

UNITED
NATIONS

CERI



International Convention on
the Elimination
of all Forms of
Racial Discrimination

Distr.

GENERAL

CERD/C/58/D/15/1999

17 April 2001

Original: ENGLISH

Committee on the Elimination of Racial Discrimination
Fifty-eighth session
6 - 23 March 2001

ANNEX

Opinion of the Committee on the Elimination of Racial Discrimination
under article 14 of the International Convention on the Elimination
of All Forms of Racial Discrimination

- Fifty-eighth session -

Communication No. 15/1999

Submitted by: E.I.F. (represented by counsel)

Alleged victim: The author

State party concerned: The Netherlands

Date of communication: 4 May 1998 (initial submission)

The Committee on the Elimination of Racial Discrimination, established under article 8 of the International Convention on the Elimination of All Forms of Racial Discrimination,

Meeting on 21 March 2001,

Having concluded its consideration of communication No. 15/1999, submitted to the Committee under article 14 of the International Convention on the Elimination of All Forms of Racial Discrimination,

Having taken into consideration all written information made available to it by the Author and the State party,

Bearing in mind rule 95 of its rules of procedure requiring it to formulate its opinion On the communication before it,

Adopts the following:

Opinion

1. The author of the communication is E.I.F., a citizen of the Netherlands of Surinamese origin. His communication was first submitted to the Committee by his counsel on 4 May 1998. On 8 July 1999 counsel provided additional information.

The facts as submitted by the author

2.1 The author claims to have been discharged from the Netherlands Police Academy (NPA) on racial grounds and mentions a number of instances of discrimination that allegedly took place during his training at the Academy between 1991 and 1993, such as the following:

He used to be told repeatedly that he was a bad learner, that his Dutch was insufficient and that he should pattern himself on the white male police officers;

When a white student was late for his classes it was not registered. If the author arrived slightly late, it was registered, resulting in a permanent minus point;

His sports teacher made him perform an exercise. When it appeared that he did not perform well enough the teacher told the group: "The muscles needed for performing this exercise well are poorly developed in apes";

As part of a sports test, a distance had to be covered within a certain time. When the author had run the distance it appeared that the sports teacher had forgotten to register the time. White students did not experience such problems;

The Academy received an invitation to participate in a football tournament. As a committee member of the sports group, the author had to decide on the composition of the team. One of the lecturers told him: "See to it that the academy is well represented, so don't select too many blacks";

On 9 July 1993 the principal of the Academy informed the author in writing that he would like to have a discussion with him in the course of August 1993 about his study results. The author was to be informed during that meeting that he had to finish his examinations before the end of October 1993. The author, however, was in Suriname from 8 July to 26 August 1993. Therefore, he could not know anything about the "agreement" with respect to the deadline of October 1993. As a result, the author did not finish his examinations before the end of October 1993. The Academy later argued that he had to leave because he had not taken his examinations.

2.2 The author further alleges that he was dismissed from the Academy in 1994 after a group of students led by him made a public statement in which they complained about the situation of foreign students. That statement, as well as pressure from the media, led to the appointment by the Minister of the Interior of the Boekraad Committee, whose mandate was to examine the complaints about the Police Academy. According to the author, the Committee recognized in its final report that the Academy had committed irregularities which had resulted in the discourteous treatment of a certain group of students and addressed a number of recommendations to the Minister.

2.3 The author brought his case before the Administrative Law Division of the Amsterdam Court, which in its judgement of 3 April 1996 annulled the dismissal and recognized that the author had been subjected to discrimination. However, by decision of 6 November 1997 the Central Appeals Court for the public service and social security matters in Utrecht ruled that the decision should stand.

The complaint

3. Counsel claims that the facts, as described above, amount to a violation by the State party of articles 2, 5, 6 and 7 of the Convention. He argues that the acts of discrimination to which the author was subjected resulted in great material and moral damage, for which he should be compensated.

Observations submitted by the State party

4.1 The State party reports that the recruitment of ethnic minority students to the NPA was originally part of the Police and Ethnic Minorities Project, which was followed by the 1988 Police and Ethnic Minorities Affirmative Action Plan. The Police and Ethnic Minorities Organization was established in 1991 and carries out a variety of projects relating to recruitment and selection, training, career guidance and research. In 1991, NPA teaching staff were offered the opportunity to attend a training course to enhance their expertise and to learn how to approach the cultures of ethnic minorities. On 11 March 1992, the Brekelmans Committee was appointed to analyse and make recommendations on the integration of ethnic minority students and their ability to adjust. The Committee submitted its final recommendations to the Director of the Police Department on 18 July 1992.

