



EUROPEAN COURT OF HUMAN RIGHTS

ASOCIACIÓN DE ABOGADOS CRISTIANOS

v. SPAIN

Application nº22604 / 18

**COMPLAINTS' COMMENTS IN RESPONSE
TO OBSERVATIONS OF THE KINGDOM
OF SPAIN AND REASONS FOR THE
EQUITABLE SATISFACTION**

TO THE EUROPEAN COURT OF HUMAN RIGHTS

Observations have been made by the Kingdom of Spain on the admissibility and on the background of the case filed by Asociación de Abogados Cristianos against the Kingdom of Spain for the infringement of the European Convention for the Protection of Human Rights and Fundamental Freedoms.

Within the indicated period, we formulate the following observations in response to those made by the Kingdom of Spain.

PLEAS OF FACT AND LAW

1. These observations do not seek to repeat the exposures made in the Application of Asociación de Abogados Cristianos (the Applicant). The facts and arguments presented in the Application **demonstrate the breach of the State of Spain to its positive obligations in order to protect the right of its citizens to not be offended by their religious feelings for acts that are incompatible with the spirit of tolerance characteristic of a democratic society.**

2. The performance *Amén*, exhibited in the municipal exhibition hall of the City Council of Pamplona (Spain), composed of 242 Consecrated Hosts of Catholic Masses that were robbed¹, used to form the word “Pederasty”, together with photos of the “author”, AC, naked next to the Forms **it gave rise to a procedure in which articles 6.1, 8, 9, 14, of the European Convention on Human Rights (the Convention) were violated.**

¹ Annex Document 1 page. 1

3. These observations respond to the questions raised by the European Court of Human Rights (the Court), rejecting each of the arguments presented by the Kingdom of Spain.

RIGHTS OF LAW

ALLEGED VIOLATION OF ARTICLE 6.1 OF THE CONVENTION

4. Article 6.1 :

In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgment shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interest of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice.

When this party filed the complaint, both criminal and civil actions were exercised simultaneously. The Applicant, by opportunity criteria, chose to pursue the civil action together with the criminal action by initiating a criminal proceeding.

In any case, the chosen option by this party is totally legitimate and nothing was judged on the civil action requested by this party.

The Court only requires a reasonable choice and one that allows satisfaction. This is the criteria established in the Nicolae Virgiliu Tănase case c. Romania:

In a case such as the present one, where various legal remedies, civil as well as criminal, are available, the Court will consider whether the remedies taken together as provided for in law and applied in practice, could be said to have constituted legal means capable of establishing the facts, holding accountable those at fault and

providing appropriate redress to the victim. The choice of means for ensuring the positive obligations under Article 2 is in principle a matter that falls within the Contracting State's margin of appreciation. There are different avenues for ensuring Convention rights, and even if the State has failed to apply one particular measure provided for by domestic law, it may still have fulfilled its positive duty by other means (Nicolae Virgiliu Tănase C. Rumania n ° 41720/13) de la Gran Sala, 25 of June of 2019, §169 y and the following "9)

Therefore, in a case like this, where different resources were available, both civil and criminal, the Court must examine whether it can be said that, as a whole and as it is disposed by law and applied in practice, they constituted legal resources to establish the facts, forcing those responsible to be responsible and offer the victim adequate reparation.

ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

5. Article 8:

1. *Everyone has the right to respect for his private and family life, his home and his correspondence.*
2. *There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others*

The use of Consecrated Hosts for an exhibition in a public municipal hall constitutes an interference of public authorities in the private life of Christians not permitted by law and totally unnecessary in a democratic society.

Well, when the author, **A.C., makes the exhibition in which he writes the word "pederasty" with Consecrated Hosts (which are Jesus Christ Himself), is in fact linking Jesus Christ with paedophilia, a fact similar to that already condemned by this European Court of Human Rights in judgment E.S. c. Austria linking Muhammad and paedophilia:**

When saying “What do we call it, if it is not paedophilia?” the applicant, according to her own statements, was quoting a conversation she had had with her sister, who was of the opinion that “one [had] to paraphrase [the accusation that Muhammad was a paedophile], say it in a more diplomatic way”. The Court notes that the applicant described herself as an expert in the field of Islamic doctrine, already having held seminars of that kind for a while. Her argument that the impugned statements had been made in the context of a lively discussion, in which they could not be revoked (see paragraph 34 above), is therefore not convincing (contrast Gündüz, cited above). The Court therefore agrees with the domestic courts that the applicant must have been aware that her statements were partly based on untrue facts and liable to arouse (justified) indignation in others. In that context the Court reiterates that the Convention States are required, in accordance with their positive obligations under Article 9 of the Convention, to ensure the peaceful co-existence of religious and non-religious groups and individuals under their jurisdiction by ensuring an atmosphere of mutual tolerance (see paragraph 44 above). The Court endorses the Regional Court’s statement in its judgment of 15 February 2011 that presenting objects of religious worship in a provocative way capable of hurting the feelings of the followers of that religion could be conceived as a malicious violation of the spirit of tolerance, which was one of the bases of a democratic society (see paragraph 15 in fine above). Case E.S. v. Austria no. 38450/12) §53.

