Portugal

Criminal Code (Law n°65/98 of September 2, 1998), Article 240 – Racial or religious discrimination

- 2) Anyone who, in a public assembly, in a writing purported to be divulged or by any means of mass communication;
- a) provokes acts of violence against a person or a group of persons because of his race, colour, ethnic or national origin or religion; or
- b) defames or insults a person or group of persons because of his race or ethnic or national origin or religion, specially through the negation of war crimes or of crimes against peace and humanity; intending to incite to racial or religious discrimination or to encourage it, is punishable with imprisonment from 6 months to 5 years.

Criminal Code, Article 251 – slander because of religious belief

1) Anyone who publicly offends or derides a person because of his religious belief or function, in a way adequate to breach the peace, is punishable with imprisonment up to 1 year or a fine up to 120 days.

2) The same penalty applies to anyone who desecrates a place or object of cult of religious veneration in a way adequate to breach the peace.
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Case Law

Portugal / Tribunal da Relação de Lisboa - Case No. 0081825

Subtitle Conventional No.: JTRL00006762; Document No.: RL199607180081825

Invento CASE 101 1

ry No.

Decidin

Rapporteur: Carmona da Mota ; Tribunal da Relação de Lisboa (TRL) [Lisbon Court of Appeal] g body

Date of decision: 18.07.1996 Date

Year Colectânea de Jurisprudência, XXI, Tomo 3, p. 149

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Decidin g Body

National court / tribunal

Topic Hate speech

Keywor

Portugal, Promotion of racial discrimination and hatred, legal finding, court decision

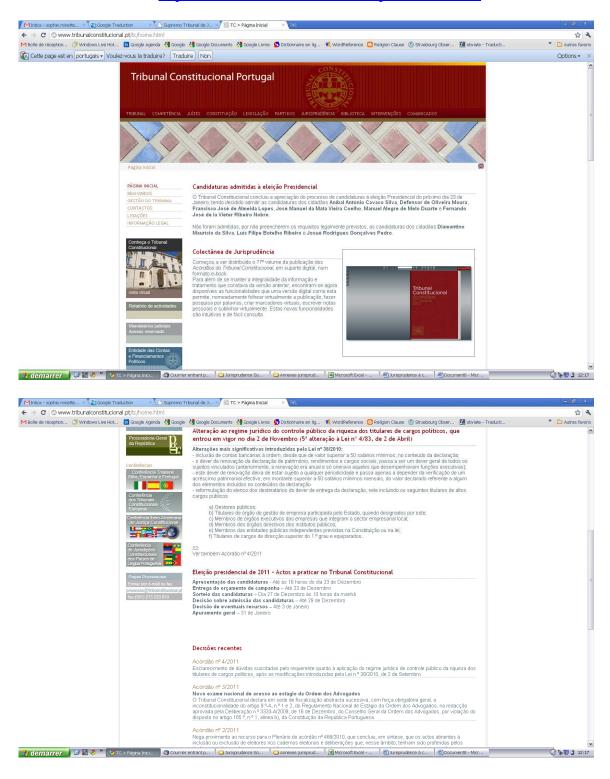
Key facts of the case: The accused were convicted of a crime of racial discrimination on account of having prepared, distributed and publicly read a document that, amongst other things, contained the following paragraph: 'the clear and absolute submission (...) by the concentration of powers that the Central Bank will wield, via a Director and "half-breed" Advisor, which, after the 25 April Revolution and the fall of the Berlin wall, is perfectly unacceptable.' The injured party requested he be allowed to be constituted as a plaintiff, which was denied on grounds of illegitimacy. This decision resulted in an appeal to the Appellate Court. Main reasoning/argumentation: The appellate court concluded that the case of the plaintiff should be admitted as a criminal proceeding, as a citizen who had been defamed and slandered in a public meeting, by a written

