



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

SECOND SECTION

CASE OF TRAVAŠ v. CROATIA

(Application no. 75581/13)

JUDGMENT

STRASBOURG

4 October 2016

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Travaš v. Croatia,

The European Court of Human Rights (Second Section), sitting as a Chamber composed of:

Işıl Karakaş, *President*,

Julia Laffranque,

Nebojša Vučinić,

Valeriu Griţco,

Ksenija Turković,

Jon Fridrik Kjølbro,

Stéphanie Mourou-Vikström, *judges*,

and Stanley Naismith, *Section Registrar*,

Having deliberated in private on 6 September 2016,

Delivers the following judgment, which was adopted on that date:

PROCEDURE

1. The case originated in an application (no. 75581/13) against the Republic of Croatia lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a Croatian national, Mr Petar Travaš (“the applicant”), on 22 November 2013.

2. The applicant was represented before the Court, first by Ms L. Kušan, a lawyer practising in Ivanić-Grad, and subsequently by Ms N. Owens from the law firm Owens and Houška, a lawyer practising in Zagreb. The Croatian Government (“the Government”) were represented by their Agent, Ms Š. Stažnik.

3. Relying on Article 8, taken separately and together with Article 14 of the Convention, the applicant alleged that his dismissal from his job as a teacher of religious education had constituted an unjustified interference with the exercise of his right to private and family life.

4. On 27 January 2014 the applicant’s complaints were communicated to the Government and the remainder of the application was declared inadmissible pursuant to Rule 54 § 3 of the Rules of Court.

5. In addition, third-party comments were received from the Alliance Defending Freedom (“ADF”) and the European Centre for Law and Justice (“ECLJ”) (Article 36 § 2 of the Convention and Rule 44 § 3 of the Rules of Court).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

A. The applicant's situation, his employment and dismissal

6. The applicant was born in 1975 and lives in Rijeka. He is a professor of theology. As a professor of theology he was qualified to teach Catholic religious education and courses in ethics and culture, as provided under the relevant domestic law (see paragraph 36 below).

7. On the basis of a proposal from the applicant's local priest, the archbishop of the Rijeka Archdiocese (*Riječka Nadbiskupija*) issued the applicant with a canonical mandate (*missio canonica*) (no. 492/08-2002) authorising him to teach Catholic religious education.

8. On 1 September 2003, following the intervention of the Catechetical Office of the Rijeka Archdiocese (*Katehetski ured riječke Nadbiskupije*), the applicant was offered, without having to undergo a public competition, a contract of employment of indefinite duration as a layman teacher of Catholic religious education in two State high schools in Opatija.

9. The applicant's appointment was based on the Agreement of 18 December 1996 between the Holy See and Croatia on education and cultural affairs and the relevant complementary domestic regulations (see paragraphs 32, 40-41, 43-44 below). He was thereby employed in the public service and remunerated by the State.

10. At the time, the applicant was married to T.F. They had married in a religious ceremony on 14 December 2002 and their marriage had been recognised at the same time by the civil authorities, as provided for under the relevant domestic law (see paragraphs 33 and 38 below).

11. The applicant's subsequent divorce from T.F. was registered before the civil authorities, and in March 2006 he married another woman in a civil ceremony.

12. On 18 April 2006 the Rijeka Archdiocese informed the applicant that his civil marriage to another woman while still bound, in the eyes of the Church, by the religious marriage to his previous wife was contrary to Christian doctrine and disqualified him from teaching religious education. The relevant part of the letter read:

"It has been established that in March this year you concluded a civil marriage although you are still bound by the Sacrament of Matrimony to a third person. The local Catechetical Office of the Rijeka Archdiocese issued you a mandate to teach Catholic religious education in school. Each religious education teacher must demonstrate that he is 'outstanding in true doctrine and the witness of a Christian life' (Canon 804 § 2) and must participate in the sacramental and evangelical community of a parish. The new situation does not enable you to do this.

You are therefore invited to explain in writing as soon as possible the manner in which your canonical situation can be harmonised with canonical mandate no. 492/08-2002 and then, by 28 April 2006, to come for a meeting in the Catechetical Office.”

13. After obtaining the applicant’s explanation of his situation, on 31 August 2006 the Rijeka Archdiocese withdrew his canonical mandate to teach Catholic religious education.

14. On the same day the Rijeka Archdiocese informed the two schools in which the applicant was employed of the new situation. The relevant part of the letter read:

“We should inform you that on 31 August 2006 canonical mandate no. 492/08-2002 was withdrawn from the teacher of religious education, Petar Travaš.

The canonical mandate was withdrawn under Article 3 § 2 of the Agreement between the Holy See and Croatia on education and cultural affairs (Official Gazette-International Contracts no. 2/1997) because of a breach of Canon Law (Canon 804 § 2). Petar Travaš explained his situation in writing.”

15. On 8 September 2006, relying on section 106 § 1(2) of the Labour Act (regular termination of an employment contract), the schools dismissed the applicant from his teaching job on the grounds that he could no longer be a teacher of Catholic religious education without a canonical mandate. They stressed that it had been impossible to find another position for the applicant or to offer him an alternative post within the schools. The applicant was given two months’ notice and the right to an indemnity.

B. Judicial proceedings

16. On 13 October 2006 the applicant instituted proceedings in the Opatija Municipal Court (*Općinski sud u Opatiji*), challenging the decisions on his dismissal.

17. On 22 February 2007 the Opatija Municipal Court dismissed the applicant’s civil action on the grounds that as stipulated in the Agreement between the Holy See and Croatia and the related Agreement between the Government of Croatia and the Croatian Episcopal Conference on Catholic religious education in State schools and pre-school institutions, he could not teach Catholic religious education without a canonical mandate. The Opatija Municipal Court also found that the schools had examined the possibility of appointing the applicant to another suitable post, but that as there was no such post, they had justifiably terminated his contract of employment.

18. The applicant challenged the judgment of the Opatija Municipal Court by lodging an appeal before the Rijeka County Court (*Županijski sud u Rijeci*). He argued that he had not breached the Labour Act or any other relevant legislation and that the Agreement between the Government of Croatia and the Croatian Episcopal Conference did not require that a person whose canonical mandate had been withdrawn should be dismissed.

19. On 17 October 2007 the Rijeka County Court dismissed the applicant's appeal, endorsing the findings and reasoning of the Opatija Municipal Court.

20. On 18 and 19 February 2008 the applicant lodged an appeal on points of law with the Supreme Court (*Vrhovni sud Republike Hrvatske*) and a constitutional complaint with the Constitutional Court (*Ustavni sud Republike Hrvatske*) respectively. He relied, *inter alia*, on Articles 8 and 14 of the Convention, and the corresponding provisions of the Constitution, arguing that there had been an unjust interference with his private and family life as a result of the decisions on his dismissal, and that his dismissal had been of a discriminatory nature. He contended, in particular, that the conclusion of a second marriage contract in a civil ceremony could not be a reason for dismissal under the Labour Act or any other State laws. He therefore considered that his dismissal based on the fact that he had divorced his former wife and remarried in a civil ceremony had disproportionately affected his private life.

21. On 3 December 2008 the Supreme Court dismissed the applicant's appeal on points of law as unfounded, endorsing the reasoning of the lower courts. In particular, the Supreme Court stressed that the applicant's dismissal had been based on the withdrawal of his canonical mandate, which was a necessary requirement for employment as a teacher of Catholic religious education as provided for under the relevant domestic law. The Supreme Court also held that it was not for the schools or the courts to enter into the examination of the reasons for the withdrawal of the applicant's canonical mandate by the Church.

22. On 7 February 2009 the applicant supplemented his constitutional complaint by extending his arguments to the judgment of the Supreme Court. He contended in particular that the Supreme Court's refusal to examine the reasons for his dismissal had essentially deprived him of the possibility to have those reasons effectively challenged in court.

23. A public hearing was held and on 22 May 2013 the Constitutional Court dismissed the applicant's constitutional complaint, finding that there had been no violation of his right to respect for his private and family life, or any discrimination against him. The relevant part of the decision reads:

"10.1.2. It follows from the available material and the [appellant's] constitutional complaint that the appellant's first marriage had been concluded in a religious ceremony before an official of the religious community and that [the appellant] was divorced on the basis of a final court decision as provided for under the relevant Croatian law. The Constitutional Court notes that the appellant subsequently concluded a new marriage in a civil ceremony without any restriction imposed by the State. It follows that the State did not inhibit his determination to remarry, nor did it prevent him from remarrying and founding a new family.

Accordingly, the appellant's right to marry under Article 12 of the Convention and his constitutional right to respect for his family life under Article 35 of the Constitution and Article 8 of the Convention has not been breached.

...

10.2.2. ... [T]he Constitutional Court starts by observing that the Republic of Croatia and the Holy See concluded an Agreement on education and cultural affairs, signed in Zagreb on 18 December 1996. The Act ratifying that Agreement came into force on 11 February 1997 and thereby this international treaty became part of the internal legal order of the Republic of Croatia with precedence in terms of its legal effects over the [domestic] statutes.

By this Agreement the Republic of Croatia undertook certain obligations which must be abided by and respected. Primarily, it undertook to secure Catholic religious education in all State elementary and high schools and all pre-school institutions as a mandatory class for all those who have chosen that course, under the same conditions applicable to other mandatory classes.