That the Consecrated Hosts in the Catholic rite are God Himself is a belief belonging to the private sphere within the free development of the personality of Catholics, Orthodox and Anglicans that also allows each believing individual to establish and develop relationships with their similar, it is why this sacrament is known as *Communion*.

In addition, the Order of Dismissal number 426/2016 of the Court of Instruction number 2 of Pamplona hurts this private life when the judge speaks of “*small white and round objects*” to refer to the Consecrated Hosts, attacking the beliefs in an unjustified way, which were attacked using abusive use of law.

INTROMISION IN PRIVATE LIFE

6. The intrusion into the private life of Catholics is evident. The "author", AC, **gets into the house of Catholics** (the Catholic Church), during 242 Masses, steals in an inappropriate way the most sacred thing for Catholics, Consecrated Hosts, and with these Consecrated Hosts creates an exhibition that links the Sacred Hosts and with it Christ himself with paedophilia, **all of which is also financed and promoted by the City Council of Pamplona.**

All this could have been done with non-consecrated hosts, but if the author sought precisely these Consecrated Host, it was to directly attack the most sacred of Catholics, Jesus Christ himself.

The author, with his exhibition, **directly links the Consecrated Hosts, and with it Jesus Christ Himself, who is God for Catholics, with paedophilia.**

In addition to admitting his intentionality, it was proved that **the author had been baptized and confirmed, so he knew the Catholic beliefs and what the Consecrated Hosts meant,** and his sole purpose was to humiliate and attack the Catholics.

It has also been proven that the Pamplona City Council knew that the exhibition that was being organized had Consecrated Hosts, without doing anything to protect the beliefs of Catholics, despite also the thousands of people who requested the withdrawal of the exhibition, and the massive manifestations and concentrations that took place.

In short, this part has the right to live without fear of an atmosphere of anti-Catholicism.

ALLEGED VIOLATION OF ARTICLE 9 OF THE CONVENTION

7. Article 9:

1. *Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief and freedom, either*

alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance.

2. *Freedom to manifest one's religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others.*

The realization of an exhibition with Consecrated Hosts, promoted by the City Council of Pamplona, is a serious and unjustified attack on religious freedom.

People can criticize paedophilia in multiple ways, it is not necessary to do it with Consecrated Hosts, that is why when the author admits that he wanted them to be Consecrated Hosts, he admits his intention to attack the religious feelings of Catholics, attacking the most sacred for the Catholics, which is the Body of Christ itself.

The author even throws them on the floor and then displays them on a plate for greater humiliation².

In this case the author on one hand flagrantly attacks the religious feelings of Catholics and on the other performs the greatest desecration by stealing the Consecrated Hosts of Catholic Masses, something that in addition to admitting, documents and disseminates through the networks.

For this reason, the Kingdom of Spain has breached its duty to guarantee the public manifestation of religious convictions, by the Pamplona City Council organizing an exhibition where the author profaned and stole 242 Consecrated Hosts of Catholic Masses, protected by Article 9 of the Convention, were part of the practice of a religion for a totally vexatious, humiliating and hurtful use for Catholics. This is what the Court says in the case Pichon and Sajous v. France:

² Annex Document 1 pages 5, 7.

The Court would point out that the main sphere protected by Article 9 is that of personal convictions and religious beliefs, in other words what are sometimes referred to as matters of individual conscience. It also protects acts that are closely linked to these matters such as acts of worship or devotion forming part of the practice of a religion or a belief in a generally accepted form.

The Court also reiterates that Article 9 lists a number of forms which manifestation of one's religion or belief may take, namely worship, teaching, practice and observance (see the Kalaç v. Turkey judgment of 1 July 1997, Reports of Judgments and Decisions 1997-IV, p. 1209, § 27, and Cha'are Shalom Ve Tsedek v. France [GC] no. 27417/95, 27 June 2000, ECHR 2000-VII, § 73).

It is also a malicious violation of the spirit of tolerance that should characterize a democratic society, also allowing the Pamplona City Council to continue the exhibition despite the great social upheaval of all Spain, the offensive content of the exhibition, thereby altering the religious life of believers.

By virtue of their positive obligations under article 9, the States parties to the Convention have the obligation to guarantee peaceful coexistence between religious and non-religious groups and persons within their jurisdiction, to guarantee an atmosphere of mutual tolerance (E.S v. Austria: § 50 to 57.).

ALLEGED VIOLATION OF ARTICLE 14 OF THE CONVENTION

8. Article 14:

The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.

The interference of the Spanish State both in private life protected by article 8 and in the normal development of participation in the religious life of the Christian community protected by article 9 of the Convention has been disproportionate and discriminatory prohibited by article 14 of the Convention, when not having an objective and reasonable justification.

Also taking into account that a general policy or measure that has disproportionate effects on a group of people can be considered discriminatory even if it is not specifically directed against that group (*D.H and others v. Czech Republic No. 57325/00 §175*).

