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MINISTERS OF RELIGION UNDER CHILEAN LAW

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I. General observations

The objective of this paper is a study of the legal position of ministers of religion under Chilean law. In order to have a better understanding, it will be necessary to review some elements that allow us to appropriately contextualize the topic being addressed.

From its beginnings until 1925, there prevailed in Chile a system of union between the Catholic Church and the state. The Constitution[2] of that year formalized the system of separation of the two, which condition was maintained in practically the same terms in the Constitution of 1980 currently in force.

There is no concordat between the Chilean state and the Catholic Church, nor is there any agreement with other religious denominations. In

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[2] Constitution of 1925, article 10 numeral 2.

1999, Law number 19,638 was passed which establishes rules for the legal constitution [or charter] of churches and religious organizations[3] and specifies some aspects of religious freedom formalized in the Constitution.

Chile has been a country of Catholic tradition, inherited from the Spanish. This is evidenced by its traditions also having shaped legal principles. Figures from the latest census, carried out in 2002,[4] are enormously illustrative of the current situation that exists in the country regarding believers, non-believers and, among the former, which religion they profess.

According to the census, the total population of Chile was 15,116,435 inhabitants, of which 74% (11,226,309 inhabitants) were over 15 years of age. Among these, 91.7% declared themselves to be believers while 8.3% indicated they had no religious affiliation, or were atheists or agnostics (931,990 inhabitants.) The 10, 294,319 inhabitants who declared themselves to be believers claimed the following religious affiliations: Catholics, 7,853,428 (69.96%); Evangelicals, 1,699,725 (15.14%); Jehovah's Witnesses, 119,455 (1.06%); Jewish, 14,976 (0.13%); Mormons, 103,735 (0.92%); Muslims, 2,894 (0.03%); Orthodox, 6,959 (0.06%); and other religions or creeds, 493,147 (4.39%).[5]

These figures show that there are other religions co-existing with the Catholic. It can be affirmed both responsibly and with satisfaction that a climate of social peace has prevailed as far as the phenomenon of religions is concerned. There have been no persecutions or wars for any

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[3] Published in the Diario Oficial of October 14, 1999. In accordance with article 7 of the Civil Code, this law is in force from the time of its publication in the Diario Oficial and for all effects the date of the law will be that of its publication.

[4] Compare *Síntesis de resultados,* Institución Nacional de Estadísticas, Censo 2002, Santiago, Chile, Empresa Periodística La Nación S.A., 2003, pp. 25-26.

[5] The 2002 Census has certain peculiarities: Non-Catholic Christian denominations are combined in the statistics under "the Evangelical Religion" without at least distinguishing between Protestants and Evangelicals as was done in the 1992 Census. Also, the options "Jehovah's Witnesses" and "Mormons" were added.

reason of this type. Reforms introduced have been, in general terms, the result of a great national consensus.

Turning our attention to the subject at hand, one initial comment is that in Chile there is no [single] legal statute pertaining to ministers of religion which systematically regulates all the rights and duties belonging to them. One must search the texts of various and scattered regulations in order to gain a unified view of the subject.

This article begins by defining the notion of minister of religion as the object of legal regulations which we will analyze later and which have a bearing on [the minister's] work situation, incapacity to hold certain offices or carry out certain functions, and obligation of secrecy; and, finally, [we will look at regulations] of a penal nature that take into account the minister and, therefore, have their own specificity. Also, reference is made to what is today called "civil death" which, although not always affecting ministers of religion per se, shows the radical nature of the life to which those who embraced that religious state were called.

During the course of this presentation there will be times when a distinction will be made between Catholic and non-Catholic ministers, according to the criteria present in the minds of legislators, and others in which the laws are applicable to all equally.

II. Concept and accreditation of ministers of religion

The fist difficulty we encounter is that in Chilean law there is no definition of a minister of religion.

We understand that it is a person who is invested with some special authority by the religious denomination to which he or she [hereafter referred to as "he"] belongs and that he has specific functions within it. That is, he has a status that differentiates him from the rest of the members

and therefore is subject to certain rights and duties in keeping with the responsibility he assumes.

