



**International covenant
on civil and political
rights**

Distr.
RESTRICTED*

CCPR/C/92/D/1487/2006
18 April 2008

Original: ENGLISH

HUMAN RIGHTS COMMITTEE
Ninety-second session
17 March-4 April 2008

DECISION

Communication No. 1487/2006

<u>Submitted by:</u>	Kasem Said Ahmad and Asmaa Abdol-Hamid (represented by counsel, Ms. Zaha S. Hassan)
<u>Alleged victim:</u>	The authors
<u>State party:</u>	Denmark
<u>Date of submission:</u>	12 June 2006 (initial submission)
<u>Document references:</u>	Special Rapporteur's rule 97 decision, transmitted to the State party on 3 August 2006 (not issued in document form)
<u>Date of adoption of Decision:</u>	1 April 2008

* Made public by decision of the Human Rights Committee.

Subject matter: Publication of illustrations offending religious sensitivities

Procedural issues: Exhaustion of domestic remedies

Substantive issues: Prohibition of inciting advocacy – freedom of expression - effective remedy

Articles of the Optional Protocol: 5, paragraph 2(b)

Articles of the Covenant: articles 2, paragraphs 3(a) and (b); 17; 18, paragraphs 3 and 4; 19; 20 and 26

[ANNEX]

ANNEX

**DECISION OF THE HUMAN RIGHTS COMMITTEE UNDER
THE OPTIONAL PROTOCOL TO THE INTERNATIONAL COVENANT
ON CIVIL AND POLITICAL RIGHTS**

Ninety-second session

concerning

Communication No. 1487/2006*

Submitted by: Kasem Said Ahmad and Asmaa Abdol-Hamid
(represented by counsel, Ms. Zaha S. Hassan)

Alleged victim: The authors

State party: Denmark

Date of submission: 12 June 2006 (initial submission)

The Human Rights Committee, established under article 28 of the International Covenant on Civil and Political Rights,

Meeting on 1 April 2008,

Adopts the following:

DECISION ON ADMISSIBILITY

1. The authors of the communication, initially dated 12 June 2006, are Kasem Said Ahmad and Asmaa Abdol-Hamid, both Danish nationals, born on 26 September 1960 and 22 November 1981, respectively. They claim to be victims of violations by Denmark of their rights under articles 2, paragraphs 3(a) and (b); article 17; article 18, paragraphs 3 and 4; article 19; article 20 and article 26 of the International Covenant on Civil and Political Rights. They are represented by counsel, Ms. Zaha Hassan.

* The following members of the Committee participated in the examination of the present communication: Mr. Abdelfattah Amor, Mr. Prafullachandra Natwarlal Bhagwati, Ms. Christine Chanet, Mr. Maurice Glèlè Ahanhanzo, Mr. Yuji Iwasawa, Mr. Edwin Johnson, Mr. Walter Kälin, Mr. Ahmed Tawfik Khalil, Mr. Rajsoomer Lallah, Ms. Zonke Zanele Majodina, Ms. Iulia Antoanella Motoc, Mr. Michael O'Flaherty, Ms. Elisabeth Palm, Mr. José Luis Pérez Sanchez-Cerro, Mr. Rafael Rivas Posada, Sir Nigel Rodley, Mr. Ivan Shearer and Ms. Ruth Wedgwood.

Factual background

2.1 The authors adhere to the Muslim faith. In 2005, the culture editor for the Danish newspaper 'Jyllands-Posten' solicited 40 members of the Danish Newspapers' Illustrators' Union to depict the Islamic Prophet Mohammad, as they saw him. Twelve illustrators accepted the invitation. On 30 September 2005, the newspaper published one of the illustrations on the front page with the following caption: "Some Muslims reject modern, secular society. They demand a special position, insisting on special considerations of their own religious feelings. It is incompatible with secular democracy and freedom of expression, where one has to be ready to put up with scorn, mockery and ridicule."

2.2 A full article was published on page three of the newspaper with the title "The Face of Mohammad" and byline "Freedom of expression". The introduction to the article read:

"The comedian Frank Hvam recently admitted that he did not dare openly "to take the piss out of the Koran on TV". An illustrator who is to portray the Prophet Mohammad in a children's book wishes to do so anonymously. As do the Western European translators of a collection of essays critical of Islam. A leading art museum has removed a work of art for fear of reactions of Muslims. This theatre season, three satirical shows targeted at the President of the USA, George W Bush, are playing, but not a single one about Osama bin Laden and his allies, and during a meeting with Prime Minister Anders Fogh Rasmussen, Denmark's Liberal Party, an imam urged the government to use its influence over Danish media so that they can draw a more positive picture of Islam. The cited examples give cause for concern, regardless of whether the experienced fear is founded on a false basis. The fact is that the fear does exist and that it leads to self-censorship. The public space is being intimidated. Artists, authors, illustrators, translators and people in theatre are therefore steering a wide berth around the most important meeting of cultures of our time – the meeting between Islam and the secular society of the West, which is rooted in Christianity."

