

O wolność wyznawania religii we współczesnym świecie

Przeciwdziałanie przyczynom dyskryminacji
i pomoc prześladowanym na przykładzie chrześcijan



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Religious Freedom in Portugal. Problems and Solutions in Complex Times

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Introduction

The Portuguese Constitution (enacted in 1976) and other legal acts provide a very comprehensive and detailed legal framework to religious freedom, which will be examined below (under 1.). But religious freedom is not a burning issue in Portugal. The vast majority of the Portuguese people is Roman Catholic and the non-Christian minorities are residual and largely come from former colonies. There are no problems about national unity or ethnic disputes, wherefore even those factors – frequently involved in religious contentious contexts – are absent from the Portuguese society.

Thus, it comes as no surprise that the case law regarding religious freedom is rather poor, as we will see under 2¹. It revolves around quite a small number of issues and cases: religious education; exemption from work for religious reasons; conscience objection for religious reasons (which has lost almost all of its social importance after conscription was abolished in 2004); political parties' names and symbols related to religion; harvesting of human organs and tissues (the problem was solved through a legislative reform); services rendered by members of religious communities within those communities. The 2010 judgment about same-sex marriage only marginally has touched on religious freedom questions. In fact, if the reader is looking for juicy judicial disputes involving crosses in public places, veils, burqhas and burkinis, prayers in schools, etc., the Portuguese case law will be very disappointing. At least for the time being, as a judgement is expected to be rendered by the Constitutional Court about gender ideology in schools.

The majority opinions that set forth the aforementioned judicial decisions were generally respectful of religious freedom and did not embark on unwarranted conflicts between Church and State, and didn't try to draw rules of law from a figure of speech like the famous (or infamous...) *wall of separation*².

Nevertheless, in recent years (the complex times mentioned in the title), an alarming trend has arisen in decisions concerning abortion/*wrongful birth* claims, abortion/surrogacy and procurement to prostitution: judicial activism, which prevents citizens to make decisions about public policies in accordance to their religious values, in areas left open by the Constitution to the democratic process. This will be discussed under 3.

[¹] For a detailed overview: A. Duarte Silva, *Jurisprudência Constitucional em matéria da Liberdade de Consciência, de Religião e de Culto*, 2008 (available in http://www.tribunalconstitucional.pt/tc/content/files/relatorios/relatorio_002.pdf); M. Baptista Lopes, *A liberdade religiosa em Portugal, a(s) Constituição(ões) e o Tribunal Constitucional*, 2016 (available in http://www.clr.mj.pt/sections/artigos/estudos-de-caracter/artigo-a-liberdade/downloadFile/attachedFile_fo/A_Liberdade_religiosa_as_Constituicao_oes_e_o_Tribunal_Constitucional.pdf?nocache=1479383571.45).

[²] *A rule of law should not be drawn from a figure of speech*: Supreme Court of the United States case *McCullum v. Board of Education*, 333 U.S. 203 (1948), Justice Stanley Reed's dissent.

1. Constitutional and legal framework

The protection of religious freedom in the Portuguese legal system is present, first of all, in art. 41/1 of the Portuguese Constitution (Const.): *The freedom of conscience, of religion and of form of worship is inviolable.*

Although set together, the freedom of religion distinguishes itself from the freedom of conscience. Freedom of conscience encompasses the moral and philosophical convictions of a person, while freedom of religion concerns the belief in a supernatural dimension. Freedom of worship is one of the aspects of freedom of religion, which is reflected in the worship and veneration of supernatural entities.

The utter importance of these freedoms is emphasized by its inviolability, which is a constitutional feature shared only by the right to life³ and the right to personal integrity⁴. Religious freedom can't be suspended during states of siege or emergency: *in no case may a declaration of a state of siege or a state of emergency affect the rights to life, personal integrity, personal identity, civil capacity and citizenship, the non-retroactivity of the criminal law, accused persons' right to a defence, or the freedom of conscience and religion* (art. 19/6 Const.).

Public authorities can't take actions against the people's religious options and no one can be sanctioned for following a religion and its precepts: *No one may be persecuted, deprived of rights or exempted from civic obligations or duties because of his convictions or religious observance* (art. 41/2 Const.)⁵. Thus, it is guaranteed that *no authority may question anyone in relation to his convictions or religious observance, save in order to gather statistical data that cannot be individually identified, nor may anyone be prejudiced in any way for refusing to answer* (art. 41/3 Const.), which is simultaneously a way of protecting everyone's right to their personal and family's life (art. 26/1 Const.)⁶.

Of course that religious freedom has ineliminable public and institutional dimensions and the Constitution couldn't ignore it: *Churches and other religious communities are separate from the state and are free to organise themselves and to exercise their functions and form of worship* (art. 41/4 Const.)⁷.

Religious education, especially the one provided by Catholic schools, has always played a very important role in the Portuguese society. That's why art. 41/5 Const. (first part) enshrines *the freedom to teach any religion within the ambit of the religious belief...* This comprises not only the right to teach within a faithful's community, like in schools created by religious denominations to teach its religion (e.g., seminaries), but also religious education in public, private and cooperative schools.

The Fundamental Law guarantees likewise *the freedom (...) to use the religion's own media for the pursuit of its activities* (art. 41/5 Const.). As the religious media's goal is to promote religious beliefs, they are exempted from its own journalists' interference in the definition of editorial policies: *Freedom of the press implies: a) Freedom of expression and creativity on the part of journalists and other staff, as well as journalists' freedom to take part in deciding the editorial policy of their media entity, save when the latter is doctrinal or religious in nature* (art. 38/ 2, a) Const.).

The right to be a conscientious objector, as laid down by law, is guaranteed (art. 41/6 Const.). This includes conscientious objection based on religious beliefs⁸, in fields like, v.g., military service (art. 276/4

[³] Art. 24/1 Const.: *Human life is inviolable.*

[⁴] Art. 25/1 Const.: *Every person's moral and physical integrity is inviolable.*

[⁵] This is also a reflection of the principle of equal protection (art. 13 Const.).

[⁶] Art. 35/ 3 Const. expressly provides: *Information technology may not be used to treat data concerning (...) religious faith (...) save with the express consent of the data subject, or with an authorisation provided for by law and with guarantees of non-discrimination, or for the purpose of processing statistical data that are not individually identifiable.*

[⁷] About the goals of the separation between State and religion (avoid totalitarianism and coercion; ensure individual freedom; ensure the autonomy of religious bodies; equality; pluralism in public life), see J. Machado, *Liberdade religiosa numa comunidade constitucional inclusiva*, Coimbra 1996, p. 347–355.

