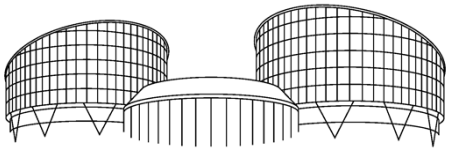

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

GRAND CHAMBER

CASE OF FERNÁNDEZ MARTÍNEZ v. SPAIN

(Application no. 56030/07)

JUDGMENT

STRASBOURG

12 June 2014

In the case of Fernández Martínez v. Spain,

The European Court of Human Rights, sitting as a Grand Chamber composed of:

Dean Spielmann, *President,*
Guido Raimondi,
Mark Villiger,
Isabelle Berro-Lefèvre,
Ján Šikuta,
George Nicolaou,
András Sajó,
Ann Power-Forde,
Işıl Karakaş,
Angelika Nußberger,
André Potocki,
Paul Lemmens,
Helena Jäderblom,
Valeriu Griţco,
Faris Vehabović,
Dmitry Dedov, *judges,*
Alejandro Saiz Arnaiz, ad hoc *judge,*

and Johan Callewaert, *Deputy Grand Chamber Registrar,*

Having deliberated in private on 30 January 2013 and 2 April 2014,

Delivers the following judgment, which was adopted on the last-mentioned date:

PROCEDURE

1. The case originated in an application (no. 56030/07) against the Kingdom of Spain lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Spanish national, Mr José Antonio Fernández Martínez ("the applicant"), on 11 December 2007.

1. The applicant, who had been granted legal aid, was represented by Mr J.L. Mazón Costa, a lawyer practising in Murcia. The Spanish Government ("the Government") were represented by their Agents, Mr I. Blasco Lozano, Mr F. Irurzun Montoro and Mr F. Sanz Gandásegui, State Counsel.

2. Relying on Article 8 of the Convention, taken separately and in conjunction with Article 14, the applicant submitted that the non-renewal of his contract of employment as a teacher of Catholic religion and ethics in a State secondary school had constituted an unjustified interference with the exercise of his right to private life. He alleged that the publicity given to his

family and personal situation as a married priest had been the cause of the non-renewal and that this was incompatible with his rights to freedom of thought and freedom of expression under Articles 9 and 10 of the Convention.

3. On 13 October 2009 notice of the application was given to the Government.

4. Luis López Guerra, the judge elected in respect of Spain, withdrew from sitting in the case. The Government accordingly appointed Alejandro Saiz Arnaiz to sit as an *ad hoc* judge (Article 27 § 2 of the Convention, as then in force, and Rule 29 § 1 of the Rules of Court).

5. A hearing took place in public in the Human Rights Building, Strasbourg, on 22 November 2011 (Rule 59 § 3).

6. On 15 May 2012 a Chamber of the Third Section composed of Josep Casadevall, President, Corneliu Bîrsan, Alvina Gyulumyan, Egbert Myjer, Ineta Ziemele, Mihai Poalelungi, judges, and Alejandro Saiz Arnaiz, *ad hoc* judge, and Santiago Quesada, Section Registrar, delivered a judgment in which it held, by six votes to one, that there had been no violation of Article 8 § 1 of the Convention.

7. On 18 July 2012 the applicant requested, in accordance with Article 43 of the Convention and Rule 73, that the case be referred to the Grand Chamber, arguing that there had been a violation of Article 8 § 1. On 24 September 2012 a panel of the Grand Chamber granted the request.

8. The composition of the Grand Chamber was determined according to the provisions of Article 26 §§ 4 and 5 of the Convention and Rule 24.

9. The applicant and the Government each filed further observations before the Grand Chamber. In addition, third-party comments were received from the Spanish Episcopal Conference, the European Centre for Law and Justice, and the Chair for Law and Religions of the Université catholique de Louvain and the American Religious Freedom Program of the Ethics and Public Policy Center, which had been given leave by the President to intervene in the written procedure (Article 36 § 2 of the Convention and Rule 44 § 3).

10. A hearing took place in public in the Human Rights Building, Strasbourg, on 30 January 2013 (Rule 59 § 3).

There appeared before the Court:

(a) *for the Government*
Mr F. SANZ GANDÁSEGUI, *Agent*;

(b) *for the applicant*
Mr J.L. MAZÓN COSTA,
Ms E. MARTÍNEZ SEGADO, *Counsel.*

The applicant was also present at the hearing.

The Court heard addresses by Mr Mazón Costa and Ms Martínez Segado, and by Mr Sanz Gandásegui, and also their replies to questions from judges.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

A. The applicant's situation, his employment and the non-renewal of his contract

11. The applicant was born in 1937 and lives in Cieza. He is married and the father of five children.

12. He was ordained as a priest in 1961. In 1984 he applied to the Vatican for dispensation from the obligation of celibacy. At that time he did not receive any answer. The following year he was married in a civil ceremony. He has had five children with his wife, to whom he is still married. The parties have not submitted any details concerning his status as a priest not having received a dispensation.

13. From October 1991 onwards, the applicant was employed as a teacher of Catholic religion and ethics in a State-run secondary school of the region of Murcia under a renewable one-year contract. In accordance with the provisions of a 1979 Agreement between Spain and the Holy See, "religious education shall be taught by the persons who, every school year, are appointed by the administrative authority from among those proposed by the Ordinary of the diocese" (see paragraph 50, below). In accordance with a Ministerial Order of 1982, "the appointment is to be made annually and renewed automatically, unless an opinion to the contrary is given by the Ordinary before the start of the school year, or unless the public authority, for serious academic or disciplinary reasons, considers it necessary to annul the appointment, in which case the Church authority shall be heard ..." (see paragraph 51, below). Furthermore, Article VII of the Agreement provides that "at all levels of education, the remuneration of teachers of Catholic religion who do not belong to the State teaching staff shall be decided jointly by the central administration and the Spanish Episcopal Conference, such that it will be applicable from the entry into force of the present agreement" (see paragraph 50, below).

14. In November 1996 the Murcian newspaper *La Verdad* printed an article about the Movement for Optional Celibacy of priests (MOCEOP), which read as follows:

"La Luz monastery bars married priests from using its premises for mass

A representative of the diocese explained that the protest-oriented nature of the gathering might disturb the peace of the monastery.

M. DE LA VIEJA – MURCIA

Father Francisco Tomás, head of the community of the Brothers of La Luz, in Murcia, has refused to allow access to the monastery to about a hundred married priests who wished to celebrate mass and spend the day there with their wives and children. Francisco Tomás stated that the monastery was a place of private worship and that the priests had not applied for the necessary authorisation. He added that, because of the advanced age of Brother Manuel (80 years old), the only monk residing at La Luz, he did not feel it was appropriate to hold a meeting that might disturb the peace of the monastery as a result of the publicity given to the event and the protest-oriented intentions of the Movement for Optional Celibacy.

Yesterday, the diocesan delegate for cultural heritage, Francisco Tomás, refused to allow the members of the Movement for Optional Celibacy (MOCEOP) to celebrate mass inside the monastery of La Luz, in El Valle. Father Tomás explained that the married priests had not sought permission to use the monastery's church. In addition, the movement had intended to make the most of the day to hold an information meeting about the IVth International Congress of married priests held in Brasilia last July on the theme 'Ministries of the third millennium'.

Francisco Tomás also explained that only one 80-year-old monk lived in the monastery and that it was not desirable to disturb the peace of this brother with protests that would attract media attention to this place of private worship.

For his part, the regional coordinator of MOCEOP, Pedro Sánchez González, stated that the requisite authorisation had certainly been applied for but the Movement had not received a reply and he did not think that such a permit would be indispensable for the celebration of mass in a hermitage.

The publicity given to the event in the press had dissuaded a large number of the Movement's members from attending the gathering in La Luz. Others, seeing the monastery's doors closed, merely waved to their colleagues without getting out of their cars and turned round. Only about ten secularised priests stayed there with their families to explain their situation to the media and those present. Some of their children even held up a banner. They eventually went away to have lunch together, intending to celebrate mass amongst themselves.

Lorenzo Vicente, Pedro Hernández Cano, Crisanto Hernández and José Antonio Fernández – a former seminary director – are among the married priests who gathered at La Luz yesterday to advocate optional celibacy and a democratic rather than a theocratic Church in which laymen would take part in electing their parish priest and their bishop. The rule of celibacy is Church-made and not divinely inspired. They also expressed their disagreement about certain economic issues: 'Those of us who paid contributions to the clergy's mutual insurance fund, which was subsequently incorporated into the social security system, lost all our rights when we became secularised. Moreover, nuns are in an even worse situation than priests because they donate their property to the community and lose everything', they declared."

The article also contained a separate part, under a different heading:

> ***"Even the Pope does not believe that we will rot in hell because of sex***
>
> On issues such as abortion, birth control, divorce or sex, Pedro Hernández Cano and his friends from the MOCEOP said that they were in favour of responsible paternity.
>
> They added that abortion was 'a personal problem which should not be prohibited by law, but [that] a social structure is needed to support women facing maternity. To castigate a woman as a sinner if she gets pregnant out of wedlock just encourages abortion'. The married priests emphasised that birth control was clearly necessary 'and that, consequently, everyone should be free to choose the means that they find most appropriate'.
>
> 'Sex is a gift from God and not a scourge, and even the Pope does not believe that it leads to damnation. If that were the case, he would not have put on hold the current 6,000 requests for secularisation', they concluded."

15. By a "rescript" of 20 August 1997, the Pope granted the request for dispensation from celibacy that the applicant had submitted thirteen years earlier, stipulating that the applicant was dispensed from celibacy and lost his clerical "state". He forfeited the rights related to that "state", as well as the ecclesiastical honours and functions (*dignitates et officia ecclesiastica* in Latin). He no longer had the obligations associated with the clerical "state". The rescript further noted that the applicant was barred from teaching the Catholic religion in public institutions, unless the local bishop decided otherwise, for lower-level schools (*in institutis autem studiorum gradus inferioris*), "according to his own prudent judgment [*prudenti iudicio*] and provided that there [was] no scandal [*remoto scandalo*]". The applicant was notified of the rescript on 15 September 1997.

16. On 29 September 1997 the Diocese of Cartagena informed the Ministry of Education in a written memorandum about the applicant's termination of service as a teacher in the school where he was working.

17. The Ministry informed the applicant on 9 October 1997 that his employment had been terminated with effect from 29 September 1997.

18. In an official memorandum of 11 November 1997 the Diocese observed as follows:

> "[The applicant], a secularised priest, taught classes in Catholic religion and ethics ... by virtue of the powers conferred on bishops by the rescripts ...
>
> Those powers ... may be exercised for the teaching of subjects related to Catholic religion, provided there is no 'risk of scandal'.
>
> When the [applicant's] situation became a matter of public and common knowledge, it was no longer possible for the bishop of the diocese to make use of the powers conferred upon him by the rescript; accordingly, the document authorising [the applicant] to teach Catholic religion and ethics was not signed, with effect from the current academic year. [The applicant]'s personal and employment situation has also been taken into account, since [he] is entitled to receive unemployment benefit for at least a year and a half.

> The Diocese of Cartagena regrets this situation, while pointing out that the decision was taken also out of respect for the sensitivity of many parents who might be upset to learn of the situation of [the applicant], who was teaching Catholic religion and ethics in an education centre.
>
> Lastly, the Diocese trusts that Christian people and society in general will understand that the circumstances surrounding these facts cannot be assessed solely from an employment or professional standpoint. For the Catholic Church, the sacrament of the priesthood is of a nature that surpasses the strictly employment or professional context."

19. The director of the secondary-education centre where the applicant had been teaching sent a note to the Bishop of Murcia in which the centre's board of teachers expressed its support for the applicant and stated that he had given his classes during the school year 1996/97 to the full satisfaction of the teachers, the pupils and their parents, and the centre's management.

20. Initially, the applicant lived on unemployment benefit. In 1999 he found a job in a museum, where he worked until his retirement in 2003.

B. Judicial proceedings

21. Having been unsuccessful in his administrative complaint against the decision of the Ministry to terminate his employment, the applicant filed an appeal against that decision with an administrative court. The appeal was dismissed on 30 June 2000 on the ground that the decision to formalise the termination of the applicant's employment was "the only course of action open to the administrative authorities" once the Diocese had decided not to propose the applicant for appointment.

22. The applicant then brought proceedings for unfair dismissal before Murcia Employment Tribunal no. 3. The Employment Tribunal gave its judgment on 28 September 2000.

23. The tribunal began by examining the facts as established and noted that the applicant had held various posts within the Catholic Church, such as director of the seminary of Murcia or that of episcopal vicar of the region of Cieza and Yecla. It further observed that the applicant was a member of MOCEOP.

24. The tribunal then referred to the arguments used by the Diocese to justify the non-renewal of the applicant's contract, namely the fact that he had made public his situation as a "married priest" (he had not received a dispensation from the Vatican until 1997) and father, together with the need to avoid scandal and to respect the sensitivity of the parents of the school's pupils, as they might be offended if the applicant continued to teach Catholic religion and ethics. In this connection the tribunal took the following view:

> "[I]n the light of the facts thus presented, Mr Fernández Martínez was discriminated against because of his marital status and his membership of the Movement for

Optional Celibacy, his appearance in the press having been the cause of his dismissal."

25. The tribunal further pointed out:

"The principle of non-discrimination at work encompasses the prohibition of discrimination on account of belonging to a trade union and union activity, and this applies to membership of any other association."

26. Lastly, the tribunal noted that the applicant's situation as a "married priest" and father had been known to the pupils and their parents and to the directors of the two schools where he had worked.

27. Consequently, the tribunal upheld the applicant's appeal, declared his dismissal (as it was described in the judgment) null and void, ordered the Region of Murcia to reinstate him to his former position, and ordered the State to pay him the outstanding salary. It dismissed the applicant's claim in so far as it was directed against the Diocese of Cartagena.

28. The Ministry of Education, the Education Authority for the Region of Murcia and the Diocese of Cartagena lodged an appeal (*suplicación*). In a judgment of 26 February 2001, the Murcia High Court of Justice allowed the appeal, finding as follows:

"... The teaching [of Catholic religion and ethics] is associated with the doctrine of the Catholic religion ... Accordingly, the bond created [between the teacher and the bishop] is based on trust. [As a result,] it is not a neutral legal relationship, such as that which exists between citizens in general and public authorities. It falls on the borderline between the purely ecclesiastical dimension and a nascent employment relationship."

29. Moreover, the court referred to the bishop's prerogatives in such matters and took the view that in the present case there had not been a violation of Articles 14 (prohibition of discrimination), 16 (freedom of thought and religion), 18 (right to respect for private and family life) or 20 (freedom of expression) of the Spanish Constitution, since the applicant had taught religion since 1991, the Bishop of Murcia having extended his employment from year to year even though his personal situation had been identical. The court concluded that, when the applicant had decided to reveal that situation publicly, the Bishop of Murcia had merely used his prerogative in accordance with the Code of Canon Law, that is to say, ensuring that the applicant, like any other person in that situation, carried out his duties with discretion and without his personal circumstances causing any scandal. In the court's view, if such a situation became public knowledge, it was the bishop's duty to cease proposing the person concerned for a post of that nature, in accordance with the requirements of the rescript granting dispensation from celibacy.

30. In addition, as regards Article 20 of the Constitution in particular, the court noted that for the purposes of Article 10 § 2 of the European Convention on Human Rights, the restrictions imposed on the applicant's

rights had to be considered legitimate and proportionate to the aim pursued, namely the avoidance of scandal.

31. Furthermore, the court analysed the question of the bond of trust and concluded as follows:

> "... Where such a bond of trust is broken (and in the present case there are circumstances that reasonably allow such a conclusion to be reached), the bishop is no longer obliged to propose the person in question for the post of teacher of Catholic religion."

32. Lastly, as to the nature of the contract, the court took the view that, since its renewal was subject to annual approval by the bishop for the following school year, it was a temporary contract, which in the present case had simply expired. It was thus not possible to consider that the applicant had been dismissed.

33. Relying on Articles 14 (prohibition of discrimination), 18 (right to respect for private and family life) and 20 (freedom of expression) of the Constitution, the applicant lodged an *amparo* appeal with the Constitutional Court. He alleged in particular that the decision not to renew his contract on the ground that he had made public his membership of MOCEOP and his dissenting opinions on the celibacy of Catholic priests constituted an unjustified interference with his private life and was incompatible with his right to freedom of religion.

34. By a decision of 30 January 2003, the chamber to which the case had been allocated declared the *amparo* appeal admissible and, in accordance with sections 50 to 52 of the Organic Law on the Constitutional Court, notified the decision to the parties and requested a copy of the case file from the courts below.

