



L.G v. Republic of Korea

Communication No. 51/2012; U.N. Doc. CERD/C/86/D/51/2012

Country: South Korea

Region: Asia

Year: 2015

Court: Committee on the Elimination of Racial Discrimination Committee on the Elimination of Racial Discrimination

Health Topics: Controlled substances, HIV/AIDS, Informed consent

Human Rights: Freedom from discrimination, Right to work

Facts

L.G, a New Zealand national, was employed as an English teacher in the Republic of Korea. She held an E-2 working visa for “native speaker conversation instructors.” Korea required all persons holding an E-2 working visa to undergo testing for HIV/AIDS and illegal drugs at a government hospital before they could register as alien residents in the country. The testing policy was established as a one-time requirement for alien registration, but most offices of education throughout Korea had been requiring aliens to be tested annually in order to have their contracts renewed. No annual testing was required for native Korean teachers nor ethnically Korean foreign teachers as they received a different working visa. L.G underwent the required testing and later found out that she had additionally been tested for cannabinoids and syphilis without her consent. When she refused to undergo testing again when her contract was up for renewal the following year, the Korean department of education did not renew her contract.

L.G filed a complaint with the National Human Rights Commission of Korea (NHRCK) requesting the Commission to investigate whether the department of education’s policy regarding mandatory medical tests for foreigners was in accordance with the National Human Rights Commission Act. She also initiated arbitration with the Korean Commercial Arbitration Board (KCAB) between herself and the education department alleging that the department imposed unjust discriminatory contractual terms. The NHRCK refused to investigate, and the KCAB dismissed the claim.

L.G subsequently brought a claim before the Committee alleging that requiring HIV/AIDS and drug testing for foreign native speaker teachers amounted to racial discrimination in violation of article 2, paragraphs 1(c) and (d) (states’ obligation to review and annul racially discriminatory policies and to prohibit racial discrimination), articles 5 paragraph (e), section (i) and (iv) (right to work and right to public health, respectively), and article 6 (remedies) of the Convention on the Elimination of All Forms of Racial Discrimination (Convention).

Decision and Reasoning

The Committee found that Korea had violated article 2, paragraphs 1(c) and (d) and article 6 of the Convention. The Committee noted that the NHRCK had declined to investigate the complaint and the KCAB had not assessed the policy’s compliance with the Convention. The failure of these state bodies to assess whether criteria involving racial discrimination were at the origin of the mandatory medical testing policy were found to be in violation.

The Committee also held that L.G was denied her right to work, in violation of article 5(e) (i) of the Convention, due to the discriminatory mandatory testing requirement. The Committee referenced General Comment XXX of the Convention, which recommends states to not “stereotype or profile” non-citizens on a racial or ethnic basis. The Committee observed that foreign English teachers that were ethnically Korean were exempted from testing, suggesting an ethnic basis for determining who is tested. The Committee also noted international standards that recognize mandatory HIV/AIDS testing as “ineffective for public health purposes, discriminatory and harmful for the enjoyment of fundamental rights.” Korea had not provided any non-discriminatory justification for mandatory testing, and the Committee noted that during the KCAB proceedings, employees of the metropolitan office of education had confirmed that the tests were proxies for assessing the values and morality of the foreign teachers.

Decision Excerpts

“The Committee observes that the NHRCK declined to investigate the petitioner’s complaint and that no assessment of the compliance of the contested testing policy with the Convention was made by KCAB or any other State party authority. In the light of the State party’s failure to carry out an assessment in the petitioner’s case, in order to determine whether criteria involving racial discrimination within the meaning of article 1 of the Convention, are at the origin of the HIV/AIDS and illegal drugs mandatory testing policy, the Committee concludes that the petitioner’s rights under articles 2, paragraph 1 (c) and (d), and 6 of the Convention have been violated” Para. 7.3.

“The Committee also observes that mandatory HIV/AIDS testing for employment purpose, as well as for entry, stay and residence purposes, is considered to be in contradiction with international standards as such measures appear to be ineffective for public health purposes, discriminatory and harmful for the enjoyment of fundamental rights. The Committee further notes that the State party did not provide any reasons to justify the mandatory testing policy.” Para. 7.4.

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