[⁸] J.J. Gomes Canotilho, V. Moreira, *Constituição da República Portuguesa Anotada*, I, Coimbra 2007, art. 41, X.

Const.)⁹, media (art. 38/ 2, b) Const.)¹⁰ and even labour relations¹¹ (art. 18/1 Const.)¹². Other examples of religious conscientious objection can be found in several legislative acts or administrative provisions about doctors¹³, nurses¹⁴ or abortion¹⁵.

Clearly separating religion from politics, art. 51/3 Const. states that *notwithstanding the philosophy or ideology that underlies their manifestoes, political parties may not employ names that contain expressions which are directly related to any religion or church, or emblems that can be confused with national or religious symbols*.

Of great importance is also the Law on Religious Freedom (LRF)¹⁶, which develops the constitutional rules. Its article 1 establishes once more the freedom of conscience, religion and worship, in accordance with the Constitution, the Universal Declaration of Human Rights and the applicable international law.

According to art. 2 LRF, religious freedom is governed by a principle of equality: no one can be privileged, beneficed, aggrieved, persecuted, deprived of any right or exempt from any duty on account of his or her convictions or religious practice, and the State shall not discriminate any church or religious community in relation to others.

Art. 6 LRF deals with the legal force of the freedom of conscience, religion and worship, which only allows the necessary restrictions to safeguard constitutionally protected rights or interests (nr. 1), as the law can regulate, whenever necessary, the exercise of freedom of conscience, religion and worship, without prejudice to the existence of this right (nr. 4). According to Gomes Canotilho and Vital Moreira, this wouldn't allow in Portugal measures already adopted in other legal systems, like banning certain clothes or symbols¹⁷. But the balance of interests may impose, on behalf of public values, restrictions to religious options (v.g., the duty to unveil one's face, in order to take a photograph for an official document)¹⁸.

Such balance of interests achieves the same results of art. 18 Const.¹⁹ and is also employed in view of the conflicts between freedom of conscience, religion and worship from one person to another, which shall be settled with tolerance, in order to respect each person's liberty as much as possible (art. 7 LFR).

The LRF reaches a very high degree of detail. Art. 8 presents the meaning of the freedom of conscience, religion and worship or, in other words, its content:

Article 8

The meaning of freedom of conscience, religion and worship

Freedom of conscience, religion and worship include the right to:

- a) Hold, not hold and to cease to hold a religion;
- b) Freely choose, change or abandon one's own religious beliefs;
- c) Practice or not to practice the worship deeds, in private or in public, that belong to the professed religion;

[⁹] Art. 276/4 Const.: *Conscientious objectors to the military service to which they are subject by law shall perform civic service with the same duration and degree of arduousness as those of armed military service*. Also Law nr. 7/92, May 12.

[¹⁰] Art. 38/2, b) Const.: (...) *journalists have the right, as laid down by law, of access to sources of information, and to the protection of professional independence and secrecy, as well as the right to elect editorial boards*.

[¹¹] J. Miranda, R. Medeiros, *Constituição Portuguesa Anotada*, I, Lisboa 2018, art. 41., XXIV; A. Menezes Cordeiro, *Contrato de trabalho e objecção de consciência*, Estudos em Honra do Prof. Doutor Raúl Ventura, II, Coimbra 2005, p. 673 ff.

[¹²] Art. 18/1 Const.: *The constitutional precepts with regard to rights, freedoms and guarantees are directly applicable and are binding on public and private entities*.

[¹³] Regulation nr. 797/2016, July 21.

[¹⁴] Regulation nr. 344/2017, June 27.

[¹⁵] Law nr. 16/2007, April 17; Ordinance nr. 741-A/2007, June 21.

[¹⁶] Law nr. 16/2001, June 22.

[¹⁷] J. J. Gomes Canotilho, V. Moreira, *op. cit.*, art. 41, XI.

[¹⁸] *Idem*.

[¹⁹] Art. 18/2 and 3 Const.: 2- *The law may only restrict rights, freedoms and guarantees in cases expressly provided for in the Constitution, and such restrictions must be limited to those needed to safeguard other constitutionally protected rights and interests*. 3- *Laws that restrict rights, freedoms and guarantees must have a general and abstract nature and may not have a retroactive effect or reduce the extent or scope of the essential content of the constitutional precepts*.

- d) Profess one's own religious beliefs, to seek for new believers, express and freely reveal one's thoughts on religious matters through the usage of words, images or by any other means;
- e) Be informed and inform others about religion, to learn and teach religion;
- f) Meet, manifest and associate oneself with others, in accordance with one's own convictions on religious matters, bearing no other limits than those foreseen in the articles 45 and 46 of the Constitution;
- g) Act or not to act in compliance with the norms of the professed religion, regarding the respect for human rights and the law;
- h) Choose names for one's children that belong to the religious onomasticon of the professed religion.
- i) Produce scientific, literary and artistic works on the subject of religion.

Following that trend, art. 9 LRF presents the negative dimension of this freedom, that is to say, what can't be imposed to citizens with regard to religious matters:

Article 9

Negative meaning of religious freedom

1. No one can:

- a) Be obliged to profess a religious creed, practice or attend acts of worship, receive ministerial assistance or propaganda on religious matter;
- b) Be coerced into taking part, remaining or leaving a religious association, church or religious community, without prejudice of the respective norms on affiliation and the exclusion of members;
- c) Be questioned by any authority whatsoever about one's convictions or religious practice, except for the collection of statistical data, not individually identifiable, nor be discriminated if one refuses to respond;
- d) Be obliged to take a religious oath.

2. Computing cannot be used to process data referring personal convictions or religious faith, except through one's explicit consent or for the processing of statistical data, not individually identifiable.

Art. 10 LRF recognizes the freedom of religion as something not confined to private beliefs or practices; on the contrary, it includes public and collective aspects of religious participation. As also stressed by art. 8 (especially *f*) and *i*)) LRF, in no way can Government try to push religious practice to the domestic field or to catacombs.

Article 10

Right to religious participation

In agreement with the respective religious ministers and according to the chosen church's or religious community's norms, freedom of religion and worship include the right to:

- a) Join the chosen church or the religious community, participate in the internal life and the religious rites practiced in communion and receive the ministerial assistance that one requests;
- b) Celebrate marriage and be interred according to the rites of one's own religion;
- c) Publicly commemorate the religious festivals of one's own religion.

