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

Cooperation and Fragmentation of Muslim Governance in Education: Implementing Islamic Religious Education

Question(s) at stake:

Whether the administration of a public school protected the right of parents to request that their children receive Islamic religious education.

Outcome of the ruling:

The Court rejected the appellant's request for recognition of her right to have her children receive Islamic religious education in the public school, in accordance with Law 26/1992, due to the lack of designated teachers for Islamic education.

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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Country:

Spain

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High Court of Justice La Rioja, Judgment of 23 February 2017, no. 63/2017 (Tribunal Superior de Justicia La Rioja, Sentencia de 23 de febrero de 2017, Sentencia número 63/2017)

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Date:

23 February 2017

Jurisdiction / Court / Chamber:

High Court of Justice La Rioja, Contentious Administration Chamber

Remedy / Procedural stage:

Fundamental Rights Procedure

Previous stages:

No information found

Subsequent stages:

No information found

Branches / Areas of law:

Constitutional law, administrative law

Facts:

The appellant, Ms Ruth, brought a contentious administrative appeal under the procedure for the protection of fundamental rights of individuals against the administrative resolution of 30 September 2016 of the Consejería de Educación, Formación y Empleo del Gobierno de La Rioja (Department of Education, Training, and Employment of the Government of La Rioja) rejecting the request for recognition of the right of the appellant's children to receive Islamic religious education in their school. The appeal was based on the alleged infringement of freedom of religion (Article 16 Spanish Constitution), non-discrimination (Article 14 Spanish Constitution), and the right of parents to ensure that their children receive a religious and moral education in accordance with their convictions (Article 27.3 Spanish Constitution) and the implementing legislation: in particular, Organic Law 8/1985 of 10 July 1985 regulating the right to education (the last amendment being Organic Law 3/2020 of 29 December, which amends Organic Law 2/2006 of 3 May on Education), Organic Law 1/1990 of 3 October 1990 on the general organization of the education system, and Article 10 of Law 26/1992 of 10 November 1992 approving the Cooperation Agreement between the State and the Comisión Islámica de España (Islamic Commission of Spain, CIE). The appellant also submitted a previous petition with the same claim in 2015, in response to which there is no record of any activity on the part of the administration, nor any record of rejection due to administrative silence. On 30 September 2016, a decision was issued rejecting the appellant's application. Subsequently, an appeal against this decision was lodged on 28 October 2016.

There was no evidence that the regional administration had been notified of the designation of teachers to teach the Islamic religion. Consequently, since the regional administration was not provided with a list of designated teachers, their unavailability was considered by the Court to be a legitimate reason for rejecting the appeal. The Court held that the administration did not deny the appellant's children the right to Islamic religious education, but that the necessary conditions for providing such education had not been met because of a shortage of teachers. The designation was not the responsibility of the regional administration, which presumably had yet to be notified of such a designation, making it impossible to provide the education requested.

Ruling:

The question raised by this appeal is whether the inaction of the administration in response to a request for the provision of Islamic education in public schools, following Article 10 of Law 26/1992 of 10 November 1992, was lawful. Article 10 of that law guarantees Muslim pupils, their parents, and the school authorities who so request the exercise of the former's right to Islamic religious education in public and subsidized private schools, provided that the exercise of that right does not conflict with the specific nature of the school and that the requirement of a minimum of 10 students per school is met. The Court referred to Articles 14, 16, and 27 of the Spanish Constitution and its implementing legislation in order to determine whether the fundamental rights invoked had been infringed. These articles include the principle of non-discrimination on grounds of birth, race, sex, religion, or opinion (14.1), freedom of thought and religion (16.1), the principle of state cooperation with different religious groups (16.3), and the right of parents to ensure that their children receive a religious and moral education in accordance with their own convictions (27.3).

The Court also referred to Organic Law 7/1980 of 5 July 1980 on Religious Freedom, Article 7.1 of which states that the state shall, where appropriate, conclude cooperation agreements or conventions with the churches, denominations, and religious communities that have well-established roots in Spain. In the field of education, Organic Law 2/2006 of 3 May 2006 on Education (amended by Organic Law 3/2020 of 29 December 2020) states in its second additional provision that the teaching of other religions shall be in accordance with the provisions of the cooperation agreements concluded by the Spanish state with the Federación de Entidades Religiosas Evangélicas de España (Federation of Evangelical Religious Entities of Spain, FEREDE), the Federación de Comunidades Judías de España (Federation of Jewish Communities of Spain, FCJE), the Comisión Islámica de España (Islamic Commission of Spain, CIE), and, if appropriate, those that may be signed in the future with other religious denominations.

