

Church-State relations and religious freedom in Argentina and Brazil

An introduction

Rodrigo Vitorino Souza Alves¹ and Alexandre Walmott Borges²

Abstract

This article presents the legal regime of church-state relations and religious freedom in Argentina and Brazil, as well as the social and judicial practice, based on reports of specialized organizations and judicial cases. It addresses some of the relevant concerns about the interpretation and application of legal and constitutional clauses related to religion. This article aims to provide a foundation for understanding the arguments in those Latin American countries.

Keywords Brazil, Argentina, church and state relations, religious freedom.

Public display of religious symbols; government funding of religious institutions and activities; hate speech; traditional religious practices and human rights; public prayer; religious education in public schools; public policies, judicial decisions and religious values; civil religion; toleration and proselytizing practices. These issues cover many of the major disputes regarding the relationship between state and religion today. Those tensions are related to two central ideas: the separation of church and state, and the religious freedom.

International declarations and treaties have already provided religious freedom as a human right. The United Nations³ has created a global system for protecting human rights. The Universal Declaration of Human Rights (1948) proclaimed the entitlement of religious freedom for everyone and that it “includes freedom to change his religion or belief, and freedom, either alone or in community with others and

¹ Rodrigo Vitorino Souza Alves (* 1985) is Assistant Professor at the Law School of the Federal University of Uberlândia (Brazil), where he coordinates a research group and supervises research projects in fundamental rights. He holds a Specialized Degree in Criminal Law and a Master’s in Public Law (graduate degree). Rodrigo is a PhD Candidate at Coimbra University, Portugal. He is a speaker on religious liberty issues in Brazil. This article is in American English spelling. Article received: 15 March 2013; Accepted: 5 Sept. 2013. Contact: Universidade Federal de Uberlândia Faculdade de Direito, Av. João Naves de Ávila, 2121, 3D - Santa Mônica, Uberlândia - MG, 38408-144, Brazil, www.ufu.br, Tel. +55 34 9158 8764, E-mail: vitorino.rodrigo@yahoo.com.br.

² Alexandre Walmott Borges (* 1971) is Adjunct Professor at the Law School of the Federal University of Uberlândia (Brazil), where he served as the Coordinator of the Master of Laws program and currently serves as the Director of the Board of Graduate Studies. Prof. Borges holds a Doctor of Laws degree in Constitutional Law. E-mail: walmott@gmail.com.

³ Documents of the United Nations are available at <http://www.un.org>.

in public or private, to manifest his religion or belief in teaching, practice, worship and observance.” This right was also endorsed by the Convention on the Prevention and Punishment of the Crime of Genocide (1948), the International Convention on the Elimination of All Forms of Racial Discrimination (1966), the International Covenant on Civil and Political Rights (1966) and the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief (1981).

Regional human rights protection systems also provided that right. In the Americas, the American Convention of Human Rights (1969), which was ratified by almost all Latin American countries (including Argentina and Brazil)⁴, protect the “freedom to maintain or to change one’s religion or beliefs, and freedom to profess or disseminate one’s religion or beliefs, either individually or together with others, in public or in private”⁵.

The freedom of religion and belief is also provided by those countries’ constitutions. In this introductory article, it is aimed to present the legal regime of church-state relations and religious freedom in Argentina and Brazil, as well as the social and judicial practice, based on reports of specialized organizations and judicial cases. The purpose of its two sections is to provide a foundation for understanding the arguments in those Latin American countries.

1. Argentina

Argentina, a former Spanish colony, for much of its history has been a country with a Roman Catholic majority. According to the CIA World Factbook⁶, from its

⁴ 1. Everyone has the right to freedom of conscience and of religion. This right includes freedom to maintain or to change one’s religion or beliefs, and freedom to profess or disseminate one’s religion or beliefs, either individually or together with others, in public or in private.

2. No one shall be subject to restrictions that might impair his freedom to maintain or to change his religion or beliefs.

3. Freedom to manifest one’s religion and beliefs may be subject only to the limitations prescribed by law that are necessary to protect public safety, order, health, or morals, or the rights or freedoms of others.

4. Parents or guardians, as the case may be, have the right to provide for the religious and moral education of their children or wards that is in accord with their own convictions.

