



# International Convention on the Elimination of All Forms of Racial Discrimination

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## Committee on the Elimination of Racial Discrimination

### Opinion adopted by the Committee under article 14 of the Convention, regarding communication No. 62/2018\*, \*\*

<i>Communication submitted by:</i>	Momodou Jallow (represented by counsel, Mr. Niels-Erik Hansen)
<i>Alleged victim:</i>	The author
<i>State party:</i>	Denmark
<i>Date of communication:</i>	26 September 2017 (initial submission)
<i>Date of opinion:</i>	1 December 2022
<i>Document references:</i>	Decision taken pursuant to rule 91 of the Committee's rules of procedure, transmitted to the State party on 29 May 2018 (not issued in document form)
<i>Subject matter:</i>	Art exhibitions of pictures inciting to racial discrimination; lack of investigation of incitement to racial discrimination
<i>Procedural issues:</i>	Substantiation of claims
<i>Substantive issues:</i>	Discrimination on grounds of national, ethnic or social origin; discrimination on the grounds of race; incitement to racial discrimination, violence or hatred; effective remedy
<i>Articles of the Convention:</i>	4 (a) and (c) and 6

1. The author of the communication is Momodou Jallow, born in 1977. He is a Swedish national, former spokesman for the National Association of Afro-Swedes and national coordinator for the European Network Against Racism in Sweden. He claims to be a victim of a violation by the State party of articles 4 (a) and (c) and 6 of the Convention on the Elimination of All Forms of Racial Discrimination. Denmark made a declaration on 11 October 1985 recognizing the competence of the Committee to receive and consider communications from individuals or groups of individuals. The author is represented by counsel.

\* Adopted by the Committee at its 108th session (14 November–2 December 2022)

\*\* The following members of the Committee participated in the examination of the communication: Sheika Abdulla Ali Al-Misnad, Nouredine Amir, Michal Balcerzak, Bakari Sidiki Diaby, Ibrahima Guissé, Gün Kut, Li Yandua, Gay McDougall, Verene Shepherd, Stamatia Stavrinaki, Mazalo Tebie, Faith Dikeledi Pansy Tlakula and Eduardo Ernesto Vega Luna.



## Factual background

2.1 On 23 October 2014, an exhibition of pictures by the controversial Swedish artist D.P. was held on the premises of the Danish Parliament in Copenhagen, under the auspices of the Danish People's Party. The exhibition was subject to admission control,<sup>1</sup> and reprints from the pictures were sold in the exhibition hall. Brochures containing images of the pictures and their prices were also available. From 27 to 31 October 2014, the pictures were also exhibited at the International Free Press Society, in Copenhagen.

2.2 The pictures exhibited included the following:

(a) An image of Adolf Hitler with the text: "NOT ONLY NIGGERS HAVE DREAMS";

(b) An image of the author, in which he is hung by the neck from a bridge, along with two other black persons, with the text: "HANG ON, Afrofobians";

(c) An image of the author, in which he appears as a slave who runs away from his owner, with the text: "VAR NEGERSLAV ÄR BORTSPRUNGEN!!" (Our negro slave has run away) above the image, with the text "Han försvann / Lördags 16 April Och lystrar till namnet JALLOW MOMODOU / Om du vet var han är eller har sett honom" (He disappeared / last Saturday 16 April and goes by the name of Mamadou Jallow / If you know his whereabouts or have seen him), along with a phone number to call, below the image;

(d) A cartoon showing a black person with a liquorish pipe in his or her mouth, with the text: "this is not a crackNIGGER or is it?";

(e) A picture of two Roma community leaders, including their names, with the text: "ZIGENAR BROTT AR NÄGOT GOTT!" (Gypsy crime is a good thing).<sup>2</sup>

2.3 The artist D.P. has been convicted in Sweden of defamation and inciting hatred against an ethnic group, for creating and exhibiting those images.<sup>3</sup> In Copenhagen, the images were exhibited with an explanatory text based on interviews given by the artist,<sup>4</sup> explaining the content of the relevant picture, its background and purpose, and the decisions by the Swedish courts concerning each of them.

2.4 The explanatory text presented with the picture described in paragraph 2.2 (a) above indicated that, given the media attention given to the fiftieth anniversary of Martin Luther King Junior's "I have a dream" speech, D.P. made the work to draw attention to the fact that Hitler also had a dream and that not all dreams deserved being celebrated. The explanatory text presented with the picture in paragraph 2.2 (b) above indicated that the artwork was related to an incident that had occurred in 2013, when a black man had been ill-treated and almost pushed off a bridge in Sweden. The author, who was at that time the spokesman for the National Association of Afro-Swedes, had indicated that the incident was related to "white Swedish racism". However, it was later determined that the perpetrators of the attack were of Kurdish origin. Consequently, the media attention surrounding the attack decreased. D.P. thought that the case had become less interesting when it was revealed that the perpetrators were not white, and he concluded that it was acceptable to be a racist "as long as you are an immigrant". The explanatory text of the picture in paragraph 2.2 (c) above indicated that the artwork was related to an incident that had occurred in 2011, when a group of students of a university association performed a sketch in which slaves were sold. The author, who was at that time the spokesperson for the National Association of Afro-Swedes, demanded an intervention from the Government of Sweden. D.P. considered that the author's "rhetoric was pathetic" and depicted him as a runaway slave, indicating that, if a person should find him, he or she should call the university association. The explanatory text displayed with the picture described in paragraph 2.2 (d) above indicated that the artwork

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<sup>1</sup> No more details are provided.

<sup>2</sup> The decision of 26 January 2017 referred to other four pictures.

<sup>3</sup> The pictures were qualified by Swedish authorities as a "smear campaign against a population group". The author refers to <https://www.theguardian.com/world/2014/aug/22/swedish-artist-sentenced-racist-art-dan-park>.

<sup>4</sup> According to the State Prosecutor's decision of 26 January 2017, D.P. was not involved in the exhibitions.

had been in response to the attempt by the European Union to prohibit liquorish pipes. In addition, it was indicated that the picture was related to the decision of a liquorice manufacturer to stop using a black face as a logo, to avoid stereotyping black people. The artist, emulating René Magritte's painting *The Treachery of Images*, in which the text under the image of a pipe reads "Ceci n'est pas une pipe" (This is not a pipe), "drew a liquorice pipe, as it was not a 'cracknigger', but only a liquorice pipe".<sup>5</sup> The explanatory text displayed with the picture described in paragraph 2.2 (e) above indicated that the artwork was related to an incident that had occurred in 2013, when a newspaper revealed that the police kept a list of Roma persons under investigation, including children and deceased persons. Several demonstrations were held in front of the police headquarters. D.P. attended one carrying a poster saying "Gypsy crime is fine" to suggest that activists could not use Roma persons as permanent victims, if they had committed the offences. After the demonstration, during which D.P. was assaulted, D.P. made the artwork, which included the pictures and names of two Roma community leaders.

