

# RESTRICTIONS OF RELIGIOUS FREEDOM AS AN INDICATOR OF MILITANT DEMOCRACY: INSTRUMENTAL TREATMENT OF RELIGION IN SPAIN IN 2009-2019<sup>1</sup>

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**ABSTRACT:** Restricting religious freedom is one of the indicators that can testify to the process of becoming militant democracy. Militant democracy is a theoretical category used for such a political regime, in which parliament and the judiciary are equipped with legal means to restrict individual democratic freedoms in order to defend democracy against those who are considered its enemies. In this article, an analysis was carried out of how religious freedom was restricted in Spain between 2009 and 2019. The main purpose of this article is to answer the research question: What type of restriction of religious freedom occurred in the period considered? What was the dynamics of violations of religious freedom? The research hypothesis is following: violations of religious freedom in Spain in 2009-2019 point out to the instrumental treatment of religion and the process of militant democracy. The study verified whether one of the indicators indicating to the process of militant democracy was implemented into Spain's political system. The method used in the study is qualitative source analysis. Sources used in the study are reports from the United States' Department of State from 2009-2019. Conclusions: in Spain, most often were restrictions associated with the place of worship; teaching religion in public schools; registering religious associations; cooperation agreements; financial issues and, above all, the possibility for citizens to transfer part of their income to the Catholic Church or NGOs excluding other faiths; religious symbols, main issues related to the prohibition of wea-

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ring certain parts of the wardrobe. The frequency with which restrictions on religious freedom are imposed is sufficient to speak of Spain's instrumental treatment of religion, and thus the evident within this indicator process of militant democracy.

**KEY WORDS:** Militant democracy – Spain – freedom of religion – United States Department of State

## **RESTRICCIONES DE LA LIBERTAD RELIGIOSA COMO INDICADOR DE DEMOCRACIA MILITANTE: TRATAMIENTO INSTRUMENTAL DE LA RELIGIÓN EN ESPAÑA EN 2009-2019**

**RESUMEN:** La restricción de la libertad religiosa es uno de los indicadores que pueden atestiguar el proceso de convertirse en democracia militante. La democracia militante es una categoría teórica utilizada para tal régimen político, en el que el parlamento y el poder judicial están equipados con medios legales para restringir las libertades democráticas individuales con el fin de defender la democracia contra aquellos que son considerados sus enemigos. En este artículo se analizó cómo se restringió la libertad religiosa en España entre 2009 y 2019. El objetivo principal de este artículo es dar respuesta a la pregunta de investigación: ¿Qué tipo de restricción de la libertad religiosa se produjo en el período considerado? ¿Cuál fue la dinámica de las violaciones de la libertad religiosa? La hipótesis de investigación es la siguiente: las violaciones de la libertad religiosa en España en el período 2009-2019 apuntan al tratamiento instrumental de la religión y al proceso de democracia militante. El estudio verificó si uno de los indicadores que apuntaban al proceso de democracia militante estaba implantado en el sistema político español. El método utilizado en el estudio es el análisis de fuentes cualitativas. Las fuentes utilizadas en el estudio son informes del Departamento de Estado de los Estados Unidos de 2009 a 2019. Conclusiones: en España, la mayoría de las veces fueron restricciones asociadas al lugar de culto; enseñar religión en las escuelas públicas; registro de asociaciones religiosas; acuerdos de cooperación; cuestiones económicas y, sobre todo, la posibilidad de que los ciudadanos transfieran parte de sus ingresos a la Iglesia católica u ONG excluyendo otras religiones; símbolos religiosos, principales cuestiones relacionadas con la prohibición de llevar determinadas partes del vestuario. La frecuencia con la que se imponen restricciones a la libertad religiosa es suficiente para hablar del tratamiento instrumental de la religión en España, y por tanto lo evidente dentro de este indicador de proceso de democracia militante.

**PALABRAS CLAVE:** Democracia militante – España – libertad religiosa – Departamento de Estado de Estados Unidos

## INTRODUCTION AND METHODOLOGICAL ASSUMPTIONS

Churches and beliefs perform many functions in society, from religious to philanthropic, inclusive, and in some cultural circles –political. Robert Putnam argued in his book *Bowling Alone* that religious Americans are much more socially engaged than non-religious people. As an important element, he indicated participation in religious activities itself, through which people are connected in the network of contacts, thereby engaging socially, regardless of the specificity of a particular religion<sup>2</sup>. According to Putnam, religion is also one of important elements of social capital, a fundamental sociological concept which erosion can lead to the collapse of civil society<sup>3</sup>. Researchers studying psychology, on the other hand, point to the relationship between religion and mental health<sup>4</sup>. Religion is also increasingly permeating political discourse<sup>5</sup>, and sometimes the Church becomes an important part of legislators' decisions, especially on bioethical issues<sup>6</sup>.

Today, there is a global secularization process<sup>7</sup>, which roots can be found in the quest of states to free themselves from the hegemony of churches<sup>8</sup>. Some researchers undertake studies on this phenomenon in the context of religious freedom. Roger Trigg begins with defining assumptions of secularism, indicating that there is no place for religion in public life<sup>9</sup>. However, when considering the case of the US, he proves that a more conciliatory approach is also possible. In this case, it turned out that the separation of church and state

2 Robert D. PUTNAM, *Bowling Alone: The Collapse and Revival of American Community*, New York: Simon & Schuster, 2000.

3 *Ibidem*.

4 Rafał P. BARTCZUK, Marek JAROSZ, "Funkcja religijności w procesie radzenie sobie ze stresem, koncepcja Kennetha I. Pargamenta", *Roczniki psychologiczne*, vol. IX (1/2006), p. 37-52.

5 Cristian ROJAS GONZÁLEZ, "The persistence of religious language in the political discourse. The case of Hugo Chavez", *Civilizar*, 13 (24/2012), p. 157-164; Gloria Cristina FLÓREZ, "Oratoria religiosa y discurso político: la batalla de Ayacucho como referente religioso (1825-1862)", *Anuario Jurídico y Económico Escurialense*, XLVII (2014), p. 615-628.

6 Kamila REZMER, "Church-dependent biopolitics in Poland", *Romanian Review of Political Sciences and International Relations*, vol. 16 (1/2019), p. 94-104; Emanuela LOMBARDO, "The Influence of the Catholic Church on Spanish Political Debates on Gender Policy (1996-2004)", in Kari ELISABETH, Sara CABIBBO (ed.), *Gender, Religion, Human Rights in Europe*, Roma: Herder, 2006, p. 125-148; Bartosz PŁOTKA, "Polityczne aspekty aborcji w Polsce i Tajlandii" in Joanna MARSZAŁEK-KAWA, Bartosz PŁOTKA (ed.), *Religie i dziedzictwo kulturowe Azji*, Toruń: Wydawnictwo Adam Marszałek, 2018, 155-166.

7 Kamila REZMER-PŁOTKA, "Secularization" in Joanna MARSZAŁEK-KAWA, Danuta PLECKA (ed.), *The dictionary of political science*, Toruń: Wydawnictwo Adam Marszałek, 2019, p. 422-423; Maria das Dores MACHADO, "Globalización y secularización", *Revista Cultura y religion*, vol. 1 (1/2007).

8 Didarul ISLAM, *Understanding secularization as indicating the process of the separation of the political and religious*, [online] 10.31219/osf.io/ez4uj, p. 1-15.

9 Roger TRIGG, "Religious Freedom in a Secular Society" in Phil ZUCKERMAN, John R. SHOOK (ed.), *The Oxford Handbook of Secularism*, New York: Oxford University Press, 2017, p. 314.

allows all beliefs to have the same influence over public actions<sup>10</sup>. Similar observations were made by Didarul Islam, who takes the view that “instead of understanding secularization only as separation between religion and politics, it is more convenient to understand it as establishment of religious freedom and equality for all irrespective of religions. This understanding has more inclusive approach”<sup>11</sup>. This makes that secularism, which often is referred to as a negative phenomenon, also may account for religious freedom.

