

O wolność wyznawania religii we współczesnym świecie

Przeciwdziałanie przyczynom dyskryminacji
i pomoc prześladowanym na przykładzie chrześcijan

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Sacred places and ceremonies in Spain

A note on the *ius sacrum* in Roman Law
Desecrations and criminal protection

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1. Preface

Legal systems do not only consist of a collection of rules, being also a dynamic reality in which they change, whereas the principles that inspire them are maintained. Therefore, we jurists must prevent positivist normativism from being overcome and subjected to an order of values.¹

Article 1 of the Constitution of Spain states that: “the highest values of its legal system are liberty, justice, equality and political pluralism.”

Article 10 of the Spanish Constitution establishes the “dignity of the person” as the foundation of political order.² From the dignity of the individual emerges the principle of freedom, which is, as Recaséns asserts, the only one that can ensure an appraisive content of the law.³

Reductionism to statist positivism is therefore rejected, to the extent that the legal system is not legitimized per se, but rather shaped into an instrument for achieving the values stated by the Constitution, which translates into an axiological dimension of the law.⁴

Our Constitutional Court has always reiterated that “no constitutional right is unlimited,”⁵ as their exercise is subject to their express limits, as well as to those that protect other rights.⁶

If rights and liberties are not absolute, much less so is their exercise. The Court states that the “rules of liberty” and the “rules of limitation” are made up of and inspired by the same principles. Therefore, with regard to a conflict between rights protected by the Constitution, a judicial assessment of the specific circumstances of the case is necessary. Furthermore, the Court notes that it falls within its jurisdiction to examine the appropriacy of this assessment by the judge.

I begin with these reflections, which are in part metajudicial and juris-philosophical, because they allow us to adopt a suitable vantage point for proceeding with an examination of the facts and exegesis of the rules that constitute the object of our analysis.

[¹] In this regard, the great contributions of Santi Romano. Cf. SANTI ROMANO. L., *L'ordinamento giuridico*, Florence, 1918.

[²] Cf. FERNÁNDEZ DE BUJÁN, F., *Fundamentos Clásicos de la Democracia y la Administración*, 2^aed., Madrid, 2019, pp. 175 ff.

[³] Cf. RECASÉNS SICHES, L., *Introducción al estudio del Derecho*, México, 1981, p. 289.

[⁴] Cf. ARAGÓN REYES, M., *El juez ordinario entre legalidad y constitucionalidad*, in *Anuario de la Facultad de Derecho de la Universidad Autónoma de Madrid*, Madrid, 1997, p. 184.

[⁵] Vide STC 11/1981, 8 April 1981 (FJ 9).

[⁶] Cf. STC 181/1990, which reiterates that, according to its constant doctrine, fundamental rights are not absolute and unlimited rights.

2. A sociological approach

In Spain today, certain secularist segments of society and far-left political parties engage in belligerent demonstrations of atheism, especially against Christianity. Attacks on religions have increased progressively, according to the report on attacks on religious freedom issued by the Observatory for Religious Freedom in Spain for the eighth consecutive year.

In 2019, 66% of these attacks were against Christians (55% against Catholics), 8% against Muslims, and 3% against Jews. The rest, 23%, were against all religions, and 3445d they were attacks carried out by a militant secular movement that seeks to have any religion disappear from the public sphere.

Regarding ridicule of the Catholic religion in Spain in the current year, 2020, two particular cases took place during the month of March. The first occurred because of the radical nature of many of Catalonia's political parties, which have adopted a position in favour of not only independence but also radical secularism. The second was due to the fact that International Women's Day is celebrated on the 8th of that month, and numerous acts of profanation and offenses against Christian sentiments were committed during that period. There are a number of cases demonstrating this.

On March 8 of this year, the irresponsible feminist demonstration held in Madrid, authorized by the government representative and promoted by the political authorities that make up the nation's government—in addition to spreading the coronavirus in an extraordinary manner—represented yet another opportunity to express the rage of radicals against Christian sentiments. Furthermore, on March 7, San Martín de Sevilla Church in Seville, among others, woke to such graffiti as this: “The Virgin Mary would have an abortion too.” And graffiti on San Roque Church stated: “Naked, I upset you. Dead, no?” and “Death to the male.” On the façade of the church on Tibidabo in Barcelona, a banner declared: “Fire to the Christian morality that wants us submissive, mothers and silent.” While Sunday Mass was being celebrated at the Monastery of Sant Cugat, a group of women performed the song “El violador eres tú” (“The Rapist Is You”). A photograph carried at the demonstration on March 8 in Plasencia showed the Virgin of the Port with a vagina in front. The image was also disseminated on social media.

If considered rationally—and not with the unity of thought imposed by the media—this is surprising, since the faith that most undermines the dignity of women and the principle of human equality is, as is well known, Islam, which is not the target of violent protest by the radical feminist movement in Spain.

A seldom discussed aspect in the study of the crimes which are the subject of our analysis is the collateral effect which the classification of crimes against religion has had in all countries—in our cultural milieu—in terms of consequences. This is noted by Renart García, even without intending to:⁷ “the first punitive rules codified became the most effective tool for safeguarding our cultural legacy and the necessary counterbalance against the harmful consequences of the various processes of seizing church lands and property⁸ and the abundant legislative provisions on confiscation.”⁹

Equally categorically, Iguacen Borau asserts: “The [Spanish] Church has its own historical heritage. It is made up of a set of artistic and documentary assets and monuments which have been created over the centuries in the different Christian communities as required by worship, pastoral work and the organization of the community itself, handed down over the generations preceding us to the present day.”¹⁰

[7] On this matter, Renart García underlines: “the penal legislator ... protected, indirectly, by chance and fragmentarily, the survival of a large part of our cultural heritage.” Vide RENART GARCÍA, F., *La protección indirecta del patrimonio cultural español a través de los delitos contra la religión: una interpretación histórica de su fundamento*, in *Actualidad Penal*, n° 40, p. 1037.

[8] On this issue and the dire consequences for Spanish cultural heritage, see, among others, GONZALEZ RUIZ, M., *Vicisitudes de la propiedad eclesiástica en España durante el siglo XIX*, in *Revista española de Derecho canónico*, núm. 1, Salamanca, 1946, pp. 389 ff.

[9] Vide RENART GARCÍA, F., *La protección indirecta del patrimonio cultural español a través de los delitos contra la religión...*, op. cit., p. 1039.

[10] Vide IGUACEN BORAU, D., *El patrimonio cultural de la Iglesia al servicio del pueblo*, in *Revista española de Derecho canónico*, vol. 41, núm. 119, Salamanca, 1985, p. 485.

3. Overview of *ius sacrum* and legal protection of *res religiosae* in Rome

I believe it to be of interest when beginning our discussion of the Roman world to start with a brief introduction to Latin, both etymological and semantic.

According to the *Dictionnaire étymologique de la langue latine*,¹¹ the expression *religio* has two different meanings. The first is believed to derive from *religare*, with the meaning of “uniting” man with divinity. This is how it is used by, among others, Lactantius¹² and Maurus Servius Honoratus,¹³ and in Christian scholasticism, by Augustine of Hippo.¹⁴ The second sense may be argued as deriving from *relegere*, with the meaning of “repeating.” This is the meaning adopted by Cicero in *De Natura Deorum*,¹⁵ although it must refer to the noun *religio* and not the adjective *religiosus*.

Furthermore, in the treatise *De Legibus*, Cicero presents sacred law, *leges religione*, as part of the *ius* and recounts different violations of its prescriptions such as the violation of traditional beliefs and of sacred objects.¹⁶ Varro asserts the same.¹⁷

The religious origin of not only the word *fas* but also the term *ius* may be explained in their true formation as probably deriving from the patronymic *Ipiter-Iovis*. This would likewise result in its concatenation with the idea of *iurare*, from the oath as a sacred symbolic act.¹⁸

A. Fernández de Buján states that: “In the early period of the Roman political community, as occurred with the other Mediterranean peoples of the time, there arose a marked interrelationship between rules of law, religious precepts, moral values, and habits and customs.”¹⁹ And he adds that: “*Fas* and *Ius* are terms used in the oldest sources of which we have evidence. The debate about the etymology of these words is not a peaceful one, although their original religious significance seems likely.”²⁰

Some authors believe that in their origins, *ius* and *fas* are identified as referring to lawful conduct. Thus, the texts use *ius est* or *fas est*, as well as their opposites *ius non est* and *fas non est*, to refer to unlawful actions.

However, in the opinion of A. Fernández de Buján,

not even in the early period would there have been such a degree of identification. It seems likely that ... *fas* would have included within it *ius*, but ... different content, given that it would correspond to interpersonal relationships, and it would be the violation of its provisions that would constitute an *iniuria* (acting against the *ius*, *in-ius*) ... the interpretation and application of the *ius* would be the responsibility of the pontifices, and the religious idea would inform the structure and effects of major legal institutions, the violation of which would constitute ... acting against the *ius* (*ius non est*, *iniuria*) but also against the *fas* (*fas non est*).²¹

Presas Barrosa highlights: “In the case of Spain ... it is unanimously acknowledged that 80 percent of Spanish artistic heritage—or perhaps more?—has ecclesiastical roots.” Vide PRESAS BARROSA, *Alternativas legales a una cuestión patrimonial: los bienes artísticos de la Iglesia española*, in *Anuario de Derecho Eclesiástico del Estado*, vol. I, Madrid, 1985, p. 20. And Fernández Albor states that “the importance of Church assets within artistic heritage is clear, and for this reason, it is not necessary to justify the special attention which they must be given.” Vide FERNÁNDEZ ALBOR, *El patrimonio artístico y su protección penal*, in *Estudios Penales, Libro homenaje al Prof. J. Antón Onea*, Salamanca, 1982, p. 713.