One way of defining the concept [of minister] so that it is not confused with other members would include three conditions: "a spiritual or intellectual preparation that is special and distinct from that received by the common member," determined by the denomination itself; "specific powers or authorities with which the ministers are invested but not the rest of the members;" and "a specific occupation consisting of the exercise of the ministry" but not signifying exclusive or principal dedication.[6]

As for the accreditation of ministers of religion, each church, denomination or religious institution is authorized by the law to do that. They are to do it by means of a certification issued by the religious entity through its respective legal entity.[7]

The second complication we find in the laws derives from the fact that the majority of current law uses terminology belonging to the Catholic Church and therefore presents the problem of a lack of equivalent in the terminology of other religious entities.[8] There are also laws that list authorities of the Catholic Church whose offices no longer exist[9] or are referred to by different names, so it is necessary to determine

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[6] Navarro Floria, Juan: *Presencia de los Ministros de Culto en Actos o Espacios Públicos,"* Anales Derecho UC, Actas del IV Coloquio del Consorcio Latinoamericano de Libertad Religiosa, Santiago, 2005, pp. 140-141.

[7] Law No. 19,638, which establishes the rules concerning the legal constitution of churches and religious organizations, art. 13.

[8] It is also interesting to note that beyond ministers of religion, Chilean law stipulates the obligation of [taking] an oath on the Holy Gospels [Bible] when assuming some offices. It is also the case that, while a person assuming the office of President of the Republic may swear or promise, it is still mandatory to take an oath in order to receive the title of attorney from the Most Excellent Supreme Court, although in practice a promise is accepted. Compare art. 27 final subsection of the Political Constitution of the Republic and art. 522 of the Organic Law of the Courts.

[9] One example of this is the reference to the chapter vicar or the *provisor*, offices to which the current canon law does not refer.

what the current "translation" would be and how they may be understood.

III. Civil death

In the beginning our law provided for the civil death of certain members of religious orders and, although that was abolished in 1943,[10] it is interesting to briefly note its extent and its scope.

"Civil death is a legal fiction by which a living person is considered dead as to the acquiring and enjoyment of his civil rights: it is the assimilation of a living man into a dead man."[11]

Although in ancient law the loss of all civil rights was associated with the application of punishment as a result of legal sentencing,[12] our civil law applied it in the case of solemn vows taken according to law in monastic institutions recognized by the Catholic Church.[13] According to the law, this referred to an institution connected only with the Catholic Church and not other denominations and, within that institution only to those who took religious vows [such as monks and nuns] and not to persons who received the holy order without taking vows.

Civil death extended to property rights, including the right of inheritance—the [monk or nun] could not receive inheritances or bequests[14] nor could they bequeath after taking their vows.[15] He or she

[10] Abolished by art 2 of Law no. 7612 of October 21, 1943.
[11] Claro Solar, Luis, *Explicaciones de Derecho Civil Chileno y Comparado, volumen 1 De las Personas,* Editorial Jurídica de Chile, Santiago, 1978, p. 262.
[12] For more on this subject, see Claro Solar, Luis, *Explicaciones de Derecho Civil Chileno y Comparado, volumen 1 De las Personas,* Editorial Jurídica de Chile, Santiago, 1978, pp. 262-267.
[13] Civil Code of the Republic of Chile, Imprenta Nacional, Santiago, 1856, article 95, currently abolished.
[14] Civil Code of the Republic of Chile, ob. cit., article 95, abolished by art. 2 of Law no. 7612 of October 21, 1943.
[15] Civil Code of the Republic of Chile, ob. cit., article 1005, numeral 1, abolished by art. 2 of Law no. 7612 of October 21, 1943.

was prohibited from making and receiving donations[16] and also lost the rights of ownership, usufruct and use and occupancy.

On the other hand, he or she maintained familial rights, such as the right to ask for food. As son or daughter, he or she received legal emancipation. "The child of the family who takes solemn vows and a vow of obedience to his or her superior is no longer subject to the power of his father;"[17] however, he could not be a guardian, trustee,[18] or executor[19] and the law rendered him relatively incapacitated for carrying out certain transactions and signing certain contracts.[20]

The possibility of the rescission of civil death is provided for although without retroactive effect.

