

## COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION

### Kamal Quereshi v. Denmark

Communication No. 27/2002

19 August 2003

CERD/C/63/D/27/2002\*

### VIEWS

Submitted by : Kamal Quereshi (represented by counsel, Eddie Khawaja, of the Documentation and Advisory Centre on Racial Discrimination))

Alleged victim: The petitioner

State Party: Denmark

Date of the communication: 23 October 2002

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 19 August 2003,

Adopts the following:

### Opinion

1. The petitioner is Kamal Quereshi, a Danish national born 29 July 1970 and a member of the Danish Parliament for the Socialist Peoples Party. He claims to be a victim of a violation by Denmark of articles 2, subparagraph 1(d), 4 and 6 of the Convention. He is represented by counsel.

#### The facts as presented

2.1 On 26 April 2001, Pia Andersen, a member of the Executive Board of the Progressive Party, faxed a party press release to media, with the headline "No to more Mohammedan rapes!". It included the

following statements:

"Cultural enrichments taking place in the shape of negative expressions and rapes against us Danish women, to which we are exposed every day Now it's too much, we will not accept more violations from our foreign citizens, can the Mohammedans not show some respect for us Danish women, and behave like the guests they are in our country, then the politicians in the parliament have to change course and expel all of them."

2.2 On 15 May 2001, Ms Andersen faxed another press release, in relation to neighbourhood disturbances in Odense, which included the following:

"Engage the military against the Mohammedan terror! Dear fellow citizen, it is that war-like culture these foreigners enrich our country with Disrespect for this country's laws, mass-rapes, violence, abuse of Danish women by shouting things like 'horse', 'Danish pigs' etc.. And now this civil war-like situation."

2.3 For these two actions, the Odense police charged Ms Andersen with a violation of section 266(b) of the Danish Criminal Code ("section 266(b)"). 1/ She was later convicted (see paragraph 2.8). On 5 September 2001, the Progressive Party placed a newspaper invitation to a lecture by the former party leader, Mogens Glistrup, which read that: "The Bible of the Muhamedans requires: The infidel shall be killed and slaughtered, until all infidelity has been removed."

2.4 From 20 to 22 October 2001, the Progressive Party held its annual meeting. This meeting, of a party running for Parliament, was required by law to be broadcast on public television. A number of speakers presented the following views:

Margit Guul (member of the party): "I'm glad to be a racist. We shall free Denmark of Mohammedans", "the black breed like rats", "they shall have a hand cut off if they steal"

Bo Warming (member of the party): "The only difference between Mohammedans and rats is that the rats do not receive social benefits"

Mogens Glistrup (former party leader): "Mohammedans are going to exterminate the populations in those countries they have forced themselves into"

Peter Rindal (member of the party): "Regarding Muslim graveyards, that is a brilliant idea, and preferably of such size that they all fit in them, and preferably at once"

Erik Hammer Sørensen (member of the party): "5th columnists are walking around among us. The ones we have received commit violence, murder and rape"

Vagn Andersen (member of the party): "The State has given these foreigners/strangers jobs. They work in our slaughterhouses, where they without problems can poison our food, and endanger our

agricultural export. Another form of terrorism is to break into our water supply facilities and poison the water"

2.5 After witnessing this meeting, the petitioner requested the Documentation and Advisory Centre on Racial Discrimination ("DRC ") to file a criminal complaint against the Progressive Party for a violation of section 266(b). The DRC filed a complaint with the Chief Constable of the Thisted police, the city of residence of the Progressive Party leader. On 31 October 2001, the complaint was rejected on the basis that section 266(b) did not apply to legal persons such as a political party. On 3 December 2001, the Aalborg Regional Public Prosecutor upheld this decision.

2.6 Thereupon, the petitioner requested the DRC to file a criminal complaint against each member of the executive board of the Progressive Party, for violation of sections 23 and 266(b) of the Criminal Code. On 11 December 2001, the DRC complained that Ms Andersen, as a member of the party's executive board, had participated in a violation of section 266(b), as a result of the press releases, newspaper invitation and comments of the annual meeting all described above. The DRC considered it relevant that the Progressive Party had allegedly set up courses allegedly teaching members how to avoid violations of section 266(b), by avoiding the use of certain phrases.