According to Article 10.2 of the Cooperation Agreement in question, Islamic religious education is to be given by teachers designated by the communities belonging to the CIE, with the agreement of the federation to which they belong. Furthermore, as stated in the second additional provision of Organic Law 2/2006 of 3 May 2006 on Education (amended by Organic Law 3/2020 of 29 December 2020), it is the responsibility of the respective religious authorities to define the curriculum and the assessable learning standards that make it possible to verify the achievement of the objectives and the acquisition of the competences corresponding to the subject of religion.

The Court concluded from the above provisions that, in order to be exercised, the recognition of the fundamental right invoked must comply with the organizational requirements for teaching laid down by law.

The administration was justified in claiming that there were no teachers to teach the Islamic religion. Consequently, the Court held that the regional administration had not infringed the fundamental rights invoked by the appellant.

Main quotations on cultural or religious diversity:

“Con la finalidad de dar efectividad a lo dispuesto en el artículo 27.3 CE , así como en sus normas de desarrollo, Ley Orgánica 8/1985, de 3 de julio, Reguladora del Derecho a la Educación, y la Ley Orgánica 1/1990, de 3 de octubre, de Ordenación General del Sistema Educativo, el artículo 10 de la Ley 26/1992, de 10 de noviembre , por la que se aprueba el Acuerdo de Cooperación del Estado con la Comisión Islámica de España’ se garantiza a los alumnos musulmanes, a sus padres y a los órganos escolares de gobierno que lo soliciten, el ejercicio del derecho de los primeros a recibir enseñanza religiosa islámica en los centros docentes públicos y privados concertados, siempre que, en cuanto a estos últimos, el ejercicio de aquel derecho no entre en contradicción con el carácter propio del centro, en los niveles de educación infantil, educación primaria y educación secundaria.’ El apartado 2 del mismo artículo establece que la enseñanza religiosa islámica será impartida por profesores designados por las Comunidades pertenecientes a la Comisión Islámica de España, con la

conformidad de la Federación a que pertenezcan. Y según el apartado 3, los contenidos de la enseñanza religiosa islámica, así como los libros de texto relativos a la misma, serán proporcionados por las Comunidades respectivas, con la conformidad de la Comisión Islámica de España."

"With the aim of giving effect to the provisions of Article 27.3 SC, as well as in its implementing regulations, Organic Law 8/1985 of 3 July regulating the right to education and Organic Law 1/1990 of 3 October on the general organization of the education system, Article 10 of Law 26/1992 of 10 November approving the State Cooperation Agreement with the Islamic Commission of Spain 'guarantees Muslim pupils, their parents, and the school bodies that request it the exercise of the right of the former to receive Islamic religious teaching in public and subsidized private schools, provided that, as far as the latter are concerned, the exercise of this right does not contradict the specific nature of the school, at preschool, primary, and secondary education levels.' Paragraph 2 of the same Article establishes that Islamic religious education shall be taught by teachers designated by the Communities belonging to the Islamic Commission of Spain, with the agreement of the Federation to which they belong. And according to paragraph 3, the contents of Islamic religious education, as well as the textbooks related to it, shall be provided by the respective Communities, with the agreement of the Islamic Commission of Spain." (legal reasoning 1, para. 5)

"Las normas fundamentales invocadas por la recurrente (artículos 14 , 16 y 27.3 de la Constitución española de 1978), como ya expresara esta Sala en su sentencia nº 176/2008, de 11 de julio de 2008 , admite, naturalmente, 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."

"The fundamental rules relied on by the appellant (Articles 14, 16, and 27.3 of the Spanish Constitution of 1978), as this Court has already stated in its judgment no.