2.5 On an undetermined date in 2014, the author filed a complaint against D.P. and others, including the organizers of the exhibitions,<sup>6</sup> submitting that the art exhibitions constituted a crime of racial discrimination. The State Prosecutor of Copenhagen initiated an investigation. However, on 26 January 2017, she decided to discontinue the investigation on the basis of section 749 (2) of the Administration of Justice Act,<sup>7</sup> against the exhibit's organizers in relation to articles 266,<sup>8</sup> 266 (b)<sup>9</sup> and 266 (c)<sup>10</sup> of the Criminal Code.

2.6 In relation to article 266 of the Criminal Code, the Prosecutor indicated that the offender must have the intent to make the relevant threat, including an understanding that it was likely to create fear. The Prosecutor considered that the artworks did not contain a threat of the nature required under article 266 of the Criminal Code, and made reference to some of the pictures. Regarding the picture described in 2.2 (b) above, she indicated that, even if some persons could perceive it as an approval of the assaults of black persons, the artwork was exhibited in a satirical art exhibition, so it should have been seen in that context and in connection with the explanatory text. Regarding the picture described in 2.2 (c) above, she indicated that it had only included an invitation to call a phone number if someone had seen the person concerned. Moreover, it was not possible to assume that the artist had intended to threaten the life or welfare of the depicted persons.

2.7 Regarding article 266 (b), the Prosecutor considered that the words "statement or other communication" covered artworks. She also considered that statements made in private did not fall within the scope of that provision. However, she considered that both art exhibitions held in Copenhagen should be considered as public. The Prosecutor indicated that article 266 (b) should be read in the light of article 10 of the Convention for the Protection of Human

<sup>5</sup> Text used in the explanatory note, as quoted in the translation of the State Prosecutor's decision of 26 January 2017, provided by the State party.

<sup>6</sup> The investigation concerned the Free Press Society, its president H.K, the Danish Peoples' Party and Minister of Parliament A.A.

<sup>7</sup> The author indicates that, according to this section, an investigation can be discontinued when there are no reasonable grounds to believe that a punishable offence subject to public prosecution had been committed.

<sup>8</sup> The author indicates that it reads as follows: Any person who threatens to commit a criminal act in a manner likely to create a serious fear in another person for his life or other peoples' lives, health or welfare is sentenced to a fine or imprisonment for a term not exceeding two years.

<sup>9</sup> The author indicates that it reads as follows: Any person who publicly, or with the intent to disseminate to a wide group of people, issues a statement or other communication threatening, humiliating or degrading persons of a particular group, because of their race, colour, national or ethnic origin, religion, or sexual inclination shall be liable to a fine or to imprisonment for a term not exceeding two years.

<sup>10</sup> The author indicates that it reads as follows: If a person makes accusations against another person at such frequent intervals that the accusations amount to persecution, although identical accusations made by him have already once been dismissed by a court decision, such person is sentenced to a fine or imprisonment for a term not exceeding four months, if the information is likely to harm the public reputation of such person.

Rights and Fundamental Freedoms (European Convention on Human Rights), on freedom of expression, which covered expressions of art.

2.8 Subsequently, the Prosecutor made an analysis of each element of article 266 (b). She indicated that, for a “statement or other communication” to fall within the scope of that provision, a group of persons must be threatened, humiliated or degraded by such statement or communication on the grounds of their race, colour, national or ethnic origin, religion or sexual inclination. The Prosecutor considered that the artworks seemed to be aimed at groups of black people and of Roma persons, not at individuals; although it could be considered that some of the artworks were aimed at the persons depicted in them. That was the case in the picture described in paragraph 2.2 (b) above, which depicted the images of three persons, including the author. However, given that there was not a connection among the three persons depicted, it was clear that the message conveyed was not aimed at them specifically, but at the group to which they belonged. In relation to the picture described in paragraph 2.2 (c) above, the Prosecutor indicated that the situation was different, given that the message conveyed by the picture was aimed directly at the author, she therefore considered that the conditions required by article 266 (b) were not satisfied in relation to the picture. Regarding the picture described in paragraph 2.2 (e) above, the Prosecutor affirmed that, even though the pictures and the names of two Roma community leaders were included, the text “Gypsy crime is fine” was a general expression; therefore, the conditions of article 266 (b) were satisfied.

2.9 With regard to the second element of article 266 (b), the Prosecutor recalled that the message communicated must be threatening, humiliating or degrading. She indicated that the explanatory text must be taken into account in the present case and concluded that inclusion of such text in the Copenhagen exhibitions made a big difference, compared with the exhibition held in Sweden. In addition, she noted that the objective of the exhibitions was to call attention to possible restrictions of freedom of expression. The Prosecutor then reviewed each picture and the accompanying text. Regarding picture (a), she considered that it did not fulfil the conditions of article 266 (b), because it only contained a derogatory word in a satirical drawing, and it therefore did not have any threatening content. Regarding picture (b), she indicated that, taking into account both the background of the work and the explanatory text, it could not be excluded that it could contribute to an important social debate about racism among people with different ethnic backgrounds, other than white, in Sweden. Regarding picture (c), she considered that, although “at first, the artwork appears very humiliating and degrading”, it did not fulfil the conditions of article 266 (b), when taking into account the explanatory background information. She also considered that it could contribute to a debate regarding the author’s actions, given that he reported a university to the police, while the sketch had only involved a few students. She further affirmed that the picture did not fulfil the condition that the statement or communication must be aimed at a group of persons. In relation to picture (d), she considered that the link between the picture and the Magritte painting was obvious and indicated that, as explained in the accompanying text, the artwork could contribute to the debate about a possible ban of liquorish pipes. She also considered that the use of the word “cracknigger” could be considered as degrading, but when assessed, taking into account freedom of artistic expression, it could not be concluded that the artwork was in violation of article 266 (b). With regard to picture (e), the Prosecutor indicated that, although it could be perceived as humiliating or degrading when considered in isolation, when the explanatory text was taken into account, it did not fulfil the conditions established in article 266 (b). She added that the artwork could contribute to “an essential and social debate”.

2.10 The Prosecutor affirmed that article 266 (c) did not apply, because the accusations needed to be dismissed by a court, which had not occurred. The Prosecutor considered that articles 267<sup>11</sup> and 268<sup>12</sup> of the Criminal Code were not applicable either, because they were

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<sup>11</sup> The author indicates that it reads as follows: Any person who violates the personal honour of another by offensive words or conduct or by making or spreading allegations of an act likely to disparage him in the esteem of his fellow citizens, shall be liable to a fine or to imprisonment for any term not exceeding four months.

<sup>12</sup> The author indicates that it reads as follows: If an allegation has been maliciously made or disseminated, or if the issuer has had no reasonable ground to regard it as true, he shall be guilty of

subject to private persecution and the only exception to that rule, namely, the existence of public interest, had not been fulfilled. Consequently, she concluded that, even if the investigation had continued, it would not be possible to bring charges against D.P. or the other persons involved in the exhibitions for a breach of articles 266, 267 or 268 of the Criminal Code.