2.7 On 7 January 2002, the Chief Constable of the Odense police rejected the petitioner's complaint, considering that there was no reasonable evidence to support the allegation that an unlawful act had been committed. 2 The Chief Constable considered that membership of a political party's executive does not of itself create a basis for criminal participation in relation to possible criminal statements made during the party's annual meeting by other persons.

2.8 On 22 January 2002, the DRC referred the decision to the Funen Regional Public Prosecutor, challenging the Chief Constable's rejection of the complaint on the basis stated. It contended that Ms Andersen herself was directly involved in the dispatch of the press releases, in respect of which the Odense police had charged her with violations of section 266(b), and that it would therefore be difficult to argue that she had not directly or indirectly called upon other party members to say similar things. Therefore, according to the DRC, the police should at a minimum have conducted an investigation to clarify these matters. On 25 January 2002, the Odense District Court convicted Ms Andersen of offences against section 266(b) of the Criminal Code for the publication of the press releases.

2.9 On 11 March 2002, the Funen Regional Public Prosecutor rejected the complaint, finding that neither the petitioner nor the DRC had the required essential, direct, individual or legal interest to become parties in the case. While the police had taken the view that the petitioner, on account of the nature of the complaint, his ethnic background and membership of Parliament, had standing to pursue a complaint, the State Attorney considered that these elements did not support such a conclusion.

### The complaint

3.1 The petitioner argues that the decision of the Odense Chief Constable not to initiate an investigation constituted a violation of articles 2, subparagraph 1(d), 4 and 6 of the Convention. Referring to the

Committee's jurisprudence, he argues that States parties have a positive obligation to take serious, thorough and effective action against alleged cases of racial discrimination. The police decision that there was no information to suggest Ms Andersen incited other speakers at the annual meeting fell short of that standard, as the police did not question Ms Andersen or any other speaker. Thus, the police could not examine issues such as whether the speeches could be seen as part of an organized attempt systematically to spread racist views, whether Ms Andersen participated in the selection of the speakers, whether she had seen a transcript or knew of the content of the speeches, and whether she, as a member of the Executive Board, tried to prevent expressions of racist views.

3.2 The petitioner alleges that the decision of the Funen Regional Public Prosecutor that he had no standing violates article 6 of the Convention. He thus considers himself deprived of action in response to an act of racial discrimination to which he feels he was exposed. Even if the speeches were not directed against him, they subjected a group to which he feels connected to racial discrimination. Further, as section 266(b) is the only criminal provision concerning racial discrimination, it is essential to hold not only individuals but also political parties, as identified by members of their Executive Board, responsible for expression of racist views.

3.3 As to the exhaustion of domestic remedies, the petitioner contends that under the State party's law, the Regional Public Prosecutor's decision cannot be appealed, and thus there is no possibility that the police will initiate criminal proceedings. He argues that private legal action brought by him directly against Ms Andersen would not be effective, given that the police and Regional Public Prosecutor had rejected this complaint. In addition, the Eastern High Court, in a decision of 5 February 1999, has decided that racial discrimination does not, in itself, infringe a person's honour and reputation in terms of section 26 of the Act on Civil Liability.

3.4 The petitioner observes that the same matter has not been submitted to another international procedure of investigation or settlement.

#### The State party's submissions on the admissibility and merits of the petition

4.1 By submissions of 29 January 2003, the State party disputed both the admissibility, in part, and the merits of the petition.

4.2 The State party understands the petitioner's observation on the impossibility of applying section 266(b) to legal persons as raising a separate claim, which should be declared inadmissible for failure to present the petition to the Committee within the required six months time limit. The Aalborg Regional Public Prosecutor's decision finally to reject the complaint against the Progressive Party was taken on 3 December 2001, over six months prior to the submission of the petition, and this claim should therefore be declared inadmissible. The State party notes however that due to an amendment to the criminal code, legal persons may be held liable for offences against section 266(b) since 8 June 2002.

