



**International Convention on
the Elimination
of all Forms of
Racial Discrimination**

Distr.
RESTRICTED*

CERD/C/66/D/33/2003
10 March 2004

Original: ENGLISH

COMMITTEE ON THE ELIMINATION
OF RACIAL DISCRIMINATION
Sixty-sixth session
21 February-11 March 2005

OPINION

Communication No. 33/2003

Submitted by: Mr. Kamal Quereshi (represented by the
Documentation and Advisory Centre on
Racial Discrimination)

Alleged victim(s): The petitioner

State party: Denmark

Date of communication: 11 December 2003

Date of the present decision: 9 March 2005

[ANNEX]

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

Annex

**OPINION OF THE COMMITTEE ON THE ELIMINATION OF RACIAL
DISCRIMINATION UNDER ARTICLE 14 OF THE INTERNATIONAL
CONVENTION ON THE ELIMINATION OF ALL FORMS OF
RACIAL DISCRIMINATION**

Sixty-sixth session

concerning

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Submitted by: Mr. Kamal Quereshi (represented by the
Documentation and Advisory Centre on
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State party: Denmark

Date of communication: 11 December 2003

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 9 March 2005,

Adopts the following:

OPINION

1. The petitioner is Kamal Quereshi, a Danish national born 29 July 1970 and a current member of the State party's parliament (*Folketinget*) for the Socialist Peoples Party (*Socialistisk Folkeparti*). He alleges to be the 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, Ms. Pia Andersson, a member of the executive board of the Progressive Party (*Fremskridtspartiet*), faxed to the media two letters on party letterhead stating inter alia: "No to more Mohammedan rapes! ... Cultural enrichments [are] 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 has to change course and expel all of them."

2.2 On 15 May 2001, with respect to certain disturbances in an Odense neighbourhood, Ms. Andersson faxed a press release stating: “Engage the military against the Mohammedan terror! ... Dear fellow citizen, it is that warlike culture these foreigners enrich our country with ... Disrespect for this country’s laws, mass rapes, violence abuse of Danish women by shouting things like ‘whore’, ‘Danish pigs’, etc ... And now this civil warlike situation.”

2.3 On 5 September 2001, the Progressive Party placed an advertisement in a local newspaper for a lecture by the former leader of the Party, Mr. Mogens Glistrup, which stated, inter alia: “The Bible of the Mohammedans requires [that] the infidel shall be killed and slaughtered, until all infidelity has been removed.”

2.4 The petitioner asserts that the Progressive Party established courses, parts of which were broadcast on a newflash on State television, teaching members how to avoid attracting liability under section 266 (b) of the Criminal Code.¹

2.5 Speeches made at the Progressive Party’s annual meeting, held on 20 and 21 October 2001, were broadcast on the State party’s public television system, which has a duty to broadcast from annual meetings of political parties seeking election. The petitioner contends that the following statements were made at the meeting from the podium:²

Vagn Andersen (party member): “The State has given the foreigners work. They work in our slaughterhouses where they can easily poison our food and endanger the agricultural exports. Another form of terrorism is to break into our waterworks and poison the water.”

Mogens Glistrup (former leader of the party): “The Mohammedans will exterminate the populations of the countries to which they have advanced.” On 22 October, an article in the *Dagbladet Politiken* daily quoted this statement as: “Their holiest duty is, in the name of Allah, to exterminate the populations in the countries to which they have advanced.”

Erik Hammer Sørensen (party member, commenting on immigration to the State party): “There are fifth columnists about. Those that we have got in commit violence, murder and rape.”

Margit Petersen (party member, referring to her earlier conviction under section 266 (b) in the State party’s courts): “I’m glad to be a racist. We want a Mohammedan-free Denmark”; “the Blacks breed like rats”.

Peter Rindal (party member): “Concerning Mohammedan burial grounds in Denmark, of course we should have such ones. And they should preferably be so large that there is room for all of them, and hopefully in one go.”