2.11 On 25 February 2017, the author appealed that decision to the Director of Public Prosecutions. He maintained that he did not agree with the assessment made by the State Prosecutor in relation to several issues. With regard to picture (b), he indicated that the fact that the picture was part of a satirical exhibition did not, as a consequence, mean that it did not constitute a threat. Regarding the application of article 266 (b), the author indicated that it was incomprehensible that acts deemed criminal in Sweden were not considered as such in Denmark, taking into account that the legal systems of both countries have integrated the provisions of the Convention. The author affirmed that the artworks of D.P were intended to threaten, humiliate and degrade him and that no significance could be attached to the fact that the exhibitions had included explanatory text. Regarding article 266 (c), the author indicated that, given that D.P. had already been convicted in Sweden, the conditions established therein were fulfilled.

2.12 On 29 March 2017, the Director of Public Prosecutions upheld the decision of the State Prosecutor of Copenhagen. She agreed with the assessment of the State Prosecutor, indicating that the fact that the exhibitions had included an explanatory text, including the background and the artist's motivation regarding each artwork, determined that they should be viewed as a satirical contribution to a social debate about racism and that their purpose was to call attention to the debate on the limits of freedom of expression. She indicated that article 10 of the European Convention on Human Rights should be taken into account and that it determined the wide scope allowed to the freedom of expression of artists and for social debates. The Director added that the fact that D.P. had been convicted in Sweden for the exhibition of the same artworks could not lead to a different conclusion.

2.13 The author claims that the prosecution authority has a monopoly on bringing criminal cases before the courts, unless there is a specific provision allowing for individuals to initiate cases. The decision of the Director of Public Prosecutions is final and cannot be appealed.

### **Complaint**

3.1 The author alleges that the State party has violated his rights under articles 4 (a) and (c) and 6 of the International Convention on the Elimination of Racial Discrimination, by allowing the exhibitions to take place and by refusing to prosecute the organizers.

3.2 According to the author, the decision to stop the investigation constitutes a violation of article 4 (a), because it reveals that, in practice, the authorities prevent the effective investigation of hate crimes falling under article 266 of the Criminal Code. The author refers to the Committee's concluding observations on the combined eighteenth and nineteenth periodic reports of the State party, in which it expressed concern at the broad powers of the Director of Public Prosecutions to stop investigations, withdraw charges or discontinue cases and recommended that the State party limit its powers by establishing an independent and multicultural oversight body to assess and oversee the Director of Prosecutions' decisions under section 266 (b) of the Criminal Code.<sup>13</sup> He also refers to the Committee's general recommendation No. 35 (2013) on combating racist hate speech, in which the Committee indicated that independent, impartial and informed judicial bodies were crucial to ensuring that the facts and legal qualifications of individual cases were assessed consistently with international standards of human rights.<sup>14</sup>

3.3 The author affirms that his prominent position as former spokesperson of the National Association of Afro-Swedes and national coordinator for the European Network Against Racism in Sweden made him a target of D.P, who attacked not only the author personally,

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defamation and the punishment mentioned in section 267 of this Act may then be increased to imprisonment for any term not exceeding two years.

<sup>13</sup> CERD/C/DNK/CO/18-19, para. 9.

<sup>14</sup> General recommendation No. 35 (2013), para. 18.

but also the ethnic group that he represents, as well as the Roma people depicted in the artworks. He indicates that, despite abundant evidence of the dissemination of ideas based on racial superiority or hatred, materialized through D.P.'s pictures, the authorities decided not to investigate those violations of the Convention, in contravention of the Committee's recommendations. The author refers to the Committee's general recommendation no. 35 (2013), according to which the effective implementation of article 4 of the Convention is achieved through investigations of offences and, where appropriate, the prosecution of offenders,<sup>15</sup> which did not happen in the present case.

3.4 The author maintains that the fact that one of the exhibitions was held on the premises of the Danish Parliament, under the supervision of the Danish People's Party constitutes a violation of article 4 (c), as national authorities and public institutions were involved in the promotion or incitement of racial discrimination.<sup>16</sup>

3.5 The author indicates that the ample powers of the Director of Public Prosecution to discontinue cases related to racial discrimination deprives the author of an effective remedy, in violation of article 6 of the Convention. He affirms that, despite the State party's general statements indicating that it attaches the highest importance to combatting racism, it consistently ignores the recommendations by the Committee regarding the payment of compensation to victims of racial discrimination.<sup>17</sup>

3.6 The author requests the Committee to acknowledge the violations of articles 4 (a) and (c) and 6 of the Convention and to order the payment of due reparation, including the payment of the legal costs of the international proceedings.

#### **State party's observations on admissibility and the merits**

4.1 On 29 August 2018, the State party submitted its observations on the admissibility and merits of the communication. It indicates that the communication is manifestly ill-founded. Should the Committee find the communication admissible, the State party indicates that it has not breached its obligations under articles 4 (a) and (c) and 6 of the Convention.

4.2 The State party recapitulates what was indicated by the State Prosecutor and the Director of Public Prosecutions in their decisions of 26 January and 23 March 2017. The State party notes that, within the legal framework regarding prosecutions, State Prosecutors are responsible for supervising criminal investigations conducted by police districts. The Director of Public Prosecutions supervises the work carried out by the Prosecution Service, including the issuance of orders to conduct investigations and the consideration of appeals filed against decisions made by State Prosecutors. Such decisions are final and cannot be appealed. The State party indicates that the Director of Public Prosecutions has issued detailed guidelines on the consideration by the police and by the Prosecution Service of cases of violations of article 266 (b) of the Criminal Code. According to the guidelines, in order to reject or discontinue an investigation, the police must submit a report to the relevant State Prosecutor indicating the grounds for the rejection or the discontinuance of the investigation, based on the relevant sections of the Administration of Justice Act.<sup>18</sup> If the State Prosecutor agrees, he or she drafts a decision and notifies the victim and any person who may have an interest in the matter.

4.3 The State party describes the relevant domestic legislation, in particular articles 266, 266 (b), 266 (c), 267 and 268 of the Criminal Code, reiterating what was indicated above (paras. 2.6–2.13). The State party adds that, according to section 275 (1) of the Criminal Code, offences in chapter 27, on offences against personal honour and certain individual rights, are subject to private prosecution, except for the offences mentioned in sections 266 and 266 (b). Under section 727 (2) of the Administration of Justice Act, it is possible to commence public

<sup>15</sup> Ibid. para. 17

<sup>16</sup> *L.R. et al. v. Slovakia* (CERD/C/66/D/31/2003 and CERD/C/66/D/31/2003/Corr.1).