The observed process of secularization therefore raises the awareness of the importance of regulating religious freedom, which allows people to profess their religion. This is especially important while in many places in the world the right to one's faith is still limited<sup>12</sup> and religious persecution continues to take place<sup>13</sup>. Even within the most peaceful streams, such as Buddhism, it is possible to use aggression and cause riots, e.g. by Buddhist extremists<sup>14</sup>, as well as to form alliances with armies and join the fighting, including the conversion of monasteries and temples into military barracks<sup>15</sup>. Although Buddhism is more a philosophical trend rather than a religion<sup>16</sup>, despite disputes it is usually classified and considered as equal with other beliefs<sup>17</sup>. Maciej Potz, referring to American political philosophy, points out that debates about the place of religion in a public forum can actually be reduced to three positions:

- The first position he defines as secularistic –it is to separate state bodies from ecclesiastical bodies, assumes emancipation of all faiths and complete getting rid of religion and its influence from the public sphere. Religion is

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10 *Ibidem*.

11 Didarul ISLAM, *Understanding secularization...*, *op. cit.*, p. 13-14.

12 *A closer Look at How Religious Restrictions Have Risen Around the World*, [online] <https://www.pewforum.org/2019/07/15/a-closer-look-at-how-religious-restrictions-have-risen-around-the-world/>, [24 April 2020].

13 Robert DOWD, *Understanding how Christians Respond to Religious Persecution: Evidence from Kenya and Nigeria*, [online] <https://doi.org/10.1080/15570274.2017.1284399>, p. 31-42 [23 April 2020]; Shahina AHMED, Richard SHERRY, Damian TERILL, *Scapegoating the Ahmadiyya Muslims: A Case Study of Religious Persecution*, [online] <https://doi.org/10.18848/2154-8633/CGP/v09i03/89-103>, p. 89-103; Maria THOMAS, “Matryst, memory and misrepresentation: The Spanish Catholic Church, religious persecution and the Spanish Civil War”, *International Journal of Iberian Studies*, vol. 31 (3/2018), p. 143-162; Jean-Michael di FALCO, Timothy RADCLIFFE, Andrea RICCARDI (ed.), *La livre noir de la condition des chrétiens dans le monde*, Paris : XO Editions, 2014; Luis ANTEQUERA, *Cristianofobia: la persecución de los cristianos en el siglo XXI*, Madrid: Digital Reasons, 2016.

14 Chas MORRISON, “Buddhist extremism, anti-Muslim violence and civil war legacies in Sri Lanka”, *Asian Ethnicity*, vol. 21 (1/2020), p. 137-159.

15 Paulina WILK, *Nowa, groźna twarz buddyźmu*, [online] <https://www.polityka.pl/tygodnikpolityka/swiat/1552369,1,nowa-grozna-twarz-buddyzmu.read>, [24 April 2020].

16 Jakub MAJCHER, *Buddyźm- nie religia a filozofia*, [online] <https://filmobasi.pl/buddyzm-nie-religia-a-filozofia/>, [24 April 2020]; Barbara O'BRIEN, *Buddhism: Philosophy or Religion?*, [online] <https://www.learnreligions.com/buddhism-philosophy-or-religion-449727>, [24 April 2020].

17 Frank JACOBS, *These are all the world's major religions in one map*, [online] <https://www.weforum.org/agenda/2019/03/this-is-the-best-and-simplest-world-map-of-religions>, [24 April 2020].

a private matter and therefore deserves protection, but it must not affect public life, including morality;

- The second position refers to the extreme theocracy –it is excluded that religion is separated from the state; followers are allowed to punish persons who do not comply with biblical orders, even with death;
- The third implies absolute respect for the institutional separation of state and individual religious associations, but this does not mean that religion is separated from public life<sup>18</sup>.

Restricting religious freedom is also one of the indicators of the process of adapting by a political system the rule of militant democracy<sup>19</sup>. Militant democracy is characterized, inter alia, by the fact that within a political regime it is possible to restrict individual freedoms through the use of legal means in order to protect democratic system against its enemies<sup>20</sup>. In this regard, it should be emphasized that among the elements that make up the liberal components in democracy are precisely the protection of citizens' rights and freedoms, the recognition of minority rights, the idea of the rule of law, anti-majority institutions and the acceptance of pluralism<sup>21</sup>. Frank Zakaria indicated in one of his publications that democracy often poses a threat to democratic freedoms<sup>22</sup>. This is confirmed by the processes of becoming militant democracies by European countries after the 2008 economic crisis.

Religious freedom is still limited and violated in many ways, as show the reports of the International Religious Freedom<sup>23</sup>. The institution that undertakes their preparation is the Department of State of the US, responsible for conducting American diplomacy. The Department of State's Bureau of Democracy, Human Rights and Labor submits to the US Congress a report on

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18 Maciej POTZ, *Granice wolności religijnej*, Toruń: Wydawnictwo Naukowe Uniwersytetu Mikołaja Kopernika, 2015, p. 52-56.

19 Jan-Werner MÜLLER, "Militant Democracy" in Michel ROSENFELD & András SAJÓ (ed.), *The Oxford Handbook of Comparative Constitutional Law*, New York: Oxford University Press, 2012, p. 1119.

20 Karl LOEWENSTEIN, "Militant Democracy and Fundamental Rights I", *The American Political Science Review*, vol. XXXI (3/1937a), p. 418; Geliijn MOLIER, Bastiaaan RIJPKEMA, "Germany's New Militant Democracy Regime: National Democratic Party II and the German Federal Constitutional Courts's «Potentiality» Criterion for Party Bans: Bundesverfassungsgericht, Hudgment of 17 January 2017, 2 BvB 1/13, National Democratic Party II", *European Constitutional Law Review*, vol. 2 (14/2018), p. 405.

21 Andrzej ANTOSZEWSKI, "Demokracja liberalna przed nieliberalnym wyzwaniem" in Andrzej CZAJKOWSKI, Dorota DRAŁUS, Leszek SOBKOWIAK, Monika WICHŁACZ (ed.), *Zjawiska polityczne w perspektywie teoretycznej*, Wrocław: Instytut Politologii Uniwersytetu Wrocławskiego, 201, p. 54.

22 Fareed ZAKARIA, *The Future of Freedom. Illiberal Democracy at Home and Abroad*, New York: W.W. Norton & Company, 2007, p. 27.

23 U.S. DEPARTMENT OF STATE, *International Religious Freedom Reports*, [online] <https://www.state.gov/international-religious-freedom-reports/>, [1 May 2020].

human rights conditions in different countries, and also annually reports on respect for religious freedom in the world, including Spain<sup>24</sup>.

The main purpose of the article is to see how religious freedom was restricted in Spain between 2009 and 2019, based on the reports of the Department of State of The International Religious Freedom, which is one of the manifestations of the militant democracy. The analysis answers the following research questions: What type of restriction of religious freedom occurred in the period considered? What was the dynamics of violations of religious freedom?

The main research hypothesis is that violations of religious freedom in Spain between 2009 and 2019 point out to the instrumental treatment of religion, and the process of militant democracy. The study verifies the extent to which one of the indicators indicating the process of militant democracy is implemented into Spain's political system. The method used in the study is qualitative source analysis. Sources used in the study are reports of the United States Department of State from 2009 to 2019. The rationale for the temporal caesura is the economic crisis that took place in 2008, when the crisis phenomena, such as the limitations of civil rights and liberties, related to the functioning of political systems began to be seen in many countries considered to be stabilized democracies<sup>25</sup>. First of all, then researchers began to observe the gradual taking over of the characteristics of non-democratic systems by modern democracies, that is, the process of militant democracy<sup>26</sup>. One of the most important consequences was the emergence of doubts about the reliability of liberal solutions not only in the economic sphere, but also political. Among other things, there were spontaneous and violent social protests, the activity of which was seen as a threat not only to public policy, but precisely to the foundations of liberal democratic systems<sup>27</sup>. That is why the opening temporal caesura was set to 2009, while for the closing one: the end of 2019, as 2020 continues. In addition, it is now predicted that the coronavirus pandemic that is going on may bring worse outcomes than the 2008 crisis<sup>28</sup>. This could result in further

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24 UNITED STATES COMMISSION ON INTERNATIONAL RELIGIOUS FREEDOM, *About us*, [online] <https://www.uscirf.gov/about-uscirf/about-us>, [1 May 2020].

