

EUROPEAN COMMISSION OF HUMAN RIGHTS

Application No. 15890/89

Jens Olaf Jersild

against

Denmark

REPORT OF THE COMMISSION

(adopted on 8 July 1993)

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I. INTRODUCTION

1. The following is an outline of the case as submitted to the European Commission of Human Rights, and of the procedure before the Commission.

A. The application

2. The applicant is a Danish citizen, born in 1959. He is a journalist and resides in Copenhagen. In the proceedings before the Commission the applicant is represented by Mr. Kevin Boyle, professor at the University of Essex, United Kingdom, and Mr. Tyge Trier, a lawyer practising in Copenhagen.

3. The application is directed against Denmark. The respondent Government are represented by their Agent, Mr. Tyge Lehmann of the Ministry of Foreign Affairs.

4. The case concerns the applicant's conviction of having aided and abetted the dissemination of racist remarks. The applicant considers that this conviction violates his right to freedom of expression and he invokes Article 10 of the Convention.

B. The proceedings

5. The application was introduced on 25 July 1989 and registered on 11 December 1989. On 7 October 1991 the Commission decided in accordance with Rule 48 para. 2 (b) of its Rules of Procedure to give notice of the application to the respondent Government and to invite them to present their observations in writing on the admissibility and merits of the application.

6. The Government submitted their observations on 20 December 1991. The applicant's written observations in reply were submitted on 17 February 1992.

7. On 8 September 1992 the Commission attended a showing of the filmed feature as broadcast on 21 July 1985. It decided to declare the application admissible. The parties were then invited to submit any additional observations on the merits which they wished to make.

8. On 5 December 1992 the Commission decided in accordance with Rule 53 para. 3 of its Rules of Procedure to obtain the parties' oral submissions on the merits of the case.

9. The hearing took place on 6 April 1993. The applicant was present and was represented by Mr. Kevin Boyle and Mr. Tyge Trier, both as counsel. The Government were represented by their Agent, Mr. Tyge Lehmann, by Mr. Michael Elmer as counsel and by Mr. Laurids Mikaelson, Ms. Julie Rechnagel, Mr. Johan Reimann and Mr. John Lundum as advisers.

10. After declaring the case admissible the Commission, acting in accordance with Article 28 para. 1 (b) of the Convention, placed itself at the disposal of the parties with a view to securing a friendly settlement of the case. Consultations with the parties took place between 11 September 1992 and 6 April 1993. In the light of the parties' reaction, the Commission now finds that there is no basis upon which such a settlement can be effected.

C. The present Report

11. The present Report has been drawn up by the Commission in pursuance of Article 31 of the Convention and after deliberations and votes, the following members being present:

MM. S. TRECHSEL, Acting President
C. A. NØRGAARD
F. ERMACORA
G. JÖRUNDSSON
A. S. GÖZÜBÜYÜK
J.-C. SOYER
H. G. SCHERMERS
H. DANELIUS
Mrs. G. H. THUNE
Sir Basil HALL
MM. F. MARTINEZ RUIZ
C. L. ROZAKIS
Mrs. J. LIDDY
MM. J.-C. GEUS
M. P. PELLONPÄÄ
B. MARXER

12. The text of this Report was adopted on 8 July 1993 and is now transmitted to the Committee of Ministers of the Council of Europe, in accordance with Article 31 para. 2 of the Convention.

13. The purpose of the Report, pursuant to Article 31 of the Convention, is:

- i) to establish the facts, and
- ii) to state an opinion as to whether the facts found disclose a breach by the State concerned of its obligations under the Convention.

14. A schedule setting out the history of the proceedings before the Commission is attached hereto as Appendix II and the Commission's decision on the admissibility of the application as Appendix III.

15. The full text of the parties' submissions, together with the documents lodged as exhibits, are held in the archives of the Commission.

II. ESTABLISHMENT OF THE FACTS

A. The Particular Circumstances of the Case

16. Inspired by an article which appeared in the newspaper Information on 31 May 1985 the applicant decided to make a television programme which would describe the attitudes of a group of young people, who called themselves "the greenjackets" (grønjakkerne), in respect of racism at Østerbro in Copenhagen, and give a general description of the social standing of these young people. The applicant contacted representatives of the greenjackets, three of whom he invited to participate, in addition to a social worker responsible for the area, in a tape-recording of their viewpoints. The interview and its recording lasted between 5 and 6 hours resulting in 2-2 1/2 hours of tape and in the course of the interview, which was conducted by the applicant, the greenjackets spoke in abusive and derogatory terms about immigrants and ethnic groups in Denmark.

17. The applicant subsequently edited and cut the interview to a filmed feature of a few minutes which was broadcast in Denmark's Radio's news magazine "Søndagsavisen" on 21 July 1985. The text of the broadcast (as to the original version see Appendix I) reads as follows:

(translation)

*

"In recent years, we have talked a great deal about racism in Denmark. The papers are currently bringing stories about

distrust and resentment aimed at minorities. Who are they, those who hate the minorities? Where do they come from? What is their mentality like? Mr. Jens Olaf Jersild has visited a group of extremist youths at Østerbro in Copenhagen.

The flag on the wall is the flag of the Southern States from the American Civil War, but today it is also the symbol of racism, the symbol of the American movement, the Ku Klux Klan, and it shows what Lille Steen, Henrik and Nisse are.

Are you a racist?

- Yes, that's what I regard myself as.
- It's good being a racist.
- We feel Denmark is for the Danes.

(A) Henrik, Lille Steen and all the others are members of a group of young people who live in Studsgårdsgade, called STUDBSEN, at Østerbro in Copenhagen. It is public housing, a lot of the inhabitants are unemployed people on social security, the crime rate is high. Some of the young people in this neighbourhood have already been involved in criminal activities and have received their first convictions.

(G) - It was an ordinary armed robbery at a petrol station.

(A) What did you do?

(G) - Nothing. I just ran into a petrol station with a ... gun and made them give me some money. Then I ran out again. That's all.

(A) What about you, what happened?

(G) - I don't wish to discuss that further.

(A) But, was it violence?

(G) - Yes.

(A) You have just come out of ... you have been arrested, what were you arrested for?

(G) - Street violence.

(A) What happened?

(G) - I had a little fight with the police together with some friends.

(A) Does that happen often?

(G) - Yes, out here it does.

(A) All in all, there are 20-25 young people from STUDBSEN in the same group.

They meet not far away from the public housing area near some old houses which are to be torn down. Here, they meet to confirm among other things their racism, hating the immigrants and supporting the Ku Klux Klan.

(G) - The Ku Klux Klan, that's something that comes from the States in the old days during - as you know - the civil war and things like that, because the Northern States wanted that the niggers should be free human beings, man, they are not human beings, they are animals, right, it's completely wrong, man, the things

that's happened. People should be allowed to keep slaves, I think so anyway.