<sup>17</sup> Three decisions of the Committee in which the State party has not complied with the compensation: *Gelle v. Denmark* (CERD/C/68/D/34/2004); *Adan v. Denmark* (CERD/C/77/D/43/2008); and *Dawas and Shava v. Denmark* (CERD/C/80/D/46/2009).

<sup>18</sup> Section 749.1, for a rejection, and 749.2, for a discontinuance.

prosecution of an offence subject to private prosecution, if opening an investigation is justified for reasons of public interest.

4.4 In relation to the admissibility of the communication, the State party affirms that, even if article 14 and rule 91 of the rules of procedure of the Committee do not mention the possibility of declaring inadmissible a communication on the grounds that no prima facie violation of the Convention has taken place, the Committee's jurisprudence allows for it.<sup>19</sup> The State party considers that such jurisprudence should be applied in the present case, given that the author has not demonstrated any violation of the Convention. Therefore, he has failed to establish a prima facie case for the purposes of admissibility, under article 14 of the Convention, and the communication should be declared inadmissible for being manifestly ill-founded.

4.5 Regarding the merits, the State party indicates that the author has failed to sufficiently establish that the State party has breached its obligations under articles 4 (a) and (c) and 6 of the Convention, in relation to the decision to discontinue the investigation of the criminal case against D.P. and others.

4.6 Regarding the author's allegation that that decision violated his rights under articles 4 and 6 of the Convention, the State party indicates that the requirement of an effective remedy set out in article 6 of the Convention does not safeguard the right to a particular remedy. The crucial element of that provision is that individuals have the right to request a consideration of the merits of their case, an obligation which was fulfilled. The State party considers that the merits of the case of the author were thoroughly reviewed by two instances of the Prosecution Service. The State party refers to the State Prosecutor's decision of 26 January 2017, in which she assessed whether D.P.'s artworks constituted a violation of articles 266, 266 (b) and 266 (c) of the Criminal Code, read in conjunction with article 10 of the European Convention on Human Rights. In the decision, she analysed each artwork in the light of section 266 (b), in order to determine whether the motifs of each artwork were threatening, humiliating or degrading towards a group of persons on the grounds of their race, colour, national or ethnic origin, religion or sexual inclination. The State Prosecutor concluded that that was not the case. The State party refers to the decision of the Director of Public Prosecutions of 29 March 2017, in which she reviewed the State Prosecutor's decision and confirmed it. The State party therefore considers that the author's case was thoroughly reviewed under relevant national legislation and that the author had access to a legal remedy.

4.7 The State party considers that the remedy provided was effective; it entails an obligation to conduct an effective investigation into a reasonably substantiated claim, an obligation which was fulfilled. It refers to previous decisions of the Committee in which it indicated that the Convention imposes a positive duty to take effective action to investigate reported incidents of racial discrimination.<sup>20</sup> The State party notes that the police promptly opened an investigation regarding the report lodged by the author in relation to the exhibitions, in order to determine whether section 266 (b) and other relevant provisions of the Criminal Code had been breached. The police interrogated the author, D.P. and the exhibitions' organizers. Copies of the pictures were obtained, and the factual circumstances of the arrangements related to the exhibitions were thoroughly investigated, including the time, place and accessibility, and the promoters and organizers thereof. The police obtained information on the background and purpose of the artworks. The State party notes that the investigation was discontinued 14 months after the author made his complaint and maintains that the decisions taken by the State Prosecutor and the Director of Public Prosecutions were made on a fully informed basis. It therefore considers that it fulfilled its obligation to effectively investigate the author's complaint.

4.8 The State party affirms that the present case is different from others in which the Committee has declared that the State party violated the Convention for failure to properly investigate incidents of racial discrimination. In *Gelle v. Denmark*, the Committee noted that the Regional Public Prosecutor and the police had excluded the possibility of section 266 (b), without basing that decision on any measures of investigation. The Committee concluded

<sup>19</sup> *C.P. and M.P. v. Denmark* (CERD/C/46/D/5/1994), para. 6.3.

<sup>20</sup> *Gelle v. Denmark*, para. 7.2; and *Jama v. Denmark* (CERD/C/75/D/41/2008), para. 7.2

that the State party had violated articles 2, 4 and 6 of the Convention, because it had failed to carry out an effective investigation to determine whether an act of racial discrimination had taken place. The State party refers to *Er v. Denmark*,<sup>21</sup> in which the Danish authorities had decided on their own initiative to refrain from investigating whether there was a discriminatory practice at a school, referring to the rule that the burden of proof shifts in such cases. The Committee found a violation of articles 2 and 6 of the Convention, indicating that the State party had failed to carry out an effective investigation to determine whether an act of racial discrimination had taken place. The State party concludes that, taking into account that, in the case at hand, an investigation was indeed initiated and adequately carried out in order to determine whether the circumstances of the case amounted to racial discrimination, there was no violation of the Convention, in particular given that the author had access to an effective remedy. The State party adds that, as indicated by the European Court of Human Rights, the effectiveness of an investigation does not depend on the certainty of a favourable outcome for the applicant,<sup>22</sup> in other words, in order to be effective, the investigation does not necessarily have to result in bringing charges against the person or persons investigated. In that connection, the Prosecution Service has an obligation of objectivity and must also safeguard the rights of suspects by not bringing charges in situations in which the suspect is likely to be deemed not guilty, including by ensuring that a person is not subjected to stigmatization.

4.9 The State party indicates that it is not the Committee's task to review the interpretation of national law made by the State party's authorities, unless a decision is manifestly arbitrary or amounts to denial of justice.<sup>23</sup> It notes that, taking into account the arguments set out above, it is not possible to consider that the decision to discontinue the investigation and to refuse its reopening were manifestly arbitrary or amounted to denial of justice.

4.10 In relation to article 6 considered alone, the State party indicates that the author has only made general assertions in relation to the alleged deprivation of an effective remedy. According to the State party, the author alleges that the powers of the Director of Public Prosecutions to discontinue investigations in relation to cases of racial discrimination are in violation of the Convention. The author's submissions relate to the State party's "rules and powers", and not to his specific case. In that regard, the State party affirms that, when reviewing individual communications, it is not the Committee's task to decide in abstract whether the national law is compatible or not with the Convention, but to consider whether there has been a violation of the Convention in the particular case. The general allegations submitted by the author should be considered by the Committee during the State party's next periodic review under article 9 of the Convention. The State party refers to *Er v. Denmark*,<sup>24</sup> in which the Committee confirmed its argument.<sup>25</sup> In relation to the author's claim that the State party has not paid compensation to victims in cases in which the Committee has determined that there was a violation of the Convention, it indicates that those allegations are not related to the case at hand, so they should be dismissed.

