

*The relevance of the provisions of canon law for French civil law and the state courts of the République has also been recognized.*

The court of first instance in Lorient, in the French region of Brittany, ruled on 3 April last on a delicate issue concerning the expulsion of a nun from the institute to which she belonged, an issue that demonstrated once again, if ever there was a need, the importance of the study of canon law and ecclesiastical law.

In France, religious Institutes are regulated by the law of 1st July 1901 (and from this perspective, doctrine has long studied the relevance of the internal statutes of religious Institutes, and more generally of the canon law that governs them, in French civil law<sup>1</sup>), and then by the broader framework of the 1905 Law of Separation.

The matter concerns a nun, Mère Marie Ferréol (Sabine Baudin de la Valette), who the ruling recognizes was expelled without means of support from her congregation, the Dominican Sisters of Pontcallec, and therefore condemns H.Em. Card. Ouellet, Prefect Emeritus of the Dicastery of Bishops, as well as the Institute of which she had been a member for the past decades, to pay compensation for the damage caused.

The heart of the judgement, in fact, is based on contractual liability: under Article 1194 of the Civil Code, first of all, contracts bind not only to what is expressis verbis indicated in them, but also to all that is provided for by equity, custom or law; Article 1217, secondly, provides that the party who suffers total or partial non-performance may seek compensation for the consequences thereof.

The judgement then goes on to examine the canonical norms, recalling that the Constitution of the Dominican Sisters of the Holy Spirit recalls that the expulsion of a nun with definitive vows must take place according to canons 694-704 and 746 CIC.

The judgment opens with some procedural remarks on the notification of acts to Card. Ouellet, which remained unanswered: since they were in any case carried out in the manner provided for by European law,

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<sup>1</sup> L. DENAUROIS, *L'ordre juridique canonique devant l'État*, in *Rev. dr. can.*, 1956, p. 373 ss.; ID., *Le lien congréganiste devant les tribunaux étatiques*, in *Année can.*, 1958, p. 187 ss.; J. KERLEVÉO, *L'Église catholique en régime français de séparation*, Paris, 1962; ID., *Régime légal des congrégations en France*, in *Année can.*, 1963, p. 167 ss.; P. COULOMBEL, *Le droit privé français devant le fait religieux depuis la séparation des Églises et de l'État*, in *RTDCiv.*, 1956, p. 17 ss.; A. LAVAGNE, *Les congrégations non reconnues (ou non autorisées) selon la loi française, existent-elles juridiquement en droit étatique? Dans quelle mesure l'appartenance à l'une d'elles confère-t-elle la qualité de congréganiste?*, in *Année can.*, 1981, p. 475 ss.; G. DOLE, *Les professions ecclésiastiques*, Paris, 1987; J.-P. DURAND, OP, *La liberté des congrégations religieuses en France*, Paris, 1999; O. BUZY, *La notion de congrégation, Sa portée en droit civil français*, Paris, 1940; S. TESTA BAPPENHEIM, *La vita fraterna. Fenotipi storico-canonistici dei consacrati a Dio*, Lecce, 2006; ID., *Il danno da uccisione di religioso in Francia, Germania, Italia*, Cosenza, 2007; ID., *La responsabilité civile et les Instituts religieux*, Paris, 2015.

the judge considers that there are no longer grounds for suspending the pronouncement of the judgment, which we now set out.

Mme Baudin de la Valette had joined the community of the Dominican Sisters of the Holy Spirit in 1987, at the age of 21, in order to teach there, and thus also became a full member of the 'Association of the Dominican Sisters of the Holy Spirit', in whose schools she taught until 21 October 2020, when a decree of temporary exclaustation was served on her.

The nun and the association were linked by synallagmatic obligations: in return for Mme Baudin's commitment to the religious community, especially as a teacher, the association had to fulfil a certain number of obligations towards her: not only did the association, as a legally recognized body, have to respect its statutes, but the religious community itself had to respect its own constitutions, and, as a religious community and as a declared association (regulated by the law of 1901), it could not ignore either canon law or the general rules of law relating to the respect of the rights of the defense, as well as those on the fundamental rights of the person, especially since this was an extremely important decision with an enormous impact on the private life of a nun in the community.

