

Freedom of religion and complementary sentence: the prohibition to exercise, for a time, a religious function (such as that of a priest) can be pronounced as a complementary sentence

04/11/2021



Ruling of 4 November 2021, appeal no. 21-80.413

Dismissal

RULING OF THE CRIMINAL CHAMBER OF 4 NOVEMBER 2021, APPEAL NO. 21-80.413

Pursuant to Article 223-15-3 of the Penal Code, any person found guilty of fraudulently abusing a state of ignorance or weakness is liable to a disqualification from practising the profession or activity, in the practice of which or on the occasion of which the offence was committed. The decision of a cour d'appel (Court of Appeal) which ruled against a priest, found guilty of abuse of weakness, and imposed a five-year ban on him from exercising as a priest, must be approved, since the above-mentioned provisions do not exclude activities relating to a priestly ministry.

No. Q 21-80.413 F-B

No. 01431

GC10

4 NOVEMBER 2021

DISMISSAL

Mr SOULARD, President,

F R E N C H R E P U B L I C

IN THE NAME OF THE FRENCH PEOPLE

RULING OF THE *COUR DE CASSATION* (COURT OF CASSATION), CRIMINAL CHAMBER, OF 4 NOVEMBER 2021

Ms [C] [B] and Mr [E] [O] appealed against the ruling of the *cour d'appel* (Court of appeal) of Colmar, Criminal Chamber, dated 12 November 2020, which sentenced the former, for failure to report ill-treatment, to eight months' suspended imprisonment; and the latter, for violence and abuse of weakness, to three years' imprisonment, a fine of EUR. 100,000, a five-year ban on practising as a priest, a five-year ban on civil, civic and family rights, ordered confiscation and publication measures and made a ruling on civil damages.

The appeals are joined on the grounds of the charges being related.

The appellants filed a joint statement of claim and additional observations.

On the report of Ms Issenjou, Judge, the observations of SCP Boré, Salve de Bruneton and Mégret, lawyer for Mr [E] [O] and Ms [C] [B], and the conclusions of Ms Mathieu, Advocate-General, after arguments at the public hearing of 20 October 2021, at which were present Mr Soulard, President; Ms Issenjou, Reporting Judge; Mr de Larosière de Champfeu, Chamber Judge, and Ms Guichard, Chamber Registrar,

the Criminal Chamber of the *Cour de cassation* (Court of cassation), composed of the above-mentioned President and Judges, pursuant to Article 567-1-1 of the Criminal Procedure Code, after having deliberated in accordance with the law, has delivered the present ruling.

Facts and procedure

1. The following results from the ruling under appeal and the documents of the proceedings.

2. An investigation was launched after Mr [H] [V] reported the abuse of weakness that his aunts, Ms [F] [V] and [J] [V], had suffered.
3. Mr [E] [O], a priest, was prosecuted on several charges of abuse of weakness against Ms [J] [V] and Ms [F] [V] as well as for violence against the latter; Ms [C] [B] was prosecuted for failure to report the ill-treatment of Ms [F] [V], a vulnerable person.
4. The criminal court found the accused guilty.
5. The accused and the public prosecutor's office appealed this decision.

Reviewing pleas

For the first and second pleas, and the first part of the third plea

6. They are not such as to allow the appeal to be admitted according to the meaning of Article 567-1-1 of the Criminal Procedure Code.

For the second part of the third plea

Statement of plea

7. The plea objects to the ruling under appeal in that it sentenced Mr [O] to the principal penalty of three years' imprisonment, ordered him to pay a fine of EUR. 100 000, prohibited him from practising as a priest for five years, ordered the confiscation of the sums seized from Mr [O]'s bank accounts by order of the investigating judge dated 13 July 2016, namely EUR. 25,766, ordered the disqualification of Mr [O] from exercising civil, civic and family rights for five years and ordered the publication, in the next bulletin to be published by the parishes of the Cernay region, of the criminal provisions of the ruling insofar as they concern Mr [O], whereas:

2°/ By imposing on Mr [O] "a ban on performing the functions of a priest for five years", when the priesthood does not constitute a professional or social activity but a priestly ministry and when such ministry derives from the freedom of worship, the *cour d'appel* (Court of Appeal) infringed the constitutional principle of secularism and Articles 9 of the European Convention on Human Rights, 1 and 2 of the Act of 9 December 1905, and 131-27 and 223-15-3 of the Penal Code."

Court's response

8. In order to prohibit the accused from practising as a priest for five years, the ruling states that the acts of abuse of weakness were committed during the exercise of his duties as a priest, which allowed him to gain access to the [V] sisters whom he regularly frequented and who had full confidence in him.
9. In so ruling, given that, according to Article 223-15-3 of the Penal Code, natural persons found guilty of abuse of weakness incur the additional penalty of being prohibited from exercising the professional or social activity in the practice or on the occasion of which the offence was committed, and that no provision exempts a priestly ministry from this, the *cour d'appel* (Court of Appeal) did not disregard the texts referred to in the plea.
10. The plea is therefore inadmissible.
11. As well, the ruling was handed down in accordance with due process.

ON THESE GROUNDS, the Court:

DISMISSES the appeals;

Thus decided by the *Cour de cassation* (Court of cassation), Criminal Chamber, and pronounced by the President on the fourth of November, two thousand twenty one.

President : Mr Soulard
Reporting Judge : Ms Issenjou, Judge
Advocate-General referee : Ms Chauvelot
Lawyer(s) : SCP Boré, Salve de Bruneton et Mégret



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