Max Planck Institute
for Social Anthropology
Department 'Law & Anthropology'

Instruction in a Particular Religion: Article 27.3 of the Spanish Constitution Concerning Islamic Religious Education

Question(s) at stake:

Whether the administration can justify not providing Islamic religious education in a state-funded school due to a lack of qualified teachers to provide such education.

Outcome of the ruling:

The non-provision of Islamic religious education by the administration to the children of the plaintiff, in conformity with her beliefs, morals, and convictions, is not considered a violation of Article 27.3 of the Spanish Constitution concerning "the right of parents to ensure that their children receive religious and moral instruction that is in accordance with their own convictions".

Topic(s):

- Education

Keywords:

- Right of parents to ensure the religious and moral education of their children
- Publicly funded education in a minority religion
- Freedom of thought, conscience and religion
- State-funded schools

Tag(s):

- Islamic religious education
- Indoctrination

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Country:

Spain

Official citation:

High Court of Justice Valencia, Judgment of 24 January 2023, no. 25/2023 (Tribunal Superior de Justicia de Valencia, Sentencia de 24 de enero 2023, Sentencia número 25/2023)

Link to the decision:

https://www.poderjudicial.es/search/AN/openDocument/407b535b73d441e5a0a8778d75e36f0d/20230519

ECLI:

ECLI:ES:TSJCV:2023:700

Date:

24 January 2023

Jurisdiction / Court / Chamber:

High Court of Justice Valencia, Contentious Administration Chamber

Remedy / Procedural stage:

High Court of Justice Valencia, Fundamental Rights Procedure (not final stage, an appeal can be presented to the Supreme Court)

Previous stages:

No information found

Subsequent stages:

No information found

Branches / Areas of law:

Constitutional law, administrative law

Facts:

The plaintiff, a woman with two children, filed an administrative appeal due to the inaction of the Department of Education, Culture, and Sport of the Generalitat Valenciana in response to her request of 27 July 2021 for her children to take the subject of Islamic religious education at their school for the 2021–2022 school year. The plaintiff claims that she has been deprived of her right under Article 27 of the Spanish Constitution, which guarantees the right of parents to ensure that their children receive a religious and moral education in accordance with their own convictions. Conversely, the defendant alleges that this provision does not apply to the violation of a fundamental right considering that this is a case of ordinary and not constitutional law, as well as that the plaintiff has not taken into consideration the necessary concurrence of certain legal requirements for teachers of religion to provide the Islamic religious teaching. The plaintiff exercised her right by submitting twenty requests for her children to obtain the possibility of having Islamic religious education in their school. However, according to the documents provided in the previous administrative procedures, there were no available teachers qualified to teach Islamic religion classes. In short, this judgment focuses on the inaction of the administration and the justification that it offered as to the legality of not providing Islamic religion classes and the material impossibility of doing so, given that in the end such classes were not given to the children.

Ruling:

Firstly, the court makes a distinction between what could be considered an administrative action that can be contested, understanding this action as the administrative inaction of the public administration, and the connection between this action and the subsequent violation of a fundamental right due to this action. Regarding the procedure, it can only be applied on grounds of unconstitutionality. Article 53.2 of the Spanish Constitution mentions that any citizen may seek the

protection of the freedoms and rights recognized in Article 14 of the Constitution, which refers to the protection of individuals from religious discrimination. The court states that in these proceedings other legal or regulatory norms cannot be invoked, nor other claims aimed at the protection of a fundamental right. Therefore, what is at stake for the court is not the judgment of a violation of a fundamental right, but to what extent an administrative action that is contestable under Article 25 of Law 29/1998 of 13 July 1998 regulating the Contentious Administrative Jurisdiction can be prosecuted to determine whether or not it has been the cause of the violation of a fundamental right. It should also be mentioned that Article 10.2 of Law 26/1992 of the Cooperation Agreement between the State and the Islamic Commission states that “the Islamic religious teaching will be given by teachers designated by the Communities belonging to the Islamic Commission of Spain in conformity with the Federation to which they belong”. The Spanish Federation of Islamic Religious Entities submitted a list of candidates for the proper distribution and selection of candidates by the public administration. The plaintiff claimed that the Department of Education, Culture, and Sport of the Generalitat Valenciana did not take this list into consideration; however, the court concluded that this list is not binding for the public administration. In this regard, the claim was dismissed; the court concluded that there is no inadequacy in this regard because the ruling is not an administrative dispute but a proceeding on fundamental rights. Moreover, the court distinguishes between the recognition of the right of the mother to request that her children be taught Islamic religion in school, and the organizational effort to make the exercise of this right effective. Therefore, the court accepts the administration’s justification for not teaching such classes, namely that it is impossible due to a lack of teachers with the required qualifications. The court clarified that the claim does not seek the implementation of religious Islamic education in a specific school for the children of the plaintiff, but rather the recognition of the plaintiff’s right to ensure her children’s religious and moral education where the requirements are met and the possibility exists.

Main quotations on cultural or religious diversity:

“El Ministerio Fiscal manifiesta que no forma parte del contenido esencial del derecho fundamental de los padres a que sus hijos reciban la formación religiosa y moral que esté de acuerdo con sus propias convicciones, la obligatoriedad de que la Administración proporcione a los hijos de la recurrente, clase de religión islámica en el Centro Público de su elección”.

