



## NEWS REPORT

<b>Date:</b>	01 February 2011
<b>Expert:</b>	Manuel Malheiros
<b>Title:</b>	Judgment on racial discrimination
<b>Country:</b>	Portugal
<b><u>Context</u></b>	
<b>Issue at stake:</b>	Racial statements in an outdoor owned by <i>Partido Nacionalista Renovador</i>
<b>Ground of discrimination:</b>	Race/ethnic origin
<b>Source:</b>	National court decision Case 59862/08.7TDLSB.L1 – Tribunal da Relação de Lisboa – Appeal Court of Lisbon
<b>Field:</b>	All fields, immigration
<b>Legislative provisions:</b>	Criminal Code – article 240 (2) (a) and (b).

### Content

**Circumstances of the case:** The facts of the case took place in a premise which belongs to the Nationalist Party (*Partido Nacionalista Renovador*) and is placed in a Lisbon square. Outdoor one could read as follows:

“IMMIGRATION? We say NO!

Enough of abuse: open frontiers, dependence benefits, low wages, criminality and multiculturalism. Portugal to Portuguese”.

In addition, a picture showed a white lamb (representing nationals) is expelling from the country black lambs (for immigrants).

M. José Coelho, the President of the Nationalist Party responsible for the outdoor, argued in court that he had no intention of expressing any racist or xenophobic language and that, in any event, he had the right to freedom of expression.

The issue at stake relates to Article 240(2) of the Criminal Code on discrimination on grounds of race, religion or sexual orientation which states that:

(a) is punished anyone who in a public meeting, in writing intended for dissemination, or by any other means of social communication, provokes acts of violence against an individual or group of individuals on grounds of their race, colour, ethnic origin or nationality, religion, gender or sexual orientation with the intention of inciting to or encouraging racial or religious discrimination.

(b) is punished anyone who in a public meeting, in writing intended for dissemination, or by any other means of social communication, defames or insults an individual or group of individuals on grounds of their race, colour, ethnic origin or nationality, religion, gender and sexual orientation.

#### *First Instance decision*

The accused is the President of the Nationalist Party (*Partido Nacionalista Renovador*) who had already been trialled and accused of racist and xenophobic behaviours in earlier cases.

On the first instance (the 1.º Juízo do Tribunal de Instrução Criminal de Lisboa), the judge dismissed the accusation of the Public Prosecutor that the statements constituted a racist act against immigration, on the ground that they were only against immigration and not racists as they did not specify any race or ethnic origin but rather address immigration as a whole and consequently the judge refused to subject the accused on trial.

#### *Appeal to the Lisbon Court of Appeal:*

The Public Prosecutor lodged an appeal before the Lisbon Court of Appeal on the ground that Mr. José Coelho's action fell within the scope of Article 240 (2) (b) of the Criminal Code.

His action may therefore be covered by the provisions of that article, since the clear purpose the outdoor panel was to disseminate an offensive message against a group of persons on grounds of their national origin, creating racial discrimination.

The association between the image of a hostile white lamb expelling the other lambs and the text itself may establish a cause/effect/connection related to immigrants as the cause of criminality: low wages and unemployment, the actual great worries of the Portuguese community nowadays.

This association may affect the image of immigrants in general and their honour and may encourage discriminatory behaviours and violent acts against immigrants.

In this sense the action of the accused could fall within the scope of Article 240 (2) (b) through the dissemination and encouragement of discriminatory behaviours against the immigrants. The accused stated that he only was pretending to raise awareness in favour of a more restrictive immigration policy.

**Decision of the Lisbon Court of Appeal:** However, the Court of Appeal observed that no explicit mention to racial or ethnic origin was referred in this outdoor and it did not confer the certainty of the existence of encouragement to racial discrimination. It therefore did not consider the accused as guilty.

According to the Court the incrimination based on racial discrimination is directly related to the International Convention on the Elimination of All Forms of Racial Discrimination in which the term "racial discrimination" shall mean any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life. (Article1). By signing this Convention Portugal as a State Party should condemn all propaganda and all organizations which are based on ideas or theories of superiority of one race or group of persons of one colour or ethnic origin, or which attempt to justify or promote racial hatred and discrimination in any form and guarantee the immediate adoption of positive measures. However, the Court considered that in this case the encouragement to racial discrimination was not proved hence this outdoor did not contain an explicit threaten to immigrants nor declined on immigrants offensive facts inciting or encouraging to racial discrimination.

Therefore, the Court did not consider that the accused incited to racial discrimination and had only used (within its limits) his freedom of expression. The First Instance decision was once again confirmed.