APPENDIX

TABLE OF APPENDICES

Appendix A

IN THE SUPREME COURT OF PUERTO RICO

No. 2018-0475

YALÍ ACEVEDO FELICIANO, et al.,
Petitioners,
v.
ROMAN CATHOLIC AND APOSTOLIC CHURCH, et al.,
Respondents.

SONIA ARROYO VELÁZQUEZ, et al.,
Petitioners,
v.
ROMAN CATHOLIC AND APOSTOLIC CHURCH, et al.,
Respondents.

ELSIE ALVARADO RIVERA, et al.,
Petitioners,
v.
ROMAN CATHOLIC AND APOSTOLIC CHURCH, et al.,
Respondents.

Certified Translation*

June 11, 2018

---

* I, Juan E. Segarra, USCCI #06-067/translator, certify that the foregoing is a true and accurate translation, to the best of my abilities, of the document in Spanish which I have seen.

OPINION

Associate Justice Estrella Martinez issued the Opinion of the Court.

Today we have the obligation to address the claim of hundreds of teachers, employees, and ex-employees of various catholic schools and academies (petitioners), which have dedicated a large portion of their lives to the teaching, education, and formation of part of various generations in Puerto Rico. As such, this case demands analyzing and clarifying of various aspects of our law system as well as addressing various new disputes of great public interest. To that end, we must analyze the following: (1) if the Roman Catholic and Apostolic Church in Puerto Rico (Catholic Church) has legal personality; (2) if its divisions and components have their own and separate legal personalities (3) the appropriateness of a garnishment in assurance of judgment and a preliminary injunction without bond; (4) if there is any contractual link that has the effect of participating employers of a retirement plan being supplementary liable for it, and (5) the scope of Art. 9.08 of the General Corporations Act of Puerto Rico, *infra*.

With that in mind, we proceed to highlight the factual and procedural context in which the present dispute arises.

I.

On June 6, 2016, petitioners, of Academia Perpetuo Socorro filed their initial complaint in which they held they are beneficiaries of the Pension Plan for Employees of Catholic Schools (Plan) , administered by

the Pension Plan for Employees of Catholic Schools Trust (Trust).[1]

They also argued that the Trust notified them of the termination of the plan and the elimination of their retirement benefits. In light of such, they argued they have acquired rights over the Plan, which cannot be retroactively eliminated. Also, they requested in the complaint, several provisional remedies, namely, a garnishment in assurance of judgment and a preliminary injunction. Afterwards, analogous complaints were filed by employees of Academia San José and Academia San Ignacio, requesting the same remedies, which were consolidated by the Court of First Instance.[2]

Having evaluated the request of petitioners, the lower court denied the provisional remedies. That decision was opportunely appealed before the Court of Appeals, which also denied granting the requested remedies. Not satisfied, the petitioners came before us. On that occasion, this Court accepted the petition filed and we issued a Judgment reversing the intermediate appellate court. *See*, *Acevedo Feliciano, et al. v. Roman Catholic and Apostolic Church, et al.*,

---

[1] The Pension Plan for Employees of Catholic Schools (Plan) that is the central axis of this dispute began operating in 1979. The Office of the Superintendent of Catholic Schools (Office of the Superintendent), that same year created the Pension Plan for Employees of Catholic Schools Trust (Trust) for it to operate the Plan and group the forty-two schools and academies that would participate in it.

[2] The complaints included the Catholic Church, the Archdioceses of San Juan, The Office of the Superintendent, Academia Perpetuo Socorro, Academia San José, Academia San Ignacio and the Trust as defendants.

r. July 18, 2017, CC-2016-1053. To that effect, we decided that the preliminary injunction remedy was appropriate. Also, we concluded that from the documents of the Plan, various clauses that address the liability of the participating employers of the Plan with its beneficiaries. Id. Pages 9-10. That is, we provided that between the Trust and the participating employers there is a subsidiary obligational link with the beneficiaries. Through this relationship, if the Trust did not have the necessary funds to meet its obligations, the participating employers would be obligated to pay.

In view of this conclusion, and as there was a dispute as to which defendants in the case had legal personalities, we ordered the lower court to hold a hearing to determine who would be responsible for continuing paying the pensions, pursuant to the preliminary injunction. That is, whether liability fell on the "appropriate Academies or the Church." *Acevedo Feliciano, et al. v. Roman Catholic and Apostolic Church, et al.*, supra, page 12.

Upon the remanding of the case to the Court of First Instance, it held the ordered hearing. In its Order, that court determined that the only defendant with its own legal personality was the Catholic Church. This, given that neither Academia San José nor Academia San Ignacio had been duly incorporated. Also, it determined that the incorporation certificate of Academia Perpetuo Socorro had been revoked on May 4, 2014. After several procedural actions, the lower court granted the Catholic Church a term of twenty-four hours to deposit the sum of $4.7 million dollars and advised that if it failed to comply with its

order it would order the garnishment of its bank accounts. Not satisfied with that action, on that same day, the Respondents appeared before the Court of Appeals by way of *certiorari and in Aid of Jurisdiction* which effectively ordered the stay of the proceedings before the Court of First Instance.

Therefore, after analyzing the arguments of the parties, the intermediate appellate court issued a Judgment which completely reversed the Order issued by the lower court. First, it determined that the Catholic Church is an inexistent entity in Puerto Rico. To that effect, it provided that the different components of the entities that compose the Catholic Church in Puerto Rico each have their own legal personality separate from one another. In that sense, it concluded that the garnishment Order and the order of preliminary injunction were invalid, as they are addressed to an inexistent entity.

On the other hand, the Court of Appeals determined that it was not appropriate to directly individually transfer to the employers the obligation to pay the pension that the employees received because that was strictly the Trust's responsibility.

Also, the intermediate appellate court concluded that the garnishment order and preliminary injunction were not appropriate because the petitioners had not paid the bond required by the Rules of Civil Procedure.

Lastly, it held that Academia Perpetuo Socorro had legal personality, given that it managed to renew its certificate of incorporation in 2017, despite the fact that it had been cancelled on April 16, 2014. In this way, it reasoned that it should be recognized legal

personality retroactively to the actions taken during that time, as it acted within the term of three years provided in Art. 9. 08 of the General Corporations Act of Puerto Rico. 14 LPRA sec. 3708.3.

Therefore, petitioners come before us assigning the aforementioned legal conclusions as errors. Having the benefit of the appearance of the parties, we dispose of the petition before us.[3] Let us see.

II.

A.

In order to adequately resolve the dispute before us, it is important to explain the legal and historical context in which the Catholic Church in Puerto Rico is recognized legal personality. The relationship between Spain, the Catholic Church, and Puerto Rico is *sui generis*, given the particularities of its development and historical context. It is known that for the time during which Puerto Rico was a Spanish colony, the Catholic Church was, *de facto* and *de jure*, part of the State. For that reason, the Catholic Church was very involved in the legal relationships that the State was involved in. Now, after the Hispano-American War, Puerto Rico was ceded to the United States, an act that was formalized with the signing of the Treaty of Paris. In that sense, and as this Court has stated:

---

[3] During the proceedings of this case, several intervention requests or to appear as amicus curiae were filed with the Clerk's Office of this Court. The petitioners were the Dioceses of Caguas, Arecibo, Mayaguez, Fajardo-Humacao and Ponce. However, we conclude that the interests of these institutions have been adequately represented by respondent. Therefore, we deny them.

> Puerto Rico became part of the constitutional order of the United States as the result of the Hispano-American War. Through the Treaty of Paris in 1898, the sovereignty of Puerto Rico was ceded to the United States-Art. II, Treaty of Paris, LPRA, Volume 1, and it was established that the rights of the inhabitants of the Island would be defined by the Congress. Id., Art. IV. Therefore, from the beginning of our relationship with the United States, the way in which the Federal Constitution would apply to Puerto Rico was the object of intense debates. *Commonwealth v. Northwestern Selecta*, 185 DPR 40, 61 (2012).[4]

Also, in view of the aforesaid Treaty, the legal personality that the Catholic Church had prior to ceding Puerto Rico to the United States was acknowledged. In other words, the Treaty of Paris, maintained the legal personality of the Church." J.J. Monge Gómez, *La permisibilidad de lo "impermisible": La Iglesia sobre el Estado* ["The Permissibility of the 'Impermissible': The Church over the State"], 41 Rev. Jur. U. Inter. PR 629, 633-634 (2007). The foregoing is evident from Art. 8 of the Treaty, which states as follows:

> It is therefore declared that this relinquishment or cession, as the case may be, referenced in the preceding paragraph,

---

[4] For an update of the different positions in this debate, see G.A. Gelpi, *The Constitutional Evolution of Puerto Rico and other U.S. Territories (1898-Present)*, 1st ed., Colombia, Ed. Nomos S.A., 2017.

> cannot reduce at all the property, or the appropriate rights, pursuant to the laws, to the peaceful possessor of properties of all kinds in the provinces, municipalities, public or private establishments, civil or ecclesiastic corporations or of any other collectivities that have legal personalities to acquire and possess properties in the mentioned relinquished or transferred territories and of individual persons, whatever their nationality. Treaty of Peace between the United States of America and the Spanish Kingdom (Treaty of Paris), art. 8, December 10, 1898, USA-Spain, 30 Stat. 1754 (1898). S.C. 343.

Note, that there is no direct reference to the Catholic Church, but rather allusion is made to ecclesiastic corporations. That said, the Supreme Court of the United States established that the word "ecclesiastic" in the aforementioned article strictly referred to the Catholic Church because it was the only ecclesiastic organization existing in Puerto Rico at the time of the signing the Treaty of Paris. Specifically, in its analysis, the federal Supreme Court determined the following:

> The Roman Catholic Church has been recognized as possessing legal personality by the treaty of Paris, and its property rights solemnly safeguarded. In so doing, the treaty has merely followed the recognized rule of international law which would have protected the property of the church in Porto [sic] Rico subsequent to the cession. This juristic

> personality and the church's ownership of property had been recognized in the most formal way by the concordats between Spain and the papacy, and by the Spanish laws from the beginning of the settlements in the Indies. Such recognition has also been accorded the church by all systems of European law from the fourth century of the Christian era. *Ponce v. Roman Catholic Apostolic Churc*h, 210 U.S. 296, 323-324 (1908).

Despite this, the intermediate appellate court understood that each division of the Catholic Church in Puerto Rico equals the creation of a different and separate legal entity and did not recognize that legal personality of the Catholic Church. That, based on a substitution of the local law for Canon Law, the scope of which, in the dispute before us, is limited to regulating the relationships and the internal procedures of the Catholic Church. See, Marianne Perciaccante, *The Courts and Canon Law*, 6 Cornell J.L. & Pub. Pol'y 171 (1996).

Consequently, the Court of Appeals mistakenly analyzed the arguments of the Respondents regarding a constitutional clause that establishes the separation of Church and State. This because, according to the Respondents, the internal determinations of the Catholic Church, as to how to administer its institutions must be respected. Given the contractual nature of the dispute before us, they are not correct.

Interpreting the referenced constitutional clause, the Supreme Court of the United States established the following:

> The "establishment of religion" clause of the First Amendment means at least this: Neither a state nor the Federal Government can set up a church. Neither can pass laws which aid one religion, aid all religions, or prefer one religion over another. Neither can force nor influence a person to go to or to remain away from church against his will or force him to profess a belief or disbelief in any religion. No person can be punished for entertaining or professing religions, beliefs or disbeliefs, for church attendance or non-attendance. No tax in any amount, large or small, can be levied to support any religious activities or institutions, whatever they may be called, or whatever form they may adopt to teach or practice religion. Neither a state nor the Federal Government can, openly or secretly, participate in the affairs of any religions organizations or groups and vice versa. *Everson v. Bd. Of Ed. Of Ewing Twp.*, 330 U.S. 1, 15-16 (1947). Also see, *Academia San Jorge v. J.R.T.*, 110 DPR 193 (1980).

Also, based on that same provision the highest federal court has invalidated state court actions that result in an inappropriate interference on the part of those courts regarding matters of organization or internal disputes (intra-church dispute) or "matters of doctrine and faith" of the church. See, *Jones v. Wolf*, 443 U.S. 595 (1979); *Serbian E. Orthodox Diocese for U.S. of Arn. & Canada v. Milivojevich*, 426 U.S. 696 (1976). Therefore, the federal Supreme Court has approved what was named as the "neutral principles of law approach". *Jones v. Wolf*, supra, pages 602-603.

Under that analysis the courts can resolve certain disputes of the Church, as for example, property law, as long as the adjudications do not take into consideration or inquire about matters of doctrine and faith. Id. Pages 602-603. That, without contravening the constitutional clause of separation of Church and State. As corollary of the foregoing, that court has stated that "[t]he First Amendment therefore commands civil courts to decide church property disputes without resolving underlying controversies over religious doctrine. This principle applies with equal force to church disputes over church polity and church administration". *Serbian E. Orthodox Diocese for U.S. of Am. & Canada v. Milivojevich*, supra, page 710.

Note that in this case, we find ourselves before civil obligations voluntarily contracted, not imposed by the State. In that sense, as this Court stated in *Mercado, Quilichini v. U.C.P.R.*, 143 DPR 610 (1997):

> [I]t must be clear that [,] even though one of the parties in this litigation is an educational institution that demands the non-intervention of the courts as there are claims involved that could lead to resolving matters of a religious nature, we can and must distinguish the different arguments before our consideration. Specifically, in this part of the discussion, we only examine the argument of breach of contract. In that sense, there is no doubt as to the authority that a civil court has to intervene in the interpretation of a contract "freely negotiated and agreed" between two private entities.

> *Diaz v. Colegio Nuestra Sra. Del Pilar*, 123 DPR 765 (1989). The intervention of the court attempts to enforce the will of the parties and vindicate their contractual interests. In *Diaz v. Colegio Nuestra Sra. Del Pilar*, supra, we clarified that the participation of the State through the Courts in contractual disputes is not penetrating and incisive in the operation of a catholic educational institution to the point of being a substantial load on the free exercise of cult nor promote the establishment of any religion, as prohibited by the First Amendment of the Constitution of the United States and Art. II, Sec. 3 of the Constitution of the Commonwealth, L.P.R.A., Volume 1. Therefore, as long as the resolving of the contractual dispute does not require passing judgment on matters of doctrine, faith or internal ecclesiastic organization, the civil courts may exercise jurisdiction.

Pursuant to that set forth, it is imperative to conclude that this Court is in the same position in this case. Note, firstly, that it is clear that in this case there is no dispute with regard to "matters of doctrine and faith" of the Catholic Church. Far from facing an intra-church dispute, certainly the dispute before us is framed in external matters of the Catholic Church in its role as employer versus the petitioner employees in a purely contractual dispute. When the courts face secular disputes such as this one, we cannot award complete deference to its internal decisions, as it is not an internal organization dispute or matter of doctrine and faith. Perciaccante, supra, pages, 171-172 and 178. Moreover, when acting that way would itself be a

violation to the constitutional clause that establishes the separation of Church and State. Id, page 172; *Serbian E. Orthodox Diocese for U.S. of Am. & Canada v. Milivojevich*, supra, pages 708-710.

Also there is no space to impute a violation to the guarantee of the First Amendment of the Federal Constitution from which every person has the right to freely exercise their religion without being impeded, restricted or prevented by government, which applies to the states pursuant to the Fourteenth Amendment of the Federal Constitution. *Everson v. Board of Education*, supra. As explained, we are not facing a regulation or interference of the Government which seeks to impose a substantial load to certain religion. We explain.

First, the civil dispute before us deals with agreements that the respondent made voluntarily with the plaintiff teachers. Secondly, these agreements are upheld in rules of Civil and Corporate Law of general application. Third, the respondent did not show that these laws were a substantial burden in the exercise of its religion. See, *Holt v. Hobbs*, 135 S. Ct. 853, 857-859 (2015); *Burwell v. Hobby Lobby Stores, Inc.*, 134 S. Ct. 2751, 2769-2762 (2014). It would be very different for the Government of Puerto Rico to interfere with the internal norms of recruitment of ministries or priests of any or of all churches because as the federal Supreme Court decided that such would constitute an undue interference with the internal norms of the churches See, *Hosana-Tabor Evangelical Lutheran Church and School v. EEOC*, 565 U.S. 171 (2012). On the contrary, we are before a purely contractual dispute regulated

by local law among private parties. That is, the legal personality that we recognize to be the Catholic Church does not affect the aforementioned constitutional guarantee because that determination in no way substantially interfered with its internal organization or any "matter of doctrine and faith." With our decision, we merely clarify the legal personality of the Catholic Church of Puerto Rico with its civil responsibilities in relation to persons outside of it.

Secondly, the dispute in this case, contrary to how it was perceived by the Court of Appeals, does not require that we evaluate or qualify the internal decisions or "internal ecclesiastic organization" of the Catholic Church as correct or incorrect, regardless how it may choose to do so, but rather whether such organization is capable of granting or denying, by itself, independent legal personality to one or various of the internal structures. Let us see.

Contrary to what was concluded by the intermediate appellate court, it is undeniable *that each entity created that operates separately and with a certain degree of autonomy from the Catholic Church is in reality a fragment of only one entity that possesses legal personality*. J. Gelpi Barrios, *Personalidad Jurídica de la Iglesia en Puerto Rico* ["Legal Personality of the Church in Puerto Rico"], 95 Rev. Esp. Der Canónico 395, 403 and 410 (1977); A. Colon Rosado, *Relation Between Church and State in Puerto Rico*, 46 Rev. Jur. Col. Ab. 51, 54-57 (1985). In other words, the entities created as a result of any internal configuration of the Catholic Church are not automatically equivalent to the formation of entities

with different and separate legal personalities in the field of Civil Law. That because they are merely indivisible fragments of the legal personality that the Catholic Church has.

The contention that the Catholic Church is authorized to forego the local Corporate Law and can establish entities with legal personality by decree or papal bull from Rome, is—for all practical effects—the recognition of an official or privileged religion in Puerto Rico. That is prohibited by the First Amendment of the Constitution of the United States and Art. II, Sec. 3 of the Constitution of Puerto Rico. See, *Everson v. Board of Education*, supra; *Academia San Jorge v. J.R.T.*, supra.

In view of the foregoing, it is unquestionable that the Catholic Church has and enjoys its own legal personality in Puerto Rico. Therefore, different from other religious institutions, it is not required to carry out a formal act of incorporation to have legal personality. As a matter of fact, that reality is stated in the Registry of Corporations of the State Department of Puerto Rico.[5] Therefore, inasmuch as the entities created by the Catholic Church serve as alter egos or its entities *doing business as*, without independently submitting to an ordinary incorporation process (as Academia Perpetuo Socorro did at a time) they are mere indivisible fragmentations of the Catholic Church with no legal personality of their own. In view of these facts, the Court of Appeals

---

[5] Certificate of the State Department, Appendix of Certiorari, pages 787-789.

erred in substituting the current law stated with non-binding rules.

B.

As it is known, one of the medullar characteristics of the corporations is that they have their own legal personality, separate and different from that of their incorporators and shareholders. See, C.E. Diaz Olivo, *Corporaciones: Tratado Sobre Derecho Corporativo* ["Corporations: Treatise on Corporate Law"], Colombia, [S. Ed], 2016, pages 2 and 45; M. Muñoz Rivera, *Ley de Corporaciones de Puerto Rico: Análisis y Comentarios* ["Puerto Rico Corporations Act: Analysis and Commentaries"], 1st ed., San Juan, Ed. Situm, 2015, page 7. That legal personality is lasting until the corporation is dissolved or expires. *Miramar Marine, et al., v. Citi Walk et al.*, 198 DPR 684, 691 (2017). Relevant to the dispute before us, Art. 9.08 of the General Corporations Act of Puerto Rico, supra, provides certain instances in which, despite the dissolution or extinction of a corporation, it will have legal personality for certain purposes.

The article cited above adopts in Puerto Rico what is known as the survival statutes. *Miramar Marine et al, v. Citi Walk*, et al, supra, page 693. It has the purpose of adequately and completely finishing the process of liquidation of a corporation. Id. Therefore, as the text of the referenced article provides, legal personality is provided to terminated corporations with the purpose of them being able to continue with their pending litigations and address those judicial claims filed within the three years that follow their dissolution or extinction. However, the same article clarifies that "[t]he legal personality may not continue

with the purpose of continuing the business for which such corporation was created." General Corporations Act of Puerto Rico, *supra*. See, also, 16A Fletcher Cyc. Corp., secs. 8112.3 and 8117 (2012). That is, the legal personality of a liquidated or terminated corporation is limited, because it will not be recognized to continue with its business as if it had never been liquidated or terminated. However, the foregoing is not equivalent to being able to file suit against a liquidated or terminated corporation within the three years following its termination for actions carried out within that same term. An interpretation of that article shows that the cause of action exercised had to have appeared during the existence of the corporation that is intended to be sued. In this way, the referenced article provides a term for an affected party to file suit against the corporation despite it having ceased to exist.

In view of the foregoing, we decide that the intermediate appellate court erred in recognizing the legal personality of Academia Perpetuo Socorro. As stated, Art. 9.08 of the General Corporations Act of Puerto Rico, *supra*, provides a term of three (3) years after the extinction of a corporation to exercise causes of action and rights that appeared during its effectiveness. In light of the stated facts, it is evident that the cause of action in question appeared in 2016, with the announcement by the Trust with regard to the end of the Plan and the lack of payment of the pensions. Therefore, it was not appropriate to recognize the legal personality of Academia Perpetuo Socorro, as the actions that are claimed occurred after the reversal of its certificate of incorporation.

III.

As stated, the petitioners state that the appealed judgment erroneously determined that there was no obligational source between them and their employer regarding the payment of the pensions. That, as the only obligational link present in the dispute was strictly between the pensioners and the Trust. That conclusion is contrary to our mandate in *Acevedo Feliciano, et al v. Roman Catholic and Apostolic Church*, et al, supra. In that occasion we established with clarity and the obligational relationship between the parties its legal effect. Therefore, the action of the Court of Appeals is erroneous, as it is incongruent with our previous mandate. *See*, *Colon, et al. v. Frito Lays*, 186 DPR 135, 151 (2012).

On that occasion, this Court determined that in the Plan there were several clauses that held the employers liable for the obligations of the Trust. Id., pages 9-10. Therefore, we ordered the Court of First Instance to hold a hearing, to determine which employers had independent legal personality and would be liable to pay. In that sense, we stated the following:

> At the same time, and regardless of the legality of the termination of the plan, from the Pension Plan there are several clauses that deal with the responsibility of the participating employers with the beneficiaries, namely: 1) Article 2 (B), where the employers *guarantee* their contribution of the necessary funds for the operation of the plan, 2) Articles 4 (B) and 8 (B.1) where a guarantee of payment is emphasized for at

> least sixty (60) months, 3) Article 7 (E) where it is established that the employers that end their participation in the Plan are liable for amortizing the non-financed liability accrued, and 4) Article 15 (b), where it is emphasized that the employer that retires from the Plan is responsible of the *acquired benefits* of its employees while it participate. All this requires examining the responsibility to which the employers had when agreeing the Pensions Plan, and if it extends beyond the figure of the trust that they established. *Acevedo Feliciano, et al. v. Roman Catholic and Apostolic Church, et al*., supra, pages 9-11 (scholium omitted.)

For that reason, and on the grounds stated in our previous Judgment, which became firm and final, we conclude that the intermediate appellate court erred when acting against our order. That is because in that occasion this Court had concluded that the obligational link between the parties was existent as it was evident from various parts of the Plan. For that reason, the lower court acted correctly when abiding by what was provided by this Court in *Acevedo Feliciano, et al. v. Roman Catholic and Apostolic Church*, et al., supra, by holding a hearing to determine which party had legal personality in order to comply with the obligation that this court already deemed existent.

IV.

A.

The garnishment remedy in assurance of judgment seeks to ensure the effectiveness of a

judgment that is entered in due time. *Ramos, et al. v. Colon, et al*., 153 DPR 534 (2001). Therefore, the Rules of Civil Procedure, compel the courts to demand the payment of a bond to grant that remedy. 32 LPRA Ap. V, R. 56.4. However, there are various exceptions to the payment of that bond. In relevant part to this dispute, one of the exceptions provides that "[a] provisional remedy without payment of the bond may be granted in any of the following cases: (a) if it is in public or private documents, as defined by law and signed before a person authorized to administer oath, that the obligation is legally binding ... " 32 LPRA AP. V, R. 56. 3. The definition of what constitutes a public or private document must be interpreted broadly and expansively. J.A. Cuevas Segarra, *Tratado de Derecho Procesal Civil* ["Treatise on Civil Procedural Law"], 2nd ed., San Juan, Pubs. JTS, 2011 T. V, page 1607. For that reason, the range of admissible documents to excuse a party from having to pay bond is vastly broad. To that effect, in the case file there is abundant documental evidence that shows that the obligation in question was payable, namely: Informative Manual for Participating Employees, Appendix to Certiorari, pages 564-566; Informative Manual for Employees, id., pages, 567-569; Deed of Trust, id. Pages 545-563; Pension Plan of the Catholic Schools of the Archdioceses of San Juan, id., pages 516-538; Minutes of the Meeting of the Trust on April 26, 2010, Id page 680, and Minutes of the Meeting of the Trust on September 13, 2010, id. Page 690.

B.

On the other hand, the preliminary injunction has the objective of "maintaining the status quo while the

case is being resolved". *Mun. Fajardo v. Sec. Justice*, 187 DPR 245, 255 (2012). To grant that remedy the petitioner must, in addition to complying with the criteria established in Rule 57. 3 of the Rules of Civil Procedure, 32 LPRA Ap. V, R. 57.3, pay a bond, as a general rule. According to Doctor Cuevas Segarra, "the imposition of a previous bond constitutes an essential requirement that must not yield to anything, *except extraordinary circumstances where requiring such payment would lead to a failure of justice*". (Emphasis provided). Cuevas Segarra, op. cit., page 1726. Professor Echevarría Vargas thinks the same, J.A. Echevarría Vargas, *Procedimiento Civil Puertorriqueño* ["Puerto Rican Civil Procedure"], San Juan [Author ed], 2012, page 393. In view of the foregoing, we find ourselves facing exceptional circumstances which make it necessary to recognize such an exception in our legal system. Therefore, we cannot ratify the reasoning of the Court of Appeals, which would result in the granting of an injunction remedy not being available for a petitioner to avoid a failure of justice if he/she does not have the force of money. That logic would weaken the effectiveness of the Law in a democratic society and would close the courts' doors for purely financial reasons to those who precisely need an urgent financial remedy.

To that effect, it is clear that demanding the payment of a bond in this case would entail a failure of justice. Let us explain ourselves. Here petitioner demands the payment of a pension that is not disputed that has stopped being paid. As a consequence of this breach, the petitioners suffer a damage, in view of the lack of flow of income and the clear and palpable harms that threaten their health, safety, and

wellbeing in a retirement stage. We recognized and stated such in the Judgment of *Acevedo Feliciano et al v. Roman Catholic and Apostolic Church et al*, supra, pages, 8-9. In view of the reality that the petitioners stated concrete and particular situations of how the non-payment of the pension has had a significant impact in their lives, it would be a contradiction to demand the payment of a significant bond for defendants to continue the payment of the pension that petitioners demand.

V.

Based on the foregoing grounds, the certiorari petition is issued and the judgment of the Court of Appeals is reversed with regard to the matters stated in this Opinion. Consequently, we hold and maintain in complete effect the decision in the Order issued by the Court of First Instance on March 16, 2018, and all the measures adopted by the lower court and therefore the case is remanded to that court for subsequent procedures to resume, in accordance with what is stated in this Opinion.

[signature]

Luis F. Estrella Martínez

Associate Justice

Dissenting Opinion Issued by Associate Justice Rodriguez Rodriguez.

Once again, "it's the church, Sancho."[1]

Due to understanding that the course of action adopted by a majority of the members of this Court violates the Constitutional Principle on Separation of Church and State, embodied in both the Constitution of the Commonwealth of Puerto Rico and the Constitution of the United States of America, by *de facto* and *de jure* reconfiguring the internal and hierarchical ecclesiastical organization of the Roman Catholic and Apostolic Church, I *forcefully dissent.*

I.

The core dispute before our consideration had its origin after a Judgment issued by this Court, on July 18, 2017. See *Acevedo Feliciano, et al. v. Roman Catholic and Apostolic Church, et al.*, R. July 18, 2017, CC-2016-1053. The Judgment that we issued at that time reviewed a *Decision and Order* of the Court of First Instance that, in turn, denied plaintiffs' request for a preliminary injunction to secure the judgment. The primary court had concluded, as a matter of law, that the damages alleged in the lawsuit were financial and therefore reparable, so the requested injunction was denied. The intermediate appellate court refused to review said decision.

When that dispute was brought to our consideration, we issued the writ of certiorari and

---

[1] *Diocese of Arecibo v. Sec. Justice,* 191 D.P.R. 292,329 (2014) (Rodriguez Rodriguez, J., Dissenting Op.) (citing M. de Cervantes Saavedra, *Don Quixote de la Mancha,* (Ed. IV Centenario) Madrid, Ed. Alfaguara, 2004, at p. 60.

revoked. We concluded that the beneficiaries of a Pension Plan had suffered irreparable damage when they were "deprived of their needed source of income." In view of such, the request for preliminary injunction filed by Yali Acevedo Feliciano and the other plaintiff teachers (collectively, petitioners) was granted. By virtue of said decision, this Court ordered the continuation of the payments of the pensions claimed by the plaintiffs. Likewise, the primary court was ordered to hold an evidentiary hearing to determine if the defendant entities had legal personality and, consequently, were liable for the payment of the pensions in question while the merits of the case were solved. *See Acevedo Feliciano, et al. v. Roman Catholic and Apostolic Church, et al.*, R. July 18, 2017, CC-2016-1053, at p. 13.

In compliance with the order of this Court, the Court of First Instance held the corresponding hearing and, after considering the evidence presented, the writings submitted by the parties and the current law, ruled that "the churches-schools sued, as well as the Archdiocese of San Juan and the Office of the Superintendent of Catholic Schools of San Juan, do not have their own legal personality because they are part of the Roman Catholic and Apostolic Church, an entity with its own legal personality, recognized by our current state of law." *Decision of the Court of First Instance* (Civil No. SJ-2016-CV-0131), March 16, 2018, at p. 8. To arrive at this conclusion, the primary court analyzed, in essence, Article 8, paragraph 2 of the Treaty of Paris of December 10, 1898 and the statements of the Supreme Court of the United States in *Municipality of Ponce v. Catholic Church in Porto Rico,* 210 U.S. 296 (1908).

According to the interpretation of the primary court—affirmed today by a majority of this Court—the Supreme Court of the United States ruled that said article of the Treaty allegedly recognized the Roman Catholic and Apostolic Church (Catholic Church) in Puerto Rico its own and independent legal personality. For the reasons explained later in this dissent, this interpretation of the decision issued by the federal Supreme Court lacks legal and historical basis and is completely incompatible with the modern constitutional doctrine about separation of Church and State and the Code of Canon Law.

In light of said analysis regarding the legal personality of the Catholic Church, the Court of First Instance ordered the continuation of the "payments to the plaintiffs pursuant to the Pension Plan, while this action is resolved." *Decision of the Court of First Instance* (Civil No. SJ-2016-CV-0131). Upon the Catholic Church's non-compliance, on March 27, 2018, the primary court ordered it to deposit, in twenty-four (24) hours, the amount of $ 4,700,000 as a measure to ensure payment of the plaintiffs' pensions. Similarly, the primary court warned that the Catholic Church's non-compliance would result in a seizure of its bank accounts.

Dissatisfied, that same day, the Catholic Church filed a petition for a writ of *certiorari* and a motion in aid of jurisdiction before the Court of Appeals. In response to the latter, the intermediate appellate court preventively ordered the stay of the proceedings before the primary court. After receiving the respective arguments of the parties, on April 30, 2018,

the Court of Appeals issued a judgment in which it fully revoked the Court of First Instance's decision.

Regarding the dispute over the legal personality of the Catholic Church, said court reasoned that, according to Canon Law and the current rule of law on principles of separation of Church and State, "there is no structure on the Island that groups together all the dioceses, under a single authority, to which their bishops are subordinate." *Judgment of the Court of Appeals,* KLCE-2018-00413, April 30, 2018, at p. 29. In interpreting sections 368 and 369 of the Code of Canon Law, the intermediate appellate court emphasized that a diocese is a portion of the people of God, whose care is entrusted to the Bishop and which, with the cooperation of the presbytery, "constitutes a Particular church, in which the Church of Christ is truly present and acts as a holy, catholic and apostolic one." *Id.* at p. 30. That is, in accordance with the canon law, "the hierarchical structure of the Catholic religion has no other authority with the capacity to represent the entire Catholic Church in Puerto Rico, other than the Bishop of Rome himself, as the universal head of the Roman Catholic and Apostolic Church". *Id.* at p. 31.

Consistent with this pronouncement, the Court of Appeals held that the decision of the Supreme Court of the United States in *Municipality of Ponce* should be interpreted taking into consideration the reality and the historical context of the time when this case was decided. For the intermediate appellate court, at the time when the opinion in question was issued, in Puerto Rico there was only "one diocese (the Diocese of Puerto Rico), so, in practice, the same identity or

conceptualization existed between the Catholic Church and the diocese." *Id.* at p. 36. Lastly, the Court of Appeals ruled that the federal Supreme Court did no more than recognize the law in force prior to the cession of the territory of Puerto Rico to the United States and, in no way, this should be interpreted as the recognition of a Catholic Church's own legal personality in Puerto Rico; otherwise, it would be a way of "intervening in the internal structure of the Church [and] in its operation and organization." *Id.* at p. 37.

Thus, the Court of Appeals concluded that the seizure order and preliminary injunction were improper, since they were addressed to a non-existent entity. On the other hand, the intermediate appellate court ruled that: (1) the employers participating in the retirement plan were not obligated to pay individually the pension received by their employees; (2) the attachment order and the preliminary injunction did not proceed since the petitioner had not provided the corresponding bond, and (3) Academia Perpetuo Socorro had its own legal personality due to having renewed its incorporation certificate in 2017 and, therefore, it should be recognized retroactively.[2]

---

[2] I must mention that Justice Rivera Colón issued a dissenting vote in which he expressed his agreement with the determination of the majority of the members of the Panel that the Catholic Church had no independent legal personality. However, he dissented from the opinion because he understood, correctly under my perspective, that the majority judgment improperly entertained matters regarding the merits of the present case that were not before their consideration and, therefore, exceeded its revisory power.

Dissatisfied, on May 14, 2018, the Catholic Church filed before this Court a *Motion in Aid of Jurisdiction and/or Expedited Transmittal* and a request for *certiorari* through which, in summary, it requested to stay the proceedings and the reversal of the judgment issued by the Court of Appeals. Even without having these resources available, on May 21, 2018, the legal representation of the Catholic Schools Employee Pension Plan Trust (Trust) filed an *Informative Motion* before this Court informing that Academia Perpetuo Socorro, on May 18, 2018, had opportunely filed a motion for reconsideration before the intermediate appellate court. Thus, a majority of the members of this Court ordered all the parties in this lawsuit to set forth their position regarding said informative motion; particularly, regarding whether the request before our consideration was premature. In the afternoon of May 24, 2018, in compliance with our order, the parties appeared and presented their arguments.

On the same day, and late at night, a majority of the members of this Court considered the briefs presented and ruled that the petitioner was not notified of the filing of the motion for reconsideration before the Court of Appeals pursuant to law. In this way, without further ado, this Court denied the motions to dismiss filed and, afterwards, the proceedings before the lower courts were stayed. This had the effect of ordering the Catholic Church to continue issuing the payments in accordance with the Pension Plan and comply with the provisions of the Decisions and orders of the court of first instance, issued on March 16 and 26, 2018, respectively. Finally, a short period of ten (10) days was granted to the

Catholic Church and other respondents to show cause as to why the judgment of the intermediate appellate court should not be revoked.

On June 1, 2018, the petitioners filed an *Urgent Motion of Contempt and Other Matters* through which they requested that the Catholic Church be found in contempt, that its allegations be eliminated and to authorize the execution of court of first instance's seizure order. Even without a ruling on said motion, on June 4, 2018, the respondents filed their respective motions in compliance with the order.

Thus, today a majority of the members of this Court issues an opinion, under the expedited procedure of Rule 50 of our Rules through which it unexpectedly reorganizes the internal structure of the Catholic Church in Puerto Rico. In doing so, it overturns the constitutional protections of the absolute separation of Church and State contained in the Constitution of the Commonwealth of Puerto Rico and in the Constitution of the United States, as established in its interpretative jurisprudence, respectively. Given that this Court took jurisdiction to address the present case, I have an inescapable duty to express myself regarding the merits of the main dispute raised and how wrong the opinion issued today is.

II.

As a threshold matter, I must make it very clear that my position in this Dissenting Opinion does not in any way imply that I am passing judgment, or compromising my judgment, on the merits of the present case and the validity of the claim of the teachers of Catholic schools regarding the legality of

the termination of the Retirement Plan. At all times, the determinations of this Court and the lower courts have arisen in the exclusive context of an action of preliminary injunction and seizure to secure judgment. I have no doubt, as a majority of the members of this Court held in the *Judgment from July 18, 2017*, that at this *early stage* of the proceedings "the balance of interests is tilted towards the petitioners." *Acevedo Feliciano,* et *al. v. Roman Catholic and Apostolic Church,* et *al.,* Res. July 18, 2017, CC-2016-1053, at p. 12. Certainly, as this Court has already resolved and we pointed out earlier, during the course of this action, the teachers "stripped of their much-needed source of income [] have suffered irreparable damage." *Id.* at pages. 11-12. Now, the dispute that is before the consideration of this Court, and that arises from our previous decision, is *whom* it is against and *who* will be liable for the millions in monetary claims that the petitioners request. In the answer to this question lies, precisely, my *irreconcilable difference* with the Majority.

Taking this as a spearhead, I will proceed to delineate the reasons why I believe that the majority opinion inappropriately interferes with the operation of the Catholic Church by imposing on it a legal personality that it does not hold in the field of private law. Likewise, I believe that the decision issued by a majority today, in practice, could lead to the unenforceability of the judgment which, in due time, could end the petitioners' claim; a claim that today is subjected to a deplorable suspense.

A.

Section 3 of Article II of the Constitution of the Commonwealth of Puerto Rico, L.P.R.A., Volume 1, establishes that, "no law shall be approved relating to the establishment of any religion, nor shall the free exercise of religious worship be prohibited. There shall be complete separation of the church and the state." On the other hand, the Constitution of the United States clearly states that, "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise of the consequences, or abridging the freedom of speech, or of the press, or the right of the people peacefully to assemble, and to petition the Government for a redress of grievances." U.S. Const. Amend I.

From the outset, it is necessary to emphasize that our constitutional clause—as opposed to its federal counterpart—expressly orders "complete separation of Church and State." At the federal level, this separation—which aspiration and inspiration of the religious clauses—has been formulated through a recognition of the existence of two separate spheres of action that go back to the secular thought of Thomas Jefferson and James Madison.[3] The other two clauses related to the recognition of the freedom of religion and the prohibition to the establishment of a religion contained in both constitutions, prevent State actions

---

[3] *See* Laurence Tribe, *American Constitutional Law,* at p. 819 (Foundation Press 1979). See also, John Ragosta, "Federal Control: Jefferson's Vision in Our Times," in *Religious Freedom: Jefferson's Legacy, America's Creed* (Charlottesville: University of Virginia Press, 2013), at pgs. 185-86,188; *Watson v. Jones,* 80 U.S. 679 (1871).

that may tend to: (1) promote a particular religion or (2) limit its exercise. Hence, in the past this Court has recognized that, both at the federal level and at the state level, there is a tension between both clauses that has resulted in a broad jurisprudence that seeks to harmonize them. *See Mercado, Quilichini v. U.C.P.R.,* 143 D.P.R. 610, 635 (1997); *Diocese of Arecibo v. Srio. Justice,* 191 D.P.R. 292, 308 (2014) (judgment) (citing *School Dist. Of Abington Tp., Pa. V. Schempp,* 374 U.S. 203 (1963)).

