

TANZANIA / JUDGMENT

a v cameroon communication 258 of 2002 2004 achpr 53 4 june 2004

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21 May - 4th June 2004 Communication No. 258/2002 AFRICAN COMMISSION ON HUMAN AND PEOPLES' RIGHTS Thirty-Fifth Ordinary Session 21 May - 4th June 2004 MISS A v. CAMEROON DECISION BEFORE: CHAIRPERSON: Salimata Sawadogo VICE CHAIRPERSON: Yassir Sid Ahmed El Hassan COMMISSIONERS: Mohammed Abdulahi Ould Babana, Andrew R Chigovera, Vera M Chirwa, E.V.O. Dankwa, Angela Melo, Jainaba Johm, Sanji Mmasenono Monageng, Bahame Tom Mukirya Nyanduga, M. Kamel Rezag-Bara Citation: A v. Cameroon, Comm. 258/2002, 17th ACHPR AAR Annex VI (2003-2003) Publications: Documents of the African Commission on Human and Peoples' Rights, Vol. 2, at 610 (Malcolm D. Evans & Rachel Murray eds., 2009); (2004) AHRLR 39 (ACHPR 2004) RAPPORTEUR 32nd Ordinary Session: Commissioner EVO Dankwa /Angela Melo 33rd Ordinary Session: Commissioner EVO Dankwa/Angela Melo 34th Ordinary Session: Commissioner EVO Dankwa/Angela Melo 35th Ordinary Session Commissioner Angela Melo SUMMARY OF FACTS

1. On 21st August 2002, the Secretariat of the African Commission on Human and Peoples' Rights (the African Commission) received from Miss A, a Cameroonian citizen, a communication relative to the provisions of Article 55 of the African Charter on Human and Peoples' Rights (the African Charter). Miss A submitted the communication for and on behalf of her father and co.
2. The communication was submitted against the Republic of Cameroon (a Sate Party [FN1] to the African Charter) and Miss A alleged in the communication that her father and two colleagues, former workers of the Cameroon P & T were arrested and detained in 1998 by the police, as conspirators of the Minister of P & T, who was also arrested and detained for alleged corruption.

[FN1] Cameroon ratified the African Charter on 20/06/1989

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3. The Complainant further alleged that since 1998, when her father and two of his colleagues have been in detention, they have never been formally charged, they have never appeared in court and never had access to a lawyer. The Complainant added that the State did not appear to have any intention to try them in the foreseeable future, whereas the delicate health of her father required constant medical attention. COMPLAINT
 4. Miss A contends that the above-described facts constitute a violation by Cameroon of Articles 2, 3, 5, 6, 7, 10, 11, 12 and 26 of the African Charter, and requests the African Commission to:
 - a) Ask Cameroon take appropriate measures in order to avoid irreparable damage to the health and well being of the said detainees;
 - b) Pronounce the Government of Cameroon in violation of the African Charter and other international human rights treaties;
 - c) Request Cameroon to bring the accused persons to trial immediately or order their release;
 - d) Request the erring State to compensate her father and his co-detainees for the period they have been in detention. PROCEDURE
 5. By letter ACHPR/COMM/258/2002 of 23rd August 2002, the Secretariat of the African Commission acknowledged receipt of the communication and informed the sender that it would be tabled for consideration prima facie at its 32nd Ordinary Session.
 6. During its 32nd Session, held from the 17th to 23rd October 2002 in Banjul, The Gambia, the Commission considered the communication and decided to be seized of it.
 7. On 22nd October 2002, the Chairman of the Commission sent a letter of requesting the urgent intervention of the President of the Republic of Cameroon, drawing his attention to the situation of the two detainees and in particular on their state of health and urged the Head of State to ensure that appropriate medical care is provided for the detainees. The Chairman of the Commission also requested in his letter that the detainees be charged and given a fair trial or freed in case no charge is made against them.
 8. On 28th October 2002, the Secretariat of the Commission sent a Note Verbale to Cameroon informing it of the communication against it and the decision of seizure that the Commission had taken on it. Cameroon was further requested to provide the Commission with its arguments on the admissibility of the case, which the Commission intends to consider at its 33rd Session (5-19 May 2003, Niamey, Niger).