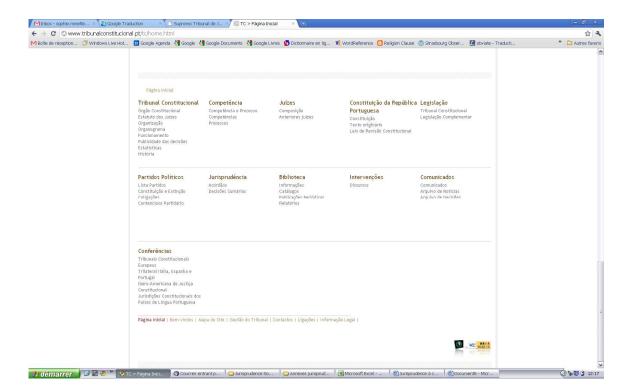
communication aimed at disseminating via means of social communication discrimination on Abstrac account of race, colour or ethnic origin. The court based its decision on the understanding that in cases of crimes of racial discrimination its protection extends beyond public interest to safeguard humanity against racial discrimination, in favour of the particular interests of the person who was slandered, defamed and discriminated against racially. Key issues (concepts, interpretations) clarified by the case: Legitimacy for the constitution of a plaintiff in penal proceedings (art. 68 of the Code of Penal Procedure), the crime of racial discrimination (art. 240 of the Penal Code). Results and most important consequences, implications of the case: The Court of Appeal decided to revoke the despatch that denied the admittance of the plaintiff, consequently ordering that it be substituted by another despatch admitting him. Since access to the decision in the first order court was not possible, it is not known which penalty had been applied to the defendants and what argumentation had been used. This case was one of the few cases in which the final decision served to condemn the practice of a crime of racial discrimination - art. 240 of the Penal Code.

[FRA Database]

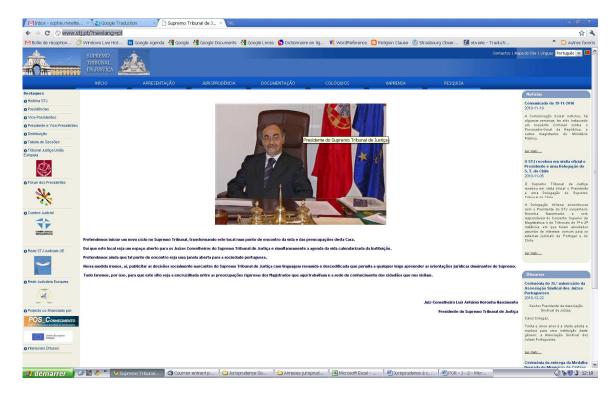
Portugal

Constitutional Court: http://www.tribunalconstitucional.pt/tc/home.html





Supreme Court of Justice: http://www.stj.pt/?newlang=pt



Public Policies





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PARECER

GABINETE DE ESTUDOS, RELAÇÕES INTERNACIONAIS E JURÍDICO (GERIJ) – ACIDI, I.P.

Em resposta ao pedido efectuado pela Direcção-Geral de Política Externa do Ministério dos Negócios Estrangeiros (MNE), de contributos do ACIDI, I.P., tendo em conta a realização do "2011 Expert workshops on the prohibition of incitement to national, racial or religious hatred" — promovido pelo Alto Comissariado das Nações Unidas para os Direitos Humanos, em Genebra —, remete-se para os devidos efeitos as seguintes informações:

COMBATING RACIAL DISCRIMINATION, PROMOTING INTERCULTURAL AND INTER-RELIGIOUS DIALOGUE

1. Institutional Framework

The High Commission for Immigration and Intercultural Dialogue, I.P. (ACIDI, I.P.) was initially created by <u>Decree-Law no. 202/2006</u>, <u>dated 27th October</u>, which approved the organic law of the Presidency of the Council of ministers and merged the High Commission for Immigration and Ethnic Minorities.

The ACIDI, I.P. it is a Public Institute that was established in May 2007¹, under the indirect administration of the Portuguese State, possessing administrative autonomy. It is under the Presidency of the Council of Ministers and the Prime Minister. The High Commission's mission is to collaborate in the conception, implementation and evaluation of public policies, both cross-cutting and sector-specific, relevant for the integration of immigrants and ethnic minorities, as well as promoting dialogue between various cultures, ethnicities and religions, but also to combat all forms of discrimination based on race, colour, nationality, ethnic origin or religion trough dialogue and integration policies.

