

APPLICATION/REQUÊTE N° 13750/88

A and others v/SPAIN

A et autres c/ESPAGNE

DECISION of 2 July 1990 on the admissibility of the application

DECISION du 2 juillet 1990 sur la recevabilité de la requête

Article 11, paragraph 1 of the Convention *Bar Associations in Spain set up by law in the public interest are not associations within the meaning of Article 11 para 1*

In placing Young Lawyers Groups under the supervision of Bar Associations the Spanish Decree of 1982 concerning the legal profession does not infringe freedom of association Moreover, the fact that the Decree provides for disciplinary sanctions in the case of disruption of the normal functions of a Bar Association's organs does not prevent lawyers from forming or joining their own professional associations

Article 11, paragraphe 1, de la Convention *En Espagne, l'Ordre des avocats créé par la loi pour des raisons d'intérêt public, n'est pas une association au sens de l'article 11 par 1*

En soumettant les Groupements de jeunes avocats à la tutelle de l'Ordre des avocats le décret espagnol de 1982 concernant la profession d'avocat ne porte pas atteinte à la liberté d'association En outre le fait que ce décret prévoit des sanctions disciplinaires en cas d'entraves au fonctionnement normal des organes de l'Ordre n'empêche pas les avocats de fonder entre eux des associations professionnelles ou d'y adhérer

(TRANSLATION)

THE FACTS

The applicants, M.-A.A., F.A., P.A. and A.L ; are Spanish nationals. They are all lawyers resident in Saragossa Before the Commission they are represented by Mr C. Carnicer and Mr Javier Arana, lawyers practising in that town.

The applicants are registered members of the Saragossa Bar Association They are also members of the "Young Lawyers' Group" set up in 1975 within the same association (Article 2 of the group's articles of association) with the particular aims of defending the interests of pupil advocates and those beginning their professional careers, organising cultural, social and training activities, and providing a forum for free debate among its members about the operation of the machinery of justice

The Official Journal (Boletín Oficial del Estado) of 2 September 1982 published Decree No 2090/82, which laid down general regulations governing the rights and duties of lawyers and was adopted by the Government on the basis of a draft produced by the Spanish Bar Association in accordance with the Professional Regulatory Bodies Act 1974. Under Article 3 of the Decree the Bar Association is divided into provincial associations, each of which is a public law corporation with legal personality and full legal capacity. Its main aims are to regulate practice as a lawyer, to defend lawyers' professional interests and to further the cause of justice The profession of lawyer is defined as a free and independent profession (Article 8) whose practitioners must be registered members of the association (Articles 2, 10 and 14). Registration cannot be refused (Articles 13 and 18) except to persons who fail to satisfy the conditions laid down in Article 15 of the Decree (mainly concerning nationality, majority, qualifications, payment of registration fees and professional dues, and membership of the lawyers' mutual benefit society) and those on whom judicial or disciplinary sanctions have been imposed or who are unfit to practise the profession of lawyer (Article 17).

- Article 4 of the Decree sets out the main functions of the Bar Association as
- a to represent the profession as a whole,
 - b to regulate practice of the profession and enforce compliance with its code of ethics,
 - c to assist in the ongoing training of its members,
 - d to organise facilities and services for the members,
 - e to prevent unfair competition and illegal practice of the profession,
 - f to lay down minimum fees and arbitrate in disputes relating thereto

Each provincial Bar Association is run by the Junta de Gobierno (Bar Council) whose powers include disciplinary powers. The Bar Council is presided over by its senior member (Decano). Appeal lies from the decisions of the provincial Bar Councils to the superior national body, the General Council of the Spanish Bar, and thereafter to the administrative courts.

The Saragossa Young Lawyers' Group, considering that the Decree at issue was unconstitutional and unlawful, asked the Supreme Court to declare it null and void. The application was directed mainly against Article 64 para 3 and Article 113 sub para (g) of the Decree, under the first of which young lawyers' groups are subject to the supervision of the Bar Council, while, under the second, establishment or membership of associations having the same aims as the Bar Association constitutes a very serious disciplinary offence. The Supreme Court, which ordered the joinder of a number of similar applications, rejected all of the claims made in a judgment dated 1 April 1986.

