Official and Certified Translation of the Verdict,
translated by Celer Pawlowsky Co. in Madrid, Spain

The full session of the Constitutional Court, formed by Mr. Pedro Cruz Villalón, President, Mr. Carles Viver Pi-Sunyer, Mr. Rafael de Mendizábal Allende, Mr. Julio Diego González Campos, Mr. Manuel Jiménez de Parga y Cabrera, Mr. Tomás S. Vives Antón, Mr. Pablo García Manzano, Mr. Pablo Cachón Villar, Mr. Fernando Garrido Falla, Mr. Guillermo Jiménez Sánchez, and Mrs. María Emilia Casas Baamonde, magistrates, has pronounced

ON BEHALF OF THE KING

the following

RULING

in the appeal for legal protection no. 3083/96, promoted by the institution "Unification Church", Mr. Armando Lozano Hernández and Mr. Segundo Marchán García-Moreno, acting through the attorney-at-law Mr. Alejandro González Salinas, and the barrister Mr. José Enrique Motilla de la Calle, against the Ruling of the Judicial Review Division of the Supreme Court of Justice of July 14, 1996, which dismissed the appeal filed against the ruling of the First Section of the Judicial Review Division of the National Criminal Court, given on September 30, 1993, fell to an appeal under the Act on Judicial Protection of Fundamental Rights (Act 62/1978), contesting the Decision of the Directorate General for Religious Affairs of December 22, 1992, refusing the recording in the Registration of Religious Institutions the aforesaid "Unification Church". The State Counsel and the Attorney General have participated in it. The speaker has been the magistrate Mr. Pablo García Manzano, expressing the opinion of the Court.

I. Precedents

1. Through the claim filed before this Court on July 30, 1996, the attorney-at-law Mr. Alejandro González Salinas, on behalf of the "Unification Church", Mr. Armando Lozano Hernández and Mr. Segundo Marchán García-Moreno filed an appeal for legal protection against the aforesaid legal and administrative decisions, refusing the record of it in the Registration of Religious Institutions attached to the Ministry of Justice.

2. The facts which are the cause for action are in summary the following:

a) On February 1, 1991, the "Unification Church" applied for its recording in the Registration of Religious Institutions, attached to the Directorate General for Religious Affairs of the Ministry of Justice, enclosing to the application form the legally required documentation.

b) Through decision of the aforesaid Directorate General of December 22, 1992, this recording was refused for two main reasons. On the one hand, because the "Unification Church" has not an actual religious nature and, therefore, it is beyond the scope of protection of the public general act of Parliament 7/1980 of July 5 on Freedom of Religion (hereinafter APFR), as established in its article 3.2. This conclusion is reached after noting that, for a true Church or religious community to exist, a "stable group of faithful, other than the members managing the organization" must exist and it is also required, according to the concept of the religious contained in the Dictionary of the Spanish Royal Academy of Language, the following requirements: belief in the existence of a Supreme Being, belief in a group of doctrinal truths (dogmas) and rules of behavior (moral rules) and also a set of ritual, individual or collective (cult) actions, which are the path through which the communication of the faithful with the Supreme Being is institutionalized. For the Administration, the institution now appealing had both no defined dogmas nor a specific worship.

On the other hand, the refusal to recording was based on the fact that the Spanish Parliament in its full session of March 2, 1989, had approved unanimously eleven conclusions related to the study on sects in Spain, where the first of them urged the

Government to increase the control of institutions requesting to be recorded in the Registration of Religious Institutions. Hence, the Decision continues arguing, "the Administration must adopt a particularly cautious attitude contrary to recording (…), both to avoid abuse of the process of the court and in defense of constitutional public order."

c) After filing an appeal for reversal, following the procedures of Act 62/1978, a ruling of the National Court, dated September 30, 1993, was given. Although it was understood that the appealing institution pursued religious purposes, it assured, however, that it broke the preservation of public order, so the contested administrative decision should be confirmed. This assertion was essentially based on the Decision of May 22, 1984, of the European Parliament, branding the "Church of Universal Unification", managed by the Korean Sun Myung Moon, as a "destructive sect", and also on a report of June 19, 1991, prepared by the Provincial Squad of Information of the Directorate General for the Police referring to the so-called "Moon sect", warning against its peculiarities. And although the appellants alleged the absence of unlawful activities in Spain by the aforesaid Church, since it had never been found criminally guilty, the court understood that "the preventive safeguard of public order preventing future damages to the fundamental rights and public freedom must be considered naturally included in the spirit and purpose of article 16.1 of the Constitution and article 3.1. of public general act of Parliament 7/1980."

d) Against this Ruling, an appeal was filed to the Supreme Court of Justice alleging the infringement of the right to the presumption of innocence and the breach of articles 22.3, 16.1 and 14 of the Constitution. The Supreme Court of Justice dismissed the appeal by a Ruling of July 14, 1996. The infringement of the right to the presumption of innocence was rejected alleging, on the one hand, the limited nature of this right when its projection out of the punishing setting is intended and, on the other hand, because there was evidence enough to have accredited that this institution fulfills activities contrary to the public order protected by law within the setting of a democratic society (Legal Ground 2nd). The alleged infringement of the rights of association and freedom of religion would be also rejected since it is understood that, unlike with associations in common law, in the case of religious associations the Administration is empowered to control the goals pursued by the applicant institution, considering the risk

that its activities may involve for public order (Legal Ground 3rd). One of the Magistrates of the Court disagreed with the opinion of the majority and formulated a dissenting vote considering unacceptable that the control of Administration "covers the risks derived from the presumable action of the institution."

3. In the claim for legal protection, the breach of the right to association (art 22 of Spanish Constitution, herein after SC) and to freedom of religion (art. 16 SC) and also the right to the presumption of innocence (art. 24.2 SC) are alleged, and are attributed to both the negative resolution on the recording and the rulings considering it in due process of law. The merits of the case are the asseveration that the religious phenomenon is also an association phenomenon and that, therefore, the legal control exerted for recording must be only formal and external. That is precisely why nothing leads to concluding from the public general act of Parliament regulating freedom of religion that the Administration is empowered to control the licitness of the institution applying for recording and this empowerment cannot be inferred from the provisions of Royal Decree 142/1981. The aforesaid regulatory framework only allows for the administrative control of the typicity -religious nature- of the applicant institution, but in no case of its licitness. The breach of the right to association has also entailed an infringement of the right to freedom of religion, since the refusal to recording in the Registration, in addition to meaning that the Church does not achieve a legal personality, makes it impossible to have a full freedom for fulfilling its activities, since recording entails the recognition of its organizational independence, the safeguard of its religious institution, economic benefits and even the possibility for establishing collaboration agreements with the State.

