



HAUT-COMMISSARIAT AUX DROITS DE L'HOMME • OFFICE OF THE HIGH COMMISSIONER FOR HUMAN RIGHTS  
PALAIS DES NATIONS • 1211 GENEVA 10, SWITZERLAND  
www.ohchr.org • TEL: +41 22 917 9341 • FAX: +41 22 917 9022 • E-MAIL: petitions@ohchr.org

REFERENCE: G/SO 237/211 DNK (22)  
APP/VL/ma 58/2016

The Secretary-General of the United Nations presents his compliments to the Permanent Representative of Denmark to the United Nations Office in Geneva and has the honour to transmit herewith the (advance unedited) text of the decision adopted by the Committee on the Elimination of Racial Discrimination on 13 December 2018, concerning communication No. 58/2016, submitted to the Committee for consideration under article 14 of the International Convention on the Elimination of All Forms of Racial Discrimination, on behalf of Mr. [REDACTED] [REDACTED]

The Secretary General has the honour to draw the attention of the State party to the Committee's determination in paragraph 8 of the Opinion, that the facts before it disclose a violation of articles 5(d) (iii) and 6 of the Convention on the Elimination of All Forms of Racial Discrimination by the State party. Pursuant to the Committee's request in paragraph 10, the State party is requested to inform the Committee, within 90 days of the transmittal of the Opinion, of all measures undertaken to give effect to the Opinion.

A handwritten signature in black ink, consisting of a large, stylized 'S' followed by a smaller 'A'.

21 January 2019





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

### **Factual background**

2.1 The petitioner was born in Bosnia-Herzegovina on ██████ ██████. He got seriously injured in the war, and in 1994, he escaped with his mother to Denmark, where he lived in the town of ██████. In 1996, he moved to Mozambique and stayed there for half a year employed by the Danish International Development Assistance. In 1997, he returned to Denmark and moved to ██████ where his mother was living.

2.2 The petitioner took several language courses and had a freelance job as interpreter. From 1998 to 2001, he worked at ██████. Afterwards, he worked for half a year in the north-western part of Greenland. In 2002, he acquired Danish nationality. The same year, he moved to England where he worked in a hotel until 2004. From 2004 to 2009 he had various jobs in England, working for example as accountant.

2.3 In 2009, he moved back to Denmark, to the municipality of ██████.<sup>2</sup> As he was looking for an employment, he contacted the job centre. In his first conversation with the centre, he did not get a proper guidance. Therefore, one week later, on 8 July 2009, he went back to apply for social assistance and presented his passport and health insurance card. He filled out and handed over a written application for income support. On 22 July 2009, the job centre refused in a written decision to grant him income support. He was however advised to search dispensation<sup>3</sup> at the Udlændingeservice (immigration authorities) for his right to reside in Denmark. As a Danish citizen, he did not understand why he had to search for dispensation. The petitioner tried to contact the job centre. He could not talk to the person in charge of his case but was attended by another employee who advised him to follow the decision. Due to lack of money, the petitioner could not afford a lawyer.

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

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

2.6 Considering that he had been subjected to racial discrimination from ██████ municipality, the petitioner contacted the Documentation and Advisory Centre on Racial Discrimination who helped him sending a complaint to the Board of Equal Treatment on 4 August 2009. On 13 August 2010, the Board took a decision in the petitioner's favour and provided him with a compensation of 2.000 DKK (270 EUR). The Board considered that, taking into account that the petitioner had been a Danish citizen since 2002, he met the

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

<sup>2</sup> The petitioner does not provide the date of the move.

<sup>3</sup> The petitioner has not provided further details on this matter.

conditions to qualify for an allowance, and that the rejection of his application was unjustified. Therefore, the Board decided that it could be presumed that the municipality committed "direct differential treatment" towards the petitioner.<sup>4</sup>

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

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

2.9 On 3 June 2013, the case was appealed by the petitioner to the High Court of Western Denmark. By its decision of 18 December 2014, the High Court maintained the decision of the Board of Equal Treatment considering that the civil servant who committed the mistake had not acted intentionally or with gross negligence, and that the petitioner received the benefit he was entitled to. The Court taking into account the outcome of the case compared to the parties' claims, ordered the petitioner to cover the costs of the proceedings amounting to 25.000 DKK (3,350 EUR). On 14 January 2015, the petitioner applied to the Danish Appeals Permission Board to obtain permission to appeal this decision to the Danish Supreme Court. On 14 April 2015, the Board rejected the petitioner's request, as it did not comply with the conditions established in article 371(1)(2) of the Administration of Justice Act. The petitioner claims that he was only notified of this decision two weeks later, due to a delay in the mail service.

