

HUMAN RIGHTS COMMITTEE

Spakmo v. Norway

Communication No. 631/1995

20 March 1997

CCPR/C/59/D/631/1995*

ADMISSIBILITY

Submitted by: Aage Spakmo [represented by counsel]

Alleged victim: The author

State party: Norway

Date of communication: 28 August 1994 (initial submission)

Documentation references: Prior decisions - Special Rapporteur's rule 91 decision, transmitted to the State party on 12 June 1995 (not issued in document form)

Date of present decision: 20 March 1997

The Human Rights Committee, acting through its Working Group pursuant to rule 87, paragraph 2, of the Committee's rules of procedure, adopts the following decision on admissibility.

Decision on admissibility

1. The author of the communication, dated 28 November 1994, is Aage Spakmo, a Norwegian citizen. He claims to be the victim of violations by Norway of article 9, paragraphs 1 and 2, of the International Covenant on Civil and Political Rights. He is represented by counsel, Mr. Gustave Hogtun.

The facts as submitted

2.1 The author, who is seventy- three years old and whose health is now frail, was commissioned, in July 1984, by a landlord, one Finn Grimsgaard, to carry out repairs on a building of his property, including the repair and replacement for three balconies. Work commenced on 23 July 1984. Two tenants applied for a work injunction from the Tenancy Disputes Court until such time as the owner

guaranteed that the balconies would be restored to their original appearance; the injunction was granted on 25 July 1984. The following day the author contacted the judge of the Tenancy Disputes Court to ascertain how to proceed and was informed that the owner could either request an oral negotiation in court or that the municipal building authorities issue a ruling authorizing the breakdown of the balconies. On the morning of 27 July 1984 a municipal inspector, Per M. Berglie (since deceased), examined the building together with the author, according to whom oral permission to continue with the demolition was received. Work was reinitiated; the police verbally requested that the author stop work several times, which he refused to do since he claimed that he was working legally. The police proceeded to arrest him, on both 27 and 28 July 1984, for 1 and 8 hours respectively.

2.2 On 23 September 1986, the author instituted proceedings before the Oslo City Court (Oslo byrett) claiming damages and compensation for non-pecuniary damages on the grounds that the arrests of 27 and 28 July 1984 had been unlawful. The hearing took place on 1 September 1989; The Court dismissed the author's claim on 4 October 1989. On 15 December 1989 the author appealed the judgement to the Eidsivating High Court. The appeal was heard on 7 October 1992; judgment was pronounced on 20 October 1992. On 23 December 1992, the author appealed to the Supreme Court. On 14 January 1993 the Interlocutory Committee of the Supreme Court decided not to allow the appeal as it had no prospect of succeeding. On 22 June 1994, the author requested the Supreme Court to reopen his case; the petition was rejected on 2 September 1994. Counsel submits that the delay during the legal proceedings was due to five adjournments requested by the author owing to ill health, a consequence of the assault he suffered in his house after the incident had been reported in the newspapers.

2.3 With respect to the exhaustion of domestic remedies for the purposes of article 5, paragraph 2, of the Optional Protocol to the International Covenant on Civil and Political Rights, the author states that with the dismissal of his case by the Supreme Court on 2 September 1994, domestic remedies have been exhausted.

The complaint

3.1 The author claims to be a victim of a violation of article 9, paragraph 1, of the Covenant in that he was arbitrarily arrested, that his arrest was not on such grounds and in accordance with such procedures as established by law. In this respect, counsel alleges that the police exceeded their competence in that they enforced a temporary order between two parties in a civil suit, acting on information received by a high-ranking officer from a friend who was one of the parties in the civil suit. The author was not party to that suit and could therefore only be detained if so ordered by a judicial authority. Norwegian law provides for a special authority (namsmenn, the head of which in Oslo is the byfogden) to implement civil decisions; the police may only intervene at the request of the mentioned authority. Counsel states that the police and later the Government shifted the burden of proof in demanding that the author prove in writing that he had been authorized to carry out the work at the time when he was arrested. This, counsel contends, is in breach of Norwegian law, as it was the police who had to prove that they had the legal right to act against the author in the manner they did, interfering with his life and liberty as a private citizen. Furthermore, his arrest was not on such grounds or in accordance with such procedures as established by law, since it was based on the decision of the Tenancy Disputes Court, between the two tenants and the landlord;

counsel contends that the decision is not applicable to a third party. Also, the police documents referred to certain articles of the criminal law not mentioned later in the court decisions. Counsel states that there are three possible reasons for arrest: upholding public order, regulating the traffic or preserving the safety of the public. The courts did not refer to any of these when justifying the author's arrest. Counsel alleges that the arrest was therefore not on such grounds as established by law. In this respect, counsel states that a civil case decision follows special rules of procedure (tvagsfullbyrdelsesloven) which differ from those established for police conduct. Counsel submits that the reason for this unusual mode of action has only one valid explanation, police hostility towards the author.

