

DENMARK

Follow-up - Jurisprudence Action by Treaty Bodies

CERD, A/61/18 (2006)

Chapter VII. Follow-up to Individual Communications

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487. The table below shows a complete picture of follow-up replies from States parties received up to 18 August 2006, in relation to cases in which the Committee found violations of the Convention or provided suggestions or recommendations in cases of non-violation. Wherever possible, it indicates whether follow-up replies are or have been considered satisfactory or unsatisfactory, or whether the dialogue between the State party and the Rapporteur for follow-up continues. This table, which will be updated by the Rapporteur on an annual basis, will be included in future annual reports of the Committee.

488. The categorization of follow-up replies by States parties is not always easy. It is therefore not possible to provide a neat statistical breakdown of follow-up replies. Many replies received may be considered satisfactory, in that they display the willingness of the State party to implement the Committee's recommendations or to offer an appropriate remedy to the complainant. Other replies cannot be considered satisfactory because they either do not address the Committee's recommendations at all or only relate to certain aspects of these recommendations.

489. At the time of adoption of the present report, the Committee had adopted final opinions on the merits with respect to 22 complaints and found violations of the Convention in 9 cases. In 8 cases, the Committee provided suggestions or recommendations although it did not establish a violation of the Convention.

Follow-up received to date for all cases of violations of the Convention and cases in which the Committee provided suggestions or recommendations in cases of no violation

State party and number of cases with violation	Communication, number, author and location	Follow-up response received from State party	Satisfactory response	Unsatisfactory response	No follow-up response received	Follow-up dialogue still ongoing
Denmark (3)	10/1997, Habassi	X (A/61/18)				X
	16/1999, Kashif Ahmad	X (A/61/18)				X
	34/2004, Mohammed Hassan Gelle	Not yet due				
...						

Petitions in which the Committee found no violations of the Convention but made recommendations

State party and number of cases with violation	Communication, number, author and location	Follow-up response received from State party	Satisfactory response	Unsatisfactory response	No follow-up response received	Follow-up dialogue still ongoing
...						
Denmark (3)	17/1999, B.J.				X (never requested by the Committee)	
	20/2000, M.B.				X (never requested by the Committee)	
	27/2002, Kamal Qiereshi				X	X
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Annex V

Cases in which the Committee adopted recommendations and follow-up information provided in relation thereto

State party	Denmark
Case and No.	Ziad Ben Ahmed Habassi, 10/1997
Opinion adopted on	17 March 1999
Issues and violations found	Discrimination with respect to loan request - article 6 in connection with 2 (d)
Remedy recommended	<p>The Committee recommends that the State party take measures to counteract racial discrimination in the loan market.</p> <p>The Committee further recommends that the State party provide the applicant with reparation or satisfaction commensurate with any damage he has suffered.</p> <p>Pursuant to rule 95, paragraph 5, of its rules of procedure, the Committee would wish to receive information, as appropriate and in due course, on any relevant measures taken by the State party with respect to the recommendations set out in paragraphs above.</p>
Date of examination of report(s) since adoption	Fifteenth report on 12 to 13 March 2002, sixteenth and seventeenth reports on 9 and 10 August 2006
Due date for State party response	None
Date of reply	27 May 1999 and 11 July 2006
State party response	<p>The Ministry of Justice took note that the Committee assessed the factual circumstances differently from the Public Prosecutor and found that the police investigation in connection with the report was insufficient and that the possibility of bringing a civil declaratory action was not considered an effective remedy compared to criminal proceedings before the courts. The Chief Constable of Skive and the State Prosecutor in Viborg have been informed by the Ministry of Justice of the Committee's opinion and that it has been taken due note of by the Ministry.</p>

Furthermore, the opinion has been forwarded to the Director of Public Prosecutions. The Ministry of Justice has requested the Ministry of Economic Affairs to inform Danish financial institutions about the Committee's opinion and that their credit policy should respect the International Convention on the Elimination of All Forms of Racial Discrimination.

Concerning the recommendation that the petitioner be granted "reparation or satisfaction commensurate with any damage he has suffered", it is the opinion of the Government of Denmark that there is no basis for compensation for pecuniary loss, since the loan was actually granted to Mr. Habassi's wife, who was listed as the borrower. However, reasonable and specific expenses for judicial assistance in connection with the communication will be compensated.

On 11 July 2006, the State party informed the Committee that on 16 June 1999, the Financial Council had sent a letter to the management of all Danish financial institutions informing them of the Committee's opinion and underlining that they should conform with the opinion in their credit policy, thus not refusing loan applications solely on the basis of the applicant's nationality. In addition, on 9 November 1999, the Danish Consumers' Ombudsman also sent a letter to a number of trade organizations and consular organizations requesting them to inform their members of the Committee's opinion and to apply the criteria mentioned in the opinion when evaluating loan applications, i.e. the applicant's permanent residence or the place where his/her employment, property or family ties are to be found and not his/her nationality. Finally, it states that the Ministry of Justice paid DKK 20,000 (around 2,700 euros) plus VAT to Mr. Habassi's attorney, which corresponds to the amount requested by the attorney to cover his judicial assistance in connection with the communication.

