

11 November 1997
Communication No. 40/90

AFRICAN COMMISSION ON HUMAN AND PEOPLES' RIGHTS
Twenty-Second Ordinary Session
2-11 November 1997

BOB NGOZI NJOKU

v.

EGYPT

DECISION

BEFORE: CHAIRMAN: Mr. Youssoupha Ndiaye

VICE CHAIRMAN: Dr. Vera V. Duarte Martins

COMMISSIONERS: Dr. Mohamed Hatem. Ben Salem, Prof. Emmanuel V.O. Dankwa, Dr. Nyameko Barney Pityana, Dr. Ibrahim Badawi El Sheikh, Mrs. Julienne Ondziel-Gnelenga, Mr. Kamel Rezzag-Bara, Prof. Isaac Nguema

Citation: Ngozi Njoku v. Egypt, Comm. 40/90, 11th ACHPR AAR Annex II (1997-1998) Publications: IHRDA, Compilation of Decisions on Communications of the African Commission On Human and Peoples' Rights Extracted from the Commission's Activity Reports 1994-2001, at 80 (2002); Documents of the African Commission on Human and Peoples' Rights, at 604 (Malcolm D. Evans & Rachel Murray eds., 2001); (2000) AHRLR 83 (ACHPR 1997)

THE FACTS AS ALLEGED BY THE COMPLAINANT:

1. The communication is submitted by a Nigerian student who was in transit from New Delhi to Lagos. He complains that at the Cairo airport, on 20 September 1986, while he was waiting for his connecting flight, Colonel Mohamed El Adile of the Egyptian police stamped a false entry visa for Egypt on his travel papers.
2. As a consequence, his luggage was searched. A suitcase bearing another person's name, of a different weight than that recorded on his ticket, and for which he had no key, was ascribed to him. The Egyptian police did not ask the airline to identify the owner of the suitcase. Drugs were found in the suitcase.
3. In the presence of two Nigerian diplomats, Mr. Njoku denied that the suitcase was his. A police officer wrote down a statement in Arabic, which the three signed, without it having been translated for them. The subsequent trial was held behind closed doors, without a translator being present for the defendant.
4. Apparently, the Arabic statement signed by the complainant contained the admission that the suitcase was his. The complainant did have a lawyer, but complains that the lawyer

was ineffective and appeared afraid of the judge. The trial lasted only 5 minutes and there was no translator present. The complainant was given a life sentence under a law specifying this punishment for importers of drugs who have visas for Egypt, whose final destination is Egypt and who cross into Egyptian territory. The complaint argues that none of these three conditions applies to him, as he was a transit passenger with no Egyptian visa who wished to remain in the airport. The complainant's appeal was rejected.

5. Article 33 of the Egyptian criminal code prohibits the searching of transit passengers. The complainant argues that the interception and search of transit passengers is a common practice by the Egyptian police, and has been condemned by Dr. Adwar Gali of the Legal Commission of Egypt. The former director of the Drug Enforcement Agency has stated that the Egyptian criminal code nowhere provides for transit related cases and that Egypt is intercepting people only because of international conventions on drug abuse.
6. The complainant argues that the judge who sentenced him, Mr. Anwe Gebali, believed the testimony of the police colonel who forged the Egyptian visa in the complainant's passport.. The complainant exhausted his last appeal in March 1991.

Facts according to the Government of Egypt:

7. The government agrees that on the date in question the complainant was arrested in the transit lounge at Cairo airport, and that the visa for Egypt was stamped in his passport only so that he could be admitted into Egypt for investigations of the case, but that the time at which he acquired the visa was found irrelevant by the courts. The government representative stated at the 19th session that the transit area is "a free zone for customs only", not for crime, and under the anti-drug convention of New York states parties may not permit individuals to carry drugs into another state party.
8. The government states that the validity of the complainant's arrest in the transit lounge was raised by his lawyer during his trial, and that this was his first grounds for overturning his conviction on appeal, but the Supreme Court refused his appeal and the conviction became final.
9. The government states that the complainant then availed himself of a special process by which appeal to the attorney general is possible, and raised the point that the confession attributed to him was not valid. The government said that in the attorney general's review of the case it was found that the court did recognise that the complainant had denied guilt in the case; no confession was used.
10. The government states that the complainant had access to all the protections of Egyptian law, that during the investigations he was represented by a private attorney, a representative of the Nigerian consulate, and during the trial he had a lawyer chosen by the bar association and paid for by the court. As evidenced by the appeals brought before the high court, the supreme court, and the court of cassation, the lawyer did a competent job.

11. The government states that the complainant was tried and convicted under the 1961 Egyptian drug law, which was in force in 1986. This law was revised in 1995, but the changes made the law more harsh and would not be to the advantage of the complainant.
12. The government further claims that the communication is inadmissible because the Working Group of the Sub-Commission on Prevention of Discrimination and Protection of Minorities of the UN decided not to take any action in respect of a communication from Mr. Njoku.

