

UGANDA / JUDGMENT

Fam and Others v Egypt (Communication 661 of 2017) [2018] ACHPR 137 (6 March 2018)

[2018] ACHPR 137

COURT

African Commission on Human and Peoples Rights

CASE / FILE NUMBER

Communication 661 of 2017

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African Commission on Human & Peoples' Rights Commission Africaine des Droits de l'Homme & des Peuples

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Communication 661/17

Amir Fam & 141 Others

Egypt

V

. Adopted by the African Commission on Human and Peoples' Rights during the 12th Extra-Ordinary Session, from 19 July to 7th August 2017 Dakar, *Republic of Senegal*

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Decision of the African Commission on Human and Peoples' Rights on Seizure

Communication 661/17: Amir Fam & 141 Others v The Arab Republic of Egypt

Summary of the Complaint:

- 1. The Secretariat of the African Commission on Human and Peoples' Rights (the Secretariat) received a Complaint on 07 June 2017 from Amir Fam (the Complainant) on behalf of himself and 141 Others (the Victims).
- 2. The Complaint is submitted against the Arab Republic of Egypt (the Respondent State) a State Party to the African Charter on Human and Peoples' Rights (the African Charter), having ratified the same on 20 March 1984.
- 3. The Complainant alleges that after the 23 July 1952 military coup led by Gamal Abdel Nasser, Egypt was transformed from a democratic monarchy into a military dictatorship.
- 4. The Complainant avers that in order to gain popular support, the new military dictatorship on 18 September 1952 imposed a reduction by 15% of all rental agreements without compensation to landlords of the rented properties.
- 5. The Complainant states further that subsequent rental reductions were imposed by the military dictatorship as follows: 1955 by 20%; 1958 by 20% and 1961 by 20%. The Complainant avers that in 1962 rent assessment committees called "Communism Committees" were formed to estimate new rentals. In 1965 the last rental reduction by 35% took place for all properties constructed since 1961, including those that had previously been estimated by the Communism Committees. The Complainant reiterates that all these impositions of reductions in the rental agreements revoked the rights of landlords in favour of tenants and were done without any compensation to the owners \$/\$ landlords of the properties.
- 6. The Complainant claims that the rent assessment committees continued to enforce very low rentals for all units (villas, shops, apartments), with estimates less than the actual cost.
- 7. The Complainant also claims that the regime forbade the landlords from evacuating the units at the end of the contractual period and also forced the contract extension for generations which is still ongoing to the present.
- 8. The Complainant alleges that rental amounts were fixed (65 years ago) at a rate of 36-180 EGP (2-10 USD) annually, despite operational costs that landlords were obliged to pay (including utility and security) which increased dramatically and became many multiples of the revenue collected from the units. The Government agencies further rent-hundreds of thousands of rental units from individual landlords for 7-20 EGP per month.

- 9. The Complainant claims that with the restrictions in place, it became impossible for landlords to increase rents or to sell the property, unless to the tenants and then for only a fraction of the market value, especially since the government imposed an extension of rental contracts for more than two generations (120 years). Landlords also cannot evacuate tenants in order to renovate the property or demolish it and rebuild another when the lifespan of the property comes to an end.
- 10. The Complainant submits that the regime forbade the evacuation of the units when the life of the property came to an end, when the landlord needed the units for his personal use, his children or relatives, or even for a pressing need.
- 11. The Complainant alleges that the restrictions imposed by the regime influenced the nonpayment of rents by tenants, notwithstanding the very low rents. Also, judicial proceedings to recover rents or force the defaulting tenants to quit the property became unduly prolonged and costly.
- 12. The Complainant avers that due to the very low revenue, landlords became unable to pay for maintenance and renovation of their property. Ironically, the Complainant avers, in case of structural damage, the landlords are obliged to pay for restoration or face juridical consequences including jail terms, when on their part they cannot even evacuate the tenants to effect restoration. As a consequence, the Complainant states, the majority of real estate properties are in a deteriorating state with over four hundred buildings collapsing every year, often resulting in the death of tenants.
- 13. The Complainant also alleges that due to the very low rents and difficulties to evict tenants, tenants have been able to remain in units with impunity, not paying their rents and even extorting exorbitant amounts from landlords to end the rental and vacate the premise.
- 14. The Complainant also submits that more than 16 million units now remain vacant, including three million units under the Rent Control Law, left empty by tenants who moved to units that they were able to construct themselves because of the savings on rent payment; and five million units left empty by landlords who refused to put it in the market because of the arbitrary laws.
- 15. The Complainant alleges that the whole regime is implicated in this corruption scheme, including executives, legislators, senior military and police officials, judges and their families, who rent millions of units for less than 1 USD per month, and would prevent any changes in the law from which they are benefitting.