The infringement of the right to the presumption of innocence is finally alleged. With this regard, it is claimed that the consideration of the institution applying for recording as dangerous for public order is not grounded at all, since the report issued by the Provincial Squad of Information on June 19, 1991, was inaccurate to the extent that, on March 10, 1994, it drew up another one amending the previous one and because the conclusions of the Committee for the Study and Impact of Sects in Spain, approved by the Spanish Parliament, does not mention the "Unification Church" at all. Finally, the Decision of the European Parliament of May 22, 1984, did not deliver any judgement on the illegality of the appellant institutions.

Furthermore, the discovery of evidence was requested

4. By Order of January 22, 1997, the Second Section ordered to give leave to the claim and, as established in art. 51 of the public Act of Parliament on the Constitutional Court (hereinafter APCC), to require the remission of the records and the administrative dossier, furthermore requesting the notice to all those involved in the aforesaid procedure and the Attorney General. Moreover, it was also ordered to grant the actors the timeline of ten days for them to specify, within this term, the evidences to be used.

5. By document of January 31 1997, the following evidences were proposed: 1st Public documentary: a) Decisions of the Committee for the Study and Impact of Sects in Spain, approved by the Congress of on March 10, 1989, b) Decision of European Parliament of May 22, 1994. 2nd Collaterally and for the case they are not enclosed to the records, to release the relevant official letters. 3rd Official Letter to the Directorate General for the Police, Provincial Squad of Information of Madrid to certify the authenticity of the report issued on March 10, 1994 on the "Unification Church".

6. The First Division, by Order of April 21, 1997, accepted the examination of the documentary evidences proposed in sections 1.a) and 3, and accepted also that proposal in section 1.b) be refused, and ordered that the appropriate dispatches were issued.

7. The Attorney General brought his pleadings on June 27, 1997, examining each of the right infringements alleged by the appellants of legal protection. As regards to the right to the presumption of innocence, it is estimated that two different reasons concur, which lead to refusing this specific complaint. First of all, the lack of invocation in the previous judicial means is to be noted, since, though it was alleged in the appeal to the Supreme Court, no mention was made to it in the first instance, so the damage was not invoked as soon as there was an occasion for it, as established in art. 44.1 c) APCC. Second, the cause contained in art. 50.1c) APCC also concurs, which consists in the lack of contents in the claim, and, since the decision contended was not a sign of *ius puniendi* of the State, the refusal to recording must be circumscribed to the scope of the

fundamental right to freedom of religion. After this clarification, the Attorney General considers that the appellants estimate the right of association is an essential path for the exercise of freedom of religion and, though within this context it may show some specialties against the general right of association, in no case they can infringe the non-available nucleus of it and, therefore, the constitutional ruling according to which the recording of associations is only for the purpose of publicity (art. 22 SC). In summary, the agency in charge of the Registration cannot perform a deep or substantial control, but must limit itself to verify compliance with legally established formal requirements. From this viewpoint, it must be verified if the right to religious association shows peculiarities from the right to association in general determining a different constitutional or legal system. For this purpose, it is first seen that art. 22 SC itself considers illegal the associations pursing goals or using means typified as crimes and that the suspension of their activities or their dissolution can be only adopted by grounded decision. On the other hand, from the viewpoint of the right to freedom of religion, art. 16 SC establishes as the only limitation that necessary “for keeping public order protected by Law", a formula consistent with that used in relation with the rights of meeting and manifestation at public places. Moving from the constitutional to the legal level, art. 5 of the APFR establishes the requirements for recording associations in the Registration, without this provision involving a qualifying power in favor of the Administration and also there is none related to trade unions or political parties. Royal Decree 142/1981, of January 9, and more specifically art. 4, is the place to provide for this control. However, the fact that APFR does not establish any power for qualification prior to recording does not mean that it cannot exist: though this act does not define positively the meaning of religion or activity or religious purposes, it does establish a catalogue of exclusions, since, according to art. 3.2. "the activities, purposes and institutions related to the study and experiencing of psychic or parapsychological phenomenons or the diffusion of humanistic or spiritual values or other alike purposes beyond religion are out of the scope of protection of this Act." Similarly, art. 8 establishes the creation of an Advisory Committee on Freedom of Religion, assigned with the functions of study, report and proposal in all issues regarding to application of Law. Therefore, if one of these essential items for recording are the "religious purposes" -which distinguishes the right of religious association from the generic right of association-, the existence of a power to qualify which allows for verifying that the

bylaws of the institution establish actual religious and not other purposes does not appear to be contrary to art. 16 and 22 SC.

The negative decision to recording denies that the appellant institution meets the requirements to be considered as an actual confession, according to various factors, essentially the organization itself, lack of worshippers or followers, lack of belief in a Supreme Being, a group of dogmas and moral rules… which lead to presume that the transcendence of humans beings is defended. These requirements are not contrary to art. 16 SC and, on the contrary, they allow for verifying the assumptions excluded from protection referred to in art. 3.2. of APFR 7/1980, so it is applicable to dismiss the protection requested.

8. The pleadings of the State Counsel were submitted on June 17, 1997. In them, after specifying the issues set out, it is noted that one of the most significant signs of freedom of religion is to form associations, so it agrees with the appellant in highlighting the association component of that basic right. Moreover, as in hypothesis of art. 22 SC, the public authorities must have limited its intervention in religious associations in terms similar to that related to the other associations. However, the Registrations are differenced by the contents enclosed in them. In fact, the appellants of legal protection requested to the Administration was not recording for the purpose of advertising only, but intended recording in the special Registration of Religious Institutions, which is aimed only at both providing the institutions recorded in it with legal personality, and to grant some economic benefits and even the possibility to enter into collaboration agreements with the State. Therefore, it is understood that the legislator has intended to connect the legal personality with a special recording act trusted to the Administration and revisable by courts. Therefore, the intention of the appellant institution is not the recognition of its legal personality or its willingness to association, but, quite contrary, the acquisition of a special, different status. Definitively, they are asking for a recording which makes it feasible a benefiting activity from the State favoring the religious association with some benefits -some of them of economic nature- planned in promotion rules. Therefore, the refusal to recording has deprived it from these benefits, but has not breached the right to freedom of religion or the right to association, that can be well exerted through other paths. The Administration only used in due form its qualification powers in defense and prevention

of public order, refusing the recording as legally established, so the claim must be dismissed.

9. The pleadings of the appellants were filed on June 13, 1997. Among them, the first fact to be noted is that both the Decision of the Spanish Parliament and of the European Parliament does not mention the "Unification Church", and by no means they are a consequence of an investigation on its activities. Second, it is noted that the police report was expressly modified by the same authority, so it is obvious that the asseveration that the "Unification Church" fulfilled activities contrary to public order has no evidence support, as duly accredited. All of this, together with the other arguments provided, must lead to allowing the appeal in the terms received.

10. By Order of January 16, 2001, it was ordered to submission to the full session, noting February 15 of the same year for deliberation and voting of this Ruling.