**OBSERVATIONS IN RESPONSE TO THE
FORMULATED BY THE
KINGDOM OF SPAIN**

9. In the first place, **the Kingdom of Spain in its observations does not deny the facts presented in the Application.** However, it refers to the factual statement that includes value judgments that stain subjectively the facts that are the subject of the Application. Specifically, it is up to the Applicant to have mentioned that on the part of (A.C), the author of the exhibition, it was intended (among other things) to relate the priests to paedophilia.

The relationship between the Catholic Church and paedophilia is carried out by the author of the "performance" when writing the word paedophilia with Consecrated Hosts, in an old Church (now a public exhibition hall), therefore, it is the "author" himself who do not delimits, but links and generalizes paedophilia and Consecrated Hosts, therefore linking paedophilia with Jesus Christ himself, and thus encompassing the entire Catholic Church and all Catholics.

He does not criticize cases of paedophilia at any time, but identifies Consecrated Forms (Jesus Christ) and paedophilia.

In addition, it was a **PROVEN** fact, and therefore known to the whole society that the mentioned "author" carried out said "performance" with Consecrated Hosts, which had previously stolen from the Catholic masses, for which said "author", A.C, was responsible for publishing photos and videos on all social networks of how he simulated communion^{3,4}, even taking the Consecrated Hosts out of his mouth, then save those Consecrated Hosts and make the exhibition "Amen".

10. The State of Spain alleges in its observations that the proven facts are those that were proven in court, based on the fact that the Order of the Court of Instruction considered that nowhere in the exhibition indicated that they were Consecrated Forms, and that neither the "author, A.C, exhibited photos and videos of how he stole them ³.

11. The Kingdom of Spain lies, and its allegations are discredited by the author's own words, A.C., as it was provided in the initial complaint before the Court of Instruction, A.C. posted on his Twitter profile:

"I attended 242 Eucharist and with the Consecrated Hosts saved I formed the word Pederasty" ⁵

12. Photos and videos published by A.C. were also attached in which he was shown stealing the Consecrated Forms⁶.

13. In an interview, when A.C. he was asked about why he chose Consecrated Hosts instead of non-consecrated forms he replied in the 9'30 minute *"of the interview: " I cared that they had value for them"*⁷. He even encouraged people through the networks social to do the same.

All of the above generated **A GREAT COMMOTION IN ALL SPAIN**⁸.

³ Annex Document 1, page. 2

⁴ Annex Document 1 page 6

⁵ Application, imagen 1 of the Document 3, p.62. / Annex Document 1, page. 3

⁶ Application: image 2 of the Document 3, p.62; image nº18 of the Documents 3, 9 and 16.

⁷ Application, Document 16, link <https://www.youtube.com/watch?v=fKr94HkRRs0&feature=youtu.be>

⁸ Application, p.62

14. The Kingdom of Spain states in its observations that the procedural burden of justifying the constitutional significance of the appeal was not met. Assessment that turns out not to be true since the Applicant claimed the constitutional relevance precisely based on the jurisprudence of the European Court of Human Rights itself now addressed, concerning religious freedom and its necessary application in Spain, being one of the fundamentals of a democratic society.

15. The Spanish state lawyer also tries to convince this Court that religious freedom is respected in Spain since there is a specific crime to protect it, as defined in article 525 of the Criminal Code. However, the Kingdom of Spain has not applied its own law in this matter in the case that concerns us that it is the most serious and scandalous that has ever happened in Spain.

In addition, the lawyer of the state hides this Court that, **in recent years, several political parties (including the Government party) have proposed decriminalizing that crime**, moreover, there are Spanish judges, belonging to an association called "*Judges for democracy*", whose territorial spokesman insists on the non-application of the crimes typified in those articles 524 and 525, and whose association belongs, curiously, **the investigating judge of Pamplona and the Judge-Rapporteur of the Navarra Court of Appeal, so that the judges in charge Judging the facts were totally partial.**

ISSUES PROPOSED BY THE COURT

First issue

Dans la mesure où, dans sa plainte, la requérante réserva l'action civile (article 112 code de procédure pénale), le classement de la plainte par les tribunaux internes constitue une « contestation » sur « un droit ou une obligation de caractère civil » (voir Pérez c. France [GC], no 47287/99, §§ 7 et ss; CEDH 2004-I). Dans l'affirmative, peut-on considérer que ce classement est-il compatible avec l'article 6 § 1 ?

16. To the question posed by the Court, as to whether the lack of ruling on civil action was compatible with article 6 of the Convention, the Kingdom of Spain replies in its letter that the complainant Association exercised civil action together with the criminal and that followed the fate of this.

17. The plaintiff by opportunity criteria chose to pursue civil action together with the criminal action by initiating a criminal proceeding and it is not the competence of the Spanish State to determine which route would have been most appropriate for the Applicant.

In any case, the option chosen by this party is totally legitimate and nothing was judged on the civil action requested by this party.

