

Conference of Bishops of Spain

European Centre for Law and Justice

WRITTEN OBSERVATIONS

submitted to the
European Court of Human Rights
in the case

***Pontificia, Real y Venerable Esclavitud del Santísimo Cristo de La
Laguna and the Diocese of San Cristóbal de La Laguna v. Spain***

Application no. 7421/2025

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1. The application filed by the *Pontificia, Real y Venerable Esclavitud del Santísimo Cristo de La Laguna* (hereinafter: the Brotherhood) and the Diocese of San Cristóbal de La Laguna against Spain raises several questions concerning the scope of the principle of the autonomy of religious institutions, as well as the limits that States may impose on the exercise of the freedom to manifest one's religion (Article 9 § 2 of the Convention) and the freedom of association (Article 11 § 2 of the Convention).
2. Given the religious dimension of the present dispute, the case should be examined primarily from the perspective of an infringement on the freedom of religion, in its collective dimension, which constitutes the foundation of the principle of the autonomy of religious organizations enshrined in the Court's case law (I). Furthermore, it is essential to consider the impact of the contested measure (the annulment of Article 1 of the Statute providing for the single-sex nature of the Brotherhood) on the protection of freedom of association (II). Finally, potential tensions between the autonomy of religious institutions and the principle of equal treatment require clarification regarding the scope of the principle of non-discrimination on the basis of sex (III).

I. Freedom of Religion and Respect for the Principle of Institutional Autonomy of Religious Institutions

1. The Religious Nature of the Case and the Essential Role of the Principle of Institutional Autonomy in the Court's Case Law

3. This case falls within the scope of Article 9 of the Convention, since all its aspects are confined to the religious sphere. The Brotherhood is a public Catholic association of the faithful, governed by canon law.¹ It is a religious group whose activities are entirely devotional and liturgical in nature.² The religious nature of the case also stems from the fact that it raises the issue of the internal organization of religious communities – an issue systematically addressed by the Court from the perspective of respect for religious freedom.³ Similarly, the decision to admit or refuse a new member into a religious group has been recognized as an expression of religious freedom.⁴ Furthermore, the matter at issue falls within the scope of the agreements between Spain and the Holy See.⁵ All these factors imply that the resolution of the dispute rests on the application of Article 9 of the Convention.
4. Since the issue of the self-organization of religious communities is at the heart of the main dispute, it should be examined more specifically from the perspective of an infringement on the autonomy of religious institutions. According to the Court's well-established case law, religious organizations are entitled to respect for their autonomy.⁶ The

¹ Code of Canon Law, canons 312–320. See, in particular, canon 314: “The statutes of each public association and their revision or change need the approval of the ecclesiastical authority competent to erect the association according to the norm of can. 312, §1.”

² In accordance with Article 1 of the Brotherhood's Statutes, its purpose is “to promote among its members a more perfect Christian life, the practice of works of evangelical piety, and the growth of devotion and worship of the sacred image of Our Lord Crucified.” In its judgment of December 23, 2021 (No. 925/2021), the Spanish Supreme Court emphasized that “the activities and objectives [of the Brotherhood] are strictly and exclusively religious [...]”

³ See, e.g., *Hassan and Tchaouch v. Bulgaria* [GC], No. 30985/96, October 26, 2000; *Sviato-Mykhailivska Parafiya v. Ukraine*, No. 77703/01, June 14, 2007; *Advisory Opinion on the Status of Monastic Sites and the Jurisdiction of Courts to Hear Disputes Concerning Them* [GC], Application No. P16-2025-001, March 5, 2026.

⁴ See *below*.

⁵ *Ibid.*

⁶ This principle has been invoked on several occasions by the Grand Chamber in the following cases: *Sindicatul “Păstorul cel Bun” v. Romania* [GC], No. 2330/09, January 31, 2012, in particular para. 74; *Fernández-Martínez v. Spain* [GC], No. 56030/07, June 12, 2014, in particular paras. 127–129; and *Károly Nagy v. Hungary* [GC], No. 56665/09, September 14, 2017. This principle was recently reaffirmed in the case of *Țimpău v. Romania*, No. 70267/17, December 5, 2023, in particular paras. 187–188, 216, and in the *Advisory Opinion on the Status of Monastic Sites*, *supra*, para. 60.

