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

Balancing the Religious Connotations of Nativity Scenes and State Neutrality

Question(s) at stake:

Whether the display of a nativity scene in the entrance hall of a public school and the use of Catholic religious symbols in a school activity titled "Deck out your classroom for Christmas", constitute a violation of a teacher's rights to equality and freedom of religion.

Outcome of the ruling:

The Court dismissed the appeal concerning the request to remove the nativity scene from the entrance hall of the public high school. It concluded that neither the display of the nativity scene in the school's common areas during the Christmas season nor the voluntary activity "Deck out your classroom for Christmas" violated the fundamental rights invoked by the appellant.

Topic(s):

- Education

Keywords:

- State-funded schools
- State neutrality
- Teachers
- Participation in religious activities
- Static religious symbols

Tag(s):

- Nativity scene
- Educational ethos

- Religious freedom of teachers
- Christmas traditional symbols

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Spain

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Date:

30 October 2009

Jurisdiction / Court / Chamber:

High Court of Justice Murcia (Contentious Administration Chamber)

Remedy / Procedural stage:

Fundamental Rights Procedure

Previous stages:

No information found.

Subsequent stages:

No information found.

Branches / Areas of law:

Fundamental rights, Administrative law

Facts:

On 1 December 2008, Juan Luis, a teacher at *IES Ramón y Cajal de Murcia* (a secondary/high school), sent an e-mail to the Community of the Region of Murcia requesting the removal of the nativity scene and objecting to the Christmas decoration activity. He also requested that religious decorations and symbols not be used in the voluntary activity called "Deck out your classroom for Christmas", which aimed to decorate the school for the Christmas season. According to him, the display of the nativity scene and the Christmas decorations violated the secular nature of the public school and the non-confessional nature of the State, and constituted discrimination in favor of a particular religious group.

On 4 December, he sent another letter containing the same allegations to the Institute and the Occupational Risk Prevention Service, arguing that the display of the nativity scene in the school's entrance hall obstructed free movement and posed a safety risk in the event of an emergency evacuation. As an alternative, he suggested that the nativity scene be placed in the religious education classroom, so that Catholic students would have a place where they could exercise their freedom of religion without violating the rights of others. As for "Deck out your classroom for Christmas", he made the same alternative proposal. He sent another email to the administration regarding this but did not receive a reply, and when he returned from sick leave, he found that the nativity scene was still there, which he considered a de facto refusal of his requests.

Since his application did not receive a response within the legal time limit, administrative silence applied and, consequently, his claim was dismissed, leading to the present administrative appeal for the protection of fundamental rights before the High Court of Justice of Murcia.

Ruling:

The question raised is whether the nativity scene placed in the entrance hall of the *IES Ramón y Cajal de Murcia* (a secondary school) during the Christmas season and the activity “Deck out your classroom for Christmas” violate the right to non-discrimination (Article 14 of the Spanish Constitution), the freedom of ideology, religion, and worship (Article 16 of the Spanish Constitution), and the right to effective judicial protection in the exercise of his legitimate rights and interests (Article 24 of the Spanish Constitution) of a teacher at that school.

The appellant based his claims on four main points: 1) The placement of a nativity scene in a public space in the school constitutes an imposition on everyone, including those who do not share the religious beliefs it represents, and implies that the administration favors a particular denomination to the detriment of the other religious beliefs. 2) Since the State is non-confessional, it cannot adhere to or support any religious denomination, and the *IES Ramón y Caja Secondary School*, as a public school, cannot engage in proselytizing or any form of religious expression. 3) The activity “Deck out your classroom for Christmas” also violates the secular nature of the State and the rights of individuals who do not profess the Catholic faith. 4) The placement or display of the nativity scene in the school’s entrance hall significantly reduces the available space in the entrance area of the school by creating a bottleneck that obstructs the normal use of the entrance and exit areas for those who provide services or study there and increases risks in the event of an emergency or school evacuation.