II. LEGAL GROUNDS

1. This appeal for legal protection is aimed against Decision of December 22, 1992, taken by the Director General for Religious Affairs, by delegation of the Minister of Justice, refusing the recording of the "Unification Church" in the Registration of Religious Institutions established in art. 5 of public general act of Parliament 7/1980, of July 5, on freedom of religion (hereinafter, APFR) and also against the Ruling of the Judicial Review (First Division) of the National Criminal Court of September 30, 1993, and that granted by the relevant Division of the Supreme Court of Justice on July 14, 1996, dismissing the appeal for reversal filed against it.

Therefore, this is a protection of those regulated in art. 43 APCC, charging to the State Administration the infringement of the basic rights of association (art. 22 SC), freedom of religion (art. 16 SC) and the presumption of innocence (art. 24.2 SC), while the damage of these same basic rights are attributed to the Rulings of the National Court and the Supreme Court for not agreeing their amendment.

Both the State Counsel and the Attorney General consider that the infringements of basic rights which are the basis of the claim have not existed, so it is applicable to refuse the protection requested.

2. The appellants consider that the refusal for the administrative decision to recording the "Unification Church" in the Registration of Religious Institutions has meant an autonomous infringement of the aforesaid basic rights. From the examination of the claim it is concluded, without difficulties, that the damage of the rights of association (art. 22 SC) and freedom of religion (art. 16.1 SC) is related to the first of the reasons claimed by the Administration to base the decision contended, while the infringement of the right to the presumption of innocence (art. 24.2 SC) is linked with the second of the justifying reasons of the refusal to recording requested.

However, it may be questioned if this contesting procedure is legally appropriate to judge the claims exercised in this protection, which requires, first of all, to analyze which were the reasons basing the decision of refusal adopted by the Administration and, second, which is, in its projection to the case, the constitutionally assured contents of the right to freedom of religion recognized in art. 16 of the Constitution, since it is not to be ruled out that the arguments contending evidenced by the appellants to support the aforesaid breaches of basic rights are only the result of different signs of the same breach of the basic right to freedom of religion of art. 16 of the Constitution.

3. The resolution of the Directorate General for Religious Affairs of December 22, 1992, adopted after a previous unfavorable report of the full session of the Advisory Committee on Freedom of Religion, after expressing that the applicants for recording had already attempted the recognition of the initially called "Church of the Holy Spirit" and then "Unification Church" as a religious institution in the years 1973, 1974 and 1978, refused it, because, as established in art. 5 and 8 of APFR and arts. 1, 2, 3, 4, and 6 of Royal Decree 142/1981 of January 9, this recording in the Registration of Religious Institutions "must be preceded by the exercise of the qualifying function ensuring the actual existence of the institution and its religious nature", adding that to properly speak about a Church or religious Confession, it is necessary that, among other items constituting it, it has a group of faithful, other that the members managing the organization (…), parishioners, that must exist before recording". On the other hand, in

order to establish the concept of what is religious, it assures that "it is common opinion, contained in the Dictionary of the Spanish Royal Academy of Languages, that the integral elements of the concept of religious are: a) organic set of dogmas or beliefs relating to the transcendence of a Supreme Being or Divinity; b) set of moral rules governing the individual and social behavior of faithful, derived from the dogma itself; c) specific, defined acts of cult, which are an external manifestation of the relation of faithful of a religious confessions with the Supreme Being or Divinity; and d) as a consequence of the existence of the acts of cult, even if it is not the essential item, the availability of places where the faithful attend to celebrate these acts (…). In conclusion, for a group or organization to deserve the qualification of religious, two essential elements must concur in it: 1) Belief in the existence of a Supreme Being; transcendent or not, with whom communication is feasible; 2) Belief in a set of doctrinal truths (dogmas) and behavior rules (moral rules) somehow derived from this Supreme Being; 3) a sort of ritual individual or collective actions (cult) which are the path through which the communication of these worshippers with the Supreme Being are institutionalized."

The projection of the above criteria to the bylaws and other documentation provided by the "Unification Church" to the recording dossier allowed the Administration for reaching the conviction that this institution had no "organic group of own beliefs", a "specific, defined cult" and parishioners other than those forming the limited group of promoters of recording. Finally, "no reference is made at all in the documentation provided in the dossier to the places of cult (…) available." In summary, for the responsible Administration, the Registration of the "Unification Church" did not meet the requirements for recording.

Furthermore, the aforesaid decision used a second reason to base the refusal to the requested recording. In fact, it makes reference to the conclusions approved by the Spanish Parliament in full session of March 2, 1989, related to the decision issued by the Parliament Committee set up for the study of sects in Spain. In this session, the Spanish Parliament would have adhered to the provisions of the decision of European Parliament of May 22, 1984, that, in turn should have considered a report from the Committee of Youth, Culture, Education, Information and Sports, which, in its preamble, section 1.6., "refers extensively to the critics received on activities of the

"Unification Church" in recent years, in relation to the techniques used by this Church for capturing members". With this regard it also warned that the aforesaid decision of the European Parliament "considered the proposals for resolution nos. 1-2/82 (…) and 1-109/82 (that) express a deep concern for the cases of anxiety, abandonment and family breakups provoked by the Association for the Unification of Christianity in the World, of Sun Myung Moon, and for the danger of this association for society." A set of information that the Administration considered relevant from the viewpoint of the limits recognized by the Constitution itself (art. 16.1 SC) to the exercise of freedom of religion in order to ensure the public order protected by Law in the setting of a democratic society."

4. After setting out the reasons invoked by the Administration to refuse recording the "Unification Church" in the Registry of Religious Institutions, the doctrine of this Court on the right to freedom of religion and the regulatory development of it regarding relevant issues for solving this issue must be noted.

Art. 16.1 SC assures freedom of religion and cult "of individuals and communities, with no more limitations, in its manifestations, than necessary for keeping public order as protected by law." This recognition of a "setting of freedom and a scope of *agere licere* (…) with full privilege from coercion by the State or any social groups" (Constitutional Court Ruling 24/1982 of May 13 and Constitutional Court Ruling 166/1996 of October 28) is complemented, in its negative dimension, with the constitutional resolution that nobody may be forced to declare on his ideology, religion or beliefs" (art. 16.2 SC).

However, the contents of the right to freedom of religion does not end in the protection against external interferences of a setting of individual or collective freedom which allows citizens for acting in compliance with their credo (Constitutional Court Rulings 19/1985 of February 13, 120/1990, of June 27 and 63/1994 of February 28 amongst others), since an external dimension of freedom of religion can be noticed, which is translated into the possibility of exercising, immune to any coercion by official authorities, activities which are manifestations or expressions of the religious phenomenon, in this case assumed by the collective subject or communities, such as those specified in art. 2 of the APFR and for which official authorities are demanded a

positive attitude, from a viewpoint that could be considered of assistance or benefit in compliance with the provisions of section 3 of the aforesaid art. 2 of the APFR, according to which "For the actual, effective application of these rights (that are listed in the previous two sections of the legal provision), the official authorities will adopt the necessary measures to facilitate religious assistance in military, hospital, prison and other establishments, under their dependence and also religious information at public teaching centers." And as a special expression of this positive attitude for the collective exercise of freedom of religion in its plural manifestations or behaviors, art. 16.3 of the Constitution, after formulating a declaration of neutrality (Constitutional Court Rulings 340/1993 of November 16 and 177/1996 of November 11) considers the religious component perceptible in Spanish society and orders the public authorities to keep "the attendant collaboration relations with Catholic Church and other confessions", thus introducing an idea of non-confessionality or positive laicity which "prevents any type of confusion between religious and State purposes" (Constitutional Court Ruling 177/1999).

