



## The decision not to renew the contract, as religious education teacher, of a Catholic priest who was married and had several children, after his active involvement in a movement opposing Church doctrine had been made public, was legitimate and proportionate

In today's Grand Chamber judgment in the case of [Fernández Martínez v. Spain](#) (application no. 56030/07), which is final<sup>1</sup>, the European Court of Human Rights held, by nine votes to eight, that there had been:

**no violation of Article 8 (right to respect for private and family life) of the European Convention on Human Rights.**

The case concerned the non-renewal of the contract of a married priest and father of five who taught Catholic religion and ethics, after he had been granted dispensation from celibacy and following an event at which he had publicly displayed his active commitment to a movement opposing Church doctrine.

In the Court's view, it was not unreasonable for the Church to expect particular loyalty of religious education teachers, since they could be regarded as its representatives. Any divergence between the ideas to be taught and the personal beliefs of a teacher could raise a problem of credibility when that teacher actively challenged those ideas.

The Court found that the Spanish courts had sufficiently taken into account all the relevant factors and had weighed up the competing interests in a detailed and comprehensive manner, within the limits imposed by the respect that was due to the autonomy of the Catholic Church. In the light of the review by the domestic courts, the principle of the Church's autonomy did not seem to have been invoked improperly: it could not be said that the Bishop's decision had been insufficiently reasoned or arbitrary, or that it had been taken with an aim that was incompatible with the exercise of the Catholic Church's autonomy, as recognised and protected under the European Convention.

### Principal facts

The applicant, José Antonio Fernández Martínez, is a Spanish national who was born in 1937 and lives in Cieza (Spain). He was ordained as a priest in 1961. In 1984 he applied to the Vatican for dispensation from celibacy, but did not receive an immediate response. He was married in a civil ceremony in 1985, and he and his wife have five children. He taught Catholic religion and ethics in a State high school of the Murcia region from October 1991 onwards, under an annually renewable contract.

In November 1996 the Murcia newspaper *La Verdad* published an article about the "Movement for Optional Celibacy" of priests (MOCEOP) of which Mr Fernández Martínez was an active member. The article included comments by a number of participants indicating their disagreement with the Church's position on abortion, divorce, sexuality and contraception, and it was illustrated by a picture of the applicant with his family.

<sup>1</sup> Grand Chamber judgments are final (Article 44 of the Convention).

All final judgments are transmitted to the Committee of Ministers of the Council of Europe for supervision of their execution. Further information about the execution process can be found here: [www.coe.int/t/dghl/monitoring/execution](http://www.coe.int/t/dghl/monitoring/execution)

On 15 September 1997 Mr Fernández Martínez was granted dispensation from celibacy by the Vatican in a rescript, which also released him from the rights and duties associated with his former clerical status. The rescript further indicated that he could no longer teach religion in a State school, unless the local Bishop decided otherwise, and provided there was no “scandal”. On 29 September 1997 the Bishop of Cartagena informed the Ministry of Education that it was not renewing Mr Fernández Martínez’s contract.

Mr Fernández Martínez first appealed to the administrative authorities against the decision not to renew his contract, but he was unsuccessful. He then initiated proceedings for wrongful dismissal before the Murcia employment tribunal, which upheld his claim and ordered his reinstatement with the payment of salary arrears, characterising the non-renewal as a “dismissal”. The tribunal found that he had been discriminated against because of his family situation and his membership of the “Movement for Optional Celibacy” of priests.

The Education Ministry and the Diocese appealed against that decision. In a judgment of 26 February 2001 the High Court of Justice upheld their appeal. The court took the view that the Bishop, by virtue of his prerogatives under the Code of Canon Law, had merely sought to ensure that the teacher observed his duty of discretion and that his personal situation did not give rise to any scandal. If necessary, and in view of the conditions laid down in the rescript releasing him from celibacy, the Bishop had been obliged not to renew his contract. The High Court of Justice found that, since the renewal of the contract was subject to the Bishop’s annual approval, the case concerned the non-renewal of a temporary contract and not a dismissal.