- (A) Because blacks are not human beings?
- (G) - No, you can also see it on their body structure, man, big flat noses, with cauliflower ears etc., man. Broad heads and very broad bodies, man, hairy, you are looking at a gorilla and compare with an ape, man, then it is the same procedure, man, it's the same movements, long arms, man, long fingers etc., long feet.
- (A) A lot of people are saying something different. There are a lot of people who say, but ...
- (G) - Just take a picture of a gorilla, man, and then look at a nigger, it's the same body structure and everything, man, flat forehead and all kinds of things.
- (A) There are many blacks, for example, in the USA, who are holding important jobs.
- (G) - Of course, there is always someone who wants to show off, as if they are better than the white man, but in the long run, it is the white man who is better.
- (A) What does Ku Klux Klan mean to you?
- (G) - It means a great deal, because I think it is right what they do. A nigger, that is not a human being, it is an animal, that goes for all the other alien workers as well, Turks, Yugoslavs and whatever they are called.
- (A) Henrik is 19 years old and on welfare. He lives in a rented room in Studsgårdsgade. Henrik is one of the strongest supporters of the Klan, and he hates the foreign workers, 'Perkerne'.
- (G) - They come up here, man, and sponge on our society. But we, we have enough problems in getting our social benefits, man, they just get it. Fuck, we can argue with those idiots up there at the social benefit office to get our money, man, they just get it, man, they are the first on the housing list, they get better flats than us, man, and some of our friends who have children, man, they are living in the worst slum, man, they can't even get a shower in their flat, man, then those 'Perkere'-families, man, go up there with seven kids, man, and they just get an expensive flat, right there and then. They get everything paid, and things like that, that can't be right, man, Denmark is for the Danes, right?

It is the fact that they are 'Perkere', that is what we don't like, right, and we don't like their mentality - I mean they can damn well, I mean ... what's it called ... I mean if they feel like speaking Russian in their homes, right, then it's okay, but what we don't like, that is when they walk around in those Zimbabwe-clothes and then speak this hula-hula language in the street, and if you ask them something or if you get into one of their taxis, in which you drive, then they say: I don't know where it is, you give directions right.

- (A) Is it not so that perhaps you are a bit envious that some of the 'Perkere' as you call them have their own shops, and cars, they can make ends ...
- (G) - It's drugs they are selling, man, half of the population who are in prison in 'Vestre' are in there because of drugs,

man, half of those in Vestre prison anyway, they are the people who are serving time for dealing with drugs or something similar.

They are in there, all the 'Perkere', because of drugs, right. It must be sufficient, what's it called, there should not be drugs here in this country, but if it really has to be smuggled in, I think we should do it ourselves, I mean, I think it's unfair that those foreigners come up here to ... what's it called ... make Denmark more drug dependent and things like that.

We have painted their doors and hoped that they would get fed up with it, so that they would soon leave, and jumped on their cars and thrown paint in their faces, when they were lying in bed sleeping.

- (A) What was it you did with that paint - why paint?
- (G) - Because it was white paint, I think that suited them well, that was the intended effect.
- (A) You threw paint through the windows of an immigrant family?
- (G) - Yes.
- (A) What happened?
- (G) - He just got it in his face, that's all. Well, I think he woke up, and then he came out and shouted something in his hula-hula language.
- (A) Did he report it to the police?
- (G) - I don't know if he has, I mean, he won't get anything out of that.
- (A) Why not?
- (G) - I don't know, it's just kid's stuff, like other people throwing water in people's faces, he got paint in his. They can't make anything out of that.

- (A) Per Axholt, known as 'Pax', is employed in the youth centre in Studsgårdsgade. He has been employed there for several years, but many give up a lot sooner because of the tough environment. Per Axholt feels that the reasons why the young people are persecuting the immigrants are because they are themselves powerless and disappointed.

What do you think it is that they want, if you asked them?

- * - The same as you and I want. Some control over their lives, some work which may be considered to be decent and which they like, a reasonable economic result, a reasonably functioning family, a wife or a husband and some children, a reasonable middle class life such as you and I know it.
- (A) They do many things which certainly prevent them from getting it.
- (P) - That is correct.
- (A) Why do you think they do this?

(P) - Because they have nothing better to do. They have been told over a long period that the means by which they achieve success is through money. They won't be able to get money legitimately, so often they try to obtain it through criminal activity. Sometimes they succeed, sometimes not, and that's why we see a lot of young people in that situation go to prison, because it doesn't work.

(A) How old were you when you started your criminal activities?

(G) - I don't know, about 14 I guess.

(A) What did you do?

(G) - The first time, I can't remember, I don't know, burglary.

(A) Do you have what one might call a criminal career?

(G) - I don't know if you can call it that.

(A) You committed your first crime when you were 14.

(G) - Well, you can put it that way, I mean, if that is a criminal career. If you have been involved in crime since the age of 15 onwards, then I guess you can say I've had a criminal career.

(A) Will you tell me about some of the things you have been doing?

(G) - No, not really. It's been the same and the same. For example video-pinning where the 'Perkere' were our customers, they have money. If people want to be out here and have a nice time and be racists and drink beer, and have fun, then it's quite obvious you don't want to sit in the slammer.

(A) But is the threat of imprisonment something that really deters people from doing something illegal?

(G) - No, it's not the prison, that doesn't frighten people.

(A) Is that why you hear stories about people from out here fighting with knives etc., night after night. Is the reason for this the fact that they are not afraid of the police getting hold of them?

(G) - Yes, nothing really comes out of it, I mean, there is no bad side-effects, so probably that's why. For instance fights and stabbings and smashing up things ... If you really get into the joint it would be such a ridiculously small sentence, so it would be, I mean ... usually we are released the next day. Last time we made some trouble over at the pub, they let us out the next morning. Nothing really comes out of it. It doesn't discourage us, but we were five, who just came out and then we celebrated the last guy, who came out yesterday, they probably don't want to go in again for some time, so big crimes, they probably won't commit again.

(A) You would like to move back to Studsgårdsgade where you grew up, but we know for sure that it's an environment with a high crime rate. Would you like your child to grow up like you?

(G) - No, and I don't think she will. Firstly, because she is a girl, statistics show that the risk is not that high, I mean they probably don't do it, but you don't have to be a criminal because you live in an environment with a high crime rate. I

just wouldn't accept it, if she was mugging old women and stealing their handbags.

- (A) What if she was among those beating up the immigrants etc. what then?
- (G) - That would be okay. I wouldn't have anything against that.

- (I) We will have to see if the mentality of this family changes during the next generation. Finally, we would like to say that groups of young people have been created elsewhere in Copenhagen like this one in STUDBEN at Østerbro."

18. The broadcast and its contents led to an investigation being carried out by the police following a complaint submitted by the bishop of Ålborg to the Minister of Justice. On 19 February 1986 the Public Prosecutor instituted criminal proceedings against the three youths interviewed charging them with a violation of section 266 (b) of the Danish Penal Code by expressing in the filmed feature the following statements:

(translation)

"... the niggers should be free human beings, man, they are not human beings, they are animals."

"Just take a picture of a gorilla, man, and then look at a nigger, it's the same body structure and everything, man, flat forehead and all kinds of things."

"A nigger, that is not a human being, it is an animal, that goes for all the other alien workers as well, Turks, Yugoslavs and whatever they are called."

"It is the fact that they are 'Perkere', that is what we don't like, right, and we don't like their mentality ... what we don't like, that is when they walk around in those Zimbabwe-clothes and then speak this hula-hula language in the street."

"It's drugs they are selling, man, half of the population who are in prison in 'Vestre' are in there because of drugs ... they are the people who are serving time for dealing with drugs."

"They are in there, all the 'Perkere', because of drugs."

19. The applicant was charged with aiding and abetting the three youths, as was also the head of the news section of Danmarks Radio, in violation of section 266 (b) of the Penal Code read in conjunction with section 23 of the Penal Code.

