COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION

F. A. v. Norway

Communication No 18/2000

21 March 2001

CERD/C/58/D/18/2000

ADMISSIBILITY

Submitted by: F. A. (name deleted)

Alleged victim: The author

State party concerned: Norway

Date of communication: 12 April 2000

The Committee on the Elimination of Racial Discrimination, established under article 8 of the International Convention on the Elimination of All Forms of Racial Discrimination,

Meeting on 21 March 2001,

Adopts the following:

Decision on Admissibility

1. The author of the communication, Mr. F. A., claims to be the victim of a violation of the Convention by Norway. He is represented by the non-governmental organization Organisasjonen Mot Offentlig Diskriminering (OMOD). OMOD brought the general situation to the attention of the Committee for the first time on 6 December 1999. In a letter dated 12 April 2000 OMOD submitted additional information and formally requested that the Committee consider the communication under article 14 of the Convention. The communication was transmitted to the State party on 13 September 2000.

The facts as submitted by the author

2.1 The author reported that he went to the housing agency "Eiendom Service" and paid a fee which entitled him to have access to the lists of vacant accommodation. In checking the lists he found that

about half of the housing advertisements clearly indicated that persons from certain groups were not desired as tenants. Statements like "no foreigners desired", "whites only", "only Norwegians with permanent jobs" punctuated the housing lists.

2.2 On 28 June 1995 the author informed the Oslo police about this situation and requested that charges be brought against the owner of the agency on the basis of section 349a of the Norwegian Penal Code, which reads as follows:

> "Any person who in an occupational or similar activity refuses any person goods or services on thesame conditions as apply to others because of his religion, race, colour of skin, or national or ethnic origin, shall be liable to fines or imprisonment for a term not exceeding six months …
>
> The same penalty shall also apply to any person who incites or is in any other way accessory to any act mentioned in the previous paragraph."

2.3 The police took more than two years to investigate the case. During that time they never visited the housing agency in question in order to collect evidence. Finally, on 3 December 1997, the police ordered the agency's owner to pay NKr 5,000, or alternatively to serve 10 days in prison, for contravention of section 349a of the Penal Code. The decision was based on the fact that in the period between December 1995 and January 1996 the owner, through her firm, Eiendoms Service, had sold lists of accommodation to rent in which it was stated that certain accommodation was only available to Norwegians in regular employment.

2.4 The owner appealed the decision to the Oslo City Court, which, in a judgement of 15 July 1998, decided to acquit her. An appeal against this judgement was filed with the High Court, which rejected it on 18 January 1999. The High Court noted that although the situation fell under section 349a of the Penal Code, the owner had acted in involuntary ignorance of the law. The case was further appealed to the Norwegian Supreme Court, which, in a ruling of 27 August 1999, declared that the acts in question were not covered by section 349a and rejected the appeal.

The complaint

3. The author claims that the facts described amount to violation by the State party of the rights to which he is entitled under article 1, paragraph 1, of the Convention.

Observations submitted by the State party

4.1 By submission of 13 December 2000 the State party challenges the admissibility of the communication. It claims that the author has failed to file a communication within the time limit set out in rule 91 (f) of the Committee's rules of procedure. This provision reads as follows: "With a view to reaching a decision on the admissibility of a communication, the Committee … shall ascertain: ... (f) That the communication is, except in the case of duly verified exceptional circumstances, submitted within six months after all available domestic remedies have been exhausted". The Supreme Court's judgement was delivered on 27 August 1999. The author, who was an OMOD employee, knew about it on the same date. Therefore, the communication should have

been submitted to the Committee no later than 27 February 2000.

4.2 The State party claims that the letter from OMOD of 6 December 1999 is purely of a general nature and devoid of any content that may help to qualify it as a communication from or on behalf of an alleged victim of a violation. The author's name is not even mentioned in it. The letter does draw the Committee's attention to the Supreme Court's judgement of 27 August 1999, however, this is not sufficient to turn it into an individual communication. Furthermore, the author was not a party to the criminal proceedings, which were based on charges of a general nature initiated by OMOD and not linked to alleged wrongdoings against Mr. F. A. Moreover, the issues raised in the letter were dealt with in the dialogue between the Committee and the State party under the Committee's reporting procedure. They are also being seriously addressed by the Norwegian authorities.

4.3 The State party further argues that the allegation of violation of the Convention is not satisfactorily substantiated for the purpose of admissibility. For instance, the letters of 6 December 1999 and 12 April 2000 do not indicate the provisions of the Convention allegedly violated or the precise object of the communication. In these circumstances, it is not possible for the State to provide an adequate response. Neither is it explained in the letters whether the alleged violation is related to the landlords' discrimination or to the agency's activity. In respect of the former, it would be important to know whether the accommodation in question is in the landlords' private houses or whether it was rented out as part of a larger commercial activity. In respect of the latter, the Norwegian courts considered that the firm Eiendoms Service did not discriminate against its customers.

4.4 The High Court judgement describes the modus operandi of the firm, an agency for private accommodation rentals. According to the judgement, landlords informed the agency of the accommodation available and the agency listed the offers in a card-index which provided factual information on the accommodation offered. A rubric called "Landlord's wishes" was also included in the card-index. If the accommodation-hunters were interested in a particular offer in the card-index they had to contact the landlord themselves for any further action. Eiendoms Service was not involved in showings, preparation of contracts, etc. The Court found that certain landlords who made use of Eiendoms Service had rejected persons of foreign origin as tenants; however, Eiendoms Service did not have any responsibility in respect of the landlord's preferences. The Court considered that section 349a of the Penal Code as supported by the *travaux preparatoires* did not apply to the services offered by a private landlord when a business person is the agent for those services. There was no evidence that the agency's owner had any objections or prejudice against, for example, people with a different skin colour. On the contrary, she had often assisted foreigners in finding accommodation. The State party claims that the author has not explained the reasons why he disagrees with the Court's conclusions.

