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LEGAL STATUS AND ADMINISTRATIVE CONTROL OF RELIGIOUS ORGANIZATIONS AND GROUPS IN FRANCE

ANDREW D. WEST*

INTRODUCTION

There is no unified legal structure prescribed for religious organizations in France, largely because of historical factors. Since the separation of Church from State following the Revolution of 1789, the creation and operation of all types of religious organization has been subject to the prior authorization and subsequent control of the administration. The level at which authorization must be obtained varies; thus, local congregations, which are treated as associations created for the purpose of providing or supporting the public exercise of a religion in the locality are regulated by the law of 9-11th December 1905, and it is the local Prefecture which is the competent authority. The Prefecture is also competent in respect of religious associations created for purposes other than the hold-

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1 This is not an exceptional requirement; an unincorporated association such as a club or society does not under French law have any legal capacity to own property or enter into contracts, even through its administrators. To obtain such capacity, it would have to be "declared" to the local Prefecture and a notice entered in the Journal Officiel; from that moment it is regarded as having legal personality independent of that of its members.

2 Hereinafter referred to as "congregational associations."

3 See D.P. IV 9-11.12.1905 (hereinafter "1905 law").
ing of religious ceremonies, which are subject to the law of 1st July 1901.4 However, the creation of religious orders and communities5 must be approved at the highest level by the Conseil d’Etat.6

One of the practical effects of the separation of Church from State is that religious organizations are not only unable to receive state funding or subsidies,7 but also have restrictions placed on the gift income they may receive, as will later be examined in this article.

HISTORICAL DEVELOPMENT

Relations between Church and State in France have had a turbulent history since the Revolution. Separation of the two was enshrined in the legislation of 1795,8 which provided that the French State would no longer provide premises for church services nor pay salaries to the clergy. Freedom of religious belief and assembly were, however, specifically guaranteed. The rigidity of the revolutionary laws was reduced when Napoleon became First Consul. Under the terms of the Concordat of 1801,9 the Catholic religion was declared to be that of the majority of the French population, and the State again took on the responsibility of paying the salaries of priests, although the latter remained obliged to swear an oath of allegiance to the Republic.10 Bishops were to be nominated personally by the First Consul.

France was not to return to a true separation of Church from State until 1905, when the rationalist Ferdinand Buisson11 introduced legislation in the National Assembly. The resulting law abolished the system whereby certain creeds12 had been legally recognized by the administration, and under the auspices of a Central Administration of Creeds, public establishments had owned and administered property for the holding of services of the recognized religions. Thereafter, no creed was to be recognized or financially supported by the State,13 although freedom of reli-

4 D.P. IV 1.7.1901 [hereinafter “1901 law”]. 
5 These entities are also subject to the 1901 law. 
6 The supreme administrative court. 
7 With the exception of certain approved religious organizations in the Alsace-Lorraine region. See infra notes 102-115 and accompanying text. 
8 See Duv. & Boc. 21.2.1795. 
9 Duv. & Boc. 15.8.1801. 
10 See Duv. & Boc. 12-24.7.1790. First introduced in 1790, this oath requirement led to a diplomatic breach between France and Rome. 
11 Then President of the National Association of Free Thinkers of France. 
12 The Catholic, Protestant and Jewish faiths. 
13 Except in Alsace-Lorraine. See infra note 102-115 and accompanying text. Also excepted was the provision of chaplaincy services in public establishments such as prisons and hospitals. See 1905 law, Art. 2. Cf. C.E. 28.1.1955 (Minister of Education bound to provide chaplaincy service in educational establishments where necessary to ensure free exercise of Cath-
religious conscience was assured, and the exercise of any faith or creed was guaranteed, subject only to the constraints of public order. For any of the creeds to continue to hold religious meetings, each local congregation would have to seek administrative recognition as a congregational association and be subject thereafter to administrative control.

The Catholic Church rejected the idea of legally autonomous congregations, held by Pope Pius X to be contrary to the Church’s Constitution. A later Encyclical authorized the creation of “diocesan associations” conforming to the spirit of the law of 1905, yet the Encyclical emphasized that the association still had to respect the authority of the Bishop, subject thereby to the Constitution of the Catholic Church.

Religious orders and communities, such as monasteries and seminaries, are subject to a different regime. The revolutionary law of 13-19th February 1790 denied all legal effect to religious vows, and authorized monks and nuns to leave monasteries and convents. Their leaving was made mandatory by a decree of 4th August 1792, and all religious bodies and communities were abolished by a decree of 17th August 1792. The First Empire saw their reestablishment, but only where prior administrative authorization was obtained. A religious community of over twenty members which failed to obtain authorization had no legal personality, and hence no legal capacity. In addition, its administrators were subject to prosecution.