As to the clause on separation of Church and State of our Constitution, we have affirmed that it requires recognition of a jurisdiction for the Church distinct and separate from that of the State. This, in order for the actions of both entities to not interfere with one another. *See Mercado, Quilichini,* 143 D.P.R. at p. 634. Consistent with this, we have determined that the constitutional mandate of separation of Church and State prevents civil courts from rendering judgment "on matters of doctrine, discipline, faith or internal ecclesiastical organization." *Amador v. Conc. Igl. Univ. De Jesus Christ,* 150 D.P.R. 571, 579-80 (2000) (emphasis supplied).

Over the years, the so-called "religious clauses," both in the federal sphere and in the Puerto Rican legal system, have formed the basis for the development of rules and adjudicative standards that, in turn, have served as a guide to face issues revolving around the interrelation between the State, religion, and the church. In this case, it is clear that the dispute does not entail a possible violation of the freedom of worship, nor does it suppose the favoring of a religion on the part of the State. Rather, this Court's ruling

directly affects the principles that inform the organization, function, hierarchy, and structure of the Catholic Church in Puerto Rico.

The majority opinion, in addressing this issue, focuses on the nature of plaintiffs' claim, warning that "we find ourselves before civil obligations voluntarily contracted and not imposed by the State."[4] *Opinion,* at p. 10. Thus, it indicates that the ruling in *Mercado, Quilichini* is dispositive, as to the authority of the civil courts to elucidate contractual disputes that "do not require rendering judgment on matters of doctrine of faith or of internal ecclesiastical organization." *Id.* (Citing *Mercado, Quilichini v. U.C.P.R.,* 143 D.P.R. at page 635 (1997)). After indicating that this Court is in the same position as in *Mercado, Quilichini* and by means of a clearly disconnected analysis, the Majority concludes that the other entities sued in the present case are in fact a fragmentation of a single entity with

---

[4] It is appropriate to distinguish, then, between the substantive nature of the dispute before our consideration and the effects of the opinion that today is signed by a majority to resolve it. While it is true that we are before a claim of contractual nature, the determination as to who is answerable for said claim, which for the majority would be the Catholic Church, results in a clear violation of the separation clause of Church and State. In other words, we are not dealing with a case in which the dispute requires evaluating whether a state action violates any of the religious clauses. Interestingly, in this case the state action, concretely, occurred **in the stage of the resolution of the dispute** by this Court by attributing—by judicial means—legal personality to the Catholic Church in the field of Private Law. This, in contravention of the different provisions of the Code of Canon Law that govern the structure and the organization of that universal religious entity.

legal personality: the Catholic Church. *Opinion,* at pages. 10-11.

In the particular context of the constitutional prohibition of the establishment of a religion, in the case of *Lemon v. Kurtzman,* 403 U.S. 602 (1977), the federal Supreme Court established a tripartite scheme of analysis to determine whether a state law or practice constitutes an improper establishment of religion. That scheme—commonly known as the *Lemon Test*—requires the courts to examine: (1) whether the legislation or action pursues a secular purpose, (2) if in some way it promotes or inhibits religion, or (3) if it constitutes an excessive interference by the State in religious matters. *Lemon v. Kurtzman*, 403 U.S. 602, 612-13 (1971); *Asoc. Academies and Col. Cristianos v. E.L.A.*, 135 D.P.R. 150 (1994) (adopting and applying the scheme); *see also Dioceses of Arecibo v. Sec. Justice*, 191 D.P.R. 292, 310 (2014) (judgment).

Professor Efren Rivera Ramos, in discussing this scheme and its adoption and application by this Court, echoes the expressions of former federal Supreme Court justice Sandra Day O'Connor and explains that, "the principle is that the Government action must not endorse Religion, neither in its purpose nor in its effect." Efren Rivera Ramos, *Estado, Religión y Derecho: Marco Juridico* ["State, Religion, and Law: Legal Framework"), 84 Rev. Jur. U.P.R. 537, 541 (2015) For practical purposes, it concludes that the general principle set forth in *Lemon* and its progeny includes the following requirements:

> (1) That the State should not favor any religion, nor should it privilege Religion in

> general; (2) *that the State should not interfere in the internal affairs of the Religion*, and (3) that the State should not allow Religion to interfere in the affairs of government, or entrust government matters to any religion. *Id.* (Emphasis supplied).

The second requirement has its origin in decisions of the Federal Supreme Court through which it recognized a modality of the violation to the constitutional prohibition to the establishment of a religion through *improper actions* on the part of the civil courts of justice. This has been called in American federal and state jurisprudence the "church autonomy doctrine" which is, for all effects, a corollary of the separation of Church and State embodied in the First Federal Amendment.[5]

As it was advanced, although in the past we have acknowledged elements of this doctrine when interpreting the religious clauses of our Constitution, particularly the mandate to separate Church and State, we have been cautious in its application and have avoided adopting it bluntly. *See Amador v. Conc. Igl. Univ. Of Jesus Christ,* 150 D.P.R. 571, 579-80 (2000); *Mercado, Quilichini v. U.C.P.R.,* 143 D.P.R. 610, 635 (1997); *Diaz v. Colegio Nuestra Sra. Del Pilar,*

---

[5] For a detailed examination of this doctrine, see *Construction and Application of Church Autonomy Doctrine,* 123 A.L.R. 5th 385 (2004). See also Michael A. Helfand, *Religion's Footnote Four: Church Autonomy As Arbitration,* 97 Minn. L. Rev. 1891 (2013), for a discussion on said doctrine, its evolution and its relationship with the other adjudication standards for the so-called "religious clauses."

123 D.P.R. 765 (1989); *Agostini Pascual v. Catholic Church,* 109 D.P.R. 172 (1979).

However, the Supreme Court of the United States decided a series of cases in the fifties, sixties, and seventies that delimit the contours of the "church autonomy doctrine" and, to a certain extent, have served as a guide for this Court when resolving disputes in which there is an undue interference by the State in matters of church. *See Jones v. Wolf*, 443 U.S. 595 (1979); *Serbian E. Orthodox Diocese for U.S. of Am. & Canada v. Milivojevich*, 426 U.S. 696, 708 (1976) ("The fatal fallacy to the judgment of the [state supreme court] is that it rests upon an impermissible rejection of the decisions of the highest ecclesiastical tribunals of this hierarchical church upon the issues in dispute, and impermissibly substitutes its own inquiry into church polity and Decisions based thereon those disputes."); *Maryland & Virginia Eldership of the Churches of God v. Church of God of Sharpsburg, Inc.*, 396 US 367.369 (1970) (Brennan, J., Concurrent Op.) ("To permit civil courts to probe deeply enough into the allocation of power within a church so as to decide where religious law, places control over the use of church property would violate the First Amendment in much the same manner as civil determination of religious doctrine.") ; *Presbyterian Church in U.S. v. Mary Elizabeth Blue Hull Mem'l Presbyterian Church*, 393 U.S. 440 (1969); *Kedroff v. St. Nicholas Cathedral of Russian Orthodox Church in N. Am.*, 344 U.S. 94, 116 (1952) ("[A] spirit of freedom for religious organizations, an independence from secular control or manipulation, in short, power to decide for themselves, free from state interference, matters of

church government as well as those of faith and doctrine.")

From the range of federal jurisprudence mentioned above it is important to emphasize the decision of *Presbyterian Church in U.S.*, by which it was resolved that:

> First Amendment values are *plainly jeopardized* when church property litigation is made to turn on the Decision by civil courts of controversies over religious doctrine and practice. If civil courts undertake to resolve such controversies in order to adjudicate the property dispute, *the hazards are ever present of inhibiting the free development of religious doctrine and of interests in matters of purely implicating secular ecclesiastical concern.* Because of these hazards, the employment of organs the First Amendment enjoins of government for religious purposes, the amendment then commands civil courts to decide church property disputes *without resolving underlying controversies over religious doctrine.* Hence, States, religious organizations, and individuals must structure relationships involving church property *so as not to require the civil courts to resolve ecclesiastical questions. Presbyterian Church in U.S. v. Mary Elizabeth Blue Hull Mem'l Presbyterian Church*, 393 U.S. 440, 449

(1969) (citations omitted) (emphasis supplied).[6]

In addition to the decisions of the Federal Supreme Court, the "church autonomy doctrine" has been endorsed and applied by the various federal and state courts. *See, e.g. Se. Pennsylvania Synod of the Evangelical Lutheran Church in Am. v. Meena*, 19 A.3d 1191, 1196 (Pa. Commw. Ct. 2011) ("If the civil courts are to inquire into all these matters, the whole subject of the doctrinal theology, the usages and customs, the written laws, and fundamental organization of every religious denomination may, and must, be examined into minuteness and care, for they would become, in almost every case, the criteria by which the validity of the ecclesiastical decree would be determined in the civil court."); *McKelvey v. Pierce,* 173 N.J. 26, 800 A.2d 840 (2002); *Bryce v. Episcopal Church in the Diocese of Colorado,* 289 F .3d 648 (10th Cir., 2002).

---

[6] Although this decision, and the others cited above, arise in the particular context of the ability of a religious institution to acquire private property, the methodology adopted by the Federal Supreme Court informs what we understand should dispose of the dispute in this case. And the fact of the matter is that, in the decision that the Majority takes today, it is determined who the Church is regardless of what the Church itself maintains. In fact, and as discussed below, the practical effect of what is decided by the majority opinion creates an undue interference, not only in the organization of the Church, but also in the purchasing power and ownership over real property of different entities that have been stripped of their own legal personality by this Court and that appear as codefendants in this lawsuit.

I consider that according to the discussion above, it is mandatory to conclude that the opinion of the majority violates the principle of separation of Church and State by interfering in the very definition of who the Catholic Church is in order to determine its legal personality. The Majority replaces the Church's criterion on this matter, with its own. This, in my opinion, is in clear contravention of the mandate of our Constitution and that of the United States.

Rather, and in order to supplement the very meager and disconnected analysis contained in the Majority Opinion on the separation of Church and State clause, I consider it prudent and intellectually sound to address the aspects of the internal and hierarchical ecclesiastical organization of the Catholic Church that are adversely affected by the majority's decision. For this, it is essential to examine those precepts of the Code of Canon Law, the Treaty of Paris, and the Concordats of 1851 and 1859 that explain the hierarchy and *modus operandi* of the Catholic Church and, moreover, reveal the historical and legal background of that religious institution in Puerto Rico. Let us see.

III.

A.

Canon Law is conceived as the legal structure of the Catholic Church and constitutes the system of legal relations that unite the faithful and place them within the social body of the Catholic Church. See in general Daniel Cenalmor and Jorge Miras, *El Derecho de la Iglesia: Curso básico de Derecho canónico* ["Church Law: Basic Course in Canon Law"] (1st ed., Pamplona, Ed. Eunasa, 2004). In this sense, as the

Court of Appeals correctly pointed out, its immediate purpose is "to establish and guarantee the just social order in the Church, ordering and leading its subjects, through said order, to the attainment of the common good." *Judgment of the Court of Appeals*, KLCE-2018-00413, April 30, 2018, at p. 15 (citing A. Bernández Cantón et al., Derecho Canónico ["Canon Law"]. 2d ed. Pamplona, Ed. Eunasa, 1975, at pags. 75-79.)

For purposes of this case, it is imperative to point out that, according to the Code of Canon Law (CCL), "[t]he Catholic Church and the Apostolic See are moral persons by the same divine ordination." CCL 113, sec. 1. Pursuant to this, in the canonical order "besides physical persons, there are also juridic persons, that is, subjects in canon law of obligations and rights which correspond to their nature." *Id.* at sec. 2. This responds to the practical fact that "the corporations and foundations constituted by competent ecclesiastical authority … within the limits that are indicated to them, fulfill in the name of the Church … CCL 116, sec. 1.

These general rules make more sense when we analyze the provisions contained in Book II of the People of God regarding particular churches and their gatherings. Note that "the concept of a particular Church *is not canonical but theological.*" Javier Hervada, *Elementos de Derecho Constitucional Canónico* ["Elements of Constitutional Canon Law"] (Madrid 2014) at p. 274. This section of the CCL states that the particular churches "in which, and from which the one and only Catholic Church exists, are first of all dioceses." CCL 368. In attention to this, as

the Court of Appeals correctly pointed out, this legal scheme provides that:

> A diocese is a portion of the people of God which is entrusted to a bishop for him to shepherd with the cooperation of the presbyterium, so that, adhering to its pastor and gathered by him in the Holy Spirit through the gospel and the Eucharist, it constitutes a particular church in which the *one, holy, catholic, and apostolic* Church of Christ is truly present and operative. CCL 369 (emphasis added).

This principle is carried out in its most practical sense because that portion of the people of God that "constitutes a diocese or another particular Church must be circumscribed within a given territory, so that it includes all the faithful who inhabit it." CCL 373 [sic]. Thus, the erection of particular churches "corresponds only to the supreme authority … [and] *those legitimately erected possess juridic personality by the law itself*." CCL 373. Dioceses are the organs of local government whose jurisdiction is defined by virtue of their territorial demarcation. Fernando Della Rocca, *Canon Law,* section 88, on page 198. See also CCL 515 sec.3

("The parish legitimately erected has legal personality under the law itself".); Jorge de Otaduy, *The civil personality of the organizational entities of the Church* (Particular reference to the parish), IUS CANONICUM, XXIX, n. 58 (1989) at pages. 503-526.

Experts in matters of Canon Law explain the organization of the Catholic Church and its particular churches, affirming that the latter, "in themselves are

Churches, because, even though they are particular in them, *the Universal Church is present* with all its essential elements." Cenalmor and Miras, *supra,* at p. 271 (emphasis supplied). This mysterious reciprocal implication between both is illustrated in the following statement: "the whole is nothing but the sum of the parts, *nor the parts a partial unit*, simple result of the division of the whole, but the *whole is at once, operates and exists in each of the parts*" *Id.* (Citations omitted) (emphasis supplied).

This analysis becomes relevant if it is understood that the Catholic Church has the capacity to acquire, retain, administer and dispose of temporal goods. The academics comment that: "[t]here is no single ecclesiastical patrimony under the direct ownership of the Universal Church, but a multitude of patrimonies with different titles and purposes." *Id.* at page 503. However, for its administration "general principles govern that tend to unify in a certain way, all the ecclesiastical goods, ordering them to serve the same purposes, *under the supreme authority of the Roman Pontiff* and with a common legal regime." *Id.* (Emphasis added).

For purposes of the dispute before our consideration, this means that the Catholic Church, as a juridical entity in itself, does not properly exist under the protection of the Canonical Law, except only under the understanding of the Universal Church, which is the People of God, whose supreme authority on earth is the Bishop of Rome. When we talk of the Catholic Church in Puerto Rico, it is not more than a colloquial way of referring to the Universal Church that exists in each of the other jurisdictions of the

world. At the same time, the Archdiocese of San Juan and the other dioceses and parochial churches in Puerto Rico are not "the sum of the parties, nor the parties a partial unit" but they are everything that "at the same time, operates and exists in each of the parts." Cenalmor and Miras, supra, at p. 271. The definition of what the Church *is and what it is not* is the responsibility in purity of said institution, and not of the civil courts. It cannot be any other way; the opposite would be to render judgment on the internal ecclesiastical organization and the hierarchy of the Catholic Church, in clear contravention of the total separation between Church and State. *See Presbyterian Church in U.S. v. Mary Elizabeth Blue Hull Mem'l Presbyterian Church*, 393 U.S. 440, 449 (1969). Unfortunately, the Majority Opinion obviates or ignores these issues.

This conclusion is even more forceful when it is considered under the magnitude of the so-called "special situation" of juridical personality of the Catholic Church in Puerto Rico, under the Treaty of Paris, the Concordats of 1851 and 1859, the federal case of *Municipality of Ponce* and the studies of the academics who have approached the subject related to the personality of the Church. Let us see.

B.

The historical and legal background of the Catholic Church on the Island goes back to the times of the rule of the Spanish Empire.[7] For the purposes

---

[7] As historical data, through the *Bull Romanus Pontifex* of 1511, promulgated by Pope Julius II, the first three dioceses were erected in the New World. These were: Santo Domingo, Concepcion de la Vega, both in Hispaniola, and San Juan

of this dispute, the agreement that illustrates the relationship between the Catholic Church, Spain, and Puerto Rico at the time of the invasion and eventual transfer of Puerto Rican territory to the United States is the Concordat of 1851 (Concordat) between Queen Isabella II and the Holy See, represented by the Supreme Pontiff, Pius IX.

In 1851, after arduous negotiations, the Kingdom of Spain and the Holy See signed the Concordat to systematize their relations, as well as to regulate the administrative organization of the Catholic Church throughout the Kingdom of Spain. This was necessary in light of the deterioration suffered between the relationship of the Catholic Church and the Spanish State during the first decades of the nineteenth century and the frank administrative disorganization of the Church. During that first part of the century, the Spanish State had deprived the Catholic Church, "in the person of its secular clergy and its religious communities of men and women, of all ecclesiastical property," either to convert them into national goods or to enter the amount of the sale of these to the vault of the Spanish government. Juan R. Gelpí Barrios,

---

Bautista, which later became the Diocese of Puerto Rico. It was not until 1924 when the second one was erected, the Diocese of Ponce. In the second part of the 20th century, three dioceses were erected: Arecibo in 1960, Caguas in 1964 and Mayaguez in 1976. The last was erected in 2008, the Diocese of Humacao. See, Samuel Silva Gotay, *La Iglesia Católica de Puerto Rico, en el Proceso Político de Americanización, 1898-1930* (Publicaciones Gaviota 2012); Gerardo Alberto Hernández-Aponte, *La Iglesia Católica en Puerto Rico ante la invasión de Estados Unidos de América Lucha, sobrevivencia y estabilización: (1898-1921)* (Rio Piedras 2013).

Personalidad jurídica de la Iglesia en Puerto Rico: Vigencia del Concordato español de 1851 a través del tratado de París ["Legal Personality of the Church in Puerto Rico: Validity of the Spanish Concordat of 1851 through the Treaty of Paris"], 95 Rev. Esp. Der. Canónico 395, 408 (1977); Federico Suárez, *Genesis del Concordato de 1851* ["Genesis of the Concordat of 1851"], http://dadun.unav.edu/handle/10171/13928. See also, Francisco Tomas y Valiente, *Manual de Historia del Derecho Español* ["Manual of the History of Spanish Law"], (Madrid 2012) at pages 411-414, 613-619. This reality generated innumerable litigation and claims that tried to reverse the actions of the State. The Concordat sought to settle this situation.

Of the aforementioned Concordat, and as it pertains to the dispute before our consideration, articles 40 and 41 are of particular relevance. In the first of these articles, it is recognized that the goods and income alienated from the Church, and enumerated in previous articles, "belong in property to the Church, and in their name shall be enjoyed and administered by the clergy." See http://www.uv.es/correa/troncal/concordato1851 This article states "conclusively the legal personality of the Church that empowers it to claim all the property that was in dispute at the time of the agreement, since the State recognizes them as their owner, clarifying that all usufruct and administration must be understood on behalf of the Church." Gelpi, supra, on p. 409.

On the other hand, Article 41 stated the following:

> In addition, the Church shall have the right to acquire for any legitimate title, and her

> property in all that she now possesses or acquires shall be solemnly respected. Therefore, as for the old and new ecclesiastical foundations, no suppression or union could be made without the intervention of the authority of the Holy See, except the powers that belong to the bishops, according to the Holy Council of Trent.

See https://www.uv.es/correa/troncal/concordato1851

Professor Gelpi Barrios, analyzing this article, rightly indicates that this was very important given that the Catholic Church had "in an independent manner in all Spanish domains, a civilian personality recognized and guaranteed by the State itself, to acquire, for any legitimate title and to possess at all times, all kinds of temporal goods." Gelpi, supra.

In fact, in accordance with the provisions of the aforementioned article, article 38 of the Spanish Civil Code of 1889, in force in Puerto Rico, was drafted up to the date of sovereignty in 1898. That article provided that:

> Legal persons can acquire and possess goods of all kinds, as well as contract obligations and exercise civil or criminal actions, according to the laws and rules of their constitution.
>
> *The church will be governed at this point by the agreement between both powers*; and the educational and charitable establishments according to the special laws. Id. (Emphasis supplied.)

By incorporating in the Civil Code the principle of legal personality of the Church recognized in the Concordat, the Spanish State "converted the Concordats between the Church and the Crown of Spain, in civil law, for the purposes of acquiring and possessing property of all kinds, contract obligations and exercise civil and criminal actions". *Id.*[8]

After the Concordat of 1851, the national Courts approved the Law of November 4, 1859 through which the Crown was sanctioned, authorizing the Government to conclude an agreement with the Holy See. This resulted in the Concordat of 1859 that, along with the 1851 Concordat, resulted in that "the Church's legal entity be totally consolidated with its property right over the assets that it acquired or that were restituted." Gelpí Berrios, *supra* at page 410.

The legal framework detailed in the preceding paragraphs was in effect at the time of the Spanish American War that ended with the Paris Treaty of December 10, 1898 ("Treaty") and the cession of Puerto Rico to the United States. In other words, both the Concordats of 1851 and 1859 and the amendments to the Spanish Civil Code were in effect during the

---

[8] I must mention, as a curious fact, that the explanatory memorandum accompanying the Concordat of 1851 said that the reorganization of the ecclesiastical entities that are part of the Concordat text does not include "the Churches of America, either because the disorganization introduced in the Churches of The Peninsula has barely reached there, and also because everything that affects [those] distant countries *must be treated in a special way*." Juan Perez Alhama, La *Iglesia y el Estado español: Estudio histórico-jurídico a través del Concordato de 1851*, (Instituto de Estudios Políticos, Madrid 1967), Appendix, at p. 526 (emphasis added).

remaining period of Spanish sovereignty on the Island. That said, the Treaty incorporated and recognized certain aspects of Spanish Law in effect at the time of the change in sovereignty. As relevant to the dispute before us, the Treaty declared that:

> Nevertheless, it is declared that this renouncement or cession, as the case may be, referred to in the previous paragraph, in no way lessens the property or rights which belong by custom or law to the peaceful possessor of goods of all kinds in the provinces and cities, public or private establishments, *civil or ecclesiastical corporations or whatever bodies have judicial personality to acquire and possess goods in the above-mentioned, renounced or ceded territories, and those of private individuals, whatever be their nationality.* Peace Treaty between the United States of American and the Queen of Spain, Art. 8, December 10, 1989, USA-Spain, 30 Stat. . 1754 (1989), T.S. 343 (emphasis added).

As mentioned, the United States Supreme Court interpreted this article of the Treaty in Municipality of Ponce v. Catholic Church in Porto Rico, 210 U.S. 296 (1908). Given the importance of this decision, I deem it necessary to reproduce in its totality certain sections of said opinion to proceed with a complete analysis of the reach. Just after citing article 8 of the Treaty, the federal court reasoned that:

> This clause is manifestly intended to guard the property of the church against interference with, or spoliation by, the new

> master, either directly or through his local governmental agents. There can be *no question that the ecclesiastical body referred to, so far as Porto Rico was concerned, could only be the Roman Catholic Church in that island, for no other ecclesiastical body there existed*. Id. at page 311.

Similarly, the United States Supreme Court Interpreted the 1851 and 1859 Concordats and the "corporate recognition" by the United States Government of the Catholic Church, including its Supreme Pontiff,[9] and ruled that:

> The Roman Catholic Church has been recognized as possessing legal personality by the treaty of Paris, and its property rights solemnly safeguarded. In so doing the treaty has *merely followed* the recognized *rule of international law* which would have protected the property of the church in Porto Rico subsequent to the cession. *This juristic personality* and the church's ownership of property *had been recognized* in the most formal way by the concordats between Spain and the papacy, and *by the Spanish laws* from the beginning of settlements in the Indies. Such recognition has also been accorded the church *by all systems of European law* from

---

[9] "The *corporate existence* of the Roman Catholic Church, as well as the position occupied by the **papacy,** have always been recognized by the government of the United States ... The *Holy See still occupies a recognized position in international law,* of which the courts must take judicial notice." *Id.* on pg. 312 (emphasis provided).

> the fourth century of the Christian era. *Id.* at pages 323-24

To begin with, we cannot lose perspective that all of the federal court's analysis occurs in the context of International Public Law. Its expressions making reference to the "corporate existence" of the Catholic Church come up specifically in relation to the recognition of the Supreme Pontiff and the Holy See. In other words, these expressions cannot be interpreted as "special recognition" of legal personality in itself because it is the Catholic Church in Puerto Rico, but rather as recognition of its peculiarity and how it was not an a properly incorporated entity pursuant to the laws of Corporate Law in effect in the United States at that time.

The explicit mention of International Public Law, the laws of the Spanish Monarchy and all other legal systems in Europe to validate the "juridical personality" of recognized by the government of the United States …. The *Holy See still occupies a recognized position in international law*, of which the courts must take judicial notice." *Id.* a page. 318 (emphasis added).

"Catholic Church" reasonably can only imply that this refers to one single religious entity at the global level: the Universal Church of God's people. Precisely, Professor José Julián Alvarez in his legal constitutional treatise points out that one of the consequences of the federal Supreme Court's Opinion is that "the Catholic Church never has the need to incorporate itself, as other religious entities had to." José Julián Alvarez González, Puerto Rican Constitutional Law (2009) at page 1192.

The investigations carried out by Gelpí Barrios, which have been cited extensively, support this explanation and are distant from the *accommodating interpretation* made in the majority Opinion that *does not even directly cite* this work, which, curiously, served as the principal foundation for its erroneous conclusion regarding such an important dispute. After analyzing the historical, legal, and social background that led to the Concordats of 1851 and 1859 and the Paris Treaty, professor Gelpí Barrios explains that:

> At the time of the cession, there was in Puerto Rico *only one diocese. At present, there are five:* the San Juan diocese and the dioceses of Ponce, Arecibo, Caguas and Mayaguez. Each diocese is a fragmentation of one only possessing entity of juridical personality. Each one of them enjoys of the *same legal status corresponding to the original diocese of Puerto Rico*, in other words, the Roman Catholic Church of Puerto Rico.
>
> None of the them has been born thanks to the act of incorporation just as it is required by the Law of Puerto Rico, but rather, *by the action of the Holy See*, that has legal civil effects from the moment in which the erection document of the new territorial jurisdiction is executed by the competent authority. Gelpí Barrios, supra, on p. 410 (emphasis supplied).

It is worth recognizing that these expressions of the Professor are a translation into Spanish of an article published by the late Bishop of Ponce, Fremiot Torres Oliver, on May 28, 1976, entitled *Juridical Personality of the Roman Catholic Church in Puerto*

Rico, 15 Rev.Der. P.R. 307 (1975) ("Each diocese is a fragmentation of the entity possessing juristic personality, and each enjoys the same legal status as the original Diocese of Puerto Rico, referred to in the opinion quoted opinion as "The Roman Catholic Church in Puerto Rico") *See also* Aníbal Colón Rosado, *Relations Between Church and State in Puerto Rico,* 23 Rev. Der. P.R. 53 (1983) If anything can be concluded from these statements, which are more than a non-binding interpretation of an academic and Bishop on the *Municipality of Ponce* case and the history of our old Spanish colonial past, it is that the internal and hierarchical organization of the Catholic Church has changed in Puerto Rico since this Caribbean island came to belong to the United States. Also, it is worth noting that in 1903 "the Diocese of Puerto Rico [separated] from the Ecclesiastical Province of Santiago de Cuba, and [became] a diocese directly subject to the Holy See, which gave Puerto Rico, within the ecclesiastical law, full ecclesiastical independence, like any other Latin American country." Samuel Silva Gotay, *The Catholic Church of Puerto Rico, in the Political Process of Americanization, 1898-1930,* (Publicaciones Gaviota 2012) pgs. 184-185. This placed the Puerto Rican Catholic Church "on an equal footing with the churches of North, Central, and South America." *Id.* at p. 185.

The so-called "fragmentation" of the Diocese of Puerto Rico cannot be interpreted as a breach of the legal personality of the Universal Church of the people of God, as the Majority seems to hold. More than anything, what is involved is the founding of new dioceses as a vehicle that makes "more efficient

pastoral work" possible. *Id.* at p. 282. That is, to carry out the work of evangelization. Again, the contrary conclusion of the majority opinion is clearly erroneous.

The Catholic Church "operates and exists" in the Archdiocese of San Juan and the remaining five (5) dioceses. Cenalmor and Miras, *supra,* at p. 271. Whereupon, each of these entities are by themselves the Catholic Church and not the parts of a partial unit that form a single entity as the majority concludes. Each diocesan community has attributed the "mystery wealth" of the Catholic Church. *Id.* The Decision as proposed by the Majority, once again, would violate the separation between Church and State because this Court would interfere in the definition and conceptualization of said religion. Most of us are deciding "who" the Apostolic and Roman Catholic Church is, a determination that, as we have seen, only concerns the Catholic Church itself and not the State through this Court. See, *Maryland* & *Virginia from Eldership of the Churches of God*, *supra*, at p. 369. The truth is that the institutions within the Catholic Church in Puerto Rico that have legal personality are the Archdiocese of San Juan and the five (5) dioceses. In addition, as regards the claim in the present lawsuit, one cannot lose sight of the fact that some of the defendant employers, such as Academia del Perpetuo Socorro, have their own and independent legal personality under Private Law as they have been incorporated according to the requirements of Corporate Law and the Department of State.[10]

---

[10] The opinion of the majority does not address this issue, by merely indicating that the certificate of incorporation of that institution had been revoked in 2014. Confusingly, later in the

IV.

Despite understanding that the foregoing analysis is sufficient to clear up any doubt regarding the error of the majority opinion, I consider it necessary to briefly examine the practical implications of the determination of the majority and the consequences of imposing on a religious entity a legal personality that it does not hold and that, for purposes of its internal organization, is non-existent.

In the first place, it is worth drawing attention to the fact that the majority opinion tacitly revokes years of jurisprudence established by this Court, through which the Archdiocese of San Juan and five (5) other dioceses have appeared as parties in different litigation. If we consider one of the first decisions of this Court in which the Diocese of Puerto Rico was a part, it follows that, until today, the personality and legal status of that institution has been recognized by this Court. In *Roman Catholic Apostolic Church v. The People*, 11 D.P.R. 485 (1906), this Court heard a request in which the Catholic Church requested that

---

Opinion,—making specific reference to Academia del Perpetuo Socorro—the possibility that some entities submit to an ordinary process of incorporation is contemplated. In this regard, it is important to note that the Department of State reinstated the incorporation of Academia del Perpetuo Socorro and, consequently, its legal personality was rolled back to the date of its original incorporation. See *Carlos Díaz Olivo, Corporaciones* (Publicaciones Puertorriqueñas, 1999) at p. 43. In addition to this oversight by the majority, some of the educational institutions mentioned in the Opinion are not even listed as part of this complaint. Specifically, throughout the Opinion alludes to the "Colegio San Ignacio", when defendant is the "Academia San Ignacio", a completely different educational institution.

the Government of the Island return property of the Religious Communities of Dominicans and Franciscans that had been suppressed and seized in 1838. In the lawsuit, the Government of Puerto Rico questioned the power of the Catholic Church to acquire property. In this context, this Court addressed the issue of the legal personality of the Bishop to initiate the claim in question and, its relevant part, stated that:

> The same is to be said about [the] personality of the Catholic Bishop of Puerto Rico to carry the representation of the Catholic Church in the present litigation. *The bishops carry the representation of the church in their respective dioceses according to the canons of the Catholic Church* and this representation was [especially] recognized by the concordats in everything that referred [to] the delivery of the goods [to] the Bishops and [to] their permutation in the manner agreed between both powers. *Roman Catholic Apostolic Church*, 11 D.P.R. at p. (emphasis supplied).

Certainly, these expressions are consistent with the interpretation of the case *Municipality of Ponce* and the analysis set forth in sections II and III of this opinion. After this decision, on several occasions, this Court has entertained disputes through which it has recognized the juridical personality of the Archdiocese of San Juan and the five (5) other Dioceses. This, demonstrating an understanding about the internal and hierarchical ecclesiastical organization of the Universal Church of the People of Christ. See *Diocese of Arecibo and. Sec. Of Justice,* 191 D.P.R. 292 (2014);

Diocese of Mayagüez and. Planning Board, 147 D.P.R. 471 (1999); *Diaz and. School Nuestra Sra. Del Pilar,* 123 D.P.R. 765 (1989); *San Jorge Academy* v. *Labor Relations Board,* 110 D.P.R. 193 (1980); *Agostini Pascual v. Catholic Church, Diocese of Ponce,* 109 D.P.R. 172 (1979); *Vélez Colón v. Roman Catholic Apostolic Church, Diocese of Arecibo,* 105 D.P.R. 123 (1976); *Camacho v. Roman Catholic Apostolic Church, Diocese of San Juan v. Registrar,* 95 D.P.R. 511 (1968); *Roman Catholic Apostolic Church, Diocese of Ponce,* 72 D.P.R. 353 (1951). As anticipated, endorsement of the majority opinion leads one to consider these decisions as if they were never written.

Furthermore, the practical effects of the decision issued by a majority today show the lightness and simplicity of the analysis used and are seen as an additional obstacle in the final Decision of the present case and, consequently, to the collection of the amounts claimed by plaintiffs. In essence, the opinion subscribed, by improperly assigning legal personality to the Catholic Church, strips the other defendant entities of independent legal personality and, consequently, relieves them of compliance with the obligations assumed towards the plaintiffs that are the object of this case. For these purposes, note that the order of attachment decreed, as contained in the Decision that today a majority "maintains and maintains in all vigor" provides the following:

> Accordingly, the sheriff of this Court is ordered to proceed to seize assets and moneys of the Holy Apostolic and Roman Catholic Church in an amount of $ 4,700,000 to respond for the payment of the plaintiffs'

> pensions, including bonds, securities, motor vehicles, works of art, equipment, furniture, accounts, real estate and any other property belonging to the Holy Apostolic and Roman Catholic Church, and any of its dependencies, which is located in Puerto Rico.

It is untenable to conceive that said order is, in fact, enforceable. How should the assets to be seized be identified? Does its ownership matter? Is there any order of priority among so much generality? What happens with the other defendant entities? Do they lack legal personality despite being incorporated? Does the dismissal of the causes of action brought against them proceed? What will happen to the assets of the dioceses that have requested intervention in this case and as of today are not part of the case? Will they be stripped of these without due process of law? Are all the assets of other religious entities seized, such as aged care centers and other educational institutions?

The questions are many and the lack of answers shows that the opinion signed by a majority of the members of this Court lacks the depth, seriousness and intellectual rigor that a dispute of such high public interest deserves. For all of which, I would render the attachment decreed without effect because it is unenforceable and directed to an entity that lacks its own legal personality and, for all purposes, does not exist in law.

[signature]
Annabelle Rodríguez Rodríguez
Interim Chief Justice

Dissenting Opinion Issued by Associate Justice Colón Pérez.

Omnes viae Roman ducunt.

There are some who say that "*all roads lead* to *Rome*"*;* an historical expression attributable to the efficient system of Roman roads that existed at the time of the emperors and that guaranteed, to the one who followed its route, access to the capital of one of the greatest empires the world has ever known: Rome. And it is precisely there, in Rome, the seat of the *Roman Catholic and Apostolic Church,* where a majority of this Court—*through an opinion that, at a minimum, will be very difficult to execute*—has sent a group of teachers from various Catholic schools of this country to claim their right to a dignified retirement, of which they appear to be worthy. Because I do not agree with this regrettable manner of proceeding, which validates a misguided litigation, and that—at the end of the day—will leave the class of teachers that knock on our door today without any remedy, we forcefully dissent.

In that direction, we will not validate with our vote an extremely superficial opinion, lacking an in-depth analysis of the various dimensions of the disputes before our consideration, in which a majority of this Court, leaving aside all the legal precedents that address similar issues to the one that concerns us today, chooses to recognize legal personality to an abstract concept of universal character as is the term *Roman Catholic and Apostolic Church*. In doing so, our fellow Justices who are part of the majority obviate in their analysis that the *Roman Catholic and Apostolic Church,* due to its function, purpose, and

idiosyncrasy requires being present in all corners of the globe. Its mission, like that of every church, is to expand in all the places in the world that allow it. From there stems the complexity that results from attempting to determine who, in controversies like those that occupy us today, and that occur in our jurisdiction, are the ones called to respond.

Therefore, in the present case before issuing any type of a determination—it was necessary to study in detail the organizational structure of the Catholic Church, in such a way that it could be determined, with particular precision, which of its entities truly have legal personality and, consequently, who are those parties truly called to respond to the group of teachers who initiated the captioned case. Given that a majority of this Court did not perform the aforementioned study—*and was much as we are facing a litigation that has all the necessary elements to be reviewed by the Court Supreme Court of the United States*—through this Dissenting Opinion, we proceed to do so. It is now up to the Federal Judicial High Court, if requested by the parties herein affected, to rectify the error committed by this Court, inasmuch as it is a matter of particular importance regarding the separation of Church and State. Let us see.

I.

The core events are not in dispute. On June 6, 2016, sixty-six (66) teachers from Academia Perpetuo Socorro (hereinafter, "plaintiff teachers") filed a preliminary and permanent injunction, for declaratory judgment, breach of contract, and torts against the *Roman Catholic and Apostolic Church* of Puerto Rico, the Archdiocese of San Juan, the Office of

the Superintendent of Catholic Schools of San Juan, Academia Perpetuo Socorro, and the Trust for the Pension Plan for Employees of Catholic Schools of San Juan (hereinafter, "Trust"). This, because the aforementioned Trust announced the cessation of the pension plan of which they have benefited for years.

Later, another group of teachers from Academia San José and Academia San Ignacio de Loyola presented similar complaints. Along with the complaint, the mentioned employees also requested a preliminary injunction and a seizure to secure the judgment. In particular, they claimed that the stoppage of payments caused them irreparable damage to their acquired rights and requested that the Court to order the continuation of the provision of the pension and the seizure of assets of the *Roman Catholic and Apostolic Church* up to the sum of $4,444,419.95, in order to secure the judgment that, in due time, could be issued by the primary court. As per its *Decision* on July 15, 2016, the Court of First Instance consolidated this case with the one originally filed by Academia Perpetuo Socorro.

Thus, having examined the parties' positions, the Court of First Instance denied the preliminary injunction requested. This determination was confirmed by the Court of Appeals, which motivated that the aforementioned dispute comes now before our consideration. On that occasion, by way of a Judgment of July 18, 2017, this Court ruled that the request for preliminary injunction filed by the requesting teachers should be granted. Thus, we ordered the Court of First Instance to hold a hearing to determine who was obligated to continue paying the pensions

that are the subject of this litigation. For this, the primary court should clarify who from the defendants had legal personality.

Under the order issued by this Court, the parties submitted several briefs before the Court of First Instance. The plaintiff-teachers claimed that Academia Perpetuo Socorro, Academia San José, and Academia San Ignacio de Loyola lacked legal personality because they were dependencies of the Archdiocese of San Juan, which also lacked legal personality. The latter is because the Archdiocese of San Juan is a subdivision of the *Roman Catholic and Apostolic Church,* which is the only institution with legal personality.

For its part, Academia Perpetuo Socorro stated that it had legal personality because it was registered as a non-profit corporation.

[1] The Trust, the Archdiocese of San Juan and the Office of the Superintendent of Catholic Schools of San Juan, although they filed several documents with the Court, at that stage of the proceedings, did not express any position concerning legal personality.

In its motion, the Trust informed that it had filed a petition for bankruptcy before the Bankruptcy Court for the District of Puerto Rico. The Archdiocese of San Juan and the Superintendent of Catholic Schools of San Juan, on the other hand, informed the primary court on the filing of a notice of removal to the United

---

[1] In addition, it stated that the Department of State had revoked its certificate of incorporation on May 4, 2014. However, it reinstalled its incorporation and reinstated its legal capacity to its original incorporation date, February 2, 1968.

States District Court for the District of Puerto Rico. This, for considering that the claim subject of the present litigation was related to the bankruptcy petition presented by the Trust.