Author's response

On 3 August 1999, the petitioner commented on the State party's response in which he stated, inter alia, that apart from the fact that the State party contests the Committee's assessment of the factual information of the case, he finds it problematic that the Ministry did not indicate what the general consequences of the Committee's opinion should or might be. The Ministry merely notified the Chief Constable of Skive, the State Prosecutor in Viborg and the Director of Public Prosecution that it has taken note of the decision. Future prosecuting practices appear to be left to the discretion of the police and the Prosecution. In addition, the Ministry seems to ignore the fact that the police and

	<p>prosecution have a general obligation to conduct a thorough investigation in the event of a report of alleged acts of discrimination. In further comments on 9 August 1999, he confirmed that he had not suffered any financial loss but stated that article 6 also involves an obligation on States parties to ensure that compensation for non-economic loss is granted. He received no compensation for the insults suffered for having been subjected to racial discrimination.</p>
Action taken by the Committee	<p>At its fifty-fifth session, held from 2 to 27 August 1999, the Committee decided to include the following text in its annual report: "Responding to suggestions and recommendations formulated by the Committee in its opinion on communication No. 10/1997 (<i>Ziad Ben Ahmed Habassi v. Denmark</i>), the State party, in a note verbale dated 27 May 1999, informed the Committee that the Ministry of Justice had taken due note that the Committee assessed the factual circumstances differently from the Public Prosecutor and found that the police investigation had been insufficient and that the possibility of bringing a civil declaratory action was not considered an effective remedy compared to criminal proceedings at the courts. Furthermore, the police and prosecution authorities involved in the case had been informed of the Committee's opinion and arrangements had been made for it to be transmitted to relevant financial institutions. The State party also informed the Committee that it would provide compensation for reasonable and specified expenses for judicial assistance to the author of the communication.</p> <p>The Committee acknowledged this information as a follow-up to the opinion adopted by the Committee under article 14. The Committee was aware that the follow-up measures raised the issue of just and adequate reparation or satisfaction referred to in article 6 of the Convention. The Committee expected to examine this issue both in general and in connection with the fourteenth periodic report of the State party, which was awaiting consideration by the Committee.</p>
Further action/Committee's recommendation	<p>No further action necessary. The State party has provided a satisfactory response and has paid legal costs in connection with the communication.</p>
State party	Denmark
Case and No.	Kashif Ahmad, 16/1999
Opinion adopted on	13 March 2000

Issues and violations found	Failure to examine claims of racial discrimination - article 6
Remedy recommended	The Committee recommends to the State party that it ensure that the police and the public prosecutors properly investigate accusations and complaints related to acts of racial discrimination which should be punishable by law according to article 4 of the Convention.
Date of examination of report(s) since adoption	Fourteenth report on 23 March 2000 Fifteenth report on 12 to 13 March 2002 Sixteenth and seventeenth reports on 9 and 10 August 2006
Due date for State party response	None
Date of reply	22 August 2000
State party response	The State party submitted that a copy of the Committee's opinion had been sent to the Chief Constable of Hvidovre, to the District Prosecutor for Zealand and to the Director of Public Prosecutions. The Ministry of Justice had furthermore paid the petitioner's counsel's fee in the matter totalling DKK 22,000 plus VAT.
Author's response	None
Further action/Committee's recommendation	No further action necessary. The State party has provided a satisfactory response.

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Cases in which the Committee found no violation of the Convention but made recommendations

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State party	Denmark
Case and No.	B.J., 17/1999
Opinion adopted on	17 March 2000

Issues	Discrimination in access to public accommodation, right to compensation
Remedy recommended	While the Committee considers that the facts described in the present communication disclose no violation of article 6 of the Convention by the State party, the Committee recommends that the State party take the necessary measures to ensure that the victims of racial discrimination seeking just and adequate reparation or satisfaction in accordance with article 6 of the Convention, including economic compensation, will have their claims considered with due respect for situations where the discrimination has not resulted in any physical damage but humiliation or similar suffering.
Due date for State party response	None
Date of reply	N/A
State party response	None
Author's response	None
Further action	No action required
State party	Denmark
Case and No.	M.B., 20/2000
Opinion adopted on	13 March 2002
Issues	Right of access to public place and failure to investigate complaint
Remedy recommended	The Committee wishes to emphasize the importance it attaches to the duty of the State party and, for that matter, of all States parties, to remain vigilant, in particular by prompt and effective police investigations of complaints, that the right established under article 5 (f), is enjoyed without discrimination by all persons, nationals or foreigners, under the jurisdiction of the State party.
Date of examination of report(s) since adoption	Fifteenth report on 12 and 13 March 2002 Sixteenth and seventeenth reports on 9 and 10 August 2006

Due date for State party response	None
Date of reply	N/A
State party response	None
Author's response	None
Further action	No action required
State party	Denmark
Case and No.	Kamal Quereshi, 27/2002
Opinion adopted on	19 August 2003
Issues	Failure to investigate complaint
Remedy recommended	The Committee would wish to remain apprised of the results of the criminal complaints lodged against the speakers at the party political conference in view of the racist nature of their remarks, which were contrary to article 4 (b) of the Convention. The Committee draws the attention of the State party to the need to balance freedom of expression with the requirements of the Convention to prevent and eliminate all acts of racial discrimination, particularly in the context of statements made by members of political parties.
Date of examination of report(s) since adoption	Sixteenth and seventeenth reports on 9 and 10 August 2006
Due date for State party response	None
Date of reply	1 July 2006