Bo Warming (party member): “The only difference between Mohammedans and rats is that rats don’t draw social benefits.” He allegedly distributed a drawing of a rat with the Koran under its arm to journalists present at the conference.

2.6 Upon viewing the meeting, the petitioner requested the Documentation and Advisory Centre on Racial Discrimination (DRC) to file complaints against the above individuals, as well as the members of the executive board of the Progressive Party for approval of the statements made.

2.7 On 23 October 2001, the DRC filed complaints with the Varde police, alleging that the statements of Ms. Guul and Mr. Warming separately violated section 266 (b) (1) and (2) of the Criminal Code on the basis that they threatened, insulted or degraded a group of persons on account of their race and ethnic origin.

2.8 On 25 October 2001, the DRC filed a complaint with the Varde police, alleging that the statement made by Mr. Andreasen violated section 266 (b) (1) and (2) on the basis that it insulted and degraded a group of people on account of their religious origin. The DRC added that the statement postulated that immigrants and refugees were potential terrorists and thereby a group of people of an ethnic origin other than Danish were generally and unobjectively equated with crime. The same day, the DRC filed a complaint with the Varde police, alleging that the statement made by Mr. Rindal violated section 266 (b) (1) and (2) on the basis that it threatened a group of people on account of their race and ethnic origin.

2.9 On 26 October 2001, the DRC filed a complaint with the Varde police alleging that the statement made by Mr. Glistrup violated section 266 (b) (1) and (2) on the basis that it insulted and degraded a group of people on account of their ethnic origin, including their Muslim faith. The same day, the DRC filed a complaint with the Varde police alleging that the statement made by Mr. Sørensen violated section 266 (b) (1) and (2) on the basis that it threatened, insulted and degraded a group of people on account of their race and ethnic origin. The DRC added that the statement equated a group of an ethnic origin other than Danish with crime.

2.10 In addition, the DRC filed a complaint against the Progressive Party itself with the Thisted police (being the police with jurisdiction over the party leader's place of residence).

Subsequent proceedings against the individual speakers

2.11 On 28 March 2003, the Varde Police Chief Constable forwarded the six cases to the Sønderborg Regional Public Prosecutor with the following recommendations:

- Messrs. *Glistrup*, *Rindal* and *Warming* should be prosecuted under section 266 (b) (1) of the Criminal Code. The part of the charge against Mr. Warming concerning the allegedly distributed drawing should however be withdrawn under section 721 (1) (ii) of the Administration of Justice Act, as the drawing could not be procured.³
- The charges against Ms. *Petersen* should be withdrawn under sections 721 (1) (ii)⁴ and 722 (1) (iv)⁵ of the Administration of Justice Act.
- The charges against Messrs. *Andreasen* and *Sørensen* should be withdrawn under sections 721 (1) (ii) of the Administration of Justice Act.

2.12 On 23 April 2003, the Regional Public Prosecutor requested the Police Chief Constable to carry out further investigations of all six cases, and to procure from the Police television channel a transcript of the statements made at the party conference. On 9 May 2003 the

Chief Constable modified his recommendations, advising to withdraw the charges against Mr. *Glistrup* under section 721 (1) (ii) of the Administration of Justice Act. He also informed that the television channel had advised that it did not possess any non-broadcast material from the party conference.

2.13 After receipt of further information, the Regional Public Prosecutor, on 18 June 2003, made the following recommendations to the Director of Public Prosecutions (DPP), in relation to prosecution of the above; the DPP accepted them on 6 August 2003:

