

No. 19668

**SPAIN
and
HOLY SEE**

**Agreement concerning appointment to non-consistorial
benefices. Signed at Madrid on 16 July 1946**

Authentic text: Spanish.

Registered by Spain on 27 March 1981.

**ESPAGNE
et
SAINT-SIÈGE**

**Accord relatif à l'octroi des bénéfices non consistoriaux.
Signé à Madrid le 16 juillet 1946**

Texte authentique : espagnol.

Enregistré par l'Espagne le 27 mars 1981.

[TRANSLATION — TRADUCTION]

AGREEMENT¹ BETWEEN THE HOLY SEE AND THE SPANISH GOVERNMENT CONCERNING APPOINTMENT TO NON-CONSISTORIAL BENEFICES

Article 1. The right of appointment to non-consistorial benefices belongs to the ecclesiastical authority, which grants such benefices in accordance with the Code of Canon Law, except as otherwise provided in this Agreement by way of concession of the Holy See in consideration of the Catholic traditions of Spain.

Article 2. The diocesan Ordinaries shall make appointments to parishes in accordance with canon 459 following a general, open competition, pursuant to paragraph 4 of that canon.

Before publishing appointments of parish priests, Ordinaries shall secretly notify the Government concerning them, in case it might exceptionally object on the ground of a difficulty of a general political nature.

In the event of a difference of opinion between the Ordinary and the Government, recourse shall be had to the Holy See, which shall take the appropriate decision in agreement with the Head of the State.

If, after a lapse of 30 days from the date of the aforementioned communication, the Government has not replied, such silence shall be interpreted to mean that no objection exists, and the appointment shall be published without any further formalities.

The provisions of this article shall in no way affect the system of appointment to cures under special patronage.

Article 3. 1. In the case of appointment to the dignity of dean of metropolitan and cathedral chapters, the bishop, after hearing the views of the chapter concerning the different candidates, shall make up a list of three worthy ecclesiastics and send it to the Head of the State, who shall select and present to the Holy See one of the persons composing the *terna*.

2. Appointment to the dignity of precentor shall take place in all cases by free collation by the Holy See.

3. Appointment to other dignities of metropolitan and cathedral chapters shall be made by the Holy See, alternately (a) by free collation, and (b) on prior presentation by the Head of the State. In the latter case, the procedure shall be as specified in paragraph 1 of this article.

4. For the appointment of the rector (*abad*) of collegiate chapters, the bishop shall, following a competitive examination, make up and send to the Head of the State a list of three ecclesiastics deemed worthy in that examination. The Head of the State shall select and present to the Holy See one of the names included in the *terna*.

¹ Came into force on 16 July 1946 by signature.

5. For the appointment of the chief chaplan (*capellán mayor*) of the Chapels of the Kings of Toledo, of the Catholic Kings of Granada and of San Fernando de Sevilla, the Head of the State shall present to the bishop a candidate selected from a *terna* made up for that purpose by the same bishop in accordance with what is laid down in paragraph 1 of this article.

Article 4. *De officio* canonries of cathedral and collegiate churches shall be granted following a competitive examination, the candidate being selected by the bishop and the chapter.

To be appointed *de officio* canon or dignity, a candidate must possess a higher degree in philosophy, theology or canon law or must have meritoriously discharged his ecclesiastical ministry in government functions, such as that of vicar-general, provisor or chamber secretary (*secretario de cámara*), or in a teaching position, as professor of philosophy, theology or canon law.

Article 5. 1. Appointment to simple canonries and minor benefices of cathedral and collegiate churches shall be made as follows: one half following a competitive examination, and the other half in the manner known as *de gracia*. Where the number of prebends is uneven, the remaining unit shall be added to the group of those assigned on the basis of examination. The last-mentioned group shall be understood to include the benefices designated as *de officio*.

2. The bishop, in making appointments to such benefices, shall retain the faculty of imposing on them, after hearing the chapter, special charges, principally that of ministry.

3. Whether a competitive examination has been held or the *de gracia* procedure is followed, the canonries and benefices referred to in paragraph 1 above shall be granted by the bishop, alternately (a) by free collation, after hearing the chapter, and (b) on prior presentation by the Head of the State.

