

The Documentation and Advisory Centre on Racial Discrimination (DACRD) v Denmark, Communication No. 28/2003, U.N. Doc. CERD/C/63/D/28/2003 (2003)

1) Reference Details

Jurisdiction: UN Committee on the Elimination of Racial Discrimination

Date of Decision: 3 December 2002

Link to full case:

<http://www1.umn.edu/humanrts/country/decisions/28-2003.html>

2) Facts

In January 2002, a private company, Torben Jensen A/C (Torben Jensen) published a job advertisement in a Danish newspaper as follows:

“The construction company BAC SIA seeks Danish foreman who, in cooperation with a Latvian construction expert...”

The petitioner reported the incident to the Chief Constable (CC) in the district where Torben Jensen was located alleging a violation of s. 5(1) of Act No. 459 arguing that the words "Danish foreman" amounted to discrimination on the ground of national or ethnic origin. In February 2002, the police interviewed the company. On this basis the CC informed the petitioner that the complaint was dismissed because there was not a violation of the Act. The police stated:

“What is sought is a Danish resident who could be of any ethnicity. In the worst case, it is a matter of an unfortunate choice of words, but not a content which constitutes grounds for further action.”

In March 2002, the petitioner appealed to the Regional Public Prosecutor (RPP) saying it was irrelevant whether the company had intended to recruit a Danish resident, as the decisive question was whether the wording of the advertisement could be perceived as discriminatory. The provision of s. 5 criminalising negligence would also be violated. The CC did not appear to have investigated this possibility. In June 2002, the RPP dismissed the appeal, for the same reasons as the CC. The DACRD (The Documentation and Advisory Centre on Racial Discrimination) consequently made a complaint to the Committee on the Elimination of Racial Discrimination.

3) Law

National Law

- Section 5 of the Danish Act No 459

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 4 of CERD (States Parties condemn all propaganda and all organizations which are based on ideas or theories of superiority of one race or group of persons of one colour or ethnic origin, or which attempt to justify or promote racial hatred and discrimination in any form)
- Article 5 of CERD (States Parties undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone)
- Article 6 of CERD (effective protection and remedies)

4) Legal Arguments

The Petitioner

The Petitioner argued that:

- a) Although no non-Danish person applied for the job, Ms Mohammad should be considered a victim of a discriminatory advertisement since it would have been futile for her to apply.
- b) DACRD should be recognised as a victim since it represents persons of non-Danish origin discriminated against by the advertisement.
- c) Domestic remedies have been exhausted since the decision of the RPP cannot be appealed, and the case cannot be brought before the Danish courts. Direct action against Torben Jensen would be ineffective, given that the police and the RPP both rejected the complaint.
- d) The State had violated its obligations under Article 4 and Article 6 of the Convention by failing to investigate the issue thoroughly. It should have investigated whether the person eventually employed was of Danish national/ethnic origin; whether the intended meaning of the advertisement should be taken into account; whether the explanation provided by Torben Jensen A/C was logical; whether the publishing of the advertisement constituted indirect discrimination; and whether the publishing of the advertisement was negligent.
- e) The company's alleged intention to recruit a Danish resident was irrelevant, since the objective meaning of the term "Danish" in the advertisement clearly related to the national/ethnic origin of the person sought. The term "Danish foreman" was not synonymous with "Danish resident".

The State

The State on admissibility argued that:

- a) The Petitioner has no legal standing to submit a complaint as it is a legal entity, and it was not in a position to claim that it was the victim of a violation of any of the rights set forth in the Convention.
- b) The Petitioner has not exhausted available domestic remedies.
- c) The determination made by the CC and the RPP was primarily a matter of interpretation and application of domestic legislation, which the Committee has no competence to review.

The State on the merits argued that:

- a) The Petitioner has failed to substantiate that the Danish legislation was not in conformity with obligations under the Convention.
- b) While an investigation must be carried out with due diligence and expedition sufficient to determine whether racial discrimination has occurred, the Convention does not guarantee the initiation or specific outcome of such an investigation in all cases reported to the police.
- c) The employment of a person of Danish origin or ethnicity in Denmark cannot in itself be considered to substantiate an allegation of discrimination.
- d) The intention of Torben Jensen A/C was relevant to the interpretation of the wording of the advertisement. Further, the question of whether the explanation provided by the company was convincing also is not a matter of traditional police investigation.
- e) The CC and the RPP made a correct assessment when they considered that the adjective "Danish" in the advertisement referred to Danish residents.

5) Decision

The Committee declared the communication inadmissible. It reasoned that a group of persons may submit a petition if it is able to prove that they had been an alleged victim of a violation of the Convention. However, persons not directly and personally affected by discrimination may not claim to be victims of a violation of any of the rights guaranteed in the Convention. Therefore as there were no identifiable victims personally affected by the allegedly discriminatory job advertisement it was questionable to whom the petitioner was authorised to represent. Further, the petitioner has failed to substantiate its claim that it constitutes or represents a group of individuals claiming to be the victim of a violation by Denmark of the Convention.