176/2008 of 11 July 2008, naturally admit the possibility that people may have different beliefs, and precisely for that reason, parents are guaranteed the right to have their children receive the religious and moral training which is in accordance with their own convictions; and, in this case, the right invoked by the appellant is precisely her right for her children to receive the religious and moral training which is in accordance with her own convictions." (legal reasoning 1, para. 6)

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:

None

Commentary

Cooperation and Fragmentation of Muslim Governance in Education: Implementing Islamic Religious Education

Fragmentation of Muslim communities in Spain

One of the issues that Islamic communities in Spain have been addressing as part of their integration into Spanish society is the implementation of Islamic education in schools. There are legal, administrative and social obstacles to the proper implementation of Islamic education in Spain. This lack of implementation

leads to a lack of trust in the administration and the CIE among the population. There are still a large number of people who believe that Islamic religious education can lead to the isolation of Muslim pupils (ghettoization), and that the public school system can become an instrument for the propagation of values that are contrary to democracy, human rights, or gender equality (Andújar Chevroller 2006: 642–643).

The CIE has been designated as the main body to represent Muslim communities in Spain and their relations with the state. Despite its importance for cooperation in religious governance, it does not always work effectively to guarantee the religious rights of the people it is supposed to represent. Unfortunately, the CIE's inability to implement Islamic religious education effectively means that some local Muslim communities do not recognise the CIE as their representative when asserting their religious rights. As a result of this lack of leadership in negotiating with the state, several initiatives in La Rioja have begun to exercise their religious rights without the support of the CIE (Lems and Planet Contreras 2023: 2–3).

The CIE is made up of the Unión de Comunidades Islámicas de España (Union of Islamic Communities of Spain, UCIDE) and the Federación Española de Entidades Religiosas Islámicas (Spanish Federation of Religious Spanish Entities, FEERI), which function as its two integral federations. However, there are many Muslim communities and associations who wanted to be part of the CIE but were denied access. The non-response or rather the persistent silence of the leaders of the CIE concerning such applications for membership resulted in these communities and associations being deprived of the rights recognized in the 1992 agreement, since they were not members of the CIE (Contreras Mazarío 2012: 163–164).

This led to the enactment of Royal Decree 1384/2011 of 14 October 2011, which developed Article 1 of the Cooperation Agreement between the State and the Islamic Commission of Spain, approved by Law 26/1992 of 10 November 1992. It establishes a procedure whereby Muslim communities and associations registered with the Registro de Entitades Religiosas (Registry of Religious Entities, RER) can submit their request to join the CIE through two channels: either to the CIE itself or through the RER. If the Muslim community chooses the latter route, the RER

becomes the recipient of the application, processes it, and then forwards it to the CIE. The CIE can accept or reject the applicant organization. However, the reasons must be exclusively religious (Article 2 of the Statutes) (Contreras Mazarío 2012: 163–164).

The dynamism of the associations has led to the emergence of new federative entities, some of which are the result of new needs for dialogue with local administrations, and some of which are the result of the unmet demands of numerous associations that do not agree with the organizational principles of the CIE and want to promote a new framework for dialogue with the administration. In La Rioja, for example, the Comunidad Musulmana de La Rioja (Muslim Community of La Rioja) was created to mobilize citizens of La Rioja to demand the fulfilment of their civil and religious rights. The need for these other ways of claiming rights and recognition is a sign of the current dynamics within the community, which include, on the one hand, a more institutionalized system with new strategic alliances that are difficult to assess, and on the other hand the existence of external platforms that create links and alliances with other social groups such as parents at school or other minority religions (Planet Contreras 2014: 271–272).

Although the CIE is supposed to act as a representative and interlocutor between Muslim communities and the state, some might argue that there is no unity in the way Islamic religious governance is managed in Spain. Given the actual way in which Islam is governed in Spain and the alleged inaction of the CIE in many cases, Muslim communities in Spain can be considered fragmented, which hinders the exercise of the religious rights of those they represent. It should also be added that – given that the CIE is the only interlocutor with the state, and that it faces considerable administrative and technical obstacles – the implementation of Muslim religious rights is far from being fully achieved in accordance with the principles of religious pluralism. The creation of external platforms, and in particular the use of non-institutionalized methods to make the situation of these communities visible, demonstrates a strategy that is separate from the role of the courts in achieving religious diversity in the public sphere (Lems and Planet Contreras 2023: 11–12).

