

22604/18 ESP
C/6/1 MMI-MMI



**IN THE EUROPEAN COURT OF HUMAN RIGHTS
THIRD SECTION**

Application No. 22604/18

ASOCIACIÓN DE ABOGADOS CRISTIANOS

- Applicant -

v.

SPAIN

- Respondent Government -

**WRITTEN COMMENTS ON BEHALF OF THE
UNIONE GIURISTI CATTOLICI ITALIANI
PURSUANT TO RULE 44 § 3 OF THE RULES OF THE EUROPEAN
COURT OF HUMAN RIGHTS**

These Written Comments are made on behalf of the Unione Giuristi Cattolici Italiani represented by its Deputy Vice President, Dr. Mattia F. Ferrero, *avvocato* admitted to the Milan Bar and resident in Italy, who consents to service by

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1. By letter dated 15th April 2020, the Registrar of the Third Section of this Court informed that the President of the Section had granted leave, under Rule 44 § 3 of the Rules of the Court, the Unione Giuristi Cattolici Italiani to make written submission. By direction of the Court this submission does not include any comments on the facts or merits of the case but addresses only the general principles involved.

The relationship between freedom of expression and freedom of religion

2. It is well known that freedom of expression is applicable «*not only to "information" or "ideas" that are favourably received or regarded as inoffensive or as a matter of indifference, but also to those that offend, shock or disturb the State or any sector of the population*»¹.

3. Applying these principles to freedom of artistic expression, it has been noted that a work of art «*cannot be prohibited solely on the grounds that it shows irreverence towards an established order or a shared belief, even one shared by the majority of the population*»².

4. On the other hand, freedom of religion or belief as such does not include the right for a religion or its believers to be immune from any criticism or all adverse comment³. But the scenario where a religion or belief is the target of critical analysis from a theological point of view is very different from a scenario where such “criticism” consists of deliberate, gratuitous insults or discrimination against followers of a particular religion.

5. According to the jurisprudence of this Court, the exercise of the freedom of expression comes with the «*duty to avoid as far as possible an*

¹ *Handyside v. United Kingdom*, no. 5493/72, § 49, 7 December 1972.

² G. BUQUICCHIO, *Art and Sacred Beliefs: from Collision to Co-existence in Blasphemy, insult and hatred: finding answers in a democratic society*, Strasbourg, 2010, p. 70.

³ See *Otto-Preminger-Institut v. Austria*, no. 13470/87, § 47, 20 September 1994; *I.A. v. Turkey*, no. 42571/98, § 28, 13 September 2005; *Aydin Tatlav v. Turkey*, no. 50692/99, § 27, 2 May 2006; *E.S. v. Austria*, no. 38450/12, § 42, 25 October 2018.

expression that is, in regard to objects of veneration, gratuitously offensive to others and profane (see Sekmadienis Ltd. v. Lithuania, no. 69317/14, § 74, 30 January 2018, with further references). Where such expressions go beyond the limits of a critical denial of other people's religious beliefs and are likely to incite religious intolerance, for example in the event of an improper or even abusive attack on an object of religious veneration, a State may legitimately consider them to be incompatible with respect for the freedom of thought, conscience and religion and take proportionate restrictive measures»⁴.

6. In fact, provocative portrayals of object of religious veneration can violate the religious feelings of believers, protected by Article 9 of the ECHR; thus *«such portrayals can be regarded as malicious violation of the spirit of tolerance, which must also be a feature of democratic society»⁵.*

7. With specific regard to works of art, it has been observed that when the circumstances under which it is legitimate for a work of art to be exposed, taken together with the work's content, *«cease to pertain to the general public and instead aim (often deliberately) at a distinct group, with the (obvious) intention to strike at the group's members religious beliefs, [...] it is legitimate for restrictions to the freedom of art to be introduced. In such cases, it would not really be restrictions on the artist's freedom to create, but on his/her discretion to choose how to present certain work to the public. In other words, such a restriction would not affect the content of a work itself, but would constitute a mere and only marginal restrictions on the work's free presentation and dissemination, using as a criterion the focalization and individualization that each presentation and dissemination*

⁴ *E.S. v. Austria*, cited above, § 43.

⁵ *Otto-Preminger-Institut v. Austria*, cited above, § 47.

bear»⁶.

