



International Convention on the Elimination of All Forms of Racial Discrimination

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Committee on the Elimination of Racial Discrimination

Decision adopted by the Committee under article 14 of the Convention, regarding communication No. 58/2016*, **

<i>Communication submitted by:</i>	S.A. (represented by counsel, Erik Niels Hansen)
<i>Alleged victim:</i>	The petitioner
<i>State party:</i>	Denmark
<i>Date of communication:</i>	19 October 2015 (initial submission)
<i>Date of present decision:</i>	13 December 2018
<i>Subject matter:</i>	Racial discrimination in access to social benefits; inadequate compensation
<i>Procedural issues:</i>	Six-month deadline set by rule 91 (f) of the rules of procedure; substantiation of the author's allegations
<i>Substantive issue:</i>	Discrimination on the grounds of national or ethnic origin
<i>Articles of the Convention:</i>	2 (1) (c), 5 and 6

1. The petitioner, S.A., originally from Bosnia and Herzegovina, acquired Danish citizenship in 2002 and currently resides in Denmark. He claims to be a victim of a violation by the State party of articles 2 (1) (c), 5 and 6 of the International Convention on the Elimination of All Forms of Racial Discrimination.¹ He is represented by counsel.

Factual background

2.1 The petitioner was born in Bosnia and Herzegovina on 8 January 1972. He was seriously injured in the war and in 1994 he escaped with his mother to Denmark, where he lived until 1996, when he moved to Mozambique and stayed there for six months employed by the Danish International Development Agency (Danida). In 1997, he returned to Denmark and moved to Aalborg where his mother was living.

2.2 The petitioner took several language courses and had a freelance job as an interpreter. From 1998 to 2001, he worked at a shipping company, DFDS. Afterwards, he

* Adopted by the Committee at its ninety-seventh session (26 November–14 December 2018).

** The following members of the Committee participated in the examination of the present communication: Nourredine Amir, Alexei Avtonomov, Marc Bossuyt, José Francisco Calí Tzay, Chinsung Chung, Fatimata-Binta Dah, Bakari Diaby, Rita Izsák-Ndiaye, Keiko Ko, Gun Kut, Yanduan Li, Pastor Murillo Martínez, Yeung Yeung Sik Yuen.

¹ The Convention was ratified by the State party on 9 December 1971. The State party made the declaration under article 14 of the Convention on 11 October 1985.



worked for six months in the north-western part of Greenland. In 2002, he acquired Danish nationality. That same year, he moved to the United Kingdom of Great Britain and Northern Ireland, where he worked in a hotel until 2004. From 2004 to 2009 he had various jobs in the United Kingdom working, among other jobs, as an accountant.

2.3 In 2009, he moved back to Aalborg.² As he was looking for employment, he contacted the job centre. In his first conversation with the centre, he did not get proper guidance. One week later, therefore, on 8 July 2009 he went back to apply for social assistance and presented his passport and health insurance card. He filled out and handed over a written application for income support. On 22 July 2009, the job centre refused in a written decision to grant him income support. He was however advised to apply for dispensation at the Danish Immigration Service for his right to reside in Denmark.³ As a Danish citizen, he did not understand why he had to apply for dispensation. The petitioner tried to contact the job centre. He could not talk to the person in charge of his case but was dealt with by another employee who advised him to follow the decision. Owing to lack of money, the petitioner could not afford a lawyer.

2.4 On 23 July 2009, the Aalborg municipality reviewed the petitioner's application and, after recognizing that a mistake had occurred, decided that he was eligible for social assistance in the form of an allowance. The petitioner received that decision on 10 August 2009.

2.5 On 22 and 23 July 2009, the petitioner contacted the media (TV2 Nord). In a television programme on 24 July 2009, the head of the social centre in Aalborg recognized that a mistake had been made, which the centre was ready to correct. In the course of the interview, she allegedly stated that the mistake probably had to do with the petitioner's "foreign-sounding" name. On 4 August 2009, following the broadcasting of his story on television, the petitioner contacted the job centre but its employees maintained that he did not have Danish citizenship.

