JUDGMENT NO. 52 YEAR 2016

In this case the Court heard a jurisdictional dispute between the President of the Council of Ministers and the Court of Cassation concerning a decision by the latter upholding an appeal brought by an association of atheists which had sought an order requiring the President of the Council of Ministers to launch negotiations with a view to concluding a concordat with it as a religious organisation. The Court accepted the application by the President of the Council of Ministers and overturned the court ruling, concluding that the decision in question was a discretionary matter for the executive, which could be held accountable for it as a political matter before Parliament, but not before the courts.

THE CONSTITUTIONAL COURT

[omitted]

gives the following

JUDGMENT

in proceedings concerning a jurisdictional dispute between branches of state arising following judgment no. 16305 of the joint divisions of the Court of Cassation of 28 June 2013, initiated by the President of the Council of Ministers by the application served on 19 March 2015, filed in the Court Registry on 26 March 2015 and registered as no. 5 in the Register of Jurisdictional Disputes between Branches of State 2014, merits stage.

Considering the intervention by the Union of Atheists and Rationalist Agnostics (*Unione degli Atei e degli Agnostici Razionalisti* - UAAR);

having heard the judge rapporteur Giorgio Lattanzi at the hearing of 26 January 2016, subsequently replaced for the drafting of the decision by the judge Nicolò Zanon;

having heard the State Counsel [*Avvocato dello Stato*] Giovanni Palatiello for the President of the Council of Ministers and Counsel Fabio Corvaja and Counsel Stefano Grassi for the Union of Atheists and Rationalist Agnostics (UAAR).

[omitted]

Conclusions on points of law

1.– The application concerning a jurisdictional dispute between branches of state was filed by the President of the Council of Ministers, represented by the State Counsel, acting in his own right and on behalf of the Council of Ministers, against the joint civil divisions of the Court of Cassation in relation to judgment no. 16305 of 28 June 2013, which dismissed on jurisdictional grounds the appeal filed by the President of the Council of Ministers against judgment no. 6083 of the fourth division of the Council of State of 18 November 2011.

In the appeal to the joint divisions of the Court of Cassation, the President of the Council of Ministers alleged an absolute lack of jurisdiction and the violation and/or incorrect application of Article 7(1), last sentence, of Legislative Decree no. 104 of 2 July 2010 (Implementation of Article 44 of Law no. 69 of 18 June 2009 authorising the government to reorganise the law on proceedings before the administrative courts), in relation to the resolution by which the Council of Ministers had decided on 27 November 2003 not to launch negotiations aimed at concluding a concordat with the Union of Atheists and Rationalist Agnostics (hereafter "UAAR") pursuant to Article 8(3) of the Constitution on the grounds that the practice of atheism asserted by the association in question is not eligible to be considered as equivalent to a religious faith.

Rejecting the appeal, the Court of Cassation asserted that the preliminary assessment concerning the classification of the applicant as a religious creed amounted to an exercise of technical discretion by the administrative authority, and was as such subject to judicial review. Considering the first paragraph of Article 8 of the Constitution, which guarantees equality before the law to all religious faiths, in relation to the third paragraph, which stipulates that relations between the state and faiths other than the Catholic Church shall be governed by concordat, the Court of Cassation held that the conclusion of a concordat also pursues the goal of achieving equality between religious faiths. For that reason, it concluded that the eligibility of a belief system to stipulate concordats with the state cannot be left to the absolute discretion of the executive, as this would otherwise encroach upon the principle of equal freedom for religious faiths. Whilst not considering it to be a decisive argument, the Court of Cassation observed, *inter alia*, that concordats "have over time transformed into the status of legislative instruments 'eligible for adoption by adherence', thereby unnaturally following standardised models". It follows that the Government is under a

legal obligation to engage in negotiations pursuant to Article 8 of the Constitution due to the sole fact that an association has made such a request, irrespective of the circumstances that may arise during the course of the legislative process.