25 Philip KOTLER, *Democracy in Decline: Rebuilding its Future*, London: SAGE Publications Ltd, 2016, p. 79.

26 Joanna RAK, "Conceptualizing the Theoretical Category of Neo-militant Democracy: The case of Hungary" *Polish Political Science Yearbook*, vol. 49 (2/2020).

27 Joanna RAK, "Relations between the Installation of Democracy and the Anti-Austerity Protest Behavior: Spanish Indignados in Comparative Perspective", *Aportes. Revista de Historia Contemporánea*, vol. 34 (99/2019).

28 Adam TOOZE, *Is the Coronavirus crash worse than the 2008 Financial Crisis?*, [online] <https://foreignpolicy.com/2020/03/18/coronavirus-economic-crash-2008-financial-crisis-worse/>, [1 May 2020].

research in the future and even redefine current analyses and conclusions in the face of new challenges.

The typology of restrictions covering religious freedom serves as the main research tool in this article. The structure of the article is following: the first part briefly discusses the category of militant democracy used in the study and identifies possible types and areas in which restrictions on religious freedom may occur; the second part of the article is empirical and focuses primarily on the analysis of reports on how religious freedom in Spain was restricted between 2009 and 2019. The last part is a summary which presents the most important findings and conclusions of the study.

## MILITANT DEMOCRACY AND FREEDOM OF RELIGION

For the first time, the category of militant democracy appeared in Karl Loewenstein's work in regard to the Weimar Republic<sup>29</sup>. The characteristics taken over by democratic regimes at that time were different from those that are adopted currently, and this does not change the fact that the militant process is still taking place, albeit in a different form. For this reason, researchers try to comprehensively develop a category of neo-militant democracy that allows to study modern militant democracies by applying indicators, selected aptly to modern realities<sup>30</sup>. This article adopted an understanding of militant democracy as a political regime in which parliament<sup>31</sup> and the judiciary are equipped with legal means to restrict individual democratic freedoms in order to defend democracy against those who are considered its enemies<sup>32</sup>. The application of various restrictions, such as restrictions on freedom of the press<sup>33</sup> or religious freedom<sup>34</sup>, is intended to provide democratic regimes with protection against political opponents and a chance to survive in a new social reality<sup>35</sup>. However, the set of restrictions typical for militant democracy is much more extensive

29 Karl LOEWENSTEIN, "Militant Democracy and Fundamental Rights I...", *op. cit.*; Karl LOEWENSTEIN, "Militant Democracy and Fundamental Rights II", *The American Political Science Review*, vol. XXXI (4/1937b).

30 Joanna RAK, "Conceptualizing the Theoretical Category...", *op. cit.*

31 Joanna MARSZAŁEK-KAWA, *The Institutional Position and Functions of the Sejm of the Republic of Poland after the Accession to the European Union*, Odessa, 2019.

32 Karl LOEWENSTEIN, "Militant Democracy and Fundamental Rights I...", *op. cit.*, p. 418; Geliijn MOLIER, Bastiaaan RIJPKEMA, "Germany's New Militant Democracy...", *op. cit.*

33 Przemysław OSIEWICZ, Maciej SKRZYPEK, "Is Spain becoming a militant democracy? Empirical evidence from Freedom House Reports", *Aportes. Revista de Historia Contemporánea*, vol. 35 (103/2020); Giovanni CAPOCCIA, *Defending Democracy Reactions to Extremism in Interwar Europe*, Baltimore, London: John Hopkins University Press, 2005, p. 57-61.

34 Jan-Werner MÜLLER, "Militant Democracy...", *op. cit.* p. 1119.

35 Roman BÄCKER, Joanna RAK, "Trajektorja trwania opancerzonych demokracji", *Studia nad Autorytaryzmem i Totalitaryzmem*, vol. 41 (3/2019).

and includes also: the limitations of the freedom of assembly<sup>36</sup>; the limitations of the freedom of speech<sup>37</sup>; the limitations of the freedom of association<sup>38</sup>; the limitations of passive voting rights<sup>39</sup>; the limitations of active voting rights<sup>40</sup>; the limitations of referendum organization<sup>41</sup>; legislation on counterterrorism and anti-terrorism<sup>42</sup>; the limitation of registration and functioning of political parties<sup>43</sup>; the limitation of naturalization<sup>44</sup>; the limitation of access to public employment<sup>45</sup>; legislation on anti-extremism<sup>46</sup>; movement restrictions<sup>47</sup>; and restrictions on the independence of the judiciary<sup>48</sup>.

Typically, authors writing about restrictions on religious freedom, mean to counter fanaticism and religious extremism, which can pose a threat for security. To interesting conclusions came Alexander Kirshner who studied alternative justifications for limiting individuals' ability to participate. The author proved that among the most frequently proposed justifications for the use of militant democracy sanctions is "that individuals or parties reject democracy and that members are opposed to or threaten a fundamental element of a regime's identity—such as its religious or ethnic identity"<sup>49</sup>. This indicates the possibility of instrumental treating religion by militant democracies.

In Spain, religious freedom is regulated primarily by the Constitution and the General Act on Religious Liberty. In the context of militant democracy and the violation of constitutionally guaranteed freedoms, which should be respected and protected, it is worth noting that there is a difference between formal and substantive constitutions. Karl Loewenstein distinguished their three types:

1. normative, which occupy the most important place in the hierarchy of positive law and are fully respected;

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36 Miroslav MAREŠ, "Czech Militant Democracy in Action: Dissolution of the Workers' Party and the Wider Context of This Act", *East European Politics and Societies*, vol. 33 (26/2012), p. 34.

37 *Ibidem*, p. 36; Ivars IJABS, "After the Referendum: Militant Democracy and Nation-Building in Latvia", *East European Politics and Societies and Cultures*, vol. 2 (30/2016), p. 289.

38 Miroslav MAREŠ, "Czech Militant Democracy...", *op. cit.*, p. 36.

39 Ivars IJABS, "After the Referendum...", *op. cit.*, p. 289.

40 *Ibidem*.

41 *Ibidem*, p. 288.

42 Patrick MACKLEM, "Militant Democracy, Legal Pluralism, and the Paradox of Self-determination" *International Journal of Constitutional Law*, vol. 3 (4/2006), 488-489.

43 Miroslav MAREŠ, "Czech Militant Democracy...", *op. cit.*, p. 36.

44 Ivars IJABS, "After the Referendum...", *op. cit.*, p. 289.

45 Miroslav MAREŠ, "Czech Militant Democracy...", *op. cit.*, p. 36.

46 Giovanni CAPOCCIA, *Defending Democracy...*, *op. cit.*, p. 57-61; Andras SAJÓ, "A from Militant Democracy to the Preventive State", *Cardozo Law Review*, 5 (27/2005), p. 2280.

47 *Ibidem*, p. 2280.

48 Alexander S. KIRSHNER, *A Theory of Militant Democracy, The Ethics of Combatting Political Extremism*, New Haven: Yale University Press, 2014, p. 21.

49 *Ibidem*, p. 19.

2. nominal, characteristics of which are the inability to implement their standards, despite goodwill expressed, because of existing social, economic or cultural conditions;
3. semantic, that is, formalizing the reigns of an individual, political party, legislative assembly or a military junta<sup>50</sup>.

It therefore seems reasonable to refer to the provisions contained in the Constitution and in the General Act on Religious Liberty, which are compared with the conclusions obtained on the basis of the analysis of the reports of the United States' Department of States, to answer the research question, and to verify the research hypothesis.

The Spanish Constitution regulates religious freedom in Section 14 "Spaniards are equal before the law and may not in any way be discriminated against on account of birth, race, sex, religion, opinion or any other personal or social condition or circumstance"<sup>51</sup>, in section 16:

"1. Freedom of ideology, religion and worship is guaranteed, to individuals and communities with no other restriction on their expression than may be necessary to maintain public order as protected by law.

