CASE DIGESTS

UN Committee on the Elimination of Racial Discrimination 77th to 82nd Sessions

JUNE 2013

SUMMARIES OF DECISIONS on admissibility and merits taken by the UN Committee on the Elimination of Racial Discrimination during its 77th to 82nd sessions, from August 2010 to April 2013. Produced by lawyers at the Open Society Justice Initiative in order to bring the decisions of global human rights tribunals to the widest possible audience.

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Admissibility Decisions

Hermansen v Denmark (Communication no. 44/2009)

Petitioners not victims of discrimination due to "ethnic discount" on airline flights because one did not take an eligible flight, the others travelled at cheaper rate, and discount was discontinued.

AS v Russian Federation (Communication no. 45/2009)

Petitioners not victims of leaflets calling to drive Roma out of a town: rights not directly affected as she did not live or work in the town.

Decisions on the Merits

Adan v Denmark (Communication no. 43/2008)

Denmark failed to investigate whether public statements by two MPs asserting that Somali parents practiced female genital mutilation against their daughters in Denmark and comparing Somalis to paedophiles amounted to racial discrimination.

Dawas v Denmark (Communication no. 46/2009)

The home of an Iraqi refugee family was attacked by 35 local youths shouting "go home!" Although some offenders were charged, the courts refused to examine the racist nature of the attack, and the victims were thus denied any compensation.

TBB-Turkish Union v Germany (Communication no. 48/2010)

Public figure gave interview denigrating Turkish and Arab residents as lazy and neither willing nor able to integrate.

Admissibility Decisions

Hermansen v Denmark

13 August 2010, CERD, 44/2009

Claims under Article 6 (effective preventions and remedies) in relation to Articles 2(1)(d) (prevention of racial discrimination) and 5(f) (access to any place intended for public use)

Inadmissible under Article 14(1) (personal standing)

Thai Airways provided a discount on flights to Thailand sold to ethnically Thai people, a fact recorded in an interaction with a salesperson on a Danish television program. The Public Prosecutor discontinued the investigation, despite numerous complaints, because of insufficient evidence that petitioners were personally denied service on the same terms as others because of their ethnic origin by the travel agency featured in the TV program. According to the Committee, the petitioners qualified neither as victims—because one did not take a flight eligible for the "ethnic discount," and others in fact traveled at an even cheaper rate than the discount would have provided—nor as potential victims—because Thai Airways has since canceled the discount.

Link to full decision (PDF)

AS v Russian Federation

26 August 2011, CERD, 45/2009

Claims under Articles 4(a) (prohibition of incitement), 5 (prohibition of racial discrimination without distinction) and 6 (effective preventions and remedies)

Inadmissible under Article 14(1) (personal standing)

The petitioner, a woman of Roma descent, found a leaflet in a public area encouraging locals to drive members of the resident Roma community out of the town. The leaflets bore the alleged authorship of two individuals. The petitioner applied for criminal proceedings against the authors for incitement to hatred, abasement of human dignity, and public appeals to encourage extremist activity. Investigation led to the discovery that persons named on the leaflet were not the true authors; instead, a third person wrote and, with the help of an accomplice, posted the leaflets in order to cause trouble for the alleged authors. The regional prosecutor's office declined to initiate criminal proceedings and the district court refused the petitioner's appeals, claiming that the true authors of the leaflet lacked the intent—as required by Russian law—to incite hatred or enmity against the Roma, and that the petitioner's rights had not been infringed because she neither lived nor worked in the relevant town. The petitioner brought the case to CERD claiming that the direct intent requirement of Russian law did not comply with the obligations of the Convention under Article 4(a), and that every individual of Roma origin has standing as a victim of speech against Roma. According to the Committee, the petitioner did not qualify as a victim under the Convention because her rights were not directly affected. The Committee did note the racist and xenophobic nature of the actions, and reminded Russia of its 2008 Concluding Observations' recommendations on the increase of racist and xenophobic activity in the country and of its obligation to prosecute *ex officio* all statements and actions which attempt to justify or promote racial hatred and discrimination in any form.

Link to full decision (PDF)

Decisions on the Merits

Adan v Denmark

13 August 2010, CERD, 43/2008

Claims under Articles 4 (obligation to condemn all propaganda or organizations based on ideas of racial superiority), 6 (effective preventions and remedies) read in conjunction with 2(1)(d) (prevention of racial discrimination)

Violations of Articles 2(1)(d) (prevention of racial discrimination), 4 (obligation to condemn all propaganda or organizations based on ideas of racial superiority) and 6 (effective preventions and remedies)

The petitioner is a Somali national currently residing in Denmark. She claims that public statements made by two MPs for the Danish People's Party lacked proof when asserting that Somali parents practiced female genital mutilation against their daughters in Denmark, and were offensive in that they made a comparison between Somalis and paedophiles. Her complaint was dismissed domestically on the basis that she lacked individual and legal interest. The Committee welcomed Denmark's guidelines on the investigation of hate speech cases; however, it also reiterated that legislation against racial discrimination must be effectively implemented. The Committee noted that the impugned statements can generalize negatively about an entire ethnic or national group. Further, it recalled that the Danish domestic authorities excluded the applicability of hate speech legislation to the disputed statements from the outset. The Committee emphasized that despite the fact that the statements had been made in the context of a political debate, the State party still had to investigate if they amounted to racial discrimination. As Denmark failed to carry out such effective investigation, it violated Articles 2(1)(d), 4 and 6.