In articulating its objections to the ruling by the Court of Cassation, the applicant asserts that it encroached upon the function of policymaking, which the Constitution vests in the government in the area of religious matters (Articles 7, 8(3), 92 and 95 of the Constitution), a function which is "absolutely free as regards its ends" and thus "not subject to review by the ordinary courts".

He asserts in particular that it cannot in any sense be asserted that the initiation of negotiations concerning the conclusion of a concordat pursuant to Article 8(3) of the Constitution is mandatory. This provision in fact is a rule concerning the sources of law, as concordats constitute the prerequisite for the initiation of legislative procedures with the aim of enacting a law regulating relations between the state and the religious faith, and thus have the same nature – as a free political act – as the subsequent stages of the legislative process. Since concordats are aimed at securing the approval of a law, they engage the political responsibility of the Government, but not the responsibility of the administrative authorities.

In essence – according to the applicant – since the ability not to exercise the right of legislative initiative in relation to religious matters is a political decision that is not eligible for review by the ordinary courts, and since the Government is free not to act on the concordat concluded by refraining from initiating the procedures leading to the enactment of the law provided for under Article 8(3) of the Constitution, it should *a fortiori* be free to decide not to engage in negotiations on the basis of its own political assessments. Once again, it is observed that if the Government may withdraw from negotiations or is otherwise free, notwithstanding the conclusion of the concordat, not to initiate the legislative procedure with a view to incorporating the concordat into law, this means that the supposed "right" to initiate negotiations is in reality a "mere unqualified *de facto* interest, which lacks legal protection".

Consequently, the Constitutional Court is asked to rule that it was not for the joint divisions of the Court of Cassation to assert that the ordinary courts had the power to review the refusal by the Council of Ministers to launch negotiations aimed at the conclusion of a concordat pursuant to Article 8(3) of the Constitution.

2.– As a preliminary matter, the intervention in these proceedings by the UAAR, as the respondent in the proceedings in which the contested judgment of the Court of Cassation was issued, must be ruled admissible.

Interventions by parties other than those entitled to initiate jurisdictional disputes, or the corresponding respondent parties, are not normally permitted in proceedings concerning jurisdictional disputes. However, that rule does not apply when the judgment given in the constitutional proceedings could preclude judicial protection for the individual legal right claimed by the intervener without allowing it the possibility to present its arguments (see most recently Judgments no. 144 of 2015, no. 222 and no. 221 of 2014, issued in jurisdictional disputes between branches of state, and Judgments no. 107 of 2015, no. 279 of 2008, no. 195 of 2007 and no. 386 of 2005, issued in disputes between the central government and local government bodies). This is the position of the UAAR in the proceedings under examination since the acceptance of the application would prevent the intervener from relying on a court ruling in order to obtain the initiation of the negotiations leading to the conclusion of a concordat pursuant to Article 8(3) of the Constitution.

3.– The dispute must be confirmed as admissible pursuant to Article 37 of Law no. 87 of 11 March 1953 (Provisions on the establishment and functioning of the Constitutional Court) – having already been declared admissible by this Court in the first summary ruling contained in Order no. 40 of 2015 – as the subjective and objective prerequisites are met.

3.1.– As regards the subjective issue, the standing to file appeals of the President of the Council of Ministers both in his or her own right and as a representative of the Council of Ministers must be reiterated.

The President of the Council of Ministers is the authority that is competent to declare the official position of the Government: in fact, the executive is not a “diffused power” but is concentrated in the Government as a whole, in order to ensure the political and administrative unity asserted by Article 95(1) of the Constitution (see Judgment no. 69 of 2009 and Orders no. 221 of 2004 and no. 123 of 1979). Moreover, decisions concerning the relations provided for under Article 8 of the Constitution are expressly reserved to the Council of Ministers by Article 2(3)(l) of Law no. 400 of 23 August 1988 (Provisions governing the activity of the Government and the organisation

of the Office of the President of the Council of Ministers), that is precisely the Law implementing Article 95 of the Constitution, which defines the organisation and powers of the Government.

