
1) Reference Details

Jurisdiction: UN Committee on the Elimination of Racial Discrimination
Date of Decision: 18 March 1991
Link to full case:
http://www1.umn.edu/humanrts/country/decisions/2-1989.html

2) Facts

The petitioner had been domiciled in Monaco since December 1985. From July 1982 to December 1985, he practised law in Dakar. In January 1986, he applied for membership in the Bar of Nice. In May 1986, the Bar Council rejected his application. He appealed to the Court of Appeal who dismissed the appeal. A subsequent appeal to the Court of Cassation was dismissed solely on grounds that he was not a French national. The Bar Council had not referred to his Senegalese nationality as an obstacle to his exercising the legal profession in France.

The petitioner felt his case fell within the Franco-Senegalese Convention on Establishment. Consequently, the Court of Cassation should not have considered Senegalese citizenship as an impediment to the exercise of the legal profession in France.

The Franco-Senegalese Convention on Movement of Persons stipulates that “Senegalese nationals wishing to establish themselves in France for the purpose of engaging in self-employed activities must … produce the required evidence of the means of subsistence available to them”. The petitioner argued that the legal profession is considered in France to be the epitome of self-employed activity.

Further, in February 1990, the petitioner requested that his name be added to the list of legal counsel. In April 1990, he was informed that his inscription was imminent. In June 1990, however, he was told that his request could not be complied with as he had not demonstrated that he had fulfilled the requirement of a three-year apprenticeship. The petitioner affirms that his application had included proof of such an apprenticeship.

3) Law

National Law

• The French Constitution
• Act 71.1130
• Franco-Senegalese Convention on Establishment
• Franco-Senegalese Convention on Movement of Persons

International Law

• The International Convention on the Elimination of Racial Discrimination (CERD)

4) Legal Arguments
The Petitioner

The petitioner argued that he was denied the right to work on the ground of national origin and that his right to equal treatment was violated because first, 6 lawyers of Senegalese nationality are members of the Paris Bar; second, all French lawyers have the right to exercise their profession in Senegal and vice versa.

The petitioner further maintained that distinctions, exclusions, restrictions or preferences established in the application of the CERD must be spelled out in legislative provisions, which was not so in this case. He contended that the bilateral Franco-Senegalese Conventions prevailed over domestic legislation and authorise French and Senegalese citizens to exercise a liberal profession, including the legal one, on the territory of the State of which they do not have the citizenship.

He submitted that the decision of the Bar Council confirmed by the Court of Appeal is irreconcilable with the judgement of the Court of Cassation, which did not annul the decision as contrary to the law; it substituted its own motives in dismissing the appeal. This is equivalent to denying him an effective remedy before domestic courts. Similarly, he was thus denied a fundamental freedom – his right to work in France.

The State

The State argued that the petitioner had failed to raise the issue of discriminatory treatment before the domestic courts. It maintained that the rejection of his application was exclusively based on the fact that he was not French. The purpose of Act 71.1130 is to protect French lawyers from foreign competition, exercising prerogatives recognised by the CERD.

The State set out that it is the duty of each Bar Council to decide on applications for admission to the Bar in its region. Decisions may only be appealed by the applicant and the Public Prosecutor within two months of the notification of the decision. It argued that the admission of six Senegalese lawyers to the Bar of Paris was wrong. They were admitted prior to final judgment in the petitioner's case.

Finally the State suggested that as the Senegalese Law on the Exercise of the Legal Profession stipulates that no one may be admitted to the Bar in Senegal if he is not Senegalese or the citizen of a State that grants reciprocity, the petitioner's situation in France is similar to that of French lawyers in Senegal and so the principle of equality of treatment and of reciprocity invoked by him may be applied to his disadvantage.

5) Decision

The Committee held that the communication was admissible but held that there was no violation of CERD. The Committee opined that it is not within the CERD mandate to interpret or monitor the application of bilateral conventions unless they result in discriminatory treatment, which was not evident in this case.

The Committee set out that the provision in the present case operated as a distinction between citizens and non-citizens within the meaning of the Convention. The refusal to
admit the petitioner to the Bar was not based on any of the grounds in the Convention.

The petitioner’s allegation related to a situation in which the right to practice law existed only for French nationals, not to a situation in which this right has been granted in principle and may be generally invoked.