⁵ In the first working session of the Inter-American Court of Rights (February 5, 2001), the Court decided the merit of the case “Last Temptation of Christ” (Olmedo-Bustos et al. v. Chile). This case, which was the first case on freedom of thought and of expression of the Court, was filed by the Inter-American Commission for the Court to decide whether Chile had violated Articles 13 (Freedom of Thought and Expression) and 12 (Freedom of Conscience and Religion) of the Convention. The dispute surrounded Martin Scorsese’ film, “The Last Temptation of Christ”, which The Chilean Cinematographic Classification Council refused to exhibit in Chile because of the defamed presentation of the figure of Christ, a decision confirmed by the Supreme Court of Chile. Although the Inter-American Court found that Chile violated the right to freedom of thought and expression embodied in Article 13 of the American Convention on Human Rights, the Court found that state has not violated the right to freedom of conscience and religion embodied in Article 12.

⁶ Report available at: <http://www.cia.gov>.

population of approximately 42 million people, 92% are Roman Catholic (less than 20% practicing), 2% are Protestant, 2% are Jewish and 4% are affiliated to other religious groups or have no religion. Although the country is considered free, it faces some problems related to church-state relations. The Association of Religion Data Archives⁷ reported that Government regulation of religion, Social regulation of religion and Government favoritism of religion indexes in Argentina are higher than the average of Latin America (the lower the better), which occurs mainly due to state favoritism of the Catholic Church.

1.1 Church-state relations

Argentina has its own church-state relations model. Firstly, the Constitution⁸ was established, as it is written in the Preamble, “invoking the protection of God, source of all reason and justice.” Although this statement was inserted in the Preamble, it is not a rule that must be observed by the people, since it consists in a political declaration only.

However, this declaration made by the representatives of the people is complemented by the second article of the first part of the Constitution, where it is stated that the Federal Government supports the Roman Catholic Apostolic religion. In addition, from 1853 to 1994 the Argentine Constitution commanded that the President would have to practice the Catholic religion. In order to be sworn into office, the President would have to profess his beliefs in God, in the Nation and in the Holy Gospels (Padilla 2004:1). This clause was only removed from the text during the 1994 constitutional reform⁹. Since then, the confessional character of the state has been attenuated, but not eliminated¹⁰.

⁷ Report available at: <http://www.thearda.com>.

⁸ Argentine Constitution (Spanish and English) and Legislation (Spanish only) are available at <http://www.senado.gov.ar>.

⁹ That clause was replaced by articles 89 and 93 of the Constitution, complemented by article 55: Article 55. In order to be elected senator the following conditions are required: to have attained to the age of 30, to have been a citizen of the Nation for six years, to have an annual income of two thousand strong pesos or similar revenues, and to be a native of the province electing him or to have two years of immediate residence therein.

Article 89. To be elected President or Vice-President of the Nation it is necessary to have been born in the Argentine territory, or to be the son of a native born citizen if born in a foreign country; and to have the other qualifications required to be elected senator.

Article 93. On assuming office, the President and Vice-President shall take oath before the President of the Senate and before Congress assembled, respecting their religious beliefs, to: “perform with loyalty and patriotism the office of President (or Vice-President) of the Nation, and to faithfully observe the Constitution of the Argentine Nation, and to cause it to be observed.”

¹⁰ In 1989, the Supreme Court of the Argentinean Nation ruled in the Villacampa v. Villacampa case (312:122, CSJN) that the Roman Catholic religion is not the official religion of the state, despite its favoritism. It also ruled that the confessionality of the President and Vice President was required because of the Patronage System, which was imposed by the Constitution to the Executive Power.

Another change brought by the reform was the removal of the Patronage clause. It was in the text of the Argentine Constitution of 1853¹¹, under which the President selected bishops from lists proposed by the Senate. The government, through its powers, could intervene in episcopal appointments, an inheritance from the Spanish Crown and remnants of royalism (Padilla 2006: 186).

In 1966, after eight years of negotiations, the Republic of Argentina and the Holy See signed an Agreement by which Argentina granted the freedom of the Holy See in the appointment of bishops. Because of this, from 1966 to 1994, despite the Patronage clause, the appointments of bishops were performed by the Catholic Church alone. The Agreement was confirmed in 1994, when the constitutional clause was superseded.