State party response	<p>The State party responded that the same author had submitted a new complaint to the Committee (No. 33/2003), in which he alleged that the State party had failed to discharge its positive obligations to take effective action to examine and investigate the reported incidents of racial discrimination, as none of the speakers in question were prosecuted. On 9 March 2005, the Committee found no violation in this case. The State party reiterates information provided in relation thereto as to the outcome of the investigations into alleged racial statements by the speakers at the party conference. Two of the speakers were convicted and fined for having made racist comments. The other four cases were investigated but prosecution was not pursued as it was not expected to lead to conviction. The State party further commented that, as reflected in its seventeenth periodic report, between 1 January 2001 and 31 December 2003, the Danish courts considered 23 cases concerning allegations of racist statements, 10 of which concerned statements by politicians, only one of whom was acquitted.</p>
Author's response	None
Further action/Committee's recommendation	The Committee considers the response satisfactory.

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VII. FOLLOW-UP TO INDIVIDUAL COMMUNICATIONS

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523. The table below shows a complete picture of follow-up replies from States parties received up to 17 August 2007, in relation to cases in which the Committee found violations of the Convention or provided suggestions or recommendations in cases of non-violation. Wherever possible, it indicates whether follow-up replies are or have been considered satisfactory or unsatisfactory, or whether the dialogue between the State party and the Rapporteur for follow-up continues. This table, which will be updated by the Rapporteur on an annual basis, will be included in future annual reports of the Committee.

524. The categorization of follow-up replies by States parties is not always easy. It is therefore not possible to provide a neat statistical breakdown of follow-up replies. Many replies received may be considered satisfactory, in that they display the willingness of the State party to implement the Committee's recommendations or to offer an appropriate remedy to the complainant. Other replies cannot be considered satisfactory because they either do not address the Committee's recommendations at all or only relate to certain aspects of these recommendations.

525. At the time of adoption of the present report, the Committee had adopted final opinions on the merits with respect to 23 complaints and found violations of the Convention in 10 cases. In eight cases, the Committee provided suggestions or recommendations although it did not establish a violation of the Convention.

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Follow-up received to date for all cases of violations of the Convention and cases in which the Committee provided suggestions or recommendations in cases of no violation

State party and number of cases with violation	Communication, number, author and location	Follow-up response received from State party	Satisfactory response	Unsatisfactory response	No follow-up response received	Follow-up dialogue still ongoing
Denmark (3)	10/1997, Habassi	X (A/61/18)				X
	16/1999, Kashif Ahmad	X (A/61/18)				X
	34/2004, Mohammed Hassan Gelle	X (A/62/18)	X (A/62/18)			
	40/2007, Er	Not yet due				
...						

Petitions in which the Committee found no violations of the Convention but made recommendations

State party and number of cases with violation	Communication, number, author and location	Follow-up response received from State party	Satisfactory response	Unsatisfactory response	No follow-up response received	Follow-up dialogue still ongoing
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Denmark (3)	17/1999, B.J.				X (never requested by the Committee)	
	20/2000, M.B.				X (never requested by the Committee)	
	27/2002, Kamal Qiereshi				X	X
...						

Annex VI

FOLLOW-UP INFORMATION PROVIDED IN RELATION TO CASES IN WHICH THE COMMITTEE ADOPTED RECOMMENDATIONS

This annex compiles information received on follow-up to individual communications since the last annual report (A/61/18), as well as any decisions made by the Committee on the nature of those responses.

State party	Denmark
Case and No.	Mohammed Hassan Gelle, 34/2004
Opinion adopted on	6 March 2006
Issues and violations found	Racial discriminatory statements made by a member of Parliament against individuals of Somali origin - articles 2, paragraph 1 (d), 4, and 6.
Remedy recommended	Adequate compensation; to ensure that the existing legislation is effectively applied so that similar violations do not occur in the future.
Date of examination of report(s) since adoption	Sixteenth and seventeenth periodic reports examined on 9 and 10 August 2006
Due date for State party response	6 September 2006
Date of reply	31 May 2007 (the State party had previously responded on 11 September 2006)
State party response	On 11 September 2006, the State party submitted that with respect to the remedy of compensation, it considered it reasonable to pay compensation for any equitable costs a petitioner may have to pay for legal assistance during the complaints procedure. In fact, legal aid is provided in such cases. It stated that the petitioner has applied for legal aid and that he has been granted DKK 40,000 (US\$ 6,670). An additional application for further legal aid is being processed. The State party also considered it reasonable that compensation be awarded for any pecuniary damage (economic damages) to the petitioner. However, the petitioner had not suffered any

pecuniary damage in this case. It was of the view that the alleged discriminatory action against the petitioner in the current case has not been of such a nature that it considers it reasonable to award compensation for moral damage (non-pecuniary damage - "pain and suffering"). Unlike the discriminatory action which had taken place in *L.K. v. the Netherlands* and *Habassi v. Denmark*, the action in the current case was not aimed at the petitioner personally. Thus, the State party considered that the finding of a violation in itself was sufficient satisfaction for the petitioner in the current case.