- 16. The Complainant submits that in 2016 the Government publicly pledged to solve the problems caused by the arbitrary rent laws, but has not submitted any modification to Parliament.

- 17. The Complainant submits further that many constitutional cases have been filed before the national courts relating to this issue. In 1996 and 1997 a Constitutional Court judge tried to annul the arbitrary rent laws, which resulted in his replacement. More cases were filed in 2008, and to date, nine years later, the Constitutional Court is yet to rule on these cases.
- 18. The Complainant submits that the Rent Control Laws have adversely affected the entire Egyptian real estate and housing sectors, leading to thousands of deaths from collapsing building, many units left vacant and many others being in an advanced state of deterioration.
- 19. The Complainant further submits that many studies have been carried out (including the World Bank Reports of 1986, 1991 and 2008) all highlighting the injustices of the Egyptian Rent Control Laws and the negative impacts that it has on the housing crisis in Egypt.
- 20. The Complainant finally alleges that the various impositions of rental reductions and the enactment of the Rent Control Laws constitute violations committed by the Egyptian executive, senior military and police officials and members of the judiciary, and include violations of the Victims' (i) right to own and dispose of property; (ii) right to adequate and affordable housing; and (iii) right to an effective remedy.

Articles alleged to have been violated

21. The Complainant alleges that the Respondent State has violated Articles 14 and 21 of the African Charter, as well as Articles 1, 7, 8, 17(1) & (2) and 25(1) of the Universal Declaration of Human Rights.

Prayers

22. The Complainant requests the Commission to rule that the Egyptian authorities should:
 - (i) Immediately cancel the Rent Control Law and return the properties to their owners; and
 - (ii) Compensate the landlords for 65 years of violations of their human rights.

Procedure

23. The Secretariat received the Complaint on 07 **June 2017** and acknowledged receipt on 04 **July 2017**, informing the Complainant that the Complaint will be tabled before the Commission for consideration.

Analysis of the Commission on Seizure

- 24. Rule 93(2) of the Rules of Procedure of the Commission provides for the requirements which must be met before the Commission shall be seized of a Complaint, including a preliminary assessment of the requirements under Article 56 of the African Charter. The

Commission is of the view that the Complainant has failed to indicate the steps taken to exhaust domestic remedies, nor did he provide grounds alleging the impossibility or unavailability of domestic remedies, as provided under Rule 93(2)(i). While the Complainant indicates that some cases had been filed on this matter before national courts, including the Constitutional Court, the Complainant does not provide information to indicate that the Victims themselves had at all attempted to seize the national courts nor does he provide arguments as to why local remedies do not have to be exhausted. Thus the Commission finds that there is no prima facie indication that the Complainant sought redress from national authorities as required by Rule 93(2)(i).

- 25. Secondly, the Complainant does not provide any indication as to why the submission of the Complaint is within a reasonable time in terms of Rule 93(2)(h) read with Article 56(6) of the African Charter, given that the violations have been ongoing since 1952 and the military regime ended in 1981. Furthermore, given that cases were filed before the Constitutional Court in 1996 and 1997, the failure of the domestic courts to deal with the matter then should have resulted in the matter being brought before the Commission at that time. The Commission thus finds that the Complaint has not been brought within a reasonable time as provided for under Rule 93(2)(h).

Decision of the Commission on Seizure

26. Based on its analysis, the African Commission on Human and Peoples' Rights decides not to be seized of this Communication because it does not fulfil the criteria for seizure provided under Rule 93 (2) of the Commission's Rules of Procedure.

Done in Dakar, Senegal at the 22nd Extra-Ordinary Session of the Commission held from 29 July to 07 August 2017

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