



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

Distr.
RESTRICTED*

CERD/C/71/D/37/2006
8 August 2007

Original: ENGLISH

COMMITTEE ON THE ELIMINATION
OF RACIAL DISCRIMINATION
Seventy-first session
(30 July – 17 August 2007)

OPINION

Communication No. 37/2006

<u>Submitted by:</u>	A.W.R.A.P. (represented by counsel, the Documentation and Advisory Centre on Racial Discrimination)
<u>Alleged victim:</u>	The petitioner
<u>State party:</u>	Denmark
<u>Date of communication:</u>	6 July 2006 (initial submission)
<u>Date of present decision:</u>	8 August 2007

[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**

Seventy-First session

concerning

Communication No. 37/2006

Submitted by: A.W.R.A.P. (represented by counsel, the
Documentation and Advisory Centre on
Racial Discrimination)

Alleged victim: The petitioner

State party: Denmark

Date of communication: 6 July 2006 (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 8 August 2007

Adopts the following:

OPINION

1.1 The petitioner is A.W.R.A.P., a Danish citizen born on 1 February 1954 in Sweden, now residing in Denmark, and a practising Muslim. He alleges a violation by Denmark¹ of articles 2, paragraph 1(d), 4 and 6 of the Convention on the Elimination of All Forms of Racial Discrimination. He is represented by counsel, Miss Line Bøgsted of the Documentary and Advisory Centre on Racial Discrimination (DACoRD).

1.2 In conformity with article 14, paragraph 6 (a), of the Convention, the Committee transmitted the communication to the State party on 20 July 2006.

Factual background

2.1 In 1997, the Danish Parliament adopted a bill abolishing the right of parents to corporally punish their children. The Danish Peoples Party voted against the bill. In 2005, the

¹ The Convention was ratified by Denmark on 9 December 1971, and the Declaration under article 14 made on 11 October 1985.

Government introduced a bill amending the Danish Integration Act by introducing the requirement for immigrants to sign “declarations of integration”, designed to ensure improved integration of immigrants. All new immigrants would have to sign a declaration stating that they will respect the fundamental values of Danish society, including observance of the rules of the Danish Criminal Code, that they will promote the integration of their children – not least by making sure that the children attend school, that they will respect the individual’s freedom and personal integrity as well as the equality of the sexes, that they will respect the freedom of religion and expression, and that they recognise the prohibition of corporal punishment of their children.

2.2 The Danish Peoples Party supported the amendment bill which led to a new debate concerning the ban on corporal punishment of children because a politician of the Socialist Peoples’ Party asked members of the Danish People’s Party how it could support a bill demanding that all aliens sign a declaration saying, inter alia, that “corporal punishment of my children is prohibited” when the same party opposed the ban on corporal punishment of children.

2.3 On 5 November 2005, Mr. Søren Krarup, member of the National Parliament for the Danish Peoples Party, in relation to this debate, stated as follows;

“The problem is that the country unfortunately has been flooded with Muslim so-called culture, and according to Islam it is the right of the male to beat his children and wife yellow and blue. That form of violence which they are practising is of sadistic and brutal character. That is why we can not reintroduce the act (on corporal punishment) and that it why it is important to make them sign it.”

2.4 On 13 November 2005, Mr. Krarup added the following to his previous statement;

“What makes it so extremely difficult in relation to discussing the right to corporal punishment today is that we have been flooded by a culture to which violence – the holy right of the male to beat up his wife and children yellow and blue – is a natural thing. And that means that the Danish tradition for corporal punishment had become more or less compromised by a Muslim tradition which is much different, but which means that.....”

2.5 Apparently, after being questioned by the interviewer on the basis for his remarks, Mr. Krarup stated that:

“Is it unknown to you that, according to Sharia and the Koran, a man has a special position requiring his wife and children to abide by his doings? And if they don’t, they’ll be punished?”

