DATABASE 2012-2024 ON ANTI-MUSLIM HATRED

Cases and rulings

Country Code	Year	Reference details title	Reference details URL	Hate Bias motivation	Court / Body	Key facts of the case	Results (sanctions, outcome) and key consequences or implications of the case	Main reasoning / argumentation	Key issues (concepts, interpretations) clarified by the case	Key quotation in original language and translated into English with reference details
Spain	2020	Spain / Supreme Court / Judgement Nº 38/2020/ Section 1, Appeal 75/2019	http://www.poderjudicial.es/search/AN/openDocument/1e4450d4d1823ed4/20200608	Religion	Supreme Court. Military Chamber (Tribunal Supremo. Sala de lo Militar)	The claimant who hold a position within the army. He took an exam to become Captain of the army on 23 June 2015. Although all the exams went well, he was considered as non suitable for the position. The negative decision made reference to "the command and management skills and the institutional values". The claimant considered that in the interview he was deprived of his religious freedom and denounced it to his superiors. The claimant argued that the exam´s questionnaire focused "almost exclusively" on questions related to his Muslim status. In response to his claim, the Civil Guard brigade received two serious sanctions (withdrawal of pay for 15 days and suspension of employment for a month) by the General Director of the Civil Guard, as it was considered a serious offence . Sanctions that later were endorsed by the Central Military Court.	The Military Chamber of the Supreme Court unanimously agreed with his claim and revoked the two serious sanctions (withdrawal of pay for 15 days and suspension of employment for a month) imposed on a Civil Guard brigade that later were endorsed by the Central Military Court. The Supreme Court declared that those sanctioning administrative decisions infringed his fundamental rights to freedom of expression, defense and the principle of sanctioning legality. The final ruling of the Military Chamber of the Supreme Court denounced that his religious freedom was infringed upon him during the interview maintained in the context of an examination to be promoted to captain. Although the Supreme Court recognized that the wording of some of the questions put to it or considerations in the personal interview, were indirectly related to his religious beliefs or practices.	The appellant exercised his right to defend his legitimate interests covered by Article 24 of the Constitution using the arguments he considered most in line with the defence of his interests. The Supreme Court considered that the sanctioning administrative file that the appellant received, after the claimant appeal against the negative decision issued after his exams and interview results, was not justified. Those sanctions were considered as an infringement of his right of the defence by preventing a person subject to an administrative sanction from preparing the defence of his interests in the manner he deems most appropriate. The Supreme Court stated that the content of the messages the claimant included in his pleadings entailed value judgments and, the value judgments are covered by the right to freedom of expression recognized by Article 20. 1(a) of the Constitution. Therefore it was concluded that there was an infringement of the fundamental right to freedom of expression proclaimed in Article 20 of the Spanish Constitution. The Supreme Court concluded that his right to religious freedom, as contained in Article 16.2 of the Spanish Constitution, was not infringed. Article 16.2 states that "no one may be compelled to testify about his ideology, religion or beliefs" (nadie podrá ser obligado a declarar sobre su ideología, religión o creencias). Although the Supreme Court recognized that the wording of some of the questions put to it or considerations in the personal interview, were indirectly related to his religious beliefs or practices.	According to the Supreme Court, the infringement of the fundamental right to freedom of expression must be put into account in relation to the rights of the defense, which assisted the appellant in making the arguments which he considered most in line with the defense of his interests. There was a reference to the conclusions reached within the military internal investigation, where the Court concluded that there were mistakes and omissions when it merely exonerates from all disciplinary liability those responsible ones. The Supreme Court analyzed the existence or not of insulting, degrading or defamatory expressions, as well as possible critical considerations concerning the authority or the military institution. The fundamental right to sanctioning legality as contained in Article 25.1 of the Spanish Constitution was under discussion as to what extent was applicable the requirement of the falsity of the claimant´s allegations, as contained in Article 8.22 of Organic Law 12/2007, of 22 October, of the Civil Guard disciplinary regime (Ley Orgánica 12/2007, de 22 de octubre, del regimen disciplinario de la Guardia Civil). The court indicates that religious freedom is a fundamental right. The claimant argued that his religious freedom was violated. The Supreme Court refer to the fact that one of the evaluators of the exam and interview stated that the appellant 'puts his ethnic (Muslim) perspective before institutional values, thus the Court concluded that indirectly it was recognizing a part of the personal interview turned around the appellant's religious beliefs and practices, what it was defined as a regrettable confusion.	"la desafortunada y reveladora frase del capitán [que le hizo la entrevista] y que hizo constar, entre otros extremos, que el hoy recurrente antepone su perspectiva étnica (musulmán) a valores institucionales" "the unfortunate and revealing phrase of the captain who leading the interview and which stated, among other issues, that the appellant put his (Muslim) ethnic perspective before the institutional values"

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