- Messrs. *Rindal* and *Warming* should be prosecuted under section 266 (b) (1) for their statements at the party conference. The part of the charges against Mr. *Warming* relating to the drawing was discontinued as it could not reasonably be presumed that a criminal offence had been committed, as it had not been possible to procure a copy of the drawing.
- The charges against Mr. *Andreasen* should be withdrawn on the basis that that further prosecution could not be expected to lead to conviction and sentence. The DPP observed that the *actus reus* of section 266 (b) (1) required a statement to be directed at a group of persons on account of, inter alia, race, colour, national or ethnic origin and religion. In the DPP's view, this requirement had not been met as the concept of "foreigners" employed by Mr. *Andreasen* was "so diffuse that it does not signify a group within the meaning of the law".
- The charges against Mr. *Glistrup* should be withdrawn on the basis that that further prosecution could not be expected to lead to conviction and sentence. The DPP observed that the journalist who attributed the reported statement to Mr. *Glistrup* had declared that the statement had been made from the rostrum and not in connection with an interview. However, the particular statement did not appear on the video recording of the television broadcast, and the television channel did not have any other non-broadcast material in its possession. For his part, Mr. *Glistrup* had stated that his remarks were unscripted. Accordingly, the DPP concluded that it was "dubious" that the alleged statement could be proven to be, in violation of section 266 (b).
- The charges against Mr. *Sørensen* should be withdrawn on the basis that that further prosecution could not be expected to lead to conviction and sentence. Referring to the *actus reus* requirements discussed above, the DPP was of the view that the terms of "fifth columnists" and "those that we have got in" employed by Mr. *Sørensen* were not directed at a group of persons as set out in section 266 (b).
- The charges against Ms. *Petersen* should be withdrawn on the basis that completion of the trial would entail difficulties, costs or trial periods not commensurate with the sanction to be expected in the event of conviction. The DPP emphasized that on 20 November 2001, the Haderslev Court had convicted Ms. *Petersen* to 20-day fines of DKK 300 for violation of section 266 (b) (1) and that her sentence would not have been much more severe if the current offence had been included in that case. The DPP observed that her remarks at the conference had been in the nature of a summary of her trial and conviction by the Haderslev Court.

2.14 On 26 and 28 August 2003, respectively, the DRC appealed the DPP's decisions regarding on Messrs. Andreasen (on the petitioner's behalf) and Sørensen (on its own behalf) to the Ministry of Justice. On 13 October 2003, the Ministry found both appeals inadmissible for lack of standing under rules of administrative law concerning appeals of DPP decisions. With respect to the appeal concerning Mr. Andreasen, the Ministry considered that the petitioner, Mr. Quereshi, did not have "an essential, direct and individual interest in the case, that he can be considered a party who is entitled to appeal". As to the appeal regarding Mr. Sørensen, the Ministry observed that, on the same principles, "lobby organizations, societies, etc. or persons handling the interests of others, of groups or of the general public on an idealistic, professional organizational, work-related or similar basis cannot normally be considered parties to a criminal case unless they have a power of attorney from a party to the case". It went on to find that "this case does not present such circumstances that the DRC must be considered entitled to appeal".

2.15 In October 2003, Messrs. Rindal and Warming were tried before the Grindsted District Court and convicted of offences against section 266 (b) (1). Mr. Rindal was sentenced on 26 November 2003 to 20 days of DKK 50 for the statement he had made at the party conference. Mr. Warming, for his part, was sentenced to an additional punishment of 20-day fines of DKK 200 under section 89 for, firstly, stating at the party conference that "It may happen any day that all Muslims decide to throw Molotov cocktails into all the nearest homes and drive in all their expensive cars to as many more other homes as possible and throw in Molotovs and cocktails ... They can halve Denmark's population or more than that in a much shorter time if they want to do like their fellow Muslims did with the World Trade Centre", and secondly, for stating with the intent of wider dissemination in an interview at the party conference with a journalist that "The only difference between Mohammedans and rats is that rats don't draw social benefits." In assessing quantum, the Court relied on two previous convictions of Mr. Warming for offences against section 266 (b) (1) both by the High Court of Eastern Denmark (on appeal) on 22 March 1999, and by the Copenhagen City Court on 30 January 2003.

2.16 On 17 March 2004, the Board of Appeal rejected Mr. Warming's application for leave to appeal the Grindsted District Court's decision to the High Court of Western Denmark. Mr. Rindal did not appeal the District Court's decision in his case.

