7. The amounts to be delivered to the entities referred in paragraphs 4 and 6 should have their own item in the State Budget.

CHAPTER IV STATUS OF CHURCHES AND RELIGIOUS COMMUNITIES

Article 33

Legal personality of religious corporate bodies

The following can acquire legal personality through registration in the register of religious corporate bodies which is created in the competent government department:

- a) Churches and other religious communities of national scope or, on the behalf, representative organizations of believers residing on national territory;
- b) Churches and other religious communities of regional or local scope;
- c) Consecrated life institutions and other institutions with the character of associations or foundations, established or recognized by the corporate bodies mentioned in sub-paragraphs a) and b) in the pursuit of their religious purposes;
- d) Federations or associations of corporate bodies mentioned in the previous paragraphs;

Article 34

Requirements for inclusion in the register

The application for registration is addressed to the competent government department and prepared with the statutes and other documents that are allowed to be register:

- a) The name, which must be distinguishable from any other religious corporate body existing in Portugal;
- b) The constitution, institution or establishment in Portugal of the organization corresponding to the church or religious community or the deed of the constitution of association or establishment and eventually, also the recognition of the religious corporate body;
- c) The registered head-office in Portugal;
- d) The religious purposes;
- e) The goods or services that complete or shall complete the estate;
- f) The formation, composition, competence and operation rules of their organs;
- g) The provisions on the dissolution of the corporate body;
- h) The method of appointment and the powers of their representatives;
- i) The identification of the incumbents of the bodies in affectivity with their functions and of the representatives, and specifications of the competence of the latter.

Article 35

Registration of churches or religious communities

Registration of churches or religious communities of national scope, or regional or local scope when they have not been created or recognized by the above, is also prepared with documentary evidence of:

a) The general principles of the doctrine and description of religious practices and acts of worship, particularly the rights and duties of the believers related to the church or religious community, in addition, a summary of the aforementioned elements should be presented;

b) Its existence in Portugal, with particular emphasis on the facts which bear witness to the organized social presence, religious practice and length of time in Portugal.

Article 36

Registration of the representative organisation of believers resident in national territory

1. Churches and religious communities of supranational scope can set up a representative organisation of the resident believers in the national territory, which shall require its own registration in the register, instead of registration of the part of the church or religious community existing on national territory.

2. Registration is subject to the same conditions as the registration of churches or religious communities of national scope.

Article 37

Churches and religious communities settled in the country

1. Churches and religious communities registered with a guarantee of duration are considered as settled in the country, being the qualification witnessed by the Minister of Justice, in view of the number of believers and the history of its existence in Portugal, after a hearing of the Committee of Religious Freedom.

2. The certificate cannot be requested before 30 years of organised social presence in the country, unless it is a case of a church or religious community established abroad more than 60 years ago. The certificate is entered in the register.

3. The application for the certificate shall be prepared with the evidence of the facts on which it is based, in harmony with the provision in Article 38.

Article 38

Supplementary instructions

1. If the applications for registration or the certificate are inadequately prepared, the applicant shall be invited to make up for the deficiencies within sixty days.

2. With a view to the provision of clarifications or additional evidence, the applicant can also be invited to attend a hearing of the Board of Religious Freedom, specifying the subject matter and the order of the hearing.

3. All these invitations shall be made within ninety days after the entry of the application for registration.

Article 39

Rejection of registration

Registration can only be rejected through:

a) Lack of legal requirements;

b) Falsification of documents;

c) Violation of the constitutional limits of religious freedom.

Article 40

Mandatory registration

1. Registration becomes mandatory after a year has passed since the delivery of the application for registration, if in the meantime a notification letter of rejection of the registration has not been sent to the applicant.

2. In the aforementioned period, the case of registration of churches or religious communities or respective representative organisation, is delayed by the period for the provision of deficient information or the hearing referred to in Article 26.

Article 41

Modification of the elements or circumstances of the entry

The elements modifications of the entry of the religious corporate body, or the circumstances on which it is based, should be communicated to the register.

Article 42

Dissolution of religious corporate bodies

1. Religious corporate bodies are dissolved:
 - a) By deliberation of their representative organs;
 - b) By elapsed time limit, if they have been set up temporarily;
 - c) By the verification of some other extinguished cause laid down in the deed of constitution or in their internal regulations;
 - d) By judicial decision, for the causes of judicial dissolution of civic associations.
2. The dissolution of a religious corporate body involves the cancellation of the entry in the respective register.

Article 43

Capacity of religious corporate bodies

The capacity of religious corporate bodies embraces all the rights and obligations necessary or suitable to the pursuit of their purposes.