Although some unauthorized communities were subjected to the rigors of the Criminal Code, in practice, a “blind eye” was turned to many unauthorized communities. The 1901 law subjected the creation and operation of all associations and clubs to administrative authorization and control. The opportunity was taken to bring within the net all religious orders and communities. Henceforth, they had to obtain administrative authorization to obtain legal personality, and any existing orders or communities which failed to do so within a period of three months were automatically dissolved by operation of law. Any orders or communities created thereafter without authorization were illegal, and their founders, administrators and members were subject to prosecution. Today, their

14 1905 law, Art. 1.
15 “Association cultuelle.”
16 See Encyclical of 10.8.1906.
17 Encyclical of 18.7.1924.
18 As was confirmed by the Conseil d’Etat in C.E. 13.12.1923.
19 “Congregations Religieuses” and “Etablissements Congreganistes.”
21 For example, the Assumptionists. See Paris 6.3.1900; G.P. 1900.I.430.
22 1901 law, Art.18.
23 1901 law, Art. 16. This Article was abolished by D.C.L. 8.4.1942, Art. 3, with the result
creation is subject to a more stringent form of authorization than that demanded of religious congregations—whereas the latter have merely to be “declared” to the local Prefecture, the former have to be granted legal recognition by government decree.

Apart from these two modes of religious organization, it is possible to form associations for other religious purposes under the general provisions of the 1901 law, but, as will be demonstrated later in this Article, such associations have been under a disadvantage compared to religious congregations, orders and communities with respect to the gift income they are legally entitled to receive.4

**CLASSIFICATION OF RELIGIOUS ORGANIZATIONS**

A. *Congregational Associations*

The law of 1905 applies only to associations formed exclusively to provide for the funding, holding and public exercise of a creed or faith.25 It has been held that this must be the primary aim of the association.26 The legislature intended that this requirement would enable the authorities to exclude associations with hidden intentions, particularly those of a political nature. It should be noted that the association’s activities are not limited to the provision of religious services, as long as its activities directly or indirectly meet the needs of the provision of the public exercise of the creed. Thus, congregational associations with purposes such as the founding of seminaries and faculties of theology and the support and provision of lodging for Ministers of Religion have been held to be valid under the law.

The drafters of the 1905 law desired to ensure that the benefits of recognition under this legislation were only extended to creeds with a specific local following. These benefits were not intended to extend to as-

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4 Note that it is not possible to create an *inter vivos* or testamentary foundation, similar to an endowed trust, for religious purposes. The Conseil d’Etat will refuse to grant a foundation having such an objective public utility status, without which a foundation has no legal personality. See C.E. no. 322384, 14.3.1978.

25 1905 law, Art. 18. There is no longer any recognition of specific creeds. A religious congregation of any faith will be valid; however, it has been held that an association of Jehovah’s Witnesses is not a congregational association due to the nature of certain declared objects. See C.E. no. 46.488, 1.2.1985. By contrast, the International Association for the Conscience of Krishna has been impliedly recognized, as has a Buddhist community. See C.E. no. 31.102, 14.5.1982 (Hare Krishna); DÉCRET DU C.E. DU 8.1.88 (Buddhist).

26 Civ. 1.7.1968, J.C.P. 1969.II.15699 (association which had as primary aim provision of material and moral help for elderly Russian Orthodox believers, and only secondarily provision of Russian Orthodox services, was not congregational association, but association subject to general provisions of 1901 law).
sociations of non-locals who might attempt to exert their influence throughout a region, and who may have hidden political objectives. Therefore, a minimum membership of seven is required if the association is based in a community not exceeding one thousand people. Apart from this minimum membership, it is for the association itself to define its "parish." It can be local, with the association holding religious services in one or several places of worship, or more widespread, serving several diocese or Departements, or even overseas territories.

It should be noted that it is possible to create a federation or union of religious associations having a central administration. This enables creeds with a centralized authority structure to maintain control over local groups, and to use the excess funds of financially strong groups to bolster the weaker groups, such transfers of excess funds being non-taxable. Any assets that the federation may have are regarded as separate from those of its constituent members. These federations are generally subject to the same rules as other congregational associations except that they do not have to submit details of their aggregate membership nor of their territorial circumscription. They must, however, keep the administration informed of the location of their registered office and of the changes in the objectives of all member associations.

B. Religious Orders and Communities

Although religious orders are regulated by the 1901 law and their dependent religious communities by the law of 4-5th December 1902, neither of these laws offer any precise definitions of these terms, in the absence of which, recourse must be had to decisions of the courts and to doctrinal writings.

In the case of Tribunal Civil Reims of 4th June 1902, it was held that a "religious order" is a type of association created by people who hold in common their knowledge and activities for the purpose of a determined work in a permanent manner. A "religious community" was defined by the early writers Trouillot and Chapsal as a community where

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87 See 1905 law, Art. 19 (membership of at least twenty-five if in community between 1,000 and 20,000; at least twenty-five in community exceeding 20,000).
88 1905 law, Art. 20.
89 1905 law, Art. 18. Another way it may help is by the provision of material assistance gratis or at reduced rates to its members. Cf. C.E. 20.4.1983 (corporation tax not payable where one congregational association granted lease of premises to another with similar goals).
90 D.P. IV 16-17.3.1906, Art. 48.
91 See 1901 law, Art. 13-21.
92 G.P. 1902.II.161.
93 TROUILLOT & CHAPSAL, DU CONTRAT D'ASSOCIATION (1902).
people are related by the discipline and rules of their order under the
authority of their superior, and carry out acts which directly effect the
purposes for which the order was formed. Later case law has confirmed
that factors tending to show the existence of an order or community are a
life in common, religious vows, objects of a pious nature, submission to a
constitution or rules, renouncement of family life, and the wearing of reli-
gious garb. 34