9. On the same date, the Secretariat of the Commission sent a letter to the Complainant informing her of the decision of seizure that the Commission had taken on her case as well as of the letter for urgent intervention that the Chairman of the Commission had sent to the President of the Republic of Cameroon at her request. The Complainant was also requested to furnish the Commission with possible arguments on the admissibility of the case, which the Commission intended to consider at its 33rd Session.
10. Having received no reply from the Respondent State, the Secretariat of the Commission sent it a reminder on 10th February 2003 drawing its attention to the fact that its written submissions on the case should reach the Commission as early as possible to allow the Commission take a decision on admissibility of the case. The Secretariat is yet to receive a reaction from the Respondent State.
11. On 20th October 2002, the Complainant sent a letter to the Commission requesting it to defer consideration of the communication to allow her to acquire more information on the case from the victims' lawyers.
12. On 21st October 2002, the Secretariat of the Commission acknowledged receipt of the Complainant's request for deferment, and informed her that in accordance with her request consideration of the communication would be deferred until the 35th Ordinary Session of the ACHPR.
13. At its 34th Ordinary Session held in November 2003 in Banjul, The Gambia, the African Commission formally decided to defer its decision on the admissibility of the complaint, in accordance with the request of the Complainant.
14. By Note Verbale ACHPR/COMM 2258/2002 OF THE 15/11/2003, the Secretariat of the African Commission handed to the delegation of Cameroon participating at the 34th Session a copy of the said complaint. The Note Verbale further requested Cameroon to convey its comments with regard to the admissibility of the matter within three months and in any case before end February 2004, to enable the Commission to make a well informed ruling on the communication at its 35th Ordinary Session.
15. On the 17/02/2004, the Ministry of Foreign Relations of Cameroon sent a letter to the African Commission in which the Respondent State intimated that Mr. Ndeh Ningo had been acquitted and freed in November 2003, "for lack of criminal charges" whilst Mr. Takang Philip had been freed in March 2003 "for non-proven facts".
16. Extracts of the judgement letter indicated the acquittal and liberation of the two individuals as well as the respective arrest warrants which had been attached to the documents mentioned earlier.

17. The Respondent State therefore requested the Commission to declare the communication inadmissible “in view of the presentation of the above mentioned documents, which sufficiently prove that the two cases had been submitted to the legal Authorities of Cameroon and had been dealt with”.
18. On the 01/03/2004 the Secretariat of the African Commission, through its Note Verbale ACHPR/COMM 258/02 acknowledged receipt of the Note Verbale from the Respondent State.
19. By letter ACHPR/COMM 258/02/RK of the 1st /03/2003, the Secretariat of the African Commission had conveyed the Note Verbale to the Complainant requesting her reaction on the contents of the letter.
20. On the 14/04/2004, the Complainant wrote to the Secretariat of the African Commission to confirm the liberation of Mr. Ndeh Ningo who had been “judged not guilty and freed on the 23/11/2003 after having spent 4 years in detention”.
21. The Complainant indicated in her letter that Mr. Ndeh Ningo would advise the Commission on whether or not he would pursue the matter at the level of the Commission. The Complainant further mentioned the possibility of holding negotiations with the Respondent State to obtain compensation for Mr. Ndeh Ningo. For this reason the Complainant requested the African Commission to kindly defer its decision on the admissibility of the communication until its 36th Ordinary Session and not to declare it inadmissible as per the request of the Respondent State.
22. During its 35th Ordinary Session held from 21st May to 4th June 2004 in Banjul, The Gambia, the Commission considered the communication and declared it inadmissible. LAW
ADMISSIBILITY
23. Article 56 of the African Charter on Human and Peoples’ Rights provides inter alia that communications shall be considered by the Commission after exhausting local remedies, unless this procedure is unduly prolonged.
24. In the case under consideration, the African Commission notes that the alleged victims were tried and freed in March and November 2003 respectively. This fact was admitted both by the Complainant and Respondent State.
25. The African Commission took note of the fact that the case was brought to the African Commission at the time that the matter was still before the courts. Furthermore, the fact that the case was tried properly before a court of law shows the availability of local remedies.

26. The African Commission further took note of the fact that the Complainant intends to meet with the Respondent State and start negotiations with a view to claim compensation for and on behalf of the alleged victims. For this reason, and in accordance with Article 56(5) of the African Charter, the African Commission, declares this communication inadmissible for non-exhaustion of local remedies. Done at the 35th Ordinary Session held in Banjul, The Gambia from 21st May to 4th June 2004.
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