Therefore, the appreciation of the Kingdom of Spain on whether this party exercised the criminal action, civil or both, is a free assessment and that only this party is responsible in accordance with the case Nicolae Virgiliu Tănase v. Romania (No. 41720 / 13) of the Great Chamber, June 25, 2019, §169 and following: *In a case like this, where different remedies were available, both civil and criminal, the Court must examine whether it can be said that, as a whole and as provided by law and applied in practice, they constituted legal remedies to establish the facts, forcing those responsible to be responsible and offer the victim adequate reparation. "*

Second issue

L'autorisation de l'exposition litigieuse a-t-elle porté atteinte au droit de la requérante au respect de sa vie privée, au sens de l'article 8 de la Convention? En particulier, les autorités internes se sont-elles acquittées de leurs obligations positives inhérentes à un respect effectif du droit garanti par cette disposition ?

18. As to whether the authorization of the exhibition involved an attack on the right to private life guaranteed by Article 8 of the Convention, the Spanish State replies that by going through criminal proceedings there is no conflict between individuals that must be weighted by the State. On the other hand, it indicates the right to freedom of expression as a limit to the positive obligation of the State in question of private life. It refers to the fact that the act subject to litigation was carried out outside the place of worship and that there is also no hate crime, which would allow the matter to enter.

19. It can be perfectly observed that the lawyer of **the Spanish State avoids the question raised by the Court**, not specifying whether the authorization of an exhibition that entailed a serious desecration (the most serious that may be for a Catholic) constituted an interference in the private life of the Applicant and a breach of its positive obligations to guarantee this right.

The positive obligations of a State involve the adoption of measures aimed at respecting private life, including in the relations of individuals with each other (Evans v. United Kingdom §75). As is well argued in the Application filed by this Association against the Kingdom of Spain, **the sponsorship and promotion by the City Council of Pamplona of an exhibition composed of stolen Consecrated Hosts of 242 Catholic Masses, forming the word "Pederasty", constitutes an interference in the private life of Catholics and an abuse of law. The government and the "author" cannot invoke freedom of expression or artistic freedom to justify the theft of Consecrated Hosts and the abuse of rights that has taken place.**

20. In view of the interest at stake, as the Consecrated Hosts, the most sacred thing for Catholics since they are God Himself, it demanded a positive obligation on the part of the Spanish State, of at least not participating in the desecration taking place

since the Eucharist It is a fundamental aspect of the private life of Catholic believers.
But the State also sponsored this exhibition, since it was organized from the Department of Culture of the City Council of Pamplona and took place in a public exhibition hall.

We must quote here E.S. v. Austria: § 50 to 57, in particular: "[...] *The Court observes that in this case the national courts have fully explained the reasons that led them to consider that the applicant's statements were of a nature that caused justified indignation, namely that they had not been formulated objectively to contribute to a debate of general interest ... Therefore, it shares the opinion of national courts that the applicant could not ignore that the comments were based in part on inaccurate facts and will likely cause a feeling of outrage (legitimate). In this context, he recalls that, **by virtue of their positive obligations under article 9, States parties to the Convention have an obligation to ensure peaceful coexistence between religious and non-religious groups and people within their jurisdiction. , in Ensuring an atmosphere of mutual tolerance** (see paragraph 44 above). She supports the conclusion, formulated by the regional court in its judgment of February 15, 2011, according to which **the presentation of objects of religious veneration in a provocative manner that may offend the feelings of the followers of the religion in question can be analysed in a malicious violation of the spirit of tolerance, which constitutes one of the foundations of a democratic society.**"*

And in this case, the reaction of the Catholic population in Spain has been very strong, stronger, in fact, than in Austria itself.

Third issue

Cette même circonstance emporte-t-elle violation du droit de la requérante au respect de ses convictions religieuses tel qu'il se trouve garanti par l'article 9 de la Convention (voir E.S. c. Autriche, no 38450/12, § 44, 25 octobre 2018)?

17. It is raised by the Court, if the authorization of the exhibition has resulted in a violation of the right to respect for religious convictions consecrated in article 9 of the Convention.

18. The Kingdom of Spain replies that there was an offense against religious feelings but that the crimes provided for in articles 524 and 525 of the Spanish Criminal Code were not consummated. Namely:

Article 524

Whoever perpetrates profane acts that offend the feelings of a legally protected religious confession in a temple or place of worship, or a religious ceremonies, shall be punished with a sentence of imprisonment of six months to one year or a fine from twelve to twenty-four months..

Article 525.

1. *Whoever in order to offend the feelings of the members of a religious confession, publicly disparages their dogmas, beliefs, rites or ceremonies in public, verbally or in writing, or insult, also publicly, those who profess or practice these, shall incur the punishment of a fine from eight to twelve months..*

2. *The same penalties shall be incurred by those who publicly disparage, verbally or in, writing, those who do not profess religion or belief, will incur the same penalties.*

On the one hand, an offense is demanded against religious feelings (a fact proven and admitted by the Provincial Court of Navarra and indicated in the allegations presented by the Kingdom of Spain (page 42, paragraph 4), admitting that "it occurs unequivocally".

And on the other hand an express intention is required, something also proven and accredited when the author himself indicates an interview (contributed to the procedure) that he expressly wanted Consecrated Hosts because he knows that for Catholics they mean something very different than hosts without consecrating, a component that it is also clearly stated and reiterated in the comments of Facebook and Twitter of the author himself.

