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Ministers of Religion in Chilean Law

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I. INTRODUCTION

This Article has been written to show how Chilean Law interacts with "ministers of religion."[1] This Article will begin by outlining some important background and contextual elements that will allow us to properly understand how a minister of religion is tteated under Chilean Law.

From the beginning of the Republic of Chile until 1925, Chilean society was largely dominated by laws created from a union between the Catholic Church and the State. However, the Chilean Constitution of 1925 established a separation between these two entities in practically the same terms as the current Constitution of 1980. Under these constitutions, no agreements between the government and religious denominations were made. However, in 1999, lawmakers in Chile passed Law 19.638, which set rules regarding the legal establishment of churches and religious organizations and explicitly affected some of the religious freedom traditionally granted by the Chilean Constitution.

Chile has a prominent Catholic tradition, inherited from Spain, from which the Chilean people have taken many customs and also legal standards. Even so, data from the last census, taken in 2002, show the religious reality that exists in the country today, between believers and non-believers and the religions in which the believers

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1. To aid in the translation "*ministro de culto*" has been translated into the somewhat awkward English rendition "minister of religion." In Spanish, this title implies the same official meaning as it would in England—for example, Minister of Finance, Minister of Defense—but also has a more religious undertone due to the influence of the Catholic Church in Chilean government, which is referenced in the text.

declare to belong.[2] The population of Chile in 2002 totaled 15,116,435 inhabitants, of which 74.0% were older than fifteen years old. Of these, 91.7% called themselves believers, while 8.3% said they were atheists, agnostics, or practiced no religion. The inhabitants who called themselves believers were separated into the following religions: Catholic: 69.96%; Evangelical: 15.14%; Jehovah Witness: 1.06%; Jewish: 0.13%; Mormons: 0.92%; Muslims: 0.03%; Orthodox: 0.06%; and other religions or creeds: 4.39%.[3]

The census shows that while a majority of Chileans still identify themselves as members of the Catholic faith, there are significant numbers of citizens who identify with other religions. Fortunately, a climate of social peace has prevailed in Chile despite other religions having established their presence in the country. In fact, this shift in religious tradition has not motivated religious persecutions or internal wars. This situation has been, in general terms, the fruit of a grand, peaceful, national consensus.

With this background we can now analyze the legal situation of today's ministers of religion. To start with, it is important to have in mind that Chile does not have any central legal statute that systematically regulates all the rights and duties that should apply to ministers of religion. One must turn to distinct and wide-ranging normative texts to approach a correct understanding of the law on this question. Ir is also decidedly difficult to find jurisprudence that, in some manner, allows one to gauge where the major points of legal friction exist concerning these ministers.

To better undersrand how Chilean Law currently treats ministers of religion, the following paragraphs will describe those rules related

2. *Cf.* INSTITUTO NACIONAL DE ESTADÍSTICAS, CENSO 2002: SÍNTESIS DE RESULTADOS [NATIONAL INSTITUTE OF STATISTICS, 2002 CENSUS: SUMMARY OF RESULTS] 25–26 (2003), http://www.ine.cl/cd2002/sintesiscensal.pdf.

3. *Id.* The 2002 census has certain particularities: Christian religions that are not Catholic are all grouped in the statistics under "evangelical religion" without distinction. This was different from the 1992 census, which distinguished between Protestants and Evangelicals. The 2002 census also added two options: Jehovah's Witnesses and Mormons.

According to the previous census, from 1992, the Chilean population was 11,226,309. From this total, 9,660,367 were older than 14 years, and 76.8% called themselves Catholics, 12.4% Evangelicals, 0.8% Protestant, 4.2% other religions or creeds and 5.8% indifferent or atheist. *See* Centro de Estudios Públicos, Santiago de Chile, International Social Survey Programme (ISSP) [Center for Public Studies, Santiago Chile, International Social Survey Program], Mapa de la Religiosidad en 32 Países [Map of Religiosity in 32 countries], ¿Cuán Religiosos somos los Chilenos? [How Religious are Chileans?], http://www.cepchile.cl/dms/lang_1/doc_3020.html.

to the ministers' work status, their incapacity to accept certain duties, their obligation to maintain confidentiality, and finally some specific criminal rules that apply to them. Even though civil death is now abolished and did not always affect proper religious ministers, civil death indicates how radical life was for those that embraced the religious state.

As a final note, this Article will, for the most part, refer to the leaders of different religions as simply ministers of religion, without regard to any specific denomination. However, because of the prominence of the Catholic Church in Chilean society and history, it will be necessary to distinguish the legal situation of Catholic minisrers from non-Catholic ministers in certain sections.

II. THE CONCEPT AND ACCREDITATION OF RELIGIOUS MINISTERS

The first difficulty in defining the legal treatment of a minister of religion is that the term "minister of religion" is not actually defined by Chilean Law. Since the position lacks a formal definition under the law, it is understood that religious ministers are persons invested with special authority who can only perform certain functions in their respective religions. Consequently, their position differentiates them from other members and also subjects them to certain rights and duties resulting from their responsibilities.

Though not recognized by law, one way to define a minister of religion and avoid confusion with other members of their respective churches, is by asking the following three questions: (1) do they have "special education or training in spiritual or intellectual pursuits that is distinct from what common members receive"—determined by the specific religion; (2) do they have "specific powers or skills only invested in the ministers as opposed to the rest of the followers"; and (3) do they have "a necessary occupation that is specific to the practice of the ministry," without which it would signify neither exclusive nor primary dedication.[4]

4. JUAN NAVARRO FLORIA, PRESENCIA DE LOS MINISTROS DE CULTO EN ACTOS O ESPACIOS PÚBLICOS ANALES DERECHO UC, ACTAS DEL IV COLOQUIO DEL CONSORCIO LATINOAMERICANO DE LIBERTAD RELIGIOSA [THE PRESENCE OF RELIGIOUS MINISTERS IN PUBLIC ACTS OR SPACES UC LEGAL ANNALS, ACTS OF THE COLLOQUIAL OF THE LATIN AMERICAN CONSORTIUM OF RELIGIOUS LIBERTY], 140–41 (Santiago, 2005), *available at* http://www.calir.org.ar/docs/pubrel04104.pdf. The quotations in the body of this Article are translated from the original Spanish that reads "una preparación o formación intelectual o espiritual especiales y distintas de las que recibe el común de los fieles"; "unos poderes o

Since Chilean Law does not define the position, the law empowers every church, congregation, and religious institution to officially certify its own ministers of religion. Therefore, the respective entity must expedite its certification process through the legal entity that controls that specific religious organization.[5]

Another complication of this topic is that the majority of current laws concerning ministers of religion employ standard Catholic terminology. Today, however, these Catholic-based terms cause problems because these terms in other religions carry different meanings.[6] Similarly, there are regulations that describe positions of authority in the Catholic Church that no longer exist or that are now known under different names.[7] Additionally, the use of these lesser-known or extinct terms often requires a kind of translation to determine their meaning within a more modern vocabulary.

