

## HUMAN RIGHTS COMMITTEE

### Spakmo v. Norway

Communication No. 631/1995

5 November 1999

CCPR/C/67/D/631/1995\*

### VIEWS

*Submitted by: Aage Spakmo (initially represented by Mr. Gustav Hogtun)*

*Alleged victim: The author*

*State party: Norway*

*Date of communication: 28 November 1994 (initial submission)*

The Human Rights Committee, established under article 28 of the International Covenant on Civil and Political Rights,

Meeting on 5 November 1999

Having concluded its consideration of communication No. 631/1995 submitted to the Human Rights Committee by Mr. Aage Spakmo under the Optional Protocol to the International Covenant on Civil and Political Rights,

Having taken into account all written information made available to it by the author of the communication, his counsel and the State party,

Adopts the following:

#### **Views under article 5, paragraph 4, of the Optional Protocol\*\***

1. The author of the communication, dated 28 November 1994, is Aage Spakmo, a Norwegian citizen, born on 21 October 1921. He claims to be the victim of violations by Norway of article 9 of the International Covenant on Civil and Political Rights.\*\*\*

2. At its 59th session, the Human Rights Committee considered the admissibility of the

communication and found that all domestic remedies had been exhausted and that the same matter was not being examined under another procedure of international investigation or settlement. It considered that the author had sufficiently substantiated, for purposes of admissibility, that he had been arbitrarily detained. Accordingly, on 20 March 1997, the Committee decided that the communication was admissible.

### The facts

2.1 The author was commissioned, in July 1984, by a landlord, one Finn Grimsgaard, to carry out repairs on a building, including the demolition and replacement of three balconies. Work commenced on 23 July 1984. Two tenants applied for an 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. According to the author, he then 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 demolition of the balconies. In the morning of Friday 27 July 1984, a municipal inspector, Per M. Berglie (since deceased), examined the building together with the author. The author states that the building inspector gave an oral order to continue with the demolition.

2.2 The author reinitiated the work later on 27 July 1984. After having received a complaint from one of the tenants in the building, the police arrived at the site for inspection at 10.30 pm. The police was of the opinion that the work was disturbing the peace in the neighbourhood, and verbally ordered the author to stop his work. The author refused to do so and claimed that he was working legally. After repeatedly having been ordered to stop his activities, the superintendent on duty ordered the author's arrest. He was arrested around 11.00 pm, and released one hour later.

2.3 The next day, the author continued with his demolition activities. Again, the police ordered him to stop, which the author refused. Around 2.25 pm he was arrested and brought to the police station from where he was released eight hours later. On Tuesday 31 July 1984, the building authorities issued a written demolition order for the balconies.

2.4 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; judgement 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.

### The complaint

3. The author claims to be a victim of a violation of article 9, paragraph 1, of the Covenant in that he was arbitrarily arrested, since 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 byfogd) 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 liberty. 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.

#### State party's observations

4.1 The State party refers to the procedure before the local courts, during which the courts found that there was no evidence that an oral order was given to the author by the building authorities to continue the demolition of the balconies. Consequently, at the material time the injunction given by the Tenancy Disputes Court prohibiting further demolition of the balconies was operative. Section 343 of the Penal Code makes it a criminal offence to act or to be accessory to an act against a legally imposed prohibition. The author should thus have respected the injunction, and his failing to do so constituted a criminal offence. Moreover, it appears from the police reports that the author was ordered on several occasions to stop the demolition. Because of his failure to comply, he was arrested. The records of the arrest show that the author was arrested for violating section 3 of the police bylaws in conjunction with section 339(2) of the Penal Code.<sup>1</sup>

4.2 As to counsel's argument that the police had no competence to arrest the author, because it concerned a civil dispute, the State party explains that the police was acting under the Criminal Procedure Act,<sup>2</sup> since the author did not stop committing criminal acts when ordered. The law on the legal enforcement of decisions in civil cases is thus not relevant in the present case. As to counsel's argument that the author was arrested because a high ranking police officer acted on information received from a friend who was a party in the civil suit, the State party refers to the records of the court hearing, which show that the police officer in question was no friend of any of the parties in the civil suit, but that he indeed remembered to have received a communication from one of the parties. He did not remember whether he had acted on the basis of the information received, but did not exclude the possibility. According to the State party, there is nothing improper or unlawful about the police acting upon information received from the public. The State party concludes that the author's arrest was lawful under Norwegian law. It notes that the author, when bringing his case to the courts, never challenged the lawfulness of his detention other than by arguing that he had received an oral order to continue the work. The Courts held that the police acted lawfully.