35. In its mandatory intervention before the Constitutional Court, the public prosecutor's office (*Ministerio Fiscal*) argued in favour of granting the applicant's *amparo* appeal. In this connection, it criticised the reasons given by the High Court of Justice, which had considered the non-renewal of the contract justified in so far as the applicant had acted in a manner that was contrary to the rescript of dispensation when he had agreed to make his family situation public. The public prosecutor's office noted that the applicant's public appearance had taken place well before the dispensation from celibacy was granted to him, and therefore before the existence of that rescript. It further pointed out that the applicant's membership of the movement in question had been known to the Church authorities. It took the view that since the applicant's conduct which had served as the justification for the non-renewal of his employment – namely, his attendance at an event organised by the movement – came within the scope of his freedom of thought, the dismissal amounted to a violation of his right to equality (Article 14 of the Constitution), read in conjunction with his right to freedom of thought (Article 16 of the Constitution).

36. In a judgment of 4 June 2007, served on 18 June 2007, the Constitutional Court dismissed the *amparo* appeal.

37. The Constitutional Court first examined the alleged violations of Articles 14 (right to equality) and 18 (right to respect for private and family life) of the Constitution and dismissed those complaints, the first because the decision not to propose the applicant for appointment as a teacher was not based on any intention to discriminate against him on account of his marital status, and the second on the ground that he himself, of his own free will, had made public both his personal and family situation and the fact that he was a member of MOCEOP.

38. The Constitutional Court then addressed what it regarded as the main question in the *amparo* appeal, namely, the alleged violation of Articles 16 and 20 of the Constitution. It thus sought to ascertain whether the facts in issue could be justified by the religious freedom of the Catholic Church (Article 16 § 1 of the Constitution) in conjunction with the State's duty of religious neutrality (Article 16 § 3 of the Constitution), or whether, by contrast, they constituted a breach of the applicant's right to freedom of thought and religion (Article 16 § 1 of the Constitution) in conjunction with his right to freedom of expression (Article 20 § 1 (a) of the Constitution). For that purpose, the court relied on the criteria laid down in its judgment no. 38/2007 of 15 February 2007 concerning the constitutionality of the system of selection and recruitment of Catholic religion teachers in State schools. In this connection it emphasised the special status of teachers of religious education in Spain and took the view that this status justified the fact that the religious beliefs of such teachers would be taken into account in the selection process.

39. At this point, the Constitutional Court explained as follows:

> "... the task of the Constitutional Court in the present case, as in other cases where there is a conflict between fundamental rights of a substantive nature, is to ascertain whether the courts [below] weighed up the competing rights at stake in a manner that reflected their constitutional definition ... In doing so, it is not bound by the assessment already made by those courts. In other words, the assessment of this Court is not confined to an external review of the adequacy and consistency of the reasons given for the decision or decisions ...; rather, in its capacity as the ultimate guarantor of fundamental rights, it must resolve any conflict that exists between the affected rights and determine whether those rights have indeed been infringed in terms of their individual constitutional content. However, for this purpose it is necessary to apply different criteria from those applied by the courts [below], as the reasons given by the latter are not binding on this Court nor do they limit its jurisdiction to merely reviewing the grounds of their decisions. ..."

40. As regards the facts of the case, the Constitutional Court began by noting that the reason for the non-renewal had been the article in a regional newspaper, which had caused a scandal according to the arguments put forward by the Diocese of Cartagena in its official memorandum of 11 November 1997. That article had made public two personal

characteristics of the applicant already known to the Diocese, namely his family situation as a married priest and father, and the fact that he was a member of a movement that challenged certain precepts of the Catholic Church. That publicity had formed the factual basis of what the Diocese had referred to in its memorandum as constituting a scandal.

41. Noting that the High Court of Justice had effectively reviewed the Bishop's decision, in particular concerning the latter's inability to propose candidates who did not have the requisite professional qualifications for the post and the obligation to respect fundamental rights and civil liberties, the Constitutional Court found as follows:

> "The extensive passages cited from the judgment appealed against demonstrate that it neither rejects the possibility of judicial review of the ecclesiastical authority's decision nor does it shy away from weighing up the fundamental rights competing in this particular case with the right to religious freedom (Article 16 § 1 of the Constitution), which it does in an unequivocal manner."

42. The Constitutional Court then engaged in its own balancing of the competing fundamental rights:

> "Having dealt with the balancing of the rights at stake in the impugned judgment, this Court must now assess, above and beyond the reasoning of that judgment, the conclusions reached by it after weighing up the conflicting fundamental rights. In doing so the Court must consider not just the rights contemplated in that judgment, but also the right to freedom of thought and religion, an issue which it submitted, of its own motion, for the consideration of the parties...
>
> The actions and opinions which resulted in the appellant in the present case not being proposed by the Diocese as a teacher of Catholic religion and ethics were his public disclosure, firstly, of his situation as a priest who was married and the father of five children and, secondly, of his membership of the Movement for Optional Celibacy (as made clear by the judgments of the courts below and expressly conceded by the *amparo* appellant himself). It is clear that, from the State's (secular) perspective, these actions and opinions must be considered in terms of a possible infringement of the right to freedom of thought and religion (Article 16 § 1 of the Constitution) in conjunction with the right to freedom of expression (Article 20 § 1 (a) of the Constitution), relied on in the application for *amparo* relief.
>
> In order to resolve this issue it must be borne in mind that no rights, not even fundamental rights, are absolute or unlimited. In some instances the provision of the Constitution recognising a right expressly limits that right; in other cases, the limitation stems from the need to preserve other constitutional rights or values which warrant protection. In that connection this Court has repeatedly held that the fundamental rights recognised by the Constitution can yield only to the limitations expressly laid down by the Constitution itself or those which can be indirectly inferred from the Constitution as being justified in order to preserve other rights or values protected by the law. In any case, the limitations imposed may not impede the exercise of the fundamental right in question to an unreasonable degree (see Constitutional Court judgments no. 11/1981 of 8 April 1981, legal ground 7; no. 2/1982 of 29 January 1982, legal ground 5; no. 53/1986 of 5 May 1986, legal ground 3; no. 49/1995 of 19 June 1995, legal ground 4; no. 154/2002 of 18 July 2002, legal ground 8; no. 14/2003 of 28 January 2003, legal ground 5; and no. 336/2005 of 20 December 2005, legal ground 7).

In the present case the interference with the appellant's right to freedom of religion, in its individual dimension, and his right to freedom of thought (Article 16 § 1 of the Constitution) taken in conjunction with the right to freedom of expression (Article 20 § 1 (a) of the Constitution), as a result of his not being proposed by the Diocese for appointment as a teacher of Catholic religion and education for the 1997/98 school year – in the context, therefore, of his claim to continue teaching the creed of a particular religious faith in a public educational establishment – was neither disproportionate nor unconstitutional, since it was justified by respect for the lawful exercise of the Catholic Church's fundamental right to religious freedom in its collective or community dimension (Article 16 § 1 of the Constitution), in conjunction with the right of parents to choose their children's religious education (Article 27 § 3 of the Constitution). The reasons determining the decision not to propose the appellant as a teacher of Catholic religion and ethics were of an exclusively religious nature, related to the rules of the faith to which he freely adheres and whose beliefs he sought to teach in a public educational establishment."

43. The Constitutional Court referred to its judgment no. 38/2007 of 15 February 2007, observing as follows:

"As this Court held in judgment no. 38/2007 of 15 February 2007, and reiterated in point 5 of the legal grounds of the present judgment, 'it would be quite simply unreasonable, as regards the teaching of religion in schools, if the religious beliefs of those who decide of their own free will to apply for such teaching posts were not taken into account in the selection process, on the basis of guaranteeing the right to religious freedom in its external and collective dimension' ...

It should certainly be reiterated, as regards the justification and constitutionality of the impact on or modification of the appellant's fundamental right to freedom of religion and thought (Article 16 § 1 of the Constitution) taken in conjunction with the right to freedom of expression (Article 20 § 1 (a) of the Constitution) that, as this Court held in the aforementioned judgment no. 38/2007 of 15 February 2007, 'the relationship between religious-education teachers and the Church is not entirely the same as that found in organisations which pursue ideological aims, as examined on a number of occasions by this Court, but represents a specific and distinctive category which, while it presents certain similarities, is also different in some respects'. In that connection the Court stated in the same judgment, referring to one of the factors which distinguished the relationship between religious-education teachers and the Church from the relationship within an organisation pursuing ideological aims, and allowed teachers' rights to be modified in line with the educational ethos of private educational establishments, that the requirement imposed by the ecclesiastical declaration of suitability 'does not merely consist in a duty to refrain from actions contrary to the religious ethos but extends in a more profound manner to a determination of the individual's capacity to impart Catholic doctrine, understood as a set of faith-based religious convictions. Since the object of religious instruction is the transmission not only of specific knowledge but of the religious faith of the person who teaches it, this will in all probability imply a series of requirements that transcend the limits of an organisation pursuing ideological aims, beginning with the implicit requirement that persons who seek to transmit a religious faith must likewise profess that faith' ..."

44. Finally, the Constitutional Court turned to an argument made by the appellant, based on the fact that he advocated changing the rules of the Catholic faith itself, and concluded as follows:

"The conclusion reached in the present case as a result of the balancing of the conflicting fundamental rights – on the one hand the Catholic Church's fundamental right to freedom of religion in its collective or community dimension (Article 16 § 1 of the Constitution) read in conjunction with the State's duty of religious neutrality (Article 16 § 3 of the Constitution), and on the other hand the appellant's fundamental right to freedom of thought and religion (Article 16 § 1 of the Constitution) read in conjunction with the right to freedom of expression (Article 20 § 1 (a) of the Constitution) – is in no way altered by the appellant's claim that through his reforming views on celibacy for Catholic priests he sought to defend evolutionary change to rules of the Catholic faith which he considered to have become outdated with the passage of time. As pointed out in the Government law officer's submissions, the State is debarred by its duty of religious neutrality (Article 16 § 3 of the Constitution) from entering into or determining possible disputes within the Church, in this specific case between proponents and opponents of celibacy for priests. Nor is it for the Court, in more general terms, to pass judgment on the suitability or compatibility of the actions, opinions and conduct of persons appointed to teach a particular religion *vis-à-vis* the orthodoxy of the religious faith in question. As a State body exercising public authority, the Court must confine itself in the present *amparo* appeal, in accordance with its duty of neutrality, to finding established the strictly religious nature of the reasons given by the religious authority for its decision not to propose the appellant as a teacher of Catholic religion and ethics. It further finds that the appellant's fundamental rights to freedom of thought and religion and freedom of expression, within the ambit of which his actions, opinions and choices in this regard might in principle fall, were affected and modified only to the extent strictly necessary in order to ensure their compatibility with the freedom of religion of the Catholic Church. Accordingly, the present *amparo* appeal must be dismissed."

45. Two judges appended a dissenting opinion to the majority judgment. They criticised the fact that the balancing of the rights by the Constitutional Court had been confined to a reference to the religious grounds given in the decision to discontinue the applicant's employment. In their view, the publicity given to a form of conduct that was already known beforehand could not justify the non-renewal of the contract.

46. The applicant subsequently submitted an application requesting that the Constitutional Court's judgment be declared null and void, on the ground that two of the judges of the Chamber which had given the judgment were known for their affinities with the Catholic Church, one of them being a member of the International Secretariat of Catholic Jurists.

47. In a decision of 23 July 2007, the Constitutional Court rejected the application on the ground that, under section 93(1) of the Organic Law on the Constitutional Court, the only possible remedy against a judgment of that court was a request for clarification.

II. RELEVANT DOMESTIC, EUROPEAN, INTERNATIONAL AND COMPARATIVE LAW AND PRACTICE

A. The Constitution

48. The relevant provisions of the Spanish Constitution read as follows:

Article 14

"Spaniards are equal before the law; they may not be discriminated against in any way on grounds of birth, race, sex, religion, opinions or any other condition or personal or social circumstance."

Article 16

"1. Freedom of thought, religion and worship shall be guaranteed to individuals and communities, without any restrictions on its expression other than those necessary to maintain public order as protected by law.

2. No one may be compelled to make statements regarding his or her ideas, religion or beliefs.

3. No religion shall have the nature of State religion. The public authorities shall take account of all religious beliefs within Spanish society and consequently maintain appropriate relations of cooperation with the Catholic Church and other faiths."

Article 18

"1. The right to respect for honour, for private and family life and for one's image shall be guaranteed.

..."

Article 20

"1. The following rights shall be recognised and protected:

(a) the right to free expression and dissemination of thoughts, ideas and opinions through words, in writing or by any other means of reproduction;

...

2. The exercise of such rights may not be restricted by any form of prior censorship.

...

4. The said freedoms shall be limited by respect for the rights recognised in the present Title, by the laws implementing the same, and in particular by the right to respect for honour, private life and one's image and to the protection of youth and childhood.

..."

B. Agreement of 3 January 1979 between Spain and the Holy See on education and cultural affairs

49. The relevant provisions of this Agreement read as follows:

Article III

"... Religious education shall be taught by the persons who, every school year, are appointed by the administrative authority from among those proposed by the Ordinary of the diocese. The latter shall notify sufficiently in advance the names of persons who are considered competent ..."

Article VII

"At all levels of education, the remuneration of teachers of Catholic religion who do not belong to the State teaching staff shall be decided jointly by the central administration and the Spanish Episcopal Conference, such that it will be applicable from the entry into force of the present agreement."

C. Ministerial Order of 11 October 1982 on teachers of Catholic religion and ethics in secondary educational centres

50. This order, which was in force at the material time, supplemented the 1979 Agreement between Spain and the Holy See, providing as follows:

Third point

"... Teachers of 'Catholic Religion and Ethics' shall be appointed by the competent authority upon the proposal of the Ordinary of the diocese. The appointment is to be made annually and renewed automatically, unless an opinion to the contrary is given by the Ordinary before the start of the school year, or unless the public authority, for serious academic or disciplinary reasons, considers it necessary to annul the appointment, in which case the Church authority shall be heard ..."

D. Organic Law no. 7/1980 of 5 July 1980 on freedom of religion

51. Article 6(1) of this Law reads as follows:

"Registered churches, faiths and religious communities shall be fully autonomous and may establish their own principles of organisation, internal rules and staff regulations. In such principles ..., they may include clauses for the purpose of safeguarding their religious identity ... and ensuring respect for their beliefs, without prejudice to respect for the rights and freedoms enshrined in the Constitution, and in particular [rights to] freedom, equality and non-discrimination ..."

E. Organic Law no. 1/1990 of 3 October 1990 on the general organisation of the education system, replaced by Organic Law no. 2/2006 of 3 May 2006 on education

52. In its second additional provision, Organic Law no.1/1990, in force at the material time, provided as follows:

> "The teaching of religion shall be adapted in line with the provisions of the Agreement on education and cultural affairs between the Holy See and the State of Spain ... Religious education shall be proposed systematically by [education] centres and shall be voluntary in nature for the pupils."

53. The second and third additional provision of Organic Law no.2/2006 now read as follows:

Second additional provision

> "1. The teaching of Catholic religion shall be adapted in line with the provisions of the Agreement on education and cultural affairs between the Holy See and the State of Spain ... Religious education shall be included as a subject in the relevant educational levels; it will be proposed systematically by [education] centres and will be voluntary for the pupils.
>
> ..."

Third additional provision

> "...
>
> 2. Teachers who, without having the status of public servant, give religious education classes in public education institutions, shall perform their duties in a contractual framework, in accordance with the Labour Code. ... They shall receive the same level of remuneration as temporary teaching staff.
>
> It shall be incumbent in all cases on the religious entities to propose a candidate for the said teaching of religious education; such proposal shall be renewed automatically from year to year ..."

F. Status of religious education teachers in Spain

54. At the time of the events in the present case, the teaching of Catholic religion in public education centres was organised in accordance with Organic Law no. 1/1990 of 3 October 1990 on the general organisation of the education system, which, in its second additional provision, referred to the Agreement of 3 January 1979 on education and cultural affairs between Spain and the Holy See.

55. The Catholic religion in Spain has the same status as the other faith groups which have also entered into cooperation agreements with the State, namely the Evangelical, Jewish and Muslim communities.

56. Parents have the right to ensure that their children receive religious education at school and if appropriate to choose the faith that they are taught. In all cases the State covers the cost of such education, as provided

for in the relevant agreements, which also stipulate that teachers are appointed after a declaration of suitability has been issued by the competent religious authority. That principle was developed in the Constitutional Court's judgment no. 38/2007 of 15 February 2007 (see paragraphs 60 and 61, below).

G. Code of Canon Law

57. The relevant canons of the Code of Canon Law, promulgated on 25 January 1983, provide as follows:

Canon 59

"§ 1. A rescript is an administrative act issued in writing by the competent executive authority; of its very nature, a rescript confers a privilege, dispensation, or other favour at a person's request.

..."

Canon 290

"Once validly received, sacred ordination never becomes invalid. A cleric shall, nevertheless, lose clerical status:

(1) by a judicial sentence or administrative decree, which declares the invalidity of sacred ordination;

(2) by the penalty of dismissal lawfully imposed;

(3) by a rescript of the Apostolic See, which issues it to deacons only for serious causes and to priests only for most serious causes".

Canon 291

"Apart from the case mentioned in Canon 290, paragraph 1, loss of clerical status shall not entail a dispensation from the obligation of celibacy, which is granted only by the Roman Pontiff."

