NON-CATHOLIC RELIGIOUS MARRIAGES IN SPAIN [1]

Isabel García Rodríguez.
Associate Professor of PIL
Universidad de Murcia.

I. INTRODUCTION AND SOURCES

In Spain, we can say that in less than one hundred years the marriage system has changed from compulsory civil marriage in 1870, to the subsidiary civil marriage found in our first article 42 of the Spanish Civil Code, then back again in 1932 to compulsory civil marriage, and in 1938 to a new subsidiary civil marriage[2]. But the changes do not stop there. Since then, but mostly since 1967, marriage law has moved toward a facultative civil marriage. And in 1978, in line with the Spanish Constitution, the main principles that govern this subject are laicism and religious freedom in two senses: the right to practice and the freedom of belief and thought. In short, religious freedom in all senses.

The constitutional sources that made possible the development of several accords or covenants with the representatives of different religions are article 14, which declares that all religions have the same rights, and article 16 which requires equal legal treatment and states the bases thereof[3]. Both articles are

---

1. This article is the basis of the conference given on August, 23, 1994, at the Swiss Institute of Comparative Law (Lausanne). I want to thank the Institute for letting me be there as a "boursier" during July and August 1994, in order to research this subject. This has facilitated the final stages of preparation of the book I intend to publish. I am very grateful to all my new collcagues at the Institute for the kind way in which they welcomed me, and very specially to Martin Sijhoff who helped me with some aspects of the translation into English. I must say that it was a great honour for me to have Mr. von Overbeck at my conference, even though his presence placed a greater responsibility on me.

2. *Vid.* J.D. González Campos, "Capítulo VII, Matrimonio", in J.D. González Campos *et al.*, *Derecho internacional privado. Parte especial.*, 5ª ed. rev., Madrid, 1993, 401—54, p. 402—03. For a detailed analysis of the historical evolution of this topic see S. Adroher Biosca, *Forma del matrimonio y Derecho internacional privado*, Madrid, 1993.

3. Although article 14 of the Spanish Constitution proclaims religious equality, it is article 16 which defines its legal treatment: *vid.* J.M. Serrano Alberca, "Artículo 16", in F. Garrido Falla (Dir) *et al.*, *Comentarios a la Constitucion*, Madrid, 1985, 284—299.

Spanish Yearbook of International Law, Volume II 1992, 32-44.

modeled on the Universal Declaration of Human Rights (article 18), the International Convention on Civil and Political Rights (article 18), and the European Convention on Human Rights (article 9)[4].

It is not clear in the Spanish Constitution if Spain is a secular State or not. To resolve this question we can consider different opinions: those that say that Spain is a pluri-confessional State, those that consider Spain to be a quasi-confessional State[5] (because the Constitution makes a special reference to the Catholic Church or to religions in general[6]), and those that think that Spain is a secular State that permits religions[7].

Personally I think that the Spanish Constitution takes into account the social reality of Spanish citizens. In that sense Spain is a secular State which considers the socio-religious way of life. That's why the Spanish Constitution does not proclaim any official religion, but neither does it declare that Spain is a secular State.

Our Constitution recognizes the presence of great religious feelings in Spanish society, and states that it is necessary to cooperate with the different churches and religious entities.

Upon this foundation, the organic law which regulates religious freedom[8] was approved in 1980. With this law the principle of religious freedom can be real and effective. This does not mean that the State — the Parliament — has the competence to create religious rules. It only accords competence to cooperate with the different religious entities and the right to establish the limits of religious freedom, so it doesn't go against constitutional principles and policies[9]. And we can't forget that in addition to religious society, there also

---

4. *Vid.* M. López Alarcón, "Actitud del Estado ante el factor social religioso", in *Anuario DEE*, vol. V (1989), 63—68, p. 63.

5. I.C. Ibán, "Grupos confesionales atípicos en el Derecho eclesiástico español vigente", in Various Autbors, *Estudios de Derecho canónico y Derecho eclesiástico. Homenaje al Profesor Maldonado*, Madrid, 1983, p. 299.

