

# COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION

**D. S. V. Sweden**

**Communication No. 14/1998**

**10 August 2001**

**CERD/C/59/D/14/1998**

## **ADMISSIBILITY**

*Submitted by: D. S. (name deleted)*

*Alleged victim: The petitioner*

*State party concerned: Sweden*

*Date of communication: 24 December 1998*

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 10 August 2001,

Adopts the following:

### Decision on Admissibility

1. The petitioner (initial submission dated 24 December 1998) is D. S., a Swedish citizen of Czechoslovak origin, born in 1947, currently residing in Solna, Sweden. She claims to be a victim of violations by Sweden of articles 2, paragraph 2, 5 (e) (i) and 6 of the International Convention on the Elimination of All Forms of Racial Discrimination. The petitioner is not represented by counsel.

### **The facts as submitted by the petitioner:**

2.1 In May 1998, the National Council for Cultural Affairs (Statens kulturråd) advertised a vacancy for a post as a statistician within its organisation. In the vacancy announcement, the Council looked for applicants who, in co-operation with the different divisions of the Council, would work on the

production of statistics, investigate studies and method support and take part in developing statistical work. The National Council for Cultural Affairs required that applicants should preferably have a university degree in statistics supplemented by e.g. sociology or economics and experience of statistical research. Other requirements included ease of oral and written expression and knowledge of cultural life and policy in Sweden. The advertisement finally stated that it was desirable that applicants were service minded, good pedagogues and able to work both independently and in a team.

2.2 A total of 89 individuals applied for the vacancy, including the petitioner and L. J.. On 30 June 1998, the National Council for Cultural Affairs decided to appoint L.J. as an official (statistician) to the Council. The petitioner appealed the decision to the Government and claimed damages due to discrimination.

2.3 On 1 October 1998, the Government rejected the petitioner's appeal. The Government did not give reasons for the decision. The petitioner appealed against this decision as well. In December 1998, this appeal was dismissed, on the ground that the Government's decision of 1 October could not be appealed and that there was no other reason to re-examine the petitioner's appeal.

2.4 The petitioner also filed a complaint with the Ombudsman against Ethnic Discrimination who refused to take any action in her case, as he claimed that it had no merits. In addition, the petitioner's trade union refused to represent her for the same reason. The Ombudsman informed the petitioner of the possibility of making an application to the District Court if she did not agree with the opinion of the trade union and the Ombudsman. The petitioner claims that she has exhausted domestic remedies, as it would have been futile to seek redress in the District Court in light of the Ombudsman's refusal to take up her case because of lack of merit.

### **The complaint:**

3.1 The petitioner claims that she has been discriminated against by Sweden on the basis of her national origin and her status as an immigrant, in the refusal by the National Council for Cultural Affairs to offer her a job. In this context, she objects to the decision of the National Council for Cultural Affairs to offer the job in question to L. J., who she claims is less qualified than she for the post.

3.2 The petitioner complains generally about the small number of immigrants employed in Sweden and claims that this is due to discrimination against non-Swedes. She claims that the government has not adopted any measures to improve the situation for immigrants in the workforce in Sweden and states that it should take measures of affirmative action, such as establishing quotas for immigrants for high-level posts, so that immigrants with higher education may obtain the possibility to work.

### **State party's observations on admissibility and the petitioner's comments thereon:**

4.1 In its submission under rule 92 of the Committee's rules of procedure the State party challenges the admissibility of the communication.

4.2 The State party notes that the relevant sources of legal protection against ethnic discrimination in Sweden are the Instrument of Government, the Act of Public Employment and the Act against Ethnic Discrimination. The Instrument of Government lays down the basic principle that public power shall be exercised with respect for the equal worth of all (chapter one, section 2). Courts, public authorities and others performing functions within the public administration shall observe, in their work, the equality of all before the law and maintain objectivity and impartiality. When deciding on appointments within the State administration, only objective factors such as experience and competence shall be taken into account.

4.3 The Act of Public Employment reiterates the principles laid down in the Instrument of Government to the extent that when making appointments to administrative positions, the guiding factors shall be experience and competence. As a general rule, competence is valued higher than experience. Authorities must also consider objective factors that correspond to objectives of the overall labour market, equal opportunities and social and employment policies. Decisions concerning the filling of vacant posts are excluded from the normal requirement that administrative authorities must provide reasons for their decisions. The rationale for this exception is concern for the unsuccessful applicant(s), sparing him/her/them the negative evaluation such reasons might imply. Under section 35 of the Government Agencies and Institutions Ordinance, appeals against the authorities' decisions may be filed with the Government. An appeal against a decision by the National Council for Cultural Affairs can also be filed with the Government, under section 5 of the 1988 Ordinance relating to the National Council for Cultural Affairs.

4.4 Labour disputes may also be tried under the Act against Ethnic Discrimination, which aims at prohibiting discrimination in working life. Under the Act, ethnic discrimination takes place when a person or group of persons is/are treated unfairly in relation to others, or are in any way subjected to unjust or insulting treatment on the grounds of race, colour, national or ethnic origin or religious belief.