Limits are imposed on the work which these orders and communities
may carry out. In an effort to limit their influence over young people, a
law of 1904 35 prohibited religious orders and their members from being
involved in education of all types and at all levels. This was an extension
of a law of 1882 36 which had secularized all state education in France.
The rationale behind the 1904 law can be seen from the report of the
Commission who drafted the bill, chaired by the aforementioned Ferdi-
nand Buisson. The role of education was limited to the preparation of
youth for civic duty. It was argued that instruction should not be left to
men and women who were thought to have set themselves apart from
society by taking vows of poverty, chastity and obedience, and, by “aban-
donning” their families, had forsaken that which any citizen should cling
to the most, without which social organization was not possible.

There was strong opposition to the bill, on grounds that it was unfair
in that it discarded all education undertaken by religious orders without
regard to the value of the education offered, and also that it was unneces-
sary because the existing provisions of the 1901 law allowed the adminis-
tration to exercise control over orders whose teaching was proven to be
contrary to the public interest. Despite these arguments and fears about
the cost of bringing all education within the public sector, the law of 1904
was promulgated, and all educational establishments run by religious or-
ders and communities were phased out over a ten-year period.

C. Non-Congregational Religious Associations

Religious associations, which are not religious orders or communities
and were formed for purposes other than the support of the public exer-
cise of a creed are not subject to special rules, but come under the provi-

34 The extent to which the courts will go to bring religious communities within the control
of the 1901 law can bee seen in a case where a court intimated that a community of laymen,
who came under the authority of the diocesan bishop who employed them to undertake
pastoral service for which they received a fee, would be regarded as a “religious commu-
nity,” even though they had not taken vows nor were subject to a common rule. See Cass.
35 D.P. IV 7-8.7.1904.
36 D.P. IV 28.3.1882 (law of “Jules Ferry”). Cf. 1905 law, Art. 30 (forbidding all religious
education to children between ages of six and thirteen in State schools during school hours).
sions of the 1901 law regulating the creation and operation of all secular associations, societies and clubs.

FORMALITIES OF CREATION

A. Congregational Associations

A decree of 1906\textsuperscript{77} set out the formalities for congregational associations to follow in order to acquire legal personality. A declaration must be made to the local Prefecture enclosing draft bylaws and declarations as to the circumscription within which the association will work and the number of adult members who are domiciled or reside in that area.

B. Non-Congregational Religious Associations

Copies of draft bylaws, which do not have to conform to any particular model, are submitted to the local Prefecture, together with a declaration giving details of the members of the council of management and proof of the location of the registered office. A list of member's names does not have to be provided. Although the Prefect can refuse to accept an incomplete dossier, he cannot reject an application merely because he is of the opinion that the proposed objects are illegal. In such a case, recognition will be granted, but the dossier may subsequently be sent to the public prosecutor. The prosecutor will then determine whether the association should be dissolved on the ground that its purpose is illicit, contrary to the law or to good morality, threatens French territory, or threatens the republican form of government.

C. Religious Orders and Communities

As has been noted, religious orders and communities are subject to prior administrative authorization at a high level.\textsuperscript{78} An application for approval must be submitted to the Minister of the Interior, enclosing draft bylaws and a declaration of the resources to which the order or community will have access. In addition, a full list of the names, ages and nationalities\textsuperscript{8} of each member of the order or community must be provided together with copies of the written notice given to each member specifying the conditions of admission to membership and the maximum amount

\textsuperscript{77} D.P. IV 16-17.3.1906.

\textsuperscript{78} See D.P. IV 16.8.1901, Art. 16-26. The requirement that the diocesan bishop submit a certificate of attestation in respect of the application is fulfilled, in the case of a Buddhist community, by the submission of the same by the Buddhist equivalent of a bishop (i.e., a "regent"). D.S.L. C.E. du 8.1.88; Rep. Min. a M.D. Cuttoli; J.O. 24.3.88. See also Senat Quest. et Rep., 412, no. 9532.

\textsuperscript{8} Also, details of any other religious orders to which they may previously have belonged.
of contribution by way of subscription or endowment that may be required. After obtaining the opinion of the local authority and of the Prefect, the Minister submits his report to the Conseil d'Etat. In the case of a religious order, authorization can only be given by government decree on the advice of the Conseil d'Etat. However, in the case of a dependent community, authorization is by decree of the Conseil d'Etat itself. Any religious order or community which had been authorized prior to 1901 is exempt from the authorization requirement of the 1901 law.

INTERNAL ORGANIZATION

A. Congregational Associations

(i) Introduction

The bylaws of a congregational association can be freely drafted as long as the provisions of the 1905 law concerning minimum membership and permissible goals are not transgressed. This, for example, permits Catholic diocesan associations to adopt bylaws approved by the Vatican. Generally, bylaws will regulate the conditions of admission and dismissal of members, the amount of any subscriptions, and the management of the association.

