

**NATIONAL COURT
ADMINISTRATIVE LITIGATION BRANCH**

Section : 003
MADRID
PO015

Unique Identification Number: 28079 23 3 2005 0004236
Procedure: ORDINARY PROCEDURE 0000352 /2005
Regarding ADMINISTRATIVE ACTION
From: IGLESIA DE SCIENTOLOGY DE ESPAÑA
Procurator: Mr. ANTONIO ALVAREZ BUYLLA BALLESTEROS
Against: MINISTRY OF JUSTICE
STATE ATTORNEY

NOTIFICATION:

In MADRID, on the 31st of October, two thousand and seven.

Before me, the Judicial Secretary of the 3rd section of the Administrative Litigation Branch of the National Court, OSCAR RAMIREZ CALVO, the official empowered by the Procurator ANTONIO ALVAREZ BUYLLA BALLESTEROS with number 787 and to represent the IGLESIA DE SCIENTOLOGY DE ESPAÑA, appears and requests to be notified of the decision issued on the current procedure dated eleven October two thousand seven, representing that he will return the notification carried out in the College of Procurators.

We proceed to notify OSCAR RAMIREZ CALVO in this Secretarial office on the resolution dated 11-10-2007.

And with this, we conclude the current notification signed by those attending, after having read and ratified it, and I, the Judicial Secretary, attest.

NATIONAL COURT
ADMINISTRATIVE LITIGATION BRANCH
THIRD Section

Appeal Number: 0000352 /2005
Type of Appeal: ORDINARY PROCEDURE

General Registry Number: 03173/2005
From: IGLESIA DE SCIENTOLOGY DE ESPAÑA
Procurator: Mr. ANTONIO ALVAREZ BUYLLA BALLESTEROS

Against: MINISTRY OF JUSTICE

STATE ATTORNEY

REPORTING JUDGE: Mr. EDUARDO MENENDEZ REXACH

RESOLUTION N°:

JUDGES:

President:
Mr. DIEGO CORDOBA CASTROVERDE

Magistrates:
Mr. EDUARDO MENENDEZ REXACH
Mr. FRANCISCO DIAZ FRAILE
Mr. JOSE LUIS TERRERO CHACON
Mr. ISABEL GARCIA GARCIA-BLANCO

Madrid, on the eleventh of October of two thousand and seven.

With respect to the Administrative Litigation appeal that the IGLESIA DE SCIENTOLOGY DE ESPAÑA (represented by the Procurator Mr. Antonio Alvarez Buylla Ballesteros), has presented before this Court of Administrative Litigation of the National Court against the General State Administration, (represented by the State Attorney), regarding registration in the Registry of Religious Entities. The Reporting judge has been the Magistrate of this section Mr. Eduardo Menendez Rexach.

I. BACKGROUND FACTS

FIRST: The refuted decision proceeds from the Ministry of Justice and is the decision dated 11 February 2005, which denied the registration of the appellant in the Registry of Religious Entities.

SECOND: The Administrative Litigation appeal was presented before this Administrative Litigation Court of the National Court, which admitted the appeal and demanded the administrative file. The file was provided to the appellant to use in formalizing the complaint.

THIRD: Once the complaint was presented it was transferred to the State Attorney together with the administrative file for his reply' once the reply was formalized, he requested that the Court disregard the claims of the appellant and confirm the refuted decision as being in conformation with the Law.

FOURTH: Once the complaint was replied to, the case advanced to the proof period and the proof proposal was presented and admitted at the request of the author with the results on file. Now, having completed the procedure, the final conclusion writs were needed for the decision, thus noting the 2nd October 2007 as the day for voting and decision on which, effectively, the Court voted and resolved.

II. JURIDICAL REASONINGS:

FIRST: The current appeal concerns the Decision by the Ministry of Justice of 11th February 2005, confirmed in appeal by resolution of the 17th May of the same year, which denies the application by the appellant to be registered in the Registry of Religious Entities of the Ministry of Justice.

SECOND: The appellant requests that the refuted decisions be declared null and that the Administration be ordered to carry forth their registration in the Registry; or in its place, that these decisions are declared null returning this procedure to the moment prior to the first decision so that their right to hearing and defense is respected.

