

On the street with the swastika

Nazi symbols and Holocaust denial are legal, and discrimination crimes are not being registered – is Spain exaggerating Freedom of Speech?

By Ralf Hutter and Edurne Bagué, Barcelona

In Spain there is not only neo-Nazi violence in the streets, but also intellectual circles that spread the associated ideas. How big freedom of speech is, is being challenged at highest courts.

Barcelona's centrally located "Europe Bookshop" does not offer many themed library shelves which can also be found in other bookstores. The one called "Philosophy", perhaps, where in addition to Erasmus, Hermann Hesse and José Ortega y Gasset a yoga book can be found. Or the childrens' section with the Tintin comic books. Presumably also the self-help section with esoteric guidebooks. Surely, categories such as "Memoirs and Biographies" and "History and Spanish Civil War" exist in most Spanish bookshops – but elsewhere they are likely to include very different works.

"Give it a look," Miguel Ángel Aguilar had said. "You fit in there, blond and blue-eyed." And really – other bookshops certainly show less blond people on book and CD covers. The fuss about some pale-faces that is being made in "Europe Bookshop" is extraordinary. "German act. Nude body joy 1920-1945", "The great Germanic leaders" and "Old Germanic cultural level. An introduction to the German pre- and Early History" – these are the German titles of some (visual) volumes.

In the quarter there are several organizations that are very much against this bookstore, had said Aguilar. Recently, there was even an attack on the store. To understand this, it is not necessary to venture to the back shelves with the thick books about German soldiers, or "The Stamps of the Third Reich". A glance into the window is sufficient. "The destruction of Dresden. The real Holocaust", for example, is prominently placed there. The showcase is located in a hallway, which is separated from the street by an impressively sturdy metal door. Only the shop sign outside is unprotected. It reads: "The persecuted books" and "Truth makes us free." In the hall several notices: "Varela, a simple book dealer, was jailed," along with: "Freedom of expression: Catalonia = China".

"Persecuted Books" and Holocaust justification

"Pedro Varela was sentenced twice for the dissemination of ideas which justify the Holocaust, and is currently serving this punishment", explains Miguel Ángel Aguilar. The first sentence had still been on probation, but Varela had repeated the offense and must now serve 15 months. Aguilar knows this so well because he brings such people behind bars. Since 2009, the 46-year-old is the coordinating prosecutor for the investigation into discrimination offenses in the province of Barcelona.

A "simple book dealer"? Varela exported books into several European and Latin American countries. "They are dedicated to the dissemination of Nazi ideology and also justify the Holocaust", holds Aguilar. Another case against Varela is filed because of Hitler's "Mein Kampf", which he distributes without permission. The German Consulate had sued him for violation of intellectual property rights because the rights are owned by the German State Bavaria. But in legal dispute "Europe Bookshop" also reached a historic decision in its favor. After being sentenced because of both denial and justification of the Holocaust in 1998, it took the case to the Spanish Constitutional Court, which ruled in 2007 that Holocaust denial should not be pursued because that would violate the right to an own worldview. Illegal is only the justification of the Holocaust, not its denial.

"But in my opinion, this is very difficult to distinguish," Aguilar says in a conference room at his office. He wonders all the more as the Spanish Constitution of 1978 was based on the German one

from 1949. “So I don’t understand why the German Constitutional Court has no problem with the ban on Holocaust denial, but the Spanish one does. There are several lawyers who ask this question.” Thus “Europe Bookshop” remains “a real intellectual center for the propagation of ideas which justify the genocide”, in the words of the prosecutor. “There are some events with leaders of the Ku Klux Klan and the extreme right in Europe.”

Such an event is advertised in the lobby, it's about negative effects of immigration. Also, an open letter from the imprisoned bookseller is presented, where the ex-Ku Klux Klan mastermind David Duke, a notorious anti-Semite and racist, is shown in a photograph with Varela. A book by Duke can be found inside, on the shelf “Cosmopolitanism / Zionism”. In the open letter Varela writes: “Fanatical Zionists want to decide the fate of nations.”

The interior of the shop is less than four metres wide and perhaps twice as long. In the end, in an adjoining room, a woman sitting at a computer no longer cares about the visitor after having opened the door with a button. Although it is noon on Saturday, no one else will ring the bell in the next half hour. Passersby are not likely to come anyway, in the small Seneca Street. The retail space is maximized, the books are lying closely on shelves and on tables. What the Spanish legal situation allows is presented here: Holocaust denial, Nazi memorabilia, music CD’s of "Hitler Youth" or with the symbol of the Waffen-SS on it. Swastikas can be seen in every corner.

The journalist and author Joan Cantarero said in 2010 that Spain was the only country where tributes to Hitler and the wearing of a swastika on the street are possible. “To go to the street with a swastika is not prohibited”, confirms Attorney Aguilar. “Ideas are not forbidden – fortunately. Our Constitutional Court and the European Court of Human Rights say that even ideas which are contrary to the Constitution and the Convention on Human Rights can be represented. What our criminal law punishes, is the incitement to hatred, violence and discrimination.” A swastika itself does not constitute such incitement, holds Aguilar, nor does it mean Holocaust justification (in football stadiums and public institutions, however, it is prohibited).