20. On 24 April 1987 the City Court of Copenhagen (Københavns Byret) found the three youths guilty of the charge brought against them. In its judgment in which the youths were referred to as A, B, and C the City Court stated inter alia:

(translation)

"As far as the defendant Mr. Jens Olaf Jersild is concerned it is maintained, as stipulated in the indictment, that (he) has rendered (himself) guilty of aiding and abetting the violation of section 266 (b) of the Danish Penal Code. In this connection attention is drawn to the fact that the defendant Mr. Jens Olaf Jersild, on the basis of an article in 'Information' in which the group of young people in question,

the so-called greenjackets, inter alia stated their opinion on 'alien workers', took the initiative himself to invite these young people to elaborate on their views in this respect in a television programme. It is thus maintained that the defendant Mr. Jens Olaf Jersild was fully aware of the racist viewpoints of the young people in question and thus knowingly caused these viewpoints to be broadcast indiscriminately in the television programme. No balancing whatsoever of the viewpoints was made in the programme e.g. by allowing other persons of a different opinion to be heard. It should be noted that the interview with Mr. Per Axholt, who worked as a club assistant in the youth club 'Studsen', is of no relevance in this connection. During the recording, during which Danmarks Radio served beer and later paid so-called 'interviewee fees', the defendant Mr. Jens Olaf Jersild did not, as a matter of fact, just play the role of a 'passive microphone holder' as on one occasion when A 'lost the thread' he managed to bring the defendant back to the basic point of view by stating in an inquisitorial manner: 'Negroes aren't people'.

...

Counsel for the defendant Mr. Jens Olaf Jersild ... has claimed acquittal even if a judgment should be delivered against the defendants A, B, and C as the conduct of the defendant Mr. Jens Olaf Jersild ... in no way can be compared with the conduct of the three other defendants with whose points of view Mr. Jens Olaf Jersild ... does not sympathise. The defendant Mr. Jens Olaf Jersild ... just wanted to describe a fact in society in a realistic way and, as a matter of fact, the programme only caused disgust and aroused pity in respect of the defendants A, B, and C, who were 'exposed to ridicule' on their own conditions. Thus, it has in no way been Danmarks Radio's intention to disseminate the points of view of the greenjackets with a view to making others 'convert' to the same viewpoints -on the contrary. For details concerning this matter, it appears from the preparatory works of the (Penal Code) inter alia that the section in question shall be subject to a narrow interpretation in respect of the freedom of expression just as reference is made to the original wording of the Convention of 21 December 1965 of the United Nations compared with a decision of the Norwegian Supreme Court of 25 September 1978. Furthermore, as held in the decision reported in the Danish weekly law journal, UfR 1980/1065 V, it is maintained that a distinction has to be made between the persons making the statements and the editors and, as regards the latter, a special freedom of expression applies. Furthermore, according to the legislation it is in fact the duty of Danmarks Radio - as a monopoly - to communicate all views that might be of social interest and which are put forward soberly in the speakers' own ways. Furthermore, it is maintained that the purpose of introducing section 266 (b) of the Penal Code was not to render the conduct of the defendant Mr. Jens Olaf Jersild ... punishable; if so, this would be atypical in substantive terms. Reference can e.g. be made to the fact that the programme was part of a debate already in progress in society which e.g. had resulted in articles in 'Information' and 'Ekstra Bladet'. The programme only covered the actual conditions in a loyal way, and reality for the young people in question was furthermore relevantly illustrated through the interview with Mr. Per Axholt, the club assistant. Finally, it is maintained that in cases of this nature the prosecution does not follow a consistent practice in respect of pressing charges; see e.g. the above-mentioned articles in 'Information' and 'Ekstra Bladet'. Furthermore, reference is made to the general social interest in being informed of attitudes notorious in society even where these cannot be considered to be sympathetic.

The Court holds:

By way of introduction the Court finds that, on the basis of the preparatory work of the Penal Code, section 266 (b) should be subject to a narrow interpretation in such a way that the provision does not apply to e.g. minor offences. Just as the provision does not apply to scientific theories advanced on racial, national or ethnic differences it must probably also be assumed that it neither applies to statements which are not of a scientific nature in the proper sense of the word but where these statements are made in the course of an objective debate.

The statement made by the defendant A in the television programme that 'niggers', 'alien workers' are animals, and the statements made by the defendants B and C on drugs in relation to 'Perkere' are found to insult and degrade a class of persons on account of their race, colour, national or ethnic origins. Consequently, they are found to have violated section 266 (b) of the Penal Code. However, the other statements made by the defendant B under the indictment are not found to be of such a serious nature that they are punishable in pursuance of section 266 (b).

When considering the conduct of the defendant Mr. Jens Olaf Jersild ... the Court finds, on the basis of the evidence given during the trial, that the defendant Mr. Jens Olaf Jersild, following an article in 'Information' of 31 May 1985 in which inter alia the racist viewpoints of the greenjackets were described, visited the greenjackets in Studsgårdsgade and then, after a discussion with Mr. Per Axholt, the club assistant, among others, agreed that the defendants A, B, and C should participate in a television programme. Furthermore, the Court finds that the object of the television programme was to describe the attitude of the greenjackets to racism at Østerbro - as stated in the article in 'Information' - as well as to give a general description of the social standing of these young people. The Court thus finds that the defendant Mr. Jens Olaf Jersild took the initiative to the television programme himself and it furthermore finds that Mr. Jens Olaf Jersild beforehand knew that discriminatory statements of a racist nature could be expected to be made during the interview. In connection with the interview, which took several hours during which beer was consumed and partly paid for by Danmarks Radio, the defendant Mr. Jens Olaf Jersild, is found to have encouraged the greenjackets to express their racist viewpoints which, by being broadcast on television, in itself implies a violation of section 266 (b) of the Penal Code. Thus, by having aided and abetted the dissemination of the above-mentioned statements in the circumstances stated above - which were furthermore, without any 'balancing' whatsoever, transmitted indiscriminately in the television programme on the basis of the cutting of the recordings made by the defendant Mr. Jens Olaf Jersild - the defendant Mr. Jens Olaf Jersild is thereby found guilty of having aided and abetted the violation of section 266 (b) of the Penal Code."

21. The three greenjackets did not appeal against the Court's judgment. The applicant, who was sentenced to a fine totalling 1,000 Danish crowns, appealed against it to the High Court of Eastern Denmark (Østre Landsret), before which he basically made the same submissions as in the City Court. He further explained that he beforehand suspected that the racist statements made in the programme were punishable. When he decided not to cut out these statements it was because he found it of the utmost importance to illustrate the actual attitudes of the so-called greenjackets. He did not warn the parties concerned against making the statements as he expected that

they knew that they could be punished.

22. On 16 June 1988 the High Court delivered its judgment. The majority, five judges, upheld the conviction, whereas one judge held that the applicant should be acquitted. The judgment reads as follows:

(translation)

"Also on the basis of the evidence produced in the High Court, the Court finds it established that the defendant Mr. Jens Olaf Jersild is guilty for the reasons stated in the judgment of the City Court. These judges therefore find, as the penalty in pursuance of section 266 (b), cf. section 23 of the Penal Code is found to be appropriate, that the judgment should be upheld ...

One judge, who agrees that the statements made must be deemed to be punishable does not find that the defendant by broadcasting the statements on television has transgressed the bounds of the freedom of expression to which television and other media must be entitled, considering the fact that the object of the programme was to create a social debate and to inform the public of the youth group's particular attitudes to racism and the group's social standing."

23. With leave to appeal the applicant appealed against this judgment to the Supreme Court (Højesteret). On 13 February 1989 the Supreme Court delivered its judgment. The majority, four judges, confirmed the applicant's conviction whereas one judge voted in favour of the applicant's acquittal. The judgment reads as follows:

(translation)

"Four judges hold:

The defendant has caused the publication of the racist statements made by a narrow circle of persons which thereby rendered them punishable and [he] has thus, as held by the City Court and the High Court, violated section 266 (b) in conjunction with section 23 of the Penal Code. These judges do not find that the protection of freedom of expression in respect of issues and events of general public interest as opposed to the protection against racial discrimination in this case could nevertheless justify an acquittal of the defendant. These judges therefore vote in favour of upholding the judgment.