2.6 Considering that he had been subjected to racial discrimination by the Aalborg municipality, the petitioner contacted the Documentation and Advisory Centre on Racial Discrimination, which helped him to send a complaint to the Board of Equal Treatment on 4 August 2009. On 13 August 2010, the Board took a decision in the petitioner's favour and provided him with compensation of 2,000 Dkr (approximately US\$ 330). The Board considered that, taking into account that the petitioner had been a Danish citizen since 2002, he met the conditions to qualify for an allowance and that the rejection of his application was unjustified. The Board therefore decided that it could be presumed that the municipality had applied "direct differential treatment" to the petitioner.⁴

2.7 On 15 October 2011, the petitioner submitted an application for free legal aid to the Department of Civil Affairs, which was granted on 7 December 2011.

2.8 On 7 June 2012, the petitioner appealed the decision of the Board of Equal Treatment to the District Court in Aalborg claiming that the compensation did not meet the requirement of "just and adequate reparation or satisfaction for any damage suffered as a result of racial discrimination" stipulated in article 6 of the Convention, as it was too low. On 6 May 2013, the district Court upheld the decision of the Board of Equal Treatment. It indicated that the municipality had corrected its mistake as soon as possible and apologized for it and that therefore there was no reason to increase the amount of compensation. The court decided that the costs of the proceedings (25,000 Dkr) should be covered by public funds.

2.9 On 3 June 2013, the petitioner appealed the case to the High Court of Western Denmark. In its decision of 18 December 2014, the High Court upheld the decision of the Board of Equal Treatment, considering that the civil servant who had committed the mistake had not acted intentionally or with gross negligence and that the petitioner had

² The petitioner does not provide the date of the move.

³ The petitioner has not provided further details on this matter.

⁴ The Act on Ethnic Equal Treatment prohibits any public or private actor from applying differential treatment based on racial or ethnic origin in carrying out social protection activities, including social security and social benefits.

received the benefit to which he was entitled. Taking into account the outcome of the case compared to the claims of the parties, the court ordered the petitioner to cover the costs of the proceedings amounting to 25,000 Dkr (approximately US\$ 4,200). On 14 January 2015, the petitioner applied to the Appeals Permission Board to obtain permission to appeal this decision to the Supreme Court. On 14 April 2015, the Board rejected the petitioner's request, as it did not comply with the conditions established in article 371 (1) (2) of the Administration of Justice Act. The petitioner claims that he was only notified of this decision two weeks later, owing to a delay in the mail service.

The complaint

3.1 The petitioner claims to be the victim of a violation by Denmark of articles 2 (1) (c), 5 and 6 of the Convention. He claims that by considering him as a non-Danish citizen, the authorities of the State party have denied him all his rights as a citizen, including the right of residence, the right to vote and the right to a health insurance card. In addition, the threat of losing those rights, in particular the right of residence, has caused the petitioner serious psychological damage. He claims that since he suffered discriminatory treatment by the municipality of Aalborg, he has had to take antidepressants and is no longer able to work.

3.2 The petitioner adds that the Board of Equal Treatment has concluded that the way the municipality of Aalborg treated his case amounted to direct discrimination against him and that he has suffered material and moral damage as a consequence. The Board has, however, set the amount of compensation at only 2,000 Dkr, which is not even close to "just and adequate reparation", as established in article 6 of the Convention, and therefore does not constitute an effective remedy against racial discrimination. He adds that the victims of less grave acts of racial discrimination, including indirect discrimination, such as being denied access to nightclubs or discrimination against persons wishing to rent apartments, generally receive a minimum of 5,000 Dkr compensation from the Board.

3.3 The petitioner refers to *B.J. v. Denmark*, in which a Danish citizen alleged that he had been a victim of racial discrimination because he and his friends were refused access to a nightclub (CERD/C/56/D/17/1999, para. 6.2). In that case, the domestic authorities fined the perpetrator of the discrimination and the Committee recommended that the State party take the necessary measures to ensure that the victims of racial discrimination seeking just and adequate reparation or satisfaction, including economic compensation, would have their claims considered with due respect for situations where the discrimination had not resulted in any physical damage but humiliation or similar suffering (para. 7). The petitioner alleges that, given that in his case the perpetrators have not been sanctioned and taking into account that he has not obtained any redress besides the inadequate compensation granted by the Board, the Committee should grant him full compensation, as recommended in *B.J. v. Denmark*.