Furthermore, as ruled in art. 10.2 SC, in the determination of the contents and scope of the basic right to freedom of religion, we must take into account, for the purpose of interpretation, the provisions of the Universal Declaration of Human Rights, specifically in its art. 18, and also in the other International Treaties and Agreements subscribed by our country on the matter, with special attention to the provisions of art. 9 of the European Agreement on Human Rights and the decisions of the European Court on Human Rights taken on the occasion of its application. With this regard and for the purpose of our judgement, it is interesting to remind the interpretation of art. 18.1 of the Universal Declaration that the Committee of Human Rights of the United Nations has shown in the General Comment of July 20, 1993, on the lines of which this provision "protects the theistic, non-theistic and atheistic beliefs and also the right to not professing any religion or belief; the terms belief or religion must be understood in a broad sense", adding that "Article 18 is not limited in its application to traditional religions or to religions or beliefs with characteristics or institutional practices analogue to those of traditional religions."

5. With this regard, it must be noted that the constitutional formulation of this right allows for assuring that communities with a religious purpose in its strict constitutional consideration are not necessarily identified with the associations referred

to in art. 22 of the Constitution. A community of believers, church or confessions does not require to formalize its existence as an association to be recognized to be entitled to its basic right to profess a given credo, since it must be taken into account that the Constitution ensures freedom of religion "with no more limits in its manifestations than those necessary for keeping the public order protected by law" (art. 16.1 SC). Therefore, as a right of freedom, freedom of religion is not subject to more restrictions than those that may be derived from the aforesaid clause of public order established in article 16.1 of the Constitution.

From this viewpoint, we must exclude from our judgement both the alleged damage to the basic right of association ensured by art. 22 SC and the invoked infringement of the right to presumption of innocence ex art. 24.2 SC that, in view of the object of the appeal, we must understand that it is referred to the application of the limit of "keeping public order protected by law" established in art. 16.1 of the Constitution. In summary, it is intended to establish if the administrative decision of the Directorate General for Religious Affairs refusing to the "Unification Church" the access to the Registration of Religious Institutions infringed or not the right to freedom of religion collectively, and, in relation to it, if the clause of public order, an intrinsic limit to the exercise of the right established by art. 16.1 of the Constitution was applied in the case constitutionally appropriately, observing the constitutional contents of the aforesaid basic right.

Delimiting in these terms the object of this appeal for legal protection, its elucidation requires analyzing the scope and function of the Registration of Religious Institutions and recording in it, as a public Registration set up within the setting of the Ministry of Justice by public general act of Parliament 7/1980 in its art. 5.1 and regulated by Royal Decree 142/1981 of January 9.

6. In principle, the reductionist understanding postulated by the State Counsel for this public Registry cannot be shared. For this representation, indeed, the recording has the only objective of allowing that some communities or religious confessions may enjoy a differenced legal status empowering them to enter into collaboration agreements with the State (art. 7.1. APFR) and to eventually enjoy "the fiscal benefits established in the general legal system for non profit Institutions and

others of charitable nature" (art. 7.2. APFR), in addition to the possibility of being part of the Advisory Committee on Freedom of Religion established by art. 8 of the APFR, so that the Registration of Religious Institutions would operate as an ordering instrument, in the service of the regulations of art. 16.3 of the Constitution to the public authorities that "they shall take into account the religious beliefs of the Spanish society and will keep the attendant collaboration relations with the Catholic Church and other confessions".

Therefore, against this restrictive structure of the Registration of Religious Institutions, we must start from the data that the development of rules and guidelines of the constitutional provision contained in the aforesaid section 3 of art. 16 (art. 7.1. of the Organic Act 7/1980 on Freedom of Religion) does not extend its scope indiscriminately to all communities or organized groups of religious nature, but imposes to public authorities an order of collaboration related to those that already recorded in the Registration "for their scope and number of believers have reached a marked influence in Spain". Consequently, it cannot be assured that the Registration is an instrument limited, in functionality and scope, to the provision established in art. 16.3, second caption of the Constitution. Nevertheless, the recording in the Registration causes various legal effects, of which the specification and scope must be noted to establish if the undue refusal to recording in it infringes or not the right to freedom of beliefs and cult.

7. For this purpose, it must be noted that the articulation by the legislator, in order to developing the basic right involved, of a registration system such as that established by article 5 of public general act of Parliament 7/1980 must be placed in an adequate constitutional context: a) on the one hand, that arising from article 16 SC itself, establishing the State and public authorities must adopt before the religious fact an attitude of abstention or neutrality, which is translated in the order that no confession has a state nature, contained in section 3, caption first, of this constitutional provision; and b) that rooted in article 9.2. of the constitutional text, in compliance with which public authorities are imposed an actuation guideline favoring the freedom of the individual and of the groups where he/she is integrated, and creating the adequate conditions for these freedoms to be actual and effective, and not only simple statements without actual contents. Therefore, the Registration of Religious Institutions, as a

special public Registration, far from the goal pursued by its immediate predecessor, created by Act of June 28 1967, is included in a system where public rights and freedom gain special importance and singularly the most intimate, personal freedom, such as freedom of religion and cult, that is assured by art. 16.1 of the Constitution.

Therefore, starting from the aforesaid constitutional guidelines, recording of a religious institution in the Registration involves, first of all, the recognition of its legal personality as such a religious group, i.e., the identification and admission in the set of laws of a group of people intending to exercise, with immunity of coercion, their basic right to the collective exercise of freedom of religion, as established in art. 5.1. APFR. But, also, the recognition of this specific or unique legal person provides the institution with a given status which is mainly evidenced in the full independence attributed by art. 6.1. of the aforesaid law, whereby religious institutions or confessions recorded "may established their own rules of organization, internal regimen and staff scheme", adding that power of self-regulation may include the structure of the institutions established for fulfilling their goals, and also including "clauses of safeguard of their religious institution and own character and also due respect their beliefs".

On the other hand, the specific status of religious institution provided by the recording in the Registration is not limited to the aforesaid internal setting, through the recognition of an ability of self-organization of the collective subject, but is also projected in an external side, so that specific manifestations that, in the exercise of the basic right, are performed by members of the group or community recorded, are facilitated, so that the collective exercise of freedom of religion with immunity of coercion is allowed, without any kind of hindrances or disturbances.

