

# Religious and worship freedom: revision of a legal framework in the context of Colombia (South America)

## Libertad religiosa y de culto: revisión de un marco legal en el contexto de Colombia (América del Sur)

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### Abstract

This document considers the elements of the international and national review of the legal framework of religious freedom and worship, in the field of qualitative research and a methodological approach to case studies, se pretende which aims to humanize the life and dignity of victims of discrimination and religious violence belonging to religious entities, organizations or foundations legally recognized. The analysis considers that there has been an increase in cases where alleged victims of domestic violence claim that they have been attacked, psychologically, verbally, intolerancia por physically, sexually or economically, due to intolerance over the manifestation of their religious beliefs, facts whose perpetrators in the greatest number of cases are members of the domestic unit, that is, they live under the same roof.

**key words:** religious freedom, legal framework, worship freedom.

### Resumen

Este artículo considera los elementos de la revisión internacional y nacional del marco legal de la libertad religiosa y de culto, en el ámbito de una investigación cualitativa y abordaje metodológico de estudios de caso, con el que busca humanizar la vida y dignidad de las víctimas de discriminación y violencia religiosa. El análisis considera que se ha incrementado el número de casos en que las presuntas víctimas de violencia intrafamiliar, manifiestan haber sido agredidas, psicológica, verbal, física o económicamente, por la intolerancia por la manifestación de sus creencias religiosas, por parte de aquellas personas con las que tienen un hogar.

**Palabras clave:** libertad religiosa, marco legal, libertad de culto.

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## 1. Introduction

During the years 2014, 2015, 2016, 2017 and 2018 the state of religious freedom in Colombia was critical and although it is illusory to try to present a real and complete diagnosis, about religious freedom of worship and conscience, since apparently there are no real figures from the Entities responsible for guaranteeing this

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fundamental right, involving all sectors, such as families belonging to the group of displaced persons for violence after the peace process in Colombia or now, after the pandemic that has lived through the world called Covid 19, in which they have had to take measures to close the places of worship and worship of different religious groups around the world, to guarantee the lives of citizens, as well as to present the number of victims due to the violence generated in the families of Bogotá in the face of this new reality of confinement, for violation of this right that is still fully identified because it is in the process of being visible in the Capital District and the other cities of the country. However, there is a report on the state of religious freedom in Colombia 2018, which is carried out by the Interreligious Council of Colombia, which deals with individual and collective violations of the rights derived from religious freedom, as well as any hostile act to be executed, justified, legitimized or sacralized in the name of religion, since such attacks also constitute a violation of religious freedom.

The State of Religious Freedom in Colombia report is a qualitative research and methodological approach to case studies, with which it seeks to humanize the life and dignity of victims of discrimination and religious violence. It seeks to inform public opinion of the situation of social violence that citizens suffer in relation to the religious act, which constitutes one of the most censored and ignored violence. This in order for the Colombian State, with the accompaniment of the International Community, take the necessary corrective and applicable measures, so that all the rights derived from religious, conscience and worship freedoms are fully guaranteed in the country.

The report presented by the Interreligious Council for the year 2018 addresses the issue of religious freedom at the following levels: State Level, the Colombian State and the Religious Freedom, Religious Liberty and the Colombian Society, cases under follow-up and finally presents recommendations, based on these, assigns an annual rating in the following terms: firm, stable, critical and dangerous.

According to the report for the year 2018 of religious freedom for Colombia, in general, all other human rights have been violated, as a result of the violation of religious, conscience and worship freedoms, and the situation merits direct and immediate intervention of the International Organizations, especially the Inter-American Court of Human Rights and the United Nations Human Rights Council, so that the Colombian State at all levels and branches of the public power is obliged to retribute in favor of the citizenship, the rights and freedoms to which the United Nations International Charter of Human Rights and the American Convention on Human Rights relate.