In relation to the governmental support of the Catholic religion,¹² there are several laws that regulate the matter. At least six of them¹³ establish salaries (paid by the Government) to clerics, such as bishops, priests and seminarians.

The relationship between the Government and religious institutions is coordinated by the Ministry of International Relations and Religion, who mediates the relations between the Argentine state and the Holy See. There are also some legal provisions that regulate governmental relationship with all religious organizations operating in the country to ensure the free exercise of religion.¹⁴

The Roman Catholic Church and the other religious organizations have their legal personality recognized in Argentina. Nevertheless, the Catholic Church has a public nature,¹⁵ with special privileges for historical reasons, while the other organizations must require the recognition of its private personality from the Department of Religion.¹⁶

Given this, even though the reform of 1994 is regarded as a great advance in terms of government neutrality toward religion, since there is no establishment clause in the Constitution, the Catholic Church remains in a position of preeminence.

1.2 Religious freedom

The Constitution guarantees the free exercise of religion. Individuals are entitled to the right to freely profess their own religion.¹⁷ A number of laws that aim to

¹¹ Article 86, §8º, Argentinean Constitution.

¹² Article 2, Argentinean Constitution.

¹³ Law n. 21.540 of 1977, Law n. 21.950 of 1979, Law n. 22.162 of 1980, Law n. 22.430 of 1981, Law n. 22.552 of 1982 and Law n. 22.950 of 1983.

¹⁴ Article 17, Law n. 22.520 of 1982.

¹⁵ Article 33, Law n. 340 of 1869 – the Argentinean Civil Code.

¹⁶ Law n. 21.745 of 1978.

¹⁷ Article 14. All the inhabitants of the Nation are entitled to the following rights, in accordance with the laws that regulate their exercise, namely: to work and perform any lawful industry; to navigate and

ensure the effectiveness of this fundamental right may be mentioned. Firstly, crimes motivated by religious hatred shall aggravate the culpability of the accused person, thus showing that the Government is serious about protecting the individual against religious persecution.¹⁸

Secondly, religious holidays were established, for the Jewish Community *Rosh Hashbanab* (New Year) and *Yom Kippur* (Day of Atonement), and for the Islamic Community *Hijra* (the Migration), *Eid al-Fitr* (the Breaking of the Fast) and *Eid al-Adba* (the Festival of Sacrifice).¹⁹ In addition, salaries of members of the Jewish and Islamic Communities are protected during those non-working days.²⁰

Thirdly, the Federal Law of Education²¹ states that not only family, national and state Governments, Provinces and Municipalities are responsible for education, but also the Catholic Church and other officially recognized religious denominations have to promote education in the country. It means that these organizations are regarded as important role players in the cultural formation of the individuals, and that religious preaching and teaching are allowed and encouraged.

Fourthly, the Military Service Law²² states that the clergy, priests, rectors of churches, pastors, seminarians, members of religious organizations and associations are exempted from the obligation of military service, even in the case of call for mobilization.

Finally yet importantly, religious assistance and freedom of conscience and religion are granted to prisoners.²³ The Law also provides that in every prison Catholic worship must be held if possible, but attendance at these events is voluntary.

1.3 Reports

Although some legal and constitutional issues persisted for many decades, religious pluralism has never been a major concern in Argentina. People of various beliefs have generally lived together in a peaceful atmosphere (Floria 2002:344).

trade; to petition the authorities; to enter, remain in, ...travel through, and leave the Argentine territory; to publish their ideas through the press without previous censorship; to make use and dispose of their property; to associate for useful purposes; to profess freely their religion; to teach and to learn.

Article 20. Foreigners enjoy within the territory of the Nation all the civil rights of citizens; they may exercise their industry, trade and profession; own real property, buy and sell it; navigate the rivers and coasts; practice freely their religion; make wills and marry under the laws. They are not obliged to accept citizenship nor to pay extraordinary compulsory taxes. They may obtain naturalization papers residing two uninterrupted years in the Nation; but the authorities may shorten this term in favor of those so requesting it, alleging and proving services rendered to the Republic.