2.3 A following section, entitled "The Ridicule", repeated caption on the front page of the newspaper and followed it with:

"It is therefore no coincidence that people living in totalitarian societies are sent off to jail for telling jokes or for critical depictions of dictators. As a rule, this is done with reference to the fact that it offends people's feelings. In Denmark, we have not yet reached this stage, but the cited examples show that we are on a slippery slope to a place where no one can predict what self-censorship will lead to."

2.4 The last column of the article, under the heading "12 Illustrators", stated: "That is why [the newspaper] has invited members of the Danish Newspaper Illustrators' Union to draw Mohammad as they see him". It stated that twelve illustrators, whose names are mentioned, has responded to the invitation, whereupon the twelve illustrations are published.

2.5 The authors allege that the illustrations commented on a faulty understanding of Islamic religious teaching. The twelve illustrations in question are as follows:¹

- 1) the face of a man whose beard and turban are drawn within a crescent moon, and with a star, symbols normally used for Islam;
- 2) the face of a grim-looking bearded man with a turban shaped like an ignited bomb;
- 3) a person standing in front of an identity parade consisting of seven people, including a caricature of leader of the Danish People's Party Pia Kjaersgaard and five men wearing turbans. The person in front of the line-up is saying: "Hmm ... I can't quite recognize him ...";
- 4) a bearded man wearing a turban, standing with a halo shaped like a crescent moon over his head;
- 5) five stylized female figures wearing headscarves, with facial features depicted as a star and a crescent moon. The caption reads: "'Prophet! You crazy bloke! Keeping women under the yoke!'"
- 6) a bearded man wearing a turban, standing with the support of a staff and leading an ass with a rope;
- 7) a man with beads of sweat on his brow, sitting under a lighted lamp and looking over his left shoulder as he draws a man's face with a head covering and beard;
- 8) two bearded man wearing turbans and armed with a sword, a bomb and a gun, running towards a third bearded man wearing a turban. He is reading a sheet of paper and gesturing them to hold off, with the words: "Relax folks! It's just a sketch made by an unbeliever from southern Denmark";
- 9) a teenage boy with dark hair, dressed in trousers and a striped top printed with the text "The Future", standing in front of a blackboard, and pointing with a pointer at the Arabic text written on it. The text "Mohammad, Valby School, 7A" is written in an arrow pointing at the boy;
- 10) a bearded man wearing a turban and carrying a sword, standing with a black bar covering his eyes. Standing at his sides are two women wearing black gowns, with only their eyes visible;
- 11) a bearded man wearing a turban, standing on clouds with arms outspread, saying: "Stop, stop, we ran out of virgins!" Waiting in front of him is a row of men in tatters with plumes of smoke over their heads;

¹ The descriptions are taken from the decision of the Director of Public Prosecutions attached to the communication.

12) a drawing of a man wearing glasses and a turban with an orange in it. The turban bears the words "Publicity Stunt". The man is smiling as he shows a picture portraying a 'matchstick man' with a beard and wearing a turban.²

2.6 On 12 October 2005, senior representatives of twelve States and territories of predominantly Muslim character wrote to the State party's Prime Minister registering concern as to publication of the illustrations and other prominent incidents of public statements directed against Islam, asserting that they would in combination cause reactions within Muslim countries and within European countries with Muslim minorities. On 21 October 2005, the Prime Minister responded that his Government could not influence the press, but that offended persons were free to pursue proceedings in the Danish courts.

2.7 On 27 October 2005, a complaint was filed with the State party's police alleging violations of Sections 140³ and 266(b)⁴ of the Criminal Code on account of publications of various cartoon representations of Mohammad in 'Jyllands-Posten'. According to the State party, the complaint was filed by "a number of organizations", with the second author being named as contact person, while the communication describes the complainants as "Muslim organizations and individuals including [the second author]."

² The authors describe what they consider the most seven most offensive illustrations as follows: 1) a sinister-looking man with dark eyes and a dark beard wears a bomb-shaped turban with a lit fuse. The turban has a central tenet of Islam written on it in Arabic; 2) a man looking like a devil holds a grenade while standing in paradise offering virgins as a reward to fighters who have smoke coming out of them and are suggested to be suicide bombers; 3) a man stands wearing a turban that has ambiguous pointed ends coming out of it, which could be viewed either as devil's horns or points of a crescent moon forming a halo; 4) a man with a dark and unkempt beard and a black censor's bar over his eyes stands in front of two women wearing black niqabs with large eyes only showing. He carries a sword in one hand and the other hand is spread out to his side in front of the two women in an apparent effort to protect them; 5) two bearded and turbaned men are running with swords towards another bearded man in a turban whose different dress distinguishes him from the other two men, making him appear in a position of authority. The latter man holds a piece of paper in one hand at which he looks, while the other hand is spread out to the side apparently to hold back the two other men from going on an attack, as he says: "Relax folks! It's just a sketch made by an unbeliever from southern Denmark"; 6) A bearded and turbaned man walks with a staff, leading an ass on a rope; and 7) five stylized female figures, wearing hijabs with facial features made with stars and crescent moons, bear the caption: "Prophet! You crazy bloke! Keeping women under the yoke."

