

PUBLIC ECONOMIC RESOURCES AND RELIGIOUS DENOMINATIONS IN EUROPE

MARCO PARISI
University of Molise

Abstract: Despite the multiplicity of the adopted solutions, a general overview of the national systems of public financing of the religious phenomenon makes it possible to affirm that, in the juridical space of the countries of the European Union, except for some exceptions, the support for religious communities is considered a constant of the different national ecclesiastical law systems. However, while it is true that there is a common substratum of principles in this matter, it is equally true that each European country has a specific history and evolution which, inevitably, has involved differences in the interpretation and the application of the financial support for the spiritual groups. Thus, the subject of funding faiths is bound to be closely linked to the relations that States have maintained over time with the religions present on their territory. A reflection on these issues can be useful to verify the adequacy of the adopted financial solutions with respect to the chosen model of relations between the State and the religious communities, to identify others that are theoretically consistent with the system of the existing relationships, to trace their evolution on the basis of the different experiences, and finally to envisage the institutional repercussions of the different adopted solutions.

Keywords: Public funding, religious confessions, legal space of the European Union countries.

Resumen: A pesar de la multiplicidad de soluciones adoptadas, una visión general de los sistemas nacionales de financiación pública del fenómeno religioso hace posible afirmar que, en el espacio jurídico de los Países de la Unión Europea, salvo algunas excepciones, el apoyo a las comunidades religiosas se considera una constante de los diferentes derechos eclesiásticos nacionales. Sin embargo, si bien es cierto que existe un sustrato de principios común en este asunto, es igualmente cierto que cada País europeo tiene, detrás de él, una historia y evolución específicas que, inevitablemente, han implicado diferencias

en la interpretación y la aplicación del apoyo financiero para los grupos espirituales. Por lo tanto, el tema de la financiación de las religiones está estrechamente relacionado con las relaciones que los Estados han mantenido, a lo largo del tiempo, con las religiones presentes en su territorio. Una reflexión sobre estos temas puede ser útil para verificar la idoneidad de las soluciones financieras adoptadas con respecto al modelo elegido de relaciones entre el Estado y las comunidades religiosas, para identificar a otros teóricamente consistentes con el sistema de relaciones existentes, para rastrear su evolución en función de los diferentes experiencias, para prever las repercusiones institucionales de las diferentes soluciones adoptadas.

Palabras clave: Financiación pública, confesiones religiosas, espacio legal de los Países de la Unión Europea.

Abstract: Pur nella molteplicità delle soluzioni adottate, una panoramica generale sui sistemi nazionali di finanziamento pubblico del fenomeno religioso consente di affermare che, nello spazio giuridico dei Paesi dell'Unione Europea, salvo alcune eccezioni, il sostegno alle comunità religiose è ritenuta una costante dei diversi diritti ecclesiastici nazionali. Tuttavia, pur essendo vero che esista un substrato comune di principi in questa materia, è altrettanto vero che ciascun Paese europeo ha, alle sue spalle, una storia ed un'evoluzione specifica che, inevitabilmente, hanno implicato differenze nell'interpretazione e nell'applicazione del sostegno economico in favore dei gruppi spirituali. Così, il tema del finanziamento alle religioni è destinato a legarsi strettamente ai rapporti che gli Stati, nel tempo, hanno intrattenuto con le religioni presenti sul proprio territorio. Una riflessione su tali questioni può essere utile per verificare la congruità delle soluzioni finanziarie adottate rispetto al modello scelto di relazioni tra Stato e comunità religiose, per individuarne altre teoricamente coerenti con il sistema di rapporti in essere, di tracciarne l'evoluzione sulla base delle diverse esperienze, di prospettare le ricadute istituzionali delle differenti soluzioni adottate.

Keywords: Finanziamento pubblico, confessioni religiose, spazio giuridico dei Paesi dell'Unione Europea.

SUMMARY: 1. Introduction. 2. Religious affiliation and cult tax. 3. Public taxation and tax revenue. 4. State budget and direct funding of denominational organizations. 5. Conclusions.

1. INTRODUCTION

The analysis of the most important models of public financial support in favor of religious confessions is, for jurists in general and for scholars of ecclesiastical law in particular, an activity of great interest and relevance. Indeed, it allows, even starting from a very specific sector of ecclesiastical law disciplines, to consider the variety and the multiformity of the existing systems of relations between the European states and the Churches. In this respect, it cannot be denied that the different models of public financing of the religious phenomenon constitute not only a specific aspect of the relations between public authorities and confessional groups, but they can also be considered as the best indicators of the real attitude of the States towards the religious confessions. This also goes beyond the formal declarations of intent that are present in the constitutional Charters and the rigid qualification of the relationship systems as separatist, concordatist, cooperationist or mixed ones¹.

To support this consideration, adhering to the most consolidated doctrinal guidelines, it can be said that the qualification of a State with respect to the religious phenomenon is the result of an empirical analysis of the overall national legal order, in force at a given historical moment, and it is the outcome of the combination of historical, legal and political factors. Therefore, it cannot be abstractly and aseptically traced back to an absolute and unitary typology². This is a reflection that is well suited to the specific question of the public funding of religious denominations, in reference to which the individual national guidelines appear to be strongly conditioned, in addition to the constitutional regulatory indications, also by historical factors (as in the case of intent compensators connected to previous confiscations suffered by some Churches and religious communities), by the numerical consistency of the (presumably) followers of a religious group, or by the general positive consideration enjoyed by a given confessional group due to its aptitude to promote collective well-being³.

¹ Often the model of relations with religions that apparently qualifies a given national order can be decidedly misleading. In fact, as we will have the opportunity to argue, some openly separatist States provide substantial financial contributions to one or more confessions, and, on the contrary, certain unionist States (or those characterized by a principle of collaboration) strongly limit or even deny economic support to cults.

² A. LICASTRO, *Il diritto statale delle religioni nei Paesi dell'Unione Europea. Lineamenti di comparazione*, II edition, Milano, Giuffrè, 2017, pp. 19-20.

³ Consider in this respect, for example, the general positive reputation enjoyed by the Catholic Church in Italy. See G. CASUSCELLI, *La crisi economica e la reciproca collaborazione tra le Chiese e lo Stato per «il bene del Paese»*, in *Stato, Chiese e pluralismo confessionale* (online magazine, www.statoeChiese.it), October 2011, pp. 1 and following.

