HUMAN RIGHTS COMMITTEE

O. F. v. Norway

Communication No. 158/1983

26 October 1984

ADMISSIBILITY

Submitted by: O. F. (name deleted) on 2 August 1983

Alleged victim: The author

State party: Norway

Declared inadmissible: 26 October 1984 (twenty-third session)

Decision on Admissibility

1.1. The author of the communication (initial letter dated 2 August 1983 and six subsequent letters) is O. F., a Norwegian national, born in 1939, residing in Norway and claiming to be a victim of violations by Norway of article 14, paragraph 3 (a), (b), (d) and (e), of the International Covenant on Civil and Political Rights. In particular, O. F. claims that the prosecuting authorities and the courts have not respected his right adequately to prepare his defense, to be assisted by legal counsel and to obtain and have examined witnesses on his behalf as laid down in the Covenant.

1.2. Following a radar control undertaken by the police on a State road for measuring traffic speed. O. F. was in July 1982 charged with having driven his car at a speed of 63 km per hour in a 50 km per hour zone in violation of the traffic law. O. F. states that he requested details from the police concerning the conduct of the radar control, but that he did not receive any. The case was taken up in the district court (Bodbyrett) on 22 October 1982, together with another unrelated charge, concerning an alleged failure by O. F. in 1981 to furnish information to an official register about a business firm which he operated. O. F. claims to have requested a postponement of the case, so that he could adequately prepare his defense, but that such postponement was denied. He claims that he was denied adequate access to the documents of the court, that he was not given an opportunity to assess whether it would be necessary to engage a lawyer or to have witnesses called on his behalf. Further, he claims that the method of the court to deal in one case with two totally unrelated charges unjustly affected his possibilities to defend himself.

1.3. By a judgement of the court delivered on 29 October 1982, O. F. was found guilty on both charges and sentenced to a fine of NKr 1,000 or 10 days' imprisonment. He was also sentenced to pay the costs of the case, NKr 1,000. O. F. appealed to the Supreme Court, which rejected the appeal on 17 December 1982. He maintains that a request for a renewed handling of the case was also rejected. O. F. also states that by a letter from the Supreme Court dated 26 November 1982, he was informed that "a suspected person does not have a legal right to borrow case documents".

1.4. In a further letter dated 27 October 1983, the author stated that he had submitted the same matter to the European Commission of Human Rights on I August 1983. However, the Secretariat of the European Commission informed him by letter of 12 August 1983 that the European Commission would not be able to consider his case, since it had not been submitted within six months of the date of exhaustion of domestic remedies.

2. By its decision of 9 November 1983, the Human Rights Committee transmitted the communication under rule 91 of the provisional rules of procedure to the State party, requesting information and observations relevant to the question of admissibility of the communication.

3.1. By a note dated 12 March 1984; the State party, *inter alia,* explained the following with respect to the facts of the case:

On 27 July 1982 the police issued an *ordinary* writ of optional fine. comprising the count under the Road Traffic Act as well as the one relating to the Act on Statistics. The author did not accept to pay the fine. In a letter of 19 July 1982 the author asked the police for technical information about the control. By letter of 26 July the police informed the author that information would be collected from the police officers operating the radar during the traffic control. It would then be submitted to him as soon as it was available. On 26 August the author was contacted by a police officer and informed that he could come to the police station and examine all documents of the two cases there in order to prepare his defense. The author answered that he did not want to meet at the police station and asked for *copses* of all documents. The police informed him that this request would not be met.

On 6 October 1982 the author was summoned to the main hearing. which took place on 21 October in Bode District Court. He met without a counsel for his defense. At the beginning of the hearing he requested that the case be temporarily dismissed $o that he could properly prepare his defense. He also submitted that if the main hearing was nevertheless to take place, a counsel should be appointed at the expense of the State. The Court did not accept the requests made by the author. It ruled that the Criminal Procedure Act did not give the accused the right to obtain copies of the documents and there was no reason for a temporary dismissal of the case. From the author's appeal of 23 November 1982 to the Supreme Court . .. it follows, however, that the hearing was suspended for a quarter of an hour to enable him to read the documents of the cross-examination. Moreover, the Court was of the opinion that the joinder of the two counts was in conformity with the material legislation. Finally, under the Criminal Procedure Act he was not entitled to a defense counsel paid by the State.