(ii) Membership

As long as the statutory requirements of minimum membership are met, the founders of the association are free to specify which classes of persons shall or shall not be admitted to membership. Power to admit to membership can be granted to a particular individual (such as a bishop) or council of management. The courts will not interfere to force an unwilling council to admit an unwanted applicant. Regardless of the provisions of the bylaws, a member has a right to withdraw from membership at any time upon payment of any subscription due. In addition, the bylaws cannot prevent a dismissed member from suing in the courts for wrongful dismissal.

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40 See 1901 law, Art. 13. It would appear that between 1905 and World War II, decrees of recognition were generally not granted, although a "blind eye" was turned to many unauthorized orders and communities. This failure to grant recognition accounts for the passing of the 1942 legislation discussed previously in the text. See OZONAM, ASSOCIATIONS, SYNDICATS ET FONDTIONS 159 (1964).

41 See Regulation of 16.3.1906, Art. 30.

42 There is no statutory maximum membership.

43 Membership could thus be limited to exclude women, minors or foreigners; NB minors can only be admitted to membership with the permission of their parent or guardian.

44 D.P. 1906.4.20.

45 1905 law, Art. 19(2).
RELIGIOUS GROUPS IN FRANCE

(iii) Administration

Daily responsibility for the affairs of the association is vested in administrators or directors, who may constitute a council of management. It is for the founders to decide who may be administrators and how they are to be appointed. It is possible to have a minister of religion as sole administrator.48 The general assembly of members has overall financial control in that it approves the annual accounts, as well as a report by the administrators on all dealings with the association’s funds and property.47

B. Non-Congregational Religious Associations

Great freedom is permitted in the drafting of bylaws for these entities; thus different categories of members may be admitted, such as full members and honorary members not having voting rights. Membership can be limited to certain categories of individuals. Power to admit to membership can be vested in the general assembly or in the full council of management. All full members will have a right to attend and vote at meetings of the general assembly. It is customary, although not obligatory, for the association to be administered by a council of management nominated from the membership of the association and appointed by the general assembly. The latter will again receive the annual report from the council of management and adopt the annual accounts.

C. Religious Orders and Communities

By a decree of 16th August 1901, the draft bylaws of religious orders and communities must contain the same provisions as those of public utility associations. The Conseil d’Etat has produced standard form draft bylaws. These provide, inter alia, that the general assembly must appoint the council of management, and must ratify the council’s dealings with the immovable property of the association.

PERMITTED RESOURCES

A. Introduction

All non-profit organizations, particularly religious organizations, depend heavily on gift income for the attainment of their objectives. A basic tenet of French law has been that clubs and associations regulated by the 1901 law must rely on membership fees, member contributions and any grants from the State that they may receive. Until major reform was in-

48 Thus, the stock-form bylaws of Catholic diocesan associations provide for the Bishop to be ex officio president and chairman of the council of management.
47 1905 law, Art. 19(3).
roduced by the law of 23rd July 1987, gift income could not legally be received unless the association had obtained recognition from the Conseil d'Etat as a public utility association on the basis of its goals being of “general interest.” Even then administrative authority was necessary for a donation to be accepted. By way of exception, however, the administration turned a “blind eye” to moderate sums donated “by hand” to any association, whether paid in cash or by check, such as the product of collection boxes, tombolas, and the like. This was tolerated because of the difficulty of policing such donations, and, more significantly, because such giving was actively encouraged by fiscal laws. Prior to 1987, no legislative provision or precedent granted associations created pursuant to the 1901 law capacity to receive such income. Nevertheless, the government had accepted that such a right was implied under the aforementioned fiscal laws. Article 16 of the law of 23rd July 1987 granted long-awaited statutory recognition of the right of all associations “declared” under the 1901 law to receive, without limit, and without the need for prior administrative authority, gifts “by hand” (dons manuels; i.e., inter vivos monetary donations, in cash or by check) and gifts of moveable property. However, it remains the rule that gifts of immoveable property and testamentary donations of any kind cannot legally be received.

A more liberal regime exists for congregational associations regulated by the 1905 law, which even before the 1987 reforms were allowed to receive the proceeds of collections and other more substantial gifts and leg-

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48 In practice, the association must also show that it has a membership of at least two hundred, capital of at least 1,000 francs, and has been in operation for at least three years.
49 “Dons manuels”.
50 See Art. 238, Bis. C. General des Impots (as amended by the law of 23rd July 1987). This law provides that a private taxpayer or corporation can deduct from taxable income payments (up to a maximum of 5% of taxable income, or 0.2% of turnover in the case of a corporation) to non-profit organizations having objectives of general interest, such as philanthropic, educational, linguistic, scientific, environmental, sporting, social, family or cultural objects. See also Instruction de la Direction Generale des Impots du 26.2.88 B.O.I. 4C-2-88.
51 See Repense Ministerielle a la Question Ecrite no. 5446 au J.O. des Debates de l'Assemblee Nationale du 29.5.1957. Tolerated resources included minor gifts or even assistance given to an association, including the donation of books, furniture, assisting in the redecorating of premises, gifts received by hand, in cash or kind, and the proceeds of public appeals received through the use of collection boxes, circular letters, tombolas and lotteries. See Duv. & Boc. 14.2.1949. It has been confirmed by the Minister of the Interior that appeals to the general public are not subject to administrative control so long as they are not organized on the public highway or in a public place. J.O. Del. Parl. 19.1.1955. However, in some Departements, prefectorial regulations subject collections and public appeals to prior prefectorial authorization.
Religious Groups in France

Acies without prior administrative authorization. Since the 1987 reforms, such donations attract tax credits for the donor. Religious orders and communities can receive gift income if the donation is approved by the administration. The harshness of the 1901 law before its reform caused difficulty to non-congregational religious associations; an example of this might be a missionary organization. Many such organizations rely largely on gift income for their survival, from both collections and fund-raising events, and from larger donations, yet could not legally receive the latter. Because of these problems, it was not unknown for such religious organizations to seek to take advantage of the more liberal provisions of the 1905 law by hiding their main objectives behind a general congregational purpose, such as "to ensure the informal celebration of the evangelical creed."