In addition to this, it is essential to keep in mind that the rules of international derivation pertaining to fundamental rights (and, specifically, in the matter of freedom of religion and conscience), gradually, but in an ever more legally binding way and in the interest of progressive integration at European supranational level, have contributed to build the different national legal systems. This has played a decisive role in the interpretation and implementation of the State-Church relationship systems, to the point that European supranational norms must be considered as key points in preparing for an examination, albeit carried out briefly, of the different financing models for religious denominations. In this sense, the principle, sanctioned by art. 17 of the new text of the Treaty on the functioning of the European Union, for which the Union respects and does not prejudice the status of Churches and religious associations or communities in the Member States, by virtue of national law; moreover, with the extension of the same guarantee also to philosophical and non-confessional organizations. This is a legislative provision which, while excluding from the Union's competences the subject of relations between States and religious denominations, in the light of the forthcoming accession to the European Convention on Human Rights, will entail that Member States can be called to respond to violations resulting from the provision or application of State regulations that result in failure to respect the rights of individuals⁴. This perspective appears particularly risky for legal systems in which the privileged regime (also of a financial and fiscal nature) granted to one or more confessions actually corresponds to a discriminatory treatment of other religious groups. A treatment that often translates, as a consequence and inevitably, into a breach of fundamental rights to the detriment of individuals who belong to denominational groups that do not benefit from the enjoyment of particular public subsidies⁵.

This progressive mutual approach of legal systems in Europe certainly has a significant bearing on the legal framework of State-Churches relations, which has resulted in a process of erosion of the most extreme existing models of relationships and seems to converge on some fundamental points, such as the acceptance of the public dimension of religion and the possibility for religious confessions to enjoy the support of public institutions, albeit in a selective and graduated manner, on the condition of accepting a certain measure of State control.

⁴ M. PARISI, *Democrazia sovranazionale europea e libertà religiosa. Evoluzioni e risultanze dei processi di convergenza giuridica in tema di interessi religiosi nel sistema europolitano*, in *Politica del diritto*, 2019, 2, pp. 305-311.

⁵ R. MCCREA, *La financiación de las confesiones religiosas en Europa*, in C. Garcimartín (ed.), *La financiación de la libertad religiosa. Actas del VIII Simposio Internacional de Derecho Concordatario*, Granada, Comares, 2017, pp. 6-10.

That said, the interest in the different systems of funding faiths in the European States is linked, quite directly, to the analysis of the degree of religious freedom that is guaranteed by national legal systems to social religious formations and, consequently, to the individual subjects who make part of them. In other words, the possibility of classifying the relations between State and Churches must be sought in the declination of principles such as the protection of individual religious freedom, the recognition of the role and autonomy of religious confessions and the enhancement of cooperation between State and Churches in a regime of cultural and ideal pluralism. The ways in which these principles are declined and combined with each other are of considerable importance with particular reference to the issue of economic support.

Now, from the observation conducted on the various national models, the forms of State subsidies to the religious phenomenon can be divided in 'direct financing' and 'indirect financing'. In the first case, we face the hypothesis in which a State delivers a certain sum of money in favor of one or more religious confessions. In the second case, on the other hand, it is indicated a general renunciation on the part of the State of receiving a fraction of tax revenue; a renunciation that is carried out, with extreme simplification, through tax breaks or exemptions in favor of individuals belonging to religious denominations or to bodies related to them.

2. RELIGIOUS AFFILIATION AND CULT TAX

The religious affiliation and the collection of the cult tax have always been a topic that has been discussed both on the fiscal and juridical level and on the institutional one. The system of obligatory taxation (also called ecclesiastical tax) is characteristic of those States in which the Churches are recognized as subjects of public law because they are considered bearers of a general interest, considered worthy of being sustained. In the logic of this system, the confessional organizations receive the proceeds of a tax paid by the faithful citizens; a tax that is managed directly by the State or by the Churches themselves (delegated for this purpose). It is possible to escape from this taxation only by formally abandoning the confession to which one belongs. This form of funding is found both in States whose systems of relations with the Churches are secular ones but marked by a bilateral discipline with the religious denominations, and in unionist States where there is an established Church.

The concrete and paradigmatic reality of this model is Germany, whose formulation of the system of relations with religious confessions is linked to

cooperative federalism, based on Article 137, par. I, of the Weimar Constitution which, affirming the absence of a State Church, would seem to lay the foundations for a rigid separatism. In reality the same rule –art. 137 par. V– allows the religious denominations that had legal personality before the entry into force of the Constitution to maintain the same *status*, from which also depends the faculty to withdraw the cult tax (*Kirchensteuer*) to its members as payment for the offered religious services. Therefore, the juridical condition of the religious confessions is based on a constitutional differentiation that has created the privileged category of ‘corporations of public law’, which through framework laws issued by the ‘Länder’ determine the amount of funding necessary for the confessional groups, while the amount of the ecclesiastical tax is determined by the local confessional power.

In Germany, the worship tax is a deductible charge from taxable income and it is payable by individuals, identified on the basis of the lists of taxpayers that are required to pay State taxes, which have not resigned, by means of an act having civil juridical validity, from the confession to which they belong⁶. Assessment and collection are carried out as for any other tribute; and the public-law personality, who is recognized by some religious confessions, is functional precisely for this purpose. We are in the presence of the ownership of a real taxing power, as a result of which the faithful citizens who do not pay can be subjected to compulsory collection procedures; this is also possible with the application of the common rules on the substitute tax, in the case of taxes related to income from employment.

Moreover, in favor of the recognized Churches there are other modest financing instruments such as the compensations recognized as reparation for the secularization of ecclesiastical goods. The unrecognized religious communities, on the other hand, are organized as common law associations and cannot participate in the ecclesiastical tax system, while enjoying the constitutional principle of self-determination (art. 137, II and III) and, in any case, of some tax benefits (such as the deductibility of the offers paid by the believers).

An ecclesiastical tax system not unlike the German one is the model currently in force in Austria, where, due to the principle of neutrality with respect to religions and ideologies, public recognition of confessions is based on uni-

⁶ As mentioned by an authoritative scholar, «(...) those who wish can free themselves from the obligation to pay the ecclesiastical tax abandoning the Church with an act that has civil juridical validity. The abandonment of the Church takes place through a declaration made before the competent State official: through it, to all civil effects, the belonging of a subject to a Church is lost». Literally, in this sense, G. ROBBERS, *Stato e Chiesa in Germania*, in G. Robbers (ed.), *Stato e Chiesa nell'Unione Europea*, Milano, Giuffrè, 1997, p. 72.

lateral sources and special laws, such as the Concordat of 1933 with the Catholic Church. The latter, together with the Protestant Church and the confessional movement of the Old Catholicism, is entitled to collect the ecclesiastical tax from its adherents. This is a system (called 'Kirchenbeitrag') which has its juridical foundation on a reform introduced in 1939 (Law No. 543 of 1939 on the collection of ecclesial contributions in the Land of Austria), following the seizure of power by the Nazi regime. However, even after the advent of democracy, it was decided to continue to maintain this financial contribution, in order to guarantee independence from the political power of the Catholic Church and other recognized denominational organizations. In accordance with the legislative provisions in force, all citizens who are adult members of a Church are subject to contributions, regardless of whether or not they make use of ecclesiastical services. The contributions paid in favor of the recognized Churches and religious communities (up to a maximum of 1.1 percent of the annual taxable income) are tax deductible up to a maximum of 400 euros in the form of special expenses. The amount of the contribution and its collection are established with an ordinance adopted by each Church. This ordinance is binding for the members of a Church by virtue of their belonging to the Church itself, as established by the norms that regulate the juridical relations existing between the Church and its faithful citizens, who can avoid their respect only by detaching themselves definitively from the Church to which they belong ('Kirchenaustritt'), by putting in place the procedures for the cancellation of the received sacraments.