As to the recommendation to ensure that the existing legislation is effectively applied so as to avoid similar violations in the future, the State party stated that the Department of Public Prosecution (DPP) was superior to the other prosecutors whom he supervises and has issued guidelines on keeping the DPP informed of all reports of violations of section 266b of the Criminal Code (deals with discriminatory utterances). The DPP was currently re-evaluating these guidelines and considering whether there was a basis for changing them. For this reason, the DPP has received a copy of the Committee's Opinion and has been requested to take it into consideration when assessing the need to amend the guidelines.

As to publicizing the Opinion, the Government forwarded it to the Chief of Police in Copenhagen and the Regional Public Prosecutor of Copenhagen, to the DPP, the National Commissioner of Police, the Danish Association of Chiefs of Police, and the Danish Court Administration. It also received widespread coverage in the Danish media.

On 31 May 2007, the State party commented on the petitioner's response, confirming its previous position and also stating the following: (1) as to the analogy drawn with *Habassi*, the State party recalls that the Committee did not specifically recommend compensation for moral injury in that case and that the Committee regarded its response as satisfactory; (2) the issue of whether a particular discriminatory act was aimed at the petitioner personally is only one aspect of the issue of compensation, which also includes whether the act had substantial consequences for the petitioner; (3) the petitioner was not mentioned by name in the letter to the editor which formed the basis of the complaint - only the names of the organizations were mentioned; (4) the requirement of legal interest as a condition for appealing a decision by the police is not identical to the requirement of being personally targeted by

	<p>a discriminating act to obtain compensation for non-pecuniary damage - the former is based on the Danish Administration of Justice Act and general principles of administrative law, and the latter is based on considerations regarding the law of torts; (5) equally, the question of being a victim under the Convention of such an act and of being personally targeted by this act are not identical, thus a person found to be a victim by the Committee is not automatically entitled to compensation for non-pecuniary damage; (6) the State party does not agree that the accusation that the petitioner supports female genital mutilation is implied from the statement made by Pia Kjærsgaard and thus the Danish authorities were not called upon to make any acknowledgement as to the truth or otherwise of the accusation. The State party does stress that it has no reason to believe that the petitioner supports female genital mutilation; the Convention does not contain a provision on compensation like the European Convention on Human Rights, but even the European Court, in awarding compensation, assesses the nature and seriousness of the violation and often rejects claims of non-pecuniary damage.</p>
<p>Petitioner's response</p>	<p>On 14 November 2006, the petitioner commented on the State party's response of 11 September 2006 and referred to its argument that it is only if a person is personally targeted in relation to a violation of the Convention that this person will be entitled to non-pecuniary damage. He argued that he was personally targeted as chairman of the Somalian organization that received the Bill in question for comments. He was in fact the person who was compared with "rapists" and "paedophiles". This fact was confirmed by the State party by its dismissal of his complaint on the grounds that politicians have a wide freedom of speech on political issues rather than on the grounds that the petitioner was not personally affected and thus had no "legal interest". It was further confirmed by the State party in its failure to bring up this argument to the Committee prior to consideration of the case. The petitioner claimed that he had been humiliated not only by the offending statement in question but also by the failure of the State party's authorities to acknowledge that the accusation that he supported female genital mutilation was false.</p>
<p>Committee's decision</p>	<p>The Committee considers that the State party has provided a satisfactory response, including by explicitly acknowledging that the petitioner does not support female genital mutilation. Furthermore, the Committee notes that the petitioner has been</p>

...	provided with adequate compensation in having been paid his legal costs.
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CERD, A/63/18 (2008)

CHAPTER VII. FOLLOW-UP TO INDIVIDUAL COMMUNICATIONS

536. In the past, the Committee only informally monitored whether, how or the extent to which States parties implemented its recommendations adopted following the examination of communications from individuals or from groups of individuals. In light of the positive experiences of other treaty bodies, and following a discussion based on a background paper prepared by the Secretariat (CERD/C/67/FU/1, available on the OHCHR website), the Committee decided, at its sixty-seventh session,¹ to establish a procedure to follow up on its opinions and recommendations adopted following the examination of communications from individuals or groups of individuals.

537. Also at its sixty-seventh session, the Committee decided to add two new paragraphs to its rules of procedure.² On 6 March 2006, at its sixty-eighth session, Mr. Linos-Alexandre Sicilianos was appointed Rapporteur for follow-up to opinions. He presented a report to the Committee with recommendations on further action to be taken. This report, which was adopted by the Committee at its sixty-ninth session, has been updated (see annex V) and reflects all cases in which the Committee found violations of the Convention or where it provided suggestions or recommendations although it did not establish a violation of the Convention. During the seventy-second session Mr. Régis de Gouttes was appointed Rapporteur for follow-up to opinions.

538. The table below shows a complete picture of follow-up replies from States parties received up to 17 August 2007, in relation to cases in which the Committee found violations of the Convention or provided suggestions or recommendations in cases of non-violation. Wherever possible, it indicates whether follow-up replies are or have been considered satisfactory or unsatisfactory, or whether the dialogue between the State party and the Rapporteur for follow-up continues. This table, which will be updated by the Rapporteur on an annual basis, will be included in future annual reports of the Committee.

539. The categorization of follow-up replies by States parties is not always easy. It is therefore not possible to provide a neat statistical breakdown of follow-up replies. Many replies received may be considered satisfactory, in that they display the willingness of the State party to implement the Committee's recommendations or to offer an appropriate remedy to the complainant. Other replies cannot be considered satisfactory because they either do not address the Committee's recommendations at all or only relate to certain aspects of these recommendations.