6. D. Llamazares, y G. Suárez Pertierra, "El fenómeno religioso en la nueva Constitución española. Bases para su tratamiento jurídico", in *RFDUC* (1980), n.61, p.33 and L. Vicente y Cantín, "La confesionalidad genérica del Estado español", in Various Authors, *Homenaje al Profesor Maldonado, cit.*, p. 863—888.

7. E. Molano, "La laicidad del Estado en la Constitución española", in *Anuario DEE*, vol. II (1986), 242--249, especially p. 245.

8. Organic Law on Religious Freedom, 5 July 1980.

9. Some authors feel that tbe constitutional principles on this topic are religious freedom, the lay nature of the State, religious equality and cooperation with the different denominations: P.J. Viladrich., "Los principios informadores del Derecho eclesiástico español", in Various Authors, *Derecho eclesiástico del Estado español*, Pamplona, 1980, 211—317, and Pamplona, 1983, 169--261. Y J. Ferrer Ortiz, "Laicidad del Estado y cooperación con las confesiones", in *Anuario DEE*, vol. III (1987), 237—248, p. 238.

exists an agnostic and an atheist one.

In short, the covenants with the Evangelical, Muslim and Jewish entities and federations are based, together with international conventions, on the Spanish Constitution and the Organic Law of Religious Freedom, which provide for the elaboration of conventions, agreements or covenants in article 7[10].

Nevertheless, this was not the case with the Catholic Church because at the same time that the Spanish Constitution was being elaborated, there were already negotiations underway with the Holy See to replace the 1953 Concordat[11]. This situation disrupted the harmonious development of our Constitution as regards religious matters because the covenants with the Holy See are not really post-constitutional, but pre-constitutional[12].

Anyway, cooperation between the State and religious institutions or federations is meant to promote and protect the religious rights of Spanish citizens and foreigners living in Spain.

But not every religion meets the requirements for entering into an agreement with the State. Article 5 of the Organic Law on Religious Freedom re-quires the previous registration of a religious entity in the Religious Entities Registry[13]. Religions must also be well-established and long-standing and recognized by Spanish citizens. The way to determine if a religion is well-established is by the number of followers it has, and by its expansion and

---

10. Article 7 of the *LOLR* states: "1.- The State, taking into account the existing religious beliefs of Spanish society, will establish cooperation agreements and conventions with the churches, denominations and communities that are recorded in the Registry which, due to their scope and number of followers, have become well-established in Spain. All of these agreements will be approved by law in the Parliament. 2.- These agreements and conventions can extend the fiscal benefits stipulated in the general legal system for non-profit and other charitable organizations to these churches, denominations and communities. The principle of equality will always be respected.".

11. There are four new accords witb the Holy See, all of which date to 1979: The Convention on Juridical Matters in which the personality, freedom and autonomy of the Catholic Church and the new system of civil marriage and canonic marriage are recognized; the Convention on Education and Cultural Matters; tbe Convention on Economic Matters; and The Convention on Religious Aid to Military Forces and Military Services for Priests and Clergyman.

12. *Vid.* on this topic C. Serrano, "Los Acuerdos del Estado Español con las Confesiones no católicas", in *Anuario DEE*, vol. IV (1988), 89—105, p. 96.

13. The organization and functioning of this registry is regulated by Decree 142/1981 dated 9 January. A thorougb analysis of these rules can be found in I. Aldanondo Salaverra, "El Registro de Entidades Religiosas. (Algunas observaciones sobre su problemática registral)", in *Anuario DEE* vol. VII (1991), p. 13—47.

scope among Spanish people in Spanish territory[14]. These requirements were not applied to the Catholic Church because article 16.3 of the Spanish Constitution mentions express recognition of a certain status for this religion among Spanish citizens, and because on March 11, 1982, the *Dirección General de Asuntos Religiosos* (Bureau of Religious Affairs) promulgated a resolution stating that the congregations of the Catholic Church do not need to be registered. This is why the congregations or territorial districts of the Catholic Church do not need to be registered[15].