4.3 In the State party's opinion, the author's detention was also necessary. It notes that the first detention lasted for one hour and the second for eight hours and argues that this cannot be deemed

disproportionate. In this connection, the State party refers to the circumstances of the author's arrest, which show that the author refused to cooperate with the police and continued his demolition work even when ordered repeatedly to stop it.

4.4 The State party concludes that no violation of article 9 has occurred.

#### Counsel's comments

5.1 In his comments on the State party's submission, counsel recalls that the injunction in favour of the tenants of the building was cancelled the Tuesday following the author's arrest. In the circumstances, the author who claimed to have received an oral order by the building authorities to proceed with the demolition, should not have been arrested by the police. In this connection, counsel submits that the author had been informed by the judge of the Tenancy Dispute Court that an order by the building authorities would overrule the injunction. The author then contacted a police officer on Friday morning and informed her that he had oral permission from the building inspector to continue the demolition of the balconies. The police failed to verify this information and instead went on to arrest the author. Counsel maintains that the police's actions were in violation of the regulations governing the police since the author's activities did not constitute a serious disturbance of public order or great danger for the public. According to counsel, the author acted out of a social and moral duty, in order to avoid danger for the public. His arrest cannot be said to have been necessary.

5.2 Moreover, counsel reiterates that it is not for the police to get involved in a civil dispute, unless specifically called for by the relevant authorities, which was not so in the present case. He suggests that one of the reasons why the police immediately acted following a telephone call from one of the tenants was that the author had had problems with the police in the past. Counsel further states that article 343 of the Penal Code requires that the accused has acted with intent - and argues that there was never any intent on the part of the author to commit a criminal act. He argues that the fact that the police never brought a case against the author for violating article 343 shows that they knew he was not guilty.

#### Issues and proceedings before the Committee

6.1 The Human Rights Committee has considered the present communication in the light of all the written information made available to it by the parties, as provided in article 5, paragraph 1, of the Optional Protocol.

6.2 The question before the Committee is whether the author's arrest was in violation of article 9 of the Covenant. The author has argued that there was no legal basis for his arrest and that the police was exceeding its competence when detaining him. The Committee has noted the State party's explanations in this respect and has examined the Courts' decisions. On the basis of the information before it, the Committee concludes that the author was arrested in accordance with Norwegian law and that his arrest was thus not unlawful.

6.3 The Committee recalls that for an arrest to be in compliance with article 9, paragraph 1, it must not only be lawful, but also reasonable and necessary in all the circumstances.<sup>3</sup> In the instant case,

it is not disputed that on Friday 27 July 1984, the police ordered the author several times to stop the demolition, that the hour was 10.30 pm and that the author refused to comply. In the circumstances, the Committee considers that the author's arrest on Friday 27 July 1984 was reasonable and necessary in order to stop the demolition, which the police considered unlawful and a disturbance of the peace in the neighbourhood. The author's arrest of the next day was again a result of him refusing to follow the orders of the police. While accepting that the author's arrest by the police also on Saturday may have been reasonable and necessary, the Committee considers that the State party has failed to show why it was necessary to detain the author for eight hours in order to make him stop his activities. In the circumstances, the Committee finds that the author's detention for eight hours was unreasonable and constituted a violation of article 9, paragraph 1, of the Covenant.

7. The Human Rights Committee, acting under article 5, paragraph 4, of the Optional Protocol to the International Covenant on Civil and Political Rights, is of the view that the facts before it disclose a violation of article 9, paragraph 1, of the International Covenant on Civil and Political Rights.

8. Under article 2, paragraph 3(a), of the Covenant, the State party is under the obligation to provide Mr. Spakmo with an effective remedy, including compensation. The State party is under an obligation to take measures to prevent similar violations in the future.

9. Bearing in mind that, by becoming a State party to the Optional Protocol, the State party has recognized the competence of the Committee to determine whether there has been a violation of the Covenant or not and that, pursuant to article 2 of the Covenant, the State party has undertaken to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the Covenant and to provide an effective and enforceable remedy in case a violation has been established, the Committee wishes to receive from the State party, within ninety days, information about the measures taken to give effect to the Committee's Views. The State party is also requested to publish the Committee's Views.

