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

The Obstacles to Implementing Islamic Religious Education in Public Schools

Question(s) at stake:

Whether the inaction of the administration in response to a request for students to receive Islamic religious education at public schools is lawful.

Outcome of the ruling:

The Court upheld the appellant's request to have her children receive Islamic Religious Education according to Law 26/1992. The Court also ruled that the administrative regional educational authorities did not comply with the law.

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 in a particular religion

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Spain

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

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Date:

08 February 2022

Jurisdiction / Court / Chamber:

High Court of Justice of Murcia, Contentious Administration Chamber

Remedy / Procedural stage:

High Court of Justice of Murcia, Fundamental Rights Procedure

Previous stages:

No information found

Subsequent stages:

No information found

Branches / Areas of law:

Constitutional law, administrative law

Facts:

The appellant lodged a contentious administrative appeal against the alleged refusal, through administrative silence, of the Regional Department of Education and Culture of the Region of Murcia to satisfy the request made by the appellant on 10 June 2021 for her children to receive Islamic religious education, in accordance with the provisions of Law 26/1992, for the 2021/2022 academic year and subsequent academic years.

The Islamic Commission of Spain (Comisión Islámica de España – CIE) sent a list of designated teachers to the Regional Department of Education on 15 February 2021. The Head of the Teaching Personnel Service of the Regional Ministry confirmed its validity. However, they did not proceed to publish the list of applicants, nor did they ask the CIE to provide a new list afterwards. Therefore, the CIE fulfilled the obligation established in Article 10.2 of Law 26/1992, which provides that Islamic religious instruction is to be given by teachers designated by the communities that are members of the CIE, with the approval of the federation to which they belong.

Therefore, the Court concluded that the fundamental right of the appellant's children to receive Islamic religious instruction in public schools that meet the requirements of the Region of Murcia had not been guaranteed, given the failure of the administration to complete the process initiated to this end.

Ruling:

Firstly, the Court examines whether the fundamental rights and freedoms provided in Article 53.1 of the Constitution are reinforced by judicial protection through ordinary and constitutional protection. Since the ordinary courts are responsible for the judicial protection of these fundamental rights, it is precisely the Constitution that is directly applicable in such cases.

The Court focuses on the question of whether the administrative actions in question can be considered to be in conformity with the law, given that the request for recognition of the right of the appellant's children to receive Islamic religious education in their public school, as protected by Articles 14, 16, and 27.3 of the Spanish Constitution and the regulations implementing them, has not been

granted. The appellant seeks to enforce the application of Article 10 of Law 26/1992 of 10 November 1992 approving the Cooperation Agreement between the State and the Islamic Commission of Spain for the teaching of the Islamic religion. The complaint not only refers to the fundamental rights allegedly violated, but also sets out the arguments on which the complaint is based in relation to Articles 14, 16.1, and 27.3 of the Spanish Constitution, which establish the principles of non-discrimination on religious grounds, freedom of thought and religion, and the right of parents to ensure that their children receive religious and moral education in accordance with their convictions. In this particular case, the Court does not simply refer to the fundamental rights that are allegedly being violated, but rather to a statement of the arguments on which the appeal is based, linked to Articles 16.1 and 27.3 of the Spanish Constitution, which establish the principles of freedom of conscience and religion and the right of parents to ensure that their children receive religious and moral education in accordance with their convictions. These rights are allegedly being violated by the refusal to allow Islamic religious education in schools that meet the agreed requirements.

The Court considers that, in the light of Article 27.3 of the Constitution, the right of parents to provide their children with religious and moral education in accordance with their own convictions prohibits state intervention to impose moral criteria such as ideological indoctrination, but does not deny the state's power to plan and organize education and therefore to include some or other doctrines in the educational curriculum. However, in the light of Article 10 of the Cooperation Agreement, the recognition of the fundamental right invoked must comply with the organizational requirements established by law for education in order to be implemented. In the case at hand, these requirements were met, therefore the court concluded that the fundamental right of the appellant's children to receive Islamic religious education had not been respected, in view of the administration's failure to complete the process of providing such education.