Canon 292

"A cleric who loses clerical status according to the provisions of law shall lose with it the rights attached to such status and shall no longer be bound by any obligations of clerical status, without prejudice to the prescript of Canon 291. He shall be prohibited from exercising the power of orders, without prejudice to the prescript of Canon 976. By the loss of clerical status, he shall be deprived of all offices, functions, and any delegated power."

Canon 804

"...

§ 2. The Ordinary [of the diocese] shall be careful that those who are appointed as teachers of religion in schools, even in non-Catholic ones, are outstanding in true doctrine, in the witness of their Christian life, and in their teaching ability."

Canon 805

"The Ordinary [of the diocese] has the right to appoint or approve teachers of religion and, if religious or moral considerations so require, the right to remove them or to demand that they be removed."

Canon 1314

"Generally, a penalty is *ferendae sententiae*, so that it does not bind the guilty party until after it has been imposed; if the law or precept expressly establishes it, however, a penalty is *latae sententiae*, so that it is incurred *ipso facto* when the delict is committed."

Canon 1394

"§ 1. ... a cleric who attempts marriage, even if only civilly, incurs a *latae sententiae* suspension. If he does not repent after being warned and continues to cause a scandal, he may be punished gradually by privations or even by dismissal from clerical status.

§ 2. A member of a religious order who is not a cleric and who attempts marriage, even if only civilly, incurs a *latae sententiae* interdict, without prejudice to the prescript of Canon 694."

H. Case-law of the Spanish courts

1. Supreme Court judgment of 19 June 1996

58. In this judgment, which concerned the nature of the contracts entered into by religious education teachers, the Supreme Court found as follows:

"The present case displays the characteristics provided for in Article 1 § 1 of the Labour Code, capable of classifying the legal relationship between the parties as 'contractual' in nature: [an activity] carried on voluntarily for another, being remunerated and under a form of management. No rule grants such teachers [of religious education] the status of public servant. [In addition], the relationship is not administrative in nature, this being an imperative condition [for classification as a public servant]."

2. Constitutional Court judgment no. 38/2007 of 15 February 2007

59. This judgment relates to constitutional review proceedings initiated by the Superior Court of Justice of the Canary Islands. The latter court questioned, among other things, the constitutionality of the Spanish employment system concerning teachers of religion, in so far as, though not being civil servants as such, they are employed by the public administration and not by the Church and are thus integrated into the public employment system. In its judgment, the Constitutional Court confirmed the compatibility of this system with the Constitution.

60. In addition, the Constitutional Court recalled that such appointments could be reviewed by the State courts. The relevant passages of the judgment read as follows:

"The fact that teachers of religious education must be appointed from among persons previously proposed by the bishop and that this proposal requires a prior declaration of suitability based on moral and religious considerations, does not in any way mean that such appointments cannot be reviewed by the State courts, with a view to determining whether they are in accordance with the law, as is the case with all discretionary acts of authorities when they have effects *vis-à-vis* third parties ...

...

... Firstly, the courts must verify whether the administrative decision [of appointment] has been adopted in accordance with the applicable legal provisions, that is, in substance, whether the appointment was made from among the persons proposed by the bishop to provide religious instruction and, among the persons proposed, in conditions of equality and with respect for the principles of merit and capacity. ... [T]he reasons for not appointing a given person must be considered [by the courts] and, specifically, whether it is a result of the person not being included among those nominated by the ecclesiastical authority, or of other grounds that may likewise be subject to review. ... The competent courts must also determine whether the person's not being included among those proposed by the bishop of the diocese is the result of applying criteria of a religious or moral nature to determine the person's suitability to provide religious instruction, criteria that the religious authorities are empowered to define by virtue of the right to freedom of religion and the principle of the religious neutrality of the State, or whether, to the contrary, it is based on grounds that do not stem from the fundamental right of religious freedom and are not protected thereby. Lastly, once the strictly 'religious' grounds for the decision have been determined, the court will have to weigh up any competing fundamental rights in order to determine to what extent the right to freedom of religion, exercised through the teaching of religion in schools, may affect the employees' fundamental rights in their employment relationships.

...

The authority granted to the ecclesiastical authorities in determining the persons qualified to teach their religious creed constitutes a guarantee of the freedom of churches to organise the teaching of their doctrines without interference from the public authorities. That being the case, and with the corresponding cooperation in that regard (Article 16.3 of the Constitution) being realised through the appointment of the corresponding teachers by the public authorities, we must conclude that the declaration of suitability is only one of the requisites of capacity necessary for appointment. This requirement is in conformity with the right to equal treatment and non-discrimination (Article 14 of the Constitution) ..."

3. Constitutional Court judgment no. 51/2011 of 14 April 2011

61. In this judgment, which concerned the non-renewal of the contract of a religious education teacher on account of her civil marriage to a divorced man, the Constitutional Court stated as follows:

"The [applicant's] complaints must necessarily be examined in the light of the principles established in judgment no. 38/2007 of 15 February 2007 ...

...

... One cannot share the affirmation in the judgment of the lower court according to which ... the local bishop's proposals to the education authority for the appointments

of teachers of the Catholic religion in each school year are not subjected to any control by the Spanish State...

Rather, on the contrary, ... there is nothing [in the relevant legal norms] that entails any exclusion of the jurisdictional power of the Spanish judges and courts ... The premise upon which the judgment of the lower court is based, namely that the proposals made by the bishop to the education authority for the appointments of teachers of Catholic religion are not subject to any control by the Spanish State, therefore proves not to be compatible with this requirement of full jurisdiction with respect to the civil effects of an ecclesiastical decision ...

... The decision of the Bishop of Almería not to propose the applicant as a teacher of Catholic religion and ethics for the year 2001/2002 corresponds to a reason of which the characterisation as being of a religious and moral nature cannot be denied...

... The strictly religious grounds for the decision not to propose the applicant as a teacher of Catholic religion and ethics having been determined ... it is necessary to continue ... to weigh up the competing fundamental rights...

... The reason given by the Bishop of Almería for the justification of his decision not to propose the applicant for a contract with the education authority as a teacher of Catholic religion and ethics in 2001/2002, that is, the fact of having entered into a civil marriage with a divorced person, is not related to the teaching activity of the applicant...

... It does not appear at any moment ... that in exercising her activities as a teacher of religion the applicant called into question the doctrine of the Catholic Church concerning marriage or defended civil marriage; neither does it appear in any way that she publicly exhibited her situation as a woman married to a divorced person...

The decision of the applicant to enter into a civil marriage, as provided for by law, with the person of her choice ... belongs in principle to the sphere of her personal and family intimacy, such that the religious reasons put forward in the decision of the Bishop of Almería not to propose her as a teacher of religion for the following school year (namely the fact of having married without following the rules of canon law) cannot justify, by themselves, the ensuing unsuitability of the applicant to teach Catholic religion and ethics ...

...

The *amparo* is therefore granted, on account of the violation of the right not to suffer discrimination on the basis of personal circumstances, of the right to freedom of thought in connection with the right to marry in the legally established form, and the right to personal and family intimacy."

62. On 3 May 2011 Almeria Employment Tribunal no. 3 declared the dismissal null and void and requested the immediate reinstatement of the teacher to her post, as well as the payment of her salary arrears. This decision was upheld by the judgment of 22 December 2011 of the Andalucía High Court of Justice.

63. Finally, on 16 November 2012 the Constitutional Court declared inadmissible the *amparo* appeal submitted by the Church against the latter decision, on the ground that there was manifestly no violation of any of the Church's fundamental rights.

64. Litigation as to the implementation of the judgment is still continuing, in particular as regards the teacher's reinstatement and the question whether it should be for a limited or an unlimited duration.

I. Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation

65. The relevant provisions of this European Union Directive read as follows:

Preamble, Recital 24

"The European Union in its Declaration No 11 on the status of churches and non-confessional organisations, annexed to the Final Act of the Amsterdam Treaty, has explicitly recognised that it respects and does not prejudice the status under national law of churches and religious associations or communities in the Member States and that it equally respects the status of philosophical and non-confessional organisations. With this in view, Member States may maintain or lay down specific provisions on genuine, legitimate and justified occupational requirements which might be required for carrying out an occupational activity."

Article 4
Occupational requirements

"1. ... Member States may provide that a difference of treatment which is based on a characteristic related to [among other things, religion or belief] shall not constitute discrimination where, by reason of the nature of the particular occupational activities concerned or of the context in which they are carried out, such a characteristic constitutes a genuine and determining occupational requirement, provided that the objective is legitimate and the requirement is proportionate.

2. Member States may maintain national legislation in force ... or provide for future legislation incorporating national practices existing at the date of adoption of this Directive pursuant to which, in the case of occupational activities within churches and other public or private organisations the ethos of which is based on religion or belief, a difference of treatment based on a person's religion or belief shall not constitute discrimination where, by reason of the nature of these activities or of the context in which they are carried out, a person's religion or belief constitute a genuine, legitimate and justified occupational requirement, having regard to the organisation's ethos. ...

Provided that its provisions are otherwise complied with, this Directive shall thus not prejudice the right of churches and other public or private organisations, the ethos of which is based on religion or belief, acting in conformity with national constitutions and laws, to require individuals working for them to act in good faith and with loyalty to the organisation's ethos."

J. Comparative law material

66. According to the material obtained by the Court, a significant majority of the Council of Europe Member States provide religious

education, both denominational and non-denominational, in State schools. In a large number of States making up this majority, the religious authorities concerned have either a co-decision role or an exclusive role in the appointment and dismissal of religious education teachers. As a general rule, in addition to pedagogical qualifications, the teachers must have the authorisation of the religious community in question (the *missio canonica*, the *Vokation* of the Protestant Church, the Orthodox canonical mandate, the Jewish teaching certificate, the certificate delivered by the Islamic community, etc.). The withdrawal of such authorisation by the competent religious authority, for reasons pertaining to religious matters, leads to the loss of the religious education teaching post. In a small minority of States where religion is taught as part of the ordinary curriculum, the State has an exclusive role in the appointment and dismissal of religious education teachers, who are required to have a degree in either human sciences or theology.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

67. The applicant complained about the non-renewal of his contract of employment. He alleged that it had breached his right to respect for his private and family life and relied on Article 8 of the Convention, which reads as follows:

> "1. Everyone has the right to respect for his private and family life, his home and his correspondence.
>
> 2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

A. The Chamber's findings

68. In its judgment of 15 May 2012, the Chamber noted that in Spanish law the notion of autonomy of religious communities was complemented by the principle of the State's religious neutrality, as recognised in the Constitution, which precluded the State from ruling on questions such as the celibacy of priests. Admittedly, the duty of neutrality was not unlimited. The Constitutional Court's judgment had confirmed that it did not preclude the possibility for the courts to review the bishop's decision to verify its respect for fundamental rights and civil liberties. The definition of the

religious or moral criteria underlying the non-renewal decision was nevertheless the exclusive prerogative of the religious authorities. The domestic courts were entitled to weigh up the competing fundamental rights and to examine whether grounds other than those of a strictly religious nature played a part in the decision not to appoint a candidate, because religious grounds alone were protected by the principle of freedom of religion.

69. The Chamber observed that the applicant had been able to take his case to the Employment Tribunal and the Murcia High Court of Justice, then at last instance to lodge an *amparo* appeal with the Constitutional Court. Moreover, the dispensation from celibacy granted to him had provided that recipients of such dispensation could not teach Catholic religion in public institutions unless authorised by the bishop.

70. The Chamber took the view that the circumstances used to justify the non-renewal of the applicant's contract were of a strictly religious nature and that the requirements of the principles of religious freedom and neutrality precluded it from carrying out any further examination of the necessity and proportionality of the decision not to renew his teaching contract.

71. In conclusion, the Court found that the competent courts had struck a fair balance between various private interests and that there had been no violation of Article 8 of the Convention.

B. The parties' submissions and third-party comments

1. The applicant

72. In the applicant's submission, the Chamber judgment had sacrificed the applicant's right to respect for his private and family life in favour of a new absolute right of the Catholic Church, namely the right to dismiss freely or on derisory or trivial grounds. The applicant thus referred throughout his observations to his "dismissal" rather than to non-renewal.

73. The applicant referred to the Court's case-law in *Hasan and Chaush v. Bulgaria* ([GC], no. 30985/96, § 60, ECHR 2000-XI), in which it was stated that the right to freedom of religion did not protect every act motivated or inspired by a religion or belief. In the present case, the non-renewal decision following the publicity given to the applicant's situation had clearly been disproportionate.

74. The applicant further noted that the Chamber judgment had not taken into account the fact that it was the State which paid his salary, a fact which should have attributed more weight to his fundamental rights such as respect for his private life.

75. This factor distinguished the case from previous cases examined by the Court such as *Obst v. Germany* (no. 425/03, 23 September 2010),

Schüth v. Germany (no. 1620/03, ECHR 2010) and *Siebenhaar v. Germany* (no. 18136/02, 3 February 2011). In those German cases, the recruitment of staff by religious communities had been carried out directly by the Churches or faith organisations themselves, without any intervention by a public authority in the appointment procedure. Moreover, unlike the situation in the present case, it was not even a public authority which had paid the salaries of the employees in those cases.

76. The applicant pointed out that the "scandal" argument given by the Bishop had been based on the appearance in the press of a photograph showing the applicant and his family. In this connection he noted that he had never spoken in his religious -education classes against the teachings of the Church, including the celibacy of priests. He mentioned the note of support from the director of the secondary -education institution where he had been teaching.

77. The applicant complained that, even though he had not given any statement to the press, the criticism of the Church's policies had been attributed to him. The remarks in question had been made by other members of MOCEOP who were present at the gathering.

78. On that point, the applicant complained that the Chamber judgment, in paragraphs 84 and 86, had introduced a new ground for the non-renewal decision, namely the criticisms allegedly made by the applicant, whereas the Bishop's memorandum had mentioned only the publicity given to the applicant's personal situation.

79. In view of the foregoing, the applicant submitted that the Chamber judgment had modified the facts that had been declared established by Murcia Employment Tribunal no. 3, which had considered that the ground for non-renewal was the "scandal", and had instead espoused the findings of the Constitutional Court judgment.

2. The Government

80. In the Government's submission, it was essential to determine the central question, namely what facts constituted the grounds for the decision of the Diocese of Cartagena not to renew the applicant's certificate of suitability for the teaching of the Catholic religion. In their view, the non-renewal could be explained by events that had been triggered by the applicant himself: his voluntary disclosure in the media of the fact that he was a married priest and that he belonged to MOCEOP, and of his opinions that were at odds with the Catholic Church's position on a number of subjects. Those public statements had clearly broken the bond of trust, essential as it was, between the applicant and the Church.

81. The Government agreed as a whole with the approach adopted by the Chamber as to the relevant Convention provision in the present case and noted that the result would have been the same if the case had been examined under Article 9.

82. The Government further took the view that, as the Chamber had found in paragraph 78 of its judgment, the present case had to be examined from the perspective of the State's positive obligations (in the light of *Rommelfanger v. Germany*, no. 12242/86, Commission decision of 6 September 1989, Decisions and Reports 62). The Government argued that the State had fulfilled its obligations in the present case.

83. The Government pointed out that, at the material time, the Ministerial Order of 11 October 1982 had been applicable, supplementing the 1979 Agreement between Spain and the Holy See.

84. The Government noted moreover that, at the material time, teachers of religious education received their pay directly from the Catholic Church, to which the State paid the necessary funds in the form of grants. Even though the legal regime of religious-education teaching had changed and salaries were now paid directly by the public authority, one essential factor had not changed, namely the need for a certificate of suitability issued by the Church, without which the teacher could not be appointed to a post. The Government were of the view that this was merely a feature of the way in which the State organised the financing of the teaching of various religions in Spain and also that a wide margin of appreciation should be afforded to States in the organisation of their education systems.

85. The Government thus submitted that, even though the non-renewal decision in the present case had been taken by the public authority, it constituted a "mandatory decision". The public authority could not ignore the failure to fulfil one of the prerequisites for renewal, namely the Catholic Church's nomination and declaration of suitability. The public authority's decision had therefore been a mere formality.

86. The certificate of suitability did not simply attest to the candidate's technical skills. In accordance with Canon 804 § 2 of the Code of Canon Law, the professional qualification of religious-education teachers lay in their morality, exemplary Christian life and teaching ability. This showed the essential nature of the bond of trust between the Church and the teacher, referred to by the Government as a "juridical-canonical relationship". In the present case that bond of trust had been broken by the applicant's statements.

87. However, the bond of trust did not exclude all review by the courts of the Church's decision or the balancing of competing fundamental rights.

88. Therefore, once it had been verified in a given case that the grounds for non-renewal were strictly religious, the courts had to weigh up any competing fundamental rights.

89. The Government submitted that in the present case the reasons had been strictly religious and concerned the duty of loyalty and coherence which had to be observed by the applicant in work that he had freely chosen and which, moreover, differed from the teaching of another subject such as mathematics or history. The Government thus requested the Court to bear in

mind that the relationship of loyalty in the present case was on a higher plane than that existing in a case concerning a church organist (as in *Schüth*, cited above), a child-minder in a Church school (as in *Siebenhaar*, cited above), or a Church public-relations manager (as in *Obst*, cited above).