19. On the other hand, the letter of the Kingdom of Spain strongly insists on the existence of other means of legal action, such as the civil route for the protection of the right to honour. By not exercising there was a lack of resource depletion.

The lawyer of the state of Spain lies, because there were other means that this part used to make such an attack on Catholics cease, so more than 110,000⁹ signatures were collected and taken to the City Council of Pamplona to request that said “exhibition” end. Likewise, demonstrations and rallies were called to ask the Government of Navarra to end the “exhibition”. None of these requests were successful, so this part had no choice but to initiate the criminal procedure (along with the civil one) in the face of the greatest attack and the greatest desecration that we, Catholics, have suffered in Spain, also promoted by the City Council of Pamplona itself.

On the other hand, it is this part that decides what actions to take, not the lawyer of the Spanish State, but the criminal route was chosen, because the conviction also implies a deterrent, something that has become evident when the author has repeated his “exhibition” in Barcelona (Berga) and Mallorca.

It cannot be claimed by the Kingdom of Spain to reduce the facts to a simple violation of the right to honour, when what was being done was to use Consecrated Hosts stolen in Catholic masses, to deliberately injure Catholics.

20. The Kingdom of Spain in its allegations refers that the intention for the commission of the crime against religious feelings is necessary, denying that, by the author, A.C., there was that intention. However, as demonstrated in the documentary provided in the Application and mentioned earlier in this paper, A.C said in an interview that he precisely chose for his performance Consecrated Hosts because he knew the value they had for Catholics.

It is in the public domain that, if a person uses and manipulates Consecrated Hosts, which for the Christians are the Body of Christ, and throws them on the ground and poses naked on top of them, he is offending Catholics.

The Spanish Supreme Court in its Judgment of April 8, 1981¹⁰ which establishes, in its Second Recital that **“the religious is not an accessory or circumstantial aspect**

9 Contributed to the application Image 21 Document 3

or value, but essential of the person, and as such guaranteed by the Spanish Constitution (art 16.1), extending this guarantee or protection in the criminal field to religious freedom - art. 205 C.P.-, to freedom of worship - art. 207 -, both freedoms with the extension recognized in the Organic Law of July 5, 1980 (art. 2) and religious feelings, typifying in the arts. 208 and 209 of the criminal text acts of desecration and offense, and these acts do not involve a grievance or outrage to a particular person, but to the religious feelings of the community because the religious act is a collective or social community value of first magnitude, and as such assumable and assumed by the impartial Magistracy of the Fiscal Ministry, within the field of action that describe art. 105 Ley de Enjuiciamiento Criminal (Criminal Procedural Law), so that their initiatives could be followed and the criminal procedure was followed for acts of public outrage to the religious feelings of the Catholic community, materialized in the crude mockery of religious people and their dogmas and rites described by the resulting from proven facts ... "

The exercise of ideological freedom and its manifestations such as freedom of expression, in no case can they protect manifestations or expressions aimed at belittling or generating feelings of hostility against certain ethnic groups, foreigners or immigrants, religious or social, then, in a State like Spain, social, democratic and of Law, the members of those communities have the right to live peacefully and to be fully respected by the other members of the social community, hence, art. 20.2 **International Covenant on Civil and Political Rights** of December 19, 1966, that remarks that "any advocacy of national, racial or religious hatred that constitutes an incitement to discrimination, hostility or violence" shall prohibited by law.

21. The lawyer of the State of Spain refers that there are other procedural remedies not used by the plaintiff. The Applicant **due to the seriousness of the facts went to criminal proceedings** considering that it was the appropriate way in which to settle this matter. In addition, as stated in the previous paragraphs, it is not up to the lawyer of the State of Spain to assess the route that the plaintiff should have chosen. Although, not only did they go to criminal proceedings to try to stop such grave desecration, protests were also carried out and the authorities were urged through a collection of signatures, which signed more than 110,000 people¹¹.

- 10 Document 5, Judgement TS 8 of April, 1981.
11 Application 21 of the Document 3.

22. Other matters are mentioned in which Spain has been convicted of limiting freedom of expression, citing matters such cases as *Losantos v. Spain* or *Stern Taulats v. Spain*, however, have nothing to do with these cases with which it is the subject of this Application. The comments made by a journalist in the exercise of his profession in a context of public debate, or criticism of an institution, although it may bother, bother or offend.

23. In the case before which we find ourselves, an alleged “work of art” has been carried out that constitutes a deliberate attack against Catholics and this because they have chosen Stolen Consecrated Hosts of 242 Masses of Madrid and Barcelona when it would have been simpler to carry out the same creation buying hosts not consecrated. In fact, to be offended by the “work of art” one must believe in the Catholic conception of the Eucharist, which implies that it is an unprecedented free attack that does not contribute to public debate, but is only aimed at attacking a religious confession (in this case to Catholics).

None of the cases raised by the Kingdom of Spain is comparable to the case at hand, here the most sacred thing has been used for Catholics: the Blessed Sacrament.

