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COMMITTEE ON THE ELIMINATION
OF RACIAL DISCRIMINATION
Sixtieth session
4 March to 22 March 2002

OPINION

Communication No. 20/2000

Submitted by:	Ms. M. B. (represented by counsel)
Alleged victim:	The petitioner
State Party:	Denmark
Date of Communication:	4 August 2002 (initial submission)
Date of Present Decision:	13 March 2002

[ANNEX]

* Made public by decision of the Committee on the Elimination of Racial Discrimination.

ANNEX

OPINION OF THE COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION UNDER ARTICLE 14 OF THE INTERNATIONAL CONVENTION ON THE ELIMINATION OF ALL FORMS OF RACIAL DISCRIMINATION

- Sixtieth session -

concerning

Communication No. 20/2000

Submitted by: Ms. M. B. (represented by counsel)

Alleged victim: The petitioner

State Party: Denmark

Date of Communication: 4 August 2000 (initial submission)

The Committee on the Elimination of Racial Discrimination, established under article 8 of the International Convention on the Elimination of All Forms of Racial Discrimination,

Meeting on 13 March 2002,

Having concluded its consideration of communication No. 15/1999, submitted to the Committee under article 14 of the International Convention on the Elimination of All Forms of Racial Discrimination,

Having taken into consideration all written information made available to it by the Author and the State party,

Bearing in mind rule 95 of its rules of procedure requiring it to formulate its opinion on the communication before it,

Adopts the following:

Opinion

1. The author of the communication, dated 4 August 2000, is M. B., a Brazilian citizen with permanent residence in Denmark, born in Denmark on 25 January 1975. She claims to be a victim of a violation by Denmark of article 2, subparagraph 1 (d), and article 6 of the Convention. She is represented by counsel.

The facts as presented by the petitioner

2.1 On 20 August 1999, at approximately 11:30 pm, the petitioner, her brother, a Danish citizen of Brazilian origin and a friend, a black Brazilian, were waiting to enter the restaurant-discotheque "Etcetera" (hereafter, the restaurant), in the Centre of Copenhagen. The doorman, Martin Andersen, told them, in Danish, that he could not let them enter because the place was too crowded. Thinking that the doorman would inform them whenever they could enter, they decided to wait in front of the restaurant. When shortly after, a group of 7/8 people left the restaurant, they were not invited to enter. Later, as they were the only ones waiting, a group of 5/6 Danish people arrived and were immediately allowed to enter. The doorman thereafter told the petitioner and her companions, in English: "You should not wait." They then left the place.

2.2 On 16 September 1999, the Documentary and Advisory Centre for Racial Discrimination in Copenhagen (DRC), an independent institution dealing with racial discrimination issues, reported the incident to the Danish Police on behalf of the petitioner. On 10 January 2000, the Police of Copenhagen informed the DRC that it had decided not to carry out further investigation, as it was found that the denial of entrance could have been due to other reasons than racial discrimination, and regretted that the case had not been reported earlier to the police. According to the same letter, the doorman of the restaurant had been interrogated but did not remember anything and stated that it was a practice of the restaurant to give priority to regular guests. The Police added that any claim for damages should therefore be pursued by civil proceedings.

2.3 On 25 January 2000, the DRC, on behalf of the petitioner, brought the complaint to the District Public Prosecutor of Copenhagen. Referring to a previous decision taken by the Committee in the case L.K. v. the Netherlands,[1] it argued that the investigation led by the police could not be considered as satisfactory since no further investigation had been carried out in relation to the doorman's statements. In a decision dated 6 March 2000, the District Public Prosecutor informed the DRC that, since the police had conducted a prompt investigation and interrogated of nearly all persons involved, he had not found sufficient justification to overturn their decision. He also regretted that the incident had not been reported earlier to the police. Finally, he mentioned that different persons working for the restaurant unanimously explained that it was usual to give priority to regular guests and that, in the future, they would make this policy clearer to other guests.

2.4 On 15 March 2000, the DRC asked the Attorney General whether further to the statements explaining the practice of the restaurant to give priority to regular guests, the police had investigated the ethnic background of regular guests of the restaurant. On 12 May 2000, the District Public Prosecutor responded that nothing indicated that there had been racial discrimination since, on the night of 20 August 2000, the restaurant was well attended and that such an investigation was therefore not necessary.