2. No one may be compelled to make statements regarding his or her ideology, religion or beliefs.

3. No religion shall have a state character. The public authorities shall take into account the religious beliefs of Spanish society and shall consequently maintain appropriate cooperation relations with the Catholic Church and other confessions"<sup>52</sup>.

It is also a Section 20 entry that reads: "1. The following rights are recognized and protected: d) the right to freely communicate or receive truthful information by any means of dissemination whatsoever. The law shall regulate the right to the clause of conscience and professional secrecy in the exercise of these freedoms"<sup>53</sup>.

In the General Act on Religious Liberty, first of all, there is an appeal to the state, which under the Constitution guarantees freedom of faith and religion,

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50 Karl LOEWENSTEIN, *Verfassungslehre*, Tübingen: J.C.B. Mohr (Paul Siebeck), 1969, p. 152 and next.

51 Constitución Española, [online] <https://www.boe.es/buscar/act.php?id=BOE-A-1978-31229>, [1 June 2020].

52 *Ibidem*.

53 *Ibidem*.

also indicating that no religion will be an official state religion<sup>54</sup>. The most important, however, in the context of research on religious freedom, is Article 3 of this act, which says that:

“1. The rights deriving from the freedom of worship and religion may not be exercised to the detriment of the rights of others to practice their public freedoms and fundamental rights or of public safety, health and morality, elements which constitute the order ensured under the rule of law in democratic societies.

2. Activities, purposes and Entities relating to or engaging in the study of and experimentation with psychic or parapsychological phenomena or the dissemination of humanistic or spiritualistic values or other similar non-religious aims do not qualify for the protection provided in this Act”<sup>55</sup>.

This Article specifies in which cases restrictions on freedom may be justified and what exclusions from legal protection exist. In this way, the provisions of the constitution, which constitute a legal mean, allow to limit civil rights and freedoms, which is used in the process of militant democracy imposition. Limitation of religious freedom of a given religious individual or group can thus be justified by the public good and concern for the democratic system, in accordance with legal regulations.

## RESTRICTION OF RELIGIOUS FREEDOM 2008-2019

Restricting religious freedom can manifest itself in different ways, so it is analytically efficient to adopt a detailed classification that will allow a researcher to analyze The United States’ Department of State’s reports in the most objective and simplified way possible. On the occasion of the 25th anniversary of the adoption of resolution 1986/20 of the Commission on Human Rights, the Special Rapporteur on freedom of religion or belief prepared a document in which the freedom of religion or belief is clearly and precisely defined.

It assumes that freedom of religion or belief includes:

<sup>54</sup> General Act 7/1980 Of 5 July on Religious Liberty (Boe No 177, 24 July), [online] [https://www.legislationline.org/download/id/6651/file/Spain\\_Act\\_Religious\\_Liberty\\_1980\\_en.pdf](https://www.legislationline.org/download/id/6651/file/Spain_Act_Religious_Liberty_1980_en.pdf), [1 June 2020]

<sup>55</sup> *Ibidem*.

- Freedom to adopt, change or renounce a religion or belief;
- Freedom from coercion;
- The right to manifest one's religion or belief, and within this group mentions:
  - Freedom to worship;
  - Places of worship;
  - Religious symbols;
  - Observance of holidays and days of rest;
  - Appointing clergy;
  - Teaching and disseminating materials (including missionary activity);
  - The right of parents to ensure the religious and moral education of their children;
  - Registration;
  - Communicate with individuals and communities on religious matters at the national and international level;
  - Establish and maintain charitable and humanitarian institutions/solicit and receive funding;
  - Conscientious objection<sup>56</sup>.

The mentioned areas are regulated by specific legal provisions. In Rapporteur's Digest on Freedom of Religion by Belief. Excerpts of the Reports from 1986 to 2011 by the Special Rapporteur on Freedom of Religion or Belief Arranged by Topics of the Framework for Communications<sup>57</sup> it is indicated that: Freedom to adopt, change or renounce a religion or belief is regulated in the UDHR<sup>58</sup>; ICCPR (Article 18 (1))<sup>59</sup>; 1981 Declaration of the General Assembly (Article 1 (1))<sup>60</sup>; Human Rights Committee general comment 22 (para. 3; pair 5)<sup>61</sup>; Freedom from coercion in UDHR<sup>62</sup>; ICCPR (Article 18 (2))<sup>63</sup>; 1981 Declaration of the General Assembly (Article 1 (2))<sup>64</sup>; Human

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<sup>56</sup> Rapporteur's Digest on Freedom of Religion od Belief. Excerpts of the Reports from 1986 to 2011 by the Special Rapporteur on Freedom of Religion or Belief Arranged by Topics of the Framework for Communications, [online], <https://www.ohchr.org/Documents/Issues/Religion/RapporteursDigestFreedomReligionBelief.pdf>, [10 June 2020].

<sup>57</sup> *Ibidem*.

<sup>58</sup> *Universal Declaration of Human Rights*, [online], <https://www.un.org/en/universal-declaration-human-rights/>, [19 August 2020].

<sup>59</sup> *International Covenant on Civil and Political Rights*, [online], <https://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>, [19 August 2020].

<sup>60</sup> *Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief*, [online], <https://www.ohchr.org/EN/ProfessionalInterest/Pages/ReligionOrBelief.aspx>, [19 August 2020].

<sup>61</sup> CCPR GENERAL COMMENT N° 22: ARTICLE 18 (Freedom of Thought, Conscience or Religion), [online], <https://www.refworld.org/docid/453883fb22.html>, [19 August 2020].

<sup>62</sup> *Universal Declaration...*, *op. cit.*

<sup>63</sup> *International Covenant...*, *op. cit.*

<sup>64</sup> *Declaration on the Elimination of All Forms of Intolerance...*, *op. cit.*

Rights Committee general comment 22 (para. 5)<sup>65</sup>; The right to manifest one's religion or belief in ICCPR (Art. 18 (1); Art. 18 (3))<sup>66</sup>; 1981 Declaration of the General Assembly (Art. 1 (1); Art. 1 (3))<sup>67</sup>; Human Rights Committee general comment 22 (para. 4)<sup>68</sup>; Freedom to worship in the 1981 Declaration of the General Assembly (Article 6 (a); Article 6 (c))<sup>69</sup>; Commission on Human Rights resolution 2005/40 (paragraph 4 (d))<sup>70</sup>; Human Rights Council resolution 6/37 (paragraph 9 (g))<sup>71</sup>; and General Assembly resolution 65/211 (paragraph 12 (g))<sup>72</sup>; Human Rights Committee general comment 22 (para. 4)<sup>73</sup>; Places of worship in 1981 Declaration of the General Assembly (Article 6 (a))<sup>74</sup>; Human Rights Council resolution 6/37 (9 (e); 9 (g))<sup>75</sup>; Human Rights Committee general comment 22 (para. 4)<sup>76</sup>; Religious symbols in 1981 Declaration of the General Assembly (Article 6 (c))<sup>77</sup>; Commission on Human Rights resolution 2005/40 (4 (b))<sup>78</sup>; Human Rights Committee general comment 22 (para 4)<sup>79</sup>; Observance of holidays and days of rest in 1981 Declaration of the General Assembly (Article 6 (h))<sup>80</sup>; Human Rights Committee general comment 22 (para 4)<sup>81</sup>; Appointing clergy in General Assembly Declaration 36/55 1981 (Article 6 (g))<sup>82</sup>; Human Rights Committee general comment 22 (para. 4)<sup>83</sup>; Teaching and disseminating materials (including missionary activity) in 1981 Declaration of the Gene-

65 CCPR GENERAL COMMENT N° 22..., *op. cit.*

66 *International Covenant...*, *op. cit.*

67 *Declaration on the Elimination of All Forms of Intolerance...*, *op. cit.*

68 CCPR GENERAL COMMENT N° 22..., *op. cit.*

69 *Declaration on the Elimination of All Forms of Intolerance...*, *op. cit.*

70 RÉSOLUTION DE LA COMMISSION DES DROITS DE L'HOMME 2005/40, [online], [https://ap.ohchr.org/documents/alldocs.aspx?doc\\_id=11124](https://ap.ohchr.org/documents/alldocs.aspx?doc_id=11124), [19 August 2020].