Sacrament that for the Catholics is the Body of Christ itself, and that even in the exhibition itself was physically displayed on a plate¹².

That is to say, it is not only about desecrating, exposing photos and videos of how the Consecrated Hosts were stolen, throwing them on the ground, posing naked with them, **but also showing themselves physically on a plate (which is the Christ himself for Catholics), with total humiliation, and with the clear intention of the author, who points out that he wanted them to be consecrated because he knows that they mean something very different for Catholics than hosts without consecrating.**

24. Moreover, as the Kingdom of Spain points out in its answer, it is clear that paedophilia is somewhat condemnable, but to condemn such facts (remembering that less than 0.5 of paedophilia crimes are attributed to religious), **it is not it is necessary to relate Jesus Christ himself to the crime of pedophilia, nor to do it with Consecrated Hosts, because then it is no longer a criticism, but an intentional attack against the believers. To criticize the crime of pedophilia, it is not necessary to do it Consecrated Hosts, there are millions of ways of making "criticism" that do not involve such an attack on Catholics.**

25. In this sense, it should be remembered that freedom of expression, even being one of the basic principles has its limits, is not an absolute right. The Court has granted ample margin in the behaviours covered under this right. In the jurisprudence of the Court, behaviours such as pouring paint on a statue of Atatürk, using dirty clothes in front of Parliament, etc. are protected by freedom of expression. However, discourses incompatible with the Convention have been considered: the Holocaust denial, justification of pro-Nazi politics, the association of all Muslims with terrorists or the incitement to racial hatred.

The Spanish Supreme Court itself rules in the judgment of **United Biscuits Iberia SL**, which cannot be called art at all¹³, and understands creativity "as an intellectual effort (talent, intelligence, ingenuity, inventiveness or personality that turns photography into a creation artistic or intellectual) without the singularity lies in the photographic object or in the mere technical correction, but in the photograph itself, in its creative dimension", even more so in this case where the most sacred is being vilified for Christians.

26. Moreover, **this part commissioned an expert examination of an art expert (senior technician of the Navarra Museum and General Director of Culture), totally independent who concluded about the author, A.C. and the exhibition: "the avidity of the artist to obtain benefits, the desire for prominence and under the pretext of free artistic expression to seek notoriety by resorting to the offense to the faith of believers"**¹⁴.

¹⁴ Annex Document 4

In this way, we are not talking about art. This part provides an expert evidence that what the author has done is not art, but a deliberate attack and offense and there is no evidence to prove otherwise (only the self-proclamation of the author himself as "artist", something obviously subjective).

Likewise, under the pretext that it is about art, behaviors such as those shown here cannot be masked, because otherwise all kinds of crimes could be committed and disseminated, based on "artistic creation".

27. Regarding the boundaries between freedom of expression and religious freedom, *the Otto Preminger Institut v. Austria* is illustrative (even though in our case a much more serious desecration). In this matter, the Court considered that it was a legitimate purpose, **for which freedom of expression, the protection of religious peace can be limited to prevent some from feeling attacked in their religious feelings in an unjustified and offensive manner** (Otto Preminger Institut case v. Austria, application No. 13470/87, §56).

Although ideological freedom and freedom of expression protect the free expression of ideas, it is not enough to shelter under their protection the use of contempt and insult against people or groups, or the generation of feelings of hostility against them.

We highlight the Judgments of the Special Court for Rwanda, Nahimena, Barayaguriza and Ngeze cases, in which holders of social media from which hate ideas were issued are condemned. We also have pronouncements from the United Nations Committee, Ross cases against Canada or Faurisson against France. In this last resolution of December 16, 1996, the United Nations Committee declares that freedom of expression is not violated (art. 19 of the PIDCyP), *"given that, read in full context, the statements made by the author they could arouse or reinforce anti-Semitic feelings, the restrictions favored the right of the Jewish community to live without fear of an atmosphere of anti-Semitism."*

That is why, given the State's duty to guarantee religious freedom, all these crimes must be stopped.

28. The Kingdom of Spain alleges regarding the fulfilment of the rights established in article 9 of the Convention that in the performance performed by A.C. There is an offense, but the type of crime is not consummated, there is no derision or desecration. That there are also legal remedies as a right to honour that were not exercised, which implies a lack of exhaustion of resources.

29. The Kingdom of Spain forgets in its observations, that under **article 9 of the Convention, the States have a positive obligation to ensure the peaceful coexistence of all religions and those that do not belong to any religious group ensuring mutual tolerance** (*E.S v. Austria ,Application No. 38450 / 12§ 44*).

30. In the case at hand, not only was not condemned to A.C, but the exhibition was promoted by the City Council of Pamplona. In addition, the judge of Spain speaks of “small round white objects”¹⁵ and that “the Catholic Church cannot force people to use hosts in a manner consistent with its directives”¹⁶.

This reveals the hostility and contempt of the Spanish jurisdictions towards Christianity, and forgets the intentionality of the author A.C., in his search for Consecrated Hosts.

