

SPANISH PROVINCIAL COURT DISMISSED THE LEGAL PROCEEDING FOR THE CRIME OF INCITEMENT OF HATRED AGAINST ACTIVISTS IN SOLIDARITY WITH THE PALESTINIAN PEOPLE

Executive Summary of the Judgement

1. On Monday 11 January 2021, the Provincial Court of Valencia (*Audiencia Provincial de Valencia*) dismissed the judicial investigation initiated by the criminal complaint filed by the Legal Committee for the Fight against Discrimination (*Comitè Legal para la Lucha Contra la Discriminación*) against eight activists in solidarity with the Palestinian people. The defendants had conducted a campaign to question the recruitment of Matisyahu at the Reggae Festival Rototom Sunsplash in 2015, because of his support for the Israeli policies towards the Palestinian people. In the Judgement, the Court acknowledged that the activists' conduct did not constitute a hate crime as their questioning of the singer was a political criticism, protected by the right to freedom of expression, as recently affirmed by the judgement of the European Court of Human Rights, [Baldassi and others v. France \(2020\)](#).

Background

2. In 2015, Matisyahu, an American-Jewish singer with a long and public record of [support](#) for the [discriminatory practices](#) and [policies](#) implemented by the State of Israel, was invited to perform at the Rototom Sunsplash, the most prominent European Reggae festival. The festival openly promotes "[peace, equality, human rights and social justice](#)" as "[key values to understand not only the festival but life in general](#)". The festival's 2015-edition was advertised as a "[unanimous cry for peace in a stance against the pain caused by so many conflicts on an international level](#)". In light of the contradiction between the festival's values and Matisyahu's public record of support for discriminatory practices, the activists, on 2 August 2015, began a campaign to denounce the festival's incoherence and to question the singer's recruitment.
3. The Festival organisers initially cancelled Matisyahu's performance; however, the singer was later re-invited due to pressure exercised by the Israeli and American embassies on the organisers. On 22 August 2015, Matisyahu performed at the festival.
4. Since 2016, the activists have been investigated by the Public Prosecutor's Office of Valencia for hate crimes according to Article 510 of the Spanish criminal code. Following the end of the investigation, on 18 August 2020, the Committee filed an "*Escrito de acusación*" to the Investigating Court n. 19 of Valencia (*Juzgado de Instrucción n° 19 de Valencia*) asking the official indictment of the activists for having promoted and incited hatred against Matisyahu. In July 2020, the Public Prosecutor requested to dismiss the case, however, in late September 2020 the Investigating Court denied the dismissal, thus, paving the way for the trial. The defendants' lawyers, with the support of the ELSC, appealed this decision before the Provincial Court of Valencia, which overruled the previous verdict and dismissed the case. The Court dismissed the case before the defence were able to present their brief.

Arguments of the Parties

5. The Committee argued that the defendants publicly promoted and incited discrimination and hatred against the singer on the grounds of his ideology, religion or belief, because of his support for the discriminatory policies of the state of Israel and Zionism". By doing so, the defendants' conduct was allegedly antisemitic and generated a hostile environment that posed a threat to Matisyahu's security.
6. The defendant's lawyers argued that the activists' campaign, which was centered on criticism of the Israeli Government's apartheid policies in the occupied territories in violation of international law, was a matter of public debate. As a result, it was argued that the campaign was a political criticism, protected by the democratic function of the legitimate right to freedom of expression.

Line of arguments of the Provincial Court of Valencia

7. On 11 January, the Provincial Court stated that **the activists' conduct did not amount to a hate crime since both the subjective and objective elements were not present.**
8. The Court began by assessing the subjective element of Article 510 which requires a specific discriminatory intent consisting of "*animosity and hatred towards a person, or a group because of the color of their skin, their origin, their ethnicity, their religion...*". In this regard, the Court stated that, the Committee's allegations did "*not specify which facts under investigation could have had such an aim*", as they only referred to "*demonstrations and pressures*" carried out by the defendants through social networks, media and direct contacts with the Festival organisers. The Judges highlighted that, "*in this case, the alleged criminal facts are reduced to attributing to [Matisyahu] an alleged position regarding the policy of the government of Israel, not because of his Jewish status, religion or any other circumstance...*" Accordingly, the Court found that demonstrating against the policies of a specific country cannot be considered as incitement to hatred against the person that supports such practices.

Secondly, according to the relevant criminal provision, the expressions and acts must be sufficiently serious to injure the dignity of the group against which they are acted upon and these facts must be legally qualified in the light of the specific circumstances of the case at hand. The Court referred to the landmark ECtHR judgement *Baldassi and others v. France* (2020) to clarify that i) "*The boycott is first and foremost a form of expressing opinions of protest. The call for a boycott, which aims to communicate these views while calling for specific actions related to them, is therefore in principle under the protection of Article 10 of the Convention*"; ii) "*...incitement to treat differently does not necessarily amount to incitement to discrimination.*" Applying this reasoning to the present case, the Court found that the defendants' campaign aimed at preventing Matisyahu from performing at the Festival while denouncing his support for the discriminatory policies implemented by the State of Israel. His Jewish identity played no role in this legitimate form of criticism. Therefore, the Judges held that the conduct carried out during the campaign was not severe enough "*to configure these acts as promoting, inciting or fostering hatred towards the person of the singer, or to claim that the dignity of the singer has been damaged*".

In conclusion, the Provincial Court of Valencia upheld the claims of the defendants' lawyers and the Public Prosecutor's Office, acknowledging that criticism of Zionism and Israeli Government's practices upon the Palestinians does not constitute incitement of hatred. Objecting to a singer's participation in a festival which is committed to the respect of human rights, based on his personal support for the practices of the State of Israel, is not criminal, but reflective of a legitimate form of activism in support for Palestinian rights.