ROMANIAN
JOURNAL OF INTERNATIONAL LAW

ISSN 2559 – 3846

Tackling Racial Discrimination: Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Qatar v. The United Arab Emirates)

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RJIL No. 21/2019

Pages 58-67

Tackling Racial Discrimination: *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Qatar v. The United Arab Emirates)*

Simona Andra OBROCARU[1]

Abstract**:** *The present article will be based on the examination and analysis of the racial discrimination issue and it will explain and present aspects that are relevant for the case study (The State of Qatar v. The United Arab Emirates). The purpose of this paper is to shed light on the racial discrimination matter and to reach the core of this problematic by offering a more comprehensive understanding for the situation as a whole. Bearing this in mind, we will also be analysing other similar cases in which common elements can be found: Koptova v. Slovak Republic, Dragan Durmic v. Serbia and Montenegro, Ms. L.R. et al v. Slovak Republic (Dobsina). The paper presents an objective and a realist approach in order to propose a series of solutions for a peaceful and rightful settlement of the conflict between the UAE and Qatar. The conclusions reached by following a thorough analysis can be summarized by stating that racial discrimination should be taken more seriously by the national courts and tribunals, so that it would not be necessary for so many complaints to be addressed international bodies.*

Key-words: *racial discrimination, dispute.*

1. Introduction

1.1 The main issue

During the course of history, humanity has been going through numerous periods of time in which it experienced violent attacks, stigmatization, unfair treatment, discrimination based on certain aspects and so many other

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similar situations. Even though discrimination has been an openly discussed subject in recent times, it does not mean that it appeared once we started acknowledging it; in fact, it preexists most studies or debates on this matter.

The subject of this article is relevant in today's society and it is also important to be aware of the fact that even though important steps in diminishing discrimination are being taken, there still are numerous cases in which people are not treated equally, the quality of their lives being tremendously affected.

1.2 Measures taken against racial discrimination

One of the earliest manifestos against racial discrimination among people can be attributed to Friedrich Tiedemann who was a prolific expert when it comes to the anatomy of the human brain. Following his many years of experience in terms of anatomy and physiology, he published an article in 1836 entitled *On the Brain of the Negro, compared with that of the European and Orang-Outang*[1] in Britain's most prestigious journal. The purpose of that article was to bring forward scientific proof which would convince the rest of the people that individuals having different physical traits than the average Caucasian are not less biologically evolved than them. The author mentions the following:

> *The mistaken notion of these naturalists arose from [the study] of a few skulls of Negroes living on the coasts, who, according to credible travellers, are the lowest and most demoralized of all the Negro tribes; the miserable remains of an enslaved people, bodily and spiritually lowered and degraded by slavery and ill treatment.*[2]

The main conclusion drew by Tiedemann was the fact that many anthropologists chose in their studies the smallest-brained and the biggest-jawed African individuals in order to sustain their arguments regarding the difference in evolution among Caucasians and Africans. However, he finishes his study by explaining that human races cannot be distinguished by looking at the size of their brains.

Another important moment in history when it comes to the elimination of racial discrimination on an international scale, belonged to Japan in 1919. During the Paris Peace Conference, the Japanese delegation proposed

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[1] Friedrich Tiedemann, JSTOR, *On the Brain of the Negro, compared with that of the European and Orang-Outang*, p. 511.

[2] Stephen Jay Gould, *The Great Physiologist of Heidelberg – Friedrich Tiedemann – Brief Article*, Natural History, July 1999, p. 4.

certain articles which were meant to put racial equality on top of the priority list of the League of Nations Covenant. Even though the proposal was accepted with a majority of 11 votes out of 16, Woodrow Wilson, the US President, declined the plea stating that this kind of issue should be approved by all the members, not just by the majority.[1]

2. The research course

2.1 *Qatar v. The United Arab Emirates*

On 11 June 2018, the State of Qatar submitted to the International Court of Justice (ICJ) an Application against the United Arab Emirates (UAE) in which it requested the enforcement of institutional proceedings upon the UAE concerning its treatment towards the Qataris living in the UAE. The legal basis referred to by Qatar was the *International Convention on the Elimination of All Forms of Racial Discrimination* (ICERD) which entered into force on 4 January 1969 and to which both Qatar and UAE are parties.[2]