Furthermore, according to a 1998 regulatory provision (Law No. 19 of 1998, 'Federal Law of Austria concerning the Legal Status of Religious Belief Communities'), there are other recognized denominations that are distinguished by the *status* of public law which, while attributing to them different prerogatives, does not allow them to access the system of ecclesiastical taxation.

Another national reality in which the current validity of the ecclesiastical tax can be seen is Switzerland, where the federal system is considered the main instrument that guarantees the peaceful coexistence between the different ideal communities and achieves a harmonious coexistence of the differences⁷.

⁷ In Germany, Austria and Switzerland we can say to be dealing with a benevolent and very special jurisdictional system. This is due to the fact that it is based not so much on the supremacy of the Protestant Churches as on the good coexistence of Catholics and Protestants, who have found in the alliance with the State a good tool to avoid conflicts and religious lacerations. Also this jurisdictionalism derives from the ancient confessionalist system that helped and supported the Churches, but with the request of a counterpart in terms of control and interference in ecclesiastical internal affairs. Today, however, this form of ecclesiastical relationships appears to be in total contrast with the international and community legislation on religious freedom, and it should be examined in the light of the secularization that our societies are experiencing.

In this respect, one of the tasks assigned exclusively to the Cantons is the regulation of relations between the State and the Churches. In fact, art. 72 of the Federal Constitution gives the Cantons the right to freely regulate their relations with religious denominations and establishes that the Confederation and the Cantons can, within the sphere of their respective competences, adopt the necessary measures to preserve peace among the adherents of the different religious communities. In a significantly varied context, as regards to the ethnic and linguistic composition of the country (which makes the task of identifying the common elements between the different territorial realities as a quite complex one), three groups of cantons can be distinguished according to the prevalence of the Evangelical confession, the Catholic one or the equal presence of both of them. The common feature that can be identified is the possibility of granting a privileged *status* –through the recognition (as in Germany) of ‘corporations of public law’– to certain religious communities⁸ as long as the privilege is based on historical, sociological or traditional reasons considered as relevant ones from a legal point of view. The condition of ‘recognized confession’ attributes to the spiritual groups the fiscal sovereignty and, therefore, the ability to collect a tribute from their own members. Even in the case of the Swiss Confederation, the religious denominations without legal personality assume the *status* of private entities to which a more modest number of rights is attributable and the impossibility to access the system of taxation of the faithful followers is applied.

The ecclesiastical tax system is also typical of Northern European countries, characterized by the validity of unionist models in the regulation of relations between public authorities and denominational organizations. In these national realities, in which there is a so-called ‘established’ Church –as occurs in Finland, Norway, Denmark, Sweden and Great Britain– the existing political ecclesiastical model is defined by some characteristics: a particularly penetrating control of the State over the national Church (to the point that in some nations, as in the United Kingdom, the Head of State is also Head of the Church, or in other cases, as in Denmark, the Lutheran Church is defined as a central

⁸ It is appropriate to bear in mind some similarities and differences between the German and the Swiss systems. While the most important analogy, as we have said, is that relating to the system of obligatory ecclesiastical tax, in the two systems, the conception of the Churches as corporations of public law is very different. In fact, while in Germany with the granting of the quality of public law entity, the State recognizes that religious communities possess, in a limited field, an original legislative power, and, therefore, are recognized as such, in Switzerland ‘recognition’ means that the State establishes a framework of legal norms regarding organization, regardless of the confessional law (which the Churches must use if they want to be recognized as entities under public law) and that the State reserves the right to closely monitor the external affairs of the Churches. In this regard see C. CARDIA, *Libertà religiosa e autonomia confessionale*, in *Stato, Chiese e pluralismo confessionale* (online magazine, www.statoechiese.it), november 2008, p. 12.

State agency in administrative purposes); as a form of compensation for the penetrating control of the State, the national Churches benefit from strong privileges with respect to the other confessions, above all in matters of State financing, teaching of religion in public schools, access to the media, spiritual assistance in the segregating communities⁹.

That said, a first national reality worthy of attention in this respect is Finland, where the Constitution provides and directly regulates the Lutheran Church and indirectly the Orthodox one. Both these denominational organizations enjoy the special *status* of public law entities and receive funding through a State tax, paid by the citizens. The other religious confessions, where they are in possession of specific requisites and are counted in a special register, can obtain the recognition of legal personality, but they do not receive direct funding from the public authorities.

The case of Denmark, where the *status* of State Church dates back to 1536, is also paradigmatic with reference to the question of the confessional tax. In fact, in this country, all the members of the Lutheran Evangelical Church are required to pay a cult tax, while the other religious communities, which do not participate in the taxation system, are organized as associations of private law, to which their members pay some kind of registration. Even if some of them have been recognized by the Ministry of Ecclesiastical Affairs, none of them receive direct funding from the State for the exercise of worship, unless they have created welfare or social institutions of public interest or require subsidies for the conservation of buildings of historical interest.

Finally, even in Sweden, the ecclesiastical tax system has more recently been adopted, thanks to the definition of a legislative reform that came into force in 2000. Following these regulatory changes, while ending the provision of a State Church, the Lutheran Evangelical Church has been enabled to fix the amount of a cult tax payable by its members. As a positive result of the adopted reforms, currently the possibility of participating in the cult tax system has also been extended to other religious communities, provided they have legal personality and certain requirements have been met.

3. PUBLIC TAXATION AND TAX REVENUE

In the legal and political area of the European Union, a second identifiable direct financing model is that of assigning a share of tax revenue based on the

⁹ P. LILLO, *Sovranità politica e dimensione religiosa nei sistemi unionisti*, in *Federalismi.it* (online magazine, www.federalismi.it), 8 May 2019, pp. 7-8.

choices of tax payers. A system that has been adopted both in two countries characterized by a bilateral discipline with the religious denominations, as in Italy and Spain, and in countries with a partially separatist approach, as in Portugal and Hungary.

In Italy, the current regulation entails an effective transfer of public funds from the State to the religious confessions that benefit from it, and consists in the payment of a share equal to eight per thousand of the income tax of the contributing citizens, which is intended, on the basis of the taxpayers' choice, partly for purposes of social interest or of a humanitarian nature under direct State management, partly for religious purposes directly managed by the Catholic Church, and partly to other religious denominations with the agreement with the State. The distribution of the sums among the possible recipients (State, Catholic Church, other religious confessions with agreement) takes place on the basis of the choices made by the taxpayers in the annual declaration of income, through a specific subscription¹⁰.