PROCEDURE

13. The communication is dated 10 October 1989. It was originally sent to the Secretary General of the OAU, who forwarded it to the Commission. It was received on 12 April 1990.
14. The Commission was seized of the communication at the 7th Ordinary Session, and the Ministry of External Affairs and Ministry of Justice of Egypt were notified on 31 May 1990. The complainant was also notified of this decision.
15. Between 1990 and 1995, several letters were exchanged between the Secretariat and the parties to ascertain the various issues raised by the protagonists as well as the exhaustion of local remedies.
16. At the 17th session, held in March 1995 the Commission declared the Communication admissible and it was decided that the case should be heard on its merits at the 18th session.
17. On 31 March 1995, a letter was sent to the complainant stating that his case had been declared admissible at the 17th session.
18. On 31 March and 20 May 1995 letters were sent to the government of Egypt requesting further information.
19. On 23 June 1995 copies of the letter of 31 March and decision were sent to him.
20. On 1 September 1995, a letter was sent to the complainant requesting him for further information with regard to the legal basis for the sentence he received.
21. On 11 September the complainant responded to the Secretariat's letter of 1 September.
22. On 30 November 1995 the Secretariat sent a note verbale to the Ministry of Foreign Affairs of Egypt informing it that it would examine the case at the 19th session.
23. On 19 December 1995 a letter was sent to the complainant acknowledging receipt of his previous three letters, and informing him that his case would be heard on its merits at the 19th session.

24. On 20 December 1995 the complainant wrote to the Secretariat with details on a court judgement relating to transit cases, enclosing a photocopied newspaper article describing the judgement, and a translation of it that he had made.
25. On 23 January 1996, the Secretariat of the Commission sent a copy of the complainant's 20 December 1996 letter and a copy of the newspaper article to the Ministry of Foreign Affairs of Egypt.
26. On 13 February 1996 the Commission received a letter, dated 6 February 1996, from the Embassy of Egypt in Dakar with a copy of the government's submission on the case.
27. At the 19th session, in March 1996, the Commission heard the representative of the Egyptian Government, but deferred taking a final decision, pending receipt from the Egyptian Government of the Egyptian law or laws under which the complaint was dealt with.
28. On 26 July 1996 the Secretariat received a letter from the complainant acknowledging receipt of the letter of 8 May 1996 and stating that as he could not appear in person at the session in October 1996, he requested that the Secretary or an NGO represent him.
29. On 1 August 1996 a copy of the Secretariat's last letter to the complainant was sent to the priest indicated by the complainant. With it was sent a summary of the presentation of the government at the 19th session.
30. On same date a copy of the Secretariat's letter of 8 May 1996, requesting copies of laws, was sent to the government of Egypt. With it was sent a summary of the presentation of the government at the 19th session, for the government's approval.
31. On 13 August 1996 the Secretariat acknowledged receipt of the letter dated 22 June and informed the complainant that as neither the Secretary nor the Commission could represent him at the session, a list of NGOs was attached whom he could contact.
32. On 13 August 1996 the Secretariat sent a letter to the Egyptian Organisation for Human Rights requesting that they represent Mr. Njoku at the session.
33. On 13 August 1996 the Secretariat received a letter from the complainant informing it that he had already contacted the Egyptian Human Rights Organisation who had agreed to represent him at the session.
34. On 27 August 1996 the Secretariat received a letter from the complainant giving the names of the two lawyers who would be representing him at the 20th session, in their private capacities.
35. On 23 September 1996 the Secretariat received a letter from the Egyptian Organisation for Human Rights with the complainant's power of attorney.

36. On 8 October 1996 the Secretariat received a letter from the complainant stating that his punishment was harsher than authorised by Egyptian law.
37. On 9 October 1996 the Secretariat received a note verbale from the Embassy of Egypt in Dakar giving additional information and asking whether it would still be necessary to send a representative to the 20th session of the Commission.
38. The same date, the Secretariat sent a letter to the Embassy of Egypt in Dakar acknowledging receipt of the latter's note verbale of the 9 October 1996 and answering that the Secretariat still found it important that Egypt send a representative to the 20th session.
39. On 21 October 1996 the Secretariat received a letter from the representative of the complainant asking the Commission to postpone the consideration of the communication because of new information.
40. At the 20th session held in Grand Bay, Mauritius, October 1996, the Commission decided to postpone the decision to the following session.
41. On 10 December 1996 a note verbale to this effect was sent to the government. The note verbale also asked the government to send relevant laws to the Secretariat.
42. On the same date, the Secretariat sent a letter to the complainant, informing him of the decision of the Commission to postpone the consideration of the Communication.
43. On 10 January 1997 the Secretariat sent a letter to Mr. Monieb, informing him of the decision taken by the Commission at its 20th Session.
44. On 23 January 1997 the Secretariat received a note verbale from the Embassy of Egypt in Dakar, informing the Secretariat that the Working Group on Communications of the Sub Commission on Prevention of Discrimination and Protection of Minorities of the UN had decided not to take any action in respect of a communication submitted by Mr. Njoku.
45. On 31 January 1997 the Secretariat received a letter from Mr. Njokii summarising his case and giving examples of Egyptian case-law in drug related cases.
46. On 3 February 1997 the Secretariat sent an acknowledgement of receipt to Mr. Njoku, enclosing a copy of the Embassy's letter of 23 January 1997.
47. On 11 February 1997 the Secretariat sent a letter to the Embassy of Egypt in Dakar informing it that all relevant information would be taken up by the Commission at its 21st session and requesting it once more to send copies of the relevant laws.
48. On 8 April 1997, the Secretariat received letters from the complainant reiterating the facts of the case and indicating cases of individuals prosecuted on similar grounds and who, according to the complainant, received lighter sentences.