In spite of the above definitional problems, the Chilean tribunals have not yet had cases regarding the specific definitional classification of someone as a "minister of religion." In fact, the only religiously motivated precedent and judgments that the tribunal has yet offered refer to cases involving false priests who have deceived people in an attempt to obtain an economic benefit.

III. CIVIL DEATH

The roots of Chilean law ruled about civil death—the loss of all civil rights—on certain religious professing vows. Even though it was abolished in 1943,[8] it is important to understand the history of this law as it related to Catholic ministers of religion, and the extent to which this civil death reached. To begin, civil death "is a fiction of

facultades específicos de los que están investidos los ministros y no el resto de los fieles"; and "una ocupación específica consistente en el ejercicio del ministerio." *Id.*

5. Ley No. 19.638, D.O., Oct. 14, 1999.

6. It is interesting to note that in addition, beyond that relating to ministers of religion, Chilean legislation includes the obligation of the oath of the Holy Gospels upon assuming certain functions. For example, the President of the Republic has the option of taking an oath or making a promise and an attorney is obligated to take an oath in order to receive a title from the Supreme Court (*Excelentísima Corte Suprema*), even though in practice his promise is accepted. Compare Article 27 of the Constitución Política de la República and article 522 of the Código Orgánico de Tribunales [Organic Code of Tribunals].

7. One example of this is the reference to the *Vicario capitular* and to the *Provisor*, offices that current canon does not describe, except in other terms, which will be explained later.

8. Repealed by art. 2 of Ley 7612, D.O., Oct. 21, 1943.

the law according to which a man is considered dead to both obtaining and enjoying civil rights: it is the transformation of a living man to a dead man."[9]

Even though in ancient law the loss of all civil rights was understood as a consequence of applying the punishments of judicial sentences,[10] Chile's Código Civil (Civil Code) also applied civil death in the case of "solemn profession executed conforming to laws, in a monastic institute recognized by the Catholic Church."[11] Just as the Code stated, civil death applied only to the Catholic Church and not to other religions. Inside the Catholic Church it was only applied to those who had professed to become religious—that is, those who had taken vows—but not to those who received the sacred order without taking vows.

Civil death covered property rights, including the right to inherit. Religious ministers could not legally inherit[12] nor could they create a will after professing vows.[13] They were also prohibited from donating and receiving donations[14] as well as enjoying any kind of ownership on any kind of goods.

Despite the civil death requirement, these religious ministers maintained their family rights. For example, the right of one who had taken his vows still had the right to ask for family sustenance even though he no longer remained under the authority of his family. As a son obtained legal emancipation "that son, if he solely professed and took vows of obedience to his superior, did not remain subject to the control of his father."[15] Nevertheless, as part of Chile's

9. LUIS CLARO SOLAR, EXPLICACIONES DE DERECHO CIVIL, CHILENO Y COMPARADO, DE LAS PERSONAS, VOLUMEN I, EDITORIAL JURIDÍCA DE CHILE [EXPLANATIONS OF CIVIL LAW OF THE PEOPLE, CHILEAN AND COMPARED, LEGAL EDITORIAL OF CHILE] (Santiago, 1978). The original Spanish reads, "La muerte civil es una ficción de la ley según la cual un hombre vivo es reputado muerto para la adquisición y goce de los derechos civiles: es la asimilación de un hombre vivo a un hombre muerto." *Id.*

10. *See id.* at 262–67.

11. Código Civil de la República de Chile, 1856, art. 95 [Civil Code of the Republic of Chile], (art. 95 now repealed). The original Spanish quote reads "profesión solemne ejecutada conforme a las leyes, en instituto monástico reconocido por la Iglesia Católica." *Id.*

12. *Id.* art. 95 (repealed by art. 2 of Ley 7612, D.O., Oct. 21, 1943).

13. *Id.* art. 1005, No. 1 (repealed by art. 2 of Ley 7612, D.O., Oct. 21, 1943).

14. *Id.* art. 1388, 1390 (repealed by art. 1 of Ley 7612, D.O., Oct. 21, 1943).

15. CLARO SOLAR, *supra* note 9, at 265. The quote is originally in Spanish and reads: "El hijo de familia que profesa solemnemente y presta voto de obediencia a su superior no queda sometido al poder de su padre." *Id.*

civil death laws, the son could not be a tutor, curator,[16] or executor,[17] and the law deemed him practically as lacking the capacity to agree to certain acts or to enter into contracts.[18]

IV. THE MINISTERS OF RELIGION AND CHILEAN LABOR LAW

The themed framework of religion and work is given by the Chilean Constitution of 1980 which guarantees the freedom to work and assures employment protection,[19] prohibiting any discrimination that is not based on capability or suitability.[20]

Acts of illegal discrimination include, among others, distinctions, exclusions, or preferences based on religious considerations[21] when

16. Código Civil, *supra* note 11, at art. 498, No. 1 (repealed by art. 2 of Ley 7612, D.O., Oct. 21, 1943).

17. *Id.* art. 1272 (repealed by art. 1 of Ley 7612, D.O., Oct. 21, 1943).

18. *Id.* art. 1447 (repealed by art. 1 of Ley 7612, D.O., Oct. 21, 1943).

19. CONSTITUCIÓN POLÍTICA DE LA REPÚLICA DE CHILE DE 1980, art. 19, No. 16.

20. The Senate is currently discussing a project of law that "establishes means against discrimination (Boletín 3815–17)" that could affect the exercise of religious freedom, if discrimination is considered, for example, the idiomatic requirement to those who occupy a job within a religious institution. *See* CÁMARA DE DIPUTADOS & SECRETARÍA DE COMISIONES, RESULTADOS DE COMISIONES, 05 al 06 de Julio de 2005, http://camara.cl/resultado/pdf/dat310.pdf.