The procedural stages involved in requesting Islamic religious education in public schools.

In accordance with the principle of cooperation with the different denominations in Spain, enshrined in Article 16.3 of the Spanish Constitution, the state must act jointly, in this case with the CIE, to facilitate the right included in the 1992 agreements on the implementation of Islamic religious education in schools. In order to implement Islamic education in a school, the school must first meet the requirement of having at least 10 students who invoke 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, para. 4 of the same article states that the public and private schools referred to in para. 1 shall provide suitable premises for the exercise of the right regulated in this article, without prejudice to the development of educational activities. Moreover, Organic Law 2/2006 of 3 May 2006 on Education, in its second additional provision, states that the teaching of other religions shall be in accordance with the provisions of the cooperation agreements concluded by the Spanish state with the FEREDE, the FCJE, the CIE, and, if appropriate, those that may be signed in the future with other religious denominations.

In this case, there is no evidence that the regional administration received the list of designated teachers. Therefore, it cannot be concluded that the regional administration did not comply with the law or that it interfered with Article 9.2 of the Constitution, which states:

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

In the resolution of 30 September 2016, which is challenged in this case, the regional administration does not deny the right of the appellant’s children to receive Islamic religious teaching, but states that the necessary conditions for the

provision of such teaching are not met due to a lack of teachers, whose designation is the responsibility of the CIE and not of the administration. Consequently, the regional administration has not infringed the fundamental rights invoked by the appellant. On the contrary, the exercise of those rights is hindered by the absence of teachers, whose designation is not the competence of the administration (Katz Rotnitzky 2025a; Katz Rotnitzky 2025b).

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

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

- Andújar Chevrollier, Ndeye. 2006. “La enseñanza religiosa islámica en la escuela”. *Bordón* 58 (4–5): 641–646.
- Contreras Mazarío, José M. 2012. “El islam en España: proceso de institucionalización y estatuto jurídico”. *Laicidad y libertades. Escritos jurídicos* 12 (1): 143–222.
- Contreras Mazarío, José M. 2018. “Muslims in Spain. The Legal Framework and Status”. In Ana I. Planet Contreras (ed), *Observing Islam in Spain. Contemporary Politics and Social Dynamics*, 23–61. Leiden: Brill.
- 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.
- Ferreiro Galguera, Juan. 2018. “Teaching Religion in Public Schools in Spain. The Constitutional Principle of Cooperation Makes the Difference”. In Ednan Aslan and Margaret Rausch (eds), *Religious Education: Between Radicalism and Tolerance*. 93–113. Wiesbaden: Springer.

- Kallioniemi, Arto. 2018. “Muslim Religious Education and Muslim Teacher Education”. In Ednan Aslan and Margaret Rausch (eds), *Religious Education: Between Radicalism and Tolerance*, 83–92. Wiesbaden: Springer.
- Katz Rotnitzky, David. 2024. “The Right of Islamic Religious Education Outside of the Framework of the Cooperation Agreements: Mobilization, Strategies and Shortcomings”. In Alejandro Torres Gutiérrez and Óscar Celador Angón (eds), *Estatuto jurídico de las minorías religiosas sin acuerdo de cooperación*, Vol. 2, 473–486. Madrid: Dykinson.
- Katz Rotnitzky, David. 2025a. “Indoctrination in a Particular Religion: Article 27.3 of the Spanish Constitution Concerning Islamic Religious Instruction”. *Cultural and Religious Diversity under State Law across Europe*, DOI: 10.48509/CUREDI100ES001.
- Katz Rotnitzky, David. 2025b. “The Obstacles of Implementing Islamic Religious Education in Public Schools”. *Cultural and Religious Diversity under State Law across Europe*, DOI: 10.48509/CUREDI100ES003.
- Lems, Johanna M. and Ana I. Planet Contreras. 2023. “Struggling with and against the Governance of Islam in Spain”. *Religions* 14 (3): 1–12.
- Planet Contreras, Ana I. 2013. “La organización del islam en España”. In Olivia Orozco de la Torre and Gabriel Alonso García (eds), *El islam y los musulmanes hoy. Dimensión internacional y relaciones con España*, 265–281*.* Madrid: Escuela Diplomática.
- 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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