The main difference between the Conventions with the Holy See and other covenants is that the first ones are international agreements. The Holy See is a State and the Evangelical, Muslim and Jewish covenants are only Spanish laws. Granted they are negotiated laws, but national laws nonetheless. We could call them "covenanted laws", that is, a law that before being approved by the Parliament must be discussed and negotiated by the parties involved — in this case the religious federations on one side and the Spanish Ministry of Justice on the other. So, the Conventions with the Holy See are regulated by international law and the Vienna Convention on the Law of Treaties; meanwhile, the Muslim, Jewish and Evangelical convenants are regulated by the Constitution and the Organic Law on Religious Freedom[16].

This is very important because it means that the Convention with the Holy See has a higher rank in a hierarchical classification than the Evangelical, Muslim and Jewish covenants. What's more, the Holy See Conventions are

14. Establishment was declared in 1985 for the Hebrew and Protestant denominations while the Muslim religion was not recognized as firmly established until 1989: *vid.* García Hervás, loc.cit. (1991), p. 590. Fernández Coronado maintains that in order to prove clear and recognized establishment the history and continuity of the denomination in Spain can be considered as can the predictions for its future stability, its establishment outside the State and the problems that arose related to that establishment: "Los Acuerdos del Estado Español con la Federación de Entidades Religiosas Evangélicas de España (FEREDE) y la Federación de Comunidades Israelitas (FCI). (Consideraciones sobre los textos definitivos)", in *Anuario DEE* vol. VII (1991), 541—577, p. 544.

15. I. Aldanondo Salaverra, "El Registro de Entidades Religiosas. (Algunas observaciones críticas sobre su problemática registral)", in *Anuario DEE*, vol. VII (1991), 13—47, especially p. 15—16 and p. 20, where some contradictions can be observed.

16. In this regard see A. Viana, *Los Acuerdos con las Confesiones y el principio de igualdad*, Pamplona, 1985, p. 207—209, and I. Zabalza, "Confesiones y entes confesionales en el ordenamiento jurídico español", in *Anuario DEE*, vol. III (1987), 249—268, p. 262—263. For an opposing view, and giving equal treatment to the agreements with the Holy See and those that by virtue of the *LOLR* could be made with other religions at the time his article was written, *vid.* C. Serrano, "Los Acuerdos del Estado Español con las Confesiones no católicas", in *Anuario DEE*, vol. IV (1988), 89—105, p. 96.

superior to the Organic Law on Religious Freedom, while the other covenants are not, because it is this act that makes them possible.

But, even given that important difference, it is true that in all of them, neither the State nor a representative of the religions can unilaterally modify the content of the agreements because of the principle of *pacta sunt servanda* and the *rebus sic stantibus* clauses[17].

II. GENERAL ASPECTS

Before discussing the content of the different covenants, we should mention that for a period of thirteen years some Spanish citizens were discriminated against. Non-Catholics could not celebrate their marriage according to their religion unless they got married in a State in which that religion was recognized in accordance with the *lex loci*[18]. Additionally, already performed non-Catholic marriages were not considered to be a barrier to a subsequent marriage[19].

---

17. Some find the reasons why it was impossible to unilaterally modify these agreements in the principle of *pacta sunt servanda* (F. Lombardía, "Fuentes del Derecho eclesiástico español", in *DEE* (1983), p. 157 y ss; A. Motilla de la Calle, "Los Acuerdos o convenios de cooperación entre el Estado y las Confesiones religiosas en el Derecho español", in *RDPúblico* (1985), p. 387 y ss.; and A. de Pablo Contreras, *Constitución democrática y pluralismo matrimonial*, Pamplona, 1985), while others limit the *rebus sic stantibus* clause to the international sphere, which is not the sphere of the other agreements which are agreements with "prior negotiation laws" (D. García Hervás, "Contribución al estudio del matrimonio religioso en España, según los Acuerdos con la Federación de Iglesias Evangélicas y con la Federación de Comunidades Israelitas", in *Anuario DEE*, vol. VII (1991), 589—604, especially p. 592—593).