90. For the Government, the question to be addressed was not whether the relevant remarks were legitimate and could be expressed in public. The issue for them was whether a religious organisation was obliged to appoint and continue to employ as a religious-education teacher a person who had publicly expressed views that were inconsistent with its doctrine. Whilst such remarks fell within the applicant's right to freedom of expression, it was also true that they were at odds with the Church's doctrine and with the prerequisites for the canonical suitability of its teachers.

91. The Government then returned to the subject of the applicant's legal situation *vis-à-vis* the Catholic Church. The dispensation from celibacy had had the effect of limiting the possibility of teaching Catholic religion, entitling the Bishop, however, to give his authorisation provided there was no risk of scandal. Consequently, the Bishop had merely been exercising his prerogatives.

92. The Government further noted that the applicant had had the opportunity to submit his arguments to courts at various levels of jurisdiction, which had examined the lawfulness of the impugned measure in the light of ordinary labour law, taking ecclesiastical law into account, and had weighed up the competing interests of the applicant and the Church, thus applying the Court's doctrine in that respect.

93. Finally, the Government noted that teachers of religious education were recruited on the basis of criteria which differed essentially from those relevant for teachers of other subjects. Whereas the latter had to take part in open and public competitions, teachers of religious education were nominated by the Catholic Church, who chose them freely and proposed them to the civil authority if they were considered to be suitable for teaching religion.

3. Observations of the third-party interveners

(a) Spanish Episcopal Conference (*Conferencia Episcopal Española* – "the CEE")

94. In its observations the CEE stated that the requirement for teachers to have an ecclesiastical certificate of suitability and the possibility for the Church to withdraw or revoke that accreditation on religious or moral grounds was adapted to the very nature of the post, and to the right of parents and pupils to require that Catholic doctrine or values be imparted properly.

95. The CEE drew attention to the specific system for the recruitment of religious-education teachers in Spain, which differed from the recruitment

of other teachers, and noted that they were proposed to the public authority by the various faith groups, after being chosen from among persons who had an academic qualification that was deemed equivalent to those of the other teachers recruited by the public authority. After the proposal in principle of teachers of religion by the corresponding faith groups, the teachers were appointed by the public authority.

96. This specific system had an objective and reasonable justification and was proportionate to the aims pursued by the legislature, namely to guarantee the religious neutrality of the State, the right of parents to their children's education and the autonomy of faith groups in the recruitment of their teaching staff. In the present case, the non-renewal of the contract had not been related to the applicant's status as a married priest, but to the fact that he had acted publicly against the Church.

(b) European Centre for Law and Justice (ECLJ)

97. The ECLJ emphasised at the outset the importance of the principle of the institutional autonomy of faith groups, in conformity with the State's duty of neutrality and impartiality. It mattered little whether the status of religious-education teachers was assimilated to that of public servants or of contractual employees, as this had no bearing on the religious nature of their employment. The crucial point for the third party was the possibility of review by the ordinary courts. Such review would vary in scope depending on the degree to which the reasoning behind the non-renewal decision was purely religious.

98. The ECLJ referred to the notion of the heightened duty of loyalty, as recognised by international and European law: Directive 2000/78/EC, International Labour Organization Convention no. 111 concerning Discrimination in Respect of Employment and Occupation, the Guidelines for Review of Legislation Pertaining to Religion or Belief adopted by the OSCE/ODIHR and the Venice Commission, and the work of the United Nations Human Rights Committee (see *Ross v. Canada,* Communication No. 736/1997). That obligation of loyalty was based on the manifestation of the personal wishes of the employee, who would thus agree to waive the exercise of certain guaranteed rights.

(c) Chair in Law and Religions of the Université catholique de Louvain and the American Religious Freedom Program of the Ethics & Public Policy Center

99. This third party argued that the principle of religious communities' autonomy was widely recognised in international law. It referred in particular to Article 18 of the Universal Declaration of Human Rights. It further noted that the right to choose "religious leaders, priests and teachers" was expressly recognised by the United Nations Human Rights Committee as a guarantee of the autonomy of religious communities in dealing with

teachers who did not conform to religious requirements (see *Delgado Páez v. Colombia*, Communication No. 195/1985, concerning a teacher of religion at a secondary school in Colombia).

100. The third party also cited the United States Supreme Court's judgment of 11 January 2012 in *Hosanna-Tabor Evangelical Lutheran Church and School v. Equal Employment Opportunity Commission et al.,* which expressly recognised for the first time the so-called "ministerial exception", a doctrine according to which otherwise applicable laws prohibiting employment discrimination could not be applied to "ministerial employees" (a category that included religious-education teachers).

C. The Court's assessment

1. Alleged modification of facts by the Constitutional Court and the Chamber

101. The Court notes that the parties disagreed as to the facts which had led to the non-renewal of the applicant's contract of employment. The applicant complained that the Chamber's judgment had followed that of the Constitutional Court in introducing new facts that had not been declared established by Murcia Employment Tribunal no. 3. In particular, both the Constitutional Court and the Chamber had presented the applicant's criticisms of the Church as the ground for non-renewal, whilst the Bishop's memorandum had mentioned only the publicity that the applicant had given to his personal situation. In the Government's submission, the event giving rise to the Bishop's decision had been the applicant's public statements, publicising both his family situation and his criticism of the Church.

102. The Court notes that in its judgment of 28 September 2000 Murcia Employment Tribunal no. 3 took the view that the applicant had suffered discrimination on account of his marital status and his membership of the association MOCEOP, with his appearance in the press having been the underlying ground for what he described as his dismissal (see paragraph 25 above). Accordingly, his membership of the movement was already part of the facts that had been declared established. On the basis of those same facts, the High Court of Justice arrived at the opposite conclusion.

103. Moreover, the Court observes that, in his *amparo* appeal before the Constitutional Court, the applicant himself argued that his position as a member of MOCEOP and his dissenting opinions about the celibacy of Catholic priests had been the cause of the non-renewal of his contract and took the view that this constituted a breach of his right to private life and religious freedom. The Constitutional Court based its findings on those two points (see paragraph 41 above).

104. This is not contradicted by the content of the Bishop's memorandum relating to the non-renewal decision. The expression

"applicant's situation" may reasonably be understood to refer both to his marital status and to his membership of MOCEOP. Those two elements taken together could thus be regarded as constituting a situation likely to give rise to the "scandal" referred to by the Bishop.

105. Lastly, as to the public statements that the applicant is said to have made (see paragraph 139 below), the Court finds that there is no indication in any domestic decision that they were taken into account by the national courts.

106. In conclusion, it does not appear that the Constitutional Court or the Chamber relied on any facts other than those that had been declared established by the domestic courts' ruling on the merits. The Grand Chamber will take this into account.

2. Relevant Convention provisions in the present case

107. It should be noted at the outset that various Convention Articles, in particular Articles 8, 9, 10 and 11, are relevant for the assessment of the present case. Article 8 is relevant in so far as it encompasses the applicant's right to continue his professional life, his right to respect for his family life and his right to live his family life in an open manner. Article 9 is relevant in so far as it protects the applicant's right to freedom of thought and religion. Article 10 is relevant in so far as it protects the applicant's right to express his opinions about official Church doctrines, and Article 11 in so far as it guarantees his right to be a member of an organisation holding specific views on issues concerning religion. In the Court's view, however, the main issue in the present application lies in the non-renewal of the applicant's contract. The applicant did not complain about being prevented from holding and disseminating certain views or from being a member of MOCEOP, or about having to endure interference with his family life. The gist of his complaint is that he was not able to remain a teacher of the Catholic religion as a direct consequence of the publicity given to his family situation and of the fact that he was a member of MOCEOP. For that reason the Grand Chamber takes the view, like the Chamber, that the application should be examined under Article 8 of the Convention.

3. Whether Article 8 is applicable

108. Whereas no general right to employment or to the renewal of a fixed-term contract can be derived from Article 8, the Court has previously had occasion to address the question of the applicability of Article 8 to the sphere of employment. It thus reiterates that "private life" is a broad term not susceptible to exhaustive definition (see, among other authorities, *Schüth*, cited above, § 53). It would be too restrictive to limit the notion of "private life" to an "inner circle" in which the individual may live his own personal life as he chooses and to exclude therefrom entirely the outside

world not encompassed within that circle (see *Niemietz v. Germany*, 16 December 1992, § 29, Series A no. 251-B).

109. According to the Court's case-law, there is no reason of principle why the notion of "private life" should be taken to exclude professional activities (see *Bigaeva v. Greece*, no. 26713/05, § 23, 28 May 2009, and *Oleksandr Volkov v. Ukraine,* no. 21722/11, §§ 165-67, ECHR 2013). Restrictions on an individual's professional life may fall within Article 8 where they have repercussions on the manner in which he or she constructs his or her social identity by developing relationships with others. In addition, professional life is often intricately linked to private life, especially if factors relating to private life, in the strict sense of the term, are regarded as qualifying criteria for a given profession (see *Özpınar v. Turkey*, no. 20999/04, §§ 43-48, 19 October 2010). Professional life is therefore part of the zone of interaction between a person and others which, even in a public context, may fall within the scope of "private life" (see *Mółka v. Poland* (dec.), no. 56550/00, ECHR 2006-IV).

110. In the present case the interaction between private life *stricto sensu* and professional life is especially striking as the requirements for this kind of specific employment were not only technical skills, but also the ability to be "outstanding in true doctrine, the witness of Christian life, and teaching ability" (see paragraph 58 above), thus establishing a direct link between the person's conduct in private life and his or her professional activities.

111. The Court further notes that the applicant, who was not a civil servant but was nonetheless employed and remunerated by the State, had been a religious-education teacher since 1991 on the basis of fixed-term contracts which provided for annual renewal at the beginning of each academic year subject to the Bishop's approval of his suitability. Thus, whilst it is true that the applicant had never had a permanent contract, a presumption of renewal had given him good reason to believe that his contract would be renewed for as long as he fulfilled those conditions and there were no circumstances that might justify its non-renewal under canon law. In the Court's opinion, the facts of the case bear some resemblance, *mutatis mutandis*, to those of *Lombardi Vallauri v. Italy* (no. 39128/05, § 38, 20 October 2009). In the present case, the applicant had been a religious-education teacher continuously for seven years and had been appreciated both by his colleagues and by the management of the centres where he taught, thus attesting to the stability of his professional situation.

112. In those circumstances, the Court takes the view that as a consequence of the non-renewal of the applicant's contract his chances of carrying on his specific professional activity were seriously affected on account of events mainly relating to personal choices he had made in the context of his private and family life. It follows that, in the circumstances of the present case, Article 8 of the Convention is applicable.

4. Compliance with Article 8

(a) Whether there has been an interference

113. The Court would first reiterate that, although the object of Article 8 is essentially that of protecting the individual against arbitrary interference by the public authorities, it does not merely compel the State to abstain from such interference: in addition to this primarily negative undertaking, there may be positive obligations inherent in an effective respect for private life. These obligations may involve the adoption of measures designed to secure respect for private life even in the sphere of the relations of individuals between themselves. The boundaries between the State's positive and negative obligations under Article 8 do not lend themselves to precise definition. The applicable principles are nonetheless similar. In particular, in both instances regard must be had to the fair balance which has to be struck between the general interest and the interests of the individual; and in both contexts the State enjoys a certain margin of appreciation (see *Evans v. the United Kingdom* [GC], no. 6339/05, §§ 75-76, ECHR 2007-I; *Rommelfanger*, cited above; and *Fuentes Bobo v. Spain*, no. 39293/98, § 38, 29 February 2000).

114. Unlike the Chamber, the Grand Chamber takes the view that the question in the present case is not whether the State was bound, in the context of its positive obligations under Article 8, to ensure that the applicant's right to respect for his private life prevailed over the Catholic Church's right to refuse to renew his contract (contrast*, mutatis mutandis,* the above-cited judgments in *Obst*, § 43*, Schüth*, § 57, and *Siebenhaar*, § 38). The Court thus accepts the position of the Constitutional Court, which, in its judgment of 4 June 2007, took the view that, even though it was not a public authority which had actually taken the non-renewal decision, it sufficed, as in the present case, for such an authority to intervene at a later stage for the decision to be regarded as an act of a public authority. The Court is thus of the opinion that the crux of the issue lies in the action of the State authority which, as the applicant's employer, and being directly involved in the decision-making process, enforced the Bishop's non-renewal decision. Whilst the Court recognises that the State had limited possibilities of action in the present case, it is noteworthy that if the Bishop's decision had not been enforced by the Ministry of Education, the applicant's contract would certainly have been renewed.

115. In view of the foregoing, the Court finds that, in the circumstances of the case, the conduct of the public authorities constituted an interference with the applicant's right to respect for his private life.

(b) "In accordance with the law"

116. The expression "in accordance with the law" requires, firstly, that the impugned measure should have some basis in domestic law. Secondly, it

refers to the quality of the law in question, requiring that it should be accessible to the person concerned, who must moreover be able to foresee its consequences for him, and compatible with the rule of law (see, among other authorities, *Kopp v. Switzerland*, 25 March 1998, § 55, *Reports of Judgments and Decisions* 1998-II). The phrase thus implies, *inter alia*, that domestic law must be sufficiently foreseeable in its terms to give individuals an adequate indication as to the circumstances in which and the conditions on which the authorities are entitled to resort to measures affecting their rights under the Convention (see *C.G. and Others v. Bulgaria*, no. 1365/07, § 39, 24 April 2008).

117. The Court notes that the Ministry of Education acted in accordance with the provisions of Article III of the 1979 Agreement between Spain and the Holy See, supplemented by the Ministerial Order of 11 October 1982, pursuant to which an appointment is not renewed if an opinion to the contrary is given by the bishop (see paragraph 51 above). This Agreement is an international treaty, integrated as such in Spanish law in conformity with the Spanish Constitution (see, *mutatis mutandis, Neulinger and Shuruk v. Switzerland* [GC], no. 41615/07, § 99, ECHR 2010). The non-renewal of the applicant's contract was thus based on valid Spanish law.

118. It remains to be examined to what extent the non-renewal of the contract was foreseeable by the applicant. The decisive question is the extent to which he could have anticipated that his personal conduct was likely to entail the consequence that the Bishop would no longer consider him a suitable candidate and that his contract would therefore not be renewed. In this context the Court notes that the Diocese of Cartagena relied in particular on the notion of "scandal" to refuse the extension of the applicant's contract (see paragraph 19 above). Even though the notion of scandal is not expressly provided for in Canons 804 and 805 of the Code of Canon Law (see paragraph 58 above), concerning religious-education teachers, it may be considered to refer to – and is thus clarified by – notions that are themselves in those canons such as "true doctrine", "witness of Christian life" or "religious or moral considerations". In this connection, the Court is of the view that the applicable provisions in the present case fulfilled the requirements concerning the foreseeability of their effects. In particular, since the applicant had been the director of a seminary, it is reasonable to presume that he was aware of the heightened duty of loyalty imposed on him by ecclesiastical law and could thus have foreseen that, despite the fact that his situation had been tolerated for many years, the public display of his militant stance on certain precepts of the Church would be at odds with the applicable provisions of canon law and would not be without consequence. On the basis of the clear wording of the Agreement between Spain and the Holy See, he could also have reasonably foreseen that in the absence of a certificate of suitability from the Church his contract

would not be renewed (see, *mutatis mutandis, Sindicatul "Păstorul cel Bun" v. Romania* [GC], no. 2330/09, § 155, ECHR 2013).

119. Accordingly, the Court is prepared to accept, as the national courts did, that the interference complained of had a legal basis in the relevant provisions of the 1979 Agreement between Spain and the Holy See, supplemented by the Ministerial Order of 11 October 1982, and that these provisions satisfied the "lawfulness" requirements established in its case-law (see, *mutatis mutandis*, *Miroļubovs and Others v. Latvia*, no. 798/05, § 78, 15 September 2009).

120. In conclusion, the impugned interference was in accordance with the law.

(c) Legitimate aim

121. The Court agrees with the parties and finds that the non-renewal decision in issue in the present case pursued the legitimate aim of protecting the rights and freedoms of others, namely those of the Catholic Church, and in particular its autonomy in respect of the choice of persons accredited to teach religious doctrine.

(d) Necessary in a democratic society

(i) General principles

(α) Balancing of rights

122. The Court reiterates that when it is called upon to rule on a conflict between two rights that are equally protected by the Convention, it must weigh up the interests at stake (see *Siebenhaar, Schüth* and *Obst*, all cited above). In the present case, this balancing exercise concerns the applicant's right to his private and family life, on the one hand, and the right of religious organisations to autonomy, on the other. The State is called upon to guarantee both rights and if the protection of one leads to an interference with the other, to choose adequate means to make this interference proportionate to the aim pursued. In this context, the Court accepts that the State has a wide margin of appreciation (see, *mutatis mutandis*, *Sindicatul "Păstorul cel Bun"*, cited above, § 160, and, *mutatis mutandis*, *Von Hannover v. Germany (no. 2)* [GC], nos. 40660/08 and 60641/08, §§ 104-07, ECHR 2012).

