

O wolność wyznawania religii we współczesnym świecie

Przeciwdziałanie przyczynom dyskryminacji
i pomoc prześladowanym na przykładzie chrześcijan

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The secularism of El Salvador: the protection of freedom of religion, a path built by jurisprudence

A review of the historical evolution of the right
to freedom of belief in El Salvador and a compilation
of the jurisprudential towards this right

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Introduction

The current Constitution of El Salvador (onwards, **SvCn**) recognizes the right to freedom of religion as a right that must be protected by the State. Its scope has been defined by the highest constitutional authority in this country, the Constitutional Court of the Supreme Court of Justice (hereinafter, **CnC**), when resolving constitutional claims, presented by citizens against bills or an infra-constitutional regulation or even material actions of public servant as they may be considered contrary to the freedom of belief and other fundamental rights.

Freedom of religion goes hand by hand with the proclamation of the El Salvador as a secular or non-confessional State, which is the result of an interesting interpretation of the Constitution based on the structural method and an analysis of the historical constitutional evolution made by the CnC in order to identify the separation of the church and the State; despite the fact that, there are still vestiges of the strong religious influence in the development of Salvadorian society. Hence, it is important to understand what does the laicity of the State means in the Salvadorian law system, and how it coexists with the duty of the State to provide protection to the freedom of religion, this will allows the citizenship to identify when the State is exceeding the limits of its duty of cooperation with religions or sects.

There is a general consensus that there are no absolute fundamental rights in the Salvadorian law system¹, and freedom of religion is not the exception. As the SvCn says in its article 25, this right finds its main limits in public order and morals, but also in its relationship with other legal categories. However, there is in El Salvador an undeniable religious tradition, specifically Roman Catholic Apostolic, that prevailed at the time of the formation of the Salvadoran State and that may bring to light some debate on the secularism of the State, as well as an erroneous interpretation of the dimension and practice of the right to freedom of religion. Also, it has been brought to the judicial arena claims between freedom of belief and other fundamental rights, being the competent to resolve such conflict the CnC.

When there is a conflict of rights, the main source to resolve it, is to make a weighting (or ponderation) analysis based on the elements of the specific case. As it will be explain in this paper, there are some cases in which the object of the debate is the freedom of cult, in which the sentences of the CnC have been characterized to considered the fact that in its origin, El Salvador has certain religious figures which by now, its religious significance has been attenuated and have become part of the Salvadorian identity, history and recognition at the national and international community. Also, is

[¹] As an example of this, in the resolution of February 15th of 2017 in the unconstitutional claim 22-2011, the CnC said that fundamental rights are an immediate projection and inevitable logical development of dignity, so their interpretation should encourage an understanding of rights that promotes the dignity of the person and their consideration as to be free and equal, capable of conscious and responsible of the self-determination of one's life. So, one of the consequences of this personalistic vision of the Constitution is the absence of absolute rights

important to mention that more than once, the SvCn has faced towards the legal recognition it gives to the Catholic church in its article 26.

Definitely, in order to understand the scope and content of freedom of religion in El Salvador, as well as its practice and protection, it is indispensable to analyze the most relevant judicial precedents of the CnC from the first decade of the century XXI, whose general criteria not only has it maintained over time despite the changes in the subjective conformation of the highest constitutional court, but has led to further and broader reasoning, situation that is evident when contrasting the first sentence in 2003 in the Constitutional claim 117-2002 with the sentence of the process of Unconstitutionality 3-2008 issued in 2013.

Thusly, this article aims to be a compendium of the most relevant jurisprudence on this subject and provides a preliminary analysis that serves as input for subsequent discussions. It will address the evolution of the right to religious freedom in El Salvador, taking as a reference the definition of this category and the protection that has been granted at the constitutional level, the different manifestations that this right has presented, the constitutional regulation of *religious sphere* and the jurisprudential treatment to resolve disputes that have arisen in the exercise of this right vis-à-vis others right with whom it must coexist.

1. Religious demography in El Salvador

El Salvador is part of the American States that arose as a result of the Spanish colonization, during the time of 1460–1500. This fact justifies the importation and imposition of the Catholic religion to which the Spanish monarchy adhered to the native people of the region; precisely the toponymic *El Salvador* was taken from *San Salvador* (the name of its capital) and came from a Holiday of the mentioned church, celebrated on August 6th of each year, and represents the Transfiguration of Jesus². Even after its independence in 1821, in El Salvador there was an accepted and constitutional union of the Catholic Church (official religion at that time) and the State, which even rejected the exercise of other sects or religions.

For this reason, the Salvadorian population was characterized for being mainly adept at the Catholic religion; this situation, however, has been changing significantly in the mid-twentieth century, a period in which the most important constitutional transformation occurred, given that El Salvador went from having origins based on the intolerance of other religions towards freedom of religion, and in which the gap between the Catholic population and the affiliates of other religions, mainly evangelical Christians has been narrowing.

According to the International Report on Freedom of Religion in El Salvador in 2016, prepared by the Embassy of the United States of America in El Salvador³, of a total population of 6 200 000 Salvadorans (estimated by July 2016), 50.6% identified as Roman Catholic, 32.9% Evangelical, 14.4% lacked of religious affiliation, and 2.1% claimed to be of *another religion*, including Jehovah's Witnesses, the International Association for Krishna Consciousness, Muslims, Jews, Buddhist, and members of The Church of Jesus Christ of Latter-day Saints (Mormons). Finally, a small segment of the population was sympathetic to indigenous religious beliefs, with some mix of these beliefs with other religions, such as Catholicism.

[²] Taken from the newspaper article *Do you know why our country is called the Republic of El Salvador?* of El Diario de Hoy, June 21st 2018 (<https://www.elsalvador.com/entretenimiento/cultura/sabes-por-que-nuestro-pais-se-llama-republica-de-el-salvador/492731/2018/>)

[³] U.S. Embassy in El Salvador, *International Report on Freedom of Religion in El Salvador in 2016* taken from <https://sv.usembassy.gov/es/our-relationship-es/official-reports-es/sv-iilr-2016>

A study carried out by *LPG Datos*, the social research unit of *La Prensa Gráfica*⁴, a local newspaper of El Salvador in 2004, said that from the Salvadorans interviewed, 55.1% percent declared themselves as Catholic, 28.7% evangelical and 14.2%. The following year, according to the same source, the gap between Catholics and Evangelicals fell to 23.9% and the reduction has been constant, such that in 15 years the difference has gone from 26% points to just 1%, more than one point per year. In 2019, a study made also by the *LPG Datos* to 1 520 people, selected randomly, showed that 40.46% declared being Catholic, while 39.47% percent, evangelical, followed by 15.99% who estimate that they are not affiliated with any religion and 3.68% percent who belong to others. From this data, is clear that there is a constant change in the religion of Salvadorans, although there is still a predilection remains with Christians dogmas over other beliefs.

2. Religion influence on the State's affairs

The truth is that El Salvador is a country whose social and political history has been marked by religious influence. Without going too far, it can be mentioned as an example, the national symbols. For instance, the national coat of arms contains the words: *God Union Liberty*, which has been officially justified as it is an indication of the principles on which the Republic of El Salvador is based; as well, those words are written in the Salvadorian flag.

In fact, according to the article 28 of the National Symbols Act is mandatory that official communications end with the words *God Union Liberty*. Likewise, in the preamble of the current Constitution it is stated: *Us, representatives of the Salvadoran people gathered in a constituent assembly, placing our trust in God (...)*

Another interesting fact is The Divine Savior of the World monument, a sculpture currently located in a plaza with the same name in the capital of El Salvador; this emblematic figure is a place of regular concentration of people for cultural, political, social events (including protests, marches and others) and recreational, becoming an icon of the San Salvador city. However, the undeniable Catholic origins of this image provoked a debate in the CnC, in the constitutional claim identified 117-2002. In this case a citizen claimed the decision of a former Vice Minister of Transportation of El Salvador to put on the vehicles plates the image of the Divine Savior of the World violated, among other things, her right to religious freedom. The resolution issued by the CnC will be developed in other sections of this paper.

Likewise, other religious figures have played an important role in the country's political-social crises, which can't go unnoticed in Salvadorian history. During the civil war in El Salvador, which developed most intensely during the 80's, Monsignor Oscar Arnulfo Romero y Galdámez, former archbishop of San Salvador of the Catholic Church (1977–1980), denounced the abuses from the Salvadoran Army, the National Guard and the *guerrilla* (the opponents of the armed forces) against civil society; Monsignor also pointed out the social injustices that El Salvador faced at that time. His fight earned him to be popular considered as *the voice of the voiceless*, and represented a subversive character for his opponents. On march 24th of 1980, he was murdered while he was celebrating a mass. Then, in 2015 Monsignor Romero was beatified as he was recognized as a martyr *out of hatred of faith* by the Catholic Church and in 2018 he was canonized by Pope Francis. Even though, Monsignor Romero was a priest of the Catholic Church, his supporting activism in favor of the peace and social justice in El Salvador has become an undeniable symbol of the Salvadorian history for which he has been

[4] Segura, E. *Catholicism is about to stop being the majority in El Salvador*, La Prensa Gráfica.com, LPG Datos, April 16th 2019, digital version taken from <https://www.laprensagrafica.com/lpgdatos/El-catolicismo-esta-a-punto-de-dejar-de-ser-mayoria-20190415-0550.html>

national and internationally recognized, becoming the place of his murder and the place where his remains rests emblematic tourist and pilgrimage spots in El Salvador.

