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

Evangelical Diversity in Spain and Its Limits in Providing Religious Instruction

Question(s) at stake:

Whether the Generalitat Valenciana's resolution concerning Evangelical religious education for the 2022–2023 school year adequately addressed the Evangelical community's demands.

Outcome of the ruling:

The Court dismissed the appeal filed by the Federation of Evangelical Religious Entities of Spain (FEREDE) and held that the Generalitat Valenciana's actions were justified on the grounds that there were insufficient suitably qualified teachers available and that the evidence submitted did not establish the need to appoint the required number of teachers.

Topic(s):

- Education

Keywords:

- Right of parents to ensure the religious and moral education of their children
- Publicly funded education in a minority religion
- State-funded schools
- RE teachers (Teachers of Religion Education)
- Teaching about religions and beliefs

Tag(s):

- Evangelical religious education
- Indoctrination

Author(s):

- Katz Rotnitzky, David (Max Planck Institute for Social Anthropology, Department Law and Anthropology, Germany)

Country:

Spain

Official citation:

High Court of Justice Valencia, Judgement of 19 January 2024, No. 24/2024 (Tribunal Superior de Justicia Valencia, Sentencia de 19 de enero de 2024, Sentencia núm. 24/2024)

Link to the decision:

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ECLI:

ECLI:ES:TSJCV:2024:334

Date:

19 January 2024

Jurisdiction / Court / Chamber:

High Court of Justice Valencia (Contentious Administration Chamber)

Remedy / Procedural stage:

Ordinary Procedure

Previous stages:

No information found.

Subsequent stages:

No information found.

Branches / Areas of law:

Administrative law

Facts:

FEREDE challenged the Resolution of the *Generalitat Valenciana* of 31 August 2022, which determined which public schools would offer Evangelical religious education during the 2022–2023 school year. FEREDE claimed that the *Generalitat* had failed to meet the needs of the Evangelical community by (1) failing to provide the required number of teachers; (2) failing to adequately ensure the availability of Evangelical religious education in all public and State-subsidized private schools; and (3) limiting Evangelical religious education to certain schools based on student demand.

FEREDE also requested that Evangelical Religious Education be included on school enrolment forms throughout the Autonomous Community of Valencia and proposed the recruitment of eleven new Evangelical Religious Education teachers, or alternatively, a minimum of five teachers. The *Generalitat Valenciana* did not respond to these requests, giving rise to a presumption of administrative silence and prompting subsequent judicial appeal.

Ruling:

The appellants submitted that 1) Article 27 of the Constitution had been violated, as it requires public authorities to guarantee the right of parents to ensure that their children receive religious and moral instruction in accordance with their own convictions; 2) the Resolution of 26 October 2018 of the Regional Secretary for Education and Research had been breached, as it established the implementation of Evangelical religious education in certain public schools of the Valencian Community; and 3) citizens of the Evangelical denomination had been subject to discriminatory treatment on grounds of religion, contrary to Article 14 of the Spanish Constitution. In particular, FEREDE relied on Article 10 of the Cooperation Agreement between the State and the Federation of Evangelical Religious Entities of Spain (FEREDE), which provides that "pupils, their parents and school governing bodies that request it, are guaranteed the exercise of the right of the former to receive evangelical religious instruction in public and subsidized private

schools, provided that, as far as the latter are concerned, the exercise of this right does not conflict with the school's own character, at infant, primary and secondary education levels".

In its defence, the administration argued that there had been no violation of the fundamental right enshrined in Article 27, since the guarantee of this right does not entail an obligation on the part of the administration to provide Evangelical religious education in schools at the request of the persons concerned. It further argued that there had been no discriminatory treatment and, in this regard, referred to the Chamber's Judgment No. 25/2023 of 24 January, appeal No. 120/2022 (CUREDI100ES001), concerning a similar case involving Islamic religious education, and requested that the appeal be dismissed.

In its ruling, the Court distinguished between the recognition of the right to religious education (which was not disputed) and its organizational implementation, which falls within the scope of administrative or organizational matters. The Court clarified that the exercise of this right, including the recruitment of teachers and the availability of courses, depends on administrative planning, available resources, and compliance with legal requirements.