123. An interference will be considered "necessary in a democratic society" for a legitimate aim if it answers a "pressing social need" and, in particular, if it is proportionate to the legitimate aim pursued and if the reasons adduced by the national authorities to justify it are "relevant and sufficient" (see, for example, *Coster v. the United Kingdom* [GC], no. 24876/94, § 104, 18 January 2001, and *S. and Marper v. the United Kingdom* [GC], nos. 30562/04 and 30566/04, § 101, ECHR 2008).

124. While it is for the national authorities to make the initial assessment in all these respects, the final evaluation of whether the interference is necessary remains subject to review by the Court for conformity with the requirements of the Convention. A margin of appreciation must be left to the competent national authorities in this assessment. The breadth of this margin varies and depends on a number of factors including the nature of the Convention right in issue, its importance for the individual, the nature of the interference and the object pursued by the interference. The margin will tend to be narrower where the right at stake is crucial to the individual's effective enjoyment of "intimate" or key rights. Where a particularly important facet of an individual's existence or identity is at stake, the margin allowed to the State will be restricted. Where, however, there is no consensus within the member States of the Council of Europe, either as to the relative importance of the interest at stake or as to how best to protect it, the margin will be wider (see *S. and Marper*, cited above, §§ 101-02). There will also usually be a wide margin if the State is required to strike a balance between competing private and public interests or different Convention rights (see *Obst*, cited above, § 42).

(β) Right to enjoy private and family life

125. As regards the right to private and family life, the Court stresses the importance for individuals to be able to decide freely how to conduct their private and family life. In this connection, it reiterates that Article 8 also protects the right to self-fulfilment, whether in the form of personal development (see *Christine Goodwin v. the United Kingdom* [GC], no. 28957/95, § 90, ECHR 2002-VI), or from the point of view of the right to establish and develop relationships with other human beings and the outside world, the notion of personal autonomy being an important principle underlying the interpretation of the guarantees laid down in that provision (see *Pretty v. the United Kingdom*, no. 2346/02, § 61, ECHR 2002-III). Thus, it is self-evident that an individual's right to marry and to make that choice known to the public is protected by the Convention and in particular by Article 8, read in the light of other relevant Articles (see paragraph 108 above).

(γ) State's duty to protect the autonomy of the Church

Scope of autonomy of religious communities

126. As regards the autonomy of faith groups, the Court notes that religious communities traditionally and universally exist in the form of organised structures. Where the organisation of the religious community is in issue, Article 9 of the Convention must be interpreted in the light of Article 11, which safeguards associative life against unjustified State interference. Seen in that perspective, the right of believers to freedom of

religion encompasses the expectation that they will be allowed to associate freely, without arbitrary State intervention. The autonomous existence of religious communities is indispensable for pluralism in a democratic society and is thus an issue at the very heart of the protection which Article 9 of the Convention affords. It has a direct interest, not only for the actual organisation of those communities but also for the effective enjoyment by all their active members of the right to freedom of religion. Were the organisational life of the community not protected by Article 9 of the Convention, all other aspects of the individual's freedom of religion would become vulnerable (see *Hasan and Chaush*, cited above, § 62; *Metropolitan Church of Bessarabia and Others v. Moldova*, no. 45701/99, § 118, ECHR 2001-XII; and *Holy Synod of the Bulgarian Orthodox Church (Metropolitan Inokentiy) and Others v. Bulgaria*, nos. 412/03 and 35677/04, § 103, 22 January 2009).

127. Concerning more specifically the internal autonomy of religious groups, Article 9 of the Convention does not enshrine a right of dissent within a religious community; in the event of any doctrinal or organisational disagreement between a religious community and one of its members, the individual's freedom of religion is exercised by the option of freely leaving the community (see *Miroļubovs and Others*, cited above, § 80). Moreover, in this context, the Court has frequently emphasised the State's role as the neutral and impartial organiser of the exercise of various religions, faiths and beliefs, and has stated that this role is conducive to public order, religious harmony and tolerance in a democratic society, particularly between opposing groups (see, among other authorities, *Hasan and Chaush,* cited above, § 78, and *Leyla Şahin v. Turkey* [GC], no. 44774/98, § 107, ECHR 2005-XI). Respect for the autonomy of religious communities recognised by the State implies, in particular, that the State should accept the right of such communities to react, in accordance with their own rules and interests, to any dissident movements emerging within them that might pose a threat to their cohesion, image or unity. It is therefore not the task of the national authorities to act as the arbiter between religious communities and the various dissident factions that exist or may emerge within them (see *Sindicatul "Păstorul cel Bun"*, cited above, § 165).

128. The Court further reiterates that, but for very exceptional cases, the right to freedom of religion as guaranteed under the Convention excludes any discretion on the part of the State to determine whether religious beliefs or the means used to express such beliefs are legitimate (see *Hasan and Chaush*, cited above, §§ 62 and 78). Moreover, the principle of religious autonomy prevents the State from obliging a religious community to admit or exclude an individual or to entrust someone with a particular religious duty (see, *mutatis mutandis*, *Svyato-Mykhaylivska Parafiya v. Ukraine*, no. 77703/01, § 146, 14 June 2007).

129. Lastly, where questions concerning the relationship between State and religions, on which opinion in a democratic society may reasonably differ widely, are at stake, the role of the national decision-making body must be given special importance (see *Leyla Şahin*, cited above, § 109). This will be the case in particular where practice in European States is characterised by a wide variety of constitutional models governing relations between the State and religious denominations (see *Sindicatul "Păstorul cel Bun"*, cited above, § 138).

Duty of loyalty

130. The Court acknowledges that as a consequence of their autonomy religious communities can demand a certain degree of loyalty from those working for them or representing them. In this context the Court has already considered that the nature of the post occupied by those persons is an important element to be taken into account when assessing the proportionality of a restrictive measure taken by the State or the religious organisation concerned (see *Obst*, cited above, §§ 48-51, and *Schüth*, cited above, § 69). In particular, the specific mission assigned to the person concerned in a religious organisation is a relevant consideration in determining whether that person should be subject to a heightened duty of loyalty.

Limits to the autonomy

131. That being said, a mere allegation by a religious community that there is an actual or potential threat to its autonomy is not sufficient to render any interference with its members' rights to respect for their private or family life compatible with Article 8 of the Convention. In addition, the religious community in question must also show, in the light of the circumstances of the individual case, that the risk alleged is probable and substantial and that the impugned interference with the right to respect for private life does not go beyond what is necessary to eliminate that risk and does not serve any other purpose unrelated to the exercise of the religious community's autonomy. Neither should it affect the substance of the right to private and family life. The national courts must ensure that these conditions are satisfied, by conducting an in-depth examination of the circumstances of the case and a thorough balancing exercise between the competing interests at stake (see, *mutatis mutandis*, *Sindicatul "Păstorul cel Bun"*, cited above, § 159).

(ii) Application of the above-mentioned principles to the present case

132. In applying those principles to the present case, the Court considers that it has to take account of the following factors.

(α) Status of the applicant

133. The Court notes, firstly, that the applicant received the dispensation from the obligation of celibacy from the Vatican after the publication of the article in the newspaper. Thus, being both a married man and a priest, his status at the relevant time was unclear. On the one hand, his status as an ordained priest had not changed from the point of view of the Church – at least not officially – and from the outside perspective he could still be considered a representative of the Catholic Church as he was still teaching Catholic religion. On the other hand, he was married and known to be a former priest. Furthermore, it has to be taken into account that his salary as a teacher was paid by the State, albeit indirectly, in so far as the Government noted that, at the material time, teachers of religious education received their pay directly from the Catholic Church to which the State paid the necessary funds in the form of grants.

134. Be that as it may, the Court takes the view that, by signing his successive employment contracts, the applicant knowingly and voluntarily accepted a heightened duty of loyalty towards the Catholic Church, which limited the scope of his right to respect for his private and family life to a certain degree. Such contractual limitations are permissible under the Convention where they are freely accepted (see *Rommelfanger*, cited above). Indeed, from the point of view of the Church's interest in upholding the coherence of its precepts, teaching Catholic religion to adolescents can be considered a crucial function requiring special allegiance. The Court is not convinced that at the time of the publication of the article in *La Verdad,* this contractual duty of loyalty had ceased to exist. Even if the applicant's status as a married priest was unclear, a duty of loyalty could still be expected on the basis that the Bishop had accepted him as a suitable representative to teach Catholic religion.

(β) Publicity given by the applicant to his situation as a married priest

135. The Court notes , firstly, that it was not the applicant himself who published an article about his views or his family life, but a journalist who wrote about the meeting of MOCEOP and included both a photograph of the applicant and his family and a description of the views held by a group of former priests including the applicant. It is relevant, however, that, unlike the applicant, most of the other participants at the meeting avoided contact with the press. As to the question whether the applicant deliberately posed for the impugned photograph, a point also disputed by the parties, the Court considers the answer not to be essential. Even assuming that the photograph was taken without his consent, it can be noted that there is no evidence in the file to show that the applicant complained of his appearance in the press by means of the mechanisms available to him under domestic law. The Court finds that in choosing to accept a publication about his family circumstances and his association with what the Bishop considered to be a

protest-oriented meeting, he severed the special bond of trust that was necessary for the fulfilment of the tasks entrusted to him. Having regard to the importance of religious -education teachers for all faith groups, it was hardly surprising that this severance would entail certain consequences. The Court thus sees the granting of dispensation, thirteen years after the applicant had requested it and shortly after the publication of the press article, as part of the sanction imposed on the applicant as a result of his conduct.

136. In the Court's view, it is not unreasonable for a Church or religious community to expect particular loyalty of religious-education teachers in so far as they may be regarded as its representatives. The existence of a discrepancy between the ideas that have to be taught and the teacher's personal beliefs may raise an issue of credibility if the teacher actively and publicly campaigns against the ideas in question (see, *mutatis mutandis, Siebenhaar*, cited above, § 46). Thus, in the present case the problem lies in the fact that the applicant could be understood to have been campaigning in favour of his way of life to bring about a change in the Church's rules, and in his open criticism of those rules.

(γ) Publicity given by the applicant to his membership of MOCEOP; remarks attributed to him

137. While the parties agreed that it was generally known that the applicant was married and had five children, it is not clear to what extent his membership of an organisation with aims incompatible with the official Church doctrine was also known to the general public before the publication of the article. In this context, in the Court's view, it is necessary to take into account the specific content of the applicant's teaching. A teacher of religious education who belongs to and publicly promotes an organisation advocating ideas that run counter to the teaching of that religion has to be distinguished from, for example, a language teacher who is at the same time a member of the Communist Party (see *Vogt v. Germany*, 26 September 1995, Series A no. 323). In the former case, the heightened duty of loyalty is justified by the fact that, in order to remain credible, religion must be taught by a person whose way of life and public statements are not flagrantly at odds with the religion in question, especially where the religion is supposed to govern the private life and personal beliefs of its followers (see Directive 2000/78/EC; *Schüth*, cited above, § 40; *Obst*, cited above, § 27; and *Lombardi Vallauri*, cited above, § 41). For this reason, the sole fact that there is no evidence to suggest that the applicant, in his class, taught anything incompatible with the Catholic Church's doctrine does not suffice for it to be concluded that he fulfilled his heightened duty of loyalty (see *Vogt*, cited above).

138. As regards the statements attributed to the applicant following the publication of the press article, it is noteworthy that the article indicated that

the remarks in question had been made by four named participants in the event, one of whom was the applicant, incidentally referred to in the article as the former director of a seminary. According to the article, those four participants, including the applicant, had expressed their support for contraception and their disagreement with the Catholic Church's positions on other subjects such as abortion, birth control and the optional celibacy of priests.

139. In the Court's view, it is self-evident that this kind of remark falls within the freedom of expression protected by Article 10 of the Convention. Nevertheless, and even though the remarks were not taken into account by the domestic courts (see paragraph 106 above), that does not mean that the Catholic Church was precluded from acting on them, in the enjoyment of its autonomy, which is also protected by the Convention under Article 9. In this connection, the Court observes that in assessing the seriousness of the conduct of an individual employed by the Church it is necessary to take into account the proximity between the person's activity and the Church's proclamatory mission (see *Schüth*, cited above, § 69). In the present case, that proximity is clearly very close.

140. Consequently, the applicant was voluntarily part of the circle of individuals who were bound, for reasons of credibility, by a duty of loyalty towards the Catholic Church, thus limiting his right to respect for his private life to a certain degree. In the Court's view, the fact of being seen as campaigning publicly in movements opposed to Catholic doctrine clearly runs counter to that duty. In addition, there is little doubt that the applicant, as a former priest and director of a seminary, was or must have been aware of the substance and significance of that duty (see, *mutatis mutandis*, *Obst*, cited above, § 50).

141. In addition, the Court takes the view that the changes brought about by the publicity given to the applicant's membership of MOCEOP and by the remarks appearing in the article were all the more important as the applicant had been teaching adolescents, who were not mature enough to make a distinction between information that was part of the Catholic Church's doctrine and that which corresponded to the applicant's own personal opinion.

(δ) State's responsibility as employer

142. The Court further notes that, unlike the situation in the three German cases cited above, *Siebenhaar, Schüth* and *Obst*, where the applicants were employed by their respective Churches, the applicant in the present case, like all religious-education teachers in Spain, was employed and remunerated by the State. That aspect, however, is not such as to affect the extent of the duty of loyalty imposed on the applicant *vis-à-vis* the Catholic Church or the measures that the latter is entitled to adopt if that duty is breached. This analysis is confirmed by the fact that, in the majority

of Council of Europe member States, the Churches and religious communities concerned have a power of co-decision or even an exclusive role in the appointment and dismissal of religious-education teachers, regardless of which institution finances such teaching, directly or indirectly (see paragraph 67 above).

(ε) Severity of the sanction

143. The Court has previously found it to be of particular importance, albeit in a somewhat different context, that an employee who has been dismissed by an ecclesiastical employer will have limited opportunities of finding another job. This is especially true where the employer has a predominant position in a given sector of activity and enjoys certain derogations from the ordinary law, or where the dismissed employee has specific qualifications that make it difficult, if not impossible, to find a new job outside the employing Church, as was the case for the present applicant (see, *mutatis mutandis*, *Schüth*, cited above, § 73).

144. As to the consequences for the applicant of the non-renewal of his contract of employment, there is no doubt that this decision constituted a sanction entailing serious consequences for his private and family life. However, in his memorandum, the Bishop took those difficulties into account, pointing out that the applicant would be entitled to unemployment benefit (see paragraph 19 above). It must be noted in this connection that after the non-renewal of his contract the applicant did receive such benefit.

145. The consequences for the applicant must also be seen in the light of the fact that he had knowingly placed himself in a situation that was incompatible with the Church's precepts. As a result of his former responsibilities within the Church, the applicant was aware of its rules and knew that his conduct placed him in a situation of precariousness *vis-à-vis* the Bishop and made the renewal of his contract dependent upon the latter's discretion. He should therefore have expected that the voluntary publicity of his membership of MOCEOP would not be devoid of consequences for his contract. The Court notes that, even though the applicant had not received any prior warning before the decision not to renew his contract, he knew that his contract was subject to annual renewal if approved by the Bishop, thus involving the possibility for the latter to assess, on a regular basis, the applicant's fulfilment of his heightened duty of loyalty. Lastly, the applicant knew that, in this connection, the Church had already shown tolerance in allowing him to teach Catholic religion for six years, that is, for as long as his personal situation which was incompatible with the precepts of that religion was not promoted publicly. Moreover, it should be noted that, for the purposes of the present case, a less restrictive measure for the applicant would certainly not have had the same effectiveness in terms of preserving the credibility of the Church. It thus does not appear that the consequences of the decision not to renew his contract were excessive in the

circumstances of the case, having regard in particular to the fact that the applicant had knowingly placed himself in a situation that was completely in opposition to the Church's precepts.

(ζ) Review by domestic courts

146. As regards, lastly, the review carried out by the domestic courts, it should be pointed out that, whilst Article 8 contains no explicit procedural requirements, the Court cannot satisfactorily assess whether the reasons adduced by national authorities to justify their decisions were "sufficient" for the purposes of Article 8 § 2 without at the same time determining whether the decision-making process, seen as a whole, provided the applicant with the requisite protection of his interests (see *W. v. the United Kingdom*, 8 July 1987, §§ 62 and 64, Series A no. 121; *Elsholz v. Germany* [GC], no. 25735/94, § 52, ECHR 2000-VIII; and *Sahin v. Germany* [GC], no. 30943/96, § 68, ECHR 2003-VIII).

147. In the present case, the Court observes at the outset that the applicant was able to complain about the non-renewal of his contract before the Employment Tribunal and then before the Murcia High Court of Justice, which examined the lawfulness of the impugned measure under ordinary labour law, taking ecclesiastical law into account, and weighed up the competing interests of the applicant and the Catholic Church (see, *mutatis mutandis*, *Siebenhaar*, cited above; *Schüth*, cited above, § 59; and *Obst*, cited above, § 45). At last instance the applicant was able to lodge an *amparo* appeal with the Constitutional Court.