3.4 In addition, the petitioner requests that an effective remedy for the acts of racial discrimination that he suffered at the hands of the Aalborg municipality, be put in place. The sanction has to be effective, give the victim redress and should have a dissuasive effect on the perpetrator. The petitioner submits that, given the size of the budget managed by the municipality, a compensation of 2,000 Dkr does not comply with such conditions. He adds that, as he was not successful in the proceedings before the High Court, he was ordered to pay the other party's legal costs, amounting to 25,000 Dkr, which is in stark contrast with the compensation of 2,000 Dkr awarded to him. The petitioner refers to paragraph 6 of the Committee's general recommendation No. 31 (2005) on the prevention of racial discrimination in the administration and functioning of the criminal justice system, in which the Committee established that States parties are obliged to guarantee the right of every person within their jurisdiction to an effective remedy against the perpetrators of acts of racial discrimination, without discrimination of any kind, whether such acts are committed by private individuals or State officials, as well as the right to seek just and adequate reparation for the damage suffered. The petitioner also refers to paragraph 19 (d) of the same general comment, in which the Committee established that States parties should ensure that the system of justice guarantees victims just and adequate reparation for the material and moral harm suffered as a result of racial discrimination.

3.5 The petitioner also refers to European Union Council directive 2000/43/EC, adopted on 29 June 2000, regarding the principle of equal treatment between people, irrespective of racial or ethnic origin. He quotes a decision by the Court of Justice of the European Union, in which it stated that sanctions for a breach of this principle, which must be effective, proportionate and dissuasive, may take the form of a finding of discrimination by the court with an adequate level of publicity or an injunction ordering the employer to cease the discriminatory practice and a fine, or an award of damages to the body bringing the proceedings.⁵

State party's observations on admissibility and the merits

4.1 On 23 June 2016, the State party submitted its observations on the admissibility and merits of the communication. It indicates that the Board of Equal Treatment is an independent, quasi-judicial body composed of one Chair, who is a high court judge, two deputy Chairs, who are district court judges, and nine other persons appointed by the Minister of Employment. They must be experts on legislation, on gender equality and on equal treatment irrespective of race or ethnic origin. They are appointed for three years and are eligible for reappointment. The decisions of the Board are binding and the Board can decide to award compensation to the complainant if it finds that there was a violation of relevant legislation, in particular the Act on Equal Treatment. The decisions of the Board cannot be appealed to any other administrative authority, but they can be reviewed by the courts.

4.2 The State party reports that the Act on Equal Treatment implements European Union Council directive 2000/43/EC. The Act establishes that no one may subject another person to direct or indirect differential treatment on grounds of racial or ethnic origin. If a person considers that he or she has been the victim of racial discrimination and demonstrates facts from which it may be presumed that there has been direct or indirect differential treatment, it is for the other party to prove that the anti-discrimination principle has not been breached.

4.3 The State party considers that the communication is inadmissible because it was submitted after the six-month deadline set in rule 91 (f) of the Committee's rules of procedure. While the Appeals Permission Board rejected the petitioner's application for permission to appeal the decision of the High Court of Western Denmark on 14 April 2015, the petitioner submitted his complaint on 19 October 2015, five days after the deadline established by rule 91 (f) had passed.

4.4 The State party also considers that the petitioner has failed to substantiate any of his allegations and that the communication should therefore be held inadmissible as manifestly ill-founded. It indicates that, while it is aware that neither article 14 of the Convention nor rule 91 of the Committee's rules of procedure establishes the possibility of declaring the inadmissibility of a communication on grounds of prima facie violation of the Convention, it appears from the Committee's jurisprudence that a communication can be deemed inadmissible on such grounds. It refers to *C.P. v. Denmark* (CERD/C/46/D/5/1994, para. 6.3).