[The Agreement] stipulates that Catholic religious education will be taught by qualified religious education teachers who are suitable for that position, in the opinion of the Church authorities, and meet the requisite legal requirements of the Croatian legislation. It also stipulates that teachers of religious education must hold a canonical mandate (*missio canonica*) issued by the diocesan bishop, and that withdrawal of the mandate leads to an immediate loss of the right to teach Catholic religious education. Under the Agreement, teachers of religious education are members, together with their pupils, of the educational corps ... The Republic of Croatia undertook to regulate the programme and functioning of Catholic religious education in schools of all types and levels by a special agreement between the Republic of Croatia and the Croatian Episcopal Conference.

The Constitutional Court considers it necessary to note at this point that the appellant is wrong when he argues that the Agreement between the Holy See and Croatia on education and cultural affairs does not require a canonical mandate as a condition for employment and that such a requirement only flows from the Agreement between the Government of Croatia and the Croatian Episcopal Conference on Catholic religious education in State schools and pre-school institutions of 29 January 1999. The appellant specifically contends that the Agreement between the Government [of the Republic of Croatia] and the Croatian Episcopal Conference is a bilateral agreement which 'is not a statute and does not have the status of an international treaty' and thus could not be binding for [him and the State] nor could it be applied to [his] case, as was done by the [lower] courts.

Although the appellant relies on an erroneous premise that the canonical mandate, as a condition for employment as a teacher of religious education, has been stipulated (only) by the Agreement between the Government [of the Republic of Croatia] and the Croatian Episcopal Conference, it could be held that in essence he considers that the consequences of the withdrawal of the canonical mandate on his contract of employment, and his position of teacher of religious education, are contrary to the Constitution.

The Constitutional Court reiterates that the requirement to hold a canonical mandate in order to teach religious education, and the consequences of its withdrawal (loss of the right to teach Catholic religious education), are provided for under Article 3 of the Agreement between the Holy See and Croatia on education and cultural affairs. ...

10.2.3. The Constitutional Court considers it necessary to examine the special requirement stipulated by the Vatican agreements for employment as a teacher of religious education – the canonical mandate.

The Constitutional Court firstly notes that the Government of the Republic of Croatia have so far concluded seven agreements on questions of mutual interest with different religious communities, in particular with:

- the Serbian Orthodox Church in Croatia (Official Gazette no. 163/03);
- the Islamic community in Croatia (Official Gazette no. 196/03);
- the Evangelical Church in Croatia and the Christian Reformed Church in Croatia (Official Gazette no. 196/03);
- the Evangelical (Pentecostal) Church in Croatia, the Christian Adventist Church in Croatia and the Baptist Union of Croatia (Official Gazette no. 196/03);
- the Bulgarian Orthodox Church in Croatia, the Croatian Old Catholic Church and the Macedonian Orthodox Church in Croatia (Official Gazette nos. 196/03 and 141/04);
- the Jewish community Bet Israel in Croatia (Official Gazette no. 4/12); and
- the Coordination of Jewish townships in Croatia (Official Gazette no. 4/12).

All these agreements have been concluded under the Act on the Legal Status of Religious Communities (Official Gazette no. 83/02) and they all contain identical provisions concerning, for example, mandatory religious education classes for those who have chosen them, the teaching of these courses under the same conditions as other mandatory courses, and the necessity for teachers of religious education to hold the requisite mandate to teach religious education, which can always be withdrawn 'for reasons of deficiencies related to the correctness of teaching and personal morality'.

Such a requirement, given the nature of their job and its proximity with the mission of dissemination of the church's teaching, in the Constitutional Court's view, is not an excessive burden for persons who have chosen to become teachers of religious education. The assessment of a person's adequacy [to teach religious education] by the competent church authorities is a concretisation of the freedom of the church's activity and the right to religious freedom, which [also] includes the right of parents to a religious education of their children.

10.2.4. The enforcement of the obligation undertaken by an international agreement, namely the organisation of Catholic religious education in State elementary and high schools and pre-school education institutions, as provided for under the Agreement between the Holy See and Croatia on education and cultural affairs and the Agreement between the Government of Croatia and the Croatian Episcopal Conference, brought religious education teachers into the employment system of the Republic of Croatia. Although their employment status is not fully defined by these Agreements, the provisions of the Agreement between the Holy See and Croatia on education and cultural affairs in themselves show that the employment status of religious education teachers is a *sui generis* employment status – in order to teach religious education they must be suitable for that position in the opinion of the Church authorities; they must hold a canonical mandate and the withdrawal of the mandate leads to the loss of the right to teach Catholic religious education.

At the public hearing – on the basis of evidence given by the Director of the Administration for legal affairs of the Ministry of Science, Education and Sport of the Republic of Croatia S.S.B., it has been undoubtedly established that the employment of all teachers of religious education was conducted without an open competition, although that has not been provided for under the relevant law. It was only [later],

after the public hearing, by section 12 of the amendments to the Act on Tuition and Education in Elementary and High Schools (Official Gazette no. 90/11) that a new section 107 § 10(6) was introduced, which provides that a contract of employment without an open competition may be concluded for the position of religious education teacher.

In June 2000 the Ministry of Education and Sport forwarded to all county offices for education, culture, information, sport and technical culture a letter concerning the employment status of religious education teachers in elementary and high schools; more precisely, concerning their hiring and dismissal.

The letter indicates that a contract of employment is to be concluded with religious education teachers meeting the relevant requirements, and that if the diocesan bishop by means of a decree withdraws the canonical mandate to teach Catholic religious education from a religious education teacher due to deficiencies related to the correctness of the teaching and personal morality, the contract of employment is to be terminated under section 107 of the Labour Act as an extraordinary dismissal.

10.2.5. It therefore follows that the appellant also entered the State education system without participating in an open competition. At the public hearing he stated that, on the basis of the local priest's recommendation the bishop had given him the mandate, the Ordinary had acted as an intermediary, and the school had given him the employment. Thus, by having the canonical mandate and meeting all other requirements, the appellant and the defendants concluded a 'classical' contract of employment under the Labour Act, which does not mention the canonical mandate or the consequences of its possible withdrawal.

At the public hearing, when asked whether he had been aware of the consequences of his conduct on the right to teach religious education, the appellant stated that he had passed the exam in canon law which he could not have passed without learning [also the issues] concerning those consequences. It follows that the appellant knew that his position depended on the mandate given by the diocesan bishop and that he would lose it if the mandate were withdrawn.

Accordingly, although he had concluded a 'classical' employment contract under the Labour Act, the appellant could not have expected, after he had lost the canonical mandate as a consequence of entering into a new civil marriage while he was still in a 'religious' marriage with a third person, that he would be able to continue to teach religious education. However, he could have expected, irrespective of the internal instructions of the Minister, that the schools where he was employed would take all necessary measures to employ him in another post. This is because the withdrawal of the canonical mandate leads to the loss of the right to teach Catholic religious education and not dismissal or the loss of his degree in theology. Under section 2 of the By-law on the educational level and pedagogical-psychological education of teachers in high schools (Official Gazette nos. 1/86 and 80/99), a degree in theology [opens the possibility] of teaching courses in ethics and culture.

According to the findings of the first-instance court, the defendants had examined the possibility of employing the appellant in another post but, as such a post had not existed, they terminated his contract of employment by so-called regular dismissal, which gives rise to the right to a notice period and an indemnity. In so doing, the defendants acted in the usual manner for terminating a contract of employment by so-called regular dismissal. The Constitutional Court therefore finds that the appellant has not been treated differently from other workers, including employees in schools, in the situation of a termination of a contract of employment by so-called regular dismissal.

The assessment of the lawfulness of the termination of the appellant's contract of employment was, in the light of the relevant labour law, conducted by the [competent] courts at three levels of jurisdiction. In view of the fact that for the position of teacher of religious education there is a further special requirement, without which it is impossible to conclude a contract of employment (a canonical mandate), and having found that the appellant, due to the withdrawal of [the canonical mandate] no longer met the requirements for teaching Catholic religious education, and the fact that the defendants had tried to find him another post ..., the [competent] courts, in the Constitutional Court's view, applied a constitutionally acceptable interpretation according to which the appellant's contract of employment had been terminated in accordance with the relevant law.

10.2.6. Against the above background, in view of the defendants' conduct following the withdrawal of the appellant's canonical mandate and in view of the manner in which the competent courts provided him with judicial protection in terms of the State's obligations under the Vatican agreements, the Constitutional Court finds that the appellant has been afforded sufficient protection of his [employment rights]."

24. Judge D.K. appended a concurring opinion to the decision, agreeing with the findings of the majority. However, he argued that the Constitutional Court had not sufficiently appreciated the fact that the applicant had voluntarily consented to his position depending on the canonical mandate, which the diocesan bishop was authorised to issue and to withdraw.

25. The President of the Constitutional Court gave a dissenting opinion in which she argued, in particular, that the normative framework for the employment of teachers of religious education, based on the Agreement between the Holy See and Croatia on education and cultural affairs, had not been implemented sufficiently precisely in the relevant domestic employment system, which had left a number of issues undetermined.