(One judge) holds:

The object of the programme was to contribute to the information on an issue - the attitude towards strangers - which was the subject of an extensive and at times very emotional debate. The programme must be presumed to have given a clear picture of the viewpoints of the greenjackets which the public thus had an opportunity to be acquainted with and make up its mind about. Considering the nature of the viewpoints, any countering during or immediately before or after the interview would not have served a reasonable purpose. Even though it concerned a relatively small group of people with extreme viewpoints, the programme had a fair news and information value. When assessing the conduct of the defendant it is found that the fact that these viewpoints were disseminated at [his] own initiative is not of the utmost importance. In these circumstances and irrespective of the fact that the statements are rightly considered to fall under section 266 (b) of the Penal Code, I doubt the advisability of

finding the defendant guilty of aiding and abetting the violation of the provision in question. I therefore vote in favour of acquittal."

24. Subsequently a commentary to the judgment, by one of the Supreme Court's judges who had participated in the case, was published in the official law journal on 20 January 1990. In this commentary the judge explained *inter alia*:

(translation)

"For the majority there was no doubt, which in fact also applied to the minority, that the statements for which the defendant had been convicted by the City Court of Copenhagen and by the High Court had rightly been considered to fall under section 266 (b) of the Penal Code.

As will be seen from the grounds given by the majority, it attached importance to the fact that it was the defendant who caused the racist statements to be made in public and thereby in a punishable manner. It was not a direct reporting of a meeting. The journalist had contacted the three youths himself and caused them to make statements like those they had previously made to 'Information' and which the journalist knew of and probably also expected them to repeat. He had then himself cut the many hours of recording down to a few minutes, keeping the 'crude' comments as one of the interviewed persons put it. Without the initiative taken by the journalist these statements would not have been repeated in a wider circle. If the same statements had been made only in a narrow circle, they would hardly have been punishable as section 266 (b) in fact requires the statements to have been made in public or with a view to dissemination to a wider circle. However, the statements became clearly punishable when they were broadcast on television as a result of the journalist's initiative and the approval of the head of the news section. The fact that the accused radio employees had, in an objective manner, aided and abetted the dissemination of statements which were insulting and degrading to a group of persons on account of their race, colour, national or ethnic origins and that they had the intention which was required to make it punishable was in the opinion of the majority beyond doubt.

If, nevertheless, the defendant were to be acquitted, this would require, in the opinion of the majority, that there were opposing considerations that outweighed decisively the wrongfulness of the defendant's actions. The defendant's reference to the freedom of expression and the resulting right to express all kinds of opinions which might be of social interest and which are made objectively, necessitated in that connection a specific weighing as to whether consideration for those who were grossly insulted by the statement outweighed the need to inform the public of the statements. It is beyond dispute that it is desirable to give the press as good conditions as possible in order to enable it to 'cover' what is going on in society. It is not, however, tantamount to giving it a free rein. The freedom of expression is a freedom with responsibility.

The balancing of the opposing considerations and the assessment made by the majority necessarily had to include the fact that the statements which were intended to be made to a wider circle were nothing but a number of inarticulate defamatory remarks and insults and that they had been made by representatives of a quite insignificant group of young persons whose opinion can hardly be of any interest to many people.

The result of the balancing of the opposing considerations was that the programme did not have such a news or information value that in relation to the protection against racial discrimination it would justify the dissemination of racist statements, and thereby lead to the acquittal of the defendant.

The finding of the majority, which is thus based on a specific assessment, does not mean that extremist viewpoints cannot be reported by the press, no matter how unpleasant they might be, but it must be done in a more balanced and all-round form than was the case in the television programme of 21 July 1985. It must also be possible to do it by direct reporting of meetings of some public interest.

As will be seen from the above, one of the participating five judges voted in favour of acquitting the defendant.

As will be seen, the minority also made an overall assessment of the case, including a balancing of the opposing considerations but found - unlike the majority - on the basis of this balancing that the protection of the right to information in the specific case should carry more weight than the protection set out in section 266 (b) of the Penal Code.

The question of the relationship with the European Convention on Human Rights, including its Article 10 concerning freedom of expression, was not introduced during the trial."

B. Relevant domestic law

25. Section 266 (b) of the Penal Code provides:

"Den, der offentligt eller med forsæt til udbredelse i en videre kreds fremsætter udtalelse eller anden meddelelse, ved hvilken en gruppe af personer trues, forhånes eller nedværdiges på grund af sin race, hudfarve, nationale eller etniske oprindelse eller tro, straffes med bøde, hæfte eller fængsel indtil 2 år."

(translation)

"Any person who, publicly or with the intention of wider dissemination, makes a statement or other communication by which a group of persons are threatened, insulted or degraded on account of their race, colour, national or ethnic origin or belief shall be liable to a fine or to simple detention or to imprisonment for any term not exceeding two years."

26. Section 23, subsection 1, of the Penal Code provides:

"Den for en lovovertrædelse givne straffebestemmelse omfatter alle, der ved tilskyndelse, råd eller dåd har medvirket til gerningen. Straffen kan nedsættes for den, der kun har villet yde en mindre væsentlig bistand eller styrke et allerede fattet forsæt, samt når forbrydelsen ikke er fuldbyrdet eller en tilsigtet medvirken er mislykkedes."

(translation)

"The penalty in respect of an offence shall apply to any person who has contributed to the execution of the wrongful act by instigation, advice or action. The punishment may be reduced for any person who only intended to give assistance of minor importance, or strengthen an intent already resolved, if the offence has not been completed or an intended assistance failed."

III. OPINION OF THE COMMISSION

A. Complaint declared admissible

27. The Commission declared admissible the applicant's complaint concerning the interference with his freedom of expression.

B. Point at issue

28. In the present case the Commission is called upon to consider whether or not the applicant's conviction and sentence for having aided and abetted the dissemination of racist remarks violated his right to freedom of expression within the meaning of Article 10 (Art. 10) of the Convention.

C. Article 10 (Art. 10) of the Convention

29. Article 10 (Art. 10) of the Convention reads as follows:

"1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.

2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary."

30. Before considering the specific circumstances of the present case the Commission recalls the general principles relating to Article 10 (Art. 10) of the Convention which appear from the Commission's own case-law and that of the European Court of Human Rights (see e.g. Eur. Court H.R., Observer and Guardian judgment of 26 November 1991, Series A no. 216, with further references).

(a) Freedom of expression constitutes one of the essential foundations of a democratic society; subject to paragraph 2 of Article 10 (Art. 10-2), it is applicable not only to "information" or "ideas" that are favourably received or regarded as inoffensive or as a matter of indifference, but also to those that offend, shock or disturb. Freedom of expression, as enshrined in Article 10 (Art. 10), is subject to a number of exceptions which, however, must be narrowly interpreted and the necessity for any restriction must be convincingly established.

(b) These principles are of particular importance as far as the media are concerned. Whilst they must not overstep the bounds set, inter alia, for the protection of the reputation or rights of others, it is nevertheless incumbent on them to impart information and ideas on matters of public interest. Not only do they have the task of imparting such information and ideas, the public also has a right to receive them. Were it otherwise, the media would be unable to play their vital role of "public watchdog".

