

**INTERNATIONAL  
CONVENTION  
ON THE ELIMINATION  
OF ALL FORMS OF  
RACIAL DISCRIMINATION**



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COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION

Eleventh Session

SUMMARY RECORD OF THE TWO HUNDRED AND THIRTY-SIXTH MEETING

Held at Headquarters, New York,  
on Wednesday, 9 April 1975, at 11 a.m.

Chairman: Mr. HAASTRUP  
Rapporteur: Mr. SAYEGH

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CONSIDERATION OF REPORTS, COMMENTS AND INFORMATION SUBMITTED BY STATES PARTIES  
UNDER ARTICLE 9 OF THE CONVENTION (continued)

(h) SECOND PERIODIC REPORTS OF STATES PARTIES DUE IN 1975

Denmark (CERD/C/R.77/Add.2)

At the invitation of the Chairman, Mr. Pedersen (Denmark) took a place at the Committee table.

Mr. PEDERSEN (Denmark) thought that there was no need to introduce the report which, in his view, was self-explanatory, but he wished to explain that the reason why practically half of the report dealt with Greenland was that, when Denmark had submitted its first report, the Committee had expressly requested information on that island.

Mr. KAPTEYN noted with satisfaction that the report of Denmark conformed to the outline recommended by the Committee in document CERD/C/R.12. In his opinion, the two reports thus far submitted by Denmark satisfied the requirements of article 9 of the Convention and reflected a firm determination to apply the principles and achieve the objectives of the Convention.

With regard to the question of Danish law seen in relation to article 4 (b) of the Convention, he noted that according to the new report (CERD/C/R.77/Add.2, p. 5) section 78, subsection 2, of the Danish Constitution made provision for certain associations to be dissolved by judgement. He would like to know from the representative of Denmark who was responsible for deciding what court was competent to render such judgement. In view of the fact that, in situations different from those covered by that subsection, illegal associations could be dissolved under general provisions of law or by unwritten rules (p. 5) he would like to know what kind of procedures were to be applied by the court or the authorities when the dissolution of illegal associations was sought. He would also like to have more information about the legal provisions and unwritten rules referred to in that part of the report. With regard to the measures adopted to

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discourage racial discrimination in accordance with the outline given in paragraph 4 (c) of document CERD/C/R.12, he noted that in its first report (CERD/C/R.50/Add.3), the Government of Denmark had indicated that it saw no need for special measures to give effect to the provisions of article 7 since in all sectors of Danish education teaching in human rights, including the prohibition against racial discrimination, was automatically provided. He would like to know how teaching on human rights was included in the curricula at various educational levels in Denmark, since that information would be very useful for the members of the Committee and for States Parties wishing to promote understanding of human rights and racial equality.

It would also be helpful if future reports included more details about court decisions because those decisions provided valuable information on the law in action and on the legal problems that could arise in connexion with the application of articles of the Convention.

Mr. VALENCIA RODRIGUEZ expressed satisfaction at the broad coverage of the second report from Denmark, which had been based on the outline adopted by the Committee in document CERD/C/R.12. The data given on the demographic composition of the country were interesting although the racial groups were not mentioned. The information on the application of article 6 of the Convention was satisfactory, and he noted that in the initial report no mention had been made of section 15 of the Act on the Penal Code. Although the provision in question was of a procedural nature, it guaranteed the rights of any person who felt he was a victim of racial discrimination, as well as the right to adequate compensation for any physical or moral harm sustained. A form of reparation particularly worth noting was that relating to public statements (sect. 273 of the Penal Code) (CERD/C/R.77/Add.2, p. 3).

It should be noted that Danish law applied both to citizens and non-citizens and that no one could be denied full enjoyment of civil and political rights on account of creed or descent which, in his opinion, was tantamount to according equal rights to aliens and nationals. It was singular that that principle was not included in the Danish Constitution yet was regarded as a principle of Danish law. Accordingly he felt that the Danish Government had the necessary legal norms and

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(Mr. Valencia Rodriguez)

had taken appropriate measures to comply with the obligations imposed by article 4 (a), (b) and (c) of the Convention.

The information provided on judicial measures indicated that Denmark was faithfully fulfilling its commitments under articles 6 and 4 of the Convention. With regard to the situation of gypsies, he emphasized the importance of the principle underlying Danish law on the matter, whose aim was not to assimilate the gypsies if that was against their wishes, but to afford them employment opportunities on equal terms with the country's citizens so that they could earn their living without changing their customs and traditions.

