

## **L. K. v The Netherlands, Communication No. 4/1991, U.N. Doc. A/48/18 at 131 (1993)**

### **1) Reference Details**

Jurisdiction: UN Committee on the Elimination of Racial Discrimination

Date of Decision: 16 March 1993

Link to full case:

<http://www1.umn.edu/humanrts/country/decisions/CERD-DLR.htm>

### **2) Facts**

In August 1989, the petitioner author, who is a partially disabled Moroccan citizen, visited a municipal subsidised house in Utrecht. He was accompanied by a friend. Some 20 people had gathered outside the house shouting: "No more foreigners". Others said they would set fire to the house if he moved in and would damage his car. They later returned with a House Office official who was told by local inhabitants that they could not accept the petitioner as their neighbour, owing to a rule that "no more than 5 per cent of the street's inhabitants should be foreigners". When told that no such rule existed, the residents drafted a petition, which noted that the petitioner could not be accepted and recommended that another house be allocated to his family.

The petitioner complained to the municipal police on the grounds that he was the victim of racial discrimination under the Criminal Code. The complaint was against those who had signed the petition and those who gathered outside the house. The police refused to register the complaint until mediation by a local anti-discrimination group persuaded them to prepare a report.

### **3) Law**

#### *National Law*

- The Netherlands Criminal Code
- Code of Criminal Procedure

#### *International Law*

- Articles 2(1)(d) of the International Convention on the Elimination of all forms of Racial Discrimination (CERD) (Each State Party shall prohibit and bring to an end, by all appropriate means, including legislation as required by circumstances, racial discrimination by any persons, group or organization)
- Article 4(c) of CERD ([States] Shall not permit public authorities or public institutions, national or local, to promote or incite racial discrimination)
- Article 5(d)(i) and (e)(iii) of CERD
- Article 6 of CERD (effective protection and remedy)

### **4) Legal Arguments**

#### *The Petitioner*

The petitioner argued that the remarks of the residents constituted acts of racial discrimination within the Convention, as well as breaching the Dutch Criminal Code. As such the judicial authorities and the public prosecutor did not properly examine the facts of the case. The police investigation was neither thorough nor complete. The decision of the prosecutor not to institute criminal proceedings remained unmotivated. The Court of Appeal unjustifiably prolonged the proceedings. The Court of Appeal itself relied on incomplete evidence. The petitioner contended that these actions violated the Convention.

#### *The State*

The State argued that there is no objection to admissibility and that the petitioner has exhausted available domestic remedies. However, it was incorrect to claim that the residents of the street were questioned only about the petition. A number of residents made statements about the remark that a fire would be set if the petitioner moved into the house. Similarly, the decision not to prosecute was explained at length by the public prosecutor in Utrecht to the Prosecutor-General at the Amsterdam Court of Appeal.

The state submitted that Dutch legislation meets the requirements of the Convention. For any criminal offence to be prosecuted, however, there must be sufficient evidence to warrant prosecution. This was not so in this case.

Finally the State argued that the fact that racial discrimination has been criminalised is sufficient to establish compliance with the CERD.

#### **5) Decision**

The Committee held that there was a violation of Articles 2(1)(d), 4(c), 5(d)(i) and (e) (iii) and 6 of CERD. It opined that the remarks and threats made to the petitioner constituted incitement to racial discrimination and to acts of violence against persons of another colour or ethnic origin, contrary to the Convention. The investigation into these incidents by the police and prosecution authorities was incomplete.

Furthermore, it stated that the enactment of law making racial discrimination a criminal act does not represent full compliance with the Convention. The freedom to prosecute criminal offences is governed by considerations of public policy. The Convention cannot be interpreted as challenging that principle, which should be applied in each case of alleged racial discrimination in the light of the guarantees laid down in the Convention.

The State must investigate with due diligence and expedition when threats of racial violence are made, especially when they are made in public and by a group. In this case, the State failed to do this. In view of the inadequate response to the incidents, the police and judicial proceedings did not afford the Petitioner effective protection and remedies.

The Committee concluded that the State should review its policy and procedures concerning the decision to prosecute in cases of alleged racial discrimination. Further, the State should provide the applicant with relief commensurate with the moral damage he has suffered.