According to the Application submitted by the State of Qatar, there are numerous violations of the ICERD by the UAE concerning the pressure of the latter towards the former in allowing it to interfere with Qatar's sovereignty through a series of discriminatory acts such as: expulsion of Qataris from the UAE within a time frame of two weeks, prohibition of Qataris from entering or passing the UAE, hereby enforcing harsh penalties (nationality deprivation and criminal sanctions), closing the UAE airspace and ports for Qatar and its citizens and also prohibition of all inter-State transportation ways, interference with the legal conditions under which Qataris lawfully possess properties in the UAE, prohibition of all types of speech through which Qataris could be supported and also enforcing legal penalties such as financial ones or imprisonment up to fifteen years, silencing of all Qatari owned and sponsored media outlets such as Al Jazeera. As such, Qatar requested the International Court of Justice to conclude that the UAE:

> *expelled all Qataris within its borders, without exception, giving them just two weeks to leave; prohibited Qataris from entering into or passing through the UAE, and ordered UAE nationals to leave Qatar or face*

[1] Reginald Kearney, *Japan: Ally in the Struggle Against Racism, 1919-1927*, Kanda University of International Studies in Japan, Volume 12 *Ethnicity, Gender, Culture, & Cuba (Special Section)*, 1994, p. 2.

[2] International Court of Justice, *Interpretation and Application of the International Convention on the Elimination of All Forms of Racial Discrimination (The State of Qatar v. The United Arab Emirates)*, p. 2.

> *severe civil penalties, including deprivation of their nationality and the imposition of criminal sanctions; closed UAE airspace and seaports to Qatar and Qataris and prohibited all inter-state transport; interfered with the rights of Qataris who own property in the UAE; prohibited by law any speech deemed to be in "support" of Qatar or opposed to the actions taken against Qatar, on threat of severe financial penalty or up to fifteen years imprisonment; shut down the local offices of Al Jazeera Media Network ("Al Jazeera") and blocked the transmission of Al Jazeera and other Qatari stations and websites.* [1]

It is vital to understand the causes that led to the situation in which UAE alongside Egypt, Bahrain and Saudi Arabia imposed some extreme sanctions against Qatar and why the situation escalated leading to alledged racial discriminatory attitudes against Qataris in the UAE. The UAE decided to isolate Qatar on the basis of allegations that it supports extremist groups and, consequently, terrorism. These allegations gained proportion based on Qatar's support for the Muslim Brotherhood, its close ties to Taliban groups and other Al-Qaeda affiliates and especially because of its close relation to Iran; this led to statements on Saudi Arabia's part suggesting that the Qatari media outlet, Al Jazeera supports and promotes Houthi rebels who are fighting in Yemen against governmental forces endorsed by Saudi Arabia and the UAE.[2]

Upon analyzing the case, the International Court of Justice reached a conclusion and presented its Judgment on this regard, solving the dispute between the State of Qatar and the UAE. ICJ found that the UAE was obliged by the ICERD to make sure that families including a Qatari citizen, that were separated, be reunited, that the Qatari students who were deprived of their rights to education be granted their opportunities to study and that Qatari citizen be provided once again with legal services and access to judicial facilities.

Furthermore, the Court decided that, except for the provisional measures requested by the State of Qatar, it also needed to indicate certain other additional measures to be addressed by both parties, not only by the UAE, and which would refer to a provision that would not allow the escalation of the dispute.

2.2 Similar cases

[1] ibid.

[2] Tom Keatinge, *Why Qatar is the focus of terrorist claims*, BBC, Centre for Financial Crime and Security Studies, June 2017.

As previously stated, we will also analyze similar cases in which the issues encountered by the petitioners are directly brought before international Courts by the individuals themselves. Even though the problematic is similar in all cases, the main distinction between the first case we presented and the following ones relies on the fact that in the former situation, the case was brought forward on behalf of the State before ICJ, as opposed to the latter series of cases in which the individuals themselves submitted the petitions on their behalf, before CERD.