26. The decision of the Constitutional Court was served on the applicant's representative on 27 May 2013.

C. Other relevant facts

27. In March 2010 T.F. applied to the Rijeka First-instance Inter-diocesan Matrimony Court (*Interdijecezanski ženidbeni sud prvog stupnja u Rijeci*) for the annulment of her religious marriage to the applicant on the grounds that, when entering into the marriage, he had demonstrated "a positive act of the will excluding marriage itself" (see paragraph 45 below, canon 1101 § 2).

28. On 16 August 2012 the Rijeka First-instance Inter-diocesan Matrimony Court accepted T.F.'s application and annulled her religious marriage to the applicant. The decision was then forwarded for examination to the Zagreb Inter-diocesan Appeal Court (*Međubiskupijski prizivni sud u Zagrebu*).

29. The proceedings were held in the applicant's absence because he had failed to respond to the court's summons. During the proceedings, an email

sent by the applicant to T.F. on 4 December 2009 was admitted as evidence. In the email the applicant stated that if he “could return all other sacraments [he] would gladly do it. This way, if [he] managed to get rid of only one, which, as [they] both knew, never existed, [his] heart would be happier.”

30. On the basis of the evidence adduced, on 24 April 2013 the Zagreb Inter-diocesan Appeal Court upheld the decision of the Rijeka First-instance Inter-diocesan Matrimony Court annulling the applicant’s religious marriage to T.F.

II. RELEVANT DOMESTIC MATERIAL

A. Relevant domestic law

1. Constitution

31. The relevant provisions of the Constitution of the Republic of Croatia (*Ustav Republike Hrvatske*, Official Gazette nos. 56/1990, 135/1997, 8/1998, 113/2000, 124/2000, 28/2001, 41/2001, 55/2001, 76/2010, 85/2010 and 5/2014) read as follows:

Article 14

“Everyone in the Republic of Croatia shall enjoy rights and freedoms regardless of their race, colour, sex, language, religion, political or other belief, national or social origin, property, birth, education, social status or other characteristics.

All shall be equal before the law.”

Article 35

“Everyone has a right to respect for and legal protection of his private and family life, dignity, reputation and honour.”

Article 40

“Freedom of conscience and religion and freedom to profess faith or other belief publicly shall be guaranteed.”

Article 41

“All religious communities shall be equal before the law and shall be separate from the State.

Religious communities shall be free, in accordance with the law, to perform religious services publicly, to open schools, educational and other institutions, social-welfare and charitable institutions and to administer them, and in their activities to enjoy the protection and assistance of the State.”

Article 54

“Everyone has the right to work and freedom of work.

Everyone shall be free to choose his or her vocation and occupation, and shall have access to any workplace and post under equal conditions.”

Article 140

“International agreements in force, which were concluded and ratified in accordance with the Constitution and made public, shall be part of the internal legal order of the Republic of Croatia and shall have precedence in terms of their legal effects over the [domestic] statutes. ...”

2. Agreement between the Holy See and Croatia on education and cultural affairs

32. The relevant provisions of the Agreement of 18 December 1996 between the Holy See and Croatia on education and cultural affairs (*Ugovor između Svete Stolice i Republike Hrvatske o suradnji na području odgoja i kulture*, Official Gazette-International Contracts no. 2/1997), ratified on 24 January 1997 and published in the Official Gazette on 11 February 1997, read:

Article 1

“The Republic of Croatia, in view of the principle of religious freedom, respects the fundamental right of parents to religious education of their children. It undertakes to ensure that Catholic religious education is available within the curriculum and in accordance with the wish of the parents or guardians of all State elementary and high schools and pre-school education institutions as a mandatory course for all those who choose it under the same conditions as those applicable to other mandatory courses.

...”

Article 2

“Respecting freedom of conscience and the responsibility of parents for the upbringing of their children, everyone shall have the right to choose religious education.

The education authorities, in cooperation with the competent Church authorities, shall ensure that parents and adult students are able to choose religious education at the time of enrolment in school in a manner excluding any discrimination in education.

...”

Article 3

“Catholic religious education shall be taught by qualified religious education teachers who are, in the opinion of the Church authorities, suitable [for that position] and who meet the requisite legal requirements of the legislation of the Republic of Croatia, respecting all duties and rights flowing from it.

Teachers of religious education must hold a canonical mandate (*missio canonica*) issued by the diocesan bishop. Withdrawal of the mandate leads to the immediate loss of the right to teach Catholic religious education.

Teachers of religious education are members, together with their pupils, of the educational corps ...

The curriculum and functioning of Catholic religious education in schools of all types and levels shall be regulated by special agreements between the Government of the Republic of Croatia and the Croatian Episcopal Conference.”

3. Agreement between the Holy See and Croatia on legal affairs

33. The Agreement of 18 December 1996 between the Holy See and Croatia on legal affairs (*Ugovor između Svete Stolice i Republike Hrvatske o pravnim pitanjima*, Official Gazette-International Contracts no. 3/1997), was ratified on 7 February 1997 and published in the Official Gazette on 25 February 1997. The relevant part of the Agreement provides:

Article 13

“(1) A religious marriage shall have the same effects as a civil [marriage] under the law of the Republic of Croatia, provided that the [spouses] do not have other civilian restrictions [preventing them from marrying] and that other conditions under the laws of the Republic of Croatia have been met.

...

(4) The decisions of the Church’s courts concerning the annulment of a marriage and the decisions of the High Church authority on the dissolution of a marital union shall be forwarded to the competent State court in order to adopt a decision on the civil effects of [the annulment or dissolution] in accordance with the laws of the Republic of Croatia.”

4. Legal Status of Religious Communities Act

34. The relevant provisions of the Legal Status of Religious Communities Act (*Zakon o pravnom položaju vjerskih zajednica*, Official Gazette no. 83/2002) read:

Section 2

“Religious communities are autonomous and free to regulate their internal affairs... [relationships concerning] bodies and persons who represent the religious community and its organisational entities ... in accordance with the Constitution of the Republic of Croatia.”

Section 9

“(1) Issues of common interest for the Republic of Croatia and one or more religious communities may also be regulated by an agreement made between the Government of the Republic of Croatia and the religious community.

(2) With a view to implementing [legal] instruments regulating relations between the State and religious communities, as well as other issues of interest for the status and operation of religious communities, the Government of the Republic of Croatia shall establish a Commission for Relations with Religious Communities.”

Section 13

“(2) In elementary schools and high schools, at the request of parents or guardians of pupils younger than 15 years and on the basis of a joint declaration by students of 15 years of age or above and their parents or guardians, a religious education course shall be organised as an optional course in accordance with the prescribed curriculum and an agreement between the religious community and the Government of the Republic of Croatia.

(3) Religious education in pre-school education institutions and elementary and high schools shall be taught by persons meeting the requirements provided for in the regulations and contracts referred to in paragraphs 1 and 2 of this section.”

5. *Labour Act*

35. At the material time the relevant part of the Labour Act (*Zakon o radu*, Official Gazette nos. 38/1995, 54/1995, 65/1995, 102/1998, 17/2001, 82/2001, 114/2003, 123/2003, 142/2003, 30/2004 and 68/2005) provided:

Regular termination of an employment contract

Section 106

“(1) An employer may terminate an employment contract, observing the prescribed or stipulated notice period (regular termination of an employment contract) if he or she has justified reason for doing so:

...

- if the employee is unable to duly perform the assignments of his or her post due to certain permanent changes in his personal circumstances or loss of skills (dismissal for reasons of personal circumstances);

...”

Section 107

“(1) The employer and the employee have justified grounds for terminating the employment contract concluded for a definite or indefinite duration, without observing the prescribed or stipulated notice period (extraordinary dismissal), if, due to a particularly grave breach of the employee’s duties or some other particularly serious incident, with due regard to all the circumstances and the interests of the contracting parties, the continuation of the employment is no longer possible.

...”

6. *By-law on the educational level and pedagogical-psychological education of teachers in high schools*

36. Section 2 of the By-law on the educational level and pedagogical-psychological education of teachers in high schools (*Pravilnik o stručnoj spremi i pedagoško-psihološkom obrazovanju nastavnika u srednjem školstvu*, Official Gazette nos. 1/96 and 80/99) provides that professors of theology may teach courses in ethics or ethics and culture.

7. *Intermediation in Employment and Unemployment Rights Act*

37. Sections 30 to 42 of the Intermediation in Employment and Unemployment Rights Act (*Zakon o posredovanju pri zapošljavanju i pravima za vrijeme nezaposlenosti*, Official Gazette no. 32/2002, with further amendments) provide for the right to claim unemployment benefit in cases of regular termination of an employment contract, including instances provided for under section 106 § 1 (2) of the Labour Act, where the employee has worked for at least nine months in the preceding period of twenty-four months.

8. *Family Act*

38. The relevant provisions of the Family Act (*Obiteljski zakon*, Official Gazette no. 116/2003, with further amendments) read as follows:

Section 6

“Marriage shall be celebrated ... in a civil or a religious ceremony.”

Section 8

“A religious marriage ceremony with the effects of a civil marriage shall be performed by a minister of a religious community with which the Republic of Croatia has regulated the legal issues in this respect.”

Section 23

“In accordance with the provisions of section 8 ... of this Act a marriage celebrated in a religious ceremony shall, from the date on which it is celebrated, have all the effects of a civil marriage as prescribed by this Act.”

Section 34

“(1) Irrespective of the form in which it was contracted, a marriage ceases upon: the death of a spouse, the pronouncement that a missing spouse is deceased, annulment or divorce.”