In the second of these cases, the Head of the State shall select the candidate to be presented by him from a list of three worthy ecclesiastics compiled by the bishop on the basis of the results of the competitive examination, or freely compiled by him after hearing the opinions of the chapter concerning the different candidates.

Article 6. 1. The prebends of the priorate *nullius* of Ciudad Real shall be granted in accordance with their traditional regimen established in the bull "*Ad apostolicam*".

2. The procedure of appointment of minor chaplains and beneficiaries of the Chapels of the Kings of Toledo, of the Catholic Kings of Granada and of San Fernando de Sevilla shall be preceded by presentation by the Head of the State. The *terna* of ecclesiastics from among whom the Head of the State is to select the name to be presented to the bishop shall be made up by that bishop after hearing the opinion of the chapter and the appropriate corporation concerning the various candidates.

3. Mozarab chaplains, parish priests and beneficiaries shall be appointed in accordance with the constitutions of their respective chapters.

4. Subject to the provisions of article 8, the collegiate churches of Santa María de Roncesvalles, of San Isidoro de León and of Gandía and the magistral

churches of Sacro Monte and Alcalá de Henares shall maintain their traditional regimen.

5. The peculiar regimen governing the grant of prebends in collegiate churches under private patronage shall also be maintained.

Article 7. 1. Where appointment to a benefice is to be made following a competitive examination, priests of all the Spanish dioceses may participate therein with the consent of the Ordinaries concerned, and such appointment shall be made in accordance with rules dictated by the Holy See.

2. Where the election of the candidate to a benefice is made, following a competitive examination, by the Ordinary and the chapter, the prelate shall have three, four or five votes in that election, according as the number of capitulars is 16 or less, 20 or more than 20.

3. Where appointment to a benefice is made following a competitive examination, for the turn involving presentation by the Head of the State, the Ordinary shall make up the list of three worthy ecclesiastics on the basis of the results of the competition; if, however, he is unable to complete that number, he may submit an incomplete list, stating his reasons for so doing.

4. Presentation by the Head of the State shall in all cases take place within a period of 30 days reckoned from the date on which the Ordinary transmits to the competent ministry the *terna* compiled by him. If that period elapses without the presentation being made, appointment to the benefice shall be considered free.

5. The diocesan ecclesiastical authority shall officially communicate to the Government, for whatever purposes it may serve, any appointments made.

Article 8. Notwithstanding the general principles of the Code of Canon Law concerning pontifical reservations, the Holy See consents that the prescriptions of canon 1435, paragraph 1, sub-paragraphs 1, 2 and 4, shall not apply where, under this Agreement, nomination to a non-consistorial benefice takes place following presentation by the Head of the State.

Appointment to ecclesiastical benefices which become vacant "as a result" shall be considered in every respect the same as other appointments and, consequently, shall be in accordance with the rules established in this Agreement for each case, except where the vacancy has been produced as a consequence of appointment to a non-consistorial benefice made by free collation by the Holy See, in which case the rules of the Code of Canon Law shall apply.

Article 9. The Spanish Government shall maintain at their present amount the endowments assigned to the benefices to which the present Agreement relates.

If, in the future, appreciable changes occur in general economic conditions, the endowments provided by the Government shall be adjusted to the new situation in such a way that they are not lower than the real value of those assigned at present.

Article 10. The present Agreement shall apply to all benefices which are vacant at the time of its signature and shall remain in force until its provisions are incorporated into the new concordat.

The Spanish Government renews, in this connection, its pledge to observe the provisions contained in the first four articles of the Concordat of 1851¹ and not to legislate, without prior agreement with the Holy See, on joint matters or matters that might in any way concern the Church.

DONE in duplicate.

Madrid, 16 July 1946

For the Spanish Government:

[Signed]

ALBERTO MARTÍN ARTAJO
Minister for Foreign Affairs

For the Holy See:

[Signed]

CAYETANO CICOGNANI
Archbishop of Ancyra
(Apostolic Nuncio)

¹ United Nations, *Treaty Series*, vol. 1221, No. II-874.