The right to religious education is expressly guaranteed by art. 11 LRF: parents have the right to educate their children until the age of 16 in coherence with their own convictions on religious matters, although with respect for the moral and physical integrity of the children and without prejudice to their health.

The LRF covers, in addition, a vast range of subjects concerning conscientious objection (art. 12), ministerial assistance in hospitals, asylums, colleges, health, educational or welfare institutions, or prisons (art. 13), exemption from work, lessons and examinations for religious reasons (art. 14), the status of ministers of religion (arts. 15–18) and the legal force of religious marriage ceremonies (art. 19).

Churches and religious communities are granted, *inter alia*, the freedom to organize themselves (art. 22), the freedom to carry out religious activities and worship (art. 23), the possibility to minister religious education in primary and secondary public schools (art. 24), time of religious broadcasts (art. 25), the right to be heard, regarding the affectation of space for religious purposes in the town planning of those areas in which they have an organized social presence (art. 28), the right to receive tax-free contributions (art. 31) and several fiscal benefits (art. 32).

Churches and religious communities can acquire legal personality by registration only after 30 years of organised social presence in Portugal, unless it is a church or religious community established abroad for more than 60 years (arts. 33 ff. LRF). The registration can be denied exclusively on the following grounds: lack of legal requirements; forgery of documents; violation of the constitutional limits of religious freedom (art. 37).

The LRF also regulates the conclusion of agreements between religious corporate bodies and the State on matters of common interest (arts. 45 ff.). Particularly significant in this context is the Concordat of 2004 between the Holy See of the Roman Catholic Church and the Portuguese Republic, which replaced the Concordat of 1940. Art. 58 LRF expressly provides the priority of the Concordat, as well of the legislation applicable to the Catholic Church.

There are some rules exclusively contained in the Concordat and applicable only to the Catholic Church, mainly concerning²⁰:

- the recognition of legal personality to the Catholic Church (art. 1 of the Concordat), the Episcopal Conference of Portugal (art. 8), dioceses, parishes and other ecclesiastical jurisdictions (art. 9/2), as well as other canonical legal persons (art. 10);
- the duty of the Portuguese Republic to assure, within the terms of Portuguese law, all measures to avoid the illegitimate use of Catholic practises and resources (art. 7);
- the duty of the Catholic Church to notify the Portuguese State about the modification and disbandment of dioceses, parishes and other ecclesiastical jurisdictions (art. 9/3);
- the duty of the Holy See to inform the Portuguese Republic about nominations and dismissals of Bishops (art. 9/4);
- the applicability of Canon Law rules to the duties arising from canonical marriages (art. 15);
- the recognition of a special legal status to the *Portuguese Catholic University* (art. 21/3);
- the legal status of the Catholic Church's immovable property classified as *national monuments* or of *public interest*.

This special treatment of the Catholic Church isn't puzzling. Agreements with other religious corporate bodies, allowed by the LRF, also prevail over the general rules; the only difference is that the Concordat consists in an international treaty²¹. Besides, the LRF extended to the other confessions many rules that before were only applicable to the Catholic Church under the Concordat of 1940²². In fact, the rules contained in art. 9/3 and art. 9/4 can be considered unconstitutional, as they don't respect the separation between the Church and the State, breaching the Catholic Church's autonomy²³.

Religious feelings are also protected by Criminal Law. Outrage due to religious beliefs (art. 251 of the Penal Code) and obstruction, disturbance or outrage to an act of worship (art. 252 of the Penal Code) are criminally punished. The punishment for homicide or offenses to physical integrity is aggravated if it's motivated by religious hatred (art. 132/2, and 145/2 of the Penal Code).

[²⁰] J. Miranda, R. Medeiros, op. cit., art. 41, XXI.

[²¹] J. Miranda, R. Medeiros, op. cit., art. 41, XXI.

[²²] J. Miranda, R. Medeiros, op. cit., art. 41, XXI, where a list of those rules can be found.

[²³] J. Miranda, R. Medeiros, op. cit., art. 41, XXI.

2. Case law

2.1 – Religious education

1/ Constitutional Court Decision 423/1987²⁴

The President of the Republic asked the Constitutional Court to review Decree-Law nr. 323/83, July 5, which regulated and organized through public funds the teaching of Catholic Religion and Morality in public schools, in accordance to the Concordat of 1940; as other religions were omitted, this could violate equal protection, religious freedom and the separation between State and religion.

The Court decided that regulating the teaching of the Catholic religion without dealing with the teaching of other religions didn't hurt equal protection and could be justified by the prevalence of Catholicism in the Portuguese society. Eventually there could be a case of unconstitutionality by omission (but procedural questions prevented such judgement)²⁵. The Court only judged unconstitutional the rule of the Decree-Law that demanded an express statement of not wanting to attend the Catholic Religion and Morality classes, which violated religious freedom and the constitutional rule that *no authority may question anyone in relation to his convictions or religious observance* (art. 41/3 Const.).

There were nine partial dissents (out of thirteen Judges), as some Judges argued that there was a violation of equal protection and religious freedom (not a mere unconstitutionality by omission) while other Judges considered that the requirement of an express statement of not wanting to attend the Catholic Religion and Morality classes didn't breach religious freedom because it didn't involve any kind of pressure or disclosure of religious options²⁶.

Presently, Decree-Law 70/2013, May 23, regulates the teaching of Catholic Morality and Religion in the mold of this judgement.

2/ Constitutional Court Decision 174/1993

A group of Members of the Parliament asked the Constitutional Court to review several rules of Ordinance 333/86, July 2 (concerning the teaching of Catholic Religion and Morality in public schools), and Ordinance 831/87, October 16 (concerning the teaching of Catholic Religion and Morality in teacher-training colleges and in teacher and childhood educator-training centres integrated in Universities).

The Court upheld the rules of both Ordinances. The teaching of Catholic Religion and Morality in public schools was organized in such a way that it was a religious education organized by the Catholic Church within the context of public schools but not a religious education organized by the State itself; for instance, the Catholic Religion and Morality's curriculum was organized by the Church. The State was merely cooperating with the Catholic Church to allow the students to have the religious education their parents wanted, which was well within the separation between religion and State. Eventually there could be a problem of unconstitutionality by omission regarding the teaching of other religions in public schools, but procedural questions prevented such judgement.