21. *See, e.g.*, Código del Trabajo, art. 2:

> Reconócese la función social que cumple el trabajo y la libertad de las personas para contratar y dedicar su esfuerzo a la labor lícita que elijan. Son contrarios a los principios de las leyes laborales los actos de discriminación. Los actos de discriminación son las distinciones, exclusiones o preferencias basadas en motivos de raza, color, sexo, edad, estado civil, sindicación, religión, opinión política, nacionalidad, ascendencia nacional u origen social, que tengan por objeto anular o alterar la igualdad de oportunidades o de trato en el empleo y la ocupación. Con todo, las distinciones, exclusiones o preferencias basadas en las calificaciones exigidas para un empleo determinado no serán consideradas discriminación. Por lo anterior y sin perjuicio de otras disposiciones de este Código, son actos de discriminación las ofertas de trabajo efectuadas por un empleador, directamente o a través de terceros y por cualquier medio, que señalen como un requisito para postular a ellas cualquiera de las condiciones referidas en el inciso tercero. Ningún empleador podrá condicionar la contratación de trabajadores a la ausencia de obligaciones de carácter económico, financiero, bancario o comercial que, conforme a la ley, puedan ser comunicadas por los responsables de registros o bancos de datos personales; ni exigir para dicho fin declaración ni certificado alguno. Exceptúanse solamente los trabajadores que tengan poder para representar al empleador, tales como gerentes, subgerentes, agentes o apoderados, siempre que, en todos estos casos, estén dotados, a lo menos, de facultades generales de administración; y los trabajadores que tengan a su cargo la recaudación, administración o custodia de fondos o valores de cualquier naturaleza. Lo dispuesto en los incisos segundo y tercero de este artículo y las obligaciones que de ellos emanan para los empleadores, se entenderán

such practices pursue altering the equality of opportunities or the treatment of persons in their employments or jobs.

In general, there is no specific statute containing labor regulations applicable to ministers of religion and their labor rights. Nevertheless, if the relationship with the minister of religion fits within the Chilean labor law requirements, this will be deemed a labor relationship, and the labor laws must be applied. On the other hand, if the relationship is not in accord with Chile's labor law requirements, then the relationship will fall under another legal classification and other laws must rule that situation.

It must be noted that in the Catholic Church, clerics and religious ministers are completely dedicated to a religious mission. Their mission is not, and cannot, be considered a working or labor contract by law.[22] Instead, it has a unique and broad nature that

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incorporadas en los contratos de trabajo que se celebren. Corresponde al Estado amparar al trabajador en su derecho a elegir libremente su trabajo y velar por el cumplimiento de las normas que regulan la prestación de los servicios.

[Employment Code], art. 2:

Recognize the social function that serves the work and liberty of the people to hire and dedicate their effort to the lawful work that they choose. Acts of discrimination are contrary to the principles of labor laws. Discriminatory acts are distinctions, exclusions or preferences based in motives of race, color, sex, age, civil status, syndication, religion, political opinion, nationality, national origin or social origin, that has for an objective to eliminate or alter the equality of opportunities or the treatment of work and occupation. That said, the distinctions, exclusions or preferences based in the qualifications required for a specific job will not be considered discriminatory. Consequently, and without prejudice to other resolutions of this Code, offers to work are acts of discrimination effectuated by an employer, directly or through third parties and by whichever means, that points out as a requisite to postulate whichever of the conditions referred to in the third interjection. No employer could condition the hiring of workers on the absence of obligations of economic, financial, banking, or commercial character that, conforms with the law, can be communicated for those responsible to registers or personal data banks; nor require any declaration or certification for that end. Excepting solely the employees that have the power to represent the employer, like managers, assistant managers, agents or representatives, always that, in all of these cases, are assigned, al least, to general abilities of administration; and the employees that have the responsibility of collection, administration or custody of funds or in the nature of any value whatsoever. It is mentioned in the second and third parts of this Article and the obligations that stem from the employers, it will be made known as incorporated in the work contracts that are performed. The duty belongs to the State, to protect the worker in his tights to freely choose his work and to watch for the observance of the norms that regulate the assistance of those services.

22. *See* Francisco Jiménez Buendía, Naturaleza empleadora de la Congregaciones religiosas: Tesis para optar al grado de Licenciado en Derecho de la Pontificia 71 [Natural

stems from canon law. In contrast, when a layperson gives paid services to the Catholic Church or the religious community at large, his or her paid services fall under the governance of the labor law.

V. INABILITY TO ACCEPT RESPONSIBILITIES OR EXERCISE CERTAIN FUNCTIONS

Those who are classified as a "minister of religion" are restrained from accepting certain responsibilities or exercising certain functions. While all ministers of religion are restrained in some way, not all ministers are required to give up the same responsibilities or functions. This subpart distinguishes the rights and responsibilities that are given up by Catholic ministers of religion as opposed to those relinquished by ministers of other faiths.

A. The Catholic Church

First, those who have received the highest ecclesiastical orders in the Catholic Church[23] cannot be judges. Further, if a Catholic minister currently serving as a judge receives such an appointment to such a high order he will be required to immediately resign his position as a judge.

It is important to note that every judge, before taking the bench, must solemnly swear, before God, to uphold the Constitution and the laws of Chile. This practice is largely believed to be directed more toward members of the Catholic faith than toward members of any other religion.[24]

Employer of Religious Congregations: Thesis for the Degree of Bachelor of Law at Catholic Universtiy of Chile] (Universidad Católica de Chile, Santiago, 1997).

23. Canon 949 of the Código de Derecho Canónico of 1917 (which was enacted after the Organic Code of Tribunals) states: "En los cánones que siguen, con el nombre de órdenes mayores o sagradas se designan el presbiterado, diaconado y subdiaconado; y con el de menores el acolitado, exorcistado, lectorado y ostiariado." [In the canons that follow, with major or sacred names that designate the priest, deacon and parish; and with the minor names of minion, exorcist, assistant and door greeter.] *Id.* Compare with canons 975, 976 § 2, 978 § 2 of the Código de Derecho Canonico, 1917, Biblioteca de Autores Cristianos, Madrid, 1976.

24. *See* Código Orgánico de Tribunales art. 304:

> ¿Juráis por Dios Nuestro Señor y por estos Santos Evangelios que, en ejercicio de vuestro ministerio, guardaréis la Constitución y la Leyes de la República?" El interrogado responderá: "Sí juro"; y el magistrado que le toma el juramento añadirá: "Si así lo hiciereis, Dios os ayude, y si no, os lo demande.
>
> [Do you swear to God our Lord and to these Sacred Gospels that, in the practice of your ministry, you will keep the Constitution and the laws of the Republic?" The

A second way in which the duties or responsibilities of ministers in the Catholic Church, as well as all other legally recognized faiths, can be limited is in their freedom from military service. Chilean Law relieves ministers of religion belonging to churches, or religious institutions enjoying public legal recognition, from military service for as long as the ministers remain in office. The condition of minister of religion is demonstrated by means of a certification issued by the minister's religious organization.