It should be noted that the choice made by each taxpayer is nominal and it does not result in a proportional contribution to the income of each individual, thus it eliminates the effective proportional correlation between the percentage share of taxes paid by the individuals and the destination to the indicated subject. With reference to the unexpressed choices, that is to say in the case in which the tax payers have not indicated any preference in the annual declaration of income, it is foreseen –with an unusual discipline that has proved to be favorable in the first place for the Catholic Church– that the destination of the odds is established in proportion to the choice made by taxpayers. It is worth highlighting that, above all in doctrine, various doubts and perplexities have been advanced regarding the reasonableness and constitutional legitimacy of a distribution of the unexpressed choices that arises in violation of the voluntary

¹⁰ In the Italian model of economic support for the religious phenomenon, it should also be pointed out that there is a second type of financing in which both the Catholic Church and other confessions (in agreement with the State) participate, also in this case. This second support modality does not involve a flow of money directed by the State to the confessions, but rather a renunciation of the public authorities to receive a part of the income tax of the citizens: it can, therefore, be defined as indirect or private support. The financing is carried out by means of donations in cash from individuals to (bodies specifically identified by) confessions: the disbursements constitute deductible charges (from the total income) at the time of the declaration for the purposes of income tax, up to the limit generalized of 1,032.91 euros. With regard to the State's economic support for confessions, the additional forms of indirect financing that are destined by law to structures of a confessional nature, are the funding for oratories and schools of denominational orientation, the so called 'five per thousand Irpef' and, finally, the controversial exemption from municipal taxes in favor of ecclesiastical bodies. From this point of view, it should be noted that numerous doubts exist regarding the possibility that the regulations in force configure the reality of 'State aid' in favor of a limited number of beneficiaries in violation of competition and community trade regulations.

nature of the destinations¹¹, which has been identified as a significant novelty characterizing the system of public funding of the religious confessions created with the 1984 Concordat review.

This concern, along with many others, has affected the reflection of the Court of Auditors that, on several occasions, has had the opportunity to carry out a detailed analysis of the functioning of the system that assigns the eight per thousand income tax of taxpayers. Among other things, the reports given by the accounting magistrates have pointed out some problematic aspects related to the preferential treatment reserved for the Catholic Church, which is the largest beneficiary of the system.

The first aspect relates, precisely, to the allocation of the sums if the taxpayer does not express any preference at the time of filing the annual tax return. The mechanism established by law n. 222 of 1985 is such that there is an arbitrary allocation of resources, with the consequence that the beneficiaries receive more from the non expressed portion than from the opted one, enjoying a considerable multiplicative factor, given that the will of those who reject the system or of those who do not care about it ends up being irrelevant. The inequity of the mechanism is increased by the fact that more than half of the taxpayers do not express a preference regarding the division of eight per thousand¹². The second aspect is connected to the system of agreements between the State and the religious confessions which, in the absence of a general law on religious freedom, constitute the only way to access to funding of the eight per thousand. The Court of Auditors, given that the entry of further confessions would decrease the resources currently allocated to the two main beneficiaries of the eight per thousand system, namely the Catholic Church and the State, notes that the delay with which Parliament has provided for transposing some agreements has prevented those confessions from participating in the distribution of resources for years, with considerable financial prejudice and violation of the principles of sincere

¹¹ If the principles of proportionality, willingness and equality had been the object of due and full respect, the sums resulting from the unexpressed choices should have remained solely in the availability of the treasury, as revenue from the tax, rather than being allocated in proportion to the expressed choices. For further references, see G. CASUSCELLI, *L'otto per mille nella nuova relazione della Corte dei Conti: spunti per una riforma*, in *Stato, Chiese e pluralismo confessionale* (online magazine, www.statoechiese.it), 39/2015, 21 December 2015, pp. 3 and following; and V. TOZZI, *L'8 per mille e il suo «inventore»*, in *Stato, Chiese e pluralismo confessionale* (online magazine, www.statoechiese.it), 8/2015, 9 March 2015, pp. 5 and following.

¹² In some years its application has even led to tripling the revenues in favor of the major beneficiaries, above all the Catholic Church. See M. PARISI, *Interventi pubblici a sostegno del fenomeno religioso e rispetto della legalità costituzionale. Il sistema dell'otto per mille all'esame della Corte dei Conti*, in *Diritto e religioni*, 2015, 1, pp. 156 and following.

collaboration and good faith¹³. The third aspect reported by the Court of Auditors regards the timing of the liquidations; while the sums are advanced to the Catholic Church, subject to adjustment in the following years, to the other religious confessions instead they are disbursed with a great delay in time¹⁴.

In addition to the critical remarks of the Court of Auditors, it can be observed that the proper functioning of the eight per thousand system appears to be invalidated also by the questionable ways of using the State-run quota. In fact, in recent years, it has been widely used by the public authorities, in the implementation of social and humanitarian activities, for the financing of restoration, recovery, improvement of immovable and movable property owned by the ecclesiastical bodies. A use of State funds that has turned out to be contradictory and bizarre. In fact, the major confession, the Catholic Church, which also receives annually by the State the huge sums destined to it directly and indirectly, through the described mechanism of choice of the taxpayers, was found, paradoxically, to be further financed with the funds that the citizens would have wanted to give to the direct management of the State. In fact, therefore, the eight per thousand quota directly managed by the State –created to offer an alternative to citizens who do not intend to finance either directly or indirectly a religious confession– nothing else has become if not, through a ‘round trip’, a further direct financing channel for the Catholic Church and, in a minimum part, for other confessions provided with agreement with the State¹⁵.

In order to avoid the criticism reported in the functioning of the eight per thousand system, what could be beneficial is the admission of all organized religious groups regardless of their nature and entity. In this way, the percentage of those who do not make a choice would be significantly reduced and, consequently, more balance would be obtained in the distribution of the amounts assigned to religious confessions. The extension of the participation to eight per thousand to all the collective organizations of a religious or philosophical na-

¹³ The most serious case concerns Jehovah’s Witnesses. The agreement between this confessional organization and the Italian State was signed in 2007, but, to date, the law of approval is missing. With the consequence of frustrating the need for freedom expected from this historic confessional movement.

¹⁴ G. DI COSIMO, *Risorse economiche pubbliche e Chiesa cattolica: due nodi al vaglio dei giudici*, in *Stato, Chiese e pluralismo confessionale* (online magazine, www.statoechiese.it), 29/2015, 5 October 2015, p. 3.

¹⁵ It is therefore possible to come to the conclusion that the establishment of a quota of eight per thousand to direct State use is not at all successful in what was supposed to be its original intent; offering a secular alternative to those taxpayers who were not willing to participate in the system of direct funding of religious confessions, but still willing to support socio-humanitarian initiatives. See I. PISTOLESI, *La quota dell’otto per mille di competenza statale: un’ulteriore forma di finanziamento (diretto) per la Chiesa cattolica?*, in *Quaderni di diritto e politica ecclesiastica*, 2006, 1, p. 179.

ture, however, would spread the huge tax resources on a wider audience of subjects operating in the social sphere and would determine a reduction of the disbursements only in favor of the Catholic Church and of a small number of religious confessions, with an obvious advantage for a more substantial respect of the principle of equality and secularism.