In defense of this claim they allege that their origin is from the Scientology doctrine by L. Ron Hubbard, whereas the first Church was founded in Los Angeles (US) in 1954. Currently there are more than six thousand Churches, missions and groups established in 159 countries and in some of these they have been recognized as a religion, granting validity to the marriages celebrated through their rituals, and tax exemptions as benevolent and religious entities. In 1983 the Scientology movement began to form in Spain and the Iglesia Cienciologica tried to obtain their registration in the Registry, as well as the Iglesia Universal de Cienciologia, an expelled schism entity expelled. Both were denied their registration in the Registry and their administrative and Administrative Litigation appeals were disregarded. Then in 1983 they went through a penal case, which concluded with a decision absolving them in 2001. Now, in view of that decision and the new doctrine on the registration of religious entities set forth in decision 46/2001 of 15 February by the Constitutional Court, the Spanish Scientologists decided to form a religious entity that would include them all, which is the Iglesia de Scientology de España, which was founded by public writ granted on the 25th of October 2005, whose religious inspiration and vocation is manifested already in the Constitutional Act and in the Statutes incorporated to it, whereas the aim is to integrate the will of thousands of persons in Spain who share the same spiritual belief of life, under one organized structure, based on the teachings and doctrine of L. Ronald Hubbard. Then on the 27th of October 2004 they applied for registration in the Registry. The General Department of Religious Affairs requested a report from the State Attorney office who issued such report considering that, the statutes being different, they should be examined by the body charged to do so and, if determined that it is not one of the entities excluded by art. 3.2 of the Religious Freedom Law, they should proceed with the registration. Despite that, the proposed decision was prepared

affirming the existence of *res judicata* and denying the application, which then received a favorable report from the Religious Freedom Advisory Commission and finally, on the 11th February 2005 the decision was issued denying registration stating the existence of *res judicata*, which was subsequently confirmed by the decision of the 17th May, which disregarded the reconsideration appeal.

The appellant considers that the essential guarantees of the administrative procedures have been violated due to the lack of hearing being provided prior to decision, and that they were not informed of the report by the State Attorney or that of the Religious Freedom Advisory Commission and that as a result of these violations the initial resolution is null as a matter of right. This being the case, the resolution of the 17th May is the only one to take into account and therefore, due to having been issued out of the time limit of six months, their application should be regarded as accepted by positive silence, in conformation with Art. 5 of the Royal Decree 1879/1994, of 16 December. With respect to the basis of the denial, they deny the existence of *res judicata*, due to having no concurrence in their subjective, objective or time objects or identities and also given that there has been a substantial change in the circumstances, as stated by the State Attorney in his report. Also, given the overdue period of time that passed since the prior application, they allege as well, that the Administration has not acted impartially and objectively, as can be seen in internal communications extant in the case file and that their right to religious freedom in art. 16 of the Constitution, 18 of the Universal Declaration of Human Rights and 9 of the European Convention for the Protection of Human Rights, have been violated, as well as the violation of the principles of neutrality and secularism due to the intervention of the Religious Freedom Advisory Commission, which is formed by several representatives of distinct confessions, and therefore the decision should order the registration in the Registry given that the application complies with all the requisites.

THIRD: The representative of the Administration, on the other hand, alleges that the hearing procedure was not necessary as they only took into account the allegations of the appellant and the reports of the State Attorney office and of the Advisory Commission, requested by the Administration, and these do not limit the rights of the parties but rather reinforce them. Also, the omission of this step is not a basis for complete nullity and was remedied by having granted it before issuing the resolution of the reconsideration appeal; and thus the positive silence had not occurred, as the Administration had complied within the established limits. As regards the basis for the denial he considers that the decision is correct due to the existence of *res judicata*, as the two prior applications were denied and their legality was confirmed by both decisions of the National Court of 25th April 1986 and of 23rd June 1988, this latter decision being confirmed by the Supreme Court on the 25th June 1990 and the motion for reconsideration was rejected in the decision by the High Court on the 27th May 1994. Therefore all the requisites for *res judicata* were present. So therefore the Administration could not act in any other way, and even if they were to enter into examining the new petition, their decision would be bound by their past decisions due to the positive effect of *res judicata*, which excludes the violation of the right to religious freedom, and therefore they request that the Court disregard the appeal and confirm the refuted decision.