2.2.1 *Koptova v. Slovak Republic*

This case was brought before the United Nations Committee on the Elimination of Racial Discrimination at the end of 2000 by Anna Koptova, a Roma Slovak citizen against Slovakia, claiming that articles 2, 3, 4, 5 and 6 of the *International Convention on the Elimination of All Forms of Racial Discrimination* have been breached.[1]

The Committee concluded by deciding that the State (The Slovak Republic) must take all necessary measures in order to make sure that all the practices which so far have been restricting the Roma freedom of movement and also of residence are permanently eliminated and not promoted. In both situations (*Qatar v. The United Arab Emirates* and *Koptova v. Slovak Republic*) the targeted minority had to leave the region because of the frictions, pressure and hostility promoted and prolonged by the majority residing in each specific area. In each case, certain resolutions, laws or acts were issued and enforced in order to alienate the targeted groups only based on their race and not on their actions or competences. In the UAE, the Federal Decree-Law no. (5) of 2012, *On Combatting Cybercrimes* focused on anyone who *shows sympathy…towards Qatar*[2] and, in Slovakia, both resolutions given by the Municipal Council of Rokytovce and the Municipality of Nagov.

2.2.2 *Dragan Durmic v. Serbia and Montenegro*

On March 6, 2002, Dragan Durmic, a petitioner of Roma origin and a national of Serbia and Montenegro (represented by the European Roma Rights Center and the Humanitarian Law Center) submitted a petition to the

[1] United Nations Human Rights Office of the High Commissioner, *International Convention on the Elimination of All Forms of Racial Discrimination – Selected Decisions of the Committee on the Elimination of Racial Discrimination*, p. 55.

[2] International Court of Justice, *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Qatar v. United Arab Emirates) – Request for the Indication of Provisional Measures, Order,* p. 14.

UN Committee on the Elimination of Racial Discrimination against Serbia and Montenegro, claiming that he was a victim of racial discrimination based on the breaches of article 2, paragraph 1 (d), read together with article 5 (f), as well as articles 3, 4 (c) and 6 of the International Convention on the Elimination of Racial Discrimination.[1]

The Committee came to the conclusion that the submission was admissible and it also demonstrated that Article 6 from the Convention was violated by the State. Besides that, the Committee condemned the State's plea regarding the inability of identifying the perpetrators and that the Statute of Limitations was not applicable in this situation considering the delays in the investigations. The State was found guilty of not being able to provide a proper protection and specific measures under Article 6 of the Convention.

The common factor in both of these cases (*Qatar v. The United Arab Emirates* and *Dragan Durmic v. Serbia and Montenegro*) is related to the State's denial of a minority of having access to public services, those being either in the educational, legal or medical field (*Qatar v. The United Arab Emirates*) or in the leisure one, such as discotheques, restaurants, clubs etc. (*Dragan Durmic v. Serbia and Montenegro*). In both cases, the persons targeted observed the discriminatory behaviour and the prohibition of accessing certain public spaces based on their ethnicity and invoked the International Convention on the Elimination of All Forms of Racial Discrimination having in mind specific articles which can be applicable in different contexts.

2.2.3 *Ms. L.R. et al v. Slovak Republic (Dobsina)*

Another situation in which a case of blatant racial discrimination was presented before the CERD Committee being submitted by Ms. L.R. alongside other 26 Roma citizens (represented by the counsel of the European Roma Rights Centre, Budapest, Hungary, and the League of Human Rights Advocates, Bratislava) from Dobsiná, Slovakia in August 2003 claiming that the Slovak Republic had breached Article 2, paragraph 1, subparagraphs (a), (c) and (d); Article 4, paragraph (a); Article 5, paragraph

[1] United Nations Human Rights Office of the High Commissioner, *International Convention on the Elimination of All Forms of Racial Discrimination – Selected Decisions of the Committee on the Elimination of Racial Discrimination*, Communication No. 29/2003, p. 88.

