

A. C. R. E. P. v Portugal (decision), 16 October 1995 [ECtHR] (excerpts)

Case no 23892/94

An "international association" was formed under the name of A C R E P by way of notarial documents of 18 August and 21 November 1988. Its object was "to study and propagate the culture and history of the constitutional line of the Royal House of Bragança {Casa Real de Bragança}. In order to achieve this object, its Memorandum of Association provided, *inter alia*, for it to "promote the study and knowledge of, and respect for, the Monarchical Constitution of 1838", as well as "to put forward the names of persons who have distinguished themselves in the community or in cultural or scientific life to the head of the Portuguese Royal House, Dom Rosario Poidimani for the award of medals, honours and titles as provided for in laws enacted under the monarchy and revived (reinstated) by means of royal decrees or sovereign acts issued or done by the current representative of the Royal House".

The Attorney General then instituted civil proceedings against the applicant association, seeking to have it dissolved.

On 22 January 1991, the 4th Civil Chamber of Lisbon Court (Tribunal da comarca de Lisboa - 4º Juízo Cível) ... dissolved the applicant association. The court based its judgment on two grounds: firstly, the lack of advance authorisation from the Government as required by Decree-Law No 594/74 of 7 November 1974 for international associations, and secondly, the fact that the association's object and purpose were unlawful.

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The applicant association appealed to the Supreme Court ... In a judgment of 6 October 1993, the Supreme Court dismissed the appeal.

As regards the first ground for dissolution, the Supreme Court emphasised that, although on an initial reading of Article 46 of the Constitution, Decree-Law 594/74 could appear unconstitutional, this was not in fact the case. Adopting a purposive interpretation of the relevant provisions, the Court held as follows (translation)

"Although the constitutional provision does not distinguish between national and international associations, it is for the body charged with interpreting the provision to make this distinction ... Article 11 of the Convention, the first paragraph of which guarantees the freedom of association, contains a number of restrictions on the exercise of this right in its second paragraph. In Portuguese law, general restrictions are laid down in Articles 158-A and 182 para 2 (d) of the Civil Code. As regards international associations, these restrictions are laid down in Article 13 para 2 of Decree-Law No 594/74, which does not contradict Article 46 para 1 of the Constitution. Therefore, international associations are still subject to obtain advance authorisation from the Government".

As regards the second ground for dissolution, the Supreme Court, after recalling that Article 46 para I of the Constitution allows associations to be dissolved by court order in the circumstances prescribed by law, proceeded to examine the applicant association's Memorandum in the light of the provisions of Portuguese law and held, *inter alia* 'The Portuguese State is a republic; the object of the relevant association is therefore clearly contrary to the Constitution Articles 158-A and 280 of the Civil Code are applicable in the present case in the sense that the document whereby A C R E P. was formed is void because it is contrary to the law and to

public policy. Nor can the relevant association rely on Article 11 para I of the Convention. However, paragraph 2 [of that provision] does apply to it, in that it does not, and cannot, exist, for reason of, *inter alia*, national security".

...

The applicant association claims that its dissolution constitutes an unjustified interference with its freedom of association.

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The Commission notes, firstly, that the applicant is a non-governmental organisation which is capable of holding and exercising the right to freedom of association (see No 8652/79 Dec 15.10.81, DR 26 p 89 and. *mutatis mutandis*, No 7805/77, Dec 5 5 79, D R 16 p 68).

On the question whether Article 11 of the Convention guarantees a right to legal personality, the Commission recalls that the same issue was left unresolved in Application No 14223/88, cited by the Government.

However, the Commission observes that in the present case the applicant was dissolved by virtue of domestic court decisions and, as a result of its dissolution and in contrast to the association in the above-mentioned application - no longer carries on any activity, at least in Portugal. Therefore, the dissolution constituted an interference in the applicant's exercise of its right to freedom of association (see No 8652/79, referred to above).

The interference in this case was based, as far as the second ground for dissolution was concerned, on Articles 158-A. 182 and 280 of the Civil Code, so that it was prescribed by law" within the meaning of paragraph 2 of Article 11 of the Convention. However, as regards the first ground for dissolution, the Commission considers that it is not necessary to examine whether Article 13 para 2 of Decree Law No 594/74 could also provide a legal basis for the interference in question.

As regards the legitimacy of the aim pursued, the Commission finds that it could be considered that the aim of dissolving the applicant association was to prevent disorder, as the Supreme Court recalled in its 6 October 1993 judgment.

As for whether the measure was necessary in a democratic society, the Commission recalls that this implies the existence of a "pressing social need" and that the States have a certain margin of appreciation in this field (see Eur Court H R , Handyside judgment of 7 December 1976, Series A no 24, p 22, para 48).

In this context, the Commission notes that a large number of the provisions of the applicant association's Memorandum were held to be contrary to the law and to public policy. Admittedly, the applicant association disputes these findings, but that is a question of interpretation of domestic law and the Commission cannot substitute its judgment in this field for that of the domestic courts. Its exclusive task is to examine whether the disputed measures were compatible with the requirements of the Convention and, in particular, whether the grounds on which the domestic courts took those decisions are relevant and sufficient in relation to the criteria set out in Article 11 of the Convention.

In this regard, the Commission notes that it follows from the applicant association's aim as defined in its Memorandum that it claims the power to award medals, honours and titles under what it calls "the revived monarchial laws". The Commission observes that the applicant association is thus claiming prerogatives which are normally the exclusive domain of States. Further, the association intends to carry out this activity under the provisions of the Monarchial Constitution of 1838, without taking account of the present Constitution of Portugal.

The Commission considers that such an aim cannot be considered as compatible with Portuguese public policy.

Taking into consideration the grounds on which the domestic courts based their decisions, in particular those given by the Supreme Court in its judgment of 6 October 1993, and in view of the applicant association's aim as defined by its Memorandum, the Commission considers that the disputed dissolution could also be considered as necessary in a democratic society, taking account of the margin of appreciation which States have in this field.

It follows that there is no appearance of a violation of Article 11 of the Convention and the application must therefore be dismissed as manifestly ill founded.