4.11 In relation to article 4 (c), the State party affirms that neither of the exhibitions were organized by the Government. The one that the author claims was held at the Christiansborg Palace was organized by a political party. It cannot therefore be stated that any public authority promoted or incited a particular message or view. The State party informs the Committee that the exhibition in question took place at the Warehouse (Proviandhuset), not at the Christiansborg Palace. It explains that the Warehouse houses the parliamentary administration, the study hall of the National Archives and the offices of a number of Members of Parliament and that it is located between the Christiansborg Palace and the Royal Library. It does not constitute an integral part of the Christiansborg Palace. In addition, the exhibition was a non-public exhibition, subject to admission control. The State party adds that the exhibition did not have the intention in any way to promote or incite a particular

<sup>21</sup> *Er v. Denmark* (CERD/C/71/D/40/2007).

<sup>22</sup> It refers to ECHR, *Kudla v. Poland*, 26 October 2000, para. 157

<sup>23</sup> It refers to *Dawas and Shava v. Denmark*, para 7.2; *Er v. Denmark*; and *Pjetri v. Switzerland* (CERD/C/91/D/53/2013), para. 7.5

<sup>24</sup> *Er v. Denmark*, para. 10.

<sup>25</sup> See also Human Rights Committee, *MacIsaac v. Canada*, communication No. 55/1979, Views adopted on 14 October 1982, para. 10.



message or view, including racial discrimination. On the contrary, the objective of the exhibition was to start an essential social debate about a subject of public interest, namely, the limits of the freedom of expression, which is crucial in a democratic society.

4.12 The State party concludes that it has not been established that there are substantial grounds for believing that it has breached its obligations under articles 4 and 6 of the Convention.

#### **Author's comments on the State party's observations on admissibility and the merits**

5.1 On 31 January 2022, the author submitted his comments on the State party's observations on admissibility and the merits of the communication. Regarding the admissibility of the communication, the author reiterates that the facts clearly raise issues under articles 4 (a) and (c) and 6 of the Convention. In addition, the author alleges that the State party did not elaborate on the reasons why the communication was ill-founded for the purposes of admissibility.

5.2 The author adds that, from a comparative perspective, questions are raised as to why the exhibition of the same pictures by the same artist in one country, Sweden, led to the conviction of the artist and an order to destroy the pictures, whereas in another country, the State party, the authorities decided to discontinue the investigation of possible violations of the Criminal Code. The author reiterates that the lack of an effective remedy and of measures of reparation demonstrate that the communication is substantiated and therefore admissible. Moreover, he indicates that, taking into account that he has exhausted all available domestic remedies, the communication complies with all the admissibility requirements under the Convention.

5.3 Regarding the merits, the author refers to the State party's argument that his allegations in relation to article 6 are worded in general terms. The author argues that, even though the claim refers to the powers of the Director of Public Prosecutions, it remains true that, by using such powers, it discontinued the investigation. As a consequence, his case was closed, despite clear evidence of racial discrimination. As a result, he has not had access to an effective remedy and the possibility of reparations has been denied to him.<sup>26</sup> The author reiterates that the State party has consistently ignored the Committee's recommendations regarding the payment of compensation to victims of racial discrimination, highlighting structural failures in the State party's system, which allowed the discontinuance of the investigation of his case.

5.4 The author reiterates that article 4 (a) of the Convention was violated, given that the Prosecution Service denied his claim that D.P.'s artworks amounted to threats against people of colour. He indicates that it is difficult to see how else the artworks could be interpreted, taking into account that they depicted scenes such as "the lynching of three black men from a bridge", the image of Adolf Hitler alongside the text "Not only niggers have dreams", and a "wanted poster" entitled "our negro slave has run away", including the author's contact information. The author notes that the State party argues that the Prosecution Service based its decision to discontinue the investigation on the principle of freedom of expression. However, he affirms that everything seems to fall under the umbrella of freedom of expression in the State party, including an exhibition containing discriminatory and threatening material already banned by a neighbouring country due to its insidious nature. The author notes that D.P. was not consulted by the organizers of the exhibitions about the texts accompanying the artworks, which, in the author's view, indicates that those explanatory texts were fabrications made by the organizers.

5.5 The author states that, while he acknowledges that an investigation does not necessarily result in bringing charges against the suspects, the case at hand was a strong case of racial discrimination and defamation, as confirmed by the court decisions issued in Sweden regarding the same artworks. The author states that racial discrimination should not be accepted under the guise of freedom of expression. In that regard, he refers to the Committee's general recommendation No. 35 (2013) and its jurisprudence,<sup>27</sup> as well as the

<sup>26</sup> *Dawas and Shava v. Denmark*, para. 7.5.

<sup>27</sup> *Gelle v. Denmark*; and *Adam v. Denmark* (CERD/C/77/D/43/2008).

Committee's concluding observations on the combined twenty-second to twenty-fourth periodic reports of the State party.<sup>28</sup> He indicates that the Committee had expressed concern regarding the gap between the number of hate crimes registered by the police, the number of prosecutions and the number of convictions where article 81 (6) of the Criminal Code<sup>29</sup> was explicitly applied by courts. The author also refers to the Committee's recommendation to the State party to take measures to ensure that all racially motivated crimes, including crimes with mixed motives, are effectively investigated and prosecuted, including by adopting concrete operational measures and by examining potential gaps in investigating, prosecuting and applying the legislation on hate crimes.<sup>30</sup> The author concludes that the decision to discontinue and to reject the reopening of the investigation of his case was manifestly arbitrary and amounted to an effective denial of justice, resulting in a violation of article 6 of the Convention.

5.6 Regarding article 4 (c) of the Convention, the author affirms that the State party's argument that the exhibition held on the premises of the Danish Parliament could not be deemed as public contradicts the State Prosecutor's conclusion that the two exhibitions of D.P.'s artworks should be considered as "statements made in public or with the intent of its dissemination to a wide group of people". That is confirmed by the fact that the organizers used the exhibition at the Parliament in their campaign to get coverage from the media,<sup>31</sup> and they refer to it on their website.<sup>32</sup> The author adds that the State party does not elaborate its argument according to which the exhibition did not have the intention in any way to promote or incite a particular message or view, including racial discrimination. He therefore considers that the State party is simply replicating the organizer's assertions, using the argument of the protection of the freedom of expression.

## **Issues and proceedings before the Committee**

### *Consideration of admissibility*

6.1 Before considering any claim contained in a communication, the Committee must decide, pursuant to article 14 (7) (a) of the Convention, whether the communication is admissible.

6.2 The Committee takes note of the State party's argument that the author has failed to establish a prima facie case for the purposes of admissibility of his communication under article 14 of the Convention and that the communication should be declared inadmissible for being manifestly ill-founded. The Committee also takes note of the author's allegation that the facts described in his communication raise issues under articles 4 (a) and (c) and 6 of the Convention and that the State party did not elaborate on the reasons why the communication would be ill-founded for the purposes of admissibility. The submission of the author contains three distinct claims: (a) a violation of the State party's positive obligation to combat racist hate speech under article 4 (a), read in conjunction with article 6, of the Convention; (b) a violation of article 4 (c) of the Convention; and (c) a violation of the right to an effective remedy under article 6 of the Convention.