Court has repeatedly noted that “religious communities traditionally and universally exist in the form of organised structures” and that, when the organization of one of these communities is at issue, Article 9 of the Convention “must be interpreted in the light of Article 11, which safeguards associative life against unjustified State interference.”⁷ Autonomy is intended to ensure that the religious organization can “function peacefully, free from arbitrary State intervention.”⁸ In the Court’s view, “the autonomous existence of religious communities is indispensable for pluralism in a democratic society and is thus an issue at the very heart of the protection which Article 9 affords.”⁹

2. National Legal Context: Framework for Implementing the Principle of Institutional Autonomy

5. In ruling on cases concerning the institutional autonomy of religious entities, the Court has repeatedly stated that States enjoy a wide margin of appreciation in determining their relations with religions.¹⁰ In the Court’s view, “[w]here questions concerning the relationship between State and religions are at stake, on which opinion in a democratic society may reasonably differ widely, the role of the national decision-making body must be given special importance.”¹¹ As a general rule, the Court shows great respect for the choices made by States in determining the nature of their relations with churches,¹² which may take the form of concordats¹³ or provisions incorporating canon law into positive law.¹⁴

6. In its case law, the Court has notably confirmed the legitimacy of States’ choice to promote policies of neutrality and impartiality with regard to religion. It “has frequently emphasized the State’s role as the neutral and impartial organiser of the exercise of various religions, faiths and beliefs,” which it refers to as the “State’s duty of neutrality and impartiality.”¹⁵ This neutrality is required of the State insofar as it exercises “regulatory power” in religious matters and insofar as it necessarily maintains a relationship “with the various religions, denominations, and beliefs”.¹⁶ The principle of neutrality and impartiality prohibits the State from arbitrating conflicts within a religious community: it is the sole responsibility of the church’s legitimate internal authority to resolve matters of a religious or theological nature.¹⁷

7. Under Spanish law, relations between the State and the Church are governed primarily by the Agreements between the Spanish State and the Holy See of January 3, 1979. Pursuant to Article I.1 of the Agreement between the Holy See and the Spanish State on Legal Affairs, dated January 3, 1979, the State recognizes the Catholic Church’s right to carry out its apostolic mission and guarantees it the free and public exercise of its specific activities, particularly those relating to worship, jurisdiction, and the magisterium. Article I.2 of the

⁷ See, e.g., *Hassan and Tchaouch*, supra, para. 62; *Sindicatul “Păstorul cel Bun,”* supra, para. 136.

⁸ *Ibid.*

⁹ *Hassan and Tchaouch*, supra, para. 62; see also, e.g., *Fernández-Martínez v. Spain*, supra, para. 127.

¹⁰ See, e.g., *Sindicatul “Păstorul cel Bun,”* supra, para. 138; *Fernández-Martínez v. Spain*, supra, para. 130.

¹¹ See, e.g., *Leyla Şahin v. Turkey* [GC], No. 44774/98, para. 109; *Fernández-Martínez v. Spain*, supra, para. 130.

¹² See, in this regard, e.g., Ronan McCrea, “Regulating the Role of Religion in Society in an Era of Change and Secularist Self-Doubt: Why European Courts Have Been Right to Adopt a Hands-Off Approach” (2022) 75 *Current Legal Problems* 111.

¹³ The Court did take into account the existence of concordats in cases such as *Alujer Fernández and Caballero García v. Spain*, No. 53072/99, June 14, 2001; *Lombardi Vallauri v. Italy*, No. 39128/05, October 20, 2009; *Pellegrini v. Italy*, No. 30882/96, July 20, 2001; *Lautsi and Others v. Italy* [GC], No. 30814/06, March 18, 2011; *Fernández-Martínez v. Spain*, supra. See also European Commission of Human Rights, *Iglesia Bautista “El Salvador” and Ortega Moratilla v. Spain*, No. 17522/90, January 11, 1992.

¹⁴ See, e.g., *Sindicatul “Păstorul cel Bun,”* supra.

¹⁵ See, e.g., *Bayatyan v. Armenia* [GC], No. 23459/03, July 7, 2011, para. 120; *S.A.S. v. France* [GC], No. 43835/11, July 1, 2014, para. 127.

¹⁶ *Metropolitan Church of Bessarabia and Others v. Moldova*, No. 45701/99, December 13, 2001, para. 116.

¹⁷ *Hassan and Tchaouch v. Bulgaria*, supra, para. 78; *Metropolitan Church of Bessarabia and Others v. Moldova*, supra, para. 117.

forementioned agreement stipulates that the State recognizes the Church's freedom of organization, as well as its freedom to establish, approve, and abolish ecclesiastical institutions and entities.