3.2, With respect to the relevant domestic legislation, the State party submits that [a]ccording to the Road Traffic Act of 18 June 1965 section 5 everyone is obliged to observe prohibitions and injunctions in pursuance of traffic sips. Under section 31 violations of the Act are punishable with fines or imprisonment up to one year. A violation is regarded as a minor offence . .. . Under section 31 b the police may issue *summary writs* of optional fine on the spot to persons having committed minor traffic offences. This is a simplified procedure; for instance, a brief reference to the applicable penal provision and the facts is sufficient. The summary writ of optional fine must be accepted on the spot. If this is not done the case will be reported to the police station and an *ordinary* writ of optional fine will normally be issued (under the Criminal Procedure Act section 287), describing the facts of the offence with reference to the provisions applicable. Again the procedure is optional. If the accused refuses to accept, judgement in the Court of first instance is normally requested by the prosecuting authorities.

Under the Act of 25 April 1907 relating to the procurement of specifications to the Official Statistics section 1 private employers are obliged to submit information requested by the authorities in conformity with a decision of Parliament. Anyone who without valid reason fails to submit such information is subject to fines (section 4). In the present case the question at issue was the duty of the employer to fill in a form... requesting information about the firm and send it to the register of enterprises of the Central Bureau of Statistics.

The General Penal Code of 22 May 1902 section 63 regulates the situation when somebody has committed more than one offence and fines are applicable for both or all offences. The court shall then impose one single fine which has to be more severe than the one applicable as a result of each offence.

3.3. With respect to the Norwegian Reservation to the Optional Protocol to the International Covenant on Civil and Political Rights, the State party points out that

Norway when ratifying the Optional Protocol entered a reservation to article 5 {2) "to the effect that the Committee shad hot have competence to consider a communication from an individual if the same matter has already been mined under other procedures of international investigation or settlement". Accordingly, whereas at-tide 5 (2} (a} prevents simultaneous duplicating procedures *(pendente lite)* .... the reservation sen forth. the principle of *non bis in idem.*

Before forwarding his communication to the Committee the author submitted In application to the European Commission of Human Rights, which is clearly another procedure of international investigation . .. The application related to "the same matter" as the present communication, as it was based on the same facts and referred to provisions of the European Convention corresponding to article 14 (3), (a), (b), (d) and (e) of the Covenant. The question arises therefore whether the communication should be declared inadmissible as incompatible *(ratione materiae)* under Article 3 of the Optional Protocol, given the Norwegian reservation.

The answer depends on the interpretation of the words "has been examined" in the

reservation. In the opinion of the Government one can hardly argue that the author's case has been *examined* by the European Commission of Human Rights. In fact, the Secretariat of the Commission merely informed him that he had failed to comply with the six months time-limit under article 26 of the Convention ... Given the fact that in the present case there was not even a decision on inadmissability the Government will not argue that the communication should be declared inadmissible because of its reservation. It was. however, thought useful to draw the attention of the Committee to the question.

3.4. On the question of admissibility, the State party, *inter alia,* observes:

In relation to *article 14 (3)(a)* the Government are unable to see that the author was not informed "promptly and in detail in a language which he understands of the nature and the cause of the charge against him". The author's communication with enclosure contains no facts implying a violation of this provision. in connection with the traffic control the author was immediately informed by the two police officers that he had driven at 63 km/h. A summary writ of optional fine on the spot, which he did not accept, also contains material information relating to the of fence... The ordinary writ of optional fine referred to the provisions of the Road Traffic Act and the Act on Statistics and gave a brief description of the facts of the two cases. Also when the author was summoned to (6 October 1982) and appeared in court (21 October 1982) he was informed of the nature and cause of the charge against him. Consequently, it is the opinion of the Government that the facts of the case do not rinse any issue under article 14 (3) (a) of the Covenant.

