

ICCPR Case Digest

CCPR/C/113/D2001/2010

Communication
No. 2001/2010

Submission: 15.07.2010
View Adopted: 01.04.2015

Q v Denmark

Lack of reasons given for a refusal to exempt an individual with disabilities from a language test was a violation of article 26

Substantive Issues

- Right to equal protection of the law

Relevant Articles

- Art. 26

Violations

- Art. 26

Facts

In 2005, the author applied for Danish naturalization. He was informed he was required to prove proficiency in Danish language and that the documentation regarding participation in language courses did not satisfy this requirement. The author requested an exception from the requirement on medical grounds but the Ministry notified the author that this request had been refused as he had failed to document severe physical or mental illness. The author provided a medical opinion from his psychiatrist and his case was brought before the Parliament's Committee on Naturalization. The Committee refused the exception and gave no reasons. In 2009 the author's psychiatrist wrote twice to the Ministry informing them that the author suffered from severe chronic mental disorder in the form of a paranoid psychosis and depression and there was no prospect of improvement and requesting reasons for the decision but the Ministry informed the author the letters contained no new information and there were therefore no grounds to resubmit the case to the Naturalization Committee.

The author claims that the state party violated article 26 in conjunction with article 2 (1) of the Covenant. He submits that by refusing to grant an exemption after he had provided ample evidence regarding his severe mental ailments is discriminatory and a violation of his right to equality before the law. Furthermore the opaque drafting of the legislation also opens the door to discrimination.

Committee's View

Consideration of admissibility

The Committee notes the state party's challenge to the admissibility of the communication arguing that the naturalisation procedure is granted by an act of

parliament to which article 26 does not apply. The Committee recalls that article 26 provides for equality before the law and equal protection of the law without discrimination and concerns the obligations imposed in state parties in regard to their legislation and application. The provision prohibits discrimination in any field regulated and protected by public authorities ([General Comment N° 18 §12 and §18](#)). The Committee recalls that all branches of the government (executive, legislative, judicial) at whatever level- national, regional or local - are in a position to engage the responsibility of the state party and the communication was therefore admissible ([General Comment N° 31 §4](#)).

Consideration of merits

The Committee notes that the author does not challenge the language requirements for naturalization in general but only that the requirement has been applied to him in an arbitrary or discriminatory manner. The Committee recalls that article 26 is not limited to those rights which are provided by the Covenant and that while states are free to decide themselves the criteria for granting citizenship, when adopting and implementing legislation the State party's' authorities must respect the applicants' rights enshrined in article 26. The Committee recalls in this respect that article 26 requires a reasonable and objective justification and a legitimate aim for distinctions that relate to an individual's characteristics enumerated in article 26, including "other status" such as disability ([Borozov v Estonia](#) 1136/2002 §7.3).

The Committee considers that the State party has failed to demonstrate that the refusal to grant the exemption was based on reasonable and objective grounds, highlighting that the Ministry was unable to give details about the reasons for the Naturalization Committee's decision to deny the author's request since the Committee proceedings were confidential. This means the author does not know the real reasons for the refusals making it difficult from him to submit further documentation to support his request.

The Committee considers that the fact that the Naturalisation Committee is part of the Legislature does not exempt the State party from taking measures so that the author is informed, even if in brief form, of the substantive grounds of the decision. The Committee therefore found that the state party had failed to demonstrate that its decision not to exempt the author despite his learning difficulties was based on "reasonable and objective grounds" and found a violation of article 26.

Recommendation

The Human Rights Committee therefore decided the state party is under an obligation to:

- a. provide the author with an effective remedy, which includes compensation and a reconsideration of his request for exemption of the language skills requirement through a procedure which takes into consideration the Committee's findings.
- b. avoid similar violations in the future.

Deadline to Submit the Report on the Implementation of the Recommendations

180 days from the adoption of the views: 28.09.2015