### The complaint

3.1 The petitioner claims to be victim of a violation by the Denmark of articles 2(1)(c), 5 and 6 of the Convention. He claims that by considering him as non-Danish citizen, the authorities of the State party have denied him all his rights as a citizen, including the right of residence, to vote, to health insurance card. In addition, the threat of losing those rights, in particular the right of residence, has caused the petitioner serious psychological damage. He claims that since he suffered this discriminatory treatment by the municipality of ██████, he has had to take an anti-depressive treatment and is not able to work anymore.

3.2 The petitioner adds that the Board of Equal Treatment has concluded that the way the municipality of ██████ had attended the petitioner's case amounted to direct discrimination against him and that he has suffered material and moral damage as a consequence. The Board has, however, set the amount of compensation to only 2.000 DKK (270 EUR) which is not even close to "just and adequate reparation" as established in article 6 of the Convention, and therefore does not constitute an effective remedy against racial discrimination. He adds that the victims of less grave acts of racial discrimination, including indirect discrimination –i.e. denial of access to nightclubs, discrimination in renting apartments, etc. generally receive a minimal compensation of 5.000 DKK from the Board.

3.3 The petitioner refers to *B.J vs. Denmark*,<sup>5</sup> in which a Danish citizen alleged before the Committee having been victim of racial discrimination because he and his friends were

<sup>4</sup> The Act on Ethnic Equal Treatment prohibits any public or private actor carrying out social protection activities-including social security and social benefits- to incur in differential treatment based on racial or ethnic origin.

<sup>5</sup> *B.J vs. Denmark* (CERD/C/56/D/17/1999), para. 6.2.

refused access to a nightclub. In this case, the domestic authorities fined the perpetrator of the discrimination, and the Committee requested the State party to take the necessary measures to ensure that the victims of racial discrimination “seeking just and adequate reparation or satisfaction, including economic compensation, have their claims considered with due respect for situations where the discrimination has not resulted in any physical damage but humiliation or similar suffering”. The petitioner alleges that, given that in his case the perpetrators have not been sanctioned, and taking into account that he has not obtained any redress besides the inadequate compensation granted by the Board, the Committee should grant him full compensation, as recommended in *B.J vs. Denmark*.

3.4 In addition, the petitioner requests an effective remedy against the perpetrators of the acts of racial discrimination that he suffered – the ██████ municipality –, should be put in place. The sanction has to be effective, give the victim redress and should have a dissuasive effect on the perpetrator. The petitioner submits that, given the big budget managed by the municipality, a compensation of 2,000 DK does not comply with such conditions. He adds that, as he was not successful in the proceedings before the High Court, he was ordered to pay the other party’s legal costs, amounting to 25,000 DKK, which is in stark contrast with the compensation of 2,000 DKK awarded to him. The petitioner refers to paragraph 6 of the Committee’s General Comment XXXI which establishes that States parties are obliged to guarantee the right of every person within their jurisdiction to an effective remedy against the perpetrators of acts of racial discrimination, without discrimination of any kind, whether such acts are committed by private individuals or State officials, as well as the right to seek just and adequate reparation for the damage suffered.<sup>6</sup> The petitioner also refers to paragraph 19 (d) of the same General Comment which establishes that the States parties should ensure that the system of justice guarantees victims just and adequate reparation for the material and moral harm suffered as a result of racial discrimination.

3.5 The petitioner also refers to the European Union’s Council Directive 2000/43/EC adopted on 29 June 2000 regarding the principle of equal treatment between people, irrespective of racial or ethnic origin. He quotes a decision by the Court of Justice of the European Union in which it stated that sanctions for a breach of this principle – which must be effective, proportionate and dissuasive – may take the form of a finding of discrimination by the court with an adequate level of publicity, or an injunction ordering the employer to cease the discriminatory practice and a fine, or the award of damages to the body bringing the proceedings.<sup>7</sup>

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

4.1 On 23 June 2016, the State party submitted its observations on the admissibility and merits of the communication. It indicates that the Board of Equal Treatment is an independent, quasi-judicial body composed of one chair - a High Court Judge -, two deputy chairs - District Court judges - and nine other persons appointed by the Minister of Employment. They must be experts on legislation on gender equality, and on equal treatment irrespective of race or ethnic origin. They are appointed for three years and are eligible for re-appointment. The decisions of the Board are binding and the Board can decide to award a compensation to the complainant, in case it finds that there was a violation of relevant

---

<sup>6</sup> General recommendation XXXI on the prevention of racial discrimination in the administration and functioning of the criminal justice system adopted during its 65<sup>th</sup> session (2005).

