
EUROPEAN COURT OF HUMAN RIGHTS

CASE
ASSOCIATION OF CHRISTIAN LAWYERS
VS. SPAIN

Motion number 22604/18

OBSERVATIONS OF THE OBSERVATORY
FOR RELIGIOUS FREEDOM IN RESPONSE TO THE
STATEMENTS MADE BY THE KINGDOM OF SPAIN

TO THE EUROPEAN COURT OF HUMAN RIGHTS

THE OBSERVATORY FOR RELIGIOUS FREEDOM, before the European Court of Human Rights in the Procedure registered under the Motion number 22604/18 between the Association of Christian Lawyers vs. The Kingdom of Spain, respectfully appears and, as best proceeds in Law:

STATES

FIRST.- That, by virtue of the provisions of article 36 of the European Convention on Human Rights, the Kingdom of Spain has made the observations that it has considered and that are in effect in these orders.

SECOND.- That, for its part, the Association of Christian Lawyers, within the term legally established, has also formulated do the corresponding Observations and that has considered relevant in response to those made by the Kingdom of Spain.

THIRD.- That in compliance with the provisions of article 36.2 of the Convention, the Observatory for Religious Freedom, as invited party and as interested third party, as well as is stated in the documents that are part of these orders, formulates before the European Court of Human Rights, which we have the honor to address, the following:

OBSERVATIONS

FIRST.- We endorse the comments submitted by the Association of Christian Lawyers, but we want to emphasize and build on our part three aspects that seem to us of the greatest interest.

Precisely because that interest, materialized in these three aspects, is what we understand to be violated, a violation that reaches a significant detriment of human rights guaranteed by the Convention in its article 35.2.b interpreted *to the contrary* and applied by analogy to this phase of the Observations.

SECOND.- The three aspects to which we refer reside in the following:

1. That the right to religious freedom has been violated, among others.
2. That, according to the case orders, the proven facts have been carried out using means that are or may constitute acts contrary to law, at least illegal and bordering on, if not presumably reaching, the level of criminal acts.
3. That such events have taken place thanks to the funding and protection of the Local Administration, specifically, that of the City of Pamplona.

THIRD.- Regarding the FIRST ASPECT, as is known, religious freedom is a Human and Fundamental Right recognized in the Universal Declaration of Human Rights and in International Agreements and Treaties -like the European Convention on Human Rights-. And, in what matters here, the rules relating to fundamental rights, such as the case at hand, will be interpreted in accordance with them, since they have been ratified by Spain, in accordance with article 10.2 of the Spanish Constitution.

This statement, in addition to being legal, is obvious; but is not, for being obvious, less important and, therefore, it must be emphasized and brought here.

FOURTH.- Indeed, Spain constitutes a social and democratic State, subject to the rule of law, in accordance with article 1.1 of the Spanish Constitution . And, as such, it is subject to the rule of law.

We insist that these statements are obvious, but we think it is important to bring them up.

Why?

FIFTH.- Because while it is true that the proven facts deeply wound fundamental and essential religious beliefs of Catholic citizens, and even perhaps of non-Catholics, it is no less true that they also violate human and fundamental rights.

If it were exclusively a religious matter that affected a few citizens, a response sent through the media would have been enough to express the pain caused by the acts carried out by its author.

But while what has been said is true, that is, that pain is caused, which it is, we understand that the acts carried out have violated a right whose ownership and exercise are held by all citizens, among whom we are counted.

We are talking, indeed, about the right of religious freedom, which legally goes beyond beliefs, although that right can be sustained by them, as de facto unquestionably it is.

And we understand that both these beliefs, as freedom of conscience, private life, equality and the cited right of religious freedom have been violated by the facts that have been proven.

SIXTH.- The right to religious freedom involves two parties: the citizens and the State.

As for citizens, the ownership of this right consists in professing a religious belief, not professing any or changing their confession, all freely and through legal channels, without internal or external coercion or intimidation.

For its part, the exercise of this right, that is, its external manifestations, are limited by the law with the aim, among others, of guaranteeing public order, security and morality (Article 9 of the Convention).

SEVENTH.- We understand, therefore, that this right has been violated by the acts that shape the proven facts, since the author's purpose was none other than to hurt the religious sentiment of the citizens, in this case, Christians. And, therefore, their conscience.

We do not doubt that the purpose of the perpetrator was also artistic and that he has the right to freedom of expression, a right evidently recognized and protected by national and supranational law, but if no right is absolute, neither is this, since it is also subject to the conditions established by the Law, as provided in article 10.2 of the Agreement.

But both rights, when they may collide, must be exercised in the same conditions of legality and equality, and in accordance with the principle of proportionality, so that as long as the purpose was not only artistic but also sought to violate the citizens' right to religious freedom in the sense indicated above, that exercise of freedom of expression violates the others applicable to the case.

Not in vain and circumscribing the facts that initiated this Litis, we are not talking, as the facts are concerned, about unconsecrated hosts, but deliberately Consecrated Hosts the use of which was intended to cause suffering to rights of the citizens, as well as it is credited in the evidence, that appear in the orders, specifically an interview with the author of the performance.

In this sense, it is worth recalling, among others, the Judgment of the Spanish Constitutional Court number 120/90, which understands that in order to delimit the illegal act it will be necessary to attend to “the legal relevance of the purpose of the act of freedom, since that it is not the same to use freedom to achieve lawful ends than to do it for purposes not protected by law” (STC 120/90, of June 27, FJ. 7; STC 137/90, of July 19, FJ. 5).