71 HUMAN RIGHTS COUNCIL RESOLUTION 6/37, Elimination of all forms of intolerance and of discrimination based on religion or belief, [online], [https://ap.ohchr.org/Documents/E/HRC/resolutions/A\\_HRC\\_RES\\_6\\_37.pdf](https://ap.ohchr.org/Documents/E/HRC/resolutions/A_HRC_RES_6_37.pdf), [19 August 2020].

72 GENERAL ASSEMBLY ON 21 DECEMBER 2010. Elimination of all forms of intolerance and of discrimination based on religion or belief, [online], <https://undocs.org/en/A/RES/65/211>, [19 August 2020].

73 CCPR GENERAL COMMENT N° 22..., *op. cit.*

74 *Declaration on the Elimination of All Forms of Intolerance...*, *op. cit.*

75 HUMAN RIGHTS COUNCIL RESOLUTION 6/37..., *op. cit.*

76 CCPR GENERAL COMMENT N° 22..., *op. cit.*

77 *Declaration on the Elimination of All Forms of Intolerance...*, *op. cit.*

78 RÉSOLUTION DE LA COMMISSION DES DROITS DE L'HOMME..., *op. cit.*

79 CCPR GENERAL COMMENT N° 22..., *op. cit.*

80 *Declaration on the Elimination of All Forms of Intolerance...*, *op. cit.*

81 CCPR GENERAL COMMENT N° 22..., *op. cit.*

82 GENERAL ASSEMBLY RESOLUTION 36/55 OF 25 NOVEMBER 1981, Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief, [online], <https://www.ohchr.org/EN/ProfessionalInterest/Pages/ReligionOrBelief.aspx>, [19 August 2020].

83 CCPR GENERAL COMMENT N° 22..., *op. cit.*

ral Assembly (Article 6 (d), Article 11 (1) 6 (e))<sup>84</sup>; Commission on Human Rights resolution 2005/40 (paragraph 4 (d))<sup>85</sup>; and Human Rights Council resolution 6/37 (paragraph 9 (g))<sup>86</sup>; Human Rights Committee general comment 22 (para. 4)<sup>87</sup>; The right of parents to ensure the religious and moral education of their children in ICCPR (Article 18 (4))<sup>88</sup>; UNCRC (Article 14 (2))<sup>89</sup>; ICESCR (Article 13 (3))<sup>90</sup>; Migrant Workers Convention (Article 12 (4))<sup>91</sup>; 1981 Declaration of the General Assembly (Article 5)<sup>92</sup>; Registration in Commission on Human Rights resolution 2005/40 (paragraphs 4 (c) and 4 (e))<sup>93</sup> and Human Rights Council resolution 6/37 (paragraphs 12 (e) and 12 (h))<sup>94</sup>; Communicate with individuals and communities on religious matters at the national and international level in 1981 Declaration of the General Assembly (Article 6 (and))<sup>95</sup>; Establish and maintain charitable and humanitarian institutions/solicit and receive funding in 1981 Declaration of the General Assembly (Article 6 (b); Article 6 (f))<sup>96</sup>; Commission on Human Rights resolution 2005/40 (paragraph 4 (e))<sup>97</sup> and Human Rights Council resolution 6/37 (paragraph 12 (h))<sup>98</sup>; and Conscientious objection in Human Rights Committee general comment 22 11)<sup>99</sup>.

The document also mentions discrimination based on religion and belief or, for example, groups that are particularly vulnerable to violations of their rights and freedoms, but this is not at the heart of the article and is therefore omitted. In order to better illustrate the matter in question, on the basis of the listed areas that make up freedom of religion, a table (Table 1) was created together with a legend, and it was noted in which of the areas there were violations and restrictions indicating the process of militant democracy. It

84 *Declaration on the Elimination of All Forms of Intolerance...*, *op. cit.*

85 RÉSOLUTION DE LA COMMISSION DES DROITS DE L'HOMME..., *op. cit.*

86 HUMAN RIGHTS COUNCIL RESOLUTION 6/37..., *op. cit.*

87 CCPR GENERAL COMMENT N°. 22..., *op. cit.*

88 *International Covenant...*, *op. cit.*

89 UNCRC Simplified Articles, [online], <https://cypcs.org.uk/rights/uncrc/articles/article-14/>, [19 August 2020].

90 International Covenant on Economic, Social and Cultural Rights, [online], <https://www.ohchr.org/en/professionalinterest/pages/cescr.aspx>, [19 August 2020].

91 GENERAL ASSEMBLY RESOLUTION 45/158 OF 18 DECEMBER 1990, International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, [online], <https://www.ohchr.org/en/professionalinterest/pages/cmaw.aspx>, [19 August 2020].

92 *Declaration on the Elimination of All Forms of Intolerance...*, *op. cit.*

93 RÉSOLUTION DE LA COMMISSION DES DROITS DE L'HOMME..., *op. cit.*

94 HUMAN RIGHTS COUNCIL RESOLUTION 6/37..., *op. cit.*

95 *Declaration on the Elimination of All Forms of Intolerance...*, *op. cit.*

96 *Ibidem.*

97 RÉSOLUTION DE LA COMMISSION DES DROITS DE L'HOMME..., *op. cit.*

98 HUMAN RIGHTS COUNCIL RESOLUTION 6/37..., *op. cit.*

99 CCPR GENERAL COMMENT N°. 22..., *op. cit.*

should also be emphasized that the article does not consider plans, intentions and projects restricting religious freedom that have not entered into force, and attempts to regulate controversial issues that have ultimately been withdrawn. The focus was solely on the limitations that were implemented. The study also omitted reported discrimination from non-institutionalized groups, i.e. random individuals or social groups. The “religious demography” section was also omitted in the analysis, which was irrelevant for the scope of this study, because this section mainly deals with statistics on religious trends. In the article, however, the issue of restrictions related to religious freedom is more important than the number of, for example, believers. The issue of registration and cooperation agreements with the government were treated as a single category, as both relate to state-church relations, referring to the requirements that religious groups must meet in order to be able to enjoy certain privileges or obtain benefits provided only for registered groups with appropriate legal status. As for the issue of the possibility of assembling to practice beliefs, it was qualified into the “place to worship” indicator, thus, within a single indicator there were included issues related to both the creation of places of worship, obtaining consents, etc., and limiting the possibility of assembling to practice. At this point, it should be emphasized that all restrictions on freedom of assembly, not just those relating to religion, are, in fact, a separate indicator for the process of militant democracy, as mentioned earlier.

In 2009, the report pointed out mainly to few cases of restrictions imposed by the local and regional government on Islamic and Protestant federations, which related to problems concerning the construction of temples, difficulties in obtaining the necessary securing permits and approvals to construct new places of worship (V3b). In the 2009 report, there were isolated voices that restrictions and policies at the local level precluded them from assembling to practice beliefs, which could also be associated with restrictions related to places to worship. In addition, federal tax law provides taxpayers the option of allocating a percentage of their income tax to the Catholic Church and also available for nongovernmental organizations (NGOs) but not to other religious entities (V3i)<sup>100</sup>. In addition, federal tax law provides taxpayers the option of allocating a percentage of their income tax to the Catholic Church and also available for nongovernmental organizations (NGOs) but not to other religious entities (V3i). What is most important is the information contained in the report that “there was no change in the status of respect

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100 UNITED STATES DEPARTMENT OF STATE. 2009. “Report on International Religious Freedom – Spain, 26 October 2009”, [online] <https://www.refworld.org/docid/4ae86109c.html>, [ 15 August 2020].

for religious freedom by the Government during the reporting period”, although with a highlight that Catholicism remains the dominant religion<sup>101</sup>.