2.6 Having read these articles in the newspaper “Politiken”, the petitioner contacted the Documentation and Advisory Centre on Racial Discrimination (DACoRD) and asked them to file a complaint to the police on his behalf against Mr. Krarup, for violation of section 266 b

of the Danish Penal Code which prohibits racial statements². On 15 October 2005, such a complaint was sent to the Copenhagen police. On 27 March 2006, the Police rejected it because there was no reasonable evidence to support the claim that an unlawful act had occurred.

2.7 On 7 April 2006, the petitioner filed a complaint with the Regional Public Prosecutor for Copenhagen. On 24 May 2006, the Public Prosecutor confirmed his agreement with the police decision not to prosecute Mr. Krarup. He referred to the extended freedom of speech which exists for politicians in general and Members of Parliament in particular especially when it comes to politically controversial public matters, including corporal punishment and how it is practised in other cultures. He did not find that the “statements, when read in context, appear to be threatening, demeaning or degrading in the sense of the Penal Code section 266 b.”

2.8 The petitioner argues that questions relating to the pursuit by the police of charges against individuals are discretionary, and that there is no possibility to bring the case before the Danish courts. Any decision by the Public Prosecutor relating to the investigation by the police departments cannot be appealed. A legal action against Mr. Krarup would not be effective, given that the police and Public Prosecutor have rejected the complaints against him. The petitioner refers to a decision of the Eastern High Court of 5 February 1999, where it was held that an incident of racial discrimination does not in itself imply a violation of the honour and reputation of a person under section 26 of the Act in Civil Liability³. The petitioner concludes that he has no further remedies under national law.

The complaint

3.1 The petitioner claims that the decision of the Copenhagen police not to initiate an investigation into the alleged facts violates articles 2, paragraph 1(d); 4(a); and 6 of the Convention, as the documentation presented should have motivated the police to investigate the matter thoroughly. There were no effective means to protect him from racist statements in this case.

3.2 The petitioner adds that the decisions of the Copenhagen police and the Public Prosecutor to reject his complaints violate article 6 of the Convention. He contends that the Danish authorities did not examine the material in full, did not take his arguments into account and did not make reference to their obligations under the ICERD.

² According to Section 266b “(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.”

³ See Communication No. 17/1999, *B.J. v Denmark*, Opinion adopted on 17 March 2000, paras. 2.4 to 2.6.

State party's observations on the admissibility and merits of the communication:

4.1 On 20 July 2006, the State party made its submissions on the admissibility and merits of the communication. On admissibility, it submits that the claims fall outside the scope of the Convention and that the petitioner has failed to establish a *prima facie* case, for purposes of admissibility. The statements concern Mr. Krarup's perception of persons of a specific religion and of a religious doctrine but do not concern persons of a particular "race, colour, descent, or national or ethnic origin" within the meaning of article 1 of the Convention. The State party notes that not all Muslims are of a particular ethnic origin and that not all Muslims are of the same race. Even the petitioner himself referred to the statements as "offensive and degrading to persons of the Muslim faith". Thus, confirming that the statements cannot be characterised as "racially discriminating" as they concern a religious and not a racial issue. For this reason, the statements fall outside the scope of article 1 of the Convention.

4.2 On the merits, the State party disputes that there was a violation of articles 2, paragraph 1 (d), 4 and 6 of the Convention. On the claim that the documentation presented to the police should have motivated it to initiate a thorough investigation, the State party argues that the Danish authorities' evaluation of the petitioner's reports of alleged racial discrimination fully satisfies the requirements of the Convention, even though they did not produce the outcome desired by the petitioner. The Convention does not guarantee a specific outcome of cases on alleged racially insulting statements, but sets out certain requirements for the investigation of such statements. For the State party, these requirements were satisfied in the current case, as the Danish authorities did take effective action, by processing and investigating the complaints lodged by the petitioner.

4.3 Under section 749(2) of the Administration and Justice Act⁴, the police may discontinue an investigation already initiated when there is no basis for its continuation. In criminal proceedings, the prosecutor has the burden of proof that a criminal offence was committed. It is important for the sake of due process that the evidence is of a certain weight for the courts to convict an accused. Pursuant to section 96(2) of the Administration of Justice Act⁵, public prosecutors must observe the principle of objectivity. They cannot prosecute a

⁴ "Section 749.