148. In this connection the Court notes that under Spanish law the notion of autonomy of religious communities is supplemented by the principle of the State's religious neutrality, as recognised in Article 16 § 3 of the Constitution. This principle precludes the national authorities from ruling on the substance of religious notions such as "scandal" or the celibacy of priests. Admittedly, the duty of neutrality is not unlimited, as the Constitutional Court itself has indicated in finding that the issue in such cases is to reconcile the requirements of religious freedom and the State's religious neutrality with the judicial protection of teachers' fundamental rights and employment relationships. Thus, in a case concerning a decision not to renew the contract of a religious-education teacher on account of her civil marriage to a divorced man, the Constitutional Court found that there had been a violation of the complainant's right not to suffer discrimination and of her right to respect for her freedom of opinion concerning marriage and for her personal and family privacy (see paragraph 62 above).

149. In the present case, which is similar, but can be distinguished in important aspects from the other case, the domestic courts found that, in so far as the reasoning for the non-renewal decision had been strictly religious, they had to confine themselves to verifying respect for the fundamental rights at stake in the present case. In particular, after carefully examining the

facts, the Constitutional Court took the view that the State's duty of neutrality precluded it from ruling on the notion of "scandal" used by the Bishop to refuse the renewal of the applicant's contract, or on the merits of the optional celibacy of priests advocated by the applicant. However, it examined the extent of the interference with the applicant's rights and took the view that it was neither disproportionate nor unconstitutional, but that it could be justified in terms of respect for the lawful exercise by the Catholic Church of its religious freedom in its collective or community dimension, in conjunction with the right of parents to choose their children's religious education (see paragraph 43 above). Even though the parents of children who attended the applicant's classes showed their support after the publicity given to his situation, the Court is of the view that the Diocese's argument was not unreasonable, since it sought to protect the integrity of the teaching.

150. In the light of the foregoing, the Court finds that the domestic courts took into account all the relevant factors and, even though they emphasised the applicant's right to freedom of expression (see paragraph 45 above), they weighed up the interests at stake in detail and in depth (see, *mutatis mutandis, Obst*, cited above, § 49), within the limits imposed on them by the necessary respect for the autonomy of the Catholic Church. The conclusions thus reached do not appear unreasonable to the Court, particularly in the light of the fact that the applicant, as he had been a priest and the director of a seminary, was or must have been aware, in accepting the task of teaching Catholic religion, of the potential consequences of the heightened duty of loyalty *vis-à-vis* the Catholic Church by which he thus became bound, for the purpose, in particular, of preserving the credibility of his teaching (see, *mutatis mutandis*, *Obst*, cited above, § 50). The fact that the Constitutional Court carried out a thorough analysis is all the more evident as two dissenting opinions were appended to its judgment, thus showing that the court examined the issue from various perspectives, whilst refraining from ruling on the substance of the principles to which the Church adhered. As to the Church's autonomy, it does not appear, in the light of the review exercised by the national courts, that it was improperly invoked in the present case, that is to say that the Bishop's decision not to propose the renewal of the applicant's contract cannot be said to have contained insufficient reasoning, to have been arbitrary, or to have been taken for a purpose that was unrelated to the exercise of the Catholic Church's autonomy.

(e) Conclusion

151. In conclusion, having regard to the State's margin of appreciation in the present case, the Court is of the view that the interference with the applicant's right to respect for his private life was not disproportionate.

152. Accordingly, there has been no violation of Article 8 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 14 TAKEN TOGETHER WITH ARTICLE 8 OF THE CONVENTION AND OF ARTICLES 9 AND 10, TAKEN SEPARATELY OR TOGETHER WITH ARTICLE 14 OF THE CONVENTION

153. The applicant complained that the decision not to renew his contract had unjustifiably given precedence to the Church's rights to religious autonomy and to freedom of association over his right to respect for his private life. In his view, a new "right to dismiss", of a discriminatory nature, had thus been created in favour of religious entities.

154. The Court is of the view that these complaints are related to the complaint under Article 8 examined above. Having regard to its finding on that provision (see paragraphs 152 and 153 above), it does not need to examine them separately (see, among other authorities, *Martínez Martínez v. Spain*, no. 21532/08, § 57, 18 October 2011).

FOR THESE REASONS, THE COURT,

1. *Holds*, by nine votes to eight, that there has been no violation of Article 8 of the Convention;

2. *Holds*, by fourteen votes to three, that there is no need to examine separately the complaints under Article 14 taken together with Article 8 of the Convention and under Articles 9 and 10, taken separately or together with Article 14 of the Convention.

Done in English and in French, and delivered at a public hearing in the Human Rights Building, Strasbourg, on 12 June 2014.

Johan Callewaert	Dean Spielmann
Deputy to the Registrar	President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the following separate opinions are annexed to this judgment:

(a) joint dissenting opinion of Judges Spielmann, Sajó, Karakaş, Lemmens, Jäderblom, Vehabović, Dedov and Saiz Arnaiz;

...

(c) dissenting opinion of Judge Sajó;

(d) dissenting opinion of Judge Dedov.

D.S.
J.C.

JOINT DISSENTING OPINION OF JUDGES SPIELMANN, SAJÓ, KARAKAŞ, LEMMENS, JÄDERBLOM, VEHABOVIĆ, DEDOV AND SAIZ ARNAIZ

1. We regret that we cannot share the view of the majority that there has been no violation of Article 8 of the Convention in this case.

We have points of disagreement on almost every aspect of the case: the establishment of the facts; the characterisation of the facts in the light of Article 8; and the application of Article 8 to the facts of the case.

A. The facts

2. In paragraph 104 of the judgment, the majority state that the applicant had argued before the Constitutional Court that the cause of the non-renewal of his contract lay in "his position as a member of MOCEOP and his dissenting opinions about the celibacy of Catholic priests". We have a slightly different understanding of the applicant's argument. In our view, he argued that the termination of his employment was due, firstly, to the fact of having made public his position as a member of MOCEOP, and secondly, to his public appearance as a married priest. The Constitutional Court, for its part, noted that the lower courts had linked the termination of the applicant's employment to the newspaper article that disclosed the fact that he was married and had five children, on the one hand, and his membership of and participation in a movement that challenged certain precepts of the Catholic Church, on the other, and it based its findings on those two points (see paragraph 41 of the present judgment).

3. We agree with the majority that there is no indication in any of the domestic decisions that the statements allegedly made to the journalist by four members of the movement, including the applicant, in favour of the optional celibacy of priests, or the critical statements made by unnamed members of the movement about abortion, birth control, divorce and sex, were taken into account by the domestic courts as a basis for the non-renewal of the applicant's contract (see paragraph 106 of the judgment). We conclude from this that the termination of the contract was not based on any criticism publicly voiced by the applicant, but merely on his family situation and his membership of an association of married priests.

4. Elsewhere in the judgment the majority conclude that "the applicant could be understood to have been *campaigning* in favour of his way of life to bring about a change in the Church's rules", referring to "his *open* criticism of those rules" (see paragraph 137 of the judgment, emphasis added; see also paragraph 141 of the judgment: "being seen as campaigning

publicly"). We do not think that such a conclusion can be drawn from the facts of the case.

B. The State's responsibility for the non-renewal of the applicant's appointment

5. While none of the parties disputed the State's responsibility for the non-renewal of the applicant's appointment, we think that it may be useful to clarify how we see that responsibility.

6. It is obvious that the responsibility of a State is engaged if a violation of one of the rights and freedoms defined in the Convention is the result of non-observance by that State of its obligation under Article 1 to secure those rights and freedoms in its domestic law to everyone within its jurisdiction (see *Costello-Roberts v. the United Kingdom*, 25 March 1993, § 26, Series A no. 247-C; *Woś v. Poland* (dec.), no. 22860/02, § 60, ECHR 2005-IV; and *Storck v. Germany*, no. 61603/00, § 101, ECHR 2005-V).

7. As has been emphasised by the Court, a State cannot absolve itself of its obligations under the Convention by delegating powers relating to these obligations to non-State bodies. The exercise of State powers which affects Convention rights and freedoms raises an issue of State responsibility regardless of the form in which these powers happen to be exercised. This is the case, for instance, where the State delegates some of its powers to a body whose activities are regulated by private law (see *Woś*, cited above, § 72; *Storck*, cited above, § 103; *Kotov v. Russia* [GC], no. 54522/00, § 92, 3 April 2012; and *O'Keeffe v. Ireland* [GC], no. 35810/09, § 150, ECHR 2014). Likewise, the Convention does not exclude the transfer of competences under an international agreement to an international organisation provided that Convention rights continue to be secured. The responsibility of the State continues even after such a transfer (see *Matthews v. the United Kingdom* [GC], no. 24833/94, § 32, ECHR 1999-I).

8. Turning to the facts of the present case, we note that the appointment of teachers of Catholic religion in State schools is the object of Article III of the 1979 Agreement between Spain and the Holy See. According to that treaty provision, teachers are appointed by the competent State authority. However, this authority has a limited choice, as it can appoint a candidate only from among those who have been proposed by the Ordinary of the diocese. Moreover, it follows from the same provision that the appointment of a teacher cannot be renewed if he or she is no longer proposed by the Church authority. The State has thus agreed to delegate part of its powers with respect to the appointment of teachers in State schools to a body that is not a public authority. It should be noted that this is an option freely chosen by the Spanish State. While there are many member States of the Council of Europe that have chosen the same option, it is by no means an option that reflects a consensus in Europe (see paragraph 67 of the judgment). In any

event, the delegation of part of the State's powers does not take away the fact that the act about which the applicant complains, the non-renewal of his appointment, is a decision made by the Ministry of Education, not by the Bishop of Cartagena. The alleged violation of the Convention is fully attributable to Spain, notwithstanding the fact that the Spanish Ministry was bound by the Bishop's decision not to propose the applicant for reappointment (see, *mutatis mutandis*, *Bosphorus Hava Yolları Turizm ve Ticaret Anonim Şirketi v. Ireland* [GC], no. 45036/98, § 137, ECHR 2005-VI, and *Nada v. Switzerland* [GC], no. 10593/08, § 121, ECHR 2012). Moreover, as mentioned above, the fact that the Ministry was bound by that decision results from the legal framework set up by the Spanish authorities themselves.

C. The applicability of Article 8

9. The majority hold that Article 8 of the Convention is applicable, mainly because the non-renewal of the applicant's contract had repercussions on his professional life (see paragraphs 109-13 of the judgment). We respectfully disagree, being of the opinion that the applicability of Article 8 is triggered, not by the effects of the decision not to renew the contract, but by the reasons that led to that decision.

10. In our opinion, the non-renewal of the applicant's employment contract was a direct consequence of the publicity given to his situation as a married priest and his membership of the MOCEOP. We find that this situation formed part of the applicant's private and family life. The Ministry's decision was based on the Bishop's disapproval of these aspects of the applicant's private and family life, or at least on the Bishop's disapproval of the fact that these aspects had received publicity. The publicity given to the applicant's situation does not, in our opinion, alter the fact that it is part of his private and family life. On the contrary, we consider that a person's manifestation of his or her private and family life is covered by the right to respect for private and family life.

It is because of this underlying ground for the Ministry's decision that we consider that the applicant's right to respect for his private life and his family life was interfered with (compare, with respect to an interference with the exercise of freedom of expression, in the form of, respectively, an actual dismissal and an announced intention not to reappoint, *because of* the applicant's opinions, *Vogt v. Germany*, 26 September 1995, § 44, Series A no. 323, and *Wille v. Liechtenstein* [GC], no. 28396/95, § 50, ECHR 1999-VII).

11. The fact that the Ministry's decision had repercussions, even serious ones, on the applicant's professional situation as a teacher is not decisive for us, as far as the issue of the applicability of Article 8 is concerned. We do not need to have recourse to the wide interpretation of the notion of "private

life" as adopted by the majority. In our opinion, the case before our Court is not about the applicant's employment rights, seen as elements of his right to respect for his private life. It is more fundamentally about the way the applicant wants to live his private life and his family life, and about a decision prompted by his personal choices in these areas. The fact that the decision had repercussions on the applicant's professional situation does not change the nature of his human rights complaint.

D. The interference by the State with the applicant's fundamental rights

12. We agree with the majority that the Ministry's decision not to reappoint the applicant should be characterised as an interference by the State with the applicant's human rights, not as an alleged failure by the State to take positive measures to protect the applicant against an interference by the Church (see paragraphs 114-16 of the judgment). It is that interference by the State that is the direct object of the Court's scrutiny.

13. We would like to add that the foregoing does not necessarily prevent the Court from examining whether the Bishop's decision not to propose the applicant for appointment violated his human rights. This was indeed the approach adopted by the Constitutional Court, which stated that if the decision of the Diocese were to be found to violate the applicant's fundamental rights, the ensuing act of the Ministry would as a consequence have to be annulled. However, attention should not be diverted from what is the main question in this case: did the State's reaction to the Church's decision respect the applicant's fundamental rights? It is State action that our Court has to review.

E. Justification for the interference

1. "In accordance with the law"

14. The majority accept that the impugned interference was "foreseeable", having regard to the applicable provisions of canon law, as far as the Bishop's reaction is concerned, and of the Agreement between Spain and the Holy See, as far as the Ministry's subsequent decision is concerned (see paragraph 119 of the judgment).

15. We are not so sure about the first point. It is true that the applicant, as a priest, must have been aware of the duty of loyalty imposed on him by canon law. However, there are some disturbing elements that make the foreseeability of the Bishop's reaction much less evident than it may seem at first sight. In this context we first note, like the majority, that the Bishop relied in particular on the notion of "scandal" to refuse the renewal of the

applicant's appointment. However, it was only in the rescript of 20 August 1997, that is, *after* the publication of the article rendering public the applicant's situation, that the absence of a scandal was explicitly mentioned as a condition for his ability to continue to teach Catholic religion. Should the applicant have anticipated the rescript? We further note that Canon 804 § 2 of the Code of Canon Law provides, as a general rule, that the local Ordinary must ensure that those who teach Catholic religion are "outstanding in true doctrine, in the witness of their Christian life, and in their teaching ability". When the applicant participated in the meeting of MOCEOP that was the subject of the article in *La Verdad*, his personal and family situation and his membership of MOCEOP had remained the same for the past six years and he had never received any warning on that subject from the Church authorities. Should the applicant have expected such a reaction from the Bishop after so many years of tolerance?

16. We do not have to come to a firm conclusion on this point. We are of the opinion that the interference was in any event unjustified for another reason, as we will explain below.

2. Legitimate aim

17. We agree with the majority that the Ministry's decision pursued a legitimate aim (see paragraph 122 of the judgment).

3. Necessary in a democratic society

(a) General principles

(i) Balancing of rights and proportionality

18. We agree with the principles recalled in paragraphs 123-25 of the judgment. We would like to stress, in particular, the need for the public authorities, when faced with a conflict between two competing fundamental rights, to make sure that in the case of a restriction of one (or both) of those rights, the interference remains proportionate to the aim pursued (see paragraph 123). Domestic courts in particular, when they are reviewing the compatibility of administrative acts with human rights standards, must conduct an in-depth examination of the circumstances of the case and a thorough balancing exercise to weigh up the competing interests, in accordance with the principle of proportionality (see *Sindicatul "Păstorul cel Bun" v. Romania* [GC], no. 2330/09, § 159, ECHR 2013, referring to *Schüth v. Germany*, no. 1620/03, § 67, ECHR 2010, and *Siebenhaar v. Germany*, no. 18136/02, § 45, 3 February 2011).

19. We would further like to emphasise the importance of a review principle that was stated by the Court in *Nada*: in order to address the question whether the measures taken against an individual were

proportionate to the legitimate aim that they were supposed to pursue, and whether the reasons given by the domestic authorities were "relevant and sufficient", the Court had to examine, among other things, whether the authorities took sufficient account of the particular nature of the individual's case and whether they adopted, in the context of their margin of appreciation, the measures that were called for in order to adapt the applicable legal regime to the individual's situation (see *Nada*, cited above, § 185). This is a principle that lies at the heart of the Court's review of the conduct of the domestic authorities in the present case.

(ii) Autonomy of religious communities

20. The present case raises the question of the extent to which the State has to respect the autonomy of a religious community like the Catholic Church. The majority refer to a number of principles (paragraphs 127-30 of the judgment), with which we do not disagree. We would, however, like to mention some other principles which seem particularly relevant in the present case.

21. When a dispute about an act of a religious community is brought before a secular court, it is for that court to ensure that the autonomy of the community can be observed in accordance with the applicable law, including the Convention. The autonomy of religious communities is not absolute. The courts should not therefore confine themselves, for instance, to merely verifying the existence of a decision taken by the competent religious authority and then attach civil consequences to that decision (see *Lombardi Vallauri v. Italy*, no. 39128/05, § 51, 20 October 2009). On the contrary, the principle of autonomy does not prevent courts from reviewing, from a formal point of view, whether the decision of the religious community is duly reasoned, is not arbitrary and has been taken for a purpose that is not unrelated to the exercise of autonomy by the faith group concerned (compare ibid., §§ 52-54). From a more substantive point of view, while it is not for the courts to examine the religious grounds of a decision taken by a religious community (see, *mutatis mutandis*, ibid., § 50), they must verify that such a decision does not produce effects that constitute a disproportionate interference with the fundamental rights of those affected by the decision (see paragraph 18 above).