The administration bases its defense on four arguments: 1) Both the placement of the nativity scene and the activity "Deck out your classroom for Christmas" were organized voluntarily for the students, without preventing or prohibiting any other activity that could have been organized by any of the existing religious denominations. Furthermore, these activities were organized by the competent bodies of the school and were authorized by the law. 2) It argues that this is an ordinary procedure and not a fundamental rights procedure, claiming that none of the activities violate the fundamental rights invoked. 3) It argues that Spain is not a secular State, as claimed by the appellant, but a non-confessional State, and therefore the principle of neutrality is not infringed, given the presence of the

different religious denominations in society. 4) The location of the nativity scene does not present any risk in the event of an emergency evacuation, as confirmed by the Education Inspectorate based on the report drawn up by the Occupational Risk Prevention Technician.

The Public Prosecutor's Office opposed the appeal, arguing that freedom of religion constituted a fundamental subjective right that guarantees the right of citizens to act in matters of religion without coercion by the State or any social group. Furthermore, the Public Prosecutor argued that the display of a nativity scene does not violate the rights guaranteed by Article 16 of the Spanish Constitution, since it does not imply any indoctrination into the Catholic faith by the school, nor does it constitute any declaration that the school is confessional or that it gives preference to Catholicism. According to the Public Prosecutor's Office, social reality and religious pluralism in a democratic State are limited only by the need to maintain public order. This is not affected by the display of a nativity scene at Christmas, since this is a socially accepted custom, a symbol that is as widespread across all levels of society as other symbols that have nothing to do with the Catholic religion and are also associated with this season.

The Court upheld the arguments of the public administration, arguing that, under the Constitution, Spain is not a secular state but a non-confessional one. Accordingly, the neutrality of the State and the public authorities cannot be interpreted so broadly as to limit or restrict the freedoms or rights of citizens, since this could lead to negative discrimination in violation of Article 14 of the Spanish Constitution. Consequently, the placement of a nativity scene in a school’s common area or the organization of an activity such as the one mentioned above ("Deck out your classroom for Christmas") do not contradict State neutrality in religious matters. On the contrary, they fully guarantee the freedom of ideology, religion, and worship of individuals and communities.

Moreover, the religious education curriculum for the third year of ESO (compulsory secondary education) for the relevant academic year included, among its extracurricular activities, the installation of a nativity scene at the school and visits to the monumental nativity scenes of the Murcia City Council,

the Episcopal Palace, and the Federation of Peñas Huertanas. According to the Court, it is the responsibility of schools to ensure that such activities are carried out in accordance with constitutional principles, with a guarantee of ideological neutrality and respect for the different religious and moral convictions referred to in Article 27.3 of the Spanish Constitution.

Concerning the alleged risks of the placement or display of the nativity scene, the Occupational Risk Prevention Service reported that its location did not obstruct any access or evacuation route and that the nearest door was not designated as an evacuation route from Module A. In addition, the summary brochure of the evacuation plan of *IES Ramón y Cajal* Secondary School states on page 3 that, in the event of an evacuation, the door shall be closed to facilitate evacuation through the two designated emergency routes. Accordingly, the Court concluded that the nativity scene did not pose any risk or danger in the event of an emergency or evacuation.

As regards "Deck out your classroom for Christmas", the Court held that there had been no violation of Article 14 of the Spanish Constitution, as the appellant had failed to identify a valid comparison with another religious denomination to prove that the contested measure had led to discrimination. Nor was there any violation of the right to effective judicial protection (Article 24 of the Spanish Constitution), as the appellant had access to all appropriate legal remedies and was ultimately able to bring the matter before the courts.

According to the Education Inspectorate's report, this activity was organized by the school’s Department of Extra-Curricular and Complementary Activities in collaboration with the APA (Parents' Association). Furthermore, schools enjoy autonomy to develop optional educational materials, to adapt programs to the characteristics of their local environment, adopt teaching methods, and organize cultural activities both inside and outside the school. Similarly, Article 50 of the Order of 29 June 1994 provides that complementary and extracurricular activities must be voluntary for both students and teachers, must not discriminate against any member of the educational community, and must be conducted on a non-profit basis.

Since participation in the activity was voluntary, the Court concluded that the use of religious motifs was neither imposed on nor prohibited for the appellant or any religious denomination. On the contrary, students and teachers were completely free to use the materials of their choice, provided they did not interfere with the proper conduct of classes and respected the values of coexistence in the school.

In conclusion, the Court held that neither the display of the nativity scene during the Christmas season nor the activity "Deck out your classroom for Christmas", including the use of religious symbols in public areas of the school, violated the fundamental rights invoked by the appellant.