[11] Cf. Meillet, A. & Ernout, A., *Dictionnaire étymologique de la langue latine*, Paris 2001.

[12] Cf. *Divin. Institut.* IV, 28.

[13] Cf. Maurus Servius Honoratus, *Religio, id est metus ab eo quod montem religet, dicta religio*. Ad. Aeneid 8, 349.

[14] Cf. Augustine, *Retract.* 1, 13.

[15] Cf. Cic., *De Natura Deorum* II, 28, 72.

[16] Cf. Cic., *De Leg.* II. 18–22.

[17] Cf. M. Terentius Varro, *Antiquitates rerum divinarum*, quoted by Augustine of Hippo. Cf. St. Augustine in *Civ. Dei* 7, 35.

[18] Vide, among others, ORESTANO, R., *Elemento divino ed elemento umano nel diritto romano*, in *Rivista Internazionale di filosofia del diritto*, 21, 1941, pp. 124 ff.

[19] Vide FERNÁNDEZ DE BUJÁN, A., *Conceptos y dicotomías del ius*, in *Estudios de Derecho romano en memoria de Benito M^a Reimundo Yanes* Vol. 1, Madrid, 2000, p. 247.

[20] Idem.

[21] Ibidem. p. 249.

A text which confirms, centuries later, the conception which Rome had of the dichotomy between sacred law and human law is by Spain's greatest learned man and encyclopedist of the Visigothic era, a giant of knowledge like no other of his time, Isidore of Seville,²² who asserts: "*Fas lex divina est, ius lex humana est.*"²³

The *ius humanum–ius divinum* dichotomy was formulated subsequently, and it must be situated at a time in which the degree of differentiation between the secular and the religious was at a more advanced stage.

In the fragment that opens Justinian's *Digest*, a text taken from the *Institutes* of Ulpian, the *ius sacrum* is incorporated into public law, being highlighted as its first content. It is expressed thus:

Publicum ius est quod ad statum rei Romanae spectat, privatum quod ad singulorum utilitatem: sunt enim quaedam publice utilia, quaedam privatim. Publicum ius in sacris, in sacerdotibus, in magistratibus constituit. Privatum ius tripartitum est: collectum etenim est ex naturalibus praeceptis aut gentium aut civilibus.²⁴

Despite this placement, in all Rome's historical periods, through different sources of knowledge about the law—corresponding to the different sources of production—religious questions and their protection have had quite considerable recognition and protection in both individual life and in society, and therefore, likewise in aspects of both public and private law.

In the *Institutes* of Justinian, the category of *ius divinum* is transformed into *ius naturale*:

Sed naturalia quidem iura, quae apud omnes gentes peraeque servantur, divina quadam providentia constituta, semper firma atque immutabilia permanent: ea vero quae ipsa sibi quaeque civitas constituit, saepe mutari solent vel tacito consensu populi vel alia postea lege lata.²⁵

In Justinian's *Corpus Iuris Civilis*, the references to *ius sacrum* and the protection of religious beliefs are a constant throughout all four parts—*Code*, *Institutes*, *Digest* and *Novels*—although it is possible to identify a difference depending on the stage at which the imperial constitutions were enacted²⁶ or the *responsa* of the jurists were issued.

It is possible to detect in the content of the *Novelae* of Justinian the shift to a new political stage in which there is an interweaving of Christianity, as the official religion, and the imperial power taken on by a Cesarean/papist system, in which there is no clear distinction between temporal and spiritual power.

In Rome, the relationship between the divine and the earthly has characteristics of a specific concatenation. Thus, we find in the following passage from Ulpian contained in the *Digest*:

Iuris prudentia est divinarum atque humanarum rerum notitia, iusti atque iniusti scientia.²⁷

Novkirishka declares that: "By placing questions of religion in first place in the systematization in D.1.1.1.2, the compilers show themselves to be in complete synchrony with the Code of Justinian, in which the first 13 titles are devoted to faith, followed by titles on the magistrates and their functions. The unity of public and private law ... is expressed in the logical ordering of the titles and the books in

[22] Cf., FERNÁNDEZ DE BUJÁN, F., *Il potere politico nel pensiero di Isidoro di Siviglia*", in *Ravenna Capitale. Uno sguardo ad Occidente. Romani e Goti – Isidoro di Siviglia*, Santarcangelo di Romagna, 2012, pp.1–26.

[23] Cf. *Orig.* 5,2,2.

[24] Vide D.1.1.1,2 (*Ulpianus libro primo institutionum*).

[25] Vide *Inst.* 1,2,11.

[26] Vide particularly, the first book of the Justinian Code, whose antecedent is found in the Theodosian Code, Book XVI.

[27] Vide D. 1,1,10,2 (*Ulpianus libro secundo regularum*).

both the *Code* and the *Digest* and *Institutes* ... Although the Ulpian text does not speak of *res divina*, in other passages, both legal and philosophical, ... the term *ius divinum* is used.”²⁸

A particular case of profanation of a religious object, in the ancient world in general and in Roman society and law in particular, is the classification of violation or profanation of a tomb or sepulchre as a crime, as they are considered to be *res religiosae* and the place of burial itself to be a true *locus religiosus*.

In Roman law, there existed a type of “public interest suit presented by the praetor for wilfully violating, building over or inhabiting a tomb.” This was known as an *actio de sepulchro violato*.

Despite this penalty, as Del Hoyo notes and demonstrates: “it does not prevent the not at all exceptional practice of tomb violation, theft of valuables or mere profanation in ancient Roman society. Proof of this is the large number of epitaphs found in different parts of the empire in which can be read pleas to not carry out the profanation, warnings about the evil which may come to transgressors, and even the desire for revenge against offenders.”²⁹

4. The constitutional order

An express historical reference to freedom of worship is contained in the Book of Exodus (9,1), where the Lord says to the Pharaoh of Egypt: “Let my people go, so that they may worship me.”

A well-known and important judgment of the European Court of Human Rights in 1994 declares that “freedom of thought, conscience and religion represents one of the foundations of a ‘democratic society.’” The Court itself, referring in particular to religious freedom, emphasizes that it is “one of the most vital elements that go to make up the identity of believers and their conception of life.”

To this jurisprudential reflection, we must add that this fundamental triad of freedom derives from human dignity and the condition of the human being as a naturally religious being.³⁰ This triad is the premise and the framework on which all other freedoms rest.

In this regard, Morales asserts: “The religious dimension is a constituent part of the human being, who tends by nature to recognize and worship God. The deepest sense of human dignity lies precisely in its tendency toward communion with the Divine Being.”³¹

In Spain, protection of the right to ideological and religious freedom is recognized in Article 16 of the Constitution, immediately after the right to life mentioned in Article 15.

Article 16 states that: “Freedom of ... religion and worship of individuals and communities is guaranteed, with no other restriction on their expression than may be necessary to maintain public order as protected by law,” and that: “The public authorities shall take the religious beliefs of Spanish society into account.”

This non-denominational state means that public authorities must ensure that citizens can practice a particular religion and prevent anyone from being forced to practice a religion.³²

Rodríguez Blanco states: “In classifications of fundamental rights, religious freedom is generally included in the set of rights to freedom that protect a sphere of individual autonomy in dealings with

[²⁸] Vide NOVIRISHKA, M., *Algunas reflexiones sobre el tema de ius sacrum como elemento de la definición del derecho público por Ulpiano*, in Anuario Facultad de Derecho de la Universidad de Alcalá, IX (2016), p. 265.

[²⁹] Vide DEL HOYO, J., *El mundo de los difuntos: culto, cofradías y tradiciones*, San Lorenzo del Escorial, 2014, p. 810 nt. 6.

[³⁰] Augustine of Hippo asserts: “Man is, by nature and by vocation, a religious being. Because it comes from God and walks towards Him; man lives a fully human life only if he freely lives his relationship with God. Man is made to live in communion with God, in which he finds his happiness: ‘When I am entirely in You, there will never be pain and trial; full of You entirely, my life will be true.’” Vide AUGUSTINE OF HIPPO, *Confessiones*, 10,28,39. And in a similar sense, Thomas Aquinas highlights: “If, then, the human intellect, knowing the essence of a created effect, only knows that God exists, its perfection did not reach the first cause either. And thus, it will have its perfection through union with God as the object in which only the beatitude of man consists.” Vide THOMAS AQUINAS, *Summa Theologiae* I-II Q. 3, A. 8, REP, 1980.

[³¹] Vide MORALES, J., *Teología de las religiones*, Madrid, 2001, pp. 39–40.

[³²] Cf. COELLO DE PORTUGAL, J. M., *La libertad religiosa de los antiguos y la libertad religiosa de los modernos*, in Revista de Derecho UNED, núm. 7, Madrid, 2010, pp. 170 ff.

public authorities. In this regard, it covers immunity from personal coercion.”³³ And he adds that “the right to religious freedom not only protects a space of individual self-determination in dealings with public authorities or third parties, but it also consists of a dimension of *agere licere*, according to which a person is entitled to manifest their beliefs, to maintain their beliefs in dealings with others, and to behave, in public and in private, according to them.”³⁴

Article 16 was implemented by a 1980 organic law that gives protection to any religion registered in the Register of Religious Entities maintained by the Directorate-General of Religious Affairs, part of the Ministry of Justice. Such registration entails the legal recognition granted to the creeds whose religious communities are protected in the collective exercise of religious freedom.