18. As regards this issue we find the Resolution of the *Dirección General de los Registros y del Notariado* dated 17 June 1991 (*BIMJ* nº 1611, pp. 4419—4421) which denies the inscription of an Islamic marriage between a Spaniard and a Morrocan in the Civil Registry in Spain as a marriage performed according to a non-Catholic denomination can only be performed in accordance with the terms stipulated by the State and these had not yet been established. Taking advantage of this Resolution, S. Adroher Biosca reflects on the then proposed agreements with the Hebrew, Islamic and Evangelical denominations in *REDI*, vol. XLIV (1992), nº1, 223—226. Also see the Resolution dated 20 August 1991 (*BIMJ* nº 1615, p. 5199—5201).

19. As regards this topic, the Resolution of the *Dirección General de los Registros y del Notariado* dated 27 September 1991 (*BIMJ* nº 1619, pp. 6116—6118), allows the celebration of a civil marriage between a Moroccan man (who is now Spanish) and a Spanish woman who had previously entered into an Islamic marriage in Melilla. The information that was obtained in the neighborhood about the celebration of the Islamic marriage was not considered to be sufficient proof, and even if it were true, the groom had already become Spanish by 1989 and therefore "this

The accords that exist between Spain and the Spanish Federation of Evangelical Entities, the Spanish Federation of the Israelite Communities and the Spanish Muslim Commission[20] regulate very different kinds of questions, all of which are of great importance to the people who profess those religions. In general, the covenants have four scopes of application: personal, material, territorial and temporal.

1. Personal Scope

Personal scope refers to three groups. First of all we have the churches, religions, communities or entities registered in the special section of the Religious Entities Registry that must be included or must belong to the larger federation or community of that religion[21]. It is not enough to belong to or depend upon the federation or commission; an entity must be registered. This requirement is used as a filter to control the purposes and intentions of a given religion. One type of control is legal control. In other words, making sure that the religion does not violate Spanish public policy or constitutional principles[22].

Secondly, personal scope refers to the ministers of the religions that are party to the covenants. Ministers must be natural persons, authorized by the religious community or federation[23], regardless of their nationality. It is not necessary for them to be Spanish citizens.

And third, the covenants apply to all persons, Spanish citizens or not, who profess one of those religions.

2. Substantive Scope

The substantive scope or content of the Evangelical, Muslim and Jewish covenants varies. This area deals with: a) questions concerning the inviolability of the buildings or places of worship used for religious services and rites

---

was only a religious ceremony and had no civil effects" as it was not yet regulated by the cooperation agreements.

20. These agreements were approved by Laws 24, 25 and 26/1992 dated 10 November (*BOE*, n.272, 12.11.1992).

21. *Vid.* article 1 of the respective covenants.

22. Also *vid.* Fernández Coronado, *loc. cit.* (1991), p. 542--543.

23. *Vid.* article 3 of the respective covenants. For an analysis of the content and conditions for ministers of the Evangelical and Hebrew religions *vid.* Fernández Coronado, *loc. cit.* (1991), p. 552—554.

(articles 2); b) the professional secrecy or confidentiality that must be observed by the officials or ministers of the religion (articles 3); c) the military service and social security rights of ministers (articles 4 and 5); d) the civil effect of a religious marriage (articles 7); e) the right to participate in religious activities and to receive religious aid and services (articles 8 and 9); f) the right to receive a religious education (articles 10); g) the regulation of economic funds and taxes (articles 11); h) respect for religious holidays and feasts at work and in school (articles 12).Moreover, the Israelite and Islamic Covenants stipulate cooperation with the Spanish State to preserve, maintain and promote the historical, artistic and cultural patrimony and properties of the Jewish and Muslim peo-ple (articles 13).

3. Territorial Scope

Even though there is nothing written about the territorial scope of the covenants, we must say that they are only applicable in Spanish territory. However, acts and activities commited abroad which fall within the scope of the covenants but produce effects in Spanish territory or on Spanish citizens are also covered with the exception, as we will see, of marriage.

At this point, we should state that we are speaking about autonomous norms, those that have been approved by the Spanish Parliament and are included in the Spanish legal system, and not those norms or religious rules pertaining to specific religions. In that way autonomous Spanish rules are limited to Spanish national territory, while religious norms have no territorial limits because they are of personal application.