With regard to migrant workers, it was interesting to note that distinctions were made between the nationals of the Nordic countries or of States that were members of the European communities and those who were not. That was no doubt due to the fact that Denmark had signed international instruments with other Nordic and European countries but it gave rise to a conflict between those commitments on the one hand and those which Denmark had assumed under the Convention on the other hand. He would like to know if the instruments signed with other countries were given precedence over the obligations flowing from the Convention or vice versa. He believed that the Committee should uphold the priority of the Convention over any other regional or subregional commitment that Denmark had entered into and point out that it was not supposed to provide for differential treatment between migrant workers on the basis of national origin since such a practice was incompatible with article 1, paragraph 1, of the Convention.

Concerning special measures to implement the provisions of article 7 of the Convention he took it that, apart from the circular about the observance of the twenty-fifth anniversary of the proclamation of the Universal Declaration of Human Rights (p. 8) other measures of a similar nature had been taken, especially in the educational institutions.

The information on Greenland, and particularly on the legal status of the population, was particularly interesting. From the data on demographic composition it appeared that there were various racial groups there, and it was to be noted that the Greenlanders were well represented in the Danish Parliament. He could understand and accept that it was often preferable to legislate especially

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(Mr. Valencia Rodriguez)

for Greenland rather than transfer Danish legislation to the island (p. 10), in view of the differences in social structure and conditions between Denmark and Greenland. Moreover, the fact that, as a result of the new changes in the Constitution, future Danish legislation would also apply to Greenland, constituted an advance and an improvement with respect to the situation prevailing before 1953. The exception referred to, whereby the provision requiring that any person taken into custody must be brought before a judge within twenty-four hours would be derogated from, was understandable. It was due to local conditions. Another welcome development was the entry into force of Acts Nos. 288 and 289 of June 1971, prohibiting discrimination on racial grounds. The rest of the valuable information on the political and administrative system applied in Greenland reflected the sincere concern of the Danish Government to guarantee to the inhabitants of Greenland the same social, economic and cultural opportunities enjoyed by the other inhabitants of the Kingdom. There were special rules applicable exclusively to Greenland, but that was in keeping with article 2, paragraph 2, of the Convention. A very important step had been the appointment in January 1973 of a Committee to investigate the possibility of introducing home rule in Greenland (p. 15). He trusted that Denmark would provide information on the conclusions reached by that Committee, particularly with regard to any matters relating to the elimination of racial discrimination.

Mr. ANCEL, referring to the initial report from Denmark (CERD/C/R.50/Add.3), requested a clarification on the provisions designed to bring Danish law, and particularly criminal law, into line with articles 4 and 5 of the Convention. Article 5 provided for a new type of offence, namely, refusal to provide services on grounds of colour or ethnic origin. Act No. 289 of 1971, which was mentioned in that particular report (p. 1), prescribed penalties in the case of any company, society or enterprise refusing to serve a person on grounds of race, etc., which was not consistent with the usual principles of criminal law in countries with a system of the kind found in Denmark. He would like to know if the recognition of criminal liability on the part of juridical persons in cases of racial discrimination was an exception in Danish criminal law or if there were other similar cases. He also wished to know if the fine mentioned in the law was a matter entirely for the discretion of the judge, or if the latter could be guided by some other provision, especially since, further on, it was

(Mr. Ance1)

provided that offences against the Act were to be dealt with as police prosecutions. He wished to know if the amount of the fine was established in a general way and accordingly had to be uniformly applied.

He observed that, under French criminal law, if a company committed an offence involving racial discrimination the employee action on behalf of the company, rather than the company itself, was held liable, and asked if in Denmark persons acting for an enterprise were held liable as well as the enterprise.

Also, he did not quite see why the Act did not "apply to any act of negligence", since offences involving racial discrimination could only be deliberate. He would therefore like to know in what cases it was considered, under the Act, that racial discrimination could arise from mere negligence.

Mr. MACDONALD said that the second report submitted by Denmark (CERD/C/R.77/Add.2) was comprehensive, very well organized and in conformity with the guidelines contained in document CERD/C/R.12. He wished, however, to associate himself with the questions asked by Mr. Kapteyn. He would also like to know whether the competence of the Danish ombudsman also extended to Greenland and, if so, whether there had been cases of racial discrimination directly connected with Greenland. If the ombudsman did not have jurisdiction over Greenland, he wished to know what other recourse, apart from the courts, the residents of Greenland had in cases of racial discrimination. He also wondered whether the councils (pp. 10-12) had had occasion to consider questions relating to racial discrimination or had confined themselves to economic and social matters. He also wished to know whether any question relating to the provisions of the Convention had been brought before the authorities.