The principle of respect for the rights of others is the foundation of the legal system and social peace, and it includes religious worship. In this regard, paragraph 1 of Article 3 of the Religious Freedom Act stipulates:

The only limit on the exercise of rights arising from freedom of religion and worship is the protection of the right of others to exercise their public freedoms and fundamental rights, as well as safeguarding public safety, health and morals, elements which constitute the public order protected by the Law within the sphere of a democratic society.

Since it is also a collective right, it may be exercised the popular prosecution and criminal proceedings may be initiated. Furthermore, the public authority must guarantee citizens a protected space to exercise their right to divine worship.

Desecrating a temple has always been intolerable behaviour worthy of reproach. Acts that mock what some citizens consider sacred by invoking the exercise of freedom of expression cannot be tolerated.

It is Valmaña’s understanding that the penal protection of “freedom of conscience and religious sentiment” contained in the Spanish Penal Code derives from the sociological fact regarding the debate between majority creeds, and it also entails specifying the process of change that runs from a confessional conception, such as that which previously existed, to a secular concept of the same.³⁵

5. Comparison between freedom of expression and protection of religious feeling

The issue at hand concerns the possible application of the grounds for justifying the exercise of the right to freedom of expression (Article 20, paragraph 7 of the Spanish Criminal Code, in addition to Article 20 of the Constitution) with regard to the offenses that are explained here.

López Castillo highlights:

Religious freedom has been a breeding ground which with the passing of the seasons ... has germinated and offered its semantic fruits at the expense of being ... worked out in a slow process of complex and diverse dogmatic product which, occasionally, has shifted from this nutritive image of religious freedom understood as a seed to its immersion, or rather dilution, as part of a comprehensive freedom which ... could be both a generic freedom of thought, in the French style, as much as a variant of a certain drive and predicament in Spanish ecclesiastical doctrine, ideological freedom and/or freedom of conscience.³⁶

[³³] Vide RODRÍGUEZ BLANCO, M., *Derecho y Religión. Nociones de Derecho eclesiástico del Estado*. Pamplona, 2013, p. 75.

[³⁴] Idem.

[³⁵] Cf. VALMAÑA OCHAÍTA, S., *Los delitos contra la libertad de conciencia y los sentimientos religiosos*, in *Estudios en Homenaje a Enrique Gimbernat*, Tomo II, Madrid, 2008, p. 2289.

[³⁶] Vide LÓPEZ CASTILLO, A., *Acerca del derecho de libertad religiosa*, in *Revista Española de Derecho Constitucional* Año 19, Núm. 56, Mayo-Agosto 1999, pp.76–77.

Due to the broad scope of the rights to freedom of information and expression included in Article 20 of the Constitution, actions or demonstrations of mere historical, political or literary criticism are not considered derision of a criminal type. The derision must be seriously offensive in its extent, persistence or way of being presented. In this regard, in my opinion, there is an impunity that should not be allowed in the comments so often posted on social networks such as Facebook, Twitter and YouTube, for they are not only offensive but manifestly rude.

In recent years, there has been a debate in some areas of public opinion and in some studies of constitutional and criminal doctrine on the question of whether grounds for justifying the exercise of the right to freedom of expression could apply to behaviour that is derisive of religious sentiments.

If such an argument were accepted, the typical misconduct of derision would be entirely lawful, no criminal penalty could be levied, and no civil liability would derive from an act of profanation. The derision would be entirely lawful.

The relevant legal regulation would be Article 20, paragraph 7 of the Criminal Code, which establishes that: "The following persons shall not be criminally accountable: ... Any person who acts in carrying out a duty or in the lawful exercise of a right, authority or office," as well as Article 20 of the Constitution, which recognizes "the right to freely express and disseminate thoughts, ideas and opinions."

Can this justification be applied to these cases? Those who advocate this idea do so in the consideration that the exercise of freedom of expression has priority over the protection of religious sentiments.

In contrast, our courts made no mistakes in this regard. In a recent and much-debated judgment of the Provincial Court of Madrid in February of this year, two 'Femen' activists were convicted of the crime of desecration, having climbed shirtless onto the base of the cross of Almudena Cathedral in Madrid and chained themselves to the bars, shouting expressions also written on their torsos. Although invoked by the defence, the Court did not accept the exercise of the right to freedom of expression as justifying grounds.

In this context, there is the case of a judgment of the Provincial Court of Valladolid which involved a public statement of opinion. The court acquitted a person who had demonstrated in a sacrilegious way against the Blessed Virgin and Her Divine Son during a procession.

For a better understanding, it seems appropriate to give some information regarding processions in Spain during Holy Week. These take place in thousands of Spanish cities, albeit with varying intensity, piety and artistic beauty. Despite the many differences, they are always a manifestation of people's faith that takes place in the streets, passing through the centres of cities and bringing together millions of people, who take part with much more respect than in any other religious celebration.

Holy Week in Spain is a phenomenon of great historical tradition. The oldest celebrations date back to the 13th century and consist of a collection of religious and artistic expressions. They currently involve large numbers of participants. Thus, some confraternities have up to 10,000 penitents who, like the Capuchins, accompany the *pasos*—as the floats are called—on which the images of the crucified Christ and the Virgin of Sorrows are transported.

There are two categories of Holy Week celebrations: those in Andalusia and those in Castile. In the first, Seville, Malaga and Cordoba are particularly noteworthy, and in the second, Zamora, Valladolid and Cuenca. Andalusians have more richly ornamented floats, more people, and they are even louder. These processions generally last from 10 to 14 hours. Castilian floats have even more splendid staging, since many of the 'sculptures' on parade are precious works of art by the most famous sculptors of the Spanish baroque style.

In both, the image of the Virgin is always protected by a covering or pallium, whereas that of Christ is not protected. A foreign visitor, observing this dual reality, being both ironic and sincere, said in some amazement: "You must see this city ... they keep the Virgin under a canopy and leave Christ outdoors." It is our understanding that the Lord does not get angry seeing the love and care with which

we treat his Mother. This was understood by the beloved Pope John Paul II, when he came to our country for the first time—he visited six times—and declared with great joy: “Spain, Land of Mary.”

Let us go back to the event that happened during Holy Week in Valladolid, which had a particular impact in the legal and social sphere in relation to the limits of freedom of expression with regard to the protection of religious sentiments. When the float carrying a *pietà* passed by, someone held up a banner that read “Adulteress with her bastard.”

The Court, beyond all logic, acquitted the accused, having considered that this conduct was not intended to harm any religious sentiments, but “to express a dissenting opinion.”³⁷ In my opinion, this breadth of freedom of expression is absolutely unreasonable.

The sentence seriously affected the feelings of the vast majority of the inhabitants of the city, who, regardless of whether or not they were believers, experience both the thunderous silences and the extreme respect towards their processions.

In order to adequately resolve this difficult dilemma, we must declare that the right to freedom of expression, like all rights, is not absolute in nature, nor does it have “automatic” priority. To apply these grounds for justification, it is necessary to verify and demonstrate the specific acts that make up the specific profanation or derision, their material content, the degree of intentionality, their seriousness, the recurring circumstances in each specific case, etc.³⁸

The European Court of Human Rights (ECHR) made its first pronouncement on the limitation of freedom of expression in relation to protection of religious sentiment in 1982.³⁹ Since then, rulings along the same lines have not been the exception. Thus, among others, the 2005 ECHR Judgment states: “The Court reiterates the fundamental principles underlying its judgments relating to ... freedom of expression [which] constitutes one of the essential foundations of a democratic society ... [although] the exercise of that freedom carries with it duties and responsibilities. Among them, in the context of religious beliefs ... it may be considered necessary to punish improper attacks on objects of religious veneration.”⁴⁰

In conclusion, it is primarily a question of ascertaining how religious feelings have been offended and, subsequently, of evaluating the material content of the offender’s expressions in which they asserted that they were exercising their right to freedom of expression. Only based on a prudent assessment of the acts carried out with regard to the aforementioned right can it be decided whether it is invocable or not.

A social debate has been sparked, with militant atheistic positions, about the possibility of abolishing the crime of derision by placing it in contrast to the freedom of expression. However, due to the situation of serious political instability, no motion incorporating this initiative has yet been put forward in Parliament by any political party.

6. The context of criminal law

6.1. General premises

Penal protection of religious freedom has remote origins dating back to the times in which a certain creed was declared to be the official religion of the State.

[³⁷] Vide SAPV 367/2005.

[³⁸] On this subject, the Provincial Court of Madrid highlights the two principles which may find themselves in conflict and that it will be necessary to decide, case by case, for which of the two to opt: “Article 16.1 ... and on the other side of the scales the right to freedom of expression ... established in Article 20.1, pursuant to which a person has the right to not share and to disagree with the religious beliefs which others may have.” Vide SAPM 809/2011, 29 July 2011.

[³⁹] Cf. STEDH 25 November 1982.

[⁴⁰] Vide STEDH 13 September 2005 and STEDH 17 July 2018, among others.