In this regard, the administration initially argued that FEREDE had failed to submit a complete list of qualified teachers within the required deadline for the 2022–2023 school year. Instead, the list was submitted late, after the start of the school year. According to the Court, religious education teachers must meet the same professional qualifications as other educators in terms of academic qualifications, suitability and linguistic competence. The recruitment of teachers cannot be justified unless these requirements are met. The evidence presented by the *Generalitat Valenciana* did not show any administrative failure in the planning of teacher recruitment, as FEREDE had not provided timely information on qualified candidates.

Although a certificate was submitted at the end of the school year, stating that FEREDE had eight teachers with the necessary qualifications, aptitude and linguistic competence to teach the subject, the Court considered that the

appellants (FEREDE) had failed to prove that suitable teachers would be available at the beginning of the 2022–2023 school year, when the increase in the number of teachers was requested.

Given that Evangelical religious education requires the availability of teachers who meet the applicable qualification requirements, the Court considered that the inability to provide such education due to the lack of suitably qualified teachers was justified, holding that there had been no failure to comply with the Resolution of the Regional Secretary for Education and Research.

The Court also found that the petition submitted by FEREDE, which included the signatures of parents requesting Evangelical religious education, did not provide evidence that the children of these parents were enrolled in the relevant schools. The absence of detailed enrolment data (e.g., official enrolment forms submitted by students or parents expressly requesting Evangelical religious education) rendered the claim of increased demand unfounded. Finally, the Court cited a previous ruling concerning the provision of Islamic religious education in Murcia (High Court of Justice Murcia, Judgment No. 41/2022, 8 February 2022, CUREDI100ES003), in which it found that the administration had failed to act, thereby violating the students' rights. However, unlike the situation in Murcia, the *Generalitat* demonstrated that it had taken proactive measures and complied with the applicable procedural and legal standards. Accordingly, the Court found that there had been no comparable administrative inaction or failure, no violation of the right to receive religious instruction in accordance with one's own convictions, and no discriminatory treatment on grounds of religion.

Main quotations on cultural or religious diversity:

"Por otra parte, y a pesar de la prueba que sustenta la petición de aumento de la plantilla del profesorado de religión evangélica consistente en el listado de firmas de padres que piden tal incremento, según los documentos 8 y siguientes que figuran en el expediente administrativo, tal prueba no demuestra el aumento del alumnado que apoya la necesidad de un aumento del profesorado. Ciertamente no sabemos con seguridad si los peticionarios son padres de los alumnos

matriculados en esos centros; el hecho que lo soliciten los padres no significa que lo hagan por hijos matriculados en los centros donde se pide la ampliación; no sabemos si sus hijos son alumnos de esos centros, siendo la prueba más idónea para demostrar el incremento de las necesidades de la impartición de las enseñanzas educativas de la religión evangélica, que se hubiesen aportado las fichas o solicitudes de esa docencia según el anexo II de la resolución de 31-8-2022 " Enseñanza de la religión o valores sociales y cívicos", que se adjunta y acompaña a la meritada resolución, lo cual de todo punto no se ha observado ni cumplido. Con una prueba tan deficiente es evidente que no se puede dar por probado el hecho de un aumento de los alumnos que han solicitado clases de religión evangélica, como razón fundamentadora de la petición de aumento del profesorado de la religión evangélica".

"On the other hand, and despite the evidence supporting the request for an increase in the number of Evangelical religious education teachers consisting of the list of parents' signatures requesting such an increase, according to Documents 8 et seq. of the administrative file, such evidence does not demonstrate an increase in the number of pupils that would justify the need for additional increase in the number of teachers. It cannot be established with certainty whether the petitioners are parents of the pupils enrolled in those schools; the fact that the parents are petitioning does not mean that they are acting on behalf of the children enrolled in the schools where the increase is requested; nor do we know whether their children are students at those schools, and the most appropriate proof for demonstrating an increased need for the teaching of the Evangelical religious education would have been to provide the files or requests for this teaching according to Annex II of the Resolution of 31 August 2022, titled 'Teaching of religion or social and civic values', which is attached and accompanies the aforementioned resolution, which has not been observed or complied with in every way. In light of such insufficient proof, it clearly cannot be considered proven that there was an increase in the number of students who requested Evangelical religious education classes, which was the reason for the request for an increase in the number of Evangelical religious education teachers". (Legal reasoning 3, p. 13)