4.2 On 14 December 1993, 21 ethnic minority students attending the NPA, including the author, wrote a letter with the heading "A cry for immediate help" which they sent to the Director-General for Public Order and Safety, the National Police Selection and Training Institute (LSOP) and several trade unions. In the letter the students complained about the discriminatory attitudes to which they had been subjected at the NPA. A different group of ethnic minority students wrote a letter distancing themselves from the content of the letter of 14 December 1993. Both letters prompted the Ministers of the Interior and Justice, in consultation with the LSOP to, *inter alia*, initiate an inquiry which would focus on the following questions: (a) Whether and to what extent ethnic minority students were treated improperly at the NPA, and if so, what action had been taken against it; (b) whether the findings were such as to suggest that measures should be taken, and if so, what should be done to prevent any recurrence in the future; (c) whether ethnic minority students were expected to perform any tasks which they could not reasonably be expected to perform.

4.3 The inquiry was conducted by a three-member Committee known as the Boekraad Committee, which concluded that there was no systematic institutional discrimination directed against ethnic minority students within the NPA. However, it also concluded that the NPA did not as yet provide truly multicultural education and that the policy intended to achieve this aim was flawed. The Committee made 14 recommendations intended to put in place a genuinely multicultural education. Recommendation 4 envisaged the appointment of a special committee of external experts who would examine the individual cases of a number of ethnic minority students whose studies had stagnated. The Committee on the Progress of Ethnic Minority Students (SAS) was set up to this effect.

4.4 The SAS Committee reported its findings to the Minister of the Interior on 30 August 1995, making recommendations on the cases of the nine students it had looked into. Out of them, three eventually completed the course, one would graduate within that year, two were appointed elsewhere through an outplacement procedure, two availed themselves of a benefit scheme and one was involved in legal proceedings concerning the question of whether or not he had suffered any loss of income because of his failure to complete the course.

4.5 The author was born in Suriname and has lived in the Netherlands for many years. Prior to his studies at the NPA, he had attended a course of higher professional education at the School of Social Work, after which he worked as a teacher. He entered the NPA on 20 August 1991, having passed through a selection procedure that deviated only in a few minor details from the regular entry process for students of Dutch origin. His admission meant that, at the same time as being a student he was a public servant employed on a temporary contract by the Minister of the Interior.

4.6 On 6 July 1992, at the end of his first year at the NPA, the author was informed by the secretary of the Examining Board that he would not be admitted to the second year, as his results were unsatisfactory. Indeed, his results were such that he could have been expelled

from the NPA. However, he was given the opportunity to repeat the first year. At that point, the author did not complain about any discriminatory attitudes within the NPA, either regarding himself or his fellow students. At the end of the second year, the author's results were again so poor that the teaching staff designated him a "discussion case". As he had been absent (due to illness) and had therefore not taken all the necessary examinations, the NPA decided to give him another opportunity to sit them. To effect this decision, the Director of the NPA invited the author to a meeting in order to discuss and evaluate his results.

4.7 At the meeting, held on 6 September 1993, the Director informed the author that he had until the end of October 1993 to sit the remaining examinations. The author again said nothing about having suffered from discrimination. By 16 September 1993 a draft timetable had been prepared and the author was invited to discuss it. However, he refused to do so. He was subsequently formally invited to sit the examinations. In response he called in sick and did not turn up on the examination dates.

4.8 On 24 September 1993, there was a meeting of the NPA medico-social team where it was noted that the author's teachers considered him perfectly capable of achieving good results, but that there were doubts about the reasons he had given for his absence. No reference was made to his colour or ethnic background.

4.9 In December 1993, the Examining Board decided to propose to the Director of the NPA that the author's enrolment be terminated as of 1 March 1994. The Director gave the author notice of his dismissal on 26 January 1994, to which the author's representative replied by letters of 18 February 1994 and 24 March 1994. Despite the representative's request that the author be given another chance, he was released from service as of 1 October 1994.

4.10 The author lodged an objection to his dismissal on 5 August 1994. He alleged that his poor grades and frequent absence were merely a consequence of the way he had been treated by the teaching staff at the NPA. He also maintained that the Minister had wrongly overlooked the above-mentioned recommendation 4 of the Boekraad Committee in his case. At the hearing, held on 26 September 1994 as part of the objection procedure, the author presented examples intended to demonstrate the bias he had encountered from teachers:

The fact that the pass mark for "training sessions" was not allowed to count for the following year;

The inclusion of the results achieved at the afternoon session in the grade for Statistics, in spite of an alleged agreement to the contrary;

The fact that the second opinion on the author's Psychology examination given by a member of staff of the Free University of Amsterdam was ignored;

The fact that other students were allegedly later given pass marks after discussion of their case, whereas the author was not;

The fact that Law graduates had actually failed the Statistics examination, but were nevertheless allegedly given pass marks.

