

Nudism is just one more of your rights

Since 1978 with the coming into effect of the current Constitution, it can now be assumed that nudism has become one more of our freedoms in Spain.

But we are still carrying along with us legislation against nudism in public, inherited from the Dictator General Franco era. So the offense of public indecency still exists in the Penal Code, a Code which penalized nudism. This situation brought about the establishment of authorized zones, zones where nudism could be practiced freely without fear of being fined. This offense was modified in 1989, suppressing the considerations of a moral nature, and in this way adjusting it to the Constitution.

So this is the way it is: all of the authorizations for beaches or nudist zones are based on a legislation which is contrary to the Constitution which was corrected in 1989 and which later on disappeared in 1995 with the repeal of the previous Penal Code, and the approval of the present one, in which this offense is no longer contemplated. In this way, **all authorizations –and prohibitions – are contrary to the Spanish Constitution and constitute discrimination.**

It is surprising that the authorizations that allowed the first nudists to enjoy spaces where they did not have to risk running up against the law later on were to become the principal argument used against nudism. The argument is that *as there are zones or beaches that are authorized, in the rest of the beaches it is not authorized, so it is therefore prohibited.* And this is **false**.

At the present time, nudism can be freely practiced in any public space and does not require any authorization whatsoever.

Beaches, rivers, lakes, open fields, paths, roads, streets, plazas, parks, etc. are all public spaces.

Municipal sports centres or commercial premises that are open to the public (bars, stores, etc.) **are not** public spaces. These are private spaces that can have their own internal regulations.

In that beaches are public spaces, **all** beaches are for free use.

Another question is **the degree of social acceptance** that this has, and the problems that we can encounter in the practice of nudism, derived from the oppression that nudism is subjected to, given that we live in a society which is in its majority textile oriented.

What is important that we understand clearly is that **according to present day Spanish legislation, nudism cannot be restricted, nor sanctioned, nor much less prohibited.**

This can of course change. All that would have to be done is to pass a law so that these measures could be applied, although this would be contrary to the fundamental rights that are included in the Magna Carta (*Constitution*) and would also collide with those rights that are recognized in the Universal Declaration of Human Rights.

We must bear in mind that nudism is a **philosophy** of life, an **ideology**, that **we are a group**, and that besides, we are a group which is **frequently discriminated against**; we have to be aware of the fact that *this is another of our freedoms and that it is totally in line with the current legislation; it **Cannot** be fined, and if it is, the fine can be appealed; we have to be ready to denounce and appeal any sanction against nudity, and any legislative development that is carried out with the intention of cutting off our freedoms.*

We are a social group which, even though we are living in a democracy, suffers a great discrimination in not being able to express ourselves freely.

Nudism is protected under the basic pillars of democracy itself and the Spanish democratic Constitution states:

- In **freedom of thought**, not being discriminated against because of the way one thinks or because of one's personal circumstances (*Article 16*).
- In the **right to have our own image** and clothing or the absence of the same (*Article 18*).
- In **freedom to wander** throughout the territory without restrictions (*Article 19*).
- In **freedom of expression** not having freedoms cut off on the basis of opinions (*Article 20*).
- In the **right to bring up our children** in accordance with our morality (so long as this is within the framework of the law... and nudism is)(*Article 27*).
- And in **not considering illegal whatever is not regulated**; the consideration that everything is illegal except for what has been declared to the contrary is befitting of dictatorships and not of democratic nations.

No one has to date given so much as one real argument against nudism. People have appealed to a sense of the aesthetic, to elegance...which are arguments that can be eliminated *per se*. And fundamentally moral reasons are given as arguments, and what is moral is already included in the Constitution, and protected...

... Specifically, what is established is the equality of moralities and that none of these should prevail over any of the others except, of course, if one of these contravenes the law itself, and nudism in no way does so.

We have freedom of expression, and we are free to express our nudism, our ideology and philosophy of life so long as we are not acting contrary to the law...and as there is no law that goes against nudism, **we can express our nudity freely.**

Today nudism is legal without the need for any authorization, and this argument should be used in our favour. But if the police appear and violate your rights, this is what you should do:

The police can come and ask you to get dressed without this constituting any infraction of the laws whatsoever. You can refuse, and this does not constitute any infraction whatsoever either.

In the event that they do ask you to get dressed, **you can refuse, but without shouting or threatening** nor doing anything of a similar nature.

If you are in your home, they cannot say anything to you. The home is inviolable. If you are in a public space you are not as protected as you are in your home, but it's still the same.

In this case, when you refuse they can insist; you can ask them to identify themselves, and it is their duty, their obligation, to identify themselves. If they do not do so, then you can make a formal complaint just on these grounds alone.

Then you can indicate to them that you are not going to get dressed and that in accordance to current legislation nudity is one of your rights. Ask them on the basis of what legislation they are asking you to get dressed. If they do not tell you, insist.

In the event that they insist, you can indicate to them that you are not going to get dressed and that if they want to they can arrest you. You have to be ready and willing to go through with that, but this is something that everyone has to decide for themselves.

This is a very tough approach because you have to be ready and willing to go through the whole experience, in the same way, for example, as the feminists had to in order to obtain some semblance of equality.

Refusing to get dressed is not punishable as an offence of civil disobedience.

If they opt to arrest you: you must let them arrest you **without putting up any resistance**, and once you are in the police station demand that they institute proceedings and that they provide you with a copy of the proceedings. They have the obligation to do so, so you have to insist. If they refuse to do so then you can make a formal complaint on these grounds. If they give you a copy of the proceedings, these can be used to issue a formal complaint against the police officers that have arrested you, for **illegal arrest**.

It is also a possibility that they tell you there is some type of legislation which, if it does actually exist, will be some type of municipal law. In this case they are under the obligation to proceed, but this legislation is irregular and the sanction or fine, in the event that there is any, or everything that they do, can be appealed against.

Municipalities must have legal authorization in order to establish sanctions. In order to establish a sanction, there must be a Law that indicates that this is an offence, and the Town Hall does not ever have the legal right to establish a fine in the absence of an authorizing Law. In the case of nudism, this Law does not exist.

They can also threaten to lodge a complaint against you for **public indecency**. This legal concept **no longer exists**. Ask them to indicate the article of the penal code in which this offence is contained. Inform them that there is no such offence and that you are under no obligation to take any notice of them.

They can, however, threaten you with an offence that does exist, which is the offence of "*Exhibitionism and Sexual Provocation*" (Art.185 del Código Penal) arguing that there are **minors** present. For this to be applicable, several things have to arise: - That you were before minors or mentally handicapped persons. - And that there had been a **sexual intention**, either to lead on third parties or to excite yourselves. But **one of these is not enough; both of these situations have to be present**. As there is no sexual intention whatsoever, it is not applicable.

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**NUDITY & LAW IN
SPAIN**

**Nudism is not punishable in Spain, but a
Constitutional Right**