6.3 With regard to a possible violation of article 4 (a) of the Convention, the Committee notes that the pictures exposed at the exhibitions prima facie can be understood as expressions of racial superiority or hatred and as incitement to violence against groups or members of groups protected under the Convention. In this respect, the Committee notes that the State Prosecutor, in her decision of 26 January 2017, acknowledged that most of the pictures contained elements which could be considered as humiliating, degrading and derogatory.<sup>33</sup> While the State party initiated investigations, it eventually discontinued them, and no action was taken with regard to the exhibitions. This raises the question of whether the State party

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<sup>28</sup> [CERD/C/DNK/CO/22-24](#).

<sup>29</sup> Circumstance of aggravation for racial discrimination, among other things.

<sup>30</sup> [CERD/C/DNK/CO/22-24](#), para. 19 (b).

<sup>31</sup> The author provides links to news pages in Danish.

<sup>32</sup> The author provides a link to a website in Danish.

<sup>33</sup> State Prosecutor of Copenhagen, decision of 26 January 2017, pp. 14–15, with regard to the pictures described in paragraph 2.2 (a), (c), (d) and (e) above.

has fulfilled its positive obligation to take effective action against reported incidents of racial discrimination under article 4 (a), read in conjunction with article 6, of the Convention. Because the author is depicted in two of the five pictures, and given that all five pictures were exhibited together, the author can also plausibly claim to be the victim of an alleged violation. Against this background, the Committee concludes that the petitioner has sufficiently substantiated his claim of a violation of article 4 (a), read in conjunction with article 6, of the Convention for the purposes of admissibility.

6.4 With regard to a possible violation of article 4 (c) of the Convention, the Committee takes note of the information provided by the author that the exhibitions were organized under the auspices of the Danish People's Party on the premises of the Danish Parliament. The Committee notes that the State party does not challenge this assertion, even though it argues that no public authority or institution promoted or incited a particular message or view. The Committee also notes that the State party does not provide any further details in this regard. Taking into account that one of the expositions was indeed held on the Parliament's premises, where brochures containing images of the pictures and prices were available, the Committee considers that the author has sufficiently substantiated his claim in relation to article 4 (c) for the purposes of admissibility.

6.5 With regard to the claim that the discontinuation of the investigation procedures amounts to a violation of article 6 of the Convention, because it deprived the author of an effective remedy, the Committee notes that the communication does not explicitly raise the issue of whether judicial review of the decision of the State Prosecutor, as well as the decision of the Director of Public Prosecutions, is possible under Danish law or required under article 6 of the Convention.<sup>34</sup> Insofar as the author holds that the decisions deprived him of an effective remedy, the communication is unsubstantiated. With regard to article 6 of the Convention, the author claims that the decisions of the State Prosecutor and of the Director of Public Prosecutions violated his right to reparations. In this regard, the Committee highlights that article 6 of the Convention guarantees the right to seek just and adequate reparation or satisfaction for any damage suffered as a result of racial discrimination.<sup>35</sup> The Committee notes, however, that the author has not declared whether he has demanded reparation or compensation from the State party or any other actor. It is not clear whether he has initiated legal proceedings in this regard against D.P., the organizers of the exhibition or the State party on the basis of private law or administrative law or whether such judicial proceedings would be possible. The author has also not indicated what damages he has suffered due to the exhibitions or the discontinuation of the investigations by the State party. The information provided by the author therefore does not disclose a violation of the right to an effective remedy under article 6 of the Convention in a substantiated manner. The Committee considers this claim to be manifestly ill-founded and inadmissible.

6.6 In the absence of any further objections to the admissibility of the communication, the Committee declares the communication admissible in respect of the claims made under articles 4 (a), read in conjunction with article 6, and 4 (c) of the Convention and proceeds to its consideration of the merits.

#### *Consideration of the merits*

7.1 The Committee has considered the communication in the light of all the information made available to it by the parties, in accordance with article 14 (7) (a) of the Convention.

7.2 The Committee takes note of the author's allegation that the decision to discontinue the investigation regarding the exhibitions constitutes a violation of article 4 (a), read in conjunction with article 6, of the Convention, because it reveals that, in practice, the prosecution authority prevents the effective investigation of hate crimes falling under article 266 of the Criminal Code. The Committee also takes note of the author's allegation that, despite the existence of abundant evidence of the dissemination of ideas based on racial superiority or hatred, materialized through D.P.'s pictures, the State party's authorities decided not to investigate further, resulting in a lack of an effective implementation of article

<sup>34</sup> *Quereshi v. Denmark* CERD/C/63/D/27/2002, para. 7.5.

<sup>35</sup> General recommendation No. 26 (2000) on article 6 of the Convention, para. 2.

4 of the Convention. The Committee further takes note of the State party's argument that its authorities carried out an effective and adequate investigation in order to determine whether the circumstances of the situation amounted to racial discrimination and that they concluded that that was not the case, given that the suspects were likely to be deemed not guilty. In this regard, the Committee takes note of the State party's assertion that the prosecution made a thorough assessment of the case and collected necessary evidence, including through interviews with D.P., the author and the exhibition's organizers, as well as the collection of background information on the pictures and the circumstances of the exhibitions, including their time, place and accessibility, and the promoters and organizers thereof.

7.3 The issue before the Committee is whether the State party fulfilled its positive obligation to take effective action against reported incidents of racial discrimination, having regard to the extent to which it investigated the petitioner's complaint under relevant sections of the Criminal Code, in particular section 266 (b). In order to determine whether the State party has violated article 4 (a), read in conjunction with article 6, of the Convention, the Committee must first determine whether the exhibitions of the pictures constitute expressions of racist hate speech under those provisions, and then whether the State party has taken effective measures to combat all instances of racist hate speech, as required under article 4, read in conjunction with article 6, of the Convention.

7.4 Article 4 (a) of the Convention applies, *inter alia*, to speech and other forms of expression which amount to the dissemination of ideas based on racial or ethnic superiority or hatred, incitement to hatred, contempt or discrimination, threats or incitement to violence and expressions of insults, ridicule or slander or justification of hatred, contempt or discrimination, when it clearly amounts to incitement to hatred or discrimination.<sup>36</sup> Article 4 (a) applies to speech which is directed against or affects persons or groups protected under the Convention. The Committee notes that the pictures in question contain derogatory language, as well as negative depictions of black people, thereby affecting persons and groups on the grounds of race and colour. One picture negatively addresses members of the Roma community, thereby affecting persons on the basis of ethnic origin. The exhibition of the pictures therefore falls within the scope of application of the Convention. In the light of the fact that several of the pictures in question depict specific individuals, the Committee recalls that article 4 of the Convention protects not only groups and their members but also specific individuals.<sup>37</sup> Article 4 establishes an individual right.<sup>38</sup>