The reason why Monsignor Romero is mentioned in this paper is because the former government used his named to identify public offices as well as infrastructure (airport, roads, etc.), which generated debate among the citizens. For example, in 2014 by a Legislative Decree, El Salvador's international airport was named Monsignor Oscar Arnulfo Romero y Galdámez, this cause that a citizen filed a claim of unconstitutionality to the CnC against it, arguing that it violated, among other rights, the article 25 of the SvCn, that is to say, his freedom of belief because not all population of El Salvador profess the Catholic religion. The conclusions of the constitutional court will be analyzed in the next section for being these coherent with the topic of freedom of belief and the historic context of El Salvador.

It is worth, as well, to mention that during El Salvador's civil war, 5 Spanish and one Salvadoran Jesuits were killed inside the University of Central America *José Simeón Cañas* (UCA), along with two collaborators, by the army of El Salvador. These priests were considered to intellectually supported the so-called the *Liberation Theology*⁵, and therefore considered as subversive for the government.

The judicial actions and decision on the case known as *the Jesuits*, led to the conviction of former military, the proclamation of an Amnesty Law in 1993, and its subsequent declaration of unconstitutionality in 2016, as well as the actions of international and Spanish courts, which are highly interesting, but are beyond the scope of this work. It is enough to emphasize that these characters of the Catholic Church beyond their religious character, they hold a historical position in El Salvador.

In order to finish this section, is important to mention the close relationship between freedom of belief and politics. Despite that the articles 151, 160, 176, 177, 179, 180 and 201 of the current Constitution indicate that the candidates for public positions must have a secular status, the use of religion for political and electoral propaganda is a recurring practice⁶, for instance, in the case of El Salvador, among the religious resources that the candidates use most frequently in their campaign, is to make proselytizing acts in properly religious events.

This apparent inconsistency has transcended among the constitutional sphere. In 2019 the CnC issue a resolution in which admitted a constitutional claim against the registration of a presidential candidate for the election of February 2019. In this case, a citizen alleged the violation of the article 82 of the SvCn which establish that the ministers of any religious cult, the members in active service of the Armed Forces and the members of the National Civil Police may not belong to political parties nor get elected on popular duties. According to the plaintiff, that presidential candidate was a minister of the cult *Christian Fraternity Emmanuel*. Although, there was not a final resolution for this case, since the lawsuit was dismissed by external factor different from the arguments presented, the considerations made by the CnC will be analyzed in the following section, since these contribute to the object of this paper.

3. Religious freedom and its historical-constitutional advances in El Salvador

As it was previously said, the CnC has made an effort to enhance the right to religious freedom, but also to determine the position of the Salvadoran State in the religious sphere. To do so, in one of its first precedents, in the verdict of the unconstitutionality case identify 117-2002⁷, the CnC reviews and

[5] *Jesuits priest killed in El Salvador* Digital version of article from November 17th 1989, El País. https://elpais.com/diario/1989/11/18/agenda/627346801_850215.html

[6] Aguilar, L. E. *It is part of the propaganda the Savior of the World Monument and the temples* Digital paper: "Brújula Electoral. Elections 2014, digital version. http://www.uca.edu.sv/sociologia/media/archivo/fib517_brujula4elsalvadordeilmundoylostemplonsonpartedelapropaganda.pdf

[7] This case will be addressed with its factual and legal elements in section V

analyzes the regulation of the religious freedom in the constitutions that El Salvador has had among time in order to define the relationship of the State with the different religious creeds.

The first Constitution that El Salvador had was in 1824, which recognized the Catholic religion, as the religion of the State and excluded the public practice of any other one. As it can be seen, the original relationship of the State with the religious factor as a social phenomenon, takes shape in its confessional character, assuming the Catholic, Apostolic and Roman religion as the official religion or *its* religion, justified by the historical background exposed in the previous section, and proscribing the public exercise of religious manifestations derived from any other belief. So, there was no right to religious freedom.

In the Constitution of 1841, the principle of confessionalism remained firm with the official recognition of the Catholic religion, but there was an important change, the begging of the right to religious liberty; its article 3 said

The Catholic, Roman Apostolic Religion, the only true one, professed by the Savior, and the Government will protect it with wisdom, justice and beneficial laws; but it is declared that every man is free to worship God, according to his conscience, without any power or authority being able, with laws, orders and mandates, of whatever nature, to disturb or violate private beliefs.

Along with confirming the confessional nature of the State, this constitution introduced tolerance for private worship of religions besides the Catholic. It is interesting that, later, in the constitutional text of 1864, this last statement is omitted in its article 5, which provided: *The Catholic, Apostolic and Roman Religion, the only true one, is professed by El Salvador, and the Government will give it all protection.*

The CnC highlighted the text of the article 14 of the Constitution of 1883 in its current interpretations of the State-Church relationship, because it considered that with this clause the principle of confessionalism of the State was replaced by the principle of secularism. It said: *The free exercise of all religions is guaranteed, with no other limit than morality and public order.* With this, the judicial authority also affirmed the introduction of the principle of secularism with the separation of Catholic Church and the State.

It should be noted, however, that such arguments are the product of an interpretation of the constitutional text, since the mentioned article 14 of the 1883 Constitution didn't proclaim expressly the neutrality and separation of the State and the Church. The CnC indicated that the definition of the State, contemplated in the SvCn, had in an ideologically neutral characteristic, and it assumed the effective and peaceful coexistence between different religions that exists in a plural and democratic society, reducing the religious phenomenon to the private sphere of an individual, without the collective dimension suggested by the principle of confessionalism.

In the Constitution of 1886, was added to the content of the article 14 the impossibility of establishing the civil status of a person through any religious act. In the Constitution of 1939 was establish the guarantees of free practice of all religions, with no other limit than morality and public order. It also prohibited that ministers of religious cults to use their spiritual authority for political interests, as well as that religious acts establish civil status.

Because of the reforms in 1944, the text of the Constitution regards the freedom of belief, said

It is guarantee the free exercise of all religions, without further limits that drawn by morality and public order (...) In the exercise of their functions, the ministers of religious cults should refrain from putting their spiritual influence at the service of political interests (...) No religious act, carried out in Salvadoran territory, (...), will serve to establish the civil status of Salvadorans and foreigners.

In the Constitution, of 1945 it is recognized the right to religious freedom, stating: *“The freedom to practice any religions is guaranteed, with no other limit than that established by morality and public order. No religious act will serve to establish the civil status of people.”* It also prescribed: *The temples and their dependencies shall be exempt from all kinds of property taxes.* Finally, it affirmed: *The State recognizes the legal personality of the Catholic Church, representative of the religion professed by the majority of Salvadorans. The other churches will be able to obtain recognition of their legal personality in accordance with the law.* It is interesting that despite this last part, the CnC reaffirms that El Salvador did not return to confessional State.

In the Constitutions of 1950 and 1962, it remained the first and third section of the last article. Nevertheless, in the Constitution of 1950, it was added

[n]o political propaganda by clerics or laity may be made in any way, invoking religious motives or using the religious beliefs of the people. In temples, on the occasion of acts of worship or religious propaganda, no criticism may be made of the laws of the State, its Government or public officials in particular.

Finally, the current Constitution (year 1983) regulates the right to religious freedom in its article 25: *“The free practice of all religions is guaranteed, with no limits other than those established by morality and public order. No religious act will serve to establish the civil status of people.* Also, it was added the article 26: *“Is recognized the legal personality of the Catholic Church. The other churches may obtain, in accordance with the law, the recognition of their personality.* This is a remind of the last paragraph of article 12 of the 1945 Constitution, regarding which the CnC shyly stated that this recognition did not constitute a retrogression to the recognition of the Catholic religion as the official state.

Because there was no explanation from CnC regards the legal recognition of the Catholic church besides the fact that at that time the majority population of El Salvador where Catholic according to the *Statement of Reasons for the Constitution of the Republic of El Salvador of 1983*, there are still remaining doubts about equal treatment between the Catholic Church and other ones.

Precisely, on October 9th of 2017, representatives of the Evangelical Christian Church in El Salvador, with the support of a congress man delivered an initiative for the legal recognition of the Evangelical Church in the country, specifically reforming article 26 of the Constitution. Despite this initiative to date it hasn't been successful, the CnC made an important advance in this matter, by making and statement regards religious equality in the resolution of April 10th of 2019 in the case 117-2018.

As it was said before, the process of Unconstitutionality identified with the number 117-2018 initiated by a citizen against the Supreme Electoral Tribunal for the registration of the presidential candidacy of political party VAMOS in the elections that were held on February 3, 2019.

Even though the facts of this case will be address in the following sections, it is important to say that in this case, the CnC explained that according to the Report of the Study Commission of the Draft of Constitution, the Commission was perfectly aware that the religion to which the majority Salvadoran belong was the Catholic religion, also that it was considerate that there are minority religions in El Salvador, whose members have grown in recent years, which deserve all respect. Also, that, even when the legal personality of the Catholic Church is recognized by constitutional provision, this does not mean the detriment of the rest of the religions, since all of them can also obtain a legal recognition, as long as they satisfy with the requirements of establish by law. With this approximation, the CnC said that the article 26 is a derivation of the right to association (article 7 SvCn), and is related with those who, by sharing their same religious beliefs (freedom of religion, article 25 SvCn), decide to organize, establish their rights and duties, as well as the purposes and guidelines of the group or association that shares such beliefs .

According to the Constitutional Court, the constituent could not ignore the fact that at that time the majority religion in El Salvador was Catholic Church, so it was exonerate from carrying out the legal

procedures to enjoy legal status; and, by expressly leaving open the possibility that other religious associations obtain such legal status, it was considered that there is no discriminatory treatment. Although it is a plausible justification from a historical point of view, now a day it could be still questionable, because the gap between Catholics and Evangelicals has narrowed, which weakens the argument that the Catholic Church is the only majority religion in El Salvador.