Main quotations on cultural or religious diversity:

“Las normas fundamentales invocadas por la recurrente (artículos 14, 16 y 27.3 de la Constitución española de 1978), admite la posibilidad de que las personas tengan distintas creencias y, precisamente por ello, se garantiza a los padres el derecho de que sus hijos reciban la formación religiosa y moral que esté de acuerdo con sus propias convicciones y, en este caso, el derecho invocado por la actora es precisamente el derecho que tiene a que sus hijos reciban la formación religiosa y moral que esté de acuerdo con sus propias convicciones (sentencia de esta Sala n.º 176/2008, de 11 de julio).”

“The fundamental rules relied on by the appellant (Articles 14, 16, and 27. 3 of the Spanish Constitution of 1978), admit the possibility of people having different beliefs, and precisely for this reason, parents are guaranteed the right to have their children receive the religious and moral training that is in accordance with their own convictions; in this case, the right invoked by the appellant is precisely the right to have her children receive the religious and moral training that is in accordance with her own convictions (judgment of this Chamber no. 176/2008 of 11 July)”. (legal reasoning 1, para. 2)

“Al cumplir un deber natural hacia sus hijos, los padres pueden exigir del Estado el respeto a sus convicciones religiosas y filosóficas. Por lo tanto, el derecho fundamental de los padres consignado en el art. 27.3 de la Constitución, a que sus hijos reciban la formación religiosa y moral que esté de acuerdo con sus propias convicciones, veda la intervención estatal para imponer criterios morales como el adoctrinamiento ideológico, pero "no se niega la facultad del Estado de planificar y organizar la enseñanza y por ende de incorporar al currículo educativo unas u otras enseñanzas" (Por todas STC /2014, de 24 de febrero de 2014).”

“In fulfilling a natural duty towards their children, parents can demand that the state respect their religious and philosophical convictions. Therefore, the fundamental right of parents enshrined in Art. 27.3 of the Constitution – to have their children receive religious and moral education that is in accordance with their own convictions – prohibits state intervention to impose moral criteria such as ideological indoctrination, but ‘the power of the state to plan and organize education and therefore to incorporate some or other teachings into the

educational curriculum is not denied' (All STC /2014, 24 February 2014)". (legal reasoning 1, para. 2)

"En el supuesto que examinamos, no existe una mera referencia de los derechos fundamentales que se dicen vulnerados, sino que se hace una exposición de los argumentos que fundamentan el recurso interpuesto, vinculada a los artículos 16.1 y 27.3 de la Constitución Española en los que se recogen los principios a la libertad ideológica y religiosa y el derecho que asiste a los padres para que sus hijos reciban la formación religiosa y moral de acuerdo con sus convicciones; derechos que estiman se vulneran con la denegación presunta de que se imparta la enseñanza religiosa islámica en los centros que cumplan los requisitos acordados."

"In the case we are examining, there is not merely a reference to the fundamental rights that are said to have been violated, but rather a statement of the arguments on which the appeal is based, linked to Articles 16.1 and 27.3 of the Spanish Constitution, which set out the principles of ideological and religious freedom and the right of parents to ensure that their children receive religious and moral training in accordance with their convictions, rights they consider to be violated by the presumed refusal to allow Islamic religious education to be taught in the schools that meet the agreed requirements". (legal reasoning 3, p. 5)

Main legal texts quoted in the decision:

Domestic law

- Articles 14, 16, 27, 53 Spanish Constitution
- Article 7 Organic Law 7/1980 of 5 July 1980 on Religious Freedom
- Article 10 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 La Rioja, Sentencia de 11 de octubre de 2017, Sentencia número 290/2017 (High Court of Justice La Rioja, Judgment of 11 October 2017, no. 290/2017) ECLI:ES:TSJLR:2017:133
- Tribunal Superior de Justicia La Rioja, Sentencia de 2 de noviembre de 2017, Sentencia número 322/2017) (High Court of Justice of La Rioja, Judgment of 2 November 2017, no. 322/2017) ECLI:ES:TSJLR:2017:476