In the 19th century, this situation—which was very widespread—was gradually abandoned in various European countries. As a result, the penal protection currently under discussion was questioned in some of these.

Later, in the immediate post-war years—from postulates who locate their origins in the thinking of Augustine of Hippo, of medieval scholasticism, as well as in St. Thomas—there was a return to protection of and respect for the dignity of human beings as a foundation of legal order and social peace, particularly due to the influence of the Christian Democratic Union of Germany in the Basic Law of Bonn.

In the 1970s, the presence of religion in public life experienced an inexorable decline, and penal protection of religious sentiment began to decline in many European legal systems and in court rulings, leading freedom of expression to clearly predominate. It is obvious, by overwhelming logic, that due to its private nature, an offense against religious sentiment is one of the most serious attacks which can be committed against a peaceful society, in that it tramples on the respect for the right of others by transgressing religious beliefs. It cannot be tolerated that acts should be carried out in a church which mock the representation and/or celebrations which are considered sacred by the faithful of a certain religious creed recognized by the State.

The right to religious freedom may manifest itself as an internal and an external facet. It is thus considered in accordance with the stipulations of international declarations of human rights. In this regard, Article 18 of the Universal Declaration of Human Rights states that:

Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance.⁴¹

For its part, along the same lines of protection, Article 9 of the European Convention on Human Rights protects, in its own words: “Freedom of thought, conscience and religion.”⁴² It states:

1. Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief and freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance.
2. Freedom to manifest one's religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others.⁴³

Since the enactment of the Constitution of 1978 in Spain, there has been a shift from penal protection for the Catholic religion, as the official religion of a clearly confessional state, to penal protection for religious beliefs in which there is room for a number of creeds, which coincides with those recognized as such by the State itself.⁴⁴

On this subject, Rossell Granados states:

[41] Declaration proclaimed by the United Nations General Assembly in Paris on December 10, 1948 (Resolution 217, A, III). It is intended as a prescribed benchmark for all peoples and all nations on the planet.

[42] It should be underlined that the recipient of this triple right to “ideological and religious freedom and freedom of worship” is not only the individual but also the communities recognized by law of which they may form part or be included in.

[43] The heading of Article 9 was added according to the provisions of Article 2.2 of Protocol No. 11 of the *Convention for the Protection of Human Rights and Fundamental Freedoms*, Rome, November 1950.

[44] For the purposes of analyzing this momentous step with regard to the penal sphere, to offer an example—not intended to be exhaustive—I would highlight three studies prior to the constitutional moment: LANDROVE DÍAZ, G., *La libertad religiosa y la reforma de 1971*, in *Anuario de Derecho penal y Ciencias penales*, 1972; CALVO ESPIGA, A., *El posible/imposible delito de blasfemia en una sociedad democrática*, in *Scriptorium victoriense*, 1989; GIMBERNAT, E., *La reforma del Código penal de Noviembre de 1971*, in *Estudios de Derecho penal*, 3.a Madrid, 1990.

In Spain, which has traditionally been a confessional country, there has been an evolution from a position in which the State only protected the Catholic religion to the current situation in which the object of protection will be freedom of conscience and individual worship.⁴⁵

Commenting on this observation, it is the understanding of Cámara Arroyo that:

This will have particular repercussions in the penal sphere, as the legal right to be protected will not be religion itself, nor will any religious confession be privileged, but the object of penal protection will be religious freedom itself and the religious sentiment of citizens deriving from it, protected by the Organic Law on Religious Freedom,⁴⁶ which encompasses all religions.⁴⁷

Despite this change in orientation and approach, it should be pointed out that what is known as the Belloch Code, which was passed in the last legislature of the socialist government of Felipe González, maintained penal protection for religious sentiment that did not differ largely from its previous criminal regulation.⁴⁸

Thus, Morillas noted that the Penal Code

maintained a system of protection very similar to the preceding one, which led several authors to highlight that certain articles were not appropriate to constitutional principles ... it has been said that the aforementioned reform ... entailed an insufficient amendment that did not tackle the problem directly, simply reducing it to a formal adaptation to the constitutional text.⁴⁹

In jurisprudence, there has been some debate about the advisability of establishing specific offenses in the articles of the Penal Code for the behaviours that constitute the object of our analysis.

Some authors believe that classifying them as a crime grants preferential or special treatment to the religious fact. Therefore, it is their understanding that any offense against the same could have been reduced to the generic offense established for the crime of coercion and/or threats.⁵⁰ By contrast, another segment of jurisprudence has considered that the wrong which makes the aforementioned wrong criminal is the individual premeditation which must exist in the perpetrator of the criminal conduct, which consists of offending religious sentiment in a specific way.⁵¹

The rubric which the codifier has established to refer to Section 2 of Title XXI “Crimes against freedom of conscience, religious sentiment and respect for the dead” has been the subject of criticism or defence in penal and constitutional jurisprudence.⁵²

It is also asserted that the rubric is not correct in identifying the legal rights protected. It is understood that “freedom of conscience” cannot be the object of penal protection. And Morillas Cueva states: “It is clear that this is a matter whose regulation is heavily determined by the principles and values which the expositor must necessarily start from, whether they like it or not, whether they recognize it

[45] Vide ROSSELL GRANADOS, J., *Religión y jurisprudencia penal*, Madrid, 1996, p. 21.

[46] Cf. Act 5, of 5 July 1980, published in the BOE (Official State Gazette) of July 24, 1980.

[47] Vide CÁMARA ARROYO, S., *Consideraciones críticas sobre la tutela penal de la libertad religiosa y los delitos contra la libertad de conciencia, los sentimientos religiosos y el respeto a los difuntos*, in *Anuario de Derecho penal*, Madrid, 2016, p. 125.

[48] Cf. VILA MAYO, E., *Los delitos contra la religión en el Derecho penal español*, in *Estudios Jurídicos en honor del Prof. Octavio Pérez Vitoria*, Barcelona, 1983, pp. 1083 ff.

[49] Vide MORILLAS CUEVA, L., *Los delitos contra la libertad de conciencia y de culto*, in *Documentación Jurídica*, Vol. II, 1983, p. 1349.

[50] Cf. TAMARIT SUMALLA, J. M., *La libertad ideológica en el Derecho penal*, Barcelona, 1989, p. 235.

[51] Vide ROSSELL GRANADOS, J., *Religión y jurisprudencia penal*, op. cit., p. 21.

[52] Fernández-Coronado points out: “Ideological freedom and religious freedom are not two species from the same genus ... but rather, one is a subspecies of the other. Religious freedom is a subspecies of ideological freedom ...” Vide FERNÁNDEZ-CORONADO, A., *Libertad de conciencia*, in *Enciclopedia Jurídica Civitas*, Madrid, 1995, pp. 4022 ff. And Llamazares Fernández reiterates: “ideological freedom and religious freedom, expressions of freedom of conscience.” Vide LLAMAZARES FERNÁNDEZ, *Derecho de la libertad de conciencia*, Madrid, 1992, p. 18.

or not. In this regard, the priority for protection may be inspired by the die-hard defence of freedom of expression—almost, or not even almost, unlimited—and the principle of minimal intervention of the State in religious matters, based on a secularity that does not attack but does not protect what it deems to belong to people's private sphere.”⁵³

Thus, it is held that articles 522 and 523 protect freedom of religion and worship; Article 524 protects religious sentiment; Article 525 defends religious sentiment and beliefs; and lastly, 526 covers respect for the dead.⁵⁴

In the opinion of Cámara Arroyo:

Religious freedom, as a fundamental right, may be considered a multifaceted legal right. For this reason, it is very likely that each one of the offenses included in the Penal Code protects, in reality, one of the guarantees deriving from the individual right to religious freedom.⁵⁵

The Spanish Constitutional Court has repeatedly recognized the defence and protection of expressions related to freedom of worship and religious sentiment.

In this regard, Pérez-Madrid notes that: “we cannot confuse speaking of plurality of legal rights with the diversification which usually occurs with religious freedom when it is accepted as a protected legal right.”⁵⁶ Additionally, Valmaña points out that penal protection for freedom of conscience and religious sentiment appears to be linked to two principles of sociological and legal interest: the first centres on the social debate among majority religions, whereas the second is positioned at the transition from the confessional response to these crimes to a secular conception of the same.⁵⁷

This position in defence of religious freedom appears in numerous rulings by the Spanish Constitutional Court,⁵⁸ although the position has lost strength in the case law in recent years.

Religious freedom demands a positive attitude with regard to individual as well as group exercise of the same, in both worship celebrations and any societal manifestations that may be organized. On this matter, Rodríguez Blanco underlines that: “The Constitution considers groups of a religious nature to be true holders of the fundamental right, without allowing them to be reduced to a mere aggregation of individuals without legal privileges, or a simple channel of expression for individual religious beliefs.”⁵⁹

Spain's current government has put forward an initiative, still in the planning stages, which seeks to abolish the criminality of what is known as an “offense against religious sentiment in a holy place.”

6.2. Article 523, Penal Code

Numerous doctrinal studies have been published on the exegesis of this precept. For obvious reasons of space, we are unable to analyse or even state the positions, so often controversial, which have been formulated in these.⁶⁰ We will therefore limit ourselves to presenting some which have been deemed important.

[⁵³] Vide Morillas Cueva, L., *Los delitos contra la libertad de conciencia y de culto*, op. cit., p. 1351.