8. Finally, Article VII of the Agreement on Legal Affairs¹⁸ provides that the Holy See and the Spanish Government shall proceed "by mutual agreement" to resolve any difficulty or doubt regarding the interpretation or application of the treaty.¹⁹ This provision constitutes an ultimate guarantee of the Church's autonomy vis-à-vis state authorities. To the extent that there is any doubt as to whether a dispute actually falls within the jurisdiction of civil courts, state authorities must therefore refer the matter to the dispute resolution commission in accordance with the provisions governing conflicts of jurisdiction.

9. The Agreement on Legal Affairs is an international treaty that forms part of the Spanish legal system. Pursuant to Article 96 of the Spanish Constitution, its "provisions may only be repealed, amended, or suspended in the manner provided for in the treaties themselves or in accordance with general norms of international law."²⁰

10. The principle of the autonomy of religious organizations recognized in the Agreements between Spain and the Holy See is also reflected in the constitutional provisions and organic laws concerning the exercise of the freedoms of religion and association. Under Spanish law, freedom of religion and worship is guaranteed primarily by Article 16 of the Spanish Constitution. More specifically, paragraph 3 of that article establishes the principle of the state's non-denominational character by stating that "no denomination shall have a state character." It adds that "[t]he public authorities shall take into account the religious beliefs of Spanish society and shall consequently maintain appropriate cooperation relations with the Catholic Church and other confessions."

11. The principle of the autonomy of religious organizations is also enshrined in the relevant provisions of the organic laws applicable in this case: Organic Law 7/1980 of July 5, 1980, on Religious Freedom, as well as Organic Law 1/2002 of March 22, 2002, on Freedom of Association. In particular, Article 6.1 of the Organic Law on Religious Freedom provides that "[r]egistered churches, denominations, and religious communities shall have full autonomy and may establish their own regulation for their organization, internal system, and personnel."

12. Organic Law 1/2002 of March 22, 2002, on Freedom of Association guarantees the freedom of associations to organize and conduct their internal affairs without public interference. Article 1.3, paragraph 2, of this law explicitly excludes from its scope "associations established by churches, religious faiths, and religious communities." Such associations are governed by the relevant international treaties, including the Agreements between the Holy See and Spain.

13. The unequivocal terms of the agreements between Spain and the Holy See, which enshrine the principle of religious autonomy, preclude Spanish courts from ruling on disputes concerning the internal organization of religious groups. By accepting jurisdiction in this case and proceeding to amend the Brotherhood's Statutes, the courts in question have not only violated the Spanish State's international obligation and provisions of constitutional and organic law, but have also seriously undermined religious freedom and the principle of legal certainty, which is one of the pillars of the rule of law.

¹⁸ Agreement between the Spanish State and the Holy See on Legal Affairs of January 3, 1979, *supra*, Art. VII.

¹⁹ *Ibid.*

²⁰ See also Articles 26 and 27 of the 1969 Vienna Convention on the Law of Treaties, May 23, 1969, United Nations, Treaty Series, vol. 1155, p. 331.

3. Consequences of the Principle of Autonomy of Religious Organizations

A. Internal Organization of Religious Communities: The Essential Content of Institutional Autonomy

14. Issues relating to the selection and admission of members of a religious community (such as the one at issue in this case) lie at the very heart of religious freedom and the principle of institutional autonomy. The Court has repeatedly emphasized that religious organizations must be free to define the conditions for membership and, therefore, to “admit members or exclude existing members.”²¹ Consequently, the State is prohibited from “obliging a religious community to admit new members or to exclude existing ones.”²² Similarly, the principle of autonomy prohibits the State from compelling a religious community to retain or readmit a member.²³ This case law clearly indicates that any act intended to, or having the effect of, altering the decisions of a religious group regarding the admission or expulsion of one of its members constitutes an unlawful interference with its right to religious freedom.

15. In light of the principle of institutional autonomy, the State has no right to modify the criteria for admission to a religious group. Yet this was precisely the result of the Constitutional Court’s ruling of November 4, 2024, which struck down Article 1 of the Brotherhood’s Statute, which stipulated that membership must be single-sex.²⁴

B. Lack of Jurisdiction of State Bodies to Rule on Religious Matters

16. In accordance with the well-established case law of the Court,²⁵ civil courts must decline jurisdiction – out of respect for the autonomy of religious communities – in proceedings that do not concern “a ‘right’ which can arguably be recognized in [domestic] law.”²⁶ Civil courts lack jurisdiction to assess non-civil rights within the meaning of the Convention. Furthermore, like any public body, civil courts are bound by a duty of impartiality and neutrality that prohibits the State from “any assessment of the legitimacy of religious beliefs or the ways in which they are expressed.”²⁷