Link to full decision (PDF)

Dawas v Denmark

6 March 2012, CERD, 46/2009

Claims under Article 3 (condemnation of apartheid), 4 (obligation to condemn all propaganda or organizations based on ideas of racial superiority) and 6 (effective preventions and remedies) in conjunction with 2(1)(d) (prevention of racial discrimination)

Violations of Articles 2(1)(d) (prevention of racial discrimination) and 6 (effective preventions and remedies)

An Iraqi refugee family in Denmark fell victim to an attack on their home and persons from 35 local youths. During the incident, the attackers shouted, "Go home!" Before the attack, a sign saying "no blacks allowed" was posted in the vicinity of the home; furthermore, one of the offenders, in a phone conversation with another before the attack, said he had a problem with foreigners. Some of the offenders were charged for the attack, but in both criminal and civil suits the Danish Court did not consider the racist nature of the attack. The petitioners thus did not receive any compensation or damages for the attack. The Committee criticized Denmark for setting aside the possibility of a racial aspect to the attack at the investigation stage and subsequently failing to adjudicate it at trial. It recalled that when threats of violence are made (especially in public and by a group), the State party is obligated to investigate with due diligence and expedition. As the Committee considered the investigation carried out by Denmark

incomplete (which consequently deprived the petitioners from their right to effective protection and remedies against racial discrimination), it held that the petitioners' rights were violated. The evidence was not sufficient, however, for the Committee to find the Article 3 claim admissible, nor to find a violation of Article 4. The Committee recommended Denmark grant compensation for material and moral injuries from the attack.

Link to full decision (PDF)

TBB-Turkish Union v. Germany

4 April 2013, UNCERD, 48/2010

Claims under Articles 2(1)(d) (prevention of racial discrimination), 4 (obligation to condemn all propaganda or organizations based on ideas of racial superiority), 6 (effective preventions and remedies) read in conjunction with 2(1)(d) (prevention of racial discrimination)

Violations of Articles 2(1)(d) (prevention of racial discrimination), 4 (obligation to condemn all propaganda or organizations based on ideas of racial superiority) and 6 (effective preventions and remedies)

The German cultural journal *Lettre International* published an interview with Mr. Thilo Sarrazin, the former Finance Senator of the Berlin Senate and member of the Board of Directors of the German Central Bank, in which he made a number of racist remarks, including several specifically against Turkish and Arab people. For example, Sarrazin claimed that most Arabs and Turks in Berlin have no productive function, are neither willing nor able to integrate, reject the German state, make no effort to educate their children and just produce "new little headscarf girls."

The applicant, the Turkish Union, filed a criminal complaint "as the interest group of the Turkish citizens and citizens with Turkish heritage of Berlin and Brandenburg." It claimed, inter alia, that Mr. Sarrazin's statements constituted inciting hatred against a segment of the population (*Volksverhetzung*). The Office of Public Prosecution declined to pursue the case, based on the freedom of expression in Article 5 of the Basic Law. The Turkish Union claims that it was arbitrarily denied protection against racially discriminatory statements directed against it as a group of individuals of Turkish heritage and, as the representative of this group, claimed that this violated Articles 2 (1) (d), 4(a) and 6.

The Committee ruled that the Turkish Union had standing to bring the claim, as Article 14(1) gives the Committee competence to receive communications from "groups of individuals" and the Union's activities with the Turkish population satisfied the victim requirement in Article 14(1). The Committee found that Sarrazin's statements contained ideas of racial superiority, denied respect to the Turkish population as human beings, and depicted generalized negative characteristics of the Turkish population. It also incited racial discrimination in order to deny the Turkish population access to social welfare in accordance with Article 4(a). The Committee held that the criterion of disturbance of public peace, required under German law for a finding of incitement, does not adequately translate into domestic legislation the State party's obligations under the Convention to enact legislation to end racial discrimination and to condemn racist propaganda, in particular as neither Article 2(1)(d) or Article 4 contain such a requirement. The Committee therefore concluded that the absence of an effective investigation into the statements by Mr. Sarrazin amounted to a violation of Articles 2(1)(d), 4 and 6 of the Convention. The Committee recommended that the State party review its policy and procedures concerning the prosecution in cases of alleged racial discrimination consisting of dissemination of ideas of

superiority over other ethnic groups and of incitement to discrimination on such grounds, in the light of its obligations under Article 4 of the Convention. The State party must also widely publicize the Committee's Opinion, including among prosecutors and judicial bodies.

Link to full decision (PDF)

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