“The Public Prosecutor’s Office states that an obligation on the Administration to provide the appellant’s children with Islamic religion classes in the public school of their choice is not part of the essential content of the fundamental right of parents to have their children receive the religious and moral education that is in accordance with their own convictions.” (legal reasoning 2, p. 4)

Main legal texts quoted in the decision:

Domestic law

- Article 27 Spanish Constitution
- Articles 14, 16, 27, 53 Law 26/1992 of 10 November 1992 approving the State Cooperation Agreement with the Islamic Commission of Spain
- Article 10 Law 29/1998 of 13 July 1998 regulating the Contentious Administrative Jurisdiction
- Articles 2, 5, 8 Organic Law 2/2006 of 3 May 2006 on Education
- Articles 4, 6, 12 Organic Law 3/2020 of 29 December 2020 amending Organic Law 2/2006 of 3 May 2006 on Education

Cases cited in the decision:

Relevant Spanish case law

- Tribunal Superior de Justicia Murcia, Sentencia de 08 de febrero de 2022, Sentencia número 41/2022 (High Court of Justice Murcia, Judgment of 8 February 2022, no. 41/2022) ECLI:ES:TSJMU:2022:50

Commentary

Instruction in a Particular Religion: Article 27.3 of the Spanish Constitution Concerning Islamic Religious Education

Education is pivotal in achieving a cohesive integration of different religious and ethnic minorities in today's culturally diverse European societies. In order to preserve their cultural identity while promoting inclusive religious education, a multi-faith system of religious education should be implemented accordingly. The present case represents the struggle of the public authorities to implement a system based on cooperation for religious education in the public state system. In short, this ruling focuses on the assessment of the administration's procedure and the justification it offers on the basis of legality due to the impossibility of providing Islamic religious education in the school. The court distinguishes between the recognition of the right to Islamic religious instruction, which the court does not consider to be violated, and the implementation at the organizational level to make this right effective. In this regard, the implementation of the classes is subject to the provision of teachers who must meet the qualification requirements established for the different teaching courses regulated by Organic Law 2/2006 (amended by Organic Law 3/2020 of 29 December), which are the same as those established for teachers of other subjects.

Therefore, based on the Conselleria's legal reports of 10 April 2019 and 29 March 2022, the lack of teachers with such qualifications made it impossible to provide Islamic religious education in the specific school requested. Furthermore, the Constitutional Court stated that the right of parents to choose the type of education for their children is not one of the freedoms recognized in Article 27 of the Spanish Constitution. This constitutional right is limited to the recognition of the freedom of parents to choose the educational establishment, and the public authorities guarantee the right of parents to ensure that their children receive religious and moral instruction in accordance with their own convictions, as stated in Article 27 of the Spanish Constitution. Therefore, the court considered the plaintiff's right to be guaranteed, as she was free to enrol her children in another school where Islamic religious education could be provided. Article 27.3 is intended to function as a positive obligation on the part of the state, facilitating the exercise of this right by allowing public and state-subsidized schools to be

used as a means of access to the religious education of these denominations without having the obligation to include it in the curriculum or to make it an ordinary subject. Therefore, the state does not cover the cost of the provision and only undertakes to provide the local denominations with the appropriate facilities in schools to facilitate the exercise of this right. However, an unjustified restriction that would prevent parents from choosing the education they want for their children would constitute a violation of Article 27.9 of the Constitution, which imposes on the public authorities the obligation to finance compulsory education while respecting equality (González-Varas Ibáñez 2013: 7).

In conclusion, the appellant's claim of a violation of Article 27(3) was rejected by the court, which interpreted it not as an obligation to implement the subject of Islamic religious education in a particular school, but as a recognition of the mother's right to request that her children receive religious education, provided that the agreed requirements are met. Furthermore, this case illustrates the distinction between the right of parents to provide moral and religious education for their children in accordance with their own beliefs and the right to choose the educational establishment. Unlike Catholic religious education, which is compulsory for schools and voluntary for pupils, Islamic religious education is always dependent on the availability of facilities and teachers and is subject to administrative decisions and procedures. That is why the court considered the administrative obstacles to be justified, since Article 27.3 does not contain a guarantee to provide religious education of choice, but rather to facilitate its exercise through the public education system. This decision raises the question of the extent to which these obligations in the Cooperation Agreements serve their purpose as safeguards to maintain equality and diversity if the authorities are unable to ensure proper administration and accessibility for these families to fully exercise their religious rights within the Spanish education system.

Literature related to the main issue(s) at stake:

General legal literature on the topic that may not be directly connected with the case

- Aláez Corral, Benito. 2011. “El ideario educativo constitucional como límite a las libertades educativas”. *Revista Europea de Derechos Fundamentales* 17: 93–128.
- Álvarez Álvarez, Leonardo. 2010. “La educación en el Estado social y democrático de derecho. El ideario educativo en la Constitución Española”. In Noemí Martín and Miguel Ángel Presno Linera and Ingo Wolfgang Sarlet (eds), *Los derechos sociales como instrumento de emancipación*, 209–232. Madrid: Thomson Reuters.
- Barnés Vázquez, Javier. 1984. “La educación en la Constitución. Una reflexión conciliadora”. *Revista Española de Derecho Constitucional* 12: 23–65.
- Cámara Villar, Gregorio. 2015. “El derecho a la educación en tiempos de crisis. La LOMCE en su contexto”. *Revista de la Facultad de Derecho de la Universidad de Granada* 16–18: 205–234
- Ferreiro Galguera, Juan. 2015. “Islamic Education in Spain”. In Juan Ferreiro Galguera, *Islam and Citizenship Education*, 123–135. Wiesbaden: Springer Fachmedien.
- González-Varas Ibáñez, Alejandro. 2013. “Régimen jurídico de la educación diferenciada en España”. Revista General de Derecho Canónico y Derecho Eclesiástico del Estado 31: 2–26.
- Rodríguez García, José Antonio. 2019. “Islamic Religious Education and the Plan against Violent Radicalization in Spain”. *British Journal of Religious Education* 4: 412–421.
- Souto Galván, Beatriz. 2011. Educación y creencias nuevas y viejas querellas sobre cuestiones educativas. Madrid: Dykinson.

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