Therefore, within the scope of criminal protection, while art. 522 of the Criminal Code protects in general the member(s) of a religious confession against those "that through violence, intimidation, force or any other illegal coercion prevent…the practice of the acts characteristic of beliefs professed or attending them", article 523 establishes a specific protection, against those who "with violence, threaten, riot or fact procedures, prevent, interrupt, or disturb the acts, functions, ceremonies or manifestations of the religious confessions recorded in the corresponding public Registration of the Ministry of Justice…"

This recognition of a peculiar status derived from recording has its positive translation in both the criminal setting and in other sectors of the Legal System, for which it is not an irrelevant data -a legal indifferent- that the religious community or confession has accessed or not to the aforesaid Registration. With this regard, art. 59 of the Civil Code, regulating the celebration of marriage in a religious form, establishes that "marriage consent may be given as established by a Registrationed religious confessions, in the conditions agreed with the State or, otherwise, authorized by its legislation", thus attributing to the marriage celebrated in any established religious form established in this provision the due civil effects, as specified in article 60 of the mentioned Code.

Similarly, the recording of a religious confession or community in the Registration claims from public authorities both an attitude of respect to the beliefs and practices of cult characteristic of it, granting them the appropriate protection, and also, as established in section 3 of art. 2 APFR, and for "actual, effective application of these rights", i.e., those derived from the individual or collective exercise of the basic right to freedom of religion, an actuation of positive meaning, for which purpose "the measures necessary to facilitate religious assistance at military, hospital, healthcare, prison and other establishments and also the religious training at public teaching centers will be adopted."

On the other hand, it can be noted that the legislator grants the confessions or communities recorded in the Registration a special legal protection from which others that, intending to have access to this status by formal application for recording, have seen it refused, cannot benefit.

8. Considering the above, the establishment of a Registration ordered for this purpose does not empower the State to fulfill a control activity on the legality of the religious beliefs of religious institutions or communities or on their different modes of expression, but only to verify, deriving for this purpose an act of only verifying but not qualifying, that the applicant institution is not any of those excluded by art. 3.2. of the APFR and that the activities or behaviors developed for the practice do not go against the right of others to the exercise of their freedoms and basic rights, and are not contrary to the security, health or public morality, as elements of public order protected by law in a democratic society, referred to in art. 16.1 SC.

Consequently, according to the constitutional context covering the Registration of Religious Institutions and the legal effects for the religious communities or groups involved by recording, we must conclude that, by this activity of verification, the Administration responsible for this instrument does not act in a setting of discretion empowering it with some discretion to agree or not the applied recording, but its action with this regard can be only considered as regulated, as supported by article 4.2. of the Regulations on the organization and performance of the Registration (Royal Decree 142/1981 of January 9): "Recording may be only refused when the requirements referred to in article 3 are not duly accredited", such as name, address, and representative agencies, and also religious goals.

9. Thus considering the Registration of religious institutions and its function and scope, very different from the so-called "Registration of non-Catholic confessional associations" of Act of June 28, 1967, we can conclude that recording in this public Registration is the formal expression of a legal recognition granted to the religious groups or communities, aimed at facilitating the collective exercise of their right to freedom of religion as an instrument ordered to "removing obstacles" and to "promoting the conditions so that the freedom and equality of individual and groups where he/she is integrated are actual and effective" ex art. 9.2. SC. Therefore, the undue refusal by the Administration responsible for the recording of the applied registration is an unjustified obstacle damaging the complete exercise of the basic right to freedom of religion to which collective subjects are entitled and, correlatively, establishes a non-desired situation of inequality for religious groups or communities that, by having access to the Registration, have available the legal recognition and the protective effects provided by recording, and for other those to whom, refusing this unduly, are deprived from them, either for them to be formally recognized as an organization with their own regulatory system, either as concerns the external manifestations projecting its religious convictions or beliefs.

With the same regard, it must be noted that the freedom of religion and cult, as already stated for freedom of ideology recognized in the same constitutional ruling "for being essential, as shown, for the efficacy of high values… makes unnecessary that the scope of this right is not cut or more limited (this word is used in singular in art. 16.1

SC) in its manifestations, than necessary for keeping public order protected by law" (Constitutional Court Ruling 20/1990 of February 15, FJ.3).

From this constitutional doctrine it is mainly concluded that the judgement of the application of this constitutional limit must be carried out by this Court with particular rigor, through a strict analysis, and, on the other hand, that our control of the constitutionality at this point must be directly referred to the administrative decision applying the limit of art. 16.1 SC and to the judgements that on its evaluation fell to the relevant process of law.

Consequently, understanding that the recording applied for by the "Unification Church" was inappropriately refused, for not complying with article 16 SC and with the constitutional guidelines and principles, we must conclude that their basic right to freedom of religion in its modality of collective exercise has been damaged, without, on the other hand, it being mended by the national courts that confirmed the negation resolution, and did not consider that it damaged the aforesaid basic right.

10. The above considerations allow us for entering into the analysis of the different grounds alleged by the Administration to refuse the applied recording and that may be reconducted to two nuclei of reasons. The first of them is referred specifically to the evident lack of the necessary religious component considered essential for recording. The second is referred to the existence of signs of some activities attributed to the "Unification Church" that are considered contrary to public order protected by law (art. 16.1 SC) and that art. 3.1. APFR specifies "in the protection of the right of others to the exercise of their public freedoms and basic rights, and also the safeguard of the safety, the health and public morals."

As regards the first of the reasons alleged in the administrative decision to refuse the intended recording, we must emphasize that the Administration must not exceed its powers with the function of judging the religious component of the institutions applying for access to the Registration, but must limit itself to verifying that, according to its bylaws, objectives and goals, they are not institutions excluded by article 3.2. APFR. However, in Resolution of December 22, 1992, the Administration followed the reverse procedure, establishing a number of criteria to verify the religious purpose of the "Unification Church".

In any case, it is unnecessary to emphasize this argument, since the Judicial Review Division of the National Criminal Court, after examining the evidences provided to the procedure, considered that the Unification Church met each and every Administration requirements to be qualified as a religious institution, therefore susceptible of access to the Registration, so, from this viewpoint, it is completely dispensable to examine the criteria that, as shown, respond to a constitutionally inadequate understanding of the verifying function corresponding to the authority responsible for the Registration.

11. The appellants question the reality of the evidences used by the Administration and national courts in order to establish the danger attributed to them, and emphasize the constitutional ilegality involved by interpreting the limit of public order of art. 16.1 SC as an open clause, of potential cautionary or preventive use, so that it allows for restricting or removing the exercise of the right to freedom of religion with the only support of only conjectures or suspects on the purposes and activities of the religious institution applying for recording.