17. In the present case, the applicants have repeatedly argued that the civil courts lack jurisdiction to hear this dispute. Ms. M.-T. L. S. has in no way proven that the refusal to admit her to the Brotherhood would have infringed upon a civil right protected under Spanish domestic law. Furthermore, not being a member of the Brotherhood does not deprive Ms. L. S. of any civil or material rights or benefits. In particular, under the Convention, just as under Spanish law, there is no right to join an association of one’s choice.²⁸

18. By considering themselves competent to rule on the merits of the dispute, the Spanish courts violated the principle of separation of church and state. More specifically, they acted as canonical courts in several respects, in violation of their duty of religious neutrality. First, the aforementioned courts erroneously considered themselves competent to render a judgment on a religious matter. Second, they exceeded their jurisdiction by ruling on the *theological*

²¹ *Sviato-Mykhailivska Parafiya v. Ukraine*, supra, paras. 146 and 150 (free translation). See also *Advisory Opinion on the Status of Monastic Sites*, supra.

²² *Sindicatul “Păstorul cel Bun” v. Romania*, supra, para. 137. See also *Advisory Opinion on the Status of Monastic Sites*, supra.

²³ *Sviato-Mykhailivska Parish v. Ukraine*, supra, paras. 146 and 150.

²⁴ STC, Judgment No. 132/2024.

²⁵ See, e.g., *Dudova and Duda v. the Czech Republic* (dec.), No. 40224/98, January 30, 2001; *Ahtinen v. Finland*, No. 48907/99, September 23, 2008.

²⁶ *Dudova and Duda*, supra, para. 1.

²⁷ *Miroļubovs et al. v. Latvia*, No. 798/05, September 15, 2009, para.89. See also, e.g., *Hassan and Tchaouch v. Bulgaria*, supra, para. 78.

²⁸ See below.

validity of the requirement for single-sex membership within the Brotherhood. Finally, the civil courts should not have applied the principle of non-discrimination to a situation falling within the religious sphere.²⁹

19. In particular, the judgment of the Spanish Constitutional Court dated November 4, 2024,³⁰ which directly alters internal organizational rules, amounts to an assessment of the legitimacy of an expression of the Catholic faith. This deprives religious freedom of any practical effect. It is not for state authorities to assess whether an internal rule of a religious organization (e.g., a rule requiring single-sex education) is grounded in religious doctrine. Such an assessment amounts to a flagrant disregard for the principle of institutional autonomy.³¹

20. It should be noted, incidentally, that Ms. L. S. has the right to file an appeal with the canonical courts competent to rule on her request.

II. Freedom of Association of Religious Communities

1. The Collective Dimension of Freedom of Association and the Absence of a Right to Join an Association

21. In addition to constituting a violation of the applicants' freedom of religion, the annulment of Article 1 of the Brotherhood's Statute infringes upon the freedom of association of its 1,200 members. The organizational autonomy of associations is an important aspect of their freedom of association, which is protected under Article 11 of the Convention.³² Associations have the right to establish their own rules and to govern themselves.³³

22. It is important to note that Article 11 of the Convention protects not only positive freedom of association but also negative freedom of association (the right not to join an association or to withdraw from it).³⁴ By extension, the negative aspect of freedom of association includes the right of associations to freely choose their future members.

23. The Court's case law regarding the interpretation of Article 11 of the Convention clearly indicates that this provision does not establish any right to join an association of one's own choosing. Similarly, under the Convention, there is no obligation for an association to admit a particular member.³⁵ Article 11 of the Convention does not guarantee any "right to admission" or "right to forced entry" into an association. In its case law, the Court has confirmed that private associations enjoy a wide margin of appreciation in the selection of their members and that Article 11 of the Convention does not impose a universal obligation of admission on private entities.³⁶

24. In the present case, the Constitutional Court interpreted the provisions on freedom of association as *de facto* guaranteeing the right to be a member of the association of one's choice, which constitutes an erroneous interpretation of freedom of association, seriously infringing upon the right of collective association of the Brotherhood's members.

²⁹ See *below*.

³⁰ STC, Judgment No. 132/2024.

³¹ The Constitutional Court's ruling has been strongly criticized by Spanish legal scholars; see, e.g., Silvia Meseguer, "A Step Backward in the Protection of Religious Denominations' Autonomy... Sentencia TC 132/2024," *Revista General de Derecho Canónico* No. 67, 2025; Rafael Palomino Lozano, "El Cristo de La Laguna y el cesaropapismo constitucional," *Revista jurídica digital "OMNES,"* December 17, 2024.

³² *Lovrić v. Croatia*, No. 38458/15, April 4, 2017, para. 71. See also *Sindicatul "Păstorul cel Bun" v. Romania*, *supra*, paras. 136–38.

