

Kamal Quereshi v Denmark Communication No. 27/2002 U.N. Doc. CERD/C/63/D/27/2002 (2003)

1) Reference Details

Jurisdiction: UN Committee on the Elimination of Racial Discrimination

Date of decision: 23 October 2002

Link to full case:

<http://www1.umn.edu/humanrts/country/decisions/27-2002.html>

2) Facts

The petitioner, Kamal Quereshi, was a Danish national and a member of the Danish Parliament for the Socialist Peoples Party. He claimed to be a victim of a violation by Denmark of Article 2(1)(d), Article 4 and Article 6 of the International Convention on the Elimination of all forms of Racial Discrimination (CERD).

In April and May 2001, Pia Andersen of the Progressive Party issued press releases containing racially inflammatory statements. Ms Andersen was later convicted under the Danish Criminal Code.

In October 2001, the Progressive Party held its annual meeting, which was televised as required by law. A number of speakers made racist statements. Kamal Quereshi requested the Documentation and Advisory Centre on Racial Discrimination (DACRD) to file a criminal complaint against the Progressive Party for a violation of s. 266(b) of the Danish Criminal Code. In October 2001, the complaint was rejected by the Chief Constable (CC) on the basis that s. 266(b) did not apply to a political party and the Regional Public Prosecutor (RPP) later upheld this decision.

In December 2001 DACRD complained that Ms Andersen had participated in a violation of s. 266(b) as a member of the party's executive board. In January 2002, the CC rejected this because there was no evidence to support the allegation. Membership of a party's executive was not a basis for prosecution for criminal statements made by others.

In January 2002, the DACRD referred the decision to the Funen Regional Public Prosecutor (RPP) challenging the CC's rejection of the complaint. In March 2002, the RPP rejected the complaint, finding that neither the petitioner nor DACRD had the required interest to become parties in the case. While the police had taken the view that the petitioner, on account of the nature of the complaint, his ethnic background and membership of Parliament, had standing to pursue a complaint, the RPP disagreed.

3) Law

National Law

- Section 266(b) of the Danish Criminal Code

International Law

- The International Convention on the Elimination of All forms of Racial Discrimination

4) Legal Arguments

The Petitioner

The Petitioner argued that the decision of the CC constituted a violation of the Convention. The petitioner submitted that the decision of the RPP, that the petitioner had no standing, violated Article 6 of CERD and he was deprived of a remedy in response to an act of racial discrimination. Due to the fact that under

Danish law, the RPP's decision cannot be appealed there was no possibility that the police will initiate criminal proceedings. Further private legal action would not have been effective, given that the police and RPP had rejected the complaint.

The State

The State argued that the Petitioner's submission exceeded the required six months time limit. Furthermore, the actions of the CC and RPP fully satisfy the requirements that can be inferred from the Convention. It contended that the CC's task was not to assess whether the statements made at the annual meeting involved a violation but a general allegation that as a member of the executive board, Ms Anderson was criminally liable.

The State submitted further that the petitioner could bring charges against the individuals who were personally involved and that under the Constitution, decisions of the CC and the RPP may be challenged judicially before the courts on the same grounds.

5) Decision

The Committee held that the petition was admissible; however it found that the Convention was not violated. It opined that the case involves two different sets of acts. First, Ms Andersen published press releases for which she was subsequently convicted. Second, speakers at the conference (not including Ms Andersen) made a series of racist statements.

The complaint against Ms Andersen offered no evidence that she was an accomplice soliciting or directing the speakers to make racist statements. As a matter of criminal law, liability of a member of a party's executive board could not attach, without additional evidence, to statements made by third parties. The fact that criminal complaints were lodged against those directly responsible provided that there was effective action in response to the acts in question. Further under national law it is possible to challenge a prosecutor's decision.

The Committee wished to remain apprised as to the results of the criminal complaints lodged against the speakers at the party political conference in view of the racist nature of their remarks.