

**Diop v. France (Communication No. 2/1989: France. 10/05/91  
CERD/C/39/D/2/1989)**

**From DADEL**

**1) Reference Details**

Jurisdiction: United Nations Committee on the Elimination of Racial Discrimination

Date of decision: 10 May 1991

Link to full case:

[http://www.unhcr.ch/tbs/doc.nsf/\(Symbol\)/dba49c7a14032085c125693b0037d039?Op=OpenDocument](http://www.unhcr.ch/tbs/doc.nsf/(Symbol)/dba49c7a14032085c125693b0037d039?Op=OpenDocument)

**2) Facts**

The author of the communication is Demba Talibe Diop, a Senegalese citizen born in 1950, currently residing in Monaco. He claims to be the victim of a violation by France of Article 5 of the International Convention on the Elimination of All Forms of Racial Discrimination ("Convention").

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The author has been domiciled in Monaco since December 1985. From July 1982 to December 1985, he practiced law in Dakar. On 30 January 1986, the author formally applied for membership in the Bar of Nice, submitting all the documentary evidence required. The Bar Council of Nice rejected his application on the ground that Mr. Diop did not hold the Certificate of Aptitude for the Exercise of the Legal Profession (CAPA), as required by Article 11 of Act No. 71.1130 of 31 December 1971; the Court of Appeal upheld the decision on the same grounds. The Court of Cassation, however, found that the author met all the statutory requirements for the exercise of the lawyers' profession except one: the French nationality. Article 11, paragraph 1, of Act No. 71.1130 of 31 December 1971 stipulates "no one may enter the legal profession if he is not French, except as provided for in international conventions." The author argued that his case falls within the scope of application of the Franco-Senegalese Convention on Establishment of 29 March 1974, Article 1 of which prohibits discrimination between French and Senegalese citizens in the enjoyment of civil liberties. The author asserted that the French judicial authorities denied him the right to work on the ground of national origin, in violation of Art. 5(e) of the Convention.

**3) Admissibility**

The author had not invoked discriminatory treatment based on national origin before the domestic courts. The Committee noted, however, that the issue of the author's national origin was first addressed by the court of last instance, the Court of Cassation. Furthermore, the State party had not indicated the availability of any other remedies to the author. In the circumstances, the Committee concluded that the requirements of Article 14, paragraph 7 (a), of the Convention had been met and that the communication is admissible.

**4) Merits**

In respect of the alleged violations of the Franco-Senegalese Convention on Freedom of Movement of 29 March 1974, the Committee observed that it was not within its mandate to

interpret or monitor the application of bilateral conventions concluded between States parties to the Convention, unless it can be ascertained that the application of these conventions result in manifestly discriminatory or arbitrary treatment of individuals. The Committee has no such evidence in the present case. The Committee noted that the rights protected by Article 5 (e) are of programmatic character, subject to progressive implementation. It is not within the Committee's mandate to see to it that these rights are established; rather, it is the Committee's task to monitor the implementation of these rights, once they have been granted on equal terms. The refusal to admit Mr. Diop to the Bar was based on the fact that he was not of French nationality, not on any of the grounds enumerated in Article 1, paragraph 1 of the Convention.

## **5) Decision**

The Committee held that the facts as submitted did not disclose a violation of any of the provisions of the Convention.