In 2010 was a signal that under the new regulations, in several cities it has been banned to wear the burqa and the niqab in public buildings (V3k). The trouble was also the lack of a formal mosque in Catalonia, especially since the highest concentration of Muslims is in the city, and it was also pointed out that none of the roughly 200 prayer centers in this region are actual mosques. In addition, mostly Muslims pointed to the emerging difficulty in gaining satisfactory treatment and reburial of disinterred remains, as well as access to cemeteries designated for particular religions. It is also the further transfer of percentage income tax to the Catholic Church and NGOs (V3i). Again, just like in the report from the previous year, it was reported that “Roman Catholicism was the dominant religion and enjoyed the closest official relationship with the government”<sup>102</sup>. Still, there were signs that restrictions and policies at the local level were hindering assembling to practice beliefs (V3a)<sup>103</sup>. The report also shows that since 2004, funding for teachers for Catholic, Islamic, Protestant, and Judaic instruction in public schools is invariably dependent on the condition that at least 10 students request them (V3f)<sup>104</sup>. This condition can be regarded as a restriction related to the right to religious worship, especially because except funding, within the required qualifications, the teachers expected e.g. to have teaching degrees, training in Spanish law, and be fluent in Spanish<sup>105</sup>.

In 2011, no violations of religious freedom were reported, and in the case of e.g. the city of Lleida, where in June Catalonia’s highest court ruled in favor of the city of Lleida’s prohibition of wearing the burqa, niqab and other clothing that covers the face in public buildings. It was very quickly considered, because already in October, an appeal to the Catalanian court’s decision raised by a Muslim association before the Spanish Supreme Court<sup>106</sup>. As one can see, the possible consequences that would arise if the decision to prohibit the wearing of wardrobe parts related to religious worship was upheld. As every year, there was also information about the possibility of transferring income tax to the Catholic Church and NGOs but not to other religious entities (V3i). There

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101 *Ibidem*.

102 UNITED STATES DEPARTMENT OF STATE. 2010. “Report on International Religious Freedom – Spain, 17 November 2010”, [online], <https://www.refworld.org/docid/4cf2d06778.html>, [ 15 August 2020].

103 *Ibidem*.

104 *Ibidem*.

105 *Ibidem*.

106 UNITED STATES DEPARTMENT OF STATE. 2011. “Report on International Religious Freedom – Spain, 30 July 2012”, [online], <https://www.refworld.org/docid/5021058378.html>, [ 15 August 2020].

was also a re-mention of the difficulties associated with assembling to practice beliefs (V3a) and reported difficulties related to the opening of places of worship (V3b)<sup>107</sup>. The report referred to voluntary registration, pointing out that “in certain cases, religious groups not officially recognized by the government have been treated as cultural associations and, as a result, cannot legally hold religious services” (V3g)<sup>108</sup>. The arrangements adopted for the organization of the financing of religion in public schools and the requirements for teachers (V3f) were continued<sup>109</sup>.

2012 was also generally free from activities aimed at restricting religious freedom. The report only signaled very enigmatically that some local governments imposed restrictions that affected members of minority religious groups, including Muslims and non-Catholic Christians. In this case, however, it is difficult, without specific infringements, to consider those restrictions in this study. In addition, as in previous years, Muslim groups continued to report difficulties connected with permits and approvals to construct new places of worship (V3b). The city of Molins de Rei, on the other hand, announced a halt to the construction of new religious buildings for an indefinite period of time. The justification of this decision that it is better to withdraw the future expansions, and to avoid conflict with community groups was met with an allegation by Muslim groups that the ban was aimed at them. The issue of the transfer of income tax to the Catholic Church and NGOs, bypassing other religious entities (V3i) was mentioned, as well as the cooperation agreement with the government (V3g), which the religious group can conclude only after obtaining the relevant status by meeting certain conditions and requirements such as “«relevant» numbers of followers, a presence in the country for a «considerable» length of time, and a «level of diffusion» that demonstrates a social presence”<sup>110</sup>. The issue of funding and teaching of religion in public schools (V3f) was also raised<sup>111</sup>.

In 2013, it was reported that some local governments limited the religious freedom of religious minorities. These groups reported that the restrictions inhibited them from assembling to practice their beliefs and, as in previous years, that difficulties appeared in securing permits and approvals to construct new places of worship (V3a; V3b). There were also signs of social discrimination related to religious affiliation, belief, or practice. It is interesting that the

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107 *Ibidem*.

108 *Ibidem*.

109 *Ibidem*.

110 UNITED STATES DEPARTMENT OF STATE. 2012. “Report on International Religious Freedom – Spain, 20 May 2013”, [online], <https://www.refworld.org/docid/519dd489a1.html>, [15 August 2020].

111 *Ibidem*.

report noted “the strong identification of the Catholic Church with the state made places to worship the target of violent acts for political purposes, as well as vandalism”<sup>112</sup> and that because of this, government leaders have taken steps to promote religious pluralism. It is worth noting that the Spanish Constitution states that “no religion shall have a state character”<sup>113</sup>, and yet, it is clear, if only on the basis of this report, that Catholicism is the dominant religion. The privilege of the Catholic Church is also evidenced once again by the emerging signal that federal tax law provides taxpayers the option of allocating a percentage of their income tax to the Catholic Church and also available for nongovernmental organizations (NGOs) but not to other religious entities. This is also indicated by other conditions referred to later in the paper. Another important issue raised, as in previous reports, in the 2013 report is that in Spain, the government does not require groups to register, however, registration allows for many privileges and permissions. Among them are e.g. privilege to hold worship services legally; privilege to buy, rent, and sell property; and privilege to act as a legal entity in civil proceedings. Therefore, some municipalities require individual churches of registered religious groups to receive authorization at the local level to hold worship services. The issue of the status of religious groups in the context of cooperation agreements with government was also raised. In addition, the People’s Party of Catalonia from the city of Mollet del Valles distributed pamphlets against Muslim groups who publicly prayed in front of the town hall building to show opposition to the prohibition on constructing a worship space in the place which, according to the municipal government, was intended for commercial use. Muslim groups continued to report problems related to obtaining building permits for new mosque construction. In Catalonia, Muslim leaders pointed out that, as a result, they still do not have a formal mosque<sup>114</sup>. In some cities, it was forbidden to wear the burqa and niqab in public buildings, and in a part of municipalities in Catalonia there are restrictions to wear full veils by Muslim women (V3k)<sup>115</sup>.

In 2014, federal tax law was again highlighted, giving the possibility to pass on 0.7% income tax, bypassing other religious groups (V3i), and raised the issue of cooperation agreements and the unchanged matter relating to the registration of religious groups (V3g). There were still regulations in some cities prohibiting the wearing of the burqa and the niqab in public buildings, and

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112 UNITED STATES DEPARTMENT OF STATE. 2013. “Report on International Religious Freedom – Spain, 28 July 2014”, [online], <https://www.refworld.org/docid/53d9071014.html>, [16 August 2020].

113 *Constitución Española...*, *op. cit.*

114 UNITED STATES DEPARTMENT OF STATE. 2013, “Report on International Religious Freedom...”, *op. cit.*

115 *Ibidem.*

in some municipalities, especially in Catalonia, wearing full veils by Muslim women (V3k) were restricted. Religious funding regulations and requirements for teachers have not changed (V3f). Also, as in previous reports, difficulties have been reported in terms of receiving building and other permits for places of worship at local level (V3b)<sup>116</sup>.