Counsel's comments

5.1 Counsel refers to the objections raised by the State party on the basis of rule 91 (f) of the Committee's rules of procedure and argues that the possible shortcomings pointed out by the State party should not exceed what one can expect from a small NGO without legal expertise such as OMOD. Protection from violations by way of bodies like CERD should be an option for everybody, not only for people with legal expertise.

5.2 The purpose of the letter from OMOD dated 6 December 1999 was to request the Committee to treat the Supreme Court judgement of 27 August 1999 as an individual complaint under article 14 of the Convention. In the letter, OMOD explicitly requested the Committee to carry out an individual evaluation of the Supreme Court's ruling in relation to the Convention. If the communication was only meant as a general communication from an NGO, as suggested by the State party, it would have been included in the report which OMOD prepares regularly in response to Norway's periodic reports to the Committee. It is true that the author used the opportunity to point to possible large-scale consequences which the judgement may have with regard to the protection of ethnic minorities against racial discrimination and the status of the Convention in Norway. This information, however, should be interpreted as complementary to the individual complaint put forward.

5.3 The letter from OMOD dated 12 April 2000 confirmed that the purpose of its letter of 6 December 1999 was to have the judgement treated as an individual complaint under article 14 of the Convention, and should be regarded as part of the communication submitted on 6 December 1999.

5.4 Counsel agrees that the letter of 6 December 1999 did not indicate the provisions in the Convention that had been violated. However, he considers that the allegations of violations of the Convention should be enough to declare the case admissible. In the letter of 12 April 2000 OMOD claims that the Supreme Court, in its judgement "refused to give F. A. the rights inherent in article 1.1". Among those rights are the rights referred to in article 5 (e) (iii), 5 (f) and 6, which are especially relevant to the case of Mr. F. A. Furthermore, it was Mr. F. A. who reported Eiendoms Service to the police. Subsequently, the police brought the case to the High Court and the Supreme Court.

5.5 Counsel claims that the object of the communication is the failure of the Supreme Court to comply with its obligations under the Convention. He also claims that the alleged violation of the Convention is related to the activities of the housing agency, not the landlords.

5.6 Regarding the State party's claim that OMOD did not substantiate its claim that the conclusion of the Supreme Court was unwarranted, counsel argues that the agency's owner indeed refused a person "goods or services on the terms applicable to others". The author was not at all offered the same service as ethnic Norwegians. In fact, he was offered a smaller number of vacant flats than other customers owing to his ethnic origin, yet he had to pay exactly the same fee to have access to the index cards. Furthermore, the author was not informed beforehand that this was the case. This difference in treatment is illegal, regardless of whether it is made on behalf of somebody else, for example a landlord. The owner of the housing agency had written the discriminatory texts on the index cards and knew what that meant to persons of minority background.

5.7 Counsel further argues that the commercial activity of Eiendoms Service cannot be categorized as being within "the private sphere". The agency offered a general service to the public which fits the description of article 5 (f) of the Convention. The activity of Eiendoms Service is therefore a clear case of discrimination in the public sphere, not the private one.

Admissibility considerations

6.1 Before considering the substance of a communication, the Committee on the Elimination of Racial Discrimination examines whether or not the communication is admissible pursuant to article 14, paragraph 7 (a) of the Convention and rules 86 and 91 of its rules of procedure.

6.2 The State party contends that the author's claims are inadmissible because of his failure to submit a communication within the time limit set out in rule 91 (f) of the Committee's rules of procedure. The Committee recalls that, according to this provision, communications must be submitted to it, except in the case of duly verified exceptional circumstances, within six months after all available domestic remedies have been exhausted.

6.3 The Committee notes that the Norwegian Supreme Court adopted its final decision on the facts that constitute the object of the present communication on 27 August 1999. The author submitted the communication under article 14 of the Convention on 12 April 2000, i.e. more than six months after the date of exhaustion of domestic remedies. Prior to that date, on 6 December 1999, the decision of the Norwegian Supreme Court had been brought to the Committee's attention, but there was no indication that the author had intended to submit a communication under article 14 of the Convention. The general terms in which the letter of 6 December 1999 was drafted suggested that the author wished to submit the facts for the consideration of the Committee within the framework of its activities under article 9 of the Convention.

6.4 Furthermore, the Committee has found no exceptional circumstances that would justify not applying the six-month requirement stipulated in rule 91 (f) of the rules of procedure.

7. The Committee on the Elimination of Racial Discrimination therefore decides:

(a) That the communication is inadmissible;

(b) That this decision shall be communicated to the State party and the author of the communication.

8. The Committee takes this opportunity to urge the State party to take effective measures to ensure that housing agencies refrain from engaging in discriminatory practices and do not accept submissions from private landlords which would discriminate on racial grounds. The Committee recalls in this respect its concluding observations on the fifteenth periodic report of Norway, in which it expressed concern that persons seeking to rent or purchase apartments and houses were not adequately protected against racial discrimination on the part of the private sector. In this connection, the Committee recommended that Norway give full effect to its obligations under article 5 (e) (iii) of the Convention.