Regarding the Catholic Church, Chilean Law exempting ministers of religion from military service is completed by the canonical ordination. According to that ordination, both the clerics[25] and the candidates waiting to receive sacred orders[26] should not voluntarily present themselves for military service without the express permission of their respective[27] *Ordinario*.[28]

The laws of the Catholic Church also stipulate that clerics should make use of the exemptions provided in laws, agreements, and customs in order to excuse themselves from exercising public offices or serving in any position that is alien to their clerical status.[29] However, in these cases the respective *Ordinario* may order a different outcome than would ordinarily result under the application of these exemptions.

Under Chilean Law, and similar to the law of some other countries, a Catholic cleric cannot receive an inheritance or any legal bequeathment (not even as a fiduciary executor)[30] if the minister has confessed the defunct on his or her death bed or habitually over the two last years before making his or her will. This prohibition also extends to orders, convents, or brotherhoods to which the cleric

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witness will respond: "Yes I swear"; and the minister that receives the oath will add: "If you do this, may God help you, if not, may God condemn you.]

Id. The same oath is required before testifying before the Tribunals of Justice, or to assume certain functions. Código de Procedimiento Civil [Civil Method Code], 2008, art. 62, 363.

25. The sacred order of the cleric capacity is acquired by means of deacon. Código de Derecho Canónico, 1983 Code art. 207, §§ 1, 1008–09.

26. It refers to those that are in the seminaries preparing themselves to become gospel ministers.

27. Código de Derecho Canónico, 1983, *supra* note 25, at art. 289, § 1.

28. The *Ordinario* is the person that, having received sacred orders, is qualified for the power of governance. *Cf. id.* art. 134.

29. *Id.* art. 289, § 2.

30. A fiduciary executor is designated by the testator to perform certain secret and confidential duties on his behalf, using the assets precisely assigned for said purpose in the will. *See* Código Civil, *supra* note 11, at arts. 1311–16.

belongs and to his relatives by blood or affinity.[31] This inability to inherit or give inheritance does not, however, include the testator's parish, nor does it apply to the cleric or his relatives when there is an intestate inheritance—that is, if there had been no will and the cleric inherits because he is a blood relation of the deceased.[32]

Notwithstanding, the Civil Code does acknowledge that secular priests, to the extent not covered under the prohibitions above, can be executors.[33] One needs to keep in mind that the job of executing a will is voluntary, which means one can accept the appointment or not.[34] Nevertheless, according to canonical rules,[35] clerics should not accept the responsibility to administer goods belonging to laymen or secular offices that carry the obligation to give an account,[36] unless they have been authorized by their *Ordinario*. While this limitation extends to priests,[37] it does not extend to permanent deacons.[38]

Priests can excuse themselves from being guardians or caregivers.[39] It is also interesting to note that individuals cannot be

31. The prohibition to relatives applies up to and including the third grade removed.

32. Código Civil, *supra* note 11, at art. 965.

33. *Id.* art. 1312, No. 2.

34. Ramon Dominguez Benavente, Ramon Dominguez Aguila, Derecho Sucesorio, *Segunda Edición Actualizada, tomo III*, Editorial JURÍDICA DE CHILE 1264–65 (Santiago, 1998),

> No siempre tuvo el cargo esta particularidad. Así, durante los siglos XIV y XV los tratadistas del Derecho Canónico consideran el carácter público del albaceazgo y declaran obligatorio su ejercicio, porque no derivaría propiamente del testamento.
> El designado por el difunto ha de obrar con el carácter de delegado del obispo o del juez secular. Si rehúsa, la ejecución de las disposiciones corresponden al obispo. En fin, una Decretal de Gregorio IX dispuso que el designado no podía ser obligado a aceptar.
> [He did not always have such a specific assignment. So, during the fourtheenth and fifteenth centuries the writers of the Canon law considered the public character of the executor and declared the practice obligatory, because he would not deviate from the testament.
> Those designated by the deceased had to behave with the temperament of those who were delegated by the bishop or secular judge. If he refused, the performance of the dispositions corresponded to the bishop. Finally, a decree from Gregory IX arranged that the designated could not be obligated to accept.]

Id.

35. These canonical rules are applicable under subsection 2 of article 547 of the Civil Code and article 20 of Law 19.638.

36. Código de Derecho Canónico, 1983, *supra* note 25, at art. 285, § 4.

37. *Id.* art. 672.

38. *Id.* art. 288.

39. Código Civil, *supra* note 11, at art. 514, No. 10.

guardians or caregivers if they profess a different faith than that in which the child (or ward) must be educated in or that in which the child professes.[40]

B. Other Religious Denominations

Unlike their Catholic counterparts, Chilean Law does not prohibit ministers of other religions from serving as judges. Similarly, as stated above, ministers belonging to churches or religious denominations other than the Catholic Church are not obliged to participate in mandatory military service as long as their capacity is certified by their ecclesiastical organization and that organization is recognized as a legal entity under public law.

The inabilities to be a testamentary heir, to receive a bequeathment, or to be appointed as a fiduciary executor under the Civil Code in 1855 were originally only thought to apply to Catholic fathers. These limitations were constrained to Catholic ministers because at the time the Chilean Constitution was enacted in 1833 Catholicism was the official religion of Chile. As such, the practice of any other faith was excluded and the laws did not foresee that eventually there would be ministers of other religious denominations in Chile.

Therefore, unlike Catholic ministers, non-Catholic ministers are not specifically barred from inheriting. In fact, according to civil legislation, the general rule is that every person has the legal ability to inherit from the will of a testator. The only exception to inheritance is incapacity.[41] "The incapacity must be interpreted restrictively and in no case can be applied by analogy method because it is an exception to the rule. Hence, who alleges incapacity should prove it."[42]

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40. *Id.* art. 508. This prohibition does not apply to the case of ancestors and the closest relatives to accept.

41. *Id.* art. 961.