Regardless of the evidences of the aforesaid reports and Parliament decisions, it must be highlighted, from the constitutional viewpoint which is characteristic of us that, when art. 16.1 SC assures ideological, freedom of religion and cult "with no more limits in their manifestations than public order protected by law", that wording is meaning both the transcendence of the rights of freedom as an essential piece of any democratic cohabitation order (art. 1.1. SC), and also the exceptional nature of public order as the only limit to their exercise, which is legally translated into the unfeasibility to be applied by public authorities as an open clause that may be used as a basis for suspects on potential future behaviors and their hypothetical consequences.

The exercise of freedom of religion and cult, as stated in art. 3.1. of Organic Act 7/1980, in complete agreement with art. 9 of the European Agreement on Human Rights "has the only limit of the protection of the right of others in their exercise of public freedom and basic rights and also the safeguard of safety, health and public morals, items constituting the public order protected by Law within the setting of a democratic society". However, as regards the "only limit" to the exercise of the right, public order

cannot be interpreted as a preventive clause against eventual risks, because in this case this becomes itself the higher risk for the exercise of this right of freedom. An understanding of the clause of public order consistent with the general principle of freedom informed in the constitutional recognition of the basic rights forces to consider that, as a general rule, only when the existence of an actual risk for "the safety, health and public morality" has been accredited in judicial office, as they should be understood in a democratic society, it is appropriate to invoke public order as a limit to the exercise of the risk to freedom of religion and cult.

However, the risk for people that can be derived from eventual specific actuations of some sects of groups that, protected by freedom of religion and beliefs, use methods of capture that can damage the free development of personality for their adepts, infringing art. 10.1 of the Constitution, cannot be ignored. Therefore, in this very unique setting, the exceptional preventive use of the aforesaid clause of public order cannot be considered to be contrary to Constitution, provided it is directly aimed at safeguarding the safety, health and public morals characteristic of a democratic society, that elements of risk are duly accredited and that, in addition, the measure adopted is proportionate and adequate for the goals pursued (Constitutional Court Rulings 120/1990, 137/1998, and 141/2000. STEDH cases Kokkinakis, Hoffman and C.R. c. Suisse). Besides this exceptional case where necessarily the aforesaid caution must concur, only by executable judgement, and by reference to practices or activities of the group, the existence of behaviors contrary to public order, which empower to limit legally the exercise of freedom of religion and cult refusing the access to the Registration of, when appropriate, cancel an already existing recording (art. 5.3. APFR), can be considered to be accredited.

12. At this point, it must noted that the administrative decision refusing recording stated conclusively : "Considering the facts and issues expressed in the decision of the European Parliament of May 22, 1984, the documents enclosed to it, and the Conclusions of the Spanish Parliament of our country, of March 2, 1989, the Administration must adopt a particularly cautious attitude contrary to recording the "Unification Church" in the mentioned Registration, both to prevent abuse of the process of the court and in defense of the constitutional public order."

Therefore, the examination of the documentary evidence fulfilled at the request of the plaintiff, in this procedure for protection, has allowed us for verifying that the

items of conviction that were the grounds to base the evidenced danger of the "Unification Church" have no clear consistency, and any adequacy for reasonably reaching, not even with minor signs, the conclusions that were reached by the Administration and national courts.

In fact, the police report of June 19, 1991, was completed by a subsequent one dated March 10, 1994, expressing assuring that "in the investigations carried out by this Provincial Squad of Information, there is no evidence of lawsuits open against the "Unification Church" or against any of his members in our country."

On the other hand, the opinion and proposals of resolution prepared by the Committee of Study of Sects in Spain, approved by the full session of the Spanish Parliament on February 1, 1989, contains no express reference to the institution now demanding protection, and concerns about the problem of sects from a general viewpoint, with the evident objective of facilitating materials and reaching conclusions which allow the Government and, if appropriate, other public authorities for adopting, in the exercise of their powers, the measures necessary to end and remedy a socially new phenomenon in our country. With this regard, it must be noted that this Committee delivers a judgement against any negative connotation in the qualification as sect, when in section 1.1. it notes that: "should specify that, except for cases solved judicially, the groups called "sects" and their members have the full right to exist and to the presumption of innocence enjoyed by all citizens and social groups." Next it adds "…it proclaims the need for diffusing, with a democratic pedagogic spirit, the idea of constitutional legality of groups with characteristics leading citizens to rate them as "sects". The illegal actuations of these groups are susceptible to be condemned by the procedures established in the law."

Regardless of the "Unification Church" being or not the express object of study and the opinion of some of the parliament members involved in this Committee, it is true that neither from the conclusion stated nor from any other contained in this decision it can be concluded that there is not any sign to be used a basis beyond a simple conjecture, a certain risk or danger for public order directly attributable to the institution now appealing for protection and that, reasonably and proportionally, can be used to justify, from a constitutional viewpoint, the refusal to access to the Registration, all the more considering that the Parliament Committees acting in the exercise of their

investigational study powers, issue judgements of political opportunity that, no matter how solid and founded they are, are not legally suitable to supply the conviction of certainty that only a judicial procedure ensures.

13. The same conclusion should be reached by us for the aforesaid decision of the European Parliament of May 22, 1984, considering that it did not comply or was adopted within the setting of a specific investigation of the "Unification Church", but as a recommendation aimed at the Member States related to the "New Religious Movements in the European Community" with origin in a report of the "Committee of Youth, Culture, Education, Information and Sports". Consequently, neither can be argued that the European Parliament adopted particular, specific resolutions attributing to the "Unification Church" an illegal behavior or according to public order nor it is legal to identify the proposal of several parliament members requesting that this Committee started an investigation on some activities of the "Unification Church" because, according to their criteria, they could be considered contrary to the safety, health and public morals, with the final result of it, i.e., the recommendation that, in general, without entering into specific charges, the Parliament sent to the Member States, since the latter is the only act directly attributable to that Chamber.

Therefore, we must conclude that neither the Administration responsible for the Registration nor the Judicial Review Divisions have data supporting a cautionary or preventive use of the clause of public order preventing access to the Registration of Religious Institutions, and, therefore, the full exercise and without coercion to the right of freedom of religion of the appellants for protection.

14. For all the above, it must be concluded that the administrative decision refused recording without certain items of evidence about the eventual illegal activities of the "Unification Church" in Spain or any of the countries were it is settled, though it has available pathways of international police and judicial collaboration which would allow it for obtaining an irrefutable verification of these issues.

Consequently, this inadequate application of the limit of public order as an item to justify the refusal for recording, also determined the infringement of the freedom of

religions ensured by article 16 of the Constitution, so the protection requested is to be granted.

VEREDICT

Considering the above, the Constitutional Court BY THE POWERS INVESTED BY THE CONSTITUTION OF SPAIN

Has resolved

To grant the protection requested by the "Unification Church" and by Mr. Armando Lozano Hernández and Mr. Segundo Marchán García-Moreno, and

1. Recognize the basic right of the appellants to the freedom of religion and cult (art. 16.1 SC).

2. Annul the Decision issued on December 22, 1992, by the Directorate General for Religious Affairs and the rulings passed by the Judicial Review Division of the National Criminal Court of September 30, 1993 and by the Judicial Review Division of the Supreme Court of July 14, 1996, dismissing the appeal to the Supreme Court.