3.2 The author states that when he was arrested he was not promptly informed of the charges against him; the only information he received was that he had to stop work because of a decision of the Tenancy Disputes Court. This, he submits, is in violation of article 9, paragraph 2, of the Covenant.

3.3 The author further alleges that the attitude the police have had towards him, which was echoed by the press, led to his house being broken into, allegedly because the perpetrators felt they would be safe since the author was a person the police did not feel obliged to protect. Furthermore, the author claims that the police treated him in a painful and humiliating manner when he was detained, denying him the possibility of obtaining explanations from senior members of the police.

3.4 Counsel contends that pursuant to article 9, paragraph 5, of the Covenant the author is entitled to compensation for the violations suffered. In this respect, counsel quantifies the amount of compensation at about 500,000 Norwegian kroner.

The State party's observations and the author's comments thereon

4.1 In its submission under rule 91 of the rules of procedure, dated 14 February 1996, the State party contends that the communication should be declared inadmissible for non-exhaustion of domestic remedies. In this respect, the State party alleged that the author did not argue or invoke, before the national courts during the ordinary proceedings, the substantive rights protected by the Covenant; had he done so, the court would have entered into the issues. The State party further alleges that the author only invoked a violation of Covenant rights when he applied for a reopening of the case and when he submitted the case to the Committee. In this respect, the State party states that to fulfil the requirement of exhaustion of domestic remedies it is insufficient only to invoke the Covenant rights when requesting a reopening of a case. This would mean that the requirement of the domestic remedies would be satisfied by an author with the mere request to reopen a case, something that is always possible, even if the requirements for reopening a case are not complied with. The State party requests that the Committee therefore declare the communication inadmissible as incompatible with the requirement of article 5, paragraph 2 (b), of the Optional Protocol.

4.2 The State party concedes that the legal provisions authorizing the author's arrest were not explicitly considered by the courts. It was not considered necessary to decide on this matter because it was not disputed by the author that the arrests were in accordance with domestic law regardless of whether or not the court found that the author had been given an oral order to demolish the balconies. His only contention had been that the arrest orders were based on incorrect facts as he argued that his activity had been lawful in accordance with the oral order.

4.3 The State party contends it was unnecessary formally to charge the author as he was aware of the reasons for his arrest, since he had refused to obey the police orders to stop the demolition work.

4.4 In respect of the legal basis for the arrest of Mr. Spakmo, the State party contends that the national courts have upheld the lawfulness of the arrest in accordance with the police by-laws, section 39, and the Penal Code, section 339, item 2, as it constitutes a criminal offence not to comply with the orders of the police.

4.5 The State party further contends that the author's arrest did not constitute a disproportionate measure against him.

5. By letter of 16 May 1996 counsel contested the State party's allegation that domestic remedies have not been exhausted because Covenant rights had not been invoked, formally, before the Norwegian courts. This is said to be a very restrictive interpretation of international law. Counsel rejects the State party's allegation that formal cautioning was unnecessary since the author was aware of why he was arrested. In this respect, counsel points out the contradiction in the State party's allegations where they require a very formalistic approach to the invocation of Covenant rights before the courts, with which the author should have complied, yet the State party rejects the need for a formal cautioning in order to arrest someone.

Issues and proceedings before the Committee

6.1 Before considering any claim contained in a communication, the Human Rights Committee must, in accordance with rule 87 of its rules of procedure, decide whether or not it is admissible under the Optional Protocol to the Covenant.

6.2 The Committee has ascertained, as required under article 5, paragraph 2 (a), of the Optional Protocol, that the same matter is not being examined under another procedure of international investigation or settlement.

6.3 As to the requirement in article 5, paragraph 2 (b), of the Optional Protocol that domestic remedies be exhausted, the Committee has noted the State party's argument that the author has not invoked the substantive rights before the courts. The Committee also notes, however, that the author requested the Court for compensation for his arrest by the police, and that therefore all the facts and issues of the author's claim were before the courts. In the circumstances, the Committee finds that it is not precluded by article 5, paragraph 2 (b), from considering the communication.

6.4 The Committee considers that the author and his counsel have sufficiently substantiated for purposes of admissibility the author's claim that he was arbitrarily detained, and that the communication may raise issues under article 9 of the Covenant which need to be examined on the merits.

7. The Human Rights Committee therefore decides:

(a) That the communication is admissible;

(b) That, in accordance with article 4, paragraph 2, of the Optional Protocol, the State party shall be requested to submit to the Committee, within six months of the date of transmittal to it of this decision, written explanations or statements clarifying the matter and the measures, if any, that may have been taken by it;

(c) That any explanations or statements received from the State party shall be communicated by the Secretary-General under rule 93, paragraph 3, of the rules of procedure to the author, with the request that any comments which he may wish to make should reach the Human Rights Committee, in care of the Centre for Human Rights, United Nations Office at Geneva, within six weeks of the date of the transmittal;

(d) That the present decision shall be communicated to the State party and to the author and his counsel.

*/ All persons handling this document are requested to respect and observe its confidential nature.