4. Temporal Scope

With regard to the temporal scope we should mention that the entry into force and effect of the three covenants took place on the day after their official publication, that is, on the 13th of November of 1992, and that neither the acts approving the covenants nor the covenants themselves include anything about a possible retroative application. So, in keeping with the general rules of article 9.3 of the Spanish Constitution and article 2.3 of our Civil Code, we must conclude that the three agreements are only applicable to the events that take place after their entry into force[24].

---

24. This same criteria is established by the Instruction issued by the *Dirección General de los Registros y del Notariado* dated 10 February 1993 which declares that it is not applicable to marriages celebrated prior to its entrance into force. This will be briefly addressed in section IV.

III. THE REGULATION OF MARRIAGES IN THE EVANGELICAL, MUSLIM AND JEWISH COVENANTS

As we said before, marriage is regulated in article 7 of each covenant. The composition of the three articles is very similar, and the first draft covenants follow the standards set by the Holy See Convention and the Spanish Civil Code[25]. However, there are significant differences, especially as regards Jewish and Muslim marriages.

In brief, article 7 of both covenants stipulates the recognition of the civil effect of those religious marriages that have the following characteristics:

1. Evangelical and Jewish Marriages

The Evangelical or Jewish community in which a bride and groom intend to contract marriage must belong to the Spanish Federation or Community[26] and be registered in the Religious Entities Registry.

The bride and groom must obtain a previous marriages file. This non-contentious administrative action concludes with the issuance of a document that certifies that they have sufficient capacity to marry[27]. That is, the certificate must state that the individuals involved are eligible to marry. Capacity to marry is analyzed taking into account Spanish law and the law of nationality if the bride and groom are foreigners, or the law of habitual residence if they are considered stateless[28].

The certificate is only valid for six months so the couple must marry in that period of time. Religious authorities or ministers may receive the certificate, but there is no sanction if they don't. The only consequence would be that the civil effects of the marriages they performed would not be recognized.

The religious official or minister who is going to perform the ceremony must be authorized to celebrate marriages by his/her respective federation and community or congregation. The minister and two witnesses of legal age must be present at the ceremony. In Spain you are considered to be of legal age when you reach 18 years of age.

---

25. *Vid.* Fernández Coronado, loc.cit. (1991), p. 555.

26. Evangelicals must belong to the FEREDE and Jews to the FCI.

27. We must not forget that in order to perform a civil marriage here in Spain, prior authorization from some of the authorities listed in article 51 of the Civil Code is required and to get this authorization, the couple must show that they meet the requirements regarding capacity that are found in the Code and in the *Ley* and *Reglamento del Registro Civil.*

28. *Vid.* articles 9.1 and 9.10 of the Spanish Civil Code.

After the wedding ceremony, the minister who performed the act must make note of the celebration of the wedding on the certificate of capacity to marry and send a copy to the Civil Registry[29]. While the Holy See Covenant states that the marriage must be registered within 5 days after the wedding, these covenants include no requirements of this kind[30].

The Israelite Covenant also stipulates that the marriage form must meet all the formal requirements established by Jewish law.

So, the marriage itself and the identity of the witnesses are recorded on the certificate. The completed certificate serves as proof that the marriage has been validly celebrated and is a prerequisite to registration. At this point, the marriage has civil effects but until registration or inscription is completed, it does not have *full legal effects.*

In other words, if a marriage is registered, it acquires *erga omnes* validity, but if it is not, this fact would not limit the civil effects of the marriage because registration is not a constitutive element of the marriage, but rather a privileged way of proving that the ceremony did indeed take place. After registration, the spouses receive the Spanish Family Book. This book is a document in which marriage, the birth of children and deaths within a family are recorded.

At the time of registration, Spanish Civil Registry officials must verify that the ceremony took place within six months of the date on which the certificate was issued. We must remember here that accreditation of the capacity to marry was verified before the certificate was issued.