Another year also included reports that face covering (V3k) is being restricted in 13 municipalities. It is worth emphasizing that each time in the reports it is indicated that the immediate covering of the face does not concern the whole territory of the state. It should be pointed out that the restrictions on places of worship indicated in previous reports have eased. Since 2015, access to permits concerning the creation of new places of worship has been made easier. Although this refers to the easing of restrictions, it is worth to mention this fact, as earlier in this particular area there were the most numerous and severe difficulties and restrictions. Despite the facilitations introduced, there have been reports that minority religious groups still find it difficult to obtain decisions on requests for land on which to establish places of worship (V3b), or that the implementation of projects is delayed<sup>117</sup>. At the same year, in June, a law colloquially called as “silence law” came into force, which restricted the freedom of public protest. It was justified by the need to restrict overcrowding in small facilities or public spaces. The report noted that “neither law has been used explicitly against religious groups”<sup>118</sup>. Despite this explanation, it should be noted that restricting public protest is one of the significant indicators of the process of militant democracy<sup>119</sup>. Giving income tax for the Catholic Church or NGOs bypassing other religious groups was still practiced in Spain (V3i). It was noticed that there were cases in which municipalities required individual houses of worship of registered religious groups to receive authorization at the local level to hold worship services (V3a). Some Islamic groups claimed that government support that was cut following the 2008 economic crisis was not restored, which for them meant inhibiting their ability to travel to conferences and properly represent the growing Muslim community (V3h). In June, a lawsuit filed by the Federation of Evangelical Religious Entities to include a field

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116 UNITED STATES DEPARTMENT OF STATE. 2014. “Report on International Religious Freedom – Spain, 14 October 2015”, [online], <https://www.refworld.org/docid/5621054a8c.html>, [16 August 2020].

117 UNITED STATES DEPARTMENT OF STATE. 2015, “Report on International Religious Freedom...”, *op. cit.*

118 UNITED STATES DEPARTMENT OF STATE. 2015. “Report on International Religious Freedom – Spain, 10 August 2016”, [online], <https://www.refworld.org/docid/57add8286.html>, [17 August 2020].

119 Joanna RAK, *Theorizing Cultures of Political Violence in Times of Austerity: Studying Social Movements in Comparative Perspective*, Abingdon: Routledge 2018; Joanna RAK, Joanna RAK, “Conceptualizing the Theoretical Category...”, *op. cit.*

for tax forms allowing donations to the Evangelical Church, on a principle that works in a return to the Catholic Church, was also rejected. The rejection was justified by the lack of cooperation agreement with the state (V3g; V3i). Registration (V3g) remained unchanged. Importantly, it was not until July 2015 that the government made changes to the Civil Code that allowed it to recognize religious marriages for all religious communities that have permanent status, not just those that had a specific signed agreement with the state<sup>120</sup>. In September, a modified royal decree to permit Protestant pastors to receive social security benefits had appeared for the first time. It should be stressed, however, that there are significant differences between the calculation of retirement time and the pension between Catholic clergy and pastors<sup>121</sup>. In the unchanged form, there remained rules related to public schools, i.e. teacher funding dependent on the meeting of at least 10 students (V3f).

The 2016 report highlighted the favoritism of one of the denominations, namely Catholicism, which was primarily manifested in the transfer of portion of taxes (it can be passed on to the Catholic Church or charities, but not to other religions); in addition, retired Catholic priests received government pensions, which, in the case of Protestant pastors was difficult (V3i). Evangelical religious leaders, on the other hand, pointed to the use of unfair laws when it comes to entities seeking religious or construction permits and the government failed to make religious accommodations in the armed forces construction permits for places of worship, and to the government's failure to provide sufficient numbers of public cemeteries (V3b). Public protest continued to be limited, though with a stipulation that "neither it nor the constitutional limits on expression have been used against religious groups"<sup>122</sup>. There has also shown an information that in the provisions of the Constitution regarding the relations of public authorities with the Church explicit mentions concern only the Catholic Church<sup>123</sup>. It is regulated as follows: "public authorities shall take into account the religious beliefs of Spanish society and consequently maintain appropriate cooperative relations with the Catholic Church and other denominations"<sup>124</sup>. It was also mentioned, as in previous years, that groups which wish to sign cooperative agreements with the state must be granted *notorio arraigo* ("deeply rooted" or permanent) status by the MOJ, of course under certain conditions, such as the "relevant" number of followers; a pres-

120 UNITED STATES DEPARTMENT OF STATE. 2016. "Report on International Religious Freedom – Spain, 15 August 2017", [online], <https://www.refworld.org/docid/59b7d840c.html>, [17 August 2020].

121 UNITED STATES DEPARTMENT OF STATE. 2016, "Report on International Religious Freedom...", *op. cit.*

122 *Ibidem.*

123 *Ibidem.*

124 *Constitución Española...*, *op. cit.*

ence in the country for a “considerable” length of time, defined as 30 years; and a “level of diffusion” that demonstrates a social presence (V3g)<sup>125</sup>. However, if the MOJ does not consider a group to be a religious group, then the group may be included in the Register of Associations maintained by the Ministry of Interior, but except for the legal status compatible with the rules applicable to associations, they do not receive any other benefits. Once again there was a mention that the government provides funding for salaries for teachers for Catholic, Protestant, and Islamic instruction in public schools when at least 10 students request it (V3f). The access of religious practitioners to refugee centers is guaranteed by the government to religious groups with cooperative agreements (V3g). Others practicing their religion, also may enter the internment centers upon request, but, as specified, they have no formal agreement with the state. The document also referred to the government’s 2015 report on religious freedom, in which Mormons and Jehovah’s Witnesses pointed out to restrictions on handing out written religious materials or use of public spaces for cultural or educational activities, restrictions on hanging posters of stands about their religion at book fairs, or that 20 localities had banned them from or fined them for preaching, or confiscated their publications (V3e)<sup>126</sup>.

In 2017, first of all, the ban on the wearing of the hijab by prisoners (V3k) was maintained, and the Muslim community had to transform the mosque for non-worship activities, due to the city’s warning that it will be closed due to building code violations, the threat of overcrowding on prayer days was invoked because of the growth of the Muslim community (V3b), and the issue of tax transfers (V3i) was mentioned. It is interesting that the MOJ began to compile a list of recognized religious clergy authorized to perform legal ceremonies. The report referred to the constitutionally expressed possibility of limits on expression, which is possible in terms of maintaining public order. It also referred to the law mentioned in earlier reports, which restricts public protest. As in previous years, there has been an assurance that “authorities have not used it or the constitutional limits on expression against religious groups”<sup>127</sup>. It referred again to legal benefits, which religious groups obtain, if they register (V3g). The issue of providing by government salaries for teachers for Catholic, Protestant, and Islamic instruction in public schools when at least 10 students request was raised. There were also voices from many religious groups concerning religious education and the integration of religious teach-

125 UNITED STATES DEPARTMENT OF STATE. 2016, “Report on International Religious Freedom...”, *op. cit.*

126 *Ibidem.*

127 UNITED STATES DEPARTMENT OF STATE. 2017. “Report on International Religious Freedom – Spain, [online], <https://www.state.gov/reports/2017-report-on-international-religious-freedom/spain/>, [18 August 2020].

ers in schools (V3f). As in previous reports, there has also been a mention that autonomous regions are developing requirements for religious teachers. It also referred to regulations related to social security benefits for retired clergy, because, as noted, no retired Protestant clergy member had yet been able to access a government pension. Difficulties related to obtaining permits to operate or build places of worship (V3b) and lack of access to additional land for cemeteries were still pointed out. The report referred to allegations against local government that were intended to limit proselytize or to manifest faith in public spaces, by imposing fines and penalties for carrying out religious activities in public or distributing leaflets with religious content (V3e). The example of Huelva City Council which in 2016 excluded religious bodies from using public municipal spaces was cited in this case. The activities of Mormon missionaries in this area, as well as Jehovah's witnesses, were also to be restricted<sup>128</sup>.

2018 is a recurring topic regarding the transfer of a part of taxes, bypassing other religions (V3i). As in each of the previous reports, there has been a thread of possible restrictions on expression and the right to restrict unauthorized public protest, and mentioning in the Constitution only the Catholic Church when it comes to state-church relations, as well as the thread of registration that guarantees certain legal benefits (V3g). Still, the government provides funding for salaries for teachers of Catholic and, when at least 10 students request it (V3f), and requirements are placed, and on religious education instructors to certify their credentials. The fact that pension entitlements for Protestant clergy are stricter than for Catholic clergy has also remained unchanged. In addition, the Church of Jesus Christ and the FCBE, i.e. churches which were unable to conclude agreements with the government were excluded from the benefits available to the Catholic Church and the three other religious groups with such agreements (V3i). Still, some religious groups have pointed out to the stated municipalities' ability to proselytize or manifest faith in public areas (V3e). Burdensome and unequal regulations remained a principal obstacle to religious groups seeking licenses or permits for creating places of worship (V3b), similarly as in previous years Muslim and Buddhist communities reported problems with accessing and establishing cemeteries. There have also been complaints from various religious groups about obstacles to provide religious education and the integration of religious teachers in schools (V3f)<sup>129</sup>.