22. These principles apply in particular where an individual is dismissed following a decision by an ecclesiastical authority based on events that relate to the individual's exercise of human rights. While it is true that, under the Convention, an employer whose ethos is based on religion or on a philosophical belief may impose specific duties of loyalty on its employees, a decision to dismiss based on a breach of such duty, especially when prompted by events relating to the exercise of Convention rights, must be subjected to a form of judicial scrutiny that involves a proper balancing of the right of the religious community to respect for its autonomy against the

individual's human rights, in accordance with the principle of proportionality (see, *mutatis mutandis*, *Obst v. Germany*, no. 425/03, § 43, 23 September 2010; *Schüth*, cited above, §§ 57 and 69; and *Siebenhaar*, cited above, § 40). These principles are all the more relevant when the dismissal is decided *by a State authority* on the basis of a binding proposal or opinion of an ecclesiastical authority.

(b) The necessity of the interference in the present case

23. In paragraphs 133-52 of the judgment the majority set out the reasons leading them to the conclusion that the interference with the applicant's right to respect for his private life was not disproportionate. There are a number of statements in that part of the judgment with which we disagree. In fact, we would follow a very different reasoning. Rather than criticising the majority opinion, we prefer to set out our own reasoning, including here and there a critical comment on the majority's reasoning. We would like to begin with an analysis of the conduct of the domestic authorities, in particular in the light of their duty to respect the principle of proportionality. We will then turn to the review we would have liked to have seen undertaken by the Court. We will end with our conclusions on the requirement of "necessity in a democratic society".

(i) The domestic authorities' reaction to the decision of the Bishop of Cartagena

24. The Ministry of Education accepted the decision of the Bishop of Cartagena not to propose the applicant for renewal of his appointment as a legal obstacle to such renewal. The Ministry thus applied the 1979 Agreement between Spain and the Holy See, which made the appointment of teachers of Catholic religion dependent upon a proposal by the Ordinary of the diocese. In so far as the Bishop's decision indicated that, according to the Catholic Church, the applicant was no longer deemed suitable to teach Catholic religion, this was a matter that could legitimately be left to the exclusive discretion of the Bishop. Indeed, by recognising the binding force of the Bishop's decision, the Ministry gave full effect to the principle of the State's religious neutrality, as recognised in Article 16 § 3 of the Spanish Constitution, a principle that also flows from freedom of religion as guaranteed by Article 9 of the Convention (see paragraph 128 of the judgment). The decision not to renew the applicant's contract, as a teacher of Catholic religion and ethics, is therefore not *per se* incompatible with the Convention. In other words, the State's interference with the applicant's right to respect for his private and family life is, in our opinion, based on relevant reasons. We would like to add that, for that reason, we do not need to examine whether the applicant can legitimately be considered to have breached his duty of loyalty to the Church, an element that plays a central role in the majority's reasoning. In our opinion, this is a matter that could be debated before an ecclesiastical court. For us it is sufficient to note that the

Bishop considered that the applicant was no longer suitable to teach Catholic religion and ethics, on whatever ground he reached that conclusion: that assessment was not one to be reviewed by the domestic authorities, and should likewise not be scrutinised by our Court.

25. The fact that, in line with the applicable legal framework, the Ministry gave effect to the Bishop's decision, did not absolve the domestic authorities of the obligation to respect the principle of proportionality in *their* relationship *vis-à-vis* the applicant (see paragraph 19 above).

26. In this connection, we note that the Ministry simply endorsed the Bishop's decision, without more. It did not provide reasons for its refusal to renew the applicant's appointment, apart from referring to that decision (compare *Lombardi Vallauri*, cited above, § 49). It did not take any action other than not renewing the applicant's contract. There is thus no evidence that the Ministry took into account the applicant's right to respect for his private and family life or the effects of its own decision on that right.

27. The decision of the Ministry was, however, the subject of proceedings before the domestic courts. The applicant complained about the non-renewal of his contract before the Employment Tribunal and then before the Murcia High Court of Justice, which examined the lawfulness of the impugned decision under ordinary labour law. The applicant lodged a further *amparo* appeal with the Constitutional Court, and that court explicitly weighed up the competing rights and interests of the applicant and of the Catholic Church. The applicant was thus able to obtain a review of the Ministry's decision and thereby, indirectly, also of the Bishop's decision (see, *mutatis mutandis*, *Obst*, cited above, § 45; *Schüth*, cited above, § 59; and *Siebenhaar*, cited above, § 42). It would not have been impossible under domestic law for the courts to conclude that, by giving effect to the Bishop's decision and by not renewing the applicant's contract, the Ministry had violated the applicant's human rights. Accordingly, they could have ordered his reinstatement (see the decision of the Constitutional Court of 14 April 2011 in case no. 51/2011, and its follow-up, mentioned in paragraphs 62-65 of the judgment). However, this did not happen in the case of the applicant.

28. It remains to be seen whether the domestic courts arrived at conclusions that effectively struck a fair balance between the competing rights and interests. This is a matter for review by our Court, bearing in mind that the domestic authorities have a wide margin of appreciation in cases such as the present one (see paragraph 19 above).

(ii) Review of the conduct of the domestic authorities

29. It seems to us that for the purposes of the Court's review of the conduct of the domestic authorities in the present case, a number of factors are relevant.

30. The first factor is the nature of the applicant's position. As far as his position within the Catholic Church was concerned, we note that the applicant received dispensation from the obligation of celibacy from the Vatican only after the publication of the article in *La Verdad* and thirteen years after having requested it. It appears that, from that moment on, he lost his clerical status, as was stipulated in the rescript. This would mean that from the point of view of canon law he was still a cleric at the time of the "scandal", albeit a suspended cleric. Whatever the applicant's situation might have been under canon law, from an outside perspective he was in any event to be regarded as mandated by the Catholic Church to teach Catholic religion. As far as his secular position was concerned, he was a teacher appointed by the Ministry and had entered into a contract with it. He was therefore an employee of the public education authority (see the Constitutional Court's decision of 14 April 2011, no. 51/2011, quoted in paragraph 62 of the judgment). The fact that his salary was paid by the Catholic Church, as noted by the Government, would not seem to change that status. Besides, the State provided the Catholic Church with the necessary funds, in the form of grants. The applicant thus had a double status: he was an employee of the public education authority, and at the same time owed a specific loyalty to the Catholic Church.

31. The second factor is the decision-making process, within both the Catholic Church's structures and the State administration. It seems that the Bishop's decision not to propose the applicant for renewal of his appointment was taken without any prior warning and without any opportunity for the applicant to be heard by the Church hierarchy. Neither is there any indication that the applicant was heard by the Ministry before it decided to follow the Bishop's decision. These are features that make it difficult to ensure a fair balancing of the relevant rights and interests. The judicial review by the domestic courts can compensate for this lack of hearing in part, but not fully.

32. The third factor is the nature of the interference with the applicant's fundamental rights. The decision not to renew his appointment was based on his situation as a married priest and his membership of MOCEOP. We consider that in the given circumstances these were important elements of the applicant's private and family life.

33. The fourth factor consists of the specific circumstances surrounding the Bishop's decision not to propose the applicant for reappointment.

In this connection we first note that the applicant's situation had been known for many years to the Church authorities and had apparently not as such constituted a reason for considering the applicant unsuitable to teach Catholic religion and ethics.

Furthermore, it was not the applicant himself who published an article about his situation, but a journalist who wrote about the meeting of MOCEOP and included both a photograph of the applicant and his family

and a description of the views held by a group of former priests including the applicant. The majority describe the applicant as having "accepted" the publication (see paragraph 136 of the judgment) and the publicity given to his membership of MOCEOP as being "voluntary" (see paragraph 146 of the judgment). We do not find that there is sufficient evidence to come to such conclusions.

Another point to be noted is that when the applicant took part in that meeting and his situation was subsequently made public, he had not yet received the dispensation from celibacy and therefore could not be bound by any conditions pertaining to such dispensation, in particular the obligation to avoid a "scandal", within the meaning of this term under canon law. That point was in fact emphasised by the public prosecutor's office before the Constitutional Court (see paragraph 36 of the judgment) when it submitted that the applicant's *amparo* appeal should be allowed.

We lastly note that the dispensation was granted thirteen years after the applicant had requested it and nine months after the publication of the press article. It would appear from this timing that, while a rescript normally grants a privilege, dispensation or other favour (see Canon 59 § 1 of the Code of Canon Law), it was used in the applicant's case to create the basis for the Bishop's withdrawal of the certificate attesting to the applicant's suitability to teach Catholic religion and ethics. The majority go even further than we would, and see the dispensation itself "as part of the *sanction* imposed on the applicant as a result of his conduct" (see paragraph 136 of the judgment, emphasis added).

34. The fifth factor lies in the repercussions of the applicant's situation, or the public disclosure thereof, on his teaching ability. This is an element referred to by the Diocese of Cartagena in its memorandum of 11 November 1997. It indicated that the decision not to renew the applicant's appointment was taken partly out of respect for the sensitivity of many parents who might be upset when they found out about that situation. It should be observed, however, that there is no evidence to suggest that the applicant's teaching was at odds with the doctrine of the Catholic Church (see, *mutatis mutandis*, *Vogt*, cited above, § 60). In addition, the applicant's situation had as such been known to the parents of pupils attending the education centres in which the applicant had been teaching. There is no evidence that the publicity about that situation had given rise to any protest on their part. On the contrary, the applicant's teaching had received the parents' express support, and also that of the other teachers.

35. Finally, in order to assess the proportionality of the decision not to renew the applicant's employment within the State education system, the effects of that measure for the applicant are a most important factor. As the majority observe, the Court has previously noted, albeit in a somewhat different context, that an employee who had been dismissed by an ecclesiastical employer had limited opportunities of finding another job (see

paragraph 144 of the judgment, referring to *Schüth*, cited above, § 73). We consider that the same might be said in the case of the applicant, even though he was employed by the State, not by the Catholic Church. While his appointment was not renewed for reasons that were relevant in the context of his teaching of Catholic religion and ethics, there was no assessment at all of whether it would have been possible to renew his employment in another position, not involving any teaching of Catholic religion and ethics (compare United Nations Human Rights Committee, *Ross v. Canada*, Communication No. 736/1997, § 11.6, views of 18 October 2000). More generally, the Ministry did not consider any alternative measure, and instead barred the applicant entirely from continuing to work within the State education system.

We note that the majority consider whether a less restrictive measure could have been envisaged in the present case. However, they raise this question with respect to the measure taken by the Bishop. Whether or not it is correct to state that "a less restrictive measure for the applicant would certainly not have had the same effectiveness in terms of preserving the credibility of the Church", as the majority do (paragraph 146 of the judgment), this is not, in our opinion, a relevant issue. It is not the Bishop's decision that should be scrutinised, but the Ministry's reaction to that decision. The majority do not attach any real importance to the fact that the Ministry had the possibility, under Spanish law, of taking another decision rather than simply refusing to renew the applicant's contract, and that the domestic courts had the power to force the Ministry to take such other decision (see paragraph 149 of the judgment, where the existence of the above-mentioned decision of the Constitutional Court of 14 April 2011, no. 51/2011, is merely used as an argument to illustrate the general point that the Constitutional Court can offer judicial protection of the fundamental rights of teachers in an employment relationship).

There is no indication in the present case that the Ministry took – or even attempted to take – an alternative measure, in order to adapt its decision to the applicant's situation and the seriousness of the interference with his private and family life. As a result of the Ministry's decision, the applicant was obliged, with little notice, to give up the professional activity he had carried on for several years. He had to live on unemployment benefit and later found an apparently not so attractive job in a museum.

(c) Conclusion

36. To sum up, the basis of the non-renewal of the applicant's appointment lay in the publicity given to his situation as a married priest and his membership of MOCEOP. It may well be that under canon law this publicity amounted to a "scandal", which made it necessary for the Bishop of Cartagena to withdraw his certificate attesting to the applicant's suitability to teach Catholic religion and ethics. However, whatever the

consequences under canon law, it was for the Ministry, and later for the domestic courts, to make sure that the secular reaction to the Bishop's decision was adapted to the applicant's situation and in particular that it did not interfere disproportionately with his right to respect for his private and family life. In this connection we have noted a number of factors which are of relevance in assessing the proportionality of the measure complained of. Following this analysis, we can now say that some of these factors appear to be particularly relevant. Firstly, it was not the applicant's situation as such – which had been tolerated for many years by the Church – but the publicity given to it, that led to the non-renewal of his contract. While such publicity could be problematic for the Church, it is difficult to conceive how it could be so for the State. Secondly, as far as the applicant's teaching ability was concerned, there is no evidence that he had taught religion in a manner that contradicted the doctrine of the Church, or that the publicity given to his situation had resulted in disapproval by his pupils' parents or by his school. Thirdly, and most importantly, the State's reaction was a drastic one: the applicant was not reappointed and no other measure was taken, with the result that he was in fact dismissed.

37. Having regard to all the circumstances of the present case, we find that the reasons put forward by the domestic authorities to justify the non-renewal of the applicant's employment, that is to say, ultimately, certain events relating to his personal and family situation, are not sufficient for it to be established that the interference with his right to respect for his private and family life was proportionate. In our opinion, it has therefore not been demonstrated that the interference was necessary in a democratic society to achieve the legitimate aim pursued, namely to respect the autonomy of the Catholic Church in relation to the authenticity and credibility of education in Catholic religion and ethics.

38. We therefore conclude that there has been a violation of Article 8 of the Convention.

JOINT DISSENTING OPINION OF JUDGES SPIELMANN, SAJÒ AND LEMMENS

To our regret, we do not share the view of the majority that there is no need to examine separately the complaints under Article 14 of the Convention, taken together with Article 8, or under Articles 9 and 10 of the Convention, taken separately or together with Article 14.

Such a view might have been justified if the Court had found a violation of Article 8. However, since that is not the case, we are of the opinion that the Court should have pursued its examination of the applicant's complaints. The applicant has the right to obtain an answer to the question whether any of his rights have been violated.

DISSENTING OPINION OF JUDGE SAJÓ

I agree with the dissenting opinion of my colleagues but I find it necessary to emphasise certain additional points which are relevant for a finding of a violation of Article 8 read in conjunction with Articles 10 and 11 of the Convention.

1. The contract of a teacher of religion employed by the State in a State school was not renewed upon the request of the competent Bishop. Such non-renewal is to be understood as a dismissal[1]. Even seen as a mere non-renewal, it was an interference with the applicant's Convention rights. The State, accepting the Bishop's perspective, sanctioned an individual on the grounds of his private and family life (and his right to marriage, as confirmed by the Vatican's dispensation) and for beliefs that he manifested publicly and as part of a movement, notwithstanding that "the protection of Article 10 of the Convention extends ... to the professional sphere of teachers"[2]. The applicant has suffered a disadvantage because of the exercise of core elements of these rights. The rights thus affected, especially the right to live with one's family without the threat of being dismissed for that reason, go to the heart of the right to respect for private life[3]. The State as employer[4], in collaboration with and on behalf of a particular private

1. In *Lombardi Vallauri v. Italy* (no. 39128/05, § 38, 20 October 2009) the repeated renewal resulted in a situation where non-renewal was considered as termination and the *Vogt* [*v. Germany*, 26 September 1995, Series A no. 323] jurisprudence was found to be applicable: "While it is true that the applicant always worked under temporary contracts, the fact that they were renewed for over twenty years and that his academic qualities were recognised by his colleagues attests to the solidity of his professional situation."

2. See *Lombardi Vallauri*, cited above, § 30.

3. "A duty of loyalty towards the Catholic Church [may limit an employee's] right to respect for his private life [only] to a certain degree". Imposing a sanction on conduct regarded as adultery under the "Catholic Church's Code of Canon Law" would be tantamount for the European Court to interpreting "the applicant's signature on the contract ... as a personal unequivocal undertaking to live a life of abstinence in the event of separation or divorce [and] an interpretation of that kind would affect the very heart of the right to respect for the private life of the person concerned" (see *Schüth v. Germany*, no. 1620/03, §§ 71 et seq., ECHR 2010). Likewise, in *Özpınar v. Turkey* (no. 20999/04, § 48, 19 October 2010) it was not the dismissal that was central to the finding of an interference with private life but the actual investigative process and the *fact that the dismissal was based on facts of private life*: "... the Court is of the opinion that the inspector's investigation into the applicant's private and professional life, which included interviews with witnesses on a particular aspect of the applicant's life, together with the resulting administrative dismissal, mainly on grounds related to her conduct, may be regarded as constituting a direct interference with the applicants' right to respect for her private life (see mutatis mutandis, Vogt, cited above, § 44, and *Smith and Grady v. the United Kingdom*, nos. 33985/96 and 33986/96, § 71, ECHR 1999-VI)."