7.5 All five pictures in question use racist language and express racist stereotypes. In order to qualify as racist hate speech as encompassed by article 4 (a) of the Convention, and to fall within the scope of the positive obligation of States parties under this provision, it does not suffice, however, that the expressions in question contain a racist content. Article 4 (a) of the Convention requires, in addition, that the speech act in question amounts to the dissemination of ideas based on racial or ethnic superiority or hatred, incitement to hatred, contempt or discrimination, threats or incitement to violence and expressions of insults, ridicule or slander or justification of hatred, contempt or discrimination, when it clearly amounts to incitement to hatred or discrimination. The racist content of a speech act must be accompanied by one of these additional factors in order to fall within the scope of article 4 (a) of the Convention. However, the Committee recalls that the criminalization of forms of racist expression should be reserved for serious cases, to be proven beyond reasonable doubt, while less serious cases should be addressed by means other than criminal law, taking into account, *inter alia*, the nature and extent of the impact on the targeted persons and groups.<sup>39</sup>

7.6 In this context, the Committee highlights the significance of the right to freedom of opinion and expression, as it is guaranteed in international human rights law and incorporated into the Convention under article 5 (d) (viii). Accordingly, article 4 requires that measures to eliminate incitement and discrimination must be made with due regard to the right to freedom of opinion and expression.<sup>40</sup> Freedom of expression in this context covers all forms of

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<sup>36</sup> General recommendation No. 35 (2013), para. 13.

<sup>37</sup> *Ibid.*

<sup>38</sup> *Jewish Community of Oslo et al. v. Norway* (CERD/C/67/D/30/2003), para. 10.6.

<sup>39</sup> General recommendation No. 35 (2013), para. 12.

<sup>40</sup> *Ibid.*, para. 19.

expression, including expressions made in the form of art.<sup>41</sup> The Committee recalls, however, that freedom of expression carries special duties and responsibilities, in particular the obligation not to disseminate racist ideas.<sup>42</sup> The Committee also recalls that the right to freedom of expression is not unlimited. It may therefore be subject to certain restrictions, including for the protection of the rights or reputation of others and for the protection of national security or of public order or of public health or morals.<sup>43</sup> As a consequence, a balance must be struck between the right to freedom of expression on the one hand, and the obligations of a State party to combat racist hate speech on the other. In deciding whether a particular speech act constitutes racist hate speech in the sense of article 4 (a) of the Convention, a number of contextual factors must be taken into account, such as the content and form of the speech, the economic, social and political climate in which the speech is made, the position or status of the speaker, the reach of the speech and the objectives of the speech.<sup>44</sup>

7.7 Against this background, the Committee concludes that the five pictures referred to in the communication fall within the scope of article 4 (a) of the Convention. The Committee notes the racist depictions and wording that, in different ways, express ideas of racial superiority. They compare the Civil Rights Movement with the ideology of National Socialism, use racial slurs and depict images of slavery to degrade a person. Some of the pictures do not only display a racist content, but also depict individual persons and portray them in a degrading manner, reproducing racist stereotypes in a way that can incite racial hatred, discrimination and violence. The picture depicting Adolf Hitler implies that the ideology of National Socialism, itself a manifestation of ideas of racial superiority, stands on equal footing with the Civil Rights Movement as a laudable attempt at combating injustice. By insinuating such comparability, the picture implies that National Socialism, with its attendant ideas of racial superiority, may be considered a virtuous system of beliefs. In doing so, it may be considered both a justification of ideas of racial superiority and an incitement to discrimination. The picture employing a stereotypical caricature of a black person and implying that this person is consuming crack cocaine, through use of a racial slur, specifically refers to black people as such, and not specific black persons, and associates them with a drug epidemic. In associating black people as such with drug addiction, alongside the racial slur used, the picture perpetuates racist stereotypes of black people as being inherently prone to drug abuse and thereby disseminates ideas of racial superiority. The picture depicting three black persons, including the author, hanging from the gallows references a historical tradition of racist violence, makes light of it and potentially justifies violence, not only against the pictured persons, but also against the communities that they belong to. With regard to the context of the pictures, the fact that the author is a human rights defender must be taken into account. Depicting him on a “wanted sign”, and in the context of a lynching, conveys a message of intimidation and can be understood as incitement to discriminatory measures, as well as to violence. In this sense, the intimidation does not only affect the author, but also the community that he defends from racial discrimination. The same reasoning applies to the picture depicting Roma community leaders and associating them with an inherent inclination of engaging in criminal behaviour, a recurring trope of racial discrimination directed at the Roma ethnic group. The Committee recalls that racist hate speech rejects the core human rights principles of human dignity and equality and seeks to degrade the standing of individuals and groups in the estimation of society.<sup>45</sup> The Committee notes that racist hate speech has a profound negative impact on targeted communities. It also notes that, given the symbolic nature, racist hate speech sends a message of hostility and intolerance to anyone who shares the identity or characteristic of the person targeted and, therefore, communities who are targeted by racist hate speech may feel stigmatised and rejected, potentially resulting in community tensions and social isolation. In depicting black people and members of the Roma community in a degrading manner, the pictures do not only affect the rights of the

<sup>41</sup> *Shin v. Republic of Korea* (CCPR/C/80/D/926/2000), para. 7.2.

<sup>42</sup> General recommendation No. 15 (1993) on article 4 of the Convention, para. 4; *Gelle v. Denmark*, para. 7.5; *Adan v. Denmark*, para. 7.6; and *TBB-Turkish Union in Berlin/Brandenburg v. Germany* (CERD/C/82/D/48/2010), para. 12.7.

<sup>43</sup> General recommendation No. 35 (2013), para. 26.

<sup>44</sup> *Ibid.*, para. 15.

<sup>45</sup> *Ibid.* para. 10.

persons who are portrayed, but also those of other members of groups protected under the Convention. The Committee notes that the pictures can therefore be understood to generalize negatively about an entire group of people based solely on their ethnic or national origin.<sup>46</sup> Against this background, the exhibited pictures must be considered as insults and incitement to hatred and discrimination, both with regard to the individuals depicted, including the author, and with regard to the communities which are meant to be depicted.

7.8 The Committee takes note of the State party's assertion that the exhibition did not have the intention in any way to promote or incite a particular message or view, including racial discrimination, but to start an essential social debate about the limits of the freedom of expression in a democratic society. The Committee notes that one of the exhibitions was held under the auspices of the Danish People's Party in a public building located on the premises of the Danish Parliament, where reprints from the pictures were sold and brochures containing images of the pictures were also available. The Committee also notes that the other exhibition was held on the premises of the Free Press Society for five days and that it was open to the public. The Committee further notes that the two exhibitions were considered as public by the State Prosecutor.