According to Ordinance 333/86, primary school's Professors could minister Catholic Religion and Morality, but the Court found no unconstitutionality problems. The Church had to accept each Professor

[²⁴] All the Constitutional Court's decisions can be found in <https://www.tribunalconstitucional.pt/tc/acordaos/>. The other Courts' decisions are available in <http://www.dgsi.pt/>.

[²⁵] The gap would be filled by Decree-Law nr. 329/98, November 2.

[²⁶] This judgement was lauded by Miranda, J., Alexandrino, J. M., *As grandes decisões dos tribunais constitucionais europeus/ Les grandes décisions des cours constitutionnelles européennes – Portugal*, p. 17–20 (available in <http://www.fd.ulisboa.pt/wp-content/uploads/2014/12/Miranda-Jorge-Alexandrino-Jose-de-Melo-Grandes-decisoes-dos-Tribunais-Constitucionais-Europeus.pdf>).

and each Professor had to accept the task. Ordinance 831/87 prescribed the teaching of Catholic Religion and Morality to future teachers so they could perform that task, so it was a simple way to allow the scheme drafted by Ordinance 333/86 and, therefore, also couldn't raise unconstitutionality problems.

There were several dissenting opinions, which argued that the Ordinances didn't respect the separation between State and religion as public resources were made available to the goals of Catholic Church and Catholic religion was being promoted²⁷.

As the prevailing opinion stressed out, separation and cooperation are different concepts. The *sub iudice* rules allowed Government to cooperate with the Catholic Church in the religious education of children, as wished by their parents/guardians, without imposing any official religious beliefs. In fact, art. 67/2,c) Const. charges the State with *cooperating with parents in relation to their children's education*, and the scheme devised by the Ordinances had precisely the goal of implementing such cooperation in the field of religious education.

3/ Constitutional Court Decision 578/2014

The Representative of the Republic to the Autonomous Region of Madeira asked the Constitutional Court to review art. 9/1 of a Decree which was presented to him to be promulgated as a Regional Legislative Decree. According to art. 9/1, parents/guardians had to expressly state they were opposed to the children's attendance to Moral and Religious Education classes.

The Constitutional Court struck down the mentioned rule, as it violated religious freedom. According to the Court, religious freedom has a negative dimension, which forbids Government's interference. If parents/guardians had to expressly state they were opposed to the children's attendance to Moral and Religious Education classes, that would amount to impose them the performance of a duty as a condition to enjoy such freedom. Moreover, it would also amount to programme education in accordance to religious directives, which is strictly forbidden by art. 43/3 Const.

The judgment was unanimous but, as the dissenting opinions had pointed out in 1987 (regarding Decision 423/1987), the requirement of an express statement of not wanting to attend those classes didn't involve any kind of pressure to follow a religion or the disclosure of religious options. In our view, it was a simple matter of bureaucratic organization, without the vast repercussions devised by the Court. Answering a simple *no* can't be considered an onerous or hazardous task.

2.2 – Exemption from work for religious reasons

1/ Constitutional Court Decision 545/2014

A Public Prosecutor who was a member of the Seventh-day Adventist Church asked to be exempted from shift work on Saturdays, based on art. 14/1,a) LRF²⁸. The request was denied by the High Council of the Public Prosecution Service. The plaintiff brought an action before the Supreme Administrative Court to no avail. According to the Supreme Administrative Court, art. 14/1,a) LRF was not applicable to jobs without flexible schedule and there was no violation of art. 41 Const., art. 13 Const. (principle of equality/equal protection) and art. 47/1 Const. (freedom to choose a profession and of access to

[²⁷] Also from a critical point of view, J. Machado, *Tomemos a sério a separação das igrejas do Estado* (Comentário ao Acórdão do Tribunal Constitucional n.º 174/93), Revista do Ministério Público, nr. 58, 1994, p. 45.

[²⁸] *The employees and agents of the State and other public entities, as well as contract workers, have the right to, on request, suspend work on the day of the weekly rest, on the days of festivals and during hourly periods that are prescribed for them by the denomination that they profess, under the following conditions: a) They shall work according to a flexible schedule.*

the public service): the general rule would be that religious freedom couldn't exempt no one from legal duties toward third parties; art. 14/1,a) LRF was an exception to that general rule, concerning exclusively jobs with flexible schedule. When the plaintiff had accepted her job, she knew the working conditions on which she was about to enter.

The plaintiff appealed to the Constitutional Court, this time successfully: the Supreme Administrative Court's interpretation of art. 14/1,a) LRF was too restrictive and didn't respect the plaintiff's religious freedom. Shift work at the Public Prosecution Service can be understood as *flexible schedule* because it allows a rotating activity between workers; the plaintiff could perform her shift work on other days (v.g., public holidays and Court recesses). Having that possibility, the Public Prosecution Service must organize its activities so that the fundamental rights of its workers can be respected²⁹.

2.3 – Conscience objection for religious reasons

1/ Constitutional Court Decision 65/1991

The plaintiff was a Jehovah's Witness who wanted to be exempted from compulsory military service. According to the legal rules then in force, he requested to the Civil Court of Lisbon the granting of the conscience objector status, invoking his religious beliefs.

The request was denied by the Judge: the legal rule demanding the assessment of the plaintiff's religious beliefs would violate the equal protection principle (art. 13 Const.) as it would impose an evaluation of each religion and a distinction between religions.

The Public Prosecution Service appealed to the Constitutional Court and the rendered judgement ordered the revision of the sentence of the Court of first instance. Equal protection allows different solutions for different situations: if some religious beliefs demand an exemption from military service and others don't, it's justified to grant that exemption only to the former. To compensate for this, art. 276/4 Const. establishes the alternative duty to perform civic service with the same duration and degree of arduousness as those of armed military service.

2/ Constitutional Court Decision 5/1996³⁰

The plaintiff was a Jehovah's Witness who wanted to be exempted from compulsory military service, based on his religious beliefs (articles 41/6 and 276/4 Const.). For that, according to Law nr. 7/92, art. 18/3, he had to request it and, at the same time, to make a written statement declaring his availability to an alternative civic duty.

As the statement wasn't made, the competent administrative authority (the National Commission for Conscience Objection) rejected the request. Thus, the plaintiff challenged that decision before the Administrative Court of Lisbon, invoking a violation of articles 18/2, 41/6 and 276/4 Const., as his religious freedom and his right to conscience objection were being disproportionately restricted with such requirement. The Administrative Court found in his favour.