Mr. ABOUL NASR said that the second report by Denmark was clearly presented and in keeping with the recommendations made in document CERD/C/R.12. He would, however, like more information about the ombudsman and his functions within the Danish legal system.

Regarding the case of the 50 gipsies who, according to the report had spontaneously decided to leave Denmark (p. 7), he would like to know whether there had been an inquiry into their reasons for making that decision. With regard to the question of migrant workers, he noted that distinctions were made and that workers from a certain area received preferential treatment; he would like to know whether the freeze imposed on the immigration of foreign labour at the end of 1973 had applied to everyone, with no exception made for workers from the Nordic countries.

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(Mr. Aboul Nasr)

He would also like some information from the Danish representative concerning Denmark's relations with the racist régimes in southern Africa; he was particularly interested in knowing the manner in which the relevant General Assembly resolutions had been implemented.

Mr. CALOVSKI said that the two reports submitted by Denmark showed that the Government of that country had fully implemented the provisions of the Convention.

He was particularly pleased with the detailed information concerning the application of article 4 of the Convention with regard to Greenland, gipsies and migrant workers. The principle of racial equality was obviously being fully observed in Denmark.

Mr. Valencia Rodríguez had noted that the information in the second report (CERD/C/R.77/Add.2) on the demographic composition of the population was not complete; however, it was pointed out in the report that a more detailed system of classification did not exist. There was a German community living in Denmark and probably other minority communities as well, and he recalled that a declaration concerning Danish minority groups in the Federal Republic of Germany and German minority groups in Denmark had been signed. That was a progressive document which represented an important advance, and he suggested that the next report should provide information on it.

With regard to the application of article 4 (b) of the Convention, the second report (p. 5) placed emphasis on the concept of freedom of association, which was a very important principle provided that it did not lead to actions by an organization which were contrary to the provisions of the Convention. Any organization could conceivably begin to practise racial discrimination, in which case it could be banned, but that was no reason for prohibiting freedom of association. He did not see any contradiction there at all.

With regard to the gipsies, he noted that they had the same rights as other Danish citizens. From an ethnic standpoint, however, the Government seemed to be somewhat paternalistic in the sense that it sought to help them to earn a living etc. In his opinion, it would be preferable for the Government to help them to achieve complete equality with other citizens and to regard them as a part of the population with the same duties and responsibilities, since it could be counterproductive to provide too much aid.

(Mr. Calovski)

As to the question of migrant workers, reference was made to aliens other than nationals of the other Nordic countries, and he wondered what was the basis for that provision in the light of the definition contained in article 1 of the Convention. He would like more information in that regard.

Mr. DAYAL observed that the Committee had held a detailed, exhaustive discussion at the time of its consideration of the initial report by Denmark. Denmark had prepared its second report with due regard for the comments made at that time and in strict conformity with the guidelines contained in document CERD/C/R.12.

A reading of the two reports left no doubt that the Danish Government was fully aware of its responsibilities under the Convention and was doing everything possible to fulfil them and to maintain a dialogue with the Committee.

He was most interested in hearing the replies to the pertinent questions asked by Mr. Kapteyn, Mr. Ancel, Mr. Valencia Rodríguez and other speakers.

With regard to the organizations described in article 4 of the Convention, he observed that section 132 a of the Danish Penal Code seemed to comply with the provisions of that article since freedom of association was a principle recognized by most constitutions, including that of Denmark, and one of the civil rights enumerated in article 5 of the Convention was the right to freedom of peaceful assembly and association.

He would be grateful if the representative of Denmark would provide detailed information on how the ombudsman functioned in relation to discrimination and other matters, since a number of countries were interested in the functions and responsibilities of the office. He would like to know whether or not the had jurisdiction in Greenland. With regard to that territory, which had a mixed population, he noted with satisfaction the manner in which the Government had tried to deal with the special problems arising there.

There was a dyarchical system of administration in Greenland with the Governor as the supreme administrative authority assisted by the Greenland Council with purely advisory functions but whose opinion was sought on legislation affecting Greenland. It was encouraging to note that it was planned to extend the powers of the popularly elected Greenland assemblies, and that a Home Rule Committee had been set up in 1973 to assess the future distribution of

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(Mr. Dayal)

responsibilities between the State, the Provincial Council and the local councils of Greenland. It would be interesting to be kept informed of the progress made by the Committee.

Finally, he joined previous speakers in thanking the Danish Government for its very comprehensive report and expressing satisfaction at the manner in which Denmark had discharged its responsibilities under the Convention.