8. With regard to the latter point, it is worthy bearing in mind that in the past spectators of works of art were only those who decided to attend the venue where such works of art were displayed (thus being aware of the “risk” they were taking and freely deciding to be exposed - or not - to certain images), while nowadays the dissemination of works of art occurs more via the Internet and social media than through physical visits⁷, potentially reaching any on-line person.

9. Moreover, under Article 9 of the ECHR States have the positive obligation of ensuring the peaceful coexistence of all religions and those not belonging to a religious group by ensuring mutual tolerance⁸. Therefore, the jurisprudence of this Court accepted that some expressions might be restricted if they are gratuitously offensive and are insulting with respect to matters or objects that are considered as sacred by believers⁹.

10. Special attention should be paid when a sacred object is not just provocatively portrayed, but it is (ab)used itself for offensive artistic expression as well as for other undue purposes. In this regard, there is a wide consensus among States on criminal prohibition of such sacrilege against an object of worships¹⁰. It is also worthy bearing in mind that, in accordance to the tenet of Catholic faith, *«in the most blessed sacrament of the Eucharist the body and blood, together with the soul and divinity, of our*

⁶ N. C. ALIVIZATOS, *Art and religious beliefs: the limits of liberalism in Blasphemy, insult and hatred: finding answers in a democratic society*, Strasbourg, 2010, p. 74

⁷ VENICE COMMISSION, *Report on The relationship between freedom of expression and freedom of religion: the issue of regulation and prosecution of blasphemy, religious insult and incitement to religious hatred*, CDL-AD(2008)026, 23 October 2008, § 70-71.

⁸ *E.S. v. Austria*, cited above, § 44, with further references.

⁹ See A. WEBER, *Manual on hate speech*, Strasbourg, 2009, p. 52; VENICE COMMISSION, *Report on The relationship between freedom of expression and freedom of religion: the issue of regulation and prosecution of blasphemy, religious insult and incitement to religious hatred*, cited above, §47.

¹⁰ See Appendix I to *Blasphemy, insult and hatred: finding answers in a democratic society*, Strasbourg, 2010.

Lord Jesus Christ and, therefore, the whole Christ is truly, really, and substantially contained»¹¹. Therefore, «the Catholic Church has always offered and still offers to the sacrament of the Eucharist the cult of adoration, not only during Mass, but also outside of it, reserving the consecrated hosts with the utmost care, exposing them to the solemn veneration of the faithful, and carrying them in procession»¹².

11. Additionally, it should be noted that current anticlericalism, differently from the past (when it used to be expressed in writing), is expressed through images: *«It is designed to provoke, rather than to explain»¹³*. Thus, there is a danger that anticlerical expressions (which are, *per se*, legitimate) slip into “gratuitously offensive” expressions, which do not contribute to any form of public debate conducive to progress in human affairs¹⁴ and may bring believers to feel themselves object of unwarranted and offensive attacks¹⁵.

The relationship between hate speech and hate crimes

12. In assessing the positive obligation incumbent upon States, it is important to consider that allowing certain expressions of prejudice or hate can create environments that are conducive to hate crimes. Hate crimes, in fact, do not occur in a vacuum. The sentiments and attitudes conveyed in them are shared and underpinned by widespread denigration in the society of the targeted communities¹⁶.

13. This “slippery slope” starting with mockery and social intolerance and ending up with violence is well explained by the following “pyramid of

¹¹ *Catechism of the Catholic Church*, no. 1374.

¹² *Catechism of the Catholic Church*, no. 1378.