The Public Prosecution Service successfully appealed to the Constitutional Court, which decided that the mentioned requirement wasn't an excessive burden to the plaintiff's fundamental rights, as it was a perfectly justified mechanism to ensure the seriousness of the conscience objection request.

[²⁹] Concerning the private sector, a similar judgement had been rendered six days earlier through the Constitutional Court Decision 544/2014.

[³⁰] Similar judgements were rendered by the Constitutional Court during 1995.

There were three dissenting opinions (out of seven Judges) which considered unconstitutional the need of the written statement because the conscience objector status would be dependent on it and, without that status, a genuine conscience objector would be forced to serve in the military or, if he refused it, he would suffer the corresponding criminal punishment. Furthermore, it would be an unnecessary burden as the mere request of the conscience objector status would submit the objector to the alternative civic duty and to the legal consequences for not performing it.

The prevailing opinion is perfectly reasonable. To demand a simple statement of Law abidance doesn't represent a significative burden to conscience objectors. It's a pure matter of bureaucratic organization, without the vast constitutional repercussions devised by the dissenting Judges.

2.4 – Political parties' names and symbols related to religion

1/ Constitutional Court Decision 107/1995

Based on art. 51/3 Const., the Constitutional Court rejected the registration of a political party whose requested name was *Christian Social Party* (because it contained a direct reference to Christianity) and whose requested symbol was a fish (an ancient Christian symbol). One Judge dissented about the symbol: the fish was replaced by the Cross as the symbol of Christianity after the end of the persecutions against Christians in ancient Rome.

2/ Constitutional Court Decision 386/2015

Twenty years later, the Constitutional Court accepted the name changing of the *Portugal Pro-Life Party* to *Citizenship and Christian Democracy*. Notwithstanding the word *Christian*, whose religious significance is unquestionable, *Christian Democracy* is not a religious expression but a political ideology. A single Judge dissented, as there would be no meaningful difference between this case and the one decided in 1995; the reasoning used in 1995 should prevail again.

In contrast to this dissent, it seems obvious that the 1995 decision was unfair and unworkable and, although tacitly, the Court departed from it. The *Social Christian Party* name should have been accepted, being a reference to a political ideology espoused, e.g., by the well-known *Christian Social Union in Bavaria*, and not a pure religious designation. Art. 51/3 Const. must be construed reasonably.

2.5 – Harvesting of human organs and tissues

1/ Constitutional Court Decision 130/1988

The Portuguese Ombudsman asked the Constitutional Court to review art. 5 of Decree-Law nr. 553/76, July 13, which ruled that human organs and tissues couldn't be harvested from dead bodies when doctors, for whatever reason, knew that would be against the deceased's will already expressed before his death. According to the Ombudsman, art. 5 violated, *inter alia*, the freedom of conscience and religion as it didn't encompass a proper system to assure that doctors could know with certainty the deceased's will – and this could lead to the harvesting of organs and tissues against that will when doctors didn't notify the deceased's family. In other words, the respect for the deceased person's will would depend on informations provided by third-parties, who would be burden with the doctor's notification.

Although not unanimously, the Court upheld art. 5. To burden the deceased's family with the notification in order to fulfil the deceased's will was not excessive, as the harvest of organs and tissues occurs in situations of emergency which justify speed. The balance of interests allowed the legal solution.

As it was stressed out by the dissenting opinions, art. 5 allowed doctors to harvest organs and tissues without making the slightest effort to know the deceased's will, breaching his freedom of conscience and religion. Fortunately this problem was overcome by Law nr. 12/93, April 22, which organized a national registration system for people who are opposed to the harvest of organs and tissues.

2.6 – Same-sex marriage

1/ Constitutional Court Decision 121/2010

The President of the Republic asked the Constitutional Court to review the introduction of same-sex marriage in the Portuguese legal system before its presidential promulgation. The Court upheld the legislative reform: the concept of *marriage* present in art. 36/2 Const. (*the law shall regulate the requisites for and the effects of marriage and its dissolution by death or divorce, regardless of the form in which it was entered into*) has an historical meaning as a different-sex marriage, but it doesn't suppress the democratic legislature's possibility to recognize same-sex marriage.

According to the majority's opinion, same-sex marriage is a legislative option, not a constitutional requirement. The legislature can decide to adopt it, but can also decide not to adopt it. It's absolutely clear that the Portuguese Constitutional Court didn't follow the logic of the Supreme Court of the United States decision *Obergefell v. Hodges*³¹, which decided that same-sex marriage is constitutionally imposed.

There were five dissenting opinions (out of thirteen). Three Judges argued that same-sex marriage was imposed by the equal protection rule. Two Judges also disagreed with the majority, but arguing that the concept of marriage embodied by the Constitution is an institutional guarantee of different-sex marriage (the only assumed by the constitutional legislator) which would be disfigured by same-sex marriage.

The Constitutional Court expressly pointed out (§ 4) that only civil marriages were affected by the new legal rules, leaving out marriages officiated by the Catholic Church or other religious marriages, even if they produce legal effects³². It was a very wise remark and, in our view, it shows that the Court wouldn't accept a legal imposition of same-sex marriage within religious communities. That would be tantamount to annihilate the autonomy of religious confessions and to impose them an official thinking, crudely infringing religious freedom.

2.7 – Services rendered by members of religious communities within those communities

1/ Constitutional Court Decision 227/1988

A nun rendered services as a teacher in a school owned by her religious Congregation. After she was dispensed from her vows, her duties in the school were terminated.

[³¹] *Obergefell v. Hodges*, 576 U.S. (2015).

[³²] This is the part of the judgment which directly deals with religious freedom.

The (now) former nun brought an action against the Congregation before the Labour Court of Braga, claiming there was an unjustified termination of what she considered to be an employment contract. The Court rejected the claim, holding that there was not an employment contract or some kind of legal subordination, but bonds of spiritual communion and a pure religious subordination. When the plaintiff left the Congregation, those bonds have ceased to exist.

The plaintiff appealed to the Court of Appeal of Oporto, to no avail: the rendered services were not covered by the Portuguese labour laws but by Canon Law.

The plaintiff appealed again, this time to the Supreme Court of Justice, pleading a violation of her fundamental rights as a worker and a Portuguese citizen, namely her right to job security. The Supreme Court affirmed the Court of Appeal's decision.