540. At the time of adoption of the present report, the Committee had adopted final opinions on the merits with respect to 25 complaints and found violations of the Convention in 10 cases. In

eight cases, the Committee provided suggestions or recommendations although it did not establish a violation of the Convention.

1/ See *Official Records of the General Assembly, Sixtieth Session, Supplement No. 18* (A/60/18), annex IV, sect. I.

2/ Ibid., annex IV, sect. II.

Follow-up received to date for all cases of violations of the Convention and cases in which the Committee provided suggestions or recommendations in cases of no violation

State party and number of cases with violation	Communication, number, author and location	Follow-up response received from State party	Satisfactory response	Unsatisfactory or incomplete response	No follow-up response received	Follow-up dialogue still ongoing
Denmark (3)	10/1997, Hebaoui 16/1999, Kashif Ahmad 34/2004, Mohammed Hassan Gelle 40/2007, Er	✓ (A/61/18) X (A/61/18) X (A/62/18) X (A/63/18)	✓ X X (A/62/18)	 X Incomplete		 X
...						

Petitions in which the Committee found no violations of the Convention but made recommendations

State party and number of cases with violation	Communication, number, author and location	Follow-up response received from State party	Satisfactory response	Unsatisfactory response	No follow-up response received	Follow-up dialogue still ongoing
...						
Denmark (3)	17/1999, B.J. 20/2000, M.B. 27/2002, Kamal Qiereshi				X (never requested by the Committee) X (never requested by the Committee) X	X
...						

Annex IV

FOLLOW-UP INFORMATION PROVIDED IN RELATION TO CASES IN WHICH THE COMMITTEE ADOPTED RECOMMENDATIONS

This annex compiles information received on follow-up to individual communications since the last annual report (A/62/18), as well as any decisions made by the Committee on the nature of those responses.

State party	Denmark
Case and No.	Murat Er, 40/2007
Opinion adopted on	8 August 2007
Issues and violations found	Ethnic discriminatory practice in schools with respect to educational and training possibilities, failure to carry out effective investigation - articles 2, paragraph 1 (d); 5, paragraph (e) (v); and article 6.
Remedy recommended	The Committee on the Elimination of Racial Discrimination recommends that the State party grant the petitioner adequate compensation for the moral injury caused by the above-mentioned violations of the Convention. The State party is also requested to give wide publicity to the Committee's opinion, including among prosecutors and judicial bodies.
Date of examination of report(s) since adoption	Sixteenth and seventeenth periodic reports examined on 9 and 10 August 2006
Due date for State party response	9 January 2008
Date of reply	10 January 2008
State party response	The State party forwarded a translation of a copy of a letter from its "Complaints Committee for Ethnic Equal Treatment under the Danish Institute for Human Rights" to the Committee, which it is assumed is to be considered as the State party's response to the Committee's decision. The Complaints Committee submits that it agrees with the Committee's decision on admissibility, that the petitioner must be

considered a potential victim of discrimination as his chances of being recruited as a trainee were considered limited compared with students of ethnic Danish origin, and refers to the decision of the Complaints Committee of 1 September 2004, which was of a similar view. However, it states that in the judgement of the High Court of Eastern Denmark of 27 June 2006, the court took no position on the school's willingness to accommodate requests from employers only to accept ethnic Danes as trainees, and that thus the Danish courts have not definitively determined whether the school was prepared to accommodate such requests. The judgement of this court should be seen in the light of the fact that the petitioner had claimed compensation and had not claimed that the college should be ordered to acknowledge having violated the Act on Ethnic Equal Treatment by accommodating requests from employers to accept only ethnic Danes as trainees. As to the Committee's recommendation on compensation, the Complaints Committee states that pursuant to general principles of State liability under public international law, it would be sufficient in the circumstances to compensate potential victims by granting redress in the form of establishing the existence of the violation. As the petitioner could not prove that he was an actual victim of ethnic discrimination, the Complaints Committee considers that the State party is not obliged to grant the petitioner financial compensation. In addition, on the violation of failing to investigate, the Complaints Committee submits that it fails to see what more could have been done to carry out an effective investigation of the case - witness statements were produced in court and the case was considered by the Complaints Committee itself, and the City and High Courts.

Petitioner's response

On 14 March 2008, the petitioner commented on the State party's response. He stated that it does not make a decisive difference for his status as potential victim of discrimination whether the school opts to accommodate the demand from an employer only to send ethnic Danes, or whether the school in anticipation of problems with an employer decides not to send trainees of a different ethnic background - the "not-P" in this case. In both cases, the school has exercised differential treatment *prior* to the question whether a given student should be sent as a trainee and was qualified for it at a given time. As to the State party's argument on compensation, the petitioner submits that the Complaints Committee is not competent to address questions of compensation, and accordingly does not have the facts at its disposal. The petitioner has suffered distress (and he refers to the medical evidence produced in court) and non-economic damage from the case, in that he was marginalized from the labour force and discontinued his training as a carpenter. He also incurred costs in the proceedings designed to prevent and redress the breach found and

instituted the case also for preventive reasons to stop what he considers is a widespread practice of discrimination in vocational schools. As to the argument on the State party's failure to investigate, the petitioner stated that the issue of whether there was a request from an employer who was accommodated by the school or whether the school was acting in anticipation of a problem could have been resolved if the identity of the employer had been divulged, so they could be questioned as a witness in court. Since they were not identified and the "P-note" not produced, the evidentiary issue should have been resolved in favour of the petitioner. The petitioner refers to research conducted in January 2008, in which it concluded that 63 per cent of consultants employed at vocational colleges admitted that they try to meet companies' demands for trainees with an ethnic Danish background and that eight out of ten consultants experienced companies only wanting trainees with a Danish background.