Thus, having examined the documents filed by the parties, the Court of First Instance issued a *Partial Judgment*. In it, in view of the bankruptcy petition filed before the Bankruptcy Court for the District of Puerto Rico, it ordered the stay of the proceedings in this case and the administrative closure of the case without prejudice. However, the Bankruptcy Court for the District of Puerto Rico later dismissed the petition for bankruptcy.

Having learned of this, on March 16, 2018, the Archdiocese of San Juan and the Office of the Superintendent of Catholic Schools of San Juan presented before the District Court of the United States for the District of Puerto Rico a notice of withdrawal of its request for removal and, consequently, they requested that the case be remanded to the state court. This document was notified to all parties in the lawsuit.

Then, on March 19, 2018, the plaintiff-teachers filed an informative motion with the Court of First Instance in which they notified said court that the Archdiocese of San Juan and the Office of the Superintendent of Catholic Schools of San Juan had filed before the aforementioned federal entity a notice of withdrawal of the notice of removal. On the same day, the Court of First Instance issued an Order through the which it lifted the stay of the lawsuit because of the bankruptcy petition.

Subsequently, in compliance with the order issued by this Court, the Court of First Instance held an evidentiary hearing to determine if the *Roman Catholic and Apostolic Church*, the Archdiocese of San Juan, the Office of the Superintendent of Catholic Schools of San Juan, Academia Perpetuo Socorro, Academia San José, and Academia San Ignacio de Loyola had legal personality. Once the aforementioned evidentiary hearing was held, the primary court issued a *Decision* by way of which it determined that the Archdiocese of San Juan, the Office of the Superintendent of Catholic Schools of San Juan and the aforementioned Schools lacked legal personality. This, given that they are dependencies of the *Roman Catholic and Apostolic Church,* which has legal personality under the Treaty of Paris. Therefore, it ordered the *Roman Catholic and Apostolic Church* to pay the pension to the plaintiff-employees, according to the Pension Plan, while the present litigation is decided.

Unsatisfied with the aforementioned determination, the Archdiocese of San Juan and the Office of the Superintendent of Catholic Schools of San Juan presented, before the primary court, a *Motion regarding Nullity of the Decision and requesting adjudication of motion of dismissal for lack of jurisdiction*. In the same, it argued that the aforesaid *Decision* was issued without jurisdiction, since the United States District Court for the District of Puerto Rico had not issued an order remanding the case to the Court of First Instance. The primary court denied the referenced motion for dismissal.

Still unsatisfied, the Archdiocese of San Juan and the Office of the Superintendent of Catholic Schools of San Juan filed a motion for reconsideration and a motion to set the bond in accordance with the provisions of the Rule 56.3 of Civil Procedure, 32 LPRA App. V. R. 56.3. In opposition, plaintiff-teachers alleged that, by their actions, and by submitting a dispositive motion on February 13, 2018, the *Roman Catholic and Apostolic Church* voluntarily waived its notice of removal. They also requested that the *Roman Catholic and Apostolic Church,* Academia Perpetuo Socorro, Academia San José, and Academia San Ignacio de Loyola be prohibited from appearing separately by virtue of their being dependencies of the *Roman Catholic and Apostolic Church.* Finally, they requested the deposit of the Trust's remaining funds.

In view of the aforementioned documents, the Court of First Instance issued a Decision in which it ordered the *Roman Catholic and Apostolic Church* to deposit with the Court, in a term of twenty-four (24) hours, the sum of $ 4,700,000. In addition, it warned the *Roman Catholic and Apostolic Church* that if it failed to comply with the aforementioned order, it would proceed to seize its bank accounts.

In a timely manner, and in disagreement with the aforementioned Decisions issued by the primary court, the Archdiocese of San Juan appeared before the Court of Appeals through a *Motion aid of jurisdiction* and *Petition for Certiorari Review.* In its writ, the Archdiocese of San Juan alleged that the Court of First Instance erred: (1) in issuing a *Decision* when it lacked the jurisdiction to do so because, at that time, a notice of removal was pending to the United States

District Court for the District of Puerto Rico; (2) by not dismissing the claim under the *Foreign Sovereign Immunities Act* for lack of jurisdiction *over* the matter; (3) by not dismissing the claim for lack of jurisdiction over the person of the *Roman Catholic and Apostolic Church;* (4) having issued a preliminary injunction without imposing a bond pursuant to Rule 57.4 of Civil Procedure, 32 LPRA App. V, R. 57.4; (5) when adjudicating that the Archdiocese of San Juan had no legal personality independently from the *Roman Catholic and Apostolic Church;* (6) by determining that Academia Perpetuo Socorro had legal personality; and, (7) in ordering the deposit of 4.7 million dollars, which amounts to a permanent injunction, without the holding of a hearing and/or the presentation of evidence of such amounts.

Having studied the briefs from all of the parties, the Court of Appeals issued a Judgment. In so doing, it ruled, firstly, that although a motion for removal to the United States District Court for the District of Puerto Rico, which was subsequently dismissed, at the time when the Court of First Instance issued the Decision under review, the conduct deployed by the Archdiocese of San Juan and the Office of the Superintendent of the Catholic Schools of San Juan, who had requested the removal, reflect that they waived the remedy of removal to the federal court. Therefore, in the judgment of the Court of Appeal, the primary court did not lack the jurisdiction to issue the Decision in dispute.

Regarding the claim of lack of subject matter jurisdiction, the intermediate appellate court determined that it was not applicable, since it was

evident that the claim filed by the plaintiff-teachers was addressed to the *Roman Catholic and Apostolic Church* for actions allegedly incurred by it in Puerto Rico.

In view of the above, under the Treaty of Paris and the Code of Canon Law, the Court of Appeals determined that the *Roman Catholic Apostolic Church* lacked legal personality. However, said court held that within the organizational structure of the Church, dioceses, parishes, religious orders, among other organizations, did have legal personality. The Court of Appeals ruled that this, in part, was due to the fact that in Puerto Rico there was no greater structure grouping all the dioceses under a single authority. Each diocese represented, autonomously, the *Roman Catholic Apostolic Church* in their respective circumscription.

Furthermore, the Court of Appeals decided that the Archdiocese of San Juan, like all dioceses in Puerto Rico, had legal personality. This, because the level of authority of an Archdiocese is the same as that of any diocese. The difference lies, as the intermediate appellate court illustrates, that an Archdiocese is denominated in such way for being a diocese of greater size and population.

As for Academia del Perpetuo Socorro, the Court of Appeals reasoned that it was a [parochial] school attached to the Parish of Nuestra Senora del Perpetuo Socorro; thus, it was covered by the legal personality of the Parish. This was so, notwithstanding the fact that Academia del Perpetuo Socorro was registered as a non-profit corporation, under Art. 9.08 of the Corporations Act, 14 LPRA sec. 3708.

Likewise, the intermediate appellate court ruled that Academia San José, being a parochial school, was attached to the San José Parish, for which reason it was covered under the legal personality of the aforementioned Parish.

Now, in regard to Academia San Ignacio de Loyola, the Court of Appeals determined that it was a school attached to the Orden de la Compañía de Jesús en Puerto Rico, Inc. [Society of Jesus Order in Puerto Rico, Inc.], better known as the Jesuit Order. The latter had legal personality in accordance with the provisions of the Treaty of Paris, thus, in the judgment of the Court of Appeals, the aforementioned school was covered by the legal personality of the Orden de la Compañía de Jesús en Puerto Rico, Inc.

Furthermore, with regard to the remedy granted under Rule 57.4 of Civil Procedure, supra, the preliminary injunction and the law on obligations and contracts, the intermediate appellate court reasoned that the obligation of employers—meaning the Archdiocese of San Juan, the Office of the Superintendent of Catholic Schools of San Juan, Academia del Perpetuo Socorro, Academia San José, and Academia San Ignacio de Loyola—was implemented under the figure of the Trust. This being so, pension payment directly to the plaintiffs cannot be ascribed to them through the provisional remedy of the preliminary injunction. The remedy was only appropriate against those to whom the law assigned that obligation. Thus, the Court of Appeals determined that what was required was to order the participating employers to continue making the contributions to which they were committed by virtue

of the Pension Plan agreement. In the opinion of the intermediate appellate court, said sums of money must be deposited in the court due to the state of insolvency of the Trust. From this fund, plaintiff teachers could continue to receive their retirement pension payments.[2]

Lastly, with regard to the imposition of a bond in accordance with the provisions of Rule 56.3 of Civil Procedure, supra, the Court of Appeals determined that the Court of First Instance incorrectly applied the aforementioned Rule. The intermediate appellate court reasoned that the exception provided by subsection (c) of Rule 56.3 of Civil Procedure, supra, is applicable when granting a remedy to secure judgment, not when granting a preliminary injunction, and it only proceeded once a final judgment was issued. As the aforementioned Decision is considered an interlocutory decision, in words of the intermediate appellate court, the authorization of the extraordinary remedy without bond was incorrect.

Unsatisfied with the determination of the Court of Appeals, on May 14, 2018 the plaintiff teachers, beneficiaries of the Pension Plan, appealed to us by way of a *Motion in aid of jurisdiction and/or petition* to *expedite proceedings and petition for writ of*

---

[2] In the particular instance of Academia San Ignacio de Loyola and Academia San José, as they do not have individual legal personality, but through their parishes, they cannot be forced to comply with the provisional remedy. Said obligation would lie on the San José Parish and the Orden de la Compañía de Jesús en Puerto Rico, Inc., but these have not been brought to litigation. These are indispensable parties without which a remedy cannot be issued for claimants.

certiorari. In those briefs, in essence, they argued that the intermediate appellate court erred in revoking the decision of the Court of First Instance. In particular, they argued that the Court of Appeals erred by ruling that the *Roman Catholic Apostolic Church* had no legal personality; by modifying the provisional remedy in assurance of judgment; and by setting aside the granting of the remedy without posting a bond.

However, on May 22, 2018 the Trust appeared before us through an informative motion in which it indicated that Academia del Perpetuo Socorro had opportunely submitted a motion for reconsideration before the Court of Appeals on May 18, 2018, read as four (4) days after the filing of the *Motion in aid of jurisdiction and/or petition* to *expedite procedure* before this Court, which deprived this Court of jurisdiction to hear the above-captioned case. Having examined said brief, this Court granted all parties in litigation one (1) day to express themselves on the aforementioned informative motion, specifically on whether or not to dismiss the appeal before our consideration because it was premature.

Having received the appearances of all parties, a majority of this Court determined that the notification of the aforementioned motion of reconsideration to the beneficiaries of the Pension Plan was incorrect because it had been sent to an email address of the plaintiff teachers' attorneys, different from the one provided in the Attorney Registry of the Supreme Court, for which reason it was deemed as not submitted. Thus, *the Motion in aid of jurisdiction and/or petition* to *expedite proceedings and petition for writ of certiorari was granted,* and respondents

were granted a term of ten (10) days to show cause for which this Court should not revoke the judgment issued by the Court of Appeals.[3]

Complying with what was ordered, all parties appeared before us. With the benefit of the aforementioned appearances, a majority of this Court—in an erroneous and hasty manner—reversed the judgment issued by the intermediate appellate

---

[3] We dissent from this course of action and consign the following expressions:

> Associate Justice Colón Pérez dissents from the course of action followed by a majority of this Court in this case, and reiterates that, as a matter of law, the above-captioned case should be dismissed without further ado. This, given that he is of the opinion that, analogously to the decision of this Court in Municipality of *Rincon v. Velazquez Muniz,* 192 DPR 989 (2015), we must afford deference to the intermediate appellate court to examine and rule on the motion for reconsideration that it currently has before its consideration, which was opportunely filed by Academia Perpetuo Socorro Inc., one of the parties in the lawsuit. **This includes, among other things, determining whether the aforementioned motion for reconsideration was submitted and notified appropriately to all parties involved in the present case.**
>
> In his opinion, the mere filing of a motion in aid of jurisdiction before this Court, ***which has not been addressed***, does not deprive the Court of Appeals of jurisdiction to address a motion for reconsideration that has been opportunely filed, and, consequently, to render judgment on the correctness of such, as well as its previous opinion. As a matter of fact, on May 22, 2018 the intermediate appellate court—meaning on the motion for reconsideration in question—ordered the parties to express themselves about it.

court and rules that the *Roman Catholic Apostolic Church* has legal personality and, therefore, is the one liable to the teachers that today come before us. From that regrettable proceeding, as we mentioned earlier, we dissent. We will explain.

II.

A. Jurisdiction

As is well known, jurisdiction is the authority that a court has to adjudicate cases and disputes before its consideration. See, Rule 3.1 of Civil Procedure, 32 LPRA Ap. V., R. 3.1. It is a repeated standard that the courts must be zealous guardians of the exercise of our jurisdiction and that, in order to validly exercise this, we must have jurisdiction over the subject matter and over the persons involved in the litigation. *Office of Monopolistic Affairs of the Department of Justice v. Jiménez Galarza,* 2017 TSPR 194, DPR (2017); *Medina Garay v. Medina Garay,* 161 DPR 806, 817 (2004); *Shuler v. Schuler,* 157 DPR 707, 718 (2002). *A ruling without jurisdiction over the person or the subject matter is null and void. Constructora Estelar, S.E. v. Pub. Bldg. Auth.,* 183 DPR 1, 22-23 (2011); *Vázquez v. López,* 160 DPR 714 (2003); *Bco. Santander PR v. Fajardo Farms Corp.,* 141 DPR 237, 244 (1996); *Vázquez v. ARPE,* 128 DPR 513, 537 (1991).

Thus, when its jurisdiction is questioned, it is the duty of every court to examine and rigorously evaluate the statement, since it directly affects the power to adjudicate a dispute. With regard to such, it should be remembered here that courts have no discretion to assume jurisdiction where there is none. See *Virella v. Proc. Esp. Rel. Fam.,* 154 DPR 742, 759 (2001);

Maldonado v. Pichardo, 104 DPR 778, 782 (1976); *Martínez v. Planning Board,* 109 DPR 839, 842 (1980).

In this regard, we have repeatedly stated that, as a general rule, a court has jurisdiction over any person who is domiciled within the geographical limits of Puerto Rico. 32 LPRA App. V, R. 3.1 However, we have recognized, as an exception to the aforementioned rule, that courts may have jurisdiction over persons absent within territorial limits if they voluntarily submit to their jurisdiction · through a substantial act that integrates them into the litigation or if they have minimal contacts with the court. *Shuler v. Schuler,* supra, p. 719; *Qume Caribe, Inc. v. Sec. of Treasury,* 153 DPR 700, 711 (2001); *Márquez v. Barreto,* 143 DPR 137, 143 (1997).

As is known, the mechanism to acquire jurisdiction over the defendant is the summons. This mechanism, provided by Rule 4 of Civil Procedure, 32 LPRA Ap. V, R. 4, is the procedural means through which the Court acquires jurisdiction over the person, because through it the defendant is notified of the intention to start a legal action against them. *Torres Zayas v. Montano Gómez,* 2017 TSPR 202, __ DPR __, (2017); *Rivera Báez v. Jaume,* 157 DPR 562, 575 (2002); *Medina Garay v. Medina Garay,* supra, p. 818. Failure to complete the service process, in accordance with the provisions of Rule 4 of Civil Procedure, supra,—either personally or by edict—deprives the Court of jurisdiction over the defendant. Rivera *Hernández v. Comtec. Comm.,* 171 DPR 695, 714 (2007); *Medina Garay v. Medina Garay,* supra, p. 818. p. 818. Hence the need to strictly comply with all the requirements for the summons provided by the

aforementioned Rule, because it is in this manner, and only in this manner, that the Court may acquire jurisdiction over the parties in the lawsuit. *Quiñones Román* v. *CIA ABC,* 152 DPR 367, 374 (2000); *Chase Manhattan Bank v. Polanco Martínez,* 131 DPR 530, 535 (1992); *Medina Garay v. Medina Garay,* supra, p. 819.

B. The parties

As we have stated on previous occasions, the concept of party is linked to jurisdiction over the person. Consistent with this, we have ruled that the plaintiff submits voluntarily to the jurisdiction of the court with the filing of the complaint and the defendant is brought to the court by a proper summons. *Sánchez Rivera v. Malavé Rivera*, 192 DPR 854, 872-873 (2015); *Acosta v. ABC, Inc.*, 142 DPR 927 (1997); *Rivera v. Jaume*, supra, p. 575.

Now, in addition to the foregoing, in order for a lawsuit to be properly processed, both the plaintiff and the defendant must have legal personality. This concept includes the *capacity to act* and *legal personality*. See, R. Hernández Colón, Práctica Jurídica de Puerto Rico: Derecho Procesal Civil, 6ta ed., San Juan, LexisNexis de Puerto Rico, 2007, sec. 1101, p. 144.

The capacity to act is the power of a person to govern their own rights and obligations. *Alvareztorre Muñiz v. Sorani Jiménez,* 175 DPR 398, 418 (2009); *Asoc. de Res. Est. Cidra v. Future Dev.,* 152 DPR 54, 67 (2000); *Laureano Pérez v. Soto,* 141 DPR 77, 89 (1996). Thus, a person who lacks the capacity to act does not have the capacity to appear in a trial. *Id.*

Furthermore, legal personality is the capacity of being a subject of rights and obligations. *Alvareztorre Muñiz v. Sorani Jiménez, supra,* p. 418; *Asoc. de Res. Est. Cidra v. Future Dev.,* supra, p. 66; *Laureano Pérez v. Soto,* supra, p. 89. In this regard, in the past we have ruled that the capacity to be part of a lawsuit is a manifestation of legal personality. *Alvareztorre Muñiz v. Sorani Jiménez, supra,* p. 418; *Asoc. de Res. Est. Cidra v. Future Dev.,* supra, p. 66; *Laureano Pérez v. Soto*, supra, p. 89.

In the case of corporations established in our country, it should be remembered here that our legal system recognizes legal personality under the provisions of the General Corporations Act of Puerto Rico, 14 LPRA sec. 3501 et *seq*. In this regard, Article 29 of the Civil Code establishes that "the civil capacity of corporations, companies and associations shall be regulated by the laws that have recognized or created them." 31 LPRA, sec. 103. This recognition of legal personality allows these entities to "acquire and possess assets of all kinds, as well as contract obligations and exercise civil or criminal actions, in accordance with the laws and rules of their constitution." 31 LPRA sec. 104.

Finally, and in relation to corporations or non-profit organizations, it should be noted that once they are recognized as such, by issuing a certificate of incorporation, they also enjoy legal personality and, among other things, they can sue and be sued. 14 LPRA sec. 3505. Once the non-profit organization is incorporated, the partners or shareholders do not respond in their personal capacity for its actions.

C. **Indispensable Parties**

Having established the above, it is necessary to add to our analysis the expressions of this Court that, by virtue of the constitutional protection that prevents any person from being deprived of their property or their freedom without due process of law, it is required of any plaintiff, when filing any judicial claim, to include in it all the parties that could be affected by the holding that, eventually, could be issued by the judicial court. *Bonilla Ramos v. Dávila Medina*, 185 DPR 667 (2012); *Sánchez v. Sánchez*, 154 DPR 645 (2001); *Cepeda Torres v. García Ortiz*, 132 DPR 698 (1993).

Related to the foregoing, Rule 16.1 of Civil Procedure requires that "persons that have a common interest without whose presence the dispute may not be adjudicated, are [made] parties and are [joined] as plaintiffs or defendants, as it corresponds. When a person that should be joined as a plaintiff refuses to do so, it may be joined as a defendant." 32 LPRA Ap. V., R. 16.1.

In this sense, as we have indicated, a party is considered indispensable whenever it cannot be left out, because the adjudication without its presence entails that the issues in litigation cannot be decided correctly, as its rights would be affected. López García v. López García, 2018 TSPR 57,__ DRP __ (2018); *Deliz* et *als. v. Igartúa* et *als.,* 158 DPR 403, 432 (2003); *Cepeda Torres v. García Ortiz,* 132 DPR 698, 704 (1993). That is, "the absent third party [has] an interest in the case that converts its presence into an indispensable requirement to impart complete justice or of such order that it prevents the making of a decree

without affecting it." *Hernández Colón, op. cit.,* p. 166. This interest is not any interest in the case, but it has to be one that is real and immediate, of such a nature that, without its presence, it prevents the design of an adequate remedy. *López García v. López García, supra; Romero v. S.L.G.,* 164 DPR 721, 733 (2005); *Pérez v. Morales Rosado* 172 DPR 216, 223 (2007); *See also,* J.A. Cuevas Segarra, *Tratado de Derecho Procesal Civil* ["Treatise on Civil Procedural Law"], San Juan, J.T.S. Pubs., 2001, T. II, p. 691; Hernández Colón, *op. cit.,* p. 166.

Notwithstanding, the determination of whether the joining of an indispensable party is proper depends on the particular circumstances that are presented in each case. *Romero v. S.L.G., supra,* pg. 732. Therefore, the court must perform a careful analysis of several factors such as the time, place, manner, the allegations, evidence, type of rights, interests in dispute, result, and formality. Cuevas Segarra, *op. cit.,* p. 695.

Finally, it should be noted that, the lack of an indispensable party constitutes a renounceable defense that may be presented at any time during the process. Even the appellate fora may and should raise motu proprio*, the lack of an indispensable party in a case since this affects the jurisdiction of the court. García Colón v. Sucn. González,* 178 DPR 527 (2010); *López García v. López García, supra; Romero v. S.L.G., supra. For this reason, the judgment that is issued in absence of an indispensable party is null and void. López García v. López García, supra; García Colón v. Sucn. González, supra; Unisys Puerto Rico, Inc. V. Ramallo Bros. Printing, Inc.,* 128 DPR 842, 859 (1991).

Having said this, we must examine whether the *Roman Catholic and Apostolic Church* is a legal entity and, therefore, if it is a party in this case or not. We proceed to do so.

D. The Roman Catholic and Apostolic Church

1.

As it is known, the *Roman Catholic and Apostolic Church* is catholic because it is universal, it extends throughout the world and it is apostolic because it is missionary, "announces the Gospel to all men and all women." *See* Pope Francis, General Assembly of Wednesday, September 17, 2014.[4] "The Church does not close, it is sent to the whole world, to all humanity." *Id.* By virtue of its universality, it has been spread to all corners of the globe, including Puerto Rico.

In our case, the *Roman Catholic and Apostolic Church,* Puerto Rico Diocese, was created back in 1511, through the *Romanus Pontifex* Bull, in which the founding of three dioceses were authorized for the Spanish colonies at the time, including Puerto Rico. E.D. Dussel, *General History of the Church in Latin America,* CEHILA Ed., 1995, T. IV., p. 43. According to history, and as a consequence of the population increase at the end of the century, by the XVIII Century the Diocese of Puerto Rico had undergone several changes. José Manuel García Leduc, *¡La Pesada Carga! Iglesia, Clero y Sociedad en Puerto Rico*

---

[4] Pope Francis, General Assembly of September 17, 2014, https://w2.vatican.va/content/francesco/es/audiences/2014/documents/papa-francesco_20140917_udienza-generale.html (last visit, June 6, 2018).

(S. XIX) Aspectos de su Historia ["The Heavy Burden! Church, Clergy, and Society in Puerto Rico (19th C.) Aspects of their History"], Ed. Puerto, 2009. These changes had significant effects over the configuration of the Church, but they did not require a new diocese to be erected. The changes were limited to the creation of new parishes. *Id.,* p. 28.

Years later, as a result of the Spanish-American War, the treatment of the *Roman Catholic and Apostolic Church* substantially changed. This, then, with the transfer of Puerto Rico to the United States, the United States constitutional doctrines of separation of Church and State and religious liberty were instituted, which had the effect that, since that time, the Diocese of Puerto Rico did not have the protection of the civil authorities as it had under the Spanish crown. *See* Aníbal Colón Rosado, *Relations Between Church and Puerto Rico,* 42 Rev. C. Abo. PR 51, 51-52 (1985); J. Gelpí Barrios, *Personalidad Jurídica de la Iglesia Católica en Puerto Rico,* 95 Rev. Esp. Der. Canónico 395, 411 (1977).

The above caused, eventually, a dispute to be presented to the United States Supreme Court regarding the capacity of the Diocese of Puerto Rico to possess property. Upon evaluating the dispute, in *Municipality of Ponce v. Roman Catholic Apostolic Church in Porto Rico,* 210 US 296 (1908), the High Federal Judicial Court, under the Treaty of Paris of December 10, 1898 , recognized legal personality to the *Roman Catholic and Apostolic Church,* Diocese of Puerto Rico, to perform certain actions. In order to support its decision, the United States Supreme

Court · made reference to Art. 8 of the Treaty of Paris which, in essence, provides the following:

> [I]t is hereby declared that the relinquishment or cession, as the case may be, to which the preceding paragraph refers, cannot in any respect impair the properly of all kinds, of provinces, municipalities, public or private establishments, *ecclesiastical or civic bodies, or any other associations having legal personality to acquire and possess property in the aforesaid territories renounced or ceded*, or of private individuals, of whatever nationality such individuals may be. Treaty of Paris, Art. 8, par. 2 (1898).

Thus, the High Federal Judicial Court interpreted that the ecclesiastical body to which the Treaty of Paris referred could only be the *Roman Catholic and Apostolic Church,* that is, the Diocese of Puerto Rico.[5]

---

[5] Similarly, in that case the High Court of the United States recognized that what the Treaty of Paris did was to follow the rule regarding the recognition of legal capacity to the *Roman Catholic and Apostolic Church* in International Law, by virtue of the Concordat of March 16, 1851. In this regard, the United States Supreme Court indicated that:

> The Roman Catholic Church has been recognized as possessing legal personality by the treaty of Paris, and its property rights solemnly safeguarded. In *so doing the treaty has merely followed the recognized rule of international law which would have protected the property of the church in Porto Rico subsequent to the cession.* This juristic personality and the church's ownership of property had been recognized in the most formal way by the *concordats* between Spain and the papacy, and by the Spanish laws from the beginning of settlements in the Indies. Such recognition has also

Id. P. 31; José Johel Monge Gómez, *La Permisibilidad de los "Impermisible"; La Iglesia Sobre El Estado*, 41 Rev. Jur. U.I.P.R. 629, 633-43 (2007).

Notwithstanding, the truth is that, since then, the organizational structure of the *Roman Catholic and Apostolic Church* in the Country has changed. The Diocese of Puerto Rico, from being only one, converted into six (6) Dioceses, namely: the Archdiocese of San Juan, the Diocese of Arecibo, the Diocese of Ponce, the Diocese of Mayagüez, the Diocese of Fajardo-Humacao and the Diocese of Caguas. In this respect, the Bishop of Ponce in 1973, Fremiot Torres Oliver, explained:

> *At the time of the cession only one diocese existed in Puerto Rico. At present there are*

---

been accorded the church by all systems of European law from the fourth century of the Christian era. *Ponce v. Roman Catholic Apostolic Church, supra,* 323-24.

Notwithstanding, regarding the legal personality of the *Roman Catholic and Apostolic Church,* the Concordat of 1851 established that:

> [T]he Church would have the right to acquire, through any legitimate title, and its property in all that it possesses now or acquires in the future, to be solemnly respected. Therefore, regarding the old and new ecclesiastical foundations, there shall be no suppression or union without the intervention of the Holy See, except for the faculties that are reserved for the bishops, as set forth in the holy council of Trent. Concordat of March 16, 1851, Art. 41.

In addition, Art. 43 of the Concordat of 1851 established that "[e]verything else that belongs to ecclesiastical people or things, over which the articles above provide, will be directed and administered according to the Church's discipline that is canonically in effect," that is, the Canon Law Code.

> *five: the archdiocese of San Juan and the dioceses of Ponce, Arecibo, Caguas and Mayaguez. Each diocese is a fragmentation of some entity possessing juristic personality and each enjoys the same legal status as the original Diocese of Puerto Rico, referred to in [Municipality of Ponce v. Catholic Church in Puerto Rico] opinion as ((The Roman Catholic Church in Puerto Rico)).* Rev. F. Torres Oliver, *Juridical Personality of the Church in Puerto Rico,* 15 Rev. Der. P.R. 307, 308 (1975).[6]

Stated another way, the Diocese of Puerto Rico—which in *Municipality of Ponce v. Catholic Church of Puerto Rico, supra,* is referred to as the *Roman Catholic and Apostolic Church* and, as such, was recognized legal personality—has ceased to exist. It has been divided into one archdiocese and five (5) different dioceses, for a total of six (6), and to each corresponds a part of what was the original Diocese of Puerto Rico. Therefore, each Diocese and the Archdiocese have their own legal personality, as was recognized to the original Diocese.[7]

---

[6] At the time that the cited article was drafted for the Law Review, the Diocese of Fajardo-Humacao which we include in our analysis did not yet exist.

[7] This is clearly stated in the article *Personalidad Jurídica de la Iglesia Católica en Puerto Rico*, by Juan Gelpí Barrios. Specifically, Mr. Gelpí Barrios expresses in his article as follows:

> Each diocese is a fragment of one entity which possesses legal personality. Each one of them enjoys the same legal status corresponding to the original

2.

In accordance with this interpretation, the Code of Canon Law—which establishes the internal structure of the Roman Catholic and Apostolic Church—provides that each Separate Church, that is, the archdioceses, the dioceses, and the parishes, are the entities that, within the organizational scheme of the Church, truly have legal personality.

Thus, the Code of Canon Law states that, "The Catholic Church and the Apostolic See have the character of a moral person by divine ordinance itself." Code of Canon Law, Canon 113 sec. 1. However, although the Church *is a moral entity,* that is abstract and intangible, in said Code it clearly states that "[i]n the Church, besides physical persons, there are also juridic persons, that is, subjects in canon law of obligations and rights which correspond to their nature." Code of Canon Law, Canon 113 sec. 2. *That is, the Roman Catholic Apostolic Church, as a whole, is not a legal person, but within it there exist legal personalities.*

On this subject, Canon 116 of the Code of Canon Law, in its section 1, establishes that:

> Public juridic persons are aggregates of persons or of things which are constituted by competent ecclesiastical authority so that, within the purposes set out for them, they fulfill in the name of the Church, according to the norm of the prescripts of the law, the

---

diocese of Puerto Rico, that is, the Roman Catholic Church of Puerto Rico. Gelpí Barrios, *supra,* p. 410.

This last fact is omitted in the Opinion issued today by the Court.

> proper function entrusted to them in view of the public good; other juridic persons are private. Code of Canon Law, Canon 116, sec. 1.

In this sense, it is through the Particular Churches that are mainly dioceses and parishes that the Catholic Church exists. Code of Canon Law, Canon 368. "A diocese is a portion of the people of God which is entrusted to a bishop for him to shepherd with the cooperation of the presbyterium, so that, adhering to its pastor and gathered by him in the Holy Spirit through the gospel and the Eucharist, it constitutes a particular church … " *Id.* Canon 369. That "portion of the people of God" which constitutes a dioceses is circumscribed within a specific territory. *id.* Canon 369. The Diocesan Bishop is the one who governs the Particular Church and is the one who represents the diocese in all its legal business. Code of Canon Law, Canon 393. The foregoing also includes the Archdiocese, which is so called because it is the diocese with the largest population within certain geographic limits.

That said, the archdioceses do not have a higher rank than the other dioceses. As we already mentioned, an archdiocese is a diocese circumscribed to a territory with a larger population. Thus, the Archbishop is the Bishop of the Archdiocese. He has no greater authority than a Diocesan Bishop. See, Code of Canon Law, Canon 435-438.

On the other hand, it is worth mentioning here that, *if necessary,"… particular churches distinguished by the rite of the faithful or some other similar reason can be erected in the same territory."*

Code of Canon Law, Canon 372." It is only for the supreme authority to erect particular churches; those legitimately erected possess juridic personality by the law itself." Canon 373. *That is, within the territory of the dioceses they can set up other Particular Churches, that is, parishes, and these will also enjoy legal personality*. Canon 513 [sic] of the Code of Canon Law so expressly states: "the parish legitimately erected has legal personality under the law itself."

In turn, religious orders may also be erected *and other organizations,* which the Code of Canon Law names as religious institutes. "Institutes, provinces and houses, as juridical persons that in their own right, have the capacity to *acquire, possess, administer and dispose of temporal goods, unless this capacity is excluded or limited by their constitutions". Code of Canon Law, Canon 634 sec. l. Among these Religious institutes are those whose purpose is education, that is, Catholic schools*. "is understood as one which a competent ecclesiastical authority or a public ecclesiastical juridic person directs … ". Code of Canon Law, Canon 803 sec. 1.

On the other hand, it is necessary to clarify that, as a general rule, in Europe, as in the United States, there is legislation that facilitates the freedom of worship and that simultaneously recognizes legal personality to religious entities according to their internal structure. *See Facilitating Freedom of Religion* or *Belief: A Deskbook* (T. Lindholm et al., Ed.), New York, 2004. In particular, regarding the Catholic, Apostolic and Roman Church, as a general proposition, one can adopt one of two postures: (1) recognize the legal personality by virtue of Civil

Law through legislation or (2) recognize civil effectiveness to the ecclesiastical juridical persons under the auspices of canonical legislation. Lourdes Ruano Espina, *The legal juridical personality of the canonical foundations in Spain*, 15 Ius Canonicum 155, 157 (2015). As to the latter, the recognition of civil effectiveness of juridic persons formulated by the Roman Catholic Apostolic Church is, in our opinion, more in accordance with and respectful of the freedom of worship. *Id.* That is why we understand that, when speaking of legal personality, one must follow the guidelines set forth in the Code of Canon Law. To interpret otherwise, is an undue intervention into how the Roman Catholic Apostolic Church is structured, and on how it is organized for decision making.

A. The Establishment Clause and the Freedom of Worship

Recall that the First Amendment of the Constitution of the United States prohibits the establishment of religion by the State and guarantees freedom of worship. Am. I. USA Const., LPRA, Volume 1. Likewise, the Constitution of the Commonwealth of Puerto Rico establishes that "no law shall be passed relative to the establishment of any religion, nor shall the free exercise of the worship be prohibited, there shall be complete separation of Church and State." Art. II, Sec. 3, Const. ELA., LPRA, Volume 1. In accordance with the above, in our jurisdiction, the State is prohibited from engaging in activities that constitute the patronage of a religion, including providing financial support to a religious entity or intervening in its religious activities. *Díaz v. Colegio Nuestra Señora del Pilar*, 123 DPR 765, 780 (1989);

Board of Educ. Of Kiryas Joel v. Tax Comm'n of City of New York 397 US 664, 673 (1970). For an intervention with the establishment clause to be considered valid, it must pass the following scrutiny: (1) that the challenged conduct or law have a secular purpose; (2) that its primary effect is not to promote or inhibit religion; (3) that does not entail the possibility of provoking excessive government interference in religious affairs. *Colegio Nuestra Sra. Del Pilar, supra; Lemon v. Kurtzman,* 403 US 602 (1971). *See also Diocese of Arecibo v. Sec. Justice,* 191 DPR 292, 311 (2014).

Now, the right to freedom of worship is not an absolute right. Religious freedom is limited by the power of the State to protect the peace, morality, and public order. *Market, Quilichini v. UCPR,* 143 DPR 610, 636, (1997); *Suen de Victoria v. Pentecostal Church,* 102 DPR 20, 22 (1974). *See also Diocese of Arecibo v. Sec. Justice, supra,* p. 365. In those cases, in which the State, with its conduct, tends to limit the freedom of worship, the party that challenges the State's action has the obligation to demonstrate that it imposes a substantial burden on the exercise of the freedom of worship. *Christian Sch. And Acad. Assoc. v. Commonwealth,* 135 DPR 150, 161 (1994); *Díaz v. Colegio Nuestra Señora del Pilar,* supra, p. 779. *See also Diocese of Arecibo v. Sec. Justice, supra,* p. 309. This implies, among other things, demonstrating that the Government action is not general, because it is directed solely to the religious entity and its internal affairs. *See Díaz v. Colegio Nuestra Sra. Del Pilar, supra; Christian Sch. And Acad. Assoc. v. Commonwealth, supra; Market, Quilichini v. U.C.P.R., supra.* Once the party challenging the

State's action proves that the conduct is not neutral, the court must examine whether it exceeds strict scrutiny. In that sense, the Court must determine whether (1) the State has an urgent interest; (2) the action of the State is aimed at that interest, and (3) there are no less onerous alternatives to achieve said interest. *Market, Quilichini v. U.C.P.R., supra. See also*, *Lozada Tirado v. Jehovah's Witnesses*, 177 DPR 893 (2010) *Diocese of Arecibo v. Sec. Justice, supra*, p. 310.

Consistent with the foregoing, in *Díaz v. Colegio Nuestra Señora del Pilar, supra,* we interpret that the courts cannot exercise their jurisdiction to resolve disputes over property rights related to a church when, in order to do so, they have to render judgment on matters of doctrine, of discipline, faith, or internal church organization. This, because it requires the interference by the State, through the courts, in matters relating to the nucleus of religion itself. That is, matters totally outside the jurisdiction of the courts. *Díaz v. Colegio Nuestra Sra. del Pilar, supra; Amador v. Conc. Igl. Unvi. De Jesucristo,* 150 DPR 571, 579-80 (2000). *See also, Agostini Pascual v. Catholic Church,* 109 DPR 172 (1979); *Jones v. Wolf,* 443 US 595, 604 (1979).

Therefore, in the exercise of our adjudicating faculty, and at the time of rendering judgment on matters such as the ones that today occupy us, "we must be particularly cautious [...] to avoid spoiling the delicate equilibrium between the two conflicting absolute mandates: the one not to establish any one religion and the one of not prohibit the free exercise of the religious cult." *Díaz v. Colegio Nuestra Sra. del*

Pilar, supra, p. 776. *See also Mercado, Quilichini v. U.C.P.R., supra,* p. 638.

It is, then, in light of the aforementioned norm, that we proceed to dispose of the disputes brought before our consideration.

III.

As we mentioned earlier, in the present case, a group of teachers of the Catholic schools of the country presented a preliminary and permanent injunction, declaratory judgment, breach of contract, tort action against the *Roman Catholic and Apostolic Church*, the Archdiocese of San Juan, the Office of the Superintendent of Catholic Schools of San Juan, Academia Perpetuo Socorro, Academia San José, and Academia San Ignacio de Loyola.

After several procedural steps, which at the beginning of this writing were narrated in detail, this Court determined that the preliminary injunction proceeded in favor of the plaintiff-teachers. However, the primary court should clarify who, of the defendants, had legal personality to respond to them.

In accordance with the order, the Court of First Instance ruled that the Archdiocese of San Juan, the dioceses, the schools, and the Office of the Superintendent of Catholic Schools of San Juan lacked legal personality to be part of the present litigation. This, since they were dependencies of the *Roman Catholic and Apostolic Church,* which, in its opinion, and by virtue of the Treaty of Paris, was the one that had legal personality to be sued. Thus, the primary court ordered that the *Roman Catholic and Apostolic Church,* make the pension payments to the plaintiffs,

according to the Pension Plan, while the lawsuit remained pending.

Dissatisfied with the ruling of the Court of First Instance, the Archdiocese of San Juan and the Office of the Superintendent of Catholic Schools of San Juan filed a writ of certiorari before the Court of Appeals. Said court, in our opinion, correctly revoked the Court of First Instance and determined that, under the Treaty of Paris and the Code of Canon Law, the *Roman Catholic and Apostolic Church* lack legal personality. However, the Court of Appeal ruled that under the organizational structure of the Church the dioceses, parishes, and religious ordinances, among other organizations, did have legal personality.

With regard to the Archdiocese of San Juan, the intermediate appellate court clarified that it also had legal personality as did all dioceses in Puerto Rico. As for Academia Perpetuo Socorro, it concluded that it also had a legal personality, since it is incorporated pursuant to the provisions of the Corporations Act, *supra.*

Now, with regard to the referenced Academia San José and Academia San Ignacio de Loyola, it maintained that they lacked legal personality. However, said court ruled that the first was covered by the legal personality of the San José Parish—who is not a party to this lawsuit, nor has it been brought to it—as a parochial school and the second was attached to the "Compañía de Jesús en Puerto Rico, Inc.,"—who is not part of this lawsuit and it has not been brought to it either, so it was covered by the legal personality of this religious institution.