However, these examples had nothing to do with discrimination.

4.11 On 1 December 1994, the Minister declared the author's objection unfounded. In reaching this decision he took into consideration the fact that the author had not been promised, as he claimed, that no steps affecting his legal status would be taken pending the outcome of the Boekraad Committee's inquiry. The Minister also noted that in anticipation of the Committee's recommendations, the dismissal was decided upon with the greatest possible care. In the Minister's view, the dismissal was due to proven unsuitability for the course, as reflected by the author's poor grades, and the author had not satisfactorily established the slightest causal relationship between his poor grades and the discrimination he claimed to have suffered.

4.12 The author appealed the decision to the Amsterdam District Court, which declared the appeal well-founded on the basis that the Minister should have incorporated the Boekraad Committee's findings in the decision-making process. The court also held that in appointing the SAS Committee, the Minister had implicitly taken responsibility for the problems experienced by ethnic minority students. Inasmuch as the other ethnic minority students had been given an

opportunity for an individual assessment by the SAS Committee, whereas this had not happened in the author's case, the court ruled that the Minister had acted in a manner incompatible with the principle of equality.

4.13 On 27 February 1997, the Minister appealed the district court's judgement to the Central Appeals Tribunal. The Minister held, *inter alia*, that the district court had wrongly assumed that the author was in the same position as the nine ethnic minority students whose cases had been studied in the SAS Committee's inquiry. These nine students had all had their previous schooling in a country outside the Kingdom and had not been in the Netherlands for very long when they started their studies at the NPA. They were hence not yet fully integrated into Dutch society. These students had followed a separate entry procedure developed specially for "authentic" ethnic minority students, namely the PPA selection procedure set up under the Affirmative Action Plan. The author did not belong to this category. The selection procedure applied in his case deviated from the regular procedure for students of Dutch origin only in a few minor details. Therefore, there was no reason to subject the author to individual assessment by the SAS Committee.

4.14 The Central Appeals Tribunal declared the Minister's appeal well-founded and quashed the judgement of the district court. It held that neither the Boekraad Committee's report nor the SAS Committee's report provided any grounds for concluding that the author's poor performance was due to discrimination. It also held that the author's situation differed essentially from that of the students who had only lived in the Netherlands for a short time before starting their studies, who had a poor command of the Dutch language and were not yet fully integrated into Dutch society. There was therefore no question of any violation of the requirement of due care and/or the principle of equality.

4.15 The State party disputes the author's contention that discrimination and racism are institutional and systematic practices within the police service and that the Minister does not take sufficient appropriate measures to counter them.

4.16 The author maintains, in particular, that the television news programme *Netwerk* highlighted his situation and the institutional nature of discrimination within the police service. However, he completely fails to make clear what the drift of the documentary in question was and what conclusions should be drawn from it. The State party therefore considers this reference irrelevant to the discussion at hand.

4.17 The author wrongly maintains that the SAS Committee has the appearance of bias as it was set up by the Minister of the Interior and the NPA. The SAS Committee consisted of six independent individuals and neither the Government nor the NPA had any influence on their work.

4.18 The Government saw the allegations of discrimination on the basis of ethnic origin by the 21 ethnic minority students as grounds for setting up an independent inquiry into the existence of any discrimination. The complaints were investigated and recommendations were made to prevent discrimination in the future. All those recommendations were followed. On the basis of these facts, it must be concluded that the Government acted in accordance with article 2, paragraph 1 (b) and article 7 of the Convention.

4.19 The author was not selected for an individual investigation by the SAS Committee. One important reason for this was that he had already been dismissed when the Committee started its inquiry. But even if he had still been enrolled at the NPA at that time he would still not have been eligible for selection as there were no indications whatsoever that his poor results had anything to do with his ethnic background. Notwithstanding that, the Minister of the Interior did investigate the author's claim that his poor grades were attributable to discrimination on the part of the teachers during the decision-making process surrounding his dismissal, up to and including the hearing by the Central Appeals Tribunal.

4.20 The author does not substantiate his statement that he was dismissed as the initiator of the "A cry for immediate help" and that the Central Appeals Tribunal gave judgement on the basis of incorrect facts. As for his claim that the Minister did not take the Boekraad Committee's

findings into account when making his decision on the author's objection, the State party emphasizes that the Minister did indeed incorporate those findings in the review of his initial decision, but that they did not give him any reason to reverse that decision.

4.21 On the basis of the above, the State party states that the Government complied with its obligation under article 5 (a) and article 6 of the Convention to ensure that the victims of racial discrimination have effective legal protection and where necessary receive compensation for any damage suffered as a result of such discrimination. The State party also concludes that it did not commit any violation of the Convention in relation to the author.