(1) The police shall dismiss a report lodged if it deems that there is no basis for initiating investigation. (2) If there is no basis for continuing an investigation already initiated, the police may decide to discontinue the investigation if no charge has been made (...). (3) If the report is dismissed or the investigation is discontinued, those who may be presumed to have a reasonable interest therein shall be notified. The decision can be appealed to the superior public prosecutor under the rules of Part 10.

⁵ "Section 96.

(1) It is the duty of the public prosecutors, in cooperation with the police, to prosecute offences according to the rules of this Act. (2) The public prosecutors shall dispatch any one case at the speed permitted by the nature of the case, and shall thus ensure not only that guilty persons are held responsible, but also that prosecution of innocent persons does not occur."

person unless they believe that the prosecution will lead to conviction with a reasonable prospect of certainty.

4.4 The State party accepts that investigations must be carried out with due diligence and expeditiously and must be sufficient to determine whether or not an act of racial discrimination has taken place. It does not follow, however, that a prosecution should be initiated in all cases reported to the police. The State party emphasises that the question in the current case was whether Mr. Krarup's statements could be considered to fall within the scope of section 266b of the Criminal Code. The State party considers that this legal assessment was thorough and adequate. There were no problems concerning evidence, as the statements were printed in the newspaper as Mr. Krarup's quotations. Thus, there was no need for the police to initiate an investigation to clarify the specific contents of the statements, to discover the originator of the statements, or to question the petitioner about his view of the statements.

4.5 In the State party's view, the prosecution service correctly balanced the right to freedom of expression, including politicians' freedom of expression in connection with debates about essential social issues, with the right for protection of religion (or the right for protection against racial discrimination). The statements must be seen in the context in which they were made, namely as contributions to a political debate about the right of chastisement, and whether the reader supports Mr. Krarup's views or not, a democratic society must allow for a debate on such viewpoints within certain limits. The State party highlights its view that freedom of expression is particularly important for elected representatives of the people, who draw attention to their concerns and defend their interests. Thus, interference with the freedom of expression of a Member of Parliament calls for close scrutiny on the part of the prosecution service.

4.6 The State party acknowledges that a politician's right to freedom of expression is not absolute and refers to the data contained in its 16th and 17th periodic report to the CERD, in which it informed the Committee that between 1 January 2001 and 31 December 2003, the Danish courts considered 23 cases concerning violations of section 266b of the Criminal Code, and that 10 of these cases concerned statements made by politicians – only one of whom was acquitted.

Petitioner's comments

5.1 On 29 December 2006, the petitioner commented on the State party's submissions. With respect to the argument that the communication falls outside the scope of the Covenant, the petitioner contends that "Islamophobia", just like attacks against Jews, has manifested itself as a form of racism in many European countries, including Denmark. After 11 September 2001, attacks against Muslims have intensified in Denmark. Members of the Danish People's Party use hate speech as a tool to stir up hatred against people of Arab and Muslim background. In their view, culture and religion are connected in Islam. The petitioner recalls that CERD has already concluded that Danish authorities do not ensure an effective implementation of criminal law in relation to hate speech against Muslims and Muslim

culture, especially by politicians. He invokes the CERD's Concluding Observations on Denmark of 2002⁶:

[“16.] The Committee is concerned about reports of a considerable increase in reported cases of widespread harassment of people of Arab and **Muslim** backgrounds since 11 September 2001. The Committee recommends that the State party monitor this situation carefully, take decisive action to protect the rights of victims and deal with perpetrators, and report on this matter in its next periodic report”.