4.5 Regarding the petitioner's allegations under article 2 (1) (c) of the Convention, the State party considers that the petitioner has failed to point to any specific policies, laws or regulations which have the effect of creating or perpetuating racial discrimination. The petitioner therefore failed to establish a prima facie case for the purpose of admissibility, and the allegations should be declared manifestly ill-founded. Should the Committee find them admissible, it submits that this provision of the Convention does not impose specific obligations on the State party. On the contrary, States parties enjoy a significant margin of appreciation in that regard. The State party adds that it has adopted legislation which implements article 2 (1) (c) of the Convention, in particular the Act on Equal Treatment which is enforced by the Board of Equal Treatment.

⁵ *Centrum voor gelijkheid van kansen en voor racismebestrijding v. Firma Feryn NV*, European Court of Justice, judgment of 10 July 2008. Available from <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:62007CJ0054>.

4.6 The State party also considers that the petitioner's allegations under articles 5 and 6 of the Convention are ill-founded. Should the Committee find them admissible, it submits that the mention by the petitioner of article 5 of the Convention is a mere reference and not a claim, as the State party complies with this provision by prohibiting and eliminating racial discrimination in all its forms in the enjoyment of civil, political and cultural rights.

4.7 Regarding the allegations under article 6 of the Convention, the State party notes that the communication did not include any new information on the petitioner's circumstances, beyond the information already provided to and reviewed by the domestic authorities. The State party adds that while the Act on Equal Treatment was being drafted, the Equal Treatment Committee, which was the body responsible for preparing the draft law, took into account the views of the Committee. According to the *travaux préparatoires*, the Equal Treatment Committee considered that a specific provision should be established on the right to compensation for a non-economic loss caused by a racially discriminatory act, taking into account that such treatment constitutes an injury to the person in question. The Equal Treatment Committee considered that compensation would be an effective and dissuasive sanction, even more than criminal proceedings. It also considered that importance must be attached to the injury inflicted by the alleged discriminatory act and the nature of the act causing the injury.

4.8 The State party maintains that the considerations of the Equal Treatment Committee are in line with the Committee's general recommendation No. 26 (2000) on article 6 of the Convention, in which it states that "the right to seek just and adequate reparation or satisfaction for any damage suffered as a result of such discrimination, which is embodied in article 6 of the Convention, is not necessarily secured solely by the punishment of the perpetrator of the discrimination; at the same time, the courts and other competent authorities should consider awarding financial compensation for damage, material or moral, suffered by a victim, whenever appropriate". In that respect, the State party argues that the petitioner's allegation that the compensation he received does not provide effective reparation in accordance with the Convention is not correct, as it is not possible to infer from the wording of the Convention or the Committee's jurisprudence or general comments, a requirement of compensation in a specific amount.

4.9 In addition, the State party considers that the right to just and adequate reparation or satisfaction is not an absolute right and that it can be subject to limitations. In that respect, States parties enjoy a margin of appreciation and may lay down limitations, provided that they do not restrict or reduce the right in such a way or to such an extent that its very essence is affected. According to the *travaux préparatoires* for the Act on Equal Treatment, the amount of compensation is determined based on an overall assessment of the specific circumstances of the individual case, taking into account the nature of the act causing the injury, as well as its impact on the victim's self-esteem and the injury itself. Moreover, it may also be taken into account to determine the amount of compensation, whether the person who exercised the differential treatment was motivated by a desire to exercise such treatment or otherwise acted negligently.

4.10 In the present case, when determining the amount of compensation, importance was attached to the fact that the municipality of Aalborg corrected the error as soon as possible after it was discovered and also apologized to the petitioner. The State party indicates that the error was corrected three days after the initial refusal by the municipality of the petitioner's request for social assistance. The municipality issued a new decision indicating that the petitioner was eligible for an allowance. In addition, the State party states that the decision of the High Court of Western Denmark of 18 December 2014 took into account that the case officer in Aalborg had neither acted intentionally nor with gross negligence, and that the petitioner had been granted compensation. The State party also affirms that the petitioner is in the same position as if no differential treatment had occurred, as he was granted the social benefit to which he was entitled only three days after the discriminatory act took place.