Main legal texts quoted in the decision:

Domestic law:

Spanish Law:

- Articles 14, 16, 27 of the Spanish Constitution
- Article 7 Organic Law no. 7/1980, 5 July 1980, on Religious Freedom
- Article 10 Law no. 24/1992, 10 November 1992, approving the Cooperation Agreement between the State and the Federation of Evangelical Religious Entities of Spain.
- Articles 2, 5, 8 Organic Law no. 2/2006, 3 May 2006, on Education
- Articles 4, 6, 12 Organic Law no. 3/2020, 29 December 2020, amending Organic Law no. 2/2006, 3 May 2006, on Education
- Resolution of the Secretary of State for Education, 3 April 2024, which publishes the curricula for the teaching of Evangelical Religion corresponding to Infant Education, Primary Education, Compulsory Secondary Education and Baccalaureate.

Cases cited in the decision:

Relevant Spanish case law:

- High Court of Justice Murcia, Judgment, no. 41/2022, 08 February 2022 (Sentencia num. 41/2022, de 08 de febrero. Tribunal Superior de Justicia de Murcia) ECLI:ES:TSJMU:2022:50
- High Court of Justice Valencia, Judgment no. 25/2023, 24 January 2023 (Sentencia num. 25/2023 de 24 de enero. Tribunal Superior de Justicia de Valencia) ECLI:ES:TSJCV:2023:700

Commentary

Evangelical Diversity in Spain and Its Limits in Providing Religious Instruction

Evangelical Religious Instruction

The right to receive Evangelical religious education is enshrined in Article 10 of the Cooperation Agreement, and this right has been exercised by the Evangelical religious communities affiliated with FEREDE in Valencia since the 2018–2019 school year. According to the latest data provided by FEREDE's Department of Evangelical Religious Education (*Consejería de Enseñanza Religiosa Evangélica FEREDE*), during the 2023–2024 school year in Valencia, there were four Evangelical Religious Education teachers working in six schools, serving a total of 404 students eligible to opt for Evangelical Religious Education. Nationally, during the same school year, there were 345 qualified Evangelical religious education teachers in Spain serving 1,144 schools, where a total of 25,080 students were eligible to receive Evangelical religious education.

Despite the growing demand for Evangelical religious education resulting from the expansion of the Evangelical community, the number of teachers providing such instruction has remained unchanged. Although FEREDE is responsible for appointing and training Evangelical religious education teachers, the responsibility for employing them rests with the Ministry of Education. In order to ensure the effective exercise of this right to receive Evangelical religious education, it is necessary to distinguish between the recognition of this right and its implementation at the organizational level. The subject is taught by teachers who meet both the civil and denominational requirements. They hold the diplomas or certificates required to teach at these levels, as well as the religious, theological and pedagogical training required by FEREDE. In addition, Evangelical religious education teachers must be active members of a church affiliated with FEREDE. All teachers are nominated by their respective denomination to the education administration and compete for teaching positions on an equal basis.

As in cases concerning Islamic religious education in other Autonomous Communities, the appellants allege a violation of the right of parents to ensure that their children receive religious and moral education in accordance with their own beliefs, as well as discriminatory treatment on the basis of religion. In cases concerning minority religious education, the lack of available qualified teachers or the unwillingness of the administration to increase the number of teaching posts

in response to parental requests may violate the principles of pluralism and cooperation. In the present case concerning Evangelical religious education, despite submission of a petition signed by parents requesting an increase in the number of teachers of the Evangelical religious education, the Court considered that the shortage of qualified teachers constituted a lawful reason for their failure to provide the requested level of instruction. The outcome of this case can also be compared with judgments pertaining to Islamic religious education in other Autonomous Communities, such as the Judgment No 25/2023, 24 January 2023 of the High Court of Justice of Valencia (see CUREDI100ES001) or the Judgment No. 63/2017, 23 February 2017 of the High Court of Justice La Rioja (see CUREDI100ES004).