Counsel's comments

5.1 Counsel notes that there are a number of inaccuracies in the State party's submission, **(1)** which show that his case has not been looked into very carefully. For instance, prior to his studies at the NPA the author lived in the Netherlands for six years and not "many years", as the State party indicates. Moreover, the author did not study at the School of Social Work; he studied medicine at the University of Amsterdam from 1987 to 1990 and never worked as a teacher.

5.2 Counsel claims that being part of the group of ethnic minority NPA students who did not need extra study facilities (Dutch lessons, for instance) did not protect the author against racial discrimination. The exclusionary mechanisms at the NPA remained intact despite the fact that the teaching staff were given the opportunity to attend a training course in order to learn how to deal with students with different cultural backgrounds.

5.3 The letter in response to the "Cry for immediate help" did not come from other ethnic minority students **(2)** but from white students, and it transpired from it that incidents which could be described as racist had taken place. The white students called for dialogue in order to find a solution.

5.4 Although the Boekraad Committee concluded that there was no institutional discrimination at the NPA it did state that discrimination occurred, and recommended that the NPA institute a specific anti-discrimination code.

5.5 The author complains that the SAS Committee never looked into his case, despite the fact that he was one of the signatories of the "Cry for immediate help". He does not understand why the SAS Committee only investigated the cases of 9 students out of the 21 signatories of the letter and expresses doubts about the independence of the SAS Committee with respect to the Ministry of the Interior. He says that the Secretary of the Committee was a staff member of the Police Directorate of the Ministry of the Interior and that the Chairman had been a member of the Boekraad Committee. The author claims that an independent investigation should have looked into all aspects of the problem and not just the case of a few individuals. He also expresses doubts about the independence of the NPA medico-social team, whose members were all affiliated with the NPA. The team did not fully believe him when he explained the reasons for his absence from the Academy. In fact, everything he said was called into question. Further evidence of discrimination is the fact that the dismissal from the NPA was communicated to him with only two days' notice, instead of three months' as required by law. The NPA only rectified that when he threatened legal action.

5.6 The author does not share the State party's view that the incidents he referred to at the hearing held on 26 September 1994 do not constitute discrimination. **(3)** Those incidents should have been investigated by the SAS Committee, as had been recommended by the Boekraad Committee. The author still does not share the State party's opinion that the Boekraad recommendations did not apply to him and draws the Committee's attention to the fact that the Amsterdam District Court fully agreed with him. Furthermore, the State party seems to imply that, because the author has a good command of the Dutch language, he could not have been subjected to discrimination. He notes that, despite this ability, he still has a dark skin colour.

5.7 The author strongly objects to the State party's argument that the reason for the dismissal was his poor results and asserts that his poor results were the direct consequence of the

psychological situation in which he found himself for having been subjected to discrimination. The State party cannot deny the fact that the number of students belonging to ethnic minorities who left the police force was higher than the number of those who joined it and that this was due to institutional discrimination.

5.8 Finally, the author notes that in its observations the State party does not deny that he actually experienced the incidents referred to in paragraph 2.1 above. However, he disagrees with the State party's conclusion that those incidents had been taken into consideration when the decision to dismiss him was adopted. Since the incidents in question were the origin of his poor results, his case should have been carefully investigated and the recommendations of the Boekraad Committee implemented.

Issues and proceedings before the Committee

6.1 Before considering any claims contained in a communication, the Committee on the Elimination of Racial Discrimination must decide, pursuant to article 14, paragraph 7 (a) of the Convention and rules 86 and 91 of its rules of procedure, whether or not the communication is admissible. The Committee notes that the State party does not raise objections to the admissibility of the communication and that it has formulated detailed observations in respect of the substance of the matter. The Committee considers that all requirements set out in the above-mentioned provisions have been met. It therefore decides that the communication is admissible.

6.2 With respect to the merits of the communication, the Committee considers that some of the allegations submitted by the author and summarized in paragraph 2.1 above have racial connotations of a serious nature. However, they did not constitute the subject of the claims brought before the Amsterdam District Court and the Central Appeals Tribunal, which dealt mainly with the question of the dismissal from the Police Academy. Furthermore, it does not appear from the information received by the Committee that the decision to terminate the author's participation in the Police Academy was the result of discrimination on racial grounds. Nor has any evidence been submitted to substantiate the claim that his poor academic results were related to the incidents referred to in paragraph 2.1.

7. The Committee on the Elimination of Racial Discrimination, acting under article 14, paragraph 7 (a) of the International Convention on the Elimination of All Forms of Racial Discrimination, is of the opinion that the facts, as submitted, do not disclose a violation of the Convention by the State party.

Notes

1. See paragraph 4.5 above.
2. See paragraph 4.2 above.
3. See paragraph 4.10 above.