In effect, Law 133 of 1994, in development of article 19 of the Political Constitution, involves religious leaders in order to achieve the goals and objectives proposed in the Integral public policy of religious freedom and cults (Congreso de la Republica de Colombia, 1994), consequently it is issued Decree 437 of 2018 (República de Colombia, 2018), these social actors have not got to involve families, the same happens with the public policy of fundamental freedom to religion in Bogotá, families have not been sufficiently socialized and the acts of violence due to this cause occurred during the years 2014 to 2018, having had to be protected by the competent authorities in other instances, have only been resolved by way of guardianship, but not all the jurisprudence around religious freedom refers to the family sphere and there is no route to attention to the victims for this right, nor statistics that allow the adoption of mechanisms that make effective and real the prevention and the exercise of the same in the country, said statement is inferred from the responses obtained to the petition rights presented to the Bogotá Legal Status, Attorney General Office, National Institute of Legal Medicine and the Prosecutor General Office, which is why it is possible to affirm that no there is a record of reported cases.

For this reason, the present manuscript considers a revision of the legal regime in the field of religious freedom and cults, in the context of Colombia (South America).

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## **2. International regulatory framework**

Colombia, by being part of the ONU and the OEA, has made commitments to the protection and guarantee of human rights, which it has ratified through various legal instruments that are part of the constitutional block. In this sense, the Colombian State undertakes to comply with international instruments that promote the elimination of all discrimination and violence. It is important to bear in mind that in the Political Constitution, in articles 5 and 42 (Corte Constitucional, 1991), the axiological basis for the protection of the family is constituted, a topic that is widely developed Jurisprudentially by judgments C-821 of 2005 (Corte Constitucional de Colombia, 2005) and T-311/18 (Corte Constitucional de Colombia, 2018) of the Constitutional Court ; Likewise, their protection and assistance are assigned to states and society, these postulates being ratified by international instruments such as in the Universal Declaration of Human Rights (art. 16) (Organizacion de las Naciones Unidas, 1948), in the International Covenant on Civil and Political Rights (art. 23) (United Nations, 1966), in the International Covenant on Economic, Social and Cultural Rights (art. 10) and in the American Convention on Human Rights -Pact of San José de Costa Rica (art. 17) (Organisation of American States, 1969); which are incorporated into our internal law for having been signed, approved and ratified by the Colombian State.

### **2.1. International covenant on economic, social and cultural rights**

The States Parties to the Covenant undertook to take measures, both separately and through international assistance and cooperation, especially economic and technical, to the maximum of their available resources, to achieve progressively, by all appropriate means, including in particular, the adoption of legislative measures “the full guarantee of the exercise of rights, without any discrimination based on race, color, sex, language, religion, political or other opinion, national or social origin, economic position, birth or any other social condition” (United Nations, 1966).

### **2.2. Protection for violation of the right to freedom of worship**

The Constitutional Court has indicated four essential aspects to determine whether or not the granting of the fundamental right to freedom of worship is appropriate and indicates that they are as follows: The importance of the belief invoked, the externalization of the belief, the opportunity for opposition to the act contrary to religious freedom, the principle of sufficient applicable reason.

### **2.3. Rights related to religious freedom**

It is in accordance with other fundamental rights such as the right to equality, freedom of conscience, the free development of the personality and the freedom to express or spread thought, established in articles 13, 16, 18 and 20 of the Magna Carta (Corte Constitucional, 1991). In Colombia, the Constitution also regulated other rights that are related to the fundamental right to religious freedom, and considering that religious beliefs in most cases extend to the conception of family, to the origin of it, therefore the possibility of starting it in accordance with the rites of the religion that is professed, in most cases a fundamental element of the religious dimension of human beings.

### **2.4. Legal framework of the right to religious freedom and cults International and in Colombia**

The preamble to the Universal Declaration of Human Rights approved and proclaimed by the General Assembly of the United Nations in 1948 recognizes the will that assists peoples to promote social progress and raise their standard of living within a broader concept of freedom, within which are freedoms of thought, conscience and religion (Organizacion de las Naciones Unidas, 1948).

Similarly, the International Covenant on Civil and Political Rights (United Nations, 1966), ratified by Colombia through Law 74 (1968) (Congreso de la República de Colombia, 1968), establishes in Article 1 the right of all peoples to self-determination regarding their political condition, their economic development, social and cultural, in addition to the postulated by article 18 against the freedom of any person to adopt the religion or beliefs of their choice, the freedom to express their beliefs individually or collectively, in public or in private, through worship, the celebration of rites, practices and teaching, with the corresponding obligation of the States Parties to respect the freedom of parents or legal guardians, on the religious and moral education of children in accordance with their own convictions.

