

## **Ms. K. R. C. v Denmark, Communication No. 23/2002, U.N. Doc. A/57/18 at 134 (2002)**

### **1) Reference Details**

Jurisdiction: UN Committee on the Elimination of Racial Discrimination

Date of Decision: 13 August 2002

Link to full case:

<http://www1.umn.edu/humanrts/country/decisions/23-2002.html>

### **2) Facts**

In June 2000, the petitioner purchased a car in Denmark. To finance the purchase the petitioner sought a bank loan and contacted a bank for an application form. The form required a declaration "that I am a Danish citizen" and the accompanying letter request submission of "a copy of your Danish passport to the sales agent". The petitioner was not a Danish citizen could not sign the form.

In June 2000, the petitioner contacted the bank, explained that she was not Danish, and asked the bank whether her American citizenship would affect her application. She was told that only Danish citizens could apply for a loan. A friend also enquired and received the same information because "the applicant might leave the country with the car". The bank employee was informed that the petitioner was a long time resident of Denmark and permanently employed there and promised to refer the matter to her superiors.

The deputy head of the bank confirmed that the bank did not give loans to non-Danish citizens but in the circumstances he would try to find a solution and she should send in the application. The petitioner did not do so as she felt the chances of loan were slim. She got a more expensive loan from another bank.

The petitioner reported the incident to the Documentation and Advisory Centre on Racial Discrimination (DARCD) who informed the bank that it was prohibited to request and use information about citizenship when handling loan applications. It requested the bank to remove the requirement of citizenship from application forms. The bank disputed the illegality but agreed to do so.

In September 2000, DARCD wrote to the bank and requested it to compensate the petitioner for the excess costs of the loan from her own bank. The bank replied that it did not offer the petitioner the loan and hence had no obligation to provide her with compensation. In September 2000, DARCD insisted that the bank compensate the petitioner and threatened to complain to the police. In October 2000, the bank denied the compensation and suggested that the petitioner move the loan to the bank at her expense.

DARCD reported the incident to the police, on the grounds of violation of the Act against Discrimination. In February 2001, the police reported to DARCD that the investigation of the case had been discontinued since there was no reasonable evidence that an unlawful act had been committed because the Petitioner "was offered the loan on June 28, 2000 by the bank when she was asked to hand in her contract of employment and evidence of her annual income."

DARCD complained to the Public Prosecutor for Sealand (PP), claiming racial discrimination, economic loss and a violation of the petitioner's integrity. In 2001, the PP informed the DARCD that he did not see any reason for changing the police's decision.

### **3) Law**

#### *National Law*

- Act against Discrimination
- Marketing Practices Act

## *International Law*

- Article 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 6 of CERD (effective protection and remedies)

## **4) Legal Arguments**

### *The Petitioner*

The Petitioner argued that she had exhausted domestic remedies as there was neither a possibility of appealing the decision of the PP nor of bringing the case before the Danish Courts. Further, the State had violated its obligations under the Convention in not effectively investigating the incident. She submitted that the application of the criterion of citizenship may constitute discrimination for the purposes of the Convention.

### *The State*

The State argued that the petitioner had not exhausted civil remedies and the petitioner could have brought an action against the bank, claiming that it acted in contravention of the law by exposing the petitioner to racial discrimination or under the rules of the Danish Marketing Practices Act.

The State maintained that the investigations into the incidents were adequate, carried out with due diligence and expedition and were sufficient to determine whether or not an act of racial discrimination had taken place. It argued that it was not the task of the police to investigate the bank generally, but rather whether the bank violated the Act against Discrimination with respect to the petitioner. It contended that the police conducted a thorough investigation and the PP correctly assessed the case.

## **5) Decision**

The Committee declared the petition inadmissible. It reasoned that while the petitioner did receive an application form containing the clause against which she objected she was informed orally that the bank would try to find a solution. The petitioner did not submit the application and so the bank could not refuse a loan (on any grounds). Consequently, the petitioner had not established the facts giving rise to the complaint.