9. *Prevention of Discrimination Act*

39. The relevant provisions of the Prevention of Discrimination Act (*Zakon o suzbijanju diskriminacije*, Official Gazette no. 85/2008), which entered into force on 1 January 2009, provide:

Section 16

“Anyone who considers that, owing to discrimination, any of his or her rights has been violated may seek protection of that right in proceedings in which the determination of that right is the main issue, and may also seek protection in separate proceedings under section 17 of this Act.”

Section 17

“(1) A person who claims that he or she has been a victim of discrimination in accordance with the provisions of this Act may bring a claim and seek:

1. a ruling that the defendant has violated the plaintiff’s right to equal treatment or that an act or omission by the defendant may lead to the violation of the plaintiff’s right to equal treatment (claim for an acknowledgment of discrimination);

2. a ban on [the defendant’s] undertaking acts which violate or may violate the plaintiff’s right to equal treatment or an order for measures aimed at removing the discrimination or its consequences to be taken (claim for a ban or for removal of discrimination);

3. compensation for pecuniary and non-pecuniary damage caused by the violation of the rights protected by this Act (claim for damages);

4. an order for a judgment finding a violation of the right to equal treatment to be published in the media at the defendant’s expense.”

B. Other relevant domestic material

40. On 29 January 1999, referring to the Agreement of 18 December 1996 between Croatia and the Holy See on education and cultural affairs, the Government of the Republic of Croatia and the Croatian Episcopal Conference concluded the Agreement on Catholic religious education in State schools and pre-school education institutions (*Ugovor između Vlade Republike Hrvatske i Hrvatske biskupske konferencije o katoličkom vjeronauku u javnim školama i vjerskom odgoju u javnim predškolskim ustanovama*).

41. This Agreement was not published in the Official Gazette but it is available on the Internet site of the Croatian Episcopal Conference (www.hbk.hr). The relevant provision of the Agreement reads:

Section 5

“(1) Catholic religious education shall be taught by persons to whom the diocesan bishop has issued a canonical mandate (*missio canonica*) and who meet the requisite legal requirements of the legislation of the Republic of Croatia.

(2) When the relevant educational and Church authorities find that there is a need [for Catholic religious education], the diocesan bishop shall appoint an appropriate person to teach religious education.

(3) The canonical mandate (*missio canonica*) to teach religious education shall remain effective until withdrawn by the diocesan bishop.

(4) The diocesan bishop has the right to withdraw by means of a decree the canonical mandate (*missio canonica*) to teach religious education for reasons of deficiencies related to the correctness of teaching and personal morality.”

42. The Government of the Republic of Croatia concluded agreements to the same effect with: (1) the Serbian Orthodox Church in Croatia (Official Gazette no. 163/2003); (2) the Islamic community in Croatia (Official

Gazette no. 196/2003); (4) the Evangelical Church in Croatia and the Christian Reformed Church in Croatia (Official Gazette no. 196/2003); (4) the Evangelical (Pentecostal) Church in Croatia, the Christian Adventist Church in Croatia and the Baptist Union of Croatia (Official Gazette no. 196/2003); (5) the Bulgarian Orthodox Church in Croatia, the Croatian Old Catholic Church and the Macedonian Orthodox Church in Croatia (Official Gazette nos. 196/03 and 141/2004); (6) the Jewish community Bet Israel in Croatia (Official Gazette no. 4/2012); and (7) the Coordination of the Jewish townships in Croatia (Official Gazette no. 4/2012).

43. On 15 June 2000 the Ministry of Education and Sport (*Ministarstvo prosvjete i športa*; hereinafter “the Ministry”) instructed the offices for the administration of education at county level on the procedure concerning hiring and dismissal of teachers of Catholic religious education.

44. According to the Ministry’s instructions, if a diocesan bishop issues a written decision appointing a person to teach religious education by giving him or her a canonical mandate, the director of the school must offer a contract of employment of indefinite duration to the person at issue. If, however, the diocesan bishop withdraws the canonical mandate for reasons of “deficiencies related to the correctness of teaching and personal morality”, the teacher must be dismissed under the procedure for extraordinary dismissal.

III. RELEVANT INTERNATIONAL AND COMPARATIVE MATERIAL

A. Code of Canon Law

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

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 1055

“§1. The matrimonial covenant, by which a man and a woman establish between themselves a partnership of the whole of life and which is ordered by its nature to the

good of the spouses and the procreation and education of offspring, has been raised by Christ the Lord to the dignity of a sacrament between the baptized.

...”

Canon 1056

“The essential properties of marriage are unity and indissolubility, which in Christian marriage obtain a special firmness by reason of the sacrament.”

Canon 1101

“§1. The internal consent of the mind is presumed to conform to the words and signs used in celebrating the marriage.

§2. If, however, either or both of the parties by a positive act of the will exclude marriage itself, some essential element of marriage, or some essential property of marriage, the party contracts invalidly.”

B. Relevant EU and comparative law

46. For the relevant EU law and for a comparative overview of religious education, both denominational and non-denominational, in State schools in Council of Europe Member States, see *Fernández Martínez v. Spain* [GC], no. 56030/07, § 67, ECHR 2014 (extracts).

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

47. The applicant complained about his dismissal from his job as a teacher of Catholic religious education, alleging that it had breached his right to respect for his private and family life. He 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. Admissibility

1. *The parties' arguments*

(a) **The Government**

48. The Government contended that Article 8 of the Convention was not applicable in the present case, arguing that the reasons for the applicant's dismissal from his job of religious education teacher were not pertinent to his private or family life. The Government pointed out that, when dismissing the applicant from his post, the schools had not examined any circumstances of his private and family life but had based their dismissal decision on purely formal grounds, namely the withdrawal of the applicant's canonical mandate. At the same time, the schools had had no knowledge of the reasons for the withdrawal of the applicant's canonical mandate; nor had it been for the schools to examine the reasons for the Church's decision.

49. The Government pointed out that the necessity for a teacher of Catholic religious education to hold a canonical mandate was clearly established under the Agreement of 18 December 1996 between Croatia and the Holy See on education and cultural affairs, which had been duly published in the Official Gazette and thus been accessible to the applicant. Moreover, during the proceedings before the Constitutional Court the applicant had stated that he had been aware of the consequences of withdrawal of the canonical mandate. This suggested, in the Government's view, that the applicant was wrong to argue that he had lost his teaching position for reasons pertaining to the circumstances of his private or family life, whereas it was clear that the sole reason for his dismissal had been the withdrawal of his canonical mandate.

(b) **The applicant**

50. Relying on the Court's findings in the *Fernández Martínez* case (cited above), the applicant submitted that it clearly followed from the Court's case-law that Article 8 of the Convention was applicable as the relevant aspects of his professional life, related to his dismissal, had also affected his private and family life.

2. *The Court's assessment*

51. The Court notes at the outset that in the circumstances 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 a manner which he considers appropriate (compare *Fernández Martínez*, cited above, § 108).

52. Although no general right to employment 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 that is not susceptible to an exhaustive definition (see, among other authorities, *Schüth v. Germany*, no. 1620/03, § 53, ECHR 2010). 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 *Fernández Martínez*, cited above, § 109; and *Niemietz v. Germany*, 16 December 1992, § 29, Series A no. 251-B).

53. 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 *Fernández Martínez*, cited above, § 110).

54. In the present case, similarly to the *Fernández Martínez* case (*Ibid.*, § 111), 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 paragraphs 12 and 45 above), thus establishing a direct link between the person’s conduct in private life and his or her professional activities.

55. Moreover, the Court notes that the applicant, as a layman teacher of Catholic religious education in two State high schools, was employed and remunerated by the State on the basis of a contract of indefinite duration (see paragraphs 8 and 9 above). He had held his position of religious education teacher continuously for three years. In the Court’s view, this sufficiently attested to the stability of his professional situation (see, *a fortiori*, *Fernández Martínez*, cited above, § 112).

56. In those circumstances, in view of the fact that the applicant’s dismissal from his stable employment as a religious education teacher in two State schools related to events concerning personal choices he had made in the context of his private and family life, namely his civil divorce from T.F. and another, civil marriage, the Court finds that Article 8 of the Convention is applicable (compare *Fernández Martínez*, cited above, § 113). The extent and modalities of involvement of the State authorities in

his dismissal, raised by the Government in their admissibility objection, is a matter to be addressed in the context of the Court's examination of the merits of the case.

57. The Court accordingly rejects the Government's preliminary objection. It notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. The parties' submissions

(a) The applicant

58. The applicant submitted that there was no reason why such an intimately personal event in his life (his second civil marriage) should have had such far-reaching consequences leading to his dismissal from his teaching job in two high schools. He pointed out that in the case of *Fernández Martínez* (cited above) it had not been the marriage *per se* that had led to the non-renewal of that applicant's employment contract, but rather his membership of an association pursuing aims contrary to those of the Church, and his public stance on the issue of priests' celibacy, which caused a "scandal" that ruptured his relationship with the Catholic Church. In those circumstances, it was the need to protect the rights of the Catholic Church from the propagation by its own members – namely, priests who obviously had an increased duty of loyalty towards the Church – of ideas that might appear to undermine its doctrinal consistency that had led the Court to hold that Mr Fernández's dismissal pursued a legitimate aim, namely protection of the rights and freedoms of the Catholic Church. In the case at issue, in contrast with the *Fernández Martínez* case, the applicant considered that it was impossible to conclude that his second marriage could have had any adverse effects on the interests of the Catholic Church, especially since he had been a layman employed by the State, and since his first marriage had been annulled by the competent Church authorities. The applicant thus contended that his dismissal from public service, in which he had been employed under a permanent employment contract as a layman teacher of religious education, solely on the grounds of his second marriage, constituted an extreme and disproportionate measure affecting his rights.

