

Consultative Opinion of National Institution for Human Rights on Article created under No. (20) of Draft Law on Issuing the Law of Traffic

Introduction:

In appreciation of the efforts exerted by the esteemed Shura Council in relation to the issues of Human Rights; and with all due respect to the considerations taken into account by creating an article under No. (20) of the Draft Law on issuing the Traffic Law, and based upon the request of the Council's Committee on Foreign Affairs, Defense and National Security for opinion of the NIHR in relation to the above subject, such opinion can be summarized as follows:

Stipulation of Article No. (20) of Decree-by-Law as concluded by resolution of the Council of Representatives:

Notwithstanding conditions that are to be included in the precedent article, the foreigners residing in Kingdom of Bahrain – other than citizens of the GCC's States – may not obtain a driving license or a motor vehicle, except when this is required for due to the nature of their work. The executive by laws shall determine the nature of the other works, according to which the driving license shall be granted to the foreigners or if they are allowed to drive motor vehicles in the Kingdom of Bahrain.

First: Legal Grounds

Article No. (1), paragraph (1) of the International Convention on the Elimination of All Forms of Racial Discrimination which the Government of Kingdom of Bahrain acceded to it pursuant to Decree No. 8 of 1990, stipulates:

"In this Convention, the term "racial discrimination" shall mean any distinction, exclusion, restriction or preference based on race, color, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life."

The same article stipulates further in paragraph (2) of the Convention that:

"This Convention shall not apply to distinctions, exclusions, restrictions or preferences made by a State Party to this Convention between citizens and non-citizens."

Article (2) of International Convention on the Elimination of All Forms of Racial Discrimination stipulates:

"States Parties 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, and, to this end:

(a)

(d) Each State Party shall prohibit and bring to an end, by all appropriate means, including legislation as required by circumstances, racial discrimination by any persons, group or organization;

Article (5) of International Convention on the Elimination of All Forms of Racial Discrimination states:

" In compliance with the fundamental obligations laid down in article 2 of this Convention, States Parties undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, color, or national or ethnic origin, to equality before the law....."

The **"Committee on Elimination of Racial Discrimination"**, formed in accordance to the International Convention on the Elimination of All Forms of Racial Discrimination, which is entrusted with interpreting all provisions hereof commented on paragraph (2) of article (1) hereof as follows:

(1. Paragraph (1) of article (1) of the International Convention on the Elimination of All Forms of Racial Discrimination defines the Racial Discrimination. Paragraph (2) of article (1) excludes from such definition the acts to be issued by of the state party to the convention which discriminate between the citizens and non-citizens. Paragraph (3) of Article (1) restricts paragraph No. (2) of article No. (1) by stating that the states party to the convention may not apply the discrimination against any specific nationality in relation to the non-citizens).

2. The committee confirms that the states party to the conventions is obligated to report completing on the legislations related to the foreigners and the execution thereof.

3. In addition, the committee confirms that the paragraph (2) of article (1) shall not be interpreted in way degrades in any form the rights and freedoms recognized and provided for in the other documents; especially, the international declaration for human rights, international convention on

economic, social and cultural rights and international convention on the civil and political rights).¹

In this context, Committee of Elimination of Racial Discrimination stated the following in course of its interpretation of article No. (5) of the convention:

(1.)

2. Whenever the state imposes restriction on any of the rights stipulated in article No. (5) of the convention, it shall guarantee that such restriction shall not be contradictory – in terms of the purpose or the result thereof – to article No. (1) of the convention considering its integral part of the international standards of human right.

3. All persons residing under protection of the state shall enjoy many of rights and freedoms stipulated in article No. (5); such as the right to equality before the courts, but the other rights such as the participation in the elections, voting and nomination shall be rights for the citizens).²

Second: NIHR's Consultative Opinion

Thereupon and pursuant to the provisions of International Convention on the Elimination of All Forms of Racial Discrimination, which the Kingdom of Bahrain acceded to pursuant to Decree No. 8 of 1990, confirms that it is necessary to prohibit and to bring to an end any racial discrimination based on race, color, descent, or national or ethnic origin including the discrimination, exclusion, restriction or preference based on those who are citizens and non-citizens.

Although, it may be apparently understood that paragraph (2) of article (1) of the International Convention on the Elimination of All Forms of Racial Discrimination that any discrimination, exclusion, restriction or preference between citizens and non-citizens is beyond the scope of execution thereof; the "Committee of Elimination of Racial Discrimination", which is entrusted with interpreting the provisions of this convention has unambiguously stated that discrimination, exclusion or preferential treatment permitted by the stipulation is for purpose of *differentiation* between citizens and non-citizens. For example, the state issues ID cards of the citizens in a specific color and form, while it issues the ID cards for non-citizens in another color and form, as the purpose of such

¹ *The eleventh recommendation of Committee of Elimination of Racial Discrimination related to the non-citizens (d-42/1993):*

<http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N94/032/64/PDF/N9403264.pdf?OpenElement>

² *The twentieth recommendation of Committee of Elimination of Racial Discrimination related to the non-citizens (d-48/1996):*

[http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolNo=A%2f51%2f18\(SUP P\)&Lang=en](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolNo=A%2f51%2f18(SUP P)&Lang=en)

procedure is to *differentiate* between two categories, not to engage in discrimination, exclusion or preference between them.

In addition, the Convention and the Committee confirm undoubtedly that the states party to the convention – in relation to non-citizens – may not engage in discrimination against a specific nationality and the states party to the convention are not to interpret paragraph (2) of article (1) of the International Convention on the Elimination of All Forms of Racial Discrimination in way that contradicts rights or freedoms, whether civil, social, political, economic or cultural or in any of the other public life fields. In addition, whenever the state imposes restriction on any of the rights, it shall guarantee that such restriction shall not be contradictory – in terms of the purpose or the result thereof – to article No. (1) to the convention, considering its integral part of the international standards of human right.

Thereupon, the National Institution for Human Rights hereby thinks that the resolution concluded by the esteemed Council of Representatives in the article created under No. (20) of the draft law on issuing the Traffic Law, which stipulates that "foreigners residing in Kingdom of Bahrain – other than citizens of GCC's States – may not obtain a driving license or a motor vehicle, except when this is required due to the nature of their work", is a provision that includes discrimination and leads to restriction, exclusion or preference of a category to the other and not for purpose of differentiation between citizens and others. Consequently, the text of the proposed article created under No. (20) contradicts the international standards for human rights and isn't in line with the obligations of Kingdom of Bahrain in this regard.