Commentary

The Obstacles to Implementing Islamic Religious Education in Public Schools

Introduction

In this case, a contentious administrative action is brought against the alleged refusal of the administration, through administrative silence, to provide Islamic religious education in a school. The High Court of Justice of Murcia considers these main aspects: 1) whether the principles of freedom of conscience and religion and the right of parents to ensure that their children receive religious and moral instruction in accordance with their beliefs have been violated by the refusal to allow Islamic religious education in schools that meet the agreed requirements; and 2) whether the administrative inaction can be regarded as lawful under ordinary or constitutional law.

The appellant invokes constitutional law because she considers her fundamental rights under the Constitution to non-discrimination on religious grounds (Article 14), freedom of religion (Article 16), and the right of parents to ensure the religious education of their children in accordance with their own convictions (Article 27.3) to have been violated. In addition, she refers to the implementation of Article 10 of the Cooperation Agreement on the implementation of Islamic religious education in schools, as well as Organic Law 7/1980 of 5 July 1980 on Freedom of Religion, in its Article 7.1, regarding the establishment, where

appropriate, of cooperation agreements with recognized denominations. Furthermore, it is also worth mentioning the various organic laws on education (Organic Law 8/1985 of 3 July 1985 on the Right to Education; Organic Law 1/1990 of 3 October 1990 on the General Organization of the Education System; Organic Law 2/2006 of 3 May 2006 on Education, Organic Law 3/2020 of 29 December 2020, which amends Organic Law 2/2006 of 3 May 2006 on Education).

The effects of administrative silence

The High Court of Justice of Murcia emphasizes that the appellant's claim is not that her children should be taught the Islamic religion in a particular school, but rather that her right to have her children receive religious education where the agreed requirements are met should be recognized. The implementation of Islamic education in schools is determined by the regulation established in Article 10 of the Cooperation Agreement with the CIE. Firstly, the school must meet the requirements of having at least 10 students who request to exercise this right. According to Article 10.2 of the Cooperation Agreement, Islamic religious education is given by teachers designated by the communities that are members of the CIE, with the agreement of the federation to which they belong. Furthermore, paragraph 4 of the same Article states that the public and private educational centres referred to in paragraph 1 of this Article shall provide suitable premises for the exercise of the right regulated in this Article, without prejudice to the development of educational activities.

The public authorities of Murcia did not comply with the law because they failed to facilitate the exercise of the right enshrined in Article 10 of the Cooperation Agreement. Their non-compliance interferes with Article 9.2 of the Constitution, which states that:

"It is the responsibility of the public authorities to promote the conditions of real and effective freedom and equality of individuals and of the groups to which they belong, to remove the obstacles that prevent or hinder their full enjoyment and to facilitate the participation of all citizens in political, economic, cultural and social life".

Therefore, by their administrative inaction, they have not only violated Article 10 of the Agreement, but by not facilitating the exercise of this right, they have also failed to comply with Article 9.2 of the Constitution.

There is no direct reference to the fundamental rights alleged to have been violated, but rather a statement of the arguments on which the complaint is based, linked to Articles 16.1 and 27.3 of the Spanish Constitution, and the rights which they consider to have been violated by the alleged refusal to allow Islamic religious education in schools that meet the agreed requirements (Articles 14, 16, 27 of the Spanish Constitution; Article 10 of the Cooperation Agreement).

Since the children did not have access to Islamic religious education, the central issue of this judgment is the extent to which the administration's inaction is justified by the law. With regard to Article 10.2 of the Cooperation Agreement, the Court found that it was the regional administration that confirmed the validity of the list of professors, but it neither published this list nor asked the CIE to provide new information. The High Court of Justice of Murcia therefore concluded that the fundamental right of the appellant's children to receive Islamic religious education in public schools that meet the requirements of the Region of Murcia had not been respected, given the administrative failure to finish the procedure initiated to this end.