Finally, the petitioner submits that the State party has taken no steps to remedy the breach of the Convention. It refers to the jurisprudence of the European Convention on Human Rights on compensation and proposes that the matter be settled with a compensation of DKR 115,000 (breakdown provided), free of tax.

Committee's decision

The Committee, while welcoming the State party's recognition of a violation of article 5, paragraph e (v), of the Convention, regrets the State party's view that recognition of a violation in itself should be a sufficient remedy and that it thus should not be obliged to grant the petitioner compensation. The Committee also regrets the State party's refusal to acknowledge that it violated the provisions under articles 2, paragraph 1 (d) and 6 of the Convention.

The Committee regards the follow-up dialogue as ongoing and in light of the petitioner's comments would wish to receive further information from the State party on measures it intends to take to implement its Opinion, including the granting of compensation.

CERD, A/64/18 (2009)

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Chapter VII Follow-up to Individual Communications

64. At its sixty-seventh session,¹ following a discussion based on a background paper prepared by the Secretariat (CERD/C/67/FU/1), the Committee decided to establish a procedure to follow up on its opinions and recommendations adopted following the examination of communications from individuals or groups of individuals.

65. At the same session, the Committee decided to add two new paragraphs to its rules of procedure setting out details of the procedure.² On 6 March 2006, at its sixty-eighth session, Mr. Sicilianos was appointed Rapporteur for follow-up to opinions, succeeded by Mr. de Gouttes with effect from the seventy-second session. The Rapporteur for follow-up to opinions regularly presents a report to the Committee with recommendations on further action to be taken. These recommendations, which are annexed to the Committee's annual report to the General Assembly, reflect all cases in which the Committee found violations of the Convention or otherwise provided suggestions or recommendations.

66. The table below provides an overview of follow-up replies received from States parties. Wherever possible, it indicates whether follow-up replies are or have been considered satisfactory or unsatisfactory, or whether the dialogue between the State party and the Rapporteur for follow-up continues. Such categorization is not always easy. In general, replies may be considered satisfactory if they reveal a willingness by the State party to implement the Committee's recommendations or to offer an appropriate remedy to the complainant. Replies which do not address the Committee's recommendations or only relate to certain aspects of these recommendations are generally considered unsatisfactory.

67. At the time of adoption of the present report, the Committee had adopted final opinions on the merits with respect to 27 complaints and found violations of the Convention in 10 cases. In nine cases, the Committee provided suggestions or recommendations although it did not establish a violation of the Convention.

¹ See *Official Records of the General Assembly, Sixtieth Session, Supplement No. 18 (A/60/18)*, annex IV, sect. I

² *Ibid.*, annex IV, sect. II.

Follow-up received to date for all cases of violations of the Convention and cases in which the Committee provided suggestions or recommendations in cases of no violation

State party and number of cases with violation	Communication, number, author and location	Follow-up response received from State party	Satisfactory response	Unsatisfactory or incomplete response	No follow-up response received	Follow-up dialogue still ongoing
Denmark (4)	10/1997, Habassi	X (A/61/18)	X			
	16/1999, Kashif Ahmad	X (A/61/18)	X			
	34/2004, Mohammed Hassan Gelle	X (A/61/18)	X (A/62/18)			
	40/2007, Er	X (A/63/18)		X incomplete		X
...						

Petitions in which the Committee provided suggestions or recommendations in cases of no violation

State party and number of cases with violation	Communication, number, author and location	Follow-up response received from State party	Satisfactory response	Unsatisfactory or incomplete response	No follow-up response received	Follow-up dialogue still ongoing
...						
Denmark (3)	17/1999, B.J. 20/2000, M.B. 27/2002, Kamal Qiereshi 41/2008, Ahmed Farah Jama				X (never requested by the Committee) X (never requested by the Committee) X	 X X
...						

Annex V

Follow-up information provided in relation to cases in which the Committee adopted recommendations

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State party	Denmark
Case and No.	Murat Er, 40/2007
Opinion adopted on	8 August 2007
Issues and violations found	Ethnic discriminatory practice in schools with respect to educational and training possibilities, failure to carry out effective investigation - articles 2, paragraph 1 (d); 5, paragraph (e) (v); and article 6.
Remedy recommended	The Committee on the Elimination of Racial Discrimination recommends that the State party grant the petitioner adequate compensation for the moral injury caused by the above-mentioned violations of the Convention. The State party is also requested to give wide publicity to the Committee's opinion, including among prosecutors and judicial bodies.
Date of examination of report(s) since adoption	Sixteenth and seventeenth periodic reports examined on 9 and 10 August 2006
Due date for State party response	9 January 2008
Date of reply	10 January 2008; 8 January and 29 May 2009
State party Response	On 10 January 2008, the State party forwarded a translation of a copy of a letter from its Complaints Committee for Ethnic Equal Treatment under the Danish Institute for Human Rights to the Committee, which it is assumed is to be considered as the State party's response to the Committee's decision. The Complaints Committee submits that it agrees with the Committee's decision on admissibility, that the petitioner must be considered a potential victim of discrimination as his chances of being recruited as a trainee were considered limited compared with students of ethnic Danish origin, and refers to the decision of the Complaints Committee of 1 September 2004, which was of