<sup>7</sup> European Court of Justice, C-54/07 *Centrum voor gelijkheid van kansen en voor racismebestrijding vs. Firma Feryn NV*, 10 July 2008. See <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:62007CJ0054>.

legislation, in particular the Act on Equal Treatment. The decisions of the Board cannot be appealed to any other administrative authority, but they can be reviewed by the courts.<sup>8</sup>

4.2 The State party informs that the Act on Equal Treatment implements the European Union's Council Directive 2000/43/EC. Section 3(1) of the Act establishes that no one may subject another person to direct or indirect differential treatment on grounds of racial or ethnic origin. If a person considers that he or she has been victim of racial discrimination, and demonstrates facts from which it may be presumed that there has been direct or indirect differential treatment, it is for the other party to prove that the anti-discrimination principle has not been breached (Section 7).

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

4.4 The State party also considers that the petitioner has failed to substantiate any of his allegations, and that the communication should therefore be held inadmissible as manifestly ill-founded. It indicates that, while it is aware that neither article 14 of the Convention, nor Rule 91 of the Committee's Rules of Procedure establish the possibility of declaring the inadmissibility of a communication on grounds of *prima facie* violation of the Convention, it appears from the Committee's jurisprudence that a communication can be inadmissible on such grounds. It refers to communication *C.P. vs. Denmark*.<sup>9</sup>

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

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

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

<sup>8</sup> Act on the Board of Equal Treatment, Section 12.

<sup>9</sup> *C.P. vs. Denmark* (CERD/C/46/D/5/1994), para. 6.3.

sanction, even more than criminal proceedings. It also considered that importance must be attached to the injury inflicted by the alleged discriminatory act and the nature of the act causing the injury.

4.8 The State party maintains that the considerations of the Equal Treatment Committee are in line with the Committee's General Recommendation XXVI which states that "the right to seek just and adequate reparation or satisfaction for any damage suffered as a result of such discrimination, which is embodied in article 6 of the Convention, is not necessarily secured solely by the punishment of the perpetrator of the discrimination; at the same time, the courts and other competent authorities should consider awarding financial compensation for damage, material or moral, suffered by a victim, whenever appropriate". In this respect, the State party argues that the petitioner's allegation that the compensation he received does not provide effective reparation in accordance to the Convention is not correct, as it is not possible to infer from the Convention's wording or the Committee's jurisprudence or General Comments, a requirement of compensation in a specific amount.

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

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

4.11 The State party further refers to the Board of Equal Treatment's case law quoted by the petitioner, and states that those cases are very different from the present case. In cases of denial of access to accommodation or nightclubs, it is impossible to put those persons in the same position as if no differential treatment had occurred. For instance, a person who has been refused entrance to a nightclub may no longer be interested in frequenting the place after the unlawful act has been established. In addition, such violations are made in the public sphere, in the presence of other persons waiting to gain access to the nightclub, which should be taken into account in the determination of the amount of the compensation, as the discriminatory act may seem particularly humiliating in that situation.

4.12 Furthermore, the State party considers unfounded the petitioner's allegations that all his rights as a Danish citizen were denied by the error committed by the ██████ Municipality, taking into account that the mistake was corrected three days later, and that the petitioner's rights, including his right to residence or his electoral rights, were not affected. In addition, it states that the petitioner has failed to establish a connexion between the

discrimination he was victim of and the allegations regarding the psychological distress he is suffering from. The State party notes that the petitioner has not provided any document to support such allegations or their connection to the error committed by the [REDACTED] municipality.

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

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

5.1 On 27 December 2017, the petitioner submitted comments on the State party's observations on the admissibility and merits of his communication. He reiterates his arguments outlined in the original communication and specifies that he contests the amount of the compensation he was awarded given the State party's high living cost. In this connection, he refers to a statement made by the Danish Prime Minister in 2013, according to which 2,000 DKK could cover only "a pair of shoes". The petitioner also affirms that the he has been "punished" by the High Court of Western Denmark, as he has been ordered to cover a very high amount for the legal costs of the proceedings: 25.000 DKK (3,350 EUR).