Article 14 (3) (e) gives the individual the right to "examine, or have examined, the witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him".

As to the first part of this provision the facts of the case cannot possibly disclose a violation of the Covenant. During the main hearing the two police officers carrying out the traffic control met as witnesses. The author has stated himself (see e.g., his appeal to the Supreme Court of 25 November 1982, p. 4) that he asked several questions concerning the operation of the radar equipment, to which the witnesses responded. It is a matter of fact therefore that the author examined the witnesses against him as required by the first part of article 14 (3) (e).

As regards the second part of that provision it should first be noted that in his appeal of 23 November 1982... the author considers the evidence relating to the traffic signs, given by the third witness (an engineer}, as militating strongly in his favour.

Secondly, during the preparation of the main hearing the author had the right under Norwegian Law (as required by the Covenant) to request that witnesses be summoned on his behalf. It is a matter of fact that he never used this right. Consequently, in this respect he cannot allege that article 14 (3) (e) was violated.

With regard to *article 14 (3) pa),* it seeing from the enclosures that the only allegation of a violation made by the author is based on the fact that his request for copies of all documents

was refused by the local police, and that he consequently was denied "adequate time and facilities for the preparation of his defense".

Subparagraph (b) does not explicitly provide for a right of the accused to copies of documents in a criminal investigation. A general right for the accused to obtain copies in all circumstances would be outside the wording and beyond the purpose of the provision, i.e., to secure that the individual has a real opportunity to defend himself and hence get a fair trial, cf. article 14 (I) . .

The question therefore must be--as stated in the text of article 14 (3) (b) itself--whether the accused in a given case has had adequate time and radiities for the preparation of his defense. in the present case the Government is of the opinion that the requirements of article 14 (3) (b) were met. As stated above the author was offered to come to the police station to see the documents on 26 August 1982. He did not accept this offer. For almost two months he refrained from using this possibility. The author was working about I km from the police station. A visit would have caused no practical difficulties. With his car he could also easily have come from his home, a distance of 20-30 kin. There is nothing to suggest that his right to see the documents at the police station would have been ineffective. The access of accused persons to documents is a well established practice with which the police are familiar. Moreover, in the present case the documents were uncomplicated and their number limited. *Further*more, the facts relevant to the two penal provisions at issue {non-compliance with the duty to fill in a form and exceeding the speed limit) were easy to ms for the purpose of preparing the defense.

If the author had examined the documents at the police station he would have had a precise picture of the information available and an adequate basis for the further preparation of his defense. If deemed necessary after having read the documents, he could have contacted a lawyer.. . and requested for additional witnesses.. . In addition, he was also informed about the charge when he was interrogated hy the police and later summoned to *court.*

Taking all these elements into consideration it should also be noted that the hearing was suspended (although for a short time} to enable the author to read the documents when he raised the issue at the beginning of the main hearing in the District *Court* ....

Even if the Criminal Procedure Act does not provide for a fight of the accused to obtain copies of the documents during the investigation, unless a court meeting in the case takes place, it is general practice, as described above, that the documents are available for examination by the accused at the police station before the main hearing. This *practice* probably amounts to a binding legal principle.

An overall evaluation of all the elements of the present case leads to the conclusion that the author had adequate time and facilities for the preparation of his defence. The Government are of the opinion therefore that the facts of the case do not raise any issue under article 4 (3) (b).