4. The right to freedom of religion in El Salvador and the role of the constitutional jurisprudence in its definition and delimitation.

As indicated, article 25 of the SvCn *recognizes and guarantees* the freedom of religion, with no limitations other than the moral and public order. However, this proclamation is subject to a variety of interpretations about who is the holder of such a right, the content and faculties it includes, the role of the State as guarantor, among others. Likewise, the literalness of the constitutional text is insufficient to provide a solution to the conflicts that with other fundamental rights may arise in the practice of freedom of religion, needing to define guidelines and other inputs to identify when conflicts are apparent or real. In this section, the most important contributions of jurisprudence are presented in chronological order.

4.1. Constitutional claim 117-2002: a citizen's complaint about the design of the vehicles' plates

Synopsis of the case

By law, in order to circulate in the country, a registered vehicle must have its identification plates. In 2000, the former Vice Minister of Transport included the image of the *Savior of the World* monument within the design of the vehicle plaque, this cause that a citizen (whose vehicle was seized by the police for not carrying the identification plates in a visible place) filed a constitutional complaint to the CnC against the former Vice Minister of Transport. She argued that her right to freedom of belief had been violated, because the plates were in conflict with the religion she professed; she argued that her religion prohibits the idolatry of the images and the worship or veneration of any object or images that her religion had not attributed divinity.

The defendant alleged that the right to religious freedom had not been violated, because although the monument of *Savior of the World* includes the figure of Jesus Christ, in El Salvador that image has a conception that transcends the religious aspect, since it is a figure that is part of the country's cultural heritage, which identifies it inside and outside its territory, and is related to the country's concept of patriotism, that includes an affective connotation towards the nation.

This case was identified by the reference 117-2002⁸ and has been recognized as one of the first efforts made by the CnC on the religious freedom matter. On May 6th, 2003, the Constitutional Chamber ruled that the image on the license plates did not have exclusive connotations of a religion; rather, it also denoted a feeling of nationality, which validated its use in the plates of Salvadoran vehicles. It stated that there wasn't element of conviction that could led to the conclusion that the former Vice Minister of Transport had the purpose of imposing the practice and mandates of the Catholic religion, nor did the fact of carrying the plates meant that she was forced to worship such image. In this case, the CnC introduced relevant aspects of the right to freedom of belief, in order to identify if there is

[8] Op Cit. In section IV *Religious freedom and its historical-constitutional advances in El Salvador*

a violation or not. Based on the following arguments, the CnC concludes that the plaintiff's fundamental argument consisted in an erroneous understanding of the content of the right to religious freedom and dismissed the claim.

Decision of the Constitutional Court

The CnC introduced the content of the right to religious freedom. It accepted that the article 25 SvCn doesn't give accurate terms in order to identify the title holder of this right. It also conceived that the object of this right is the religious belief or the faith as an act as well as all its consequences, and from this analysis concluded that it is valid to affirm that the practice of this right has a double dimension: the individual and the collective.

The individual dimension regards at the fact that religion is part of a person's life contributing (for most) to his/her self-determination, so each person becomes the holder for this individual right. On the other hand, this right is also considered as collective, because religion is not only defined by faith, but also by its ability to generate a community of believers with their own organization, rules, ceremonies or any other expression manifested in collective actions, whether they are held in special venues of each religion or outside them.

Hence, any legally organized group of believers who profess a certain religious conviction is listed as the holder of the right to freedom of belief; that is, any religious entity that, in accordance with the regulations, has obtained the recognition of its personality as provided in article 26 of the SvCn.

Due to the absence of a textual precision of whom the passive subject of this right is, the CnC determined it by analyzing whom the constitutional protection of such freedom is directed. The CnC affirmed that, normally, the protection is enforceable against the public powers; that is, against any State entity or agency, although it is accepted the possibility of requiring constitutional protection against acts of any person in the private sector.

Regarding the limits of the right to religious freedom, the CnC said it isn't an absolute right and that, as indicated in the text of the article 25 SvCn, this right finds its limit in morality and public order, considered them as fences that, due to their evident abstract content requires the specification of its content. So, in order to resolve conflicts with other rights, the CnC reiterated its own jurisprudence⁹ and said that a right's essential core is the element that cannot be yielded to others rights without the annulment of it and not a ponderation of both rights that could allow a peaceful coexistence.

Based on the fact that the object of the right to religious freedom is faith as an act, the CnC held that its content must be limited to the following faculties: (a) to profess religious beliefs, or not to profess any, which supposes the right to know them, study them, abandon them, change them, express themselves on them or refrain of any practice; (b) practicing religion in community and, consequently, the right to associate with other believers in all kinds of confessional associations, to meet and demonstrate with them to celebrate public or private acts of worship, commemorate their festivities, contract religious marriage, and, in return, not to be forced to such acts; (c) practice the rules and commandments of a religion, and, consequently, to celebrate their own worship, which includes the right not to be forced to practice one or the other; (d) receive and impart teaching and disseminate religious information; that is, the faculty of propaganda and proselytizing; (e) establish and sustain places of worship, as

[⁹] The CnC in the resolution of March 26th 2001 in the Unconstitutional case 22-97 talks about the limitations or restrictions of rights: (...) *The analysis of limitation is necessary, even if it requires material and procedural norms, because through it, the protection of legal assets of equal or, perhaps, greater hierarchy is achieved. By specifying these limits, it contributes, in part, to specify certain essential content of fundamental rights. And, although it could be considered that a fundamental right is absolute and unlimited, the absolute impossibility of interference or limitations is not concluded; however, these would be unconstitutional if they violate the core of it.*

well as maintain relationships with organizations and / or other national or foreign denominations; (f) train their own personnel, designate it and establish the corresponding centers; and others with the same characteristics

The CnC warned that the list above isn't exhaustive, and even though it tried to cover the greatest number of faculties that derive from such right, it could obviate some that would imply the restriction of the mentioned right; for this reason, the CnC determined generic guidelines that, although may limit the essential content of the right to religious freedom, their enumeration does not prevent the eventual emergence of other faculties.

After doing an analysis of the constitutions that El Salvador has had through time, the judicial authority recognized the irrefutable adherence to the Catholic religion that El Salvador had in its beginnings, being that even its name finds no more justification than the confessional character that the Constitution evidenced in its origins. In this way, the constituent of 1841, based on a festivity of the Catholic Church – whose representation is based on the image of the *Savior of the World* –, establish El Salvador's name (which can be translated as *the savior*).

The CnC recognized that the image of the Savior of the World is originally endowed with a religious character; however, the possibility of conceiving this image solely as a religious symbol is rejected with the recognition of the right to religious freedom and the principle of State's secularism. Thus, the CnC indicated that the image of the aforementioned monument objectively carries an affective connotation linked to a patriotic and national feeling.

In this case, the CnC explained that the applicant's thesis led to configure the image of the *Savior of the World* as a markedly religious symbol, typical of Catholic belief, and claims that by using the plates she is obliged to participate in acts she deems of worship, and that are against her will and personal convictions. Nevertheless, the CnC indicated that the image didn't have exclusive religious connotations; but, in addition, it denotes a feeling of nationality, and it is precisely in this sense that the monument of the *Savior of the World* has been printed on the vehicle's plates, since there is no element of conviction that led to the conclusion that, the use of plates imposed the practice of the rules and mandates of the Catholic religion, nor any type of worship.

The Constitutional Court clarified that the use of the plates with the image of the *Savior of the World*, didn't violated the right to religious freedom, precisely because with this act, it has not been demonstrated that the defendant tried to coerce the worship of such image or adopt as her own the precepts of a certain religion, and neither intervene in the intimate cloister of beliefs of the plaintiff.

In conclusion, the CnC established that argument of the plaintiff was an erroneous understanding of the content of the right to religious freedom, and therefore the Constitutional Court dismissed the claim.

4.2. Unconstitutional claim 3-2008: The criminalization of the attacks on religious freedom

Synopsis of the case

El Salvador's Criminal Code criminalizes -in its article 296- the attacks on freedom of religion, as following:

Religious freedom assault:

Anyone who in any way prevents, interrupts or performs, free exercise of a religion or publicly offends feelings or beliefs of the same, sharing of any dogma of any religion that have proselytism in the Republic, does apology against traditions and religious customs, or that destroy or cause damage to objects intended for cult, will be sanctioned with prison of six months to two years.

If the above was carried out with advertising, you will be sanctioned with prison of one three years.

The reiteration of the conduct, will be sanctioned with prison of three to five years. The conduct carried out in a reiterated form and with advertising, will be sanctioned with prison from four to eight years.

In 2008 a citizen made an unconstitutional claim to the Constitutional Court and alleged that this article violated the right to freedom of speech, private property and the right of religious freedom itself, by the following arguments:

1. It violates article 6 of the SvCn (which recognizes the right to Freedom of Expression), since the article 296 of the Criminal Code establishes as a crime the mocking of a religion or belief; therefore, this will imply that such provision restricts the exercise of freedom of expression.
2. It violates article 22 of the SvCn (which recognize the right to private property) since article 296 of the Criminal Code establishes as a crime the destruction or damage of objects destined for worship; therefore, this would imply an interference in the rights of people over their own assets.
3. It violates article 25 of the SvCn (which recognizes freedom of religion) since all religions have different points of view, many of them being exclusive, therefore, churches and particular are prevented to express their worship, because that will mean going against other religion.

In this case, the CnC deepened its analysis of the right to religious freedom in a democratic society; also, it expressed the limits that each right has and made a ponderation of one against each other. As a result, the CnC dismissed the plaintiff's arguments.