[⁵⁴] Cf. RAMOS VÁZQUEZ, J. A., *Delitos contra la Constitución: aspectos destacados del título XXI del Código Penal de 1995*, in Anuario da Facultade de Dereito da Universidade da Coruña, 2006, p. 905.

[⁵⁵] Vide CÁMARA ARROYO, S., *Consideraciones críticas sobre la tutela penal de la libertad religiosa...*, op. cit., p. 134.

[⁵⁶] Vide Pérez-Madrid, F., *La tutela penal del factor religioso en el derecho español*, Pamplona, 1995, p. 168.

[⁵⁷] Vide VALMAÑA OCHAÍTA, S., *Los delitos contra la libertad de conciencia y los sentimientos religiosos*, op. cit., p. 2289.

[⁵⁸] Cf. STC 24/1982, 19/1985 and 17/1990, among others.

[⁵⁹] Vide RODRÍGUEZ BLANCO, M., *Derecho y Religión...*, op. cit., p. 78.

[⁶⁰] Vide MARTÍN SÁNCHEZ, I., *El derecho a la formación de la conciencia y su tutela penal*, Valencia, 2000, p. 259; regarding the precedents for the article in the 1983 reform, de Otaduy, J., *La tutela penal de la libertad religiosa*, in *Tratado de Derecho Eclesiástico*, Pamplona 1994, p. 528; PÉREZ-MADRID, F., *La tutela penal...*, op. cit., p. 207; GOTI ORDEÑANA, J., *Protección penal de los derechos de libertad religiosa y de los sentimientos religiosos*, in *Derecho y opinión*, no. 6, 1998, p. 277; see LIÑÁN GARCÍA, A., *La*

In the opinion of Morillas Cueva, the object of penal protection for this precept must be defined as follows: “Act is the public or formal event as formulation and expression of religious confession. Function, formal religious act, especially held in a church. Ceremony, external act regulated by law, statutes or custom to pay worship to religious formulas. Manifestation, collective expression to reveal desires, feelings.”⁶¹

For the purposes of jurisprudential determination of this offense, the legal basis contained in an important judgment of the Provincial Court of the Balearic Islands is of great interest. The Court states that: “This offense does not require a special subjective intent ... that intent did in fact exist in the accused as in the interests of their propagandistic aim, they knowingly curtailed the right of the attendees to the practice of the act of religious worship. The Defence highlights that the act formed part of a multiple act of protest against what they consider interference of the Church in political matters by supporting the reform of the Abortion Act, and that it was a question of raising awareness of that support and their protest. This Court has no doubt that this was the case. However, that ultimate reason or motivation behind their action does not eliminate the reality that they knew that they were violating the freedom to celebrate mass without incident by a group of believers, and with that their right to religious freedom was violated, and in addition to knowing this, they wanted it.”⁶²

In the opinion of Valmaña Ochaíta, the religious fact must have aggravated penal consideration, with regard to conduct that attacks the exercise of their freedoms in comparison with conduct which goes against the public order in general terms.⁶³

The statutory offense in this precept defends freedom of worship, as one of the main manifestations of the institutions that represent the different religious creeds.

The doctrine has given rise to the debate around whether all religious creeds and confessions which may exist and have acts of celebration and worship of their religion are protected actors, or if the only ones protected are those liturgical or worship ceremonies of the confessions which have requested and been granted registration in the Register of Religious Entities operating in our country at the Ministry of Justice, through the responsible government body.⁶⁴

The majority of the doctrinal sector leans toward understanding that the offense described protects only registered religious confessions. Therefore, religious confessions that are not registered, either because they have not so requested or because they have been denied, would have penal protection, but not that classified as this crime. As a result, their defence of the freedom of worship they practice will have to be redirected to the circumstances, of a general nature, which affect protection of the public order. A minority of authors consider that the crime should be extended to all religious confessions, whether registered or not.⁶⁵

The unfairness of this crime incorporates two different types of conduct, both related to a collective dimension of religious freedom.⁶⁶

protección del factor religioso en el nuevo Código Penal español (ley orgánica 10/1995, de 23 de noviembre), in *Revista española de Derecho canónico*, no. 58, 2001, p. 826; VALMAÑA OCHAÍTA, S., *Los delitos contra la libertad de conciencia...*, op. cit., p. 2299.

[61] Vide MORILLAS CUEVA, L., *Delitos contra la Constitución (VI): Delitos contra la libertad de conciencia, los sentimientos religiosos y el respeto a los difuntos*, in *Sistema de Derecho Penal. Parte especial*, Madrid, 2015, p. 1074.

[62] Judgment of the Provincial Court of the Balearic Islands of 13 October 2016.

[63] Cf. VALMAÑA OCHAÍTA, S., *Los delitos contra la libertad de conciencia...*, op. cit., pp. 2300 and 2301.

[64] Normally the Directorate, or sometimes the Subdirectorate, for Religious Affairs of the Ministry of Justice.

[65] It is the understanding of Liñán García, A. that religious institutions which do not want to register do not cease to be legitimate for this reason, with the right to exercise their worship activity and for this to be protected. Cf. LIÑÁN GARCÍA, A., *La protección del factor religioso...*, op. cit., p. 826.

[66] It is Cámara Arroyo's understanding that said collective dimension manifests in the following fundamental ways: “right to establish places of worship and meeting for religious purposes; right to designate and train worship ministers; right to circulate and spread their own creed; right to have a relationship with the organizations themselves and with other religious confessions.” Vide CÁMARA ARROYO, S., *Consideraciones críticas sobre la tutela penal de la libertad religiosa...*, op. cit., p. 154.

Firstly, disruptions carried out in spaces dedicated to and consecrated for religious worship; secondly, disruptions carried out in the place of worship itself and those carried out outside of these temples and similar buildings.⁶⁷

Manzanares Samaniego considers the term “manifestations” to include processions and other similar public acts.⁶⁸

In the understanding of Ferreiro Galguera: “the reference to acts, functions, ceremonies or manifestations is sufficiently broad to encompass any kind of collective acts carried out by religious confessions, whether they be liturgical gatherings, worship or any other acts carried out in a group and whose aim is teaching, artistic expression, communication of ideas, etc.”⁶⁹

In any event—as we have already recalled on various occasions—the conduct which is the object of punishment must be carried out in a malicious manner. And the malice required is the responsible agent’s intent to impede or seriously upset the exercise of freedom of worship, halting, impeding or spoiling the ceremony.

There are numerous rulings in which the claim of the complaint was rejected as the “specific” malice of the agent acting with the purpose of offending religious sentiment was not sufficiently proven.

Two recent Supreme Court judgments pronounced in the opposite regard,⁷⁰ as included in a subsequent ruling by the Provincial Court of Madrid: “they confirm the sentences for a crime against religious sentiment of Art. 523 of the Penal Code, for acts interrupting mass in churches by means of shouting and flyers on the altar in favour of free abortion at no charge and against the position of the Catholic Church regarding the reform of the abortion act which was in process.”⁷¹

Thus, in one of the above-mentioned rulings, the Supreme Court includes the doctrine regarding the conflict between freedom of expression and freedom of religion on saying: “In fact, the rights of freedom of expression, association and assembly ... are fundamental rights recognized in international conventions However, ... they are not absolute rights, so they may conflict with other fundamental rights, protected to an equally intense extent. More specifically, in the case before us, their exercise cannot entail the right to violate other fundamental rights, such as the right to religious freedom.”⁷²

The actions which are punishable are “impeding”⁷³ and “interrupting”⁷⁴ and “disrupting.”⁷⁵ The first requires that they entail making the religious ceremony impossible or obstructing it. It is understood that this also includes such conduct as blocking, disrupting or hindering. The second entails stopping or halting it. The third is equivalent to acting during the course of the same with the aim of intruding in an essential manner. In this case, the offense is fulfilled by the simple activity of the

[67] In cases of disruptions in places other than those expressly and primarily dedicated to worship, it is necessary to clarify whether the act of disruption was carried out in a setting which could be redirected to Article 2 of the Organic Law on Religious Freedom. In principle, the regulatory provision stipulates that it shall be the religious confession itself which has had an act of its own worship disrupted that shall determine if the space reflects the definition established by the same. However, the problem can be considered as regards the fact that the definition of these spaces by the appropriate religious confession is not absolute and definitive, but that it may contrast with and even contradict the judgment of the responsible government body. In this case, the final decision would be made by the judicial authority, obviously, in accordance with the stipulations of applicable regulations.

[68] Cf. MANZANARES SAMANIEGO, J., *Comentarios al Código penal*, Madrid, 2016, p. 1369.

[69] Vide FERREIRO GALGUERA, J., *Libertad religiosa e ideológica: garantías procesales y tutela penal*, in *Anuario da Facultade de Dereito da Universidade da Coruña* N° 6, 2002, p. 387.

[70] Cf. STS 19 December 2017 and STS 4 December 2018.

[71] Vide SAPM 102/2019, 21 February 2019.

[72] Vide STS 4 December 2018.

[73] The word “impede,” from the Latin *impedire*, is defined by the Dictionary of the Spanish Royal Academy in its first meaning, which is the one that interests us for the purposes of our reasoning, as: “To hinder or make it impossible to carry something out.”

