

TANZANIA / JUDGMENT

republic of djibouti v state of eritrea communication 47814 2022 achpr 10 9 march 2022

COURT
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AFRICAN UNION UNION AFRICAINE UNIÃO AFRICANA African Commission on Human & Peoples' Commission Africaine des Droits de l'Homme Rights & des Peuples 31 Bijilo Annex Layout, Kombo North District, Western Region, P. O. Box 673, Banjul, The Gambia; Tel: (220) 4410505 / 4410506; Cell-phone (+220) 2304361; E-mail: au-banjul@africa-union.org; Web www.achpr.org Decision of the African Commission on Human and Peoples' Rights on Withdrawal Communication 478/14: The Republic of Djibouti v. The State of Eritrea Summary of the Complaint:

1. The Secretariat of the African Commission on Human and Peoples' Rights (the Secretariat), received a complaint presented on behalf of the Republic of Djibouti (hereinafter referred to as Djibouti) pursuant to Article 49 of the African Charter on Human and Peoples' Rights (the African Charter).
2. The Complaint is submitted against the State of Eritrea (hereinafter referred to as Eritrea).
3. Djibouti (the Complainant State) alleges that Eritrea (the Respondent State) is violating provisions of the African Charter, as well as relevant provisions of international law, by its continuous detention since June 2008 of 19 "war prisoners," now seventeen (17) as 2 have successfully evaded captivity in September 2011 and have arrived in Djibouti through Sudan.
4. Djibouti submits that in February 2008, Eritrean troops entered into Djiboutian territory without warning and seized Ras Doumeira and Doumeira Island. A military confrontation initiated by Eritrea on 10 June 2008, the Complainant State alleges that thirty (30) Djiboutian soldiers were killed, one hundred and nineteen (119) were wounded and a further nineteen (19) Djiboutian military personnel, including one officer, were reported missing in action.
5. Djibouti alleges that, seven (7) of the missing soldiers are confirmed to have been taken by Eritrea as prisoners of war, and that the remaining twelve (12) are presumed to have also been taken by Eritrea as prisoners of war. 1

6. Djibouti avers that since the capture of nineteen (19) members of its military personnel by Eritrea, the Respondent State has continuously denied having them in her custody until two of the captives escaped and revealed what exactly happened starting from the date of their arrest. Procedure and Application for Withdrawal
7. The Secretariat received from a Note Verbale from the Minister of Foreign Affairs and International Cooperation of the Republic of Djibouti, dated 03 May 2014, presented on behalf of Djibouti pursuant to Article 49 of the African Charter.
8. The African Commission on Human and Peoples' Rights (the African Commission) seized the Communication during its 17th Extra-Ordinary Session, held from 19 to 28 February 2015.
9. The Commission adopted a decision on Admissibility at its 25th Extra- Ordinary Session held from 19 February to 05 March 2019. The Commission also informed the parties that it was offering its good offices, with a view to an amicable settlement being reached between them in accordance with Rule 90(1) of its Rules of Procedure (2010).
10. Whilst Djibouti agreed to the offer for amicable settlement, which (agreement) was transmitted to the Respondent State on 10 April 2019 for its consideration, the latter failed to accept nor respond to the offer of amicable settlement within the stipulated timeline, following which the offer lapsed on 28 June 2019, and the Commission decided to proceed with the Communication on the Merits in accordance with Rules 91 and 92 of its Rules of Procedure (2010). Accordingly, the Complainant State was requested to submit arguments on the Merits of the Communication in accordance with Rule 91(1) of the Commission's Rules of Procedure (2010).
11. Djibouti failed to submit on the Merits within the stipulated timeline, which expired. However, the Respondent State's submissions on the Merits were received, thereby extending the process for exchange of pleadings between the parties, and the same were transmitted to Djibouti on 19 April 2021, requesting its response to Eritrea's Merits thereto, failing which the Commission would proceed to adopt a decision on the Merits based on information at its disposal, including those contained in the initial Complaint which touch on the Merits of the Communication.
12. By Note Verbale, reference No. 81/56/21/MN/DAJC/MAECI and dated 24 May 2021, received by the Secretariat of the Commission from Djibouti, the Ministry of Foreign Affairs and International Cooperation of the Republic of Djibouti stated the following: 2 "In light of recent developments in bilateral relations between the two States, the Ministry hereby informs the African Commission on Human and Peoples' Rights by Note Verbale, forwarded through its Ambassador in Washington and addressed to Ms. Lindiwe Khumalo, Executive Secretary a.i., of Djibouti's decision to withdraw its Communication, which is currently at the Merits stage."
13. On 18 June 2021, the Secretariat acknowledged receipt of the Note Verbale.

14. By Notes Verbale dated 15 December 2021, the Parties were informed, inter alia, that the Commission was in receipt of the request for withdrawal of the Communication by Djibouti and that the same would be duly considered by the Commission.
 15. By Note Verbale dated 23 December 2021, the Respondent State welcomed the request for withdrawal of the Communication by Djibouti, and recalled its previous requests for the discontinuation and closure of the matter, as well as the Commission's Information Sheet No. 3, which indicates that "[t]he author of a Communication can withdraw his or her Communication at any stage." Analysis of the African Commission
 16. The Commission sees no objection in granting this request. Decision of the African Commission
 17. The Commission decides to grant the request for withdrawal, in line with its established practice and jurisprudence, and in accordance with Rule 124 of its Rules of Procedure (2020).
 18. Based on the above, the Commission declares the Communication closed. Done in Banjul, The Gambia, during the 70th Ordinary Session, held from 23 February to 09 March 2022 3
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