As anticipated, together with the Italian case, the Spanish situation is certainly of interest for an analysis of the concrete models of the financing systems of the religious phenomenon, with specific reference to the ones based on the assignment of a share of tax revenue. In Spain, following the end of the Francoist dictatorial experience and with the adoption of the 1978 democratic Constitution, considered to be a veritable watershed in the relations between the State and the religious denominations, the *asignación tributaria* model has gradually replaced, starting from 1979, the *dotación presupuestaria* system, foreseen by the 1953 Concordat. The current model has been implemented in various phases, starting from the entry into force of the new Constitutional Charter, originally foreseeing that taxpayers could allocate the 0.5239% share of their taxable income in favor of the Catholic Church. Thus, in some respects, a system similar to that of the Italian eight per thousand one was defined, but with some substantial differences. For example, while the Italian taxpayers –with their own signature– allocate a generic amount of the eight per thousand of the income tax revenue, the Spanish ones allocate the effective 0.5239% of their income, as in the case of the German religious tax. The legislation has also set the maintenance of a minimum ceiling to be recognized to the Catholic Church. In 2006, following negotiations between representatives of the Spanish Episcopal Conference and the Government, an interpretative agreement (legally approved by law n. 42 of 2006) was finally reached on the *asignación tributaria* system, which became, in this way, a definitive one; furthermore, the threshold of 0.7 per cent of the tax on the personal income coefficient was defined. In return, the Catholic Church has definitively accepted the abandonment of the system of pre-school provision and the overcoming of the exemption from VAT.

This quota, which can be allocated either to the Catholic Church for other social purposes, or to the State, either to both or none of the two, unlike what happens in Italy, is an actual percentage compared to the citizens' tax on personal income. If no preference is given, the corresponding rate remains available to the State and it can be assigned to organizations with a social purpose.

As regards to the other confessions, in the absence of direct funding, only the tax deductibility of the offers is envisaged for the *Federación de Entidades Religiosas Evangélicas de España*, for the *Federación de Comunidades Israelitas* and for the *Comisión Islámica de España*, which appear to be the repre-

sentative entities of the only three minority confessions with an agreement stipulated with the State (on the basis of the provisions of art. 16.3 of the Constitution). Since 2005, a public foundation, *Pluralismo y Convivencia*, has been established, which receives annual public funding in order to support educational or cultural projects of religious confessions provided with an agreement with the State or which have obtained the said recognition of the ‘notorio arraigo’¹⁶ (notorious rooting), in order to contribute to a better social and cul-

¹⁶ Along with the registration in the Registry of Religious Entities of the Ministry of Justice, the recognition of the ‘notorio arraigo’ constitutes an indispensable requirement to sign cooperation agreements with the Spanish State. The article 7 of the organic law n. 7 of 5 July 1980, on Religious Freedom (LOLR), defines it as follows: «The State, taking into account the religious beliefs existing in Spanish society, will establish, where appropriate, cooperation agreements or agreements with the Churches, Confessions and Religious Communities registered in the Registry that, due to their scope and number of believers, have reached noticeable rooting in Spain. In any case, these agreements will be approved by the Law of the General Courts».

To date and in the absence of a special procedure, the ‘notorio arraigo’ has been requested by the religious denominations to the ‘Comisión Asesora de Libertad Religiosa’ (CALR) which, since the beginning of its activity, has developed criteria for obtaining this particular *status*. In 1984, Protestantism and Judaism were recognized and, in 1989, Islam. In this same way, later, the Church of Jesus Christ of Latter-day Saints was recognized in 2003. Following, the recognition concerned the Jehovah’s Christian Witnesses in 2006, the Federation of Buddhist Entities of Spain in 2007 and finally, the Orthodox Church in 2010.

The definition of the requirements and the procedure for obtaining the ‘notorio arraigo’ have recently been elaborated in Royal Decree n. 593 of 3 July 2015, which regulates the declaration of ‘notorio arraigo’ of religious confessions in Spain. The requirements that the confession must meet are the following: to be registered in the Register of Religious Entities for thirty years, unless the entity accredits a recognition abroad of at least sixty years and has been registered in said Registry for a period of fifteen years; presence in at least ten Autonomous Communities and / or cities of Ceuta and Melilla; one hundred inscriptions or annotations in the Register of Religious Entities, between registrable entities and places of worship, or a lower number in the case of entities or places of worship of special relevance for their activity and number of members; adequate and sufficient structure and representation of the Church’s organization for the purposes of the declaration of ‘notorio arraigo’; presence and active participation in Spanish society.

Regarding the procedure, the application is submitted to the Ministry of Justice, instructing the file by the Subdirector General for Relations with the Confessions; the mandatory non-binding report of the CALR is foreseen and the competence to resolve corresponds to the Minister through ministerial acts, being the resolutions appealable before the ordinary jurisdiction (arts. 4 and 5 of R. D. 593/2015).

When the request is made through a Federation of entities that represents the confession, the effects of the declaration of the ‘notorio arraigo’ is always made to the confession but its effects only take advantage of the entities that are part of said Federation as a guarantee of the continuity of the condition of the ‘notorio arraigo’.

A procedure is regulated for the loss of the condition of the ‘notorio arraigo’ in the event that there is a substantial modification of the requirements necessary to obtain it.

The effects of the declaration of the ‘notorio arraigo’ will be those provided in the regulations in force at any time. As of today, such legal consequences are: the possibility of being the recipient of a cooperation agreement with the State, although the signing of said agreement is not mandatory for the State; being part of the CALR; the recognition of civil effects to the marriage celebrated

tural integration of religious minorities. It must be said that the failure to extend the system of tax assignment even to other religious confessions (provided with an agreement with the State) raises doubts in relation to the respect for the principle of equality between religious denominations¹⁷.

In Portugal, as part of a constitutional order that recognizes the religious freedom and the principle of equality between the cults (articles 19 and 41 of the Constitution of 2 April 1976), the Concordat texts of 1940 and 2004 provide for specific public funding for the activity of the pre-eminent religion. Thus, the Catholic Church retains benefits that are not granted to other religious denominations, which fall under the association regime where they fail to obtain the *status* of 'registered religious communities'¹⁸. That said, the system of direct financing is based, for the most part, on tax concessions and exemptions and, starting from 2001, on the Italian and Spanish example, the new law provides that each taxpayer can donate five per thousand of the tax on income to charitable or religious works, for the benefit of entrenched religious communities only.

Finally, it may be interesting to give some indications of the Hungarian system, which is paradigmatic of the current structure of relations between the former communist countries and the Catholic Church. In Hungary, the country's Catholic Church, which recently celebrated the first millennium of evangelization and to which the 70% of the population refers to, since 1997 is freely financed through the tax return, based on one percent of the personal taxable income, unlike Italy where the eight per thousand refers to the total income tax revenue. The Hungarians can also choose between the Reformed, Lutheran, Jewish, Evangelical, Baptist and Serbian-Orthodox denominations, or they can allocate the afore-

according to their religious form in the terms provided by the civil regulations. In addition to the legal effects, the social consequences are very interesting since it represents a public legitimation of the State to a minority religious confession.