Mr Fernández Martínez lodged an *amparo* appeal with the Constitutional Court, which dismissed the appeal. The Constitutional Court took the view that the decision not to renew his contract was not based on any discriminatory intention related to his family situation and that it had been the applicant himself who, of his own free will, had made public both his family situation and his membership of MOCEOP. The court emphasised the constitutionality of the system of selecting and recruiting teachers of Catholic religion in State schools and pointed out that religious education teachers in Spain had a special status which justified taking into account their religious beliefs when they were chosen. The Constitutional Court noted that the reason for the non-renewal decision had been a newspaper article which had given rise to a “scandal” – according to the arguments of the Diocese – because it had made public two personal characteristics of the applicant already known to the Diocese: his family situation as a priest who was married and had several children, and his membership of a movement which challenged certain precepts of the Catholic Church. That publicity constituted the factual basis for what the Bishop regarded as the “scandal”.

## Complaints, procedure and composition of the Court

Relying in particular on Article 8 (right to respect for private and family life), Mr Fernández Martínez complained that his contract of employment had not been renewed. He alleged that this was an interference with his private and family life.

The application was lodged with the European Court of Human Rights on 11 December 2007. The Court delivered a [Chamber judgment](#) on 15 May 2012. On 18 July 2012 the applicant requested that the case be referred to the Grand Chamber under Article 43 (referral to the Grand Chamber) and on 24 September 2012 the panel of the Grand Chamber [accepted](#) that request. A [public hearing](#) was held on 30 January 2013.

Judgment was given by the Grand Chamber of 17 judges, composed as follows:

Dean **Spielmann** (Luxembourg), *President*,  
Guido **Raimondi** (Italy),  
Mark **Villiger** (Liechtenstein),  
Isabelle **Berro-Lefèvre** (Monaco),

Ján Šikuta (Slovakia),  
George Nicolaou (Cyprus),  
András Sajó (Hungary),  
Ann Power-Forde (Ireland),  
Işıl Karakaş (Turkey),  
Angelika Nußberger (Germany),  
André Potocki (France),  
Paul Lemmens (Belgium),  
Helena Jäderblom (Sweden),  
Valeriu Griţco (the Republic of Moldova),  
Faris Vehabović (Bosnia and Herzegovina),  
Dmitry Dedov (Russia) and,  
Alejandro Saiz Arnaiz (Spain), *ad hoc Judge*,

and also Johan Callewaert, *Deputy Grand Chamber Registrar*.

## Decision of the Court

### Article 8

The Court reiterated that there was no general right to employment or to the renewal of a fixed-term contract. However, there was no reason of principle why the notion of “private life” should be taken to exclude professional activities. In the present case, private life and professional life were particularly intertwined, as factors relating to private life were regarded as qualifying criteria for the professional activity in question. The Court thus found Article 8 applicable, as the non-renewal of the applicant’s contract, on account of events mainly relating to personal choices he had made in the context of his private life, had seriously affected his chances of carrying on his specific professional activity.

The Court noted that the Ministry of Education had acted in accordance with the 1979 Agreement between Spain and the Holy See, supplemented by the Ministerial Order of 11 October 1982, which was an international treaty and incorporated as such into Spanish law in conformity with the Spanish Constitution. The non-renewal of the applicant’s contract of employment had thus been based on the applicable Spanish law.

The Court noted that the Bishop had relied in particular on the notion of “scandal” to justify his decision. Even though the notion of scandal was not expressly provided for in the part of the Code of Canon Law concerning religious education teachers, it could be considered to refer to notions that were themselves in the canons such as “true doctrine”, “witness of Christian life” or “religious or moral considerations”. Those provisions expressed specific requirements with foreseeable effects. Since Mr Fernández Martínez had been the director of a seminary, he could have foreseen that the public display of his militancy against 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. The Court found that the non-renewal of his contract was thus in accordance with the law.

Like the parties, the Court took the view that the decision not to renew the applicant’s contract pursued the legitimate aim of protecting the rights and freedoms of the Catholic Church, and in particular its autonomy as to the choice of persons qualified to teach religious doctrine.