B. Congregational Associations

(i) Gift Income and Subscriptions

As previously mentioned, the administration does not seek to impose control on small donations and receipts. In any event, the 1905 law specifically provides that congregational associations are entitled to receive subscriptions from members and the product of collections and donations toward the cost of holding religious services.

The 1905 law as originally drafted prohibited the receipt of both in ter vivos and testamentary donations other than moderate endowments made solely for the provision of future religious services. Any excess endowment was regarded as a "disguised donation" and thus disallowed. The parliamentary commission's report introducing the 1905 law was strongly opposed to giving congregational associations a general right to receive donations and legacies. The commission was particularly concerned with avoiding the exercise of undue influence over parishioners by priests. It was also felt that a religion's resources should come from the zeal and contributions of its living members, not inheritance from those deceased. The commission was of the opinion that a religion should not be able to have at its disposal significant resources, as this would enable it to multiply places of worship and increase "out of proportion" to the number of clergy. It feared that the resulting increased influence would not be entirely religious in nature.

This position was relaxed by the law of 25th December 1942, which

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[88] Particularly in the case of the French branch of an organization initially constituted in a country where there is freedom to receive gift income.
[88] Such as masses for the donor after his death.
provided that both testamentary and *inter vivos* donations can be accepted if given for the furtherance of the objectives of the association or given on trust for pious or congregational purposes. These gifts must first be sanctioned by the administration. A further loosening of restrictions has resulted from the law of 23rd July 1987, which encourages the making of personal donations to congregational associations who have thus been granted authority to receive gifts and legacies. This is accomplished by allowing income tax credits to individuals (up to 5% of their annual taxable income) and corporations (up to 0.3% of their annual turnover) who make donations to such associations, which are, in this respect, now assimilated to public utility associations. Any illegal donations can be annulled at the insistence of any interested party or the public prosecutor. However, payments to congregational associations which have not been authorized to receive donations and legacies are only tax-deductible under this provision to the extent that the association carries out lay activities of general interest. The payments may also be tax-deductible if made for the purpose of construction or repair of church buildings, or if the gift is made to the Fondation Nationale pour la Sante du Clerge de France. The law specifies that no deduction is possible for donations made toward the costs of the public celebration of the creed or the upkeep of ministers of religion except as mentioned above.

(ii) Subsidies

Since the separation of Church from State, no state subsidies are permitted, whether central or local. The only exceptions to this rule are that the State can continue to pay ministers of religion for funeral and chaplaincy services. It is also possible for administrative bodies to receive a donation to be used in furtherance of their own objectives, subject

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66 The authority of the Prefect is to be obtained if the donation does not exceed five million francs; that of the Conseil d'Etat or an arrete of the Minister of the Interior passed with the approval of the Conseil d'Etat is required if it exceeds that figure, D.S.L. 13.6.1966, modified, D.S.L. 21.2.1984. If an application is refused by the Prefect, appeal lies to the Conseil d'Etat. D.S.L. 13.6.1966, Art. 6.
67 COMMUNIQUE DU MINISTRE DE L'ECONOMIE, DES FINANCES ET DE LA PRIVATISATION DU 27.1.88. DROIT FISCAL 1988 No.6, 251.
68 1901 law, Art. 17.
69 REPONSE MINISTERIELLE A M. GRUSSENMEYER, J.O. 3.9.84, ASS. NAT. QUEST. ET REP. 3931 no. 47,124; REPONSE MINISTERIELLE A M. LEONARD, J.O. 27.4.87, ASS. NAT. QUEST. ET REP. 2398 no. 17,368.
70 All pre-1905 subsidies were diverted to local communities.
71 Other than in Alsace-Lorraine. See infra notes 105-118 and accompanying text.
72 See, e.g., C.E. 6.1.1922, D.P. 1922.3.15 (services over bodies of deceased soldiers brought back from front).
73 See note 13, supra.
RELIGIOUS GROUPS IN FRANCE

to a condition that specified religious services be held.\(^4\)

(iii) Other Income

It is permissible to charge fees for the provision of religious ceremonies such as weddings and funerals, for the provision of religious articles for use at funerals or for the decoration of structures, and for the rental of church buildings.\(^6\) Also authorized are donations of surpluses from other associations having similar goals.

(iv) Contributions

It is possible for a member to grant to the association the right to use any property, whether moveable or immoveable, which can be regarded as indispensable to the functioning of the association. The property is returned to the member or his next of kin in the event of dissolution of the association.\(^6\) The arrangement\(^6\) is therefore not a "donation;" nor is it to be regarded as a "loan." The property can be alienated or charged by the association, which is treated as being the "proprietor" of the property.