2. Muslim Marriage in Spanish Law

The Muslim institution in which the bride intends to contract marriage must belong to one of the Islamic communities included in the Spanish Islamic Federation or Commission (CIE), and it must he registered in the Religious Entities Registry. This is the same requirement that we've seen for Evangelical and Jewish marriages.

As regards Muslim marriages, the parties can choose whether or not they want to obtain the previous marriages file or not in order to obtain a capacity-

29. The covenants do not stipulate an express obligation for the ministers of the religions, but the wording does state that "the official at the marriage will immediately send a copy of the duly prepared certification to the competent civil registry." Also see article 24 of the *Ley de Registro Civil.*

30. *Vid.* the Final Protocol of the Legal Covenant with the Holy See.

to-marry certificate. The consequences of both choices will be discussed later in this section.

The marriage must be celebrated in the form foreseen by Islamic Law[31] and in the presence of an appropriately authorized religious guide and two fully capacitated witnesses. These requirements show that the Spanish legislator did not fully accept the private form of Muslim marriages. Muslim marriages can only be celebrated if at the time of the wedding the bride and groom have marital capacity as defined by the Spanish Civil Code[32]. The Muslim religious au-thority who celebrates the wedding must be aware of this fact and take it into consideration.

In order to obtain full legal effect, the marriage must be registered in the same way an Evangelical or Jewish marriage must be.

As we said earlier, the parties to a Muslim wedding can choose whether or not to request a prior marriages file, and there are certain consequences for each choice. We will now analyze these consequences. If the marriage was celebrated after the marital capacity certificate was obtained, the official at the Civil Registry only has to make sure the wedding took place within a six month period. He must also check whether the Muslim religious guide present at the marriage was the same one who filled out the certificate, because it may be that the religious guide who performed the marriage does not have the necessary competence to complete the certificate. Exclusive competence to fill out the certificate is accorded to the Islamic community's legal representative[33]. This supposes further control of the civil conditions of marriages. Within the second possibility, if the marriage was contracted without the previous marriages file, then, in order to obtain the capacity-to-marry certificate, the Islamic community representative must send to the Spanish Civil Registry a certificate stating the marriage was celebrated and that the requirements set out in the Spanish Civil Code were met[34]. In this case, the Spanish Civil Registry official, before registering the marriage, has the duty of verifying if the bride and groom reallly were able to contract that marriage and fulfilled Spanish Civil Code requirements.

---

31. This covenant, like the one that exists with the Hebrew denomination, refers to a system, Islamic law, as regards form. We must remember that the Legal Covenant with the Holy See does not refer to any formal rules which leads to an interpretation that it refers to canonic law in general.

32. *Vid.* article 7.1 *in fine* of the Muslim Covenant.

33. *Vid.* article 7.3 of the covenant.

34. In this case, the Civil Registry official, before registering the marriage, has the duty of verifying if the spouses really were able to contract the marriage and if the requirements set out in the Spanish Civil Code were met.

Therefore, it is possible to conclude that Muslim marriages can be contracted in two ways. One simply requires the presence of the parties, a religious guide and two witnesses, and the other a previous marriages file in order to obtain immediate registration and the religious guide and two witnesses. Both have civil effects, but until a marriage is registered, it does not have full legal effects. The difference between them is that it is more difficult to register the first one than the second one.

We must remember that registration is a state requirement, not a religious one. In this sense, we think that the Spanish Ministry of Justice has been very generous with Muslims, because it allows Muslim couples to choose. Both marriages have civil effects, but one is easier to register, and the representative has a bit more responsibility.

IV. PRACTICAL SCOPE OF THE RELIGIOUS COVENANTS

On February 10, 1993, the *Dirección General de los Registros y del Notariado* (Department of Registries and Notaries) promulgated an instruction with some orientative rules for the registry officials[35] so that the three agreements could be put into practice. The aim of these rules was to provide some uniform criteria for the registration of marriages. We can summarize these criteria in the following way:

First, the covenants affect religious marriages between Spanish citizens, between Spaniards and foreigners and between foreigners who want to marry according to Spanish law as *lex loci*.

Second, the marriage is valid and has civil effects only if that religion or school is recognized and registered in the Religious Entities Registry.