3. Re-establish their right and therefore declare the appropriateness of recording the "Unification Church" in the Registration of Religious Institutions of the Ministry of Justice.

This Ruling shall be published in the "Official State Gazette".

Written in Madrid, on February 15, 2001

DISSENTING VOTE expressed by Mr. Justice Manuel Jiménez de Parga y Cabrera to the Ruling passed in the appeal for legal protection no. 3,083/1996, to which Mr. Justice Rafael de Mendizábal Allende, Mr. Justice Fernando Garrido Falla and Mr. Justice Guillermo Jiménez Sánchez adhere.

I consider that the appeal for protection should be refused, with due respect to the majority of the Full Session. In the debates leading to granting, I stated my reasons, that I now summarize in this dissenting Vote.

1. The freedom of religion in the Spanish Constitutional System.

Article 16 SC assures the freedom of religion to both individuals and communities. A laical State is not established in the French meaning of the expression, characteristic of the III Republic, as a legal-political organization wanting of any religious credo because all beliefs, as a manifestation of the intimate conscience of the individual, are equal and have identical rights and duties. In the Spanish Constitutional System, the collaboration of the State with Churches and religious confessions is accepted. However, a confessional Sate was not established in 1978: "No confession shall have a State nature" is categorically stated at the start of paragraph 3 of the aforesaid art. 16 SC.

The freedom of religion is not only a fundamental right, but it must be understood as one of the constitutional principles. The State is structured in a society where the religious fact is a basic component. The right to freedom of religion cannot be compared, for instance, to the right to collective bargaining inherent to trade-union freedom. The latter is a fundamental right in the Spanish Constitution of 1978, but it is not a constitutional principle, such as, however, freedom of religion.

Public authorities, in summary, shall take into account the religious beliefs of the Spanish society. These are faithfully the words in the Constitution (art. 16.3). With this attitude recognizing and caring for the religious fact, one of the first post-constitutional Constitutional Acts developing a basic right was Act 7/1980, of July 5, on freedom of religion (hereinafter OAFR).

In the constitutional block integrated by art. 16 SC and Organic Act on Freedom of Religion (OAFR), three levels of State protection for Churches, Confessions and religious Communities are established. The highest level is granted to the Catholic Church (the only one mentioned expressly in the constitutional text) and the Confessions signing Agreements of Collaboration with the State (to date, those approved by Acts of 1992 concerning the Federation of Evangelic Religious Institutions in Spain, the Federation of Israel Communities and the Islamic Commission in Spain). A second level of State protection is obtained by religious institutions recorded in the relevant public register of the Ministry of Justice. Finally, public authorities recognize and protect the freedom of religion of individuals and communities existing in Spain and not recorded in the Register of the Ministry of Justice.

My first discrepancy with the opinion of the majority of the Full Session, as shown in the Ruling, was based on a specific issue: Is, by any chance, registration an essential part of the right to freedom of religion? Or, in other words, the question is: Does the State respect the freedom of religion of a Community, in this case the so-called

"Unification Church", rejecting its requests for recording in the relevant public Register?

The Ruling considers that refusing recording affects the right to freedom of religion and, therefore, it grants the legal protection. My different position is based mainly on the articulation of the OAFR.

2. Recording in the register is not part of the essential contents of the right to freedom of religion.

The OAFR expresses clearly, with a detailed listing, the contents of freedom of religion and worship. This listing does not include recording Communities, Confessions or Churches in the public Register of the Ministry of Justice. I consider that it is important, to ground my thesis, to quote art. 2 of this Constitutional Act:

"Art. 2.1. The freedom of religion and worship assured by the Constitution covers, with the relevant immunity of coercion, the right of every individual to:

a) Professing the religious beliefs freely chosen or not professing any; changing confession or leaving the previous one; freely expressing his/her own religious beliefs, or the absence of them, or abstain from declaring on them.

b) Practicing the acts of worship and receiving religious assistance of his/her own confession; celebrate their marriage rites; receiving a decent burial, without discrimination for religious reasons, and not be forced to practice acts of worship or receiving religious assistance contrary to personal convictions.

c) Receiving and giving education and religious information of any nature, either verbally, in writing or by any other procedure; choosing for him/herself and for non-emancipated minors and disabled, under their dependence, within and out of school setting, the religious and moral education in agreement with his/her own convictions.

d) Meeting or demonstrating in public for religious purposes and associating to develop in community their religious activities in compliance with the general legal system and the provisions of the current Constitutional Act.

2. It also covers the right of Churches, Confessions and religious Communities to establish places of worship or meeting for religious purposes, to designate and form their ministers, to disclose and spread their own credo and to keep relations with their own organizations or with other religious confessions, either in the national or foreign territory.

3. For an actual, effective application of these rights, public authorities will take the measures necessary to facilitate religious assistance in public military, hospital, assistance, prison and other establishments under their dependence and also the religious education in public teaching centers."

This is, well delimited by the constitutionality block, the contents of the right to freedom of religion. No registration is mentioned (it must be noted that in the Statement

of the Reasons of the bill of OAFR it was stated that the Spanish Constitution considers "religious communities as a reality previous to any recognition by the Administration of their legal personality, that do not need and, in many cases, not even want it for the normal fulfillment of their activities and compliance with their religious purposes").

The OAFR establishes then (art. 3) the limits of the protection of the right and the exclusion of some institutions detached from religious purposes. Art. 4 states the procedures to exert the right to freedom of religion. This ends the treatment of the essential contents of the right.

Then, the public Register of the Ministry of Justice appears in art. 5. I consider, as I stated in the deliberations of the Full Session, that if the right to recording in the Register was a part of the right to freedom of religion, it would have been noted in the long, detailed listing of art. 2 (above quoted) of the OAFR. It must noted that this rule of law starts as follows: "The freedom of religion and worship assured by the Constitution covers..." The right to recording in an official Register is not included. According to the Statement of the Reasons in the bill of the aforesaid OAFR, religious institutions stand aside and beyond any official Register on them. They do not need that any legal personality is granted to them.

It is true that religious institutions recorded have a special protection, with a status superior to non-recorded ones. The Ruling talks about the "unique status", the "specific status" of Confessions, Communities and Churches registered (FJ 7). However, non-registered institutions, certainly placed at a lower level of attention by public authorities, are also entitled to the right to freedom of religion. The State recognizes and protects more extensively and intensively those registered, but does not fail to "take into account" –as ruled by the Constitution- the "religious beliefs of the Spanish society", beliefs that can be harbored in non-registered Churches, Communities or Confessions.