Mme Baudin complains that she has been harmed by several facts put in place by the Association of the Dominican Sisters of the Holy Spirit, in violation of the French civil code and the code of canon law.

First of all, in fact, it is common ground and acknowledged that no warning was given to Mme Baudin, no official admonition was given to her before the decree of expulsion, she was not even informed of the precise facts, nor of the dates on which they allegedly occurred, so that she was unable to present elements in her defence: it is therefore clear, the judgment continues, that the Institute of the Dominican Sisters of the Holy Spirit did not take the trouble to respect either the procedure or the rights of defense.

In addition to the violation of these general rules, then, the Association also violated Article 5 of its statutes, according to which membership is lost by resignation, by expulsion following non-payment of the membership fee and for a serious reason, by decision of the Board of Directors, against which an appeal to the General Assembly is admissible.

Mme Baudin, on the other hand, was confronted with a decision that had already been taken, ordering her to leave her community within a few hours, together with a temporary exclaustation for three years, renewable, with a ban on communicating with the other members of the Institute without the prior permission of the apostolic visitors, as well as an obligation to limit contact with the outside world and an obligation of confidentiality concerning her whereabouts, on pain of definitive expulsion.

The failure to respect the procedures, and especially the fundamental right of defense, for which the Association is responsible, had direct consequences on Mme Baudin's life, since she was suddenly deprived

of her teaching activity, her habitual way of life, her interrelationships with the other sisters, without the charity and equity provided for in canon 686 in such cases.

As for the absence of grounds for expulsion and damage to private life, the judgment recalls how Mme Baudin was received by the two visitors Père Nault and Mère Desjobert, who gave her the decree of 21 October 2020 by Card. Ouellet, along with a letter in which the cardinal described Mme Baudin's shortcomings that emerged from the inspection conducted by Père Nault and Mère Desjobert: bad spirit, systematic criticism, partisan spirit: the judgment notes, however, that the report on this inspection, which served as the basis for the sanctions, was not forwarded to the person concerned, nor were precise and circumstantiated reprimands made to her, nor did she receive written reminders urging her to change her attitude, with the prospect of sanctions coming her way if she did not.

The contents of the report remain unknown not only to Mme Baudin and her lawyers, but also to the court, whose consultant in canon law was only asked to come and consult the file at the Nunciature in Paris, on a day when Mme Baudin had also been summoned.

It is clear from this, says the judgment, that the latter's right of defense was violated, as she was not told precisely what she was supposed to be defending herself against.

Again, continues the court in Lorient, the duty of assistance, provided for by cann. 694-704 and 746 CIC, according to which, in the case of the expulsion of one of its members, the religious institute will show fairness and evangelical charity towards it: Mme Baudin did not receive any salary for the years she was a teacher, in accordance with her status as a nun, and by synallagma all her expenses for board, lodging and medical care were provided for by the Religious Institute; consequently, however, she was never able to set aside anything to prepare herself materially to one day leave her religious community and return to the life 'of the world'.

Having been expelled from the Dominican Sisters of the Holy Spirit without being offered to continue her religious life at another religious Institute, she returned to civil life with nothing, having to rely only on the Revenu de solidarité active (RSA) to survive, although the Institute paid her accommodation expenses in the place to which she had been transferred by authority, gave her a small pecuniary advance pending a final account (€1500 on 30 April 2021 and €5000 on 30 April 2022), paid her dentist in January 2021 and her canon lawyer (€6750); Mme Baudin was also advised to register with the Caisse Primaire d'Assurance Maladie.

Pursuant to Article 90 of the Constitution of the Dominican Sisters of the Holy Spirit, then, Mme Baudin was entitled to receive, from her former community, "charity and a large generosity" following her

expulsion, whereas the Institute does not provide any evidence of the proposals for financial assistance it claims to have made to the Service Accueil Médiation,

The court concludes, on this point, that the faults committed by the Dominican Sisters of the Holy Spirit to the detriment of their former sister are established, and that they contributed in part to the material and moral damage suffered by the latter.

