

HUMAN RIGHTS COMMITTEE

S. S. v. Norway

Communication No. 79/1980

2 April 1982

ADMISSIBILITY

Submitted by: S. S. on 5 September 1980

Alleged victim: The author

State party: Norway

Date of decision on inadmissibility: 2 April 1982 (fifteenth session)

Decision on Admissibility

1. The author of the communication (initial letter dated 5 September 1980 and further submission dated 16 November 1981) is a 77-year-old Norwegian national, living in Norway. He submits the communication on his own behalf.

2.1 The author complains that for over 20 years he has been the victim of relentless attacks upon his privacy by boys and youths in the town where he lives and that his repeated requests for protection and proper investigation have gone unheeded by the police. All windows on the ground floor and first floor of his house had been broken and he had given up on having them repaired and moved instead down to the basement, where he slept in a windowless room. Cars were frequently parked in front of his house illegally in such a manner that he had difficulties entering and leaving his house. In anguish and desperation the author had on a number of occasions resorted to acts which he describes as self-defence (in 1978, twice throwing bucketfuls of excrement and urine over cars parked in front of his house, and, in 1979, firing shots from his shotgun in the direction of a group of youngsters across the street and accidentally wounding three of them). In the criminal court proceedings that ensued, the author explained that, in all cases, he had suspected the occupants of the cars and the group of youngsters across the street of being would-be stone throwers whom he only wanted to scare away. He was, however, found guilty of violating a number of provisions of the penal code, found liable for damages and sentenced to 30 days' imprisonment, suspended.

2.2 The author feels strongly that it is unjust that he has been found guilty and sentenced, as

he sees it, merely for trying to defend himself and his property, while the real offenders, i.e, those who for years have been annoying him and damaging his property, have been neither apprehended nor charged. He also feels that a number of procedural errors have been made by the prosecuting authorities and the trial court in the conduct of his case.

2.3 The author did not initially specify the article or articles of the International Covenant on Civil and Political Rights which have allegedly been violated by Norway in his case. However, the facts set out in his letter dated 5 September 1980 indicate that he claims to be a victim of violations of the provisions of article 17 of the Covenant.

2.4 He requests the Human Rights Committee to consider his claim, pointing out that domestic remedies were exhausted by the refusal of the Supreme Court on 31 July 1980 to allow his appeal. He also maintains that other admissibility criteria, set out in the Optional Protocol, are fulfilled.

2.5 There is no indication in the communication that the same matter has been submitted to another procedure of international investigation or settlement.

3. By its decision of 27 March 1981, the Human Rights Committee transmitted the communication under rule 91 of the provisional rules of procedure to the State party concerned, requesting information and observations relevant to the question of admissibility of the communication, in so far as it may raise issues under article 17 of the International Covenant on Civil and Political Rights.

4.1 By a note dated 21 October 1981, the State party objected to the competence of the Human Rights Committee to consider the communication, stating that if the communication is to be interpreted as alleging a breach of article 17 because S. S., acting in legitimate self-defence, was not acquitted in the criminal proceedings instituted against him, it is the opinion of the Norwegian authorities that the communication should be declared inadmissible as incompatible with the provisions of the Covenant in accordance with the provisions of article 3 in fine of the Optional Protocol. Article 17 provides that no one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation. It does not contain any right to be acquitted because of self-defence.

4.2 The State party then continues that Should one take the view that a right to self-defence falls within the scope of article 17, it is at any rate clear that the author went too far when exercising this (possible) right. in fact, three children were hit during the shooting incident. Considerable damage was caused to the cars of persons parking for a limited period of time at the bus-stop, in one case without any prior warning from the author. In the court's opinion, he exceeded his right to self-defence, and this must also be the result under article 17 of the Covenant.

Norwegian authorities have clearly not interfered with the privacy, home etc., of the author. The main problem in relation to article 17 is therefore whether the authorities have afforded sufficient protection to S. S. against interference by other persons, or, to put it differently,

whether Norway has ensured the author the right recognized in article 17 of the Covenant (see article 2 (1) of that instrument).

Seen from this angle, the relevant domestic remedies are not in the hands of the courts, but of the various police authorities, which have as their major task to maintain public order and protect the rights of the individual. A person claiming that he has been harassed by others, has to address himself to the police authorities giving them the opportunity to investigate the matter with a view to preventing similar events in the future.

In the countryside, his first possibility is to inform the sheriff (lensmannen). If he is of the opinion that the sheriff is not pursuing the matter in an efficient manner, he may complain to the police, which will then investigate the matter and ask the sheriff for clarifications. If the person concerned is still not satisfied, he may complain to the Crown Prosecutor (statsadvokaten) and in the last instance to the Attorney-General (riksadvokaten). Accordingly, a hierarchical system of remedies is available to persons claiming to be subjected to harassment or other criminal acts.