As regards the autonomy of faith groups, the Court noted that religious communities traditionally and universally existed in the form of organised structures. The right of believers to freedom of religion meant that they should be allowed to associate freely, without arbitrary State intervention.

The autonomous existence of religious communities went to the very heart of the protection which Article 9 of the Convention afforded. It had a direct interest, not only for the actual organisation of those communities but also for the effective enjoyment by their 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.

However, Article 9 of the Convention did not enshrine a right of dissent within a religious community. In the event of any disagreement between a religious community and one of its members, the individual's freedom of religion was exercised by the option of freely leaving the community.

Respect for the autonomy of religious communities recognised by the State implied, 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 was therefore not the task of the national authorities to act as the arbiter between religious communities and the various dissident factions that existed or might emerge within them.

The Court reiterated that, but for very exceptional cases, the right to freedom of religion as guaranteed under the Convention excluded any discretion on the part of the State to determine whether religious beliefs or the means used to express such beliefs were legitimate. Moreover, the principle of religious autonomy prevented the State from obliging a religious community to admit or exclude an individual or to entrust someone with a particular religious duty.

As a consequence of their autonomy, religious communities were entitled to demand a certain degree of loyalty from those working for them or representing them.

The Court, whilst observing that Mr Fernández Martínez had not received the dispensation from the obligation of celibacy until after the publication of the newspaper article, took the view that, by signing his successive employment contracts, he had knowingly and voluntarily accepted a special 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 were permissible under the Convention where they were freely accepted. The Court was not convinced that at the time of the publication of the article in *La Verdad*, this contractual duty of loyalty had ceased to exist. In choosing to accept a publication about his family circumstances and his association with a protest-oriented meeting, Mr Fernández Martínez had severed the bond of trust that was necessary for the fulfilment of his professional duties.

The Court observed that Mr Fernández Martínez had voluntarily been part of the circle of individuals who were bound by a duty of loyalty towards the Catholic Church. The fact of being seen as campaigning in movements opposed to Catholic doctrine clearly ran counter to that duty. In addition, there was little doubt that the applicant, as former priest and director of a seminary, had been or must have been aware of the substance and significance of that duty.

Mr Fernández Martínez had been able to complain about the non-renewal of his contract before the Employment Tribunal and then before the Murcia High Court of Justice, which had examined the lawfulness of the measure in question under ordinary labour law, taking ecclesiastical law into account, and had weighed up the competing interests of the applicant and the Catholic Church. At last instance the applicant had been able to lodge an *amparo* appeal with the Constitutional Court. Since the reasoning for the non-renewal decision had been strictly religious, the domestic courts had considered that they had to confine themselves to verifying respect for the fundamental rights at stake. Thus, the Constitutional Court had taken the view that the State's duty of neutrality precluded it from ruling on the notion of "scandal" used by the Bishop to refuse to renew the contract, or on the merits of the optional celibacy of priests as advocated by the applicant. It had examined the extent of the interference with the applicant's rights and had found 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.

The Court was of the view that the domestic courts had taken into account all the relevant factors and had weighed up the interests at stake in detail and in depth, within the limits imposed on them by the necessary respect for the autonomy of the Catholic Church. In the light of the review exercised by the national courts, it did not appear that the autonomy of the Church had been improperly invoked: the Bishop's decision could not 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.

Having regard to the margin of appreciation afforded to the State, the Court found that the interference with the applicant's right to respect for his private life had not been disproportionate. The Court concluded by nine votes to eight that there had been no violation of Article 8.

Having regard to its conclusion under Article 8, the Court found that there was no need to examine the other complaints separately.

## Separate opinions

Judges Spielmann, Sajò, Karakaş, Lemmens, Jäderblom, Vehabović, Dedov and Saiz Arnaiz expressed a joint dissenting opinion; Judges Spielmann, Sajò and Lemmens expressed a joint dissenting opinion; Judges Sajò and Dedov each expressed a dissenting opinion. These opinions are annexed to the judgment.

*The judgment is available in English and French.*

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