Consequently it is necessary that Spanish legal scholars argue about at what point hate crimes start. A decision of the Supreme Court on the 3rd of June 2011 aroused general attention – and Aguilar's anger. It concerned the bookshop “Kalki”, which is also from Barcelona, and comparable to “Europe”. The people behind it were acquitted, and indeed with a strange argument.

Ban only on "real danger"?

“The decision on Kalki says that a “real danger” must be the case, an immediate threat to the groups against which all of these ideas are directed,” explains Aguilar. “We think that this is not necessary, because the relevant articles of the Penal Code do not require these “real dangers”. The legislator has conceived the Penal Code also as a means of prevention. Moreover I do think that any such doctrine is a real danger because they are being distributed massively, especially over the Internet, and can lead many people to attacking people of black race. Or Jewish or gay people.” The acquittal could be contested at the Constitutional Court, but civil society organizations would have to do that. Aguilar, who criticized the verdict in the press, is able to list a whole handful of institutions and agreements at EU and UN level which are contrary to the view of the Court – and would actually have to affect the Spanish ruling. The judgment is even more striking, as another chamber of the same court decided contrarily in the following week, ruling that the Nazi network “Blood and Honour”, with members in many countries, is to be prohibited because of its hate ideologies.

This may raise speculation on the political orientation of the body that did not want to punish Kalki for the sheer ideas it spreads. But Aguilar contradicts rigorously: “I deny any kind of sympathy by the judge with the groups studied. This is a matter of legal interpretation. Our interpretation is a modern, advanced one, in the spirit of international institutions and agreements. The interpretation of the Court is in line with the decisions of the 1990s. As the relevant articles were included in the 1995 Penal Code, the social reality was quite different. We did not have six million immigrants as it is today. The society was not so plural and multifaceted.”

Now the cohabitation in the new variety must be protected, Aguilar says. He has been eagerly

anticipating for months, if the Supreme Court upholds the ban on the group “Hammerskins”. Since the judgments in the cases Kalki and “Blood and Honour” contradict each other, it depends on this decision, how sedition will be dealt with in the future in Spain. A second judgment in one direction or the other becomes a binding law.

The mentioned author Joan Cantarero also complained that there is a contradiction of allowing Holocaust denial and Nazi ideology, while people might be sent to prison for the burning of a photo of the Spanish king. Attorney Aguilar points out that it depends on the exact circumstances, but notes: “Sure, our Penal Code punishes attacks on state institutions, which include the crown.” Why then the public tribute to Hitler – who, without doubt, stands for a particular regime – is not an attack on the institutions? “That's just the display of an ideology”, says the eloquent Attorney. This is contradicted, however, by the fact that in March the European Court of Human Rights sentenced Spain to a fine, because Spanish courts had punished the Basque pro-independence activist Arnaldo Otegi with a prison sentence for mere bad words against the king.

No statistics on hate crimes

Catalonia's top discrimination fighter criticizes his State powers only in one aspect: “We are one of five EU countries that have no statistics on discrimination and hate crimes. But the government is now working on that. In Catalonia there are homophobia statistics since 2009. And in March 2010, we have begun to elaborate comprehensive statistics with the police.” Thus, concrete statements about the crime trends can not be made yet. But Aguilar says to have noticed “an increase in racist and xenophobic discourse.”

“Statistics do not exist because they would mean a compulsion to act.” Joan Cantarero, born in 1964, often criticizes government agencies that hard. He is one of the best connoisseurs of the Spanish scene of old and new Nazis. The journalist is working for newspapers and television and has written two standard works on the subject. Because of his activities – he also infiltrated neo-Nazi groups –, he and his family were subjected to threats and attacks, which is why they once changed their place of residence.

The author, who collaborates in a civil society network “against impunity” for hate crimes, can take a long talk about the closeness of the right scene in the province of Valencia (which is considered the worst affected by neo-Nazism), not only with the local police but also with highest official circles; and about the recent history in this area of policy: “In this country there is much fear of the far right – and a lot of nostalgic police,” is his judgment. “And the Social Democrats always stopped halfway in criminal law reforms.”

Cantarero appreciates the prosecutor Aguilar’s work a lot. But he opposes Aguilar’s statement that in a Constitutional State all ideologies should have space. Neither does he want to see Nazi symbols, anywhere. “A symbol stands for an ideology. It's like someone walking with a knife through the streets, screaming: ‘I'll kill all the Reds!’ Or all black. We know what these people are capable of.” According to Cantarero, the swastika ban in football stadiums goes back to the footballclub chairmen.

The anti-fascist can not accept the existing impunity for Hitler worship because he knows of several cases where tributes to dead associates of the terrorist group ETA were punished with six to eight years in prison. Towards the end of the long conversation, it just erupts out of the always calm and explanatory journalist: “There are so many absurdities in this country!”