In the case of S. S., it is a matter of clear fact that he never addressed himself to the police or the Crown Prosecutor because of the alleged harassment

4.3 The State party points out in this connection that "the author has not adopted an active attitude towards the police authorities" and that apart from the two incidents mentioned in the author's communication:

... the sheriff's office has never been informed by S. S. of alleged trouble on his property. According to S. S. he has been terrorized for a long time. The remedy open to him was then to report to the sheriff's office, a remedy of which he does not seem to have made adequate use. But at any rate he might have entered into contact with the police or the Crown prosecutor, arguing that he was not satisfactorily protected. As stated above, it is clear that he never did this.

Accordingly, it is the opinion of the Norwegian authorities that the author has not exhausted the domestic remedies available to him in accordance with article 2 of the Optional Protocol.

4.4 The State party adds:

... that the sheriff's office in fact kept an eye on S. S.'s house, situated about 6-8 km from the office, as the officers passed the house several times every day.

It should also be pointed out that the sheriff's area covers 240 km with a population of about 6,500. The office has a heavy workload.

5.1 On 16 November 1981, the author of the communication forwarded his comments in reply to the State party's submission of 21 October 1981.

5.2 The author rejects the State party's contention that the communication does not reveal

a violation of article 17 of the International Covenant on Civil and Political Rights and therefore is inadmissible, stating, in particular, that "it is extremely disheartening and disquieting that the Government should consider that the events and hooliganism ... to which I was subjected for a long time are not covered by article 17. For that matter the situation is also covered by article 12 of the Universal Declaration of Human Rights, whose wording corresponds fully with that of article 17."

5.3 He further claims that the right to self-defence has been acknowledged by the Norwegian courts in many cases similar to his own.

5.4 With regard to the specific incidents referred to in his communication and commented upon by the State party, the author states that he personally had informed automobile owners who parked illegally in front of his property "of that rather undesirable effect". He continues that:

Those who eventually claimed otherwise were quite familiar with the situation from hearing others say that the best way to tease 'the smith' was to ignore him completely and simply continue parking there. The way those cars were parked meant that my only access to my property was completely blocked each day. In wintertime, with high snow drifts, the situation was so bad that I was forced to go out via highway 120 behind my smithy and wade in through 1-metre-high snow in order to get back to my house. When, after a year it was impossible to get the authorities (sheriff) and the offenders to understand my hopeless situation and I was met with honking automobile horns and derisive laughter, an old 75-year-old man had no other possibility available than to take matters into his own hands on the basis of the right of retaliation under criminal law (see Criminal Code, paragraphs 228 and 250).

5.5 The author further rejects as untrue the State party's assertion that, apart from the incidents mentioned in the communication, he has never informed the sheriff's office of alleged trouble on his property.

5.6 He also refers to his defence counsel's statement made in the latest criminal case against him that "the sheriff's employees had themselves said that they had heard that 'S. the smith' was a 'special person' as soon as they came to the town, that is to say a man who was not entirely normal".

5.7 The author concludes:

My point is obvious: are complaints received from the "town crank" taken as seriously as those from respected citizens in Enebakk? ... It should obviously make no difference who reports criminal actions that are taking place in the town to the Enebakk Sheriff's Office. I have in no way remained passive and the means for complaint available to an old man have been exhausted without being heard by the authorities. The distance from the Sheriff's Office, the size of his district, the size of the population and his workload are irrelevant considerations here. The only determining factors are that the prosecuting authorities have not fully realized in this situation that their duty is to maintain law and order so that older

people in particular are protected from hooliganism by children and youths.

6.1 The issue to be resolved by the Committee in the last resort relates to whether or not domestic remedies have been exhausted by the author of the communication.

6.2 It is not clear whether there were any remedies such as an action for trespass which the author of the communication might have been able to pursue in a court of law. However, the Committee concludes, on the basis of the information available to it, that the author has failed to pursue remedies which the State party has submitted were available to him, namely, to pursue the matter before the appropriate higher police authorities, the Crown Prosecutor and, in the last instance, the Attorney-General. The author appears to intimate that further efforts by him to exhaust available remedies might not have been taken "seriously" by the authorities. His doubts about the effectiveness of these remedies do not, however, absolve him from exhausting them, as required by article 5 (2) (b) of the Optional Protocol.

The Human Rights Committee therefore decides:

1. The communication is inadmissible;
2. This decision shall be communicated to the author and to the State party.