4.11 The State party further refers to the case law of the Board of Equal Treatment quoted by the petitioner and states that those cases are very different from the present case. In cases of denial of access to accommodation or nightclubs, it is impossible to put those persons in the same position as if no differential treatment had occurred. For instance, a person who

has been refused entrance to a nightclub may no longer be interested in frequenting the place after the unlawful act has been established. In addition, such violations are made in the public sphere, in the presence of other persons waiting to gain access to the nightclub, which should be taken into account in the determination of the amount of compensation, as the discriminatory act may seem particularly humiliating in that situation.

4.12 Furthermore, the State party considers unfounded the petitioner's allegations that all his rights as a Danish citizen were denied by the error committed by the Aalborg municipality, taking into account that the mistake was corrected three days later and that the petitioner's rights, including his right to residence or his electoral rights, were not affected. In addition, it states that the petitioner has failed to establish a connexion between the discrimination of which he was a victim and the allegations regarding the psychological distress from which he is suffering. The State party notes that the petitioner has not provided any document to support such allegations or their connection to the error committed by the Aalborg municipality.

4.13 Finally, the State party indicates that the circumstance that the petitioner was ordered to pay the legal costs of the judicial review of the Board's decision does not change the fact that he was granted a compensation of 2,000 DKr for the discriminatory act he had suffered. The fact that he finds the amount of the compensation insufficient does not imply that such compensation is ineffective.

Petitioner's comments on the State party's observations on admissibility and the merits

5.1 On 27 December 2017, the petitioner submitted comments on the State party's observations on the admissibility and merits of his communication. He reiterates his arguments outlined in the original communication and specifies that he contests the amount of the compensation he was awarded, given high living costs in the State party. In that connection, he refers to a statement made by the Prime Minister of Denmark in 2013, according to which 2,000 DKr could buy only "a pair of shoes". The petitioner also affirms that he has been "punished" by the High Court of Western Denmark, as he has been ordered to pay the very large amount of 25,000 DKr for the legal costs of the proceedings.

5.2 The petitioner further submits that the State party failed to mention that after his request for social assistance was rejected on 22 July 2009, the Aalborg municipality contacted the Danish Immigration Service in order to start the proceedings for his deportation to Bosnia and Herzegovina. As a result, he has been suffering from deep fear and stress that have caused him severe psychological problems and made it impossible for him to work. Taking into account the severe psychological damage he has suffered, the State party's argument that the mistake made by the municipality was corrected a few days after it occurred is not relevant.

5.3 Regarding the State party's argument that the communication is inadmissible because it was submitted after the six-month deadline set in rule 91 (f) of the Committee's rules of procedure, the petitioner indicates that he was notified of the decision of the Appeals Permission Board of 14 April 2015 after a substantial delay caused by the postal service. He therefore considers that the communication was submitted within the deadline. The petitioner questions the State party's argument as on the one hand, it considers that four days taken by the municipality to correct its mistake were not long, while considering that four days of delay in submitting the communication makes it inadmissible.

5.4 The petitioner reiterates that all his rights as a Danish citizen were violated by the decision of the Aalborg municipality, taking into account that every citizen who comes back to the country after having lived abroad, as he did, needs to register with the municipality where he or she will be living in order to get access to medical services, social assistance, taxation services, etc. He therefore considers that his rights were violated by the decision of the municipality ordering him to register with the Danish Immigration Service.

Issues and proceedings before the Committee

Consideration of admissibility

6.1 Before considering any claim contained in a communication, the Committee on the Elimination of Racial Discrimination must decide, pursuant to article 14 (7) (a) of the Convention, whether or not the communication is admissible.