42. *See also* Ramon Dominguez Benavente, Ramon Dominguez Aguila, Derecho Sucesorio, *supra* note 34, at 252 (vol. I). "La incapacidad debe ser interpretada restrictivamente y en caso alguno procederá extender su aplicación por analogía, dado el carácter excepcional que tiene, según se dijo. Por ello mismo, quien tiene una incapacidad, debe probarla." ["Incapacity should be interpreted narrowly, and in any case it should extend its application by analogy, given, as stated, its exceptional nature. By this token, one who has a disability under the law should try to test it."] *Id.*

However, there is a potential conflict within the civil law rule pertaining to succession after death and the adequate protection of religious freedom. According to the civil law incompetence must be narrowly interpreted, but under the prohibitions we have just discussed non-Catholic ministers are not included. This is extremely problematic because, in its current state, the civil law provides freedoms to non-Catholic ministers that are not available to their Catholic counterparts. Carlos Salinas Araneda states the problem as follows:

> Regardless of whether the confessor father is Catholic or from another faith, the problem that the law tries to prevent is the same and the possibility that ministers of any faith commit the abuses contemplated by the law is also the same. It is true that while non-Catholic faiths do not have the sacrament of the confession, it is certain also that church members are not away from of the deathbeds of their respective churches—who, just like in the last confession, can coerce their parishioners to make a will for their own benefit or for the benefit of close relations. Where there is the same reasoning, the same regulation should exist. It seems to me that this article [of law] is not justified in a country where religious freedom prevails and where different religious faiths, especially after law 19.638, have reached a notable level or religious equality.[43]

Much like Catholic ministers of religion, ministers of other faiths can technically be guardians or caregivers of orphaned children but the law also allows them to excuse themselves from accepting the responsibility.[44]

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43. CARLOS SALINAS ARANEDA, LECCIONES DE DERECHO ECLESIÁSTICO DEL ESTADO DE CHILE 319 (Ediciones Pontificia Universidad Católica de Valparaíso 2004).

> Sin embargo, no cabe duda ya se trate de confesores católicos o de ministros de otras confesiones, el problema que trata de precaver la norma puede ser el mismo y también la posibilidad que se cometan los abusos que se trata de evitar. Es cierto que no hay en otras confesiones el sacramento de la confesión, pero es igualmente cierto que, en su última enfermedad, los miembros de otras confesiones religiosas no están desasistidos por sus ministros religiosos quienes, al igual que el último confesor, pueden inducir a sus feligreses a testar en beneficio propio o de sus próximos. Si donde existe la misma razón, debe existir la misma disposición, me parece que se está produciendo con este artículo que no resulta justificada en un país donde impera la libertad religiosa y donde las diversas confesiones religiosas, especialmente después de la ley 19.638 ha alcanzado una notable igualación.

Id.

44. Código Civil, *supra* note 11, at art. 514, No. 10.

Also, it is important to note the call for parity between the religion of a child and the religion of the child's prospective guardian: "The provision regarding children [wards] restricts a Catholic from being the guardian of a Protestant child, and a Protestant from being the guardian of a Catholic child."[45]

VI. MINISTERS OF RELIGION: THE SECRECY OBLIGATION

Without doubt, one of the most interesting and practical themes in statutes applicable to ministers of religion is their protection of the confidential relationship between a minister and a confessing person. "Just as there exists a duty of confidentiality, there also exists the right to remain silent before third parties who are not part of the confidential relationship."[46] While this article will briefly address the implications of this prorection, it is impossible to adequately analyze all the implications that arise from this issue.

The Chilean Law distinguishes two different types of cases: first, cases where a minister has the right to refrain from testifying at trial in order to maintain the obligation of secrecy which accompanies a confession; and second, cases where, even though ministers may be obligated to testify, ministers do not take the witness stand, but instead are allowed to fulfill this obligation in a different manner.

A. Right to Refrain from Testifying for Reasons of Confidentiality

In civil cases, clerics are not required to testify concerning confidentially obtained information if they receive the information due to their status, profession, or position.[47] Similarly, in criminal cases, individuals are not required to restify if, as part of their position, profession, or legal function (like a lawyer, doctor, or priest), they have a duty of confidentiality regarding the entrusted information. This exception, however, is strictly limited to confidentially conveyed information.

While these laws provide some measure of protection, they do have limitations which can cause difficulties for ministers of religion.

45. CLARO SOLAR, *supra* note 9, at 269.

46. JORGE PRECHT PIZARRO, 15 ESTUDIOS SOBRE LA LIBERTAD RELIGIOSA EN CHILE 167 (Ediciones Universidad Católica de Chile 2006). "Así como existe el deber de guardar secreto, existe el derecho de guardar silencio frente a terceros ajenos a la relación confidencial." *Id.*

47. Código de Procedimiento Civil, *supra* note 24, at art. 360, No. 1.

Under Chilean Law, in cases where the person subject to a duty of confidentiality is relieved by the person to whom he or she owes this duty,[48] the entrusted person may no longer claim confidentiality as a means of avoiding testifying and will be compelled to testify regardless of any protection they would normally receive.[49] However, according to canon law, the sacramental seal is absolutely unbreakable.[50] This means that a priest's disclosure is not possible, under any circumstances, without committing a serious canonical offense,[51] which invokes the punishment of excommunication[52]—the harshest punishment enforced by the Catholic Church. "The inviolability of secrecy, like the standard itself tries to clarify, means that never and by no means, whether direct or indirect, can the inviolability of secrecy be broken. It does not matter what possible private or public damage disclosure may avoid or the good that disclosure might promote."[53]

48. Código Procesal Penal, art. 303. Compare with the same code articles 190, 217, 298, 299, 302, 304 and 317. Código Procedimiento Penal, arts. 171, 189, 201, 202 and 229.

49. *Cf. id.* art. 303.

50. Código de Derecho Canónico, 1983, *supra* note 27, at art. 983, 1388.

51. *Cf. id.* art. 1388, § 1.

52. *Cf. id.* art. 1331. The imposition of the penalty of excommunication deprives an individual from taking part in sacraments, taking Communion, participating as a minister in any religious worship, or performing any act that deals with the offices, ministry, or responsibilities of an ecclesiastical leader.

53. TOMÁS RINCÓN-PÉREZ, LA LITURGIA Y LOS SACRAMENTOS EN EL DERECHO DE LA IGLESIA 234 (EUNSA Pamplona, 1998).

> La inviolabilidad del sigilo, como la propia norma se encarga de aclarar, significa que jamás y de ningún modo, directo o indirecto, puede quebrantarse, cualquier sea el daño privado o público que se pretenda evitar o el bien que se pudiera promover.
>
> Se quebranta directamente el sigilo cuando se manifiesta el pecado oído en confesión y la persona del penitente, por su nombre o circunstancias que permiten identificarlo. Este tipo de violación está sancionado con excomunión *latae sententiae* reservada a la Sede Apostólica. Hay violación indirecta cuando de las palabras, hechos u omisiones del confesor puede deducirse o identificarse el pecado y el pecador. Este otro tipo de delito, que admite graduaciones, ha de ser castigado en proporción con la gravedad del mismo.
>
> [A priest directly violates the duty of secrecy when he divulges a sin heard in confession or if he identifies the penitent person by name or by the circumstances that make it possible to identify him or her. This type of violation is sanctioned with excommunication, *latae sententiae* reserved for the Holy See. A person indirectly violates this duty when words, acts, or omissions of the confessor infer or identify the sin and the sinner. This other type of offense, which is determined on a scale of grades, is punishable according to the proportion of gravity of the offense.]