	<p>a similar view. However, it states that in the judgement of the High Court of Eastern Denmark of 27 June 2006, the court took no position on the school's willingness to accommodate requests from employers only to accept ethnic Danes as trainees, and that thus the Danish courts have not definitively determined whether the school was prepared to accommodate such requests.</p> <p>The judgement of this court should be seen in the light of the fact that the petitioner had claimed compensation and had not claimed that the college should be ordered to acknowledge having violated the Act on Ethnic Equal Treatment by accommodating requests from employers to accept only ethnic Danes as trainees. As to the Committee's recommendation on compensation, the Complaints Committee states that pursuant to general principles of State liability under public international law, it would be sufficient in the circumstances to compensate potential victims by granting redress in the form of establishing the existence of the violation. As the petitioner could not prove that he was an actual victim of ethnic discrimination, the Complaints Committee considers that the State party is not obliged to grant the petitioner financial compensation. In addition, on the violation of failing to investigate, the Complaints Committee submits that it fails to see what more could have been done to carry out an effective investigation of the case - witness statements were produced in court and the case was considered by the Complaints Committee itself, and the City and High Courts.</p>
<p>Petitioner's Response</p>	<p>On 14 March 2008, the petitioner commented on the State party's response. He stated that it does not make a decisive difference for his status as a potential victim of discrimination whether the school opts to accommodate the demand from an employer only to send ethnic Danes, or whether the school in anticipation of problems with an employer decides not to send trainees of a different ethnic background – the “not-P” in this case. In both cases, the school has exercised differential treatment prior to the question emerging of whether a given student should be sent as a trainee and was qualified for it at a given time.</p> <p>As to the State party's argument on compensation, the petitioner submits that the Complaints Committee is not competent to address questions of compensation, and accordingly does not have the facts at its disposal. The petitioner has suffered distress (and he refers to the medical evidence produced in court) and non-economic damage from the case, in that he was</p>

	<p>marginalized from the labour force and discontinued his training as a carpenter. He also incurred costs in the proceedings designed to prevent and redress the breach found and instituted the case also for preventive reasons, to stop what he considers is a widespread practice of discrimination in vocational schools.</p> <p>As to the argument on the State party's failure to investigate, the petitioner stated that the issue of whether there was a request from an employer who was accommodated by the school or whether the school was acting in anticipation of a problem could have been resolved if the identity of the employers had been divulged, so they could be questioned as a witness in court. Since they were not identified and the "P-note" not produced, the evidentiary issue should have been resolved in favour of the petitioner. The petitioner refers to research conducted in January 2008, in which it concluded that 63 per cent of consultants employed at vocational colleges admitted that they try to meet companies' demands for trainees with an ethnic Danish background and that 8 out of 10 consultants experienced companies only wanting trainees with a Danish background.</p> <p>Finally, the petitioner submits that the State party has taken no steps to remedy the breach of the Convention. It refers to the jurisprudence of the European Convention on Human Rights on compensation and proposes that the matter be settled with a compensation of DKr 115,000 (breakdown provided), free of tax.</p>
<p>State party's supplementary response</p>	<p>On 8 January 2009, the State party reiterated its request to the Committee to clarify what is meant by an "effective investigation". It informed the Committee that the petitioner received legal aid in an amount of DKr 40,500 (approx. 5,400 euros). With respect to his claim for reimbursement of his costs and expenses before the Danish High Court of Eastern Denmark, the State party notes that the Court's decision on this case was that the petitioner should pay the sum of DKr 25,000 to the technical school in question, but that the petitioner's representative had informed the Government that it would cover the costs and expenses on his behalf. In any event, according to the State party, the Committee had not recommended the payment of compensation for costs and expenses before the national courts.</p> <p>As to the payment of non-pecuniary compensation, or moral compensation, the State party maintains its view that as the petitioner was not personally targeted by the actions in the</p>

	<p>present case it is not reasonable to award compensation for such loss. In this regard, the State party distinguishes this case from that of <i>L.K. v. the Netherlands</i> (No. 4/1991) and <i>Habassi v. Denmark</i> (4/1991) and considers that the present case is more in line with that of <i>Hassan Gelle v. Denmark</i> (No. 34/2004), in which the State party's response was considered satisfactory.</p> <p>On the issue of publicity, the State party submits that the decision was forwarded to the Danish Court Administration, the complaints committee for ethnic equal treatment and to the Ministry of Education. The Ministry sent letters to all vocational schools in the State party emphasizing that it is against the law to categorize students by ethnicity and that the school associations, the management and the teachers have a joint responsibility in this field.</p>
Petitioner's Comments	<p>On 9 March 2009, the author commented on the State party's submission and requests the Committee to remain seized of the case under the follow-up procedure. He refers the State party to the Human Rights Committee's general comment No. 33 (2008) in which it stated that, "States parties must use whatever means lie within their powers in order to give effect to the Views issued by the Committee". According to the petitioner, the State party has the same obligation to the Committee. In his view, the State party understands what is expected of it to implement the Committee's opinion but is simply unwilling to do so. On the issue of compensation, the petitioner submits that the State party is confusing the issue of legal aid and compensation, and submits that he would have been entitled to legal aid even if the Committee had not found a violation of the Convention. As to the High Court costs paid by the petitioner's representative, the petitioner submits that this money was still lost as a result of an incorrect decision of the Court. The petitioner refers to other similar cases brought before the Danish national courts since the case under consideration. He also submits that he is not aware that any letter has been sent to the vocational schools as indicated by the State party, and in any event does not consider the measures taken by the State party to publish the views as adequate. In his view, wide publicity should include a press release or similar action.</p> <p>On 29 May 2009, the State party provided a copy of the letter, dated 23 April 2009, which was sent to all technical vocational schools and in which a copy of the Committee's opinion is included.</p>