However, judicial decisions in this area have not always emerged from consensus. Cases such as those decided by the High Court of Justice of Granada (Judgment no. 4399/2022, 21 October 2022; see CUREDI100ES006) and the High Court of Justice of Murcia, (Judgment no. 41/2022, 8 February 2022; see CUREDI100ES003) show that, in certain circumstances, the conduct of either the administration or the religious organization may impede the exercise of the parental right to ensure their children receive religious education in accordance with their own convictions. In most of these cases, courts rely on Article 9(2) of the Spanish Constitution, which requires public authorities to promote and ensure the freedom and equality of individuals and to remove obstacles that impede the full enjoyment of these rights.

In the present case, the Court held that, although FEREDE’s petition included the signatures of parents requesting Evangelical religious education, it did not establish that the children of these parents were enrolled in the relevant schools. According to the Court, such evidence might have demonstrated an administrative failure to act, as had been established in other cases concerning Islamic religious education. However, FEREDE had made the necessary efforts to support this request with a report outlining the increased demand of Evangelical parents for additional Evangelical religious education teachers. In light of the circumstances of the case, a matter that might have been resolved through the

administration’s recruitment of the necessary Evangelical religious education teachers ultimately ended up before the courts because of a disagreement between the minority’s demands and the State’s unwillingness, or lack of effort, to address those demands. Guaranteeing the fundamental rights of children and parents should be a priority for both the State, as the guarantor of the rights of its citizens, and religious organizations, as representatives of their respective faith communities.

Historical Context of the Evangelical Communities

The leadership and unity of the Evangelical bodies are characterized by their plurality of churches. For a long time during the dictatorship, Catholicism served as a symbol of unity and national cohesion, seeking to unite Spain’s diverse population. From the beginning, Spanish Evangelicalism showed a tendency toward establishing a common understanding among groups identifying as Evangelical, although this tendency was ultimately unsuccessful in forming a single church. This resulted in increasing problems with the enjoyment of religious freedom by its followers, who were dependent on centralized governance. Under this cultural influence, even today, some Evangelical groups continue to “justify” their lack of structural unity as a shortcoming, whereas it should instead be presented as a great virtue that enriches their pluralism (García Ruíz 2001:104-106). The forerunner of today's *Federación de Entidades Religiosas Evangélicas de España* (FEREDE) was the *Comisión de Defensa Evangélica* (Evangelical Defence Commission), which was founded in 1956. The purpose of this organization was to provide a degree of protection to Evangelical and Protestant groups (Smith 2024: 169-179).

From 1975 onwards, following the end of Franco's National Catholicism, the progressive secularization of the Spanish State coincided with increasing religious pluralism. This process affected not only the arrival of religious minorities through migration, but also the religious communities already present in Spain, which had enjoyed limited religious freedom. The newly converted Evangelical communities and Protestant churches, which were previously almost non-existent, were strengthened by the influx of Latin American and Eastern European citizens, as

well as by the large-scale and recent conversion to Pentecostalism of an important segment of the Spanish Roma community (Dietz 2008: 11-13; Gómez Movellán 1997: 319). This growth of Evangelical Protestantism has been linked to the expansion of the industrial zones and neighbourhoods in the main metropolitan areas and has had a great influence on marginalized sectors of Spanish society, particularly the Roma population. Even on a sociological level, the first generation of Evangelical converts who were perceived as 'different' were not Protestants from northern and central Europe, but Spanish Roma (Dietz 2008: 21).

Evangelicalism has developed significantly since the transition to democracy and experienced spectacular growth during the socialist decade (1982–1992). The profile of the Evangelical community has also changed over time, moving from its deep-rooted influence in rural areas to a presence across today's increasingly diverse demographic groups. Unlike other religious entities, Evangelicalism has also seen some independent movements within its broader community, as it is conceived not singularly as “one church” but as a group of “self-governing churches” (Rozenberg 1996: 254).