C. Non-Congregational Religious Associations

(i) Gift Income

As mentioned previously, *inter vivos* donations (*dons manuels*) may today be freely received. However, the tax credits granted in the 1987 reforms in respect of gifts to congregational associations authorized to receive gift income will only apply to gifts to non-congregational religious associations to the extent that the latter carry out "general interest" objectives of a philanthropic, educational, scientific, social, family or cultural nature.\(^8\)

(ii) Subscriptions and Fees

A major source of funding has been and continues to be the subscriptions of members. So as to prevent life membership subscriptions from

\(^{4}\) See C.E. 18.12.1925, D.P. 1927.3.23 (diocesan association must perform service).

\(^{5}\) 1905 law, Art. 19.

\(^{6}\) 1901 law, Art. 18.

\(^{7}\) Known as an "apport." To distinguish an "apport" from a "donation" it must be shown in the case of the former that the grantor received in return for his grant a benefit, whether material or otherwise, including a "moral" or "spiritual" benefit. See Cour de Cass. 1.3.88 D.1988 I.R. 73.

\(^{8}\) See supra note 52. Even then this is limited to 5% in the case of individuals or 0.2% in the case of corporations. *Id.; see also Instruction de la Direction Generale des Impots du 26.2.88; Rep. Min. à M. Hamel, J.O. 17.3.88. Senat Quest. et Rep. 370 no. 9120.*
being a source of "disguised" gift income, a maximum fee of one hundred francs has been prescribed for life memberships. In addition, an association is entitled to charge and retain fees for any services that it provides.

(iii) Contributions

As with congregational associations, the contributions of members are a permitted source of income for non-congregational religious associations.

(iv) Loans

Financing can be achieved by way of loans, either from the public or the private sector.

(v) Subsidies

Religious associations are not eligible to receive state funding, at least in respect of their activities of a religious nature.

D. Religious Orders and Communities

(i) Gift Income and Subscriptions

Subject to the general provisions of the 1901 law, these organizations may legally receive funds by way of subscription from their members. Regarding gift income, the law of 13th June 1966 provides that duly authorized religious communities and orders may be permitted to accept inter vivos and testamentary donations. It should also be noted that any donation made to a member of an order or community is presumed, in the absence of contrary evidence, to be a gift to the order of the community.

(ii) Contributions

Again, contributions can be made by members to orders and communities, returnable on dissolution.

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86 1901 law, Art.6.
88 See OZONAM, supra note 40, at para. 162.
89 By the Prefect up to five million francs; by decree of the Conseil d'Etat or Minister of the Interior if above that figure.
90 Unless the donee is a direct descendant of the donor.
91 There were limitations on the extent to which women's orders and communities could receive gift income. Duv. & Boc. 24.5.1825., modified by D.C.L. 30.5.1941. These limitations were abolished in 1987. D.S.L. 30.7.1987, confirmed by REP. MIN. A M. DEJOIE DU 3.3.88 SENAT QUEST. ET REP. 297 no. 9014.
Religious Groups in France

(iii) Subsidies

No public subsidies can be given to religious orders and communities due to their religious objectives.

Use of Resources

Particular rules have been set down as to the purposes for which congregational associations can use their resources. These resources are to be used exclusively for the funding and support of the public exercise of a creed.\(^{76}\) Surpluses can be used to create a reserve fund for future expenditure, but within defined limits to ensure that substantial reserves are not built up. The formula employed in Article 22 of the 1905 law to prescribe those limits is intended to enable an association to keep in reserve no funds in excess of the amount sufficient to enable it to function for one year without other income. In addition, a special reserve fund may be maintained for the specific purpose of purchasing, constructing, decorating or repairing real or personal property used in furtherance of the association's purposes.\(^{76}\) Any additional surpluses can be donated to other associations having the same goals.\(^{77}\) This provision enables poor parishes to be supported by richer ones. The provision is also considered to be in the public interest because it encourages congregational associations to spend their wealth, rather than accumulate it.

Administrative Control

A. Congregational Associations

The type of control the administration exercises over congregational associations is described in French administrative law as "administrative guardianship."\(^{78}\) It has already been observed that this involves control at the stage of the initial application for recognition.\(^{79}\) Further control is exercised by the taxation authorities.\(^{80}\) A detailed accounting of profits and losses\(^{81}\) must be submitted annually,\(^{82}\) together with a balance sheet re-

\(^{76}\) D.P. IV 16-17.3.1906, art. 33.
\(^{77}\) Id.
\(^{78}\) "La tutelle administrative".
\(^{79}\) Subsequent declarations must be submitted to the Prefect within three months of the event, in respect of any alteration to the association's territorial circumscription, any reduction in membership below the minimum number, and the acquisition of immovable property. D.P. IV 16-17.3.1906, art. 32.
\(^{80}\) See Le Service de l'Enregistrement; l'Inspection Generale des Finances; D.P. IV 16-17.3.1906, art. 37.
\(^{81}\) Providing details of the source of every item of income and expenditure to ensure that no unauthorized gift income has been received and that all expenditure is directed toward au-
vealing any reserve funds. Accounting records for the previous five years
together with receipts must be maintained for inspection if demanded.\textsuperscript{63}
Any transgressions must be reported to the public prosecutor.\textsuperscript{64}