[74] The word “interrupt,” from the Latin *interrumpere*, is defined by the Dictionary of the Spanish Royal Academy as: “To cut off the continuation of something in a place or time.” This means that the action does not definitively impede the celebration, but prolongs it, doing harm to it, in time, the result of the malicious action.

[75] The word “disrupt” in Spanish (*perturbar*), from the Latin *perturbare*, is defined by the Dictionary of the Spanish Royal Academy, in its first meaning, as: “...to disrupt the order and arrangement, or the peace and calm of something or someone.” In other words, unlike the preceding terms, it would be that the criminal action does not reach the extent of stopping, much less making impossible, the celebration or act of worship, but it does harm it in the essence of its carrying out.

individual making the disruption, whereas the other two require that the impeding and interrupting actions achieve the results they seek.

It should be highlighted that the penalty established in this precept is greater than that indicated in Article 522 of the Penal Code. Although both regulatory precepts are protecting religious freedom, the first does so in its individual dimension, which affects private persons, whereas the second relates to religious confessions and the institutions that represent them, in other words, to the collective dimension of the former, making it logical that the penalty should be worse.

6.3. Crime of desecration must be performed

Article 524 specifies that:

Whoever perpetrates profane acts that offend the sentiments of a legally protected religious confession in a temple or place of worship, or at religious ceremonies, shall be punished with a sentence of imprisonment of six months to one year or a fine from twelve to twenty-four months.

The legal right protected is religious sentiment. As Ferreiro Galguera rightly stresses:

If it is truly solid, religious sentiment, like all sentiment, will fight to reveal itself, to 'be embodied.' How this sentiment reveals itself is through specific, defined actions, that is to say, through the exercise of freedom. Therefore, religious sentiment can only manifest itself to its full extent in a sphere in which it recognizes a specific vehicle: the exercise of religious freedom.⁷⁶

According to the constant doctrine of the Constitutional Court, "profaning" means treating sacred things without respect, where sacred things are the ones used for worship. The action consists of the fact that the perpetrator performs acts of desecration on sacred objects, such as a crucifix, a chalice, an image intended for worship, etc. It may consist of their destruction or treating them without due respect (which happens, for instance, when they are thrown on the ground, hit or trampled). The category of crime demands *expressis verbis* that the act of desecration be carried out "in offense of religious sentiments."

The case law usually requires first of all, that the act be serious and directed against the sentiments of a person or a community. Secondly, a specific subjective desire for profanation is necessary: imprudence is therefore not punished.

As for the place, the desecration must be performed in a temple, in a space intended for worship or during the celebration of a religious ceremony, even outside the religious place, for instance during a procession, the blessing of a building or the administration of the extreme unction to a patient in their home.

The precept does not indicate what should be understood by "profanation." Some authors,⁷⁷ with the recurring and well-worn argument of the secular nature of the State, are of the understanding that this conduct—the crime of profanation—should not be considered a crime, as its recognition is equivalent to admitting that something has a higher value due to being symbolic of a religious creed. It is obvious that the argument is absolutely outlandish as regards the fact that that symbolism is what embodies, or better said, is what materializes, the protection of religious sentiment which is the ultimate aim of the penal protection.

[⁷⁶] Vide FERREIRO GALGUERA, J., *Protección jurídico penal de la religión*, Universidade da Coruña, A Coruña, 1998, p. 249.

[⁷⁷] Vide for instance, TAMARIT SUMALLA, J. M., *La libertad ideológica...*, op. cit., p. 187.

One of the most outrageous legal provisions, due to the tremendous spread of freedom of expression, the astonishing contempt with which the concepts of “profanation, ridicule and humiliation” are interpreted in articles 524 and 525 of the Penal Code in response to penal protection of religious sentiment, is that handed down in a decision by a Pamplona court in 2016.

The events can be summarized as follows: An individual repeatedly attends celebrations of Holy Mass and goes up to take communion. The priests or whoever distributes the communion are very seriously negligent in not checking that the sacramental bread is consumed in their presence. Therefore, the defendant obtains dozens of consecrated hosts. With them, he makes a repulsive “work of art,” slandering that name, in which he writes the word Pederasty with the consecrated bread. Moreover, he shows it in an “artistic” competition sponsored by the Pamplona Council.

The Association of Christian Lawyers and the Archbishopric of Pamplona bring the appropriate legal action. The plaintiffs declare that, in addition, the defendant states on social media that the written word has been made with consecrated bread, although said question is not sufficiently proven in the opinion of the court.

The judge states:

The elements of this crime (classified in Article 524 of the Penal Code) are not present, as when he obtained the consecrated bread ... taking communion at different masses, he did not commit acts of profanation of the same. ... the Spanish Royal Academy defines ... “profane” as ‘to treat something sacred without the proper respect, or apply it to profane uses,’ it cannot be stated that the defendant’s conduct, when he took control of the consecrated bread which he later used to make his work, involved treating something sacred (the consecrated bread is, without a doubt, for Catholics) without the proper respect, as it is not possible to confuse lack of respect with not doing what the Catholic religion requires its faithful to do with the consecrated bread in the act of communion. ... (regarding Article 525) the work shown ... does not constitute ridicule of the dogmas, ceremonies of the Catholic Church or humiliation of those who profess or practice said beliefs Ridicule ... entails making fun of, mocking, parodying ... satirizing... the [religious] dogmas ... rituals or ceremonies ... and it is clear that the work made by the defendant ... constitutes none of the aforementioned regarding the dogmas, beliefs, rituals or ceremonies of the Catholic Church. Nor is it possible to consider the action taken by the defendant to constitute a humiliation for those who profess or practice the Catholic religion.

The absolutely irrational reasoning of the judge is incredible, but true!

Compared to such an extremely restrictive reasoning of the proof of “animus” to offend religious sentiment, a judgment of the Provincial Court of Madrid sets out the following proven facts:

On June 13, 2014, the accused entered the Cathedral of Madrid ... they undressed themselves ... leaving their torso naked, they climbed the pedestal of the Cross (on the High Altar) ... they chained themselves ... and on their torso there were written the expressions: ‘Altar for abortion’ ... ‘let us take the altar.’ In addition, verbally ... they shouted ‘abortion is sacred’ At this time, there was an intense social debate on regulation of abortion The accused, activists from the ‘Femen’ movement ... decided to carry out the action to lend public importance to their position ... of considering abortion a non-negotiable right⁷⁸ What is stated in the judgment, which should be common case law, is obvious, and it is so often not recognized. “Here we find ourselves with ... an act of profanation which fits the offense of Art. 524 of the Penal Code. As regards the presence of the subjective element or will to offend religious sentiment, it is understood [to be] inherent in the conduct carried out by the accused, it being inferred from the set of objective factual circumstances which have been proven.”⁷⁹

[⁷⁸] Vide SAPM 102/2019, 21 February 2019.

[⁷⁹] Idem.

6.4. Crime of mockery

Article 525 reads:

Whoever, in order to offend the feelings of the members of a religious confession, publicly disparages their dogmas, beliefs, rites or ceremonies in public, verbally or in writing, or insults, also publicly, those who profess or practice these, shall incur the punishment of a fine from eight to twelve months. [2] The same penalties shall be incurred by those who publicly disparage, verbally or in writing, those who do not profess any religion or belief whatsoever.

In relation to conduct classified as “mockery,” the first order of business is to grasp its semantic value. According to the Dictionary of the Spanish Royal Academy (DRAE), the Spanish word comes from an ancient term no longer in common use, the verb *escarnecer*, with the reflexive meaning of “to mock.” It should be added that this likely comes from the German *skernjan*.

Regarding its meaning, the dictionary offers only one: “Tenacious ridicule done with the purpose of affronting.”

In reference to ridicule, the DRAE indicates: “Action, gesture or words with which one attempts to make a fool of someone or something.” Additionally, in order for mockery to be recognized, the members of the academy state that the ridicule must be tenacious, that is to say, “firm, persistent and persevering in a purpose.”

Similar conduct which can be expressed in other linguistic terms would be offense, sarcasm, ridicule or jeering. In all of them, with different nuances, or *sfumature*, as they would say in Italian, all of these conducts involve making fun of either the beliefs and dogmas of a religious creed⁸⁰ or its services or ceremonies.

As regards the offense indicate in Article 525 CP, which penalizes insults against dogmas, this has been the subject of great debate, especially as regards the possible limitations on freedom of expression when this takes the form of manifestations relating to religious sentiment.⁸¹ It is clear that we are not referring to the mere manifestation of opinions contrary to a religious creed, which does not constitute a direct and intentional offense of making mockery.⁸²

A judgment of the Provincial Court of Barcelona indicates:

Article 525.1 of the Penal Code punishes [one] who, in order to offend the sentiments of the members of a religious confession, publicly ... ridicules its dogmas, beliefs, rituals or ceremonies, or who humiliates, publicly, those who practice them ... the offense is made up of objective and subjective elements, all of which ... must be present to discern the existence of the crime in question ... it is essential for the actions to be done publicly, that is to say, ... for them to be able to reach the majority of people.⁸³

For its part, the Provincial Court of Madrid points out: “It is obvious that associating photographs of unambiguous sexual content with an image of the Virgin is contrary to customs but ... irreverent, in poor taste, vulgar” However, the Court appreciates that: “it is not enough to offend the religious

[⁸⁰] Morillas Cueva distinguishes between these two categories, stating that “dogma” can be defined in the religious aspect as truth revealed by God and declared by the Church for the belief of its faithful, or utmost point of a religion. And “belief” is the firm approval and agreement with postulates of a certain religious confession. Cf. MORILLAS CUEVA, L., *Delitos contra la Constitución* (VI)..., op. cit., p. 1077.