Lastly, about the provisional remedy requested by the plaintiffs-teachers, the Court of Appeals reasoned that only the Trust was called to respond directly to the beneficiaries of the Pension Plan with the assets that remained. However, the Archdiocese of San Juan, the Dioceses, parishes, and Catholic schools, which were employers, were only required to contribute to the Plan.

Regarding the imposition of the remedy without filing of a bond, as mentioned above, the intermediate appellate court ruled that it was contrary to what is required by Rule 56.3 of Civil Procedure, *supra,* so it left it without effect.

Dissatisfied with this determination, plaintiffs-employees appeared before us by means of a *Motion for aid of jurisdiction and/or Request for expedited processing,* and *Petition of Certiorari Review.* As such, after evaluating all of the parties' positions, a majority of this Court revokes the judgment issued by the intermediate appellate court and rules that the *Roman Catholic and Apostolic Church* has legal personality and, therefore, is the one called to respond to the group of teachers of the Catholic schools who presented the lawsuit that concerns us today. As we have already said, we strongly disagree with that course of action.

And the fact of the matter is that, as we advance in the introduction of this Dissenting Opinion, we will not validate with our vote a superficial opinion, lacking an in-depth analysis of the various dimensions of the controversies before our consideration, in which a majority of this Court, contrary to the aforementioned standard, chooses to recognize the

legal personality of an abstract concept of universal character as is the term *Roman Catholic and Apostolic Church.*[8]

As has been clearly demonstrated, the Roman Catholic and Apostolic Church *has no legal personality. The legal personality that today a majority of this Court erroneously grants to the* Roman Catholic and Apostolic Church *in our jurisdiction, truly is at the archdiocese and the five (5) dioceses established herein, namely: the Archdiocese of San Juan, the Diocese of Arecibo, the Diocese of Ponce, the Diocese of Fajardo-Humacao, the Diocese of Mayaguez, and the Diocese of Caguas. Similarly, the parishes erected within each of the dioceses and religious orders have legal personality.*

This has been recognized by this Court on numerous occasions in which, in different lawsuits that have been presented before our consideration, we have recognized the legal personality of the dioceses of the *Roman Catholic and Apostolic Church* and their parishes. *See, Diocese of Arecibo v. Scty. of Justice, supra; Diocese of Mayaguez v. Planning Board*, 147

---

[8] It is necessary to point out that, to this Court, it is necessary to decide that the Archdiocese of San Juan, the Office of the Superintendent of Catholic Schools of San Juan, Academia Perpetuo Socorro, Academia San José, through the San José Parish, and Academia San Ignacio de Loyola (through the "Orden de la Compañía de Jesus, Inc.", better known as the Jesuit Order) lack legal personality in the present lawsuit,—and determine that only the *Roman Catholic and Apostolic Church* has such a personality—, *has left the captioned case without any party,* due to the fact that the *Roman Catholic and Apostolic Religious Church* really subsists through the archdiocese, the dioceses, the parishes erected within each of the dioceses and the orders.

DPR 471 (1999); *Díaz v. Nuestra Señora del Pilar,* 123 DPR 765 (1989); *Academia San Jorge v. Labor Relations Board,* 110 DPR 193 (1980); *Agostini Pascual v. Catholic Church, Diocese of Ponce,* 109 DPR 172 (1979); *Vélez Colón v. Roman Catholic and Apostolic Church, Diocese of Arecibo,* 105 DPR 123 (1976); *Camacho v. Roman Catholic and Apostolic Church, Diocese of Ponce,* 72 DPR 353 (1951). However, the Majority of this Court seems to forget this.

There is no doubt that, in the present case, the Archdiocese of San Juan, the Trust, and the Office of the Superintendent of Catholic Schools of San Juan were sued, who are parties to the lawsuit and have legal personality. In the same way, Academia Perpetuo Socorro, who as such, has legal personality, was correctly sued, and is part of this lawsuit.

Thus, to the extent that the Archdiocese and the aforementioned religious institutes or organizations that would be affected by the rulings issued by the Court of First Instance were correctly brought to the present lawsuit, they should have been considered parties to such, and, even more importantly, they should have had the opportunity, at this stage of the proceedings, to express themselves on the claim that plaintiffs-teachers make herein; as well as on the nature of the provisional remedy that is imposed until this complaint is finally decided. To the extent that this was not done—to the extent that the Archdiocese and the aforementioned institutes or religious organizations are parties in the captioned case express themselves, are heard and participate in the proceedings—, the *Decisions* and *Orders* issued by the

Court of First Instance, which are subject to review in this case, *and which will clearly have an effect on the entities with legal personality mentioned above,* are null in their entirety. This is so, because they were issued in violation of the due process of law that assists the parties that could not be dispensed from the present litigation, as indispensable parties. The above, on its own, and without a doubt, would be sufficient reason to have disposed of the captioned case.

However, it should also be pointed out that, with regard to Academia San José and Academia San Ignacio de Loyola, who were included by the plaintiffs-teachers in this case, as has been clearly demonstrated, they lack legal personality. Notwithstanding, in accordance with the above standard, Academia San José is covered by the legal personality of the San José Parish and Academia San Ignacio de Loyola is covered by the legal personality of the religious order, "Orden de la Compañía de Jesus en Puerto Rico, Inc." *Neither the San José Parish, nor the "Orden de la Compañía de Jesus en Puerto Rico, Inc.", have been brought to this lawsuit, nor are they part of it.*

That is, the present case also suffers from the absence of indispensable parties that allow adequately deciding the disputes before our consideration. Thus, the San José Parish, the "Orden de la Compañía de Jesus en Puerto Rico, Inc.", and all the dioceses that could today be called upon to answer for the payment of the pension, for retirement, that are today demanded by the plaintiffs-teachers. The foregoing was not done either.

Finally, in light of the clear and gross violations of the due process of law in the present lawsuit, as well as in the absence of indispensable parties for the correct adjudication of the same, it was not, nor is it, necessary—as the Court of Appeals did—to render judgment on the other assignments of error. What should have occurred, without delay, was to determine the Decisions and Orders issued by the Court of First Instance null in their entirety, which are subject to review in the captioned case, and, consequently, remand the case to said court so that—having already determined those who truly have legal personality in the present case—it could hold a new hearing, in accordance with that previously ordered by this Court, to establish who is obligated to continue paying the pensions covered by this lawsuit while such is finally decided.

IV.

To conclude, it is necessary to remember that, at the time of issuing a judgment, the courts must ensure that the remedy that, in due time, is issued is effective and capable of being complied with by the obligated party. Therefore, the legal interpretations and provisional remedies provided under such should be able to be complied with. The ruling issued by this Court presents many related questions, namely: How are we going to enforce the judgment? Who are we going to demand compliance from, one or all of the dioceses? From now on, how are we going to acquire jurisdiction over the *Roman Catholic and Apostolic Church?* Will it be sufficient to serve process upon one of the dioceses to have jurisdiction over the *Roman Catholic and Apostolic Church,* or must service of

process be on all dioceses within our jurisdiction? Does this opinion extend to churches of other denominations, such as the Methodist Church, Baptist Church, Adventist Church, Episcopal Church, Pentecostal Church, Lutheran Church, among others? These are some of the problems presented by the opinion that is issued today.

V.

This being so, we dissent with the course of action followed by a Majority of this Court today. Consequently, we would have modified the Judgment of the Court of Appeals, and so modified, we would confirm the same.

[signature]
Ángel Colón Pérez
Associate Justice

Appendix B

IN THE SUPREME COURT OF PUERTO RICO

No. 2018-0475

YALÍ ACEVEDO FELICIANO, et al.,
Petitioners,
v.
ROMAN CATHOLIC AND APOSTOLIC CHURCH, et al.,
Respondents.

SONIA ARROYO VELÁZQUEZ, et al.,
Petitioners,
v.
ROMAN CATHOLIC AND APOSTOLIC CHURCH, et al.,
Respondents.

ELSIE ALVARADO RIVERA, et al.,
Petitioners,
v.
ROMAN CATHOLIC AND APOSTOLIC CHURCH, et al.,
Respondents.

Certified Translation*

August 17, 2018

---

* I, Juan E. Segarra, USCCI #06-067/translator, certify that the foregoing is a true and accurate translation, to the best of my abilities, of the document in Spanish which I have seen.

RESOLUTION

Having examined the second motions for reconsideration presented by the Archdiocese of San Juan, the Superintendence of the Catholic Schools of the Archdiocese of San Juan, the Catholic School Employees Pension Trust, and the San Jose Academy, along with the motion in opposition, the second motions for reconsideration are dismissed. Adhere to this resolution as it pertains to the second motions for reconsideration.

The "Urgent motion regarding acts of retaliation and seeking provisional remedies" is dismissed since, in accordance with the enacting terms of the Opinion issued by this Tribunal, ensuing proceedings are under the purview of the Court of First Instance.

It is agreed upon by the Court and certified by the Secretary of the Supreme Court. Associate Judge, Mr. Colon Perez would reconsider and agrees in overruling the "Urgent motion regarding acts of retaliation and seeking provisional remedies". The Presiding Judge Oronoz Rodriguez and Associate Judge Mrs. Rodriguez Rodriguez did not intervene.

[SEAL] [Signature]

Juan Ernesto Davila Rivera

Secretary of the Supreme Court

Appendix C

COMMONWEALTH OF PUERTO RICO
COURT OF APPEALS
JUDICIAL REGION OF SAN JUAN
SPECIAL PANEL

No. KLCE201800413

YALÍ ACEVEDO FIGUEROA, JOHN A. WILLIAMS BERMÚDEZ, and the community property formed by both, et al.,

Plaintiffs-Respondents,

v.

LA SANTA IGLESIA CATÓLICA APOSTÓLICA EN LA ISLA DE PUERTO RICO, INC., represented by Monsignor Roberto González Nieves in his capacity as Archbishop of San Juan, et al.,

Defendants-Petitioners.

SONIA ARROYO VELÁZQUEZ, JESÚS M. FRANCO VILLAFAÑE, and the community property formed by both, et al.,

Plaintiffs-Respondents,

v.

LA SANTA IGLESIA CATÓLICA APOSTÓLICA EN LA ISLA DE PUERTO RICO, INC., represented by Monsignor Roberto González Nieves in his capacity as Archbishop of San Juan, et al.,

Defendants-Petitioners.

ELSIE ALVARADO RIVERA, ISODORO HERNÁNDEZ, and the community property formed by both, et al.,

Plaintiffs-Respondents,

v.

LA SANTA IGLESIA CATÓLICA APOSTÓLICA EN LA ISLA DE PUERTO RICO, INC., represented by Monsignor Roberto González Nieves in his capacity as Archbishop of San Juan, et al.,

Defendants-Petitioners.

Certified Translation*

April 30, 2018

Before: Chief Justice Cortés González, Justice González Vargas, and Justice Rivera Colón

---

JUDGMENT

Judgment by González Vargas, Troadio.

Come now before this Court of Appeals the Archdiocese of San Juan and the Office of the Superintendent of Catholic Schools through a Writ of Certiorari and request the review of three decisions issued by the Court of First Instance, San Juan Part (CFI). Firstly, the Resolution issued on March 16, 2018, through which the CFI, in compliance with the

---

* I, Juan E. Segarra, USCCI #06-067/translator, certify that the foregoing is a true and accurate translation, to the best of my abilities, of the document in Spanish which I have seen.

Supreme Court's order regarding the preliminary injunction, ordered "The Roman Catholic and Apostolic Church in Puerto Rico to, immediately and without further delay, continue with the issuance of the payments to the plaintiffs in accordance with the Pension Plan, while this case is decided.[1] Also, the CFI determined that the academies of the Archdioceses of San Juan lacked individual legal personhood, separate from that of the Church. Secondly, the Decision issued by the CFI on March 19, 2018, through which the CFI denied the *Motion Regarding Nullity of Decision and Request to Consider the Motion to Dismiss due to Lack of Jurisdiction*, filed by the Archdiocese of San Juan that same day. Lastly, the Order issued by the CFI on March 26, 2018, by way of which it ordered the "Roman Catholic and Apostolic Church in Puerto Rico" to consign $4,700,000 in the Accounts Unit of the Court.

The dispute presented by this case faces us with a painful human and social drama that adds complexity to the already difficult legal dispute in which the parties are involved. In one side, we have the claim of a significant group of teachers from three catholic schools of the metropolitan area that have faced the loss of their pension after the trust fund that administered them presumably became insolvent. That apparently forced the discontinuance of said benefit and the subsequent liquidation of the trust fund, which is still inconclusive. Just as the plaintiffs, teachers, and former employees allege, this situation has caused them serious difficulties and great

[1] See Appendix to Writ of Certiorari, pg. 147.

distress, given the dependence that many of them have on said pension to cover their most urgent needs.

On the other hand, we have mainly the three sued schools[2] (Schools) and the Archdioceses of San Juan, who sustain that no legal obligation exists on their part to pay those pensions, a responsibility that, as they state, corresponds solely to the trust fund created for those purposes. The Archdioceses and the Schools individually allege that they were participating employers of said plan, along with other schools, for which they exclusively assumed the obligation to contribute to the trust a certain amount of money based on a payroll percentage to sustain the Plan, an obligation they state that they fulfilled. Also, they face the claim of a potentially multimillion dollar sum of money to be paid monthly to the teachers, which they point out, surpasses their financial capacity to satisfy such.

Conscious of this conflict, of profound consequences for both parties and of potential impact and interest for the entire religious community, we have the duty to solve this dispute with the strictest adherence to the applicable legal standards to reach the correct adjudication of this dispute.

With the benefit of the appearance of the parties, and in light of the applicable law, we proceed to issue a determination on this Writ of Certiorari on the following grounds:

---

[2] We take judicial notice of the Complaint filed by teachers of other schools that request the same remedy against the defendants. See, KLAN201701129 and KLCE201800519.

I.

The origin of this case dates back to June 6, 2016, the date on which a group of employees and former employees of Academia del Perpetuo Socorro filed a complaint against the Holy Catholic Apostolic Church in Puerto Rico," the Archdioceses of San Juan, the Office of the Superintendent of Catholic Schools, Academia del Perpetuo Socorro, and the Catholic School Employee Pension Plan Trust Fund (Trust Fund). The Trust Fund had just announced the discontinuance of the Catholic Schools Employee Pension Plan (Pension Plan), due to the insolvency of the Trust Fund funds and its virtual liquidation, from which the plaintiffs benefited. The Pension Plan was established under the sponsorship of the Office of the Superintendent of Catholic Schools of the Archdioceses of San Juan, which came into effect in 1979.[3] The 26th of November of that same year, the Office of the Superintendent of Catholic Schools created the Trust by way of the corresponding public instrument. The Pension Plan operated by means of the Trust Fund and grouped together forty-two schools, among them, Academia del Perpetuo Socorro. As stated in the Pension Plan and the Trust, each participating employer would contribute to the Trust funds between two to four percent of its payroll to sustain the payment of the pensions. The teachers and employees of the participating employers would not need to make contributions to the fund.

---

[3] See Appendix to Motion in Compliance with Order (April 4, 2018). page 124. (Exhibit 3 of the Complaint of Academia del Perpetuo Socorro of July 6, 2016 - Writing No. 12 of November 26, 1979.

Analogous lawsuits to that filed by the teachers of Academia del Perpetuo Socorro were later filed by employees and former employees of Academia San José and Academia San Ignacio de Loyola. The three lawsuits were consolidated by the CFI by way of a Decision notified on July 15, 2016.

As alleged in the complaint, which over the course of time has been amended on four occasions, the plaintiffs demand the continuation of the payment of the pensions that they they used to receive and those that are owed to them, pursuant to the terms of the Plan. To that effect, they sustain that in its capacity as employer of the plaintiffs, the Roman Catholic and Apostolic Church in Puerto Rico "is obligated to respond with its own assets to honor the terms of the existing contracts with the plaintiffs."[4]

The Complaint originally filed by the employees and former employees of Perpetuo Socorro was filed together with a preliminary injunction and request for seizure of property to secure judgment. In this request the plaintiffs alleged that the suspension of the pension plan payments caused them irreparable damage that threatened their acquired rights. They requested seizure of the assets of the Roman Catholic and Apostolic Church in Puerto Rico, up to the amount of $4,444,419.95 to secure the judgment that one day may possibly find in their favor. Likewise, they demanded that the Trust Fund be ordered to continue with the pension payments. The CFI denied the injunction.

---

[4] See Appendix to Writ of Certiorari (March 26, 2018), page 109. (Fourth Amended Complaint from January 15, 2018).

In disagreement, the defendants opportunely recurred to this Court of Appeals, where a fellow panel refused to issue the recourse. Still in disagreement, they recurred to the Supreme Court of Puerto Rico by way of a petition for a writ of certiorari. On July 18, 2017, the Supreme Court of Puerto Rico approved the recourse and issued a judgment (case CC-201601053) revoking the determinations of the court of first instance and the court of appeals and granted the request for a preliminary injunction and the extraordinary remedy requested. It determined that it remained to be decided who was obligated to continue the payments to the plaintiffs until the conclusion of the lawsuit.

As a consequence, it ordered the court of first instance to hold a hearing to determine whether the sued schools had legal personhood and ordered the continuance of the pension plan payments by the employers, whether they be the schools or the Church.[5]

In view of such, the parties filed various motions regarding said issue before the CFI. On one side, the plaintiffs alleged the lack of legal personhood of Academia del Perpetuo Socorro, Academia San José,and Academia San Ignacio de Loyola, due to being "dependencies" of the Archbishopric of San Juan, who in turn also lacked legal personhood. This, due to it being a subdivision of the Roman Catholic and Apostolic Church in Puerto Rico, (the only institution with legal personhood). On the other side,

---

[5] Although the Judgment mentions the schools and Church, it is our understanding that that is merely illustrative (i.e. examples), which can include other entities of the Church.

Academia del Perpetuo Socorro argued that it had its own legal personhood independent from the Roman Catholic and Apostolic Church in Puerto Rico due to being registered as a non-profit organization. It sustained that even though its Certificate of Incorporation was revoked by the Department of State on May 4, 2014, the incorporation was later reinstated, and its legal personhood was retroactive to the date of the original incorporation, to wit, February 2, 1968.

On January 11, 2018, the Trust filed an informative motion stating that it had filed a bankruptcy petition before the Bankruptcy Court of the Federal District Court.[6] As a consequence of such, the Archdioceses of San Juan and the Office of the Superintendent of Catholic Schools filed an informative motion before the CFI stating that they had filed a notice of removal of the present case before the Federal Court for the District of Puerto Rico due to understanding that the claim against them was related to the bankruptcy petition filed by the Trust in said court and that their rights could be affected if the plaintiffs prevailed in the litigation. The CFI issued a Partial Judgment by way of which it ordered the stay of the proceedings and the administrative filing of the present complaint without prejudice or statistical purposes. Moreover, the CFI concluded that "the

[6] It must be noted that on January 8, 2018, the CFI issued an Order through which it granted the Trust a 48-hour period to present an updated certificate stating the balance of available funds. On January 10, 2018, the Trust filed a *Motion Requesting a Brief Twenty-four Hour Extension to Comply with Court Order*. The CFI granted said request. However, the documents do not show that the Trust complied with said Order

Court reserves jurisdiction for its reopening to the current procedural status, as soon as such is requested."[7]

On March 13, 2018, the Bankruptcy Court for the Federal District Court dismissed the bankruptcy petition filed by the Trust. That same day, the Archbishopric of San Juan filed before the CFI a *Motion to Dismiss* alleging the court of first instance's lack of jurisdiction over the Archdiocese of San Juan due to it being part of the Roman Catholic and Apostolic Church with based in Vatican City, which is a Sovereign State pursuant to the Foreign Sovereign Immunities Act. Said motion was denied by the CFI.

On March 16, 2018, the Archdioceses and the Office of the Superintendent of Catholic Schools filed before the Federal District Court a notice of dismissal of its request for removal and they requested that the case be remanded to the local court.[8] On that date, the CFI issued an Order nullifying the stay previously issued as a consequence of the bankruptcy petition filed by the Trust.

That same day, the CFI complied with that ordered by the Supreme Court of Puerto Rico on July 18, 2017 regarding the holding of an evidentiary hearing to determine whether the sued schools or the Church had legal personhood.

---

[7] See Appendix of the Motion in Compliance with Courts Order (April 4, 2016), page 585. (Judgment issued February 12, 2018).

[8] See Appendix of the Motion in Compliance with Courts Order (April 4, 2016) page 610. (Notice of Voluntary Dismissal Without Prejudice of March 16, 2018).

After the evidentiary hearing was held, the CFI issued the first Decision, review of which is being requested.[9] It determined that the sued schools, as well as the Archdioceses of San Juan and the Superintendence of Catholic Schools, did not have its own legal capacity. It concluded that they were part of, or were dependencies of, the Roman Catholic and Apostolic Church in Puerto Rico, who has its own legal capacity by virtue of the Treaty of Paris of December 10, 1898. In accordance with the above, and before the apparent lack of legal capacity of the schools and the Archdioceses of San Juan, the CFI concluded that the Roman Catholic and Apostolic Church in Puerto Rico was responsible for the pensions payments and ordered the Church to continue making said payments to the plaintiffs in accordance with the Pension Plan while the case was litigated.

On March 19, 2018, the Archdioceses of San Juan and the Office of the Superintendent of Catholic Schools filed a *Motion Regarding Nullity of Resolution and Request to Consider the Motion to Dismiss for Lack of Jurisdiction*. They argued that through the dismissal of the Trust's bankruptcy petition, the CFI's Resolution cancelling the stay applied only to the Trust and not to them with regard to their request for removal. They added that the Federal Court had not yet issued the corresponding order to remand the case to local court and, therefore the decision issued on March 16, 2018 was issued without jurisdiction.

---

[9] See Appendix of the Writ of Certiorari (March 16, 2018), page 140-147.

That same day, the CFI issued the second Decision for which review is being requested.[10] The CFI denied the *Motion Regarding Nullity of Resolution and Request to Consider the Motion to Dismiss for Lack of Jurisdiction*. Not satisfied,, on March 20, 2018, the Archdioceses and the Office of the Superintendent of Catholic Schools filed a motion for reconsideration and a motion to set bond pursuant to Rule 57.4 of the Rules of Civil Procedure, 32 L.P.R.A. Ap. V. This motion was also denied.

The plaintiffs filed a *Motion in Compliance with Orders 639 and 640* in which they argued that the Roman Catholic and Apostolic Church of Puerto Rico had freely and voluntarily withdrawn their request for removal by presenting a dispositive motion before the CFI on February 13, 2018 and a notice of dismissal of said request before the Federal District Court on March 16, 2018. Furthermore, they requested that Academia del Perpetuo Socorro, Academia San José, and Academia San Ignacio de Loyola by prohibited from appearing before the Court separately and independently from the Roman Catholic and Apostolic Church, due to being dependencies of the Church.

On March 21, 2018, the plaintiffs filed a motion requesting consignment of the remaining funds of the Trust[11] *In March 26, 2018, the Court issued the Order, for which review is also being requested.*[12] Through

---

[10] See Appendix of the Writ of Certiorari (March 19, 2018), page 148-155.

[11] This as a follow-up to a prior motion in which the plaintiff requested the Court to take control of the Trust's funds.

[12] See Appendix to Motion in Compliance with Order (April 4, 2018), pg. 620. (March 26, 2018 Order).

this Order, the CFI granted a term of 24 hours to the Roman Catholic and Apostolic Church in Puerto Rico to consign the sum of $4,7000,000.00 in the Accounts Unit of the Court. The Court warned that if the Church failed to comply with that decreed, it would proceed to order the seizure of the bank accounts of the Roman Catholic and Apostolic Church in Puerto Rico.

Not satisfied with the CFI's determinations, the Archdioceses of San Juan appeared before this Court of Appeals by way of a petition for a writ of certiorari, which was accompanied with a Motion in Aid of Jurisdiction. This motion was referred to a special Panel of this Court, established to consider urgent matters during Holy Week. As a consequence, a stay of the proceedings was ordered while the action was considered on the merits. In its brief, it formulated the following seven assignments of error:

> A. The Court of First Instance gravely and manifestly erred upon issuing the reviewed Decision without having jurisdiction when the case was removed to the Federal District Court and said court had not remanded it when the issued resolutions and orders were issued.
>
> B. The Court of First Instance gravely and manifestly erred by not dismissing the Fourth Amended Complaint for lack of subject matter jurisdiction pursuant to the Foreign Sovereign Immunities Act.
>
> C. The Court of First Instance gravely and manifestly erred by not dismissing the Fourth Amended Complaint for lack of personal

> jurisdiction over the Roman Catholic and Apostolic Church and for insufficient summons and service thereof pursuant to the Foreign Sovereign Immunities Act.
>
> D. The Court of First Instance gravely and manifestly erred by issuing a preliminary injunction without the imposition of a bond as required by Rule 57.4 of the Rules of Civil Procedure, which constitutes a violation of the constitutional right to due process of law.
>
> E. The Court of First Instance gravely and manifestly erred by concluding that the Archdioceses of San Juan does not have its own legal personhood independent from the Roman Catholic and Apostolic Church.
>
> F. The Court of First Instance gravely and manifestly erred by deciding that Academia del Perpetuo Socorro lacks legal personhood despite concluding as a matter of fact that it was correctly incorporated under the Puerto Rico General Corporations Act.
>
> G. The Court of First Instance gravely and manifestly erred by ordering the consignment of 4.7 million dollars, what equals a permanent injunction without the celebration of a hearing and/or evidence to determine the amounts corresponding to plaintiffs' pensions in violation of the due process of law.

The first three errors identified by the Archdioceses of San Juan are reduced to a jurisdictional matter. As they allege, the CFI did not have subject matter jurisdiction or personal jurisdiction over the Roman Catholic and Apostolic

Church pursuant to the *Federal Sovereign Immunities Act.* 28 U.S.C. secs. 1602-1611, due to being a foreign state, immune to the legal proceedings against it, and for insufficient summons and service thereof in compliance with said federal legislation. This, because it was understood that when the CFI referred to Roman Catholic Apostolic Church in Puerto Rico" it was referring to the State of Vatican City or the Holy See, because no legal person known as "Roman Catholic and Apostolic Church in Puerto Rico" exists.

Moreover, on March 27, 2018, the CFI issued an Order for the seizure of assets against the Roman Catholic and Apostolic Church in Puerto Rico for the collection of the aforesaid $4.7 million in unpaid pensions, as requested by the plaintiffs the previous day. For its part, on March 29, 2018 the Federal District Court issued a Decision ordering the formal remand of the case to the local court. The Diocese of Arecibo and its Bishop filed a Petition to Intervene before this Court alleging that they are being affected by the decision of the CFI without them being parties of this action. Upon examination of the petition, this Court entered a Decision ordering the interested parties to express themselves regarding the legal nature of the Trust and the Pension Plan in dispute and to explain in what way, if any, the new Trust Act, Law 219 of August 31, 2012, as amended, 32 L.P.R.A. sec. 3351, *et seq*., has an impact on said legal nature of the Trust. Through said Decision we also granted the parties a term to express their positions regarding the *Petition to Intervene* and the *Document Explaining the Position of the Diocese of Arecibo* from Bishop of the Diocese of Arecibo of the Roman Catholic and

Apostolic Church, Monsignor Daniel Fernández Torres.

As ordered, the parties, including the Trust, submitted their corresponding motions. With regard to the intervention by the Diocese of Arecibo, the plaintiffs opposed the requested intervention, although they agreed for the Diocese of Arecibo to be authorized as an *amicus curiae*.

Since then, this Court has received various intervening appearances from other Dioceses, namely, those of Ponce, Mayagüez, Fajardo, Humacao and Caguas, as well as the Parish of María Madre de la Misericordia. By way of a separate Decision we have ruled on the aforesaid appearances.

II.

A. Separation of Church and State

The First Amendment of the United States Constitution prohibits the establishment of any religion and guarantees the Freedom of Religion, stating that: "*Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof […].*" 1st Amendment, U.S. Const., L.P.R.A. Vol. I. Moreover, Section 3 of Article II of the Constitution of the Commonwealth of Puerto Rico states in that pertaining to this matter that "[no] law shall be made respecting an establishment of religion or prohibiting the free exercise thereof. **There shall be complete separation of church and state."** (Emphasis ours). Art. II, Sec. 3, Const. Commonwealth., L.P.R.A. Vol. I. Thus, the above constitutional citations consecrate the so-called Establishment Clause and Freedom of Religion Clause.

In its more generalized meaning, the Establishment Clause seeks to avoid the patronage, the economic support, and the active participation of the *State* in religious activities. *Walz v. Tax Commission*, 397 U.S. 664, 668 (1970); *Diaz v. Colegio Nuestra Sra. def Pilar*, 123 D.P.R. 765, 780 (1989). In accordance with this constitutional imperative, the state actions impugned under this provision shall be upheld if they resist a tripartite jurisprudentially developed scrutiny. In *Diaz v. Colegio Nuestra Sra. Del Pilar*, supra, the Supreme Court of Puerto Rico, adopting the analysis outlined by the Federal Supreme Court in the leading case of *Lemon v. Kurtzman*, 403 U.S. 602 (1971), established that, in order for the State to prevail before an alleged violation of this clause, it is required that the law or challenged conduct: (1) have a secular purpose; (2) that its primary or principal effect is not the promotion or inhibition of the religion; and, (3) that it does not entail the possibility of provoking any meddling or excessive interference of the Government in religious matters. Id. Page 781. See, also, *Mercado Quilichini v. UCPR*, 143 D.P.R. 610, 637 (1997).

For its part, the Free Exercise or Freedom of Religion Clause guarantees the practice of religious beliefs and prevents any type of state intervention that could hinder such. *Dioceses of Arecibo v. Secretary of Justice*, 191 D.P.R. 292, 308 (2014); *Mercado, Quilichini v. UCPR*, supra, page 636. The purpose is, thus, to guarantee the practice of religious beliefs, whether they be individually or collectively, free of prohibitions imposed by any branch of government. *Id.*; *Lozada Tirado et al. v. Jehovah's Witnesses*, 177 D.P.R. 893, 914 (2009). This right extends to

individuals that practice a determined religion, as well as to the organizations or entities that promote said practice. *Hosanna-Tabor Evangelical Lutheran Church and Sch. v. EEOC*, 565 U.S 171 (2012); *Mercado, Quilichini v. UCPR*, supra, page 639.

Of course, the right to Religious Freedom, as with other rights, is not absolutely guaranteed, nor does it "[s]erve as a veil for violating other laws promulgated by the State." *Dioceses of Arecibo v. Secretary of Justice*, supra; *De Victoria Estate v. Pentecostal Church*, 102 D.P.R. 20, 22 (1974). Our rule of law recognizes that the freedom to act, pursuant to a religious practice, can be limited or restricted to protect the peace, moral ideas, and public order. *Id*. In line with this reality, it is the duty of the courts, as guardians of the constitution, to decide whether a state intervention violates the right of any individual or institution to practice their religion.

The party that challenges a state action under the Freedom of Religion clause has the initial burden of proof to demonstrate that the State has imposed a substantial burden on the exercise of their religious practice. *Díaz v. Colegio Nuestra Sra. del Pilar*, supra, page 779. To determine the constitutional validity of a government action pursuant to the Freedom of Religion clause, it is necessary to review the state action, the interest of the State that motivates it, and the effect that it has over a determined religious practice. The Supreme Court of Puerto Rico, following the standard set in *Church of the Lukumi Babaly Aye, Inc., v. Hialeah*, 508 U.S. 520 (1993), recognized that "a neutral and general applicability law does not have to be justified by a pressing governmental interest,

even when it has the incidental effect of imposing a burden over a particular religious practice." *Lozada Tirado et al. v. Jehovah's Witnesses*, supra, pp. 914-915; *Mercado, Quilichini v. UCPR*, supra, page 636. To that effect, it is understood that "*an action is not general when it is directed solely at the Church or the religious entity and their internal affairs*." *Id.*, page 646.

In cases where it can be demonstrated that the state action is not neutral or of general applicability, the Court has to apply a strict scrutiny. Under same, the State may prevail only if it shows: (1) that is has a pressing interest that justifies its actions even when they have an incidental effect of imposing a burden on a particular religious practice; (2) that its action follows said interest; and (3) that, before said pressing interest, no other alternatives exist that impose less of a burden on the religious practice. *Dioceses of Arecibo v. Secretary of Justice*, supra, page 310; *Mercado, Quilichini v. UCPR*, supra.

On the other hand, it must be noted that it is also possible to invade the protected constitutional scope consecrated by the Freedom of Religion clause through an inappropriate court intervention. As the Supreme Court has determined: the decisions of the Court that invade the religious liberties protected by our and the federal Constitution are invalid." *Id*. Therefore, it is firmly established that the Courts "*cannot exercise their jurisdiction to determine disputes regarding property rights related to a church when to do so it has to irremediably pass judgment over matters of teachings, discipline and faith of an internal ecclesiastical body*." (Our emphasis). *Jones v. Wolf*, 443

U.S. 595, 604 (1979); *Natal v. Christian & Missionary Alliance*, 878 F.2d 1575, 1576 (1st. Cir., 1989; *Amador v. Cone. lgl. Univ. de Jesucristo*, 150 DPR 571, 574 (2000); *Diaz v. Colegio Nuestra Sra. del Pilar*, supra, page 783; *Agostini Pascual v. Catholic Church*, 109 D.P.R. 172 (1979).

The cited standard responds to the interest recognized to the religious organizations in maintaining their autonomy, select their leaders, define their own doctrines, solve internal disputes, *as well as administer their institutions, property, and economic resources and elements. Mercado v. Quilichini v. UCPR*, supra, page 639, citing *Corporation of Presiding Bishop v. Amos*, 483 U.S. 327, 341- 342 (1987). It is because of that that it is recognized that the judicial abstention doctrine in religious matters requires not only an analysis of the challenged legal authorities between the parties, but also requires that the Court determines if, with its interference, it enters "[a]t the very core of the religion, a matter completely external to [its] competence." *Díaz v. Colegio Nuestra Sra. del Pilar*, supra, page 784.

B. Canon Law

The canonical system is conceived as the legal structure of the Catholic Church. It is a system of legal relations that unify the faithful and situates them in a determined position within the social body of the Church. In that way, the immediate purpose of canonical law is to establish and guarantee the just social order within the Church, ordering and leading its subjects, through said order, to the achievement of

the common good. A. Bernández Cantón et al., *Canon Law*, 2nd ed., Pamplona, Ed. Eunsa, 1975, pp. 75-79.

The regulations and provisions that arise from canonical law are codified in a legal body known as the Code of Canon Law or *Codex Juris Canonici* ("CCL"). The CCL is circumscribed almost exclusively to matters of the Church's internal order, which are extended to regulations related to clergy and the structure and activity of the ecclesiastical body. P. Lombardia, *Escritos de Derecho Canónico* ["Canonical Law Documents"], Pamploma, Ed. Univ. of Navarra, 1974; T. 111, pg. 281. Promulgated by Pope John Paul II on January 25, 1983, the last version of the CCL organizes its content in canons that are divided into seven (7) Books with their respective titles and chapters.

Concretely, Book I provides a collection of general regulations and, in Title VI, it addresses matters related to the canonical condition of physical persons. It starts by stating that "[t]he Catholic Church and the Apostolic See has the character of a moral person by divine ordinance itself." Canon 113, Sec. 1 of the CCL. Likewise, the CCL establishes that in the Church, besides physical persons, there are also juridical persons, that, in canonical law, are subjects of obligations and rights coherent to their nature." Canon 113, Sec. 2 of the CCL. Finally, Canon 116 of the CCL clarifies that "Public juridic persons are aggregates of persons (*universitates personarum*) or of things (*universitates rerum*) which are constituted by competent ecclesiastical authority so that, within the purposes set out for them, they fulfill in the name of the Church, according to the norm of the prescripts of

the law, the proper function entrusted to them in view of the public good; other juridic persons are private."

The mentioned Canon 116 gives legal personhood to various components within all the divisions that compose the Church. Thus, for example, the Dioceses, the Ecclesiastic Province, the Apostolic See, the Parishes, the Seminars, among others, have public legal personhood. According to the CCL, all these can be owners of ecclesiastic property. Further on we will discuss this matter within the particular context of the present controversy.

C. Legal capacity of corporations

Our legal system requires the parties in a legal action to meet certain criteria in order to be able to participate in the proceeding. One of these criteria is *capacity*. In its more basic definition, capacity refers to "the ability to appear in a legal proceeding without the assistance of another person." J.A. Echevarria Vargas, *Procedimiento Civil Puertorriqueño* ["Puerto Rican Civil Procedure"] , 1st ed. Rev., [Ed. of the author], 2012, pg. 131.

However, our doctrine recognizes that the concept extends to two components: the capacity to act and the legal capacity. R. Hernández Colón, *Práctica Jurídica de Puerto Rico: Derecho Procesal Civil* ["Legal Practice in Puerto Rico: Civil Procedural Law"], 6th ed., San Juan, LexisNexis of Puerto Rico, 2017, sec. 1101, page 144. The capacity to act refers to the aptitude of an individual to *participate* in a judicial act, assessed in light of physical and psychological criteria. *Id*. On the other hand, the concept of legal personhood encompasses that regarding the aptitude of a person to be the subject or party of a legal relationship. *Id.*

To those effects, Article 27 of the Puerto Rico Civil Code, 31 L.P.R.A., sec. 101, states that corporations with public interest and particular interest to whom the law grants legal capacity shall be considered legal persons. Thus, for example, Law 164- 2009, as amended, known as Puerto Rico General Corporations Act (Corporations Act), states in Article 1.05 that: "[h]aving executed and filed the certificate of incorporation, the person or persons who have thus associated and their successors and assignees, shall constitute, as of the filing date, or if it was set forth in the certificate of incorporation, as of a subsequent date which shall not exceed ninety (90) days, a corporate entity with the name set forth in the certificate, subject to dissolution as provided in this Act." 14 L.P.R.A. sec. 3503. According to the procedure set above, as of the date of the execution of the certificate of incorporation, the corporate entity is born.

Once the corporation's legal personhood has been established, its existence as a legal entity is independent to those of its shareholders, directors, and officers, as well as to any other associate corporate entity. *Peguero v. Hernández Pellot*, 139 D.P.R. 487, 502 (1995). Corporations can acquire and possess goods of any kind, as well as enter into contractual obligations, and exercise civil and criminal actions in accordance with the laws and the corporate by-laws. 31 L.P.R.A. sec. 104. Moreover, once the legal personhood of a corporation is recognized, the corporation can sue and be sued. See Article 2.02 of the Corporations Act, 14 L.P.R.A. sec. 3522 (b). In the same way, the concept of individual legal personhood implies that the shareholders and members of the corporation ordinarily will not be held personally

liable for the debts and obligations of the entity. Art. 1.02 and 12.04 of the Corporations Act, 14 L.P.R.A. sec 3502 (b)(5) and 3784 (b); *D.A.C.O. v. Alturas Fl. Dev. Corp et al.*, 132 D.P.R. 905, 924 (1993); *Flmeing v. Toa Alta Develop. Corp.,* 96 D.P.R. 240, 244 (1968).

However, and as an exception, the courts may disregard the legal personhood of a corporation, or pierce its corporate veil, and hold the shareholders' assets liable for the obligations of the corporation under certain circumstances, to wit: (1) if said entity is merely an alter ego, conduit of a passive financial instrument of their shareholders, with them receiving exclusively and personally the benefits produced by the corporate management; and, (2) if it is necessary to prevent fraud or the commission of an illegal activity or to prevent a clear wrongdoing or inequality. *D.A.C.O. v. Alturas Fl. Dev Corp. et al*, supra, pg. 925; *Fleming v. Toa Alta Develop. Corp*., supra, pg. 243; *Cruz v. Ramirez*, 75 D.P.R. 947, 954 (1954).

D. The Trust

The Puerto Rican trust is an institution with particularities that incorporate the principles of the Anglo-Saxon trust and seeks to harmonize it with our Civil Law tradition. *Dávila Vega v. Agrait,* 116 D.P.R. 549, 553 (1985). It is because of this that the trust has been recognized as a "hybrid figure" difficult to specify and harmonize with its Civil and Anglo-Saxon law contours. C.T. Lugo Irizarry, *El fideicomiso en Puerto Rico: un híbrido jurídico ante el future* ["The Trust in Puerto Rico: A Legal Hybrid for the Future"], First Book Publishing of PR, 1996, pg. 15.