In the dispute under examination, the President of the Council of Ministers must be acknowledged to have active standing to sue also in his own right, since within the procedure leading up to the conclusion of concordats – and in particular during the initial stage under discussion here, that is when it is necessary to identify the interlocutor and to launch negotiations – the Office of the President of the Council of Ministers acts independently, as provided for under Article 2(1)(e) of Legislative Decree no. 303 of 30 July 1999 (Provisions governing the organisation of the Office of the President of the Council of Ministers, adopted pursuant to Article 11 of Law no. 59 of 15 March 1997), in which it is asserted that the President of the Council of Ministers avails himself of the Office of the President of the Council of Ministers with regard to relations between the Government and the religious faiths pursuant to Article 8(3) of the Constitution, and as has been confirmed through practice.

There are also no doubts concerning the standing of the Court of Cassation to act as a party to a jurisdictional dispute between branches of state, according to the settled case law of this Court, which recognises such standing for individual judicial bodies that are competent, within a position of full independence guaranteed by the Constitution, to declare the definitive position of the branch to which they belong, whilst exercising their relative functions (see *inter alia*, with specific reference to the standing of the Court of Cassation, Judgments no. 29 and no. 24 of 2014, no. 320 of 2013 and no. 333 of 2011).

3.2.– The dispute must be confirmed as admissible also in objective terms since, notwithstanding that it was brought against a judicial decision, the application does not object to an *error in iudicando* (see Judgment no. 81 of 2012), but asserts a conflict "concerning the delimitation of the sphere of powers determined for the various branches of state under constitutional law" (Article 37(1) of Law no. 87 of 1953). In fact, the applicant has not requested this Court to re-examine the decision by which the Court of Cassation resolved a jurisdictional dispute through the interpretation of primary sources of law. Had this been requested, the dispute would accordingly have been inadmissible, as these very proceedings cannot be transformed into an improper

form of appeal against judicial decisions (see Judgment no. 259 of 2009 and Order no. 117 of 2006). By contrast, the applicant disputes the very existence of any judicial authority in relation to him (see Judgments no. 88 of 2012, no. 195 of 2007 and no. 276 of 2003) and thus objects to the breach, by the judgment of the joint divisions of the Court of Cassation, of the limits imposed upon that branch of state by the legal order, as a guarantee of the constitutional powers of the Government.

Nor is it relevant that the object of the application concerning a jurisdictional dispute is a judgment issued in proceedings seeking to resolve an issue of jurisdiction pursuant to Article 111, last paragraph, of the Constitution - as averred by the intervener, according to which questions of jurisdiction can never be the object of a constitutional dispute. Whilst it is indeed the case that, in regulating the institution of jurisdictional dispute between branches of state, Article 37(2) of Law no. 87 of 1953 stipulates that "[t]he foregoing shall be without prejudice to the rules governing questions of jurisdiction", the provision cited above is however intended solely to ensure the continuing competence within the legal order of the Court of Cassation to resolve disputes relating to jurisdiction, and not, by contrast, to prevent the Constitutional Court from being requested to resolve a dispute between branches of state where the deficiency objected to is nonetheless destined to have ramifications on the correct delimitation of constitutional powers. Besides, the resolution of the issue of jurisdiction and applications concerning jurisdictional disputes between branches of state are two distinct remedies, operating on different levels. On the one hand, it cannot be excluded that both may be activated in response to a judicial ruling which is alleged in parallel to have incorrectly applied the rules on jurisdiction and to have encroached upon the constitutional powers of other branches of state (see Judgments no. 259 of 2009 and no. 150 of 1981); on the other hand, it may indeed be the case that the object of the application – as in this case – is precisely a ruling of the Court of Cassation issued in proceedings resolving jurisdiction pursuant to Article 111, last paragraph, of the Constitution.

Accordingly, the intervener's objection that the application is inadmissible is unfounded.