(e), subparagraph (iii); and Article 6 of the International Convention on the Elimination of All Forms of Racial Discrimination.[1]

The Committee concluded that it was clear that the State party was guilty for the practice of racial discrimination and that it breached Article 2, paragraph 1 (a), Article 5, paragraph (e) (iii) and Article 6 of the Convention. Ergo, according to the Convention, the State party was obliged to offer the petitioners an effective remedy and come up with such measures that would allow them to live in equality and also to prevent similar breaches from happening in the future. It was also requested by the Committee to receive in a matter of ninety days maximum, details from the State party regarding the measures it decided to take in solving the dispute.

Once again, it is clear that in all cases presented so far, including *Qatar v. The United Arab Emirates*, the State parties being petitioned had breached Article 6 of the International Convention on the Elimination of All Forms of Racial Discrimination and that because of their racist behavior, the minorities in question had to suffer by having no access to basic life conditions. However, an important aspect in this regard should be taken into consideration, namely the fact that even though the same article has been breached in all of the cases we briefly presented, in the first one we encounter the situation in which there is a dispute between two states, as opposed to the last three cases in which the individuals were the ones that submitted their petitions against the state. Still, it is rather obvious that mainly the same breaches were highlighted in all four cases and primarily, the targeted minority was the one to be affected by the consequences of racial discrimination.

3. Conclusions and outcome

We can easily observe that during the last decades numerous cases of racial discrimination had arose and consequently, an important number of them had been brought in the public's attention. Seeing that the racial discrimination phenomenon does not disappear by itself, both the national and the international community have reacted and decided to take appropriate measures. Special treaties, conventions, acts and bills have been decided upon in order to establish series of punishments in the case of breaching certain obligations to which the parties had agreed to in the

[1] United Nations Human Rights Office of the High Commissioner, *International Convention on the Elimination of All Forms of Racial Discrimination – Selected Decisions of the Committee on the Elimination of Racial Discrimination*, Communication No. 31/2003, p. 108.

international arena or the natural persons have automatically accepted when being a citizen of a specific state.

Moreover, a great number of special judicial bodies has been established, especially designed for situations in which racial discrimination would be promoted, encouraged and endorsed. Those international judicial bodies that deal with this issue are judging the cases brought to them based on the international conventions and treaties concluded by states.

Most states have accepted to be a part of the *International Convention on the Elimination of All Forms of Racial Discrimination*, which led to the implementation in each state's national legislation of the obligations and values embedded in this Convention. This means that in the case of a racial discriminatory situation, the victim firstly addresses a national legal body which is obliged, if it has jurisdiction, to consider such a case, to offer a proper solution, to defend the victim and punish the perpetrator.

3.1 Solutions and possible steps in the future for solving the racial discrimination issue

When it comes to solutions to be found in order to at least confine and/or prevent situations in which racial discrimination could be used against someone, we could provide some potential solutions.

First of all, racial discrimination should be taken more seriously by the national courts and tribunals, so that it would not be necessary for so many victims to address international bodies, considering that the procedures and steps that must be taken in this regard are far more extensive and large-scaled than the ones at the national level. The national legal bodies should be more attentive when judging a racial discrimination case and should investigate and invest more time in analyzing such a matter.

On the other hand, another important solution would be a more precise and comprehensive national legal framework that should be put in place by many states; this solution would come as an addition to the first one, considering that it is possible to experience a racist situation but not to be helped by a national legal entity because of the lack of proper legislation on this matter.

One other feasible solution could be the enforcement of stricter punishments for those who engage in a racist behavior. Harsher regulations on this matter might help in preventing this unwanted behavior and might

make people reconsider their options before initiating or being part of a racial discrimination context.

One last solution should be addressing more the problematic of racial discrimination at the educational level in the sense that it should be talked about more openly and that people should learn at least from school that it is not normal to engage in such activities. A racial behavior is not inherited, it is learnt and because of that, it is vital to make people open their eyes more when it comes to this matter and one of the best ways to do that is through education.

As far as the main case presented in the present paper and its settlement, having in mind that it is still an on-going case, we would rather abstain from making predictions and assumptions because the behavior of both states can be unpredictable and the accusations brought before the Court by each of them can be false, misleading or exaggerated. As it was already settled, the Court has the needed jurisdiction in order to handle this situation and offer a series of measures, but, until then, it is impossible to predict how the frictions between the two states could be solved.

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