Obstacles to implementation

Although the agreement on the designation and economic regime of those in charge of Islamic religious education in public primary and secondary schools was published in 1996, the fact is that the lack of agreement between the Spanish Federation of Islamic Organisations (Federación Española de Entidades Islámicas – FEERI) and Union of Islamic Communities of Spain (Unión de Comunidades Islámicas de España – UCIDE) within the CIE on the designation of teachers has meant that for almost two decades there has been no Islamic religious education in most of the Spanish territory (Rossell Granados 2022: 232–233).

The conditions of the current Spanish school system invite denominational religion to be offered outside of it. It is debatable whether public schools are

obliged to respond to all the potential demands of the different existing religions, since it should be noted that this right can only be guaranteed where the conditions are met (e.g., the requirement of a minimum of 10 students) (Bermejo and Morales 1998: 132–133). Although there may be opportunities for collaboration between the different institutions responsible for the religious formation of a person, the issue of how Spanish schools are organized cannot be the exclusive responsibility of the school institution. According to the Cooperation Agreement of 1992 and Article 9.2 of the Constitution, the schools and the public administration should work for the implementation of religious education for the three recognized religions with agreements (Judaism, Evangelism, and Islam) within the limits of their possibilities and when the requirements are met (Bermejo and Morales 1998: 132–133).

Different religions have their own resources and it is up to them to provide their members with the religious education they consider appropriate, organizing those educational activities which, according to their own criteria, best contribute to religious education in the principles and values underpinning their respective religions. Although the role of religious organizations is essential in ensuring religious education in public schools, as the schools need their support to deal with administrative processes (such as the appointment of professors), if this process fails and children end up going to private schools or extracurricular religious education, this may demonstrate that the system is not promoting religious pluralism.

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: 91–129.

- Bermejo Campos, Blas and Juan A. Morales Lozano. 1998. “¿La educación religiosa es misión de la escuela o de la familia?” In Vincente Llorent Bedmar, Symposium Internacional sobre Familia y educación, *Familia y educación: una perspectiva comparada*, 125–136. Sevilla: Universidad de Sevilla.
- Cubillas Recio, Luis M. 1997. *Enseñanza confesional y cultura religiosa. Estudio jurisprudencial*. Valladolid: Secretariado de Publicaciones e Intercambio Científico, Universidad de Valladolid.
- Díez de Velasco, Francisco. 2016. “La enseñanza de las religiones en la escuela en España: avatares del modelo de aula segregada”. *Historia y Memoria de la Educación* 4: 277–306.
- Estebán Garcés, Carlos. 2017. “Religiones en la escuela, 25 años de pluralidad”. *Vida Nueva* 3058: 24–30.
- Ferreiro Galguera, Juan. 2018. “Teaching Religion in Public Schools in Spain”. In Ednan Aslan and Margaret Rausch (eds), *Religious Education: Between Radicalism and Tolerance*, 93–113. Wiesbaden: Springer.
- González del Valle, José M. 1979. “Libertad de enseñanza en materia religiosa y su plasmación legal”. *Persona y derecho: Revista de fundamentación de las Instituciones Jurídicas y de Derechos Humanos* 6: 427–448.
- Kallioniemi, Arto. 2018. “Muslim Religious Education and Muslim Teacher Education”. In Ednan Aslan and Margaret Rausch (eds), *Religious Education: Between Radicalism and Tolerance*, 83–91. Wiesbaden: Springer.
- Lems, Johanna M. and Ana I. Contreras Planet. 2023. “Struggling with and against the Governance of Islam in Spain”. *Religions* 14 (3): 306–318.
- Planet Contreras, Ana I. (ed). 2018. *Observing Islam in Spain: Contemporary Politics and Social Dynamics*. Leiden: Brill.

- Rossell Granados, Jaime. 2022. “La Comisión Islámica de España: 30 años de interlocución y desarrollo del Acuerdo de Cooperación de 1992”. *Anuario de Derecho Eclesiástico del Estado* 38: 219–252.

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