4.– The applicant asks this Court, when ruling on the dispute, to assert that it was not for the Court of Cassation to hold that the refusal by the Council of Ministers of the

request made by the intervener to launch negotiations aimed at the conclusion of a concordat pursuant to Article 8(3) of the Constitution was not subject to review by the ordinary courts.

The opposing arguments which this Court has been called upon to assess may be summarised as follows: on the one hand, it is considered that the refusal by the Government to accept an association's request to launch negotiations cannot be subjected to judicial review, as this would violate the sphere of constitutional powers vested in the Government as defined by Articles 8(3) and 95 of the Constitution; on the other hand, it is considered that this amenability to review should be asserted, as the actionability of the legal entitlement to launch negotiations is stated to be a corollary of the equal freedoms guaranteed to all religious faiths under Article 8(1) of the Constitution, and would prevent the exercise of absolute governmental discretion in this area from giving rise to arbitrary discrimination.

The applicant disputes at root the existence of a subjective legal interest, which is hypothetically protected by the legal order, consisting in the entitlement to the conclusion of negotiations, or even to the tabling of draft legislation on the basis of the concordat concluded; on the other hand the intervener considers that – with reference to the procedure governing the conclusion of concordats – the jurisdiction of the ordinary courts should end at the time the legislative initiative based on the concordat is exercised, but not before, thereby not precluding the availability of the subjective claim now at issue, along with the possibility for the judicial review of that very claim. The judgment of the joint divisions of the Court of Cassation, which gave rise to the dispute, asserts that, when resolving the issue of jurisdiction, it has no standing to rule on the existence of a "right to conclude negotiations" or the exercise of legislative initiative following the conclusion of a concordat.

This Court by contrast believes that considerations relating to the actual availability of a court-enforceable claim to the conclusion of negotiations are not secondary for the resolution of the dispute, albeit within the terms set forth above, whilst assessments regarding governmental action following the conclusion of a concordat and the nature of the procedure which, pursuant to Article 8(3) of the Constitution, will result in the approval of the law intended to regulate relations between the state and the non-Catholic

religious faith on the basis of the concordat, fall outside the object of the present dispute.

5.– The application is well founded, insofar as specified below.

5.1.– The solution to this dispute cannot disregard a consideration of the nature and significance of concordats within our constitutional system for regulating relations between the state and religious faiths other than Catholicism, pursuant to Article 8(3) of the Constitution.

The significance of the constitutional provision under examination consists in the extension to non-Catholic faiths of the "bilateral method", with a view to the formulation of legislation in areas linked to the specific features of individual religious faiths (see Judgment no. 346 of 2002). Concordats thus aim to recognise the requirements specific to each religious faith (see Judgment no. 235 of 1997), to grant them particular benefits or, as the case may be, to subject them to particular restrictions (see Judgment no. 59 of 1958), or alternatively to establish certain acts that are specific to the religious faith as relevant within the legal order. This significance of the concordat, namely its purpose of recognising the particular requirements of the religious group, must remain a fixed point, irrespective of the fact that practice has shown a tendency towards unifying the contents of the concordats effectively concluded, even though such content is ultimately still dependent upon the intentions of the parties.

The Constitution has sought to avoid the unilateral introduction of special exceptional provisions regulating relations between the state and individual religious faiths, on the premise that such unilateralism could give rise to discrimination: for this fundamental reason, the specific relations between the state and each individual faith must be governed by a law adopted "on the basis of concordats".

It is essential to stress, in keeping with the case law of this Court, that within the constitutional system concordats are not a requirement imposed by the public authorities with the aim of enabling religious faiths to avail themselves of freedom of organisation and action, or to benefit from the application of the norms addressed to them within the different areas of the legal system. Irrespective of the conclusion of concordats, equal freedom of organisation and of action is guaranteed to all faiths by the first two paragraphs of Article 8 of the Constitution (see Judgment no. 43 of 1988) and by Article 19 of the Constitution, which protects the exercise of religious freedom also in

associational terms. In fact, the case law of this Court has been settled in asserting that the legislator cannot discriminate between religious faiths on the basis of whether or not they have regulated their relations with the state through agreements or concordats (see Judgments no. 346 of 2002 and no. 195 of 1993).

