

COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION

K. R. C. v. Denmark

Communication No. 23/2002

13 August 2002

CERD/C/61/D/23/2002

ADMISSIBILITY

Submitted by: Ms. K. R. C (represented by counsel)

Alleged victim: The petitioner

State Party: Denmark

Date of Communication: 2 January 2002 (initial submission)

The Committee on the Elimination of Racial Discrimination, established under article 8 of the International Convention on the Elimination of All Forms of Racial Discrimination,

Meeting on 13 August 2002,

Having concluded its consideration of communication No. 23/2002, submitted to the Committee under article 14 of the International Convention on the Elimination of All Forms of Racial Discrimination,

Having taken into consideration all written information made available to it by the petitioner and the State party,

Adopts the following:

Decision on admissibility

1. The petitioner is Ms. K. R. C., a citizen of the United States, currently residing as a permanent resident in Denmark. She claims to be a victim of a violation by Denmark of articles 2, paragraph 1 (d), and 6, of the International Convention on the Elimination of All Forms of Racial Discrimination. She is represented by counsel.

The facts as presented by the petitioner

2.1 In June 2000, the petitioner purchased a car at Brandt's Auto, in Denmark. The car dealers suggested approaching Sparekassen Vestsjælland ("the bank"), with which Brandt's Auto cooperated, for a loan. The petitioner thus contacted the bank for a loan application form. On 27 June 2000, she received the loan application form together with a letter from the bank.

2.2 As part of the standard information in the loan form it was indicated that the person applying for a loan was to declare "that I am a Danish citizen". Further the letter accompanying the application form stated: "You are kindly requested to hand in the application duly filled in, and enclose a copy of your Danish passport to the sales agent". As the petitioner is not a Danish citizen she was not able to sign the application form.

2.3 On 28 of June 2000, the petitioner contacted the bank, explained that she was an American citizen, and asked whether this would have any influence on her application. She was informed that if one did not have Danish citizenship, one could not apply for a loan. After having received this information, the petitioner contacted a friend who similarly requested of the bank whether it was correct that non-Danish citizens could not apply for a car-loan in the bank. She was informed that this was correct, and that the reason was that the bank did not have any possibilities of collecting the loan if the individual left the country with the car. The petitioner's friend informed the bank that the petitioner had lived in Denmark for the last 9 years, that she was from the USA, had had permanent employment for the last 8 years, and was just about to start in a new job at Novo Nordisk. The employee at the bank responded that she would talk to her superior and get back with an answer.

2.4 On the same day, the deputy head of the bank informed the petitioner's friend that the bank did not give loans to non-Danish citizens. However, as the petitioner was about to start as an employee at Novo Nordisk, he would try to find a solution and requested of the petitioner to send the loan form together with evidence of her annual income to the bank. The petitioner did not send the application back as she believed that her chances of loan approval were slim. She applied and got a car-loan from her own bank, which cost 1% more than the potential loan from the bank.

2.5 Following this incident, the petitioner reported the incident to the Documentation and Advisory Centre on Racial Discrimination ("DRC")^{1/} in Copenhagen. The DRC informed the bank that it was prohibited to request and use information about a person's citizenship when handling loan applications, and requested the bank to remove the requirement of citizenship in the application form in question, and in future application forms. The bank responded that it was not of the view that this requirement was illegal, that although it may appear from the form that citizenship is an invariable criterion to receiving loan approval, this is not the case, but that nevertheless, it would remove this criterion from the forms.

2.6 By letter dated 6 September 2000, the DRC wrote to the bank and requested it to compensate the difference between the potential loan at the bank and the loan she received from the petitioner's own bank - a difference of 10180 dkr.^{2/} In a letter of 12 September 2000, the bank replied that it was still of the opinion that the requirement of citizenship was not illegal, and that they did actually offer the petitioner the loan, and hence they had no obligation to provide her with compensation.

2.7 In a letter of 25 September 2000, the DRC pointed out that the bank had made no offer of a loan to the petitioner and that given the response by the bank to the petitioner - that the bank did not offer loans to non-Danish citizens - it was fully understandable that the petitioner had not returned the loan application as she had no grounds to believe she would be granted the loan. The DRC thus insisted that the bank compensate the petitioner. It further stressed that if the bank refused to offer compensation, a complaint would be filed with the police.