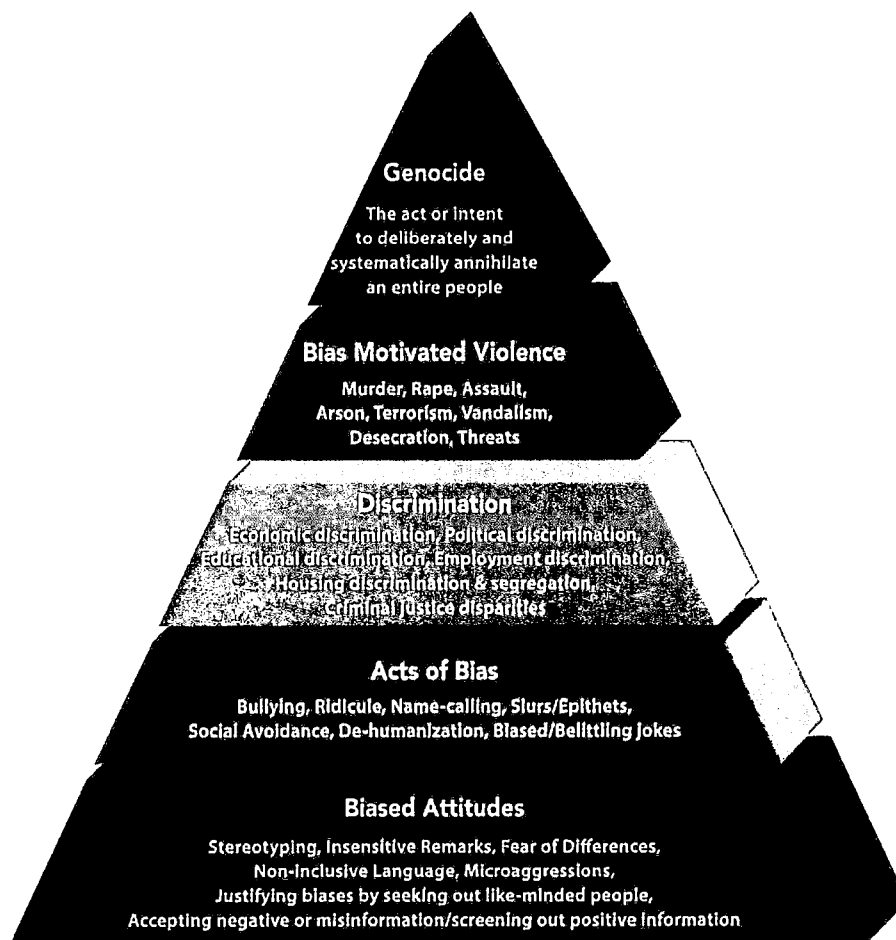
¹³ J.-P. WILLAIME, *Reshaping religion and religious criticism in ultramodernity in Blasphemy, insult and hatred: finding answers in a democratic society*, Strasbourg, 2010, p. 139.

¹⁴ *Otto-Preminger-Institut v. Austria*, cited above, § 49.

¹⁵ *I.A. v. Turkey*, cited above, § 29.

¹⁶ P. IGANSKI – J. LEVIN, *Hate Crime. A Global Perspective*, New York, 2015.

hate” elaborated by the Anti-Defamation League.



14. Such pyramid is presented as follows: «*The Pyramid shows biased behaviors, growing in complexity from the bottom to the top. Although the behaviors at each level negatively impact individuals and groups, as one moves up the pyramid, the behaviors have more life-threatening consequences. Like a pyramid, the upper levels are supported by the lower levels. If people or institutions treat behaviors on the lower levels as being acceptable or “normal,” it results in the behaviors at the next level becoming more accepted*»¹⁷.

15. In this respect, it is important to note that Christians are the targets of

¹⁷ <https://www.adl.org/sites/default/files/documents/pyramid-of-hate.pdf>

hate crime all across Europe.¹⁸ Data collected and made available by the OSCE/ODIHR show that anti-Christian hate crimes are comparable, in nature and extension, to those motivated by anti-Semitism or other religious biases¹⁹.

16. However, it seems that manifestations of intolerance and discrimination against Christians represent the last acceptable prejudice and seem to receive less attention than other forms of intolerance, presumably because of Christianity's position as the historically dominant religion²⁰.

17. In order to avoid an improper selectivity or discrimination – which would be contrary to Article 14 of the ECHR – in addressing all forms of religious intolerance and discrimination, particularly expressions of prejudice and hate, it is essential that standards adopted to protect believers' feelings apply equally to all, avoiding any hierarchical approach implying that acts against majority groups are less serious than those against minorities.

Respectfully pled,



Dr. Mattia F. Ferrero

Milan, 30th June 2020

¹⁸ <http://hatecrime.osce.org/what-hate-crime/bias-against-christians> As it is well known, all Council of Europe's member States are part of the OSCE.

¹⁹ <https://hatecrime.osce.org/infocus/2018-hate-crime-data-now-available>

²⁰ P. JENKINS, *The New Anti-Catholicism. The Last Acceptable Prejudice*, New York, 2003; R. REMOND, *Le nouvel antichristianisme*, Paris, 2005.