According to current positive law, some of the assumptions underlying both the judgment of the joint divisions of the Court of Cassation, which gave rise to this dispute, and the arguments of the intervener, are therefore not correct. In fact, it cannot be asserted that the failure to conclude a concordat is in itself incompatible with the guarantee of equality between non-Catholic religious faiths, which is protected by Article 8(1) of the Constitution.

Within our legal system, there is no general overall legislation governing religious phenomena applicable only to faiths that conclude a concordat with the state. Moreover, no requirement for such pervasive legislation is in fact imposed by the Constitution, which provides the utmost level of protection to religious freedom. And there is no doubt that the Constitution would prevent the legislator from discriminating between religious associations depending upon whether or not they had concluded a concordat, with a view to the applicability of specific legislation relating to freedom of religion.

On the other hand, as regards the legal systems that subordinate the applicability of the legislation laid down for religious associations to public recognition, or those systems that otherwise contain a more detailed legislative framework in the area of religious associations and faiths, the case law of the European Court of Human Rights (see judgments of 12 March 2009 in *Gütl v. Austria* and *Löffelmann v. Austria*; judgment of 19 March 2009, *Lang v. Austria*; judgment of 9 December 2010, *Savez crkava "Riječ života" and others v. Croatia*; and judgment of 25 September 2012 in *Jehovah's Witnesses in Austria v. Austria*) has been able to identify cases in which the discriminatory application of the legislation would entail a violation of Articles 9 and 14 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, signed in Rome on 4 November 1950, ratified and implemented by Law no. 848 of 4 August 1955. Instead, within our legal system , which is characterised by the principal of secularism, and thus impartiality and equidistance with regard to each religious faith (see Judgments no. 508 of 2000 and no. 329 of 1997), it is not the conclusion of a concordat itself that enables equality between faiths: this by contrast is

protected overall by Articles 3 and 8(1) and (2) of the Constitution, by Article 19 of the Constitution, which guarantees the right to practice one's religious faith freely, whether in individual or associate form, and by Article 20 of the Constitution.

For these reasons, it is not correct to assert that Article 8(3) of the Constitution is a procedural provision which merely serves – and is thus inextricably linked to – the first two paragraphs, and thus the realisation of the principles of equality and pluralism in the area of religious matters enshrined within it. By contrast, the third paragraph has the self-standing meaning of enabling the extension of the "bilateral method" to the issue of relations between the state and non-Catholic faiths where the reference to that method reflects the common intention of both parties, already regarding the choice to launch negotiations.

The conclusion might have been different, also with regard to the question raised by this dispute, had the legislator decided through an act of discretion to introduce comprehensive regulation of the procedure governing the conclusion of concordats, laying down also objective parameters suitable for guiding the Government as regards its choice of interlocutor. Were this to occur, compliance with those restrictions would constitute a prerequisite for the legitimacy and validity of the choices made by the Government, which could be reviewed in the appropriate fora (see Judgment no. 81 of 2012).

5.2.– Prior to making a decision in this dispute, it is necessary as a preliminary matter to establish whether our legal system recognises a legally enforceable claim to the launch of negotiations – with a view to the conclusion of a concordat pursuant to Article 8(3) of the Constitution – with the result that any refusal by the Government of a request made by an association alleging that it is religious in nature could be reviewed by the ordinary courts.

This Court considers that institutional and constitutional reasons preclude the availability of such a claim.

It is precluded first and foremost by the reference to the bilateral method inherent within the rationale of Article 8(3) of the Constitution which – especially given the absence of specific procedural provision – requires a joint intention of the parties not only to conduct and conclude negotiations, but also to launch them in the first place. The assertion that a refusal to launch negotiations is subject to review before the courts

– with the resulting possibility for mandatory enforcement of the "right" recognised, and the related obligation for the Government to launch negotiations – would by contrast be at odds with the bilateral method provided for under the constitutional provision under examination.