(c) The adjective "necessary", within the meaning of Article 10 para. 2 (Art. 10-2) implies the existence of a "pressing social

need". The Contracting States have a certain margin of appreciation in assessing whether such a need exists, but it goes hand in hand with a European supervision, embracing both the law and the decisions applying it, even those given by independent courts. The Convention organs are therefore empowered to give the final ruling on whether a "restriction" is reconcilable with freedom of expression as protected by Article 10 (Art. 10).

(d) The Convention organs' task, in exercising their supervisory function, is not to take the place of the competent national authorities but rather to review under Article 10 (Art. 10) the decisions they delivered pursuant to their power of appreciation. This does not mean that the supervision is limited to ascertaining whether the respondent State exercised its discretion reasonably, carefully and in good faith; what the Convention organs have to do is to look at the interference complained of in the light of the case as a whole and determine whether it was proportionate to the legitimate aim pursued and whether the reasons adduced by the national authorities to justify it were relevant and sufficient.

31. Turning to the facts of the present case the Commission finds that there has been an interference by a public authority with the exercise of the applicant's freedom of expression within the meaning of Article 10 (Art. 10). This interference resulted from his conviction and the sentence to pay a fine imposed on the applicant by the City Court of Copenhagen on 24 April 1987, upheld by the High Court of Eastern Denmark on 16 June 1988 and by the Supreme Court on 13 February 1989, for aiding and abetting the three youths in exposing defamatory remarks about immigrants in Denmark.

32. The Commission also finds that the interference was in accordance with law as it was based on section 266 (b) in conjunction with section 23, subsection 1, of the Danish Penal Code. The restriction furthermore pursued a legitimate aim covered by Article 10 para. 2 (Art. 10-2) of the Convention, namely the protection of the reputation and rights of others.

33. Accordingly, what remains to be examined is whether the restriction complained of could be considered to be "necessary in a democratic society" as required by Article 10 para. 2 (Art. 10-2) of the Convention.

34. The applicant submits in this respect in particular that in pursuit of the legitimate aim of protecting the reputation and rights of others it is not necessary in a democratic society to penalise a journalist where he seeks in good faith to investigate an issue of major public concern and to ensure public and governmental response. The applicant contends that the programme item condemned in court was in fact directed at protecting the rights of the immigrant community, through exposure of the attitudes of the greenjackets which in turn explained their violent behaviour towards immigrants. At the same time the feature sought to give information to the public about the social deprivation of the youths and to raise questions about the effectiveness of the policies of the authorities, particularly the police.

35. The applicant also submits that the interpretation of section 266 (b) in conjunction with section 23 of the Penal Code by the Danish courts did not give proper weight to the purpose of the broadcast, which was not aiming at insulting or degrading persons, but was designed to make a portrait of the greenjackets and to convey to the public an appreciation through images and words of this new phenomenon in Denmark, the espousal of violent racism. To achieve such a portrait of the group it was necessary for the medium in question, television, to broadcast the views of the group even if these were, outside the context of the broadcast, offensive. To have excluded such speech in the final editing would have made the

portrait incomplete and ultimately of no value as a means of communicating to the public the group's attitudes, however reprehensible they were, particularly as the "Søndagsavisen" feature in July 1985 was the first investigation by television of the phenomenon of violence and harassment against immigrants.

36. The applicant thus considers that his conviction was a disproportionate interference with his freedom of expression.

37. The Government submit in particular that present-day actions against racist activities are based on the international community's bitter experience of the dire consequences of such acts which have led to great suffering. This phenomenon is not only something which belongs to the past but is a reality of today as recent trends in various European countries show. This had led to the adoption of declarations within the United Nations and the European Communities against racism as well as motions in the Danish Parliament, condemning all forms of discrimination. The Government agree that it is desirable to give the media as good conditions as possible in order to enable them to report on what is happening in society, but this is not tantamount to giving them a free rein.

38. With reference to the comments on the Supreme Court's judgment of 13 February 1989, published in the Danish Law Journal on 20 January 1990, the Government furthermore submit that the Danish Penal Code is not applied automatically in respect of reports and articles in the media. Consideration for freedom of expression and freedom of the media makes it natural to weigh the need for protection of the individual against the public's right to be informed. The result must depend on which consideration is found to carry most weight in the specific circumstances.

39. In the present case the Government maintain that the statements, which were intended to be made to a wider circle, were nothing but a number of inarticulate defamatory remarks and insults made by representatives of a quite insignificant group of young persons. Therefore, so the Government contend, the weighing of the opposing interests lead to the conclusion that the programme did not have such a news or information value that it could justify, in relation to the protection against racial discrimination, the dissemination of the racist statements. The Government thus finds, having regard to the State's margin of appreciation, that the interference with the applicant's right to freedom of expression was necessary in a democratic society within the meaning of Article 10 para. 2 (Art. 10-2) of the Convention.

40. Inspired by certain newspaper articles, the applicant took the initiative in producing the television programme, that he contacted the members of the greenjackets and spent 5-6 hours in making the interviews which resulted in 2-2 1/2 hours of tape, that he edited and cut the tapes down to the filmed feature of 5-6 minutes which was broadcast on 21 July 1985 and that he was subsequently convicted and sentenced to a fine totalling 1,000 Danish crowns for aiding and abetting the dissemination of racist remarks contrary to section 266 (b) in conjunction with section 23 of the Penal Code.

41. When examining the necessity of convicting the applicant for having aided and abetted the dissemination of racist remarks the Commission cannot confine itself to considering those remarks alone. As they were not made by the applicant himself, there is a particular need to look at these remarks in the light of the context of the programme and all the circumstances of the case. In this respect the Commission has taken into consideration that the Government have ratified the International Convention on the Elimination of All Forms of Racial Discrimination of 1965 whereby they are obliged to "condemn racial discrimination and undertake to pursue by all appropriate means and without delay a policy of eliminating racial discrimination

in all its forms and promoting understanding among all races". Nevertheless, although the television programme affected the reputation or rights of others due to its discriminatory contents, a fair balance between their rights and the applicant's right to impart information must be struck. The limits of what can be accepted may vary depending on the circumstances of the case.

42. As regards the reputation or rights of others the Commission recalls the actual contents of the programme which included statements about immigrant workers which were highly insulting. However, when considering these remarks in the context of the whole programme the reputation or rights of others were not significantly affected. The remarks were made by members of an insignificant group of persons with a clear criminal record and, in the Commission's view, rather had the effect of ridiculing their authors. The picture which the applicant's programme presented to the public was more that of drawing attention to racism, intolerance and simplemindedness, exemplified by the remarks in question, than an attempt to show disrespect for the reputation or rights of others. In such circumstances the Commission finds that the reputation or rights of others, as legitimate aims for restricting the freedom of expression, carry little weight.

43. As regards the applicant's right to impart information the Commission finds that the television programme touched upon an issue of great public concern. Not only due to problems in Denmark but also in many other places in the world, the rise of racial hatred had prompted the international community to take action in order to counter racism and xenophobia. The underlying problems may not have been new in Denmark when the filmed feature was broadcast but, in the Commission's view, it nevertheless had an information value and there was a need to impart information and ideas on such issues to the public.

44. Furthermore, although the applicant deliberately left the disputed statements in the programme, the Commission finds it established that his intentions were not to disseminate racist ideology but rather to counter it through exposure. This conclusion is also supported by the fact that the statements in question were hardly of a kind which would call for views of an opposite nature. The Commission has no doubt that the final message which was conveyed was that of anti-racism and contempt for the type of individuals willing to identify themselves with the remarks made. In such circumstances it is of great importance that the media are not discouraged, for fear of criminal or other sanctions, from imparting opinions on issues of public concern.

