COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION

C.P. and M.P. v. Denmark

Communication No. 5/1994*

15 March 1995

CERD/C/46/D/5/1994

ADMISSIBILITY

Submitted by: C.P.

Alleged victims: The author and his son, M.P.

State party concerned: Denmark

Date of communication: 13 January 1994 (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 15 March 1995,

Adopts the following:

Decision on admissibility

1. The author of the communication is C.P., an American citizen of African origin living in Roskilde, Denmark. He submits the communication on his behalf and on behalf of his son, and contends that they have been the victims of racial discrimination by the municipal and police authorities of Roskilde and the Danish judicial system. He does not invoke specific provisions of the International Convention on the Elimination of All Forms of Racial Discrimination.

The facts as submitted by the author:

2.1 The author is an African American, who has been residing in Denmark since 1963; he married a Danish citizen in 1963, who later left him and from whom he is now divorced. From 1964 to 1972, he worked for a chemicals company in Roskilde; from 1972 to an

unspecified date, he worked for Kodak Inc., as shop steward in a warehouse. In September 1990, he was elected shop steward at the Roskilde Technical School. He contends that starting in October 1990, students of the school began to display signs of racism towards him; the school authorities allegedly did not intervene. Mr. P. claims that a number of students, with the blessing of their teacher, carved a racially offensive inscription and cartoon into a red brick. The inscription ran approximately as follows: "A coal black man hanging from a gallows, with large red lips". Under this was inscribed the word "nigger". This brick and other, similar ones, allegedly were openly displayed in the author's working area. Again, the school authorities failed to intervene and allowed the display to continue.

2.2 On 19 November 1990, the author participated in a meeting of the School Staff Council; at the meeting, he showed two of the bricks and asked the school's support in fighting or suppressing this form of racism. To his surprise, the director of the school criticized him for raising the issue; no measures were taken to identify the students responsible for the "display". The author adds that after the meeting, the school director, head teacher and technical manager refused to talk to him.

2.3 In January 1991, the author was informed that he was to leave immediately, with ten minutes' notice only, the area where he had been working since being hired by the school. He attributes this to the hostile and discriminatory attitude of the school superintendent and others towards him. Still in January 1991, the author was asked to carry out certain tasks in the school cafeteria, during student breaks. Here, he allegedly was again confronted with the racist remarks and slogans of the students directed towards him; when he asked the school director to be removed from the area, the latter refused. In May 1991, after what the author refers to as "months of racial harassment", the school director and technical manager dismissed him.

2.4 As to the events concerning his son, the author submits the following: on 20 July 1991, the author's son M., then 15 years old, was stopped on his bicycle at a traffic light by a group of four young men aged 17 and 18, who severely beat him, using, inter alia, beer bottles. M. sustained a number of injuries (nose, front, cheeks and jaw), which have since necessitated numerous plastic surgery interventions; the last such intervention was in 1994. According to the author, all four men had previously made racist slurs and remarks to his son and that, in 1988, they had tried to drown him in a lake in a public park. This previous incident had been reported to the police which did not, according to the author, investigate it but dismissed it as a "boyish joke".

2.5 The author immediately reported the incident of 20 July 1991 to the police. He complains that the police requested to see his residence permit and a copy of his rental agreement instead of swiftly investigating the matter; according to him, the police was reluctant to investigate the incident expeditiously and thoroughly, which allegedly had to do with his colour. Two of his son's assailants were briefly kept in police custody for interrogation; another was remanded in custody for another week.

2.6 The author claims that the court proceedings against his son's aggressors were biased, and that the defendants were allowed to "distort" the evidence in the case. Eventually, one

received a suspended prison sentence of 60 days, whereas two others were sentenced to pay ten daily fines of 50 and 100 Danish Kronors (DKK), respectively. According to the author, the outcome of the case was at odds with the medical evidence presented and the doctor's testimony in court. Mr. P. complains about an alleged "judicial cover-up" of the case, noting that the mother of one of the defendants works for the Roskilde District Court. The author's attempts to have the case removed from the docket of the Roskilde District Court and moved to another venue in Copenhagen were unsuccessful. In his initial submission, the author does not state whether he appealed the sentence against his son's aggressors pronounced by the District Court.