Secondly, a self-standing enforceable claim to launch negotiations cannot be available, precisely in the light of the fact that there is no individual entitlement to the successful conclusion of negotiations.

The contested judgment asserts that there is no need to rule on this last aspect, whilst the intervener – asserting that the jurisdiction of the ordinary courts should only end once the legislative initiative based on the concordat has, following its conclusion, been commenced – appears in truth to mean that such a claim is available, and may be enforced through review by the ordinary courts. The applicant for his part stresses that it is possible to withdraw from negotiations at any time, inferring that the supposed "right" to their commencement in actual fact amounts to a "mere unqualified *de facto* interest, which lacks legal protection".

Since the unitary purpose (in this case the conclusion of the concordat) is a characteristic of the procedure and since the launching of negotiations is structurally and functionally related to that final act – it would be contradictory to deny the enforceability of a "right" to a concordat as the final result of negotiations, whilst at the same time asserting that the refusal to launch them was subject to review: indeed, why should the illusory launching of negotiations be required where there is no judicial guarantee of their conclusion.

Conversely, and consequently, it is precisely the lack of any entitlement to the successful conclusion of negotiations, and hence to the conclusion of a concordat, that renders meaningless the assertion of an entitlement solely to the launching of negotiations. Besides, it is not clear through what judicial forms and with what instruments that stipulation could be guaranteed to the applicant association and imposed on the Government.

Moreover, the inability to enforce the claim to the launching of negotiations through the courts is based on further arguments of the utmost institutional and constitutional significance.

For the Government, the identification of the individuals who may be allowed to engage in negotiations and their subsequent actual launch are important considerations within which its political discretion is already engaged, along with the responsibility that normally results within a system of parliamentary government.

It is necessary in particular to give close consideration to a range of reasons and events, which are generated in considerable number by the changing and unpredictable reality of national and international political relations, which may lead the Government to conclude that it is not appropriate to allow an association that requests it to launch negotiations.

When confronted with this considerable variety of situations, which by definition does not lend itself well to classification, the Government is vested with a broad discretion, the only limit to which may be found in principles of constitutional law, which could induce it to refrain from granting even the implicit *de facto* "legitimising" effect which the association could obtain from the mere launch of negotiations. Due to the reasons that justify them, choices of this type cannot be subject to review by the courts.

This Court has already held that, within a normative scenario in which the conclusion of concordats is conditional not only upon an initiative by the faiths concerned but also on the consent of the Government, the latter "is not currently bound by specific norms concerning the obligation, following a request by a faith, to negotiate and conclude a concordat" (see Judgment no. 346 of 2002). This must be confirmed in these proceedings, considering also the fact that the procedural framework, which may be inferred solely from the practice followed to date in the conclusion of concordats, cannot give rise to restrictions that are subject to judicial review.

However, any refusal by the Government to launch negotiations would not avoid any allocation of responsibility. Article 2(3)(l) of Law no. 400 of 1988 stipulates that "acts concerning the relations provided for under Article 8 of the Constitution" must be resolved upon within the Council of Ministers. And since these acts without doubt include any resolution stating a refusal to launch negotiations, it must inevitably be acknowledged that the Government will also answer for such a decision before Parliament, according to the arrangements by which the political responsibility of the executive is engaged within a system of parliamentary government. The reservation to

the Council of Ministers of competence over the decision as to whether or not to launch negotiations has the effect of establishing the possibility – in accordance with the principles of parliamentary government – of effective control by Parliament from the stage preliminary to the actual launching of negotiations, a control which is certainly justified in the light of the delicate interests protected by Article 8(3) of the Constitution.