Decision of the Constitutional Court

On May 22nd, 2013 the CnC issued the sentence of this case. The interesting part of this ruling was that although in the previous precedent, when carrying out a review of the evolution of the right to religious freedom in El Salvador, the CnC said that the principle of secularism by the State since the Constitution of 1883 is affirmed, in this case this judicial authority emphasized the connection of this principle with the freedom of religion. In this part, it will be mentioned the considerations made by the Constitutional Court regarding the content of the right to religious freedom, and in the section VI of this paper will be addressed the analysis made towards the violations of the right alleged by the plaintiff.

In order to resolve this case, the CnC began its presentation by assuring that: in the historical evolution of Salvadoran society, it is clear and constant the will of a separation of the State and ecclesiastical spheres. In this way, El Salvador has moved from a religious society, both intolerant (Constitution of 1824, in which the public practice of any religion other than the Catholic was excluded) and tolerant (Constitutions of 1841, 1864, 1871, 1872 and 1880, in which it was considered that the Catholic religion should be the object of the State protection, but the practice of various creeds or religions was also admitted), passing into a secular society (Constitutions of 1883, 1886, 1939, 1945, 1950, 1962 and 1983), in which the religious practice of citizens was accepted, to the extent that belief is part of the sphere of individual freedom .

The CnC recognized that nowhere in the current Constitution is it expressly prescribed that the Salvadoran State is secular, that is, that there is no provision or article prescribes, for example, *the Church is separated from the State* or *the Salvadoran State has no official religion*, and clarified that secularism is a political concept or doctrine not strictly normative, with which it seeks to qualify a certain attitude of the public powers towards the religious phenomenon.

So, according to the 1983 Constitution in the Salvadoran State the right to everyone to freely profess their religion or beliefs is guaranteed (article 25), either individually or collectively and also the plurality or diversity of confessions or religious and church cults. As well, is mandatory that education is based on democratic principles (article 57) and public offices and agency are required to be from

the secular State (articles 151, 177 and 179), in such manner the CnC concluded that such regulations prevent the imposition of a particular creed.

The Constitutional Court invoked a structural interpretation (known also as a systematic interpretation) of the article 85 SvCn, which establishes that the State is republican, democratic and representative, thereby it warned of the constitutional obligation to assume and promote the diversity (religion, ethics, morals and , in general, the different cultural values) with no other limit than the respect to fundamental rights. Therefore, the CnC stated that an absence of a provision that expressly determines that El Salvador protects a certain religion -which would characterize it as a confessional state-, indicates that the Constituent established a kind of *secularism by silence*. The CnC is aware that the simple omission of an expression is not enough to choose the type of relationship of the Salvadoran State and religion, so in order to support its thesis, it used the principle of unity of the Constitution.

Consequently, it proposed that, despite the lack of a constitutional provision that expressly prescribes that the State does not have an official religion, the consecration of the principle of secularism is understood as the principle of non-confessional state or neutrality religious, and it is sustainable through a systematic interpretation of the constitutional content, because according to the Constitution: i) the State's organization is separated from any religious institutional structure; ii) the political community does not endorse the values or purposes of any religion or ideology; iii) religious freedom is recognized, with no other limit than that established by morality and public order; iv) the equality of all citizens or groups is guaranteed, regardless of their beliefs or religious, which implies that there are no privileges or discriminations based on said beliefs; and, v) as a consequence of the above, the State is neutral in the face of different religious or ethical conceptions.

Likewise, the CnC delimited the duty of neutrality of the Salvadoran State, stating that it is prohibited by mandate of the Constitution to (i) establish an official religion or church, (ii) formally and explicitly identify itself with a church or religion or (iii) perform official acts of adherence, even symbolic, to a belief, religion or church; since these actions of the State would violate the principle of separation between churches and the State, it would ignore the principle of equality in religious matters and would violate religious pluralism within a non-confessional State; likewise, the State cannot (iv) make decisions or measures that have a religious purpose, much less if it constitutes the expression of a preference for some church or confession; nor (v) adopt policies or develop actions whose real primary impact is to promote, benefit or harm a particular religion or church compared to others religion.

The Constitutional Court further clarified that neutrality, in these cases, means that in the public affairs the religious or secular character can't operate as a factor of privilege or discrimination. So, it doesn't mean that the State will become inert regards the protection of the right to freedom of belief. It is noted that the proclaimed separation of the State-Church, far from being a proclamation of absence or lack of importance or attention to basic moral and ethical principles for state decision-making, is shown as a guarantee of the acceptance of a cultural, religious and morally plural society, as a guarantee of respect for differences and the demand for equality or non-discrimination between individuals according to which are their moral or religious ideas. This conception is precisely in tune with article 3 SvCn which prescribes that all people are equal before the law. For the enjoyment of civil rights, no restrictions may be established based on differences of nationality, race, sex or religion.

Without doubt, the ruling of unconstitutionality 3-2008 is also a sample of one of the CnC greatest efforts to empower the right to Freedom of Religion. Also, this court said that the article 25 SvCn expressly prescribes the fundamental right to freedom of religion or belief. Thus, religious or belief freedom guarantees the free self-determination of the individual in the choice and exercise of his own personal worldview or concept of life, regardless of the origin or source of creation or adherence to such concept.

According with the ruling of the case 117-2002, the CnC referred to the freedom of expressing any idea, conception or belief about the religious affairs, as well as to maintain, change or abandon them, either individually and privately, as collectively, in public; however, regarding the practice of freedom of belief, the CnC changes the terminology of *dimensions* to *double-sided*: internal and external aspects. The first one is considered as a matter of individual conscience, and uses foreign jurisprudence in order to reinforce its thesis, specifically from the European Court of Human Rights, in the case *Refah Partisi vs Turkey*.

It also explained that religious freedom is validly permitted in the field of fundamental rights, which protects those one who have assumed a positive attitude towards the religious practice, that is, those who have chosen to profess a particular religion; and, also protects those who have decided not to exercise any religion at all, that is, those who assume a negative attitude towards any religion and beliefs.

The CnC concluded that it is not possible to understand that this right only includes those who practice a religion and not those who chooses not to practice one at all, since it considers that this would imply a restrictive interpretation, which would violate the content of this right. According to this court, the full effectiveness of this fundamental right requires a recognizing that individuals and groups organized legally or not, are holders -active subjects- of the freedom of belief, both internally and externally.

To justify the recognition and protection of this right both internally and externally, and in the positive and negative attitude of people towards the religious phenomenon, the CnC mentioned international instruments to which the Salvador is legally bound.

For instance, it mentions the article 18 of the Universal Declaration of Human Rights, the article 12.1 of the American Convention on Human Rights, the article 18.1 of the International Covenant on Civil and Political Rights and the article 1.1 of the Declaration on the Elimination of All Forms of Intolerance and Discrimination Based on Religion or Convictions. This one says:

Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have a religion or whatever belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching.

As for the passive subject, in the case 117-2002, the court stated that the fundamental right to religious or belief freedom supposes, in general, a passive or negative attitude both from the State and of the individuals -passive subjects- aimed at respecting, not preventing and guaranteeing the practice of any religion or belief without discrimination. Such obligations are: i) guarantee the right to profess the religious beliefs that each person freely chooses, not to profess any and, in addition, the possibility of changing religion or belief; ii) not impose a person's believe, not taking coercive measures to express their beliefs or forcing them to act in such a way that they are understood to profess certain beliefs; iii) not force a change of religion or belief; iv) not to judge the beliefs of individuals; v) not investigate the beliefs of individuals, or indoctrinate a certain confession; vi) not consider the religion or beliefs of the people in their relations with the State; vii) not interfere in the organization of worship acts, as well as the reception of religious assistance, the commemoration of their festivities, the celebration of their marriage rites, which implies not being forced to practice acts contrary to their personal convictions ; viii) guarantee the right to receive and impart religious education and information of all kinds; and ix) not to hinder the right to people to gather or demonstrate publicly for religious purposes, as well as to associate for their religious activities as a community.

As indicated in the previous section, for the resolution of certain conflicts between religious freedom and the use of religious figures, is important to consider the absence of coercive measures for the exercise of certain confession, as well as the consideration of whether or not there is an objective injury to the internal sphere of the conscience of the individual. Additionally, the CnC stated that the

right to religious freedom or belief also constitutes a right to positive actions by the State; for example, the State must issue laws for an effective protection (such as the laws related to religious freedom, religious associations, etc.) Finally, the CnC reiterated that the practice of this right is not absolute, so it has limitations regarding public order, morality and third-party rights, and continued to analysis the rights alleged as violated by the plaintiff, this will be addressed in the section VI of this chapter.

4.3. Unconstitutional claim 22-2011: Legal existence of the human being

Synopsis of the case

In 2011 a citizen filed to the CnC a lawsuit against the article 72 of the Salvadoran Civil Code (SvCC); he alleged that it had a contradiction with the article 2 of the SvCn. The article 72 SvCC says: *The legal existence of every person begins at birth, that is, by separating completely from his mother.* Also, the Constitutional Court incorporated into this process the constitutional analysis of the article 75 of SvCC, which said:

The rights that would be deferred to the child in the womb, if it had been born and lived, will be suspended until the birth is carried out. And if birth constitutes a principle of existence, the newborn will enter into the enjoyment of said rights, as if it had existed at the time they were defended. In the case of article 72, subsection 2, they will pass these rights to other people, as if the creature had never existed.

