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## **SPAIN: A Catholic lay group can exclude women, the Supreme Court says**

### **Spanish Supreme Court: A Catholic lay group can exclude women**

*The Esclavitud, a Canary Islands organization, can continue to admit male Catholics only as members. The decision will also protect other religious groups.*

*By Massimo Introvigne*

Bitter Winter (31.01.2022) – <https://bit.ly/3oanwwf> – The grounds of an interesting decision of the Spanish Supreme Court rendered on December 23, 2021, have recently been published. The Justices concluded that a Catholic lay organization may exclude women from membership without violating Spanish and European statutes on non-discrimination.

The case involved the Pontificia, Real y Venerable Esclavitud del Santísimo Cristo de La Laguna (Pontifical, Royal and Venerable Slaves of the Most Holy Christ of La Laguna), whose origins are probably more ancient than 1659, when it was legally incorporated. The “Christ of La Laguna” is a wooden sculptural masterpiece by an unknown Flemish author of the 16<sup>th</sup> century, who according to some art historians should be identified with Louis Van der Vule, of whom not much is known.

It was exhibited in several European cities, until it was purchased in 1520 by Alonso Fernández de Lugo, the Spanish conquistador who conquered the Canary Islands for Spain. It was placed in San Cristóbal de La Laguna, commonly known as La Laguna, in the island of Tenerife, the largest of the Canary Islands, inside a new church built by de Lugo, now part of a UNESCO World Heritage site.

Apart from its artistic value, the Christ of La Laguna has a considerable devotional importance for Catholics in the Canary Islands. To protect the image and organize the procession carrying it through Tenerife, the lay organization called the Esclavitud was organized. Originally, it admitted only local aristocrats, but later the Statutes specified that all male Catholics can petition the organization to be admitted.

In 2018, a woman applied to become a member. Her petition was declared null and void based on article 1 of the Statutes, which defines the Esclavitud as an association open to male Catholics only. She sued the Esclavitud and the Catholic Bishop of Tenerife, who had declined to intervene, arguing that article 1 violated the fundamental human rights of women

not to be discriminated. On March 11, 2020, the Second Court of First Instance of Santa Cruz de Tenerife ruled in favor of the woman and declared article 1 of the Esclavitud's Statutes null and void.

The Esclavitud appealed, but on December 22, 2020, the First Section of the Provincial Court of Santa Cruz de Tenerife rejected the appeal. The Esclavitud then went to the Supreme Court. The Esclavitud argued that the first- and second-degree decisions violated the Concordat between Spain and the Holy See, which reserves to the Holy See only the jurisdiction on statutes of Catholic lay associations recognized as "pontifical."

The Diocese of Tenerife also intervened on the appeal, and referred to a broader right of religious associations to self-organize themselves, which would subsist even in the absence of a provision in the Concordat. The Diocese also argued that secular courts are not competent to judge similar cases, and the woman should have taken her complaint to a Catholic canonical tribunal. The state objected that the right of women not to be discriminated is such a basic human right that it should prevail on the right of religious liberty, and even on international treaties such as the Concordat.

The Supreme Court disagreed with the Diocese, and stated that secular courts are not prevented by the Concordat to render decisions in cases where members of the Catholic Church argue that their human rights have been violated by a Catholic organization. However, it considered that the Concordat reinforces a general principle established by the European Court of Human Rights (ECHR) in several decisions, including *Sindicatul "Păstorul cel Bun" v. Romania*, decided by the Grand Chamber in 2013, stating that courts cannot interfere on how religious bodies admit and exclude members.

This principle applies to all religions. A reconstruction of the ECHR case law persuaded the Spanish Justices that freedom

of religion requires that religious organizations should be allowed to reserve certain positions and offices to males only (or to females only: a man cannot become a Catholic nun).

The woman argued that the Esclavitud has a “dominant position” because it is exclusively in charge of organizing the processions, but the Supreme Court answered that this cannot be assimilated to a monopoly or quasi-monopoly in the economic field. Women, the Justices commented, remain free to establish separate associations expressing their devotion to the Christ of La Laguna.

The decision’s scope goes beyond the specific case, and reaffirms that religious bodies have a right to self-organize themselves and to admit or exclude members as they deem fit, including by refusing admission to some in reason of their gender. The implications are important for all religions, not for the Catholic Church only.

Photo : *The Christ of La Laguna in the church built by Alonso Fernández de Lugo in the 16<sup>th</sup> century. Credits.*

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**Massimo Introvigne** (born June 14, 1955 in Rome) is an Italian sociologist of religions. He is the founder and managing director of the Center for Studies on New Religions (CESNUR), an international network of scholars who study new religious movements. Introvigne is the author of some 70 books and more than 100 articles in the field of sociology of religion. He was the main author of the *Enciclopedia delle religioni in Italia* (Encyclopedia of Religions in Italy). He is a member of the editorial board for the *Interdisciplinary Journal of Research on Religion* and of the executive board of University of California Press’ *Nova Religio*. From January 5 to December 31, 2011, he has served as the “Representative on combating racism, xenophobia and discrimination, with a special focus on discrimination against Christians and members of other

*religions” of the Organization for Security and Co-operation in Europe (OSCE). From 2012 to 2015 he served as chairperson of the Observatory of Religious Liberty, instituted by the Italian Ministry of Foreign Affairs in order to monitor problems of religious liberty on a worldwide scale.*

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