See A. LÓPEZ-SIDRO, *El notorio arraigo de las confesiones religiosas en España a partir del Real Decreto que regula su declaración*, in *Ius Canonicum*, 55/2015, pp. 821-833.

¹⁷ The issue was the subject of a ruling by the European Court of Human Rights, in which the European judiciary, while premising that the freedom of religion –guaranteed by art. 9 of the Convention– does not imply that confessions or their members must be recognized as having a different tax *status* from that of other taxpayers, has considered that the exclusion of minority confessions from the *asignación tributaria* system is not such as to lead to a violation of the Convention. This is possible from the moment in which these confessions can theoretically require to adhere to the defined legislative financing system. The reference is to the sentence, issued on 14 June 2001, for the solution of the *Alujer Fernández et Caballero García against Spain* case.

¹⁸ The new law of 26/4/2001, which applies only to minority denominations, introduces two levels of recognition: the 'registered religious communities' (in the Register of Religious Entities) and the 'rooted religious communities', which refers to registered confessions that have a large number of believers and have been present for at least 30 years in Portugal. Only the ones belonging to these two categories ensure the recognition of the public rights associated with religious freedom, and only the 'rooted' communities can enter into bilateral agreements with the State.

mentioned one percent share of tax revenue to a public fund for social and cultural purposes. In this general framework, Catholic schools receive the same funding as public schools and, moreover, the major confession can receive contributions for restoration and for the protection of the artistic heritage. In December 2001 this form of funding has been reaffirmed in the framework of bilateral agreements made between the Hungarian State and the Holy See¹⁹.

4. STATE BUDGET AND DIRECT FUNDING OF DENOMINATIONAL ORGANIZATIONS

A third model of direct financing of the religious phenomenon is achieved through forms of direct disbursement from the State budget to one or more religious denominations. This is a characteristic system of unionist States, in which the pursued objective is the assurance of an almost exclusively favorable treatment for the prevailing religion, but it is also present in some States of secular and pluralist inspiration, like Belgium, or even in countries that are declaredly as separatist ones, like France.

In its most radical form, today this model is found in Greece, where the Article 3 of the Constitution declares that the 'prevailing' religion is the Eastern Orthodox Christian Church. The norm must be interpreted in the sense that the Christian-Orthodox religion is configured as the State religion, having a privileged treatment²⁰, and that the Orthodox Church is to be considered a public law

¹⁹ The choices made in Hungary seem to hide a substantial weakness of the State, which seeks political support and an identity justification in the Catholic religion. This attitude, although it appears to be consolidated thanks to the continuity with which the identity of the country was managed and is supported by an institutional apparatus functional to the objectives of its Government, begins to be full of holes, as it is put to the test of the comparison with the dynamics of European society. Time will verify whether Hungary manages to represent the model of the future Europe, extending to the continent the distinctive features of the last reduced, of the identity bastion of a Catholic Europe, where the populations live in distinct and separate enclosures, in the effort to rebuild a monocultural world, ethnically pure, or if the country is one of the last spaces of a bygone past. See G. CIMBALO, *Confessioni e comunità religiose nell'Europa dell'Est, pluralismo religioso e politiche legislative degli Stati*, in *Stato, Chiese e pluralismo confessionale* (online magazine, www.statoechiese.it), 8/2019, p. 119.

²⁰ This privileged treatment can be sworn on the basis of different reasons. The great majority of the Greeks consider themselves Orthodox, or at least almost all have been baptized in the Orthodox Church, which, at the same time, expresses the traditional cult of the people and has proved to be an extremely important factor in the preservation of ancient values and in support of the Hellenic ethnic identity. Both aspects are, of course, of the utmost importance for a small nation with very little race and language affinity with any other population. The Orthodox Church also acts as a bridge of contact between the Greek emigrants and their native land. Other reasons could be added to those ones, such as, for example, the political process within the framework of the

institution in all its relationships and in all its articulations (dioceses, parishes, temples, monasteries, etc.)²¹. As a result, with regard to the issues of the economic sustenance, the Hellenic State gave itself solely the task of financing the Orthodox Church. In any case –regardless of the reasons, factors and calculations that has led the State to ensure and to preserve this privileged *status* of the Orthodox Church– the cost is enormous for a country that is still struggling to develop its economy. On the other hand, many objections to this state of affairs have been raised not only by the many representatives of the secular legal culture, but also by the ecclesiastical authorities themselves, according to whom all the Church subsidies currently in force would be contrary to the sacred canons, would have grafted into the clergy the mentality of the State employees and would have transformed the Orthodox Church into a sort of agency of the State²².

As anticipated, a very interesting national model is the one of Belgium, where the relations between the State and the religious denominations are regulated by the Constitution of 7 February 1831 (amended several times over the years and, most recently, in 1994) which, promulgated a year after the national independence, is listed as one of the best examples of a compromise between Catholics and liberals. In exact terms with the 1994 reform, religious freedom is enshrined in articles 19 and 20 of the Constitutional Charter, while the independence of religious groups from the State authority is the subject of the provisions of article 21. In reality, however, the Belgian system of State-Churches relations appears to be more marked by mutual independence than by separation. In fact, it has not always been translated into equality between the different religious confessions before the State which, in consideration of a generic character of ‘social utility’, can recognize some spiritual organizations. Thus, a sort of ‘stratification’ of the position of the individual cults has been accomplished in relation

parliamentary system. The votes of a part of the electoral body can easily be influenced by the policy adopted by the various parties in relation to the Church and its ministers. The strong ties with the Orthodox Church explain, therefore, the political will of the governments to finance, directly and indirectly, this cult, and manifest themselves, as has been said, both in the Constitution and in ordinary legislation, and both in reference to the juridical position of the Church within the State and to the principles governing the relations between the two entities. See C. K. PASTHIS, *The Hellenic Republic and the Prevailing Religion*, in *Brigham Young University Law Review*, 1996, pp. 815-852.

²¹ The Greek Jewish communities and the *Evkaf* institutions (i.e. the three Muslim *Muftis*) of Western Thrace also have the *status* of a corporation under public law. All other ‘known religions’ (where ‘known religion’ is to be understood as a confessional movement whose doctrine or cult are not secret) are recognized as private law associations (partnerships) or foundations (corporations), since no law currently provides them with legal personality under public law. See C. K. PASTHIS, *Il finanziamento statale della religione dominante in Grecia*, in *Quaderni di diritto e politica ecclesiastica*, 2006, 1, p. 51.

²² C. K. PASTHIS, *Il finanziamento statale della religione dominante in Grecia*, *op. cit.*, p. 66.

to the State, from which the Catholic Church has emerged as prominent²³. In this respect, the law (still in force) of 4 March 1870 on the recognition of religious confessions allows State funding and the enjoyment of a fair range of benefits, such as the conferment of legal personality on ecclesiastical bodies, the granting of public subsidies for the construction or restoration of religious buildings, free access to the media and broadcasting, and so on²⁴.

