

COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION

Ahmad v. Denmark

Communication No 16/1999

13 March 2000

CERD/C/56/D/16/1999

VIEWS

Submitted by: Kashif Ahmad (represented by legal counsel)

Alleged victim: The author

State party concerned: Denmark

Date of communication: 28 May 1999 (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 13 March 2000,

Having concluded its consideration of communication No. 16/1999, submitted to the Committee under article 14 of the International Convention on the Elimination of All Forms of Racial Discrimination,

Having taken into consideration all written information made available to it by the author and the State party,

Bearing in mind rule 95 of its rules of procedure requiring it to formulate its opinion on the communication before it,

Adopts the following:

OPINION

1.1 The author of the communication is Kashif Ahmad, a Danish citizen of Pakistani origin born in 1980 who claims to be a victim of violations by Denmark of article 2, subparagraph 1 (d), and article

6 of the Convention. He is represented by counsel.

1.2 In conformity with article 14, paragraph 6 (a), of the Convention, the Committee transmitted the communication to the State party on 27 August 1999.

The facts as submitted by the author

2.1 On 16 June 1998 family members and friends had come to meet pupils after the exams at the Avedore Gymnasium, Hvidovre, as is the usual practice in Danish high schools. The author and his brother were waiting with a video camera outside an examination room, where a friend of theirs was taking an exam. While they were waiting, a teacher, Mr. K.P., asked them to leave. Since they refused the teacher informed the headmaster, Mr. O.T., who immediately called the police. Mr. O.T. publicly referred to the author and his brother as "a bunch of monkeys". When the author told Mr. O.T. that he was going to complain about the manner in which he had been treated, Mr. K.P. expressed doubts about the effectiveness of such a complaint and said that the author and his brother were "a bunch of monkeys" who could not express themselves correctly. When the police arrived the author and his friends discussed the matter with them. The police promised to have a discussion with Mr. O.T.

2.2 The same day the author received a letter in which Mr. O.T. informed him that he did not want him to be present at the official celebration to be held at the school on 19 June 1998 in the course of which he was going to receive his diploma. On 17 June 1998 the author's father went to Avedore Gymnasium in order to discuss the matter with Mr. O.T. Mr. O.T. first refused to receive him and when he finally accepted, told him that the matter had been settled and asked him to leave. Subsequently, the author learned from one of the employees at the school that Mr. O.T. had given instructions to the door guards not to let him in.

2.3 By letter dated 25 June 1998, counsel informed Mr. O.T. that the matter was a serious one and that the expressions he had used against the author amounted to a violation of section 266b of the Danish Penal Code. Counsel also requested an explanation and an apology for his client. Mr. O.T. replied that the author and his brother had been noisy outside the examination rooms but he did not deny having used the racist expressions referred to above.

2.4 Counsel filed a complaint with the police of Hvidovre on 7 July 1998. By letter dated 23 September 1998 the police informed him that they had interviewed Mr. O.T. and Mr. K.P. and concluded that the expressions used were outside the scope of section 266b of the Penal Code and that the case would be discontinued in accordance with section 749, subparagraph 2, of the Danish Administration of Justice Act. The letter also said that the expressions used had to be seen in connection with a tense incident. In the opinion of the police, they should not be understood as insulting or degrading in terms of race, colour, national or ethnic origin, since they could also be used towards persons of Danish origin who behaved as the author had.

2.5 By letter dated 1 October 1998 counsel requested the police to have the case brought before the State Attorney. On 30 November 1998 the State Attorney upheld the decision of the police.

2.6 Counsel claims that, in accordance with section 101 of the Administration of Justice Act, a

decision by the State Attorney relating to an investigation by the police departments cannot be appealed to other authorities. As questions relating to the pursuance by the police of charges against individuals are entirely up to the discretion of the police, there is no possibility of bringing the case before a court. Furthermore, legal action by the author against Mr. O.T. and Mr. K.P. would not be effective, taking into account that the police of Hvidovre and the State Attorney had rejected the author's complaints.

2.7 Counsel further contends that the High Court of the Eastern Circuit, in a decision of 5 February 1999, held the view that an incident of racial discrimination did not in itself imply a violation of the honour and reputation of a person under section 26 of the Danish Act on Tort. According to counsel the position of the High Court, as a result of that decision, is that racial discrimination carried out politely would not in itself constitute a basis for a claim for compensation.