IV. Ministers of religion and labor legislation

The framework for the subject of religion and labor is given in the Constitution of 1980, in that it assures the freedom to work and the protection of that freedom,[21] prohibiting any discrimination not based on ability or suitability.[22]

Considered as acts of discrimination are, among others, any distinctions, exclusions, or preferences based on reasons of religion,[23]

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[16] Civil Code of the Republic of Chile, ob. cit., articles 1388 and 1390, the latter being abolished by art. 1 of Law no. 7612 of October 21, 1943.
[17] Claro Solar, Luis, *Explicaciones de Derecho Civil y Comparado*, ob. cit., p. 265.
[18] Civil Code, ob. cit., article 498 numeral 1, abolished by article 2 of Law no. 7612 of October 21, 1943.
[19] Civil Code, ob. cit., article 1272, abolished by article 1 of Law no. 7612 of October 21, 1943.
[20] Civil Code, ob. cit., article 1447, abolished by article 1 of Law no. 7612 of October 21, 1943.
[21] Constitution of 1980, art. 19 numeral 16.
[22] A bill is currently being discussed in the Senate which "establishes measures against discrimination (Bulletin 3815-17)" that could affect the exercise of religious freedom if, for example, the suitability requirements for those who act as officers of religious denominations should be considered discriminatory.
[23] Labor Law, art. 2: Recognized, That the social function of labor and the freedom of individuals to contract and dedicate their effort to the lawful labor they choose. Acts of discrimination are contrary to the principles of the labor laws. Acts of discrimination are distinctions, exclusions or preferences based on reasons of race, color, sex, age, civil status, union affiliation, religion, political opinion, nationality, ancestry or social origin, having as their purpose to annul or alter equality of opportunity or of treatment in the workplace and occupation. Even so, distinctions,

which have as their object to annul or alter equality of opportunities or of treatment in employment or occupation.

In general, there are no labor regulations constituting a special statute in matters of labor rights for ministers of religion. We may conclude that, to the degree that a work relationship exists, in the terms described by the Labor Code,[24] the regulations contained therein shall be applied as a whole.[25] If these suppositions are not verified, the relationship shall belong to some other order and thus the labor laws shall not apply.

It must be added that in the case of the Catholic Church those who are clerics or members of a religious order are engaged full-time in a mission that cannot be thought of as a work contract,[26] but rather is of a different nature emanating from canon law. This differs from the case of the layperson providing remunerated services to the Church or religious

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exclusions or preferences based on the qualifications required for a given job shall not be considered to be discrimination. Wherefore and without detriment to other provisions of this Law, offers of employment made by an employer, directly or through a third party and by any means, which indicate as a requirement for applying any of the conditions referred to in subsection third, are acts of discrimination. No employer may make contracting of workers conditional upon the absence of obligations of an economic, financial, banking or commercial nature which, according to law, may be communicated by those responsible for records or data bases of personal information; nor may he demand for that purpose any declaration or certificate. The only exception are those workers who have power to represent the employer, such as managers, assistant managers, agents or proxies, whenever, in all these cases, they are invested, at least, with general administrative authority; and the workers who are in charge of the collection, administration, or custody of funds or securities of any type. That which is set forth in subsections second and third of this article and the obligations deriving from them for the employers shall be understood to be in the employment contracts signed. It falls to the state to protect the worker in his/her right to freely choose his/her work and to ensure compliance with the laws that regulate the provision of the services.

[24] Labor Code, art. 7: An individual employment contract is a convention by which the employer and the worker have reciprocal obligations, the latter to provide personal services under dependence and subordination to the former, and the former to pay for those services a determined remuneration. Refer also to art. 8: All provision of services in the terms indicated in the previous article presumes the existence of an employment contract.

[25] There may be situations in which, although a work relationship exists, canonical regulations shall be applied, such as that relating to the prohibition to unionize (canon 287 subsection 2) and to hold public positions and offices (canon 289 subsection 2).

[26] Regarding this subject we can cite a resolution of the Supreme Court of June 22, 1956 which, in hearing a complaint following a case against the Salesian Congregation of Chile, file 7353, concludes to this effect (cited by Francisco Jiménez Buendía: *Naturaleza empleadora de las Congregaciones religiosas, Tesis para optar al grado de Licenciado en Derecho de la Pontificia Universidad Católica de Chile,* Santiago, 1997, p. 71).

community, wherefore this latter relationship does fall within the suppositions of the Labor Code.

V. Incapacity to accept positions or exercise certain functions

The status of minister of religion disqualifies one from accepting certain positions or exercising certain functions. We will first examine the case of the Catholic Church and then refer to that of the other religious denominations.

A. The Catholic Church

Those who have received major ecclesiastical orders[27] may not be judges, and for those who already are their office expires.[28]

We note that the law provides that every judge, before assuming his or her position, is to take an oath according to a specified formula,[29] applicable to Catholics.