As far as *article 14 (3) (d)* is concerned, it is beyond dispute that the author was tried in his

presence, defended himself in person and was aware of his right to be defended through legal *assistance.* Consequently, it is presumed that the author's reason for invoking this provision must be that the interest of justice required that he should have been assigned free legal assistance. The fact that the author was not assigned free legal assistance must be seen in the light of the nature of the of fences with which the author was charged. Both charges were trivial and ordinary and could in practice only lead to a small fine.. .

Even if the accused usually has no right to *free* legal assistance in minor cases, he is of course (section 99 of the Criminal Procedure Act) entitled to be assisted by a counsel of his own choice--paid by himself--at any stage of the prosecution, including the main hearing ....

Consequently, the Government are of the opinion that the facts of the case do not raise any issue under article 14 (3) (d).

3.5. For the reasons explained above the State party submits that the author's communication should be declared inadmissible under article 3 of the Optional Protocol.

4.1. In response to the State party's submission under rule 91, the author, *inter alia,* forwarded the following comments dated 8 April 1984:

In the Government's reply, it is asserted that I could go to the police station and obtain the information which I had requested and needed for my defense. The Government knows that is untrue. On 5 April 1984 the necessary information on the radar's field of action was not yet available. This was confirmed by Police Sergeant E., by telephone, on 5 April 1984; he also said that the Police Chief, W., was opposed both to this information being obtained from the police officers operating the radar and to my being given this information, obviously from fear of losing face if the police should once again lose a court case involving radar control brought against me and other drivers. E. added that there was strong antagonism on the part of the superior officers of Bode police station...

It is stated that I asked for the case to be postponed, but not why I did so. I wanted a postponement firstly because I had not been able to prepare my defense without the necessary information and documents, although these had been promised me on 26 July 1982, and also because during the brief adjournment of about 15 minutes which was granted in order to allow me to study the photocopies of some documents which had just been distributed, I noticed that I had received copies which were so dark (overexposed) that it was quite impossible to see what they represented .... Without documents, I did not have much material to give a lawyer in order to get him to help me. It is only when I saw some of the documents, just before the hearing, that I received confirmation of the shortcomings of the police's case, and became aware of my small possibilities of defense. I then invoked paragraph 99 (1) of the Criminal Procedure Act: "the accused has the right to be assisted by counsel at every stage of the proceedings". This too was refused, without the judge recording anything in this connection.

It is stated, under point 2, that "anyone who without valid reason fails to submit such information (to the official statistical services) is subject to fines (article 4)".. . .

It is stated that the Penal Code provides for the joinder of several offences. This is true, *but* it is also presumed that the sentence should not exceed by more than 50 per cent the maximum penalty applicable to any of the individual offences: this was not observed in my case. See Penal Code, paragraph 62 (1).

The maximum sentence {on condition of having been found liable to a penalty) should have been "only" a fine of NKr. 900, or, in case of non-payment of the fine, three days' imprisonment. The sentence was a fine of NKr. 1,000 or 10 days' imprisonment. This is contrary to Norwegian law, and, strangely enough, this was accepted by the courts concerned! Furthermore, I was sentenced to pay the State NKr. 1,000 legal costs (when I was unable to defend myself satisfactorily) ....

Mention is made of article 14 (3) (e) concerning the right to examine the witnesses of both parties. I wished to hear the statements of the witnesses of the State Motor Vehicle Office/Motor Vehicle Inspector Service and the State Highway Office, concerning the traffic signs on the spot (the Highway Office has since acknowledged that the signposting was defective and has changed it) and to obtain an opinion, in particular, from the Defense Research Institute (FFI) concerning the possible reflection of the radar waves on a bus shelter located further on. For this purpose, it was necessary to have a reply or photocopies of the police documents of the *case, as* well as the technical data (which have still not been provided) of the Radar Control Service concerning the radar's field of action ....

To excuse itself, the Government then argued that article 14 (3) (d) would have been respected if the accused had had a lawyer. No reference is made to the following problem: not everyone can obtain the help of a lawyer, which is difficult either for economic reasons, or because of the large distances in the remote regions of Norway. or finally because private individual~lly do not know how to obtain the assistance of a lawyer ....