6.2 The Committee notes the State party's assertion that the communication is inadmissible because it was submitted after the six-month deadline set in rule 91 (f) of the Committee's rules of procedure. It also notes the petitioner's claim that he was notified of the decision of the Appeals Permission Board of 14 April 2015 because of a delay caused by the postal service and that therefore, the communication was submitted within the deadline. The Committee notes that on 31 May 2018, the petitioner's comments, including this affirmation, were transmitted to the State party. It also notes that on 11 July 2018, the State party replied, indicating that the petitioner's submission did not raise any further comments. Taking into account that the State party has not contested the petitioner's affirmation in relation to the late notification of the Board's decision of 14 April 2015, taking note that he submitted his petition on 19 October 2015, namely five days after the deadline, and taking note that the delay was caused by the Danish postal service, the Committee considers that the communication is admissible under article 14 (5) of the Convention.

6.3 The Committee further notes the State party's argument that the petitioner has failed to establish a prima facie case with respect to his allegations under article 2 (1) (c) of the Convention, as he does not point to any specific policies, laws or regulations which have the effect of creating or perpetuating racial discrimination in the State party. The Committee notes that the petitioner did not mention any law, regulation or policy in reply to the State party's observations and therefore considers that the petitioner's claims under article 2 (1) (c) of the Convention are inadmissible under article 14 of the Convention.⁶

6.4 The Committee observes that the communication raises issues under articles 5 and 6 of the Convention and therefore declares admissible this section of the communication and proceeds to consider it on the merits.

Consideration of the merits

7.1 The Committee has considered the present communication in the light of all the submissions and documentary evidence produced by the parties, as required under article 14 (7) (a) of the Convention and rule 95 of its rules of procedure.

Article 5 of the Convention

7.2 The Committee notes the State party's argument that the petitioner has failed to demonstrate that any violation of article 5 of the Convention has taken place, as it complies with this provision by prohibiting and eliminating racial discrimination in all its forms in the enjoyment of civil, political and cultural rights. The Committee notes the petitioner's claim that by rejecting his social assistance request, the authorities have denied him his rights as a citizen, such as the right of residence, the right to vote, or the right to a health insurance card. It also notes that the petitioner obtained Danish nationality in 2002; that after living abroad for several years, he came back to Denmark in July 2009 and that he contacted the Aalborg municipality so as to obtain social assistance. The Committee notes the decision by the municipality, dated 22 July 2009, in which it rejected his request and ordered him to contact the Immigration Service. It also notes that on 23 July 2009, the municipality modified the previous decision and indicated that the petitioner, as a Danish citizen, was entitled to receive an allowance. The Committee notes that this decision was notified to the petitioner on 10 August 2009.

7.3 However, the Committee also notes the petitioner's allegation that, following the broadcast of his story on television, he contacted the Social Centre on 4 August 2009 and

⁶ *C.P. v. Denmark*, para. 6.2.

that the employees who dealt with him reiterated that he was not a Danish citizen, despite the decision issued by the Centre on 4 August 2009 recognizing that an error had been made and that he was indeed a Danish citizen. In that connection, the Committee also takes note of the petitioner's affirmation that, taking into account that all Danish citizens have the obligation to register with the municipality of the place of residence after living abroad in order to gain access to social and medical services, the error committed by the Aalborg municipality on 22 July 2009 affected all his rights as a Danish citizen, including residence and electoral rights. The Committee also notes the decision of the Board of Equal Treatment of 13 August 2010, in which it concluded that the petitioner had suffered direct differential treatment by the Aalborg municipality, and the confirmation of that conclusion in the decisions of the district court of 6 May 2013 and of the High Court of Western Denmark of 18 December 2014. The Committee agrees with the decisions of the domestic authorities. Nonetheless, it also observes that there is no indication that the domestic courts took into account the events of 4 August 2009 and it notes that according to the information available, no action has been taken to punish the employees of the Social Centre who dealt with the petitioner. In view of the above, the Committee considers that the decisions of the Aalborg municipality on 22 July and again on 4 August 2009 denying that the petitioner had Danish nationality amounted to a violation of his rights under article 5 (d) (iii) of the Convention.