[“11.] The Committee, while taking note of the State party's efforts to combat hate crimes, is concerned about the increase in the number of racially motivated offences and in the number of complaints of hate speech. The Committee is also concerned about **hate speech by some politicians in Denmark**. While taking note of the statistical data provided on complaints and prosecutions launched under section 266(b) of the Criminal Code, the Committee notes the refusal by the Public Prosecutor to initiate court proceedings in some cases, including the case of the publication of **some cartoons associating Islam with terrorism** (arts. 4(a) and 6)” (emphasis added).

5.2 The petitioner concludes that he has made a *prima facie* case, given that he belongs to a so-called “Muslim culture” and that, as a father, he is personally affected by the stereotyping that he and other Muslims beat up their wives and children.

Issues and proceedings before the Committee

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 the State party's objection that the petitioner's claims fall outside the scope of the Convention, because the statements in question are directed at persons of a particular religion or religious group, and not at persons of a particular “race, colour, descent, or national or ethnic origin”. It also takes note of the petitioner's contention that the statements in question were indeed aimed at persons of Muslim or Arab background. The Committee observes, however, that the impugned statements specifically refer to the Koran, to Islam and to Muslims in general, without any reference whatsoever to any race, colour, descent, or national or ethnic origin. While the elements of the case file do not allow the Committee to analyse and ascertain the intention of the impugned statements, it remains that no specific national or ethnic groups were directly targeted as such by these oral statements as reported and printed. In fact, the Committee notes that the Muslims currently living in the State party are of heterogeneous origin. They originate from at least 15 different countries, are of diverse national and ethnic origins, and consist of non-citizens, and Danish citizens, including Danish converts.

6.3 The Committee recognises the importance of the interface between race and religion and considers that it would be competent to consider a claim of “double” discrimination on

⁶ CERD/C/60/CO/5, 21 May 2002

the basis of religion and another ground specifically provided for in article 1 of the Convention, including national or ethnic origin. However, this is not the case in the current petition, which exclusively relates to discrimination on religious grounds. The Committee recalls that the Convention does not cover discrimination based on religion alone, and that Islam is not a religion practised solely by a particular group, which could otherwise be identified by its “race, colour, descent, or national or ethnic origin.” The Travaux Préparatoires of the Convention reveal that the Third Committee of the General Assembly rejected the proposal to include racial discrimination and religious intolerance in a single instrument, and decided in the ICERD to focus exclusively on racial discrimination.⁷ It is unquestionable therefore that discrimination based exclusively on religious grounds was not intended to fall within the purview of the Convention.

6.4 The Committee recalls its prior jurisprudence in *Quereshi v. Denmark* that, “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”⁸. Similarly, in this particular case, it considers that the general references to Muslims, do not single out a particular group of persons, contrary to article 1 of the Convention. It, therefore, concludes that the petition falls outside the scope of the Convention and declares it inadmissible *ratione materiae* under article 14, paragraph 1, of the Convention.

6.5 Although the Committee considers that it is not within its competence to examine the present petition, it takes note of the offensive nature of the statements complained of and recalls that freedom of speech carries with it both duties and responsibilities. It takes the opportunity to remind the State party of its Concluding Observations, following consideration of the State party’s reports in 2002 and 2006, in which it had commented and made recommendations upon: (a) the considerable increase in reported cases of widespread harassment of people of Arab and Muslim backgrounds since 11 September 2001; (b) the increase in the number of racially motivated offences; and (c) the increase in the number of complaints of hate speech, including by politicians within the State party.⁹ It also encourages the State party to follow-up on its recommendations and to provide pertinent information on the above concerns in the context of the Committee’s procedure for follow-up to its concluding observations.

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

⁷ General Assembly resolution 1779 (XVII), General Assembly resolution 1780 (XVII), and General Assembly resolution 1781 (XVII).

⁸ See Petition No. 33/2003, Opinion adopted on 9 March 2005, para. 7.3

⁹ CERD/C/60/CO/5, 21 May 2002, and CERD/C/DEN/CO/17, 19 October 2006.

(a) That the communication is inadmissible *ratione materiae* under article 14, paragraph 1, of the Convention.

(b) That this decision shall be communicated to the State party and to the petitioner.

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