

The cries of dissent: a religious procession between vilification and the right to criticism

Key words: religious freedom-criminal protection of religious sentiment-criminal exemptions-

On January 11, 2024, the III section Criminal Court of Cassation files sentence no. 1253 of 11/21/2023 on the topic of the criminal protection of religious sentiment. The context in which the events take place is the feast of the patron saint of Salerno, San Matteo, celebrated on 21 September 2014 with a procession, which was disturbed by the tumultuous intervention of numerous participants. Unrecognized characteristics found in the behavior of the appellants, which, on the contrary, materialize a mere violation of the right to religious freedom which, for our Legislator, expresses a feeling absorbed in the general interest, transcending the individual moral heritage, in this case, criminally protected by applying the articles 403 e 405 cp. In the end, two subjects are indicted for having shouted at the bishop, Monsignor Luigi Moretti, using vulgar and aggressive gestures in order to induce him to leave, all following the prelate's decision to prohibit - according to the provisions of the Episcopal Conference regional - the 'bows' of the statues of the saints to protect the authentic religiosity of the rite, in fulfillment of its pastoral responsibilities. The 'paranze' rebelled, deviating from the route established by the Curia for the procession. The situation has, therefore, gotten out of hand, but above all from the dutiful religious attitude. In the Salerno affair the two suspects are deemed guilty pursuant to articles. 403 and 405 cp. which sanction anyone who offends a religious confession by vilifying the person who professes it, or a minister of religion, and disrupts the carrying out of a religious function. With an appeal to the Court of Cassation, the manifest illogicality of the motivation of the appeal sentence is contested which would fail to find that "the person to whom the offenses were aimed was not the Archbishop of Salerno, but the leader of the bearers of the statue of San Matteo and that, in any case, the aforementioned offenses "would certainly not have been aimed at offending religious sentiment, but simply the organizational methods of the procession". The Court confirms the orientation of the contested sentence according to which the procession is equated to a ceremony of the Catholic liturgy and the violation of the art. 405 cp. can be perfected by two anti-legal conduct: the impediment of the function, or the disruption of the function, the latter being materially verifiable in the specific case. The offending conduct, according to the judges, consists "in expressing ("holding a vile"), a vulgar and gross offense, which takes the form of acts that take on evident characteristics of mockery, derision, contempt, and such acts are supported by generic malice, by the desire to commit the act with the awareness of their suitability to vilify, such as to also make the motive for the political or social action irrelevant (Cass. Penal., section III, 24 February 1967, n. 328)". The importance of the circumstance in which the criminal conduct takes place also leads the Court of Cassation not to grant the exemption of the particular tenuousness of the fact, ex. art. 131 bis of the criminal code, requested by the defenders. The Court therefore finds the offense to the religious sentiment of the community of faithful present there, since it contests "the particular authority that the community itself attributes to the figure of the bishop in the exercise of his pastoral functions", the highest spiritual authority that represents the religious interests of the local community. This rigid position of the Supreme Court does not completely exclude the possibility that the right to religious freedom is limited by the exercise of the right to free expression of thought, with a view to a peaceful balance between constitutionally guaranteed interests, articles. 19 and 21 of the Constitution, hoped for by the aforementioned ruling of the Constitutional Court no. 188 of 27 June 1975. The manifestation of critical thinking could even be considered a criminal exemption, as long as it is moved within very specific limits. It must, in fact, be translated «into the motivated and conscious expression of a different and sometimes antithetical appreciation, resulting from an investigation conducted, with serenity of method, by a person equipped with the necessary aptitudes and adequate preparation» (Cass. I Civ. Sent 7 April 2015, no. 41044, referred to by sentence 17 January 2017, no. 1952). Unrecognized characteristics found in the behavior of the appellants, which, on the contrary, materialize a mere violation of the right to religious freedom which, for our Legislator, expresses a feeling absorbed in the general interest, which

transcends the individual moral heritage, and in the present case, is criminally protected by applying the articles. 403 and 405 cp.

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