The plaintiff appealed to the Constitutional Court. The appeal was rejected on procedural grounds, thus the Supreme Court's decision stood.

The decisions of the ordinary courts were sound. It seems obvious that services rendered by members of religious communities within those communities are a religious matter, based on a voluntary faith relation. If such services were subject to labour law, the State would govern the internal life of religious organizations, hindering their autonomy. Then there would be a serious problem of unconstitutionality and a vitious attack on freedom of religion (art. 41/4 Const.).

2.8 – Incitement to prostitution

The following judgements aren't directly related to religious freedom and for the most part they have upheld the criminal punishment of incitement to prostitution. Nonetheless, as an important dissenting opinion was based on a *secularized and democratic society* argument, it becomes convenient to examine that approach (which will also be discussed under 3.).

1/ Constitutional Court Decision 641/2016

The Court of Appeal of Coimbra sentenced A. to 3 years and two months in prison (although the sentence was suspended for the same period) for incitement to prostitution, a crime punished by art. 169 of the Penal Code.

A. appealed to the Constitutional Court, having argued, *inter alia*, that social evolving standards had superseded art. 169: consenting adults have the freedom to make decisions about their lives, which included the relation between a procurer and a prostitute.

The Constitutional Court upheld art. 169, reaffirming its judgement rendered through Decision 144/2004 (and several others that followed): the criminalization of incitement to prostitution doesn't promote the prevailing moral conceptions; its goal is the prevention of sexual exploitation and offenses to human dignity (art. 1 Const.) and to the moral and physical integrity of people, well within the values embodied by the Constitution. In sum, freedom of conscience, freedom to choose a profession (art. 47/1 Const.) and the principle of proportionality of interferences in the exercise of fundamental rights (art. 18/2) aren't violated by the criminalization of such conducts.

Two Judges dissented from the Court's judgement.

In his dissenting opinion, Judge Lino Ribeiro argued that art. 169 would be constitutionally permissible only if it punished the incitement to prostitution when the prostitute is a person in economic and social distress. That was what happened before 2008 with art. 170 of the Penal Code, but such requirement was abolished by a legislative reform which replaced it by art. 169. Without that requirement, according to Judge Lino Ribeiro, no constitutional values are pursued and the criminalization breaches

the Constitution. This reasoning follows the dissenting opinions of Judge Maria João Antunes and Judge Joaquim de Sousa Ribeiro to previous rulings (respectively, Decisions 396/2007 and 654/2011).

Judge (and the Court's President) Manuel da Costa Andrade also dissented from Decision 641/2016. To Judge Costa Andrade, the criminalization of incitement to prostitution after the 2008 reform is a breach of sexual freedom, it doesn't pursue any constitutional values and represents the exercise of *a kind of atavistic moralism, which can't be accepted in a secularized and democratic society*. More recently, *v.g.*, Decisions 694/2017, 90/2018 and 178/2018 reaffirmed the Constitutional Court long established case law, although Judges Costa Andrade and Lino Ribeiro have repeated their dissenting opinions.

2/ Court of Appeal of Oporto Decision (February 8, 2017)³³

Based on the aforementioned dissenting opinions of some of the Constitutional Court's Judges, the Court of Appeal of Oporto acquitted B. and C., who had been indicted for incitement to prostitution.

According to the majority, art. 169 aims to protect personal autonomy and freedom, but its content is so vast that it includes situations where those values aren't harmed, as it's not possible to presume that every case of prostitution is not based on the prostitute's free will. This would result in a breach of art. 18/2 Const. Moreover, even if it had a legitimate goal, art. 169 would be excessive, as other sanctions (*v.g.*, administrative ones) would suffice to deter that kind of conducts.

One Judge dissented, based on the Constitutional Court case law, stressing out that inciting to prostitution is a clear offense against human dignity.

The Court of Appeal's decision was reversed by the Constitutional Court Decision 694/2017. In addition to the reasoning present in the previous rulings of the Court (that is, art. 169 has a legitimate goal of protection of constitutional values), according to the majority's opinion it isn't the judicial power's province to decide if administrative sanctions are more suitable to reach that goal than criminal penalties.

3/ Court of Appeal of Oporto Decision (June 28, 2017)³⁴

Four months after the aforementioned decision of the Court of Appeal of Oporto, a different chamber of the same Court, based on the Constitutional Court's case law, decided that art. 169 isn't unconstitutional.

2.9 – Gender ideology in schools

The preceding case law shows, through its scarcity (and sometimes triviality), a very peaceful coexistence between State and religion. The Portuguese public authorities have very wisely accommodated religious beliefs and public policies without undue interferences in religious freedom. On the contrary, the State has cooperated with citizens and families in the promotion of their religious rights.

Regrettably, in recent times, a certain trend is being developed which aims to replace the citizens's freedom of conscience or religion by legally imposed political ideologies. A prime example of this is the introduction of *gender identity* in schools. According to Law nr. 38/2018, August 7 (concerning the *right to self-determination of gender identity and gender expression, and to the protection of each person's sexual characteristics*), art. 12:

[³³] Proceedings 404/13.9TAFLG.P1.

[³⁴] Proceedings 28/14.3ZRPRT.P1.

Article 12

Education and teaching

1 – The State must guarantee the adoption of measures in the educational system, at all levels of education and cycles of study, which promote the exercise of the right to self-determination of gender identity and gender expression and the right to protection of the sexual characteristics of people, namely through the development of:

- a) Measures to prevent and fight discrimination based on gender identity, gender expression and sexual characteristics;
- b) Mechanisms for detection and intervention on risk situations that endanger the healthy development of children and young people who manifest a gender identity or gender expression that is not identified with the sex attributed to birth;
- c) Conditions for an adequate protection of gender identity, gender expression and sexual characteristics, against all forms of social exclusion and violence within the school context, ensuring respect for the autonomy, privacy and self-determination of children and young people who make social transitions of identity and gender expression;
- d) An adequate training for teachers and other professionals in the educational system in the context of issues related to the issue of gender identity, gender expression and the diversity of sexual characteristics of children and young people, with a view to their inclusion as an integration process socio-educational.

2 – The institutions of the education system, regardless of their public or private nature, must guarantee the necessary conditions so that children and young people feel respected according to their manifested gender identity and gender expression, and their sexual characteristics.