## **2.5. Declaration of Human Rights**

Likewise, the preamble to the Covenant states that the ideal of a human being, free from fear and misery, can only occur while creating the conditions for the effectiveness of civil and political rights, economic, social and cultural rights, while the Article 2 prohibits discriminatory acts based on race, color, sex, language, religion, political opinion, national or social origin, economic position, birth or any other social condition. We also have the American Convention on Human Rights (Pact of San José), approved by Colombia through Law 16 of 1972, which affirms in its preamble that rights are attributes of human beings, which justifies international protection of conventional adjuvant nature or complementary to that offered by the internal law of the American States (Congreso de Colombia, 1972). For their part, articles 12, 13 and 14 of the Convention observe that the freedoms to manifest their own religion and beliefs, the freedoms of thought, expression and association, are only subject to the limitations prescribed by law and necessary to protect the safety, order, health or public morals or the rights or freedoms of others.

Resolution 36/55 in 1981 "Declaration on the Elimination of All Forms of Intolerance and Discrimination Based on Religion or Convictions proclaimed by the General Assembly of the United Nations, considers contempt for fundamental freedoms, particularly those of religion, worship and conscience as a direct and indirect cause of wars and great suffering to humanity, therefore its protection is a contribution to the achievement of the objectives of world peace, social justice and friendship among peoples and to the elimination of ideologies or practices of colonialism and racial discrimination The invocation to God expressed in the preamble of the Political Constitution of Colombia, affirms the compatibility of God with all religious beliefs and confers equal value and legal treatment to all religions. Also, in the article 10 recognizes the Colombian State as a Social State of Law, with autonomy from its territorial entities, democratic, participatory and pluralistic.

Articles 18 and 19 idem, enshrine as fundamental rights the religion, worship and conscience freedoms which, in direct connection with the fundamental principles, are the axiological framework of our legal system. Rights that, together with the International Treaties on Human Rights, International Humanitarian Law, Law 25 of 1992 "By which paragraphs 9, 10, 11, 12 and 13 of article 42 of the Political Constitution are developed" (Congreso de Colombia, 1992), the Statutory Law 133 of 1994 "by which the Decree of Religious Freedom and Worship, recognized in Article 19 of the Political Constitution" (Congreso de la Republica de Colombia, 1994) is developed and its National Regulatory Decree 1396 of 1997 (Presidencia de la Republica, 1996), the current constitutional doctrine and the provisions of article 94 of the Political Constitution, make up the Block of Constitutionality in the same matter.

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## **3. Legal framework for religious freedom in Colombia**

### **3.1. Constitutional block**

For the Constitutional Court, it is "that juridical unit composed" of norms and principles that, without appearing formally in the articles of the constitutional text, are used as parameters of constitutional control of the laws,

since they have been normatively integrated into the Constitution, by various means and by mandate of the Constitution itself. In the area of human rights related to the family, the international conventions, pacts, treaties and instruments ratified by Colombia and incorporated into the national regulatory framework are part of this block and are mandatory.

Among others, the American Convention on Human Rights Signed at the Inter-American Specialized Conference on Human Rights (B32) - Articles 1, 12, 13, 16, 22, 27. "Article 18 of the International Covenant on Civil and Political Rights Everyone has the right to freedom of thought, conscience and religion; This right includes the freedom to have or adopt the religion or beliefs of your choice, as well as the freedom to express your religion or beliefs, individually or collectively, both publicly and privately, through worship, the celebration of rites, practices and teaching. No one shall be subject to coercive measures that may impair their freedom to have or adopt the religion or beliefs of their choice. The freedom to manifest one's religion or beliefs will be subject only to the limitations prescribed by law that are necessary to protect the public safety, order, health or morals, or the fundamental rights and freedoms of others. The States Parties to the present Covenant undertake to respect the freedom of parents and, where appropriate, of legal guardians, to guarantee that children receive a religious and moral education that is in accordance with their own convictions." (United Nations, 1966).

### **3.2. The Concordat between the Colombian State and the Holy See**

The concordat is an international treaty that the Holy See signs with other countries. According to its Latin etymological root - concordatum, which in turn comes from concordare, means to agree or to concur (Garzón B., 2011). The concordat for this reason, whether signed in a Catholic confessional state, such as that of 1887 or the concordat of 1973 with an evident church-state separation, has allowed the exercise of religiosity for millions of Catholics and has always respected freedom of the exercise of other religions in the country. A fundamental key that the concordat undoubtedly achieved has been that of a deep respect between ecclesiastical power and civil power.