The Saragossa Young Lawyers' Group and a number of individual lawyers, including the applicants, then lodged with the Constitutional Court an appeal de amparo alleging, *inter alia*, that Article 64 para 3 and Article 113 sub para (g) of Royal Decree No 2090/82 infringed the right to freedom of association set forth in Article 22 of the Spanish Constitution. The Constitutional Court declared the appeal admissible, but, after examining the observations of the Spanish Bar Association, Crown Counsel, counsel for the State and the applicants, dismissed it on the merits on 15 July 1987. The judgment stated in particular that Article 64 para 3 of the Decree at issue was an internal regulation which did not restrict the right to form young lawyers' associations freely outside the Bar Association or join such associations. As for Article 113 sub-para (g), the Constitutional Court

ruled that its sole purpose was to prevent individual or collective activities designed to hinder the Bar Association in the conduct of its normal activities.

COMPLAINTS

The applicants complain that Article 64 para. 3 of Royal Decree No 2090/82 restricts their right to freedom of association in that it provides for supervision of the activities of the Young Lawyer's Group by the Bar Council.

They also claim that since Article 113 sub-para. (g) of the same decree provides for disciplinary sanctions against persons who set up or join associations having the same aims as the Bar Association, it infringes lawyers' freedom of association. The applicants rely on Article 11 of the Convention.

THE LAW

1. The applicants complain in the first place that Royal Decree No 2090/82, which lays down general regulations governing the rights and duties of lawyers, imposes supervision of young lawyers' groups by the Bar Council, notably through Article 64 para. 3. They consider that this has involved an infringement of the right to freedom of association set forth in Article 11 of the Convention.

This provision reads as follows:

"1. Everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions for the protection of his interests.

2. No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others. This Article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces, of the police or of the administration of the State."

However, the Commission notes that in Spain the Bar Associations are public law institutions regulated by law and pursue an objective in the general interest, namely the promotion of independent and competent legal assistance and therefore the promotion of justice itself. It points out that registration as a member of the Bar Association, which is open to all those who satisfy the statutory conditions, is a necessary precondition for practice as a lawyer.

A professional regulatory body like the Bar Association, according to the case-law of the Convention institutions, cannot be regarded as an association within the meaning of Article 11 of the Convention (cf. Eur. Court H.R., Lecompte, Van Leuven and De Meyere judgment of 23 June 1981, Series A no. 43, p. 26). The Commission observes, however, that the Saragossa Young Lawyers' Group, to which the applicants belong, is a group set up within the Saragossa Bar Association in 1975 – even before the entry into force of Royal Decree No. 2090/82 – and all its members are registered members of that body.

Moreover, at no time have the applicants alleged that they intended to set up an association separate from the Bar Association or that they were prevented from doing so. Consequently, the impugned provision constitutes one of the Bar Association's internal regulations, and its existence does not restrict in any way the exercise of the applicants' rights under Article 11 of the Convention. It follows that in this respect the application is manifestly ill-founded and must be rejected pursuant to Article 27 para. 2 of the Convention.

2. The applicants also complain that Article 113 sub-para. (g) of the impugned Royal Decree restricts the exercise of the right to form professional associations freely outside the Bar Association or to join such associations. In this connection the Commission first reiterates the case-law to the effect that the provisions governing the activities of professional regulatory bodies must not prevent practitioners from forming together or joining professional associations, if there is not to be a violation of Article 11 of the Convention (cf. the previously cited Lecompte, Van Leuven and De Meyere judgment). Consequently, the question arises to what extent it is still possible for members of the Bar Association to set up or join a professional association or trade union.

The Commission notes in this connection that in its judgment of 15 July 1987 the Constitutional Court interpreted the impugned provision and held that it provided for disciplinary sanctions only in cases where, individually or collectively, members of the Bar Association knowingly disrupted its normal functions and activities or those of its subsidiary bodies.

The Commission considers that because of the principle according to which the Spanish Constitution overrides every ordinary law, and because of the role of the Constitutional Court, which is to act as the supreme interpreter of the Constitution (Article 1 of Institutional Act No. 2/1979), there is no possibility that the impugned provision could form the basis in law, as the applicants allege, for infringements of lawyers' rights to freedom of association. It notes in this connection that at no time have the applicants alleged that disciplinary sanctions have been imposed on them for forming or joining a professional association. Moreover, there is nothing in the application as submitted by the applicants to

support their contention that the provision at issue actually infringes or might in future infringe their right to set up professional associations or trade unions or to join those which already exist. That being the case, it follows that in this respect the application is also manifestly ill-founded and must be rejected pursuant to Article 27 para. 2 of the Convention.

For these reasons, the Commission

DECLARES THE APPLICATION INADMISSIBLE.