¹⁸ Article 2, Law n. 23.592 of 1998.

¹⁹ Laws n. 24.571 of 1995 and 24.757 of 1996.

²⁰ Law n. 25.151 of 1999.

²¹ Article 4, Law n. 24.195 of 1993.

²² Article 32 (items 2 and 3), Law n. 17.531 of 1967.

²³ Article 153, Law n. 24.660 of 1996.

The International Religious Freedom Report for 2011,²⁴ made by the U.S. Department of State, confirms that Argentine Legislation and public policies protect religious freedom, and in practice, the state authorities respect it. The government did not demonstrate a trend toward either improvement or deterioration in respect for and protection of the right to religious freedom. There were some reports of societal abuses or discrimination based on religious affiliation, belief, or practice, and some reports of anti-Semitism.

This is confirmed by the 2012 Freedom in the World Report²⁵ of the Freedom House, which states that a major problem remains. Although anti-Semitism is reportedly on the decline and Cristina Fernández de Kirchner appointed a Jewish foreign minister in June 2010 (the first person of the Jewish faith to become foreign minister in the country), Argentina's Jewish community, the largest in Latin America, remains a target of discrimination and vandalism.

1.4 Judiciary court cases

“Virgen del Palacio” case. In 2003, the Association for Civil Rights (ADC) filed a petition for judicial review of the administrative act that allowed the placement of an image of the Virgin of St. Nicolas at the main entrance of a public building. The Association petitioned the Supreme Court of Justice of the Nation to declare the unconstitutionality of this act on the grounds of equal treatment and religious freedom rights, which was upheld by the Court in November 21, 2006 (Padilla 2004:10-12).

“Virgen de Luján” case. This case likewise concerns the discussion about the public display of religious symbols.²⁶ In September 2011, the Association for Civil Rights (ADC) and the Civil Partnership Mar del Plata Atheists filed a lawsuit before the Contentious Administrative Justice of the Province of Buenos Aires aimed to annul the resolution of 28 April 2010 of the Chamber of Deputies of the Province, which decided to enthrone an image of the Virgin of Luján in a Hall of that House. They petitioned for the removal of the image and required that the House would henceforth be refrained from placing any type of religious symbols in that public building, because the Chamber is responsible for laying general laws for all the people of the province through representatives elected by people professing different religions or no religion. The case is not closed yet.

2. Brazil

Brazil is a country characterized by plurality of beliefs. After its Independence in 1822, until the late nineteenth century (during the entire period of the Monarchy),

²⁴ Report available at: <http://www.state.gov/j/drl/rls/irf/religiousfreedom/index.htm#wrapper>.

²⁵ Report available at: <http://www.freedomhouse.org/report/freedom-world/2012/argentina>.

²⁶ Report available at: <http://www.adc.org.ar>.

Roman Catholicism was adopted in Brazil as the official religion.²⁷ Any other faiths suffered restrictions, but they could be practiced privately or in specific places, however, without the form of a religious temple. During this period, almost all the population was Catholic. Since then, Brazilian religious settings have changed. According to the last census in 2010²⁸ 64.6% of the population remains Roman Catholic, while 22% are Protestant, 8% have no religion, 3.2% declared themselves followers of other religions and 2% are spiritualists.

2.1 Church-state separation

Law made this pluralism possible. The first breakthrough came with the Decree n. 119-A of 1890, which prohibited the intervention of the government in religious matters, ensured freedom of worship and extinguished the patronage by which the Vatican delegated to the government the administration of local churches.

In the Bill of Rights of the first Republican Constitution (1891)²⁹ we can find the first Establishment Clause in Brazilian constitutionalism.³⁰ This separation model of church and state can be found in each following Constitution, namely, the Constitutions of 1934, 1937, 1946, 1967, and 1988. The current Constitution,³¹ while in its Preamble declares that it was promulgated “under the protection of God”, kept in its text an Establishment Clause.³²

Civil Legislation ratifies the separation when it states that religious organizations are free to define their organizational structure. Until 2003, every religious organization had to adapt their structures to the requirements of the Civil Code³³ – they were treated like associations or foundations. However, in 2003, the Civil Code was reformed, and it was established that religious organizations may be created and

²⁷ Article 5, the Imperial Constitution of 1824.