[⁸¹] Vide for instance, VIVES ANTÓN, T. S. (Dir.): *Derecho penal. Parte especial*, Madrid, 1990, pp. 125 and 126.

[⁸²] Cf. ROSSELL GRANADOS, J.: *Religión y jurisprudencia penal*, op. cit., p. 224.

[⁸³] Vide SAPB 6 November 2017 (FJ2).

sentiment of others ... that conduct must be done publicly ... which we do not deem to have occurred in the present case.”⁸⁴

Such penal conduct in Article 525 is discussed not only with regard to officially registered religious confessions but also regarding any creed, with or without recognition.

As regards the conduct classified in penal terms as “humiliation,” it is our understanding that the legislator refers not to institutions that represent a religious creed but to the persons who follow it, that is to say, the believers. The agent responsible for the crime must have as their purpose to shame them, harass them or humiliate them.

As Cámara Arroyo highlights, quoting Pérez-Madrid: “the inclusion of the term humiliation is very wise, as it constitutes a chance of specific penal protection for individual religious freedom, paying attention to the protection of peaceful possession of the right to religious freedom, against the freedom of choice to which freedom of conscience is entitled.”⁸⁵

In relation to the possible concatenation of the two types of conduct classified as crimes in this precept, Morillas Cueva considers that although they are two different categories, there is however a certain complementarity between them. Thus, it is normal for whoever commits ridicule against a religious creed to normally cause humiliation of the believers of that confession.⁸⁶

However, there should be a casuistic distinction, considered and evaluated case by case, of whether the conduct of which they are accused can be included in ridicule of dogmas, beliefs of a religious confession or in humiliation or offense of its believers.

In the understanding of Ferreiro Galguera: “we must distinguish between the protected legal right and the object of ridicule. The protected legal right is not the religion itself or the manifestation of its dogmas, rituals or ceremonies. Nor is it the beliefs (which may be non-religious) or the rituals deriving from them. In any event, these manifestations are the object of ridicule, but the protected legal right is the religious sentiment of the persons who may feel their dignity to have been wounded as a result of an action which seeks to ridicule particular expressions of their creed.”⁸⁷

In this crime, the perpetrator offends by ridiculing beliefs, rites or ceremonies or harassing those who profess or practice beliefs, rites or ceremonies. It is necessary to make the derision public: there is therefore no punishment when it occurs in a strictly private environment. Harassment or public mockery can be done by word or by any means of transmission.

As is obvious and reflects all the offenses we are analysing here, the conduct classified as a crime in this precept requires *animus iniuriandi*. This can clearly be concluded from the literal wording of the article, in which it is stated that the agent must engage in the conduct “in order to offend the sentiments of the members of a religious confession.”⁸⁸

For these purposes, it is important to note the reasoning included in a ruling by the Provincial Court of Madrid, in which it is stated:

if to make up the crime all that was required was not the subjective effect on certain recipients, as seems to be sufficient for the magistrate a quo, but even the mere objective suitability of the conduct to wound the religious sentiment of the majority of the members of a certain confession, dispensing with that action constituting, in fact, ridicule and being done precisely to offend, the catalogue of possible typical conducts would be as broad

[⁸⁴] Vide AAPM 809/2011, 29 July 2011.

[⁸⁵] Vide CÁMARA ARROYO, S., *Consideraciones críticas sobre la tutela penal de la libertad religiosa*, cit. p. 193 and nt. 295; PÉREZ-MADRID, F., *La tutela penal...*, op. cit., p. 312.

[⁸⁶] Cf. Morillas Cueva, L., *Delitos contra la Constitución (VI)...*, op. cit., p. 1076.

[⁸⁷] Cf. FERREIRO GALGUERA, J., *Libertad religiosa e ideológica...*, op. cit., p. 390.

[⁸⁸] Valmaña Ochaíta, S., (quoted by Cámara Arroyo, in CÁMARA ARROYO, S., *Consideraciones críticas sobre la tutela penal de la libertad religiosa*, op. cit., p. 196) considers it to be an unnecessary redundancy, since the intentional element is already implicit in the grammatical meaning of the term mockery, in *Los delitos contra la libertad de conciencia...*, op. cit., p. 2303.

as that of religious confessions and their different schools is long, thus we would be leaving whether the crime existed or not in the hands of each believer, no doubt threatening the principles of legality and legal certainty.⁸⁹

As with desecration, a criminal case requires a specific subjective desire. Imprudence is not punished. It should be noted that derision, in words or in writing, of disbelief, that is, of people who practice no religion or belief, is also considered a crime.

The subjective element of the crime of derision entails mockery consisting of offending religious sentiment. According to almost unanimous doctrinal opinion, Spanish case law requires specific intent.

We can therefore understand how in stressing the criminal precept, the expression “offended” requires a special *animus*, that is, an objective element of the unjust that is added to the “crime.” This is the framework of the crimes which include those requiring an element of purpose, of a subjective nature, with which the perpetrator offends or derides these feelings.

The proof of this psychological element is usually “indirect,” since this *animus* is inferred from the set of factual circumstances that have been demonstrated. These criminal conducts refer to serious attacks, and the courts usually therefore require the use of violent means: a slight disturbance or criticism is not penalized. Being “public” is always necessary: the action must therefore be performed in public worship, for instance while celebrating Mass or in a procession, such that private acts, even if they are offensive in themselves, have no criminal relevance.

Spanish case law has established certain criteria which are usually followed in its judgments. It is therefore usually more frequent than desirable not to proceed with the charges after a criminal complaint has been filed because it has been understood that the reported action did not constitute a serious offense, but only an exercise of criticism.

On the other hand, on many occasions, at the time the accused is convicted or acquitted, the courts place importance on the fact that after the act has been judged, the plaintiff expressed remorse in the case of desecration, or they apologized to the people who were the subject of their mockery, when the latter is the crime being judged.

In this crime, it is usually required that the expressions of derision are not isolated, but are rather repeated behaviour that can be considered a continuous attitude of “obstinate offense”.

In many other cases, actions that had an obvious satirical and provocative meaning have been not prosecuted, because it is understood that they must be framed within a critical judgment or evaluation, and that they are protected as an exercise of freedom of expression.⁹⁰ So very often an acquittal is handed down because there is no demonstrated unequivocal intention to offend religious sentiments.

With reference to these crimes, the imputability of the perpetrator is usually analysed in a particular way by the courts. It is a question of whether there is a psychic alteration of the subject to apply or not, the corresponding exemption, or consider a mitigating factor by analogy.

[⁸⁹] Vide SAPM 29 July 2011.

[⁹⁰] For any excuse is good to consider their action to fall within the scope of their freedom of expression, and they are always deemed not to have the will to offend, when in very many cases, this can be deduced from the acts of which they are accused, however little one may reason with common sense. Thus, in a video broadcast on a TV program, it is possible to make out the figure of a crucified Christ with the head of a ram. In the judgment it states: “the intentional element of the defendant was not the unlawful one required ... the will to offend the sentiments of Christians ... even when hypothetically it was accepted that the objective element ... of the offense [was present], it not being possible to deduce ... that the psychological element or the intent to offend was present ... in that the showing of the video was part of the performance of a musical group ... with the purpose ... of publicizing cutting-edge musical trends.” Vide STS 668/2003, 7 May 2003. Also an inconceivable “line of argument,” but that is the trend.

7. Conclusion

In Spain, protection of the right to ideological and religious freedom is recognized in Article 16 of the Constitution, in a preferential position under the title that enunciates fundamental rights. This means that public authorities must ensure that citizens can practice a particular religion, in public or private, and prevent anyone from being forced to practice a religion.

The crimes of profanation and derision provided for in the Spanish Criminal Code are incorporated into this constitutional framework, which has just been briefly laid out. They come under Title XXI (On felonies against the Constitution), Chapter IV (On felonies related to the exercise of fundamental public rights ...), Subchapter 2 (On felonies against ... religious sentiments ...), which sets out crimes related to “desecration” in offenses against religious sentiment in temples, places of worship or during religious ceremonies, and acts of “derision” of dogmas, beliefs, rites or ceremonies. This classification protects not only religious freedom, but also “religious sentiments.”

It cannot be maintained, as those who are against this protection do, that the concept of “religious sentiment” is an indeterminate or at least debatable concept. This is the belief of those who advocate a subjective interpretation of “religious sentiment” which would lead to its inability to be protected under criminal law due to the fact that it could not be put in objective terms, which is obviously a necessary requirement for its statutory penal protection. In this regard, “religious sentiment” could be compared to honour, for example, as both the former and the latter take the form of an obvious limit on freedom of expression.

In recent years, there has been a debate in some areas of public opinion and in some studies of constitutional and criminal doctrine on the question of whether grounds for justification of exercising the right to freedom of expression should take precedence over religious sentiment. Especially when it comes to the crime of derision, a social debate has been sparked, with militant atheistic positions, about the possibility of abolishing it from our Penal Code.

Unfortunately, too frequently, judgments in recent years, even by the Spanish Supreme Court, accept an extraordinarily strict interpretation of the agent’s *animus* of action. Thus, it appears that it is almost not possible to detect the intent to humiliate except when the defendant acknowledges it during the case.