The complaint

3.1 It is submitted that the case was not examined properly by the national authorities and that the author never obtained an apology or sufficient satisfaction or reparation. As a result the State party has violated its obligations under article 2, subparagraph 1 (d) and article 6 of the Convention.

3.2 Counsel claims that neither the police department of Hvidovre nor the State Attorney examined, in particular, the following issues: (a) had Mr. O.T. and Mr. K.P. said that the author and his brother were "a bunch of monkeys" and that they could not express themselves correctly; (b) had that been used with reference to the Pakistani origin of the author and his brother; (c) had that expression amounted to a discriminatory opinion about the author and his brother. According to counsel, the police limited themselves to interviewing Mr. O.T. and Mr. K.P; they did not even consider interviewing the author and his brother, or the six witnesses whose names and addresses were known to them.

State party's submission on admissibility and merits

4.1 In a submission dated 29 November 1999 the State party contends that the author has failed to establish a prima facie case for the purpose of admissibility and, accordingly, the communication should be declared inadmissible. The State party does not dispute that the other conditions for admissibility set out in article 14 of the Convention and rule 91 of the Committee's rules of procedure are satisfied. Should the Committee not declare the communication inadmissible on the above ground, the State party submits that there has been no violation of the Convention and that the communication is manifestly ill-founded.

4.2 The State party quotes excerpts from the complaint lodged by counsel with the Chief Constable of Hvidovre on 7 July 1998, the letter addressed by counsel to Avedore High School on 22 June 1998 requesting an explanation of the incident and an apology, and the response from the headmaster. It states that as a result of counsel's complaint the police interviewed Mr. K.P. on 9 September 1998.

4.3 Mr. K.P. explained to the police that the author had previously been a student of his and that there had been disagreements between them, including about the author's grades. On the examination

day in question he had been corridor attendant responsible, inter alia, for peace and order. At one point he noticed two individuals in the basement at the door to the sports field and that a cup was jammed into the door to keep it open. He asked the two persons, one of whom was the author's brother, what they were doing there. They answered that they were waiting for the author, who was returning books. Mr. K.P. said that it was a strange place to be standing and that there had previously been three cases of theft at the school where that particular door had been used. The two young people started getting excited and shouted at Mr. K.P. The author, who was standing at the book return desk, turned round and insulted Mr. K.P.

4.4 Later, Mr. K.P. noticed four to six persons of foreign origin, including the author and his brother, waiting outside an examination room. There was much noise in the corridor and several times the teachers had come out of the examination rooms and requested quiet. Mr. K.P. then decided to empty the corridors. Everybody left except the group containing the author and his brother. The brother shouted that they were not going to leave. Mr. K.P. asked them four times, quietly and peacefully, to leave the corridor but they still refused to do so. Both the author and his brother had threatening, piercing eyes, pointed with their fingers at Mr. K.P. and shouted and screamed. Mr. K.P. pressed the intercommunication system on the wall and shortly afterwards the headmaster arrived. The headmaster tried for about five minutes to talk to the group but they still refused to leave. The group, mainly led by the brother and, to some extent, the author, hurled insults and became more and more threatening, even in the presence of other teachers. As a result, the police were summoned. Mr. K.P. could not remember whether the group left by themselves after realizing that the police had been called or whether the police removed them. In any case, he noted subsequently that police were standing outside the school talking with the group. Mr. K.P. was asked whether the headmaster had said anything about "monkeys" to the group. He replied that he had heard nothing of the sort. He was asked whether he had said anything similar. He answered that he did not think so but was not able to reply definitively. If he had said something about "monkeys", it had nothing to do with race, religion, ethnic origin, etc. of the group, but had merely been used as an ordinary slang word for a "bunch" that behaved abnormally. He and Mr. O.T. had not wanted to lodge a complaint with the police about the threats received, as they were used to cultural differences and different conduct.

4.5 On 18 September 1998 the police interviewed Mr. O.T., the headmaster. He explained, inter alia, that Mr. K.P. had come to him and said that he was unable to control events on the second floor as a group of foreigners would not comply with his instructions. Upon arriving on the scene he noticed that a group of foreigners consisting of 8 to 10 persons, including the author and some of his classmates, were making a lot of noise. When he asked them to leave the author's brother started to shout, insulted him and made threatening gestures. While all this was happening the author was standing with a video camera. Mr. O.T. believes that he was recording. A group of parents who had been sitting at the end of the corridor had been very shocked. During the entire episode several adults had come to the corridor and watched the whole scene with astonishment. When asked why he did not file a complaint, Mr. O.T. explained that they were used to many different nationalities at the school and consequently they probably had a higher tolerance threshold. As for the use of the expression "bunch of monkeys", he said that he could not deny having said something like that. If so, the word "monkey" was merely used in the light of the conduct of the group and had no relation to the religious affiliation, colour, ethnic origin, etc. of the group. He could equally have used the word about a group of ethnic Danes behaving similarly. He could not remember Mr. K.P. referring

to the group as "a bunch of monkeys who could not express themselves grammatically correctly".

