



International Convention on the Elimination of All Forms of Racial Discrimination

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Committee on the Elimination of Racial Discrimination

Decision on the admissibility of the inter-State communication submitted by Qatar against Saudi Arabia*, **

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| <i>Applicant State:</i> | Qatar |
| <i>Respondent State:</i> | Saudi Arabia |
| <i>Date of communication:</i> | 8 March 2018 (initial submission) |
| <i>Date of adoption of decision:</i> | 27 August 2019 |
| <i>Subject matter:</i> | Effective protection and remedy against any act of racial discrimination; obligation of a State party to act against racial discrimination |
| <i>Procedural issue:</i> | Admissibility of the communication |
| <i>Substantive issue:</i> | Discrimination on the ground of national or ethnic origin |
| <i>Articles of the Convention:</i> | 2, 4, 5, 6 and 11 (3) |

1. The present document has been prepared pursuant to article 11 of the International Convention on the Elimination of All Forms of Racial Discrimination.
2. Qatar (the applicant State) acceded to the Convention on 22 July 1976. Saudi Arabia (the respondent State) acceded to the Convention on 23 September 1997. The applicant State alleges a violation of articles 2, 4, 5 and 6 of the Convention, in the context of enforcement of coercive measures taken by the respondent State in 2017.
3. The present document should be read in conjunction with CERD/C/99/5.
4. On 8 March 2018, the applicant State submitted a communication against the respondent State to the Committee on the Elimination of Racial Discrimination, pursuant to article 11 of the Convention. The present document contains a summary of the main arguments regarding admissibility raised by both parties pursuant to the Committee's decision of 14 December 2018, in which the Committee requested the parties to inform it whether they wished to supply any relevant information on the issues of the jurisdiction of the Committee or the admissibility of the communication.
5. On 29 October 2018, the applicant State referred the matter again to the Committee in accordance with article 11 (2) of the Convention.

* Adopted by the Committee at its ninety-ninth session (5–29 August 2019).

** The following members of the Committee participated in the examination of the communication: Nouredine Amir, Alexei Avtonomov, Marc Bossuyt, José Francisco Calí Tzay, Fatimata-Binta Victoire Dah, Bakari Sidiki Diaby, Rita Izsák-Ndiaye, Keiko Ko, Gun Kut, Yanduan Li, Gay McDougall, Yemhelhe Mint Mohamed, Pastor Elías Murillo Martínez, Verene Albertha Shepherd, María Teresa Verdugo Moreno and Yeung Kam John Yeung Sik Yuen.



I. Submission of the respondent State with regard to the admissibility of the complaint

6. On 19 March 2019, the respondent State transmitted its arguments to the Committee on the issues of jurisdiction and admissibility. On 25 March 2019, the applicant State submitted that the respondent State's submission of 19 March 2019 should be rejected by the Committee, as it had been submitted after the deadline set by the Committee had lapsed. The applicant State also noted that such submission raised new issues, as in it, the respondent State contested the admissibility of the communication.

7. On 1 April 2019, bearing in mind the principle of equality of arms, the Committee's Working Group on Communications, acting on behalf of the Committee, decided that the respondent State's submission of 19 March 2019 could not be taken into account by the Committee as it raised issues not previously raised and had been submitted far beyond the deadline indicated in the Committee's decision of 14 December 2018.¹

II. Decision of the Committee on the admissibility of the communication

8. In its submissions, the respondent State raised the issue of nationality as an exception of inadmissibility of the communication.

9. In its responses of 7 September 2018 and 29 January 2019, the respondent State observed that the Convention contained no reference to differentiations based on present nationality as a prohibited ground of racial discrimination. In its submission of 19 March 2019, the respondent State argued that the applicant State had failed to establish that domestic remedies had been invoked or exhausted.

A. Scope *ratione materiae* of the Convention (the issue of nationality)

10. In its responses of 7 September 2018 and 29 January 2019, the respondent State submitted that the complaint by Qatar did not fall within the scope of the Convention because it did not involve a situation in which a State party was not giving effect to the provisions of the Convention and because the Convention contained no reference to differentiations based on present nationality as a prohibited ground of racial discrimination. In its comments of 14 February 2019, the applicant State replied that the Convention prohibited the coercive measures based upon the respondent State's discriminatory purpose of targeting Qataris on the basis of nationality, and based upon the discriminatory effect on individuals of Qatari national origin.

11. The Committee notes that in article 1 (1) of the Convention, "racial discrimination" is defined as "any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin". "Nationality" as such is not mentioned as a ground of prohibited racial discrimination. Moreover, in article 1 (2), it is stated that the Convention "shall not apply to distinctions, exclusions, restrictions or preferences made by a State party to this Convention between citizens and non-citizens".

12. The Committee is aware that the *travaux préparatoires* of the Convention show that in the different stages of the elaboration of the Convention (with the Sub-Commission on Prevention of Discrimination and Protection of Minorities, the Commission on Human Rights and the Third Committee of the General Assembly), the ground of "national origin" was understood as not covering "nationality" or "citizenship".