Proceedings against the Progressive Party

2.17 The Thisted police rejected the complaint against the Progressive Party on the basis that the State party's law, as it then stood, did not permit a complaint of violation of section 266 (b) to be filed against entities with legal personality, including a political party. The Regional Public Prosecutor subsequently upheld this decision.

2.18 On 11 December 2002, the DRC, at the petitioner's request, filed a new complaint against Ms. Andersen with the Odense police (having jurisdiction over her place of residence), arguing that in light of what is described in paragraphs 2.1 to 2.5 above, she had participated in a violation of section 266 (b) as a member of the Party's executive board. On 7 January 2002, the Chief Police Constable of the Odense police rejected the complaint as there was no reasonable evidence to support the conclusion that an unlawful act had been committed by Ms. Andersen as a member of the Party's executive board. He 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. 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.

2.19 On 11 March 2002, the Fyn Regional Public Prosecutor rejected the DRC's appeal, on the basis that neither it nor the petitioner had the required essential, direct, individual or legal interest in the case to become parties to it. As a result, the DRC filed the petitioner's first petition before the Committee on the Elimination of Racial Discrimination, which found that there had been no violation with respect to the State party's action concerning Ms. Andersen.⁶ It emphasized that proceedings had been lodged with respect to those directly responsible for the statements in question at the party conference.

The complaint

3.1 The petitioner alleges two counts of violation of articles 2, subparagraph 1 (d), 4 and 6 of the Convention. He first alleged that the State party failed to discharge its positive obligation to take effective action to examine and investigate reported incidents of racial discrimination, as the charge against Mr. Andreasen was discontinued, none of the speakers at the party conference was prosecuted, and an investigation of Ms. Andersen's role was not initiated. In his view, the failure to prosecute those directly responsible for the statements (having initially charged them) violated article 6, while the Regional Public Prosecutor's decision (not subject to appeal by the petitioner) that Mr. Andreasen's statements fell outside the scope of section 266 (b) of the Criminal Code violated article 2, subparagraph 1 (d), of the Convention. The petitioner relies on a decision of the High Court of Eastern Denmark of 1980 for the proposition that such statements do fall within the scope of section 266 (b).

3.2 Secondly, the petitioner argues that the decision of the Public Prosecutor to discontinue Mr. Andreasen's case, confirmed on grounds of lack of standing by the Ministry of Justice, violates the obligation imposed by the same articles, but especially article 6, to ensure effective protection and remedies against any act of racial discrimination. In his view, as a result of these decisions, he could not take action against the acts of racial discrimination to which he had been exposed, as part of a group of persons against whom the statements were directed.

3.3 As to the exhaustion of domestic remedies, the petitioner argues that to take (unspecified) legal actions directly against Mr. Andreasen would not be effective given the rejection of the complaint by the Regional Public Prosecutor and the Ministry of Justice. The petitioner also contends that a complaint under section 26 of the Act on Civil Liability (providing civil damages for infringements of a person's honour and reputation) would be ineffective, citing a 1999 decision of the Eastern High Court to the effect that racial discrimination does not in itself give rise to a claim for compensation to the offended person under the section in question. The petitioner also rejects any possible constitutional remedy under section 63 of the Constitution (providing for review of scope of executive authority), claiming that it is necessary to have the status of a party to the case in order to bring such an action. This petitioner was however denied such status both by the Regional Public Prosecutor (in the earlier decision concerning the case of Ms. Pia Andersen, see paragraph 2.19, supra) and by the Ministry of Justice in the current case.

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

4.1 By submission of 17 June 2004, the State party contests both the admissibility and the merits of the petition. He argues that the petitioner has failed to exhaust domestic remedies available in criminal proceedings in three respects. Firstly, the petitioner only appealed the DPP's decision of 14 August 2003 related to Mr. Andreasen, and did not appeal any of the DPP's decisions on the other individuals concerned. In respect of those individuals, therefore, domestic remedies have not been exhausted.