The parameter of control, in this case was the second paragraph of article 1 of the SvCn, which establishes: *Likewise, [El Salvador] recognizes as a human person every human being from the moment of conception.* Specifically, the incompatibility lied in the fact that the SvCC recognized the human person from birth, while the Constitution of 1983, from its conception; this difference had an impact on the determination of the moment from which the human being is holder of rights.

In the Salvadoran judicial system, in the process of the unconstitutionality of a law, usually the authority that gets sue is the Congress; nevertheless, in this case, even though it was required, the Congress didn't render a defense.

In its ruling, the CnC explained that by recognizing the *nasciturus* the condition of person and the respective ownership of certain fundamental rights, the Constitution, without a doubt, simultaneously, is recognizing the legal existence of a person, so it determined a contradiction between the Constitution and the SvCC, because the civil legislation postponed and conditioned the attribution of *legal existence* to the occurrence of birth; and, only from this perspective, it affirmed that the plaintiff's claim was acceptable and declared the contradiction, between articles 72 and 75 SvCC.

Decision of the Constitutional Court

The interesting part of this case, was that in its explanation, the CnC included aspects related to the exercise of freedom of religion and, mainly, to the secularism of the State; even though religious matter wasn't a subject brought by the claimant, the Constitutional Court addressed it, not to approach the controversy over the end of life before birth, but to review the human dignity and its quality as the origin and purpose of all state activity, in order to strength its recognition from the moment of conception; and in whose context it is logical to emphasize the liberties of the human being, among them, religious freedom.

In this case, the Constitutional Court explained that the influence of Liberal Constitutionalism in Salvadoran legal system is characterized by giving priority to the guaranteeing the rights of the individual against political power, especially through the representative and limited form of government, in which a person conserves a space of freedom that allows him or her self-realization or the pursuing for happiness.

In order to explain Liberal Constitutionalism, the CnC argued that it is expressed in certain substantive principles that rules the decision procedures of the government in fundamental issues for Salvadoran society; and identifies them as follows, without one being a prerequisite for another:

- a. Secularism: It is understood as the absence of an official religion, but also is related with the principle of religious freedom and in the reiterated constitutional requirement of the *Secular status* the candidates for public offices.
- b. Tolerance: Is secularism foundation. According to the CnC no one can claim to possess absolute truth. As an effect of this, the diversity of opinions, the plurality of values, the criticality of thought and the permanent competence of alternative visions are recognized as positive goods or values and which are indispensable for the progress of human civilization. Only intolerance should not be tolerated. For this reason, the Constitution aspires that through education it is possible to *combat all spirit of intolerance* –article 55 SvCn.–thus, within the democratic institutional framework and the limits of the rights of others, the free confrontation of ideas and reasoned dissent prevents the State's paternalism, the manipulation of conscience or the annulment of individualities.
- c. Pluralism: which is classified by the CnC as a condition of secularism and tolerance. It is defined as an ideological level, which implies favoring the expression and dissemination of a diversity of opinions, beliefs or conceptions of the world, based on the conviction that no individual or social sector is the repository of truth and that it can only be reached through discussion and the meeting between different positions.

With those principles the Constitutional Court explained that the Constitution by regulating freedom of thought (article 6 SvCn) and political pluralism (article 85 SvCn) creates an *open society*, that is, a form of social organization reserves spaces of freedom for criticism, rational discussion and moral dissent among its members.

4.4. Unconstitutional claim 23-2017: The constitutionality of the name of El Salvador's international airport

Synopsis of the case

In 2017 a citizen filed an unconstitutional claim against the decree issued by the Congress, in which it was decided to change El Salvador's International Airport name to *El Salvador's International Airport Monsignor Oscar Arnulfo Romero and Galdámez*. In his arguments, the plaintiff said the decree violated, among others, the article 25 SvCn.

As it was mentioned previously, Monsignor Oscar Arnulfo Romero, former Archbishop of San Salvador, was an iconic character in Salvadoran history. Monsignor Romero was assassinated for denouncing the abuses of the army against civil society, as well as the social injustices that El Salvador was going through at that time. To date, the figure of Monsignor Romero remains representative, both for the religious sector (being recognized as a martyr for the faith, which led to his canonization), and for those who identify themselves for the struggles in favor of social justice.

In this case, the plaintiff hinted that the State must act on behalf of all the inhabitants of the Republic, since not all citizens and inhabitants profess the Catholic religion, in his opinion, the State

is prohibited, by Constitutional mandate, to make decisions with religious purposes, especially when it behalf the preference for some church or confession.

In this case, the Constitutional Court didn't make a final decision and dismissed and said that the plaintiff made a misinterpretation of the object of control (religious freedom establish in art. 25 SvCn), and used the precedent of the case 3-2008 to justify its decision.

Decision of the Constitutional Court

In the resolution of this case, the CnC basically summarized the most essential elements of the resolution of the case 3-2008 (which is a precedent), reiterating the transition of the State of El Salvador from a religious society, characterized mainly by its adherence and official recognition of the Catholic religion, to a secular society, in which the religious practice of citizens was accepted, to the extent that belief is part of the field of individual freedom.

The Constitutional Court explained that, due to the duty of neutrality, the State is prohibited from imposing on individuals a particular creed or recognizing an official religion or church, making decisions or measures that grant beneficial or unfavorable treatment to a specific creed or promoting a religious practice. Also, it highlighted that this neutrality means that the States have the mission of guaranteeing the exercise of various religions, cults or beliefs -or respecting the decision of those who abstain from adhering to them and practicing them- but must remain impartial in matters of creed. To substantiate the above, it used the resolution of November 10th, 2005 and March 18th, 2011, in the cases *Leyla Sahin vs. Turkey* and *Lautsi and others vs. Italy*, of the European Court of Human Rights. As said, it used part of the arguments of the ruling of unconstitutionality 3-2008, which, in fact, is recognized in the academic field as an important precedent in the matter of the right freedom of religion. Then, the Constitutional Courts mentioned the faculties that the practice of freedom of religion supposes, which were taken from the Constitutional Claim 117-2002, which was already explained.

After reaffirming its precedents, the CnC proceeded to analyze the content of the legislative decree and, based on it, concluded that the given name was aimed at recognizing one of the most renowned characters in contemporary Salvadoran history and its work in favor of the human rights for the most vulnerable people at the time of the civil war. Consequently, the CnC indicated that by the content of the decree it wasn't proved any limitation or violation in the right to religious freedom recognized in article 25 Cn.

4.5. Unconstitutionality 117-2018: The analysis of the prohibition of religious leaders for running in elections for public office

Synopsis of the case

On October 26, 2018, the Supreme Electoral Tribunal of El Salvador (SET), the highest authority in electoral matter, registered Mr. Josué Alvarado Flores as a presidential candidate for the party VAMOS in the presidential elections that took place on February 3rd, 2019.

In that same year, a citizen filed a claim of unconstitutionality of the aforementioned registration, considering that it violated, among other things, article 82 SvCn which, establishes: *[t]he ministers of any religious cult (...) may not belong to political parties or be elected to positions of popular election*. The violation was justified in the fact that, according to the plaintiff, Mr. Alvarado Flores was a minister, pastor or reverend of the cult *Emmanuel Christian Sorority* or *Intercontinental Christian Fraternity*

Association and, therefore, he wasn't supposed to be registered by the SET as presidential candidate for the 2019 elections.

This case didn't reach a final sentence but got dismissed because during the trial, the presidential elections took place and Mr. Alvarado Flores lost them. Despite this early termination, the CnC made important considerations on the subject that on the matter of a secular State.

Decision of the Constitutional Court

Lawsuit admission

In the admission of the lawsuit (resolution of January 11th, 2019), the CnC made an extended pronouncement regards the right to passive suffrage for the ministers of religious cult. In first place, is important to observe that the Constitutional prohibition consist in a limitation of the right to be chosen for public office, which can only be qualified for constitutionally valid reasons. After analyzing the claim, the CnC explains the neutrality principle (including the historical transition of the Salvadoran State from confessionalism to secularism), on the limits to the right to passive suffrage, and said that the object of this neutrality would not be fulfilled or, at least, would be seriously questioned, if, for example, religious leaders are allowed to occupy positions of popular election, because it would involve the risk that the State adopts, to a greater or lesser extent measure, a particular religious creed or that, in general, would promote a specific religious practice, to the detriment of the State's secularism, the freedom of worship of people and the desirable tolerance and plurality in a Constitutional State.

This clearly demonstrates that for the Constitution the right to run for popularly elected positions (article 72 SvCn), even though it constitutes a right of fundamental importance for representative democracy, isn't absolute either, since it can be limited or exceptionally restricted to certain people or public officials by reason of the position to which they aspire (articles 82 and 151 SvCn.) or by the nature of the function they perform.

End of the process

As related previously, the purpose of the unconstitutionality process, was to determine whether the decision of the SET (the registration of the presidential candidate of VAMOS party) fulfilled constitutional requirements, specifically if there were no disabling conditions to apply for the position of President of the Republic of El Salvador and that if he effectively belongs to the secular state.

As can be seen, the issue was not to define the right to freedom of religion or to resolve a conflict between rights, but rather to determine if the candidate satisfied the principle of secularism and neutrality of the Salvadoran State against the freedom to choose his belief, to modify it or not have any at all. This analysis is an important contribution from the CnC because:

- a. The Constitutional Court (which at that moment had change of conformation) reaffirmed the criteria established in case 3-2008 regards the principle of neutrality, secularism or non-confessionalism *by silence* in the Constitution (by structural interpretation). Also made a clear distinction between the political-state religious sphere, explaining that the religious phenomenon is protected on an individual basis
- b. It made an effort to define what should be understood constitutionally by secular state as a requirement to apply to certain public offices (and as a counterpart, its non-compliance as a disqualification).