The 1905 law also provides for a variety of administrative controls on
the activities of the association. As to the meetings themselves, they must
be open to the public, and are subject to the “surveillance” of the admin-
istration in the interests of public order.\textsuperscript{65} The association must make an
annual declaration of the location of their meetings, without which meet-
ing cannot legally take place.\textsuperscript{66}

The concern of the legislature to prevent political activity behind the
cloak of religion is shown in Articles 26, 34 and 35 of the 1905 law. Article
26 provides that no meeting of a political nature can take place in prem-
ises habitually used for the exercise of a creed, even if organized by a
third party. Articles 34 and 35 make it an offense for a minister of reli-
gion either orally or in writing to publicly defame a holder of a public
office, or to use words which incite one group of citizens against another.
During the parliamentary debate in which these provisions were intro-
duced, it was argued that, as the State was neutral toward the Church, so
too should the Church remain neutral toward the State. Note that it is
also an offense to use threats against person or property in order to influ-
ence a person to join or leave a creed or a congregational association. Sim-
ilarly, such threats may not be used to influence an individual to contrib-
ute or not to contribute to an association’s costs.\textsuperscript{67}

For reasons of public order, strict controls are also placed upon pub-
lic manifestations of a creed, such as the display of religious signs and
artifacts or the holding of marches and processions. Although the original
draft of the 1905 law proscribed all such marches and processions, Article
27, as eventually promulgated, provides that they are to be regulated by
municipal bylaws. It has been held that the local mayor is bound to up-
hold the freedom to exercise any religion\textsuperscript{68} which is guaranteed by Article
1 of the 1905 law. In the absence of any genuine public order considera-
tions, the mayor has no power to interfere with traditional local proces-

\textsuperscript{63} See \textit{Le Service de l’Enregistrement; l’Inspection Generale des Finances}; D.P. IV 16-
17.3.1906, Art. 44.
\textsuperscript{64} Id.
\textsuperscript{65} \textit{Id.}
\textsuperscript{66} See \textit{Le Service de l’Enregistrement; l’Inspection Generale des Finances}; D.P. IV 16-
17.3.1906, Art. 46.
\textsuperscript{67} 1905 law, Art. 25.
\textsuperscript{68} Apart from certain private gatherings for the congregation such as retreats, conferences
and the like.
\textsuperscript{69} 1905 law, Art. 31.
\textsuperscript{70} C.E. 19.3.1909, D.P. 1910.3.121.
Indeed, there is a presumption that such traditional processions do not interfere with the public order. By Article 28 of the law, no religious signs or emblems may be placed on public buildings or sites except church buildings, cemeteries and museums. Breach of any of these provisions is an offense.

B. Non-Congregational Religious Associations

Declarations must be made to the local Prefecture concerning any change in the association's objects or administrators, or any acquisition of real property. Annual accounts do not have to be submitted.

C. Religious Orders and Communities

Religious orders and communities are subject to the same degree of administrative guardianship as public utility associations created under the 1901 law. Thus, by Article 6 of that law, all changes of administrators and amendments to the bylaws must be communicated to the Prefect within three months of their adoption. A profit-and-loss accounting and balance sheet must also be submitted annually. In addition, an up-to-date list of members must be kept on the premises for inspection upon request.

Dissolution

A. Congregational Associations

Dissolution of a congregational association may be voluntary or imposed. If the association has been formed for a limited duration, dissolution will automatically occur at the end of that period, unless the general assembly votes to extend the life of the association, or enters into a new contract of association. As most associations are created with an unlimited duration in mind, a resolution of the general assembly will usually be needed for voluntary dissolution to occur. This will require a unanimous vote by the members unless the bylaws provide otherwise. Forced dissolution by intervention of the civil courts will occur if the association's ac-

See, e.g., C.E. 21.11.1923, Receuil C.E. 739; C.E. 2.8.1907. D.P. 1908.3.81; C.E. 2.8.1907, D.P. 1908.3.81; C.E. 29.8.1950, Receuil C.E. 483.

See 1901 law, Art. 3 (associations entitled to own only such real property as is strictly necessary for attainment of objectives).

Unless the association is in receipt of state subsidies, or is recognized as a public utility association; neither applies in the case of a religious association.

1901 law, Art. 15.

Id.

1901 law, Art. 7.
tivities are determined to be illegal, or the membership falls below the required minimum for a period of three months. Dissolution may also be pronounced for other breaches of Articles 18 through 22 of the 1905 law, such as holding unauthorized reserves, or not having exclusively congregational objects, or, on the insistence of any member, for breaches of the association's bylaws. If dissolved, it remains possible for members to create a new association having objectives identical to those of the dissolved association.

Once an association is dissolved, the question arises as to what happens to its remaining assets. It is provided that these assets shall devolve according to the provisions of the bylaws, or failing that, as determined by a meeting of the general assembly. In the absence of any such decision, a liquidator will be appointed by the court, who will convene a meeting of the general assembly for this sole purpose. In practice, any remaining property is usually transferred to other associations having identical or similar goals. In no case may such property be distributed among its members.