4.6 By letter dated 23 September 1998 the Chief Constable of Hvidovre informed counsel, inter alia, of the following:

"Pursuant to section 742(2) of the Administration of Justice Act (retsplojeloven), the police initiates an investigation on the basis of an information when it can reasonably be assumed that a criminal offence subject to public prosecution has been committed.

"I have had some investigation made in the case, inter alia, by interviewing Mr. O.T. and Mr. K.P.

"Subsequently, I am of the opinion that the statements and the circumstances under which they may have been made fall outside the provisions of section 266b of the Criminal Code.

"I have therefore decided, pursuant to section 749(2) of the Administration of Justice Act, to discontinue the investigation and shelve the case.

"In my assessment I have attached importance to the following:

"Mr. O.T. does not entirely deny that he may have said something like the quoted statement.

"However, the statements must be seen in connection with a tense episode in the corridors of the High School, during which both Mr. K.P., the teacher, and especially Mr. O.T., the headmaster, have borne various expressions of disapproval and even had to summon the police to get peace at the examinations rooms.

"Anyway, in my opinion, the alleged statements cannot especially be perceived as insulting or degrading in relation to race, colour, national extraction or ethnic origin, as such statements could be made with the same meaning about others - also of Danish ethnic origin, that exhibit a similar conduct. The statements refer to the nature of the conduct and not to the person.

"Any claim for damages is referred to a civil action."

4.7 By letter of 1 October 1998 counsel appealed the decision to the District Public Prosecutor for Zealand through the Chief Constable of Hvidovre. He stressed, inter alia, that neither the author nor his classmates had been interviewed by the police and that a video recording existed that showed the situation about 30 minutes before the episode occurred, when a very large number of classmates and relatives of a student being examined were in the corridor. The video also showed the situation shortly before the statements in question were made, when only a quite small number of persons were present in the corridor together with Mr. K.P.

4.8 On 6 October 1998 the Chief Constable forwarded the case to the District Public Prosecutor and explained that in view of the context in which the statements in question had been made he had not found it necessary to interview the author. Although he had not seen the video he did not consider

it relevant, as it did not concern the episode itself. On 30 November 1998 the District Public Prosecutor informed counsel that he concurred entirely in the assessment made by the Chief Constable and found no basis for reversing his decision.

4.9 The State party submits that the central point in the present communication is the statements allegedly made by Mr. K.P. and Mr. O.T. Those statements, if made, are not an expression of a difference of treatment that constitutes discrimination in violation of article 2 (1) and article 5 (e) (v) of the Convention. It is more relevant to assess the statements in question in relation to article 4 (a) of the Convention, which requires States parties to penalize certain categories of misconduct. To enable Denmark to ratify the Convention, section 266b and other sections of the Danish Criminal Code were amended. Pursuant to section 266b, any person who, publicly or with the intent of dissemination to a wider circle, makes statements or any other communication by which a group of persons is threatened, insulted or exposed to indignities on the grounds of race, colour, national extraction or ethnic origin, shall be liable to punishment.

4.10 It is a condition that the statement in question be directed at a group on the basis of its race, etc. Statements aimed at a single person must, if they cannot be seen as an expression of insult or persecution of the group to which the person belongs, be assessed pursuant to the general rules of the Criminal Code on invasion of privacy and defamation of character. When assessing whether some statements must be deemed to be in violation of section 266b it is necessary to make a concrete assessment of the substance of the statements, including the context in which they were made. This was done by the Chief Constable and the District Public Prosecutors in deciding to discontinue the investigation. The Government concurs entirely in those assessments and considers that the author has not substantiated or rendered probable that he was the victim of racist statements in violation of the Convention, as they were not aimed at a group because of its race or ethnic origin. Thus, the author has failed to establish a *prima facie* case for the purpose of admissibility of his communication.

