

ADMINISTRACIÓN
DE
JUSTICIAROSA JAEN SANCHEZ DE LA CAMPA
Solicitor of the Courts
NOTIFIED: 23/12/2019**COURT OF INQUIRY NO. 1. PRELIMINARY
PROCEEDINGS 161/18.****AUTO**


In Cadiz, 16 December 2019.

Ms. María del Carmen Fornell Fernández, Magistrate - Judge of the Court of
Instruction nº 1.**FACTS****FIRST:** On November 12, the Public Prosecutor's Office filed a writ with this Court requesting the provisional dismissal of the proceedings based on the arguments presented by the Public Prosecutor's Office.**SECOND** - Given that the parties should be notified, the private prosecution submits a written statement in which it opposes the application to close the proceedings and urges the continuation of the present proceedings and their adaptation to the procedures foreseen for the abbreviated procedure.**LEGAL GROUNDS****FIRST:** There does not seem to be any discrepancy on the facts under investigation, focusing the debate not on these considered in themselves but on their relevance and legal qualification.

It is accepted by all the legal operators that the Local Government Board on the 12th of August 2016 unanimously decides the adhesion of Cadiz City Council to the ELAI campaign, which is presented as a campaign aimed at achieving fair trade and responsible consumption, promoting the non-acquisition of products cultivated or produced in conditions of apartheid in the territories occupied by Israel and illegally expropriated from the Palestinian people".

It is also admitted that the City Council of Cadiz proceeded to suspend a series of Israeli films previously organized with the Israeli Embassy, which consisted of the broadcast of several films in the ECCO space in Cadiz, which already





had begun and was part of the official cultural programme of the City Council.

This cancellation, which was not formally drawn up in writing as it was agreed by the Councillor for Culture and the Mayor, is justified by the commitment made by the City Council to the ELAI campaign and was communicated by Mrs Tubío to the Honorary Consul of Israel in Cadiz, Huelva and Extremadura by e-mail.

SECOND: With regard to the offence of malfeasance, an attempt should be made to determine whether the resolutions of 12 August 2016 and 28 September constitute the offence referred to in article 404 of the Criminal Code.

Despite the fact that the Court of Contentious-Administrative Matters No. 1 of Cadiz established the irregularity of the suspension of the film season under the accession agreement adopted by the Governing Board, because it considered that it exceeded the scope of its powers, this excess does not in itself constitute an offence of malfeasance, since the circumstances and reasons leading to its adoption must be examined.

With regard to this point, the arguments put forward by the Public Prosecutor's Office on the lack of knowledge of the illegality of the agreement adopted are shared, since it was a campaign with repercussions in the press and to which other city councils had adhered, with political support, emphasizing that the Spanish Parliament itself unanimously approved a motion recognizing the right to advocate Boycott, Divestment and Sanctions (BDS); in this context, it cannot be sustained that the agreement of 12 August 2016 was adopted in the knowledge of its injustice.

On this basis, the abolition of the film cycle cannot be considered to be in line with this precept either, as it is a consequence of the previous agreement.

THIRD:- Finally, with regard to the alleged crime of hate, we must begin with the provisions of Article 510 of the Criminal Code, in relation to which the Supreme Court, in a resolution of 8 November 2018, establishes that "...it punishes those who encourage or promote discrimination, hatred or violence against groups or associations for different reasons that are included in the precept. The core element of the crime consists of the expression of epithets, qualifiers, or expressions, which contain a message of hate that is transmitted from

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generic form. This is a criminal offence structured in the form of a crime of danger, and all that is needed to carry it out is the generation of a danger that is made concrete in the message with a content that is typical of "hate speech", which implies the danger referred to in the international conventions from which the offence arises. These refer to the anti-juridicality of the discourse of hate without the need for a demand that goes beyond the very discourse that contains the message of hate and that in itself is contrary to coexistence and therefore considered harmful.

The term hate speech has its origin in the jurisprudence of the European Court of Human Rights, which in turn has taken it from the resolutions of the Council of Europe. States have configured expressive criminal types of hate speech. In reality, there is no typical figure of hate speech, but rather various types of criminal offences that include figures of aggression against individual or collective subjects, especially vulnerable ones, through different vehicles of communication. The legal origin can be found in Recommendation (97) 20 of the Committee of Ministers of the Council of Europe of October 1997, which "urges States to take action against all forms of expression which propagate, incite or promote racial hatred, xenophobia, anti-Semitism or other forms of hatred based on intolerance manifested through aggressive nationalism, ethnocentrism, discrimination and hostility towards measures and immigrants or persons of immigrant origin".

On the basis of the foregoing, it can be considered that the suppression of the Israeli film cycle does not give rise to anti-Semitic or exclusionary motives on the grounds of nationality, nor does it show contempt for elementary rules of coexistence or the dignity of the individual.


For this reason, and expressly considering that the arguments put forward by the Public Prosecutor's Office in this regard have been reproduced, which in turn follows the criteria set out in Public Prosecutor's Office Circular 7/19, the facts reported should not be considered subsumable under article 505 of the Criminal Code.

Having regard to the abovementioned Articles and other relevant provisions.

DISPOSED

That I must agree and consent to the provisional dismissal of these

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actions for not understanding that the commission of any criminal offence has been accredited.

Notify the parties in person and the Public Prosecutor's Office of this resolution, informing them that an appeal for reform and subsidiary appeal may be lodged against it, without prejudice to the latter's power to lodge a direct appeal.

It is so agreed, ordered and signed by Ms. M^a. del Carmen Fornell Fernández, Magistrate of the Court of Instruction No. 1 of Cadiz. I can vouch for that.



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