In the last analyzed year, there was mentioned the possibility of restricting religious freedom, including the restriction of expression of faith in cases justified by the maintaining of public order. Also, the agreement was invoked,

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<sup>128</sup> *Ibidem*.

<sup>129</sup> UNITED STATES DEPARTMENT OF STATE. 2018. "Report on International Religious Freedom – Spain, [online], <https://www.state.gov/wp-content/uploads/2019/05/SPAIN-2018-INTERNATIONAL-RELIGIOUS-FREEDOM-REPORT.pdf>, [18 August 2020].

as well as the thread of the agreement concluded between the Government and the Holy See, which grants the Catholic Church additional benefits not available to three other groups that do not have such agreements, which is also an issue that has still not changed, while it concerns transferring by citizens their taxes to the Catholic Church or its charities (V3i). The issue of optional registration has been raised, but this results in non-receiving of certain legal advantages (V3g). It was also mentioned that the government guarantees religious workers of groups with cooperative agreements with the state access to refugee centers, while others may enter the internment centers upon request. In the case of salaries for teachers of Catholic, the requirement still were at least 10 students requesting it. The issue of pension inequalities for retired Protestant and Catholic clergy (V3i) has not changed. The report states that the “Ministry of Justice’s Religious Freedom Advisory Committee was unable to approve its 2018 annual report on religious freedom because of the lack of an official government”<sup>130</sup>. In addition, the regional education ministry of the Autonomous Community of Madrid has established that schools have the right to regulate the dress code of students, including the hijab (V3k). Difficulties related to licenses or permits for places of worship (V3b) and obstacles to religious education and the integration of teachers of religion in schools (V3f) were also reported<sup>131</sup>(Table 1).

**Table 1. Restrictions on religious freedom in Spain 2009-2019**

Spain	V1	V2	V3a	V3b	V3c	V3d	V3e	V3f	V3g	V3h	V3i	V3j	V3k
2009	0	0	0	1	0	0	0	1	1	0	1	0	0
2010	0	0	1	1	0	0	0	1	1	0	1	0	1
2011	0	0	1	1	0	0	0	1	1	0	1	0	0
2012	0	0	1	1	0	0	0	1	1	0	1	0	0
2013	0	0	1	1	0	0	0	1	1	0	1	0	1

<sup>130</sup> UNITED STATES DEPARTMENT OF STATE. 2019. “Report on International Religious Freedom – Spain, [online], <https://www.state.gov/reports/2019-report-on-international-religious-freedom/spain/>, [19 August 2020].

<sup>131</sup> *Ibidem*.

2014	0	0	1	0	0	0	0	1	1	0	1	0	1
2015	0	0	1	0	0	0	0	1	1	0	1	0	1
2016	0	0	1	1	0	0	1	1	1	0	1	0	0
2017	0	0	1	1	0	0	1	1	1	0	1	0	1
2018	0	0	1	1	0	0	1	1	1	0	1	0	0
2019	0	0	1	1	0	0	0	1	1	0	1	0	0

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Legend: Freedom to adopt, change or renounce a religion or belief (V1); Freedom from coercion (V2); The right to manifest one's religion or belief: freedom to worship (V3a); Places of worship (V3b); Observance of holidays and days of rest (V3c); Appointing clergy (V3d);

Teaching and disseminating materials (including missionary activity) (V3e); The right of parents to ensure the religious and moral education of their children (V3f); Registration (V3g); Communicate with individuals and communities on religious matters at the national and international level (V3h); Establish and maintain charitable and humanitarian institutions/solicit and receive funding (V3i); Conscientious objection (V3j); religious symbols (V3k).

1 – Restrictions on religious freedom have been introduced

0 – Restrictions on religious freedom have not been introduced

## CONCLUSIONS

The analysis presented in the article allows a researcher to formulate several important conclusions concerning the limitations of religious freedom in Spain. First of all, during the considered period, new restrictions on religious freedom were introduced relatively rarely, and regular practices were usually pointed out. Thus, the research question –what was the dynamics of violations of religious freedom?– should be answered that there is a constant process of restricting religious freedom. On the second research question –what type of restriction of religious freedom occurred during the period considered?– we should answer that, by drawing on the analysis of reports of the US' Department of State, it can be pointed out that the most common restrictions on religious freedom were associated with the place of worship. In the analyzed case restrictions were mainly related to: reported difficulties to obtain the entitlements and consents necessary for the creation of a place of worship, and the problems that arise with limiting the possibility of gathering for worship; the issue of teaching in public schools, in particular the requirements placed on teachers who can teach religion and making a funding dependency based on a certain number of participants wishing to participate; registration and cooperation agreements, and a religious group status, although in Spain there is no obligation to register and sign cooperation agreements, in the absence of a certain status granted by the state or the absence of contracts/registrations, the religious group concerned is deprived of many benefits and rights, which are given to registered and contracted religious associations; financial issues and, above all, the possibility for citizens to transfer part of their income to the Catholic Church or NGOs, bypassing other faiths; and the issue of pensions for retired Protestant clerics; religious symbols, mainly issues related to the ban on women practicing Islam. Less often, but in recent years there have also been increasing restrictions related to teaching and disseminating materials (including missionary activity).

The analysis allowed for the positive verification of the research hypothesis assuming that violations of religious freedom in Spain 2009-2019 point out to the instrumental treatment of religion and the process of militant democracy. The essence of this instrumental treatment were, first of all, restrictions rela-

ted to religious education, including financing teachers and the requirements for them, the issue of voluntary registration, cooperation agreement, which in practice means, however, exclusion from many spheres and benefits of religious groups that do not perform these activities. It is really making religious groups dependent on the state on seemingly voluntary way. The study also verified the assumption that one of the indicators indicating the process of militant democracy is implemented into Spain's political system –restrictions on religious freedom. In the analyzed period, no major restrictions appeared that would prevent such activities as adopting, changing or renouncing a religion or belief, i.e. those that constitute the foundation of religious freedom. This does not mean, however, that the restrictions that have occurred regularly are less significant. It rather indicates permanent practices that, despite the postulated changes and voices of protest, do not change, e.g. the pension system, which privileges Catholic clergy, or the issue of transferring part of the income to the exclusion of religious groups other than the Catholic Church. Particularly noteworthy is the fact that in recent years difficulties have started to appear in the area of teaching and disseminating materials (including missionary activity). This can make it difficult for religious groups to gain new believers or take away the opportunity to present their belief system to a wider audience. This is important because it is one of the key elements of religion for its survival.

It is interesting that despite the restrictions indicated the reports often underlined that the government generally respected religious freedom in practice, and pointed out to a number of measures taken to protect religious freedom, and protect individuals and minorities. In the case of many forms of discrimination or attacks targeting certain religious groups, actions appropriate to the acts were taken quite swiftly, or meetings were organized with leaders of those religious groups that were subjected to any form of persecution. Another interesting conclusion is that, usually, when it comes to restricting religious freedom regarding place to worship or prohibitions related to religious symbols, they mainly refer to Muslims. In this case, further research should be carried out to determine what the restriction of religious freedom may result from, above all, of this group of followers, whether it depends on the number of followers, their greater activity, the greater number of claims made, and perhaps completely different factors.

The study indicates that difficulties, problems and prohibitions relate rather to the same issues. It is not difficult to notice that the Catholic Church has a privileged position in Spain, despite the Constitution's provision that no faith or religion can be regarded as a state religion. This is manifested primarily in matters relating to the transfer of taxes, the pensions of the retired Catholic clergy, and mentioning the Catholic Church by name as the only one in the provisions of the Constitution in regard to relations with the state.

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