FOURTH.- The object of this appeal is the refusal by the General Directorate of Religious Affairs in the Ministry of Justice of the registration of the appellant in the Register of Religious Entities. Practically the only basis given for the resolution is the existence of *res judicata*, i.e. the final judgements passed by this Chamber and cited in the answer to the registration demand. Nevertheless, prior to the examination of this point, we should determine if the formal defects in the processing of the administrative proceedings,

as alleged in the request, and which gave rise to two petitions, really do exist. One petition, the principal one, is that the request should be granted because of positive silence and the second one, is that the proceedings should be returned to the moment prior to dictating the original resolution. This allegation of lack of the right of defence as a result of the omission of the step of the hearing cannot be accepted and even less with the effects asked for in the request. The reason is that, even if we would admit that this step is obligatory – it is not so provided in article 4 of the Royal Decree 142/1981 of 9 January regarding the organization and the functioning of the Register of Religious Entities but is only imposed in a general way by article 84.1 of the Law of 30/1992 of 26 November – it is considered to be done immediately before the issuance of a proposed decision. However in this case, prior to the proposed decision, there were no additional documents in the case file than the ones already filed by the requesting party and the report by the Advisory Commission of Religious Freedom was after this proposed decision, which would permit the hearing to be skipped (art. 84.4 of the original law). Moreover it does not require the full nullity but only the possibility of nullity, per article 63 of the same law. Finally, and most importantly -- because it permits excluding the claim of lack of defence -- the appellant had access to the complete case file before the *second decision* (reposicion) was rendered, at which point the allegations of the demanding entity in this regard could be considered.

FIFTH. – As has been declared by the Supreme Court (Supreme Court Decision of 30 June 2003, which cites many prior ones), “*res judicata*” contains very specific nuances in the contentious administrative process. It is enough to impugn the administrative action and cast aside the existence of *res judicata* if the former action is historical and formally different than the one contested. The second argument asks us to review the legality or illegality of an administrative action which has never been examined before even if, when finally entering in the merits of the case -- not for reasons of judged subject anymore -- one will have to arrive at the same result as before. Moreover the appreciation of the exception requires that one is dealing not only with the same action but also with the same claim or another substantially identical one to the one treated in the former process. It is emphasized that the positive prejudicial effect, evoked in the answer to the appeal, depends on the connectedness between the action, the disposition or the proceedings that were adjudicated and the equivalent points in the later process with respect to which this effect is claimed. When we compare the above doctrine with the facts of the present appeal, we must consider that the General Directorate, in view of the possible petition of registration the requesting entity was expected to file after it had taken earlier actions with an eye on registration in the Register -- of which there is ample evidence in the administrative folder -- solicited on 11 November 2004 a report from the General State Attorney, pointing out that there were earlier decisions confirmed by final court decisions, which could constitute *res judicata* with respect to a new petition by those the Directorate considered to be the same subjects who tried to obtain the same registration. To this consideration the General State Attorney answered that a revision of what has already been decided is not possible because it would conflict with art. 118 of the Spanish Constitution, 17.2 Organic Law of Judicial Proceedings and 103.2 of the Law of this Jurisdiction. Among other things he added that, nevertheless, at a date later than the request for his report, there had been entered in the Register a petition of registration by the Church of Scientology of Spain and that for this reason the Administration could and must proceed with the examination of the new statutes which differ from the ones presented at the time and that it should note its findings and take into account the criterion laid down by the Constitutional Court in its decision 46/2001: that if once these statutes are studied as well as the objectives and purposes laid down by the soliciting entity, and once it has been determined that this entity is not one of those excluded by article 3.2 of the Organic Law of Religious Freedom of 1980, it should be entered in the Register in accordance with the

cited jurisprudence. He adds that the effectiveness of *res judicata* applies to the administrative resolutions taken on the basis of the statutes presented at the time by those entities, but not on the statutes presented now when these are different. In conclusion the State Attorney ordered the body in charge of the Register to examine the presented statutes and then as a result of its examination and after having requested the reports it deemed necessary and after having noted that the entity was not one of the entities excluded per article 3.2 of the organic Law of Religious Freedom, to proceed to its registration.