7.9 The Committee recalls that the context of a speech act is decisive in determining whether it constitutes racist hate speech. The Committee refers to its position that the expression of ideas and opinions made in the context of academic debates, political engagement or similar activity, and without incitement to hatred, contempt, violence or discrimination, should be regarded as legitimate exercises of the right to freedom of expression, even when such ideas are controversial.<sup>47</sup> The Committee acknowledges that, in the light of the right to freedom of expression, pictures which are displayed in an exhibition cannot easily be qualified as racist hate speech, even when they depict a racist content or reproduce racist stereotypes. In this context, the Committee takes note of the explanatory labels attached to the pictures, which point out their context and draw attention to the debate on the limits of freedom of expression. The Committee notes, however, that some of the pictures in question display specific individuals, some of whom are known for their anti-discrimination activities. Such racist ad hominem attacks are particularly harmful and dangerous and go beyond any acceptable limits of a debate in a democratic society. They humiliate and thereby touch upon the dignity of the persons displayed and can lead to further acts of discrimination. Displays of violence against specific persons or groups of persons are also particularly harmful, given that they may be understood as incitement to or justification of violence. The Committee notes that the context of an exhibition cannot be used as a pretext in order to display pictures which would otherwise be understood as racist hate speech. The Committee takes note of the fact that the explanatory texts of the pictures did not show that the organizers of the exhibitions distanced themselves from the racist content of the pictures. The Committee also takes note of the fact that reprints of the pictures were sold in the exhibition hall, thereby facilitating the dissemination of the pictures beyond the context of the exhibition. Against this background, the Committee does not agree that the purpose of the exhibitions was solely to start a debate on the limits of freedom of expression, but that it also served the purpose to disseminate the pictures and their racist content. The Committee therefore concludes that the display of the five pictures cannot be justified with reference to the right to freedom of expression, but constitutes racist hate speech as encompassed by article 4 (a) of the Convention.

7.10 The exhibition of the pictures constitutes racist hate speech in the sense of article 4 (a) of the Convention. The Committee recalls its jurisprudence, according to which it does not suffice, for the purposes of article 4 of the Convention, merely to declare acts of racial discrimination punishable on paper.<sup>48</sup> Rather, criminal laws and other legal provisions prohibiting racial discrimination must also be effectively implemented by the competent State institutions. This obligation is implicit in article 4 of the Convention, under which State parties undertake to adopt immediate and positive measures to eradicate all incitement to, or acts of, racial discrimination. This positive dimension of the obligations of States with regard

<sup>46</sup> *Adan v. Denmark*, para. 7.5.

<sup>47</sup> General recommendation No. 35 (2013), para. 25.

<sup>48</sup> *Gelle v. Denmark*, para. 7.3; *Adan v. Denmark*, para. 7.3; and *Jama v. Denmark*, para. 7.3.

to racial discrimination is also reflected in other provisions of the Convention, such as article 2 (1) (d), under which States are required to prohibit and bring to an end, by all appropriate means, racial discrimination, and article 6, guaranteeing to everyone effective protection and remedies against acts of racial discrimination.

7.11 The Committee highlights and affirms that it is not the task of the Committee to scrutinize the application of domestic law by the State party. It is, however, the task of the Committee to determine whether the State party has fulfilled its obligation under article 4 (a), read in conjunction with article 6, of the Convention. In this regard, the Committee recalls the obligation of States parties to conduct effective investigations into alleged instances of racial discrimination and racist hate speech.<sup>49</sup>

7.12 The Committee takes note of the State party's argument that, under the Convention, individuals have the right to request a consideration of the merits of their case, an obligation which was fulfilled because the merits of the author's case were thoroughly reviewed by two instances of the Prosecution Service. The Committee takes note of the decision of the State Prosecutor, in which she analysed each picture and the text accompanying it. The Committee notes that the Prosecutor concluded that none of the pictures fell under sections 266, 266 (b), 266 (c), 267 or 268 of the Criminal Code, read in conjunction with article 10 of the European Convention on Human Rights on freedom of expression. The Committee also notes that, in her analysis in relation to article 266 (b), the Prosecutor considered that some of the pictures could be perceived as humiliating, degrading or derogatory (see para. 2.9 above). The Committee further notes, however, that she considered that they could contribute to important social debates, including about racism. The Committee takes note of the State party's affirmation that the Director of Public Prosecutions confirmed this assessment.

7.13 The Committee notes with appreciation that the Prosecution Service of the State party took the allegations of racist hate speech seriously and conducted a thorough analysis of whether the exhibitions amounted to a criminal offence under the criminal law of the State party. It notes the diligence with which the State Prosecutor analysed the content and context of each of the pictures in question. The Committee highlights that the mere fact that the investigations did not lead the State Prosecutor to bring charges before a criminal court, and the fact that therefore no one was convicted, does not automatically indicate that the State party violated its obligations under article 4 (a) of the Convention. However, the Committee observes that, when a speech act falls within the scope of article 4 (a) of the Convention, the State party is obliged to react and to take effective measures. The mere conduct of an investigation does not suffice. In this context, the Committee also recalls its recommendation that the criminalization of forms of racist expression should be reserved for serious cases, to be proven beyond reasonable doubt, while less serious cases should be addressed by means other than criminal law, taking into account, *inter alia*, the nature and extent of the impact on targeted persons and groups.<sup>50</sup> In the light of the qualification of the pictures as racist hate speech, however, the Convention required an appropriate and proportional response from the State party in an effort to combat this incident of racial discrimination. The absence of an effective response by the State party to the incident that qualifies as racist hate speech was not in conformity with the requirements of the Convention.

8. The Committee, acting under article 14 (7) of the Convention, is of the view that the facts before it disclose a violation of article 4 (a), read in conjunction with article 6, of the Convention.

9. In the light of the above findings, the Committee does not consider it necessary to examine the author's allegations of a possible violation of article 4 (c) of the Convention.

10. The Committee recalls that, according to the rules of the responsibility of States under international law, any violation of an international obligation that has resulted in harm entails a duty to make full reparation for the injury caused.<sup>51</sup> The Committee emphasizes that it is the responsibility of the State party to make reparation for the violation of its obligations

<sup>49</sup> *Gelle v. Denmark*, para. 7.3; *TBB-Turkish Union in Berlin/Brandenburg v. Germany*, para. 12.8; and general recommendation No. 35 (2013), para. 17.

<sup>50</sup> General recommendation No. 35 (2013), para. 25.

<sup>51</sup> *Pérez Guartambel v. Ecuador* (CERD/C/106/D/61/2017), para. 6.

under the Convention and of the rights of the author of the communication, which should include an apology and granting him a full reparation. The Committee, moreover, requests the State party to take further measures to ensure that the existing legislation is applied in an effective manner and with due regard to the requirements under the Convention. Such measures should include the development of guidelines on measures for responding to racist hate speech and the establishment of training programmes addressed towards police officers, prosecutors and judges on the prevention of racial hatred and discrimination. The State party is also requested to give wide publicity to the Committee's opinion, including among police officers, prosecutors and judicial bodies.

11. The Committee wishes to receive from the State party, within 90 days, information on the measures taken to give effect to the present opinion.

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