3 – The members of the Government responsible for the areas of gender equality and education adopt, within a maximum period of 180 days, the administrative measures necessary for the implementation of the provisions of paragraph 1.

Eighty-six Members of the Parliament (out of 230) asked the Constitutional Court to review art. 12, arguing that it breaches art. 43 Const.:

Art. 43 (Freedom to learn and to teach)

- 1 – The freedom to learn and to teach is guaranteed.
- 2 – The state may not programme education and culture in accordance with any philosophical, aesthetic, political, ideological or religious directives (...)

Moreover, according to the plaintiffs, art. 12, paragraph 3, is extremely vague, which amounts to legislate by reference to future administrative rules. Besides, even private or cooperative schools are bound by art. 12, which infringes its autonomy.

The plaintiff's concerns were absolutely justified. On August 7 2019, the Secretary of State for Education has issued Order nr. 7247/2019, whose goal is to execute Law nr. 38/2008, art. 12. Its art. 5 establishes, *inter alia*, the duty of schools to ensure the access of students to restrooms in accordance to their *will*...

Up to the moment this text is being written, no judgement was rendered by the Constitutional Court. But gender is an ideological question (a very divisive one!) and ideologies can't be imposed to children through the education system. The Constitution clearly establishes a neutral public education, which means that children's indoctrination by the State is strictly forbidden (*a fortiori*, such indoctrination is also forbidden in private and cooperative schools). Children's education can be programmed in accordance to philosophical, aesthetic, political, ideological or religious directives, but these directives have to be issued by the parents/guardians and not the State. Indeed, the children's education is a matter for their parents, as they *have the right and the duty to educate and maintain their children*

(art. 36/5 Const.). The State has the duty to cooperate with parents in that task (art. 67/1,c) Const.), ie, the duty to cooperate in the education provided and divided by the parents, not the right to replace that education by doctrines and ideologies nurtured by the political power.

Therefore, in our opinion, all the legal and administrative rules related to *gender identity* in schools are unconstitutional if interpreted in the sense of not demanding parental authorization for measures that can anyhow affect their children.

3. The right of citizens to decide their own lives according to their religious beliefs as a right to make decisions about public policies in accordance to their religious values

Religious freedom encompasses the right of people to determine their lives according to their religious beliefs, which in our view must have a public dimension, reflected in the freedom of the politically organized community to make collective decisions according to their religion. A religion of catacombs, relegated to the private sphere, is not truly free.

The Constitution forbids the imposition of religious beliefs and the prosecution of religious practices. But it doesn't ban religion from public life, neither it prevents that the constitutional rules may overlap with religious values. Nowhere in the Portuguese legal system can be found a rule of interpretation according to which the meaning of legal texts must shy away from results coincidental with religious views.

If the constitutional norms allow the people to decide, through the democratic process, which legal solutions should be adopted, there is no obstacle to a political decision inspired by religious values³⁵.

Art. 24/2 Const. states that *in no case shall there be the death penalty*. It's pretty obvious that, as legislatures cannot pass laws that are contrary to the Constitution, no statute can establish the death penalty, even if religious rules allow it and people wanted to follow them³⁶.

By contrast, the concept of marriage used in art. 36/2 Const. didn't depart from its historical meaning of different-sex marriage: marriage has been the union between a man and a woman for millennia. As the Constitutional Court Decision 121/2010 has ruled, the democratic legislature can choose to exclusively recognize different-sex marriages, even if that option is deeply rooted in religious teachings. On the contrary, if the mentioned three dissenting opinions had prevailed in imposing same-sex marriage, future democratic choices would be hindered and the citizen's will (possibly – and legitimately – grounded on their religious beliefs) would be suppressed.

The above examined case law about incitement to prostitution provides another example of a legislative option that rightfully overlaps with religious beliefs³⁷. Human dignity (art. 1 Const.) and moral integrity (art. 25/1 Const.) are in jeopardy when someone exploits other people's sexual activities, making profit from it, and this is a sufficient basis to uphold the criminalization of such conduct. The commerce of sex is degrading and for sure that the Constitution doesn't embrace human degradation.

The dissenting opinion of Judge Costa Andrade refers to a *kind of atavistic moralism, which can't be accepted in a secularized and democratic society*. If human dignity has some meaning, surely it proscribes the exploitation of someone as a sexual object and the commercialisation of human sexual intercourse, even if consensual. Human dignity is undoubtedly based on an ethical stand which has

[³⁵] The opposite view is espoused by R. Dworkin, *Is Democracy Possible Here?*, Princeton and Oxford 2006, followed in the Portuguese-speaking legal literature by Bucchianeri Pinheiro, M. C., *Liberdade religiosa, separação Estado-Igreja e o limite da influência dos movimentos religiosos na adoção de políticas públicas Aborto, contraceptivos, células-tronco e casamento homossexual*, Revista de Informação Legislativa, 45, nr. 180, Oct./Dec. 2008, p. 347 ff.

[³⁶] Religious options don't allow the breach of constitutional rules and principles (like the right to marry under conditions of full equality between spouses, enshrined by the Portuguese Constitution, art. 36/3): J. J. Gomes Canotilho, V. Moreira, op. cit., art. 41, XI.

[³⁷] J. Miranda, J. M. Alexandrino, op. cit., 11, qualify this "convincing" constitutional jurisprudence as based on values.

suffered religious influences (in the Portuguese social and historical context, mainly Christian ones), but there is no reason to not accept it just because it happens that religion points in the same direction. To struck down the criminalization of incitement to prostitution on these grounds would amount to create a *fundamental right to be a pimp*, which – besides being facetious – can only be explained through a radical secularist approach that sweeps away any traces of religion from public life. The coincidence of constitutional and religious standards is part of the *secularized and democratic society* as they are not mutually exclusive.

The described radical secularist approach is accompanied by what could be called a constitutional judicial activism, that is to say, the imposition of solutions by the judiciary instead of the democratic process when nothing in the Constitution allows that strictness³⁸. Thus, a regular casualty of the constitutional judicial activism is religious freedom, understood as the freedom of the politically organized community to make collective decisions according to its religious beliefs.

The Constitutional Court has reversed the judgement rendered on February 8, 2017 by the Court of Appeal of Oporto (which was a paradigmatic activist decision) and upheld the criminalization of incitement to prostitution, but in other fields the constitutional jurisdiction has recently also trodden the perilous path of judicial activism and, once again, to the detriment of popular choices eventually based on religious beliefs.