The first Puerto Rican regulation of the trust was an adaptation of the Panamá Trust Act and was

adopted by way of Law 41 of April 23, 1928, which incorporated articles 834 to 874 into our Civil Code. Later on, some amendments were introduced by way of Law 211 of May 8, 1952. At that time, a trust was defined as an *irrevocable mandate* by virtue of which determined goods are transferred to a person called the settlor who would dispose of said goods as ordered by the one transferring them, the trustee, for the benefit of himself of a third party, called the beneficiary. Art. 834 of the Puerto Rico Civil Code, 31 L.P.R.A., sec. 2541.

Furthermore, it stated that the trust fund *inter vivas* should be created by way of public instrument and that it could be established over any kind of movable or immovable assets, tangible or intangible, present or future. Arts. 834 and 837 of the Civil Code, 31 L.P.R.A. sec. 2543-2544. The trust constituted over immovable assets must be documented in public instrument and registered, for only by way of such would it be enforceable before third parties from the date of its registry in a public registry. Art. 838 of the Civil Code, 31 L.P.R.A. sec. 2545. It was also established that the trustee would have the rights and actions regarding the complete control of the assets but would not be able to sell or encumber them without express authorization or, if necessary, for the execution of the trust. Art. 866 of the Puerto Rico Civil Code, 31 L.P.R.A. sec. 2573.

Through various decades without said regulation being amended, Law 219-2012 was enacted, best known as The Trust Act of 2012, 32 L.P.R.A. sec. 3351, *et seq*. (Act No. 219). This Act repealed Arts. 834 to 874 of the Civil Code and consecrated the figure of the

trust under a single piece of legislation. It introduced various changes pertaining to the matter under consideration. Among them, the concept of the trust was redefined, and the creation of a Trust Registry was created in which all executed trustsin Puerto Rico shall be registered, under penalty of nullity.

Pursuant to the Trust Act, a trust is an *autonomous patrimony* that results from the act by which the settlor transfers assets or rights that shall be administered by the trustee for the benefit of the beneficiary or for a specific end, in accordance with the provisions of the constitutive document and, in its defect, pursuant to the provisions of the Trust Act. 32 L.P.R.A. sec. 3351. The abovementioned shows the change of concepts from "irrevocable mandate" to autonomous patrimony that is the result of an act of the trustee. This change comes from the recognition that the phrase "irrevocable mandate" was contradictory and anti-judicial, for the trust and the mandate are different figures. It is said that a mandate is essentially revocable, and it acts in relation to assets that are and continue to be of the mandatary. Whereas the trust is irrevocable and allows assets to be transferred to the trustee, who cannot be compared to a mandatary because when he disposes of the assets he does so on his own name. With this change the concept of autonomous patrimony is formed, which is an indispensable quality of the figure of the trust.

Recently, amendments were introduced to Law 219-2012, by way of the passing of Law 9-2017 and Law 102-2017. The latter, which is limited to correcting a mistake of reference in Article 64,

applicable to public trusts, does not pertain to the present case. Another one of the important changes introduced by Law 9-2017 is that of providing the trust with legal personhood. Art. 2, which defines the estate that constitutes the trust, was amended to read as follows:

> The assets and rights of the trust constitute an estate that is fully autonomous and separate from the personal estates of the settlor, trustee, and beneficiary, which is allocated to the particular purpose granted to it at the time of its execution.
>
> Once the deed of trust has been executed and filed pursuant to the provisions of this Law, *an entity independent of its settlors, trustees, and beneficiaries shall be constituted, enjoying full legal personhood.*
>
> For as long as the trust remains in place, this estate is exempted from the single or collective actions of the creditors of the settlors, trustees, or beneficiaries, with the exception of that established in sec. 3353i *et seq*. of this title. (Emphasis ours). 32 L.P.R.A. sec. 3351(a).

This arrangement made it possible for the settlor to transfer ownership over the trust assets to the legal entity that is the trust and to designate a person trusted by them, the trustee, to perform the purpose proposed when the trust was constituted. In this regard, it is clarified that the attenuated personality of the trust refers to a capacity according to its purpose and for utilitarian purposes as is its registration in the

Special Registry of Trusts. In addition, according to scholars of the subject, with this capacity it would not be necessary to make any procedures in the Property Registry if the trustee dies, is dismissed, resigns, rejects their position, becomes incapacitated or is substituted for any reason, since the assets would appear registered in the name of the trust. Lugo Irizarry, *op. cit*., pages 35-36.

Regarding the acknowledgement of the legal personhood of trusts, the Supreme Court of the United States, through the voice of Justice Sotomayor, acknowledged that traditionally, trusts were not considered a legal entity, but rather a fiduciary relationship between multiple people. *Americold Realty Trust v. ConAgra Foods, Inc.*, 136 S. Ct. 1012, 1016 (2016). Thus, the legal procedures involving trusts are filed by or against the trustees under their own name. In that sense, when a trustee files a lawsuit or is being sued under their name, their citizenship is what counts for purposes of diversity of citizenship.

E. General theory of contractual obligations

As is known, obligations arise from the law, contracts, and quasi-contracts, from illegal acts and omissions or in which any kind of fault or negligence is involved. Article 1206 of the Civil Code of Puerto Rico 31 LPRA sec. 2992. Regarding the contract as a source of an obligation, Article 1206 of the Civil Code of Puerto Rico, 31 LPRA sec. 3371, provides that "[t]he contract exists from the time at which one or more persons consent to be bound in relation to another or others, to give something, or to render a service." In Puerto Rico, the principle of freedom of contract

prevails, as regulated in Article 1207 of our Civil Code 131 LPRA sec. 3372. It establishes that "[t]he contracting parties may establish the covenants, clauses and conditions that they deem convenient, provided they are not contrary to the laws, morals or public order." Id. Likewise, "[t]he obligations that arise from contracts have the force of law between the contracting parties, and must be fulfilled in accordance with them." Art. 1044 of the Civil Code, 31 LPRA sec. 2994.

It is known that a contract exists when the following requirements are met: (a) consent of the contracting parties; (b) a certain object that is the subject of the contract and (c) cause of the obligation that is established. Art. 1213 of the Civil Code, 31 LPRA sec. 3391; *Diaz Ayala v. Commonwealth*, 153 DPR 675 (2001). Once the essential conditions for its validity are met, the contracts are binding. Art. 1230 of the Civil Code, 31 LPRA sec. 3451. In line with the foregoing, the courts have the power to ensure the faithful fulfillment of contractual obligations between the parties. See, *Mercado, Quilichini v. UCPR*, supra.

E. The indispensable party

Rule 16.1 of Civil Procedure, 32 LPRA App. V., defines the indispensable parties as those "[p]ersons who have a common interest without whose presence the dispute cannot be adjudicated [...]".To this end, our Supreme Court has indicated that this Rule is inspired by two (2) principles, namely: (1) the constitutional protection that prevents any person from being deprived of liberty and property without due process of law, and (2) the need to include an indispensable party so that the legal ruling rendered is complete.

Cepeda Torres v. García Ortiz, 132 DPR 698 (1993). In addition, it adds that it seeks to avoid multiplicity of litigation, provide the parties with a final, complete, and effective remedy in the same lawsuit, and protect those absent from the harmful effects of a decision without their presence. *Granados Navedo v. Rodríguez Estrada II*, 124 DPR 593 (1989).

In the same way, the Supreme Court has also defined the concept of indispensable party as one whose rights or interests could be destroyed or inevitably affected by a judgment issued while that person is absent from the litigation. *Mun. of San Juan v. Bosque Real SE*, 158 DPR 743 (2003); *Fred et al. v. Commonwealth*, 150 DPR 599 (2000). For this reason, the indispensable party must have such interest in the dispute that a judgment cannot be issued without their rights being affected. Our Highest Court has indicated that the third absentee must have a common interest in the lawsuit, which makes their presence an indispensable requirement to impart complete justice. See, *Mun. of San Juan v. Bosque Real, SE*, supra; *Hernández Agosto v. López Vives*, 114 DPR 601 (1983).

The jurisprudence has clarified that the phrase *common interest* does not mean any interest in the lawsuit, but rather that real and immediate interest and of such magnitude that prevents the preparation of an appropriate ruling without affecting it. *Hernández Agosto v. López Nieves*, supra. Therefore, a sentence issued without including an indispensable party in the lawsuit possesses defects of nullity. *Fred et al. v. Commonwealth*, supra. The determination of whether a person should be considered an indispensable party rests on pragmatic considerations

and on the evaluation of the interests involved, which will depend on particular and specific facts of each case. *Granados Navedo v. Rodríguez Estrada II*, supra. In making this determination, the Supreme Court has stated that factors such as time, place, manner, class of rights, allegations, evidence, interests in conflict, formality and result must be taken into account. *Mun. of San Juan v. Bosque Real SE*, supra.

In those cases in which it is decided that an indispensable party is absent, the action cannot prosper. However, this dismissal shall not have the effect of an adjudication on the merits with the effect of res judicata. See, *Romero v. SLG Reyes*, 164 DPR 721 (2005); *Banco de la Vivienda de PR v. Carlo Ortiz*, 130 DPR 730 (1992). The Supreme Court has also ruled that the absence of an indispensable party "even though it is grounds for dismissing the suit, does not constitute an impediment to the court, at the request of the interested party, to grant the opportunity to bring the originally omitted party to the lawsuit, as long as the court can acquire jurisdiction over it." *Deliz et al. v. Igartúa, et al.*, 158 DPR 403. 434 (2003). Regarding the latter, it should be noted that Rule 18 of Civil Procedure, 32 LPRA Ap. V. provides, where pertinent, that "[a]ny party may be included or eliminated by order of the court, at its initiative or by motion of party at any stage of the procedure under conditions that are fair. " See, *Aponte Caratini v. Román Torres*, 145 DPR 466 (1998).

F. The preliminary injunction

Rule 57.2 of Civil Procedure, 32 LPRA App. V, regulates everything related to the extraordinary

remedy of injunction or preliminary injunction. This procedural mechanism is aimed at prohibiting or ordering the execution of a specific act, in order to avoid causing imminent harm or irreparable damage to any person, in cases where there is no other appropriate remedy in law. *VDE Corporation v. P&R Contractors*, 180 DPR 21, 40 (2010). Thus, it is intended to maintain the status quo while the dispute is elucidated on its merits. *Asoc. Vec. v. Caparra v. Assoc. Fom. Educ.*, 173 DPR 304, 317 (2008). The latter, with the aim of preventing the defendant from promoting with their conduct a situation that renders the final decision of the court moot.

For the issuance of a preliminary injunction, the court must evaluate the particular circumstances of the case, together with the following criteria: (1) the nature of the damages that may be caused to the parties by granting or denying it; (2) the irreparableness of the damage or existence of an adequate remedy in law; (3) the likelihood that the petitioner will eventually prevail when deciding the dispute on its merits; (4) the probability that the cause will become moot if not granted, and (5) the possible impact on the public interest of the remedy requested. *Next Step Medical v. Bromedicon*, 190 DPR 474, 486-487 (2014); *PR Telephone Co. v. Superior Court*, 103 DPR 200,202 (1975). Rule 57.3 of Civil Procedure, 32 LPRA App. V., lists the factors previously outlined by our casuistry and, in addition, adds the criterion of the diligence and good faith with which the petitioner has acted.

The Supreme Court of Puerto Rico has pointed out that *the requirement that the probability of prevailing*

be demonstrated obeys the basic notion that a court should not grant this type of extraordinary accessory remedy to any party that clearly does not have the right to do so in relation to the merits of the main appeal. Mun. of Ponce v. Governor, 138 DPR 431 (1995). Likewise, the probability of success is not demonstrated by adducing mere speculations. *VOE Corporation v. P&R Contractors*, supra, p. 41. On this point, the professor Hernández Colón comments that "[t]he right of the injunction must have been unequivocally established by the petitioner, with certainty and clarity." There is no need to issue an injunction to protect a right that is doubtful, unrecognized, or disputed". Hernández Colón, *op. cit.*, p. 530

Likewise, Rule 57.4 of Civil Procedure, 32 LPRA App. V, establishes that "*no preliminary injunction or injunction order shall be issued except through the provision of bail by the petitioner,* for the amount that the court deems just, for the payment of costs and damages that may be incurred or suffered by any party that has been improperly placed into question or restricted [...]" (Emphasis supplied). The purpose of this requirement is to provide the plaintiff with an immediate preliminary remedy while, in addition, it is intended to protect the defendant in the event that it is determined that said party was unduly restricted from a right. Echevarría Vargas, *op. cit.*, p. 337.

On the other hand, the difference between the injunction of Rule 57 of Civil Procedure, supra, and the remedy granted by Rule 56 of Civil Procedure, 32 LPRA App. V., was discussed in the case of *Asoc. Vec. V. Caparra v. Assoc. From. Educ.*, 173 DPR 304, 313

(2008)[13]. Even though both are analogous in that both provide for an order to do or refrain from doing something as a remedy, the Supreme Court recognized that they are not the same and their concession depends on with the fulfillment of different requirements. *Id*. In distinguishing both rules, the High Court stated that the remedy under Rule 57 of Civil Procedure, supra, *always requires the provision of bail*, while under Rule 56 of Civil Procedure, supra, whose purpose is limited to the assurance of a judgment, *can be* granted without providing bail. *Id*. Pages 322-323. This, *when one of the following exceptions recognized in Rule 56.3 of Civil Procedure*, supra, *is set forth*:

> (a) if it appears from public or private documents, as defined by law and is signed before a person authorized to administer an oath that the obligation is legally enforceable, or
>
> (b) when an insolvent litigant is expressly exempted by law for the payment of fees and filing fees, and in the judgment of the court,

---

[13] Rule 56.1 of Civil Procedure, *supra*, provides that:

In any lawsuit before or after sentencing, by motion of the petitioner, the court may dictate any preliminary order that is deemed necessary to ensure the effectiveness of the judgment. The court may grant the seizure, the seizure of funds in the possession of a third party, the prohibition to alienate, the claim and delivery of movable property, receivership, an order to do or refrain from doing any specific acts, or may order any other measure it deems appropriate according to the circumstances of the case. In any case in which a preliminary remedy is requested, the court shall consider the interests of all the parties and rule as required by substantial justice.

> the claim adduces sufficient facts to establish a cause of action whose probability of success is evident or can be demonstrated, and there are well-founded reasons to fear, after a hearing on the matter, that if this preliminary remedy were not immediately obtained, the judgment that could be obtained would be moot because there would be no assets to foreclose on, or
>
> (c) if the remedy is arranged after the judgment.

III.

It is our first task to address the jurisdictional approach formulated by the petitioner in their first assignment of error related to the lack of jurisdiction of the Court of First Instance to issue the Resolutions and the Order appealed. This is because the case was stopped in the hearing of the Motion for Removal pending adjudication before the Federal District Court.

As can be seen from the events previously reported, at the beginning of this year, the Trust had filed a Bankruptcy Petition before the Bankruptcy Court of the Federal District Court. Based on the filing of that remedy, the petitioner submitted a Notice of Removal to the federal court based on the fact that the dispute that was filed in the CFI (local court) was closely related to the bankruptcy proceeding initiated by the Trust. Hence, to the effect that their rights were not affected by continuing the proceeding of the case before the local court, it was appropriate that the case be removed and heard by the Federal Court, as requested.

Although the petition before the Bankruptcy Court was later dismissed, the petitioner maintains that by the time the ruling was delivered in this case, it was at a standstill due to the Notice of Removal, as provided in 28 USC sec. 1446 (d), so the CFI lacked jurisdiction to continue the proceedings before that court. The respondent is right in their arguments against this statement. Although the remedy of removal before the Federal Court had been filed, and by virtue of the aforementioned federal provision, the proceedings in the state court remain at a standstill, the petitioner itself, in light of the conduct assumed and the jurisdiction invoked in the state court after submitting their petition for removal, necessarily waived the federal remedy requested. Note that after the petition in the Bankruptcy Court was dismissed, the petitioner filed with the CFI a request for dismissal alleging lack of jurisdiction of the court before its consideration, pursuant to the Foreign Sovereign Immunities Act.[14]

Not many days later, the petitioner filed before the Federal Court a motion voluntarily withdrawing their request for removal.[15]

In that direction, the Federal Court for the District of Puerto Rico has ruled that:

> A party may waive removal to federal court by litigating in the state court in such a

---

[14] See, Appendix to Petition for Writ of Certiorari, pp. 152-155. (*Motion regarding Nullity of Decision* and *Request to Consider Motion for Dismissal due to Lack of Jurisdiction* from March 19, 2018).

[15] After the appeal had been filed before this Court, the Federal Court ordered the remand of the case to the CFI.

> manner that "invoke(s) the jurisdiction of the state court" or engages in actions "that manifest the defendant's intent to have the case adjudicated in state court". *Vistas de Canóvanas I, Inc. v. Fed. Deposit Ins. Corp.,* 266 F. Supp. 3d 563,571 citing *Hernández-López v. Com. of Puerto Rico*, 30 F. Supp. 2d 205, 209. See, also, persuasively, 32A Am. Jur. 2d. Federal Court sec. 1322

This decision, although not binding or mandatory, is persuasive and based on correct reasoning, compatible with the entrenched doctrine of estoppel, which postulates that litigants are not allowed to behave in a contradictory manner, against their own acts. *Int. General Electric v. Concrete Builders*, 104 DPR 871 (1976). See, *OCS v. Universal*, 187 DPR 164 (2012).

It is evident that when the petitioner recurred to the local court to request a remedy such as the one requested, this necessarily implied a waiver of the request for removal submitted, thus the jurisdiction was remanded to the local court. Consequently, the alleged error was not committed.

The same can be said with regard to the lack of jurisdiction based on the *Foreign Sovereign Immunities Act*. It is clear that the claims in this case: (1) are directed exclusively against entities within the Roman Catholic Church with recognized legal personhood here in Puerto Rico, (2) for actions alleged to have been committed by them on the Island, and (3) the remedies requested are also limited to those entities. There is no claim in this case directly, or even indirectly, directed toward the Holy See or the State

of Vatican City, which is the entity which the United States of America and international law recognize as a sovereign entity.

Nor have proceedings, or even allegations, been initiated to bring this sovereign State to the present lawsuit, which requires formalization through the exceptional processes provided in the aforementioned federal statute, so that a court in the United States may assume Jurisdiction over said foreign State. Therefore, the aforementioned error was not committed either.

Given these threshold issues, it is necessary to begin by examining the nature and legal personhood of the Roman Catholic and Apostolic Church in Puerto Rico, which the CFI ordered to continue the issuance of payments to the plaintiffs, in accordance with the Pension Plan, within the context of the preliminary injunction decreed by the Supreme Court of Puerto Rico. This, after ruling that it was the only defendant entity with legal personhood to answer for the claim urged by the respondents. For its part, the position of the codefendants is that there is no legal entity in Puerto Rico such as this—the Roman Catholic and Apostolic Church in Puerto Rico—which has legal personhood.

The appearances of the co-defendants persuade us that, although there exists in Puerto Rico, and in other parts of the world, the Roman Catholic and Apostolic religion, said religion operates on the Island through various entities for whom canonical law recognizes their own legal personhood, namely: dioceses, parishes, and religious orders, among others. Such a conclusion is especially clear if we observe that, given

the hierarchical equality among the bishops, and the autonomous or separate nature of their dioceses, including among them, the Archdiocese of San Juan, there is no structure on the Island that comprises under any single authority all the dioceses and to which their bishops are subordinated. Each diocese is the official representative of the Catholic faith within its particular territorial demarcation and is absolutely autonomous. It is subordinated exclusively to the Universal Church, whose Representative Authority is held by the Bishop of Rome (the Pope). Sections 368 and 369 of the Code of Canon Law (CCL) expressly provide that:

> Particular churches, in which, and from which the Catholic Church exists, one and only, are mainly the dioceses [...].
>
> The diocese is a portion of the people of God, whose pastoral care is entrusted to the Bishop with the cooperation of the presbyter so that, united to its pastor and gathered by him in the Holy Spirit through the Gospel and the Eucharist, it constitutes *a particular Church, in which the Church of Christ, holy, catholic and apostolic, is truly present and active*. (Emphasis ours.)

Subsequently, the canonical ordinance provides that "[t]he diocesan Bishop represents the diocese in all its legal business". Sec. 393 of the CCL.

The parishes hold equal representation of the Church, also limited to their territorial circumscription, under the direct authority of the Parish Priest and in communion with the Bishop of

the diocese to which it is assigned. See, Secs. 515 (1) (3) and 532 of the CCL.

It should also be clear that the Archdiocese has no more, no less authority, nor representative capacity of the Catholic religion, than the other dioceses within the territorial demarcation that has been assigned by the Holy See. Likewise, the scope of authority of the Archbishop is exactly the same as the other Bishops in their respective regions. As we have stated, each diocese, including the Archdiocese, is absolutely autonomous from one another. The Archbishop in particular, does not exercise any function of authority or supervision over the other dioceses or bishops. Such is precisely the consequence and nature of an apostolic church, according to canon law. The Archbishop is called in this way, because he is the Bishop of an Archdiocese, which, within the organizational and canonical structure, usually constitutes a diocese of great size and population. See Canons 369, 634, 515 of the CCL.

As can be seen, the canonical order recognizes the representative capacity of the Catholic faith on the Island for the dioceses and parishes, within their respective territorial limits, as a particular Church. Outside of these entities, especially the parish and the dioceses, including the Archdiocese, the hierarchical structure of the Catholic religion has no other authority with the capacity to represent the entire Catholic Church in Puerto Rico, other than the Bishop

of Rome, as the universal head of the Roman Catholic and Apostolic Church.[16]

Such is the hierarchal structure of said religion, pursuant to its dogmas of faith and the canonical law that governs it. Any action of the State, by way of any of its components, aimed at intervening or seeking to alter the way in which internally it or any other religion operates or is organized, infringes upon the clause of separation of Church and State of the Constitutions of the United States and Puerto Rico, as already transcribed.

The Decision issued by the CFI, and moreover, its Order for Seizure, to the extent in which it is aimed against a legally nonexistent entity in light of the internal organization of the Church contravenes the aforesaid constitutional clause, wherefore it lacks validity and effectiveness, among other grounds that shall be set forth later on.

Hence, as co-defendants correctly hold, the certification of the Department of State that recognizes the legal personhood of the Roman Catholic and Apostolic Church in Puerto Rico, to the extent that recognizes such a non-existent entity, according to the

---

[16] It is important to note that the Puerto Rican Episcopal Conference is an entity that brings together the bishops of Puerto Rico in assembly, whose president is elected from among its own members. Canon 447 of the CCL, part II. This organization has no direct interference in the particular administration of each diocese, nor does it hold any official representation of the Catholic Church in Puerto Rico. See Canon 455 sec. 4 of the CCL, part II. As we pointed out according to canon law, such representation rests exclusively in the dioceses and parishes within their respective territorial space and in accordance with the hierarchical structure of the Church.

order and structure of this religion, is inofficious. This, above all, when it does not rest in the registers under its jurisdiction and control, since the juridical personality of the entities of the Church does not emanate from the registry of corporations, but rather from the Treaty of Paris. Ultimately, this is a mere opinion or interpretation of that provided in the Treaty.

The foregoing having been established, and the subject having been addressed within the context of the controversy under consideration, it behooves us first of all to identify the entity or entities of the Catholic religion in Puerto Rico which hold legal personality, and from there, which of the codefendants enjoy that quality. To this end, it is essential that we refer to the Treaty of Paris of 1898 and to the Federal Supreme Court case, *Municipality of Ponce v. Catholic Church in Puerto Rico*, 210 US 296 (1908). We begin by transcribing the conclusions of law from the Court of First Instance in terms of the grounds of their decision regarding the matter of legal personality of ecclesiastical entities within the Catholic Church. These were correctly stated in its Decision from March 16, 2018, though the decision may have been incorrect. Regarding that issue, the appealed court stated:

> […] Art. 30 of Civil Code stipulates that the civil capacity of corporations, companies and associations shall be regulated by the laws that created or recognized them. 31 LPRA Sec. 103. Lastly, it stipulates that:
>
> > Legal persons may acquire and possess all manner of property, *and may contract obligations and exercise*

> *civil or criminal actions*, pursuant to the rules and regulations of their constitution.
>
> … … …

At the same time, we understand that the legal condition of the Catholic Church in Puerto Rico does not depend on an act by the Legislature of Puerto Rico, since the Church has its own legal personhood, *which is the same that it had and enjoyed during the Spanish regime and which it continued to enjoy when Puerto Rico became a territory of the United States after the Spanish-American war*.

The maintenance and possession of said legal personhood were recognized by the Treaty of Paris of December 10, 1898, in article 8, paragraph 2, which stipulated the following:

> It is therefore declared that this relinquishment or cession, as the case may be, to which the previous paragraph refers, may in no way diminish the property, or the rights, that according to the law, correspond the peaceful holder of all manner of property of the provinces, municipalities, public or private establishments, ecclesiastical or civil corporations, or of any other communities whatsoever, that have legal personhood to acquire and possess property in the aforementioned relinquished or

> ceded territories, and those of specific individuals, whatever their nationality.

Based on this provision of the Treaty of Paris, the United States Supreme Court recognized the legal personhood of the Catholic Church in *Municipality of Ponce v. Catholic Church in Porto Rico*, 210 US 296 [311] (1908). The Court expressed the following:

> This clause is manifestly intended to guard the property of the Church against interference with, or spoliation by, the new master, either directly or through his local governmental agents. There can be no question that the ecclesiastical body referred to, so far as Porto Rico was concerned, could only be the Roman Catholic Church in that island, for no other ecclesiastical body there existed.

Later on, the Court adopted the following conclusion:

> The Roman Catholic Church has been recognized as possessing legal personality by the Treaty of Paris, and its property rights solemnly safeguarded. In so doing the treaty merely followed the recognized rule of international law which would have protected the property of the church in Porto Rico subsequent to the cession. *This juristic personality*

> *and the church's ownership of property had been recognized in the most formal way by the concordats between Spain and the papacy, and by the Spanish laws from the beginning of settlements in the Indies. Such recognition has also been accorded the church by all systems of European law from the fourth century of the Christian era.*

The concordat referenced in the opinion is the Concordat of March 16, 1851, between Pope Pius IX and Queen Isabel II, which in article 41 confirms that in addition to the Church's constituting a public entity, that is, under the government and representation of the Supreme Pontiff and that of the Archbishops, Bishops and Prelates of its institution, it also held independently in all of the Spanish domains, a civil personality recognized and guaranteed by the State itself, to acquire, through any legitimate title and to at all times, all manner of temporal goods. *It should be noted that the Spanish Civil Code that governed in the islands until the last day of Spain's sovereignty, converted the Concordats between the Church and the Spanish Crown, into civil Law, for purposes of acquiring and possessing all manner of property, contracting obligations and exercising civil and criminal actions.* (Emphasis ours) See, Appendix to the Petition for Writ of Certiorari, P. 143-145. (Court of First Instance Decision from March 16, 2018).

From the conclusions above, essentially correct under law, as we stated, it is inferred that, by virtue of the Treaty of Paris, the legal personhood of the Catholic Church or its components in Puerto Rico is recognized with the same scope, conditions, and content as it was recognized by the Spanish State. Hence we must examine the legal treatment of the Church in Spain with regard to this matter, in order to determine which would be the rule that should be applied to this matter on the island by virtue of the Treaty of Paris. On this matter the Court of First Instance also correctly concluded that the Spanish Civil Code that governed in the island until the last day of Spain's sovereignty, *converted the concordance between the Church and the Spanish Crown, into civil Law, for effects of acquiring and possessing all manner of property, contracting obligations and exercising civil and criminal actions*. (Note omitted). Id., P. 145. Specifically, in the note in question the Court of First Instance added that, "[i]n particular, it may create, modify or suppress dioceses, parishes and other territorial circumscriptions, *that shall enjoy civil legal personality to the extent they have canonical personality and that the competent State organisms are notified of this*." (Emphasis ours). *Id.*, Footnote 1.

Hence, under the Concordat of 1851, the legal personality of the Church in Spanish civil law as provided under Canonical Civil Law was in turn recognized. See, Art. 1 of the Concordat. In other words, the entities of the Catholic Church thus acknowledged under canonical law enjoyed legal personality under the Spanish legal system. See, Art. 2 and 4 of the Concordat. As the Court of First Instance correctly stated, such is the situation with

respect to the parishes, the dioceses and the religious orders, among other entities or organizations whose legal personhood was and is recognized by Canonical Code.

Note that, with respect to the parishes, it is thus expressly provided under sec. 515 (3) of the CCL when it is established that, "the legitimately erected parish holds legal personhood by virtue of the law itself." Likewise, section 532 establishes that "[the] parish priest represents the parish in all legal transactions, pursuant to legal norms […]." For its part, section 800 of the same Code authorizes the particular church "to establish and direct schools of any subject matter, gender and grade."

Canon law recognizes the same personality for dioceses, by virtue of Canons 372 and 373. These provide that:

> 372 - Section 1. As a rule, the portion of the people of God which constitutes a diocese or other particular Church is limited to a definite territory, so that it includes the faithful living in the territory.
>
> -. Section 2. Nevertheless, where the judgment of the supreme authority of the Church it seems advantageous after the conferences of bishops concerned have been heard particular churches distinguished by the rite of the faithful or some other similar reason can be erected in the same territory..
>
> 373 -. It is only for the supreme authority to erect particular churches; those legitimately erected possess *juridic personality* by the law itself. (Emphasis ours).

The same thing can be said of religious orders, and other organizations, in accordance with section 634 (1) of the CCL, which indicates that:

> As juridic persons by the law itself, institutes, provinces, and houses are capable of acquiring, possessing, administering, and alienating temporal goods unless this capacity is excluded or restricted in the constitutions.[17]

Such is the rule of law which binds us in Puerto Rico regarding this matter, and therefore, the legal treatment that we must apply and recognize for the entities of the Catholic Church with respect to their legal personhood under the Treaty of Paris and the Spanish law in effect at that time. As can be observed, as opposed to that argued by the respondent, this is not about canonical law being granted direct application in Puerto Rico in our civil law system with respect to this subject matter, which would be forbidden by the clause regarding separation of Church and State. The recognition and validity of these rules of canonical law operate by virtue of their effectiveness in Spanish law through the Concordat of 1851. From that arises their application to Puerto Rico through the Treaty of Paris. From that time on, as the Federal Supreme Court interpreted in *Municipality of Ponce,* supra,

> Since April 11, 1899, Porto Rico has been a de facto and de jure American territory. The history or Porto Rico and its legal and

---

[17] See also, section 114 (1) (2) of the CCL regarding religious and foundational corporations.

> political institutions up to the time of its annexation to the United States are matters which must be recognized by this court as the ancient laws and institutions of many of our states when matters come before it from several jurisdictions.
>
> *The court will take judicial notice of the Spanish law as far as it affects our insular possessions*. It is pro tanto no longer foreign law. (Emphasis ours).

To the above, it adds:

> In so doing the treaty merely followed the recognized rule of international law which would have protected the property of the church in Porto Rico subsequent to the cession. This juristic personality and the church's ownership of property had been recognized in the most formal way by the concordats between Spain and the papacy, and by the Spanish laws from the beginning of settlements in the Indies. Such recognition has also been accorded the church by all systems of European law from the fourth century of the Christian era.

While the Federal Supreme Court's statement in the aforementioned case *Municipality of Ponce*, supra may generate ambiguity as to the concept of legal personality with respect to the "Roman Catholic and Apostolic Church," that does not affect the legal personality of the diverse entities within the Church, identified above. Keep in mind that at that time there was only a single diocese in Puerto Rico (the Diocese of Puerto Rico), so in practice, there existed between

the Catholic Church and the diocese a single identity or conceptualization. For all practical purposes it was the same thing. Hence the case was brought against the "Catholic Church in Puerto Rico" and it was thus heard by the Supreme Court. There was no dispute whatsoever between the interchangeable nature of these denominations. It was a matter of the common or popular name, the Diocese of Puerto Rico, as legitimate representative of the Catholic religion on the Island. Today, as we know, the situation has changed, since there are six (6) dioceses, including the archdiocese of San Juan. Nonetheless, each of them, as we explained, has its own legal personality separate from the others.

What is truly important in this decision is that it clarifies the manner and grounds under which the Church and its components must be recognized as entities with their own legal personhood through the Treaty of Paris and not by means of Puerto Rican legislative action. Ultimately, consistent with its multiple decisions regarding separation of Church and State, it was not up to the Federal Supreme Court, as a State body, to define, much less intervene, in the Church's internal structure, nor in its functioning or organization. That was and is an attribute of that religion, in accordance with the First Amendment, as regulated by Canonical Law. This is also the case with respect to the issue of legal personality conferred by that same legal body to the diverse entities or organizations within the Church.

With respect to the case under consideration, it falls to us to now resolve which of these entities with legal personality would be required to assume the

obligation to respond to the remedy decreed by the Court of First Instance. This, within the context of what the Court of First Instance was tasked with in this regard by the Supreme Court.

Obviously, we should begin by determining *what would be the source of the obligation* for these entities (schools, parishes and Archbishoprics) in terms of the claim in question. Firstly, this subsidiarity should be judged in light of the contractual obligations contracted under the Pension Plan and the Trust in charge of its execution and administration.

Upon exercising our revisory role, we start with the premise that, for whatever reasons, the Plan, as conceived by the Office of the Superintendent of Catholic Schools of the Archdiocese of San Juan and the participating schools, ceased to exist. The fund created and provided for that purpose, except for an apparently small sum pending liquidation, does not exist either. So then we must ask, how should that obligation be transferred to the participating employers when presumably the scheme under which the Plan was agreed upon is inoperable and in practice nonexistent, especially the scheme designed to fund it and to make its payments?

We likewise cannot lose perspective of the fact that some of the participating schools, as the parties state, no longer exist and others claim to be facing financial hardships that allegedly prevent them from contributing as agreed to the fund. Apparently, plaintiffs' claim for such an obligation to be transferred to other entities outside of the Trust is in based on all of the above.

As we indicated, it is necessary to identify the source of obligations for those entities in order to assume or transfer that obligation to them, before asking ourselves if it is legally possible to uphold the plaintiffs' claim. It is well known that obligations arise from, among others, the Law[18] and contracts. Art. 1042, 31 LPRA section 2992. In the absence of a statute which requires the provision of a pension plan, like this one, it is necessary to examine the obligation to continue the payment of pensions by the participating employers based on contractual law. The Pension Plan of the Catholic Schools of the Archdiocese of San Juan came into being through the specific terms and conditions set forth in the documents of incorporation of that Plan and the Trust established by way of agreement among the participating employers. As agreed, the Plan would be effective, executed, and administered by the Trust, which was duly constituted and regulated by way of the corresponding public deed, which further provided for its functioning and administration.

Note that, according to the Pension Plan, the schools individually and the Office of the Superintendent of Catholic Schools, as participating employers, agreed to contribute a fixed percentage of their payroll to a common fund in the aforesaid Trust in order to finance said Plan, in conjunction with the capital generated through their investment under the control of said entity. Hence, the appropriate pension benefit would be determined and structured for each

---

[18] The Plan is not covered by ERISA. See, Appendix 2 Petition for Writ of Certiorari, P. 13. (Supreme Court Judgment of July 18, 2017).

teacher under the Plan. It is easy to observe that neither the schools individually, nor the Superintendence under the Archbishopric, contractually committed to granting or issuing a pension directly to *their* employees through a pension plan created by them. As indicated, they instead agreed to join the Pension Plan in question and to contribute to the common Trust fund jointly with a group of other schools, into which they would enter voluntarily, through that concept.

The exclusive contractual agreement of a School or the Archdiocese for the direct payment of a pension to its employees is neither legal, nor conceptually the same thing, as the obligation to join a pension plan together with a group of participants and to contribute a certain amount to the common fund to then grant this benefit, through a Trust. This, of course financed, moreover, with the proceeds and capitol generated through the investments of that large fund constituted through the established Trust. From the legal-obligational point of view, and above all from the economic or financial perspective, there is a substantial difference between one and the other.

It is thus legally inadmissible to transfer directly to the colleges and to the Archdiocese individually the obligation to pay a pension that their employees were receiving, which was fixed based on actuarial criteria previously determined by the Trust. Beyond the collective obligation assumed, as deduced from the Plan, the Colleges and the Archdiocese did not contract an additional financial obligation with their employees. In such circumstances, standards of basic rules of contractual law require these Schools to pay a

pension directly to their employees and teachers, based on the remedial and temporary criterion of the issued preliminary injunction. Requiring them to do so could imply the emergence or acknowledgment of a source of obligation that is different from the one established and agreed upon. That is, an obligation that is different from the one established by the Trust and a radical change with regards to the object, cause, and consent of the previously assumed obligation. In other words, we cannot impose additional obligations on the codefendants other than the ones they had initially undertaken, since it is not appropriate under the law. Furthermore, such a scheme would be tantamount to giving way to a new pension plan through a legal process.

With respect to the Archdiocese of San Juan, particularly, the records of the case show that they are only one of many employers who participate in the Pension Plan, as far as their own employees are concerned, so it undertook no representative obligation towards the schools, or its employees and teachers. Aside from their role as participant and obligor with regards to their employees exclusively, the Archdiocese rather acted as a sponsor and settlor of the Plan, as shown by the Trust Deed. On the other hand, given the distinctive and separate legal personhood of these schools or of the parish church they belong to, and in the absence of substantiated claims regarding the doctrine of lifting the corporate veil, it is not appropriate for the employees of these schools to go directly to the Archdiocese to claim this benefit, in violation of the individual and separate personality of their respective employers.

It should be noted that, regarding Academia del Perpetuo Socorro, in addition to it being a parochial school attached to the Perpetuo Socorro Parish, therefore being covered by the legal personality of this Parish, it was registered with the Department of State as a nonprofit corporation. Although their certification was cancelled in 2014, it was renewed in 2017. As certified by the Department of State in the records of the case, once their renewal was approved, the school recovered its legal personhood retroactively to the time of its original registration. Furthermore, this School was sued within the 3-year period after the cancellation of the Certificate; therefore, pursuant to Art. 9.08 of the Corporations Act, 14 LPRA Sec. 3708, it extends until the end of the dispute. Also, during the time that it operated as a participating employer, its certificate was still in force. Again, in terms of its corporate nature, neither the second amended complaint, which addressed the process for injunction hearing, nor the fourth amended complaint, which governed the procedures for the hearing ordered by the Supreme Court, show that any claims were made regarding the doctrine of lifting the corporate veil with regards to this or the other Schools. It was merely stated that these were entities attached to the Roman Catholic Church.

Meanwhile, as for Academia San José, it is also covered by the legal personhood of the San José Parish, as a parochial school attached to said Parish. Academia San Ignacio faces a similar situation, although with an important variant. In addition to its condition as a parochial school of the San Ignacio Parish, this School is attached to Orden de la Compañía de Jesús en Puerto Rico, Inc. (Jesuit Order).

It is so stated by the Certification by Reverend Lawrence P. Searles, School Director, which is included in the case files. This religious order, with headquarters in Rome, also has legal personality in Puerto Rico by virtue of the Treaty of Paris, as acknowledged by canon law, and apparently also through the Corporations Act, as a nonprofit corporation.

Thus far, the considerations and controversies that we have examined and faced in response to the claim of the defendants and in compliance with the opinion of the Supreme Court, rise from an analysis essentially based on rules of contractual law. However, the present case also confronts us directly with the constitutional clause of separation of Church and State, to which we have referred marginally in other contexts. We cannot detach from the fact that, in the end, this involves a claim against a religion through its different components, beyond the Trust. This necessarily causes that actions, measures, and considerations that may be addressed or applied to other types of disputants may not be available when dealing with churches, because it was so provided by the fathers of the Constitution of the United States and the Constitution of Puerto Rico. The adoption of this clause was aimed at safeguarding the essential social, moral, and spiritual value acknowledge by the People and its leaders to these institutions. It is a clause that was envisioned by the founding fathers of the United States not to protect the State, but, on the contrary, to protect the Church and religious worship from the State's intervention, which they perceived as harmful, based on the experiences lived by their ancestors. *Agostini Pascual v. Catholic Church,* 109

DPR 172 (1979). For a broader view of this subject, see part II-A of our Judgment.