4.2 Secondly, the State party repeats its argument, also advanced in the petitioner's first petition to the Committee, that section 63 of the Constitution enables decisions of administrative authorities, including the DPP and the Ministry of Justice, to be reviewed as to their lawfulness before the courts. It rejects the petitioner's argument that such an application would be ineffective as a result of the DPP's refusal to prefer charges and the Ministry's finding the petitioner's appeal to be inadmissible. On the contrary, the petitioner could have applied to the courts for a review of whether the DPP's view of the scope of section 266 (b) (1) or of the Ministry's view of his standing was correct. The DPP's decisions on the other cases could also have been reviewed. Thirdly, the State party argues that even where a prosecution under section 266 (b) (1) of the Criminal Code has not been pursued, a private prosecution under section 267 of the Criminal Code⁷ protecting personal honour is available. In *Sadic v. Denmark*,⁸ the Committee accepted, in circumstances where a complaint under section 266 (b) had not been pursued by the police, that the requirements of section 267 are different and a petitioner should be expected to exhaust that alternative and effective remedy before approaching the Committee.

4.3 On the merits, the State party argues that the petition discloses no violation of the Convention. As to alleged violations of articles 2, 4 and 6 arising from the processing and assessment of the criminal complaints lodged, the thorough treatment at both the levels of police, Regional Public Prosecutor and DPP fully met the State Party's obligation to take effective action. The State party points out that the Convention does not guarantee the specific outcome on allegations of conduct in breach of the Convention, but rather sets out certain parameters for the processing of such allegations. The State party's authorities complied with their duty to initiate a proper investigation, carried it out with due diligence and expedition in order to determine whether or not an act of racial discrimination took place. Upon such investigation, some complaints - those against Messrs. Rindal and Warming concerning their conference statements - were found to make out a case to answer, while in others no basis for prosecution was found.

4.4 For those cases for which it was determined not to proceed further, the State party argues that each result was the product of careful and proper individual investigation and justified on the merits of each complaint. In the case of the drawing allegedly distributed by Mr. Warming, the police questioned both Mr. Warming and the journalist who had allegedly been offered the drawing before concluding that there was no basis for prosecution. The State party emphasizes that the Convention does not require every investigation of every case reported to the police to result in prosecution, including, for example, if the requisite proof is not available.

4.5 Concerning the DPP's decision on Ms. Petersen that the resources involved in a prosecution would not be commensurate with the punishment expected, the State party observes

that the Regional Public Prosecutor procured a transcript of the video tape of the television broadcast and questioned Ms. Petersen, disclosing sufficient examination of the case. The DPP estimated, that Ms. Petersen's earlier sentence of 20 November 2001, (20-day fines of DKK 300 for violating section 266 (b) (1) would not have been much more severe if the current complaint had been included in that case, thus justifying the DPP's decision under section 89 of the Criminal Code not to proceed. The State party also recalls that her conference statements were in the nature of a summary of her earlier trial and conviction. The case was thus examined in accordance with the requirements of the Convention.

4.6 As to the decision that it was impossible to determine the context of Mr. Glistrup's statement, the State party notes that the police questioned him and the journalist involved, and procured a transcript of the tape of the television broadcast, on which the alleged statement at the rostrum did not appear. The State party observes that it is important for due process reasons that evidence be of a certain probity before being put to the courts in criminal proceedings. The withdrawal of charges in this case, having been found inadequate in evidentiary terms, followed effective investigation consistent with the Convention.

4.7 Concerning the decisions on Messrs. Andreasen and Sørensen that the *actus reus* of the offence requiring statements concerning groups of persons on account of race, colour, national or ethnic origin had not been made out with use of terms such as "foreigners" and "fifth columnists", the State party points out that section 266 (b) clearly identifies the specific groups to be covered. It points out that the 1980 decision of the High Court of Eastern Denmark referred to by the petitioner found that the designation "guest worker" did fall within "a group of persons", within the meaning of section 266 (b). The Court emphasized, however, that according to general understanding that expression designated a person living in Denmark of South European, Asian or African origin, particularly Yugoslavs, Turks or Pakistanis. Unlike the much broader terms at issue in the present case, therefore, this conclusion was possible as the designation was used to refer to persons originating from specific countries. The finding that it was impossible to establish that the terms used by Messrs. Andreasen and Sørensen concerned a specific group of people characterized by race, colour, national or ethnic origin thus followed an examination in accordance with the Convention's requirements.

