

UGANDA / JUDGMENT

Samak v Arab Republic of Egypt (Communication 640 of 2016) [2018] ACHPR 131 (17 October 2018)

[2018] ACHPR 131

COURT

African Commission on Human and Peoples Rights

CASE / FILE NUMBER

Communication 640 of 2016

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Communication 640/16**Mr Sharif Hassan Jalal Samak****V****The Arab Republic of Egypt**

*Adopted by the African Commission on Human and Peoples' Rights during the 23rd Extra-
Ordinary Session, from 13th to 22nd Feb 2018 Banjul, The Gambia*

Communication 640/16- Mr Sharif Hassan Jalal Samak 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 12 October 2016 on behalf of Mr. Sharif Hassan Jalal Samak (the Victim), represented by the Organisation of European Alliance for Human Rights (AED) and AMAN Organization (the Complainants).
- 2. The Complaint is submitted against the Arab Republic of Egypt (the Respondent State), State Party to the African Charter.
- 3. The Complainants allege that on 03 March 2014, police raided the Victim's house, beat him severely, stole his furniture and money and kidnapped him for ten days.
- 4. During the time of the alleged kidnapping, the Complainants allege that police tortured the Victim through beatings and electric shocks and also forced him to admit to nine fabricated charges. In four of these charges, the Victim was tried in military tribunals and the rest in local courts. The Victim was sentenced to 37 years in prison.
- 5. The Complaints submit that the Victim was moved from Tanta prison to Liman Tora Prison. While at Liman Tora Prison, the Victim was tortured and subjected to different forms of humiliating treatment in a small room called 'room of revenue'. There were 35 other inmates in the same cell. The small cell did not have water, lighting and had poor ventilation. The Victim inhaled thick cigarette smoke. According to the Complainants, the Victim suffered from angina and fainted frequently. His health deteriorated due to the prison conditions.
- 6. The Complainants submit that the Victim was transferred to another cell but had the same conditions as the previous one. As the Victim's health deteriorated, he was not allowed to get treatment and could not even use a catheter for his heart condition. It is submitted that the Victim is also diabetic.
- 7. The Complainants submit that crimes committed against the Victim include: violation of the Victim's right to administration of justice; harsh sentence; torture and forced disappearance.
- Regarding the need to exhaust domestic remedies, the Complainants submit that the Victim exhausted all available domestic remedies as required under Article 56 of the African Charter. The Complainants allege that the prosecutor failed to investigate incidents of torture that the Victim was subjected to. The Complainants also submit that the Egyptian courts are not impartial; they are SECRETARIAT

politicized and neutral Judges lose their jobs. They allege that the Judges issued an unreasonably harsh sentence on the Victim.

9. The Complainants submit that this Complaint has never been presented before any other international dispute settlement forum for settlement or adjudication and that it has been filed before the African Commission on Human and Peoples' Rights (the Commission) within a reasonable time in accordance with Article 56(6) of the Charter.

Articles alleged to have been violated

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10. The Complainant alleges that the Respondent State has violated Articles 1, 2, 3, 4, 5, 6, 7(a), (b), 8, 19, 60 and 61 of the African Charter on Human and Peoples' Rights.

Procedure

- 11. The Secretariat received the Complaint on 12 October 2016 and acknowledged receipt on 17 October 2016.
- 12. The African Commission on Human and Peoples' Rights (the Commission) was seized of the Communication during the 59th Ordinary Session of the Commission, held from 21 October to 04 November 2016.
- 13. By letter and note verbale dated 15 November 2016 the Complainant and the Respondent State were informed of the decision to be seized and the Complainant was requested to present evidence and arguments on admissibility within two (2) months.
- 14. By letters and note verbales dated 11 July 2017 and 22 September 2017 the Secretariat informed the Parties that the Communication was deferred.
- 15. By note verbale dated 30 October 2017 and received at the Secretariat on 24 November 2017, the Respondent State indicated that the Complainant had not made their submissions on admissibility within the required time frame and requested that the Communication be struck out.

Analysis of the Commission to strike out

16. Rule 105(1) of the Commission's Rules of Procedure establishes that when the Commission has decided to be seized of a Communication, it shall request the Complainant to present arguments on Admissibility within two (2) months.
- 17. Rule 113 provides that when a deadline is fixed for a particular submission, either party may apply to the Commission for extension of the period stipulated. The Commission may grant an extension of time for a period not longer than one (1) month.
- 18. In this case, the Complainant was requested to present evidence and arguments on the admissibility of the Communication within two (2) months from the date of notification of the seizure decision which had expired on 15 January 2017. However, the Complainant did not present any evidence and arguments within the stipulated time.

- 19. To date, the Complainant has not (i) made any admissibility submissions, (ii) responded to several correspondences from the Commission, including the last one dated 22 September 2017 and (iii) has not requested for an extension of time to submit. There is evidence on record that the Complainant has received the most recent correspondence of 22 September 2017.
- 20. In light of the above, the Commission therefore decides that the Complainant has shown no interest in prosecuting this Communication.
- 21. The Commission takes note of its jurisprudence, including Communication 594/15: Mohammed Ramadan Mahmoud Fayad Allah v. the Arab Republic of Egypt, Communication 612/16: Ahmed Mohammed Ali Subaie v. the Arab Republic of Egypt, Communication 412/121 Journal Echos du Nord v. Gabon and Communication 387/10; Kofi Yamagnane v. The Republic of Togo, which were similarly struck out for want of diligent prosecution.

Decision of the Commission

22. In view of the above, the Commission decides to strike out the Communication for lack of diligent prosecution.

Done at the 23rd Extra-Ordinary Session of the Commission held in Banjul, The Gambia from 13 to 22 February 2018

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