Article 44

Private corporate bodies with religious objectives

Associations and foundations with religious objectives can also acquire a legal personality under the terms foreseen on the Civil Code for private corporate bodies, thus being liable to the respective regulations, except with regard to their activity with religious objectives.

CHAPTER V

AGREEMENTS BETWEEN RELIGIOUS CORPORATE BODIES AND THE STATE

Article 45

Agreements between churches or religious communities and the State

Churches or religious communities settled in the country or federations in which these are integrated can propose the conclusion of agreements with the State on matters of common interest.

Article 46

Procedure for conclusion of agreements

1. The agreement proposal is submitted through an application requesting the opening of negotiations and addressed to the member of Government responsible for the Justice area, accompanied by supporting documentation for the confirmation of the compliance mentioned in sub-paragraph a) of Article 47.
2. Having heard the Religious Freedom Commission on the agreement proposal the member of Government responsible for the Justice area can:
 - a) Justifiably refuse to negotiate the agreement;
 - b) Appoint a negotiating committee, composed by representatives of the Ministries concerned and an equal number of Portuguese citizens nominated by the church or

religious community, with the task of drawing up a draft agreement or a report on the reasons of its impracticability. The Minister appoints the Chairman of the Committee.

Article 47

Bases of refusal to negotiate the agreement

The following are bases for refusal to negotiate the agreement:

- a) The lack of assurance regarding the internal rules or the religious practice of the church or religious community comply with the regulations of the Portuguese legal system;
- b) Five years have not passed since the refusal of a previous proposal;
- c) The approval of a new law in order to meet the practical objectives of the proposal is not necessary;
- d) The basic content of the proposal does not merit approval.

Article 48

Conclusion of the agreement

1. Once approved by the Council of Ministers, the agreement is signed by the Prime Minister and by the competent Ministers on account of the subject matter, on behalf of the Government, and by the representatives of the church or religious community or the federation.

2. The agreement shall only enter into force after its ratification by law by the Assembly of the Republic.

Article 49

Bill for ratification of the agreement

The agreement is submitted to the Assembly of the Republic with a law proposal, which approves it.

Article 50

Amendments to the agreement

Up to the moment of deliberation of the Assembly of the Republic, which ratifies the agreement, this can be amended by agreement of both parties, having any amendment immediately communicated to the Assembly of the Republic.

Article 51

Other agreements

Religious corporate bodies can conclude other agreements with the State, the autonomous districts and counties for the achievement of their purposes, which do not involve the approval of a law.

CHAPTER VI

COMMITTEE OF RELIGIOUS FREEDOM

Article 52

Committee of Religious Freedom

The Committee of Religious Freedom is created, an independent advisory body of the Parliament and the Government.

Article 53

Functions

1. The Committee has functions covering examinations, information, opinions and proposals on all matters related to the application of the Law on Religious Freedom, with

the development, improvement and any revision of this Law and, in general, with the law concerning religions rights in Portugal.

2. The Committee has also the function of scientific investigation of churches, communities and religious movements in Portugal.

Article 54 Competence

1. In the exercise of its functions it falls namely to the Committee:
 - a) To issue an opinion on the draft agreements between churches or religious communities and the State;
 - b) To issue an opinion on the settle in the country of churches or religious communities;
 - c) To issue an opinion on the composition of the Religious Confessions Broadcast Time Committee;
 - d) To issue opinions on the registration of churches or religious communities requested by the registry department of religious corporate bodies;
 - e) Examine the development of religious movements in Portugal and, in particular, collect and update information on new religious movements, provide the necessary scientific and statistical information to the departments, institutions and persons interested and publish an annual report on the matter;
 - f) Elaborate studies, information, opinions and proposals that have been entrusted by law, by the Assembly of the Republic, by the Government or on its own initiative.
2. The Committee draws its own internal regulations.

Article 55 Cooperation of departments and public bodies

In the exercise of its functions, the Committee has the right to the cooperation of departments and other public bodies.

Article 56 Composition and operation

1. The Committee is constituted by persons grouped-up in the following two sub-paragraphs:
 - a) The Chairman, two members appointed by the Portuguese Episcopal Conference and three members appointed by the member of the Government responsible for the area of Justice amongst the people indicated by churches or non-Catholic religious communities settled in Portugal and by the federations in which they are integrated, taking into consideration the representation of each one and the principle of tolerance;
 - b) Five persons of recognized scientific competence in the areas relating to the functions of the Committee appointed by the member of the Government responsible for the area of Justice, in order to ensure the plurality and neutrality of the State regarding religious issues.
2. Whenever the latter believes it to be necessary or convenient, the members representing the areas of Justice, Finance, Internal Affairs and Work and Solidarity will have a seat in the Committee, appointed permanently, without a right to vote.
3. Whenever the question of appraisal makes reference to other Ministries than those referred in sub-paragraph 2, a representative of the referred Ministry can take part in the respective sessions.
4. The Committee members mandate is three years and can be renewed.
5. The Committee members have the right to produce a dissenting vote on the opinions referred in sub-paragraphs a), b), c) and d) of Article 54 when they have taken part in the deliberation that approved them.