It is stated that on 26 August 1982 I was invited to go to the police station to see the (incomplete) documents of the case, but that I did not accept that invitation. This is only part of the truth. In fact, it was I who telephoned the police; first of all, I spoke to Police Chief W. and asked him if the information I wanted was now available; he did not answer this question, but merely transferred the call to Deputy Chief B., who later represented the Public Prosecutor during the trial. B. told me that W. had decided that I should *not* receive the information I requested, despite the promise that had been made me in writing by Sergeant E. on 26 July 1982 ....

It is then asserted that this was a simple case and that if I had examined the documents at the police station 1 would have had a better idea of the information available and therefore a better basis for preparing my defence; if I deemed it necessary, I could have contacted a lawyer and asked him to have witnesses appear. In my opinion, this is an inadmissible attempt to wriggle out of a situation in which human rights have been violated.

4.2. The author concludes:

It cannot be denied that it will be of great significance both for me and for countless

Norwegians if the Committee considers that there have been violations of United Nations conventions and if it criticizes this situation. It is absolutely unjust, for example, that a police chief can fail to reply to important requests from persons against whom he wishes to institute proceedings before the courts and that such behavior should be accepted. As recently as March 1984, W. did everything he could to have mc serve the term of 10 days' imprisonment and rejected all my requests to have the prison sentence suspended until a decision had been taken concerning my request of 22 December 1983 for the reopening of the case on the one hand, and until the United Nations Human Rights Committee had considered my communication, on the other.

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

5.2. The Committee concurs with the State party (see pars. 3.3 above) that the reservation of Norway with regard to article 5, paragraph 2 (a), of the Optional Protocol does not apply in the present case. The European Commission of Human Rights has not "examined" the facts of the case. Its Secretariat merely pointed out to the author that the period of six months, within which applications may be made to the European Commission in accordance with article 26 of the European Convention on Human Rights, had already expired. As a consequence the case was not even registered by the European Commission of Human Rights.

5.3. The Committee has carefully considered the material submitted by the author, but is unable to find that there are grounds substantiating his allegations of violations of the Covenant.

5.4. With regard to article 14, paragraph 3 (a), no evidence has been submitted indicating that the author was not ''informed promptly and in detail in a language which he understands of the nature and cause of the charge against him."

5.5. With regard to article 14, paragraph 3 (b), the submissions indicate that from 26 August to the date of the hearing on 21 October 1982, the author could have examined, personally or through his lawyer, documents relevant to his case at the police station. He chose not to do so, but requested that copies of all documents be sent to him. The Committee notes that the Covenant does not explicitly provide for a right of a charged person to be furnished with copies of all relevant documents in a criminal investigation, but does provide that he shall "have adequate time and facilities for the preparation of his defense and to communicate with counsel of his own choosing." Even if all the allegations of the author were to be accepted as proven, there would be no ground for asserting that a violation of article 14, paragraph 3 (b), occurred.

5.6. With regard to article 14, paragraph 3 (d), the only disputed issue in this case is whether the author should have been assigned free legal assistance. The Covenant foresees free legal assistance to a charged person *"in* any case where the interests of justice so require and without payment by him in any such case if he does not have sufficient means to pay for it."

The author has failed to show that in his particular case the "interests of justice" would have required the assignment of a lawyer at the expense of the State party.

5.7. With regard to article 14, paragraph 3 (e), the submissions indicate that the author was able to question witnesses against him and to adduce favourable witness testimony. The Committee cannot see that there was any miscarriage of justice in this respect.

6. In the light of its observations set out in paragraphs 5.1 to 5.7 above, the Human Rights Corn-mince concludes that no facts have been submitted in substantiation of the author's claim that he is a victim of violations of any provisions of the International Covenant on Civil and Political Rights.

7. The Human Rights Committee therefore decides:

The communication is inadmissible.