31. The Kingdom of Spain mentions that, in accordance with the jurisprudence of the ECHR, a concept of religion cannot be established for all of Europe and that it is not possible to establish definitively the limits to freedom of expression in the face of religious feelings. It does not mention, however, the Kingdom of Spain, which, as regards the religious fact, the Court addresses it from an individualist and constructivist reading, that is, to measure the degree of desecration, one must ask to what extent Spanish Catholics consider as sacred the Consecrated Hosts.

¹⁵ Application, Document 10

¹⁶ Ibid.

32. Proof of this was the reaction of the Church to the desecration of A.C., which we remember was promoted by the Spanish authorities:

- Masses under repair
- Kneeling prayers in front of the photos of the Consecrated Hosts.¹⁷
- Rosaries, demonstrations and signature collections.¹⁸

Fourth issue

La requérante est-elle fondée à soutenir qu'elle est victime d'une discrimination, contraire à l'article 14 de la Convention combiné avec l'article 9 de la Convention et/ou l'article 8 de la Convention (voir, mutatis mutandis, D.H. et autres c. République tchèque [GC], no. 57325/00, CEDH 2007-IV) ?

33. As regards discrimination contrary to article 14 of the Convention in combination with article 8 and article 9, the Kingdom of Spain simply limits itself to analysing the jurisprudence mentioned by Asociación de Abogados Cristianos, claiming that it is not applicable to the case is treated in this document and that similar cases are not shown.

34. The case mentioned in the observations of the Kingdom of Spain (a complaint against the director of Museo de Reina Sofía), has nothing to do with the object of the present Application, where **we are faced with the greatest desecration that there can be for a Catholic, not only allowed but also promoted by the Spanish authorities.** Once again exceeding the Kingdom of Spain in his observations, stating that on that occasion (the merited complaint against the director of Museo de Reina Sofía Museum), the Applicant did not go before the ECtHR, as if it were a decision of the Kingdom of Spain when it is due go or when not.

35. On the other hand, the judge of Pamplona F. O, in his resolution (*Auto nº429 / 2016*), tried to give an objective definition of the Consecrated Forms: "small round and white objects". This definition does not distinguish between consecrated and non-consecrated hosts and reveals the personal convictions of the judge, (who, by the way,

¹⁷ Annex Document 2 pages. 1 and 2

¹⁸ Annex Document 2 pages. 3, 4, 5 and 6

belongs to the group of “Judges for democracy”, in favour of eliminating the crime against religious feelings and the crime of desecration). However, the judge had to put aside his own religious sensibility, because the object of the dispute was about the protection of the religious feelings of Catholics and not theirs. What mattered for the trial was to determine with neutrality that they are the Consecrated Hosts for Spanish Catholics, which corresponds to the faith of the Church to which they freely adhere.

In this case, the Judge of Instruction also exceeded the limit of the instruction, deprived this part of a trial with all the guarantees and made interpretations whose examination and assessment would correspond to another judge, the Criminal Judge, and after the celebration of the oral trial and the practice of the relevant test.

The omission of this guarantee and the subtraction of the power to decide to the body that legally has the role of knowledge and resolution in the criminal field would imply an arrogance of powers by the Court of Instruction, in violation of the right of defence, in this case of the accusations.

Already in the delimitation of the facts, the judge seems to want to circumscribe it to the facts, photographs and materials included in the exhibition, excluding all previous activities (subtraction of hosts, disposition of them for his photograph, etc.) and the concomitant comments later made by the “author” in social networks, media and even in his own statements in the instruction phase. This limitation of the facts is artificial, since these include, apparently, not only the photographs and materials of the exhibition, but the previous conduct of the investigated in order to its preparation, which evidences the intent and the premeditation of the "author".

On the other hand, it is not understood that the investigating judge takes into account the author’s manifestations made out of the legal procedure in order to his self-exculpation, indicating that it was not his intention to offend or vex religious feelings, and it seems that it is intended to limit the scope of his statements both in social networks and in the media when he acknowledges that the forms used both in the photographs and in the bowl that disappeared from the exhibition were consecrated and that they were also secretly stolen at mass celebrations.

That is why the bias of the investigating judge of Pamplona, as well as that of the rapporteur of the Navarra Court of Appeal, when these judges depart from the premise that these are crimes that should never be applied and should not exist in any criminal code, discriminates this part.

36. So much bias of the judge, linked to the financing of the profane exhibition by the Department of Culture, frame a deliberate support of the anti-Christian action of A.C, assuming discrimination since the plaintiffs **were not treated, in a neutral way from the religious point of view**. There is a clear discrimination with respect to those who do not give value to the Consecrated Forms. It is in this sense, on which the violation of Article 14 is based, the bias, the lack of proportionality on the part of the authorities towards the plaintiffs, must be considered discriminatory.

Failure of the authorities to ensure the minimum required by the Convention

37. In accordance with the Convention, the Kingdom of Spain has a positive obligation under article 9 of the Convention to ensure the peaceful coexistence of all religions and those that do not belong to any religious group ensuring mutual tolerance.