²⁸ In Brazil, the agency responsible for official statistics is the Brazilian Institute of Geography and Statistics (IBGE). It performs a national census every ten years. Information on age, household income, religion, education, occupation and other subjects can be found in the IBGE's reports published at <http://www.ibge.gov.br>.

²⁹ The text of the Constitution of 1891 is available (in Portuguese only) at www.planalto.gov.br. Translation by the authors.

³⁰ Article 72. The Constitution guarantees Brazilians and foreigners residing in the country the inviolability of the rights to liberty, security of person and property, as follows:

§ 7º. No cult or church will enjoy official subsidy, nor have relations of dependence or alliance with the Union Government and the states.

³¹ The text of the Constitution of 1988 is available (Portuguese and English) at <http://www.planalto.gov.br>.

³² Article 19. The Union, the states, the Federal District and the municipalities are forbidden to:
I – establish religious sects or churches, subsidize them, hinder their activities, or maintain relationships of dependence or alliance with them or their representatives, without prejudice to collaboration in the public interest in the manner set forth by law.

³³ Law n. 10.825.

organized freely, and that the Government is forbidden to deny the recognition or registration of their incorporation and other necessary acts.

Although state and church are separated, the Brazilian Constitution allows the Government to support religious schools, because of their social relevance.³⁴ Concerning religious education in public schools, the Brazilian Constitution states that religious education should be taught in elementary public schools. However, it must not have a proselytizing or dogmatic character and student's participation shall not be mandatory.³⁵ Curiously, the government made an agreement with the Holy See in 2008 (the Concordat) in order to guarantee some rights to the Catholic Church, which include the teaching of Catholic doctrine in public schools during religious education classes.

2.2 Religious freedom

The right to believe and to express the faith has been granted to Brazilians since its first Constitution (1824). However, it was not a Religious Freedom Clause in its full sense. As already said, there were some restrictions to non-Catholics. This situation was changed when the new Constitution was promulgated. Since the 1891 Constitution, religious freedom is largely ensured for every individual.³⁶ It must be said, nevertheless, that during the military government, an authoritarian regime that ruled Brazil from 1964 to 1985, civil rights were restricted, such as freedom of conscience and expression.

³⁴ Article 213. Public funds shall be allocated to public schools, and may be channeled to community, religious or philanthropic schools, as defined by law, which:

I – prove that they do not seek profit and that they apply their surplus funds in education;

II – ensure that their assets shall be assigned to another community, religious or philanthropic schools, or to the Government in case they cease their activities.

Paragraph 1. The funds provided by this article may be allocated to elementary and secondary school scholarships, as provided by law, for those who prove insufficiency of means, when there are no vacancies or no regular courses are offered in the public school system of the place where the student lives, the Government being placed under the obligation to invest, on a priority basis, in the expansion of the public system of the locality.

Paragraph 2. Research and extension activities at university level may receive financial support from the Government.

³⁵ Article 210. Minimum curricula shall be established for elementary schools in order to ensure a common basic education and respect for national and regional cultural and artistic values.

Paragraph 1. The teaching of religion is optional and shall be offered during the regular school hours of public elementary schools.

³⁶ Article 72. The Constitution guarantees Brazilians and foreigners residing in the country the inviolability of the rights to liberty, security of person and property, as follows: §3. All individuals and religious groups can publicly and freely exercise their religion, associating for that purpose and acquiring assets, subject to the provisions of law.

The current Federal Constitution and Legislation are quite advanced in terms of religious freedom. The Constitution guarantees all individuals religious freedom as a fundamental right, prohibiting any discrimination based on grounds of belief.³⁷ Individuals are entitled to the rights of conscience and to practice religion. Religious assistance in collective establishments is granted. Religious societies have autonomy to make decisions internally and receive protection against discrimination. Places of worship and rites have to be protected by the Government. The Constitution, in order to keep religious autonomy, also guarantees that temples are endowed tax immunity.³⁸ The conscientious objection right is also provided.³⁹ In relation to the military service, the Constitution establishes that the Armed Forces may require from the objectors an alternative service (e.g. community service), and that clerics are exempt from military service during times of peace.⁴⁰