59. The applicant stressed in particular that the interference with his private and family life had not been in accordance with the law, had not pursued a legitimate aim and had been disproportionate. He pointed out that although he had been dismissed as a result of the withdrawal of his canonical mandate, this measure had been a direct consequence of his second marriage. Thus, his chances of pursuing his specific professional

activity had been seriously affected on account of events mainly related to the personal choices he had made in the context of his private and family life. Moreover, precisely because of his specialised educational background and skills, it had been difficult for him to secure alternative employment or be entitled to social assistance. He therefore considered that this clearly showed that there had been an interference with his rights under Article 8 of the Convention.

60. The applicant further contended that there was no legal basis in the Croatian legal system providing for the termination of an employment contract due to the withdrawal of a canonical mandate, a second marriage or failure to abide by any rule of canon law. Although the Agreement between the Holy See and Croatia on education and cultural affairs had been signed and ratified, Croatia had failed to pass adequate legislation for the implementation of that Agreement, leaving a number of issues related to the employment of laymen teachers of religious education undetermined. Moreover, the applicant stressed that the Agreement between the Government of Croatia and the Croatian Episcopal Conference on Catholic religious education in State schools and pre-school education institutions, to which the domestic courts had also referred, had never been promulgated or published as a binding law. Accordingly, teachers of religious education had no means of foreseeing the consequences of any action they might undertake. Although the applicant was familiar to an extent with the provisions of canon law, he could not have foreseen the Church's decision in his particular situation or the domestic authorities' decisions automatically upholding his dismissal.

61. In the applicant's view, the interference with his private and family life had not pursued a legitimate aim. In this connection, he pointed out that as a layman teacher of religious education employed by the State, he had been receiving his salary directly from the State, without any Church involvement. The fact that he had entered into a second marriage had not been known to anyone outside his family and close circle of friends, and nothing in his behaviour had threatened the credibility of the Catholic religious community. Accordingly, unlike in the *Fernández Martínez* case, there had been no discrepancy between the ideas that have to be taught and the teacher's personal beliefs that might raise an issue of credibility of the Church. The applicant had not actively and publicly campaigned against any idea or issue, let alone an idea important to the Catholic Church. Nor had he campaigned in any way in favour of his way of life. Although he had divorced his former wife and married his present wife, he had not done it in any way that could be understood as promoting an idea of marriage different from the Church's. He had divorced discreetly and consensually, and had done nothing to promote the idea of divorce or to undermine the idea of marriage as promoted by the Catholic teachings. Furthermore, no other aspects of his life could have been considered contrary to the Church's

teachings. The applicant also pointed out that divorce was a reality that occurred commonly in Croatian society. Thus, his divorce could not have had any adverse effect on public sentiment or the public interest. This was demonstrated by the fact that none of his pupils or their parents had sought to have him dismissed on account of his second marriage.

62. The applicant also argued that his dismissal had been disproportionate. In his view, the domestic courts had failed to conduct a proper assessment of all the competing interests and had based their decisions upholding his dismissal solely on the grounds that his canonical mandate had been withdrawn. He also considered that his case differed from other similar cases examined by the Court (the applicant cited *Obst v. Germany*, no. 425/03, 23 September 2010; *Schiith*, cited above; and *Siebenhaar v. Germany*, no. 18136/02, 3 February 2011) in that he had not been employed by the Catholic Church but by the State. Thus, the obligations of his employer differed in nature from those examined in the cited cases. In particular, he had not violated any rule or standard laid down by his employer; he had not jeopardised his employer's credibility in any way and if it had been up to his employer, he would never have been dismissed. Moreover, unlike the applicant in the *Fernández Martínez* case, the applicant had never been a priest and there had been no reason for him to live the life of a priest, particularly since, as explained above, his personal circumstances had not been known to the public. The applicant also considered that nothing could be drawn from the findings in the *Fernández Martínez* case to suggest that teachers of religious education should be prevented from divorcing and remarrying.

63. The applicant accepted that laymen teachers of religious education should also be held to high standards so as to ensure that their teaching was in full conformity with the principles and precepts of the Catholic Church. Had he, for example, used his position to promote a different religion, both the Church and primarily the State would have been well within their rights to launch disciplinary proceedings against him. This, however, had not been the case. Nor had the Church or the State authorities argued that his teaching had not been in conformity with the official Church doctrine or that it sought in any way to undermine or discredit it. The applicant also contended that his dismissal had been a disproportionate sanction for the alleged misconduct. It had severely affected his private and family life and his possibility of finding other employment, given that since his dismissal he had been unable to find a permanent job. Moreover, by applying such a severe sanction on account of his divorce and second marriage, the domestic authorities had created a situation in which a certain "stigma" had been attached to such occurrences in the eyes of the pupils and their parents.

(b) The Government

64. The Government argued that there had been no interference with the applicant's right to respect for his private and family life, given that the reason for his dismissal had been related to the withdrawal of his canonical mandate by the Church, which the schools had not been in a position to question. The Government pointed out that, in the event that the Court found that there had been an interference with the applicant's rights, such interference had sufficient basis in the relevant domestic law. The provisions of the Agreement between the Holy See and Croatia on education and cultural affairs clearly provided that a canonical mandate was a precondition for teaching Catholic religious education in schools. This Agreement had been published in the Official Gazette and had thus been accessible to the applicant. Moreover, as the applicant had confirmed himself during the proceedings before the Constitutional Court, the provisions of the Agreement were sufficiently precise and foreseeable to allow him to predict the consequences of withdrawal of the canonical mandate. He had also admitted before the Constitutional Court that he had been aware that by entering into another marriage, he would lose his canonical mandate to teach Catholic religious education.

65. The Government also considered that the interference with the applicant's rights had pursued the legitimate aim of protecting the Catholic Church's religious autonomy, and that such interference had been proportionate. In this connection, the Government firstly pointed out that when accepting the canonical mandate to teach Catholic religious education in schools, the applicant had consented to live his life in accordance with the Catholic Church's teachings. He had thereby accepted that certain parts of his private life would be subjected to assessment by the Church. This had also included the possibility for the Church to withdraw his canonical mandate to teach religious education in the State education system in the event of his behaving in a way that was contrary to the principles of Christian morality, all of which had been well known to him as a professor of theology. Moreover, when applying for a canonical mandate and obtaining his teaching job in the State education system, the applicant had not considered the requirements imposed by the Church's teachings to be contrary to his right to respect for his private and family life. He had not complained about those requirements until they had affected his teaching post in the two high schools.

66. The Government pointed out that the applicant had not attempted to have his religious marriage annulled before entering into a new civil marriage. Had he done so, he could have avoided any adverse effects of his new marriage on his employment as a teacher of Catholic religious education. The Government also considered, relying on the Constitutional Court's findings, that the Court should take into account that the applicant had been well aware of the duties imposed on him by the relevant Catholic

doctrine concerning marriage. He had also been aware, when the canonical mandate was granted to him, that he would lose it if the Church no longer deemed him suitable to teach Catholic religious education. Given the Church's autonomy to appoint teachers of its doctrine, the applicant had therefore had no reason to expect that he would keep his post if the Church deemed that he was no longer suitable for it.

67. The Government also stressed that religious autonomy enjoyed special protection under Article 9 of the Convention and that the States had a wide margin of appreciation in regulating matters concerning their relationship with religious communities. The Catholic Church's autonomy in its relationship with the State on matters of religious education had been established in the Agreement between the Holy See and Croatia on education and cultural affairs. This Agreement essentially resembled other treaties regulating the relationship of the Catholic Church with a number of other European countries. Relying on the Court's case-law in *Fernández Martínez* (cited above), *Obst* (cited above) and *Siebenhaar* (cited above), the Government contended that the Court had recognised the importance of religious communities' autonomy to choose persons suitable to teach their doctrine. Thus, in the Croatian legal system, although the State formally acted as the employer of teachers of Catholic religious education in the State education system, the decision as to the suitability of persons for that post and the substance of their teaching always remained in the hands of the Catholic Church. The Church's autonomy was exercised through its right to assess the circumstances in which a canonical mandate could be issued. This undoubtedly included the right to assess whether the person to whom a mandate had been issued was living his or her life in accordance with the Church's teachings. Accordingly, if the person was living in circumstances contrary to the Church's doctrine, this could undermine the credibility of that religious community. From this perspective, the "duty of allegiance" referred to in the *Fernández Martínez* case was equally binding for a layman and a priest teaching religious education.

68. The Government further pointed out that the applicant's misconduct, in the eyes of the Church, had been even more severe than the one examined by the Court in the *Fernández Martínez* case since, unlike with the issue of celibacy, there was no dissenting position within the Church concerning the sanctity of matrimony. Moreover, although the applicant had not publicised the events concerning his private life, as happened in the *Fernández Martínez* case, he nevertheless taught religion in a small town of only 11,759 inhabitants, in which the circumstances related to his divorce could not have remained secret from the pupils.