Hence, the functioning and work of the High Commission demonstrates Portugal's objective and action to prevent and forbid every discriminatory act and to discourage



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¹ For more information, please see ACIDI's Organic Law (<u>Decree-Law no. 167/2007</u>, dated 3rd May).



every discriminatory practice. It also represents an active engagement in improving the living conditions of persons belonging to minorities and immigrants.

In this context, it should be taken into account the function of the <u>Commission for Equality and Against Racial Discrimination (CICDR)</u>, the active role of the <u>Victim Support Unit of Immigration and Discrimination Racial or Ethnic (UAVIDRE)</u>, but also the activities held by the Department of Support for Associative Activity and Intercultural Dialogue – <u>Entreculturas</u>. Therefore, according to article 3 of the Decree-Law no. 167/2007, dated 3rd May, it is incumbent on the ACIDI, I.P.:

- e) To promote interculturality through intercultural and inter-religious dialogue;
- j) To promote interest in civil society and academia in research on themes related to immigration, ethnic minorities, intercultural dialogue and inter-religious dialogue;
- m) To foster dialogue with religions through knowledge of the different cultures and religions, and by encouraging an attitude of mutual respect and love for diversity, both within Portuguese territory and in the relationships that Portugal has with the rest of the world.

However, it is the <u>Committee on Religious Liberty (CLR)</u>², which was established in February 12, 2004 by order of the Ministry of Justice, pursuant to <u>Decree-Law no.</u> <u>308/2003, dated 10th December</u>, that is responsible for deciding, warning, and preventing the competent authorities in all cases of violation of religious freedom or in any kind of religious discrimination.

a) Commission for Equality and Against Racial Discrimination (CICDR)

The Portuguese law foresees – <u>Law no. 134/99 dated 28th August</u> and <u>Law no. 18/2004</u> <u>date 11th May</u> – an administrative complaints procedure for cases of racial discrimination, which is dealt with by the CICDR that works closely with the ACIDI, I.P. This Commission is presided by the High Commissioner for Immigration and Intercultural Dialogue and



² The CLR is an independent and consultative organ of the Portuguese Assembly of the Republic and Government. As guardian of the Religious Freedom Act, it must rule on all matters relating to his application, development and changes. This commission has powers under the protection of religious freedom by acting as a sort of "provider" as it should alert and prevent the competent authorities in case of violation of religious freedom or any kind of religious discrimination. It has also important to refer CLR's functions of scientific research of churches, religious communities and movements in Portugal, which are reflected, namely in the processing and updating of scientific and statistical information with a view to public disclosure. Mário Soares is the current chairman of the **Committee on Religious Liberty.**



includes representatives elected by the Parliament, Government' appointed, as well as representatives from the employers associations, trade unions, immigrants associations, NGOs and civil society.³

Its principal mission is to accompany the application of legislation that, in Portugal, combats discrimination on the basis of race, colour, ancestry and national or ethnic origin. In this sense, competences are attributed to it to collect information in relation to the practice of discriminatory acts, recommending the adoption of legislative measures, promoting the realisation of studies and research work on racial discrimination and making public cases of effective violations of the law.

Moreover, the CICDR⁴ meets regularly and is constituted, under the law, by the following representatives:

- a. The High Commissioner for Immigration and Intercultural Dialogue, who preside;
- b. Two representatives elected by the Assembly of the Republic;
- c. Two government representatives, appointed by the government departments responsible for employment, social security and solidarity, and education;
- d. Two representatives of immigrant associations;
- e. Two representatives of anti-racist associations;
- f. Two representatives of trade unions;
- g. Two representatives of employers' associations;
- h. Two representatives of human rights;
- i. Three persons to be appointed by the remaining members.

The ACIDI, I.P. provides logistical and technical support, ensuring the facilities needed to run the CICDR.