2.8 By letter of 12 October 2000, the bank denied the request for compensation, informed the DRC that it had several foreign citizens who were granted loan approval and suggested that the petitioner move the loan to the bank. The bank did not agree to cover the expenses for transferring the loan.

2.9 On 8 October 2000, the DRC reported the incident to the police department in Holbæk, expressing the view that the treatment of the petitioner violated the Danish Act on the prohibition of differential treatment on the basis of race ("the Act against Discrimination"), which, it claims, partly implements the ICERD into Danish law. By letter of 1 February 2001, the police informed the DRC that the investigation of the case had been discontinued, as it considered that there was no reasonable evidence that an unlawful act had been committed. The police based its decision on the belief that the petitioner "was offered the loan on June 28, 2000 by the bank when she was asked to hand in her contract of employment and evidence of her annual income, to use with the normal assessment of applications. Because of time constraints she did not send the requested papers, but instead took a loan in another bank. Under these circumstances, it is my perception that there is no bases to press charges in the case, hence the investigation has been discontinued."

2.10 By letter of 28 February 2001, the DRC, on behalf of the petitioner, complained to the Public Prosecutor for Sealand, claiming that the petitioner had not been treated on the same basis as Danes, because of her ethnic origin. She thereby suffered an economic loss and a violation of her integrity. In a letter of 10 July 2001, the Public Prosecutor informed the DRC that he did not see any reason for changing the police decision.

The complaint

3.1 The petitioner claims that she has exhausted domestic remedies as there is neither a possibility of appealing the decision of the Public Prosecutor nor of bringing the case before the Danish Courts.

3.2 The petitioner also confirms that the subject of this communication has not nor is currently being examined by another international instance.

3.3 The petitioner claims that the State party has violated its obligations under article 2, subparagraph 1 (d), and 6, of the Convention in not effectively investigating the reported incident of racial discrimination. The petitioner argues that following the decision of the CERD in *L.K v. The Netherlands* ^{3/} the States parties under these provisions have a positive obligation to take effective action against reported incidents of racial discrimination. Alleged cases of discrimination must be taken seriously and must be investigated thoroughly by the national authorities.

3.4 The petitioner argues that although article 1, paragraph 2, stipulates that distinctions based on

citizenship are not *as such* comprised within the definition of discrimination, if the application of a citizenship criterion in fact constitutes a distinction on the basis of, for example, national origin or colour, it may amount to discrimination within the terms of article 1, paragraph 1. In addition, the petitioner argues that if the application of the criterion of citizenship has the effect of discriminating against a person on the bases of his race, national origin or colour, it may also constitute discrimination for the purposes of article 1, paragraph 1, of the Convention. In this regard, the petitioner refers to the case of *Habassi v. Denmark*.^{4/}

3.5 According to the petitioner, there is no indication that the police interviewed the parties involved, nor did they include anything else to support their decision, except the material provided by the DRC in its complain to the police. In particular, the petitioner argues that the following issues should have been examined: first, to what extent were persons applying for loans requested to show their passports; second, to what extent does the bank grant loans to non-Danish citizens; third, on what grounds did the bank inform the petitioner that non-Danish citizens could not apply for a loan; fourth, to what extent does the bank grant loans to Danish citizens living abroad; fifth, whether an act of indirect and unintentional discrimination had taken place.

3.6 According to the petitioner, if loans were granted to citizens living abroad, the criterion of citizenship would in fact constitute racial discrimination or an act of discrimination on the basis of national origin or colour.

The State party's submission on the admissibility and merits of the communication

4.1 By letter of 25 March 2002, the State party made its submission on the admissibility and merits of the communication. On admissibility, the State party confirms that in relation to remedies under *criminal* law, the petitioner has exhausted domestic remedies. However, it argues that the petitioner has not exhausted all of the *civil* remedies available to her and therefore the communication should be declared inadmissible, under article 14, paragraph 7 (a), of the Convention as read with Rule 91 (e) of the rules of procedure.