4.8 The State party argues that section 266 (b), as applied in practice and detailed in its fourteenth and fifteenth reports to the Committee, satisfies the State party's obligation under article 2 (1) (d) of the Convention to prohibit and end, by appropriate means including legislation, all racial discrimination. As to the portion of the complaint concerning the petitioner's inability to appeal the decision concerning Mr. Andreasen, the State party refers to its admissibility submissions for the available possibilities of a constitutional complaint and a private prosecution under section 267 of the Criminal Code.

The petitioner's comments on the State party's submissions

5.1 By letter of 2 August 2004, the petitioner disputes the State party's submissions on admissibility and reiterates his earlier submissions on the merits. On the possibility of a constitutional complaint challenging the decisions of the DPP and Ministry of Justice, he argues that since the Ministry itself declared that he had no essential, direct and individual interest in the case which would confer standing, it would not be correct to place an obligation on him to pursue such a case and delay the possibility of a petition to the Committee. In any event, even if

a court found that he did have standing, this would be futile, as the deadline for bringing a prosecution (related to the Ministry's decision) has passed. Thus, in violation of articles 4 and 6 of the Convention, no sanction can ever be imposed on Mr. Andreasen.

5.2 Concerning a private prosecution under section 267 of the Criminal Code, the petitioner argues that, whether or not Mr. Andreasen's statement fell within the scope of that provision, a court would reject such a claim on the basis that he had no essential, direct and individual interest in the case. He thus again argues that it would not be appropriate to require him to pursue such an avenue and delay a petition to the Committee.

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 On the issue of exhaustion of domestic remedies, the Committee notes that the petitioner confines his complaint to the handling of the complaint made against Mr. Andreasen, a case in which he did appeal to the Ministry of Justice. The Committee thus need not address the argument that the petitioner did not also appeal the adverse decisions in certain other cases, though the Committee would note that there is nothing to suggest that the Ministry's decision of lack of standing would have been any different in those cases.

6.3 Turning to the State party's argument that the petitioner should have initiated a private prosecution under the general provisions of section 267 of the Criminal Code, the Committee recalls that, in its Opinion in *Sadic*,⁹ it indeed required the petitioner in that case to pursue such a course. In that case, however, the facts fell outside the scope of section 266 (b) of the Criminal Code on the basis that the disputed comments were essentially private or were made within a very limited circle; in that light, section 267, which could capture the conduct in question complemented the scope of protection of section 266 (b) and was a reasonable course more appropriate to the facts of that case. In the present case, by contrast, the statements were made squarely in the public arena, which is the central focus of both the Convention and section 266 (b). It would thus be unreasonable to expect the petitioner to initiate separate proceedings under the general provisions of section 267 after having unsuccessfully invoked section 266 (b) of the Danish Criminal Code in respect of circumstances directly implicating the language and object of that provision.

6.4 As to the State party's argument that judicial review of the DPP and Ministry's decisions in the form of a constitutional application remained available, the Committee recalls that the petitioner pursued his complaint through four levels of administrative decision-making in a process lasting just weeks short of two years, with respect to facts which were in the public domain from the outset and which did not require complex investigation. In those circumstances, the Committee considers that the application of further remedies in the courts at the present time would be unreasonably prolonged within the meaning of article 14, paragraph 7 (a), of the Convention. They thus need not be exhausted for the purposes of the present complaint. The Committee notes, moreover, that the petitioner has questioned the

effectiveness of such an application, arguing that as the deadline for prosecution had passed any judicial decision on the legality of action taken would be devoid of practical effect for the proceedings in question.