Among top activities of the Commission for Equality and Against Racial Discrimination for 2010, we highlight the following:

The launch of the Contest Photo / Video Against Racial Discrimination, was aimed to elect a photo and a video depicting the values and the Diversity of Non -Discrimination on the basis of nationality, ethnic origin, race, colour or religion, in order to reproduce and national distribution by ACIDI;



³ For more information, see http://www.cicdr.pt/.

⁴ The Rules of CICDR is provided for in paragraph 2 of article 5 of Law no. 134/99, dated 28th August. Please see the rules here http://www.acidi.gov.pt/docs/Acime/CicdrCocai/Regulamento_CICDR.pdf.



- ❖ The CICDR leaflet, with the purpose to inform and provide information on the CICDR's role in the fight against Racial Discrimination;
- ❖ The CICDR logo that can be linked to the fight against Racial Discrimination;
- Cinema Cycle on the theme of Racial Discrimination, in-room University, followed by discussion, to be held in October / November 2010;
- Creation of a Legal Seminar on the theme of Racial Discrimination;
- Conducting a Seminar on "Combating racism and xenophobia in the workplace," with guest expert panel, to be held in December 2010.

Finally, it should be mentioned that the CICDR site (http://www.cicdr.pt/) has a special tool called "Racism on Internet", where the users have the link to a national project called "Safe Internet", co-financed by the European Union under the project "Safer Internet Plus", in which citizens may file a complaint against a internet blog or site that has racist issues. This complaint leads to immediate action in the cases where the site is located in Portugal.

b) Support Unit for Immigrant Victims of Racial and Ethnic Discrimination (UAVIDRE)

Regarding the Immigrant / Racial Victim Support is important to stress out the role of the ACIDI, I.P. on this matter, specifically the formation of a "Victim Support Unit to Immigrant and Victims of Racial and Ethnic Discrimination (UAVIDRE)" in 2005. This Unit is integrated in a Portuguese NGO, the "Portuguese Association for Victim Support" (APAV), which receives public financing on a yearly basis from the ACIDI, I.P. 5 This Unit provides support free of charge, legal and psychological help to victims of racial discrimination and to immigrant victims in general.



⁵ A UAVIDRE resulta, basicamente, de um **protocolo** celebrado entre a **Associação de Apoio à Vítima** (APAV) e o ACIDI, I.P., tendo entrado em funcionamento no dia 1 de Maio de 2005.

The results UAVIDRE basically an agreement between the Association of Victim Support (APAV) and ACIDI, entered into operation on 1 May 2005.

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According to the latest <u>ACIDI's Activity Report</u>, the UAVIDRE held in the last year about 377 visits / procedures to support immigrants and immigrant victims of crimes of Racial or Ethnic Discrimination, providing also generic information and emotional, social and psychological support a free, confidential, personalized, humanized and qualified. In addition to this support, also aims to promote the rights of immigrants in the country and knowledge of their state of labor market integration.

c) Entreculturas

The Programme "Entreculturas" was established in 1991 to help schools deal with the increase of foreign students and social, cultural and ethnic diversity. A large range of activities were developed to raise awareness in schools and other educational stakeholders towards intercultural education, as a mean to facilitate immigrants' and ethnic minorities' children integration and ensure better and more equal opportunities.

Recognizing that the problems and challenges addressed go far beyond the answers that may be given within the education system, the High Commission for Immigration and Intercultural Dialogue also created a team to provide training in awareness-raising and mobilization actions at the local level to promote welcoming and integration — Department of Support for Associative Activity and Intercultural Dialogue (DAADI)-Entreculturas.⁶ This allows capacity building among the staff of different institutions involved in of welcoming and integrating immigrants in Portugal.

In this sense, the activities undertaken by the **Entreculturas** are framed within the topic of interculturalism as an explicit dimension of policies to support welcoming and integrating immigrants, and reflect the promotion of Dialogue with Religions.

The challenge of the promotion of Interculturalism is a process of learning that relates to all and is based specifically on the very strong and systematic involvement of the greatest possible number of actors and institutions of the receiving society. It involves projects where competences for the management of diversity are learned, to be applied in the different contexts in which they intervene.