³ Section 140 provides: "Any person who, in public, ridicules or insults the dogmas or worship of any lawfully existing religious community in this country shall be liable to imprisonment for any term not exceeding four months or, in mitigating circumstances, to a fine."

⁴ Section 266(b) provides: "Any person who, publicly or with the intention of wider dissemination, makes a statement or imparts other information by which a group of people are threatened, insulted or degraded on account of their race, colour, national or ethnic origin, religion, or sexual inclination shall be liable to a fine or to imprisonment for any term not exceeding two years."

2.8 On 1 January 2006, the State party's Prime Minister stated: "...it is this unorthodox approach to authorities, it is this urge to question the established order, it is this inclination to subject everything to critical debate that has led to progress in our society. For it is this progress that new horizons open, new discoveries are made, new ideas see the light of day. While old systems and outdated ideas and views fade and disappear. That is why freedom of speech is so vital. And freedom of speech is absolute. It is not negotiable In general we treat others with consideration and have confidence in each other, confidence in a set of principles that are fundamental to our society. We have based our society on respect for the individual person's freedom, freedom of speech, equality between men and women, a distinction between politics and religion. Our point of departure is that as human beings we are free, independent, equal and responsible. We must safeguard these principles."

2.9 On 6 January 2006, the Regional Public Prosecutor of Viborg decided to discontinue the investigation under Section 749 of the Administration of Justice Act, stating that in assessing an offence under Sections 140 and 266(b), the right to freedom of expression had to be taken into consideration and that, on overall assessment of the article, there was no reasonable presumption that a punishable offence to be prosecuted by the public had been committed. An appeal was lodged with the Director of Public Prosecutions. According to the communication, this appeal was lodged by the Islamic Community, of which the first author is a member, other organizations and individuals, including the authors, while the State party describes the appeal as "on behalf of a number of organizations and individuals" and which named both authors as contact persons.

2.10 On 13 February 2006, the State party's Prime Minister stated: "Nobody can deny that the caricatures insulted the beliefs of many Muslims. And it's right to show understanding for this. The government doesn't have any interest in insulting Islam or any other religion. But all of the protesters must understand that the Danish Government has no means of controlling a free press. This is the main problem: we are all talking at cross-purposes."

2.11 On 15 March 2006, the Director of Public Prosecutions decided to address the merits of the appeal due to the public interest in the matter without assessing as a preliminary matter the locus standi of the complainants. On the substance, he declined to reverse the decision of the Regional Public Prosecutor, in a decision not subject to further appeal. The Director noted that, Sections 140 and 266(b) of the Criminal Code restricting the right to freely express opinions, had to be interpreted with due regard for the right to freedom of expression. As to Section 140, the Director noted that accepted usage in the State party covered even offensive and insulting expressions of opinion. The practice since adoption of this provision in 1930 had amounted to only three prosecutions, the most recent in 1971 ending in acquittal (of two public service television programme managers who broadcast a song that might be highly offensive to moral or religious feelings of Christians). As to whether the article mocked or scorned "religious doctrines or acts of worship", within the meaning of the section, the Director noted that the religious writings of Islam cannot be said to contain a general and absolute prohibition against drawing Mohammad. Rather, there was a prohibition against depicting human figures. Not all Muslims consistently complied with the depiction ban, as there were pictures of Mohammad depicted respectfully from earlier times as well as the present. It therefore could not be assumed that a drawing of Mohammad in general would be contrary to religious doctrines and acts of worship, as practiced today. As to whether caricature (rather than depiction) amounted to ridicule or an

expression of contempt of religious doctrines and acts of worship depended on the circumstances, including the text accompanying the illustrations.

2.12 In the present case, the Director considered that that text suggested a basic assumption that the newspaper commissioned the drawings for the purpose of debating, in a provocative manner, whether in a secular society special regard should be had to the feelings of some Muslims. The Director considered illustrations (1), (3), (4), (6), (7), (9), (11) and (12) as either neutral in expression or not seeming to be an expression of derision or spiteful ridiculing humour, falling outside the scope of Section 140. Drawings (5) and (10) addressed the position of women in Muslim society and concerned social conditions of those societies and the lives of their members, rather than expression about Islamic religious doctrines or acts of worship.