As in other laws, the ecclesiastic who has heard the confession of the deceased during his or her final illness or regularly during the two years predating the will may not receive any inheritance or bequest, not even as fiduciary executor;[30] nor may the order, convent or brotherhood of which the ecclesiastic is a member; nor may his relatives by blood or affinity to the third degree inclusive. This incapacity does not include the

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[27] According to canon 949 of the 1917 Code of Canon Law, enacted after the Organic Code of Courts from which the regulation is taken: "In the canons which follow, the term major or sacred orders is used to designate the priesthood, deaconship or under-deaconship; and lesser [the office of] acolyte, exorcist, lector and [ostiary or doorkeeper]." Compare canons 975, 976 subsection 2, 978 subsection 2 of the 1917 Code of Canon Law, Bibioteca de Autores Cristianos, Madrid, 1976.

[28] Organic Code of Courts, arts. 256 numeral 8 and 332 numeral 2.

[29] Organic Code of Courts, art. 304: "Do you swear by God our Lord and by these Holy Gospels that, in exercise of your ministry, you will guard the Constitution and the laws of the Republic? The candidate shall respond: I do swear; and the magistrate administering the oath shall add: If you do it, may God assist you, and if not, may He require it of you." The same oath is required before giving testimony before the Courts of Justice or upon assuming certain functions. Compare arts. 62 and 363 of the Code of Civil Procedure.

[30] The fiduciary executor is designated by the testator to execute certain secret and confidential charges for him or her, for which [the executor] has access to previously determined assets in order to carry out the commitment. See articles 1311-1316 of the Civil Code.

parish of the testator or that which pertains to the ecclesiastic or his relatives by intestate inheritance--that is, if there should be no will.[31].

The aforementioned notwithstanding, the Civil Code[32] provides that the secular ecclesiastic, insofar as he does not fall within the foregoing supposition, may act as executor. We must bear in mind that this position as testamentary executor is voluntary.[33] Nevertheless, in compliance with canonical regulations—which becomes applicable in virtue of article 547 paragraph second of the Civil Code and article 20 of Law number 19,638—clerics are not to agree to administer assets belonging to laypersons or accept secular offices which carry with them the obligations of rendering accounting[34] unless they have permission from their bishops. This limitation extends to members of religious orders,[35] not to permanent deacons.[36]

Priests may excuse themselves from being tutors or guardians.[37] It is interesting to highlight that no one may be tutor or guardian if of a different religion than that in which the pupil is to be or has been educated.[38]

B. Other religious denominations

The incapacity to be heir, legatee, or fiduciary executor established by the Civil Code was contemplated only for Catholic priests. That is

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[31] Civil Code, art 965.
[32] Civil Code, art. 1312 numeral 2.
[33] "The position did not always have this peculiarity. Thus, during the XIV and XV centuries, the writers of the Canon Law considered the public nature of the position of executor and declared its exercise to be mandatory because it would not derive specifically from the will. The person designated by the deceased was to serve as a delegate of the bishop or of the secular judge. If he refused, the execution of the stipulations fell to the bishop. In short, a decretal by Pope Gregory IX stipulated that the designated [person] could not be forced to accept." Domínguez Benavente, Ramón and Domínguez Aguila, Ramón: *Derecho Sucesorio, tomo III*, segunda edición actualizada, Editorial Jurídica de Chile, Santiago, 1998, pp. 1264-1265.
[34] Code of Canon Law, canon 285 subsection 4.
[35] Code of Canon Law, canon 672.
[36] Code of Canon Law, canon 288.
[37] Civil Code, art. 514 numeral 10.
[38] Civil Code, article 506, this prohibition does not apply in the case in which the progenitors, or in their absence the nearest blood relatives, accept him or her.

based, among other things, on the fact that according to the Constitution of 1833 in force at the time of enactment of the body of law cited, the official religion of the Republic of Chile was the Catholic and the exercise of any other was excluded; wherefore, the eventuality of dealing with ministers of other religions was not foreseen.

According to civil law, the general rule is that every person has the legal competence to succeed a given decedent and is, therefore, with the capacity, incapacity being the exception.[39] "Incapacity should be interpreted restrictively and, given its exceptional character as was stated, in no case shall its application be extended by analogy. Wherefore, he who has incapacity must prove it."[40]

A conflict arises between the rules of the civil law relating to succession due to death—which order a restrictive interpretation of incapacity—and the adequate protection of religious freedom—which would imply inclusion of ministers of other religions. In my opinion, the latter should take precedence precisely so that the spirit which inspired the lawmakers might be fully respected.