In Federal Legislation, there are several rules that ensure and advance religious freedom. For example, Brazil recognizes that religious marriage equates to civil marriage.⁴¹ Religious practices are protected by the Brazilian Penal Law,⁴² it being a crime to mock someone for their religion or to disturb a ceremony or worship service.⁴³ It is also a

³⁷ Article 5. All persons are equal before the law, without any distinction whatsoever, Brazilians and foreigners residing in the country being ensured of inviolability of the right to life, to liberty, to equality, to security and to property, on the following terms:

VI – freedom of conscience and of belief is inviolable, the free exercise of religious cults being ensured and, under the terms of the law, the protection of places of worship and their rites being guaranteed;

VII – under the terms of the law, the rendering of religious assistance in civil and military establishments of collective confinement is ensured;

VIII – no one shall be deprived of any rights by reason of religious belief or philosophical or political conviction, unless he invokes it to exempt himself from a legal obligation required of all and refuses to perform an alternative obligation established by law.

³⁸ Article 150. Without prejudice to any other guarantees ensured to the taxpayers, the Union, the states, the Federal District and the municipalities are forbidden to: ... VI – institute taxes on: ... b) temples of any denomination.

³⁹ Article 5, item VIII, the Brazilian Constitution.

⁴⁰ Article 143. Military service is compulsory as set forth by law.

Paragraph 1. It is within the competence of the Armed Forces, according to the law, to assign an alternative service to those who, in times of peace, after being enlisted, claim imperative of conscience, which shall be understood as originating in religious creed and philosophical or political belief, for exemption from essentially military activities.

Paragraph 2. Women and clergymen are exempt from compulsory military service in times of peace, but are subject to other duties assigned to them by law.

⁴¹ Article 1.515, Law n. 10.406 of 2002. In July 2013, for the first time, the Superior Court of Justice recognized the civil effects of a marriage annulment made by the Catholic Church.

⁴² Executive Order n. 2.848 of 1940.

⁴³ Article 208. Publicly mock someone for reasons of belief or religious function, prevent or disrupt ceremony or practice of religious worship; publicly vilify act or object of worship:

Penalty - imprisonment of one month to one year or a fine.

Paragraph - If there is use of violence, the penalty is increased by one third, not to mention the penalty

crime to practice discrimination based on race, color, ethnicity, national origin or religion.⁴⁴ Examples of discrimination are to deny or impede employment in private enterprise, and to decline or prevent access to business premises, refusing to serve or receive customers or buyers. Brazil also punishes severely the crime of genocide.⁴⁵

2.3 Reports

Firstly, the 2012 report of the Freedom House⁴⁶ declares that “the constitution guarantees freedom of religion, and the government generally respects this right in practice”. The International Religious Freedom Report for 2011 of the U.S. Department of State⁴⁷ endorses this positive situation, noting, however, that there are discrimination practices based on religious belief, including incidents involving anti-Semitism and intolerance towards followers of African-based religions.

Currently, the Brazilian Federation faces some other delicate issues involving the relationship between state and religion, which are not mentioned in those reports. About this, the following examples can be highlighted: the questioning about the inscription “God be praised” in the Brazilian Real bills and the use of crucifixes in courts and other public offices; the relationship between state sovereignty, self-determination and religious freedom of the indigenous groups, especially on the killing of newborn children due to physical disability; the positioning of the Brazilian Judiciary about hate speech; discussion about religious education in public schools and state support of cultural activities with a religious character; the social implications of the Sabbath; the relationship between medical practice and rejection of blood transfusion by patients or their legal guardians.

Certainly, although there is no significant religious persecution in Brazil (but it must be said that religious minorities suffer prejudice in some areas), there are situations endowed with a high degree of importance that need to be better examined. Let us briefly present some of them.

2.4 Judiciary court cases

“Ellwanger” case. Even though Brazilian Constitution guarantees the right to freedom of expression, this right is not absolute. The Supreme Corte ruled, in the Ellwanger Case,⁴⁸ that “hate speech”, which consists of expressions that promote hatred against religious, ethnic or racial minorities, is unconstitutional.

for the corresponding violence.