2.13 Drawing (8) could be seen as an illustration of an element of violence in Islam, but the standing man – who could be Mohammad – denies there is any reason for anger and speaks soothingly, which must be taken to be a rejection of violence. There is thus no expression of mockery or scorn of Islamic doctrines or acts of worship. Drawing (2) could be understood as meaning that violence or bomb explosions had been committed in the name of Islam, therefore a contribution to the current debate on terror and as an expression that religious fanaticism has led to terrorist acts. It is thus not contempt for Mohammad or Islam being expressed, but criticism of Islamic groups committing acts of terror in the name of religion. The drawing could also be taken as depicting Mohammad as a violent, or rather intimidating or scary, figure. The Director noted that historical descriptions of Mohammad's life showed violent conflict and armed clashes with non-Muslims in the course of propagation of the religion, and substantial loss of Muslim and non-Muslim life. Even so, the depiction of Mohammad as violent had to be incorrect if shown with a bomb, which today might be understood to imply terrorism. This could with good reason be understood as an affront and insult to Mohammad. It was not however an expression of mockery, ridicule or scorn (covering contempt or debasement) within the meaning of Section 140. Taking into account the drafting history and precedents, the section was to be narrowly construed and the affront and insult to Mohammad which could be understood to be conveyed could not be assumed with the necessary certainty to be a punishable offence.

2.14 As to Section 266(b), the Director noted that this provision should likewise be subject to a narrow interpretation out of regard for freedom of expression. As to whether the illustrations "insulted" or "degraded" Muslims on account of their religion, the content of these terms was co-equal with the "mockery" and "scorn" described in Section 140. The article's text did not refer to Muslims generally, but to some Muslims, those rejecting modern, secular society and demanding a special position for their own feelings. The text could not be considered scornful or degrading towards this group, even in the context of the illustrations. The drawings depict Mohammad, a religious figure, rather than referring to Muslims in general, and there was no basis for assuming that the intention of drawing (2) was to depict Muslims generally as perpetrators of violence or even as terrorists. The drawings depicting persons other than Mohammad contained no general references to Muslims, and did not depict them in scornful or degrading fashion, even in conjunction with the text.

2.15 In conclusion, the Director noted that although there was no basis for institution of criminal proceedings in the case, both Sections 140 and 266(b) restricted freedom of expression. To the extent publicly made expressions fell within the scope of those rules, there was therefore

no free and unrestricted right to express opinions about religious subjects. It was thus not a correct description of the law when the article stated that it was incompatible with the right of freedom of expression to demand special consideration for religious feelings and that one had to be ready to put up with “scorn, mockery and ridicule”.

2.16 Following the decision of the Director of Public Prosecutions, Mr. Ahmad states that his private sector employment was terminated, on the grounds that insufficient work was available. He believes that the actual reason was his activism on the illustrations issue; shortly before his termination, he was approached several times by management to discuss the complaint, to the filing of which he had been a party, and statements he had made to the press. He also states he experienced harassment in the workplace after speaking out against the publication, and that his search for new employment is being hindered by discrimination against him for the same reason.

2.17 On 29 March 2006, the Islamic Community of Denmark, of which the first author is a member, and six other organizations, all represented by the first author by power of attorney, initiated private criminal proceedings against the editor-in-chief and the culture editor of the newspaper, under Sections 268⁵ (defamation in the form of libel or slander); 21 (attempts); and 267⁶ (defamatory statements violating the personal honour of another by offensive words or conduct) of the Criminal Code. The case was heard on 9 October 2006, the author being amongst the witnesses. On 26 October 2006, the District Court of Aarhus ruled against the complainants. The judgment noted that freedom of expression had limits, which fell to the courts to be determined in a modern democratic society. The Court noted that some of the illustrations had no religious content or aim, while others were completely neutral in their presumed message and seemed likely to infringe the ban on depiction only, which the complainants had expressly disavowed as part of the proceedings. Others were ironical illustrations of the consequences of violation of the ban on depiction, did not even depict Mohammad or were satirical about his alleged connection with the suppression of women.

2.18 In the Court’s view, the messages of illustrations intended to depict Mohammad were Danes’ lack of knowledge of Mohammad, a link between him and the suppression of women, making Mohammad to “look (mildly) ridiculous as a rather simple person”, descriptions of connections between Mohammad and terrorism. The Court considered the three cartoons linking Mohammad and terrorism as the only ones that did not clearly fall outside of what might be deemed insulting. As to whether these amounted to criminal defamation, the Court considered that they aimed at social criticism, and would hardly have caused offence if published individually. Although the accompanying text might be read as an invitation to scorn, mockery and ridicule, the illustrations were not of this nature. Obviously it could not be ruled out that the illustrations offended the honour of some Muslims, but there was no basis for an assumption that

⁵ Section 268 provides: “If an allegation has been made or disseminated in bad faith, or of the author has had no reasonable ground to regard it as true, he shall be guilty of defamation, and the punishment mentioned in Sectionsection 267 may then be increased to imprisonment for two years.”

⁶ Section 267 provides: “(1) Any person who violates the honour of another person by offensive words or conduct or by making or spreading allegations of an act likely to disparage him in the esteem of his fellow citizens, shall be liable to a fine or to imprisonment for any term exceeding four months.”

they were intended to be offensive or that the purpose was to make statements disparaging Muslims in the esteem of their fellow citizens; nor were they suited for that purpose. It followed that no criminal responsibility could be imposed on the defendants. According to the State party, the first author has availed himself of an appeal of the judgment to the High Court of Western Denmark.