Mr. INGLES said that he had been particularly interested in reading the paragraphs in the report concerning judicial measures taken in cases of racial discrimination connected with admission to restaurants (CERD/C/R.77/Add.2, p. 6), in which it was stated that fines had been imposed out of court in two cases and that one case had ended in a warning. He wondered how it was possible for fines to be imposed without bringing the matter to court. The procedure was presumably comparable to that followed by traffic police officers, who imposed and collected fines at the place where the offence was committed. He would like to know whether there was not some prior judicial proceeding. He would also like further information on the case which had ended in a warning; he did not know what precedents there were for such proceedings, for if it was an administrative tribunal that imposed the fine or issued the warning, that would amount to a judicial proceeding.

It seemed clear from the report that article 4 of the Convention was being fully observed in Denmark. He would, however, like to make certain observations concerning the philosophy underlying the legislation enacted pursuant to article 4 (b). Danish law provided that a person could be imprisoned for from one to four years under article 4 (a) for incitement to racial discrimination and that an organization could be penalized under article 4 (b) but that the penalty was limited to declaring it illegal and dissolving it. He wondered what the impact of the declaration of illegality was, since it apparently resulted only in the dissolution of the organization. If the organization had been formed for the purpose of fostering racial discrimination, to what penalty were its founders liable? It appeared from the report that they remained at liberty.

The problem arose in connexion with the provisions of section 132 a of the Danish Penal Code, which provided that it was a punishable offence to take part in the continued activities of an association after it had been prohibited by the Government or dissolved by judgement and to join such an association as a member after it had been prohibited or dissolved. There was some logic in that, but he

(Mr. Ingles)

wondered nevertheless what was done with regard to acts committed before the organization was declared illegal or dissolved. It might be that article 4 (a) would apply in such cases, but he wondered whether any distinction was being made between acts committed on an individual basis and those committed in an organized manner. The commission of an offence in an organized manner would presumably be regarded as an aggravating circumstance. The scope of article 4 (b) was a question which called for discussion by the Committee, since, in speaking of participation in a movement or an organization, a distinction should be made between participation as an organizer and as an ordinary member. He hoped that the representative of Denmark would clarify those points.

Mr. PARTSCH, speaking with reference to article 6 of the Convention, noted with interest that it was possible to obtain reparation for acts of racial discrimination committed not only by the authorities but also by private individuals, according to section 15, subsection 1, of the Act relating to the Penal Code (CERD/C/R.77/Add.2, p. 3).

It was also surprising that no reference was made to the ombudsman in connexion with discrimination between individuals, and he wondered whether the ombudsman was able to provide effective protection in cases of racial discrimination.

He had no difficulty in agreeing that the legal provisions adopted in connexion with article 4 (a) and (b) of the Convention fully met the requirements of that article. He understood that the individuals referred to in article 266 (b) of the Penal Code, reproduced in document CERD/C/R.50/Add.3, could be penalized as individuals or as members of an organization. He assumed that, in imposing the penalty, the court would take into account whether such persons had acted as individuals or as members of a group.

In general, it could be said that the part relating to Greenland could serve as a model for other countries having to refer in their reports to Territories which enjoyed a special status. In that connexion, it would be interesting to know if the Government of Denmark would be willing for its report to be given general distribution so that other countries might use it as a model.

Mr. ORTIZ MARTIN said that the report of Denmark faithfully reflected the social, cultural, political and economic progress of that country. The excellence of that report would undoubtedly be heightened by the answers to the questions asked in the Committee.

(Mr. Ortiz Martin)

He had always admired Denmark for the exemplary legality of its conduct. The manner in which it complied with the provisions of the Convention could serve as a model. Denmark, although a small country, was nevertheless in the vanguard in many respects. He was pleased to note that, in spite of the great geographical differences between Denmark and his own country, there was a fundamental factor which united them: the universal concept of the law.

Mr. PEDERSEN (Denmark) said that he was gratified by the favourable reception given to his country's report. He would endeavour to give preliminary answers to some of the questions which had been asked, all of which would be dealt with in more detail in future reports.

It was difficult to explain in detail how a juridical system operated and in what way it protected human rights in all their aspects. Mr. Kapteyn and Mr. Macdonald had asked which courts would hear cases relating to section 78, subsection 2, of the Constitution. He assumed that they would be heard in ordinary courts of first instance, with the possibility of appeals reaching as high as the Supreme Court itself.