³³ *Cheall v. United Kingdom*, Commission decision, No. 10550/83, May 13, 1985.

³⁴ *Sigurður A. Sigurjónsson v. Iceland*, No. 16130/90, June 30, 1993; para. 35; *Vörður Ólafsson v. Iceland*, No. 20161/06, April 27, 2010, para. 45.

³⁵ *Cheall v. the United Kingdom*, *supra*. See also *Associated Society of Locomotive Engineers & Firemen (ASLEF) v. the United Kingdom*, No. 11002/05, February 27, 2007, para. 39.

³⁶ *Ibid.*

25. Furthermore, it should be noted that the Convention “does not guarantee any right to dissent within a religious organization.”³⁷ However, the very act of demanding, upon joining an association, that it abandon an essential aspect of its identity (single-sex membership) amounts to a form of dissent that expresses the applicant’s profound disagreement with the ethos of the association in question. Such an attitude demonstrates the person’s intention to obliterate a key element of the group’s identity and rules of self-organization. In the present case, the request for admission to the brotherhood reveals Ms. L. S.’s principled opposition to the belief shared by the members of the brotherhood (and, more broadly, by members of the Catholic Church) that the rule of single-sex membership can facilitate progress in the spiritual life. Thus, such an action, which seeks to challenge a constitutive element of the group’s identity, infringes upon the essential content of the freedom of association and religion protected by the Convention.³⁸

2. Enhanced Protection of Freedom of Association in the Context of Religious Group Activities

26. In its case law, the Court treats religious organizations as a distinct category of associations, as their operations are closely linked to faith, identity, and pluralism. It grants religious organizations enhanced protection in their internal affairs, particularly when state interference is likely to affect their doctrine, hierarchy, or membership composition. Indeed, as noted above, the freedom of association of religious communities is guaranteed not only by Article 11 of the Convention but also by Article 9. While Article 11 of the Convention protects collective organization as a “procedural” right, it does not directly address the content of the message or the identity of the group. By contrast, these aspects are protected by Article 9 of the Convention. For this reason, any potential infringement on the freedom of association of a religious group must necessarily be examined in light of Article 9, read in conjunction with Article 11 of the Convention.

27. In particular, canonical associations, which pursue exclusively devotional and ritual objectives, cannot be equated with associations under ordinary law. In this regard, it should be emphasized that, while in exceptional circumstances the State may be entitled to intervene in matters relating to the organization of ordinary associations (such as a labor union or a political party), such a possibility is strictly excluded with respect to religious associations.³⁹ The functioning of a religious association is, in fact, an expression of the right to freedom of religion. Furthermore, it must be recalled that the measure at issue in this case concerns “worship” activities, the very essence of the freedom of religion guaranteed by Article 9 of the Convention. Consequently, treating a religious association as a cultural or social association would amount to denying the specific protection of its freedom of religion.

3. Strict Limits on State Interference in the Internal Organization of Religious Groups

28. According to settled case law, exceptions to the rule of freedom of association “are to be construed strictly and only convincing and compelling reasons can justify restrictions on that freedom.”⁴⁰ A restriction on freedom of association must primarily respond to a “pressing social need.”⁴¹ In its case law, the Court has indicated that the reasons underlying decisions

³⁷ *Miroşubovs and Others v. Latvia*, para. 80; *Sindicatul “Păstorul cel Bun” v. Romania*, supra, para. 137.

³⁸ *Ibid.*

³⁹ See *Refah Partisi (Prosperity Party) and Others v. Turkey* [GC], Nos. 41340/98, 41342/98, 41343/98, and 41344/98, February 13, 2003.

⁴⁰ *Gorzelik and Others v. Poland*, No. 44158/98, February 17, 2004, para. 95.

⁴¹ *Ibid.*, para. 96.

affecting the internal organization of religious groups must “be particularly weighty and compelling.”⁴²

29. With regard to restrictions on freedom of association outside the context of the exercise of religious freedom, the Court has, on a case-by-case basis, held that the refusal to admit a person into a particular organization may be sanctioned under specific circumstances, when the association in question occupies a dominant position akin to a *de facto* economic monopoly. However, this criterion of “dominant position” or “associative monopoly” has been applied by the Court only exceptionally in economic and professional contexts.⁴³ The associative monopolies in question were imposed by law and directly infringed upon individuals’ means of subsistence or property rights.