However, in less recent times, a reasoned case law by the Constitutional Court has confirmed its proper legality and has considered profanation to be a vast concept with room for any action in which a “sacred” thing—understood as such by a certain creed—is treated or taken without due respect. This would coincide with what is practiced by members of their respective religion. Thus, its use for secular purposes with the intention of impinging on its religious value. In an important judgment, the Supreme Court considers that a thing—tangible or intangible—is sacred when according to the dogma or rituals of the different religions, it is dedicated to their respective god or divine worship of the same (STS 25 March 1993).

In response to all these repeated attacks on religious freedom, particularly by members and sympathizers of the communist party Podemos—today a member of the governing coalition of Spain—senators from the Partido Popular have put forward a motion in Parliament urging the government as follows:

That the political parties, in their political and legislative activity, respect and ensure the fundamental right to religious freedom, from both the individual and the collective perspective, as well as compliance with the treaties and agreements signed by the different religious confessions. That government bodies exercise oversight to reduce the number of ... profanations of churches and spaces of worship, and no crime goes unpunished after the proper investigations are made

This motion was accepted and is pending debate in the Senate.

Let us hope that law may be made to prevail over sectarianism, no longer anti-clerical but anti-religious, which is being advocated by some public authorities today.

Bibliography

- ARAGÓN REYES, M., *El juez ordinario entre legalidad y constitucionalidad*, in Anuario de la Facultad de Derecho de la Universidad Autónoma de Madrid, Madrid, 1997.
- CALVO ESPIGA, A., *El posible/imposible delito de blasfemia en una sociedad democrática*, in *Scriptorium victoriense*, 1989.
- CÁMARA ARROYO, S., *Consideraciones críticas sobre la tutela penal de la libertad religiosa y los delitos contra la libertad de conciencia, los sentimientos religiosos y el respeto a los difuntos*, in Anuario de Derecho penal, Madrid, 2016.
- COELLO DE PORTUGAL, J. M., *La libertad religiosa de los antiguos y la libertad religiosa de los modernos*, in Revista de Derecho UNED, núm. 7, Madrid, 2010.
- FERNÁNDEZ ALBOR, *El patrimonio artístico y su protección penal*, in Estudios Penales, Libro homenaje al Prof. J. Antón Oneca, Salamanca, 1982.
- FERNÁNDEZ-CORONADO, A., *Libertad de conciencia*, in Enciclopedia Jurídica Civitas, Madrid, 1995.
- FERNÁNDEZ DE BUJÁN, A., *Conceptos y dicotomías del ius*, en *Estudios de Derecho romano en memoria de Benito M^a Reimundo Yanes* Vol. 1, Madrid, 2000.
- FERNÁNDEZ DE BUJÁN, F., *Il potere politico nel pensiero di Isidoro di Siviglia*, en *Ravenna Capitale. Uno sguardo ad Occidente. Romani e Goti – Isidoro di Siviglia*, Santarcangelo di Romagna, 2012.
- Fundamentos Clásicos de la Democracia y la Administración*, 2ªed., Madrid, 2019.
- FERREIRO GALGUERA, J., *Libertad religiosa e ideológica: garantías procesales y tutela penal*, in Anuario da Facultade de Dereito da Universidade da Coruña Nº 6, 2002.
- Protección jurídico penal de la religión*, Universidade da Coruña, Coruña, 1998.
- GIMBERNAT, E., *La reforma del Código penal de Noviembre de 1971*, in Estudios de Derecho penal, 3.a Madrid, 1990.
- GONZALEZ RUIZ, M., *Vicisitudes de la propiedad eclesiástica en España durante el siglo XIX*, in Revista española de Derecho canónico, núm. 1, Salamanca, 1946.
- GOTI ORDEÑANA, J., *Protección penal de los derechos de libertad religiosa y de los sentimientos religiosos*, in Derecho y opinión, no. 6, 1998.
- DEL HOYO, J., *El mundo de los difuntos: culto, cofradías y tradiciones*, San Lorenzo del Escorial, 2014.
- IGUACEN BORAU, D., *El patrimonio cultural de la Iglesia al servicio del pueblo*, in Revista española de Derecho canónico, vol. 41, núm. 119, Salamanca, 1985.
- LANDROVE DÍAZ, G., *La libertad religiosa y la reforma de 1971*, in Anuario de Derecho penal y Ciencias penales, 1972.
- LIÑÁN GARCÍA, A., *La protección del factor religioso en el nuevo Código Penal español (ley orgánica 10/1995, de 23 de noviembre)*, in Revista española de Derecho canónico, no. 58, 2001.
- LLAMAZARES FERNÁNDEZ, *Derecho de la libertad de conciencia*, Madrid, 1992.
- LÓPEZ CASTILLO, A., *Acerca del derecho de libertad religiosa*, in Revista Española de Derecho Constitucional Año 19, Núm. 56, Mayo-Agosto 1999.
- MARTÍN SÁNCHEZ, I., *El derecho a la formación de la conciencia y su tutela penal*, Valencia, 2000.
- MEILLET, A. & ERNOUT, A., *Dictionnaire étymologique de la langue latine*, Paris 2001.
- MORALES, J., *Teología de las religiones*, Madrid, 2001.
- MORILLAS CUEVA, L., *Los delitos contra la libertad de conciencia y de culto*, in Documentación Jurídica, Madrid, 1983.

- MORILLAS CUEVA, L., *DELITOS CONTRA LA CONSTITUCIÓN (VI): Delitos contra la libertad de conciencia, los sentimientos religiosos y el respeto a los difuntos*, in *Sistema de Derecho Penal. Parte especial*, Madrid, 2015.
- NOVKIRISHKA, M., *Algunas reflexiones sobre el tema de ius sacrum como elemento de la definición del derecho público por Ulpiano*, in *Anuario Facultad de Derecho de la Universidad de Alcalá*, IX (2016).
- ORESTANO, R., *Elemento divino ed elemento umano nel diritto romano*, in *Rivista Internazionale di filosofia del diritto*, 21, 1941.
- de OTADUY, J., *La tutela penal de la libertad religiosa*, in *Tratado de Derecho Eclesiástico*, Pamplona 1994.
- PÉREZ-MADRID, F., *La tutela penal del factor religioso en el derecho español*, Pamplona, 1995.
- PRESAS BARROSA *Alternativas legales a una cuestión patrimonial: los bienes artísticos de la Iglesia española*, in *Anuario de Derecho Eclesiástico del Estado*, vol. I, Madrid, 1985.
- RAMOS VÁZQUEZ, J. A., *Delitos contra la Constitución: aspectos destacados del título XXI del Código Penal de 1995*, in *Anuario da Facultade de Dereito da Universidade da Coruña*, 2006.
- RECASÉNS SICHES, L., *Introducción al estudio del Derecho*, Mexico, 1981.
- RENART GARCÍA, F., *La protección indirecta del patrimonio cultural español a través de los delitos contra la religión: una interpretación histórica de su fundamento*, in *Actualidad Penal*, n° 40
- RODRÍGUEZ BLANCO, M., *Derecho y Religión. Nociones de Derecho eclesiástico del Estado*. Pamplona, 2013.
- ROSSELL GRANADOS, J., *Religión y jurisprudencia penal*, Madrid, 1996.
- MANZANARES SAMANIEGO, J., *Comentarios al Código penal*, Madrid, 2016.
- SANTI ROMANO. L., *L'ordinamento giuridico*, Florence, 1918.
- TAMARIT SUMALLA, J. M., *La libertad ideológica en el Derecho penal*, Barcelona, 1989.
- VALMAÑA OCHAÍTA, S., *Los delitos contra la libertad de conciencia y los sentimientos religiosos*, in *Estudios en Homenaje a Enrique Gimbernat*, Tomo II, Madrid, 2008.
- VILA MAYO, E., *Los delitos contra la religión en el Derecho penal español*, in *Estudios Jurídicos en honor del Prof. Octavio Pérez Vitoria*, Barcelona, 1983
- VIVES ANTÓN, T. S. (Dir.): *Derecho penal. Parte especial*, Madrid, 1990.
- CICERO, *De Natura Deorum* II, 28, 72;
—*De Leg.* II, 18–22.
- LACTANTIUS, *Divin. Institut.* IV, 28.
- MARCUS TERENTIUS VARRO, *Antiquitates rerum humanarum et divinarum*.
- MAURUS SERVIUS HONORATUS, *Ad. Aeneid* 8, 349.
- SAINT AUGUSTINE, *Retract.* 1, 13;
—*Confessiones*, 10, 28, 39;
—*Civ. Dei* 7, 35.
- SAINT ISIDORE OF SEVILLE, *Orig.* 5, 2, 2.
- SAINT THOMAS AQUINAS, *Summa Theologiae* II Q. 3, A. 8, REP, 1980.
- D. 1, 1, 1, 2 (*Ulpianus libro primo institutionum*);
D. 1, 1, 10, 2 (*Ulpianus libro secundo regularum*);
Inst. 1, 2, 11.

Case Law

STEDH 25 November 1982

STEDH 13 September 2005

STEDH 17 July 2018

STC 24/1982

STC 19/1985

STC 17/1990

STC 181/1990

STS 25 March 1993

STS 19 December 2017

STS 4 December 2018

STS 7 May 2003

SAPB 6 November 2017

SAPM 29 July 2011.

SAPM 21 February 2019