69. In these circumstances, the Government considered that by imposing a duty on the Church to accept a person as a religious education teacher would run counter to the Church's autonomy, guaranteed under the relevant domestic law and the Convention. By dismissing the applicant, the State had

not overstepped its margin of appreciation in reaching a fair balance between the applicant's right to respect for his private and family life and the Catholic Church's autonomy. In particular, while guaranteeing the Church's autonomy to appoint a teacher of its doctrine, the schools had attempted to find another suitable post for the applicant and granted him the right to an indemnity, which had been duly paid to him. Moreover, contrary to the circumstances in the case of *Schüth* (cited above), the Constitutional Court had conducted a detailed assessment of all the competing interests and provided sufficient reasoning when dismissing the applicant's complaints.

(c) The third-party intervention

(i) The Alliance Defending Freedom (ADF)

70. The ADF submitted that the right to freedom of thought, conscience and religion was a fundamental right protected by several seminal international human rights treaties, and guaranteed under Article 9 of the Convention. The principle of religious autonomy was embedded in this right, and was given prominent importance in the Court's extensive case-law on questions of religious freedoms. In the ADF's view, maintaining the integrity of Church autonomy was paramount in a democratic society. The States had a duty of neutrality and impartiality and were required, under the Court's case-law on Article 9, to refrain from interfering with Church autonomy or the right to manifest religious beliefs. The ADF contended that this principle applied equally to interference with the internal workings and management of a Church body as a whole.

71. Accordingly, given that the guarantees under Article 8 were not absolute, where private conduct undermined the integrity of a licensing scheme for ecclesiastical teaching and contradicted the substance of the subject matter of the licence, Church autonomy should predominate, as clearly shown in the Court's case-law. Moreover, the ADF stressed that the Court had held, in view of the wide variety of constitutional models in existence, that the States enjoyed a wide margin of appreciation in this context. The Court had therefore been reluctant to override the decision of the national authorities when the case involved the relationship between the Church and those who work for it. This also corresponded to the comparative solutions, such as those found in the case-law of the United States Supreme Court and in European Union legislation.

72. The ADF also stressed that safeguarding pluralism in education was essential for the preservation of a democratic society. While religious indoctrination was forbidden in schools, the State had no discretion to determine whether religious beliefs or the means used to express them were legitimate. The State could only demand that any teaching be provided in an objective, critical and pluralistic manner. Overall, Church autonomy,

steeped both in freedom of thought, conscience and religion and in freedom of association, required State neutrality. In a democratic society, proportionate limitations to Article 8 were justified both to protect the integrity of religious bodies issuing teaching certificates and to maintain the integrity of the State school system by requiring teachers to hold relevant qualifications in order to teach sensitive subject matters.

(ii) *The European Centre for Law and Justice (ECLJ)*

73. The ECLJ submitted that two recent Grand Chamber cases, *Fernández Martínez* (cited above) and *Sindicatul “Păstorul cel Bun” v. Romania* [GC] (no. 2330/09, ECHR 2013 (extracts)), were instructive for the resolution of questions related to religious autonomy and respect for an individual’s private and family life. In the ECLJ’s view, the bishop’s decisions represented an exercise of Church autonomy guaranteed under Article 9 of the Convention, and could not as such be subjected to judicial review before the civil courts, unlike the ensuing decisions of the civil authorities, based on the bishop’s decision. Of particular importance in this context was the principle of religious institutional autonomy, reaffirmed in the Court’s case-law. Moreover, the principle of heightened duty of loyalty, generally recognised in labour law, was also applicable in the context of employment by a religious community, irrespective of whether such employment was direct or indirect through the State employment system. In both instances, it was for the authorities of the religious community to assess an individual’s suitability to teach religious education. Such a heightened duty of loyalty was particularly important in the context of the interrelationship between the religious and civil aspects of an employee’s professional activity. Accordingly, it could also have a bearing on certain aspects of his or her private life. Therefore, it could be expected that the behaviour of a teacher of religious education should not undermine the credibility of a particular religious doctrine.

74. The ECLJ stressed in particular that the question whether a certain person was suitable to teach Catholic religious education was for the bishop to decide, irrespective of whether that person was a priest or a layman. In any case, the necessary precondition for teaching Catholic religious education was the existence of a canonical mandate issued by the bishop. Those who voluntarily accepted a canonical mandate should obey the relevant provisions of canon law and meet the requirements related to the heightened duty of loyalty emanating from the mandate.

2. *The Court’s assessment*

(a) **Whether there has been an interference**

75. The Court notes that in the *Fernández Martínez* case, concerning the non-renewal of an employment contract of a teacher in a State-run school

following the withdrawal by the Church of his mandate to teach Catholic religious education, it found that the direct involvement of the State authority – the applicant’s employer – in the decision-making process, and enforcement of the Church’s non-renewal decision, constituted an interference with the applicant’s right to respect for his private life. This held true irrespective of the State’s limited possibilities to act in the case of withdrawal by the Church of a mandate to teach religious education (see *Fernández Martínez*, cited above, §§ 115-16).

76. In the present case the school authorities, as the competent public authority in the matter, dismissed the applicant from his teaching job in two State high schools following the withdrawal by the Church of his canonical mandate, having been unable to appoint him to another post (see paragraph 15 above).

77. It thus follows that there has been a direct involvement of the State authorities in the decision-making process concerning the applicant’s dismissal, which constituted an interference with his right to respect for his private life.

(b) “In accordance with the law”

78. The expression “in accordance with the law” requires, firstly, that the impugned measure should have some basis in domestic law. Secondly, referring to the quality of the law in question, it requires that it 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* 1998-II). The phrase thus implies, *inter alia*, that the terms of domestic law must be sufficiently clear to enable individuals to foresee the circumstances in which, and the conditions on which, the authorities are entitled to resort to measures affecting their rights under the Convention (see *Fernández Martínez*, cited above, § 117).

79. The Court notes that the school authorities acted in accordance with the Agreement of 18 December 1996 between the Holy See and Croatia on education and cultural affairs, and the provisions of the Labour Act concerning the regular termination of an employment contract for reasons related to an individual’s personal circumstances (see paragraphs 15, 32 and 35 above). Pursuant to Article 3 of the Agreement, the existence of a canonical mandate issued by the diocesan bishop is a precondition for teaching Catholic religious education in schools, and the withdrawal of the mandate leads to an immediate loss of the right to teach Catholic religious education (see paragraph 32 above). The Agreement is an international treaty, integrated as such in Croatian law in conformity with the Croatian Constitution, and duly published in the Official Gazette (see paragraph 31 above, Article 140 of the Constitution; and paragraph 32 above). It therefore follows that the applicant’s disqualification from teaching Catholic religious

education, and thus the regular termination of his employment contract for reasons related to his personal circumstances, were based on valid and accessible Croatian law (compare *Fernández Martínez*, cited above, § 118).

80. It remains to be examined to what extent the applicant's dismissal from his job of a religious education teacher was foreseeable by him (*Ibid.*, § 119). The foreseeability in this contest and in particular the level of precision required of domestic legislation, depends to a considerable degree on the content of the law in question, the field it is designed to cover and the number and status of those to whom it is addressed (see *Hasan and Chaush v. Bulgaria* [GC], no. 30985/96, § 84, ECHR 2000-XI), as well as the level of care required of persons who carry out a professional activity with regard to the consequences which their conduct might entail (see, *inter alia*, *Karácsony and Others v. Hungary* [GC], no. 42461/13, § 125, 17 May 2016).

81. In this connection, the Court notes that in the decision withdrawing the applicant's canonical mandate the Rijeka Archdiocese relied on his breach of canon 804 § 2 of the Code of Canon Law (see paragraph 45 above). The Rijeka Archdiocese informed the applicant that "each religious education teacher must demonstrate that he is 'outstanding in true doctrine and the witness of a Christian life' and must participate in the sacramental and evangelical community of a parish", and that his new situation did not enable him to do this (see paragraph 12 above). At the same time the Agreement of 18 December 1996 between the Holy See and Croatia in Article 3 provides that Catholic religious education can be taught by qualified religious education teachers who are, in the opinion of the Church, suitable for that position (see paragraph 32).

82. The Court observes that when he was asked, during the proceedings before the Constitutional Court, whether he had been aware of the consequences of his conduct on his teaching job, the applicant stated that he had passed the exam in canon law and that he could not have passed that exam without learning about those consequences (see paragraph 23 above). There is therefore no reason for the Court to put into question the foreseeability of the consequences of the applicant's conduct on his teaching job. This is particularly true given the clear wording of the Agreement of 18 December 1996 between the Holy See and Croatia on education and cultural affairs, from which the applicant could have reasonably foreseen that in the absence of a canonical mandate from the Church, he would not be able to continue to hold his position of teacher of Catholic religious education (see *Fernández Martínez*, cited above, § 119).