Article 6 of the Convention

7.4 Regarding the petitioner's allegations under article 6, the main issue before the Committee is whether the State party fulfilled its obligations under that provision, to ensure the petitioner's right to seek just and adequate reparation or satisfaction for any damage suffered as a result of racial discrimination from national competent tribunals and other State institutions.

7.5 The Committee notes the State party's argument that, when drafting the Act on Equal Treatment, it was determined that a provision establishing the right to compensation for a non-economic loss caused by a racially discriminatory act should be introduced and that such provision should be an effective and dissuasive sanction. The Committee further notes the State party's reference to the *travaux préparatoires* for the Act, according to which importance must be attached to the injury inflicted by the alleged discriminatory act and the nature of the act causing the injury, as well as to an analysis of whether the discriminatory act was intentional or resulted from a form of negligence. The Committee takes note of the State party's argument that in the present case those criteria were fully applied and that, accordingly, the Board of Equal Treatment decided that the amount of the compensation should be 2,000 DKr. That decision was upheld by the district court in Aalborg and by the High Court of Western Denmark in their decisions of 6 May 2013 and 18 December 2014, respectively. The Committee further notes the State party's statement that the compensation granted to the petitioner complies with the provisions of the Convention and with the Committee's general recommendation No. 26, insofar as it is not possible to infer either from article 6 of the Convention or from general recommendation No. 26 a requirement of compensation in a specific amount.

7.6 The Committee also notes the petitioner's affirmation that the amount of compensation is not even close to "just and adequate reparation", as established in article 6 of the Convention, and that therefore it does not constitute an effective remedy against racial discrimination, taking into account that in other cases of racial discrimination larger amounts of compensation were allocated, that living costs in the State party are very high and that such an amount is in stark contrast with the amount he was ordered to pay as legal costs, namely 25,000 DKr, which he considers to be a "punishment". The Committee further notes the petitioner's allegation that the fact that he has been ordered to pay such a large amount of legal costs contravenes article 6 of the Convention, as it violates the right to seek just and adequate compensation and constitutes an obstacle to obtaining an effective remedy against the perpetrators of acts of racial discrimination, as set out in paragraph 6 of the Committee's general recommendation No. 31.

7.7 The Committee notes that on 7 June 2012, the petitioner appealed the decision of the Board of Equal Treatment to the district court in Aalborg, claiming that the compensation

of 2,000 DKr that he had been granted did not meet the requirement of “just and adequate reparation or satisfaction for any damage suffered as a result of racial discrimination”, as stipulated in article 6 of the Convention, as it was too low. The Committee further notes that on 6 May 2013, the district court upheld the decision of the Board of Equal Treatment, as it considered that the municipality had corrected its mistake as soon as possible and had apologized for it, and that therefore there was no reason to increase the amount of compensation. The Committee notes that the court decided that the costs of the proceedings (25,000 DKr) should be covered by public funds. The Committee also notes that on 3 June 2013, the petitioner appealed the decision of the district court to the High Court of Western Denmark, which on 18 December 2014, upheld the decision of the district court. The High Court took into account that the civil servant who committed the mistake had not acted intentionally or with gross negligence and that the petitioner had received the benefit to which he was entitled. The High Court also indicated that, taking into account the outcome of the case compared to the claims of the parties, the petitioner should pay the costs of the proceedings, amounting to 25,000 DKr.

7.8 The Committee recalls that, in accordance with its jurisprudence, the victim’s claim for compensation has to be considered in every case, including those cases where no bodily harm has been inflicted but where the victim has suffered humiliation, defamation or other attack against his or her reputation and self-esteem.⁷ The Committee also recalls that according to article 6 of the Convention, States parties shall assure to everyone within their jurisdiction effective protection and remedies, through the competent national tribunals and other State institutions, against any acts of racial discrimination that violate human rights and fundamental freedoms contrary to the Convention, as well as the right to seek from such tribunals just and adequate reparation or satisfaction for any damage suffered as a result of such discrimination. The Committee further recalls that according to General Assembly resolution 60/147, which refers to article 6 of the Convention, full and effective reparation includes the following forms: restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition. The Committee notes that restitution aims to restore the victim to his or her original situation before the violation occurred; compensation should be provided for any economically assessable damage, as appropriate and proportional to the gravity of the violation and the circumstances of each case, including the costs required for legal or expert assistance, among others; rehabilitation should include medical and psychological care and legal and social services, as well as judicial and administrative sanctions against persons liable for the violations; satisfaction should include measures such as a public apology, including acknowledgement of the facts and acceptance of responsibility, or an official declaration or judicial decision restoring the dignity, reputation and rights of the victim and of persons closely connected with the victim; and guarantees of non-repetition should include measures such as reviewing and reforming the laws contributing to or allowing the violations to occur.