6.5 In light of the foregoing and in the absence of any other objection to the admissibility of the petition, the Committee declares it admissible and proceeds to the 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 recalls that in its decision on the first petition presented by the complainant it emphasized that the focus of its examination was on steps taken on the basis of the State party's legislation, primarily criminal, against the individual actors alleged to have personally engaged in an act of racial discrimination. Thus, in that case, it noted that Ms. Andersen had been convicted for the conduct she had personally engaged in.¹⁰ In the present case, two speakers at the party conference were convicted and sentenced for violations against section 266 (b) of the Criminal Code.¹¹ Indeed, one of those speakers was given a more severe sentence after two earlier convictions less severe and lower sentences for offences against section 266 (b). Meanwhile, a further speaker was not further prosecuted on the basis that her sentence would not have been materially greater in comparison to what she had already incurred under an earlier conviction under section 266 (b).¹² With respect to another speaker's statement, the investigation carried out showed that the statement alleged to have been made from the rostrum had not in fact occurred.¹³ It is against this background of operation of the State party's criminalization of acts of statements of racial discrimination, both in respect of instances outside the present party conference as well as of statements made at the conference, that the merits of the petition concerning resolution of the complaint against Mr. Andreasen must be considered.

7.3 The Committee recalls that Mr. Andreasen made offensive statements about "foreigners" at the party conference. The Committee notes that, regardless of what may have been the position in the State party in the past, a general reference to foreigners does not at present single out a group of persons, contrary to article 1 of the Convention, on the basis of a specific race, ethnicity, colour, descent or national or ethnic origin. The Committee is thus unable to conclude that the State party's authorities reached an inappropriate conclusion in determining that Mr. Andreasen's statement, in contrast to the more specific statements of the other speakers, at the party of the conference, did not amount to an act of racial discrimination, contrary to section 266 (b) of the Danish Criminal Code. It also follows that the petitioner was not deprived of the right to an effective remedy for an act of racial discrimination in respect of Mr. Andreasen's statement.

8. Nevertheless, the Committee considers itself obliged to call the State party's attention (i) to the hateful nature of the comments concerning foreigners made by Mr. Andreasen and of the particular seriousness of such speech when made by political figures, and, in this context, (ii) to its general recommendation 30, adopted at its sixty-fourth session, on discrimination against non-citizens.

9. 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.

[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.]

Notes

¹ Section 266 (b) of the Criminal Code stipulates:

“(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 form of the statements is as reported in the criminal complaints to the police lodged by the Documentation and Advisory Centre on Racial Discrimination.

³ Section 721 (1) of the Administration of Justice Act provides:

“Charges in a case may be withdrawn in full or in part in cases:

- (i) Where the charge has proved groundless;
- (ii) Where further prosecution cannot anyway be expected to lead to conviction of the suspect; or
- (iii) Where completion of the case will entail difficulties, costs or trial periods which are not commensurate with the significance of the case and with the punishment, the imposition of which can be expected in case of conviction.”

⁴ Ibid.

⁵ Section 722 (1) (iv) of the Administration of Justice Act provides that: “Prosecution in a case may be waived in full or in part in cases ... where section 89 of the Criminal Code is applicable when it is deemed that no punishment or only an insignificant punishment would be imposed and that conviction would not otherwise be of essential importance.” Section 89 provides: “Where a person already sentenced [for another offence] is found guilty of another criminal offence committed prior to the judgment, an additional sentence must be imposed provided that simultaneous adjudication would have resulted in a more severe sentence.”

⁶ *Quereshi v. Denmark* (No. 1), Case No. 27/2002, Opinion adopted on 19 August 2003.

⁷ Section 267 of the Criminal Code provides: “(1) Any person who violates the personal honour of another by offensive words or conduct or by making or spreading allegations of an act likely to disparage him in the esteem of his fellow citizens, shall be liable to a fine or imprisonment for any term not exceeding four months.”

⁸ Case No. 25/2002, Opinion adopted on 25 May 2002.

⁹ *Op. cit.*

¹⁰ See para. 2.18, *supra*.

¹¹ See para. 2.15, *supra*.

¹² See para. 2.13, *supra*.

¹³ *Ibid.*