45. In the light of the above, the Commission takes the view that although the specific remarks made by the greenjackets, read out of context, were highly offensive, the way in which they were presented and the objective pursued by the applicant were, in the circumstances, sufficient to outweigh the effect, if any, on the reputation or rights of others. Accordingly, the Commission concludes that the reasons advanced by the Government do not suffice to show that the interference complained of was proportionate to the legitimate aim pursued. It cannot, therefore, be considered to be "necessary in a democratic society". Thus Article 10 (Art. 10) of the Convention has been breached.

CONCLUSION

46. The Commission concludes, by twelve votes to four, that there has been a violation of Article 10 (Art. 10) of the Convention.

Secretary to the Commission

(H.C. KRÜGER)

Acting President of the Commission

(S. TRECHSEL)

DISSENTING OPINION OF MR. GAUKUR JÖRUNDSSON,
JOINED BY SIR BASIL HALL AND MR. JEAN-CLAUDE GEUS

This case concerns a television programme which was made by the applicant and was intended to describe the attitudes and the social standing of a group of young people, so-called "greenjackets". This programme was based on an interview, which was conducted by the applicant and which had lasted between 5 and 6 hours. The applicant subsequently edited and cut the interview to a filmed feature of 5 minutes which was broadcast in Danmarks Radio's news magazine.

Three of the youths interviewed made statements in the programme which contained abusive and derogatory terms about immigrants and certain ethnic groups in Denmark. They were charged and found guilty of a violation of section 266 (b) of the Danish Penal Code by their statements that "niggers, alien workers are animals" and statements on drugs in relation to "perkere". The applicant was held to have aided and abetted the dissemination of the statements made by the three youths and was convicted of a violation of section 266 (b) of the Penal Code read in conjunction with section 23 of the Penal Code.

The applicant took the initiative to produce the programme in question on the basis of certain newspaper articles. The programme was not live television but was edited and cut by the applicant from 2-2 1/2 hours of tape to the above-mentioned filmed feature of a few minutes, in which he deliberately left the disputed remarks. As appears from the proceedings in the domestic courts the applicant beforehand suspected that the racist statements were punishable and he did nothing to warn the parties concerned against making the statements as he expected that they knew that they could be punished. However, as appears from the Supreme Court judgment the essential feature constituting the criminal act was the dissemination of the statements to a wider circle of the public; a matter which was not in the hands of the three youths concerned but in the hands of the applicant to decide upon.

It is clear that section 266 (b) of the Danish Penal Code and its application in the present case aim at the protection of the reputation and the rights of others within the meaning of Article 10 para. 2 of the Convention, i.e. the moral and physical integrity of certain groups of people. The restriction of the applicant's rights under Article 10 of the Convention was thus prescribed by law and had a legitimate aim as required by Article 10 para. 2. The remaining question is, therefore, whether the interference can be considered to be necessary in a democratic society within the meaning of Article 10 para. 2.

There can hardly be much disagreement about the seriousness of the threat of racial persecution in Europe. Racially motivated violence poses a constant threat to the lives and security of many groups of people in the European countries. At an international level States have found it necessary to act against this threat by inter alia introducing the United Nations Convention of 21 December 1965 on the Elimination of All Forms of Racial Discrimination.

In Article 4 (a) of this Convention the States Parties have undertaken to "declare as an offence punishable by law all dissemination of ideas based on racial superiority or hatred, incitement to racial discrimination ... against any race or group of persons of another colour or ethnic origin ...". The Convention was ratified by Denmark on 8 September 1971.

The present text of section 266 (b) (apart from the words sexual orientation which were added in 1987) was entered in the Penal Code in 1971 when the scope of application of the said provision was extended substantially in order to enable Denmark to ratify the

United Nations Convention of 21 December 1965 on the Elimination of All forms of Racial Discrimination.

It is interesting to note, that during the drafting of this Convention the relationship between Article 4 and the fundamental right of freedom of speech was discussed at length. The opening paragraph of Article 4 provides that the measures the State Parties have to adopt must always have due regard to the principles embodied in the Universal Declaration of Human Rights.

This so-called "due regard" clause was introduced by the Third Committee in order to meet objections of those who maintained that Article 4 would violate the principles of freedom of speech and freedom of association. It was interpreted as giving State Parties the right to understand Article 4 as imposing no obligation on any party to take measures which were not fully consistent with their constitutional guarantees of freedom, including freedom of speech and association.

It is also noteworthy that, during the preparation of the Bill, introducing the amendment of the Danish Penal Code, and during the deliberations in the Danish Parliament, it was fully realised that a conflict with the principle of freedom of speech was possible but the drafting was clearly aimed at avoiding such conflict.

I think that it is important that the provision of the Danish Penal Code which was applied in the applicant's case thus came about after careful consideration of conflicting interests, the principle of freedom of speech on the one hand and the freedom and security of special groups of people on the other. These conflicting interests were first considered during the drafting of the Convention on the Elimination of All Forms of Racial Discrimination and again during the preparation of the Bill introducing the amendment of the Danish Penal Code and later when it was dealt with by the Danish Parliament.

It may be true that there is no evidence that the statements in question provoked any acts of racist persecution in Denmark. That is, however, not decisive in my opinion. These statements were, nevertheless, outrageous and likely to insult and hurt the feelings of people belonging to certain minority groups in Denmark. It was the view of the Danish courts that such statements could only be justified if balanced by opposing considerations which could have outweighed the wrongfulness of the statements. This is very much in line with the interpretation indicated in the preparatory work of the Convention on the Elimination of All Forms of Racial Discrimination and of the following amendment of the Danish Penal Code which clearly were not intended to restrict scientific or otherwise serious discussion of problems of public concern.

The European Convention on Human Rights provides inter alia that the exercise of the freedom of expression carries with it duties and responsibilities. In that connection it is important to bear in mind that the applicant in the present case is a professional journalist and was exercising his functions as an employee of a public institution, which is devoted to objectivity and pluralism. The programme was broadcast at peak viewing time and it was accordingly seen by a wide public, comprising people who may not necessarily have a critical mind, and whose living conditions may render more receptive to racist propaganda. The fact that this propaganda stemmed from a rather insignificant group of persons does not limit its impact. Rather, this fact would seem to prove that there was no real and pressing necessity to devote a programme to the matter.

The assumption that the sole effect of the programme was to ridicule the persons behind the propaganda appears as purely theoretical. The fact that racism and xenophobia are wide-spread in important sections of the European population shows on the contrary

that addresses of a clearly primitive character may be experienced as convincing, despite the lessons of the past.

Finally, when considering the necessity of the interference it is also of importance to examine the way in which the competent domestic authorities dealt with the case and I consider that their position is in good conformity with Article 10 para. 2 of the Convention. A perusal of the relevant judgments as well as the commentary to the judgment of the Supreme Court reveals that the courts fully recognised that the present case involved a conflict between the right to impart information and the reputation or rights of others, which conflict they resolved by a weighing of the relevant considerations on either side. Without repeating what is already established in the facts of the Commission's Report I find that, having regard to their margin of appreciation which they undoubtedly have, the Danish courts were in the circumstances entitled to consider the interference to be necessary and I also consider that their reasons for so concluding were relevant and sufficient. The sanction, a fine of only one thousand Danish crowns was not, in my view, disproportionate to the State's legitimate interest in protecting the rights of the groups of individuals in question.

In view of the above I have come to the conclusion that there has been no violation of Article 10 of the Convention in the present case.

