



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

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

OPINION

Communication No. 32/2003

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

Alleged victim(s): The complainant

State party: Denmark

Date of communication: 4 August 2003

Date of the present decision: 7 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

Communication No. 32/2003

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

Alleged victim(s): The complainant

State party: Denmark

Date of communication: 4 August 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 7 March 2005,

Adopts the following:

OPINION

1. The petitioner is Mr. Sefic Emir, a Bosnian citizen, currently residing in Denmark, where he holds a temporary residency and work permit. He claims to be a victim of violations by Denmark of articles 2, paragraph 1 (d), 5 and 6, of the International Convention on the Elimination of All Forms of Racial Discrimination. He is represented by the Documentation and Advisory Centre on Racial Discrimination (DRC), a non-governmental organization, based in Denmark.

The facts as presented by the petitioner

2.1 On 22 July 2002, the petitioner contacted Fair Insurance A/S to purchase insurance covering loss of and damage to his car, as well as third party liability insurance. He was told that they could not offer him insurance, as he did not speak Danish. The conversation took place in English and the sales agent FULLY understood his request.

2.2 Late July 2002, the petitioner contacted the DRC, which requested confirmation of the petitioner's allegations from Fair Insurance A/S. In the meantime, the petitioner contacted the company again and was rejected on the same grounds. By letter dated 23 September 2002, Fair Insurance A/S confirmed that the language requirement was necessary to obtain any insurance offered by the company for the following reasons:

“... ensure that we cover the need of the customer to the extent that we can ensure that both the coverage of the insurance and the prices are as correct as possible.

... ensure that the customer understands the conditions and rights connected to every insurance ... ensure that the customer in connection with a damage claim particularly when it is critical (accident, fire, etc.) can explain what has happened in order that he/she can be given the right treatment and compensation.

To fulfil these demands it is ... of the utmost importance that the dialogue with the customers is carried out in a language that both the customer and we are familiar with and that for the time being we can only fulfil this requirement and offer service to our customers in Danish. The reason being that we as a young (3.5 years) and relatively small company have limited resources to employ persons in our customer services department with knowledge of insurance issues in languages other than Danish or develop or maintain material on insurances in languages other than Danish.”

2.3 On 8 October 2002, the DRC filed a complaint with the Danish Financial Supervisory Authority, which monitors financial companies. By letter of 25 November 2002, the Supervisory Authority replied that the complaint should be made to the Board of Appeal of Insurances (“the Board”). However, the Supervisory Authority would consider whether a general policy of rejection on the bases of language was in accordance with Danish law. It pointed out that, under section 1 (1) in the Instruction on Third Party Liability Insurances for Motor Vehicles (No. 585, 9 July 2002), the company was legally obliged to offer any customer public liability insurance.

2.4 On 12 December 2002, the DRC filed a complaint with the Board and specifically asked whether the language requirement was compatible with the Act against Discrimination. On 31 January 2003, the Board informed the DRC that it was highly unlikely that it would consider the legality of the requirement in regard to any other legislation other than the Act on Insurance Agreements. However, the case was being given due consideration. The letter also contained a response, of 29 January 2003, from Fair Insurance A/S to the Board, which stated as follows:

“Regarding the Act on Insurance Agreements ... we are clearly aware of the fact that anybody accepting our conditions of insurance can demand to be offered third party liability insurance. We regret that Emir Sefic was not offered third party liability insurance that he could have claimed. On this basis we have explained in more detail to our employees the legal rules in regard to the liability insurance.”

2.5 On 10 January 2003, the Supervisory Authority informed the DRC that its assessment would be based on section 3 of the Act on Financial Business, in its determination on whether Fair Insurance A/S had complied with “upright business activity and good practice”. On 11 March 2003, it informed the DRC that it was of the view that the requirement did not violate section 3. The Supervisory Authority did not consider whether the language requirement violated any other legislation, in particular the Act against Discrimination.

2.6 On 12 December 2002, the DRC filed a complaint with the Commissioner of the Police of Copenhagen (“the Commissioner”). On 24 April 2003, the Commissioner informed the DRC that “it appears from the material received that the possible discrimination only consists of a requirement that the customers can speak Danish in order for the company to arrange the work routines in the firm. Any discrimination based on this explanation and being objectively motivated is not covered by the prohibition in section 1 (1) of the Act against Discrimination”.