38. In this sense, the Court has established that, in a democratic society, in which there are different religions in the same population, it may be necessary to carry out restrictions in order to reconcile the interests of different groups and ensure that the beliefs of all are respected. In addition, the Court has indicated the duty of the state to remain neutral and impartial (case *Metropolitan Church of Bessarabia and Others v. Moldova, Application No. 45701 / 99* § 116.).

39. In light of the provisions of the Court, the State, as guarantor of freedom of religion and belief, has the obligation to remain impartial, that is, in the case at least we had the obligation not to collaborate in the exhibition "Amen". However, the State has gone beyond this minimum since it has promoted the exposure, and in addition the national judge has not been impartial, biasing the facts and improperly weighing the evidence presented by the Applicant.

REQUIREMENT FOR THE COURT IN THE AREA OF EQUITABLE SATISFACTION

40. For the reasons set forth in these allegations, the Court must find a violation of the Convention and provide appropriate compensation. Asociación de Abogados

Cristianos requires that the amount of 285,000 euros be granted, in order to donate this amount to charities of the Catholic Church.

41. The demand for non-pecuniary damages of 285,000 euros is equitable because the performance “Amen” entailed great humiliation and damage to Catholics, and against this the Spanish authorities did not meet the minimum of nonintervention, but instead promoted and contributed to this performance that finally A.C sold for the amount of 285,000 euros⁶.

CONCLUSIONS:

- The facts contemplated all the requisites required for it to be a crime of desecration and a crime against religious feelings, because even the author himself admitted in an interview given to the different judges that “he wanted them to be Consecrated Hosts because he knew they meant something very different for Catholics (than hosts without consecrating) ”, because for the Catholics in the Consecrated Hosts there is the Body of Christ itself.

- In order to criticise paedophilia, it is not necessary to relate Consecrated Hosts, and with it, Jesus Christ himself to the crime of pedophilia, a fact similar to that already condemned by this European Court of Human Rights in the aforementioned judgement of E.S. v. Austria case , linking Muhammad and pedophilia.

- If the author was really trying to make a simple criticism, **it was not necessary to make such an exposition with Consecrated Hosts**, so it is evidenced that it is a completely free and premeditated attack.

- The Kingdom of Spain as it has been credited, breaches the positive obligations to respect private life, and breaches its position as impartial guarantor of respect for religious freedom from the moment it actively **collaborates in an exhibition that constitutes an attack for Catholics** (It took place in a public exhibition hall and was organized and inaugurated by a councilor of the City Council of Pamplona).

- This part before starting the criminal procedure tried to stop such an attack on Catholics, collecting signatures, requesting the City Council itself to end the exhibition, demonstrations, rallies, repair masses **were also held, all of them mass aimed at requesting the cessation of such a deliberate attack**, without any of them being heard, leaving, therefore, no more alternative than going to the criminal and civil courts together.

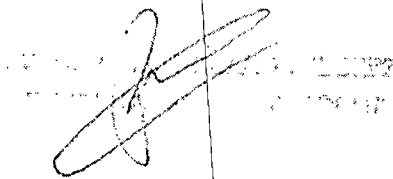
- The exhibition made **by the author is not about art, as corroborated by a report commissioned by an expert of recognized prestige**, but is about a deliberate and premeditated attack against Catholics.

- This is the biggest attack against Catholics, none of everything mentioned by the Kingdom of Spain is similar to what happened in Pamplona, the Spanish State not only did not respect the minimum of non-interference, did not stand aside, did not act as guarantor Respect for the Catholics, but quite the opposite, acted collaborating with this exhibition (giving a public place, organizing and inaugurating the “exhibition”), which exhibited photos of the theft of Consecrated Hosts, lying on the ground, with the “author posing naked next to these Consecrated Hosts and that also exhibited on a plate next to the exhibition said Hosts for more contempt and humiliation. **If what has happened in this case is allowed, it would mean that everything is allowed against Catholics.**

SUPPLICATE

- 1º That the present allegations have been made
- 2º That it admits as proof the linked documents attached to this document as well as those already attached previously in the application.
- 3º That deems the demand filed by this party to which third parties adhere The Episcopal Conference and the European Center for Law and Justice (ECLJ), The Observatory on Intolerance and Discrimination against Christians in Europe, The Italian Union of Jurists Catholics, The Agent of the Government of Poland, The Observatory for Religious Freedom and Consciousness, The Observatory of Christian-phobia.

Polonia M^a Castellanos Flórez



NOMBRE
CASTELLANOS
FLOREZ POLONIA
- NIF 12408380H

Firmado digitalmente por
NOMBRE CASTELLANOS
FLOREZ POLONIA - NIF
12408380H
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In Valladolid for Strasbourg, March 1st, 2020

Polonia M^a Castellanos Flórez

President, Asociación de Abogados Cristianos.

ANNEX: LIST OF DOCUMENTS

Document	Description
1	PHOTOS SUSTRACCION OF HOSTS
2	SOCIAL REPULSE EXHIBITION
3	NEWS SALE OF THE WORK
4.	ARTISTIC PERITIAL
5.	JUDGMENT TS APRIL 8, 1981
6.	JUDGMENT T.S. APRIL 5, 2011