2.7 Concerning his dismissal from the Roskilde Technical School, the author notes that he filed a complaint for "racial harassment and unlawful dismissal". This complaint was heard on 8 and 9 April 1992, eleven months after the dismissal; it appears that, initially, the case was to be heard in January 1992. The author asserts that the school director and the technical manager "conspired" to distort and blur all the evidence. The judge dismissed the author's complaint, in a reasoned judgment of 29 pages, adding that Mr. P. was not entitled to monetary compensation but to have his court and legal fees waived. According to the author, the judge refused to grant leave to a higher tribunal. On 10 June 1992, therefore, the author wrote to the Attorney-General, who advised him to submit the case to the Civil Rights Department. By letter dated 3 February 1993, the Department replied that the deadline for filing an appeal had expired. The author suspects that, since he had told his legal representative that he wanted to appeal, all the parties involved are "conspiring that he [should] not bring a racism case against ... the Danish Government".

2.8 Finally, the author refers to a malpractice suit which he filed against his lawyer. It transpires from his submissions that a panel of lawyers and judges, which included a judge of the Danish Supreme Court, has also dismissed this complaint.

The complaint:

3.1 The author complains that he and his son have been victims of racial discrimination on the part of the Roskilde police and judicial authorities, and concludes that the judicial system and legal profession have shown much solidarity in covering up and dismissing his own and his son's case. He contends that there is no domestic law which would protect non-citizens and non-whites from racial harassment and unlawful dismissal in Denmark.

3.2 The author seeks: (a) a ruling under whose terms he is given a new hearing in his suit for unlawful dismissal against the Roskilde Technical School; (b) the Committee's recommendation that the aggressors of his son be re-indicted and prosecuted/tried once again for the offence of 20 July 1991; and (c) a condemnation of the attitude of the police and judicial authorities involved in the case.

The State party's information and observations and the author's comments:

4.1 In its submission under rule 92 of the Committee's rules of procedure, the State party divides the complaint into the suit for unlawful dismissal filed by Mr. P. and the criminal

proceedings against the presumed aggressors of his son.

4.2 As to the first issue, the State party observes that, in April 1992, the Roskilde Court heard the complaint filed by the author on 19 November 1991 with a request that he be awarded 100,000 DKK for unlawful dismissal, and that it delivered its judgment on 5 May 1992. It notes that the author's claim, based on Section 26 of the Liability for Damages Act, was founded partly on the argument that the Technical School had not taken any measures in connection with the appearance of the bricks with typically racist motives, partly on the claim that the school had remained passive vis-à-vis the author's request to discuss the matter in the Cooperation Committee, partly on the claim that the school had reacted to the author's grievances by transferring him to a post including work as a canteen watchman, and that the school had later dismissed him without any valid reason.

4.3 The State party notes that the Court, in its judgment, found that the author had not submitted the matter involving the display of the bricks to the school authorities until several weeks after Mr. P. had first seen the bricks. This delay, the Court held, contributed significantly to impeding the investigations into who was responsible for the display. On that ground, it concluded that the mere fact that investigations were slack was not in itself sufficient to hold the school liable for damages.

4.4 The Court, in its judgment, characterized as "very unfortunate" the failure of the school to take up Mr. P.'s complaints for detailed discussion of the incident in the Cooperation Committee when asked to do so, but found that this alone did not give rise to liability for damages. The Court further held that, at the time of Mr. P.'s transfer to another post, his dismissal would have been justified for financial reasons. The Court argued that the school could not be blamed for having tried to keep Mr. P. at work through transfer to another job which, in the judges' opinion, was not "obviously degrading", as claimed by the author.