2.19 Following publication of the illustrations, demonstrations and riots took place in a number of countries around the world, resulting in over 100 deaths, 800 injured and extensive property damage, including to the State party's embassies in Damascus and Beirut. The illustrations were also reprinted in other European newspapers and magazines.

The complaint

3.1 Under a general reference to articles 2, paragraphs 3(a) and (b); article 17; article 18, paragraphs 3 and 4; article 19; article 20 and article 26 of the Covenant, the authors allege that in the circumstances of the case they were denied an effective remedy for incitement of hatred against Muslims, prohibited under article 20 of the Covenant, by acts and omissions of the State party's Prime Minister and its Director of Public Prosecutions. This denial has permitted and furthered violations of the Covenant related to protection against attacks on honour and reputation, of public order and safety, against racial and religious discrimination, and against incitement to racial and religious discrimination against Danish Arabs and Muslims, as well as the guarantee of equal protection before the law. The failure to prosecute resulted in serious injuries and trivialization of the controversy, while sending a message that incitement against Arabs and Muslims was acceptable.

3.2 As to the Prime Minister, the authors allege that he facilitated and encouraged the violation of their rights by taking public actions (specifically, failing to meet with the ambassadors and representatives) and making public statements that trivialized and appeared to support the publication of "patently offensive and provocative" illustrations. This contributed to growing volatility of the situation and arguably emboldened other publications to republish the illustrations. He then prejudiced the investigation into the publication of the illustrations by taking an official position against prosecution, in clear misrepresentation of the State party's own laws and its obligations under international treaties, giving a clear signal to police and prosecutors that the Government was not committed to pursuing the case against 'Jyllands-Posten'.

3.3 As to the Director of Public Prosecutions, the authors argue that he denied an effective remedy by affirming the Regional Public Prosecutor's decision. The authors argue he did not appreciate the full import of message of the illustrations in determining whether there had been a violation of the State party's law and should have forwarded the issue to a tribunal rather than rely on his own questionable interpretations. Specifically, the illustrations were, in the authors' view, by their very definition meant to grotesquely distort and misrepresent their subjects; they were aimed at offending and ridiculing Muslims as a minority group in the State party; the culture editor should have been aware that caricaturing Mohammad would be especially offensive to Muslims; the dominant message was the association and confusion of Islam with terrorism; the culture editor had been placed on notice by the violent reaction to reports of desecration of the Koran at United States military bases in 2005; the stated intention of the

article was that Muslims should accept being scorned, mocked and ridiculed; caricaturing Muslims did in fact make a statement about all Muslims and Islam generally; appropriate weight had not been given to international standards on incitement and discrimination against racial and religious groups, and protection of public order; and the narrow interpretations given ran counter to recent Parliamentary efforts to punish more severely crimes with racial, religious or ethnic motivations.

3.4 The authors allege that the illustrations commented on a faulty understanding of Islamic religious teaching, and bore the following messages: 1) that Mohammad is a terrorist and his message, Islam, is the ideology of terrorism; 2) Islam is evil and supports terrorism by offering the promise of virgins to putative suicide-bombers; 3) Mohammad is both a devil and a saint, or a devil disguised as a saint; 4) Islam is strange and paradoxical, prohibiting depiction of Mohammad's face but requiring Muslim women to cover everything but their face; women are subjugated under Islam; 5) Muslims are violent and automatically seek to kill anyone with whom they disagree; 6) Mohammad and Muslims are backwards and simple, not of the civilized, modern age; and 7) Islam calls for the subjugation of women.

3.5 The authors state that the failure of the State party to uphold its obligations under the Covenant had caused the State party's Government to be perceived as supportive of the publication and republication of the illustrations, which had fed and would likely continue to feed violent protests around the world leading to more deaths, bodily injury and property destruction. They also state that Muslim and Arab minorities generally in the State party, and themselves as members thereof, would suffer from a political and social backlash because members of the majority in the State party may believe that incitement and discrimination against Arabs and Muslims in the State party is sanctioned by the manner with which the controversy had been dealt.

3.6 The second author, Ms. Abdol-Hamid, also states that she believes she is injured as all Muslims are by the publication of racist and Islamophobic caricatures of Mohammad and Islam, associated with the fact of the State party's Government apparent sanction of the publication of the illustrations. In her view, this provides licence to non-Muslim Danes to discriminate and engage in further defamatory speech against Muslims and Arabs in the State party.

State party's submissions on the admissibility and merits of the communication

4.1 By Notes verbales of 23 October 2006 and 6 February 2007, the State party disputed the admissibility and merits of the communication. As to admissibility, the State party submits that the case is inadmissible on the basis that no prima facie case had been made out in respect of article 20 of the Covenant, that the communication was manifestly ill-founded as the authors did have access to an effective remedy and that the authors cannot be considered victims. As to the merits, it submits that the communication discloses no violation of the Covenant.