6. The Committee can function in plenary or as a permanent committee.

Article 57

Chairman and operation

1. The Chairman of the Committee is appointed by the Council of Ministers for periods of three years, renewable, amongst jurists of acknowledged competence.
2. The functions of the Chairman are considered to be those of scientific investigation of a legal character, and may be carried out simultaneously with teaching as an exclusive dedication.
3. The operation of the Committee and its supporting services and the legal framework of the respective personnel will be the object of a Government diploma.

CHAPTER VII CATHOLIC CHURCH

Article 58

Legislation applicable to the Catholic Church

The Concordata between the Holy See and the Portuguese Republic dated May 7th, 1940, the Additional Protocol to the same of February 15th, 1975, are kept, as well as the legislation applicable to the Catholic Church, not being applicable to same the provisions of this Law relating to Churches or religious communities registered or settled in the country, without prejudice of acceptance by agreement between the State and the Catholic Church of any arrangements.

CHAPTER VIII SUPPLEMENTARY AND TEMPORARY PROVISIONS

Article 59

Amendment of Article 1615 of the Civil Code

Article 1615 of the Civil Code will now be read as follows:

“Article 1615”

Publicity and format

“The celebration of marriage is public and is subject, according to the will of the betrothed:

- a) To the format laid down in this code and in the laws of the civil register;
- b) To a religious format, under the terms of special legislation.”

Article 60

Amendment of sub-paragraph b) of Article 1654 of the Civil Code

Sub-paragraph b) of Article 1654 of the Civil Code shall be read as follows:

“ b) The entries of urgent civil marriages or according to a religious format celebrated in Portugal;”

Article 61

Amendment of sub-paragraph 2 of article 1670 of the Civil Code

Sub-paragraph 2 of article 1670 of the Civil Code shall be read as follows:

“2. However, the rights of a third party which are compatible with the rights and duties of a personal character of married couples and children, remain intact, unless, this being a matter of registration through transcription, this has been done within the seven days subsequent to the celebration.”

Article 62

Legislation expressly revoked

Law no. 4/71 dated August 21 and Decree 216/72 of June 27 are expressly revoked.

Article 63

Religious denominations and non-Catholic religious associations currently registered

1. Religious denominations and non-catholic religious associations registered in the corresponding government department maintain their legal personality and capacity, being subject to this law with respect to their religious activities under the terms of article 44.
2. These denominations and associations can request their conversion to a religious corporate body under the terms of Articles 34 to 40 by way of compliance with the respective requirements, within the time limit of three years from the entry into force of this law.
3. If they have not done this, they shall only be registered in the National Register of Corporate Bodies, where the files and documents, which serve as the basis for the respective registers, shall be dispatch.
4. Once the time limit mentioned in sub-paragraph 2 expires, the current register of religious denominations and non-Catholic religious associations of the Ministry of Justice is abolished.

Article 64

Social Security

For ministers who benefit from the social security system set up by Regulatory Decree 5/83 dated January the 31st and belong to religious denominations or associations referred to in the previous article, and have not been converted into religious corporate bodies, the respective scheme continues to be applicable.

Article 65

Exemption of Value Added Tax

1. The churches and religious communities settled in the country, as well as the institutes of consecrated life and other institutes, with a character of association or foundation, founded or recognized by the former, as well as the federations and associations to which they belong, may choose the system foreseen in article 1 of Decree-Law 20/90, dated January 13th, while it is in force, not being applicable in those cases numbers 3 and 4 of article 32 of the current law.
2. Private social solidarity institutions, which have requested the return of the value added tax during the period concerning the amount paid will not benefit from the deduction foreseen in number 5 of article 32.

Article 66

Entry into force of the fiscal benefits

Articles 32 and 65 come into force on the date of the beginning of the following fiscal year of the entry into force of this law.

Article 67

Radication in the country

The necessary time of organized social presence in the country for the registered churches and religious communities to request their certificate confirming their presence in the country to which the rule of the first part of number 2 of article 37 refers is 26 years in 2001, 27 years, in 2002, 28 years in 2003 and 29 years in 2004.

Article 68

Fiscal and Legal Codes

The Government is authorized to introduce in the respective fiscal and legal codes the fiscal system arising from the present law.

Article 69

Supplementary legislation

The Government should take all the required measures to ensure the fulfillment of the present law and publish, within a term of sixty days, the legislation on the registration of religious collective entities and the Committee on Religious Freedom.