[1] Case No. 4/1991.

The complaint

3.1 Counsel for the petitioner argues that the State party has violated its obligations under article 2, subparagraph 1 (d) and article 6 of the Convention. Referring to the Committee's jurisprudence in the cases L. K. v. the Netherlands[2] and Habassi v. Denmark,[3] he further explains that these provisions imply positive obligations for States parties to take effective action further to such reported incidents, including an investigation into the real reasons behind the "treatment" of the petitioner in order to ascertain whether or not criteria involving racial discrimination have been applied.

3.2 In the present case, counsel for the petitioner argues that the State party has failed to conduct a proper investigation. In particular, three important questions have not been addressed by the Danish authorities in their investigation:
-The mere fact that the employees of the restaurant have stated that there was no racial discrimination does not give an answer as to whether racial discrimination has effectively taken place.
-The Police have not investigated the ethnic background of regular guests of the restaurant.
-How is it possible to become regular guest if one is not allowed entrance in the first place?

3.3 Counsel also argues that although only intentional racial discrimination is criminalized under Danish law, it would have been appropriate for the Police to assess whether the alleged racial discrimination was intentional or unintentional and that the State party should explain on which evidence the Police based their conclusions other than the information received from the restaurant employees.

3.4 Counsel further points out to a departmental notice of the Copenhagen Police related to investigations on alleged racial discrimination, which expressly comprises "possible arbitrary interrogation of visitors (for instance if the allegation is that only members or regular clients are let in)". The Police have however not made such an investigation, which is, according to counsel, the usual practice of the Copenhagen Police in similar cases, regardless whether the incident has been reported immediately.

3.5 Counsel finally confirms that domestic remedies have been exhausted and that the matter is not pending before another procedure of international investigation or settlement.

Observations by the State party

4.1 In a submission dated 13 December 2000, the State party sent observations both on the admissibility and the merits of the communication.

4.2 The State party contends that the investigation carried out in the present case "fully satisf[ies] the requirements that can be inferred from the Convention as interpreted by the

[2] Case No. 4/1991.
[3] Case No. 10/1997.

Committee's practice" and is in accordance with the principles laid down in the Committee's previous opinions on cases related to the implementation of the alleged violated articles of the Convention.

4.3 The State party notes that the Copenhagen Police conducted thorough and detailed interviews of all persons involved in the case, except the petitioner's Brazilian friend, and this, despite increased difficulties resulting from the delay in reporting the incident. Moreover, considering the unanimous statements made by the three people working for the restaurant and the statement by the petitioner that the place was well-attended on the night of the incident, the State party is of the opinion that the steps taken by the Copenhagen Police were sufficient to determine whether racial discrimination had taken place.

4.4 The State party also points out that had the incident been reported immediately, the police could have investigated whether the group of persons who were allowed to enter before the petitioner and her companions were indeed regular guests. In this respect, the State party notes that the departmental notice referred to by counsel prescribes a description and an inspection of the site, including interviews of the clientele, only when the police are present at the place immediately after an incident of racial discrimination has occurred, which was not the case in the present situation.

4.5 With regard to the petitioner's claim that the police should have investigated the ethnic background of the guests present in the restaurant, the State party argues that the purpose of the investigation is to assess whether the conditions of the criminal offence are fulfilled in the present case and that the ethnic background of regular guests of the restaurant in general is independent from this assessment.

4.6 With regard to the question as to how it is possible to become regular guest of the restaurant if one is not allowed to enter in the first place, the State party contends that the answer to this question has no bearing on the issue whether racial discrimination has effectively taken place in this case.

4.7 With regard to the distinction between intentional and unintentional discrimination, the State party notes that only intentional racial discrimination entails criminal liability in Denmark and that the police was therefore not under a duty to investigate whether alleged racial discrimination could had been unintentional.

4.8 Finally, the State party notes that, although it had not been mentioned in the decisions taken by both the Copenhagen Police and the District Public Prosecutor, the petitioner's brother had expressly stated that, on the night of the incident, both Danes and foreigners were present in the restaurant. This demonstrates that no act of racial discrimination had been committed in the restaurant on the night of the incident and supports the decision taken by the Danish authorities to discontinue the investigation.

