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FOUR OBLIGATIONS - EXERCISE 2 (1/1 point)

2. In Brazil, an employer published an ad in a regional newspaper offering domestic employment, with preference to white persons. An afro-Brazilian job-seeker, after calling the employer and being turned down for her color, brought charges of racism against the employer. After a brief investigation, the public prosecutor decided not to press charges alleging that the impugned behavior – publication of an ad expressing racial preferences – was not constitutive of the crime of racism.

- ☐ This is a violation of the rule of equality before the law;
- ☐ This is a violation of the rule of equal protection of the law;
- ☒ This is a violation of the requirement that the law should prohibit any discrimination; ✓
- ☐ This is a violation of the requirement that all persons should have equal and effective protection against discrimination; or,
- ☐ Though this may be a violation of the right to work, it is unrelated to the prohibition of discrimination.

EXPLANATION

The obligation imposed on the State to prohibit any discrimination also requires that allegations of discrimination should be diligently and independently investigated, or the formal legal prohibition may remain a dead letter. The case described is analogous to that of *Simone André Diniz v. Brazil* submitted to the Inter-American Commission on Human Rights (Case 12.001, Decision on the merits of 21 October 2006, Report No. 66/06). After acknowledging the important progress made by Brazil in establishing a legal framework – including criminal law provisions – for the punishment of racism, the Commission noted that these norms remained largely inefficient. It remarked that 'every victim of a human rights violation must be assured of a diligent and impartial investigation, and, if there are indicia as to who committed the crime, the pertinent action should be initiated so that a judge with jurisdiction, in the context of a fair trial, can determine whether the crime occurred, as with every crime brought to the attention of the authorities' (para. 97). However, 'as this has not happened with the complaints of racial discrimination lodged by Afrodescendants in Brazil, the Brazilian State has flagrantly violated the principle of equality enshrined in the American Declaration and the American Convention, ... which dictates that all persons are equal before the law and have the right to equal protection of the law, without discrimination' (para. 98). Excluding a person from access to the labor market on grounds of race 'is an act of racial discrimination' (para. 99), and 'Article 24 of the American Convention is violated, in conjunction with Article 1(1), if the State allows such conduct to remain in impunity, validating it implicitly or giving its acquiescence. Equal protection before the law requires that any expression of racist practices be dealt with diligently by the judicial authorities' (para. 100). The Commission also emphasized that

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'the failure of the public authorities to go forward diligently and adequately with the criminal prosecution of the perpetrators of racial discrimination and racism creates the risk of producing not only institutional racism, in which the judiciary is seen by the Afrodescendant community as a racist branch of government, but is also grave because of the impact on society, insofar as impunity encourages racist practices' (para. 107).

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