"Nevertheless, there is no doubt that whether referring to Catholic priests or to ministers of other denominations, the problem the regulation tries to guard against could be the same, likewise the possibility that the abuses it tries to avoid might be committed. It is true that in other religions there is no sacrament of confession, but it is equally true that, during their final illness, members of other religious denominations are not neglected by their religious ministers who, like the last confessor, could induce their faithful to testate to their own benefit or that of those nearest them. If, where the same situation exists there should exist the same provision, it seems to me that this article [which mentions only Catholic priests] is not

[39] Civil Code, article 961.
[40] Domínguez Benavente, Ramón and Domínguez Aguila, Ramón: *Derecho Sucesorio, tomo I*, segunda edición actualizada, Editorial Jurídica de Chile, Santiago, 1998, p. 252.

justified in a country where religious freedom reigns and where, especially following Law 19,638, the various religious denominations have achieved a notable equality."[41]

Like ministers of the Catholic religion, those of other denominations may be tutors or guardians but the law allows that they may excuse themselves from accepting the position.[42]

Also applicable here is the regulation concerning the coincidence between the religion of the pupil and that of the tutor. "The regulation refers to the pupils, whatever religion may be professed by the family to which they belong, and it incapacitates a Catholic to be guardian of a Protestant child as well as a Protestant to be that of a Catholic child."[43]

VI. Ministers of religion and the obligation of secrecy

Without a doubt, one of the topics that is most interesting and of important practical application within legal statute regarding ministers of religion is that which concerns the scope of the secrecy protecting the confidences they receive. "Just as the duty to keep secret exists, there also exists the right to maintain silence before third parties not involved in the confidential relationship."[44]

Legislation distinguishes between cases in which the minister of religion may abstain from testifying in court, being supported by the obligation to keep secret, and those in which, in spite of being obligated to testify, they do not have to attend but may fulfill this obligation in a different way.

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[41] Salinas Araneda, Carlos: *Lecciones de Derecho Eclesiástico del Estado de Chile,* Ediciones Universitarias de Valparaíso, Pontificia Universidad Católica de Valparaíso, Valparaíso, 2004, pg. 319.
[42] Civil Code, art. 514 numeral 10.
[43] Claro Solar, Luis, *Explicaciones de Derecho Civil,* ob. cit., Volumen II De las Personas, p. 269.
[44] Precht Pizarro, Jorge: *15 Estudios sobre la Libertad Religiosa en Chile,* Ediciones Universidad Católica de Chile, Santiago, 2006, p. 167.

A. Power to abstain from testifying by reason of secrecy

In civil cases, ecclesiastics are not obligated to testify regarding facts that have been communicated to them confidentially due to their state, profession or office.[45]

In criminal cases, those persons shall not be obligated to testify who, by their state, profession or legal function, such as the attorney, physician or priest, have the duty to keep secret what has been confided to them, but only as concerning said secret.

In the case that the persons listed above should be released from their obligation of secrecy by that person who confided in them,[46] they shall not be able to invoke the power there recognized in order to be exempt from the duty of testifying. However, with regards to the secrecy of the confessional,[47] absolutely inviolable,[48] revelation would not be possible without committing a grave canonical offense,[49] to which the penalty of excommunication is applied,[50] the most serious included in the regulations of the Catholic Church. "The inviolability of secrecy, as the regulation itself makes clear, means that never, in any way, either direct or indirect, can it be broken, regardless of the private or public harm [one might be] trying to avoid or the good that could be promoted."[51]

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[45] Code of Civil Procedure, art. 360 numeral 1.
[46] Criminal Procedural Code, art. 303. Compare Criminal Procedural Code, arts. 190, 217, 298, 299, 302, 304 and 317; Criminal Procedural Code, arts. 171, 189, 201, 202 and 229.
[47] Compare art. 303 of the Criminal Procedural Code.
[48] Code of Canon Law, canons 983, 1388.
[49] Compare canon 1388 subsection 1 of the Code of Canon Law.
[50] Code of Canon Law, canon 1331. The imposition of the penalty of excommunication deprives one of celebrating sacraments and sacramentals, receiving sacraments, participating as minister in any religious act, holding offices, ministries or ecclesiastical positions or carrying out administrative acts.
[51] Rincón-Perez, Tomás: *La Liurgia y los Sacramentos en el Derecho de la Iglesia,* EUNSA, Pamplona, 1998, p. 234. The distinction is made between direct and indirect violation in order to constitute the offense. "Secrecy is broken directly by making known the sin heard in confession and the identity of the penitent by name or circumstances that allow him or her to be identified. This type of violation is sanctioned with excommunication *latae sententiae* reserved to the Papal See. There is an indirect violation when by the words, acts or omissions of the confessor the sin or sinner may be deduced or identified. This other type of offense, which has degrees, is to be punished in proportion to its seriousness."