2.7 On 21 May 2003, the DRC filed an appeal with the Regional Public Prosecutor of Copenhagen (“the Prosecutor”). On 13 June 2003, the Prosecutor rejected the complaint under section 749 (1) of the Administration of Justice Act. He explained that the language requirement, “was not based on the customer’s race, ethnic origin or the like, but in the wish to be able to communicate with the customers in Danish, as the company has no employees who in regard to insurances in other languages than Danish have skills. Discrimination based on such a clear linguistic basis combined with the information given by the company is not in my opinion covered by the Act on the prohibition of differential treatment based on race, etc. Moreover, it is my view that the Fair Insurance A/S’s acknowledgement of the fact that the company was obliged to offer a third party liability insurance to Emir Sefic, in accordance with the Act on Insurance Agreements, is of no relevance in regard to the question whether the Act on the prohibition of differential treatment based on race, etc. ... I have based this on the information provided by Fair Insurance A/S that it was due to a mistake that no third party liability insurance was offered to Emir Sefic”.

2.8 The petitioner argues that he has exhausted domestic remedies. Any decision by the Regional Prosecutors relating to the 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 the Danish Courts. He submits that a civil claim under the Act on Civil Liability would not be effective, as both the Commissioner and the Prosecutor have rejected his complaint. Furthermore, the Eastern High Court, in a decision of 5 February 1999, has 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 on Civil Liability. Thus, racial discrimination in itself does not amount to a claim for compensation by the person offended.

The complaint

3.1 As to the definition of discrimination under article 1, subparagraph 1, of the Convention, the petitioner argues that, although a language requirement is not specifically included in this definition, discrimination may conflict with the obligation laid down in the Convention, especially under circumstances where the requirement in fact constitutes discrimination based, inter alia, on national or ethnic origin, race or colour, as the requirement has such an effect. Further, any language requirement used with the purpose of excluding, inter alia, customers of a

specific national or ethnic origin would be contrary to article 1 of the Convention. Such a requirement should also have a legitimate aim and respect the requirement of proportionality in order to constitute a legal ground for discrimination.

3.2 The petitioner claims that the State party has violated article 2, subparagraph 1 (d), and 6, by not providing effective remedies against a violation of the rights relating to article 5. He refers to the Committee's decisions in *L.K. v. the Netherlands and Habassi v. Denmark*¹, in which it was established that States parties have a positive obligation to take effective action against reported incidents of racial discrimination. The petitioner submits that the language requirement cannot be considered as an objective requirement; and argues that the Danish authorities could not come to such a conclusion without initiating a formal investigation. They merely based their claim on the letter from Fair Insurance A/S of 23 September 2003, the DRC's complaint to the Commissioner of 12 December 2003 and the appeal to the Prosecutor of 21 May 2003. Neither the Commissioner nor the Prosecutor examined whether the language requirement constituted direct or indirect discrimination on the basis of national origin and/or race.

3.3 The petitioner highlights the following questions and issues, which in his view the Danish authorities failed to consider in examining whether the language requirement constituted racial discrimination: Firstly, to what extent the petitioner and Fair Insurance A/S were able to communicate in the present case. As the latter did understand the petitioner sufficiently to reject his claim, the authorities should have examined whether Fair Insurance A/S had understood the needs of the petitioner, to ensure that he understood the conditions and rights connected to each insurance and that he would be able to inform the company about the relevant facts in connection with a potential damage claim. Secondly, the authorities should have examined the extent to which the situation concerning language skills in regard to statutory insurance (the third party liability insurance) differed from the situation in regard to voluntary insurance (the insurance covering loss off and damage to a car). As the third party insurance is statutory, the company is obliged, even if the customer only speaks English, as in the present case, to provide an offer and accept any customer who accepts its conditions. An investigation "could" have uncovered whether Fair Insurance A/S was able to "communicate on a sufficient basis" the demands, requirements and rights connected to the statutory insurance to the petitioner.

3.4 Thirdly, the authorities should have examined whether Fair Insurance A/S had any customers who were unable to speak Danish. If this were the case (especially relating to the statutory insurance), it would be of interest to reveal how the company communicated with such customers, and why the company could not communicate with other potential customers requesting other insurances. In addition, the petitioner claims that the failure by the Commissioner and the Prosecutor to interview him and Fair Insurance A/S further demonstrates that no proper investigation was carried out to try and establish whether the reasons given by Fair Insurance A/S were correct. The petitioner argues that there "may" have been other reasons for the language requirement and refers to a test case conducted by a television show, which revealed that Fair Insurance A/S offered insurance at a higher price to an individual of non-Danish national origin than a person of Danish national origin.