The judgment then goes on to examine the liability of the two visitors, Père Nault and Mère Desjobert, beginning by recalling that, under Article 1241 of the Civil Code, one is liable for the damage caused not only by one's own actions, but also by one's negligence or imprudence; Père Nault and Mère Desjobert had been charged, by a decree signed by Card. Père Nault and Mère Desjobert were instructed, by a decree signed by Cardinal Ouellet on 29 June 2020, to carry out investigations within the community of the Dominican Sisters of the Holy Spirit, and then to report to the Prefect of the Dicastery (at the time: Congregation) for Bishops, Card. Ouellet, who would then inform the Holy Father.

Although - the judgment emphasizes - this report was at the origin of the sanctions later imposed on Mme Baudin, neither the latter nor the adjudicating tribunal had access to its contents.

Père Nault objected to the transmission of the report to Mme Baudin's canon lawyer, but doing so necessarily compromised the exercise of the latter's fundamental rights of defense: in the decree of appointment, however, the two visitors had not been authorized to ignore the norms of canon law, nor the fundamental principles of law, among which are undoubtedly respect for the right of defense and respect for the principle of cross-examination; the two visitors, therefore, the court concludes, also contributed in part to causing the moral and material damage suffered by Mme Baudin.

As for Card. As for Cardinal Ouellet, continues the court in Lorient, it is not clear what competence he, Prefect of the Dicastery (at the time of the events: Congregation) for Bishops, had to intervene in a matter falling within the competence of the Dicastery (at the time of the events: Congregation) for Consecrated Life, all the more so since the special mandate with which the Pope expressly instructed Cardinal Ouellet to designate the person who would be responsible for the consecrated life was not produced in court. Ouellet to designate who should carry out the inspection at the Dominican Sisters of the Holy Spirit, at the same time also authorising him to make the subsequent decisions.

The Court notes that in canon law, as in civil law, anyone who claims to have received a delegation must produce it, and since this did not happen, there remains doubt as to the actual existence of this special mandate; this is of extreme importance, continues the judgment, since only the acts of the Pope are inappellable, while those of the Cardinals are not; secondly, producing this special mandate would have been of great importance, since it seems strange that the Pope should have given the Prefect of the Dicastery (at the

time of the events: Congregation) for Bishops to intervene in a matter pertaining to the Dicastery (at the material time: Congregation) for Consecrated Life.

In order to ascertain that this was not an abuse of right, therefore, the court in Lorient only has Cardinal Ouellet's letters and decrees at its disposal, in a sort of self-certification: it is therefore not proven that there was actually any pontifical approval.

Moreover, even assuming the existence of the special papal mandate in favour of Card. Ouellet, the Court of Lorient is surprised that he was not recused, given his known close friendship with one of the Dominican Sisters of the Holy Spirit whose positions were notoriously diametrically opposed to those of Mme Baudion, and this enmity between the two nuns was not disputed by either party.

It is clear from the documents produced in actis that Card. Ouellet was a great friend of both this nun and Père Nault, and the Court concludes that these elements are sufficient to characterize an abuse of right and lack of impartiality in the proceedings.

The judgment goes on to note that Mme Baudin had been a member of the Dominican Sisters of the Holy Spirit for 34 years, but had had no opportunity to prepare for her return to civilian life, and the fact that she could receive RSA and possibly be housed by friends or family certainly does not detract from the religious institute's duty to assist her, nor were the sums of €1,500 and €5,000 that it paid her in April 2021 and then in April 2022 sufficient to enable her to meet all her needs, considering that she had no home of her own, no movable property and no savings.

The court thus recognizes the relevance of the provisions of canon law for civil law and state courts as well, and acknowledges that violations of the latter constitute damages that state courts may also take into account and for which they may order compensation.

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