4.5 Pursuant to the terms of the Act, the Government has appointed an Ombudsman against Ethnic Discrimination whose mandate is to ensure that ethnic discrimination does not occur in the labour market or other areas of society. The Ombudsman should assist anyone subjected to ethnic discrimination and help safeguard the applicant's rights. He must also make sure that job applicants are not subjected to ethnic discrimination.

4.6 This legislation, which applies to the overall labour market, has two major thrusts. The first is the prohibition of discrimination in relation to applicants for vacancies, which is relevant to the present case. The other prohibition of discrimination covers the treatment of employees. The provision which covers the treatment of job applicants provides that any employer must treat all applicants for a post equally and that, when appointing an applicant, he may not subject other applicants to unfair treatment on account of their race, colour, national or ethnic origin or religious belief (sect. 8) i.e. only objective factors shall be considered. Any employer who violates the prohibition of discrimination is liable to pay damages to the discriminated job applicant.

4.7 Under section 16 of the Act against Ethnic Discrimination, cases of discrimination in employment will be examined pursuant to the Act on Litigation in Labour Disputes. Disputes shall be handled before the Labour Court, as a court of first and last instance, if they are brought by an

employer's organization, an employees' organization, or by the Ombudsman. If the dispute is brought by an individual employer or a job applicant it shall be heard and adjudicated by a District Court. Appeals may be lodged with the Labour Court, which is the final instance.

4.8 The State party submits that the petitioner has failed to exhaust available domestic remedies, as required by article 14, paragraph 7(a), of the Convention. The State party argues that, although the petitioner lodged a complaint with the Ombudsman against Ethnic Discrimination she did not challenge the decision not to appoint her to the vacant post in a District Court (with a possibility of appeal to the Labour Court). The State party contends that the petitioner was aware of the possibility of challenging this decision in a District Court but considered it futile on the ground that the law against ethnic discrimination in the labour market is not applicable in practice in cases when an immigrant did not get a job, despite he/she was better qualified, and at the same time has no direct evidence about the discrimination. In this regard, the State party claims that there is nothing to indicate that this case would not have been properly examined by the District Court and that mere doubts about the effectiveness of such a remedy does not absolve a petitioner from pursuing it.

5.1 In response to the State party's comments, the petitioner reiterates that she has exhausted all available and effective domestic remedies. She argues that she did not issue proceedings in the District Court because of the Trade Union's and Ombudsman's decision not to do so on her behalf claiming that there were no merits in the case. In addition, the petitioner states that under the Act against Racial Discrimination of 1994 the Ombudsman has only initiated three cases in court and lost all three. For this reason the petitioner claims that an application to court in this instance would be ineffective. She also states that this act itself has since been amended as it was considered ineffective. The petitioner also states that, although she would receive legal aid for some of the costs of an application to the District Court, she would be unable to pay the balance due to her financial situation. (1)

5.2 The petitioner also compares her education and experience to the person that got the job in question attempting to demonstrate that she was the better person for the job and that the reason she failed to secure the post was because of her Czechoslovak origin. This discrimination, she claims, is also reflected in the fact that her prospective employer did not take into account the experience she had acquired in her homeland.

6.1 Before considering any claim contained in a communication, the Committee on the Elimination of all Forms of Racial Discrimination must decide, pursuant to article 14, paragraph 7(a), of the Convention, whether or not the current communication is admissible.

6.2 The Committee notes the State party's contention that the petitioner's claims are inadmissible for failure to exhaust domestic remedies because she did not challenge the decision in the District Court not to appoint her to the vacant post. The petitioner replied that she did not take such an action as her trade union refused to represent her and both her trade union and the Ombudsman found that there were no merits in her claim. The petitioner also stated subsequently that, although she would receive legal aid to pay some of the costs involved in such an action, she could not afford to pay the balance. In any event, she claims that such an appeal would have failed, as the applicable legislation is deficient.

6.3 The Committee concludes that, notwithstanding the reservations that the petitioner might have regarding the effectiveness of the current legislation to prevent racial discrimination in the labour market, it was incumbent upon her to pursue the remedies available, including a complaint before the District Court. The Committee recalls that doubts about the effectiveness of such remedies do not absolve a petitioner from pursuing them. With respect to the petitioner's claim that she could not issue proceedings in the District Court due to lack of funds, the Committee notes that the petitioner would have received legal aid to assist her in making her application, and therefore cannot conclude that the expenses involved would have been a grave impediment that would excuse the petitioner from the obligation to exhaust domestic remedies.

6.4 In light of the above, the Committee considers that the petitioner has failed to meet the requirements of article 14, paragraph 7 (a), of the Convention.

7. The Committee on the Elimination of Racial Discrimination therefore decides:

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

---

#### Notes

1. In this context, the petitioner claims that such an application would cost at least 100.000 krona and that if she were to lose the case she would have to pay the other party's barrister the same amount. She claims that she receives 100.000 krona of unemployment assistance a year net out of which she pays 34.600 krona for accommodation and has 65.400 krona remaining to live on. She claims that she would receive 60.000 in legal aid and does not have the balance.