

NEWS REPORT

Date: 6 April 2010
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Title: Iranian students win case against the State
Country: The Netherlands

Context

Issue at stake: Nationality discrimination in a Dutch Regulation based on UNSC Resolution 1737
Ground of discrimination: Nationality
Source: National court decision, District Court the Hague, 3 February 2010
Field: Education
Legislative provisions: Article 1 Dutch Constitution, Article 1 of the Twelfth Protocol to the ECHR, Article 26 ICCPR, Article 12 EC Treaty; Art. 17 of UN Security Council Resolution 1737

Content

Case/law: On 23 December 2006, the UN Security Council adopted a Resolution (UNSCR 1737) in which Iran is encouraged to immediately stop with all activities that may lead to the proliferation of nuclear weapons. UN Member States are called upon to take a number of measures against Iran. Most importantly, Article 17 "(...) urges all States to exercise vigilance and prevent specialised teaching or training of Iranian nationals, within their territories or by their nationals, of disciplines which would contribute to Iran's proliferation sensitive nuclear activities and development of nuclear weapon delivery systems". On the basis of this Resolution, in February 2007, the Council of Europe has adopted a Common Standpoint (2007/140/GBVB); Article 6 of this document is similar to Article 17 of the UN Resolution. On this basis and on the basis of the Dutch "Sanction Law",¹ the Dutch Government amended in June 2008 the Sanction Regulation Iran (i.e. a governmental Decree)² prohibiting certain schools of higher education

¹ To be found at: http://wetten.overheid.nl/BWBR0003296/geldigheidsdatum_22-04-2010 (last accessed on 27 April 2010).

² To be found at: <http://www.iraanestudenten.nl/docs/Sanctieregeling-Iran.pdf> (last accessed on 27 April 2010).

and universities to give access to Iranian students for a particular list of studies. Four Iranian students and a non-registered action group composed of Iranian students brought a law suit before the District Court of the Hague against the Dutch State. The students claimed that the Sanction Regulation was discriminatory on the basis of Article 1 of Dutch Constitution (the non-discrimination principle) and several provisions in International human rights law (Article 26 ICCPR, Article 1 of the 12th Protocol to the ECHR, Article 12 EC Treaty and Article 2 of the First Protocol *juncto* Article 14 ECHR).

They claimed to suffer material damages as a consequence of the Regulation, and they stated that it was stigmatising and caused them unnecessary suffering. The State claimed that it was obliged (on the basis of the UN and Council of Europe documents) to issue this Regulation. The District Court of The Hague first decided that the Dutch Court is the instance to judge the validity of the Regulation, and not (as the State had argued) solely the ECHR. The District Court based its judgement on Article 26 ICCPR, and stated that this prohibition includes an 'objective justification test', meaning that a measure or regulation that makes a distinction on the ground of nationality must have a legitimate aim, that it should be appropriate to reach this aim and that it should be proportionate to it. In this respect, the Dutch Government does have a certain discretionary power (margin of appreciation). The State's argument that on the basis of International Law it is obliged to take this particular measure, and that this obligation is more important than its obligation to respect the principle of non-discrimination, is not valid according to the Court. This is only the case when the international organ has described precisely how the State should fulfil its obligations. However, Article 17 of the UN Resolution leaves ample room for State parties to decide how they will give effect to it. The Resolution does not compel State parties to take a measure which discriminates against inhabitants on the basis of their nationality, which may not be objectively justified. The Court states that the criterion 'nationality' is a suspect criterion, and that only very weighty reasons can justify it. The Regulation excludes a whole class of people from education, while it makes no real risk assessment of all individuals who attend these particular studies. It does not prevent that people of other nationalities contribute to the proliferation of nuclear arms by Iran. Therefore, the Regulation is not appropriate to reach the (legitimate) goal of prevention this from happening.



Decision of the Court: The 4 individual students were unlawfully discriminated against on the ground of nationality. The Action Group of students was not admissible because it did not possess legal personality (not being a Foundation or an Association).

Internet link source and additional information: District Court The Hague, 3 February 2010: Bitaraf c.s. vs The Dutch State, LJN BL1862, to downloaded from: <http://zoeken.rechtspraak.nl/default.asp> (last accessed on 6 April 2010).