It is an agreement between the Church and the State on matters in which the interests of both parties are concerned or in the definition, already classic, of GIMÉNEZ FERNÁNDEZ (1967), «The concordats are solemn bilateral conventions for the Church and the State on mutual delimitations of the scope for the exercise of ecclesiastical and civil powers , in accordance with the chronic and topical circumstances and without prejudice to divine law" (Giménez F., 1967) The "Concordat and the Final Protocol between the Republic of Colombia and the Holy See", was approved by Law 20 of 1974, in its text determines among others the following: Religious freedom is enshrined, which is essentially embodied in the law to profess any religion. The freedom of worship, despite being included in religious freedom, was also expressly consecrated, therefore, all people have the right to carry out the practices or rites that constitute external manifestations of the religion that is freely professed. Also and expressly, the right to propagate or disclose the beliefs that are professed is established and this can be done privately or publicly. The equality of the churches and confessions is established before the law, as a clear manifestation of the elimination of all forms of religious confessionalism. Natural persons as well as religious entities, whether they are churches or religious confessions, are holders of the right to religious freedom and cults. Lack of express limits and specifically referring to this right, as it was brought by the constitutions that preceded it, which should not lead to pointing out that it is an absolute right, because in any case it must be subject to the legal system in its entirety, the one that is erected as a limit for this as for all other liberties; what if such provisions can be interpreted is the recognition of the religious fact as positive, consequently liberalizing its exercise (Congreso de Colombia, 1974).

### **3.3. Political Constitution of 1991**

The Colombian Constitution in its preamble states: "THE PEOPLE OF COLOMBIA, in exercise of their sovereign power, represented by their delegates to the National Constituent Assembly, invoking the protection of God, and in order to strengthen the unity of the Nation and ensure its members life, coexistence, work, justice, equality, knowledge, freedom and peace, within a legal, democratic and participatory framework that guarantees a fair and committed political, economic and social order to promote the integration of the Latin American community, it decrees, sanctions and promulgates the following: "Freedom of worship is guaranteed. Everyone has the right to freely profess their religion and to spread it individually or collectively. All religious confessions and churches are equally free before the law" (Corte Constitucional, 1991).

This is how in Colombia the Constitution that is in force in 1991, establishes that it is a democratic and pluralist republic, founded on respect for human dignity, solidarity and the prevalence of the general interest, prohibits all forms of discrimination, including which is based on religious motives. The constituent, by consecrating the right to religious and religious freedom, made a great advance in this matter, eliminating all types of confessionalism and establishing that "all religious confessions and Churches are equally free before the law." (Corte Constitucional, 1991).

The rights to conscience, religion and worship freedom are recognized as fundamental rights. However, it is necessary to mention that the Constitutional Court of Colombia, in charge of the protection of fundamental rights in the country, has referred to the right to freedom of conscience and says that this is not absolute and therefore has limits, which we will mention subsequently.

### **3.4. Religious and worship freedom as a fundamental constitutional right**

The consecration in our current Constitution of the right to religious freedom and worship, undoubtedly constitutes a development of the fundamental principle of pluralism in the religious field, the Colombian State could not legitimately be considered to be pluralistic if it did not allow the different manifestations in this field, if it did not guarantee each person the power to adopt or not certain religious beliefs. In the previous constitutional regime of our country this right was recognized as part of the right to freedom of conscience, all within the framework of the confessionalism that the constituent of the moment had adopted; For its part, in the Political Charter of 1991, the fundamental right to religious and religious freedom was established as indicated, expressly and autonomously, this right is located in title II, chapter I, on "the Fundamental rights".

Since the recognition of the right to religious freedom in the 1991 Constitution, regulations have been promulgated to develop article 19 and articles related to the aforementioned right, of which the most important will be cited:

- Law 25 of 1992 - Through which paragraphs 9, 10, 11, 12 and 13 of article 42 of the Political Constitution were developed (Congreso de Colombia, 1992).
- Statutory Law 133 of 1994 - It develops the right to religious and religious freedom recognized in article 19 of the Political Constitution (Congreso de la Republica de Colombia, 1994).