4.3 On the merits of the claims concerning the handling of the complaint against Ms Andersen by the Odense Chief Constable and in turn the Funen Regional Public Prosecutor, the State party argues that these

processes fully satisfy the requirements that can be inferred from the Convention, and as interpreted in the Committee's practice. This is so even though the petitioner did not achieve the result he wanted, that is the initiation of criminal proceedings, for the Convention does not guarantee a specific outcome, but rather sets down certain requirements for the handling of such complaints, which were met in this case.

4.4 As to the decision of the Odense Chief Constable police rejecting the complaint against Ms Andersen, the State party noted that, on the basis of the DRC's detailed report to him, he had a broad basis for deciding whether there was reason for initiating a full investigation. The State party emphasises that the Chief Constable's task was not to assess whether the statements made at the annual meeting involved a violation of section 266(b), but whether it could reasonably be presumed that Ms Andersen, as a member of the party's executive board, could be punished for participation in a violation of section 266(b) on the grounds, inter alia, of statements made by third parties.

4.5 While at the time a criminal report had been lodged against the speakers at the conference and criminal proceedings had been separately initiated by the petitioner against Ms Andersen concerning the two press releases, the petitioner's complaint contained no information that Ms Andersen had encouraged others to make criminal statements or had otherwise participated in them; rather, it simply made a general allegation that as a member of the executive board, she was criminally liable for participation, and it was in respect of this charge that the decision was made. It would have been open to the author to bring charges against the individuals who had personally engaged in the conduct in question. Accordingly, the State party finds no basis for criticizing the Chief Constable's decision concerning Ms Andersen, and the dismissal of a report found to be without basis is consistent with the Convention.

4.6 Concerning the specific issues that the petitioner contends the Chief Constable should have investigated, the State party points out, on the argument that the police should have investigated whether the rostrum statements amounted to propaganda activities, that propaganda activity is considered an aggravating circumstance at the sentencing stage (see section 266(b)(2)). It is not a constitutive element of the offence charged, and as it had been determined that there were not reasonable grounds to suspect Ms Andersen had committed an offence against section 266(b), there was no need to further investigate this aspect.

4.7 As to the further issues that the petitioner claims should have been investigated, the State party recalls that the Chief Constable dismissed the case on the ground that membership of a party's executive committee does not per se involve criminal participation in statements made by others at a party conference. As the information given to the police supplied no basis for initiating an investigation, there was no concrete reason for presuming Ms Andersen was liable for criminal participation in, or encouragement of, statements made by third parties. There was no reason to investigate the further matters raised.

4.8 As to the argument of a violation of the right to an effective remedy protected by article 6, because of the refusal of the Funen Regional Public Prosecutor to consider the petitioner's case, the State party observes that the Regional Public Prosecutor found that the DRC had no material legal interest that would entitle it to appeal, and that it could not be assumed that the author had such interest. She further stated that a review of the case did not otherwise give rise to any comments, and, thus, she also considered the case

on the merits. As the authority superior to the Chief Constable, the Regional Public Prosecutor may *proprio motu* assess the correctness of a decision on the merits even when formal entitlements to appeal are not satisfied. Indeed, on the basis of the special nature of the violation, and given that section 266(b) of the Criminal Code relates to public statements, there may well be special reason to consider the merits of a case involving a violation of section 266(b) despite the fact that an applicant cannot be considered party to the particular proceedings. This is what transpired in the present case. As the Regional Public Prosecutor assessed the merits of the case, the State party argues it has ensured effective protection and remedies to the petitioner, consistent with article 6 of the Convention.

4.9 The State party points out that it satisfied its obligations under article 6, in addition, by the Chief Constable's determination on whether or not an investigation should be initiated, and by providing for recourse to the independent Parliamentary Ombudsman if it was thought that the decisions of the Chief Constable or the Regional Public Prosecutor were invalid, insufficiently reasoned or contrary to the law. In addition, under section 63 of the Constitution, decisions of administrative authorities, including the Chief Constable and the Regional Public Prosecutor, may be challenged judicially before the courts on the same grounds. While this possibility exists, the State party cannot refer to an instance where this has been resorted to.