In the year 2000, a law was enacted which states: "Pastors, priests, or ministers of religion of churches, denominations or religious organizations which enjoy civil personality and capacity, members of the Grand Lodge of Chile and of B'nai B'rith of Chile and members of the armed forces and state police of Chile, shall be obligated to maintain confidentiality only as to the name and details which would identify those who provide or confide information that is useful and may lead to establishing the whereabouts and fate of "disappeared" prisoners referred to in article sixth of Law number 19,123."[52] Further on it adds that the duty of secrecy shall be required even if the aforementioned status has been lost. That which is set forth therein only applies to information they may receive within a period of six months from the publication of the law.

B. Exemptions from the obligation to attend and testify

In civil cases, the following are not obligated to attend the trial to testify as witnesses: the archbishop and bishops; vicars general, [*provisores]*[53] and chapter vicars and [*provicarios];*[54] and parish priests within the boundaries of the parish in their charge, those persons who enjoy diplomatic immunities in the country and members of religious orders, including novices.[55]

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[52] Law No. 19687 establishes the obligation of secrecy for those who provide information leading to the location of "disappeared" prisoners, published in the Diario Oficial of July 6, 2000. It has only one article.

[53] The term *provisor* comes from Spain and designated the one who exercised litigious jurisdiction as distinct from the vicar general who acted in voluntary jurisdiction. Compare Donoso, Justo, *Instituciones de Derecho Canonico Americano,* Book two, Imprenta y Librería del Mercurio, Valparaíso, 1848, p. 209.

[54] The chapter vicar was the one who governed the diocese in case of a vacant see; that is, when for any reason—death or resignation—there was no diocesan bishop. We understand that, according to current canon law—canon 421 and subsequent of the 1983 Code of Canon Law—it is to be understood that today this mission is exercised by the diocesan administrator. Compare Donoso, Justo, *Instituciones de Derecho Canonico Americano,* Vol. 1, Imprenta y Librería del Mercurio, Valparaíso, 1848, pp. 236 and subsequent; 1917 Code of Canon Law, canons 432 and 198.

[55] Code of Civil Procedure, arts. 361 numerals 1, 2 and 3, and 362; Law no.19,638, art. 13.

In criminal cases, for crimes committed before the enactment of the criminal procedural reform,[56] the following are not obligated to attend the trial to testify: the archbishop and the bishops; the vicars general and chapter vicars, persons who enjoy diplomatic immunities in the country, nuns and women who because of their status or position cannot attend without serious inconvenience.[57]

In both suppositions they shall give testimony by official letter or shall be questioned in their own residence, depending on the subject, civil or criminal, and the position of the person giving evidence.

VII. Ministers of religion and criminal law

We now refer to all those criminal regulations in which religious status makes the person who holds it the object of special regulations, whether in constituting specific crimes or as a modifying circumstance in criminal responsibility.

A. Offense against a minister of religion

There are cases in which it is considered a special crime when the victim is a minister of religion. Such is the case provided for in the Criminal Code which, within the descriptive title of crimes and simple offenses relative to the exercise of religion permitted in the Republic,[58] sanctions those who with actions, words, or threats, offend a minister of religion in the exercise of his or her ministry.[59] The penalties increase both in cases where "the injury should consist of laying violent hands upon the person of

[56] In the year 2000 there began to be gradually implemented in the various regions of the country a criminal procedural system in which the investigation of the criminal act does not fall to the judge but to the Attorney General's office, among other important modifications. The reform required the modification of the 1980 Political Constitution of the Republic, adding a chapter dedicated to the Attorney General's office (arts. 83 to 91.) The new system is structured according to the following bodies of regulations: Criminal Procedural Code (Law no. 19,696; Law no. 19,640, Constitutional Organic of the Attorney General's Office; Law no. 19,718 which created the Criminal Public Defender's Office.)

[57] Compare Criminal Procedural Code, art. 191 and Law no. 19,638, art. 13.

[58] Penal Code, articles 138-140.