This imposes upon us, as a Court, the obligation to be particularly careful when adjudicating disputes such as this one, and more importantly, when designing the remedies to be granted, in order not to impermissibly invade the sphere of protection provided by this clause, even in the procedural context in which we find ourselves right now by order of the Supreme Court. We already highlighted the practical and legal problem we would face if the intention were to adopt a new scheme to pay the pensions claimed through other entities outside the established Trust. Added to this is the risk of excessively interfering (entanglement) in issues that are specific to the church's government, in the administration of their property, and particularly, in the administration and disposal of their financial resources, which are presumed to be intended for the sustenance of their religious ministry and the promotion of worship, and the spreading of their doctrine.

Our legal system legitimates a certain level of judicial intervention in church affairs, based on a compelling interest of the State in issues such as the one discussed in this case, which affect mostly secular aspects, such as that of the labor management relations. *Díaz v. Colegio Nuestra Sra. Del Pilar,* 123 DPR 765 (1989). However, given its real or potentially substantial impact on the finances of these institutions, in their internal organization, and above all, due to their operational complexity, the dispute under our consideration could go beyond what is constitutionally allowed. This, particularly, when,

contrary to the opinion of plaintiffs and the Court of First Instance that said obligation applied to all the dioceses, parishes, and organizations of the Church throughout the Island, which could make that claim more plausible, that is not the situation. The burden in this case would rather fall on the codefendant schools and the Archdiocese of San Juan, as employers participating in the Plan.

As it can be seen, this is not an easy labor case, or a simple claim for damages in which payment of a compensation for fault or negligence is simply ordered. The imposition of an obligation such as the one before us, at a multimillion-dollar scale, whether on some parishes or on the Archdiocese, proposes the establishment of a scheme for the *monthly* payment of a pension to *dozens of teachers, former teachers, and other employees, for years or maybe for decades*. This would certainly have a substantial impact on the finances of these religious entities, with the real potential to disrupt and alter their policies, priorities, and activities in important aspects of their proselytizing, ministerial, and organizational work. This, of course, may substantially impinge on the aforementioned clause.

Hence, within the context of the separation of Church and State clause, the imposition of an obligation such as this one would require the court to carefully determine which of the assets of the Archdiocese and the affected parishes can be used to finance this kind of fund, and which cannot. In light of this obligation, the main question here is how to draw a clear and accurate line between which of the Church's funds and resources, particularly those of

these parishes and of the Archdiocese of San Juan, may be earmarked for said purposes due to their secular nature, and which are of religious significance, in other words, intended for the administration and sustenance of their ministerial activity and the promotion of their doctrine.

Obviously, that scenario becomes more complicated as we move to the execution phase of an order or decision, as the one appealed herein, to maintain the *status quo* between the parties until the trial is held,[19] which, considering what has happened in this case with regard to the Order for Seizure of the Church's assets, is particularly relevant. Faced with this scenario, especially in the vent that the Archdiocese, the parishes, or the schools, as the case may be, are unable to comply with the court's order, it would be inevitable to take legal action to ensure payment of these obligations. As stated before, this would really or potentially bring the Judicial Branch face to face with the separation of Church and State clause, and even more directly in this phase to enforce the order.

To achieve this, it would be necessary to determine, with the highest accuracy, which of these entities' assets may be seized, in order to avoid an impermissible interference with the aforementioned constitutional clause. In this sense, it is imperative to conclude that, for example, that the following property should not be subject to seizure: temples and their contents (benches, images, religious art, sacristies);

---

[19] See, Appendix to Petition for Writ of Certiorari, pg. 8 (Judgment of Supreme Court from July 18, 2017).

other properties used for their evangelizing or proselytizing work or for their parishes' activities or apostolic movements, such as retreat houses, parish halls, convents, monasteries, or pilgrimage centers, among other similar properties; parish and Archdiocese vehicles used for the transportation of priests and the Archbishopric's staff members in performing their ministerial work; money collected during Mass and donations made to the Church for the sustenance of its temples, the Archdiocese, and other Church operations associated to religious work; the parishes' or the Archdiocese's individual bank accounts for the same purposes stated above or to finance the different projects and activities related to their religious ministry or cult, among others. As case law has shown, the secular, not the religious, purpose of these assets must be predominant to legitimate the court intervention, without breaching the limits of this clause.

Lastly, in order to avoid an impermissible interference of the Courts with the constitutional sphere of protection to the churches, granted by the Constitutions of the United States and Puerto Rico, we must exercise our judicial power with extreme caution, in order not to put the Judicial Branch in a position in which it lacks the legal tools, the legal criteria, and the means to enforce its authority.

In light of the above bases and analysis, it must be concluded that a Seizure Order, like the one requested and granted in this case, could be clearly in conflict with this clause, mainly due to its scope, which would allow for it to be executed on assets such as the ones listed above. Likewise, under the previously

outlined contract law rules, it must be concluded that neither the codefendant parochial schools herein, nor the Archdiocese of San Juan, can be held liable for incurring the obligation to pay the pensions as they have been claimed by the plaintiffs. The fact that it is an interim remedial measure does not justify its imposition on parties that, at this stage in the proceedings, legally do not have, nor can they be attributed, said obligation. It should be noted that, in accordance with the above-cited Rule of Civil Procedure, supra, and its interpretative jurisprudence, one of the main criteria or basis to impose this interim measure on a party is the possibility that the moving party may prevail in their claim against the opposing party.

As far as this issue is concerned, the Supreme Court provided in its revoking opinion that the remedy sought is appropriate *as a matter of law*, even if it is a monetary claim to which a financial remedy could be applied, given the existence of irreparable harm on the part of the plaintiffs. In light of the court ruling, it was, therefore, appropriate to identify who should be liable for said damages, based on the aforementioned criteria of Rule 57.3 of Civil Procedure, supra. Hence, the Supreme Court instructed the CFI to determine what other party, besides the Trust, could be liable for the payment of these accrued pension obligations, as agreed by the parties. This cannot be separated from the criterion of likelihood of prevailing, and even more importantly, from the existence of a source of obligation that will validate said measure. This is necessary as an essential complement to finally impose this obligation by direct operation of Rule 57.3 of Civil Procedure, supra, and the applicable law,

especially given the hardship caused by this obligation, in light of the accrued amounts, as determined by the CFI, as well as of those to be paid in the future. We cannot lose sight of the fact that it is for the Courts to proceed and to act within the limits of the rule of law.

We reaffirm that the obligation of the participating employers on this matter was designed and implemented under the protection, scope, and limitations of the legal concept of the Trust. Consequently, and as we have already stated, what they agreed to therein was to make contributions to the Trust fund in order to contribute to a pension through the Trust, according to the terms provided in the documents which are the basis of the Pension Plan and the Trust.

As for the Trust, we must refer to the ownership unbundling principle of this figure.[20] I has been recognized that the essential elements for the constitution of a Trust are a separate estate and the destination or allocation given to said estate.[21] According to professor Ana C. Gómez-Pérez, the estate may be defined as an organized set of assets, rights, and liabilities subject to an economic valuation, and which form a unit for their management, treatment, and liability. Although prevailing theories claim that

---

[20] We clarify that we are not adjudicating any rights with regard to the Trust as defendant, since at the time when the evidentiary hearing was held, the process was at a standstill in terms of the hearing due to the Trust being under a bankruptcy proceeding. We merely state the rules that apply to this figure.

[21] Rodolfo Batiza, *El Fideicomiso: teoría y práctica*, Editorial Porrúa, S.A., Mexico, 1980, 86-89.

the estate constitutes a financial protection of personality, since each estate corresponds to an individual, this has been rebutted. A dominant group of theoreticians rather acknowledge the existence of separate estates. That is, estates which are segregated from the settlor's general or personal estate and whose creation responds to a given time and to specific interests, as can be the creation of pension or investment funds for the benefit of a third party called the "beneficiary." According to the author, these separate estates are presented as *a unit that is independent from any other set [of assets], which has a differentiated liability regime with regard to the settlor's personal estate, and which is completely disconnected from the settlor's obligations.*[22] Patrimonies by appropriation are the prevailing modality within this type of separate estates.

According to Gómez-Pérez, patrimonies by appropriation are those whose unit or organization is conferred by their allocation to a specific purpose, and not to the personality. The term "appropriation" refers to the destination or purpose for which said estate is separated and comes from the acknowledgment of a legal interest protected by law. *This lends it unity and attributes certain legal consequences to it, such as the fact that the estate acts independently from the general estate of the person, possesses its own legal life, and a*

---

[22] Ana C. Gómez-Pérez, *Una revisión de las principales doctrinas civilistas que impiden la incorporación del "trust" en España* ["A Review of the Principal Civil-law Doctrines that Prevent the Incorporation of the 'Trust' in Spain"], Revista Crítica de Derecho Inmobiliario (Spain), Year No. 89, Issue 740, 2013, pp. 3766-3768

differentiated liability regime, that solely attends to its concrete obligations. Among the most characteristic features of this type of patrimony by appropriation, the author mentions the following:

(1) the requirement for a delimitation of the assets and rights that form part of the separate estate;

(2) *a separation with regard to any other estate (which at times entails several sets of assets that are independent of one another being found in one same holder)*;

(3) their allocation to a purpose that serves to provide unity to the estate (such purpose may be granted by virtue of a law or an agreement);

(4) is governed by particular measures of administration and conservation.

For Gómez-Pérez, trusts are included among the variations of the patrimony by appropriation. Regarding such, she states to us that the trust is characterized by *being a financial entity that is independent of its constituent, allocated to a purpose and without their own legal personhood, at least under the primary statutes.* Under common law, the separation of assets that constitutes it entails that, although there is an initial disposer of the estate (*settlor*), an administrator and holder of the rights (*trustee*), and a third party that is enriched by the estate (*beneficiary*), *no channels of communication exist among the estates of the subjects involved.* In sum, according to this author, this separation of assets of the trust under common law is obtained with the division of the property between two subjects, the

trustee and the beneficiary, and the estate remains outside of the personal obligations of both.[23] With regard to the appropriation of the assets of the trust, the legal scholar Batiza explains that it must be in agreement with the limits of the current laws and public order. If the appropriation is not specific, *if it becomes impossible or illicit, or if it is performed, the trust simply disappears.*[24] See also, Art. 852 (2)(3) of the Civil Code, now repealed, and Art. 61 (d) of Law No. 219-2012.

From its earliest formulations, the Anglo-Saxon trust has followed these notions with regard to the separation of assets present in the trust and its appropriation. According to the author Ricardo Alvaro, who has made a synthesis of the Anglo-Saxon doctrine, such is evident upon defining the trust as a fiduciary relationship with regard to the assets or rights that the settlor transmits or creates in favor of the trustee so that he, keeping them in his name, but separated from his own estate, governs them and allocates them to the benefit of the beneficiary, or to a philanthropic, useful, or general-interest purpose. *Again, these assets or rights form a specialized estate that must be kept separate from the estates of each one of the persons that intervene in the trust, particularly*

---

[23] Ana C. Gómez Pérez, *Una revisión de las principales doctrinas civilistas que impiden la incorporación del "trust" en España* ["A Review of the Principle Civil-law Doctrines that Prevent the Incorporation of the Trust in Spain"], Revista Crítica de Derecho Inmobiliario (Spain), Year no. 89, Issue 740, 2013, p. 3770.

[24] Rodolfo Batiza, *El Fideicomiso: teoría y práctica.* ["The Trust: Theory and Practice"], Editorial Porrúa, S.A., Mexico, 1980, 86-89).

that of the trustee. With regard to this last point, this author clarifies that included among the obligations of the trust [sic] is his duty to keep the trust estate separate from his own assets and, to the extent possible, from any other assets that are not subject to the same. The Anglo-Saxon doctrine of the trust also warns that the existence of this figure is not possible without an estate appropriated to its purposes.[25]

It must be pointed out that as Alfaro states, among the different uses of the trust, are the trusts in favor of employees and workers. These are trusts created by a company or employers in benefit of their employees. It entails the advantage of distribution of activities; the investment and management is under the charge of a trustee, and the distribution of the yields for the established purposes may even be left in the hands of *a committee of employees and workers*.[26]

In accordance with the foregoing, the legal scholar Lugo Irizarry *points out that the trust estate is an autonomous one*, given that it *does not belong to any of the persons that participate in the trust*. It is by way of such that the obligations contracted by the trustee in the performance of his duty could only be effective over the trust estate and not over the trustee, settlor, or beneficiary.[27] Along this same line, Fratcher states that the consideration of the fact that the trust is a separate estate clarifies several issues. This author

---

[25] Ricardo J. Alfaro; Ruford G. Patton, El Fideicomiso Moderno ["The Modern Trust"], 28 Rev. Jur. UPR 149, 170 (1958).

[26] *Id.*

[27] Carmen Lugo Irizarry, *El fideicomiso en Puerto Rico: un híbrido jurídico ante el futuro* ["The Trust in Puerto Rico: A Legal Hybrid for the Future"+, p. 153 (1996).

states that the rights of the beneficiary are personal rights against the trustee, *enforceable only against the special estate of the trust*. Moreover, generally, the personal creditors of the trustee cannot demand their credit amounts from the special estate of the trust.[28]

From this conception of the trust, it is deduced that one of its most characteristic features is the existence of a separate estate—independent and allocated to a particular purpose. Said estate, which comes from assets belonging to the settlor, once appropriated or allocated to the purpose of the trust, they are separated from the estates of the persons who intervene in it. In this sense, it is clearly understood that the appropriation of those assets disassociates them, not only from the personal estate of the trustee, but also from the settlor's estate. To such effects, and under the protection of the prevailing rule upon the effectiveness of Law 219-2012, it is the trustee who, in fulfillment of his duties as administrator, must perform the tasks assigned by the settlor in the deed of constitution of the trust. That said, the trustee must fulfill the benefits to the beneficiaries with the estate of the trust itself.

To conclude otherwise, such as providing that said benefits must be performed with the personal estate of the settlor or the trustee, entails a crass contradiction to the previously explained doctrine, regarding the separation, independence, and allocation of the trust estate. It should be noted that the recent legislation regarding this figure has moved along that same line,

---

[28] Fratcher, *Trust International Encyclopedia of Comparative Law,* Ch. 11, (1974). In Reporter's Notes on Sec 2, General Note on the sec 2 Definition and on the Nature of Trusts.

such as Law 219-2012 and Law 9-2017, which emphasize the autonomous and inclusive estate in the acknowledgement of the trust as being of its own legal personhood.

In this case, by seeking to impose liability on the Roman Catholic and Apostolic Church, after binding the participating employers directly in such obligation, only the obligation contracted through the Pension Plan was taken into account, as if it was an agreement independent from the Trust. Hence, the claim that it is the Church who should continue making the pension payments.

Such, however, is not the situation, given that the Pension Plan in question was conceived and executed through the figure of the trust. This Plan, dated September 1, 1979, provides among other matters, the following:

> That the pension plan is established for the benefit of the employees of the participating employers and/or their beneficiaries (family members).
>
> The funds of the pension plan would go to the trust and the same would be contributed by the participating employers, who would pay a contribution for each employee to the trustee according to the agreed percentages.
>
> The participating employers guarantee and declare that, for the operation and management of the plan, *they have authorized and agreed to contribute the necessary funds by way of the trustees and that said funds form part of the property of the trust*, which shall be maintained and

> managed by the trustee for the benefit of the employees and their beneficiaries; this under the terms of the Plan they are going to contribute the necessary funds through the trustee.
>
> The Sponsor (settlor: Office of the Superintendent of Catholic Schools of the Archdiocese of San Juan) would delegate the management of the Plan in a Committee, said Committee would give orders regarding such to the trustee.

For its part, the Deed of Trust executed on November 26, 1999, among other matters, reveals the following with regard to the funds that will constitute the Trust:

> The trust shall have the funds that from time to time are deposited with the trustee by the Plan Sponsor and its employee pursuant to the terms of the *Pension Plan of the Catholic Schools of the Archdiocese of San Juan*.
>
> Said funds, and interest on such, income originating from them, and the property for which they are exchanged, *shall all be the property of the trust*.

As already pointed out, it arises from these documents that the Pension Plan was instituted as an agreement among the parties, individual employers that decided to form part of the Plan, in which it was provided that its operation would be performed by way of a trust. In the Pension Plan, in particular, it was clearly agreed that the participating employers were obligated *to make contributions for each one of their employees to the trust fund, by way of trustees. So that,*

according to the Deed of Trust, the task of paying the pensions fell on the trustees of the trust.

It should be noted that, in its Judgment, the Supreme Court, upon examining the aforesaid constitutive documents of the Plan in their most literal sense, acknowledged for the purposes of the injunction, its contractual nature and validity. According to that stated in them, it is clear that what the participating employers pledged to was *to make contributions of 2%, 4%, or 6% of the payroll for each employee to the trust fund*, from which the pensions would be paid. *The text of said Plan does not state that the employers pledged to pay the pensions directly to the teachers, that is, independently from the management of the trust*. In the end, as appears in the text of the pension Plan, each participating employer would be liable only for the contributions that it pledged to contribute to the trust.

Hence, beyond the funds of the trust, it was not possible to commit or obligate the participating employers to assume the obligation of continuing the payments of the respondents until the lawsuit ended. Thus, the mission of the Supreme Court, upon granting the preliminary injunction, as a matter of law, was not to impose that obligation, even in a provisional manner, to any of the parties mentioned in order to maintain the status quo. Such would only be appropriate against whomever the law assigned that obligation, on rational and legal grounds and of reasonable probability of the movants' claim prevailing. It should be noted that, pursuant to the previously outlined law, the probability rather pointed toward that obligation not falling on the entities of the

Church with legal personhood considered herein. In this stage of the proceeding, the alleged inability and insolvency of the Trust to pay it cannot lead to attributing the obligation to pay to the participating employers in total abstraction of the legal liability of the Trust. It is clear that, in view of, with regard to this entity, the proceedings before the CFI were halted when hearing and adjudicating the present dispute, no judgment was rendered regarding its liability, if any, for purposes of the provisional remedy under consideration. Hence, this Court is equally prevented from issuing any remedy against said party at this stage in the proceedings. It would in time correspond to the CFI, once it acquires jurisdiction over that entity, and to the parties, to take any action that may be appropriate regarding this matter.

Having clarified the foregoing, and in compliance with that provided by the Supreme Court, the proper course of action in this case as a provisional remedy is to order the participating employers, Academia Perpetuo Socorro and the Archdiocese of San Juan, to continue making the contributions that they pledged to make in the Pension Plan and the Constitution of the Trust, including those accrued to date. These contributions must be consigned in the Court, given the current status of the aforesaid Trust. From that fund, under the criteria to be established by the CFI, the payments will be able to continue to be made to the plaintiffs while the complaint is decided and the causes of action filed by the respondents are adjudicated on their merits.

With regard to Academia San Ignacio and Academia San José, it is not possible at this time to

impose the same remedy on them as the other two co-defendants, due to the fact that they do not individually have legal personhood, but rather by way of their respective parishes, as parochial schools, and in the particular case of Academia San Ignacio, also through the Orden de la Compañía de Jesús. None of these entities appears directly as defendants in this case, wherefore they have not been summoned. If it is the interest of the plaintiffs to claim against those schools, the aforesaid entities are indispensable parties, without which it is not possible to issue any remedy against the aforesaid schools. Nevertheless, as we pointed out in part II of this Judgment, the absence of an indispensable party does not entail as a first measure the dismissal of the complaint, if not first providing the plaintiff to bring it to the complaint. Should they opt for that course of action, the plaintiffs may then request the Court of First Instance to impose the remedy ordered herein against the other co-defendants.

Lastly, the fact that the CFI issued the remedy in question without the imposition of the bond required by Rule 57.4 of Civil Procedure, supra, is cited as an error. Pursuant to that stated in Part II-F of this Judgment, the imposition of a bond is a mandatory requirement upon issuing an injunction. That remedy, as opposed to that set forth in Rule 56.3 of Civil Procedure, supra, does not contain any exceptions. However, in the case *V. Caparra Neigh. Assoc. v. From. Educ. Assoc.,* supra, the Supreme Court of Puerto Rico seemed to view a common junction between the preliminary injunction and the order confirm a judgment, which suggests that, in appropriate cases, it may recur to Rule 56.3 even

within the context of a preliminary injunction. (To the contrary, see the Dissenting Opinion of Justice Hernández Denton, joined by Justice Rivera Pérez, regarding the inappropriateness of interchanging these rules).

Precisely, in the case at hand, the CFI applied the exceptions contemplated in Rule 56.3 to excuse the presentment of a bond in the decreed injunction. Specifically, to do so it based itself on subsection (c), which contemplates the exception of: "[i]f the remedy was processed after the Judgment was issued." Without any aim to conclusively rule whether in this case the conditions set forth in *V. Caparra Neigh. Assoc.*, supra, to justify applying the aforesaid exceptions were present, it is true that the Court of First Instance erred as a matter of law in basing itself on the aforesaid subsection (c). This exception clearly refers to those cases to confirm judgments in which a final judgment has already been issued. Nevertheless, the CFI seemed to base its decision regarding this matter on the Judgment recently issued by the Supreme Court in this case. It should be noted, however, that this was precisely the judgment in which the appropriateness of the preliminary injunction as an interlocutory remedy was determined. Precisely having acknowledged the preliminary injunction in that Judgment, the proper course of action was therefore the consideration of the matter of the bond, which the Supreme Court evidently left in the hands of the CFI. It should be observed that, in its decision, the High Court did not make any pronouncement regarding that matter, which necessarily implies that it should have been attended to in time by the court of first instance.

Hence, correctly, said court opted to rule on the matter, but, as we stated, incorrectly. This with regard to the extent to which it based [sic] its determination to except it in reference to the decision that precisely accepted the extraordinary remedy as an interlocutory measure.

If the CFI sought to use the exceptions of Rule 56.3, supra, it should have done so in the way in which they are applied to the remedy in judgment confirmation. In that context, we reiterate that exception (c) refers to final judgments and not to interlocutory decisions, such as that issued by the Supreme Court in this case. See, *Ramos et. al. v. Colón et al.,*153 DPR 534 (2001).

Thus, the proper course of action is to nullify the determination of the CFI authorizing the extraordinary remedy in question without the presentment of a bond. That said, given the remedy decreed in our judgment, in compliance with the order of the Supreme Court, this matter is to be remanded to the CFI for its reevaluation and final decision. Such, with the task, firstly, to decide whether it was appropriate to apply the exceptions of Rule 56.3 to this case, even when the judgment confirmation remedy has not been requested in light of the criteria of *V. Caparra Neigh. Assoc. v. From. Educ. Assoc.*, supra. In the event that the CFI were to decide in favor of the application of said Rule, it must provide for whether the requirement of the bond pursuant to the exceptions contemplated therein, as they have been applied and interpreted in our jurisprudential rules.

IV.

Based on the foregoing grounds, the Decision from March 16, 2018 and the Order from March 26 of the same year are hereby revoked. The case is hereby remanded to the court of first instance so that it may proceed, pursuant to that provided herein.

So agreed and ordered by the Court, and certified by the Clerk of the Court of Appeals. Justice Rivera Colón issues a dissenting vote in writing.

[signature]

Lilia M. Oquendo Solís
Clerk of the Court of Appeals

"Whenever a family does not have anything to eat because they have to pay the loan to the usurers, that is not Christianity, it is inhumane."

-Pope Francis

DISSENTING VOTE OF JUSTICE RIVERA COLÓN

Now come the Archdiocese of San Juan and the Office of the Superintendent of Catholic Schools (together, the Archdiocese of San Juan) and request the review of three decisions issued by the Court of First Instance, Superior Court of San Juan (CFI):

1. They request the revocation of the Decision issued on March 16, 2018, by way of which the TPI determined that the Archdiocese of San Juan did not have legal personhood and issued a preliminary injunction in which the "Roman Catholic and Apostolic Church in Puerto Rico" was ordered to "immediately and without any further delay proceed to content with the issuance of the payments to the plaintiffs while this lawsuit is decided."[1]

2. They also request the revocation of the Decision issued on March 19, 2018, by way of which the court of first instance denied the "Motion regarding Nullity of Decision and Request to Consider Motion for Dismissal due to Lack of Jurisdiction," filed on the same date by the Archdiocese of San Juan.

3. They moreover petition for the revocation of the Order issued on March 26, 2018, in which ordered the "Roman Catholic and Apostolic Church in Puerto Rico" to proceed, within a term of 24 hours, to consign the

[1] See Ap. Petition for Writ of Certiorari, on pg. 147.

sum of $4,700,000.00 in the Accounts Unit of the Court.

I.

On June 6, 2016, sixty-six (66) employees and former employees of Academia del Perpetuo Socorro filed in the CFI a petition for injunction and seizure in assurance of judgment against the "Holy Roman Catholic and Apostolic Church in Puerto Rico," the Archdiocese of San Juan, the Office of the Superintendent of Catholic Schools, Academia del Perpetuo Socorro, and the Trust Pension Plan for Catholic School Employees (Trust). In said petition, it was stated that "[i]n view of the insufficiency of funds of the Trust, the proper course of action is for the Catholic Church to respond with its estate to fulfill its contractual obligations."[2] Moreover, it was requested that "pursuant to the provisions of Rule 56.4 of Civil Procedure and that provided in 32 L.P.R.A. sec. 3133, the seizure of the funds of the Catholic Church be ordered in a sufficient amount to cover the benefits of the plaintiffs."[3]

In kind, the teachers filed a complaint regarding declaratory judgment, estoppel, breach of contract, and damages. In sum, they stated that the suspension of the payment of the pensions to the retired employees caused them irreparable damage, since they alleged that this action threatened their acquired rights. Furthermore, in assurance of the judgment that one day favors them, they requested the seizure

---

[2] See Ap. "Appearance in Compliance with Order," on pg. 159.

[3] See Ap. "Appearance in Compliance with Order," on pp. 159-160.

of the assets of the Church for up to the sum of $4,444,419.95. Thus, they petitioned for the Trust to be ordered to continue to provide the pension.

On June 15, 2016, other employees and former employees of Academia San José filed an analogous complaint. On June 22, 2016, the same action was taken by other employees and former employees of Academia San Ignacio de Loyola. On July 15, 2016, the CFI notified Decision and Order, by way of which it decided to consolidate the three complaints and redirect them to the ordinary proceeding.

On July 1, 2016, the CFI issued and notified a Decision and Order, by way of which it denied the request for preliminary injunction and seizure in assurance of judgment filed by the respondents. In disagreement, on July 28, 2016, the respondents appealed the aforesaid decision before the Court of Appeals, which denied the appeal. Still unsatisfied, the petitioning party recurred to the Supreme Court of Puerto Rico for review by way of a request for a writ of certiorari.

On July 18, 2017, the Supreme Court of Puerto Rico issued Judgment in case No. CC-2016-1053, and granted the petition for a preliminary injunction filed by the respondents to continue the payment of the pensions to the beneficiaries of the Pension Plan of the Catholic Schools of the Archdiocese of San Juan. In turn, it ordered court of first instance to "hold a hearing to determine whether the defendant-schools have legal personhood and, immediately thereafter, order the continuation of the pension payments by the employers of the petitioners [respondents herein], whether that be the Academies or the Church."

On January 8, 2018, the CFI issued an Order granting the Trust a term of 48 hours to submit an updated certification stating the balance of funds in its possession.

On January 10, 2018, the Trust filed a motion entitled "Motion Requesting Brief Final Twenty-Four Hour Term" to comply with the Order issued by the Court. The aforesaid motion was granted by the CFI. Nevertheless, the documents do not show that the Trust ever complied with the aforesaid order.

On January 11, 2018, the Trust filed an "Informative Motion regarding the Filing of a Petition before the Bankruptcy Court," in which it stated that that day it had filed a petition for bankruptcy before said court.

On January 15, 2018, the respondents filed a "Fourth Amended complaint" in order to include the fiduciaries and/or trustees of the Trust and several unincorporated Catholic schools as defendants.

On January 30, 2018, the CFI held an evidentiary hearing in order to comply with the Judgment of the Supreme Court of Puerto Rico issued on July18, 2017, *supra.*

On February 6, 2018, the petitioning party filed an "Informative Motion regarding Removal of the Case to the United States District Court for the District of Puerto Rico." It stated that that day, it filed a Notice of Removal of the present case before the Federal Court for the District of Puerto Rico, based on the fact that the claim filed against it was related to the petition for bankruptcy filed by the Trust and that, should the responding party prevail in the lawsuit, its rights could be affected. As such, it requested the CFI

to abstain from carrying out any ulterior action and dismiss the above-titled case. Having heard the motion, on February 12, 2018, the CFI issued Judgment by way of which it ordered the stay of the proceedings and the closing, without prejudice, of the above-titled case for statistical purposes.

Against this background, on March 13, 2018, the Bankruptcy Court dismissed the request filed by the Trust and on the same date, the petitioning party filed a request for dismissal before the CFI based on the presumed lack of jurisdiction of the Court over the Archdiocese of San Juan as part of or a "dependency" of the Roman Catholic and Apostolic Church. Said motion was denied by the CFI.

On March 15, 2018, the responding party filed a "Motion Submitting a Copy of the Judgment by the Bankruptcy Court" to which it accompanied the Judgment issued on March 13, 2018 by the Bankruptcy Court dismissing the petition for bankruptcy filed before that Court by the Trust.

On March 16, 2018, the petitioning party filed before the Bankruptcy Court a notice of withdrawal of its removal and requested that the case be remanded to the state Court.

On the same date, the CFI issued the appealed Decision, and ruled that the Roman Catholic and Apostolic Church in Puerto Rico was liable for the payment of the pensions, given that neither the defendant-schools nor the petitioning party had their own legal personhood. Thus, it ordered the Catholic Church to continue with the issuance of the payments to the respondents pursuant to the Pension Plan while the case was decided.

On March 19, 2018, the petitioning party filed a "Motion regarding Nullity of Decision and Request to Consider Motion for Dismissal due to Lack of Jurisdiction." It sustained that with the dismissal of the Trust's petition for bankruptcy solely the automatic stay of the claims against it were lifted. Nevertheless, it stated that the federal Court had not yet issued the corresponding order remanding the case to the state Court, wherefore the Decision issued on March 16, 2018, was issued without jurisdiction. On the same date, the CFI denied the aforesaid motion.

In disagreement, on March 20, 2018, the petitioning party filed a "Request for Reconsideration and Motion to Set Bond pursuant to Rule 57.4."

For its part, that day, the responding party filed a "Motion in Compliance with Orders 639 and 640." It argued that the Catholic Church waived its request for removal in view of the fact that said party had: (1) filed a dispositive motion before the Court of First Instance on February 13, 2018 and (2) filed a notice of withdrawal of its request for removal on March 16, 2018. In turn, it requested for Academia del Perpetuo Socorro, Academia San José, Academia San Ignacio de Loyola, and the other defendant-schools to appear separately and independently from the Catholic Church as dependencies of the Church.

March 21, 2018, the responding party reiterated by way of a motion for the consignment of the remaining funds of the Trust to be ordered.

On March 26, 2018, the CFI denied the motion for reconsideration filed by the petitioning party. On the same date, it issued an Order in which it granted a term of 24 hours to the Roman Catholic and Apostolic

Church in Puerto Rico to consign the sum of $4,700,000.00 in the Accounts Unit of the Court. It warned the party that, should it fail to comply with such, the seizure of its bank accounts would proceed to be ordered.

In disagreement with the determinations of the CFI, on March 26, 2018, the Archdiocese of San Juan appeared before this Court of Appeals by way of the present request for writ of certiorari and formulated the following assignments of error:

> *A. The Court of First Instance gravely and manifestly erred upon issuing the reviewed Decision without having jurisdiction when the case was removed to the Federal District Court and said court had not remanded it when the issued resolutions and orders were issued.*
>
> *B. The Court of First Instance gravely and manifestly erred by not dismissing the Fourth Amended Complaint for lack of subject matter jurisdiction pursuant to the Foreign Sovereign Immunities Act.*
>
> *C. The Court of First Instance gravely and manifestly erred by not dismissing the Fourth Amended Complaint for lack of personal jurisdiction over the Roman Catholic and Apostolic Church and for insufficient summons and service thereof pursuant to the Foreign Sovereign Immunities Act.*
>
> *D. The Court of First Instance gravely and manifestly erred by issuing a preliminary injunction without the imposition of a bond as required by Rule 57.4 of the Rules of Civil*

Procedure, which constitutes a violation of the constitutional right to due process of law.

E. The Court of First Instance gravely and manifestly erred by concluding that the Archdioceses of San Juan does not have its own legal personhood independent from the Roman Catholic and Apostolic Church.

F. The Court of First Instance gravely and manifestly erred by deciding that Academia del Perpetuo Socorro lacks legal personhood despite concluding as a matter of fact that it was correctly incorporated under the Puerto Rico General Corporations Act.

G. The Court of First Instance gravely and manifestly erred by ordering the consignment of 4.7 million dollars, what equals a permanent injunction without the celebration of a hearing and/or evidence to determine the amounts corresponding to plaintiffs' pensions in violation of the due process of law.

With its petition, the petitioning party accompanied a "Motion in Aid of Jurisdiction."

On March 27, 2018, this Court issued a Decision and ordered the stay of the proceedings of the present case before the CFI. In turn, the responding party was granted a term ending on April 9, 2018 to state the reasons for which the writ of certiorari should not be issued and grant the requested remedy.

Opportunely, the responding party appeared by way of its pleading in opposition. Several intervening appearances and motions were also filed before our

consideration, which were disposed of by way Decision.

Having listened to the recording of the hearing held on January 30, 2018 and having analyzed the appearances of the parties, as well as their appendices, in light of the applicable state of law, we dissent from the majority. Let us see.

II.

A. Separation of Church and State.

The First Amendment of the Constitution of the United States states the following which reads as follows:

> Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.

1st Amendment, U.S. Const., LPRA, Volume 1.

For its part, Section 3 of Art. II of the Constitution of the Commonwealth of Puerto Rico provides that "[no] law shall be made respecting an establishment of religion or prohibiting the free exercise thereof. There shall be complete separation of church and state." *Mercado, Quilichini v. U.C.P.R.,* 143 DPR 610 (1997). The referenced section consecrates the freedom of religion, prohibits the State from establishing an official religion, and orders the total separation between Church and State. *Christian Academy and Sch. Assoc. v. Commonwealth,* 135 DPR 150, on pg. 159 (1994); *Agostini v. Catholic Church,* 109 DPR 172,

on pg. 175 (1979). Both prohibitions encompassed by the first sentence of Section 3 of Art. II of our Constitution constitute a literal translation of the first two prohibitions contained in the First Amendment of the Federal Constitution. These two prohibitions in both Constitutions have been called separately and respectively the "Establishment Clause" and "Free Exercise or Freedom of Religion Clause." *Mercado, Quilichini v. U.C.P.R., supra,* on pp. 634-635.

The Establishment Clause constitutes a barrier of a constitutional nature by way of which the State is prevented from sponsoring any religion as the State religion. *Mercado, Quilichini v. U.C.P.R., supra,* on pg. 635. Generally, the cases decided by the Supreme Court of the United States under the protection of the Establishment Clause consist of the assistance or backing that churches and/or parochial schools have received directly or indirectly through tax exemptions, subsidies, reimbursement of expenses related to any religion or recognized religious organization, among others. Id. "*In order for the State to be able to prevail against an alleged infraction of this clause, it is required for the attacked law or conduct to have a secular purpose, the primary or principal effect of which is not to promote or inhibit religion and, lastly, which does not entail the possibility of causing excessive meddling or entanglement of the government in religious matters.*" (Emphasis ours). *Lemon v. Kurtzman,* 403 US 602 (1971); *Díaz v. Colegio Nuestra Sra. del Pilar,* 123 DPR 765, on pg. 780 (1989).

Alternatively, the Free Exercise or Freedom of Religion Clause guarantees the practicing of religious beliefs, whether individual or collective, and

absolutely prohibits the government from impeding said beliefs. *Mercado, Quilichini v. U.C.P.R., supra,* on pg. 636. "The distinguishing thread that ties together the cases decided under the protection of the clause that guarantees the freedom of religion is the presence of any type of government intervention, through any of its Branches, that hinders or prevents the practicing of any particular religious activity." *Id.,* on pg. 636. Thus, just like any legislative action, *court decisions that infringe upon the religious freedoms protected by the Constitution of the Commonwealth of Puerto Rico and the Constitution of the United States are invalid*. *Id.*, on pg. 638.

Consonant with the foregoing, the Supreme Court of Puerto Rico has stated that:

> *[t]he civil courts cannot exercise their jurisdiction to decide disputes over property rights relating to a church when in order to do so they must irremediably render judgment on matters of doctrine, discipline, faith, or internal ecclesiastical organizations.*

Díaz v. Colegio Nuestra Sra. del Pilar, supra, on pg. 783.

Religious organizations have an interest of a constitutional nature in maintaining their autonomy in the organization of their internal affairs, so that they may freely select their leaders, define their own doctrines, settle internal disputes, and administer their institutions. *Mercado, Quilichini v. U.C.P.R., supra,* pg. 639, citing *Corporation of Presiding Bishop v. Amos,* 483 US 327, on pp. 341-342 (1987).

B. Canon Law.

Pursuant to the Code of Canon Law of January 25, 1983 (CCL), the Catholic Church and the Apostolic See are moral persons by way of the same divine ordainment.[4] The Catholic Church, in addition to possessing strictly spiritual characteristics, is legally organized.[5] Said organization is based on the CLL, which provides the set of legal rules that govern the religious community of Christians, especially the Latin Catholic Church. Book 1, CLL. This establishes, principally, the constitutional right of the Church, the diocese, the parishes, and the religious orders. It also establishes the set of rules that regulate the organization of the Latin Church, as well as the rights and obligations of the faithful. O. Ochoa G., *Derecho Civil I: Personas* ["Civil Law I: Persons"], Caracas, Universidad Católica Andrés Bello, 2006, pp. 105-106.

Canon 368 of the CLL provides that:

Particular churches, in which and from which the one and only Catholic Church exists, are first of all dioceses, to which, unless it is otherwise evident, are likened a territorial prelature and territorial abbacy, an apostolic vicariate and an apostolic prefecture, and an apostolic administration erected in a stable manner.

The canonical system distinguishes between physical persons and juridic persons. Moreover,

---

[4] Canon 113 § 1 of CLL.

[5] Vicente Prieto, Relaciones Iglesia-Estado: La Perspectiva del Derecho Canónico ["Church-State Relations: The Perspective of Canon Law"], Salamanca, Publicaciones Universidad Pontificia Salamanca, 2005, pg. 9.

within juridic persons, it distinguishes between private and public juridic persons. We will focus our attention on public juridic persons, given that only they may be owners of ecclesiastical assets. In that pertaining to the matter at hand, Book V, entitled, On the Temporal Goods of the Church, in Title VI, entitled, On Physical and Juridic Persons, Chapter II, entitled, On Juridic Persons, develops all of that pertaining to juridic personhood within the Church, in light of the rights and obligations that it has, with regard to the ecclesiastical estate.

Specifically, it is provides that juridic persons are constituted by the prescript of law or by special grant of competent authority, "[...] aggregates of persons (corporations) or of things (foundations) ordered for a purpose which is in keeping with the mission of the Church and which transcends the purpose of the individuals."[6] The purposes to which this canon refers are "those which pertain to works of piety, of the apostolate, or of charity, whether spiritual or temporal."[7]

In accordance with such, the CLL distinguishes between private juridic persons and public juridic persons.[8] In sum, the difference is based on their origin and purpose. The former are constituted by the initiative of the faithful, by virtue of the right of association and they act on their own behalf for purposes or functions similar to public juridic persons, which we shall discuss shortly.

---

[6] Canon 114 § 1 of CLL.

[7] Canon 114 § 2 of CLL.