4.2 On the threshold issue of whether the authors can sufficiently be considered victims with standing to bring a claim, the State party refers to the Committee's jurisprudence in questioning the degree to which they have been personally affected to the necessary extent. The State party notes that in the initial communication the authors described their interest in terms of a general perception of the State party's government in the wider world, rather than any reflection of harm or real risk thereof to the authors' enjoyment of Covenant rights. The statement of being at risk

of political and social backlash was based on several sets of clearly hypothetical conceptions to the reaction of the majority of the Danish population to the Government's handling of the crisis, rather than the decision of the Director of Public Prosecutions. The statement in no way proves actual effect on the authors of the decisions of the State party's authorities. Only subsequent to a letter by the Committee's Secretariat requesting clarification of this issue were the (entirely undocumented) allegations of individual harm in the employment context to Mr. Ahmad particularised, though at no time have these been presented to the State party's prosecution service for assessment under Section 266(b) of the Criminal Code or otherwise pursued.

4.3 The State party also notes in this respect that its Act on Prohibition against Differential Treatment on the Labour Market prohibits discrimination in hiring and firing on account of, inter alia, race, colour, religion, faith or social or ethnic origin, provides specially relaxed evidentiary rules in this context, and awards compensation for violations thereof. While the allegations raised by the author would fall under this Act, he has not engaged in any proceedings against past or would be employers, and has thus not exhausted domestic remedies in respect of such injury. It was thus impossible for the State party at this point to verify the veracity of these allegations, and it disputes in any event that it was the decisions not to prosecute that caused Mr. Ahmad's dismissal.

4.4 As to the separate injuries advanced by Ms. Abdol-Hamid, the State party argues that these are of such general and abstract character that they cannot fulfil the victim requirement. Furthermore, the allegations of licence of further discrimination are wholly unsubstantiated and purely speculative, insufficient to sustain a claim as the author's risk of being affected is more than a theoretical possibility.

4.5 The authors have thus not shown that the decision not to prosecute has had an adverse effect, or real risk thereof, on enjoyment of their Covenant rights and the communication is inadmissible for want of victim status.

4.6 On the substance of the case, firstly, the State party submits that the illustrations in question did not fall within the scope of application of article 20, paragraph 2, of the Covenant, in no way advancing religious hatred. Decisive emphasis must be placed on the context – illustrating a newspaper article intended to launch a debate on self-censorship in the State party, as recognized by the Director of Public Prosecutions. The newspaper thus did not intend to incite discrimination against certain Muslims, but to point out that a group of Muslims who “reject modern society” must be treated like all others in the State party regardless of beliefs. There is thus a crucial difference between initiatives intended to put an end to what the newspaper considered self-censorship and those intended to incite religious hatred, and the article's statements need to be seen in that light. The inclusion of “humoristic and satirical” illustrations, including of the illustrators themselves, supports the claim that they were not designed to incite religious hatred. For example, the portrayal of a bearded man with a staff leading an ass seems only to show the illustrator's view what Mohammad might have looked like at the time, just as Jesus is often depicted in flowing robes and sandals, rather than raising negative inferences. While other illustrations may be perceived as provocative, the purpose was to direct focus to the issue of self-censorship, an issue attracting broad public interest at home and abroad.

4.7 The State party notes that the Committee has yet to find a breach of article 20 of the Covenant. In the three cases in which it expressed views on this provision, the authorities had interfered with expressions of unambiguously anti-Semitic nature. In each case, the Committee concluded that the authors' rights had not been violated by the interferences because the expressions were so racist in character that they were covered directly by article 20, or were justified as a permissible limitation on freedom of expression under article 19, paragraph 3. The cases therefore provide no guidance on the interpretation of article 20 where, as presently, the State party has not interfered with freedom of expression, and in which the expressions in dispute are not in the same nature of advocacy of national, racial or religious hatred. Article 20 sets a high threshold, requiring not only such advocacy, but advocacy constituting incitement to discrimination, hostility or violence. As noted, the purpose of the article was not thus, but to launch a debate on self-censorship, and the resulting violence in certain countries outside the State party does not change that.

4.8 The drawings and text falling not being published for the purpose of inciting racial hatred, they fall outside article 20, paragraph 2, and the claim is both inadmissible for insufficient substantiation and discloses no violation on the merits.

4.9 Even if the claim is arguable in respect of article 20, the State party emphasizes that the authors did have access to an effective remedy as required by article 2, and the claim is therefore manifestly ill-founded and discloses no violation on the merits. The authors had access to the police and prosecutorial system, which they exercised. The prosecuting authorities at two levels issued prompt, thorough and reasoned decisions, including assessment of international human rights instruments. There being no doubt on the facts, the prosecutor's task was solely legally to assess the article and illustrations against Sections 140 and 266(b) of the Criminal Code. Although the authors did not achieve the outcome they wanted, the Covenant does not guarantee a specific outcome to investigations. The State party notes that article 2, as further explained in General Comment 31, explicitly permits States parties to provide remedies to administrative authorities, with no requirement necessarily to have subsequent recourse to courts. If no violations of Covenant rights have been shown following prompt and effective investigation, there can be no obligation to engage a prosecution in the courts. A decision to prosecute must, to protect the rights of accused, be based only on objective soundness and likelihood of procuring a conviction, rather than to respond to public controversy or the desires of a sector of the public. In this respect the State party refers to an opinion of the Committee on the Elimination of Racial Discrimination, reaffirming its view that "the freedom to prosecute criminal offences – commonly known as the expediency principle – is governed by considerations of public policy and not[ing] that the Convention cannot be interpreted as challenging the raison d'être of that principle."⁷