State party's submission on the admissibility and merits

4.1 On 18 December 2004, the State party provided comments on the admissibility and merits. On admissibility, it submits that, although the petitioner has exhausted available remedies under criminal law, there remain two civil actions which he has not pursued. Thus, the case is inadmissible for failure to exhaust domestic remedies. Firstly, the petitioner could bring an action against Fair Insurance A/S, claiming that it acted in contravention of the law by exposing him to racial discrimination, and thus request damages for both pecuniary and non-pecuniary loss.

4.2 The State party argues that this case differs from the Habassi² decision, in which the Committee found that the bringing of a civil action in a case of alleged discrimination contrary to the Act against Discrimination was not an effective remedy, as unlike the petitioner in that case, the petitioner in the current case claims that he has suffered a financial loss, as he subsequently had to take out insurance with another insurance company at a higher premium. The same argument is made to distinguish the current case from the Committee's decision in the case of *B.J. v. Denmark*.³

4.3 The second civil remedy is an action against Fair Insurance A/S under the rules of the Danish Marketing Practices; under section 1 (1) thereof, a private business may not perform acts contrary to "good marketing practices". The petitioner could have submitted that Fair Insurance A/S had acted in contravention of the Act against Discrimination in its treatment of his insurance application and had thus also acted in contravention of "good marketing practices". The petitioner could have claimed damages under general rules of Danish Law, both for the financial loss allegedly suffered by him and for non-pecuniary loss. Acts contrary to this Act can be prohibited by judgement and give rise to liability in damages.

4.4 As to the merits, the State party submits that there has been no violation of the Convention. It acknowledges that States parties have a duty to initiate a proper investigation when faced with complaints about acts of racial discrimination, which should be carried out with due diligence and expeditiously and must be sufficient to determine whether or not an act of racial discrimination has occurred.⁴ However, in the State party's view, it does not follow from the Convention or the Committee's case law that an investigation has to be initiated in all cases reported to the police. If no basis is found to initiate an investigation, the State party finds it to be in accordance with the Convention to dismiss the report. In the present case, the Commissioner and the Prosecutor received a detailed written report enclosing a number of annexes from the DRC illustrating the case sufficiently to conclude, without initiating any investigation, whether it could reasonably be presumed that a criminal offence subject to public prosecution had been committed.

4.5 As to the petitioner's argument that the Commissioner should have investigated whether the language requirement constituted direct or indirect discrimination, the State party submits that the Act against Discrimination does not make this distinction, but refers to the person who

“refuses to serve” another person on the same conditions as others on account of race, nationality, etc. It was, therefore, not decisive in itself to clarify whether direct or indirect discrimination had occurred, but rather whether section 1 of the Act against Discrimination had been violated intentionally, whether the alleged discrimination contrary to the Act was direct or indirect. As to the petitioner’s reference to the television survey, the State party finds this of no relevance to this context.

4.6 As to whether the Commissioner should have investigated the extent to which the petitioner and Fair Insurance A/S could communicate, the State party argues that it was not decisive to clarify whether the petitioner and Fair Insurance A/S had been able to communicate adequately, but rather whether section 1 of the Act against Discrimination had been violated intentionally. As the language requirement is due to the lack of resources to hire staff with insurance expertise in languages other than Danish and to the fact that it is a telephone-based company, the State party considers the requirement to be objectively justified, as the question involves the purchase of an insurance policy, which implies contractual rights and obligations, and the contents and consequences of which both the buyer and seller must be able to understand with certainty. It is therefore, considered irrelevant to initiate an investigation of the extent to which the petitioner and Fair Insurance A/S were able to communicate in a language other than Danish. In this connection, the Government notes the decision of the Financial Supervisory Authority that this language policy does not violate section 3 of the Financial Business Act No. 660 of 7 August 2002, as the measure involved is a practical measure resulting from limited resources.

4.7 As to whether the Commissioner should have investigated the extent to which the situation concerning language skills in regard to statutory insurance differed from the situation in regard to voluntary insurance, the State party submits that it follows from Fair Insurance A/S’s letter of 22 January 2003 that the company acknowledges that the petitioner should have been offered third party liability insurance when he contacted the company. The State party notes that the task of the Commissioner was not to consider whether Fair Insurance A/S had a general practice contrary to the Act against Discrimination, but rather whether it had specifically violated the Act in connection with the petitioner’s application, and thus committed a criminal act of racial discrimination.

4.8 As to whether the Commissioner should have investigated the extent to which Fair Insurance A/S had customers who are unable to speak Danish, the State party submits that in its letter of 19 September 2002, Fair Insurance A/S informed the DRC that the company has many customers with an ethnic background other than Danish, but that these customers speak Danish. In this light, it was not considered necessary to investigate any further.