Id.

In 2000, a law was enacted that protected the secrecy privilege for a specific time and reason. This law stipulated:

> Pastors, priests, or ministers of religion from faiths or religious institutions that enjoy legal status, members of the Great Lodge of Chile and the B'nai B'rith of Chile and the members of the Armed Forces and Chilean Police, will be obligated to maintain confidentiality only regarding the name and data that identify those who provided the information, or entrusted them with useful and conducive information to establish the whereabouts and fate of the missing prisoners referenced by article six of law number 19.123.[54]

Later, it adds that the duty to maintain privacy will be demanded even when the trusted person loses the status required by law. The aforementioned only concerns the information received by the previously named parties within six months from the time of publication of the law.

B. Exemptions from the Obligation to Go to Court

As srated above, some ministers of religion are not required by law to go to court and they have the option to fulfill their obligation of testifying in an alternative way.

In civil cases, some persons are not obligated to go before the court to testify as witnesses. Such persons include the Archbishop and Bishops, general Vicars, *Provisores*[55] and Vicars and *Capitular*

54. Ley No. 19.687 establece obligación de secreto para quienes remitan información conducente a la ubicación de detenidos desaparecidos, publicada en el Diario Oficial de 6 de julio de 2000. Tiene un articulo único:

> Los pastores, sacerdotes o ministros de culto de iglesias, confesiones o instituciones religiosas que gocen de personalidad jurídica, los miembros de la Gran Logia de Chile y de la B'nai B'rith de Chile y los integrantes de las Fuerzas Armadas y Carabineros de Chile, estarán obligados a mantener reserva únicamente respecto del nombre y los datos que sirven para identificar a quienes les proporcionen o confien información útil y conducente para establecer el paradero y destino de los detenidos desaparecidos a que hace referencia el artículo No. 6 de la Ley No. 19.123.

[Law No. 19.687, D.O., established an obligation of privacy for those that send information conducive to the location of missing prisoners, published in the Official Diary of 6 July 2000. *Id.* It has only one article.]

55. The position of *Provisor* came from Spain, and to distinguish it from the general Vicar carried out voluntary jurisdiction, appointed the person exerting contested jurisdiction. In all actuality, the judicial Vicar influences the office of *provisor*, in conformity with Canon 391, § 2. *Cf.* JUSTO DONOSO, INSTITUCIONES DE DERECHO CANÓNICO AMERICANO 209 (Libro segundo, Imprenta y Librería del Mercurio, Valparaíso 1848).

Provicars[56] parish pastors within the territory of their own parish, as well as persons enjoying diplomatic immunity, priests and even novices.[57]

However, the Chilean legislature has recently created an exception to this rule through the enactment of the Law of Family Courts.[58] This rule, along with a newly enacted Criminal Process Law, has deprived all religious ministers of their right to refrain from going to court. Before these reforms, in criminal cases for offences prior to the implementation of the new Criminal Process Law of 2000,[59] the Archbishop and Bishops, general Vicars and *Capitular* Vicars, persons who enjoy diplomatic immunity, nuns, and women (with a certain status or position) could not comfortably testify in court[60] without a material discomfort. However, the aforementioned reforms have not maintained this privilege for ministers of religion.[61]

In both criminal and civil proceedings, the people who enjoyed these exemptions from the obligation to go to court must give their testimony by written communication or by official interrogation outside of court regarding the matter (civil or criminal).

VII. MINISTERS OF RELIGION AND CRIMINAL LEGISLATION

The following subparts will examine the criminal rules under which a religious position makes a person subject to special laws. The

56. The *Capitular* Vicar was the person who governed the Diocese in case of a vacant seat, that is, when for various reasons—death or renunciation—there was no diocesan bishop. We understand that, in accordance with the canonical legislation now in force—canon 421 and the following canons of the 1983 Canon Law Code—it is now understood that the filling of vacant seats is controlled by the diocesan administrator. *See* JUSTO DONOSO, supra note 55, at 236; Código de Derecho Canónico, 1917, *supra* note 23, at No. 432, 198.

57. *See* Código de Procedimiento Civil, *supra* note 24, at art. 360, No. 1, art. 361, Nos. 1–3, 362; Ley No. 19.638, art. 13, D.O., Oct. 14, 1999.

58. *See* Ley No. 19.968 arts., 33, 35, D.O., que crea los Tribunales de Familia.

59. Starting in the year 2000, among other important modifications, a criminal prosecution system began gradually implementing itself into various regions of the country, in which the investigation of punishable acts do not come under the jurisdiction of a judge, but the Public Minister. The reform meant to change the 1980 Political Constitution of the Republic, adding a chapter dedicated to the Public Minister (articles 83–91). The new system is structured in accordance with the following normative bodies of law: Código Procesal Penal [Criminal Prosecution Code], Ley No. 19.696, D.O., Ley No. 19.640, D.O.; Orgánica Constitucional del Ministerio Público [Organic Constitution of the Public Minster], Ley No. 19.718 (creating the Public Criminal Defense or la Defensoría Penal Pública).

60. *See* Código de Procedimiento Penal, art. 191; *see also* Ley No. 19.648, art. 13, D.O.

61. *See* Código Procesal Penal, *supra* note 60, at arts. 298, 300.

law's special treatment of persons with a religious position has served to create particular offenses and as a modifying circumstance for criminal liability.

A. Offence to a Minister of Religion

The law has established special offences for when a victim is a minister of religion. The Criminal Code, which under the title of crimes and simple offences relative to the practice of the permitted religions in the Republic,[62] imposes sanctions on those who, with actions, words, or threats, offend a minister of religion during the exercise of his ministry.[63] The punishment under the Code increases when "the offense will be the act of laying violent hands on a person of the ministry,"[64] or when trying to hit or to injure a minister of religion.[65]

B. Removing Entrusted Documents

Persons with ecclesiastical status are punished for removing or destroying documents or papers that, because of their callings, were entrusted to them.[66]

C. Celebration of Marriages Prohibited by Law

The criminal law imposes a stipulated fine on a minister of religion who authorizes a marriage that is prohibited by law.[67] The new Civil Marriage Law[68] establishes that "marriages celebrated before religious institutions that enjoy legal status under public law will produce the same effect as a civil marriage as long as they fulfill the stipulated requirements of the law, especially their registration before a Public Registry Office."[69] In accordance with this standard,

62. Código Penal, arts. 138–40.

63. *Id.* art. 139, No. 3.

64. *Id.* art. 140. The Spanish reads, "la injuria fuere de hecho, poniendo manos violentas sobre la persona del ministro." *Id.*

65. *Cf. id.* art. 401.

66. *Id.* art. 242.