There are two programs undertaken by Entreculturas that exposes the Inter-religious Dialogue awareness: Campaign "Conhecer para Agir" You Have to Know, to Act) and Calendar "Celebração do Tempo" (Celebrating Time).



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⁶ The article 6 of the Ordinance no. 662-I/2007, dated 31st May, establishes Entreculturas's competences.



In the first case, the Operational Program of Human Potential, from the European Social Fund, ACIDI is going do develop a Campaign, where Inter-religious Dialogue is one of its main focuses, through:

- 4 seminars on inter-religious dialogue;
- Poster for youngsters to help dissiminate the message from Charter for Compassion (na international movement);
- Calendar "Celebração do Tempo" Celebrating Time;
- "Um dia para Agir" One Day to Act (Proposals for teachers of activities to use in school at different levels of education).

In the second program, the Calendar includes a theological/historical approach regarding each religion's symbology, main doctrine and fundamental principles, as well as sacred texts. Published since 2003, it is an inter-confessional and inter-religious calendar, in the spirit of the Universal Declaration of Human Rights, and of the Declaration for the Elimination of All Forms of Intolerance and Discrimination. This calendar has been widely distributed by ACIDI, I.P., free of charge.

2. National Policies

The first Plan for Immigrant Integration (PII I), created by the Resolution of the Council of Ministers no. 63-A/2007, of 3 May. This plan seeks to provide an overall, integrated and comprehensive solution, which systematises the State's objectives and commitments while hosting and integrating immigrants who have come to Portugal. To this end, it identified a set of 122 measures, reflected in 295 goals distributed over 20 sectorial and transversal areas, including six measures on Racism and Discrimination [i) equal opportunities towards Employment, to combat all forms of ethnic discrimination; ii) Combating racism and discrimination in access to housing, iii) Dissemination and training in combating racism and racial discrimination, iv) Elaboration under the Immigration Observatory, namely studies relating to discrimination in school, in housing and labor market; v) enhancing support for victims of racist acts and discrimination, vi) Legislative changes to strengthen the intervention capacity of the Commission for Equality and Against Racial Discrimination] and two measures on Religious Freedom [i) Consolidation of the Portuguese Religious Freedom Act; ii) and specific training of professionals in key sectors]. After three years of implementation, the plan was subject an evaluation, contained in the PII I Final Report (2007-2009), which shows that 81% of its measures have been implemented or are being implemented.





Hence, the plan primary purpose was devoted to receive and fully integrate immigrants, keeping in mind not just the economic and social aspects but also equally important issues concerning cultural and religious diversity, citizenship, participation and rights.

In this sense, given the importance of the implementation of the first Plan for the Integration of Immigrants 2007-2009 as a program supervisor of public policies in the reception and integration of immigrants, the Portuguese government has approves a second action plan with new measures, new areas of intervention and whose duration is for the period of the current term of 2010-2013.

The second Plan for Immigrant Integration (2010-2013), created by the Resolution of the Council of Ministers no. 74/2010, dated 12th August, involving 14 Ministries and identified a set of 90 measures, reflected in 401 goals distributed and planning for four years. Accordingly to this plan, the Portuguese government proceeded to recast the intervention areas, with the integration of five new areas (Media, Religious Freedom, Family Reunification, Information Society and Sports) and the creation of two other new areas, resulting (Promotion of the Diversity and Intercultural Dialogue, and Immigrant Elderly), a total of 17 areas. Regarding the area of Racism and Discrimination, the plan includes four steps: i) legislative changes to strengthen the intervention capacity of the CICDR; ii) dissemination and training in combating racial discrimination, iii) combat racial discrimination in sports; iv) disaggregation of statistics. Thus, as in the previous Plan, the PII II will be subject to regular monitoring and evaluation, with the annual reports submitted to the Consultative Council for the Immigration Affairs (COCAI) ⁷.