[59] Penal Code, article 139 numeral 3.

the minister"[60] and where it involves striking or wounding a minister of religion.[61]

B. Theft of entrusted documents

Any ecclesiastic who steals or destroys documents or papers entrusted to him by reason of his position shall be punished.[62]

C. Performing marriages prohibited by law

It is stipulated that a fine shall be imposed upon any minister of religion who authorizes a marriage prohibited by law.[63]

The new Law of Civil Marriage[64] established that "marriages celebrated before religious entities having civil personality under civil law shall have the same effect as civil marriage as long as they meet the requirements provided in the law, especially that which is prescribed in this chapter, beginning with their registration before an official of the Civil Registry."[65] In harmony with this regulation, it is stated that the minister of religion who commits falsehood in the record or on the certificate of religious marriage with the intent to produce civil effects, shall be given a [jail or minor prison] sentence in any of its degrees.[66]

A third party who impedes the registration before a civil official of a religious marriage celebrated before an entity authorized for such by the Law of Civil Marriage shall also be sanctioned with a [jail or minor prison] sentence of the minimum degree or a fine of six to ten monthly tributary units.[67]

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[60] Penal Code, article 140 subsection 1st.
[61] Compare arts. 138-140, 401 of the Penal Code.
[62] Penal Code, art. 242.
[63] Compare Penal Code, art. 388 subsection 1st.
[64] Law no. 19,947 published in the Official Record of May 17, 2004 which came into force six months after this date.
[65] Law no. 19,947, article 20.
[66] Penal Code, art. 388. Compare Penal Code: arts. 30 and 76. Law no. 4,808 on Civil Registry: arts. 34 to 43. Law of Civil Marriage: arts. 16 to 18.
[67] Penal Code, art. 389. Compare Penal Code: arts. 24, 76, 370, 382 and subsequent. The value of a monthly tributary unit, in the month of August, 2007 comes to $33,019 Chilean pesos which equal approximately $63 dollars of the United States of America.

D. Application of penalties

When the penalties of disqualification and suspension fall upon an ecclesiastical person, their effects shall not extend to the positions, rights and honors he may have through the church. For ecclesiastics incurring such penalties, for the entire time of their duration, their ecclesiastical jurisdiction and caring for souls shall not be recognized in the Republic,[68] nor may they receive income from the national treasury except the adequate emolument set by the court.[69]

This provision does not include bishops relative to the exercise of ordinary jurisdiction belonging to them.

When crimes of rape,[70] rape of a minor,[71] or other sexual crimes are committed by a minister of a religious denomination,[72] the minimum degree of the indicated penalty shall not be imposed upon the perpetrator unless it is a matter of crimes in which the law describes and

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[68] This provision of the Penal Code of 1874, currently in force, corresponds to the system of union of Church and State, established in the Constitution of 1833, applicable to the date of approval of the regulation in question, in which the Republic of Chile claims for itself the right of patronage of the Spanish crown. However, in light of the Constitution of 1980 and the international treaties signed by Chile, art. 41 of the Penal Code presents clear problems of unconstitutionality.

[69] Penal Code, art. 41. Compare with arts. 38 to 40, 42 to 44 of the Penal Code and art. 19 numeral 6 of the Constitution of 1980.

[70] Penal Code, art. 361 and subsequent.

[71] Penal Code, art. 363 and subsequent.

[72] It is interesting to highlight a ruling by the Supreme Court of Justice of Chile in case file 1556-2006 of April 3, 2006, having accepted a petition of passive extradition from the Republic of Argentina concerning a Chilean citizen, deacon of an Evangelical church, for the crimes of aggravated sexual abuse and corruption of minors which occurred in March of 2003 inside the Evangelical Church [while he was] acting in his character as pastor of the same. There is no extradition treaty between the two countries. However, both signed the Montevideo Convention of Extradition of December 26, 1933--Chile on February 2, 1935 and Argentina on April 19, 1956— which, among other stipulations for its application, requires that the crimes being prosecuted not be committed against the religion and that the prosecution not be time-barred, according to the laws of either the state issuing the order or the respondent, prior to the detention of the accused individual. In accordance with the ninth introductory statement of the judgment, article 62 numeral 2 of the Argentine Penal Code establishes that, if dealing with acts punishable by imprisonment or jail, the prosecution is time-barred after the passage of the maximum time of the sentence indicated for the crime, not to exceed twelve years. It has been indicated that the crime that was the subject of the extradition, because of aggravating legal factors provided for in that law, may reach a maximum or twenty years. We see here how the status of minister of religion as an aggravating circumstance in criminal responsibility has the effect of increasing the period of the statute of limitations and of rendering the accused extraditable.

assigns punishment specifying circumstances of abuse of a relationship of dependency on the part of the victim or [abuse] of authority or trust.[73]

Relative to the foregoing, there is a December 2006 ruling[74] of the Supreme Court of Justice of our country, condemning a Catholic priest of the Punta Arenas Diocese for the crime of sexual abuse, which applies the aforementioned regulation.