4. In the Spanish legal system, as authoritatively determined by the Spanish Constitutional Court, "*religion teachers are employees of the public education authorities and, as such, they receive the protection of the Constitution and Spanish labour laws, and have the same rights to seek relief from the Spanish courts.*" (Spanish Constitutional Court judgment

entity, namely the Church, interfered in the private and family life of the applicant by imposing certain duties affecting his Article 8, 10 and 11 rights, under the potential threat of loss of employment (compare *Schüth v. Germany*, no. 1620/03, § 40, ECHR 2010, as regards the positive obligations of the State). Moreover, he ultimately lost his job and this *per se* affected his private and professional social relations. However, I do not believe that our jurisprudence requires us to construe employment as such as a Convention right within the meaning of private life[5]. Loss of employment as a matter of social private life is not the key issue here and the impact of the loss of employment on the applicant's social private life is secondary[6].

2. The reasons for the applicant's dismissal remain opaque. The formal explanation was that the Bishop informed the State authority that the applicant's contract should not be renewed. The official Memorandum of the Bishop of Cartagena (11 November 1997) that was submitted to the public authority *after* the dismissal refers to the fact that the earlier proposal had been based on the Bishop's obligation to disqualify the teacher once his "situation" had become public knowledge in order to avoid causing further "scandal" in view of "his personal and employment situation". According to the Memorandum, the power of the Bishop originated in the Pope's rescript of 20 August 1997 (dispensation of celibacy). The applicant was notified of the rescript on 15 September 1997. The applicant's "situation" had become "publicly known" through the publication of an article in November 1996. The Murcia court expressly referred to the publication as being the *origin* of the public knowledge of the "situation": "his appearance in the press having been the cause of his dismissal" (Murcia Employment Tribunal no. 3, judgment of 28 September 2000). In the press publication the applicant was

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no. 38/2007, 15 February 2007, point 7).

5. See *Vogt*, cited above, and *Larissis and Others v. Greece, 2*4 February 1998, *Reports of Judgments and Decisions* 1998‑I, or in the context of termination of employment, most recently *Eweida and Others v. the United Kingdom,* nos. 48420/10, 59842/10, 51671/10 and 36516/10, ECHR 2013, and *Redfearn v. the United Kingdom,* no. 47335/06, 6 November 2012. Even in *Obst v. Germany* (no. 425/03, § 40, 23 September 2010), with its wide-ranging concept of the positive obligation to protect private life against private intrusion by a private religious organisation, it was traditional private life (marriage and, perhaps living in a community) that was to be protected, not employment as a feature of private social life: "In the present case the Court first observes that the applicant did not complain about an action on the part of the State, *but about a failure thereby to protect his private sphere against interference by his employer*." *Schüth* follows the same approach in the construction of the applicant's Article 8 right, referring to extramarital relations and the right to have a child from those relations.

6. It is, however, an element of the bundle of Convention rights interfered with by the dismissal. It is for this reason that I am among the judges expressing a joint dissenting opinion on the Article 8 issues (Opinion of Judges Spielmann, Sajó, Karakaş, Lemmens, Jäderblom, Vehabović, Dedov and Saiz Arnaiz).

presented not only as a married priest but also as a supporter of specific ideas.

It is primarily for the fact-finding court to determine the facts, including the grounds of the dismissal, even though on appeal and in the *amparo* process there was some confusion in this connection. The recapitulation of the grounds for the dismissal as presented by the Murcia court cannot be disregarded. Accordingly, the family status, as publicly displayed, and the "opinions" of the applicant were part of the "situation" as understood by the Bishop and therefore served as grounds for dismissal.

3. A teacher of religion in Spain operates in a State school within a scheme that is intended to enable freedom of religion, and more specifically the collective exercise of religion through a religious organisation, in the present case the Catholic Church. In order to ensure the autonomy of the Church, which stems from the needs and rights of such free exercise, the State chose to cooperate with the Church in the form of an Agreement. This was intended to provide adequate Church control over the teaching of religion, and consequently those who taught religion on behalf of the Church. It is uncontested that the teaching of religion has to be in conformity with principles as understood by the Church (in the context of the Catholic religion), and that the teacher must be credible, as determined by the Church. The religion teacher has specific obligations of loyalty to the Church. The bishop supervises the professional aptitude of such teachers, which goes beyond formal qualification and faithful presentation of the religious position, that is to say, the teachings of the Church. This does not mean that, just because the bishop finds a teacher's lessons appropriate, the public authorities cannot object to the teachings if they contravene public policy (or the national curriculum), or if the public employee's behaviour is contrary to pedagogical or other professional expectations.

4. As the Court stated in *Sindicatul "Păstorul cel Bun" v. Romania* ([GC], no. 2330/09, ECHR 2013), the autonomy of religious organisations is not absolute. This is true even when it comes to clergy members' work, which pursues a spiritual purpose and is "carried out within a Church enjoying a certain degree of autonomy" (ibid., § 144). The Court has thus set certain limits on Church autonomy. It cannot undermine the legal order that safeguards fundamental rights (see also *Refah Partisi (the Welfare Party) and Others v. Turkey* [GC], nos. 41340/98, 41342/98, 41343/98 and 41344/98, § 119, ECHR 2003-II). Unfortunately, that important consideration is omitted from the present judgment.

Church autonomy requires a positive and respectful approach by the State, which stems from the State's obligations to respect freedom of religion, and which is also applicable to the rules and regulations of the religious organisation in question. However, Church autonomy does not mean public recognition of a sovereign religious legal regime. The Court is not ready to accept any absolute immunity when it comes to fundamental

human rights even in regard to State "sovereign immunity" (see *Cudak v. Lithuania* [GC], no. 15869/02, ECHR 2010, in the "access to court" context).

In *Refah Partisi (the Welfare Party) and Others* (cited above), it was held that the autonomy of a religious community was a matter to be respected but that it did not entail legal pluralism and did not require domestic courts to become the enforcers of autonomous religious decisions which fell short of their requirements of adequate justification. Without such reasons, legal evaluation becomes arbitrary and there can be no effective rights protection.

Courts do often consider semi-autonomous and "alien" legal regimes; they do so with respect to comity but within the requirements of "*ordre public*". Such non-State legal regimes remain on the "radar" of the Convention. Even if, to some extent, the present case is about relations between the applicant and the Church, and therefore a matter outside the sphere ordinarily controlled by the State, the Convention guarantees still apply and arbitrariness cannot be tolerated in case it results in the restriction of rights[7].

The duty of the State to respect autonomy is a matter of degree. It is certainly greater in matters concerning the internal organisation of the life of a religious group and absolute when it comes to defining a religion's doctrines. But not even internal relations and acts within the religious organisation or community are exempt from State obligations to protect Convention rights. Where the State intervenes to punish incitement to imminent violence advocated by an office holder of a religious organisation and stemming from a religious precept, that intervention will not be barred by considerations of Church autonomy. Moreover, the internal affairs of a religious organisation have effects that transgress the borders of autonomy which can be considered without contravening the principle of autonomy. Consider the following hypothetical example of a priest (or pastor, etc.) "employed" by a religious organisation such as the Catholic Church. The priest teaches religion to children on the premises of a State school, as permitted by school management or as enabled by law. It is up to the Church to conclude that the teachings of that teacher are not acceptable. As a rule it is not the business of the State to ask for the reasons of the Church behind a decision which results in the discontinuance of the teaching activity, except perhaps in a case where the reason is clearly racist in nature.

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7. See *Negrepontis-Giannisis v. Greece*, no. 56759/08, § 101, 3 May 2011: "The Court reiterates that it is not in theory required to settle disputes of a purely private nature. That being said, in exercising the European supervision incumbent on it, it cannot remain passive where a national court's interpretation of a legal act, be it a testamentary disposition, a private contract, a public document, a statutory provision or an administrative practice appears unreasonable, arbitrary or, as in the present case, blatantly inconsistent with the principles underlying the Convention (see *Larkos v. Cyprus* [GC], no. 29515/95, §§ 30-31, ECHR 1999-I, and *Pla and Puncernau v. Andorra*, no. 69498/01, § 59, ECHR 2004-VIII)."

However, as soon as the priest loses financial benefits as a consequence of the above decision, the State is entitled to consider the situation. Where the impact of a decision that originates in the autonomous activities and decision-making of a religious organisation concerns relations outside that organisation, the weight of the religious organisation's autonomy diminishes. This is the situation in the present case: the decision of the Bishop, which is protected to a very great extent within the Church, falls under the ordinary balancing scrutiny that the Court applies where two Convention rights collide. The internal reasons for the Bishop's decision are not subject to the review of public authorities or domestic courts, nor of this Court; however, the *effects* of the decision are. Autonomy of religious organisations cannot entail violation of other Convention rights.

While the Court shies away from considering the implications of limited autonomy, the judgment contains another important reference to its functional limits. In paragraph 132, the Court refers to the duties of the State as determined in *Sindicatul "Păstorul cel Bun"* (cited above). In particular, it considers that Church autonomy does not exempt domestic courts from the duty to scrutinise the appropriateness of an autonomy-serving interference with a Convention right. Like domestic courts, the Court accepts that the religious organisation has to show that it is not violating the Convention. This means that while its internal reasons are beyond the reach of the State, the religious organisation must provide a "translation" of those arguments in a form that is understandable to the public. In other words, the explanation has to be accessible for normal comprehension, as determined judicially.

The difficulty in the present case is that, in its Agreement with the Holy See, the State accepted a specific arrangement that could not result in proper "translation" in the domestic courts. The Bishop was not party to the procedure, as the State was the formal employer, and hence it was the State which had to provide reasons on behalf of the Church as its proxy under the Agreement. The State was satisfied that the Bishop's references to "scandal" were sufficient for judicial comprehension and not arbitrary by the judicial standards of public discourse. The State, however, could only second-guess the reasons for the dismissal – a second-guessing which was forced upon all the judicial bodies dealing with the matter. Consequently, the question of which rights were interfered with and the subsequent balancing of those rights became arbitrary.

The State also failed to provide grounds which would have made the dismissal understandable as non-arbitrary. Speculation about a "scandal" cannot provide sufficient reasons for interference with the rights of the applicant. In this context the undeniable duties of loyalty of the (former) priest cannot be properly evaluated. It is hard to accept a dismissal that is applied as a result of the exercise of Convention-protected rights where it has not been proved that the decision was not arbitrary, given that for a long

time the same issue had not been a problem and was tolerated even after a report in the press. The undeniable right of the Church to determine who qualifies to teach religion under various religion-based criteria is duly taken into consideration by the Court; however, here the domestic judicial process was deprived of proper consideration of the genuine grounds for the dismissal and their weight in terms of the impact on the applicant's rights.

It was well known in the local community that the applicant was married and had children. The same facts were also well known to the religious authorities. The priest's views and involvement in a movement that challenged certain teachings of the Catholic Church (but was not prohibited by the Church authorities) were also known. For eleven years none of this constituted a scandal. According to domestic speculation, the situation only became a "scandal" once it was reported in a newspaper article. Once again, it is not for a State court to enquire what amounts to a "scandal" for the Church. But when the issue has consequences for public employment, it is necessary to make this comprehensible in order to be able to determine whether the resulting disadvantage is an *ex-post* interference with Convention rights. In the interpretation provided by the State and accepted both by the domestic courts and in the understanding of the Court, the publication of an article in which the known facts were displayed constituted the scandal. According to the Court, while this "going public" was not the applicant's initiative, he should have objected to it. Was he thus expected not to walk in public with his family? Was he expected to make a statement saying that he did not share the views of the movement, when he was known to share those views? One cannot enjoy one's family and private life if one has to hide it, or live in the knowledge that unemployment might be the consequence of one's family relationships. Is a teacher of religion expected to be able to hold and express certain views and at the same time be particularly careful in preventing those views from becoming known? These expectations, contradictory as they may be, are the uncontested meaning and effect of the non-renewal.

The sequence of events contributes to the lack of a demonstration that the grounds for the interference were proportionate and not arbitrary. The applicant was employed as a priest after having been married and having five children. The Bishop found that the applicant had caused a scandal, and was therefore disqualified, ten months *after* the article in question. He relied on the "scandal" clause of the papal rescript that was communicated nine months *after* the events and which referred to the marriage that had taken place many years earlier.

In the absence of proper reasons (which the State authority, as a proxy of the Church, failed to give), the legal process intended to provide adequate protection of fundamental rights cannot be considered appropriate in the sense of providing relevant and sufficient reasons. In the absence of proper information it cannot be determined – as required by the rule of law – why

the applicant's exercise of his right to free expression, which was critical but clearly permitted within the Church, constituted a scandal. Nor is it clear why the fact of having a family became a scandal after more than a decade of the situation being known.

5. The standards of judicial scrutiny applicable to a review of public acts which originate in a decision falling within the ambit of Church autonomy, where those acts affect Convention rights, have been set out in an exemplary manner by the Spanish Constitutional Court (see judgment no. 38/2007), which has reiterated that "[t]he civil effects of ecclesiastical decisions, regulated by civil law, are the exclusive jurisdiction of the civil judges and courts, as a consequence of the principles of a non-denominational State with no official religion (Article 16.3 of the Spanish Constitution)".

Adequate judicial supervision cannot be provided unless religious considerations which affect civil or public law can be made legally cognisable for the benefit of the judicial authority. This is often referred to as the requirement of "translation". This principle does not call into question the veracity of a Church's positions, but rather concerns their applicability in civil and public relations. The position of a Church regarding the teaching of religion is translated into the language of the Convention through reference to Article 9 and Article 2 of Protocol No. 1. Further, as stated by the Spanish Constitutional Court (judgment no. 38/2007):

> "[O]nce the strictly 'religious' grounds for the decision have been determined, the court will have to weigh up any competing fundamental rights in order to determine to what extent the right to freedom of religion, exercised through the teaching of religion in schools, may affect the employees' fundamental rights in their employment relationships."

It is a pity that in this specific case the highest Spanish court and this Court have failed to apply these sound principles consistently. The "scandal" was not convincingly translated to meet the requisite judicial standards. Or better put, it was accepted that it was above and beyond the need for such translation. For this reason I could not agree with the majority.

DISSENTING OPINION OF JUDGE DEDOV

In the present case the Grand Chamber has divided almost in the middle. Both the majority and the minority of judges (I joined the latter) used the same proportionality test, but they have come to opposite conclusions. This unfortunate and discouraging result forces me to present a principal argument in favour of a violation of Article 8 of the Convention.

Does the Church's autonomy constitute a legitimate aim in the present case? Although the proportionality test is always objective and justified, mistakes could be made owing to a subjective understanding of the legitimate aim. The issue was raised by the Grand Chamber as to whether the protection of the autonomy of a religious organisation prevailed over the right to family life. But it is easy to see that, while the autonomy concept has been considered as the legitimate aim, at the same time it has been regarded as one of competing rights in paragraphs 122 and 123 of the judgment. This approach is not acceptable. If the Court's task is to balance the rights and to place them into some hierarchy, it has to find another legitimate aim among the basic values and purposes of the Convention.

The Convention protects freedom of religion so that no one can be persecuted for their religious beliefs. But it does not entitle religious organisations, even in the name of autonomy, to persecute their members for exercising their fundamental human rights. If the Convention system is intended to combat totalitarianism, then there is no reason to tolerate the sort of totalitarianism that can be seen in the present case.

Indeed, for centuries celibacy has been a well-known and serious problem for thousands of priests who have suffered for their whole lives while concealing the truth about their family life from the Catholic Church and fearing punishment. The adverse consequences of the outdated rule of celibacy have been portrayed by many writers from Victor Hugo (*The Hunchback of Notre-Dame*) to Colleen McCullough (*The Thorn Birds*), as well as by numerous media reports, including those on clerical sex-abuse scandals in many countries.

Obviously, complete deprivation of family life violates the Convention, and it cannot be justified by any public interest or religious autonomy. Even the long-standing Catholic Church cannot protect itself behind the autonomy concept, as the celibacy rule contradicts the idea of fundamental human rights and freedoms. This, in my view, should be used as a principal reason for finding a violation of Article 8 of the Convention.

The right to family life is vital for any individual. For the purposes of the present case it cannot be regarded as just a "form of personal development" or a "right to establish relationships with other human beings" (paragraph 126 of the judgment). The right to have a family is one of the fundamental or, to be more precise, natural rights specified in the Convention. Family life cannot be impaired in favour of an organisation's membership

requirements, employment rules, functioning, religious doctrine or autonomy. This natural right cannot be impaired under any such circumstances, even if the applicant voluntarily agreed to abide by the celibacy rule (as he wanted to be a priest and to devote his life to this kind of service), because family life cannot be subjected to any transaction either.

Therefore, the State cannot abstain from protecting the fundamental right to family life which prevails over any kind of organisational autonomy. However, the State has failed, not just to abstain from interference concerning the applicant, but also to exercise its positive obligation with respect to at least 6,000 priests of the Catholic Church. If the applicant, after many years of fear, gathered all his courage to make his family situation public in order to bring his humiliation to an end and to express his support for other married priests, he deserves to receive an adequate response from the Court in compliance with the aims of the Convention system. I believe that optional celibacy is the best way out of this problem and that it could also – I hope – serve as a preventive measure against the sexual abuse of children by members of the clergy in the future.