4.2 According to the State party, the petitioner could have brought an action against the bank, claiming that it acted in contravention of the law by exposing the petitioner to racial discrimination, and the petitioner can also claim damages for both pecuniary and non-pecuniary loss. According to the State party, this possibility is available whether or not the Public Prosecutor chooses to investigate the same matter or discontinues an investigation.

4.3 In its argument, the State party refers to the communication of *Habassi v. Denmark* where the Committee held, among other things, that the bringing of a *civil* action in a case of alleged discrimination contrary to the Act against Discrimination was not, in that particular case, an effective remedy. In that case, the petitioner claimed that a criminal act of discrimination had been committed, and the Committee attached decisive importance to the fact that the institution of civil proceedings could only lead to damages for non-pecuniary loss. The petitioner had not suffered a financial loss as the loan was subsequently granted in the wife's name.

4.4 In the case at hand, the petitioner claims to have suffered a financial loss, after obtaining a loan

in another bank at a higher rate of interest. On her behalf, the DRC requested compensation from the bank and in fact told the bank that it would only report the incident to the police if the petitioner were not granted compensation. In addition, the State party argues that through such an action the petitioner could have established whether she had been exposed to discrimination at the same time as receiving redress. If the petitioner had been able to prove on the balance of probabilities that she had been exposed to discrimination on the basis of race etc. it would be up to the defendant to substantiate, under the general rules of Danish law, on the burden of proof and standard of evidence, that the discrimination was not unlawful.

4.5 Furthermore, the State party claims that the petitioner could have instituted an action against the bank under the rules of the Danish Marketing Practices Act, as a private business may not perform acts contrary to "good marketing practices". In this case, the petitioner could have argued that the bank acted in contravention of the Act against Discrimination in its treatment of her loan application and that the bank had thus also acted in contravention of "good marketing practices". In this regard, the State party points to statements made by the Consumer Ombudsman who stated in a letter to the DRC that if discrimination contrary to the Act against Discrimination or the ICERD occurred, such discrimination might at the same time be a violation of section 1 of the Marketing Practices Act. If a violation of this act is found it may give rise to a liability in damages.

4.6 On the merits, the State party contests that the investigations carried out by the State party were inadequate. In its view, they were carried out with due diligence and expedition and were sufficient to determine whether or not an act of racial discrimination had taken place.^{5/} According to the State party, as part of its investigation, the police examined all the documentation attached to the report lodged on the petitioners behalf, the correspondence between the DRC and the bank, and interviewed the employee of the bank who had spoken to the petitioner. During this interview, they were informed of the bank's views on the specific case and provided with information on the loan policy of the bank generally, including the use of nationality as a criterion.

4.7 In response to the petitioner's claim that certain issues (outlined in paragraph 3.5) were not raised by the investigation authorities, the State party responds as follows. On the issue of whether the authorities should have requested information on the extent to which other applicants were requested for a copy of their Danish passport, and the extent to which the bank had granted loans to foreigners and Danish nationals abroad, the State party is of the view that it was not the task of the police to investigate the policy of the bank generally as it relates to the request for passports or the granting of loans to foreigners, but rather whether the bank violated the Act against Discrimination with respect to the petitioner's loan application.

4.8 On the issue why the police did not investigate the grounds upon which the petitioner was informed that she could not apply for a loan, the State party notes that both the police and the Public Prosecutor found that the petitioner had been offered a loan and that, in addition, the Public Prosecutor emphasised that the information concerned was given by telephone/orally, where it may be difficult in connection with criminal proceedings to prove what was in fact said - including whether what was said was taken out of context. He also found that he could not preclude the possibility that the information on nationality was provided as a piece of information among other elements in credit assessment and not an expression of a condition. According to the State party, this position is clearly

supported by the police interview of the bank's employee.

4.9 On the question as to whether the authorities should have investigated whether indirect and unintentional discrimination had taken place the State party argues that the Act against Discrimination only covers intentional violations and does not distinguish between direct and indirect discrimination.