Committee's Decision	<p>The Committee, while welcoming the State party's recognition of a violation of article 5, paragraph e (v), of the Convention, regrets the State party's view that recognition of a violation in itself should be a sufficient remedy and that it thus should not be obliged to grant the petitioner compensation. The Committee also regrets the State party's refusal to acknowledge that it violated the provisions under articles 2, paragraph 1 (d) and 6, of the Convention.</p> <p>The Committee regards the follow-up dialogue as ongoing and in light of the petitioner's comments would wish to receive further information from the State party on the measures it intends to take to implement its opinion, including the granting of compensation.</p> <p>At its seventy-fifth session, the Committee examined both the State party's and the petitioner's response with respect to the Committee's decision on follow-up. It reiterates its earlier decisions that while welcoming the State party's recognition of a violation of article 5, paragraph e (v), of the Convention, it regrets the State party's view that recognition of a violation in itself should be a sufficient remedy and that it thus should not be obliged to grant the petitioner compensation. The Committee also regrets the State party's refusal to acknowledge that it violated the provisions under articles 2, paragraph 1 (d) and 6, of the Convention. However, in light of the firm refusal by the State party to pay non-pecuniary compensation to the petitioner, the Committee considers that no useful purpose will be served in pursuing the follow-up dialogue with the State party.</p>
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CERD, A/65/18 (2010)

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Chapter VII Follow-up to Individual Communications

68. At its sixty-seventh session,¹ following a discussion based on a background paper prepared by the Secretariat (CERD/C/67/FU/1), the Committee decided to establish a procedure to follow up on its opinions and recommendations adopted following the examination of communications from individuals or groups of individuals.

69. At the same session, the Committee decided to add two new paragraphs to its rules of procedure setting out details of the procedure.² On 6 March 2006, at its sixty-eighth session, Mr. Sicilianos was appointed Rapporteur for follow-up to opinions, succeeded by Mr. de Gouttes with effect from the seventy-second session. The Rapporteur for follow-up to opinions regularly presents a report to the Committee with recommendations on further action to be taken. These recommendations, which are annexed to the Committee's annual report to the General Assembly, reflect all cases in which the Committee found violations of the Convention or otherwise provided suggestions or recommendations.

70. The table below provides an overview of follow-up replies received from States parties. Wherever possible, it indicates whether follow-up replies are or have been considered satisfactory or unsatisfactory, or whether the dialogue between the State party and the Rapporteur for follow-up continues. Such categorization is not always easy. In general, replies may be considered satisfactory if they reveal a willingness by the State party to implement the Committee's recommendations or to offer an appropriate remedy to the complainant. Replies which do not address the Committee's recommendations or only relate to certain aspects of these recommendations are generally considered unsatisfactory.

71. At the time of adoption of the present report, the Committee had adopted final opinions on the merits with respect to 28 complaints and found violations of the Convention in 11 cases. In nine cases, the Committee provided suggestions or recommendations although it did not establish a violation of the Convention.

¹ See *Official Records of the General Assembly, Sixtieth Session, Supplement No. 18 (A/60/18)*, annex IV, sect. I.

² *Ibid.*, annex IV, sect. II.

Follow-up received to date for all cases of violations of the Convention and cases in which the Committee provided suggestions or recommendations in cases of no violation

State party and number of cases with violation	Communication, number, author and location	Follow-up response received from State party	Satisfactor y response	Unsatisfactor y or incomplete response	No follow-up response received	Follow-up dialogue still ongoing
Denmark (5)	10/1997, Habassi	X (A/61/18)	X			
	16/1999, Kashif Ahmad	X (A/61/18)	X			
	34/2004, Mohammed Hassan Gelle	X (A/62/18)	X (A/62/18)			
	40/2007, Er	X (A/63/18)		X incomplete		X
	43/2008, Saada Mohamad Addan	(not due until 25 February 2011)				X
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Petitions in which the Committee provided suggestions or recommendations in cases of no violation

State party and number of cases with violation	Communication, number, author and location	Follow-up response received from State party	Satisfactory response	Unsatisfactory or incomplete response	No follow-up response received	Follow-up dialogue still ongoing
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Denmark (3)	17/1999, B.J. 20/2000, M.B. 27/2002, Kamal Qiereshi 41/2008, Ahmed Farah Jama				X (never requested by the Committee) X (never requested by the Committee) X	 X X
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