30. The concept of “dominant position” cannot be applied to communities whose objectives are strictly devotional and whose activities have no economic, professional, or employment-related connotations. Even if the theory of associative monopoly were applicable in the religious sphere, there is no basis for applying it to assess the internal structure of the Catholic Church. Furthermore, since no community or group, either within or outside the Catholic Church, enjoys exclusive rights or privileges regarding worship, applying this concept to a context such as that of the main proceedings would be profoundly erroneous.

31. In any event, the internal organization of the Catholic Church exhibits remarkable structural pluralism. In the present case, the Brotherhood held neither a monopoly nor a dominant position in religious or cultural activities. In fact, there are 26 Catholic brotherhoods in La Laguna and 362 mixed brotherhoods in the Diocese of Tenerife that pursue the same objectives. Furthermore, it is possible to establish new brotherhoods, with the same spiritual and religious objectives, composed of both men and women or of women only.

32. The existence of alternative groups pursuing the same goals correspondingly reduces the impact of being denied admission to a particular association.⁴⁴ The possibility of pursuing the goal of growth in faith (or, in other words, sanctification) through membership in another religious group, through the creation of a separate group, or through participation in the Brotherhood’s activities as an external member precludes characterizing the situation at issue as one involving any kind of associative monopoly within the meaning of the Court’s case law.

33. In accordance with Catholic doctrine, membership in a brotherhood or any other religious group is neither necessary nor an end in itself. It is one means among others for pursuing the goal of personal sanctification. There are many ways to work toward one’s sanctification while fully participating in the Church’s salvific mission; one need only mention regular attendance at Holy Mass, the practice of confession, Eucharistic adoration, individual or communal prayer, and the performance of acts of charity or penance. In the present case, Ms. L. S. is in no way deprived of access to these means. On the contrary, she was fully entitled to participate in worship activities open to the public and organized by the parishes, the diocese, and the Brotherhood. The availability of other independent means to pursue the goal of growth in faith confirms that the refusal to admit a person to a particular brotherhood should not be viewed as depriving that person of any right or privilege.

⁴² *The Moscow Branch of The Salvation Army v. Russia*, No. 72881/01, October 5, 2006.

⁴³ See, e.g., *Young, James, and Webster v. the United Kingdom*, Applications No. 7601/76 and 7806/77, August 13, 1981, No. 44, para. 55; *Chassagnou and Others v. France* [GC], No. 25088/94, 28331/95, and 28443/95, April 29, 1999, para. 114.

⁴⁴ See, in this regard, e.g., Dwight Newman, *Community and Collective Rights: A Theoretical Framework for Rights Held by Groups* (Hart Publishing, 2011); 181–182. Aroney, Nicholas, and Patrick Parkinson. “Associational Freedom, Anti-Discrimination Law, and the New Multiculturalism.” *Australasian Journal of Legal Philosophy*, 44, 2019, pp. 1–28. p. 2.

III. Limited Scope of the Principle of Non-Discrimination on the Basis of Sex

1. Principle of the Autonomy of Religious Institutions: A Legitimate Limit on the Application of the Principle of Equal Treatment

34. The principle of religious autonomy requires civil courts to respect the decisions of religious groups regarding their internal operations. Such groups may legitimately make membership contingent upon candidates' compliance with their rules and a commitment to heightened loyalty. Individuals who voluntarily join such a group may waive *the exercise* of certain rights.

35. The Court has held that religious groups are not required to guarantee the religious freedom of their members;⁴⁵ that the scope of the exercise of freedom of expression may be limited for a secular employee of a religious employer;⁴⁶ that religious communities are not required to guarantee their clergy the right to form a union,⁴⁷ to start a family or maintain family relationships,⁴⁸ or to divorce and remarry in a civil ceremony.⁴⁹ Similarly, the right to non-discrimination, as enshrined in Article 14 of the Convention and in Article 1 of Protocol No. 12 to the Convention, is not intended to apply to the internal affairs of religious institutions.⁵⁰ Indeed, imposing equal treatment with regard to the composition of a religious group amounts to the annihilation of its identity and status as a religious association.

36. It is worth noting that the distinction between men and women is rooted in the religious teachings of all the world's major religions, including Christianity, Islam, Judaism, Buddhism, and Hinduism. With regard more specifically to the teachings of the Catholic Church, it is worth emphasizing that Christianity upholds the principle of equality between men and women, who are equal in dignity as creatures of God.⁵¹ At the same time, Catholic doctrine recognizes natural differences between the two sexes. The distinction between men and women is of particular importance in the context of worship practices and the performance of liturgical acts (such as those at issue in the present case). This distinction in roles in religious life and the liturgy does not stem from a discriminatory intent but arises from the teaching of Tradition and is based on theological considerations rooted in Scripture. By way of illustration, the fact that the Lord Jesus Christ became man by taking on a male body explains the exclusion of women from the priestly ministry.⁵² Given the importance of the distinction between men and women in Catholicism, any act aimed at or resulting in the imposition of a secular conception of gender equality on Church entities must necessarily be characterized as a serious interference with religious freedom.