SIXTH.- In light of the above elements in the law, it must be determined if the identities existed that would permit determination of the existence of *res judicata* and its correct use in this case as a basis for rejecting the claim of registration. Thus, in regards to the applicant individuals, the Administration considered that they were the same as those affected by the decisions confirming the denial of registration. This does not appear to correspond with the reality, particularly because the Universal Church of Cienciologia is an independent schism from the Iglesia Cienciologica de Espana and is opposed to it, as has been pointed out in the request. Thus, the only one that could be considered as coinciding with the present requesting entity is the Iglesia Cienciologica de Espana, although its former representatives are not the same as the present ones nor are the statutes the same, even if they are based on the same doctrine, which all by itself excludes a subjective identification. But beyond that, even if in both cases they try to obtain the registration of an entity claiming to be religious, the existence of particular circumstances impede the finding of the identification of the object and the cause: the time that evolved between one and the other request, during which a significant variation of the number of followers has occurred, an evolution in the doctrine, organization and purposes as reflected in different statutes, as results from the mere reading of the presented documents and, specifically, the new interpretation of the qualifying function of the Register in relation to the right to religious liberty, laid down by the Constitutional Court in the cited 2001 sentence, which recommends, as said by the State Attorney in his report, a new examination of the request. At the time of the earlier resolution and the court decision confirming it, this decision did not exist, but now gives a broader interpretation of the fundamental right that is in play here. In conclusion, the application of the exception of *res judicata* to the current request is not applicable because we are not dealing with the same administrative action, nor do the identifications required for such an exception apply. Therefore the merits of the request need to be examined. They consist of determining whether the requesting entity needs to be inscribed in the Register of Religious Entities as a manifestation of its right to religious liberty, which was ignored in the contested decision.

SEVENTH: The right to freedom of religion is found in Article 16 of the Spanish Constitution and is also recognized by International Treaties, from which viewpoint are to be interpreted the rights and fundamental freedoms as ordered by Article 10.2 of the fundamental law and the European Convention for the Protection of Human Rights – which protects freedom of thought and conscience pursuant to Article 9. In the interpretation of this last article, the European Court of Human Rights has confirmed that such liberties constitute one of the pillars of democratic society within the meaning of the Convention -- related to pluralism and established in efforts through the centuries -- which is part of such a society (ECHR decision October 26th 2000, Hassan and Tchaouch vs Bulgaria). As this is a fundamental freedom, this interpretation must be in accordance with the general principle of freedom reported by the constitutional recognition of fundamental rights, taking in consideration that “except in very exceptional cases, the right to freedom of religion as understood by the Convention, excludes any evaluation by the State of the legitimacy of religious beliefs or their means of expression” (ECHR decision October 26th 2006, Moscow Branch of the Salvation Army vs Russia, and significantly, in the ECHR

decision of April 5th 2007 of the Church of Scientology of Moscow vs Russia, in which, even though it is stated that the states have some margin to determine the existence and extension of the necessity of an interference in this right, the restriction of that right must be legally established and constitute those measures in a democratic society necessary for security and public order, the protection of health or of the morals or the rights and freedoms of others (art. 9.2 ECHR), thus being restrictions proportional to the aimed purpose.

In the same vein as above, the Spanish Constitutional Court, in its 46/01 decision of February 15th of 2001, after recalling its doctrine about the right to religious freedom and its regulations in our country, has established the criteria for interpretation of the aforementioned principles, which can be summarized as follows: 1) the registration of a religious entity in the Registry implies, above all, the recognition of its legal status as a religious group, that is, the identification and admission in the Law of a group of people that intend to practice, with immunity from coercion, their fundamental right to the collective practice of religious freedom as it is established by article 5.2 of the Spanish Religious Freedom Law; 2) the specified “status” of religious entity granted by the registration in the Registry is not limited to the indicated internal framework, through the recognition of a capability of a self organization of the entity, but it also affects in an external dimension, that the manifestations by its members or community when practicing their fundamental right, be eased in a way that they do not encounter problems or coercion in the collective practice of the right of religious freedom, with no interference of any kind; 3) the existence of a registry does not enable the State to practice any controlling activity over the legitimacy of the religious beliefs of the entities or religious communities, or as regards their means of expression of these beliefs, but is only permitted to verify and not interpret, that the applying entity is not one of the excluded ones by article 3.2 of the Spanish Religious Freedom Law, and that the activities or behavior developed for its practice do not infringe upon the rights of others to the practice of their liberties and fundamental rights and are not contrary to public order; 4) the Administration responsible for the Registry can not act discretionally but must act in the regulated way, as corroborated by article 4.2 of the Regulation of the functioning and organization of the Registry (Royal Decree 142/1981, January 9th), when establishing that “the registration can only be denied when the requisites of article 3 are not duly proven, that is, name, address, functioning rules and management entities as well as the religious aims” (Supreme Court Decision May 21st, 2004).