- c. Identified the freedoms and principles that serve as the basis for constitutional regulation of the *religious sphere* in El Salvador.

Regarding the last point, the CnC maintained that a full reading of the Constitution allows to affirm that the religious sphere is constitutionally regulated on the basis of the following freedoms and principles:

- A. Religious freedom, reiterated the definition given in the Unconstitutionality case 3-2008, adding that it is a manifestation of conscience that sometimes resulted in the creation of religious associations (articles 7 and 26 of the SvCn), also has a negative dimension that implies that nobody can be forced to belong to an association.
- B. Religious equality (articles 3, 25 and 26 SvCn), which assumes that no religion is below or above the rest. The Constitutional Courts mentioned that *The Single Report of the Study Commission of the Draft of the Constitution* (popularly known as the Exposition of Reasons for the 1983 Constitution), explains that the Commission considered that the religion to which most Salvadorans belong (at that moment) was Catholicism, which explained why the Constitution recognized the Catholic Church; nevertheless, the Constitution also establish that the other churches will be recognizes as long as they fulfill the legal requirement. So even though the legal personality of the Catholic Church is recognized by constitutional provision, this does not detract from the rest of the religions, since all of them can also obtain it, as long as they comply with the requirements of the law. As it was said previously, with the fact that the gap between the Catholic Church and other Evangelical churches has been shorted, is possible that this Constitutional mandate may be questioned again.
- C. The secularism and the State's neutrality. The CnC affirmed that secularism is expressed in the absence of an official religion, but also in the same principle of religious freedom (article 25 SvCn). As well, it is a manifestation of the people's freedom, because in their decisions the State should not impose any particular vision of spirituality or religious morality.
- D. The cooperation of the State with religious confessions. This has been qualified as a limit to the laicity of the State, because such cooperation is considered necessary to promote the effective exercise of the religious freedom of individuals. Even when the State is secular, the Constitutional Court affirms that it must not impede relations between the individual and religion, spirituality or the decision not to adopt one. The Constitutional Court made an extensive interpretation regarding the protection of the religious factor, asserting that it is a legally protected social asset and must be protected by the public authorities. Also, that this responded to the democratic inspiration.

In other words, the CnC clarified that the secularism of the State does not deprive it of the obligation to provide support, protection and recognition of legal personality of religions, so that individuals and groups can practice their right to religious freedom.

Regarding the *secular status* required in the Constitution to apply to the main public offices in the country, the Constitutional Court recognized that this concept is not specified in the Magna Carta. So, the CnC pointed out that by secular state, it must be understood as

the condition of not belonging to the priestly class of the Catholic Church or to the hierarchy of any other church or religion, or even for religions or "churches" that doesn't formally reflects a well-defined hierarchical class, such a requirement of the secular state would be linked to its leaders or authorities, in such a way that whoever exercised areas of this nature would be excluded from the requirement of being a secular state, and therefore, must not hold a public office.

As it is observed, the disqualification includes every leader or authority of any church or religion, so in the future the casuistry will establish the complexity in order to achieve the segregation between a church leader and any parishioner.

Even though the CnC didn't give a final judgment (because the presidential elections were held, and that candidate was not elected), the CnC made important contribution by making a structural interpretation in order to determinate the relationship between the State and the religious sphere

5. The Right to freedom of religion in El Salvador and the role of the jurisprudence to define its limit and weighting against other fundamental right

In the evolution of the right to religious freedom, jurisprudence has played a leading role in defining its limits and prevalence against other right. Many fundamental rights conflicts usually arise and is a judge the one that charge to determine in which circumstances one right will prevail against another one.

The CnC has repeatedly maintained that the recognition of absolute rights is not possible, despite the fact that they have constitutional rank. Therefore, this means that all rights are limited, but this restriction does not rest on the discretion of the authorities, but rather on fully established valuation, and the weighting analysis between the rights that will prevail over another.

When a collision of fundamental rights occurs, it is not possible to resolve a conflict by ignoring or annulling a particular fundamental right, since this would imply the hierarchy of constitutional rights, a situation that is not allow in Salvadoran constitutional law. Therefore, when faced with these cases, the ideal method of interpretation is a weighting analysis, which consists of determining, with specific circumstances, which right prevails.

When fundamental rights collide, a balance should be sought between them or, if such a balance is not possible, decided in the specific case, with the specific circumstances, which right should prevail. This solution cannot be generalized to future cases, being essential to carry out an individual analysis of the rights in conflict.

In this section a brief review will be made of the judicial resolutions in which there were exposed collisions of rights, being one of these, religious freedom. With this, it is intended to evaluate the limits that the jurisprudence has granted to this right, being that in some cases it will prevail and in others it will yield against other rights. It was considered appropriate to address this point, since it reflects the importance that both the legislator and the Judicial Branch gives to this right, without ignoring the importance of other rights.

5.1. The State's protection to Religious freedom

Due the importance of religious freedom, the legislator has been in charge of developing a series of regulations in order to safeguard it. Among the most immediate protection, it can be found, the right to equal treatment (article 3 SvCn). This right prohibits any unequal treatment based on nationality, race, sex or religion. Although this protection is under the protection of the right to equality, it also covers religious freedom, since it inhibits discriminatory treatment derived from the religion of the individual. As an example, the Salvadorian law system has many laws, like the Law on Obligations and Rights of Patients and Health Service Providers, Law of Integral Protection of Children and Adolescents, Labor Code, among others.

Despite the above, it cannot be ignored that there are cases in which people's behaviors can go beyond an unequal treatment, and on the contrary, it is motivated by hatred against a specific religion. Is towards these cases that the legislator has become aware of the need to protect freedom of religion

to such a degree, to criminalize those acts that violate religious freedom. So, in the article 296 of the Criminal Code, which establishes:

Religious freedom assault:

Anyone who in any way prevents, interrupts or performs, free exercise of a religion or publicly offends feelings or beliefs of the same, sharing of any dogma of any religion that have proselytism in the Republic, does apology against traditions and religious customs, or that destroy or cause damage to objects intended for cult, will be sanctioned with prison of six months to two years.

If the above was carried out with advertising, you will be sanctioned with prison of one three years.

The reiteration of the conduct, will be sanctioned with prison of three to five years. The conduct carried out in a reiterated form and with advertising, will be sanctioned with prison from four to eight years.

As it can be seen, one of the most important elements from the crime describe above is that it is focused on or directed towards the protection of religious freedom; even though, the acts described could fit into crimes against honor or private property, the legislator chose to provides independent protection, regards the importance of the final right it aims to protect .

Thus, in the Salvadoran legal system, freedom of religion is protected through an independent crime, which to perpetuate requires the specific intentions of the criminal to affect someone beliefs. Therefore, for the crime described above to materialize, it is essential that the person responsible has the purpose of damaging a religious or a belief. Although the perpetrator of the crime could have attacked honor, property or public peace during the execution of his criminal conduct, his purpose, his will or harmful intention should be directed against the religious manifestations of third party.

One of the important elements when analyzing the previous article is the protection it grants to the two aspects of freedom of religion: the internal and the external. It is recalled that jurisprudentially, the Constitutional Court has indicated that religious freedom has to aspects: internal and external. The internal aspect consists a person's own personality and individual dignity, referring to the faculty that every person has to freely choose any idea, conception or belief about the religious phenomenon, as well as to maintain, change or abandon them.

Thus, the article 296 of the Criminal Code protects this aspect by prohibiting the public offence of dogmas or beliefs. Whereas, the external aspect refers to the power that every person has to act according to their own convictions, and express that decision individually or collectively, whether privately or in public. Therefore, by sanctioning the conduct by which the free exercise of a religion is prevented or interrupted, the external aspect is protected.

Despite the fact that such protection reflects an intention of the legislator to guarantee the freedom of belief, such provision has been questioned, being alleged that it can restrain the right to freedom of expression, freedom of property and even, the practice of someone owns religion, and receive a punishment of up to 8 years in prison.

5.2. The weighting as a jurisprudential solution to the conflicts of constitutional rank

As said in the section V) of this paper, a citizen made an unconstitutional claim against this article. The plaintiff said that the article 296 of the Criminal Code violated the article 6 of the SvCn (which recognizes the right to Freedom of Expression), article 22 of the SvCn (which recognize the right to private property) and article 25 of the SvCn (which recognizes freedom of religion).

The Congress (which issued the Criminal Code) justified the constitutionality of the article 296, explained with that article it is intended to punish the abusive use of some of the rights and guarantees against the right to freedom of belief.

On May 22nd, 2013 the CnC gave its ruling. As it was previous said, the decision in this case became an important precedent in toward the freedom of belief, due the fact that in order to answer all of the allegations, the CnC had to make many explication regards collision of rights as well as the nature of freedom speech, private property and religious freedom in Salvadoran legal system.

a. Freedom of speech vs freedom of belief

In the sentence 3-2008, The CnC recognized the essential function of freedom of speech and the right of information in a democratic and representative society. Therefore, the article 6 SvCn indicates that everyone can freely express and disseminate their thoughts as long as they do not subvert public order, nor harm the morals, honor, or private life of others. According to the Constitution, the practice of this right will not be subject to prior examination, censorship or surety; and those who using it who breaks the laws, will answer for the crime they commit.

It can be easily understood that freedom of expression is the right of every person to express their individual's ideas, opinions and judgments, by any means, without being object of censorship. However, as it has been said, there is not absolute right.

It is evident that from the literality of article 6 SvCn, although this freedom is established, there is also a restriction, which is *to answer for the crime that is committed by the practice of this right*. By this content, the text of the Constitution introduces the term *crime*, which establishes an assumption of responsibility for the exercise of this right, as well as the existence of an express command for the legislator to establish specific actions, in which there will be an illegitimate use of freedom of speech, in which other rights would be violated and therefore would be a commission of a crime.