A very peculiar model of financing of the religious phenomenon, founded on direct payments for the benefit of the denominational organizations, is the one currently in force in France, where, despite the well-known law of December 9th 1905 that prescribed the separation of State and Churches and suppressed the State economic support of religious groups, a more open conception of secularism has made its way with time²⁵. On this basis, the idea of the legitimacy of State interventions in favor of the satisfaction of practical needs connected to the exercise of religious freedom has been affirmed, justifying significant forms of financing such as the State remuneration of chaplains, the maintenance of religious buildings and the financial support for denominational orientation schools. There has been an overall evolution of the principle of secularism, which has led to a change in the traditional separatist logic relating to a different form of secularism, understood as neutrality, which, by insisting on the concept of religious freedom, would express a new secularism, more open to freedom. This concept attributes to the principle in question a different connotation, in that there would be contained the idea that the State, while admitting all religions and although it cannot foresee any provision regarding their organization and their exercise, attributes to them full freedom in the so-

²³ Suffice it to say, the Catholic Church is thus supported directly by the State, to the point that it finances it on a parochial basis and in proportion to the number of residents in the parish (regardless, therefore, of the number of practitioners). In this way, there is a strong inequality between rich and needy parishes. The State support covers from the remuneration for the clergy, the costs of managing buildings and religious activities, up to the salaries of the secular pastoral assistants.

²⁴ In 2001 the State had recognized six confessions. In addition to the Catholic Church, the Protestant Church, the Jewish Communities and the Anglican Church, already beneficiaries of the aforementioned law of 1870, over the years the Islamic confession (1974) and the Greek and Russian Orthodox Churches (1985) were added. The current framework is then completed by the numerous unrecognized religious communities (including Jehovah's Witnesses), which constitute non-profit associations of common law and benefit exclusively from the constitutional protection related to the freedom of worship.

²⁵ It may well be said that, even in the face of a general choice of separatism as a theoretical method of determining the relations between public authorities and religious phenomenon, in the practical implementation, the separatist model can manifest itself in a very differentiated way in the various States opting for this formula. In fact, multiple motivations may suggest legislative measures that have little to do with the traditional separatist logic, although a formal abjuration of the theoretically assumed model has never been achieved.

ciety with the limit, of course, to respect public order. In this way, the same law of separation has been interpreted with considerable breadth from the financial point of view, going as far as not excluding –in addition to completing what has already been said– at all that hospices, hospitals, nurseries, charities can be supported, even if managed by religious confessions, and allowing the hiring of public services such as spiritual assistance in public institutions, in kindergartens, in prisons. This new ‘open’ concept requires that the State can no longer elevate secularism as a dogma or ideology, which consequently implies the abandonment of secularism understood as a doctrine based on the aversion towards the religious dimension and the adoption of a new model, characterized by progressive neutrality towards the confessions themselves, but in a logic of support for their material needs²⁶.

Furthermore, it is possible to identify a large group of countries –both of unionist inspiration, such as the United Kingdom²⁷ and Ireland²⁸, and of sepa-

²⁶ See J. BAUBÉROT, *Libertà religiosa e laicità in Francia*, in *Lessico di Etica pubblica*, 2011, 2, pp. 59-70.

²⁷ In Great Britain, the major confession, namely the Church of England, has been self-financed from the beginning, although it has become an integral part of the constitutional structure of the country. In reality, even in the face of its claimed economic self-sufficiency, over the centuries, the State has become the supervisor and guarantor of this autonomy, especially when the evolution of the economy has meant that ecclesiastical assets, essentially the ones involving estates, were no longer capable –from the industrial revolution onwards– to meet the needs of the Church.

Already in 1836, with the creation of the Ecclesiastical Commissioners, the State proposed to collect all the abandoned real estates, often belonging to the cathedrals, in order to create a common fund with which to contribute to the poorest parishes in order to make the work of the established Church a more efficient one. Nowadays, the Church of England manages its assets through the institution of the trust and enjoys the same tax advantages reserved for socially useful activities carried out by any social body operating in England.

As for the other confessions present on the English territory, the juridical *status* of private associations applied to them and their assets are managed through the creation of trusts. When the religious confessions carry out socially useful activities, they can take advantage of discounts and tax relief, under the *Charities Act 2011*, through the creation of a charity; however, they are not obliged to do so also because this exposes them to a series of further checks. In fact, many of them are simply organized into trusts. The law establishes which charitable activities can enjoy special tax regime; the list of these activities highlights a particular attention for the religious phenomenon, even if the activities that are made by the religious groups are considered worthy of a differentiated treatment only when they produce a non-restricted social repercussion only to the members of the denominational organizations. Therefore, the religious confessions are not in a particular legal position, but only the non cult activities that these religious groups carry out can enjoy a special tax regime. In any case, the charitable trusts are obliged to register in a special register and are placed under the control of the Charity Commissioners.

See C. CIANITTO, *L'assetto patrimoniale della Chiesa d'Inghilterra: un esempio di pragmatismo*, in *Stato, Chiese e pluralismo confessionale* (online magazine, www.statoechiese.it), 32/2014, 20 October 2014, pp. 3-16.

²⁸ Ireland represents a case on the border between the different national examples. Although since 1871 in Ireland there has been a regime of initial tendential separation between the State and

ratist orientation, such as the Netherlands²⁹— in which there is no direct funding, if not to a lesser extent, in favor of religious communities. In all of these countries, however, an economic support for the religious denominations is not entirely excluded, and it is achieved indirectly through various forms of exemptions or tax breaks, of which the ecclesiastical bodies or associations can benefit from.

Finally, in order to complete the review conducted to this point, some attention must be paid on the current reality of the post-communist countries which, in the complicated re-establishment of their systems of relations with the religious communities, have opted, albeit with different nuances, for the principle of separation, understood as a distinction of orders and respect for reciprocal autonomy with a view to a collaboration between public authorities and denominational organizations.

The two models that the former communist countries could choose from were the American or the European ones. The second was chosen, thus confirming the consolidation in Europe of a homogeneous model of relations between religious communities and democracy. As already occurred for Western

the religious denominations (up to that date the Anglican Church of Ireland was an official Church and, as such, entitled, among other things, to obtain public financial support); however, the preamble to the Constitution of 1937 opens with a reference to the Holy Trinity and to the bond of the Irish people with the Catholic Christianity. With the exception of Greece, this is the only example in Europe of a Constitution that is so decisively aimed at the maximum recognition of a given religious confession. However, this framework changes, at least in part, when it comes to examining the content of the most important source of law on State-Church relations in Ireland, which is article 44 of the Constitution. In this article, the freedom of worship is recognized and the State funding of any religious confession is excluded. Nevertheless, many provisions of ordinary law allow exemptions and tax benefits for the interest of the Catholic Church and other denominational organizations.

²⁹ There is no State church in the Netherlands. There are also no bilateral agreements between the State and the Churches (including the Catholic Church). Therefore, there is a total freedom of religion and the Churches are all equally subject to the laws of the State, without any favoritism and no discrimination against any confession. The financial resources of the confessional organizations come exclusively from the free offers of the followers, in a logic of the absence of obligatory ecclesial contributions and direct public contributions.