Main quotations on cultural or religious diversity:

“El art. 16.3 C.E. expresa que ninguna confesión tendrá carácter estatal. Los poderes públicos tendrán en cuenta las creencias religiosas de la sociedad española y mantendrán las consiguientes relaciones de cooperación con la Iglesia Católica y las demás confesiones. Por lo tanto, como afirma acertadamente la Administración demandada, de acuerdo con la Constitución, no vivimos en un Estado laico, sino aconfesional. Por lo tanto la neutralidad del Estado y de las Administraciones no debe llegar al extremo de limitar o restringir las libertades o derechos de los ciudadanos, ya que podría darse en ese caso una discriminación negativa, con la consiguiente vulneración del art. 14 C.E. Otra cosa sería que el Estado o la Administración hubiera permitido la realización de determinadas actividades o manifestaciones religiosas a una confesión y a su vez hubiera prohibido las mismas u otras análogas a otras confesiones, lo cual no ha sucedido en el presente caso. Como señala el art. 18.1 de la Ley 8/1985, reguladora del Derecho a la Educación, todos los centros públicos desarrollarán sus actividades con respeto a los principios constitucionales, garantía de la neutralidad ideológica y respeto de las opciones religiosas y morales a que hace referencia el art. 27.3 de la Constitución. Para dar cumplimiento a este precepto el apartado 2 del citado artículo encomienda a la Administración Educativa competente y a los órganos de gobierno de los centros docentes la responsabilidad y obligación de velar por la efectiva realización de los fines de la actividad educativa, la mejora de la calidad de la enseñanza y el cumplimiento de lo dispuesto en el apartado

anterior de este artículo".

Article 16(3) of the Spanish Constitution states that no religion shall have State status. Public authorities shall take into account the religious beliefs of Spanish society and shall maintain appropriate cooperation with the Catholic Church and other religions. Therefore, as the defendant Administration rightly states, according to the Constitution, we do not live in a secular state, but in a non-confessional state. Therefore, the neutrality of the State and the Administrations should not go so far as to limit or restrict the freedoms or rights of citizens, as this could lead to negative discrimination, with the consequent violation of Article 14 of the Spanish Constitution. It would be another matter if the State or the Administration had allowed one denomination the performance of certain religious activities or manifestations and in turn prohibited the same or similar ones to other denominations, which has not happened in the present case. As stated in Article 18(1) of Law 8/1985, regulating the Right to Education, all public centers shall carry out their activities with respect for the constitutional principles, guarantee of ideological neutrality and respect for the religious and moral options referred to in Article 27(3) of the Constitution. In order to comply with this precept, Section 2 of the aforementioned Article entrusts the competent Educational Administration and the governing bodies of the educational centers with the responsibility of and obligation to ensure the effective realization of the aims of the educational activity, the improvement of the quality of teaching and compliance with the provisions of the previous section of this article. (Legal Reasoning no. 3, p. 3)

"En consecuencia, la colocación de un belén en un espacio común del centro educativo o realizar una actividad como la antes referida (tunea tu clase en Navidad), además de tratarse de actividades programas por el centro (y por ello difícilmente recurribles por uno de sus profesores de forma aislada sin vulnerar el art. 20 a) de la Ley Jurisdiccional), no contradice el precepto constitucional referido. Por el contrario garantiza la libertad ideológica, religiosa y de culto de los ciudadanos y las comunidades sin más limitación, en sus manifestaciones, que la necesaria para el mantenimiento del orden público protegido por la Ley y ello

teniendo en cuenta que en este caso los órganos de gobierno del centro no han impedido a miembros de la comunidad educativa la realización de actividades de carácter religioso, por el hecho de profesar una profesión distinta a la católica, lo que efectivamente podría haber supuesto una vulneración de los arts. 14 y 16 de la Constitución. Se trata de una actividad a desarrollar con la colaboración de distintos departamentos (página 10 de la Programación del Departamento de Actividades Extraescolares y Complementarias para el curso 2008/2009, según consta en la documentación obrante en el expediente). Además, en la programación docente de Religión para 3º de la ESO para dicho curso se establece entre las actividades extraescolares la instalación de un belén en el centro y la visita a belenes monumentales del Ayuntamiento de Murcia, Palacio Episcopal y Federación de Peñas Huertanas. Son los centros docentes del centro los responsables de decidir su ubicación y de que la actividad se desarrolle con respeto a los principios constitucionales, con garantía de la neutralidad ideológica y con respeto a las distintas opciones religiosas y morales a que hace referencia el art. 27. 3 C.E. Ningún inconveniente por tanto existe en que dichos órganos decidieran ubicar el belén en el vestíbulo del módulo A del centro. Es práctica habitual en todos los centros realizar actividades programadas por los distintos departamentos y profesores usando espacios comunes de acuerdo con el Reglamento de Régimen Interior y Programación General Anual de los mismos".