[8] Canon 113 § 2 of CLL.

On the other hand, public juridic persons are constituted, formally or materially, as such by ecclesiastic authority and are those that:

> *[...] act on behalf of the Church pursuing public legal purposes, whether due to their very nature, or due to being reserved to the public ecclesiastical authority itself, or because the ecclesiastical authority [...]takes the initiative and assumes or creates a juridic person for the performance of a purpose or function that is not sufficiently attended to.*[9]

The same author explains to us that by virtue of Canon 116, juridic personhood is granted to several components within all of the divisions comprised by the Church. Among these, for example, the Ecclesiastical Province, the Institutes of Consecrated Life, the Apostolic See, the College of Cardinals, the parishes, the Seminaries, among others, have public juridic personhood. In particular, with regard to the Institutes of Consecrated Life, the Provinces, and the Houses (monasteries or convents), the canonical system provides:

> *634 § 1. As juridic persons by the law itself, institutes, provinces, and houses are capable of acquiring, possessing, administering, and alienating temporal goods unless this capacity is excluded or restricted in the constitutions.*

---

[9] F. R. Aznar Gil, *La Administración de los Bienes Temporales de la Iglesia* [*"The Administration of the Temporal Goods of the Church"*], Salamanca, Ed. Publicaciones Universidad Pontificia de Salamanca, 1984, pg. 31.

> *§ 2. Nevertheless, they are to avoid any appearance of excess, immoderate wealth, and accumulation of goods.*
>
> *[…]*
>
> *635 § 1. Since the temporal goods of religious institutes are ecclesiastical, they are governed by the prescripts of Book V, The Temporal Goods of the Church, unless other provision is expressly made.*[10]
>
> (Emphasis ours.)

The foregoing is important, given that only those subjects that have public juridic personhood may be owners of ecclesiastical assets.

In order to understand what ecclesiastical assets are, we must first point out that the canonical system allows the Church to have assets—called temporal goods—to the extent to which such guides it to the appropriate realization of divine worship.

That said, an ecclesiastical asset, according to Aznar Gil, are all of the material or immaterial, movable or immovable assets, allocated immediately or mediately to the performance of the purposes of the Catholic Church and that belong to an ecclesiastical public juridic person.[11] With regard to such, Book V of the CLL, entitled, On the Temporal Goods of the Church, explains: "[...] all temporal goods which belong to the universal Church, the Apostolic See, or other public juridic persons in the Church are

---

[10] Canon 634-635 of the CLL.

[11] Aznar Gil, *op. cit.*, pg. 27.

ecclesiastical goods."[12] Consequently, in order for us to be faced with an ecclesiastical asset, it must have the following characteristics:

> -that the subject of domain or possession is an ecclesiastical public juridic person;
>
> -that the thing is in the estate, that is, in the property or at least in legitimate possession of the ecclesiastical juridic person.[13]

Having identified these characteristics, it is necessary to underscore that ecclesiastical assets are grouped into several classifications, among which we highlight "sacred things and places." Sacred things and places are those things, movable or immovable, that with the consecration or blessing have been intended for divine worship.[14] Therefore, the sacred objects and places in the Church's estate, hold a special category, due to their sacred nature. These objects and places become sacred at the moment at which they are consecrated or blessed by way of prescribed liturgical rites. With such, a spiritual nature is bestowed upon the thing or place "[...] and it is placed in a particular legal condition, distinguishing it from profane things and separating them from profane or improper uses."[15] With regard to such, Aznar Gil, *op. cit.*, *supra*, explains that sacred things

---

[12] Canon 1257 of the CLL.

[13] Aznar Gil, *op. cit.*, pg. 29.

[14] Canon 1171 of the CLL. This type of asset may be ecclesiastical or private, given that they may belong to private individuals, but they entail certain limitations and restrictions imposed by the canonical system.

[15] Aznar Gil, *op. cit.*, pg. 37.

are: sacred images, sacred relics, sacred places intended for worship, Churches, oratories, private chapels, sanctuaries, altars, the accessories or instruments intended for divine worship, among others.[16]

Due to their spiritual nature and value, the canonical system prescribes the manner in which these sacred object shall be treated, so that, even in the hands of a private person, their use and purpose is specially regulated by the ecclesiastical rules. That is to say, their administration, necessarily, shall be governed by the limits imposed by the doctrines of separation of Church and State and Freedom of Religion, as previously set forth.

Alternatively, Canon 369 of the CLL defines the diocese in the following manner:

> *A diocese is a portion of the people of God which is entrusted to a bishop for him to shepherd with the cooperation of the presbyterium, so that, adhering to its pastor and gathered by him in the Holy Spirit through the gospel and the Eucharist, it constitutes a particular church in which the one, holy, catholic, and apostolic Church of Christ is truly present and operative.*

The state of canonical law provides that: "[t]he diocesan bishop represents his diocese in all its juridic affairs."[17] He has the obligation to defend the unity of the Universal Church and, therefore, demand

---

[16] Aznar Gil, *op. cit.*, pg. 37.

[17] Canon 393 of the CLL.

compliance with all ecclesiastical laws.[18] It corresponds exclusively to the diocesan Bishop to erect, suppress, or change parishes.[19] Moreover, the CLL establishes that the parishes of the dioceses constitute a determined community of faithful and each one of them, "legitimately erected, has juridic personality by virtue of the law itself."[20] It appears, moreover, in the aforesaid Code that the *representation of the parishes is entrusted in the pastor* (parochus) *under the authority of the diocesan Bishop*.[21]

Consonant with the foregoing, the juridic personality of each diocese arises from Canons 372 and 373 of the CLL, which provide the following:

> *372 § 1. As a rule, a portion of the people of God which constitutes a diocese or other particular church is limited to a definite territory so that it includes all the faithful living in the territory.*
>
> *§ 2. Nevertheless, where in the judgment of the supreme authority of the Church it seems advantageous after the conferences of bishops concerned have been heard, particular churches distinguished by the rite of the faithful or some other similar reason can be erected in the same territory.*

---

[18] Canon 392 of the CLL.

[19] Canon 515 § 2 of the CLL.

[20] Canon 515 § 1 and § 3 of the CLL.

[21] Canon 515 § 1 of the CLL.

> *373 It is only for the supreme authority to erect particular churches;* ***those legitimately erected possess juridic personality by the law itself.***
>
> (Emphasis ours).

C. Federal Sovereign Immunities Act.

The Federal Sovereign Immunities Act establishes the limitations with regard to whether a foreign state may be sued in the courts of the United States. A foreign state includes its political subdivisions or an agency or instrumentality of a foreign state. 28 USC 1603(a). Moreover, it defines what constitutes an agency or instrumentality in the following manner:

An "agency or instrumentality of a foreign state" means any entity-

(1) which is a separate legal person, corporate or otherwise, and

(2) which is an organ of a foreign state or political subdivision thereof, or a majority of whose shares or other ownership interest is owned by a foreign state or political subdivision thereof, and

(3) which is neither a citizen of a State of the United States as defined in section 1332 (c) and (e) of this title, nor created under the laws of any third country. The Federal Sovereign Immunities Act provides, furthermore, the following:

"[s]ubject to existing international agreements to which the United States is a party at the time of enactment of this Act a foreign state shall be immune from the jurisdiction of the courts of the United States and of the States, except as provided in sections 1605-

1607 of this chapter." 28 USC 1604. Pursuant to the Federal Sovereign Immunities Act, the assets of a foreign state are also immune from seizure and foreclosure. 28 USC 1609.

D. Provisional Remedies.

Rule 56.1 of the Rules of Civil Procedure, 32 LPRA Ap. V, 56.1, empowers a court to issue in any lawsuit, before or after issuing judgment, any orders that are necessary to ensure the enforcement of such. It expressly recognizes as specific measures for achieving that purpose "seizure, seizure of funds in possession of a third party, prohibition to transfer, the claiming and delivery of movable assets, receivership, an order to do or refrain from doing any specific act," in addition to "any other measure that it deems appropriate, according to the circumstances of the case."

As a general rule, "[n]o ruling shall be granted, modified, annulled, or taken on a provisional remedy, without notifying the adverse party and without holding a hearing, except as provided in Rules 56.4 and 56.5." Rule 56.2 of the Rules of Civil Procedure, 32 LPRA Ap. V, R. 56.2. The granting of a measure to enforce a judgment supposes, moreover, posting a bond, unless any of the following circumstances are present:

> *(a) If it appears from public or private documents, as defined by law, signed before a person authorized to administer oaths, that the obligation may be legally enforced; or*
>
> *(b) If party is indigent and expressly exempted by law from the payment of filing fees, and in the court's opinion the complaint adduces*

> *facts sufficient to establish a cause of action which may evidently succeed, and there are reasonable grounds to believe, after a hearing to that effect, that if such provisional remedy is not granted the resulting judgment would be academic since there would be no property over which to execute it; or*
>
> *(c) If a remedy is sought after judgment is entered.*

Rule 56.3 of the Rules of Civil Procedure, 32 LPRA Ap. V, R. 56.3.

E. The Injunction.

Rule 57 of the Rules of Civil Procedure, 32 LPRA Ap. V, R. 57, as well as Arts. 675 to 689 of the Code of Civil Procedure, 32 LPRA secs. 3521-3533, regulate the injunction. Asoc. Vec. V. Caparra v. Asoc. Fom. Educ., 173 DPR 304, on pg. 318 (2008). This extraordinary recourse seeks to prohibit or order the execution of a determined act in order to prevent imminent or irreparable damages from being caused to a person, whenever no other adequate remedy exists in law. *VDE Corporation v. F & R Construction,* 180 DPR 21, on pg. 40 (2010).

The preliminary injunction is a "recourse that is issued by the court prior to the holding of a trial on the merits and, ordinarily after the holding of the hearing where the parties have the opportunity to present evidence in support and opposition of the issuance of such." *Next Step Medical v. Bromedicon et al.,* 190 DPR 474, on pg. 486 (2014). Its main objective is to maintain the status quo between the parties until the trial on its merits is held, so that a situation in which the judgment that is ultimately issued is not rendered

moot and greatly considerable damages are inflicted on the petitioner of the injunction while the lawsuit continues. *Id; VDE Corporation v. F & R Construction, supra,* on pg. 41: *Rullán v. Fas Alzamora,* 166 DPR 742, on pg. 764 (2006). The decision to grant or deny a preliminary injunction rests on the sound discretion of the court, wherefore its determination shall be reviewed if any abuse of discretion on its part was involved. *Mun. of Ponce v. Governor,* 136 DPR 776, on pp. 784-785 (1994).

The criteria to be considered for the granting of a preliminary injunction are the following: (1) the nature of the damages that may be caused to the parties by granting or denying it; (2) the irreparableness of the damage or existence of an adequate remedy in law; (3) the likelihood that the petitioner will eventually prevail when deciding the dispute on its merits; (4) the probability that the cause will become moot if not granted, and (5) the possible impact on the public interest of the remedy requested. *Next Step Medical v. Bromedicon et al., supra,* on pp. 486-487; *VDE Corporation v. F & R Construction, supra,* on pp. 40-41; *Mun. of Ponce v. Governor,* 136 DPR 776, *supra*, on pg. 784.

For its part, Rule 57.4 of the Rules of Civil Procedure, 32 LPRA Ap. V, R. 57.4, provides the following:

> ***No restraining order or preliminary injunction shall be issued except upon the posting of bond*** *by the applicant, in such sum as the court deems proper for the payment of such costs and damages as may be incurred or suffered by any party who is found to have*

> *been wrongfully enjoined or restrained. No such bond shall be required of the Commonwealth of Puerto Rico, its municipalities, agencies, instrumentalities or of any of its officers acting in their official capacity.*
>
> *Whenever these rules require or permit the posting of bond by a party, each guarantor submits himself to the jurisdiction of the court and irrevocably appoints the clerk of the court as his agent upon whom any notice, summons or document affecting his liability on the bond may be served. His liability may be enforced on motion without the necessity of an independent action. The motion and such notice of the motion.*
>
> (Emphasis ours).

F. Legal Personhood and the General Corporations Act of 2009.

Art. 27 of the Civil Code, 31 LPRA sec. 101, provides that the following are

artificial persons:

(1) Corporations and associations of public interest, having artificial personality recognized by law. The personality of such bodies shall commence from the moment of their establishment in accordance with law.

(2) Private corporations, companies or associations, whether civil, commercial or industrial, to which the law grants legal personality.

Legal personhood is the collectivity of persons or group of assets that, organized for the realization of a

permanent purpose, obtains the recognition of the state as a subject of law. *Rodríguez v. P.R. Gov. Dev. Bank,* 151 DPR 383, on pg. 401 (2000); *Rivera Maldonado v. Commonwealth,* 119 DPR 74, on pg. 81.

Art. 29 of the Civil Code, 31 LPRA sec. 103, provides that the civil capacity of corporations, companies and associations shall be regulated by the laws that created or recognized them. In other words, the artificial person shall receive its personhood directly from the law that created it, which shall provide for its limits, powers, rights, and responsibilities. *Rivera Maldonado v. Commonwealth, supra.*

For its part, Art. 1.05(A) of Law 164-2009, known as the General Corporations Act of 2009, 14 LPRA sec. 3505(a), provides the following with regard to the establishment of the legal personhood of corporations as follows:

> *(a) Once the certificate of incorporation has been executed and filed as provided in sec. 3503(d) of this Act and the fees required by law have been tendered, the person or persons who have thus associated and their successors and assignees shall constitute, as of the filing date, or if it was set forth in the certificate of incorporation, as of a subsequent date which shall not exceed ninety (90) days, a corporate entity with the name set forth in the certificate, subject to dissolution as provided in this Act.*
>
> *(b) The issue of the certificate of incorporation by the Secretary of State shall constitute conclusive evidence that all the conditions required by this Act for incorporation have*

> *been satisfied, except in procedures initiated by the Commonwealth to cancel or revoke the certificate of incorporation or to dissolve the corporation.*
>
> *(c) All persons acting as a corporation without having the authority to do so shall be severally liable of all the debts and obligations incurred or assumed as a result of such action.*

Alternatively, in addition to the requirements outlined in subsection (a) of Art. 1.02 of the General Corporations Act of 2009, 14 LPRA sec. 3502(a), the certificate of incorporation may contain:

> . . . . . .
>
> *(4)* ***A provision limiting the duration of the existence of the corporation to a specific date. If no such provision is included, the corporation shall have perpetual existence.***
>
> . . . . . .

(Emphasis ours).

Art. 1.02 (b)(4) of the General Corporations Act of 2009, 14 LPRA sec. 3502(b)(4).

For its part, Art. 11.02 of the General Corporations Act of 2009, 14 LPRA sec. 3762, provides, in that pertaining to this matter, as follows:

> *(a) Any corporation organized under the laws of the Commonwealth as well as any corporation whose certificate of incorporation has become void pursuant to the law and any corporation whose certificate of incorporation has expired by reason of failure to renew it or*

whose certificate of incorporation has been renewed, but, through failure to comply strictly with the provisions of this Act the validity of whose renewal has been brought into question, may, ***at any time before the expiration of the time limited for its existence*** *and subject to all of its duties, debts, and liabilities which had been secured or imposed by its original certificate of incorporation and all amendments thereto, procure an extension, restoration, renewal or revival of its certificate of incorporation, together with all the rights, privileges, and immunities provided by the same. Likewise, it may be requested by any corporation whose certificate of incorporation has become ineffective, pursuant to law; and any corporation whose certificate of incorporation has not been renewed or that having been renewed, the validity of this renewal would be questioned due to not strictly complying with the provisions of this subtitle.*

(d) When drafting the certificate pursuant to sec. 3503 of this title, ***the corporation shall be renewed and established with the same force and vigor as if it had not lost validity due to cancellation of its certificate of incorporation, pursuant to sec. 354(b) of this title or become ineffective or forfeited or void, or had not expired. Such reinstatement shall validate all contracts, acts, matters and things made, done and performed within the scope of its certificate of***

> ***incorporation by the corporation, its officers and agents during the time when its certificate of incorporation was cancelled pursuant to sec. 354(b) of this Act, or forfeited or void, or after its expiration, with the same force and effect and to all intents and purposes as if the certificate of incorporation had at all times remained in full force and effect.*** *All real and personal property, rights and credits, which belonged to the corporation at the time its certificate of incorporation became cancelled pursuant to subsection (B) of Section 3.06 of this Act, or forfeited or void, or expired and which were not disposed of prior to the time of its revival and restoration, shall be vested in the corporation, after its revival and restoration, as they were held by the corporation at and before the time its certificate of incorporation became cancelled pursuant to 354(b) of this Act, or forfeited or void, or expired. The corporation after its revival and restoration shall be as exclusively liable for all contracts, acts, matters and things made, done or performed on its behalf by its officers and agents prior to its revival, as if its certificate of incorporation had at all times remained in full force and effect.*
>
> *(Emphasis ours).*

The extinction of a corporation is not instantaneous, wherefore Art. 9.08 of the General Corporations Act of 2009, 14 LPRA sec. 3708, extends the legal personhood of such for a period of three years

as of the date of extinction or dissolution or any greater term that the court of first instance deems to be necessary. During that term, the corporation must attend to, among other matters, any litigation or proceeding against the corporation, regardless of its nature, the liquidation of the entity, and fulfillment of its obligations. C. Díaz Olivo, *Corporaciones, Tratado sobre Derecho Corporativo ["Corporations: Treatise on Corporate Law"]*, 2016, § 12.07, on pg. 382. Art. 9.08 of the General Corporations Act, *supra,* provides as follows:

> *All corporations, whether they expire by their own limitation or are otherwise dissolved, shall continue for a three (3)-year term from such expiration or dissolution or for such longer period as the Court of First Instance (Superior Part) shall in its discretion direct for the purpose of prosecuting and defending suits, whether civil, criminal or administrative, by or against them, and of enabling them to settle and close their business, to discharge their liabilities and to distribute to their stockholders any remaining assets; however, not for the purpose of continuing the business for which the corporation was organized.*
>
> *With respect to any action, suit or proceeding begun by or against the corporation either prior to or within three (3) years after the date of its expiration or dissolution, the corporation shall, solely for the purpose of such action, suit or proceeding, be continued as a body corporate beyond the three (3)-year period and*

until any judgments, orders or decrees therein shall be fully executed, without the necessity for any special direction to that effect by the Court of First Instance (Superior Part).

G. Trust Act.

Trusts established prior to the passing of Law 219-2012, *infra*, as amended by Law 9-2017, *infra,* are regulated by Arts. 834 to 874 of the Civil Code. Art. 834 of the Civil Code defines the trust as "an irrevocable mandate by virtue of which determined goods are transferred to a person called the settlor who would dispose of said goods as ordered by the one transferring them, the trustee, for the benefit of himself of a third party, called the beneficiary." 31 LPRA sec. 2541.

For its part, Art. 849 of the Civil Code provides, in that concerning this matter, that: "[t]he legal live of a trust begins from the time at which the trustee accepts the mandate, with which it is made irrevocable. [...]" Art. 865 of the Civil Code provides that: [t]he trustee shall have all of the rights and actions corresponding to full possession; but shall not be able to transfer or encumber the entrusted assets unless he as authorization for such or unless, without transferring or encumbering them, it is impossible to execute the trust." Moreover, Art 866 of the Civil Code establishes that the trustee shall not dispose of the entrusted assets in any way against that established in the trust.

Before Law 219-2012, *infra,* took effect, and pursuant to Arts. 835 and 837 of the Civil Code, the trust could "be created by way of will" so that it had "affect after the death of the settlor, or by an *inter vivos* act" and be established "over all types of movable

and immovable, tangible or intangible, present or future assets." 31 LPRA secs. 2542, 2544. Moreover, it could be used "to grant the use or usufruct of the assets of a beneficiary during their life and the full domain of another." 31 LPRA sec. 2549. In sum, the settlor could create the trust in any way, for any purpose, and under any terms and conditions that do not infringe upon the law or public morality. 31 LPRA sec. 2562.

With regard to which figure has active legitimacy within the trust under the state of law prior to the effectiveness of Law 219-2012, *infra,* the Supreme Court of Puerto Rico in the case of *Belaval v. Puerto Rico Court of Expropriations,* 71 DPR 265, on pp. 273-274 (1950), stated the following:

> In the trust, the assets that belonged to the settlor have been transferred *to the trustee, who has all of the rights and actions corresponding to full domain*, with the sole limitation that the transfer is made in accordance with that which the settlor has ordered, for the benefit of the trust.
>
> . . . . . .
>
> *The title over the properties transferred in trust is with the trustee* and so registered in the Property Registry, subject to the conditions of the trust, and not with the beneficiary minors in this case. They only have the right to receive said properties in the future upon meeting the terms of the trust.

(Emphasis ours.)

As is to be noted, active legitimacy under the state of law prior to the effectiveness of Law 219-2012, *infra,* was held by the trustee.

In 2012, the Legislative Assembly understood that, after decades without altering the provisions that governed the figure of the Puerto Rican trust, it had become obsolete with regard to the economic and social reality and it was necessary to update its regulation. Thus, Law 219-2012, 32 LPRA sec. 3351, et seq., was passed, which had the effect of repealing Arts. 834 to 874 prospectively. This Law, moreover, introduced several changes, among them, it defined the concept of trust and created a special registry of trusts.

Pursuant to Art. 1 of Law 219-2012, 32 LPRA sec 3351, a trust is:

> *an autonomous patrimony that results from the act by which the settlor transfers assets or rights that shall be administered by the trustee for the benefit of the beneficiary or for a specific end, in accordance with the provisions of the constitutive document and, in its defect, pursuant to the provisions of this Law.*

For its part, Art. 2 of Law 219-2012, 32 LPRA sec. 3351a, establishes what constitutes an autonomous patrimony in the following manner:

> The entrusted assets or rights constitute a totally autonomous estate separate from the personal estates of the settlor, the trustee, and the beneficiary, which is allocated to a particular purpose that is bestowed upon it at the time of its creation.

> *For as long as the trust remains in place, this estate is exempted from the single or collective actions of the creditors of the settlors, trustees, or beneficiaries, with the exception of that established in Section Six of this Law.*

Moreover, this Law created the Special Registry of Trusts, ascribed to the Office of Notary Inspection of the Judicial Branch. As provided in Art. 5 of Law 219-2012, 32 LPRA sec 3351d, any trust created in Puerto Rico must be entered in the Special Registry of Trusts, under penalty of nullity.

Years later, on February 8, 2017, Law 9-2017 was passed, in order to amend Law 219-2012, *supra*, and Law 1 of 2011, Internal Revenue Code. The purpose of Law 9-2017, according to its statement of motives, is to prevent professionals from the island from migrating to other jurisdictions and safeguard their future and that of their family by providing a better protection of assets, incorporating the figure of the Retirement Plan Trust, attend to statutory conflicts, protect surviving spouses, and create an openness for more private employers to offer retirement plans. Said amendment entered into effect immediately after being passed.

Law 9-2017 amended several articles of Law 219-2012, among them, Art. 2, in order to add the following paragraph:

> "Once the deed of trust has been executed and filed pursuant to the provisions of this Law, an entity independent of its settlors, trustees, and beneficiaries shall be constituted, enjoying full legal personhood."
>
> 32 LPRA sec 3351a.

Thus, full legal personhood was recognized for trusts, capable of suing and being sued, forming contracts, and having the rights and obligations of an artificial person with full capacity (not attenuated).[22] Moreover, it amended Art. 11 in order to add the following sentence: "The trust is the owner of all of the entrusted movable and immovable assets. [...]".

Both Law 219-2012 as well as Law 9-2017 remain silent with regard to their retroactive application. To those effects, our legal system recognizes that laws of a substantive nature shall not have retroactive effect, unless expressly provided otherwise in the statute. Art. 3 of the Civil Code, 31 LPRA sec 3; *Rivera Padilla et al. v. OAT,* 189 DPR 315, on pg. 340 (2013). This being so, the intention of the Legislative Assembly upon creating said laws was for their application to be prospective. Even more, pursuant to Art. 5 of Law 219-2012, *supra*, the Office of the Director of Notary Inspection (O.D.I.N., by its Spanish acronym), by way of General Instruction, instructed all notaries on the duty to provide notice of any public instrument constituting, modifying, or notarizing a trust to the Registry of Trusts ascribed to O.D.I.N. It is stated in the aforesaid Instruction that "[t]he effectiveness of the Registry is prospective. However, nothing prevents an interested party from requesting the entry of an instrument with effectiveness prior to Law

---

[22] Carmen T. Lugo Irizarry, *Analisis Critico Sobre la Ley de Fideicomisos de Puerto Rico, según Enmendada por la Ley Núm. 9-2017* ["Critical Analysis on the Puerto Rico Trust Act, as Amended by Law 9-2017"], Second edition, p. 38, 2017.

219-2012." It adds that said validity is effective as of October 1, 2012.

Thus, under Law 219-2012, as amended, it is required for all trusts that are created after the passing of this Law to be registered in the Special Registry of Trusts so that they may enjoy all of the rights that this law makes viable, under penalty of nullity.

III.

In order to facilitate their understanding, we altered the order of analysis of the assignments of error.

By way of its first assignment of error, the Archdiocese of San Juan argues that the CFI erred by issuing the appealed decisions without jurisdiction for such, since it understands that the case was still remanded to the Federal District Court and it had not remanded the case to the CFI at the time at which the appealed decisions and orders were issued.

The Federal District Court for Puerto Rico has ruled that a party may waive a request for removal by way of its conduct. To those effects, the aforesaid Court has stated the following:

> "*A party may waive removal to federal court by litigating in the state court in such a manner that "invoke[s] the jurisdiction of the state court" or engages in actions that "manifest the defendant's intent to have the case adjudicated in state court.*"
>
> Hearings of Canóvanas I, Inc. v. Fed. Deposit Ins. Corp., 266 F. Supp. 3d 563, 571 (citing

Hernández v. Com. of Puerto Rico, 30 F. Supp. 2d 205, 209).

As we stated, on January 11, 2018, the Trust filed a petition for bankruptcy before the Federal Court for the District of Puerto Rico. Subsequently, on February 6, 2018, the petitioning party filed a Notice of Removal before the federal court based on the fact that the claim pending against it was related to the petition for bankruptcy filed by the Trust and that if the responding party were to prevail and request for bankruptcy be successful, the rights of the Archdiocese of San Juan would be affected. Against this background, on March 13, 2018, the Bankruptcy Court dismissed the request filed by the Trust and on the same date the petitioning party filed a request for dismissal before the CFI based on the alleged application of the Foreign Sovereign Immunities Act to the present case. It must be pointed out that three days later, the Archdiocese of San Juan filed a motion before the Federal Court in which it stated that it was voluntarily withdrawing its request for removal. Moreover, subsequent to the filing of the appeal before this Court, the Federal Court ordered the remand of the case to the CFI.

Evidently, the request for removal filed by the Archdiocese of San Juan, after the petition for bankruptcy had been dismissed, constitutes an affirmative act on its part by withdrawing the removal and once again invoking the jurisdiction of the state court. In light of this, the CFI had jurisdiction to issue the appealed decisions. Therefore, we understand that error (A) was not committed.

In its assignment of error (E), the petitioning party sustains that the CFI erred by ruling that the Archdiocese of San Juan does not have its own legal personhood independent of the Roman Catholic and Apostolic Church.

The Roman Catholic and Apostolic Church is recognized as a religious institution the leadership and dogmas of which are established directly by the Supreme Pontiff,[23] also known as the Pope, from the Holy See in Vatican City. According to the *Real Academia Española*, the term "Catholic" comes from the Latin *catholīcus*, which means "universal."[24]

For its part, the work "Catholicism" is used, in general, to allude to the religious experience shared by the people who live in communion with the Catholic

---

[23] The Supreme Pontiff [who is also the Bishop of the Church of Rome], elected during the conclave of cardinals that have not reached eighty years of age, is converted into a Sovereign State when he accepts his election to the Pontificate. http://www.vaticanstate.va/content/es/stato-c-governo/organi-dello-stato.html (last visit, April 17, 2018). With regard to such the canonical system provides:

> "The bishop of the Roman Church, in whom continues the office given by the Lord uniquely to Peter, the first of the Apostles, and to be transmitted to his successors, is the head of the college of bishops, the Vicar of Christ, and the pastor of the universal Church on earth. By virtue of his office he possesses supreme, full, immediate, and universal ordinary power in the Church, which he is always able to exercise freely." *See,* Canon 331 of the CLL.

[24] Real Academia Española, Diccionario de la Lengua Española, 23rd ed., Madrid: Espasa, 2014, http://dle.rae.es/?id=7yAuNn2/ (last visit, April 12, 2018).

Church.[25] In this manner, reference is also habitually made both to the beliefs of the Catholic Church as well as to its community of the faithful.[26] Thus, we clarify that he Catholic Church does not constitute a building or denomination, but rather it is a representation of moral persons of the same divine ordainment.

Consonant with the foregoing, in order to analyze this assignment of error, it is appropriate to cite the second paragraph of Art. 8 of the Treaty of Paris of December 10, 1898, which was used as a starting point by the CFI to grant legal personhood to the Catholic Church in Puerto Rico. The aforesaid precept provides the following:

> *It is therefore declared that this relinquishment or cession, as the case may be, to which the previous paragraph refers, may in no way diminish the property, or the rights, that according to the law, correspond the peaceful holder of all manner of property of the provinces, municipalities, public or private establishments, ecclesiastical or civil corporations, or of any other communities whatsoever, that have legal personhood to acquire and possess property in the aforementioned relinquished or ceded territories, and those of specific individuals, whatever their nationality.*

---

[25] Rausch, Thomas P., *Catholicism in the Third Millennium*. Collegeville, MN, U.S.: Liturgical Press. 2003, xii.

[26] Real Academia Española, Diccionario de la Lengua Española, 23rd ed., Madrid: Espasa, 2014, http://dle.rae.es/?id=7yAIeAZ (last visit, April 12, 2018).

The aforesaid Article was interpreted by the United States Supreme Court more than 100 years ago in the case of *Municipality of Ponce v. Catholic Church in Porto Rico*, 2010 US 296, on pg. 311 (1908), in which the highest judicial forum stated the following:

> *This clause is manifestly intended to guard the property of the Church against interference with, or spoliation by, the new master, either directly or through his local governmental agents. There can be no question that the ecclesiastical body referred to, so far as Porto Rico was concerned, could only be the Roman Catholic Church in that island, for no other ecclesiastical body there existed.*

As we see, by way of the second paragraph of Art. 8 of the Treaty of Paris, all of the assets and properties of the ecclesiastical bodies were respected, wherefore, pursuant to the express text of the same, it is not necessary for the Roman Catholic and Apostolic Church on the Island to have to incorporate in order to recognize its legal personhood. It is necessary to point out that, at the time of having signed the Treaty of Paris and deciding the case of *Municipality of Ponce v. Catholic Church in Puerto Rico, supra,* there existed one single diocese of the Roman Catholic and Apostolic Church in Puerto Rico, and there was no representation whatsoever of other denominations. Nevertheless, more than a century later, the Roman Catholic and Apostolic Church in Puerto Rico has reorganized into an Archdiocese and five additional dioceses, namely: Archdiocese of San Juan, and the

Dioceses of Arecibo, Caguas, Mayaguez, Ponce, and Fajardo-Humacao. *Each one is autonomous, independent from the others, and has its own legal personhood, headed individually by a diocesan Bishop. He is appointed by the Supreme Pontiff by virtue of the canonical ordainment and is constituted as a Pastor of the Church to be "teachers of doctrine, priests of sacred worship, and ministers of governance."*[27] *Likewise, "[t]he The diocesan bishop represents his diocese in all its juridic affairs."*[28]

The action taken by the court of first instance of not granting legal personhood to the Archdiocese of San Juan evidently infringes on the internal structure of the Catholic Church

and unduly interferes with the prescriptions, guidelines, provisions, and orders that make up the Code of Canon Law. Moreover, it constitutes clear and undue meddling on the part of the Court of First Instance, in violation of the Freedom of Religion Clause. Doubtlessly, said order violates the constitutional clause that promotes the complete separation between church and state, given that none of the branches of the government, including the courts, can repeal the power to determine the organization or structure of the Roman Catholic and Apostolic Church, or pry into its internal affairs.

It is our judgment that error (E) was committed by the CFI, in view of the fact that the Archdiocese of San Juan has its own legal personhood independent from the Roman Catholic and Apostolic Church. With

---

[27] Canon 375 § of the CLL.

[28] Canon 393 of the CLL.

this determination we acknowledge the validity of the Code of Canon Law, its coexistence with our civil legal system, and we avoid any interference with its postulates.

Consonant with the foregoing, *the order issued by the CFI addressed to the "Roman Catholic and Apostolic Church in Puerto Rico" to continue with the issuance of the pension payments to the recurring party is a vague, nonspecific, and general one.* Thus we decide, above all, taking into consideration the fact that, evidently, the term *Church* expressed by the Supreme Court of Puerto Rico in its Judgment from July 18, 2017, *supra*, is a *numerus apertus* concept that includes countless entities within the Roman Catholic and Apostolic Church with their own legal personhood independent of the others. An example of this is the Archdiocese of San Juan, the Dioceses, as well as the Pontifical Catholic University of Ponce [sic] and Univeridad del Sagrado Corazón, to name a few Catholic university institutions. The CFI must itemize the exact and specific amount of the unpaid pensions, as well as the monthly payrolls of said pensions by academic institution.

We clarify, moreover, that the separation of church and state clause is not limited to the Roman Catholic and Apostolic Church, it is also addressed to all of the other religions that have been established and they enjoy their own legal personhood pursuant to their internal rules and standards. Among these religious organizations are:

Protestants, which includes the Christian Church of Disciples of Christ, Defenders of the Faith, the Pentecostal Church of God, the United Methodist

Church, the American Baptist Churches, the United Presbyterian Church, the United Evangelist Church, the Episcopal Church, among others.

Unaffiliated churches, also known as Independent Churches, such as the Group of Evangelist Missionaries of Canóvanas- House of Praise Church (A.M.E.C., by its Spanish acronym), Fountain of Living Water, La Senda Antigua, Church of Jehova Our Justice-Heavenly Camp, among others.

Other protestant groups including Jehovah's Witnesses, Mormons, Mita Congregation, among others.

In addition to other religious denominations, such as Islam, Judaism, including Orthodox, Conservative, and Reformist, among others.

It is necessary to point out that the Church by way of its dependencies can be plaintiffs or defendants in a lawsuit and the court is obligated to decide the dispute brought forth. What the state (the executive, legislative, and judicial branch) cannot do is interfere, meddle in, or establish the internal standards and rules and institute the

hierarchal structure or the legal personhood of each dependency within the Church. Doing so would constitute a crass entanglement and violation of the separation of church and state.

We reiterate that the courts cannot exercise our jurisdiction to decide disputes regarding property rights of a church when in order to do so we must render judgment on its internal organization. *Díaz v. Colegio Nuestra Sra. del Pilar, supra. When faced with this type of dispute, the judge is obligated to consider*

the canons, rules, and standards of the churches and/or religious denominations and may not intervene in their internal functioning or with their assets or places devoted to the spreading of the faith. Respecting in this manner the legal personhood held by each religious organization.

On the other hand, the petitioning party sustains that it was appropriate in law to dismiss the fourth amended complaint due to lack of jurisdiction based on the Foreign Sovereign Immunities Act. In view of the fact that the claims in the present case are addressed to entities within the Roman Catholic and Apostolic Church and not the Holy See or the State of Vatican City, the entity recognized by International law as a foreign state, the Federal Sovereign Immunities Act does not apply to the present case. Therefore, errors (B) and (C) were not committed.

In its assignment of error (F), the petitioning party sustains that the CFI erred by ruling that Academia del Perpetuo Socorro lacks legal personhood. Upon analyzing this assignment of error, it is appropriate to remember that the CFI erroneously granted legal personhood to the "Roman Catholic and Apostolic Church in Puerto Rico." Below, we shall proceed to analyze whether the Trust, Academia del Perpetuo Socorro, Academia San Ignacio de Loyola, and

Academia San José have legal personhood. Let us see.

It appears in the appearance by the Trust entitled "Motion in Compliance of Order by the Pension Plan of Catholic Schools Trust," that the deed of the Pension Plan for Employees of Catholic Schools Trust was executed on November 26, 1979. It shows that one

appearing party was the Office of the Superintendent of Catholic Schools of the Archdiocese of San Juan and the other appearing parties were Father Baudillo Merino, Father John Tomala, Ms. Anabel P. Casey, Brother Francis M. Oullete, and Mr. Santiago Aponte, as trustees. In the deed, the powers of the trustees were established, along with investment guidelines, guidelines regarding the expenses to be incurred by the Trust, and the validity of the Trust.

Included in the appearance also is a document entitled "Pension Plan of the Catholic Schools of the Archdiocese of San Juan" which establishes that a trust will be created. Art. 13, which is entitled "Creation of Trust" with regard to the trustees, states the following:

> *The Sponsor* [the Office of the Superintendent of Catholic Schools of the Archdiocese of San Juan] *shall appoint the* ***trustees who****, upon executing the corresponding instruments,* ***shall enter into possession of the legal title of the property.*** *The custody and control of all of the assets that constitute part of the fund shall remain in the power of the trustee and neither the Sponsor nor any other participant shall be entitled to any ownership over such, except that the participants shall be entitled to receive those payments and distributions that are established in this document.*
>
> (Emphasis ours).

The Pension Plan for Employees of Catholic Schools Trust, the sponsor of which is the Office of the Superintendent of Catholic Schools of the Archdiocese

of San Juan, was created by way of public instrument on November 26, 1979. Therefore, Law 219-2012, as amended,

which grants full legal personhood to trusts, is not applicable to the same, due to being prospective. As such, the Trust lacks its own independent legal personhood. Nevertheless, those who were brought into the lawsuit by way of the "Fourth Amended Complaint" could be held liable for the payment of the pensions, in their capacity as trustees.

With regard to whether Academia San Ignacio de Loyola holds legal personhood, a document entitled "Financial Viability Certification" appears in the records, signed on May 15, 2017 by Rev. Lawrence P. Searles, Administrative Director and Pastor of Academia San Ignacio de Loyola. It is stated in the document that the aforesaid school is a "Parochial School of the Jesuit Order" and that Rev. Lawrence P. Searles was appointed administrator by the Provincial of the Order.

According to the canonical system, the Institutes of Sacred Life, the Provinces, and the Houses have legal personhood and they have the capacity to acquire, possess, administer, and transfer assets. Thus, the "Parochial of the Jesuit Religious Order" holds distinct and independent legal personhood from the Archdiocese of San Juan and, therefore, in the case of the pensions claimed by the affected teachers at that school, both the "Parochial of the Jesuit Religious Order," the San Ignacio Parish, the Archdiocese of San Juan, as well as the trustees of the Trust, in their capacity as trustees, could be held liable.

With regard to whether Academia del Perpetuo Socorro has legal personhood, in addition to being a Parochial School ascribed to the Perpetuo Socorro Parish, it was registered in February of 1968 as a nonprofit corporation in the Puerto Rico Department of State, the following appears in the "Certificate of Revocation of Certificate of Incorporation" issued by the Puerto Rico Department of State: "Academia del Perpetuo Socorro, Inc., Santurce," registration number 4692, has been cancelled as established by the General Corporations Act of Puerto Rico, on April 16, 2014 at 12:01 A.M." *Alternatively, it is stated on the Certificate of Incorporation of Academia del Perpetuo Socorro signed on February 2, 1968, as well as the document entitled "Articles of Restoration" issued by the Puerto Rico Department of State on December 19, 2017, that the term of existence of the corporation Academia del Perpetuo Socorro, Inc., Santurce shall be perpetual or indefinite as of February 1968.* As such, the corporation of Academia del Perpetuo Socorro regained its legal personhood retroactively on to February 2, 1968. In addition to this, the above-titled case was filed on June 6, 2016, within the term of three years established by Art. 9.08 of the General Corporations Act, *supra,* so that the corporation maintained its corporate identity until the end of the lawsuit.