3. Main actions / activities

At the level of combating racial discrimination (in this regard Portugal has a consolidated national legal framework and penalties for discriminatory behaviour), concrete activities were promoted in this area, including:



⁷ The ACIDI's is also formed by the Consultative Council for the Immigration Affairs (COCAI). Created by Decree-Law n. 251/2002, dated 22nd November, the COCAI is aimed at ensuring dialog among all the interested partners. The Consultative Council advices on the projects of legislative texts relating to immigrants rights, participates in the definition of the social integration policies aiming at the elimination of discrimination and promotion of equality, participates to the definition of measures and of actions aiming at the improvement of immigrants living conditions and following their execution, taking part in the defence of immigrants rights, in the respect of their identity and culture by formulating proposals aiming at their promotion and exerts other competences foreseen in the Law.



- **The Award for Journalism, Human Rights and Integration**, which recognises the work developed by media professionals in the field of tolerance and integration, combating all forms of racism and discrimination. The initiative contemplated prizes awarded in 3 categories: written media, radio and television, with a prize of € 3,000, in addition to an award for Intercultural Dialogue, with a prize of € 5,000.
- The <u>"Posters Against Discrimination" Competition</u>, which aims to select a poster alluding to the values of Diversity and Non-Discrimination due to Nationality, Ethnic, Origin, Race, Colour or Religion, which will be reproduced and distributed at a national level by the ACIDI, IP. The contest was launched by the CICDR and is open to all individuals resident in Portuguese national territory. The value of the prize awarded was € 1,500, and honourable mentions were also awarded.
- ❖ The translation, publishing and launch of the "Diversity Toolkit for Factual Programmes in Public Service Television" prepared by the <u>European</u> Fundamental Rights Agency.
- ❖ A <u>Pool of Trainers</u> which, at the request of institutions involved in the process of receiving and integrating immigrants (schools, associations, NGOs, institutions for social solidarity, municipal authorities, hospitals, courts, public and private entities, amongst others), holds awareness initiatives at no cost. Amongst many other modules, these sessions cover themes such as the Nationality Law, the Foreigners' Law and Intercultural Dialogue. In this regard, the organisation of a module on <u>Myths and Facts about Immigration in Portugal</u> is especially worthy of note. This information has also been compiled into an easy-to-read brochure, which essentially seeks to dismantle preconceptions about immigration.
- ❖ During the seventh edition of the <u>Best Practices in the Public Sector Award</u>, which has been receiving a growing number of applications and a higher level of ambition in terms of each project, the Project for a Pool of Trainers promoted by the ACIDI, I.P. was nominated for the category of Human Capital.

A reference to the <u>Immigration Observatory</u>⁸, overseen by the ACIDI, I.P., has promoted the development and dissemination of knowledge about the phenomenon of migration,



⁸ For detailed information on the Immigration Observatory and published works, plus plenty of information related to the theme of migration, racial discrimination, but also the inter-religious dialogue, please see the Observatory catalogue of publications, here http://www.oi.acidi.gov.pt/docs/CatalogoOI/CatalogoOI/EN.pdf.



especially the dimension of integration, under which were published several research and that will be sources of information / data for the Project Integra.

4. International Projects

Regarding these matters, the ACIDI, I.P., in coordination with its Unit of Research and International Relations participated and involved in the European project "Living Together".

Since February of 2009, the ACIDI, I.P. is the Portuguese partner of the project Living Together "European Citizenship against Racism and Xenophobia" has been co-financed by the European Commission, DG Justice, Freedom and Security, in the framework of the community action programme Fundamental Rights and Citizenship, under the priority: to combat racism and xenophobia. It is a transnational project developed by a consortium of 13 organisations, public and private, from 6 UE Member States (Spain, Portugal, The Netherlands, Ireland, Sweden and Finland), and coordinated by the Spanish Observatory on Racism and Xenophobia (OBERAXE). As a general aim the project pretends to promote a European discourse of tolerance based in the generation of coexistence and respect arguments, recognition of the difference and building a European citizenship away from any kind of racism and xenophobia. ⁹

Lisboa, 21 de Outubro de 2010.



⁹ For detailed information, see http://livingtogether.oberaxe.es/livingtogether/.