However, the State finances institutions and activities of general interest (therefore, also private schools, including the Catholic University of Nijmegen and Tilburg and the Free University of Amsterdam, obviously requiring certain legal conditions and carrying out administrative checks), the restoration of ancient churches and monuments, public utility structures, including religious ones (for example, we can consider the construction of a mosque operating as a socio-cultural center, within the framework of public policy for the integration of minorities).

The contributions paid to the Churches (such as those paid to philanthropic parties and associations) are tax deductible. Both the believers and the public opinion are not very interested in financial matters relating to the life of denominational organizations. Apart from a few exceptions as in the case of the Catholic Church, the management of the Church resources is sufficiently democratic; so the need for particular reforms has never been a necessity.

Europe, the Constitutions, the ordinary legislation and the jurisprudence in the post-communist countries have confirmed a wide protection of the individual religious freedom and a similar use of the selective criterion for the associative forms of religious interests.

However, on a closer look, the two models that mark the dialogue between Christianity and liberalism in Eastern Europe present substantial differences. First of all, while the other European national realities have –for a long time now– assumed the appearance of mature and consolidated liberal democracies, the countries of Central and Eastern Europe are still weak and are developing and consolidating forms of democracy. These regions of Europe, in other words, are experiencing a transition process that is certainly not concluded. Indeed, we can say that the process is now in a phase that can still be defined as ‘constituent’, and, therefore, it is an undoubtedly difficult one. Essentially, the complexity of the current phase is due to the difficulties inherent in the democratization process that is being implemented³⁰. In this complex transition from the communist system to the democratic one, the Churches have played a decisive political role, not only in the process of erosion of the Marxist-Leninist system, but in the current social, economic and democratic revival of these countries. We just need to think of the established Concordat relations with the Catholic Church in many countries in this area (Croatia, Slovenia, Czech Republic, Slovakia, Estonia, Lithuania, Latvia, Hungary, Poland, Albania) or of the influence exerted by the Orthodox Churches. This has resulted in the strengthening of an institutional aspect that has always been present in Central-Eastern Europe, characterized by the principle of ‘symphony’ in the relations between State and Church. It is something more profound and encompassing than the mere idea of collaboration prevalent in Western Europe, as it goes to strengthen the connection between the nationalism and the dominant religion³¹.

³⁰ G. BARBERINI, *La libertà di religione nel processo di democratizzazione degli Stati dell'Europa centrale ed orientale*, in S. Ferrari, W. Cole Durham, E. A. Sewell (ed.), *Diritto e religione nell'Europa post-comunista*, Bologna, Il Mulino, 2004, p. 9.

³¹ All this has significant consequences in terms of democracy. The Eastern European countries seem to have missed the opportunity to exceed the limits of the ecclesiastical policy of Western European States, not only because they have reproduced its defects, but especially because they have amplified and aggravated them. In several of these countries what has occurred, in fact, is a real regression on the level of associated religious freedom, by means of an even more extensive and arbitrary use of the selective criterion, so much as to harm the same subjective rights of the believers. The art. 16 of the 1992 Belarusian law on religious freedom, as amended in 2002, or the art. 14 of the 2002 Moldovan law on religious confessions have predicted that a religious organization that wants to operate as such should register; in the absence of a registration there is no other way to acquire legal personality. Now such legislation affects profoundly also on the individual rights, preventing the unregistered confessions of not being able to buy or rent the premises that are necessary for the meetings of their followers. Thus, it is causing serious damage to the freedom

On the basis of these preliminary observations, we can well understand why these countries, for the most part, have adopted both forms of indirect financing through tax breaks or exemptions for religious communities and also have prepared direct financing, assigned or through taxpayers' choices (Hungary), or through the transfer of State funds to the religious communities (Slovakia, Romania, Estonia and Croatia) or through the remuneration of ministers of worship (Czech Republic, Romania, Slovakia). In any case, the main beneficiaries of public financial interventions appear to be the 'traditional' Churches, due to both the harassment they suffered in the period of the communist dictatorship and the particular 'symphony' existing with the State authorities³².

5. CONCLUSIONS

In conclusion of the arguments raised so far, in the variegated and articulated European panorama of the systems of public financing of the religious phenomenon, it is possible to identify some common trends.

A first observation concerns the consolidated tendency to abandon the most extreme and obsolete forms of relations with the religious denominations. This tendency entails a general recognition of all the confessional autonomies, so as to promote concrete interventions by the States in a perspective of collaboration with all the spiritual groups, given the recognition of the religious phenomenon as a good of public utility.

Secondly, the gradation and distribution of the economic aids to the different religious communities allows us to trace a recurring pattern, known as the 'pyramid structure', within which various levels of 'selective collaboration' can be distinguished. In particular, we can observe a differentiated treatment among confessions: the ones that, for historical or numerical reasons, have more intense relations with the State, which translates into privileged regulations also with regard to financing; those that, by receiving some form of public recognition, have access for the most part to forms of indirect financing, such as exemptions or tax breaks; and, finally, the ones –eventually recognized as mere associations– that cannot access funding, except in a very limited manner.

of individual worship, even before the collective one. See S. FERRARI, *Chiesa e Stato nell'Europa post-comunista*, in S. Ferrari, W. Cole Durham, E. A. Sewell (ed.), *Diritto e religione nell'Europa post-comunista*, op. cit., p. 517.

³² A. LÓPEZ MEDINA, *La financiación de la Iglesia Católica en los concordatos de la Europa del Este*, in C. Garcimartín (ed.), *La financiación de la libertad religiosa. Actas del VIII Simposio Internacional de Derecho Concordatario*, op. cit., p. 77.

It can therefore be concluded that, actually, there is a marked selective treatment in favor of the most deeply rooted and historically consistent religious communities in the single national realities, which corresponds to a general difficulty of the minority religious groups (or of the ones that are characterized by a more recent settlement) to take part in the public financing system. Often, in fact, despite the constitutional recognition of the freedom of the religious denominations, it can then correspond, concretely, to a qualitatively different measure of freedom, due to the strong privileges enjoyed by the Churches that are traditionally more rooted in a given national context. The risk of excluding some confessions of more recent settlement from a series of rights, including the access to State funding, is mainly concentrated in the formal obstacle of the excessive discretion of the State institutions in their recognition, often following an evaluation of their harmony with the founding values of the civil society, that sometimes appears to be arbitrary. The concrete consequence of such a legal situation and of such a practice on behalf of the State authorities lies in the realization of a difference in treatment that goes beyond the so-called 'limit of reasonableness'³³ and which affects directly the principles that underlie the European model of approach to the religious phenomenon, namely the individual religious freedom, the prohibition of discriminations, the organizational autonomy and the legal equality of the religious denominations.

³³ A dangerous tendency, because it lends itself to promote a form of attenuated pluralism and to sustain the continuous tension towards the affirmation of an exclusive discipline of some cults, revealing an abusively rewarding character of the strong subjects of confessional pluralism. With all that this can entail in terms of the right to equal liberty which, in this way, risks turning into an unequal freedom, or a compression of the equal freedom of the religious communities.