37. In summary, the separation of the sexes imposed by certain religious precepts (e.g., regarding the composition of religious communities or entities) in no way introduces gender inequality but rather responds to disciplinary reasons of a religious nature intended to facilitate spiritual life. From this perspective, interference consisting of the imposition of mixed-sex

⁴⁵ *X. v. Denmark*, No. 7374/76, Commission decision of March 8, 1976. The freedom of personal religion of the faithful—and even more so of clergy—is exercised at the moment of accepting or rejecting the faith, and even more so a religious office, and through the ability, in the event of disagreement, to leave that office and the religious community.

⁴⁶ *Rommelfanger v. FRG*, No. 12242/86, Commission decision of September 6, 1989.

⁴⁷ *Sindicatul "Păstorul cel Bun" v. Romania* [GC], No. 2330/09, July 9, 2013.

⁴⁸ *Sijakova and Others v. the Former Yugoslav Republic of Macedonia*, No. 67914/01, March 6, 2003; see also *Schüth v. Germany*, No. 1620/03, June 28, 2012.

⁴⁹ *Travaš v. Croatia*, No. 75581/13, Oct. 4, 2016.

⁵⁰ *Fernández Martínez v. Spain*, *supra*, para. 129.

⁵¹ Gen 1:27 "God created man in his own image; in the image of God he created him; male and female he created them."

⁵² The priesthood entails, among other things, the celebration of the Eucharist, during which the priest acts *in persona Christi*, as Jesus Christ, identifying himself with Him. See, in particular, can. 1024: "A baptized male alone receives sacred ordination validly."

policies on a religious structure amounts to passing judgment on the legitimacy of religious beliefs, which is strictly prohibited under the Convention.⁵³

38. Looking beyond the framework of the Convention, there is a broad international consensus that the principle of equality or equal treatment does not apply in the context of the self-organization of religious communities. In his report on the elimination of all forms of religious intolerance, the United Nations Special Reporter on freedom of religion recalls that “the State must generally respect the autonomy of religious institutions, also in policies of promoting equality between men and women.”⁵⁴

39. Even within the legal framework of the European Union, where the principle of equal treatment between men and women is of fundamental importance,⁵⁵ there are exceptions to the application of the principle of non-discrimination that are closely linked to respect for the autonomy of religious entities.⁵⁶ If a situation analogous to that in the present case had arisen within the scope of European Union law, an association such as the Brotherhood would have benefited, as an organization whose “the ethos of which is based on religion” from an exemption under anti-discrimination laws under Article 4(2) of Directive 2000/78.⁵⁷ The EU Member States’ recognition of the need to respect the distinction between men and women in religious matters is perhaps best illustrated by the Joint Declaration on the Status of Mount Athos, an autonomous monastic region in Greece.⁵⁸ In accordance with the autonomous legal status of Mount Athos, access to the Mount Athos peninsula (covering an area of approximately 335 km²) is strictly prohibited to women. This special status, recognized by Greece and the entire international community and stemming from a tradition dating back more than a thousand years, has always been acknowledged and respected.

2. The Ongoing Importance of the Distinction Between Men and Women in the Secular Sphere

40. Outside the religious sphere, it is important to note that the distinction between men and women is maintained in a significant number of private-law associations. The significance of this distinction is particularly evident in sports,⁵⁹ the professional sphere,⁶⁰ volunteer work,⁶¹ and within associations such as Freemasonry, for example. The single-sex nature of these associations is accepted as part of the functioning of democratic societies. European courts have repeatedly upheld the single-sex nature of associations,⁶² thereby demonstrating their endorsement of the principle that single-sex membership can constitute an identifying feature of the group. In particular, single-sex access to certain services in various contexts has been

⁵³ *İzzettin Doğan et al. v. Turkey* (GC), No. 62649/10, April 26, 2016.

⁵⁴ United Nations General Assembly, *Report of the Special Rapporteur on freedom of religion or belief*, Heiner Bielefeldt, August 7, 2013, UN Doc. A/68/290, para. 59 (section devoted to the analysis of the interrelationships and mutual limitations between freedom of religion and gender equality).

⁵⁵ See, e.g., Articles 2 and 3(3) of the Treaty on European Union; Articles 8, 153, and 157 of the Treaty on the Functioning of the European Union (TFEU); and Articles 20, 21, and 23 of the Charter of Fundamental Rights of the European Union.