4.10 The State party submits that not only does the Government find that the police conducted a serious and thorough investigation but that the Public Prosecutor correctly assessed the case. The State party explains that Article 1 of the Act against Discrimination comprises cases where a person "refuses to serve" another person on the same conditions as others due to race etc. The State party notes that the petitioner believed that her chances of obtaining a loan were slim and that therefore she did not forward the application to the bank. However, it appears from the investigations that the petitioner received no definitive answer on whether her non-Danish nationality would be used against her in its credit assessment. The petitioner's only direct contact with the bank took place on 28 June 2000, which was an introductory inquiry ending in a request to forward a loan application. The State party argues that as the petitioner did not actually forward her loan application to the bank it was never in a position to refuse the application and therefore did not refuse to serve her on the same conditions as others.

Comments by the petitioner

5.1 On the State party's reference to the *Habassi v. Denmark* 6/ communication, the petitioner contests that the facts of this case differ substantially. In the opinion of the petitioner, the objective of the complaint was not, as the State party claims, to seek compensation. In her opinion, it is clear from the complaint sent to the police from the DRC which states that it believes that the bank had violated the Act against Discrimination.

5.2 On the issue of the possibility of taking an action under the Marketing Practices Act, the petitioner asserts that the DRC also requested the police to investigate under this act. Subsequently, in a letter from the Ombudsman to the DRC it was stated that the inclusion of the question of citizenship with regard to credit assessment violates the rules of the Marketing Practises Act (7). Therefore, in the petitioner's view domestic remedies have been exhausted in this case.

Issues and proceedings before the Committee

6.1 Before considering any claims contained in a communication, the Committee on the Elimination of Racial Discrimination must, in accordance with rule 91 of its rules of procedure, decide whether or not it is admissible under the Convention.

6.2 The Committee notes that the petitioner received a loan application form from Sparekassen Vestsjælland [Vestsjælland Savings Bank], containing the clause against which she objects, but that she was subsequently orally informed that the bank's assistant director would try to find a solution, since she was going to be employed by Novo Nordisk (paras. 2.3 and 2.4). However, the petitioner did not send in the application form, believing that she had only a slight chance of obtaining the loan. Considering the petitioner's lack of perseverance and notwithstanding the eventual deficiencies in the

bank's form, the act of refusal by the bank which, according to the petitioner, would have been contrary to the provisions of the International Convention on the Elimination of All Forms of Racial Discrimination, was not accomplished. In the absence of the establishment of the existence of the facts giving rise to the complaint, the Committee concludes that the communication is inadmissible.

6.3 The Committee on the Elimination of Racial Discrimination therefore decides:

- (a) That the communication is inadmissible;
- (b) That this decision shall be transmitted to the State party and to the petitioner

* The following members of the Committee participated in the examination of the present communication: Mr. Mahmoud Aboul-Nasr, Mr. Nourredine Amir, Mr. Marc Bossuyt, Mr. Ion Diaconu, Mr. Mohamed Aly Thiam, Mr. Régis de Gouttes, Mr. Kurt Herndl, Ms. Patricia Nozipho January-Bardill, Mr. José Augusto Lindgren Alves, Mr. Raghavan Vasudevan Pillai, Mr. Yuri A. Rechetov, Mr. Agha Shahi, Mr. Linos Alexander Sicilianos, Mr. Patrick Thornberry, Mr. Luis Valencia Rodriguez, Mr. Tang Chengyuan, Mr. Mario Jorge Yutzis.

Notes

1/ The Documentation and Advisory Centre on Racial Discrimination is an independent institution working with racial discrimination under relevant rules of international law. The Documentation and Advisory Centre on Racial Discrimination carries out fact finding in reported cases of racial discrimination and gives advice, guidance and legal assistance to persons who claim to be victims of racial discrimination or have witnessed racial discrimination.

2/ This amounts to around 1,990.34 CHF.

3/ Case No. 4/1991, Views adopted on 16 March 1993.

4/ Case No. 10/1997, Views adopted on 17 March 1999.

5/ The State party refers to the Committee's jurisprudence on this issue: Case No. 1/84, *A. Yilmaz v. the Netherlands*, Views adopted on 10 August 1988, Case No. 4/1991, *L.K. v. the Netherlands*, Views adopted on 16 March 1993, Case No. 10/1997, *Habassi v. Denmark*, Views adopted on 17 March 1999, and Case No. 16/1999, *Ahmad v. Denmark*, Views adopted on 13 March 2000.

6/ *Supra*.

7/ The petitioner makes no reference to the question of compensation in this regard.