

The European Court reaffirms the right to autonomy of religious organisations

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On June 12, 2014, the European Court of Human Rights pronounced a judgement on the important case, [Fernández-Martínez v. Spain](#) (no 56030/07). Adopted by a very small minority (9 votes to 8), the Grand Chamber reaffirms the principle of the institutional autonomy of religious communities with regard to the State.

The case involved the non renewal of a priest's contract as a Catholic religion and moral education teacher following the publication of an article which exposed his marriage and his involvement in a movement opposed to the teachings of the Catholic Church. In Spain, religions teachers are approved by religious authorities and employed by the State. Following this publication, his Bishop did not renew the agreement authorising the applicant to teach, which led to the non-renewal of his work contract by the State.

The plaintiff challenged this non-renewal, arguing that the State's decision had violated his fundamental rights, particularly, his privacy and freedom of religion, and constitutes a discriminatory measure.

The ECLJ intervened in this case as third party, on his behalf and as a representative of the Spanish Episcopal Conference.

This case is important since it concerns the relationship between the Church and the State, and in particular freedom of religious communities to operate autonomously, according to their own doctrinal norms. It involved determining the limits of this freedom and the consequential scope of the power of the civil authorities in their regard, knowing that the values of the religions and civil authorities are sometimes conflicting.

In summary, the Court reaffirmed that believers' rights to freedom of religion implies that their community can operate peacefully and be autonomous without the State's arbitrary interference. It also emphasized that civil authorities need not set themselves up as internal conflicts arbitrators in religious organizations, the right to freedom of religion excluding any appreciation on the part of the State on the legitimacy of religious beliefs or their modes of expression.

The Court also noted that the right to freedom of religion does not guarantee a "right to dissent". Thus, in the case of a disagreement between a religious community and one of its members, the individual's freedom of religion is exercised by his ability to freely leave the community. In addition, the principle of religious autonomy forbids the State to force a religious community to accept or exclude an individual or to entrust the individual with any religious responsibility.

With regards to the relationship between the community and its collaborators, as in this case, the Court confirmed that religious communities may require a duty of specific loyalty on the part of the people who work for them or represent them, depending on the functions performed. This duty is extended to the observance of the religious doctrine and rules and thus exceeds what a non-religious employer may demand of his employees. This duty of loyalty allows the Church to demand that collaborators respect its teachings, and to sanction failure to do so. This duty of loyalty can only be invoked by the religious authorities on condition that the collaborator has knowingly and voluntarily agreed to it.

The Court emphasized that such sanction, if it infringed a civil right of the collaborator; must be challengeable before a national court. But, the Strasbourg judges précised that the national court can only act within the limits imposed by respect for the autonomy of the religious community. The Court stated that the civil court must ascertain that the breach of the duty of loyalty causes a likely and serious risk of infringement of the rights of the religious community, that the sanction does not go beyond what is necessary to respond to this infringement, and finally that the sanction has a motive falling within the scope of the autonomy of the Church, i.e. in general a purely religious motive.

Applying those criteria to the present case, the Strasbourg Court ruled that Spanish courts could legitimately limit their examination to the verification of the respect of fundamental rights in place, from the moment the motivation for non-renewal of the contract was religious.

This Grand Chamber judgement upholds a first judgement of the 15th May 2012 adopted by six votes to one. It is also part of the aftermath of the Grand Chamber judgement *Sindicatul Pastoral cel bun v. Romania* (no 2330/09), of July 9th 2013, by which the Court had reaffirmed the principle of autonomy of religious organizations. These two Grand Chamber judgments, *Sindicatul Pastoral cel bun* and *Fernández-Martínez*, adopted at the end of long proceedings, and a series of other similar cases¹, determine

¹Lombardi Vallauri v. Italy, no 39128/05, 20 octobre 2009 ; Obst v. Germany, no 425/03, 23rd September 2010 ; Schüth v. Germany, no 1620/03, 23 September 2010 ; Siebenhaar v. Germany, no 18136/02, 3 February 2011. For pervious jurisdiction, refer to Hassan and Tchaouch v. Bulgarie [GC], no 30985/96, and the Commission's decision on 6th September 1989, Rommelfanger v. Germany, no 12242/86.

the extent and the legal framework of the freedom enjoyed in internal functioning of religious communities' with regard to the civil authorities.

It is appropriate to welcome this judgement by the Court, however, it is surprising and worrisome that it was adopted by a one vote majority, because if similar events had occurred within a business, there is no doubt that none would have challenged the employer's right to dismiss a publicly disloyal employee.

The Permanent Representation of the Holy See to the Council of Europe published a "[note on the Catholic Church's freedom and institutional autonomy](#)" on the occasion of the examination of both cases. This note was meant to explain the functioning of the Church, and particularly its understanding of "freedom". In modern time, the Europe culture has developed an understanding of freedom that is opposed to classic freedom the Church is attached to. For the Church, freedom is exercised by personal commitment (such as religious commitment), while according to contemporary culture, freedom results more from the lack of real commitment (for example freedom of divorce) and is independent from the truth.

The danger is to attempt to impose the modern conception of freedom to the proponents of the classical one, as the French Revolutionaries did against the religious by 'releasing' them by force of their religious commitment. Moreover, in the background of this case, some judges wanted to conduct the trial of the ecclesiastical celibacy, as the plaintiff had asked. This was particularly the case of the Russian judge Dedov who, forgetting the rigour required by his function, did not hesitate in asserting that "*the rule of celibacy (of priests) is contrary to the idea of the human rights and fundamental freedoms*" and "*constitutes violation of the Convention*". By wanting to subject religion to his ideology, such an assertion not only violates religious freedom, but it distorts human rights by making it a vulgar and dangerous ideology, as did communism.

In fact, in this case, it is the right of the Church to offer its members real religious commitments which were at stake. However, in so far as the Church and the spiritual life are based on personal voluntary commitment, taking the Church's right to sanction this commitment denies not only its freedom, but also an important condition for its functioning.

This judgment constitutes a new phase in the recognition and respect of the freedom of the Church in the heart of and towards the European society. The ECLJ is pleased to have been a part of this.

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