PRESS RELEASE

Decision No. 2022-1004 QPC of 22 July 2022

(Regime for associations carrying out religious activities)

The Constitutional Council ruled that several legislative provisions relating to the regime of associations carrying out religious activities conform to the Constitution, subject to two reservations on interpretation

The purpose of the application for a priority preliminary ruling on the issue of constitutionality (*question prioritaire de constitutionnalité, QPC*)

On 18 May 2022, the Conseil d'État referred to the Constitutional Council an application for a priority preliminary ruling on the issue of constitutionality relating to the conformity of Articles 19-1 and 19-2 of the Act of 9 December 1905 on the separation of church and state and Articles 4, 4-1, and 4-2 of the Act of 2 January 1907 on the public practice of worship, with the rights and freedoms guaranteed by the Constitution.

Religious associations constituted on the basis of the Act of 9 December 1905 benefit from certain advantages in this respect. Article 19-1 of this act stipulates that, in order to benefit from it, they must declare their religious status to the representative of the State in the department. This benefit is available to them for a period of five years, renewable under the same conditions. The representative of the State in the department may, however, under certain conditions, oppose their benefiting from these advantages or withdraw them.

Articles 4, 4-1, and 4-2 of the Act of 2 January 1907 govern the public practice of worship by means of associations governed by the Act of 1 July 1901. Articles 4 and 4-1 subject these associations to various administrative and financial obligations. Article 4-2 allows the State representative to give formal notice to an association whose activities are related to the public practice of worship, without its purpose providing for this, to bring it into line with these activities.

Criticism made concerning these provisions

In particular, Article 19-1 of the Act of 9 December 1905 was criticised for requiring associations to declare their religious nature in order to benefit from the advantages of the category of religious associations, and for instituting a system of prior authorisation that led the State to recognise certain religions in particular. The applicants also argued that, since the obligations imposed on

these associations had been made more onerous, these provisions would allow the State representative to refuse or withdraw this religious status in many cases. In their view, this resulted in a violation of the principle of secularism, freedom of association and freedom of worship and religion.

The applicants also criticised the excessive constraints imposed by Articles 4 and 4-1 of the Act of 2 January 1907 on associations providing for the public practice of worship, which, in their view, disregarded freedom of association, freedom of religion and worship, and freedom of assembly. Moreover, if the legislator had not defined in Article 4-2 of the same law the *"activities related to the practice of worship"* taken into account by the administration when it gives notice to an association to bring its statutes into line with its activities, these provisions would be judged as not acting fully within the competence of jurisdiction under conditions that could affect these constitutional requirements.

<u>Review of the provisions subject to the QPC</u>

** Concerning the provisions of Article 19-1 of the Act of 9 December 1905*

Examining the criticism levelled at these provisions with regard to the principle of secularism, the Constitutional Council, after citing the terms of Article 10 of the Declaration of Human and Civic Rights of 1789 and the first three sentences of the first section of Article 1 of the Constitution, recalled that the principle of secularism is one of the rights and freedoms guaranteed by the Constitution and that it follows, in particular, that the Republic does not recognise any religion and that it guarantees the free practice of worship.

In this regard, it notes, firstly, that the sole purpose of the disputed provisions is to introduce a reporting obligation to enable the State representative to ensure that associations are eligible for the benefits specific to religious associations. They have neither the object nor the effect of bringing about the recognition of a religion by the Republic or of impeding the free practice of worship, within the framework of an association governed by the Act of 1 July 1901 or by means of meetings held on individual initiative.

On the other hand, that the State representative can only oppose an association benefiting from the advantages specific to religious associations or withdraw these advantages after an adversarial procedure, and solely for a reason of public order or in the event that they find that the association does not have the exclusive purpose of practising worship or that its constitution, composition and organisation do not meet the limiting conditions for the practice of worship listed in Articles 18 and 19 of the Act of 9 December 1905.

The Constitutional Council considers that, consequently, the disputed provisions, which do not deprive the free practice of worship of legal guarantees, do not

infringe the principle of secularism.

Then, examining the criticism levelled at these same provisions with regard to the principle of freedom of association, the Constitutional Council recalled that this principle is one of the fundamental principles acknowledged in the laws of the Republic and solemnly reaffirmed by the Preamble of the Constitution, and that any infringements of it must be necessary, appropriate and proportionate to the objective pursued.

In this respect, it notes that the declaration imposed on associations by the disputed provisions in order to benefit from certain advantages is not intended to regulate the conditions under which they are formed and carry out their activities.

On the other hand, it notes that the withdrawal of these benefits by the State representative is likely to affect the conditions in which an association carries out its activity.

In a first reservation of interpretation, the Constitutional Council ruled that this withdrawal could not lead to the restitution of benefits that the association had enjoyed before losing its religious status without disproportionately infringing freedom of association

** Concerning the provisions of Articles 4, 4-1 and 4-2 of the Act of 2 January 1907*

Examining the criticisms levelled at these provisions with regard to the principle of freedom of association and freedom to practise worship, the Constitutional Council noted that the various administrative and financial obligations they imposed on associations engaged in activities related to the public practice of worship were such as to undermine these requirements.

However, it considers that, firstly, by adopting these provisions, the legislator intended to increase the transparency of the activity and financing of associations providing for the public practice of worship. In so doing, they pursued the constitutional objective of safeguarding public order.

Secondly, pursuant to the disputed provisions of Articles 4 and 4-1 of the Act of 2 January 1907, associations are subject to obligations consisting, in particular, in drawing up a list of the places in which they usually organise worship, in presenting the accounting documents and the provisional budget for the current financial year at the request of the State representative, in drawing up accounts that separately indicate the operations relating to their religious activities, and in certifying their accounts when they have received foreign funding for amounts exceeding a threshold set by decree, when they have issued tax receipts, when they have received a minimum amount of public subsidies or when their annual

budget exceeds a minimum threshold also set by the regulatory power.

In a second reservation of interpretation, the Constitutional Council specifies that, if such obligations are necessary and appropriate to the objective pursued by the legislator, it will nevertheless be up to the regulatory power to ensure that the constitutional principles of freedom of association and freedom of worship are respected when setting the specific procedures for implementing these obligations.

Lastly, the Council dismissed the objections against Article 4-2 of the Act of 2 January 1907. It held that, by providing that the State representative may give notice to an association to bring its social purpose into line with its activities when it carries out *"activities related to the practice of worship"*, the legislator had not disregarded their scope of competence in a way that affects the aforementioned constitutional requirements. In fact, it follows from the established case law of the Conseil d'État that these activities are those relating to the acquisition, rental, construction, fitting out and maintenance of buildings used for worship, as well as the maintenance and training of ministers and other persons involved in the practice of worship.

For all these reasons, the Constitutional Council ruled that the legislator had not infringed the freedom of association and the free exercise of religion in a way that was not necessary, appropriate and proportionate.

Title: Union des associations diocésaines de France and others [Regime for associations carrying out religious activities]