4.10 In conclusion, the State party considers that it is not possible to infer an obligation under the Convention to carry out an investigation in situations that provide no basis for it. The Administration of Justice Act provides for the appropriate remedies in accordance with the Convention, and the competent authorities fully discharged their obligations in the specific case.

#### The petitioner's comments

5.1 By letter of 10 March 2003, the petitioner responded to the State party's comments, clarifying that he did not contend the State party was in breach of article 6 by not providing for corporate liability under section 266(b). Given this situation, however, it was of great importance that there be an effective investigation as to whether members of the executive board of a legal entity could be held responsible for the conduct in question.

5.2 On the merits, the petitioner contends that there is a breach of article 6 due to an inability to appeal decisions of the Regional Public Prosecutor. He refers to a previous decision of the Committee to the effect that the possibility to appeal to the Parliamentary Ombudsman did not amount to an effective remedy, for purposes of article 6. <sup>3/</sup> The Ombudsman has full discretion as to whether to pursue a case, and the State party does not refer to a single occasion where the Ombudsman has investigated a Regional Public Prosecutor's refusal to initiate an investigation. In addition, the State party's own inability to invoke a case where judicial review under the Constitution was invoked in such a case suggests this recourse is ineffective.

5.3 As to the Regional Public Prosecutor's review of the Chief Constable's decision, the petitioner argues that both the conduct and outcome of the appeal violated article 6. Firstly, non-mandatory review of the merits of the decision is said itself to breach article 6 of the Convention, as it does not involve a mandatory

examination of the case. Even if there was a merits review by the Regional Public Prosecutor, the petitioner considers it unclear why the case did not give rise to any comments, and the actual ground for dismissal of the appeal was the lack of standing. Thus, the rejection of the appeal also breached article 6.

5.4 The petitioner agrees that article 6 does not guarantee a specific outcome of a given case. However, his case relates not to the outcome of the investigation, but to the investigation itself. He disagrees that the Chief Constable's decision not to initiate an investigation was "acceptable", as it was based on the DRC's detailed report. In his view, the Chief Constable did not ascertain important issues; in particular, the fact that Ms Andersen had already been indicted for disseminating racist views made an investigation into possibly organized and systematic conduct on the part of the executive board members important.

5.5 The petitioner rejects that the DRC's report contained only a "general allegation" against Ms Andersen, as it specifically detailed an alleged criminal offence. An effective investigation would have required at least questioning the alleged perpetrator before deciding whether or not to prosecute. In addition, if membership of the executive board did not itself imply complicity in criminal conduct of the party or its members, and no complaint could be directed against the party itself, there was all the more reason individually to assess the extent, if any, of Ms Andersen's role in the alleged acts of racial discrimination.

5.6 The petitioner observes that criminal complaints were indeed brought against the individuals personally responsible for the conduct in question, as suggested by the State party, but contends that this does not affect the issue of Ms Andersen's alleged participation therein, or the effectiveness of the investigation in respect of the charges against her. He thus considers that the State party has failed to show that the decision not to conduct an investigation, the Regional Public Prosecutor's rejection on formal grounds of the appeal against the Chief Constable's decision, and the inability to appeal the Regional Public Prosecutor's decision, were consistent with articles 4 and 6 of the Convention.

## Issues and proceedings before the Committee

### *Consideration of admissibility*

6.1 Before considering any claims contained in a petition, 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 disclaims any contention that the inability, at the material time, to file a criminal complaint of racial discrimination was in violation of the Convention. Thus, the Committee need not decide whether such a claim would be inadmissible with reference to the six months rule applicable to the timeframe within which a petition may be brought. In the absence of any further objections to the admissibility of the petition, the Committee declares it admissible and proceeds to its examination of the merits.

### *Consideration of the merits*

7.1 Acting under article 14, paragraph 7 (a), of the International Convention on the Elimination of All Forms of Racial Discrimination, the Committee has considered the information submitted by the petitioner and the State party.

7.2 The Committee notes that the present case involves two different sets of acts by different actors: on the one hand, Ms Andersen herself transmitted press releases by facsimile, in respect of which she was subsequently convicted. On the other hand, speakers at the party conference (of which Ms Andersen was not one) made the series of racist statements, contrary to article 4, paragraph b, of the Convention, described in paragraph 2.4, concerning which criminal complaints were lodged (see paragraph 5.6).