One of those fields is the right to life and the abortion issue. From 1984 to 2006, the Constitutional Court has decided that abortion was a matter for the legislature to decide. Decisions 25/84 and 85/85 ruled that the legislature can allow abortions, during stipulated time periods, grounded on a risk to the pregnant woman's life and health, sexual crimes or fetal malformation. According to Decisions 288/98 and 617/2006, abortion on demand up to the 10th week of pregnancy is likewise permissible under the Constitution; it was also ruled that the abortion issue can be subjected to a referendum.

This jurisprudence was rather deplorable, as it recognized a right of the unborn to life but accepting, at the same time, the inexistence of a deterrent legal protection to it. Nevertheless, a different democratic choice was allowed. Everything changed with the Constitutional Court Decision 55/2016, concerning *wrongful birth* actions.

A couple whose son had been born with severe health problems brought an action before the Judicial Court of Barcelos against a centre for medical imaging, claiming damages for the clinic's failure to warn them about the child's medical condition, which prevented the option for an eugenic abortion. The Judicial Court condemned the defendant to pay damages.

The defendant successfully appealed to the Court of Appeal of Guimarães. According to the Court of Appeal, *wrongful birth* actions are unacceptable, as the child's health problems aren't caused by the inaccurate diagnosis; moreover, life is not a damage and abortion isn't a contraceptive method.

The couple appealed to the Supreme Court of Justice and, as a result, the Court of Appeal's decision was overruled. To the Supreme Court, the misdiagnosis had hindered the parent's choice to have an abortion and their individual freedom³⁹.

The clinic appealed to the Constitutional Court, arguing that a claim for damages based on *wrongful birth* would infringe the fundamental right to life. To no avail: the aforementioned Decision 55/2016 ruled that the parents have a right to self-determine their reproductive choices, including abortion, which is a valid legal basis for *wrongful birth* actions.

For the first time, the Constitutional Court decided that abortion was a right. Notwithstanding its previous judgements, according to which the unborn child is protected by the constitutional right

[³⁸] Ironically, Dworkin's quest for "democracy" would result in a less democratic society, where vital questions would be decided by the Courts and not through the ballot box...

[³⁹] Supreme Court of Justice Decision, March 12, 2015 (proceedings 1212/08.4TBBCL.G2.S1). This is the prevailing opinion among the Portuguese ordinary courts. See, also, Court of Appeal of Oporto Decision, March 1, 2012 (Proceedings 9434/06.6TBMTS.P1), and Supreme Court of Justice Decision, January 17, 2013 (proceedings 9434/06.6TBMTS.P1.S1).

to life and the criminalization of abortion is a legislative option, the Court created a *fundamental right to abortion*. Therefore, the contradiction between the prior constitutional jurisprudence and Decision 55/2026 is blatant: if the unborn child's right to life is protected by the Constitution, no one can have the right to suppress his life. Even the infamous Supreme Court of the United States' decision *Roe v. Wade* conceded that the unborn's constitutional protection would not allow a right to abortion: *The appellee and certain amici argue that the fetus is a "person" within the language and meaning of the Fourteenth Amendment. In support of this, they outline at length and in detail the well-known facts of fetal development. If this suggestion of personhood is established, the appellant's case, of course, collapses, for the fetus' right to life would then be guaranteed specifically by the Amendment*⁴⁰.

If abortion is the object of a fundamental right, the democratic legislature can't proscribe its legal availability and the freedom of the political community to make collective decisions according to their eventual religious beliefs is trampled. It's, by all means, a Portuguese version of *Roe v. Wade*.

Concerning surrogacy, the Constitutional Court Decision 225/2028 has followed the same trend. A group of Members of the Parliament asked the Court to review several legal rules governing surrogacy agreements. Hereupon, the Court struck down the part of the law that didn't allow the revocation of the pregnant woman's consent to the agreement after the beginning of the therapeutic procedures, as it would remove her option to have an abortion on demand up to the 10th week of pregnancy (or based on the other legal grounds) and, in consequence, her human dignity and her rights to self-determination and to the development of her personality (art. 26/1 Const.) would be infringed.

Once more, the Constitutional Court considered abortion to be a right and, what is more, based on the pregnant woman's dignity... But the baby's life and dignity was utterly disregarded. The Court didn't even take in account that a couple would be prepared to receive and love the child, and the only burden the pregnant woman would have to bear was to wait until the delivery. No balances were made, just *an exercise of raw judicial power*⁴¹ which ignored the unborn child's right to life or, at least, the people's democratic choice.

As Justice Byron White wrote when he dissented from the *Doe v. Bolton*'s majority: *The upshot is that the people and the legislatures (...) are constitutionally disentitled to weigh the relative importance of the continued existence and development of the fetus, on the one hand, against a spectrum of possible impacts on the woman, on the other hand*⁴². As we have seen, religious freedom is another permanent victim of such exercise of raw judicial power.

[⁴⁰] *Roe v. Wade*, 410 U.S. 113 (1973).

[⁴¹] *Doe v. Bolton*, 410 U.S. 179 (1973), Justice Byron White's dissent.

[⁴²] *Idem*.

List of Portuguese jurisprudencial cases

A. Constitutional Court⁴³

1. Decision 25/84 (abortion)
2. Decision 85/85 (abortion)
3. Decision 423/1987 (religious education)
4. Decision 130/1988 (harvesting of human organs and tissues)
5. Decision 227/1988 (services rendered by members of religious communities within those communities)
6. Decision 65/1991 (religious conscience objection)
7. Decision 174/1993 (religious education)
8. Decision 107/1995 (political parties' names)
9. Decision 5/1996 (religious conscience objection)
10. Decision 288/98 (abortion)
11. Decision 617/2006 (abortion)
12. Decision 121/2010 (same-sex marriage)
13. Decision 545/2014 (exemption from work for religious reasons)
14. Decision 578/2014 (religious education)
15. Decision 386/2015 (political parties' names)
16. Decision 55/2016 (abortion/*wrongful birth* claims)
17. Decision 641/2016 (procurement for prostitution)
18. Decision 225/2018 (abortion/surrogacy)

B. Court of Appeal of Oporto⁴⁴

1. Decision rendered on February 8, 2017, proceedings 404/13.9TAFGL.P1 (procurement for prostitution)
2. Decision rendered on June 28, 2017, proceedings 28/14.3ZRPRT.P1 (procurement for prostitution)

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