⁴⁴ Law n. 7716 of 1989.

⁴⁵ Law n. 2889 of 1956.

⁴⁶ Report available at: <http://www.freedomhouse.org/report/freedom-world/2012/brazil>.

⁴⁷ Report available at: <http://www.state.gov/j/drl/rls/irf/religiousfreedom/index.htm#wrapper>.

⁴⁸ *Habeas Corpus* n. 82424-RS, 2003.

“Infanticide” case. Christian missionaries have been accusing the Brazilian Government of allowing the practice of infanticide among Amazonian Indians. At the center of this campaign is the Hakani Project,⁴⁹ which aims to prevent the practice. For them, the right to cultural diversity can never be invoked as justification to tolerate the infanticide. In addition to the campaign, a bill was proposed in 2007⁵⁰ to prohibit traditional practices that are contrary to the Constitution and International Treaties, such as infanticide, rape and aggression. The bill is still being processed.

“Crosses in Courts” cases. In March 2012, the Council of Court Judges of Rio Grande do Sul state unanimously commanded the removal of crucifixes and religious symbols from the court buildings, based on the need to safeguard the public space of the Judiciary by using only the official symbols of the state.⁵¹ Before that, in May 2007, the National Council of Justice (CNJ) found that the presence of religious symbols in courts did not violate the secular state, since these symbols are a cultural trait of Brazilian society.⁵²

“God be Praised” case. Since 1986, the motto “God be Praised” has been included in all Brazilian paper currency. On 12 November 2012, the Regional Federal Prosecutor’s Office in the state of Sao Paulo requested the Regional Federal Court to ensure the removal of the reference to God from the Real bills. The Prosecutor sought a preliminary injunction, in order to restrain the Federal Reserve from publishing the expression on the grounds of equality, non-exclusion of minorities and the concept of a secular state. On 29 November 2012, the Seventh Court of Justice of Sao Paulo rejected the preliminary request, arguing that the motto does not seem to be an imposition of a religion by the state. The legal challenge is still pending.⁵³

3. Final remarks

This introductory article addressed the legal regime and some of the relevant concerns about the relation between church and state in Argentina and Brazil. Although there is no severe persecution against religious groups in these countries, as reported by international organizations, the mentioned issues require further critical and contextual discussions, in order to promote and strengthen religious freedom in Latin America.

Dilemmas concerning religious freedom and church-state relations require difficult solutions. On the one hand, states should guarantee religious freedom to all individuals within their territory and should keep themselves separated from

⁴⁹ More information at: www.hakani.org.

⁵⁰ Bill n. 1.057-2007.

⁵¹ Petition n. 0139-11/000348-0, TJRS.

⁵² Petitions 1.344, 1.345, 1.346 e 1.362, CNJ.

⁵³ ACP 00119890-16.2012.4.03.6100.

religious social life in order to respect civil liberties. On the other hand, civil societies do not live in a vacuum. They operate in a framework defined by principles, on which they are based. There are traditions and customs in every society. According to Ferrari (2011:34-35), “the state is not an empty container that can be filled with whatever content: on the contrary it has a memory and a history that provide guidance in selecting the inputs coming from civil society.” In his opinion, the state is in a continuous transformation under the inputs of civil society and it is made by people with a culture and an identity, which influence court decisions, creation of laws and public administration.

Although Parliaments, National Judiciaries and International Courts have been struggling with great legal issues, perhaps the major problem concerning religious freedom is the lack of effectiveness of law. “Many human rights are neglected, but religious freedom is often strikingly so,” said Paul Marshall (2011). The concern increases significantly when religious freedom is recognized as important not only in its own right but also as central to other human goods, since that freedom is correlated with all civil and political rights.

Legal, political and social problems become more intense when cultural diversity increases, and that is happening in Latin American countries. According to Bhikhu Parekh (2006:295), “from time to time a multicultural society is bound to throw up situations in which deep cultural and moral disagreements between its different communities come to the fore and create a crisis.” The interplay of different cultures in one society requires a broader and conciliatory perspective from social role players, such as individuals, institutions, state agents and political representatives, in order to avoid social fragmentation and anomy.

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