4.10 In cases of discrimination, States parties must investigate with due diligence and expedition, rather than commence prosecution in all cases where discriminations is alleged. Nor does the Covenant imply any unconditional requirement that allegations must be prosecuted if the prosecuting authorities fairly determine that the objective facts clearly fall outside the scope of applicable criminal law.

⁷ L.K. v The Netherlands, Case No. 4/1991, Opinion of 16 March 1993, at para. 6.5.

4.11 The State party emphasizes that the Covenant does not contain a positive obligation to interfere in a debate on a topical subject taken up by the press in furtherance of its watchdog functions in a democratic society, provided it does not amount to advocacy of national, racial or religious hatred inciting to discrimination, hostility or violence. The relevant publication here was made with no such purpose, but to launch debate on a potential problem of self-censorship in the State party. Given the value of free expression in a democratic society, the media must be able to take up even touchy issues and make provocative statements on potential societal problems without State intervention, subject to the limit described.

4.12 Extremely weighty reasons are therefore required to restrict the press' right and duty to inform and provide information and ideas on all matters of public interest, even if there has been possible recourse to a degree of exaggeration or even provocation. The demands of pluralism, tolerance and broadmindedness without which there would be no democratic society protects information and ideas that may offend, shock or disturb, subject to the bounds of criminal law and thorough assessment of prosecutors that they have been respected. Free expression must be carefully balanced against regard for the protection of religious feelings of others. However, persons manifesting their religion, whether as a majority or minority, cannot reasonably expect to be exempt from, for example, articles or papers intended to launch a critical debate on their religion, and have to tolerate and accept the dissemination of attitudes that may be perceived as criticism of their religion.

4.13 In addition, Mr. Ahmad has had access to the courts, as organizations in which he is a member and represented by him have instituted private criminal proceedings against the newspaper for violations of injury to feelings, in violation of articles 267 and 268 of the Criminal Code. These proceedings are no less effective merely because the proceedings had been privately instituted rather than by the prosecution service. He gave evidence in those proceedings, with judgment given in October 2006 and now under appeal. As a result, the State party's courts have indeed had the opportunity meticulously to assess from a legal perspective whether a punishable offence had been committed. Apart from showing that the article 2 claim is both inadmissible for insufficient substantiation and discloses no violation on the merits, this raises a separate issue of non-exhaustion of domestic remedies.

Authors' comments on the State party's submissions

5.1 By letter of 26 April 2007, the authors responded to the State party's submissions, arguing that the State party has failed to provide an effective remedy under article 2, paragraph 3, of the Covenant.

5.2 On the issue of sufficient victim status, the authors argue that whether Mr. Ahmad filed a complaint in respect of workplace discrimination is irrelevant to the State party's Covenant obligations and is not in substitution of its obligation to penalize incitement to racial hatred and violence. Filing of such a complaint against third parties is not required by the Committee's jurisprudence. In any event, such complaints would only constitute further evidence of his injury. That apart, the Committee has recognized admissibility of communications in case of "a real threat" that a State party's act or omission will affect enjoyment of a Covenant right.⁸ Moral

⁸ Bordes et al. v France, Case No. 645/1995, Views adopted on 22 July 1995, at para. 5.4.

injury may also be sufficient to establish standing,⁹ which is consistent with the Committee's efforts to give effect to remedies for violations of the Covenant. In incitement cases, the only injury may be moral, and in view of the serious practical consequences that occurred in this case, allegations of moral injury and threat of injury should be seen as sufficient for standing.

5.3 On the sufficiency of administrative remedies, the authors argue that ineffectual administrative remedies are no substitute for judicial review, and that the availability of an administrative remedy alone is insufficient. In this case, the State party failed in its obligations to adequately investigate. The Prime Minister's public statements and comments prejudiced the investigation from the outset. The prosecuting authorities also accepted as fact that the newspaper's intent was not to incite racial hatred or violence, rather than going beyond the text to assess from the overall facts surrounding publication whether this might have in fact been the case. The claim that prosecutors only prosecute cases that would lead to conviction also overstates the legal threshold, with the Committee's jurisprudence extending Covenant protection to claims "sufficiently well-founded to be arguable under the Covenant".¹⁰ If there was sufficient evidence to support a conviction, as here, prosecution ought to proceed. Indeed, there was a strong likelihood of success on the merits had that happened, given previous convictions under Section 266(b) for much less virulent statements and assessments of Danish legal commentary that "entirely non-objective, generalizing allegations of serious crime and immorality" are at the "core" of statements covered by Section 266(b). The prosecuting authorities also completely failed to achieve the import and effect of the messages, and were not culturally competent to do so. Accordingly, the authors were denied a competent and impartial investigation and the possibility of a judicial remedy.