4.11 The State party is aware that the Convention makes certain requirements of the treatment accorded by the authorities to information from private individuals concerning alleged racial discrimination contrary to the Convention (1). However, the investigation performed by the police fully satisfied the requirements that can be inferred from the Convention as interpreted in the Committee's practice. The police had details on the substance of the alleged statements both from the author and his counsel and from the teacher and the headmaster. The author has specifically pointed out that the police should have assessed whether the statements that gave rise to the complaint had in fact been made. The State party argues that both the police and the Public Prosecutor assessed that it was not necessary to decide definitively whether the statements were in fact made as, even if they had been made, they were not criminal pursuant to section 266b.

4.12 The task of the police in its treatment of a complaint differs from the way a criminal case is treated by the courts. The task of the police is not to establish in a binding manner what actually happened, but to assess "whether the conditions of imposing criminal liability ... are satisfied ..." (section 743 of the Administration of Justice Act). The police have determined that, to be able to make this assessment, it was not necessary to decide whether the alleged statements had in fact been made, as whether they had been made or not, they were not criminal.

4.13 Moreover, the author has pointed out that the police should have determined whether the expressions used were intended to disparage the national origin of the author and whether they were racially discriminatory. According to the State party, such a determination was indeed made, as reflected in the decisions of the Chief Constable and the District Public Prosecutor.

4.14 The author has further pointed out that he, his brother and six named witnesses were not interviewed by the police. The State party argues that the statements, if they had been made, could not be considered as falling within section 266b of the Criminal Code. This made it unnecessary to interview the applicant, who had given an account of his understanding of the incident in his written information. Against this background, the State party considers that it was equally unnecessary to interview the applicant's brother and the six witnesses.

4.15 The State party finds that the police did initiate a proper investigation. Thus, article 2 (1) (d), article 5 (e) (v) and article 6 of the Convention have not been violated, nor has article 4 (a).

Counsel's comments

5. In a submission dated 10 January 2000 counsel argues that the State party recognizes in its response some of the essential elements which gave rise to the report by the author to the police. In previous cases the Committee has stressed the need for a thorough investigation of reported cases of racial discrimination. As explained in the initial submission, the police declined to examine the case after having interviewed only the two representatives of the high school. In order to fulfil the requirements of a thorough investigation, and in order to verify whether the questions relating to the expressions used and their status under Danish law, the police should at least have interviewed the author and/or the witnesses.

Issues and proceedings before the Committee

6.1. The State party submits that Mr. K.P. did not deny having called the author and his group "monkeys". It also submits that Mr. O.T. did not deny having said something similar. It is also established that these utterances were made in the course of a tense episode in a school corridor and in the presence of several witnesses. Thus, the Committee is of the opinion that the author was insulted in public, at least by Mr. O.T.

6.2. The District Public Prosecutor did not establish whether the author had been insulted on the grounds of his national or ethnic origin, in violation of the provisions of article 2, paragraph 1 (d), of the Convention. It is the opinion of the Committee that if the police involved in the case had not discontinued their investigations, it might have been established whether the author had indeed been insulted on racial grounds.

6.3. From information submitted by the State party in its fourteenth periodic report (CERD/C/362/Add.1), the Committee gathers that on several occasions persons have been convicted by Danish courts for breaches of section 266b of the Criminal Code for insulting or degrading statements similar to the ones uttered in the present case. Therefore, the Committee does not share the opinion of the State party that the statements in question do not fall within section 266b of the Criminal Code.

6.4. Owing to the failure of the police to continue their investigations, and the final decision of the Public Prosecutor against which there was no right of appeal, the author was denied any opportunity to establish whether his rights under the Convention had been violated. From this it follows that the author has been denied effective protection against racial discrimination and remedies attendant thereupon by the State party.

7. The Committee considers that the author has established a prima facie case for the purpose of admissibility. It also considers that the conditions for admissibility have been satisfied. It therefore decides, under rule 91 of its rules of procedure, that the communication is admissible.

8. As for the merits, the Committee considers that, in the light of the above findings, the facts as presented constitute a violation of article 6 of the Convention.

9. The Committee recommends to the State party to ensure that the police and the public prosecutors properly investigate accusations and complaints related to acts of racial discrimination which should be punishable by law according to article 4 of the Convention.

Notes

1/ See opinions adopted by the Committee in L.K. v. the Netherlands (CERD/C/42/D/4/1991), Yilmaz-Dogan v. the Netherlands (CERD/C/36/D/1/1984) and Habassi v. Denmark (CERD/C/54/D/10/1997).