

## 1) Reference Details

Jurisdiction: UN Committee on the Elimination of Racial Discrimination

Date of Decision: 13 March 2002

Link to full case:

<http://www1.umn.edu/humanrts/country/decisions/20-2000.html>

## 2) Facts

In August 1999 the petitioner, her brother, a Brazilian Danish citizen, and a black Brazilian friend were waiting to enter a restaurant. The doorman said they could not enter because the place was too crowded and they decided to wait. Later, a group of 7/8 people left the restaurant, but they were not invited to enter. A group of 5/6 Danes arrived and were allowed to enter. The doorman thereafter told the petitioner and her companions: "You should not wait." They then left.

In September 1999, the Documentation and Advisory Centre on Racial Discrimination (DACRD) reported the incident to the Police who subsequently informed DACRD that they would not carry out further investigation because the denial of entrance could have been due to other reasons than racial discrimination. The doorman had been interrogated but did not remember anything and said it was their practice to give priority to regular guests. The police also stated that any claim for damages should be pursued by civil proceedings.

In January 2000, DACRD complained to the District Public Prosecutor of Copenhagen (DPP) arguing that the investigation could not be satisfactory since there was no further investigation of the doorman's statements.

In March 2000, the DPP informed DACRD that, since the police had conducted a prompt investigation and interrogated nearly all persons involved, there was no justification to overturn their decision and different persons working for the restaurant said it was usual to prioritise regular guests.

DACRD asked the Attorney General whether the police had investigated the ethnic background of regular guests. In May 2000, the DPP said there was no indication of racial discrimination since, on the night of in question, the restaurant was full and that such investigation was not necessary.

## 3) Law

### *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 the Convention implies that States are obliged to investigate the real reasons behind the treatment of a petitioner to ascertain whether racial discrimination has occurred. The police failed to conduct a proper investigation and did not address three questions: Did discrimination take place? What was the ethnicity of regular guests? How is it possible to become a regular guest if entrance is

not allowed in the first place?

Furthermore the petitioner argued that although only intentional discrimination is criminalised, the police should have assessed whether the alleged discrimination was intentional or unintentional and that the State should explain on what evidence the Police based their conclusions.

#### *The State*

The State argued that the investigation into the case fully satisfies the requirements of the Convention. It maintained that the Police conducted thorough and detailed interviews of all persons involved in the case, except the Petitioner's Brazilian friend. Furthermore, had the incident been reported immediately, the police could have investigated whether regular guests had been allowed to enter before the petitioner.

Moreover, as the petitioner's brother had said that on the night of the incident, both Danes and foreigners were present in the restaurant. Consequently, the petition is inadmissible because the petitioner has failed to establish a *prima facie* case.

#### **5) Decision**

The Committee declared the petition as admissible, however, it held that there was no evidence of a violation of CERD. This was due to the specific circumstances of the case in which the police could not accomplish a complete and in-depth investigation of the case. Furthermore, the Committee had no evidence available which would allow it to conclude that a violation has taken place.