---

\*The following members of the Committee participated in the examination of the present communication: Mr. Abdelfattah Amor, Mr. Nisuke Ando, Mr. Prafullachandra N. Bhagwati, Ms. Christine Chanut, Lord Colville, Ms. Elizabeth Evatt, Mr. Eckart Klein, Mr. David Kretzmer, Ms. Cecilia Medina Quiroga, Mr. Fausto Pocar, Mr. Martin Scheinin, Mr. Hipólito Solari Yrigoyen, Mr. Roman Wieruszewski and Mr. Maxwell Yalden.

\*\* The text of one individual opinion signed by six members is appended to this document.

\*\*\* Mr. Spakmo was represented by Mr. Gustav Hogtun until June 1999.

[Adopted in English, French and Spanish, the English text being the original version. Subsequently to be issued also in Arabic, Chinese and Russian as part of the Committee's annual report to the General Assembly.]

## Notes:

1/ Section 3 of the police bylaws of Oslo reads: "All persons are obliged to comply immediately with any order, sign or signal given by the police in order to maintain public order, regulate passage or ensure safety and otherwise to enforce the provision of these bylaws." Section 39 of the bylaws reads: "Any violation of these bylaws or any order issued pursuant thereto is punishable in accordance with section 339 (2) of the Penal Code unless a more stringent penal provision is available." Section 339(2) of the Penal Code reads: "Anyone shall be liable to fines who .... (2) contravenes any regulation issued by a public authority according to law and implying liability to a penalty."

2/ Section 229 of the Criminal procedure Act reads: "Regardless of the severity of the penalty, any person who is with just cause suspected of any offence may be arrested if he: (1) is caught in the act and does not desist from the punishable activity. (2) ..... The provision of section 228 (2) shall apply accordingly." Section 228(2) reads: "An arrest shall not be made if, considering the nature of the case and other circumstances this would constitute a disproportionate measure."

3/ See the Committee's Views in respect to communication No. 305/1988 (Van Alphen v. The Netherlands), adopted on 23 July 1990.

## Appendix

### **Individual opinion (dissenting) signed by members A. Amor, N. Ando, Lord Colville, E. Klein, R. Wieruszewski and M. Yalden**

We are unable to agree to the Committee's conclusion that the author's detention for eight hours in the present case was unreasonable and constituted a violation of article 9, paragraph 1, of the Covenant. (paragraph 6.3)

The information before the Committee reveals that the author reinitiated the demolition work of the building's balcony late on Friday, 27 July 1984; that the police received a complaint from a tenant in the building; that the police arrived there at 10:30 pm and ordered the author to stop; and that upon the author's refusal to obey the order the police arrested him and detained him for one hour (paragraph 2.2). The information also reveals that the next day, Saturday, the author continued his demolition work; that again the police ordered him to stop; and that upon his refusal the police arrested him around 2:25 pm and released him "eight hours" later (paragraph 4.2).

Subsequently, the author instituted court proceedings, claiming unlawfulness of the arrest, and went all the way through to the Supreme Court, but the Norwegian courts held that the police acted lawfully (paragraphs 2.4 and 4.2). According to the State party, the author never challenged the lawfulness of the detention in the proceedings. The State party also argues that, considering the circumstances of the case, his detention for eight hours "cannot be deemed disproportionate" (paragraphs 4.2 and 4.3).

We would like to emphasize that the role of the Human Rights Committee is to apply provisions of the Covenant to particular cases and that it is not a fourth instance of any judicial proceedings. According to the established jurisprudence of the Committee, it is not for the Committee but for national courts to evaluate facts and evidence. In fact, the Committee has seldom rejected the national courts' findings or interpretation or application of domestic law if it is, as such, in conformity with the Covenant, unless the interpretation or application is manifestly unreasonable or disproportionate or constitutes denial of justice.

In our opinion the Norwegian courts' decisions in the present case do not disclose any such defect. On the contrary, the courts have taken all the relevant factors into account in reaching their decisions. After his arrest on the Friday night the author was released one hour later around midnight. After his arrest on the Saturday afternoon he was released eight hours later again around midnight. It may be that the police, on the Saturday, had little choice but to hold the author until after nightfall (given the length of daylight hours in Norway in July and the author's previous conduct); they could thus have prevented another disturbance to the peace of the neighbourhood.

For these reasons we are unable to accept the Committee's conclusion in the present case.

A. Amor (signed)

N. Ando (signed)

Lord Colville (signed)

E. Klein (signed)

R. Wieruszewski (signed)

M. Yalden (signed)

[Done in English, French and Spanish, the English text being the original version. Subsequently to be translated into Arabic, Chinese and Russian as part of the Committee's annual report to the General Assembly.]