4.5 The Court further observed that the fact that it did not become known until the examination of witnesses during the court hearing that the principal of the school had indeed had one of the bricks in his possession and had shown them to some of his assistants could not - however unfortunate this might appear - be deemed an unlawful act giving rise to the liability of the school.

4.6 With regard to the issue of exhaustion of domestic remedies by Mr. P., the State party gives the following information:

Pursuant to Section 368 of the Administration of Justice Act, the author could appeal the judgment of the Roskilde Court to the Eastern Division of the Danish High Court.

Under Section 372(1), the time allowed for appeal is four weeks from the day the judgment is given. Sections 372(2) and 399(2) regulate some exceptions to this rule and allow for appeals even after the expiration of this period.

4.7 By letter of 25 May 1992 addressed to the Ministry of Justice, the author outlined the circumstances which led to the proceedings before the Roskilde Court and its judgment in

the case. No information was given in this letter as to when judgment had been given, nor were details given about the nature of the legal action. On 9 June 1992, the Ministry of Justice informed the author that it could not intervene in, or change, decisions handed down by courts of law. In this letter, the Ministry advised the author that he could appeal the judgment to the Eastern Division of the High Court and informed him about the statutory deadlines for the filing of such an appeal.

4.8 On 10 June 1992, the author petitioned the Department of Private Law in the Ministry of Justice for permission to appeal after the expiration of the period allowed for appeal (Section 372(2) of the Administration of Justice Act). The Department then obtained the documents in the case as well as a statement from the author's lawyer, P.H. In a letter dated 18 September 1992, P.H. stated that he had sent a copy of the judgment of 5 May to the author on 6 May 1992, advising him that, in his opinion, there was not ground for appeal. As the lawyer did not hear from Mr. P., he wrote to him again on 19 May, requesting him to contact him telephonically. According to the lawyer, Mr. P. did not contact him until after the expiration of the appeal deadline, informing him that he indeed did want to appeal the judgment; in this connection, the author told P.H. that he had not reacted earlier because he had been in the United States. The lawyer then explained the operation of Section 372 of the Administration of Justice Act to him.

4.9 After completing its review of the case, the Department of Private Law refused, by letter dated 3 February 1993, to grant permission to appeal the judgment of the Court of Roskilde to the Eastern Division of the Danish High Court. Against this background, the State party contends that the author's complaint must be declared inadmissible on the ground of non-exhaustion of domestic remedies. It is due to the author's own actions and/or negligence that the judgment of 5 May 1992 was not appealed in time.

4.10 In this context, the State party notes that Mr. P. contacted the Department of Private Law once again on the same matter on 7 January 1994. His letter was interpreted by the Department as a request for reconsideration of the issue. By letter of 16 March 1994, the Department maintained its decision of 3 February 1993. By letter of 7 June 1994 addressed to the Department of Private Law rather than to the Supreme Court of Denmark, the author applied for legal aid for the purpose of filing an application with the Supreme Court, so as to obtain permission for an extraordinary appeal under Section 399 of the Administration of Justice Act. On 9 August 1994, the Department informed him that an application to this effect had to be examined at first instance by the County of Roskilde, where his application had thus been forwarded to.

4.11 With regard to the events of 20 July 1991 involving the author's son, the State party refers to the transcript of the hearing before the Court of Roskilde, which shows that the incident opposing M.P. to three young residents of Roskilde was thoroughly examined, and evidence properly evaluated, by the Court. It notes that during the proceedings, medical certificates were obtained concerning the injuries sustained by M.P. On 25 November 1991, the Chief Constable of Roskilde filed charges against the three offenders, M.M.H., A.A.O. and J.V.B. The case was heard before the Roskilde Court with the assistance of a substitute judge of the City Court of Copenhagen, as one of the accused was the son of a clerk

employed by the Roskilde Court. Additionally, there were two lay judges, as the case involved an offence punishable by the loss of liberty (Section 686(2) of the Administration of Justice Act).