7.9 The Committee notes that the petitioner was granted compensation. However, the just and adequate character of such compensation must be analysed in the light of the context in which it was granted. In that way, in the particular circumstances of the present case, the compensation provided must be analysed in view of the gravity of the violation, of the cost of living in the State party, of the petitioner’s situation and of the preventive character of the measures taken to avoid similar violations in the future. In this regard, the Committee notes the petitioner’s allegation that the fact that he was asked to contact the immigration authorities, despite having presented his passport, caused him great anxiety because he thought that he could be deported to Bosnia and Herzegovina, a country in which he had not lived for years. The Committee further observes that although the authorities corrected their decision very quickly, such a situation is serious enough to generate anxiety for the person concerned, especially taking into account that he was told that he could be deported. The compensation should therefore reflect the effect that it may have had on the petitioner. In that regard, the Committee further notes the petitioner’s argument that according to a statement made by the Prime Minister of Denmark in 2013, 2,000 DKr could buy only “a pair of shoes”, and that according to the information available on file no action has been taken by the judicial or administrative authorities to punish the

⁷ Ibid., para. 6.2.

perpetrators or, more widely, to avoid similar violations in the future, despite the fact that the State party's authorities have recognized that the petitioner was the victim of an act of racial discrimination. The Committee therefore concludes that the compensation received by the petitioner does not comply with article 6 of the Convention, as it is not just and adequate and failed to rehabilitate the petitioner, taking into account that no judicial or administrative sanctions have been imposed on the perpetrators of a recognized act of racial discrimination.

7.10 In addition, the Committee notes that the amount of 25,000 DKr for legal costs charged to the petitioner is much higher than 2,000 DKr he received as compensation for an act of recognized racial discrimination. The Committee further notes that in its decision of 18 December 2014, the High Court did not explain the reason why such high legal costs were justified in the petitioner's case, in particular taking into account that the first instance court had considered that the legal costs should be covered by public funds. The Committee further notes that on 7 December 2011, the Department of Civil Affairs granted legal aid to the petitioner so as to enable him to appeal the decision of the Board of Equal Treatment. The Committee considers that this decision constitutes a clear indication that the petitioner was in a precarious financial situation and that asking him to pay a large amount to cover the legal costs of the court proceedings constitutes a sanction against a person who has been the victim of racial discrimination and who was merely seeking adequate compensation. The Committee considers that such a practice can be considered a deterrent for victims of racial discrimination to challenge a compensation amount that they consider inadequate or ineffective, which may convert into a denial of access to justice in cases of racial discrimination. Consequently, the Committee considers that article 6 of the Convention has been violated.

8. In the circumstances of the case, the Committee on the Elimination of Racial Discrimination, acting under article 14 (7) (a) of the International Convention on the Elimination of All Forms of Racial Discrimination, considers that the facts before it disclose a violation of articles 5 (d) (iii) and 6 of the Convention by the State party.

9. The Committee recommends that the State party review the amount of compensation provided to the petitioner, so as to render it just and adequate, bearing in mind the circumstances of the case. It also recommends that the decision ordering the petitioner to cover the legal costs of the proceedings be reviewed so as to bring it into line with the principles of the Convention. The State party is also requested to give wide publicity to the Committee's opinion, including among administrative and judicial bodies and the Board of Equal Treatment, and to translate it into the official language of the State party.

10. The Committee wishes to receive, within 90 days, information from the State party about the measures taken to give effect to the Committee's opinion.