Ultimately, a complex body of reasons, which may be assessed on different levels, leads this Court to conclude that the argument set out in the judgment of the joint divisions of the Court of Cassation and in the submissions presented by the intervener is unfounded. By contrast, all of these reasons point to the conclusion that, in the light of a reasonable balancing of the interests protected by Articles 8 and 95 of the Constitution, there is no judicially enforceable claim – for any association that so requests, asserting that it is a religious faith – to the launching of negotiations pursuant to Article 8(3) of the Constitution.

Since that claim has been excluded, it follows that the application concerning a jurisdictional dispute must be accepted in the manner specified below.

5.3.– It therefore falls to the Council of Ministers to assess whether it is appropriate to launch negotiations with a particular association with a view to achieving, upon conclusion thereof, the bilateral drafting of special provisions governing reciprocal relations. The Government may be held responsible on a political level for that decision – and in particular, insofar as is relevant in this case, for the decision not to launch negotiations – before Parliament, but not before the courts. Therefore, the joint civil divisions of the Court of Cassation had no basis for asserting that such a decision was subject to review by the ordinary courts.

It must however be clarified that – just as the assessment reserved to the Government is closely related to and limited to the object in dispute within these proceedings, namely the decision over whether to launch the negotiations in question – in the same way the refusal at issue here cannot produce any additional effects within the legal order other than those which it is intended to have.

Insofar as it is based on the premise that the interlocutor is not a religious faith, as was the case in the situation that gave rise to this dispute, that act cannot give rise to any additional negative consequences – other than the failure to launch negotiations – on the

legal sphere of the applicant association, by virtue of the principles laid down in Articles 3, 8, 19 and 20 of the Constitution.

Irrespective of whether or not they have concluded a concordat, religious faiths are subject to a complex series of rules in various sectors. Indeed, the case law of this Court asserts that, absent a law defining the concept of "religious faith", and given that self-classification is not sufficient, "the nature of a faith may also result from previous public recognition, from the charter that clearly expresses its characteristics, or otherwise from common consideration", from criteria which, within legal experience, are used in order to distinguish between religious faiths and other social organisations (see Judgment no. 195 of 1993; see for an analogous ruling, Judgment no. 467 of 1992).

Within this context, the Government's refusal to launch negotiations cannot have any effect beyond the procedure provided for under Article 8(3) of the Constitution and cannot prejudice the legal sphere of the association for other purposes insofar as it denies the classification of "religious faith" to the applicant association.

Any detrimental act adopted within a context that is obviously distinct from that now under examination could give rise to judicial review according to the procedural arrangements permitted by the legal order, with the aim of reviewing the refusal to classify it as a religious faith that was purportedly based on the Government's decision.

There are in fact no "free zones" within the delicate area of religious pluralism laid down by the Constitution that are immune from judicial review, which has been put in place in order to oversee the quality of all faiths guaranteed by Articles 3, 8, 19 and 20 of the Constitution.

Ultimately, it is one thing to identify on an abstract level the characteristics that establish a social group pursuing religious purposes as a faith, thereby rendering it subject to all of the rules laid down by ordinary law for this type of association. However, the Government's decision concerning the launch of negotiations pursuant to Article 8(3) of the Constitution, which also includes the specific identification of the interlocutor, is quite another thing. This choice is dependent on delicate assessments of appropriateness, which Articles 8(3) and 95 of the Constitution place under the responsibility of the Government.

Within this limited area, and only within it, the Council of Ministers is thus vested with political discretion, under the ever possible control of Parliament, which cannot be brought before the courts for review.

Accordingly, the contested judgment of the joint civil divisions of the Court of Cassation must be annulled.

ON THESE GROUNDS

THE CONSTITUTIONAL COURT

rules that it was not for the Court of Cassation to assert that the resolution by which the Council of Ministers refused to initiate negotiations with the Union of Atheists and Rationalist Agnostics concerning the conclusion of a concordat pursuant to Article 8(3) of the Constitution was subject to judicial review, and as a result annuls judgment no. 16305 of the joint civil divisions of the Court of Cassation of 28 June 2013.