VIII. Final observations

As we have pointed out from the beginning, within our system of laws there is no organic statute for the minister of religion, but rather applicable regulations are found scattered throughout various texts.

It is not easy to find legislation in which the status of minister of religion is relevant. In this context, at first glance the need for lawmakers to specify certain situations in order to systematize on this particular point does not appear evident.

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[73] Penal Code, art. 368.

[74] Ruling by the Most Excellent Supreme Court of Justice on December 6, 2006, in case file No. 177-2006, 13th introductory statement, "that as regards the aggravating factor employed by the plaintiff in question and which is referred to by article 368 subsection 1st of the Penal Code, it shall not apply, in accordance with that which is set forth in the same article in its second subsection which states: "Those cases are exceptions in which the crime is committed by those the law describes and punishes specifying circumstances of the use of force or intimidation, abuse of a relationship of dependency on the part of the victim or abuse of authority or trust, and bearing in mind the characterization of the crime being investigated in these proceedings which has been made in the 5th introductory statement of this ruling. That likewise it is supported by doctrine, specifically the author Juan Pablo Cox Leixelard in his book "Los Abusos Sexuales Aproximación Dogmática," Lexis Nexis, 2003, page 165, who, having analyzed the circumstance recorded in article 363 of the Penal Code, indicates: "If the crime of sexual abuse is constituted by the concurrence of this circumstance (which article 366 numeral 2 considers to be an abuse,) the new subsection 2nd of article 368 of the Penal Code will be operative, eliminating any possibility of violating the principle of non bis in idem. This is also supported by the author Luis Rodríguez Collao in his work, "Delitos Sexuales de Conformidad con las Modificaciones Introducidas por la ley 19,617 de 1999," Editorial Jurídica de Chile, 200, page 283, who, in mentioning that which is set forth in subsection 2nd of article 368 of the Penal Code, states: "With this clause is discarded the application of the circumstance in the hypothesis of rape [stated] in article 361 numeral 1; of rape of a child in article 363 numeral 2; of sexual abuse in article 366 or 366 A, when the abuse consists of the use of physical or moral force or of taking advantage of a relationship of dependency; and of promoting prostitution when perpetrated with abuse of authority or trust."

Despite the lack of urgency—which many times is the principal motive for resolving a matter—in the interests of legal certainty it becomes advisable for legislators to specify certain concepts in order to effectively protect religious freedom, a fundamental human right.

Regarding the concept and scope of the notion of minister of religion, it appears especially important to clarify that, as well as updating terms found in the law which have become obsolete. Some type of public register could be considered to which each religious denomination would send a list authorizing the appropriate names that are included in their notion of minister of religion.

Regarding the labor situation of ministers of religion, their status cannot be the object of discrimination and in each case it must be determined whether to apply labor regulations of the common law or whether the relationship is of a different nature which, being special, takes precedence over the usual.

Concerning the incapacity to assume certain positions or exercise certain functions, without removing ministers of religion from their minimum duties as citizens, it seems reasonable that lawmakers should provide for them since they are more fully devoted to the exercise of a ministry which requires them to remove themselves from certain activities in order to devote themselves to their own mission.

With regard to the obligation of secrecy, ministers of religion receive many confidences precisely because they hold a special position that makes them recipients of that which is in people's souls. This aspect should be especially protected by legal code—and, in fact, it is—since it is an essential condition for ministers of religion to be able to serve in every sense of the word.

As for ministers of religion being subject to greater penalties than any other citizen for crimes of a sexual nature, it seems reasonable given

that somehow the position they hold leads to the assumption that they have used that position to commit the illicit act and makes them particularly repugnant to society.

In accordance with all that has been said, there could be a statute provided within Chile's legal code pertaining to ministers of religion. Its systematization could be a great opportunity to pause and reflect upon one of the pillars upon which rests the real protection of religious freedom and which is precisely what grants identity and stability to religion considering the legal challenges that are expressed amid the differences in our peoples, [which is] the announced topic for this fourteenth conference, in which I am very grateful to have been invited to participate.