4.9 For the above reasons, the State party considers that the communication is inadmissible because the petitioner has failed to establish a *prima facie* case. However, if the Committee were to consider the case admissible, the State party submits that article 2, subparagraph 1(d) and article 6 of the Convention have not been violated.

Comments by the petitioner

5.1 In a submission dated 24 January 2001, counsel for the petitioner mentions a 2000 report made by the Copenhagen Police concerning a number of situations where the police had not challenged the doormen's explanations. According to the said report, ethnic minorities can expect that the police "(…) inspect the site to state whether discrimination has taken place" [and] "[i]t can be difficult to see from a place and its guests whether there is a group which can be called 'regular clients'. The police can, however, by questioning at the place investigate this. It should also be investigated whether there are ethnic minorities amongst the 'regular clients'[…]" (translated from Danish by the petitioner). Furthermore, counsel considers that an immediate report of the incident would not have significantly changed the possibilities of investigation since the issue in this case was over the existence of a regular practice of the restaurant to give priority to regular guest, which could have been investigated at any time.

5.2 With regard to the departmental notice referred to under 3.4 and 4.4, counsel argues that the fact that it does not prescribe a description and inspection of the site if the Police is not present at the place immediately after an incident of alleged racial discrimination has occurred cannot justify any lack of investigation in contravention with the Convention.

5.3 Counsel agrees that only intentional acts of racial discrimination constitute a criminal offence under Danish legislation but notes that racial discrimination by negligence is nevertheless also in violation of the Convention. He therefore maintains that the Police should have investigated unintentional acts of racial discrimination.

5.4 Finally, counsel states that the statement by the petitioner's brother according to which there were both Danes and foreigners in the restaurant on the night of the incident does not necessarily lead to the conclusion that racial discrimination has not taken place. Moreover, it is submitted by counsel that a number of Danish discotheques have so called "immigration quotas".

Consideration of admissibility

6. At its 59th session, the Committee examined the admissibility of the communication and duly considered the contention by the State party that the communication was inadmissible because the petitioner has failed to establish a *prima facie* case but concluded that in view of the elements brought before it by the petitioner, the communication satisfied the conditions for admissibility. It thus declared the communication admissible on 13 August 2001.

Additional observations by the State party

7.1 By Note Verbale of 23 January 2002, the State party made additional observations on the merits of the case.

7.2 The State party first draws the attention of the Committee on the nature of the document referred to as the "2000 report" in paragraph 5.1. The said document is not a report that gives an account of concrete situations where explanations given by discotheque's doormen on allegations of discriminatory practice have not been challenged; it is draft entitled "Strategy

against Discrimination" elaborated in cooperation with the Documentation and Advisory Centre on Racial Discrimination in order to give guidelines to police officers to combat discrimination and racism. The document contains a non-exhaustive list of examples of the most common reasons for denying access to places like discotheques and describes what the police do or should do when they have to deal with such cases. The document also reflects the high priority given by the Copenhagen Police to the education of police officers on issues related to discrimination.

7.3 The State party further reiterates that, in the present case, the doorman's explanations have indeed been challenged as all the persons involved, except the Brazilian's friend, have been interviewed by the police.

7.4 Finally, the State party emphasizes that the factual circumstances of the case have been reflected very briefly in the admissibility decision taken by the Committee and does not give a true and fair impression of the extent of the police investigation.

Consideration of the merits

8. Acting under article 14, paragraph 7 (a), of the International Convention on the Elimination of All Forms of Racial Discrimination, the Committee has considered all the information submitted by the petitioner and the State party.

9. Due to the abovementioned specific circumstances of the case, the police could not accomplish a complete and in-depth investigation of the case. Therefore, the Committee has no elements at its disposal which would allow it to conclude that a violation by the State party of the provisions of the Convention has indeed taken place in this case.

10. However, the Committee wishes to emphasize the importance it attaches to the duty of the State party and, for that matter, of all States parties, to remain vigilant, in particular by prompt and effective police investigations of complaints, that the right established under article 5, paragraph f, is enjoyed without discrimination by all persons, nationals or foreigners, under the jurisdiction of the State party.

[Done in English, French and Spanish, the English text being the original version. Subsequently to be issued also in Arabic, Chinese and Russian as part of the Committee's annual report to the General Assembly.]