We rule that Academia del Perpetuo Socorro has distinct and independent legal personhood from the Archdiocese of San Juan and, therefore, in the case of the pensions claimed by the teachers affected at that school, Academia del Perpetuo Socorro, the Archdiocese of San Juan, Perpetuo Socorro Parish, as well as the trustees of the Trust, in their capacity as

trustees, could be held liable. The CFI erred by ruling that Academia del Perpetuo Socorro lacks legal personhood.

With regard to Academia San José, it arises from the evidence presented by the parties that it is a parochial school belonging to the Archdiocese of San Juan, wherefore the Archdiocese of San Juan, San José Parish, as well as the trustees of the Trust, in their capacity as trustees, could be held liable for the payment of the pensions of the teachers of that school.

In its assignment of error (D), the petitioning party argues that the CFI erred by issuing a preliminary injunction without the imposition of a bond pursuant to Rule 57.4 of the Rules of Civil Procedure, *supra.* As we pointed out, the Supreme Court of Puerto Rico, by way of its Judgment on July 18, 2017, granted the request for a preliminary injunction so as to continue the payment of the pensions before the holding of a trial on the merits. The preliminary injunction was issued by the high court and mentioned nothing with regard to the posting of bond in the appellate stage. In view of the fact that Rule 57.4 of the Rules of Civil Procedure, *supra*, expressly and categorically establishes that no preliminary injunction order shall be issued except by way of the posting of bond by the requestor, it corresponds to the CFI to impose such.

Moreover, as we pointed out, the Supreme Court of Puerto Rico in its Judgment on July 18, 2017, ordered the court of first instance to hold a hearing in order to determine whether the defendant-schools have legal personhood and to order the continuation of the pension payments, whether those corresponding to

the Academies or the Church. Therefore, in the present case, the responding party has not prevailed given that it continues litigating the case and no final and enforceable judgment regarding the matter has been issued. In view of the foregoing, in the event that the party(-ies) fail to comply with the continuation of the issuance of the payments pursuant to the Pension Plan and seizure to be legally admissible, the CFI shall impose the bond pursuant to Rule 56.3 of the Rules of Civil Procedure, *supra.* Such must be proportional to the liability of each of the institutions.

In its assignment of error (G), the Archdiocese of San Juan argues that the CFI erred by ordering the consignment of $4,700,000.00 without holding a hearing regarding the amounts corresponding to the pensions of the plaintiffs in alleged violation of the due process of law.

From the documents filed before this Court, it does not appear exactly that the amount to be consigned is $4,700,000.00. As such, the CFI must hold a hearing in which both the Trust and the parties provide the corresponding documents and based on the evidence presented, the court of first instance shall determine the exact amount of the pension payment per institution.

It is advised that sacred things, including movable assets that have been consecrated or blessed to be used for divine worship, such as: sacred images, sacred relics, and the instruments or accessories intended for divine worship, among others, shall never be subject to seizure. Nor shall the sacred places intended for divine worship or the burial of the faithful through blessing or dedication such as churches or

temples, oratories, private chapels, sanctuaries, altars, cemeteries, among others, be subject to seizure. To those ends, the CFI must evaluate case by case and hold a hearing to decide which are seizable, should the liable party fail to comply with the payments.

IV.

Based on the foregoing grounds, I consider that the preliminary injunction issued by the Supreme Court of Puerto Rico ordering the continuation of the payment of the pensions should be addressed to the entities with legal personhood within the Roman Catholic and Apostolic Church that are liable for making such and that are part of this lawsuit. Due to the fact that the Trust no longer finds itself under the jurisdiction of the Federal Court, its trustees may also be liable for the payment of the pensions, in their capacity as trustees.

The CFI must use the necessary mechanisms to determine the exact liability that corresponds to each Academy according to the retired teachers that it covers. Once such has been determined, it is the duty of the court of first instance to implement the mechanism for its enforcement, including evaluating the imposition of a bond pursuant to the criteria of Rule 57.4 of the Rules of Civil Procedure, *supra.*

That said, at this time no liability may be imposed on those parties that have not been brought to the lawsuit, namely: "Parochial of the Jesuit Religious Order," San José Parish, Perpetuo Socorro Parish, and San José Parish.

Once it has been established who holds liability for continuing the payment of the pensions, pursuant to that provided herein, said entity or entities of the

Roman Catholic and Apostolic Church with legal personhood shall be liable for making such.

I concur with the majority of this panel revoking the order for seizure against the Roman Catholic and Apostolic Church, given that such is null, since as was explained, it does not have legal personhood. The seizure must be directed solely at the entities of the Roman Catholic and Apostolic Church with legal personhood and that are parties of this lawsuit.

Should the parties fail to comply with the continuation of the payments pursuant to the Pension Plan and seizure be legally appropriate, the CFI must consider a seizure bond pursuant to Rule 56.3 of the Rules of Civil Procedure, *supra*. With such being proportional to the liability of each one of the institutions.

Said seizure order must be limited to assets that are not sacred pursuant to the Code of Canon Law or devoted to the spreading of the faith, given that, in doing so, the separation of church and state clause would be violated.

I dissent from the Judgment issued by the majority of the Judges of the Panel, due to understanding that the Judgment issued on July 18, 2017, by the Supreme Court of Puerto Rico ordering "the continuation of the payments of pensions by the employers of the petitioners, whether that be the Academies or the Church," is a clear and specific one, wherefore it is not subject to interpretations. Contrary to the clear order by the highest Court, the majority of the Judges of the Panel went into adjudicating the entirety of the case in this early stage of the proceedings. I understand that the proper course of action was to decide who could be

held liable for the continuation of the payment of the pensions until the entire lawsuit is decided.

[signature]
Felipe Rivera Colón
Appellate Judge

Appendix D

COMMONWEALTH OF PUERTO RICO
COURT OF FIRST INSTANCE
SUPERIOR COURT OF SAN JUAN

No. SJ2016CV0131

YALÍ ACEVEDO FIGUEROA, JOHN A. WILLIAMS BERMÚDEZ, and the community property formed by both, et al.,

Plaintiffs,

v.

LA SANTA IGLESIA CATÓLICA APOSTÓLICA EN LA ISLA DE PUERTO RICO, INC., represented by Monsignor Roberto González Nieves in his capacity as Archbishop of San Juan, et al.,

Defendants.

SJ2016CV00143

SONIA ARROYO VELÁZQUEZ, JESÚS M. FRANCO VILLAFAÑE, and the community property formed by both, et al.,

Plaintiffs,

v.

LA SANTA IGLESIA CATÓLICA APOSTÓLICA EN LA ISLA DE PUERTO RICO, INC., represented by Monsignor Roberto González Nieves in his capacity as Archbishop of San Juan, et al.,

Defendants.

SJ2016CV00156

ELSIE ALVARADO RIVERA, ISODORO HERNÁNDEZ, and the community property formed by both, et al.,

Plaintiffs,

v.

LA SANTA IGLESIA CATÓLICA APOSTÓLICA EN LA ISLA DE PUERTO RICO, INC., represented by Monsignor Roberto González Nieves in his capacity as Archbishop of San Juan, et al.,

Defendants.

Certified Translation*

March 27, 2018

ORDER

Having addressed the request filed by plaintiffs to Order the Seizure of Funds of the Catholic Church, to secure the payment of the pensions of the plaintiff-employees, it is hereby granted.

In this case, by way of its judgment on July 18, 2017, the Supreme Court of Puerto Rico ruled that the plaintiffs are suffering irreparable damages due to the suspension of payment of their pensions.

* I, Juan E. Segarra, USCCI #06-067/translator, certify that the foregoing is a true and accurate translation, to the best of my abilities, of the document in Spanish which I have seen.

Accordingly, the Sheriff of this Court is ordered to seize assets and moneys of the Holy Roman Catholic and Apostolic Church in an amount of $4,700,000 to secure the payment of plaintiffs' pensions, including bonds, values, motor vehicles, works of art, equipment, furniture, accounts, real estate, and any other asset belonging to the Holy Roman Catholic and Apostolic Church, and any of its dependencies, that are located in Puerto Rico.

If the seizure is performed on sums of money, including wages or benefits, or movable property that is under the possession, deposit, or custody of third parties, the Sheriff is ordered to make such seizure by notifying a copy of this Order to said third parties requiring them to surrender said assets immediately or, in the event that their immediate surrender is impossible, retain them until they can be consigned to the court without being able, under penalty of contempt, to deliver such to the defendants or any other natural or artificial person other than the Sheriff unless the court provides otherwise. In the case of real estate, its seizure shall be made by recording it in the Property Registry and notifying the defendant.

Furthermore, the Sheriff is ordered and authorized, if the place, location, or site where the assets to be seized are located is closed, to take any and all necessary measures {such as opening doors, breaking locks, or forcing entry into the aforesaid place or locale) so as to not render the seizure futile or inoperative.

The present order may be served night or day, anywhere in Puerto Rico where there are assets

belonging to the Holy Roman Catholic and Apostolic Church. To these ends, the Sheriff is authorized to move outside the Judicial District for its execution. The Sheriff is also ordered and authorized to, if the place, location, or site where the assets to be seized are located is closed, to take any and all necessary measures {such as opening doors, breaking locks, or forcing entry into the aforesaid place or locale) so as to not render the seizure futile or inoperative.

This Order is issued free of bond, pursuant to Rule 56. 3 of the Civil Procedure, due to the plaintiffs having already prevailed by way of a final and enforceable judgment of the Supreme Court and it having been established that the obligation to pay arises from a public document prepared by defendants themselves.

The Clerk of the Court shall issue, without requiring further order, all orders necessary to faithfully enforce that ordered herein.

In San Juan, Puerto Rico, March 27, 2018.

[signature]
Anthony Cuevas Ramos
Superior Judge

Appendix E

COMMONWEALTH OF PUERTO RICO
COURT OF FIRST INSTANCE
SUPERIOR COURT OF SAN JUAN

No. SJ2016CV0131

YALÍ ACEVEDO FIGUEROA, JOHN A. WILLIAMS BERMÚDEZ, and the community property formed by both, et al.,

Plaintiffs,

v.

LA SANTA IGLESIA CATÓLICA APOSTÓLICA EN LA ISLA DE PUERTO RICO, INC., represented by Monsignor Roberto González Nieves in his capacity as Archbishop of San Juan, et al.,

Defendants.

SJ2016CV00143

SONIA ARROYO VELÁZQUEZ, JESÚS M. FRANCO VILLAFAÑE, and the community property formed by both, et al.,

Plaintiffs,

v.

LA SANTA IGLESIA CATÓLICA APOSTÓLICA EN LA ISLA DE PUERTO RICO, INC., represented by Monsignor Roberto González Nieves in his capacity as Archbishop of San Juan, et al.,

Defendants.

SJ2016CV00156

ELSIE ALVARADO RIVERA, ISODORO HERNÁNDEZ, and the community property formed by both, et al.,

Plaintiffs,

v.

LA SANTA IGLESIA CATÓLICA APOSTÓLICA EN LA ISLA DE PUERTO RICO, INC., represented by Monsignor Roberto González Nieves in his capacity as Archbishop of San Juan, et al.,

Defendants.

Certified Translation*

March 26, 2018

ORDER

On July 18, 2017, the Supreme Court, pursuant to the Judgment in the case CC-2016-1053, vacated the Decision issued by this court and ***granted the preliminary injunction requested the continuance of the payment of the plaintiffs' pensions.*** In its Judgment, it provided that it remains to be determined who is obligated to continue payments to the plaintiffs until this this lawsuit concludes. To those effects, it ordered for us to hold a hearing in which we determine whether the

* I, Juan E. Segarra, USCCI #06-067/translator, certify that the foregoing is a true and accurate translation, to the best of my abilities, of the document in Spanish which I have seen.

defendant-schools have legal personhood, and once that has been determined, for us to order the continuation of pension payments by the employers of the plaintiffs, whether they be the corresponding academies or the Church. After having held the hearing and in compliance with that order, we proceeded to issue our Decision on March 16, 2018. In it, we ordered the Roman Catholic and Apostolic Church in Puerto Rico to proceed to ***immediately and without further delay, to continue issuance of payments to plaintiffs according to the pension Plan, until this lawsuit is decided***. As of today, defendants have "crossed their arms" in breach of our order.

In view of the foregoing, as well as the reckless attitude assumed by defendants, such party is ordered to, in the final term of 24 hours, proceed to deposit the sum of 4.7 million dollars in the Unit of Accounts of this Court.

Defendant is warned that this Court shall not tolerate any further delays or procrastination during the proceeding, wherefore, if this Order is not complied with within the established term, we shall proceed to order the seizure of the bank accounts of the Roman Catholic and Apostolic Church in Puerto Rico.

NOTIFY.

In San Juan, Puerto Rico, March 26, 2018.

s/ANTHONY CUEVAS RAMOS
SUPERIOR JUDGE

Appendix F

COMMONWEALTH OF PUERTO RICO
COURT OF FIRST INSTANCE
SUPERIOR COURT OF SAN JUAN

No. SJ2016CV0131

YALÍ ACEVEDO FIGUEROA, JOHN A. WILLIAMS BERMÚDEZ, and the community property formed by both, et al.,

Plaintiffs,

v.

LA SANTA IGLESIA CATÓLICA APOSTÓLICA EN LA ISLA DE PUERTO RICO, INC., represented by Monsignor Roberto González Nieves in his capacity as Archbishop of San Juan, et al.,

Defendants.

SJ2016CV00143

SONIA ARROYO VELÁZQUEZ, JESÚS M. FRANCO VILLAFAÑE, and the community property formed by both, et al.,

Plaintiffs,

v.

LA SANTA IGLESIA CATÓLICA APOSTÓLICA EN LA ISLA DE PUERTO RICO, INC., represented by Monsignor Roberto González Nieves in his capacity as Archbishop of San Juan, et al.,

Defendants.

SJ2016CV00156

ELSIE ALVARADO RIVERA, ISODORO HERNÁNDEZ, and the community property formed by both, et al.,

Plaintiffs,

v.

LA SANTA IGLESIA CATÓLICA APOSTÓLICA EN LA ISLA DE PUERTO RICO, INC., represented by Monsignor Roberto González Nieves in his capacity as Archbishop of San Juan, et al.,

Defendants.

March 16, 2018

Certified Translation*

DECISION

I.

This Decision is issued for the purposes of complying with the order of the Supreme Court of Puerto Rico in this case, as a result of a writ of certiorari filed by plaintiffs. On July 18, 2017, the Supreme Court, by way of the Judgment in the case CC 2016-1053, vacated the Decision issued by this court and granted the preliminary *injunction* requesting that payment of plaintiffs' pensions continue. It affirmed that it remains to be determined

* I, Juan E. Segarra, USCCI #06-067/translator, certify that the foregoing is a true and accurate translation, to the best of my abilities, of the document in Spanish which I have seen.

who is obligated to continue payments to the plaintiffs until this litigation concludes. To those effects, it ordered us to hold a hearing in which we determine whether the defendant-schools have legal personhood, and once that has been determined, for us to order the continuation of pension payments by the employers of the plaintiffs, whether that be the corresponding school or the Church.

To that end, the parties submitted several documents on this particular matter. Plaintiffs have questioned the legal personhood of "Academia del Perpetuo Socorro" (APS) and, in turn, of "Academia San José" ("ASJ") and "Academia San Ignacio de Loyola" ("ASIL"), presumably, because none of the three schools possesses legal personhood due to being "dependencies" of the Archdiocese of San Juan.

APS has argued, in several pleadings, that it has its own legal personhood independent of the Roman Apostolic Catholic Church (Church). It affirms that plaintiffs expressly admit that APS is one of the participating schools in the Pension Plan for Employees of Catholic Schools (Plan) of the Archdiocese of San Juan and that it contributes at the rate of four percent (4%) of its payroll. Moreover, it recognizes that they, as employees of APS, are beneficiaries of the plan and this is part of their compensation.

It argues that although the Certificate of Incorporation for APS was revoked by the Department of State on May 4, 2014, Article 12.08 of the Corporations Act, *supra*, in no way prevents plaintiffs from ignoring the existence of the corporation in a legal proceeding such as this one.

On December 18, 2017, plaintiffs filed a "Motion Submitting Documents on the Lack of Legal Personhood of the Schools." In sum, they reiterated that the academies have no legal personhood and that they belong to the Catholic Church. To that end, they supported their arguments in a series of documents pertaining to the academies.

On January 19, 2018, plaintiffs reiterated that APS has no legal personhood inasmuch as it lost its incorporation before the Department of State. Moreover, on January 24, 2018, it argued that it does have legal personhood because its incorporation was reinstated and such carries its legal personhood back to the date of its incorporation, that is, to February 2, 1968. APS affirmed that none of its actions were in any way affected during the period of time in which its Certificate of Incorporation was canceled.

On January 29, 2018, defendants filed a "Memorandum of Law Concerning the Legal Personhood of the Catholic Church and its Ecclesiastical Entities" in which it reiterated that argued in its previous pleadings.

Upon considering the briefs presented by the parties and the current law, we proceed to decide. Let us see.

II.

DETERMINATIONS OF FACTS

1. Plaintiffs consist of active and retired employees of "Academia del Perpetuo Socorro" (APS).

2. APS is one of the schools participating in the Plan of the Archdiocese of San Juan and which contributes four percent (4%) of its payroll. Plaintiffs,

as employees of APS, are the beneficiaries of the plan and it constitutes part of their compensation.

3. On February 2, 2016, the Department of State issued a certificate in which it stated that, "in accordance with the Paris Peace Treaty of December 10, 1898," the Roman Catholic and Apostolic Church "has legal personhood, wherefore it does not have to be registered as a corporation in the Department of State."

4. Furthermore, on July 6, 2016, it issued two certifications in which it reiterated the foregoing and stated, also, that "any division or dependency created under said legal personhood shall be part of such, wherefore the Archdiocese of San Juan [and the] Office of the Superintendent of Catholic Schools of the Archdiocese of San Juan do not have to register in the registry of corporations."

5. On August 27, 2009, the Archdiocese of San Juan, by way of Ms. Lucía Guzman Orta, Chancellor of the Archdiocese, affirmed by letter that the Nuestra Señora del Perpetuo Socorro ["Our Lady of Perpetual Help"] Parish, the parish to which APS belongs, in turn, belongs to the Archdiocese of San Juan and is part of the Roman Catholic and Apostolic Church in Puerto Rico, which has its own legal personhood under the Treaty of Paris of 1898.

6. From the testimonial evidence in open court, it arose that the decisions of both the church-schools and of the Office of the Superintendent of Catholic Schools of San Juan are made by the Archbishop of San Juan.

III.
CONCLUSIONS OF LAW
A.

At the outset, it is important to note that the Civil Code of Puerto Rico establishes who artificial persons are in our jurisdiction. Art. 27 of the Civil Code prescribes that the following are artificial persons:

> (1) Corporations and associations of public interest, having artificial personality recognized by law. The personality of such bodies shall commence from the moment of their establishment in accordance with law.
>
> (2) Private corporations, companies or associations, whether civil, commercial or industrial, to which the law grants legal personality.

31 LPRA Sec. 101. Emphasis ours.

The Supreme Court has reiterated that an artificial person is, then, the collectivity of persons or group of assets that, organized for the realization of a permanent purpose, obtains the recognition of the State as a subject of law. The artificial person receives its personhood directly from the law; therefore, the limits of its powers, rights, and responsibilities are set by the enacting law. *Rivera Maldonado v. Commonwealth*, 119 DPR 74.

Likewise, Article 28 of the Civil Code prescribes that:

> [t]he corporations, companies or associations referred to in subsection (2) of this title governed by such legal provisions as may be applicable thereto, by their classes of

> incorporation and by their bylaws, according to the nature of each of them.

31 LPRA Sec. 102.

Likewise, Article 30 of the Civil Code establishes that "the civil status of corporations, companies and associations shall be governed by the laws which create or recognize them." 31 LPRA Sec.103. Lastly, it prescribes that:

> Artificial persons may acquire and possess property of all kinds and also contract obligations and institute civil and criminal actions, in accordance with the laws and regulations of their establishment.

B.

For its part, the Corporations Act, *supra*, prescribes on the birth of corporations upon the issuance of the corresponding Certification of Incorporation. To those effects, Art. 1.01 prescribes the following regarding the incorporating purposes:

> A. This Act shall be known as the "General Corporations Act."
>
> B. Corporations may be organized under this Act to transact or promote any lawful business or purpose, except those prohibited by the Constitution and laws of the Commonwealth of Puerto Rico.
>
> C. Any natural person with legal capacity or any juridical person, singly or jointly with others, may incorporate or organize a corporation by filing a certificate of incorporation with the Department of State that shall be executed, acknowledged, filed,

> and recorded in accordance with Section 1.03 of this Act, and subject to inspection by the public.

14 LPRA sec. 3501. Emphasis ours.

Likewise, Art. 1.05 provides the following concerning the beginning of legal personhood. Specifically, it prescribes that:

> A. Once the certificate of incorporation has been executed and filed as provided in subsection (D) of Section 1.03 of this Act and the fees required by law have been tendered, the person or persons who have thus associated and their successors and assignees shall constitute, as of the filing date, or if it was set forth in the certificate of incorporation, as of a subsequent date which shall not exceed ninety (90) days, a corporate entity with the name set forth in the certificate, subject to dissolution as provided in this Act.
>
> B. The issue of the certificate of incorporation by the Secretary of State shall constitute conclusive evidence that all the conditions required by this Act for incorporation have been satisfied, except in procedures initiated by the Commonwealth to cancel or revoke the certificate of incorporation or to dissolve the corporation.
>
> [...]

Emphasis ours.

C.

Alternatively, we understand that the legal status of the Catholic Church in Puerto Rico does not depend on an act of the Legislature of Puerto Rico, given that the Church has its own legal personhood, which is the same that it had and enjoyed during the Spanish regime and continued to enjoy when Puerto Rico became a territory of the United States after the Spanish-American War.

The maintenance and possession of said legal personhood was recognized by the Treaty of Paris of December 10, 1898, in Article 8, paragraph 2, which prescribed the following:

> And it is hereby declared that the relinquishment or cession, as the case may be, to which the preceding paragraph refers, cannot in any respect impair the property or rights which by law belong to the peaceful possession of property of all kinds, of provinces, municipalities, public or private establishments, ecclesiastical or civic bodies, or any other associations having legal capacity to acquire and possess property in the aforesaid territories renounced or ceded, or of private individuals, of whatsoever nationality such individuals may be."

Based on this provision of the Treaty of Paris, the Supreme Court of the United States recognized the legal capacity of the Catholic Church in *Municipality of Ponce v. Catholic Church in Porto Rico*, 210 US 296 (1908). The Court expressed the following:

> This clause is manifestly intended to guard the property of the Church against

> interference with, or spoliation by, the new master, either directly or through its local governmental agents. There can be no question that the ecclesiastical body referred to, as far as Porto Rico was concerned, could only be the Roman Catholic Church in that island, for no other ecclesiastical body there existed.

Municipality of Ponce v. Catholic Church in Porto Rico, *supra* page 311.

And later the Court adopted the following conclusion:

> The Roman Catholic Church has been recognized as possessing legal personality by the Treaty of Paris, and its property rights solemnly safeguarded. In doing the treaty only followed the recognized rule of international law which would have protected the property of the church in Porto Rico subsequent to the cession. This juristic personality and the church's ownership of property had been recognized in the most formal way by the concordats between Spain and the papacy, and by the Spanish laws from the beginning of settlements in the Indies. Such recognition has been accorded to the church by all systems of European law from the fourth century of the Christian era. Emphasis ours.

The concordat to which reference is made in the opinion, is the Concordat of March 16, 1851, executed between Pope Pius IX and Queen Isabella II, which in article 41 confirms that in addition to the Church

constituting an entity that was public in nature, that is, under the government and representation of the Supreme Pontiff and the Archbishops, Bishops and Prelates of its institution, it also had, and independently, from all Spanish domains, a civil personhood recognized and guaranteed by the State itself, to acquire, for any legitimate title and possess at all times, all kinds of temporal goods. It should be noted that the *Spanish Civil Code that governed the island until the last day of the sovereignty of Spain, converted the Concordats between the Church and the Crown of Spain, into civil law, for the purposes of acquiring and possessing property of all kinds, contract obligations and exercise civil and criminal actions.*[1]

D.

In this case, the Supreme Court instructed us to determine whether the church-schools have their own legal personhood or if they are protected under the legal personhood of the Catholic Church.

As we previously pointed out, an artificial person is born from the recognition of the law by the State. In

---

[1] In the Legal Agreement with the Holy See, the Spanish State recognizes the legal personhood of the Spanish Episcopal Conference, in accordance with the Statutes approved by the Holy See. It is recognized, moreover, that the Church can be organized freely. In particular, it may create, modify or suppress dioceses, parishes and other territorial circumscriptions that shall enjoy civil legal personhood as soon as they are canonical and this is notified to the competent organs of the State. Marino Pardo, Francisco Manuel, *Legal Regime of Religious Entities and their Foundations and Associations*, (November 3, 2015), http://www.franciscomarinopardo.es/mistemas/4l-temas-10-27-parte-gcneral- program-2.

our jurisdiction, such recognition is made by the Department of State under the provisions of the Corporations Act, *supra*. It is through the incorporation that a corporation is formed, that, therefore, it has legal personhood in our legal system and is recognized by the State.

In this case, from the evidence presented, we cannot affirm that the Churches and Schools have their own legal personhood in our legal system. From the evidence presented we verified that APS was and is incorporated, but not other schools in the same condition, such as ASJ and ASIL, which operate without being incorporated. We were able to conclude that these church-schools are administered by the Archdiocese of San Juan.

Likewise, the Archbishop of San Juan recognized this in his letter issued on August 27, 2009, in which he affirmed that the Nuestra Señora del Perpetuo Socorro Parish, the parish to which APS belongs, belongs in turn to the Archdiocese of San Juan and is a part of Roman Catholic and Apostolic Church in Puerto Rico, which has its own legal personhood under the Treaty of Paris between Spain and the United States of December 10, 1898.

As we previously stated in a certificate issued by the Department of State, an entity that recognizes and regulates artificial persons in our legal system, it was stated that, "in accordance with the Treaty of Peace of Paris of December 10, 1898," the Roman Catholic and Apostolic Church "has legal personhood, wherefore it does not have to register as a corporation in the Department of State."

Likewise, it acknowledged that for the same reasons, any division or dependency created under said legal personhood shall be part of such. To this end, it relieved both the Archdiocese of San Juan and the Office of the Superintendent of Catholic Schools of San Juan to register in the registry of corporations, due to them belonging to and being protected under the legal personhood held by the Catholic Church.

By virtue of the foregoing, certainly, in our legal system legal personhood cannot be recognized for the defendant schools because they has not acted as such and not even the Department of State recognizes their own legal personhood. Note, that the testimonial evidence showed that all decisions, including administrative ones, are consulted and carried out by the Archdiocese of San Juan, which, as previously indicated, belongs to the Roman Catholic and Apostolic Church in Puerto Rico, which has its own legal personhood under the Treaty of Paris.

Therefore, upon analyzing the provisions of our legal system, we conclude that the defendant church-schools, as well as the Archdiocese of San Juan and the Office of the Superintendent of Catholic Schools of San Juan, do not have their own legal personhood because they are part of the Roman Catholic and Apostolic Church, as an entity with its own legal personhood, recognized as such by our current legal framework.

IV.

DECISION

In accordance with the determinations of fact and conclusions of law set forth, we hereby declare that the defendant church-schools, as well as the Archdiocese

of San Juan and the Office of the Superintendent of Catholic Schools of San Juan, do not have their own legal personhood because they are part of the Roman Catholic and Apostolic Church, as an entity with its legal personhood, recognized as such by our current legal framework.

As a consequence, the Roman Catholic and Apostolic Church in Puerto Rico is ordered to immediately and without any further delay proceed to continue to make payments to plaintiffs as provided in the pension Plan, while this claim continues

NOTIFY.

In San Juan, Puerto Rico, March 16, 2018

s/ ANTHONY CUEVAS RAMOS
SUPERIOR JUDGE

Appendix G

PLAINTIFF-RESPONDENT PARTIES TO THE PROCEEDING

1. Yalí Acevedo Feliciano, John A. Williams Bermúdez and their conjugal partnership
2. Juan D. Albarrán Rodríguez
3. Carmen M. Almódovar Oliva
4. Miguel E. Alonso Reyes, Mary L. De Graux Villafaña and their conjugal partnership
5. Iraida Alvarado Garcés
6. Luis Aponte Santiago, Lourdes Isern and their conjugal partnership
7. Milagros Arroyo Reyes, José A. Solís Ríos and their conjugal partnership
8. Enid Ávila Cardona, Boris Corujo Orraca and their conjugal partnership
9. Ana Ayala Torres, Ramón Ortiz and their conjugal partnership
10. Esther C. Barrera
11. Gloria Caraballo Figueroa, Jorge Luis Leavitt and their conjugal partnership
12. Gloria M. Cerra Quiñones, Jaime López Díaz and their conjugal partnership
13. Ernesto N. Chiesa Figueroa, María E. Báez Bello and their conjugal partnership
14. Vilmarie Chiroldes Carbia
15. Mayradagmar Colón Nieves
16. Ramonita Covas Bernier
17. Maria M. Cruz Cassé, José F. Umpierre Rivera and their conjugal partnership
18. Luz D. Cruz Rodríguez
19. Ana Rosa Cuesta Del Valle

20. Francisco E. De Los Santos Aquino, María Del C. Ortiz Navarro and their conjugal partnership
21. Yolanda M. Elizondo Del Pino
22. Virgilio Espinal Wallace, Santa Lebrón Ferrera and their conjugal partnership
23. Aida Teresa Febres Hernández, Juan R. García Loubriel and their conjugal partnership
24. María José Fernández Magadán
25. Eneida Fernández Moreno
26. Clara E. Fernández Sissa
27. Sarita Font Rodríguez, José M. Castro Pavía and their conjugal partnership
28. Alfredo García, Maribel Casanova and their conjugal partnership
29. Liz García Dávila
30. Vanessa García Dávila, Héctor Jorge Monserrate and their conjugal partnership
31. Ivelisse García Vega, Francisco J. Miranda Del Valle and their conjugal partnership
32. Lymaris González Sierra, Reynaldo Ortiz and their conjugal partnership
33. Elba Gutiérrez Schmidt
34. Héctor Julián Lanzó Roldán, Lydia Rivera Flores and their conjugal partnership
35. José Manuel Leavitt Rey
36. Carmen E. Ledesma Méndez, Claudio E. Acarón Bonilla and their conjugal partnership
37. Clarita Lidin de Rom, Carlos Rom Goris and their conjugal partnership
38. Teresa López Guzmán
39. Ligia López Oliver
40. Christine M. Lugo Quesada
41. Carlixta Martínez Vilorio, Ronny Echevarría and their conjugal partnership

42. Milagros Matos Alvarez, Antonio Manuel Taveras and their conjugal partnership
43. Awilda Meléndez Ríos, Edwin Sánchez Maldonado and their conjugal partnership
44. Edda 1. Meléndez Rivera
45. Yeidy R. Oliver Hernández
46. Jesús Ortiz García, Marta Villamil Rodríguez and their conjugal partnership
47. Diana Ortiz Rodríguez
48. Nerirosa Otero Romero, Alberto Del Toro and their conjugal partnership
49. Carmen Priscilla Pavía Cabanillas
50. Francisca Ramírez, Luis Darío Tineo Sánchez and their conjugal partnership
51. Milagros Ramos, Alonso De Hoyos and their conjugal partnership
52. Juan M. Ramos Pizarro, Dora Carrasquillo Márquez and their conjugal partnership
53. Iraida Rinaldi Ríos, Fernando Quiñones Aponte and their conjugal partnership
54. Carlos Juan Rivera Padua, Noelia M. Torres Cotts and their conjugal partnership
55. Georgina Rivera Rodríguez
56. Diana Roche Rodríguez Ríos
57. Angela Rodríguez Colón, Pedro A. Del Valle Ferrer and their conjugal partnership
58. Genoveva Rodríguez Rosa
59. Carlos Ruiz Porrata, Sylvia Ramos Moreau and their conjugal partnership
60. Carmen C. Ruiz Rexach
61. Marlene Ruiz, Jorge A. Saldarriaga Barragán and their conjugal partnership
62. María Victoria Saiz Martínez, Ramiro Jordán Sarria and their conjugal partnership

63. Oscar Sánchez Del Campo Delgado
64. Diana Sardiña Hernández, Jorge Escobar and their conjugal partnership
65. Yolanda Seda Benítez, Manuel A. Pérez Sánchez and their conjugal partnership
66. Estrella Sissa De León
67. Cristina Soriano
68. Amelia Sotomayor Díaz
69. Ramona Stokes Gimenez
70. Luis Darío Tineo Sánchez, Francisca Ramírez Núñez and their conjugal partnership
71. Rita T. Toro Monserrate, Miguel A. Hernández Feliciano and their conjugal partnership
72. Noelia Torres Cotts, Carlos J. Rivera Padua and their conjugal partnership
73. Lianis Z. Vélez Pérez, Julio Rodríguez Odum and their conjugal partnership
74. Sonia Arroyo Velázquez, Jesús M. Franco Villafañe and their conjugal partnership
75. Héctor Luis Báez Rodríguez
76. Ana Teresita Borges Rodríguez
77. Alicia Castillo Peña, William Mangual Martínez and their conjugal partnership
78. Miriam Cortés Pérez
79. Elsie De Jesús Rosado
80. Isabel Del Valle Rivera
81. Sara J. Disdier Caballero
82. Elena Durán Sobrino
83. María M. Espinosa Miranda, Ariel Pagán Rodríguez and their conjugal partnership
84. Marlia Feliciano Santana, Carlos M. Meléndez and their conjugal partnership
85. Amarilis Flores Ruiz, Alfonso García Ruiz and their conjugal partnership

86. Eva J. Freire, Félix J. Lugo Soto and their conjugal partnership
87. Ivette Fuentes Febles
88. Glenda García Martínez
89. María T. Geswaldo Medina
90. Sandra Ivette Grau Morales, Pedro R. Villalta Bernabe and their conjugal partnership
91. Ivelisse Laboy Ruiz, Mark A. Neste and their conjugal partnership
92. Mari Angelie Lamboglia Vila, José F. Adrover Robles and their conjugal partnership
93. Ana Doris Lladó Silva
94. Leslie Janette López Báez, Juan Carlos González Rodríguez and their conjugal partnership
95. Nilsa López Marcano
96. Tensy Machargo Enríquez
97. Omayra Marrero Santiago, Miguel Ángel Lozada and their conjugal partnership
98. Florin M. Martínez Fontán, Ángel M. De La Rosa Schuck and their conjugal partnership
99. Nilda Martínez Méndez, Eliezer Tulier Polanco and their conjugal partnership
100. Janice Mercado Corujo, Vicente Román Arriaga and their conjugal partnership
101. Nereida Montes Burgos, Samuel Monge Pérez and their conjugal partnership
102. Lillian Otero Cabrera
103. Alma Padilla Morales
104. Minu Derbhis Pagán Ramos, Ismael Placa Estremera and their conjugal partnership
105. Ana L. Pérez Pérez
106. Eileen Pérez Reyes, José Javer Santos Mimoso and their conjugal partnership

107. Lourdes Puig Sánchez, Carlos E. Chapel Palerm and their conjugal partnership
108. Ayricell Quintana Muñiz
109. Sonia M. Ramos González, Reinaldo Santana and their conjugal partnership
110. Nilda Rivas Laboy, Juan Medina Castro and their conjugal partnership
111. Pedro Rivera Ortiz
112. Margarita Rivera Rosado
113. Wanda Rivera Vega, Ernesto Maldonado Ojeda and their conjugal partnership
114. Evelyn D. Rodríguez Soto
115. Gladys J. Rodríguez Suliveres;
116. Brenda Rodriguez Toro De Damiani, Nicholas Damiani López and their conjugal partnership
117. Yolanda Rodríguez Toro De Gil, Luis A. Gil Borgos and their conjugal partnership
118. Jeanette Roig López, José A. Rivera And Their Conjugal Partnership
119. Eddie W. Santiago Figueroa
120. Carmen J. Santiago Hernández
121. Fe Migdalia Santiago Padilla
122. Carmen Santini Rivera
123. Dora Elisa Soler Muñiz
124. Magda E. Toledo Rodríguez
125. Tahira E. Vargas Gómez, Joan Vargas and their conjugal partnership
126. Leonor Vélez Ortiz, Israel Menchaca Dobal and their conjugal partnership
127. Yolanda Vélez Rosado, Fernando Sánchez Saldaña Dobal and their conjugal partnership
128. Brenda Wharton Flores
129. Elsie Alvarado Rivera, Isidoro Hernández and their conjugal partnership

130. Esther M. Alvarez Meléndez, Javier O. Torres and their conjugal partnership
131. Margarita Álvarez Rodríguez
132. Lionel Arroyo Carrero
133. Ada L. Arroyo Sánchez, José A. Hernández Nieves and their conjugal partnership
134. Zenaida Basora Urrutia, Mermes Román Amador and their conjugal partnership
135. Luis A. Carrión Pérez
136. Silvia E. Casiano Tellado, Gerardo F. López Muñoz and their conjugal partnership
137. Bárbara V. Casiano Velázquez
138. Luisa M. Castro Rivera, Jaime Luis García Garda and their conjugal partnership
139. Carmen M. Crespo
140. Andrés Durán Castaños, Vanessa Figueroa González and their conjugal partnership
141. Zonya Espinosa Tarniella
142. Dora Fernández Padilla
143. Gladys M. Figueroa Gautier, Richard Zambrana and their conjugal partnership
144. Audilia Fuentes Santos
145. Lourdes Godén Gaud, Eliud A. Serrano González and their conjugal partnership
146. Jossie A. González Ventura, Edgardo Reyes Morales and their conjugal partnership
147. Rosa D. Hernández Rosado, Ricardo Lebrón Maldonado and their conjugal partnership
148. Janine Hidalgo Santiago, Héctor Martínez Tosado and their conjugal partnership
149. Alice M. Huyke Souffront, Carlos E. Jiménez Torres and their conjugal partnership
150. Olga M. Jaume Tapia, Antonio Ginés Montalvo and their conjugal partnership

151. María L. Julia Julia, Miguel Ángel Ríos Gerena and their conjugal partnership
152. Ana R. Julia Savarit
153. Linda López Arriaga, José Reyes Rosario and their conjugal partnership
154. Arlene López Cancel
155. Luis A. Martínez Vázquez
156. Felícita Montañez Figueroa, Miguel A. Albarrán Reyes and their conjugal partnership
157. Asmara Morales Yepes
158. Carmen T. Morris Zamora
159. Vivian Ortiz Schettini
160. María De Los A. Pacheco Rodríguez, Alfred Demel and their conjugal partnership
161. Yanira Padilla Santiago
162. Eliezer Parrilla Meléndez, María García Montañez and their conjugal partnership
163. 163. Liza Polanco Pagán, Walter Ricardo Bonilla Santaliz And Their Conjugal Partnership
164. Myrna Quijano Guillama
165. Sonia Rivera Colón, Jorge Ariel Vázquez Román and their conjugal partnership
166. Iris Rodríguez Delgado
167. Ángel F. Rolón Rivera, Maria Teresa Del Valle and their conjugal partnership
168. Ginnette Rosado Sánchez, Eugenio René Chinea and their conjugal partnership
169. Javier Rosado Torres, Maria S. Urango Salcedo and their conjugal partnership
170. Fanivel Rosario Santiago
171. Adela Sabatier Águila, Rudy E. Mayol Kauffmann and their conjugal partnership
172. Ana Sierra Díaz, César Manuel Sierra Rondón and their conjugal partnership

173. Mayra E. Soto Guzmán, José A. Candelaria Maldonado and their conjugal partnership
174. Nelly-Ann Suárez Pesante
175. Ana M. Tirado Colón, Yarim E. Cros Vázquez and their conjugal partnership
176. Clara L. Tirado Rios, Samuel López Pérez and their conjugal partnership
177. Aurin Valcarcel Cervera
178. Mirtelina Vázquez Robles, José V, Torres Rivera and their conjugal partnership
179. Miriam Villardefrancos Vergara
180. Lourdes M. Zegrí Prieto, Carlos E. Rentas Giusti and their conjugal partnership