83. The above findings are not affected by the applicant's grievances that the relevant domestic legislation supplementing the Agreement had not been properly and comprehensively implemented in the relevant domestic employment system (see paragraph 60 above), as underlined by the President of the Constitutional Court in her dissenting opinion in the

Constitutional Court's decision of 22 May 2013 (see paragraph 25 above). The Court reiterates that in proceedings originating in an individual application, it is not called upon to review the legislation at issue in the abstract, namely the manner in which the Agreement between the Holy See and Croatia was implemented in the domestic employment system, but has to confine itself, as far as possible, to an examination of the concrete case before it (see *J.B. v. Switzerland*, no. 31827/96, § 63, ECHR 2001-III; and *Zehentner v. Austria*, no. 20082/02, § 60, 16 July 2009).

84. Accordingly, given that the consequences of the applicant's conduct were sufficiently foreseeable to him, 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 domestic law, and that these provisions satisfied the "lawfulness" requirements established in its case-law.

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

(c) Legitimate aim

86. The Court finds, as it also held in the *Fernández Martínez* case (cited above, § 122), that the applicant's dismissal at issue in the present case may be seen as pursuing the legitimate aim of protecting the rights and freedoms of others, namely those of the Catholic Church, and in particular its autonomy to choose persons accredited to teach religious doctrine.

(d) Necessary in a democratic society

(i) General principles

87. The Court refers to the general principles set out in the *Fernández Martínez* case (cited above, §§ 123-132).

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

88. In the above-cited *Fernández Martínez* case, the Grand Chamber set out the relevant factors to be taken into account in balancing the right to enjoy private and family life with the State's duty to protect the autonomy of the Church in instances where the employment contract of a religious education teacher was terminated because the Church deemed that he or she was no longer suitable for that position. Those factors in particular included the following: status of the applicant; exposure of the applicant's situation; State's responsibility as an employer; severity of the sanction; and review by the domestic courts.

- Status of the applicant

89. The Court notes that the applicant was a layman teacher of Catholic religious education employed in the State education system on the basis of an employment contract of indefinite duration, and his salary as a teacher

was paid by the State. In accordance with the relevant domestic procedures on the employment of teachers of Catholic religious education (see paragraphs 32, 40-41, 43-44 above), the applicant's employment came about as a result of the intervention of the Rijeka Archdiocese's Catechetical Office. He was offered a teaching job in two State high schools in Opatija without having to participate in a public competition for a post in the public service (see paragraph 8 above). The applicant's appointment to the position of religious education teacher in the two schools ensued from his canonical mandate to teach Catholic religious education issued by the archbishop of the Rijeka Archdiocese on the basis of a proposal put forward by the applicant's local priest (see paragraph 7 above).

90. The Court has already observed above that the necessity to hold a canonical mandate to teach Catholic religious education follows from the Agreement of 18 December 1996 between the Holy See and Croatia on education and cultural affairs (see paragraph 79 above). The Agreement stipulates in particular that Croatia must ensure that Catholic religious education is available in all State elementary and high schools and pre-school education institutions as a mandatory course for all those who have chosen it under the same conditions as any other mandatory course. At the same time, Croatia accepted that Catholic religious education in the State public education system would be taught only by qualified religious education teachers who were, in the opinion of the Church authorities, suitable for that position. The suitability for the position in question is expressed through the existence of a canonical mandate issued by the diocesan bishop and the withdrawal of the mandate leads to the immediate loss of the right to teach Catholic religious education (see paragraph 32 above). The Court notes that such an arrangement does not differ from those in a significant number of other Council of Europe Member States (see *Fernández Martínez*, cited above, § 67), and the agreements which Croatia has entered into with other religious communities (see paragraph 42 above).

91. The Court further observes that under the relevant rules of canon law, the Church issues a mandate to teach Catholic religious education only to individuals who, in the Church's opinion, are "outstanding in true doctrine, in the witness of [their] Christian life, and in [their] teaching ability". Such individuals can be appointed or approved by an Ordinary to teach Catholic religious education and, "if religious or moral considerations so require", the mandate to teach religion may be removed by the Ordinary (see paragraph 45 above, canons 804 § 2 and 805 of the Code of Canon Law).

92. Those precepts of canon law make no distinction between priests and laymen teachers of Catholic religious education and, as the applicant conceded, they were well known to him as a professor of theology (see paragraph 23 above). In the *Fernández Martínez* case (cited above,

§ 135), without dwelling on the debatable questions related to the applicant's status of a priest or layman teacher of Catholic religious education, the Court took the view that, by signing his successive employment contracts, the applicant had knowingly and voluntarily accepted a heightened duty of loyalty towards the Catholic Church, which had limited the scope of his right to respect for his private and family life to a certain degree. The Court stressed that such contractual limitations were permissible under the Convention if they were freely accepted.

93. In the Court's view, the same holds true in the case at issue: by engaging in the arrangement between the Church and the State concerning the teaching of Catholic religious education in schools, and knowingly and voluntarily accepting all the above-mentioned privileges and limitations concomitant with that position, the applicant consented to meeting the requirement of special allegiance towards the teachings and doctrine of the Church, including the duty to be "outstanding in true doctrine, in the witness of [his] Christian life, and in [his] teaching ability". His status of a teacher of religious education was related to one of the essential functions of the Church and its religious doctrine (see, by contrast, *Schüth*, cited above, concerning the position of an organist and choirmaster in a parish church).

94. In this connection, the Court notes that during the proceedings before the Constitutional Court the applicant conceded that, being a professor of theology, he had been aware of the consequences of his conduct on his mandate to teach Catholic religious education (see paragraph 23 above). It thus follows that when accepting the job, the applicant was aware of the importance of the sacrament of matrimony for the Church, as set out in Canon 1056 of the Code of Canon Law (see paragraph 45 above).

95. The Court notes however that although the applicant was aware of the importance of the sacrament of matrimony for the Church he decided to enter into a new civil marriage without regularising the situation with regard to his religious marriage with T.F. as provided under the Code of Canon Law. He did not institute proceedings seeking the annulment of the religious marriage, as provided for under canon law, which would have had the desired effect in terms of dissolving his marriage to T.F. (see paragraphs 33 and 45 above). Moreover, the applicant failed to participate diligently in the proceedings for the annulment of his religious marriage instituted by T.F. before the competent Church authorities (see paragraphs 27 and 29 above). However, in an email to T.F. of 4 December 2009, he expressly indicated that their religious marriage had never existed in reality (see paragraph 29 above). This, together with other evidence adduced, was conducive to the annulment of his religious marriage with T.F. in April 2013 (see paragraph 30 above).

96. It is therefore apparent that the applicant decided to disregard the requirements of special allegiance towards the teachings and doctrine of the

Church, concomitant with his status of a teacher of Catholic religious education. He thus brought himself in a situation in which he lost his canonical mandate to perform that function. Even so, he still expected to retain the right to a teaching job in the State education system. The Court will examine that expectation against the other relevant factors of the case in accordance with the principle of proportionality.

- *Exposure of the applicant's situation*

97. The Court notes that, unlike in the *Fernández Martínez* case, in the case at hand an issue does not arise with regard to the publicity given by the applicant to his particular situation and the applicant's public propagation of his beliefs contrary to the Church's official position. The question is rather whether a particular religious doctrine could be taught by a person whose conduct and way of life were seen by the Church at issue as being at odds with the religion in question, especially where the religion is supposed to govern the private life and personal beliefs of its followers.

98. In general, as the Court has explained in the *Fernández Martínez* case (cited above, § 138), in order for a religion to remain credible, the requirement of a heightened duty of loyalty may relate also to questions of the way of life of religious teachers. Lifestyle may be a particularly important issue when the nature of an applicant's professional activity results from an ethos founded in the religious doctrine aimed at governing the private life and personal beliefs of its followers, as was the case with the applicant's position of teacher of Catholic religious education and the precepts of the Catholic religion. In observing the requirement of heightened duty of loyalty aimed at preserving the Church's credibility, it would therefore be a delicate task to make a clear distinction between the applicant's personal conduct and the requirements related to his professional activity (compare *Siebenhaar*, cited above, § 46; and see paragraph 45 above, canon 804 § 2 of the Code of Canon Law).

99. Accordingly, the Court considers that the fact that no publicity was given to the applicant's conduct and lifestyle, seen by the Church as being contrary to the precepts of its teachings and doctrine, is not a decisive element in the assessment of the consequences of the decision on the applicant's dismissal (see *Obst*, cited above, § 51).

- *State's responsibility as an employer*

100. As regards the State's responsibility as employer, the Court notes that, as in the *Fernández Martínez* case (cited above, § 143), the applicant was employed and remunerated by the State (see paragraph 9 above). That aspect, however, does not affect the extent of the duty of loyalty imposed on him *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, Churches and religious

communities 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.

101. On the other hand, the Court would emphasise that, in its view, the withdrawal of the applicant's canonical mandate due to the fact that he had entered into another marriage while still bound by the vows made at his religious marriage could not lead in itself to his dismissal from the teaching job in the State education system (see, *mutatis mutandis*, *Obst*, cited above, § 51). Indeed, the applicant's right to marry forms part of his human rights guaranteed under the Convention, which the State undertook to abide (see *V.K. v. Croatia*, no. 38380/08, §§ 100-107, 27 November 2012).

102. Accordingly, irrespective of the fact that the Catholic Church, in exercising its autonomy, deemed the applicant's conduct to be at a variance with his position of teacher of Catholic religious education and was thus free to withdraw his canonical mandate, the State was required to ensure that the impugned interference with the applicant's rights did not go beyond what was necessary to eliminate any risk for the Church's autonomy and did not serve any other purpose unrelated to the exercise of that autonomy. It should be remembered that such an autonomy is not absolute and cannot be exercised in a manner affecting the substance of the right to private and family life (see *Fernández Martínez*, cited above, § 132).