49. On 23 April 1997, the Secretariat renewed its request to the Embassy of Egypt in Senegal for the provision of the relevant legislative enactment against drug trafficking, as well as examples of case-law dealing with passengers on transit charged with drug trafficking. The Embassy was also informed of cases presented to the Secretariat by Mr. Ngozi Njoku.
50. On 21 May 1997, the Secretariat received a note verbale from the Embassy of Egypt in Senegal forwarding copies of the legislative instruments in force relating to drug trafficking in Arabic (as well as amendments made thereto) as requested by the Commission. The Note verbale also underscored that there was no special law applicable to passengers on transit in Egypt and therefore that the latter were subject to the same law.
51. On 28 May 1997, the Secretariat informed the complainant of the defendant's response.
52. On 9 July 1997, the Secretariat acknowledged receipt of the complainant's last letter and on the same day sent a note verbale to the Embassy of Egypt seeking the reaction of its government to the information provided by Mr. Ngozi Njoku.
53. At the 22nd Ordinary Session held in Banjul, (The Gambia) from 2 to 11 November 1997, the Commission took a decision on the merits of the case.

THE LAW

ADMISSIBILITY

54. Article 56, paragraph 7 of the African Charter on Human and Peoples' Rights stipulates inter alia that -communications shall be considered if they do not deal with cases which have been settled in accordance with the principles of the Charter of the United Nations, or the Charter of the Organization of African Unity or the provisions of the present Charter."
55. The defendant state maintains that the communication should be declared inadmissible on the grounds that the working group of the United Nations sub-commission on the prevention and protection of minorities seized of the matter by Mr. Ngozi Njoku decided not to entertain the case.
56. The Commission, considering the provisions of the above-mentioned article, observes that the said text talks about "cases which have been settled..." It is therefore of the view that the decision of the United Nations sub-commission not to take any action and therefore not to pronounce on the communication submitted by the complainant does not boil down to a decision on the merits of the case and does not in any way indicate that the matter has been settled as envisaged under article 56 paragraph 7 of the African Charter on Human and Peoples' Rights. The Commission therefore rejected the arguments of the defendant.

57. On the issue of exhaustion of local remedies as provided for by article 56 paragraph 5, the Commission observes that the complainant has exhausted all local remedies provided for by Egyptian Law, including the possibility of having the case reviewed. Moreover, the government has not indicated existence of remedies other than those used by the complainant.

58. For all these reasons, the Commission declared the communication admissible.

MERITS

59. Both the complainant and the defendant (State) admit that Mr. Ngozi Njoku was arrested in the transit zone of Cairo airport on 20 September 1986, whilst he was on his way to Lagos from New Delhi. They also admit that drug was found in a suitcase which was alleged to belong to the Complainant, the latter was tried and sentenced to life imprisonment, that he was provided with the services of a Lawyer and that he exhausted all local remedies in 1991.

60. Apart from these points of convergence, the rest of the communication contains serious divergences as regards the information provided by the parties. It does not however behove the Commission to judge the facts. This is the responsibility of the Egyptian courts.

61. The role of the Commission in such a case is to ensure that during the process from the arrest to a the conviction of Mr. Ngozi Njoku, no provision of the African Charter on Human and Peoples' Rights was violated. It is also incumbent on it to ensure that the defendant state respected and indeed enforced its own law in total good faith. To all these questions, the Commission responded in the affirmative.

ON THESE GROUNDS,

1. The Commission considers that no provision of the African Charter on Human and Peoples' Rights has been violated and therefore declares the communication closed.

2. Gives mandate to Commissioner Isaac Nguema to pursue his good offices with the Egyptian government with a view to obtaining clemency for Mr. Ngozi Njoku on purely humanitarian grounds.

Taken at the 22nd Ordinary Session, Banjul (Gambia) on 11 November 1997.