Consequently, placing a nativity scene in a common area of the educational center or carrying out an activity such as the one mentioned above (decorating your classroom for Christmas), in addition to being activities programmed by the center (and therefore difficult to be challenged by one of its teachers in isolation without violating Article 20(a) of the Jurisdictional Law), does not contradict the aforementioned constitutional provision. On the contrary, it guarantees the freedom of ideology, religion, and worship of citizens and communities without any limitation on their expression other than that necessary for the maintenance of public order protected by law, taking into account that, in this case, the governing bodies of the center have not prevented members of the educational community from carrying out activities of a religious nature on the grounds that

they profess a religion other than Catholicism, which could indeed have constituted a violation of Articles 14 and 16 of the Constitution. This is an activity to be carried out with the collaboration of different departments (page 10 of the Program of Extracurricular and Complementary Activities for the 2008/2009 academic year, as reflected in the documentation contained in the file). In addition, the Religious Education program for the third year of ESO for that academic year includes, among the extracurricular activities, the installation of a nativity scene at the school and a visit to the monumental nativity scenes of the Murcia City Council, the Episcopal Palace and the Federation of Peñas Huertanas. The school's teaching staff are responsible for deciding where to put it and for making sure the activity is done in line with constitutional principles, guaranteeingideological neutrality and respect for different religious and moral choices, as mentioned in Article 27(3) of the Spanish Constitution. Therefore, there is no issue with these bodies deciding to place the nativity scene in the lobby of Module A of the school.It is common practice in all schools to carry out activities planned by the different departments and teachers using common areas in accordance with the Internal Regulations and Annual General Program of the schools. (Legal reasoning 3, p. 4)

“Por último procede señalar en lo que respeta a la violación del derecho a la igualdad (art. 14 C.E .), que el recurrente no menciona ningún término válido de comparación con alguna otra confesión religiosa, para acreditar que el acto impugnado haya originado una discriminación. Tampoco puede entenderse infringido el derecho a obtener una tutela judicial efectiva (art. 24 C.E.), ya que el actor ha dispuesto de todos los recursos procedentes y finalmente ha podido acceder a la vía jurisdiccional. El hecho de que en el informe de la Inspección de Educación se proponga la apertura de un expediente disciplinario contra el recurrente, no supone que finalmente el mismo haya sido iniciado, ni que se le haya impuesto alguna sanción. Se trata de una cuestión de legalidad ordinaria ajena al objeto del presente recurso de protección de derechos fundamentales. Solamente en el caso de se haya abierto dicho expediente y de que se le haya impuesto una sanción, el actor podrá interponer contra la resolución

sancionadora los recursos administrativos y jurisdiccionales procedentes".

Finally, it should be noted that with regard to the violation of the right to equality (Article 14 of the Spanish Constitution), the appellant does not identify any valid terms of comparison with any other religious denomination to prove that the contested act gave rise to discrimination. Nor can the right to effective judicial protection (Article 24 of the Spanish Constitution) be considered to have been infringed, since the appellant has had access to all the appropriate remedies and was ultimately able to bring the matter to the courts. The fact that the Education Inspectorate's report proposes the opening of disciplinary proceedings against the appellant does not mean that such proceedings have actually been initiated or that any penalty has been imposed. This is a matter of ordinary legality that falls outside the scope of this appeal for the protection of fundamental rights. Only where such proceedings have been initiated, and a penalty is imposed may the appellant lodge the appropriate administrative and judicial appeals against the penalty decision. (Legal Reasoning no. 3, p. 8)

Main legal texts quoted in the decision:

Domestic law:

Spanish Law:

- Articles, 9, 14, 16, 20, 24, 27, 53 of the Spanish Constitution
- Articles 15, 18 Organic Law 8/1985, of 3 July, regulating the Right to Education.
- Articles 49, 50 Order of 29 June 1994 approving the instructions that regulate the organization and functioning of secondary schools.
- Articles 114, 115 Law 29/1998, of 13 July, regulating the Contentious-Administrative Jurisdiction
- Article 118 Organic Law 2/2006, of 3 May 2006, on Education
- 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:

- Sentencia num. 24/1982, de 13 de mayo. Tribunal Constitucional (Constitutional Court, Judgment no. 24/1982, 13 May 1982) ECLI:ES:TC:1982:24
- Sentencia num. 166/1996, de 28 de octubre. Tribunal Constitucional (Constitutional Court, Judgment no. 166/1996, 28 October 1996)

Commentary

Balancing the Religious Connotations of Nativity Scenes and State Neutrality

The Spanish school year is marked by Catholic traditions, with festivals such as Christmas and Easter symbolizing the end and the beginning of the school year. Around the Christmas season, schools all over Spain organize a variety of Christmas-themed activities, including classroom decorations and Christmas festivities featuring carol singing and student performances. Nativity scenes are usually presented in one of two ways: as a live performance by students depicting the birth of Jesus or as a static display (life-size or miniature) representing the Nativity. In the former case, it could be understood as the performance of a religious celebration or ritual, and in the latter, it functions as a static symbol or representation. In some cases, however, either students and their parents or teachers, object to participating in an activity that they consider to have a religious character, arguing that public education should maintain religious neutrality and should not organize activities celebrating a religious event (Rodrigo Lara and Mesenguer Velasco 2018: 59). The present case, concerning a teacher's request to remove a nativity scene from a public school, illustrates the two competing approaches to this issue: on the one hand, it highlights the existing conflict between the display of a nativity scene in common areas and the use of religious symbols in the activity "Deck out your classroom for Christmas" as an expression of freedom of religion. On the other hand, it reflects the solution proposed by the teacher, namely, to move both the activities and the nativity scene to the Religious Education classroom, where they would form part of Catholic religious instruction. This second option would also imply that the

exercise of the students' freedom of religion should be limited to those enrolled in Religious Education, thereby excluding other students and teachers from participating in these celebrations.

Secularism, State neutrality and non-confessionalism

To define the Spanish State's position on religion, it is necessary to distinguish between non-confessionalism, State neutrality, and secularism. The Spanish system can be defined as positive secularism, moving from strict neutrality toward a collaborative approach, as defined by the Constitutional Court in its judgment of 15 February 2001 (Corral Salvador 2004: 4–5). Spain is also a non-confessional State, meaning that it has no State religion. Before this ruling, both doctrine and jurisprudence used the concept of non-confessionalism to describe the state's relationship with religious communities. Non-confessionalism means that the State may not profess any religion; however, non-confessionalism does not, in itself, require the State to treat all religious beliefs in exactly the same manner formally and materially. The 2001 Constitutional Court ruling legally recognized the importance of protecting the spheres of freedom of religion and the principle of *agere licere* (the freedom to act). It prohibits forcing anyone to disclose their ideology, religion or beliefs, while recognizing that public authorities may adopt a positive approach to public manifestations of religion (Calvo Espiga 2011: 308–312; Relaño Pastor 2025: 9). Accordingly, the State provides institutional guarantees to protect and promote religious freedom, along with all the requirements and implications associated with the exercise of that right in a pluralistic society. This is because pluralism is both a guiding principle of the legal system and a constitutional principle. In Spain, the principle of secularism has two faces: one positive and one negative. The positive dimension imposes a duty on public authorities to guarantee religious freedom and manifestations of the religious phenomenon. The negative dimension limits State cooperation with religious denominations (Torres Gutiérrez 2016: 668). The Spanish approach to religion, based on this concept of positive secularity, is cooperative: while no denomination may have the status of a state religion, public authorities may cooperate with the Catholic Church and other religious denominations. Although

the Constitutional Court has defined this concept of positive secularity, secularism, or laicism, is not explicitly mentioned in the Constitution; it is only when Articles 9(2), 10, 14, 16 and 27(3) of the Constitution are considered alongside Article 1(1) that secularism can potentially be considered a guiding value of the Spanish legal system (Calvo Espiga 2011: 308–309). While an asymmetric system of cooperation exists, and the State is understood to adopt a model of positive secularism under the aforementioned provisions, Spanish society itself, where different religions coexist, is not secularist. Rather than establishing secularism as a constitutional principle, Spain has a constitutional principle of freedom in all areas. As religion remains an active social phenomenon, Spain is a pluralistic society in which the State is expected to remain neutral while cooperating with existing religious communities.