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

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

5.4 The petitioner reiterates that all his rights as a Danish citizen were violated by the [REDACTED] Municipality's decision, taking into account that every citizen who comes back to the country after having lived abroad, as he did, needs to register with the Municipality where he or she will live in order to get access to medical services, social assistance, taxation services, etc. Therefore, he considers that all his rights were violated by the Municipality's decision ordering him to register with the Danish Immigration Services.

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

##### *Consideration of admissibility*

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

6.2 The Committee notes the State party's assertion that the communication is inadmissible because it has been submitted after the six-month deadline set by Rule 91(f) of

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

6.3 The Committee further notes the State party's argument that the petitioner has failed to establish a *prima facie* case with respect his allegations under article 2(1)(c) of the Convention, as he does not point to any specific policies, laws or regulations which have the effect of creating or perpetuating racial discrimination in the State party. The Committee notes that the petitioner did not mention any law, regulation or policy in reply to State party's observations and therefore considers that the petitioner's claims under article 2(1)(c) of the Convention are inadmissible under article 14 of the Convention.<sup>10</sup>

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

#### *Consideration of the merits*

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

#### **Article 5**

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

7.3 However, the Committee also notes the petitioner's allegation that, following the broadcast of his story on TV, he contacted the Social Centre on 4 August 2009, and that the employees who attended him reiterated that he was not a Danish citizen, despite of the decision issued by the Centre on 4 August 2009 that recognized that an error had been made, and that he was indeed a Danish citizen. In this connection, the Committee also takes note of the petitioner's affirmation that, taking into account that all Danish citizens have the

<sup>10</sup> See *C.P. vs. Denmark*, (CERD/C/46/D/5/1994), para. 6.2.

obligation to register with the Municipality of the place of residence after living abroad in order to access to social and medical services, the error committed by the [REDACTED] Municipality on 22 July 2009 affected all his rights as a Danish citizen, including residence and electoral rights. The Committee also notes the Board's decision of 13 August 2012, which concluded that the petitioner had suffered a direct differential treatment by the [REDACTED] municipality, as well as the confirmation of this conclusion by the decisions of the District Court of 6 May 2013 and of the High Court of Western Denmark of 18 December 2014. The Committee agrees with these decisions of the domestic authorities. Nonetheless, the Committee also observes that it has no indication that the domestic courts took into account the event of 4 August 2009, and it notes that, according to the information available, no action has been taken to punish the employees of the Social Centre who attended the petitioner. In view of the above, the Committee considers that the decisions of the [REDACTED] municipality on 22 July and again on 4 August 2009 denying the petitioner's right to Danish nationality amounted to a violation of his rights under article 5(d)(iii) of the Convention.

#### Article 6

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

7.5 The Committee notes the State party's argument that, when drafting the Act on Equal Treatment, it was determined that a provision establishing the right to compensation for a non-economic loss caused by a racial discriminatory act should be introduced, and that such provision should be an effective and dissuasive sanction. The Committee further notes the State party's reference to the Act's *travaux préparatoires*, according to which importance must be attached to the injury inflicted by the alleged discriminatory act and the nature of the act causing the injury, as well as to an analysis of whether the discriminatory act was intentional, or resulted of a form of negligence. The Committee takes note of the State party's argument that in the present case those criteria were fully applied and that, accordingly, the Board of Equal Treatment decided that the amount of the compensation should be 2,000 DKK. This decision was upheld by the District Court in [REDACTED] and by the High Court of Western Denmark in their decisions of 6 May 2013 and 18 December 2014, respectively. The Committee further notes the State party's statement that the compensation granted to the petitioner complies with the Convention, as well as with the Committee's General Recommendation XXVI, in so far as it is not possible to infer either from article 6 of the Convention, nor from the General Recommendation XXVI a requirement of compensation in a specific amount.

7.6 The Committee also notes the petitioner's affirmation that the amount of the compensation is not even close to "just and adequate reparation" as established in article 6 of the Convention, and that therefore it does not constitute an effective remedy against racial discrimination, taking into account that in other cases of racial discrimination higher compensation amounts were allocated, that the living cost in the State party is very high, and that such amount is in stark contrast with the amount he was ordered to pay as legal costs - 25,000DKK - which he considers to be a "punishment". The Committee further notes the petitioner's allegation that the fact that he has been ordered to pay such a high amount for the legal costs, contravenes article 6 of the Convention, as it violates the right to seek a just and adequate compensation, and constitutes an obstacle to obtain an effective remedy against the perpetrators of acts of racial discrimination, as prescribed by paragraph 6 of the Committee's General Comment XXXI.