FEREDE’s Organization

The Spanish constitutional principle of cooperation with religious minorities, enshrined in Article 16.3 of the Spanish Constitution, states that:

“(…) the public authorities shall take the religious beliefs of Spanish society into account and shall consequently maintain appropriate cooperation with the Catholic Church and the other confessions “.

For the principle of cooperation to work effectively, each faith has designated an association as its interlocutor and representative vis-à-vis the State. However, a system that brings together these religious groups under a single representative organization minimizes the ability to accommodate the specific interests of individual denominations, and misunderstandings and tensions often arise between individual denominations. FEREDE comprises 20 churches and federations that conform this organization (*Anabautistas, Menonitas y Hermanos*

en Cristo en España, Asamblea Cristiana, Asambleas de Dios de España, Asambleas de Hermanos, Iglesia Española Reformada Episcopal (IERE), Federación Anglicana (Sección Española de la Diócesis en Europa), Federación de Iglesias Apostólicas y Pentecostales de España (FIAPE), Federación de Iglesias Betania. (FIBE), Federación de Iglesias de Dios de España (FIDE), Federación de Iglesias Evangélicas Independientes de España (FIEIDE), Federación de Iglesias Evangélicas Pentecostales de España (FIEPE), Iglesia Cuerpo de Cristo. Iglesia Evangélica Española (IEE), Iglesia del Evangelio Cuadrangular, Iglesia Evangélica Filadelfia, Iglesias Buenas Noticias, Iglesias de Cristo, Iglesias de la Biblia Abierta, Unión Evangélica Bautista de España (UEBE), Unión de Iglesias Cristianas Adventistas del Séptimo Día (UICASDE *)*).

Although 20 churches are affiliated with FEREDE, as García Ruíz previously observed, Evangelism in Spain can be divided into two main groups:

1. Those whose origins can be traced to the churches of the Magisterial Reformation, particularly those associated with the Anglican Church and its historical development in the nineteenth century (García Ruíz 2001:105).
2. Those more closely associated with the Radical Reformation, including Adventists, Pentecostals, the Restoration Movement, Philadelphia (Gypsy Pentecostals), Charismatics, and other groups (García Ruíz 2001:105).

According to Article 2 of FEREDE's statutes, the objectives of this organization include the legal representation of its member churches in their relations with the public administration. FEREDE also seeks to promote the effective exercise of religious freedom and non-discrimination in religious matters, and to serve as a legitimate instrument for cooperation and dialogue in pursuit of the common good, both among the members of this Federation and with other religious denominations.

FEREDE has successfully brought together several Evangelical and Protestant churches to work together to protect and promote religious freedom in the public sphere. However, these groups often claim that significant inequalities and

discriminatory practices persist compared to the majority religion, especially in relation to the provision of minority religious education. The principle of cooperation implies a positive view of religious phenomena and, in line with the principle of religious freedom, cooperation should only take place at the request of the community, as some communities may be reluctant to seek institutional support (Ferreiro Galguera 2018:102). However, this approach may contribute to the asymmetry of the system of recognition of religious minorities, potentially giving rise to future proposals for a model of governance based on "religious normalization" (*normalización religiosa*), advocating a common and equal status for all denominations within the legal framework (see *Informe anual sobre la situación de la libertad religiosa en España en relación con las Iglesias Evangélicas 2023–2024*).

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

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

- Consejería de Enseñanza Religiosa Evangélica FEREDE. 2024. Datos sobre la ERE en toda España, actualizado marzo 2024. FEREDE, available at < https://cgere.es/materiales-para-la-promocion-de-la-ensenanza-religiosa-evangelica/materiales-promocion-ere-2021/materiales-promocion-ere-2021/ > accessed 10 December 2024.
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- Smith, Calvin L. 2024. “Pentecostal Public Engagement in Spain”. In Simo Frestadius and Mark J. Cartledge (eds), *Pentecostal Public Theology: Engaged*

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