5.4 On alternative remedies, the authors argue drawing on the Committee's General Comment 11 that the availability of a civil cause of action for defamation, libel or slander is not a substitute for compliance with article 20's requirement that certain advocacy be affirmatively prohibited by law. Nor is the ability to privately engage criminal prosecutions, as occurred in this case, a replacement for the State's own responsibility to pursue the behaviour at issue.

Issues and proceedings before the Committee

6.1 Before considering any claim contained in a communication, the Human Rights Committee must, in accordance with rule 93 of its rules of procedure, decide whether or not it is admissible under the Optional Protocol to the Covenant.

6.2 The Committee notes that both authors have been closely involved, in varying capacities and at differing stages, in the course of pursuit of domestic remedies before the police, prosecutorial authorities and the State party's courts (see *supra*, paras. 2.7, 2.9 and 2.17). The Committee notes that after the Director of Public Prosecutions decided against bringing criminal prosecutions in respect of the publications at issue in respect of Section 140 and 266(b) of the Criminal Code, the same subject matter was advanced to the State party's courts by way of a private criminal prosecution under Sections 21, 267 and 268 of the Criminal Code, resulting in a

⁹ Committee on the Elimination of Racial Discrimination, Gelle v Denmark, Case No. 34/2004, Opinion of 6 March 2006, at para. 9.

¹⁰ Karantzis v Cyprus Case No. 972/2001, Decision adopted on 7 August 2003.

judgment assessing at length criminal responsibility under these provisions of senior managers of the publishing newspaper. That judgment is currently under appeal. Assessing as a whole the close involvement of the authors with each other in the course of the proceedings before the State party's prosecutorial and judicial authorities, the Committee recalls its constant jurisprudence that when authors of a communication seize a State party's authorities of the subject matter likewise presented to the Committee, that such proceedings must be pursued to their conclusion before the Committee can assess the claim.¹¹ The Committee notes in this respect that, even though the first author is before the domestic courts by virtue of his membership in a body with legal personality (the Islamic Community organisation), its jurisprudence recognises an author's personal status before the Committee in circumstances such as the present where the individual's rights are directly and personally affected.¹² It follows that, at the present time, the communication is inadmissible for failure to exhaust domestic remedies, under article 5, paragraph 2(b), of the Optional Protocol.

6.3 In light of that conclusion, the Committee need not assess other objections to the admissibility of the communication, including with respect to the locus standi vel non of the authors as victims within the meaning of article 1 of the Optional Protocol, that have been presented.

¹¹ Baroy v The Philippines Case No. 1045/2002, Decision adopted on 31 October 2003, at para. 8.3. ("The Committee observes, however, with respect to the exhaustion of domestic remedies, that the author has filed a "partial motion for reconsideration", currently pending before the Supreme Court, requesting the Court to reconsider its treatment of his minority in its judgment of 9 May 2002. In the present case, accordingly, the Committee considers that the questions of the authors' age and the means by which it was determined by the courts are, by the author's own action, currently before a judicial forum with authority to resolve definitively these particular claims."); Benali v. The Netherlands Case No. 1272/2004, Decision adopted on 23 July 2004, at para. 6.3 ("The Committee observes however that the issues which the author, by her own action, has presented to the authorities in her renewed application, are of substantial import to any decision of the Committee on these claims, as the Committee's decision would be based on assessment of the author's situation as it stands at the time of decision. The Committee refers to its jurisprudence that, where an author has lodged renewed proceedings with the authorities that go to the substance of the claim before the Committee, the author must be held to have failed to exhaust domestic remedies as required by article 5, paragraph 2(b), of the Optional Protocol. The Committee thus declares the communication inadmissible on this basis."); Osivand v The Netherlands Case No. 1289/2004, Decision adopted on 27 March 2006, at para. 8 ("The Committee recalls its constant jurisprudence that where an author has lodged renewed proceedings with the authorities that go to the substance of the claim before the Committee, the author must be considered to have failed to exhaust domestic remedies, as required by article 5, paragraph 2 (b), of the Optional Protocol."); and Romans v Canada Case No. 1040/2001, Decision adopted on 9 July 2004.

¹² Wallman v Austria, Communication No. 1002/2002, Views adopted on 1 April 2004, at paragraph 8.9; see also Singer v Canada, Communication 455/1991, Views adopted on 26 July 1994, at paragraph 11.2.

7. The Committee therefore decides:

(a) That the communication is inadmissible under article 5, paragraph 2(b), of the Optional Protocol;

(b) That this decision shall be communicated to the authors and to the State party.

[Adopted in English, French and Spanish, the English text being the original version. Subsequently to be issued also in Arabic, Chinese and Russian as part of the Committee's annual report to the General Assembly.]