7.7 The Committee notes that on 7 June 2012, the petitioner appealed to the District Court in [REDACTED] the decision of the Board of Equal Treatment, claiming that the compensation he was granted-2,000 DKK (270 Euros)-did not meet the requirement of “just and adequate reparation or satisfaction for any damage suffered as a result of racial discrimination” stipulated in article 6 of the Convention, as it was too low. The Committee further notes that on 6 May 2013, the District Court maintained the decision of the Board of Equal Treatment, as it considered that the Municipality had corrected its mistake as soon as possible, had apologised for it, and that, therefore, there was no reason to increase the amount of the compensation. The Committee notes that the Court decided that the costs of the proceedings (25,000 DKK) should be covered with public funds. The Committee also notes that on 3 June 2013, the petitioner appealed the District Court’s decision to the High Court of Western Denmark, which, on 18 December 2014, upheld the District Court’s decision. The High Court took into account that the civil servant who committed the mistake had not acted intentionally or with gross negligence, and that the petitioner received the benefit he was entitled to. The High Court also indicated that, taking into account the outcome of the case compared to the parties’ claims, the petitioner had to cover the costs of the proceedings amounting to 25,000 DKK (3,350 EUR).

7.8 The Committee recalls that, in accordance to its jurisprudence, the victim’s claim for compensation has to be considered in every case, including those cases where no bodily harm has been inflicted but where the victim has suffered humiliation, defamation or other attack against his/her reputation and self-esteem.<sup>11</sup> The Committee also recalls that according to article 6 of the Convention, States Parties shall assure to everyone within their jurisdiction effective protection and remedies, through the competent national tribunals and other State institutions, against any acts of racial discrimination which violate his human rights and fundamental freedoms contrary to the Convention, as well as the right to seek from such tribunals just and adequate reparation or satisfaction for any damage suffered as a result of such discrimination. The Committee further recalls that according to the General Assembly resolution 60/147 on the Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law<sup>12</sup> which refers to article 6 of the Convention,<sup>13</sup> a full and effective reparation includes the following forms: restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition.<sup>14</sup> The Committee notes that restitution aims at restoring the victim to the original situation before the violation occurred; compensation should be provided for any economically assessable damage, as appropriate and proportional to the gravity of the violation and the circumstances of each case, including costs required for legal or expert assistance, among others; rehabilitation should include medical and psychological care, and legal and social services, as well as judicial and administrative sanctions against persons liable for the violations; satisfaction should include measures such as a public apology, including acknowledgement of the facts and acceptance of responsibility, or an official declaration or a judicial decision restoring the dignity, the reputation and the rights of the victim and of persons closely connected with the victim; and guarantees of non-repetition should include measures such as reviewing and reforming laws contributing to or allowing the occurrence of violations.

7.9 The Committee notes that the petitioner was granted a compensation. However, the just and adequate character of such compensation must be analysed in the light of the context in which it was granted. In this way, in the particular circumstances of the present case, the provided compensation must be analysed in view of the gravity of the violation, of the cost

<sup>11</sup> Ibid., para. 6.2.

<sup>12</sup> A/RES/60/147, adopted on 16 December 2005.

<sup>13</sup> Ibid., Preamble.

<sup>14</sup> Ibid., para. 18.

of living in the State party, of the petitioner's situation, and of the preventive character of the measures taken to avoid similar violations in the future. In this regard, the Committee notes the petitioner's allegation that the fact of having been asked to contact the immigration authorities despite of having presented his passport caused him great anxiety, because he thought that he could be deported to Bosnia and Herzegovina, a country in which he had not lived in years. The Committee further observes that although the authorities corrected their decision very soon after their occurrence, such situation is serious enough to generate anxiety for the person concerned, especially taking into account that he was told that he could be deported. Therefore, the compensation should reflect the effect that such event may have caused on the petitioner. In this regard, The Committee further notes the petitioner's argument that according to a statement made by the Danish Prime Minister in 2013, 2,000 DKK could cover only "a pair of shoes", and that according to the information available on file no action has been taken by the judicial or administrative authorities to punish the perpetrators or, more widely, to avoid similar violations in the future, despite the fact the State party's authorities have recognised that the petitioner had been a victim of an act of racial discrimination. Therefore, the Committee concludes that the compensation received by the petitioner does not comply with article 6 of the Convention, as it is not just and adequate, and failed to rehabilitate the petitioner, taking into account that no judicial or administrative sanctions have been imposed on the perpetrators of a recognized act of racial discrimination.

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

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

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

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