For its part, the scope of the suffering is proven by the evidence provided in the orders by the plaintiff (among others, Document 2), but it is also inferred from the number of interested third parties, among which we are, and which includes among them, no less, than the Episcopal Conference.

A mere pain and consequently one non-violation of said rights would not have mobilized this many citizens and so many organizations in defending the rights violated -we fathom-. The depth of events is, therefore, much greater.

EIGHTH.- The SECOND ASPECT indicated *above* consists in that, according to the case orders, the proven facts have been carried out using means that are or may constitute acts contrary to law, at least illegal and bordering on, if not presumably reaching, criminal acts.

As already indicated, the author of the events understands that his purpose in his artistic expression was freedom of expression. This being true, we understand that its purpose goes beyond what he claims, as has been demonstrated.

But even if its sole purpose was artistic, which it was not (pardon the insistence), it is public and notorious that it can not be achieved using unlawful means. Not only religious sentiment has been offended, but the offense has affected other legally protected assets.

Specifically, we refer to the misappropriation of Consecrated Hosts, every time that for their part they have not resorted to Communion for the purpose that it has, but for a different purpose and use (needless to say the way to do it): the author has not only misappropriated but has treated the Consecrated Hosts without the respect due to them, that is, he has desecrated them.

With everything, this second aspect is closely related to the third, which we now turn to develop.

NINTH.- The THIRD ASPECT consists in that the proven facts have taken place thanks to the financing and protection of the Local Administration, specifically, of the City Council of Pamplona.

We have said before that the right to religious freedom involves two parties: the citizens and the State.

We have already spoken about citizens, about their rights to privacy, conscience and religious freedom. Now it is appropriate to speak of the State. In this case, the Local State Administration and, specifically, the City of Pamplona regarding these events.

TENTH.- Spain is a social and democratic State subject to the rule of law, in accordance with article 1.1 of the Spanish Constitution. Within this framework and within the sphere of the right to religious freedom, Spain is a secular State, in accordance with article 16.3 of the Spanish Constitution.

As a consequence of the latter, and by virtue of the principle of impartiality, the State must not negatively interfere with or obstruct or impede the exercise of the right to religious freedom. It should not neutralize said right.

It is the duty and responsibility of the State, therefore, to respect and promote the right of religious freedom exercised within the limits established by the Law. That is, like any other right. The State, we insist, must therefore be neutral, impartial.

And breaching the principle of impartiality entails violating the right to equality and non-discrimination to the detriment, in this case, of Catholic citizens.

ELEVENTH.- The Council of Pamplona, in this particular case, it has negatively interfered with the right to religious freedom of citizens, violating its duty of impartiality and non-discrimination, since it was aware of the facts we have reported in these previous observations.

The State was aware because the information about the performance came to them through various means: requests asking for the show to be withdrawn because it violated the rights of many citizens on one hand; and, on the other, mass demonstrations and concentrations of citizens in the same sense.

And, despite this, that is, despite the fact that the City Council was aware of the facts, it facilitated, financed and promoted a performance whose content and purpose, as has been proven, transcends the merely artistic and reaches the violation of human and fundamental rights, as in this case are those of equality and non-discrimination, privacy, freedom of conscience and religion, rights recognized all in the legal texts mentioned previously, both domestic and European, especially in the European Convention on Human Rights.

Add to all this the publicity made by the author of the performance on the means and ways by which he got the Consecrated Hosts. Therefore, ignorance can not be alleged on this point.

The State must be impartial, neutral, non-neutralizer. they had to have exercised the principle of proportionality. Hence, they should not have allowed the performance because it violated said rights. If the State not only allowed it but promoted and financed it, it was most likely due to anti-religious motives.

But neither for religious reasons or anti-religious reasons, acts and omissions of citizens, even more of the State, should be exercised so that their manifestation infringes rights, as is the case.

The Report on Attacks to Religious Freedom in Spain 2019, published by our Observatory, shows that 80% of the attacks are against Christians. The two parties that are in the government (Socialist Party and “Podemos”) are the most secular among all the political parties in Spain.

The following apply to the previous Observations:

FUNDAMENTALS OF LAW

Foundations of Internal Law

- 1.- Articles 1.1, 9, 10, 16.3, following and concordant of the Spanish Constitution.
2. Organic Law, 7/1980, on Religious Freedom, of July 5th.
- 3.- Articles 524 and 525 of the Spanish Penal Code.
- 4.- Judgment of the Spanish Constitutional Court number 120/90, of June 27.
- 5.- Judgment of the Spanish Constitutional Court number 137/90, of July 19.
- 6.- Judgment of the Spanish Constitutional Court number 2/1982, of January 29.

Foundations of European Law

- 7.- Articles 8, 9, 10, 14, 35.2.b, 36, following and concordant, of the European Convention on Human Rights.
- 8.- European Court of Human Rights, Case Barfod.
- 9.- European Court of Human Rights, Case E. S. vs. Austria.

10.- European Court of Human Rights, Case Pichón vs. France.

For all this and, by virtue of it,

I APPEAL TO THE EUROPEAN COURT OF HUMAN RIGHTS: That considering that this Written Document has been presented and that the statements it contains have been made, it is useful to admit it and, consequently, to consider the Motion filed by the Association of Christian Lawyers in this Litigation.

It is Justice that we ask in (...) for Strasbourg, on (...) June 2020.