In its resolution the CnC, analyzed the interaction of freedom of speech and freedom of religion, and quoted the resolution dictated by the European Court of Human Rights, in the case *Otto Preminger-Institute vs. Austria* of September 20th, 1994:

Those who choose to exercise the freedom to manifest their religion, irrespective of whether they do so as members of a religious majority or a minority, cannot reasonably expect to be exempt from all criticism. They must tolerate and accept the denial by others of their religious beliefs and even the propagation by others of doctrines hostile to their faith. However, the manner in which religious beliefs and doctrines are opposed or denied is a matter which may engage the responsibility of the State, notably its responsibility to ensure the peaceful enjoyment of the right guaranteed under Article 9 (art. 9) to the holders of those beliefs and doctrines. Indeed, in extreme cases the effect of particular methods of opposing or denying religious beliefs can be such as to inhibit those who hold such beliefs from exercising their freedom to hold and express them. (paragraph 47).

Based on this ruling, the Constitutional Court recognized that, although freedom of expression is fundamental in a democratic society, it cannot be extended to the detriment of the necessary harmony of other constitutional rights, being of them, the right of religious freedom. Therefore, the very limits that the Constituent has established to freedom of expression cannot pass unnoticed: public order, morality, honor and the private life of others, as well as consequences (criminal sanction) to those who made illegitimate use of it.

Although the right that everyone has to express their thoughts, opinions or ideas is recognized, when they have enough intensity to violate another fundamental right, they should be repressed or limited.

Taking the previous ruling as a reference, the Constitutional Court maintained that freedom of expression – including that of information, opinion, public criticism and the right to make favorable or unfavorable value judgments derived from article 6 SvCn are not justiciable or punishable, unless

it acts with intent or an intention to cause damage to constitutionally protected rights, such as religious or belief freedom. If this situation arises, one would be in the illegal and arbitrary exercise of a fundamental democratic freedom, in which the application of a punishment would be appropriate, hence, the existence of article 296 of the Criminal Code.

Therefore, CnC sustained that making opinion, express a public criticism, a favorable or unfavorable judgment- is a right derived from article 6 SvCn, and those actions will not be punishable, unless they are intended or made with the intention to cause damage to the constitutionally protected rights, such as religious freedom. If this situation arises, the author would be in the illegal and arbitrary practice of a fundamental democratic freedom, in which the application of a punishment would be appropriate, as is establish in article 296 of the Criminal Code.

From the analysis carried out, the Constitutional Court concluded that article 296 of the Criminal Code must be interpreted in such a way that it is applicable only when ideas, thoughts or opinions are expressed in the form of mockery or are intended to insult or ridicule, having great potential to provoke retaliation in the average citizen, thus causing public disorder. Therefore, to be a crime, a context analysis must be done to determine the purpose of the violent or degrading attack on religious freedom or belief towards an individual person or group. In this case, when freedom of expression will yield to the right to religious freedom.

b. Private property vs Religious freedom

According to article 269 of the Criminal Code, the act of destroying or causing damage to objects destined for a cult constitutes a crime. One of the relevant points in this case is that in order for this crime to be committed, it does not matter if the property belongs to the offender or if it belongs to someone else. The plaintiff circumscribes his complaint in the case of someone's own property, explaining that just because an object is destined for a cult or worship, it restricts the exercise of the owner. Thus, due to its religious significance, its owner would be prohibited from carrying out an action aimed at disposing of it in the way he wishes, in this case damaging or destroying it.

In order to resolve this apparent collision of constitutional rights, the highest interpreter of the Constitution in the Salvadoran judicial system, started its analysis with the right of private property. The article 2 of SvCn recognizes the right of property, while the article 22 of SvCn establishes the right of every person to freely dispose of their property under the law, which implies not only poses the object but to transmit it, modify it, or even destroy o damage the object; in other words, as long as it doesn't harm public order or the rights of third parties, the owner could be able to do whatever he wants with his assets. As it was analyzed in the previous case, the CnC is emphatic in determining that there are external limits to fundamental rights that are imposed by the same legal system. These limits will allow to distinguish when there is a legitimate and ordinary use of a right and when isn't.

To identify when there's an illegitimate use of this right, Salvadoran Constitutional jurisprudence has said that it will be when the acts transcends his personal sphere of its owner through external manifestations. This situation will arise when there is a violent intention to harm or endanger others. In order to solve the allegation of the plaintiff, the CnC, first, excludes from the application of the article 296 of the Criminal Code, those conducts that imply the destruction of own goods destined for a cult or religious adoration, that do not have a relevant value or meaning.

As well, the judicial authority says that criminal sanction is considered to be the specific measures used by the legislator to protect the fundamental rights of third parties, against the abusive or illegitimate exercise of certain rights. In this way, the legislator usually prescribes the behavior of people in their relationship with others, but not with respect to themselves. So, it should be understood that article 296 of the Criminal Code penalize destruction of objects destined precisely for worship, derived

from external manifestations of a disproportionate and irrational religious intolerance. In other words, the destruction or damage to objects destined for a cult will only be considered illegal, when that action is done with the will or harmful intention directed against any religion or cult. In this way, the limit of the right to property is legitimized, because the destruction or damage to the property is only a consequence of intolerance, thus affecting the right to religious freedom.

c. Does the criminalization of religious freedom attack, violates this liberty?

Finally, in this case, the plaintiff, also, alleged that the article 296 of the Criminal Code restricts religious or belief freedom, because when someone practice its own religion, this could also harm other religions or beliefs. In this case, it is claimed that religions tend to have different points of view, which are mutually exclusive.

To settle this conflict, the CnC made reference to the external aspect of religious freedom, that is, the power that people have to express their own convictions and maintain them in front of third parties. One of the advantages of being in a democratic society is the right to practice any religion, but this also brings possibility of being criticized and rejected; however, such criticism or rejection should always be within the reasonable margin of tolerance. So, the article 296 of the Criminal Code is not intended to prevent religions or beliefs from being criticized or rejected; what it intends is to prevent those manifestations that seek to incite attacks or unlawful conduct due to exaggerate rejection of any religion.

To clarify this point, the CnC advocates to the article 20.2 of the International Covenant on Civil and Political Rights, which says: *Any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law.* Therefore, the purpose of the article 296 Criminal Code is to prohibit any hate speech against any religion or belief, which is usually characterized by: (i) delimiting an individual or group of individuals based on certain characteristics; (ii) stigmatize its objective, assigning it a series of qualities that are generally considered undesirable and that are always present in the specific group or sector components; and, (iii) displacing a group outside normal social relations because any particular characteristic and their presence is considered as hostile and unacceptable.

Consequently, the CnC concluded that the crime of publicly offending feelings or beliefs, by speaking against religious traditions and customs, is applicable only when critical manifestations or rejection incite discrimination, hostility or violence on religious grounds. So, the punishment must be limited to a genuine incitement to commit a crime, when religious intolerance is professed for violent purposes. With this interpretation, the prohibited behavior, doesn't apply to a regular practice of any religion external aspect.

From the previous analysis, the Constitutional Court decided that the article 296 of the Criminal Code was coherent with the SvCn, since it did not violate the right to freedom of speech, the right to property, or the right to religious freedom. It is worth mentioning that this sentence was a milestone for the liberty of freedom El Salvador. Lastly, although the article 296 of the Criminal Code could be considered severe (because it gives up to 8 years of prison) and that currently there shouldn't be cases of religious intolerance, unfortunately they do occur. For instance, there are two cases, which, although they did not go beyond the judicial sphere, it may represent a clear religious intolerance.

In 2017, teachers from a private educational institution forced their students to clean the ash placed on their foreheads after attending the Ash Wednesday mass. In the Catholic religion, the beginning of Lent is celebrated with Ash Wednesday, in which, as part of the rite, a cross is drawn to the parishioners with the ashes of the palms of the Palm Sunday of the Easter of the previous year. As a consequence, of the teachers' attitude, several parents made a public claim, alleging lack of respect and tolerance and

invoking the right to religious freedom. Given this, the educational center made a public statement rejecting the act of its staff acknowledging that the actions reflected lack of tolerance and respect for diversity.

Similarly, in the last presidential campaign in El Salvador (presidential period 2019–2024), a smear campaign was implemented against one of the candidates, using the fact that his father was a leader of the Islamic community in the country. Even though this candidate turned out to be elected as President of El Salvador, some of his political opponents insisted on using religious motives to denigrate his image.

Sometimes intolerance in religion goes unnoticed, which can't be acceptable in a democratic society, hence the importance of the State's protection and the punishment of any behaviors tending to repress or violate such right.

5.3. Religious freedom and parental authority limits

Synopsis of the case

On 2017, a citizen filed a Habeas Corpus claim to the CnC claiming that he was in provisional detention without the requirements stated by law, also violating his constitutional rights to freedom of worship and to choose the education of his children. Therefore, he manifested that he was criminalized for the exercise of his faith, since he belongs to an evangelical Christian church, with deep Christian beliefs that does not accept the events of the outside world, so he decided that he didn't want to send his children to public schools, and preferred to personally educate them.

The judge who was hearing about the case in the criminal court indicated that the plaintiff's statements were not true, since there was proof that the children (of the plaintiff) were victim of serious child abuse, and that the plaintiff was being charge of deprivation of liberty and child abuse. To resolve, this case the CnC focused its analysis on the right that any under- aged has to an integral development and the duty of the State to protect it; and after reviewing the facts of the case, as well as the applicable law, the CnC resolved not to grant the plaintiff request.