Does the nativity scene have religious connotations?

The question of whether nativity scenes have a religious connotation that justifies their prohibition or restriction is the subject of growing controversy in different countries, giving rise to different perspectives on the issue. In France, which has a specific understanding of State neutrality through the concept of *laïcité,* there is an ongoing debate both in favor of and against the religious character of nativity scenes. In two decisions, the *Conseil d'Etat* has ruled that a nativity scene forms part of Christian iconography and therefore has a religious character. However, it also considered that nativity scenes may constitute part of traditional decorations in public spaces or schools and may not have a particular religious significance when viewed alongside other Christmas symbology (Thebault 2017: 400).

Similarly, in the United States, several cases have involved challenges to the presence of nativity scenes in public schools and public institutions since it may imply a compelling government endorsement of religion. In *Lynch v. Donnelly 465 U.S. 668 (1984),* the nativity scene was sponsored by the city council to celebrate the holiday as a whole, and the majority found that the nativity scene did not create an “excessive entanglement between government and religion” (Walsh 2014: 13). In *Allegheny v. American Civil Liberties Union 492 U.S. 573 (1989)*, the Court considered the constitutionality of two holiday displays on public property

in downtown Pittsburgh, one of which was a nativity scene. The U.S. Supreme Court sought to determine whether the government was endorsing religion and concluded that religious holiday symbols are also protected by the law as long as more than one religion and a secular symbol are also represented (Walsh 2014: 23).

In addition to nativity scenes, the issue of the display of crucifixes has also been brought before the courts because of their religious nature as symbols. One of the most significant cases took place in Valladolid, where on 14 November 2008, Administrative Court No. 2 of Valladolid rejected a request for the removal of religious symbols from classrooms and common areas of the school. The court concluded that the presence of these static symbols violated the right to non-discrimination, freedom of religion, and the principle of neutrality, as enshrined in Articles 14 and 16 of the Constitution. This decision was appealed, and the case was brought before the High Court of Justice of Castile and León, which, in its judgment of 14 December 2009, partially upheld the appellants' claims. The High Court ruled that the religious symbols displayed in classrooms should not be removed where students' parents had not requested their removal. The presence of crucifixes in the common areas of the school could give the impression that the State supported one religion over others and could indirectly influence the students. This could reflect the concern about preferential treatment by the State favouring the religion associated with the symbols displayed in the school over other religions not represented by any symbols (Polo Sabau 2012: 278)

In the present case, the High Court of Justice of Murcia considered that the placement of the nativity scene or the use of Christian religious symbols did not imply that the school endorsed any religion, as other Christmas symbols were also present, and the school council had not restricted the presence of other secular or religious symbols. A further point addressed by the Court in relation to the "Deck out your classroom for Christmas" activity was that the appellant had not provided evidence of discrimination on religious grounds in comparison with other religious denominations. Therefore, the nativity scene as a long-standing tradition in a country like Spain remains controversial mainly because of its

religious character. In a way, the presence of religious elements during the Christmas season may also be understood as a way of countering the more commercial aspects associated with Christmas. Whether the nativity scene is regarded as religious or not, it conveys certain moral, historical and ethical values that may differ from the more commercial aspects associated with Christmas. As long as the truth of the events depicted in the nativity scene is not imposed on pupils or teachers, its presence in schools should not amount to indoctrination. Regardless of whether one celebrates Christmas or not, it would be difficult to argue against including a historical perspective on a religious tradition that has formed part of Spanish history for centuries.

Does the presence of a nativity scene in a public school violate the neutrality of the State?