4.12 On 27 January 1992, the Court of Roskilde handed down its judgment in the case. The Chief Constable of Roskilde found the punishment imposed on M.M.H. (60 days' suspended prison sentence) too lenient. He therefore recommended to the public prosecutor for Zealand that the sentence against Mr. H. be appealed to the Eastern Division of the High Court, with a view to having an unconditional prison term imposed on Mr. H. The public prosecutor followed the advice and appealed, and the Eastern Division of the High Court, composed of three professional and three lay judges, heard the case on 3 June 1992. The Court concluded that given the violent nature of Mr. H.'s attack on M.P., an unconditional prison sentence of forty days should be imposed.

4.13 As regards Mr. P.'s allegations submitted to the Committee on behalf of his son, the State party argues that they are inadmissible, partly because they fall outside the scope of the Convention, partly because they are manifestly ill-founded. It notes that the communication does not give any details about the nature of the violations of the Convention in relation to the way in which the authorities and tribunals handled the criminal case against the three persons accused of violence against M.P.

4.14 The State party denies that, because of the race and colour of M.P., the courts gave the three offenders a lighter sentence than others would have received for similar use of violence. It points out that no importance whatsoever was attached, in the proceedings either before the Roskilde Court or those before the Eastern Division of the High Court, to this element. It is submitted that on the contrary, both the courts and the police of Roskilde took the case against the three individuals accused of aggressing M.P. very seriously: this appears both from the sentence imposed on Mr. H. and from the fact that he was remanded in custody after the incident, upon order of the Court of Roskilde of 21 July 1991.

4.15 The State party further recalls that the prosecution authorities felt that the sentence of the Court of Roskilde was too lenient with regard to one of the aggressors, which is why this sentence was appealed to the Eastern Division of the High Court, which increased the sentence from 60 days' imprisonment (suspended) to 40 days unconditional imprisonment. In this connection, it is noted that an unconditional sentence is exactly what the prosecution had called for initially.

4.16 Finally, as regards the question of damages to M.P., the State party notes that in the judgment of 27 January 1992 of the Roskilde Court, he was awarded DKK 3,270, which Mr. H. was required to pay. According to the decision of the Eastern Division of the High Court, of 3 June 1992, Mr. H. had paid this amount by that time. Damages awarded by this sentence covered only pain and suffering, while M.P.'s request that the offenders' liability to pay damages to him should be included in the sentence was referred to the civil courts. Pursuant to Section 993(2) of the Administration of Justice Act, claims for damages may be brought before the (civil) courts for decision. The State party ignores whether the author's son has in fact instituted (civil) proceedings in this matter.

5.1 In his comments, dated 25 January 1995, the author takes issue with most of the State party's arguments and reiterates that he was denied his civil rights, as were his son's. He again refers to the trial against the three individuals who had aggressed his son as "a farce", and complains that the lawyer assigned to represent his son never told the latter what to expect, or how to prepare himself for the hearing. Mr. P. complains that the judge was biased in allowing the accused to present their version of the incident one after the other without interference from the Court. He dismisses several passages in the judgment as "directly misleading" and complains that a professional judge was allowed to ask his son "subjective questions" and using his answers against him. He further asserts that by concluding that, on the basis of the testimonies heard by the court, it was impossible to say who exactly started the fight, the Court "protect[ed] racist attitudes of the whites" and used a "camouflage excuse to find the accused innocent".

5.2 The author further refers to what he perceives as a miscarriage of justice: what exactly the miscarriage consists in remains difficult to establish, but it would appear that the author objects in particular to the way the judge interrogated his son and allowed the testimony of the accused to stand. The author strongly objects to the decision of the prosecution not to appeal the sentences against two of the accused. The author sums up the Court's attitude as follows: "I ask how can a judge determine a fair decision without hearing all the evidence or even worse just listening to the criminals explaining unless he wanted to pass a lenient sentence. Which he did. Very unprofessional".

5.3 As to the proceedings concerning the allegedly racist and unlawful dismissal from employment at the Roskilde Technical School, the author reiterates his version of the events and submits that he has "exhausted every possible known means to be heard and appeal [his] case". He contends that the school was not justified in dismissing him out of financial considerations, as it had recently expanded its facilities and could have used the services of a shop steward. He alleges that before the Court, the director of the Technical School committed perjury.