B. Non-Congregational Religious Associations

These entities can be forcibly dissolved for the same general reasons as congregational associations. It is again for the general assembly to decide to dissolve voluntarily. The assets of the liquidated association will devolve in accordance with the provisions of the bylaws, or the instructions of the general assembly, in the absence of which they will revert to the State as bona vacantia.

C. Religious Orders and Communities

There is a greater degree of formality required for the dissolution of religious orders and communities. Article 13 of the 1901 law provides that this can only be accomplished by a decree of the Conseil d'Etat. As to the devolution of property following dissolution, provision for this will usually be made in the bylaws, failing which it will be for the Conseil d'Etat to determine the ownership of the property. Special rules apply with respect to the liquidation of property attributed to an order or community

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88 See Trib. Civ. Bar-le-Duc 3.2.1942, D.A. 1942.114 (illegal activity found where diocesan association accepted ministry of priest who was in rebellion against bishop on ground that association was no longer conforming to general rules of catholic creed as required by bylaws).
89 1901 law, Art. 9.
91 D.P. IV 16.8.1901, Art. 15.
92 See, e.g., Duv. & Boc. 21.2.1941 (concerning Ordre des Chartreux).
93 Id.
which fails to obtain initial authorization.101

REGIONAL VARIATIONS: ALSACE-LORRAINE

The Alsace-Lorraine region of France102 was occupied by Germany from the Franco-Prussian War of 1870 until World War I. During that time the German Civil Code103 became the source of civil law in the region, and has been specifically preserved104 in certain fields of law,105 one of which being the law of non-profit foundations. However, in relation to religious organizations, the French law which was in force in July of 1870106 is still valid. Thus, the Catholic, Protestant and Jewish faiths remain recognized creeds, and their maintenance107 is regarded as a public service. The State supplies the material means for these faiths to operate, in the form of places of worship, salaries for ministers of religion and various grants. However, the State also exercises control over their activities. Application for registration as an establishment of a recognized public creed is made to the local civil court.108 Administrative consent is required for the alienation or acquisition of immoveable property, as such property will usually be provided by and hence owned by the State.

These recognized establishments are entitled to receive gift income,109 subject to administrative authorization being obtained.110 In addition, they will be able to receive donations “by hand,” and state funding. Despite some earlier doubts111 that income tax deductions for donors to such establishments112 did not apply, it is now clear from the law of 23d July 1987 that they do.113 It was also confirmed in Parliament in 1984114 that donations to these establishments are exempt from transfer tax, as are donations to religious associations created according to Alsatian law acting as “umbrella” structures for non-recognized creeds.115

101 1901 law, Art. 18.
102 Comprising of the modern Departments of Haut-Rhin, Bas-Rhin and Moselle.
103 See generally GERMAN CIVIL CODE OF 1900.
104 Theoretically, at least, on a temporary basis.
105 See D.P. IV 1.6.1924, Art. 7; B.L.D. 24.5.1951.
106 D.P. IV 17.10.1919, Art 3; D.P. IV 1.6.1924, Art. 7.
107 Through etablissements publics du culte.
108 Tribunal d’instance.
110 Authorization must be obtained from the Prefect if under five million francs, and from the Conseil d’Etat if in excess of that figure.
112 See C. GENERALE DES IMPOTS ART. 238 bis.
113 See INSTRUCTION DE LA DIRECTION GENERALE DES IMPOTS DU 26.2.88.
114 REPONSE MINISTERIELLE A M. MASSON, J.O. 23.4.84, ASS. NAT. QUEST. ET REP. 1941 no. 40599/47848.
115 For example, the Baptist and Orthodox Churches.
CONCLUSION

The legal regime of religious organizations in France stems largely from the desire of rationalist parliamentarians of the early twentieth century, following in the steps of their revolutionary forefathers, to keep a tight control on the power and influence of such organizations without breaching the guarantees of freedom of religious conscience now enshrined in both the 1905 law, and in constitutional documents such as the Preamble to the 1946 Constitution. Due to both the complexity of the law and to the severe limitations that (until recently) were placed upon the receipt of gift income, especially by non-congregational religious associations, the administrators of religious organizations have almost been encouraged to operate outside the letter of the law. With the 1987 reforms at last permitting declared associations to receive *inter vivos* donations, and actively encouraging the making of such donations to congregational associations by the granting of tax credits to donors, the legislature has responded, perhaps just in time, to the lead given by fiscal provisions and administrative doctrine of recent years, which as has been seen have encouraged the donation of funds to religious organizations despite their traditional legal inability to receive them. This relaxation is to be welcomed. However, perhaps it would now be appropriate for the legislature to proceed further by lessening the present degree of administrative control, and by introducing greater simplicity in the permitted legal structures. For example, in light of the moves towards decentralization since 1981, the present powers of the Conseil d'Etat in respect of religious organizations should be vested in the more accessible local Prefecture. Relaxing the hitherto often daunting administrative burden of creating and operating such organizations, the law will be encouraging their operation within its bounds, and not on the margins of illegality, as appears to have often been the case in the past. This is surely to be welcomed, even at the cost of a reduction of central control over the operation of some types of religious organization.

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116 Incorporated into the 1958 Constitution, which is presently in force.