Petitioner’s comments on State party’s submission

5.1 On 27 February 2004, the petitioner responded to the State party’s submission. On its admissibility arguments, he submits that the *Habassi* decision clearly indicates that “the civil remedies proposed by the State party could not be considered an adequate avenue of redress ... (because) The same objective could not be achieved by instituted a civil action, which

would lead only to compensation for damages” ... and thus not to a criminal conviction. Furthermore, the Committee was of the opinion that it was not “convinced that a civil action would have any prospect of success ...”. He submits that he has a right to an effective remedy against racial discrimination, as defined in articles 1 and 5 of the Convention.

5.2 As to the Danish Marketing Practices Act, the petitioner submits that this Act has nothing to do with racial discrimination and a decision in relation to this Act is not a “remedy” against such a violation of the petitioner’s rights. In addition, the petitioner claims that if this civil legislation covered the situation in the current case there would have been no necessity for the State party to adopt a new Act on Equal Treatment, which was implemented and took effect on 1 July 2003 after the incident addressed in the present case. The petitioner maintains his arguments on the merits.

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 The Committee notes that the State party objects to the admissibility of the complaint on the grounds of failure to exhaust civil domestic remedies. The Committee recalls its jurisprudence⁵ that the types of civil remedies proposed by the State party may not be considered as offering an adequate avenue of redress. The complaint, which was filed with the police department and subsequently with the Public Prosecutor alleged the commission of a criminal offence and sought a conviction of the company Fair Insurance A/S under the Danish Act against Discrimination. The same objective could not be achieved by instituting a civil action, which would result only in compensation for damages awarded to the petitioner. Thus, the Committee considers that the petitioner has exhausted domestic remedies.

6.3 In the absence of any further objections to the admissibility of the communication, the Committee declares the petition admissible and proceeds to its examination of the merits.

Consideration of the merits

7.1 The Committee has considered the petitioner’s case in the light of all the submissions and documentary evidence produced by the parties, as required under article 14, paragraph 7 (a), of the Convention and rule 95 of its rules of procedure. It bases its findings on the following considerations.

7.2 The issue before the Committee is whether the State party fulfilled its positive obligation to take effective action against reported incidents of racial discrimination, with regard to the extent to which it investigated the petitioner’s claim in this case.⁶ The petitioner claims that the requirement to speak Danish as a prerequisite for the receipt of car insurance is not an objective requirement and that further investigation would have been necessary to find out the real reasons behind this policy. The Committee notes that it is not contested that he does not speak Danish. It observes that his claim together with all the evidence provided by him and the information

about the reasons behind Fair Insurance A/S's policy were considered by both the police department and by the Public Prosecutor. The latter considered that the language requirement "was not based on the customer's race, ethnic origin or the like", but for the purposes of communicating with its customers. The Committee finds that the reasons provided by Fair Insurance A/S for the language requirement, including the ability to communicate with the customer, the lack of resources for a small company to employ persons speaking different languages, and the fact that it is a company operating primarily through telephone contact were reasonable and objective grounds for the requirement and would not have warranted further investigation.

8. In the circumstances, the Committee on the Elimination of Racial Discrimination, acting under article 14, paragraph 7 (a), of the International Convention on the Elimination of All Forms of Racial Discrimination, is of the opinion that the facts as submitted do not disclose a violation of the Convention by the State party.

[Done 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.]

Notes

¹ Case No. 4/1991, Decision adopted on 16 March 1993 and Case No. 10/1997, Decision adopted on 17 March 1999.

² Case No. 10/1997, *Habassi v. Denmark*, Decision adopted on 17 March 1999.

³ Case No. 17/1999, *B.J. v. Denmark*, Decision adopted on 17 March 2000.

⁴ The State party refers to the Committee's jurisprudence on this issue: Case No. 1/84, *A. Yilmaz v. the Netherlands*, Decision adopted on 10 August 1988, Case No. 4/1991, *L.K. v. the Netherlands*, Decision adopted on 16 March 1993, Case No. 10/1997, *Habassi v. Denmark*, Decision adopted on 17 March 1999, and Case No. 16/1999, *Ahmad v. Denmark*, Decision adopted on 13 March 2000.

⁵ Case No. 10/1997, *Habassi v. Denmark*, Decision adopted on 17 March 1999.

⁶ *L.K. v. the Netherlands* and *Habassi v. Denmark*, *supra*.