Mr. Kapteyn had also asked how article 7 of the Convention was implemented. In Denmark there was a commission responsible for school textbooks which endeavoured to include in them information on racial discrimination and human rights. Schools were free to choose the texts which they preferred from among those offered to them by the commission. In that way, students in Danish schools were informed of what was happening in the world in the field of human rights, of their country's position in that regard and of the relevant activities of international organizations.

Mr. Valencia Rodríguez had asked about work permits, with particular reference to the inhabitants of other Nordic countries and of the countries of the European community. The nationals of those countries did not need work permits in Denmark. However, that could not be considered discriminatory. It was a preference granted by Denmark to certain nationalities in accordance with international treaties which it had concluded.

Mr. Aboul Nasr had asked why the gipsies had left Denmark. It had very probably been because of the climate. Mr. Calovski might have been right in suggesting that perhaps the Government had been somewhat paternalistic. At times

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(Mr. Pedersen, Denmark)

it was very difficult to treat such groups in the way in which they would like to be treated.

Mr. Inglés had asked about fines. It was the police who imposed them and, if the person fined agreed to pay, the case was closed. If the person did not agree to pay, recourse could be had to the courts.

As far as the observation made by Mr. Dayal on the implementation of article 4 (b) was concerned, his reasoning was indeed correct. Denmark could not prohibit the formation of any organization, but any organization whose aims were illicit would be dissolved.

The CHAIRMAN expressed his appreciation of the Danish Government's willingness to co-operate with the Committee and of its excellent report which conformed entirely to the outline adopted by the Committee in document CERD/C/R.12. The Committee awaited with interest the additional information promised by the representative of Denmark.

As far as the fulfilment of the provisions of article 4 (b) was concerned, he felt that the observations made in that connexion by Mr. Dayal and the representative of Denmark were very pertinent, since the importance of those provisions need not be underlined. As Mr. Kapteyn had pointed out, it would also be interesting to have more detailed information in the future on some cases dealt with by the courts, so as to have a clearer picture of the practical implementation of the Convention.

Denmark's report deserved the congratulations of the Committee. It was to be hoped that Denmark would continue to co-operate as closely with the Committee in the future.

Mr. Pedersen (Denmark) withdrew.

(f) THIRD PERIODIC REPORTS OF STATES PARTIES DUE IN 1974 (continued)

(j) INFORMATION FROM STATES PARTIES CONCERNING THEIR OBLIGATIONS UNDER ARTICLE 4 OF THE CONVENTION

Niger (CERD/C/R.70/Add.30 and CERD/C/R.69)

At the invitation of the Chairman, Mr. Salifou (Niger) took a place at the Committee table.

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Mr. VALENCIA RODRIGUEZ said that, as the Niger had stated that, since the date of its last report, it had adopted no new measure which could change its implementation of the Convention, it was worth recalling that previous reports had dealt essentially with legislative measures taken and the full application of the principle of equality. The provisions of article 102 of the Penal Code of the Niger met the requirements of article 4 (a). It would be useful to know what legislative measures had been taken to implement the provisions of article 4 (b), and in what way the provisions of articles 6 and 7 of the Convention had been implemented. He would be interested to hear information from the representative of the Niger with regard to other legislative measures of a secondary nature, which certainly existed, to give effect to the principle of equality enshrined in the Constitution and to the other rights enumerated in article 5 of the Convention.

In the Niger's third periodic report, there appeared for the first time information relating to the suspension of the Niger's Constitution by decree. No one doubted the right of any sovereign State to suspend the provisions of its Constitution. What might be of interest to the Committee was that the suspension was of a general nature, applying to all citizens, without restriction, limitation or preference for or against any given racial group.

The Niger's report lacked information on relations with the racist régimes of southern Africa. The Niger's position on that question in international bodies was well known, but it would do no harm to reaffirm it. The report also lacked data on the measures taken to achieve the aims and objectives of the Decade for Action to Combat Racism and Racial Discrimination.

Mr. TOMKO said that the Niger had provided three concise pieces of information: firstly, that since 22 January 1970 no new measure relating to the Convention had been taken; secondly, that on 22 April 1974 the country's Constitution had been suspended; and, thirdly, that it proposed to pursue a policy opposed to any form of discrimination. Unfortunately, no details were given as to the administrative and other measures taken to implement the Convention or the provisions adopted to implement articles 6 and 7.

It would be interesting, as Mr. Valencia Rodríguez had pointed out, to have information on the Niger's relations with the racist régimes of southern Africa and to have further details on the consequences of the suspension of the Constitution.

The meeting rose at 1 p.m.