Decision of the Constitutional Court

First, the Constitutional Court indicated that article 34 SvCn establishes that every under-aged has the right to live with his/her family in environment that allows his/her full right, for which he/she will have the protection of the State, which is the responsible for creating institutions for the protection of the children. Similarly, it mentioned that the article 35 of the SvCn indicates that the State will protect the physical, mental and moral health of under-aged and will guarantee their right to education and assistance. In addition, the CnC mentioned the article 19 of the American Convention on Human Rights, which establishes that every minor child has the right to the measures of protection required by his condition as a minor on the part of his family, society, and the State.

In order to give full effect to the rights and duties conferred by the Constitution and the laws that protect minors, the figure of parental authority is recognized in the Salvadoran legal system, being its purpose to guarantee the fulfillment of the duties of parents through the exercise of certain rights over their children. Thus, as stated in article 206 of Salvadoran Family Code, the parental authority is the set of facultative and duties granted to both the father and the mother regarding their children. However, the CnC specified that the rights that make up parental authority have not been granted to parents for personal gain, but exclusively in favor of the best interests of the child. So, this right is an instrumental right which final purpose is the welfare of the children.

Within the Salvadoran laws a series of faculties and obligations are develop to the parents or representatives of the children, among which is that both parents direct the formation of their children within the canons of morality, human solidarity and respect, including the religious aspect and establishing it as a duty to educate them and facilitate access to the educational system. Likewise, the duty of parents to adequately and moderately correct their children is recognized.

The article 53 SvCn establishes that education is an inherent right of the human person, and the CnC has indicated that, due to its essential and vital character for the development of individuals, this right is classified as fundamental. In addition, that within the aims of education is to achieve the integral development of the personality in its spiritual, moral and social dimension, having parents the preferential right to choose the education of their children (article 55 SvCn); being that said, this right not only can be understood only as an academic view but it also includes values, religion, etc.

Regarding child protection, El Salvador is part of many international instruments. For example, there is the Additional Protocol to the American Convention on Human Rights in the area of Economic, Social, and Cultural Rights (more commonly known as the *Protocol of San Salvador*) and the Universal Declaration of Human Rights. Both normative agree on giving preferential right to parents to choose the type of education of their children. Likewise, the CnC brought to mention the article 18 of the International Covenant on Civil and Political Rights, which states:

1. Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching.
2. No one shall be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice.
3. Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others.
4. The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to ensure the religious and moral education of their children in conformity with their own convictions.

Also, the American Convention on Human Rights incorporates into the freedom of conscience and of religion, in its article 12: *4. Parents or guardians, as the case may be, have the right to provide for the religious and moral education of their children or wards that is in accord with their own convictions.*

However, the right of parents to choose the education of their children, as well as to impart the religion that will be indoctrinated, according to the CnC shouldn't conflict with the public education provided by the State, due to the secular nature of the State; that is to say, the education imparted in the public educational system cannot have a doctrinal impact on a specific religion or belief; on the other hand, parents can always educate their children in their convictions when they are not at school. Based on this, it is not valid to considerate the one own religious belief is a justify cause in order to deny the right to education one's child.

By making a comprehensive analysis of the aforementioned norms (Constitution, international and national regulations), the CnC indicated that, on one hand, the State has a positive obligation to guarantee that children gets education, on the other, to respect the convictions of those who are primarily responsible for them; however, there is a limit such as complying with the aims of education, which must be essentially democratic and subject to the rules established by the law on that matter.

Also, the article 54 SvCn says that the State will organize the educational system for which it will create the necessary institutions and services, while also guaranteeing the freedom to establish private educational centers. When referring to this freedom, the CnC said it refers to everyone who engages in the orderly and systematic transmission of knowledge, inside or outside the official educational system; therefore, as a first approximation to its content, it can be affirmed that everyone is free to

carry out a teaching activity, to spread ideas to others, as established by the Constitution. However, the same Constitution in its article 57 indicates that those who exercise such freedom will be subject to regulation and inspection by the competent public authorities.

The CnC stated that in the Salvadoran system, education must be provided under state regulation and inspection, that is, academic education must be carried out under the guidelines and programs established by the State itself. Therefore, although the possibility that education is carried out at home is not prohibited in the educational system, the teachers and the academic program must be regulated and inspected by the State. In addition, it was brought to consideration that in order to be a teacher of the education system, one must be registered in the registry kept by the State, prior to fulfill with the requirements established by the regulations, being prohibited for educational institutions (public or private) to have teachers who are not on that register.

Regarding the violation of religious freedom alleged by the plaintiff, the CnC reiterated what was stated in the sentence identify as 3-2008 of May 22nd, 2013, which was analyzed in a previous section of this article.

After doing a description of the facts, CnC determined that the defendant's children did not have access to academic education, nor were medical checks followed, since they were locked up at home. As well as, that defendant wasn't within the registry of teachers that the State have. Among other consideration, the Constitutional Court, indicated that the plaintiff had failed his duty as a parent, in terms of ensuring his children health, formal educational rights and other rights that assisted them. Therefore, the CnC indicated that the conduct of the plaintiff was far from any faculty given by his parental authority, and since this is not a right of self-interest for the parents because it's purpose will always be the children welfare. Also, that the right of an education goes beyond the academic one, because also includes to give the children the necessary tools to prepare themselves to develop within society, while the applicant has not allowed it. The CnC found out that the victims (children of the plaintiff) showed schooling and socio-cultural delays, as well as bad nutrition.

It is reiterated that the powers conferred with the exercise of parental authority are intended to achieve the well-being of the family and guarantee it's rights, which did not occur in the case in question, since the plaintiff's argument consisted in claiming that because religious beliefs he didn't send his children to school, but he neither supplied the necessary education for their comprehensive development. The CnC said that such omissions couldn't be justified by claiming to protect his religious beliefs and preferred it against the education of his children. The CnC reiterated that the right of religious freedom is not absolute, being one of its limits the right of third parties, which in this case would be the rights of the plaintiff's children. Also, it indicated that because El Salvador is a secular State the official education wouldn't go against his religious beliefs.

Finally, the CnC added an important element, and that is that the essence of parental authority should not be distorted, since the final beneficiaries are children and adolescents and not the parents. In this case, the CnC dismissed the plaintiff petition of Habeas Corpus.

Conclusions

After analyzing the legal history of El Salvador, it can be seen that the right to religious freedom has been evolving gradually. In the first place, there was a Constitution that gave no entry to any other religion than to Catholicism, thus constituting El Salvador as a Confessional State; subsequently, this situation changed until El Salvador became a Secular State. Although, this status is not expressly recognized by the Constitution, the jurisprudence has played a transcendental role to define it, using different interpretation method, giving preference to the structural method of the principles that prevail in our democratic regime.

Also, constitutional jurisprudence was in charge of empowering the term of secular State with the duty of *neutrality of the State*, as well as its implementation in El Salvador law system in order to guarantee the peaceful practice of any religions as well as the right to choose to no practice a religion at all, and to remain impartial in matters of any creed.

Being a country with Catholic origins and traditions, the role that constitutional jurisprudence has been crucial, being the Constitutional Court in charge of evolving with the different legal criteria that allow an effective practice to religious freedom according to a democratic society, and protecting, as well the other constitutional rights.

In this way, the decisions of the highest constitutional court of El Salvador has given essential guidelines to identify when the freedom of belief, or when there is an illegal or erroneous use of it. Even though there aren't so many cases regards this right, the few that exists has made great strides, because its content is rich in analysis and interpretation. Likewise, it is important to point out that although the Judicial Branch has been in charge of laying the foundations for a neutral State, as civil society Salvadorian still have a long way to go; although the State is in charge of guaranteeing its neutrality, as citizens we must also practice tolerance, knowing that in Salvadorian law system there are no absolute rights, and that in case there is an illegitimate practice of one (even if it is considered constitutional), there will be consequences.

List of judicial decisions

1. Resolution delivered by the Constitutional Court of the Supreme Court of Justice on March 26th, 2001 in the process of Unconstitutionality 22-97
2. Resolution delivered by the Constitutional Court of the Supreme Court of Justice on May 6th, 2003 in Constitutional Claim 117-2002
3. Resolution delivered by the Constitutional Court of the Supreme Court of Justice on May 22nd, 2013 in process of Unconstitutionality 3-2008
4. Resolution delivered by the Constitutional Court of the Supreme Court of Justice on February 15th, 2017 in the Unconstitutionality Process 22-2011.
5. Resolution delivered by the Constitutional Court of the Supreme Court of Justice August 14th, 2017 in the unconstitutionality process 23-2017.
6. Resolution delivered by the Constitutional Court of the Supreme Court of Justice on June 6th, 2018 in *Hábeas Corpus* 296-2017.
7. Resolution delivered by the Constitutional Court of the Supreme Court of Justice on January 11th, 2019 in the process of Unconstitutionality 117-2018.
8. Resolution delivered by the Constitutional Court of the Supreme Court of Justice on April 10th, 2019 in the process of Unconstitutionality 117-2018.

Legislation

1. Additional Protocol to the American Convention on Human Rights in the area of Economic, Social, and Cultural Rights
2. American Convention on Human Rights
3. El Salvador Constitution
4. Declaration on the Elimination of All Forms of Intolerance and Discrimination Based on Religion or Convictions
5. Family Code

6. International Covenant on Civil and Political Rights
7. Law on Obligations and Rights of Patients and Health Service Providers
8. Law of Integral Protection of Children and Adolescents
9. Labor Code
10. National Symbols Act
11. Salvadoran Civil Code
12. Universal Declaration of Human Rights

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