### **3.5. Public Policy of Religious Liberty Decree 437 of 2018**

The comprehensive public policy of freedom and religious worship is always framed by the Constitution and the law and aims to recognize, strengthen and guarantee the fundamental rights of an objective population, for which plans, programs and projects are implemented, based on needs and issues related to an issue that has been identified. Decree 437 of 2018 presents in light the following principles in the light of which public order must be interpreted: Diversity of religious beliefs, legality, equity, participation, co-responsibility, articulation, autonomy and immunity from coercion and publicity; is proposed with a territorial approach, religious identity

and religious institutionality. The general objective of public policies is to "provide guarantees for the effective exercise of the right to religious freedom and worship in Colombia" (Presidency of the Republic, 2018), which it aims to achieve through the lines and lines of action outlined.

### **3.6. Public Policy on Fundamental Rights and Religious Liberty for Bogotá, D.C.**

Decree number 093 of February 12, 2018 - By which the District Public Policy of Fundamental Freedoms of Religion, Worship and Conscience is created for the Capital District, for the period 2018 - 2028., with the purpose of promoting respect for freedom and religious equality, of worship and conscience from the promotion and social and institutional appropriation of a culture that fully recognizes these rights, in order to turn the Capital District into a city that prevents and reduces its violation or threat and that strengthens the religious plurality expressed materially and symbolically in the territory (Alcalde Mayor de Bogotá D.C., 2018).

The District Public Policy of Fundamental Freedoms of Religion, Worship and Consciousness, for the city of Bogotá, has set itself as objectives, to diminish social, cultural and institutional factors that feed intolerance, exclusion, persecution and the apology of hate founded in religion, guarantee conditions of equality that enable the effective enjoyment of the rights to religious freedom, worship and conscience in the city and implement strategies to strengthen and articulate peace initiatives and social projects from religious communities with organizations in society civil, international cooperation agencies and institutional instances of the district and national order.

### **3.7. Jurisprudential development of religious freedom and cults in Colombia**

In Colombia we have various pronouncements from the High Judicial Corporations such as the Constitutional Court, the Council of State and the Supreme Court of Justice, related to the religious sphere in our Nation; People who have suffered the violation of the fundamental right to religious freedom and worship in different settings, such as labor, academic, institutional, have resorted to filing tutela actions, after going to different judicial authorities and not finding a correct answer in reason that it is a fundamental right still unknown in many sectors. As for families, their members when they go and request a measure of protection for acts of violence by other members of their family and that occur on the occasion of religion, face ignorance on the part of the official of the procedure to follow or they do not give credibility to their versions, which in many cases are not filed as formal complaints and this means that there are no real statistics that allow the implementation of a care route, a prevention process, and the guarantee of non-repetition and punishment of the accused. However, it is important to mention that the high courts in various pronouncements, develop concepts regarding religious freedom, freedom of worship, freedom of conscience, religious persecution, religious intolerance, religious discrimination, as well as the limits of the fundamental right to religious and religious freedom in the country.

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## **4. Conclusions**

In Colombia, from 2014 to 2018, there has been an increase in cases where alleged victims of domestic violence claim that they have been attacked, psychologically, verbally, physically, sexually or economically, due to intolerance due to the manifestation of their religious beliefs, by those with whom they have a domestic unit; sin embargo, although the 1991 Political Constitution has established that Colombia is a pluralistic country and recognizes the protection of individuals and their rights, religious freedom, is enshrined as a fundamental right and Article 19, this is how a person can freely profess his religion and spread it, he is being regulated by two systems of international protection of human rights, one of a universal nature of the United Nations "ONU" and the other of a regional nature, composed of the Inter-American System of Human Rights of the Organization of American States "OEA"; right that, in turn, conforms to other fundamental rights such as the right to equality, freedom of conscience, the free development of personality and the freedom to express or disseminate

thought, as set out in Articles 13,16, 18 and 20 of magna Carta, of which there has been extensive jurisprudence development on the subject.

Finally, it is important to note that due to the prominence that virtuality has taken because of the current conditions of confinement, caused by the Pandemic that has been called Covic 19, Colombia has been no exception and virtual spaces have been opened so that through an approach from the academic sector to the religious sector, all kinds of seminars, forums , debates and trainings around the fundamental right to religious freedom, thus making the issue visible and giving it the category that, as already mentioned in International and National Normativity, has a fundamental right of Humanity in the Universe.

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