67. *Id.* art. 388.

68. Ley No. 19.947, Ley de Matrimonio Civil publicada en el Diario Oficial el 17 de Mayo de 2004 (enforcement began six months after this date).

69. *Id.* art. 20. "Los matrimonios celebrados ante entidades religiosas que gocen de personalidad jurídica de derecho público producirán los mismos efectos que el matrimonio

a religious minister that commits a falsehood in the act, or in the certification of a religious marriage, which will produce civil effects, will suffer the penalties of minor prison in any of its grades.[70]

The law also sanctions third parties who prevent the registration before the Public Registry Office of a celebrated religious marriage, which was performed by an entity authorized by the Civil Marriage Law, including a minister of religion. Those third parties are punished with minor prison sentence or a fine of six to ten monthly tax units.[71]

D. Application of Punishment

Existing laws have some elements that do not currently apply because they were enacted for a system in which Chile and the Catholic Church were unified. For this reason, when an ecclesiastical individual is punished by disablement or suspension, the effects will not extend to the person's religious duties, rights, and honors. The religious status of clerics facing such punishments is not recognized in Chile[72] nor do they receive income from the national treasury, except for the *congrua feed*[73] that the judge will set.[74] This rule does not include the bishops' right to exercise their ordinary jurisdiction.

When a minister of religion[75] commits first degree rape,[76] statutory rape,[77] or another sexual crime, the prescribed punishment

civil, siempre que cumplan con los requisitos contemplados en la ley, en especial lo prescrito en este Capítulo, desde su inscripción ante un Oficial de Registro Civil." *Id.*

70. Código Procesal Penal, *supra* note 60, at art. 388. *Cf. id.* arts. 30, 76; Ley No. 4.808 sobre Registro Civil art. 34–43; Ley No. 19.947, arts. 16–18.

71. Código Procesal Penal, *supra* note 60, at art. 389. *Cf. id.* arts. 24, 76, 370, 382 and those following. The amount of the monthly tax unit in the month of August 2007 rose to 33.019 Chilean pesos, which is approximately 63 U.S. dollars.

72. *Id.* art. 41. This mandate of the Penal Code of 1874, now in force, responds to the union of the church and state, established in the Constitution of 1833, applicable on the date of approval of the above mentioned law, in which the Republic of Chile used to claim for itself the right of patronage from the Spanish crown. Nevertheless, in light of the Constitution of 1980 and the international treaties to which Chile subscribes, article 41 of the Penal Code presents clear unconstitutional flaws.

73. "*Congrua*" is a Catholic term referring to a salary that a cleric can receive for its work.

74. Código Procesal Penal, *supra* note 60, at art. 41; *see also id.* arts. 38–40, 42–44; Constitución de 1980 art. 19, No. 6.

75. Código Procesal Penal, *supra* note 60, at arts. 365–74.

Resulta interesante destacar una sentencia de la Corte Suprema de Justicia de Chile, en causa Rol 1556-2006 de fecha 3 de abril de 2006 que, acogiendo una petición de extradición pasiva de la República Argentina, respecto de un ciudadano chileno,

will not be imposed in the lowest grade—unless it involves a crime that is described and penalized based on circumstances of abuse when the victim is in a dependent relationship or when someone takes advantage of authority or trust.[78]

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diácono de una iglesia evangélica, por los delitos de abuso sexual agravado y corrupción de menores ocurridos en marzo de 2003 en el interior de la Iglesia Evangélica en su calidad de pastor de la misma. Entre los dos países no hay tratado de extradición. Sin embargo, ambos suscribieron – Chile el 2 de febrero de 1935 y Argentina el 19 de abril de 1956–, la Convención de Extradición de Montevideo de 26 de diciembre de 1933, que entre otros requisitos para que se aplique, exige que los delitos perseguidos no sean contra la religión y que la acción penal o la pena no se encuentren prescritas, según las leyes del Estado requirente y del requerido con anterioridad a la detención del individuo inculpado. De acuerdo al Considerando noveno de la sentencia, el artículo 62 No. 2 del Código Penal Argentino, establece que la acción penal prescribe después de transcurrido el máximo de duración de la pena señalada para el delito, si se tratare de hechos reprimidos con reclusión o prisión, sin pueda exceder de doce años. Se ha señalado que el delito materia de extradición, por factores de agravación legal que contempla esa legislación puede llegar a un máximo de veinte años. Vemos aquí cómo la condición de ministro de culto siendo una circunstancia agravante de la responsabilidad penal, tiene el efecto de aumentar el plazo de prescripción de la acción penal y hacer extraditable al imputado.

[It is interesting to highlight a judgment by the Supreme Court of Chile, in cause Rol 1556-2006 dated April 3, 2006, in which the Court heard a passive extradition petition from the Republic of Argentina, concerning a Chilean citizen, who was a deacon of an evangelical church, for crimes of aggravated sexual abuse and violation of minors which transpired in March of 2003 inside the Evangelical Church while the deacon was acting in his capacity as pastor of the church. There is no extradition treaty between Argentina and Chile. Nevertheless, both subscribed to the Montevideo Extradition Convention of December 26, 1933—Chile accepted it on February 2, 1935, and Argentina followed suit on April 19, 1956—which, among other requirements for application, mandates that the crimes pursued are not against religion and that the remedial action or the punishment are not previously stipulated, according to the demands of the laws of the State and prior requirements for the detention of the guilty party. In accordance upon the ninth Consideration of the sentence, article 62 number 2 of the Argentine Penal Code, establishes that the penal action prescribes (after the maximum sentence permissible by law is imposed), if the crime is punishable by imprisonment or jail, not being able to exceed twelve years. It has been sigualed that the crime at issue for extradition, due to factors of legal augmentation that are considered in that legislation can arrive at a maximum of twenty years. We see here how the condition of a minister of religion being an aggravating circumstance of the penal responsibility, has the effect of increasing the time period of prescription of the penal action and make the imputed criminal extraditable.]

76. Código Procesal Penal, *supra* note 60, at arts. 361–62.

77. *Id.* art. 363.

78. *Id.* art. 368.

