



Hearing concerning the decision not to renew contract of a married catholic priest and father who taught religious education

The European Court of Human Rights is holding a Chamber hearing today **22 November 2011 at 9 a.m.** in the case of **Fernández Martínez v. Spain** (Application no. 56030/07)

The case concerns the non-renewal of the teaching contract of a married priest and father of five who taught religious education, following the publication of a newspaper article revealing his membership of the "Pro Celibato Opcional" optional celibacy movement.

The hearing will be broadcast from 2.30 p.m. on the Court's Internet site (www.echr.coe.int). After the hearing the Court will begin its deliberations, which will be held in private. Its ruling in the case will, however, be made at a later stage.

The applicant, José Antonio Fernández Martínez, is a Spanish national. He was ordained a priest in 1961. In 1985, a year after having applied to the Vatican for dispensation from celibacy, he was married in a civil ceremony. His application from dispensation from celibacy was granted on 15 September 1997. He and his wife have five children. His contract as a teacher of Catholic religion in an upper secondary state school in Murcia was renewed every year by the bishop of the diocese.

In 1996 *La Verdad* newspaper in Murcia published an article about the movement in favour of optional celibacy for priests of which Mr Fernández Martínez was a member, showing a picture of him, with his family, attending one of their meetings. On 29 September 1997 the Bishopric of Cartagena informed the Ministry of Education of its intention not to renew the applicant's contract for the 1997-98 school year.

Mr Fernández Martínez appealed to the Murcia Labour Tribunal, which found that he had been discriminated against because of his civil status and his membership of the optional celibacy movement. It declared his dismissal null and void and ordered his reinstatement in his former teaching post.

The education authorities and the Bishopric appealed. The High Court examined the question of the bond of trust between the teacher and the bishop, and pointed out that it was the bishop's role to ensure that people in the applicant's position carried out their duties with discretion, making sure that their personal lives were not a source of scandal. If the applicant's personal situation became a public matter, it was the bishop's duty not to renew the contract he had regularly renewed since 1991, even though the applicant's actual circumstances had not changed. The court noted with regard to Article 10 § 2 (freedom of expression) of the European Convention of Human Rights that the restrictions imposed on the applicant's rights were proportionate to the aim pursued, which was to avoid scandal. The nature of the contract – the fact that it had to be renewed annually by the bishop – made it a temporary contract, which had simply expired. Mr Fernández Martínez had not been dismissed.

Mr Fernández Martínez lodged an appeal with the Constitutional Court. The Court noted the special nature of the role of teachers of religious education in Spain and found that

the reasons for not renewing the applicant's contract had been purely religious. It pointed out that it was unreasonable to expect religious education to be dispensed without the religious convictions of applicants for such teaching posts being taken into account in the selection criteria. The appeal was rejected.

Relying on Article 6 § 1 (right to a fair hearing), Mr Fernández Martínez complains that two of the judges who delivered the Constitutional Court decision lacked impartiality because they were Catholics.

Relying on Article 8 (right to respect for private and family life) combined with Article 14 (prohibition of discrimination), he alleges that the non-renewal of his contract because of his connection with the optional celibacy movement and because of a newspaper article amounted to an unjustified intrusion into his privacy.

Under Articles 9 (right to freedom of thought, conscience and religion) and 10 (freedom of expression), he alleges that his right to his own beliefs and to freedom of expression was violated.

Procedure

The application was lodged with the European Court of Human Rights on 11 December 2007.

Composition of the Court

The case will be heard by a Chamber, composed as follows:

Josep **Casadevall** (Andorra), *President*,
Corneliu **Bîrsan** (Romania),
Alvina **Gyulumyan** (Armenia),
Egbert **Myjer** (the Netherlands),
Ineta **Ziemele** (Latvia),
Mihai **Poalelungi** (Moldova), *judges*,
Alejandro **Saiz Arnaiz** (Spain), *ad hoc judge*,
Kristina **Pardalos** (San Marino),
Ján **Šikuta** (Slovakia),
Nona **Tsotsoria** (Georgia), *substitute judges*,

and also Santiago **Quesada**, *Section Registrar*.

Representatives of the parties

Government

Fernando **Irurzun Montoro**, Luisa **García Blanco** and Isaac **Salama Salama**, *Agents*;

Applicant

José Luis **Mazón Costa** and Enrique **Espinosa**, *Counsel*.

Third parties

The applicant, José Antonio **Fernández Martínez**, will also attend the hearing.

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The European Court of Human Rights was set up in Strasbourg by the Council of Europe Member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.