



Court rejects as inadmissible complaints about controversial artwork

In its decision in the case of [Asociación de Abogados Cristianos v. Spain](#) (application no. 22604/18) the European Court of Human Rights has unanimously declared the application inadmissible. The decision is final.

The case concerned an artwork, called *Amen*, which was part of an exhibition financed by the local authorities in Pamplona in 2015. The use of consecrated pieces of the host in the artwork sparked public outrage and led the applicant association to lodge a criminal complaint against both the artist and a local councillor.

The Court rejected the applicant association's first complaint, concerning the authorities' duty of religious neutrality, because it had not used all the [legal avenues available at national level](#) in that regard. In particular, instead of lodging a criminal complaint, the association could have challenged the local authorities' refusal to cancel the exhibition by bringing contentious administrative proceedings.

The association's second complaint, concerning the refusal to prosecute, was rejected as manifestly ill-founded. There was nothing arbitrary in the national judicial authorities' conclusion that the acts in question had not amounted to a criminal offence.

Principal facts

The applicant, Asociación de Abogados Cristianos, is an association which was created in 2008 with the aim of restoring and maintaining the principles of Christian faith in society.

An artwork called *Amen* was part of an exhibition held in 2015 in a municipal hall in Pamplona. It showed pictures of the artist posing naked next to the word "paedophilia" (*pederastia*) spelled out on the floor with pieces of the host he had taken from 242 Catholic Masses. The artist promoted the exhibition on social media, posting captures taken with a hidden camera during the Masses he had attended.

The exhibition was organised and subsidised by the department for culture of Pamplona City Council, which refused to withdraw the artwork despite public indignation and a petition. The Council considered it a matter of freedom of expression.

The applicant association subsequently lodged a criminal complaint against both the artist and the councillor who had given approval for and inaugurated the exhibition.

The criminal proceedings were, however, discontinued in 2016 by the investigating judge who found that the acts in question did not constitute a criminal offence, a decision upheld by the national courts. In particular, the final instance *Audiencia Provincial* concluded that it was not sufficiently proven that the artist had intended to offend and that it was clear from his statements on social media that his main aim had been to draw attention to paedophilia scandals in the Catholic Church.

Complaints, procedure and composition of the Court

The application was lodged with the European Court of Human Rights on 26 April 2018.

Relying in particular on Article 9 (freedom of religion), the applicants complained that: the local authorities had financed, hosted and refused to cancel the exhibition of a piece of art which offended religious feelings, in breach of their duty of neutrality; and, that the judicial authorities had

not prosecuted the artist and the local councillor involved, in breach of their duty to protect believers in the Christian faith.

The following were granted leave to intervene as third parties: the Polish Government, the Spanish Episcopal Conference and European Centre for Law and Justice (ECLJ), the *Unione Giuristi Cattolici Italiani*, the Observatory for Religious Freedom, *Ordo Iuris*, the Observatory on Intolerance and Discrimination against Christians in Europe, *L'Observatoire de la Christianophobie* and the *Conferentia Episcoporum Slovachiae*.

The decision was given by a Committee of three judges, composed as follows:

Mārtiņš Mits (Latvia), *President*,
María Elósegui (Spain),
Kateřina Šimáčková (the Czech Republic),

and also Martina Keller, *Deputy Registrar*.

Decision of the Court

Firstly, the Court noted that the applicant association had challenged the City Council's refusal to cancel the exhibition in criminal proceedings, even though the Spanish legal system provided for the possibility to complain about a breach of the duty of religious neutrality in contentious administrative proceedings. Instituting such proceedings would have given the national administrative courts the opportunity to examine the substance of that complaint and to balance freedom of expression against the rights of Christian believers.

The applicant association had not, however, brought administrative contentious proceedings or argued that such a remedy had been inaccessible or ineffective. The Court therefore considered that the association had not complied with the obligation under the European Convention to first use all the remedies available at national level before bringing its case to the Court. That first part of its complaint was rejected for "non-exhaustion of domestic remedies".

As concerned the second part of the association's complaints, the Court found that there was nothing arbitrary in the national courts' conclusion that the acts of the artist and the local councillor had not amounted to a criminal offence. The resulting refusal to prosecute, in a situation where the possibility to seek protection via civil remedies had been open to the association, could not be seen in any way as a failure by the respondent State to observe its duty under Article 9 of the Convention to protect believers against an attack on their freedom of religion. The second part of the complaint was rejected as manifestly ill-founded.

The Court therefore declared the association's application inadmissible.

The decision is available only in English.

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The European Court of Human Rights was set up in Strasbourg by the Council of Europe member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.