7.3 Against this background, the Committee considers that given the complaint against Ms Andersen in connection with the party conference was not accompanied by any evidence suggesting that she was an accomplice soliciting, directing or otherwise procuring the speakers at the party meeting to engage in the impugned conduct, it is reasonable to conclude, as did the State party's authorities, that the complaint did not make out a case that Ms Andersen, as opposed to the speakers themselves, had engaged in any act of racial discrimination; indeed, as a matter of criminal law, liability of a member of a party's executive board could not attach, without additional evidence, in respect of statements made by third parties.

7.4 In the Committee's view, this case may accordingly be distinguished from previous cases where, on the facts, the Committee has on occasion considered that an investigation into the alleged acts of racial discrimination that had taken place was insufficient for the purposes of article 6. 4/ In each of those cases, in fact, the investigation was in respect of the individual(s) directly committing the alleged act of racial discrimination, rather than a third party, with the result that no person was held criminally responsible for the acts in question; in the present case, on the other hand, criminal complaints were lodged against those directly responsible. It cannot therefore be considered that there was no effective action taken in response to the acts in question.

7.5 As to the review of the decisions not to prosecute in the present case, the Committee refers to its jurisprudence that "the terms of article 6 do not impose upon States parties the duty to institute a mechanism of sequential remedies" in cases of alleged racial discrimination. 5/ Accordingly, even if article 6 might be interpreted to require the possibility of judicial review of a decision not to bring a criminal prosecution in a particular case alleging racial discrimination, the Committee refers to the State party's statement that it is open, under national law, judicially to challenge a prosecutor's decision.

8. The Committee on the Elimination of Racial Discrimination, acting under article 14, paragraph 7, of the Convention, is of the opinion that the facts before it do not disclose a violation of the Convention in as much as the State party's action with respect to Ms. Anderson is concerned.

9. In the light of the State party's obligation under article 4, paragraph (b), of the Convention, however, the Committee would wish to remain apprised as to the results of the criminal complaints lodged against the speakers at the party political conference in view of the racist nature of their remarks, contrary to article 4, paragraph b, of the Convention. The Committee draws the attention of the State party to the need to balance freedom of expression with the requirements of the Convention to prevent and eliminate all acts



of racial discrimination, particularly in the context of statements made by members of political parties.

[Done in English, French and Spanish, the English text being the original version. Subsequently to be issued in Arabic, Chinese and Russian as part of the Committee's annual report to the General Assembly.]

\* Made public by decision of the Committee on the Elimination of Racial Discrimination.

Notes:

1/ Section **266(b)** of the Criminal Code provides as follows:

(1) Any person who, publicly or with the intention of wider dissemination, makes a statement or imparts other information by which a group of people are threatened, insulted or degraded on account of their race, colour, national or ethnic origin, religion, or sexual inclination shall be liable to a fine or to imprisonment for any term not exceeding two years.

(2) When the sentence is meted out, the fact that the offence is in the nature of propaganda activities shall be considered an aggravating circumstance.

2/ The relevant sections of the *Administration of Justice Act* regulating the investigation of criminal complaints provide as follows:

742(2): The police shall institute investigations upon a [criminal] report lodged or on its own initiative, when it may reasonably be presumed that a criminal offence subject to prosecution has been committed.

743: The purpose of the investigation is to clarify whether the conditions for imposing criminal liability or other legal consequences under criminal law are fulfilled, and to provide information for use in the determination of the case and prepare the conduct of the case before the court.

749(1): The police shall dismiss a report lodged if it deems that there is no basis for initiating investigation.

3/ Habassi v Denmark Case No 10/1997, Opinion adopted on 17 March 1999.

4/ See, for example, Ahmad v Denmark Case No 16/1999, Opinion adopted on 13 March 2000, and Habassi, op.cit.

5/ Dogan v The Netherlands, Case No 1/1984, Opinion adopted on 10 August 1988, at 9.4 (finding no violation of article 6).