DISSENTING OPINION OF MRS. JANE LIDDY

The applicant arranged for an interview to be made, and subsequently broadcast, with three youths whose views and language (for example, "nigger", "animal") were of a nature to degrade a class of persons on account of their race, colour, national or ethnic origins, contrary to section 266 (b) of the Danish Penal Code.

The circumstances in which the interview took place included the payment of a fee to the interviewees and the provision of drinks to them. It may be that it is for good reason that, once the choice has been made to interview someone, the interviewer would adopt a respectful manner and show interest in what the interviewee has to say, but nonetheless the observation can be made that this was the way in which the interview was conducted. Moreover, there was no balancing material.

These circumstances would have conveyed a degree of respectability or legitimacy to the racist comments in the minds of the interviewees, their friends and relatives, and in the minds of a proportion - however unquantifiable - of the viewers of the programme.

The majority of the Commission consider that "the way in which [the remarks] were presented and the objective pursued by the applicant were, in the circumstances, sufficient to outweigh the effect, if any, on the reputation or rights of others" (paragraph 45 of the Report).

As indicated above, my own observation was that the remarks were presented with ordinary professional respect, and without balancing material. There remains the question of how much weight should be attached to the objective pursued by the applicant.

With respect to the majority, it seems to me that the above-quoted conclusion does not place enough weight on the effect of the programme on those who were outrageously insulted by the words spoken and whose rights needed to be vindicated. In particular, I consider that more weight should be given to the generally accepted opinion of the international community as to the limitations on freedom of expression that must be considered necessary to counter the evil of

racism, and correspondingly less weight to the subjective aim of the interviewer.

Article 4 of the International Convention on the Elimination of All Forms of Racial Discrimination, adopted by the General Assembly of the United Nations on 21 December 1965, makes it obligatory for States party to "declare as an offence punishable by law all dissemination of ideas based on racial superiority or hatred". At international level, therefore, there has been for decades a perceived need to provide a grave sanction against dissemination of racist comments, whatever the motivation of their proponents. The wisdom and experience of the drafters and adopters of that Convention deserve respect.

I have no hesitation in concluding that the conviction and sentence of the applicant was proportionate to the aim pursued and answered a pressing social need in a democratic society. There has therefore been no violation of Article 10. I am supported in this conclusion by the consideration that although the applicant himself did not subjectively aim at the degradation of others, this was the foreseeable consequence of his action, contrary to the spirit of Article 17.

APPENDIX I

TRANSCRIPT OF THE FILMED FEATURE OF 21 JULY 1985

*

I de sidste år har vi snakket en hel del om fremmedhad i Danmark. Aviserne bringer jævnligt beretninger om mistro og chikane mod fremmedarbejdere og flygtninge, men hvem er det egentlig der hader minoriteterne, hvor kommer de fra, og hvad er deres mentalitet. Jens Olaf Jersild har besøgt en gruppe yderligtgående unge på Østerbro i København.

Flaget på væggen er sydstaternes flag fra den amerikanske borgerkrig, men i dag er det også symbolet på racisme, det er vartegnet fra den amerikanske bevægelse Ku Klux Klan, og det viser hvad Lille Steen, Henrik og Nisse er.

Er du racist?

- Ja, jeg betegner mig i hvert fald selv som en.

- Det er en god ting at være racist.

- Vi mener, Danmark er for danskere.

(A) Henrik, Lille Steen og alle de andre er en gruppe unge, der holder til i Studsgårdsgade, kaldet STUJSEN, på Østerbro i København. Kommunalt boligbyggeri, mange af beboerne er arbejdsløse klienter på bistandskontoret og kriminaliteten er stor. En del af kvarterets unge har allerede været på kant med loven mange gange og fået deres første domme.

(G) - Det var et almindeligt væbnet røveri på en tankstation.

(A) - Hvad gjorde du?

(G) - Ikke noget. Hoppede ind på en tank med en .. gun og fik dem til at udlevere nogle penge. Og så hoppede jeg ud igen. Andet var det sådan set ikke.

(A) Hvad med dig, hvad skete der?

(G) - Det vil jeg ikke nærmere komme ind på her.

- (A) Men det var vold?
- (G) - Ja
- (A) Du er lige kommet fra ... du har været anholdt, hvad blev du anholdt for?
- (G) - Gadeuorden.
- (A) Hvad skete der?
- (G) - Lidt oppe at slås med politiet sammen med nogle venner.
- (A) Sker det tit?
- (G) - Ja, herude gør det.
- (A) Ialt er der 20-25 unge fra 'STUDSEN' i samme gruppe. De samles et stykke væk fra boligbyggeriet ved nogle gamle huse, der skal rives ned. Her mødes de for at være sammen om bl.a. at være racister, om det at hade fremmedarbejderne og det at støtte Ku Klux Klan.
- (G) - Ku Klux Klan det er noget, der stammer fra staterne i gamle dage af under - som du selv ved - med Borgerkrigen og sådan noget, for nordstaterne de ville have niggerne skulle være frie mennesker mand, det er jo ikke mennesker, der er jo dyr, altså det er noget helt forkert, der er sket, folk skal have love til at holde slaver, synes jeg i hvert fald.
- (A) Fordi negre det er ikke mennesker?
- (G) - Nej, det kan du også se mand på deres kropsbygning mand, store flade næser med blomkålsører og så noget mand, brede hoveder og så noget bred krop mand, lådden, du ser på en gorilla og sammenligner med en abe mand, så er det samme fremgangsmåde mand, samme bevægelser, lange arme mand, lange fingre og sådan noget, lange fødder.
- (A) Der er en masse mennesker, der siger noget andet ikke, der er en masse mennesker, der siger, jamen ...
- (G) - Du kan jo bare tage et billede at en gorilla mand og så kigge på en nigger, der er jo samme kropsbygning og det hele mand, flad pande og alt muligt.
- (A) Der er mange negre, hvis du ta'r USA f.eks., så er der mange negre der sidder på høje stillinger.
- (G) - Der skal jo altid være nogen der skal vise sig, som om de er bedre end den hvide mand, men i den lange ende er det den hvide mand der er bedre.
- (A) Hvad betyder Ku Klux Klan for dig?
- (G) - Det betyder en hel del, for jeg synes, det er rigtigt det de laver. Nigger, det er ikke et menneske, det er et dyr, det er de andre fremmedarbejdere også, tyrkere, jugoslavere og hvad de så hedder alle sammen.
- (A) Henrik er 19 år og på bistandshjælp, han bor i et lejet værelse i Studsgårdsgade. Henrik er en af de varmeste tilhængere af klanen og han hader fremmedarbejderne "perkerne".
- (G) - De kommer herop mand og nasser på vores samfund, vi andre vi har problemer nok med at få bistandspenge mand, de får dem udbetalt, vi kan kraft ed... stå og skændes med de idioter

deroppe på bstanden, for at få vores penge mand, de får dem bare mand, de står først i boligkøen, får bedre lejligheder end os andre mand, og en del af vore venner der har børn og sådan noget mand, de sidder i noget værre slum mand, de kan ikke engang få bad i deres lejligheder og sådan noget mand, så kommer der sådan en "perker"-familie mand med 7 unger mand, de ryger lige ind i en dyr lejlighed mand, får hele lortet betalt og sådan noget, det kan da ikke være rigtigt mand, Danmark er for danskerne, ikke?