¹ In its 14 December 2018 decision, the Committee invited the respondent State to inform the Committee whether it wishes – within a period of one month after receipt of the request to supply any relevant information on issues of jurisdiction of the Committee or admissibility of the communication, including the exhaustion of all available domestic remedies.

13. However, article 1 (3) of the Convention provides that “nothing in this Convention may be interpreted as affecting in any way the legal provisions of States parties concerning nationality, citizenship or naturalization, provided that such provisions do not discriminate against any particular nationality”.

14. Moreover, in its subsequent practice, the Committee has repeatedly called upon States parties to address instances of discrimination against non-citizens on the basis of their nationality. As stated by Patrick Thornberry, a former member of the Committee, in his authoritative commentary on the Convention, a reading of article 1 (2) that rules out from the Convention any concern with non-citizens could be classified in Vienna Convention on the Law of Treaties terms as a “manifestly absurd or unreasonable” reading of the International Convention on the Elimination of All Forms of Racial Discrimination, and as not corresponding to its object and purpose.²

15. In paragraph 4 of its general recommendation No. 30 (2004) on discrimination against non-citizens, the Committee has stated that:

“Under the Convention, differential treatment based on citizenship or immigration status will constitute discrimination if the criteria for such differentiation, judged in the light of the objectives and purposes of the Convention, are not applied pursuant to a legitimate aim, and are not proportional to the achievement of this aim.”

16. It is in line with this standard, which requires “a legitimate aim”, and proportionality in achieving the aim, that the Committee examines whether a distinction based on citizenship constitutes discrimination prohibited by the Convention.

17. Moreover, it is stated in general recommendation No. 30 that States parties shall “ensure that non-citizens are not subject to collective expulsion, in particular in situations where there are insufficient guarantees that the personal circumstances of each of the persons concerned have been taken into account” (para. 26) and “avoid expulsions of non-citizens, especially of long-term residents, that would result in disproportionate interference with the right to family life” (para. 28).

18. Moreover, general recommendation No. 30 notes the duty of the Convention to protect non-citizens against States parties’ arbitrariness. In this regard, any text concerning non-citizens or persons of a particular national or ethnic origin shall not be applicable when incompatible with the provisions of the Convention.

19. It is in light of this constant practice that the Committee exercises its competence *ratione materiae* when confronted with differences of treatment based on nationality. Far from considering any difference of treatment between citizens and non-citizens as contrary to the Convention, which would be in contravention of its article 1 (2), the Committee considers itself competent to examine whether such differences pursue a legitimate aim, are proportional to the achievement of that aim and do not result in a denial of fundamental human rights of non-citizens. Only when those requirements are fulfilled, and when a different treatment does not discriminate against any particular nationality, as required under article 1 (3) of the Convention, do such differences not constitute discrimination prohibited by the Convention. Consequently, the allegations contained in the *Qatar v. Saudi Arabia* inter-State communication do not fall outside the scope of competence *ratione materiae* of the Convention. The preliminary exception of the respondent State based on the absence of “nationality” in the definition of racial discrimination prohibited by the Convention must be rejected.

B. Exhaustion of domestic remedies

20. Article 11 (3) of the Convention requires that the Committee ascertain that “all available domestic remedies have been invoked and exhausted in the case”. In its reply of 19 March 2019, the respondent State argued that the applicant State had failed to establish that domestic remedies had been invoked or exhausted. In its comments of 25 March 2019, the

² Patrick Thornberry, *The International Convention on the Elimination of All Forms of Racial Discrimination: A Commentary* (Oxford University Press, 2016), p. 158.

applicant State requested the Committee to reject that argument, as the submission in which it was presented had been made outside the deadline and the submission raised new issues. On 1 April 2019, the Committee decided not to take into account the submission by the respondent State of 19 March 2019, as it raised issues not previously raised and it had been submitted far beyond the deadline indicated in the Committee's decision of 14 December 2018.

21. The Committee decides that, at the present stage of the examination of the communication, there are no grounds for declaring it inadmissible for non-exhaustion of domestic remedies.

C. Conclusion

22. In respect of the inter-State communication submitted on 8 March 2018 by Qatar against Saudi Arabia, the Committee rejects the exceptions raised by the respondent State concerning the admissibility of the communication.

23. The Committee requests its Chair to appoint, in accordance with article 12 (1) of the Convention, the members of an ad hoc Conciliation Commission, which shall make its good offices available to the States concerned with a view to an amicable solution of the matter on the basis of States parties' compliance with the Convention.

Annex

List of the submissions

1. Communication submitted by Qatar pursuant to article 11 of the International Convention on the Elimination of All Forms of Racial Discrimination, dated 8 March 2018 (57 pages)
 2. Response of Saudi Arabia to the communication dated 8 March 2018 submitted by Qatar pursuant to article 11 of the International Convention on the Elimination of All Forms of Racial Discrimination, dated 7 September 2018 (reiterated on 29 January 2019) (2 pages)
 3. Comments of Qatar on the responses of Saudi Arabia of 7 September 2018 and 29 January 2019, dated 14 February 2019 (29 pages)
 4. Further response of Saudi Arabia, dated 19 March 2019 (9 pages)
 5. Comments of Qatar, dated 25 March 2019 (2 pages)
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