Third, the laws are applicable only to those marriages contracted in Spain (within Spanish territory) and those contracted in a foreign State when at least one of the parties is a Spanish citizen and the *lex loci* permits that kind of marriage.

Fourth, the covenants are only applicable to marriages contracted after their entry into force[36]. Of course, religious marriages celebrated prior to the entry into force of the covenants that were performed in conformance with the

35. *BOE* n.47, 24.2.1993.

36. This has already been declared in the Resolutions of the *DGRN* dated 22 February and 22 March 1993, among others. (*BIMJ*, n. 1672, p. 2217—2218 and 2520—2522, respectively.)

lex loci are valid and have civil effect as provided in article 49 of the Spanish Civil Code[37].

The same applies to a religious marriage between foreigners celebrated in Spain prior to the entry into force of the covenants, if the personal law (national law) of the parties admit or permit that kind or type of marriage[38]. This is not so if one of the parties is a Spanish citizen.

V. CONCLUSIONS AND EVALUATION OF THE COVENANTS

Article 7 of each of the covenants seem to be the same, but this is not the case. The Spanish Ministry of Justice distinguishes between religions with law, those with written law, and those that do not have any rules at all.

In the first case, the convenants makes a generic reference to the religious legal system, but only to those rules with formal guidelines for contracting or celebrating marriage. This means that there is no remission to material or substantive religious norms. These aspects are controlled exclusively by the Spanish Civil Code.

This express reference to the *formal rules* was not necessary with the Evangelical communities because there was no risk that religious norms would be applied to formal and substantive aspects. These communities do not have a written law as do the Catholics, Muslims or Jews. But the formal rules of the Jewish or Muslim religions cannot be applied alone.

The Spanish Ministry of Justice took good care to impose a minimum standard without which a religious marriage could not have civil effects. This *minimum standard* is included in the three covenants and meets the requirements set out for a Spanish civil marriage. That is, the marriage must be celebrated in the presence of a legally competent authority and two fully capacitated witnesses[39]. This *minimum* is a guarantee that the marriage has

---

37. Article 256.3 of the *Reglamento del Registro Civil* states the same and this is expressly recognized in the Resolution of the *DGRN* of 25 November 1978 (BIMJ, n.1152, 15.12.1978).

38. This is the way it is regulated by article 50 of the Civil Code and article 256.4 of the *Reglamento del Registro Civil*. It is expressly recognized in the Resolutions of the *DGRN* of 18 September 1981 and 6 May 1982.

39. In this regards the United Nations Covenant of 10 December 1962 on matrimonial consent which Spanish has been a party to since 15 April 1969 (*BOE* 29.5.1969) stipulates that the party States should abide by the matters that are regulated as regards the free expression of consent: minimum age, announcement of the marriage, equality between the two parties and the spouses, inscription and the presence of an authority and witnesses.

taken place, and that the parties to the marriage have publicly declared their consent.

The significance of this *standard minimum* is that these are the only formal elements that really matter, and that all other formalities, including religious formalities, do not affect the marriage. So, in terms of civil effects, it does not matter that the marriage does not comply with the other religious formalities. Of course, this situation leads us to consider the problem of marriages that are valid under civil law but are not valid under religious law. But this is another problem altogether, as is the one that deals with the dissolution of those marriages through unilateral divorce and non-judicial divorce, topics that will have to be addressed at another time.

SUMMARY

For a period of thirteen years some Spanish citizens were discriminated against. Non-Catholics could not celebrate their marriage according to their religion unless they got married in a State in wich that religion was recognized in accordance with the *lex loci*. Additionally, already performed non-Catholics marriages were not considered to be a barrier to a subsequent marriage. Now, since 1992 the accords that exist between Spain and the Spanish Federation of Evangelical Entities, the Spanish Federation of the Israelite Communities and the Spanish Muslim Commission is possible to celebrate evangelical, jewish or muslim marriages. But, the Spanish Ministry of Justice took good care to impose a *minimum standard* without wich a religious marriage could not have civil effects. This *minimum standard* is included in the three covenants and meets the requirements set out for a Spanish civil marriage.