The question of whether the presence of a nativity scene in a public school violates State neutrality should be addressed from the perspective of the Spanish State's understanding of neutrality and State-Church relations. Firstly, Spain is a non-confessional State, but not a secularist one, which means that even if no religion has State status, different religious beliefs and communities form part of Spanish society. The Spanish legal system recognizes an asymmetrical system of recognition and cooperation not just with the Catholic Church but with the different religious denominations. Therefore, State neutrality does not entail the exclusion of religion from the public sphere or public institutions; rather, it means that no religion can be identified with the identity of the Spanish State, since the State recognizes the existence of diverse religions in the Spanish society. In addition, Article 9.2 of the Spanish Constitution requires the public authorities to promote the conditions for real and effective freedom and equality of individuals and groups. Education in Spain is not entirely neutral, as it is based on an educational ethos. There are certain constitutional values, based on fundamental rights and principles of equality, that the State considers imperative to transmit to ensure harmonious education and prepare students for democratic citizenship (Relaño Pastor 2025: 9). Schools are therefore not completely neutral, nor should they be, as they operate within an educational ethos that is in line with

constitutional principles such as pluralism and participation. However, schools should maintain an objective approach to religious matters and, to some extent, remain impartial towards religious beliefs.

Impartiality in this context, particularly regarding the nativity scene, could also entail assessing whether the presence of a nativity scene amounts to endorsing Christian values over others, which would conflict with the religious impartiality expected of schools. However, the Court was clear on this point, arguing that the neutrality of the State and public administrations cannot be interpreted so broadly as to limit or restrict the freedoms or rights of citizens, as this could constitute negative discrimination. The Court further explained that the situation would be a different if the State or public administration had allowed certain religious activities or manifestations to be carried out by one denomination while prohibiting the same or similar activities by other denominations, which was not the case here. The constitutional solution to the problem of the use or display of religious symbols in schools also depends on how symbols come to represent religious. Firstly, the symbols must possess the same religious character as the beliefs they symbolize; and secondly, the constitutional limits differ where these symbols are not regarded as religious expressions but rather as manifestations of freedom of expression or the right to one's own image, as is the case with personal symbols (Aláez Corral 2003: 94).

With regard to static religious symbols, the same reasoning applies to crucifixes displayed in schools or to nativity scenes. If one of these symbols is considered religious and therefore an expression of religious belief, its legal-constitutional status is determined by the fact that it constitutes an expression of the freedom of religion guaranteed by Article 16 of the Spanish Constitution. In this regard, the Court points out that Article 16 guarantees the freedom of thought, religion and worship of individuals and communities, subject only to restrictions necessary for the maintenance of public order as protected by law. This must also be considered in light of the fact that the school's governing bodies did not prevent members of the educational community from carrying out activities of a religious nature.

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. 2003. “Símbolos Religiosos y Derechos Fundamentales en la Relación Escolar”. *Revista Española de Derecho Constitucional*, 67, 89–125.
- Belén Rodrigo, Lara and Silvia Meseguer Velasco. 2018. “*La diversidad religiosa en la escuela: orientaciones jurídicas. Madrid: Observatorio del Pluralismo Religioso en España*.
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- Corral Salvador, Carlos. 2004. “Laicidad, aconfesionalidad, separación ¿Son lo mismo?”. UNISCI Discussion Papers, *Universidad Complutense de Madrid*. 1–7
- Polo Sabau, José Ramón. 2012. Símbolos religiosos, escuela pública y neutralidad ideológica estatal: el caso del crucifijo. *Revista De Derecho Político*, 85, 273–292.
- Relaño Pastor, Eugenia. 2025. “Teaching about Religions and Education for Citizenship in Spain: A Long Confrontational Issue”. In Davide Strazzari, Rosella Bottoni and Cinzia Piciocchi (eds), *From Multiculturalism to Interculturalism: Law, Religious Teaching and Civic/Citizenship Education in Today’s Europe*. Editoriale Scientifica Napoli.
- Thebault, Deborah. 2014. “Who Ever Said that the Nativity Scene was Religious?”. *Oxford Journal of Law and Religion*, 6, 399–405.
- Torres Gutiérrez, Alejandro. 2016. “Los retos del principio de laicidad en España: Una reflexión crítica a la luz de los preceptos constitucionales”. Estudios III. Libertad religiosa, derechos humanos y laicidad, *Anuario de Derecho Eclesiástico*. 663–722
- Walsh, William T. 2014. "The War On Christmas: The Display of Christmas Decor on Public Property is Being Attacked". *Law School Student Scholarship*. 601.

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