⁵⁶ See, in particular, Council Directive 2000/78/EC of November 27, 2000, establishing a general framework for equal treatment in employment and occupation, OJ L 303, December 2, 2000, pp. 16–22. See also Article 17 TFEU.

⁵⁷ Directive 2000/78/EC, cited above, Art. 4, para. 2.

⁵⁸ Joint Declaration No. 4 on Mount Athos, annexed to the Final Act of the Treaty of Accession of the Hellenic Republic to the European Communities, signed in Athens on May 28, 1979.

⁵⁹ In the *Semenya v. Switzerland* judgment (No. 10934/21, July 10, 2025), the Grand Chamber recognized the legitimacy of the division between men and women in athletics. See also the Olympic Charter of February 3, 2026 (in particular Fundamental Principles of Olympism Nos. 5 and 6); Convention on the Elimination of All Forms of Discrimination against Women (in particular Art. 10(g)).

⁶⁰ See, e.g., the networks Business & Professional Women Europe (BPW) [bpw-europe.org]; Women in Leadership (WIL Europe) [wileurope.org].

⁶¹ See, e.g., the European Women’s Lobby (EWL) [womenlobby.org]; Women Against Violence Europe (WAVE).

⁶² See, e.g., BVerwG, resolution, April 8, 2022, 6 B 17.21, *Traditional Men’s Choir Case*, in which the German Federal Administrative Court upheld the choir’s right to exclude women in order to preserve its vocal repertoire.

upheld by national courts.⁶³ In a similar vein, drawing on the concept of “freedom of expressive association”, the U.S. Supreme Court ruled in a landmark decision that the state may not use its anti-discrimination laws to force a private association – in this case, a single-sex educational movement for young boys – to admit members whose presence would alter the substance of its message or its educational method.⁶⁴ The Supreme Court explained that such interference was impermissible to the extent that it was likely to significantly impair the group’s ability to defend and promote its beliefs.

41. Furthermore, European legal instruments guarantee the possibility of maintaining distinctions based on sex. For example, under European Union law, the legislature has excluded the field of sports from the binding scope of mandatory coeducation regarding access to goods and services.⁶⁵

3. Striking a Balance Between the Autonomy of Religious Institutions and Competing Interests

42. Assuming that, under specific circumstances, state courts are called upon to rule on the merits of matters that nevertheless fall within the scope of religious autonomy, the assessment of the legitimacy of potential interference with an individual right must necessarily be based on a balancing of all competing rights and interests, such as the right to freedom of religion, freedom of association in its individual and collective dimensions, or, where applicable, the principle of non-discrimination.⁶⁶

43. It is surprising that, in the present case, the Constitutional Court did not conduct any examination of the competing rights and interests. Furthermore, the annulment of Article 1¹ of the Brotherhood’s Statute entails the removal of a distinctive feature of the organization. Thus, it constitutes a particularly serious and manifestly disproportionate measure, as it contributes to the elimination of pluralism – which lies at the heart of democratic societies—and infringes upon the rights of the Brotherhood’s current members. Indeed, the Court consistently reiterates, the actions of state authorities in ensuring the free and peaceful exercise of religious freedom must not lead to the eradication of differences between religious groups.⁶⁷ The disproportionate nature of the contested measure also stems from its potential effects on the internal organization of a multitude of religious communities operating on the principle of single-sex membership.

⁶³ See, e.g., Liège Court of Appeal, 2017, *Health City Club case* (upholding the refusal to admit men to a fitness facility to preserve the privacy of female users). See also United Kingdom Supreme Court, *For Women Scotland Ltd v. The Scottish Ministers*, [2025] UKSC 16.

⁶⁴ U.S. Supreme Court, *Boy Scouts of America v. Dale*, 530 U.S. 640 (2000).

⁶⁵ Council Directive 2004/113/EC of December 13, 2004, implementing the principle of equal treatment between men and women in the access to and supply of goods and services, OJ L 373, December 21, 2004, pp. 37–43. Article 4(5) of the directive provides that a difference in treatment remains legitimate if the provision of goods and services intended exclusively or primarily for men or women pursues a legitimate aim and the means of achieving that aim are appropriate and necessary.

⁶⁶ In particular, the Court has weighed the rights involved in cases concerning employees of religious communities; see, e.g., *Fernández Martínez v. Spain*, supra, paras. 123 and 132; *Obst v. Germany*, No. 425/03, September 23, 2010; *Schüth v. Germany*, supra.

⁶⁷ *Metropolitan Church of Bessarabia and Others v. Moldova*, supra, para. 116.