Det, at de er "perkere", det kan vi ikke li' vel, og så kan vi ikke li' deres mentalitet med at gå, hvad er det nu det hedder, altså de må s'gu snakke altså, hvis de har lyst til at snakke russisk når de er inden døre ikke, så er det okay, men altså det vi ikke kan li', det er når de farer rundt i det der zimbabwe-tøj og så snakker hula-hula sprog ude på gaden og hvis man skulle spørge dem om noget eller hvis man kommer ind i deres taxa, som du kører i så siger de, jeg ved ikke hvor det ligger, du fortælle vej, ikke.

- (A) Er det ikke sådan også, at I måske er lidt misundelige, altså der er nogen af "perkerne", som I kalder dem, der har forretning og de har biler, de kan få tingene til at ...
- (G) - Det er narko, de sælger mand, halvdelen af befolkningen inde på "Vestre", de sidder for narko mand, ihvertfald de halve af dem, der sidder inde på Vestre fængsel mand, det er sådan nogle, der sidder for narko eller sådan noget.

De sidder for narko, alle "perkerne" ikke. Det må være rigeligt, hvad er det nu det hedder, der skal ikke være stoffer her i landet, men skal de smugles ind, så må vi nok selv stå for det altså, jeg synes det er for dårligt der skal komme udlændinge herop for - hvad er det nu det hedder - gøre Danmark mere til sprøjten og sådan noget.

Vi har malet deres døre og håbet, at de bliver trætte af det, at de snart forsvinder, og hoppet på deres bil og smidt maling i hovedet på dem, når de ligger og sover altså.

- (A) Hvad var det, der skete med den maling, hvorfor maling?
- (G) - Fordi det var hvid maling, det synes jeg, det passede sådan godt. Det var effekten over det hele.
- (A) Den smed I altså ind gennem ruden til en fremmedarbejderfamilie?
- (G) - Ja.
- (A) Hvad skete der?
- (G) - Han fik det bare i hovedet, så skete der ikke noget andet, altså, han vågnede vist nok, så kom han ud og råbte noget på hula-hula.
- (A) Har han meldt det til politiet?
- (G) - Det ved jeg ikke om han har, det får han nok ikke noget ud af.
- (A) Hvorfor ikke?
- (G) - Det ved jeg ikke, der er en barnestreg, som andre smider vand i hovedet på folk altså, så har han fået en bøtte maling der. Det kan de nok ikke gøre noget videre ud af.

- (A) Per Axholt, kaldet "Pax", er ansat i fritids- og ungdomsklubben i Studsgårdsgade, her har han været ansat i flere år, men mange opgiver efter langt kortere tid p.g.a. det hårde miljø. Per Axholt mener, at de unge forfølger fremmedarbejderne, fordi de unge selv er svage og skuffede.

Hvad tror du de vil have, hvis man spør'r dem?

*

- Det samme som du og jeg vil have, lidt styr på tilværelsen, lidt arbejde man synes er anstændigt, og man kan li', et rimeligt økonomisk udbytte, en rimeligt velfungerende familie, en kone eller en mand og nogle børn, sådan en rimelig borgerlig tilværelse som man kender den.

- (A) De gør jo mange ting, som i hvert fald forhindrer dem i at få det sådan.

- (P) - Det er rigtigt.

- (A) Hvorfor tror du de gør det?

- (P) - Af mangel på bedre at foretage sig. De har fået bombet ind i sig igennem lang, lang tid at en forudsætning for at have succes, det er at have penge. Penge vil de ikke være i stand til at erhverve sig på en regulær måde, og det foregår så tit via kriminalitet og det er jo klart, at går den, så går den, og går den ikke, så går den ikke og det er jo så også derfor, vi ser at mange unge mennesker i den slags situationer, de hyppigt vil ryge i fængsel, for det går s'gu ikke.

- (A) Hvornår lavede du første gang noget kriminelt?

- (G) - Det ved jeg ikke, da jeg var 14 eller sådan.

- (A) Hvad lavede du?

- (G) - Første gang så langt kan jeg s'gu ikke huske tilbage, det ved jeg ikke, indbrud.

- (A) Har du, hvad man kunne kalde en kriminel løbebane?

- (G) - Det ved jeg ikke om man kan kalde den.

- (A) Du lavede noget kriminelt første gang da du var 14.

- (G) - Nå ja, sådan kan man da godt sige det, altså, hvis det er en kriminel løbebane, hvis man har lavet kriminelt fra 15 og op efter, så har jeg vel haft en kriminel løbebane.

- (A) Vil du fortælle om nogle af de ting, du har lavet?

- (G) - Ikke specielt, det har været det samme og det samme. Det har været videoknæk, hvor "perkerne" har stået som aftagere, dem er der penge i. Hvis folk vil gå herude og hygge sig og være racister og drikke bajere og lave al muligt sjov så er det klart, så gider man ikke sidde i spjældet.

- (A) Men er det noget, der for alvor afskrækker folk fra at lave noget ulovligt?

- (G) - Nej, det er ikke fængsel, det afskrækker ikke.

- (A) Er det derfor man tit hører om, at nogen herude den ene aften efter den anden er i slagsmål med knive og ting og sager, er

det at de i virkeligheden ikke er bange, hvis politiet får fat på dem?

- (G) - Ja, der er ikke nogen efterfølgning, altså der er ikke nogen dårlig bivirkning, så det er nok derfor, det passer meget godt altså. Altså især sådan nogle ting som slagsmål og knivstikkeri og smadre alt muligt, det hvis du endelig skulle ryge i spjældet for det, så ville det være så latterligt en lille dom, så det ville altså ... vi kommer som regel ud om morgenen, når vi har lavet ballade. Sidste gang vi lavede ballade ovre på ... bodegaen, der kom vi ud om morgenen også, det sker der ikke rigtig noget ved. Det afskrækker ikke, men vi er lige 5, der er kommet ud nu her og så fejrede vi ham den sidste, der var kommet ud i går, de gider nok ikke ryge ind foreløbig, så det store kriminelle det bliver ikke lavet igen.
- (A) Du vil gerne flytte tilbage til Studsgårdsgade, hvor du er vokset op, men vi ved, det er et meget kriminelt miljø, vil du gerne have at dit barn bliver ligesom dig selv?
- (G) - Næh, men det gør hun nok heller ikke, for det første så er chancerne endnu mindre fordi det er en pige, det viser statistikkerne, de er ikke så store, altså det gør de jo nok heller ikke, men man behøver jo heller ikke være kriminel, fordi man bor i et kriminelt miljø. Hvis hun gik og slog gamle damer ned og huggede deres tasker, så var det klart, det ville jeg overhovedet ikke finde mig i.
- (A) Hvad så, hvis hun var med til at tæve fremmedarbejderne og sådan noget, hvad så?
- (G) - Det ville være okay, det ville jeg ikke klage over.

- (A) Så må vi jo se, om mentaliteten i familien ændrer sig i løbet af den næste generation. Og så kan vi da tilføje, at ungdomsgrupper i stil med denne her på STUDBSEN på Østerbro er opstået flere andre steder i København.

APPENDIX II

HISTORY OF PROCEEDINGS

Date	Item
25 July 1989	Introduction of the application
11 December 1989	Registration of the application
Examination of Admissibility	
7 October 1991	Commission's decision to invite the Government to submit observations on the admissibility and merits of the application
20 December 1991	Submission of the Government's observations
17 February 1992	Submission of the applicant's observations
8 September 1992	Commission's decision to declare the application admissible

Examination of the merits

5 December 1992	Commission's decision to hold a hearing on the merits of the case
6 April 1993	Hearing on the merits of the case followed by the Commission's deliberations
2 July 1993	Commission's deliberations on the merits and final vote
8 July 1993	Adoption of the Report