I am not convinced, if the lack of protection of non-registered religious institutions is to be proven, with the argumentation of Legal Ground 7 of the Ruling, that is based on articles 522 and 523 of the Criminal Code (CrC), and articles 59 and 60 of the Civil Code. Art. 522 CrC protects the members of a religious Confession, whether recorded in the public Register or not; this penal protection is extended to the practice of the acts characteristic of the religious belief and attendance to them. In my opinion, it is an irrefutable evidence that registration is a complement reinforcing the status, but it is not necessary to enjoy freedom of religion.

Article 523 CrC grants a specific protection, aggravated to those attempting against registered religious confessions. The regulation is consistent. We have previously warned that those registered are placed at a higher level of State protection, but –we emphasize it- public authorities pay attention also to those that are not registered.

The Ruling mentions articles 59 and 60 of the Civil Code (CC). This mention strengthens the thesis I am setting out, i.e., the different treatment, now on the civil order, of religious acts of registered and non-registered Confessions. But nothing else. [Maybe it must be noted that the "Unification Church" has no sacraments, and its main ceremony is marriage. It celebrates multitudinous marriages with up to 25,000 couples (from almost 130 countries), for instance: on August 25, 1992, in the Olympic Stadium of Seoul (Korea). Applying articles 59 and 60 of the Civil Code, granting civil effects to

these “religious marriages” in Spain, since it is a “registered confession” (art. 59 CC), must lead us to reflecting, I think].

I do not consider that art. 2.3 OAFR is applicable either, as made in the Ruling (FJ 7, penultimate paragraph). I do not believe that “the actual, effective application” of the rights covered in the freedom of religion must be limited to worshippers and Communities of registered institutions. As aforesaid, the Register appears later in the OAFR, in art. 5, while the adoption of measures by public authorities finishes or crowns the list of rights noted in the same article 2, in its paragraphs 1 and 2. In summary, these are rights of Churches, Communities and religious Confessions whether recorded in the Register or not.

3. The “Unification Church”, a Spanish version of Moonism.

Considering the application for recording in the Register of the Ministry of Justice, submitted by the “Unification Church”, the matter could be focused in two different ways: a) as if it were a new religious institution, arising in Spain, thanks to the convergence of some worshippers in the postulates of a doctrine; b) as if the applicants for recording in the register were members of a religious organization established in other countries, with a sufficiently known development abroad.

The Ruling of the Judicial Review Division (Seventh Section) of the Supreme Court of Justice, against which it appeals for legal protection, focuses the matter wisely, according to the second mode noted: “It must be repeated –stated in FJ 4 of this Ruling of June 14, 1996- that it is not a matter of recording in the Register of Religious Institutions an original Confession, but a subsidiary of another of worldwide extension for which there are evidences of commission, in the normal fulfillment of their activities, of facts, breaching the limits established in the Spanish law to the practice of freedom of religion.”

This is another key in my discrepancy with the Ruling. It disqualifies the use of “mere guesses or suspects on the purposes and activities of the religious institution applying for recording” (FJ 11), and it is not possible to “infer any sign to ground, beyond mere guesses, an actual risk or danger for public order directly attributable to the institution now appealing for protection” (FJ 12).

I must dissent from these evaluations. The problem is focused in the Ruling as if the “Unification Church” had no history, leading events in several countries. Now therefore, both the Ministry of Justice (Decision of December 22, 1992), and the National Criminal Court (Ruling of September 30, 1993, of the First Section of the Judicial Review Division), and finally the Supreme Court of Justice (aforesaid Ruling) ruled against recording by well-grounded decisions. It is very eloquent to read FJ 8 the Ruling of the National Criminal Court: “According to the decision of the Ministry of Justice, and in summary, the Unification Church has been classified by several institutions as an association with illegal purposes, with methods for capturing new members and activities that are forced to perform while they stay in them, are an actual danger for the free practice of rights and freedoms of citizens and, definitively, public order protected by Law, as a limit to the efficacy of the right to freedom of religion (art. 16.1 Constitution, and 3 Organic Act 7/80). To reach this conclusion –timely warned by the

Advisory Committee of Freedom of Religion, according to minutes of the meeting of 10-23-92 as document no. 4 of the administrative file-, the Directorate General mentions expressly the reports issued by both the European Parliament (1984) and the National Congress (1989), on the case of both debates highlighting the serious social impact generated by the activities of the Universal Unification Church in several countries, an organization to which –according to the ruling appealed- the Unification Church in Spain is attached".

The Legal Grounds 12 and 13 of the Ruling, of which I am dissenting, provide a version, that I respectfully do not share, of the decisions taken on the "Unification Church" at the European Parliament and the Spanish Parliament. The majority of the Full Session states that these documents do not contain an express mention to the "Unification Church", forgetting that in the Decision of the European Parliament, published in the "Journal officiel des Communautés européennes", of May 22 1984, it is mentioned, among the various organization that may attempt against the freedom of religion, the "Association for the Unification of Christianity Worldwide", of Sun Myung Moon, and the "Universal Unification Church", directed by Moon himself. In another report of the European Parliament, of April 2 1984, express mention is made to the "Unification Church" of Moon. And only the Churches of Moonism are mentioned by their names, as dangerous, causing anguish (vu la détresse provoquée par...).

I can hardly admit that the European Parliament and the Spanish Parliament adopt agreements without any basis for them. In the process of Constitutional protection, the appellants should refuse, with definitive evidences, the imputations by the Ministry of Justice, National Criminal Court and Supreme Court of Justice. But they did not.

The scientific literature on religions of the world, on the contrary, includes detailed, in-depth analyses of Sun Myung Moon and the eight organizations operating in different countries. Therefore, the activities of Moon and his people out of Spain are known. A wise, legally well-grounded measure (as those appealing for protection) is to refuse to the "Unification Church" the plus of State protection or specific status (in worlds of the Ruling) which are enjoyed by religious institutions recorded in the Register of the Ministry of Justice.

These refusals to application do not affect the right to freedom of religion.

4. Freedom of religion, but without the plus of registration.

With the understanding that I am proposing of the block of constitutionality (in this case, SC plus OAFR), the Ruling should not grant the protection recognizing the basic right to freedom of religion and worship, since this right was not breached by the decision of the Ministry of Justice, and either by the Rulings of the National Criminal Court and Supreme Court of Justice. The recording was certainly refused, but the "Unification Church" enjoys freedom of religion in Spain.

The freedom of religion –I want to repeat it- is not only a right that public authorities must respect when applying the Constitution. Freedom of religion is one of the constitutional principles, previous to the Constitution, that are, as such principles, on the basis of the Constitutional System. The cornerstone of contemporary political régimes,

within the setting of democracies, is article 18 of the Universal Declaration of Human Rights, of 1948: “Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance.”

This freedom of religion is despised if its actual, effective enjoyment (art. 9.2 SC) is bound to recording Churches, Communities, or Confessions in an official Register.

I also dissent, for the aforesaid reasons, from the other two decisions of the Ruling.

I regret to dissent from the opinion of the majority of the Full Session, whose opinions I always respect and highly praise, carefully examining them.

I sign this Vote in Madrid on February 20, 2001.