103. In this context, the Court attaches particular importance to the fact that the applicant was not dismissed directly following the withdrawal of his canonical mandate by the Church. Although the Ministry's instruction suggested to the contrary, the schools terminated his contract of employment only after examining the possibility of finding him another suitable post (see paragraphs 15 and 17 above). Such a conduct by the schools was found to be correct by the Constitutional Court (see paragraph 23 above). Moreover, the applicant was given the right to an indemnity, which, according to the Government's uncontested assertion, has been duly paid to him (see paragraphs 15 and 69 above), and it was open to him to claim unemployment benefit (see paragraph 37 above; compare to *Fernández Martínez*, cited above, § 145). The applicant has not argued, and there is no reason for the Court to doubt, that the efforts made by the schools were not genuine. In the Court's view, they represented a particularly important effort by the State to find a balance in the protection of the applicant's private and professional positions and the exercise of the Church's autonomy.

- *Severity of the sanction*

104. The Court considers that there is no doubt that the decision on the applicant's dismissal constituted a sanction entailing serious consequences for his private and family life. However, as observed above, that dismissal was not directly and unconditionally related to the fact of withdrawal of the

canonical mandate but was rather a result of an objective impossibility to find another suitable post for the applicant.

105. Moreover, unlike in other cases where an employee who has been dismissed by an ecclesiastical employer has limited opportunities of finding another job owing, in particular, to the employer's predominant position in a given sector of activity and 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 (see *Schiith*, cited above, § 73), this was not the case for the present applicant. Under the relevant domestic law, it was open for the applicant to seek other employment in the education system by teaching courses of ethics and culture (see paragraph 36 above), an opportunity completely unrelated to the special arrangement between the State and the Catholic Church on the teaching of Catholic religious education.

106. The Court also finds it important to note that the consequences for the applicant must be seen in the light of the fact that he knowingly placed himself in a situation that was incompatible with the Church's precepts (see *Fernández Martínez*, cited above, § 146). As the Court has already observed above, by concluding a new civil marriage without considering the possibility of regularising the situation with regard to his religious marriage, the applicant decided to disregard the requirements of special allegiance towards the teachings and doctrine of the Church, concomitant with his status of teacher of Catholic religious education, and thus placed himself in a situation in which he lost his canonical mandate to perform that function (see paragraphs 95-96 above).

107. In these circumstances, particularly given that in the applicant's case an attempt of regularising the situation with regard to his religious marriage could have produced an effective result (see paragraphs 29 and 30 above), it does not appear that the decision to withdraw his canonical mandate, justified by the interest of the Church to preserve the credibility of its teachings, was in itself excessive (see *Fernández Martínez*, cited above, § 146). Moreover, the Court considers it important to reiterate that the withdrawal of the applicant's canonical mandate did not directly lead to his dismissal. It prevented him only from teaching Catholic religious education but he was eventually dismissed according to the rules on regular termination of an employment contract (see paragraph 35 above) from the State education system because at the relevant time another suitable post did not exist in the two schools where he was employed (see paragraph 103 above).

- *Review by the domestic courts*

108. As regards 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 the 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 *Fernández Martínez*, cited above, § 147).

109. This is particularly relevant in the present case where the domestic courts were called upon to scrutinise whether a proper balance was achieved between the competing rights of the Church to respect for its autonomy and the applicant’s rights under the Convention (see paragraphs 101 and 103 above). It was therefore for the courts to ensure that the Church’s autonomy is exercised in a manner which is not arbitrary or taken for a purpose that is unrelated to the exercise of its autonomy and that it did not produce effects disproportionately interfering with the applicant’s Convention rights (see paragraph 103 above; and *Lombardi Vallauri v. Italy*, no. 39128/05, §§ 51-56, 20 October 2009)

110. The Court observes at the outset that the applicant was able to complain about his dismissal before the competent domestic courts and to have the lawfulness of the impugned measure examined under ordinary labour law (see paragraph 35 above), taking into account the competing interests of the applicant and the Catholic Church. At final instance the applicant was able to lodge a constitutional complaint with the Constitutional Court (compare *Obst*, cited above, § 45; and *Fernández Martínez*, cited above, § 148).

111. In its assessment of the applicant’s case, the Constitutional Court examined in detail the special arrangement between the State and the Catholic Church on Catholic religious education in the State education system. It also examined the reasonableness of the requirement to hold a canonical mandate to teach religious education and found that, in view of the nature of the position of teacher of religious education and its proximity to the mission of disseminating the Church’s teachings, the requirement to hold a canonical mandate was not an excessive burden for persons who chose to become religious education teachers. The Constitutional Court also observed that Catholic religious education teachers in the State education system in Croatia had a *sui generis* employment status, as provided for under the Agreement of 18 December 1996 between the Holy See and Croatia on education and cultural affairs. In particular, such a status followed from the requirement to hold a canonical mandate, which could be issued only by the competent Church’s authorities based on their assessment as to the teacher’s suitability for that post. The Constitutional Court noted that the applicant had been employed in the State education system under such an arrangement and that he had been well aware of the requirements related to the canonical mandate and the consequences of its withdrawal (see paragraph 23 above).

112. The Constitutional Court considered, however, that as the applicant had entered the public employment system by concluding a “classical” contract of employment, he could have expected, irrespective of the withdrawal by the Church of his canonical mandate to teach Catholic religious education, that the schools would take all necessary measures to relocate him to another position. The Constitutional Court held that despite the withdrawal of his canonical mandate, the applicant still had his degree in theology, which gave him the possibility to teach courses in ethics and culture. The schools at issue had discharged this obligation by trying to find another post for the applicant; having been unable to find such a post, they had terminated his contract of employment. In those circumstances, the Constitutional Court concluded that a fair balance had been struck between the protection of the applicant’s interests and the State’s duty towards the Catholic Church (see paragraph 23 above).

113. In view of this assessment of the applicant’s case, the Court finds that the domestic courts took into account all the relevant factors and weighed up the interests at stake in detail and in depth. The conclusions thus reached do not appear unreasonable to the Court, especially as the Constitutional Court placed emphasis on the applicant’s knowledge of the requirements of special allegiance towards the teachings and doctrine of the Church concomitant with his status of teacher of Catholic religious education, and the duty of the competent domestic authorities to take into account the fact that as the applicant had entered the State education system, the withdrawal of his canonical mandate could not in itself lead to his dismissal from the teaching profession. The Constitutional Court carried out a thorough analysis and examined the issue from various perspectives (see paragraphs 24 and 25 above). As to references to the Church’s autonomy to impose a special requirement for religious education teachers to hold a canonical mandate, it does not appear, in the light of the review exercised by the national courts, that this was improperly invoked in the present case (compare *Fernández Martínez*, cited above, § 148).

(e) Conclusion

114. In the light of the foregoing, the Court finds, having regard to the State’s margin of appreciation in the present case, that the interference with the applicant’s right to respect for his private and family life was not disproportionate.

115. The Court therefore finds that 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

116. The applicant complained that his dismissal, by unjustifiably giving precedence to the Church's rights to religious autonomy and to freedom of association over his right to respect for his private and family life, had been of a discriminatory nature, contrary to Article 14 taken together with Article 8 of the Convention.

A. Admissibility

1. *The parties' arguments*

117. The Government argued that the applicant had failed to exhaust the effective domestic remedies provided for under section 16 of the Prevention of Discrimination Act by not raising the issue of discrimination during the proceedings before the domestic courts.

118. The applicant pointed out that the Prevention of Discrimination Act had entered into force on 1 January 2009 and that the Supreme Court had adopted the final decision concerning his employment dispute on 3 December 2008. He could not therefore have relied on the provisions of the Prevention of Discrimination Act during the dispute.

2. *The Court's assessment*

119. As the applicant correctly pointed out, the Prevention of Discrimination Act entered into force on 1 January 2009 (see paragraph 39 above), and the Supreme Court adopted the final decision concerning the applicant's employment dispute dismissing the applicant's appeal on points of law, on 3 December 2008 (see paragraph 21 above). It was therefore impossible for the applicant to raise an issue of discrimination relying on the Prevention of Discrimination Act during the dispute. The Court notes that in his appeal on points of law to the Supreme Court and his constitutional complaint to the Constitutional Court, the applicant, expressly relying on Articles 8 and 14 of the Convention and on the corresponding provisions of the Constitution, complained of the discriminatory nature of his dismissal (see paragraph 20 above).

120. The Court therefore finds that the applicant properly exhausted the domestic remedies by providing the national authorities with the opportunity of putting right the violations alleged against them. The Government's objection should therefore be rejected. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

121. The Court is of the view that this complaint is related to the complaint under Article 8 examined above. Having regard to its finding on that provision, it does not need to examine it separately (see *Fernández Martínez*, cited above, § 155).

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the application admissible;
2. *Holds* that there has been no violation of Article 8 of the Convention;
3. *Holds* that there is no need to examine separately the complaint under Article 14 taken together with Article 8 of the Convention.

Done in English, and notified in writing on 4 October 2016, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Stanley Naismith
Registrar

Işıl Karakaş
President