In relation to the recently announced standard, in December 2006, the Supreme Court of Chile condemned a Catholic priest from the *Punta Arenas* diocese for the crime of sexual abuse. This decision is an example of the application of the former standard.[79]

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79. Sentencia de la Excelentísima Corte Suprema de Justicia de 6 de diciembre de 2006, en causa rol No. 177-2006, Considerando 13°

> Que en relación al efecto agravatorio esgrimido por el querellante aludido y a que se refiere al artículo 368 inciso 1ª del Código penal, no se aplicará, de conformidad con lo dispuesto en el mismo artículo, en su inciso segundo, al establecer "Exceptúanse los casos en que el delito sea de aquellos que la ley describe y pena expresando las circunstancias de usarse la fuerza o intimidación, abusarse de una relación de dependencia de la víctima o abusarse de autoridad o confianza y teniendo presente la calificación que se ha hecho del delito investigado en estos autos en el considerando 5° de este fallo. Que igualmente así lo sostiene la doctrina, específicamente, el autor Juan Pablo Cox Leixelard en su libro *Los Abusos Sexuales Aproximación Dogmática*. Lexis Nexis, año 2003, en su página 165, que con motivo del análisis de la circunstancia consignada en el artículo 363 del Código Penal, señala: "Si se configura el delito de abusos sexuales por la concurrencia de esta circunstancia (que el artículo 366 N° 2 considera como un abuso), operará el nuevo inciso 2° del artículo 368 del Código Penal, eliminándose cualquier posibilidad de violar el principio *non bis in ídem* Que en igual sentido lo sostiene el autor Luis Rodríguez Collao, en su obra *Delitos Sexuales de Conformidad con las Modificaciones Introducidas por la ley 19.617 de 1999*, Editorial Jurídica de Chile, año 2000, página 283, quien haciendo mención a lo dispuesto en el inciso 2° del artículo 368 del Código Penal, dispone: "Con esta cláusula queda descartada la aplicación de la circunstancia en las hipótesis de violación del artículo 361 N° 1; de estupro del artículo 363 N° 2; de abuso sexual del artículo 366 o 366 bis, cuando el abuso consistiere en el empleo de fuerza física o moral, o en el aprovechamiento de una relación de dependencia; y de favorecimiento de la prostitución, cuando éste se ejecuta con abuso de autoridad o confianza.

Judgment of the Supreme Court of Justice on December 6, 2006, in cause Rol number 177-2006, thirteenth Consideration:

> [In relation to the aggravated effect used by the plaintiff in question and to which the first interjection of article 368 of the Penal Code refers, shall not apply, in agreement with what the same article says in the second interjection, upon establishing that 'they exclude themselves from the instances where they commit the crime and the law describes and punishes expressing the circumstances of using force or intimidation, taking advantage of a trust-based relationship with the victim, or taking advantage of their authority or confidential relationships and having the qualification present that has made the crime scrutinized en these cars en the 5th *Considerando* of this judgment.]

Id. Juan Pablo Cox Leixelard also sustains this doctrine in his recent book. *See* JUAN PABLO COX LEIXELARD, LOS ABUSOS SEXUALES APROXIMACIÓN DOGMÁTICA [Sexual Abuse Near Religion] 165 (LexisNexis 2003). Leixelard uses this method to analyze the consigued circumstance in article 363 of the Criminal Prosecution Code, which states: [If the crime is configured by the concurrence of this circumstance (which article 366 number 2 considers as an abuse), the new second interjection from article 368 of the Penal Code will take effect, thus eliminating whatever possibility of violating the principle *non bis in idem*.] *Id.* With equal fervor Luis Rodríguez Collao supports this line of reasoning. *See* LUIS RODRÍGUEZ COLLAO,

VIII. FINAL CONSIDERATIONS

As stated earlier, there is not an organic statute in Chile specifically governing a minister of religion. Instead, the applicable standard is found within several different texts. Neither is it easy to find jurisprudence in which the position "minister of religion" is completely relevant. This is understandable, however, given the Chilean trend of preferring self composition instead of bringing cases to the court house. Accordingly, upon first glance, it appears as though, for legislators, there is no need to systematically specify all the possible acts or instances where ministers of religion might be implicated.

However, even if there is no real sense of urgency—which is often the principal motive to resolve a matter—for the sake of legal certainty, legislators should clarify certain concepts in a way that effectively protects religious liberty as a fundamental human right.

In relation to the concept and scope of the title "minister of religion," it is especially important to define it, together with modernizing the terms that have remained obsolete in legislation. To remedy the problem of defining ministers of religion—apart from the Catholic Church, which already has its own registration system—we should think of a kind of public register in which each religious denomination can officially designate which positions can be properly classified under the concept of "minister of religion."

Regarding labor laws, ministers of religion cannot be the object of discrimination. In each case it will be necessary to determine if the labor rules of the common legal order should apply to the ministers of religion or if, due to their special relationship, we need to consider a special law that will always prevail over the common legal order.

The law should also consider the special needs of the ministers of religion in their duties of citizenship. Legislators should recognize

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DELITOS SEXUALES: DE CONFORMIDAD CON LAS MODIFICACIONES INTRODUCIDAS POR LA LEY NO. 19.617 DE 1999 at 283 [Sexual Crimes: Conforming with Modifications Introduced by the Law] (Editorial Jurídica de Chile 2000). Collao mentions that the second interjection of article 368 of the Criminal Prosecution Code stipulates:

> [With this clause, the application of this hypothetical remains ruled out for rape in article 361 number; for statutory rape in article 363 number 2; for sexual abuse in article 366 or 366 part 2, when the abuse takes place with physical or verbal force, or by taking advantage of a dependent relationship; and by enabling prostitution, when this is carried out with abuse of authority or trust.]

Id.

that, while minimum rights of citizenship should not be taken away, ministers of religion are often unable to assume certain responsibilities or perform certain functions. Therefore, legislators should consider the elimination of certain obligations in these circumstances so that ministers can more fully dedicate themselves to their ministry.

With regard to the duty of secrecy, many people trust their private or confidential matters to a minister of religion precisely because they know their minister has special qualifications that allow him or her to receive and understand what is in human souls. This function should especially be protected by the judicial code—as it is currently—because it represents an essential condition for ministers of religion ro serve in the full sense of the word. Nevertheless, it is troubling that, unlike previous regulations, recent laws do not include some ministers of religion within the exemption to making personal appearances in court, as it did in previous laws. Also rroubling is the conflict porentially deriving from the exclusion of waiver when the emitting person relieves the entrusted person from maintaining confidentiality, since confession seal is part of the essence of Catholic confession.

Finally, the heightened punishment for ministers of religion involved in sexual crimes, when compared to that of an ordinaty citizen, is reasonable because often in these case ministers of religion will use their position of trust to facilitate these illicit crimes. Experience also provides evidence that these crimes are extremely revolting in the eyes of society.

In view of all that has been discussed, the Chilean legislature should formulate a specific statute dealing with the ministers of religion in Chile's legal order. The systemization of rules applying to minister or religion could be a great opportunity to stop and reflect about one of the pillars on which the true protection of religious liberty rests. It would also provide identity and stability to religion as a challenge in the middle of the differences of our community.