EIGHTH: The criteria just stated determines, therefore, the interpretation that must be given to the applicable norms in this case; thus, Art. 5 of the LOLR [Organic Law of Religious Freedom] stipulates that churches, confessions and religious communities and their federations will have a legal status [charter] once they are registered in the relevant public registry created in the Ministry of Justice. Those who apply for the registration have to attach to their application reliable documentation stating its founding or establishment in Spain, statement of its religious aims, name and other identifying information, rules of operation and management entities with a statement of their functions and requirements for their valid designation. Otherwise, Art. 3 considers the only limit to the right to religious freedom the protection of the right of others to their practice of their public liberties and fundamental rights, as well as the safeguarding of safety, health and public morality, which are constituent elements of the public order protected by Law in the framework of a democratic society; excluded from its protection are the activities, purposes and entities related to the study and experimentation of the psychic and para-psychological phenomena or to the spreading of humanistic or spiritualistic values or other similar aims which are beyond the religious ones (art 3.2).

Otherwise, the Regulation of the Registry of Religious Entities lists those entities which have to be registered in it (Art. 2) and demands as data required to the registration the name, the address, the religious aims in relation to the limits of Art. 2 of the same Regulation and the rules of operation and management entities in the same sense as the aforementioned Art. 5.2 of the Law.

These regulations and the applicable Constitutional and Supreme Court precedents (Decision of the Supreme Court of 21 May 2004, aforementioned) which have been cited regarding the interpretation of the Fundamental Right in regards to the registration function and to the scope of the registration determine that the registration is fair as all the formal requirements that make it possible are present -- those being the name, address, religious aims respectful within the limits established in the Art. 2 LOLR, rules of operation and management entities, which functions and requirements for their designation are given in the bylaws as well as the designation of their officers, taking in account that the legal recognition given by the registration goes towards easing the practice of the collective right to religious freedom, which scope has no other limit in its manifestations than the one needed for the preservation of public order protected by law, as said in the aforementioned decision of the Constitutional Court.

From none of the documents presented by the appellant or proof presented by the Administration can the application of the exclusions of the Art. 3.2. LORL be derived, that is, that the appellant would not be a religious entity with religious aims but trying to spread spiritualist or humanist or similar values and therefore excluded from the legal protection; the positive conclusion favorable to its consideration as a religious entity emerges 'prima facie' from its bylaws as well as from the doctrine/teachings presented, and also from the fact that the association is similar to others that are rightfully registered in official registries in countries of similar jurisprudence and culture. On the contrary, there is no datum that permits to conclude that the appellant carries out activities different than those mentioned in its bylaws which could determine the application of the Art 3.2. aforementioned. Therefore it is more rightful and according to the 'pro libertate' [in favor of freedom] interpretation that governs this subject, to agree to the requested registration.

NINTH: Because of all the aforementioned reasons it is appropriate to grant the appeal, not estimating any lack of care or bad faith in regards to enforcing the payment of court costs.

RULING

FIRST: To uphold the current appeal n° 352/05 filed by the Procurator Mr. Antonio Alvarez Buylla Ballesteros, in name and representation of the Iglesia de Scientology de España, against the Decision of the Ministry of Justice as described in the first Juridical Reasoning, which is nullified due to being contrary to the Law.

SECOND: To declare the right of the mentioned association to its registration in the Registry of Religious Entities of the Ministry of Justice.

THIRD: To make no express imposition regarding court costs.

Therefore, through this resolution of ours, copy of which will be sent together with the administrative case file to the office of origin for its execution, we state it, order it and sign it.