5.4 The author emphatically asserts that the delays in appealing the decision of the Roskilde Court should not be attributed to him. He notes that he had trusted his lawyer to handle the issue of the appeal; contrary to the assertion of the State party and his former representative, he contends that he did contact his lawyer to confirm that he wanted to appeal "at all cost", even though his lawyer had advised him that the chances of succeeding on appeal were slim. He blames his lawyer for having acted evasively at around the time - i.e. during the first days of June 1992 - when the deadline for appealing the decision of the Court of Roskilde was approaching. Furthermore, the author once again, even if indirectly, accuses his representative of malpractice and suspects that the lawyer struck a deal with the judge not to have the venue of the case transferred to the Copenhagen High Court.

5.5 In conclusion, the author contends that the State party's submission is replete with "preposterous inconsistencies" and dismisses most of its observations as "misleading", "incorrect", "untrue" or "direct misleading". It is obvious that he contests the evaluation of evidence made by the Courts in both cases - his action against the Technical School and the criminal case against the aggressors of his son - and is convinced that the cases were

dismissed because of racist attitudes of all concerned vis-à-vis himself and his son. He complains that there is "no affirmative action against racism in Denmark today".

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, determine whether or not it is admissible under the International Convention on the Elimination of All Forms of Racial Discrimination.

6.2 The Committee has noted the arguments of the parties in respect of the issue of exhaustion of domestic remedies concerning Mr. P.'s claim of unlawful dismissal by the Technical School of Roskilde. It recalls that the Court of Roskilde heard the complaint on 19 November 1991 and delivered its reasoned judgment on 5 May 1992; said judgment was notified to the author by his lawyer on 6 May 1992. The author affirms that he did convey to his lawyer in time that he wanted to appeal this judgment, and he blames the lawyer for having acted negligently by failing to file the appeal within statutory deadlines. The Committee notes that the file before it reveals that the author's lawyer was privately retained. In the circumstances, this lawyer's inaction or negligence cannot be attributed to the State party. Although the State party's judicial authorities did provide the author with relevant information on how to file his appeal in a timely manner, it is questionable whether, given the fact that the author alleged to have been the victim of racial harassment, the authorities have really exhausted all means to ensure that the author could enjoy effectively his rights in accordance with article 6 of the Convention. However, since the author did not provide prima facie evidence that the judicial authorities were tainted by racially discriminatory considerations and since it was the author's own responsibility to pursue the domestic remedies, the Committee concludes that the requirements of article 14, paragraph 7(a), of the International Convention on the Elimination of All Forms of Racial Discrimination, are not met.

6.3 As to the part of the author's case relating to the criminal proceedings against the aggressors of his son, the Committee notes that the police took these aggressors into custody after the author had reported the incident of 20 July 1991, and that the Chief Constable of the Roskilde police subsequently requested that they be criminally prosecuted. It also observes that the fact that one of the accused was the son of a Court clerk was duly taken into account, in that the authorities nominated a substitute judge from another venue to sit on the case. Moreover, it must be noted that the Chief Constable of Roskilde recommended, after judgment in the case had been passed, that the sentence against one of the offenders be appealed, with a view to increasing the sentence against Mr. H.; the public prosecutor for Zealand complied with this request, and the Eastern Division of the High Court imposed a term of unconditional imprisonment on Mr. H. After a careful review of available documents in the case of the author's son, the Committee finds that these documents do not substantiate the author's claim that either the police investigation or the judicial proceedings before the Court of Roskilde or the Eastern Division of the High Court were tainted by racially discriminatory considerations. The Committee concludes that no prima facie case of violation of the Convention has been established in respect of this part of the

communication, and that, therefore, it is equally inadmissible.

7. 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 author.

[Done in English, French, Russian and Spanish, the English text being the original version.]

---

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