

11-25 May 2006
Communication No. 290/2004

AFRICAN COMMISSION ON HUMAN AND PEOPLES' RIGHTS
Thirty-Ninth Ordinary Session
2000

OPEN SOCIETY JUSTICE INITIATIVE (ON BEHALF OF PIUS NJAWE NOUMENI)
v.
CAMEROON

DECISION

BEFORE: CHAIRPERSON: Salamata Sawadogo
VICE CHAIRPERSON: Yassir Sid Ahmed El Hassan
COMMISSIONERS: Reine Alapini-Gansou, Mumba Malila, Angela Melo, Sanji Mmasenono Monageng, Bahame Tom Mukirya Nyanduga, Musa Ngary Bitaye, Kamel Rezag-Bara, Faith Pansy Tlakula

Citation: Open Society Justice Initiative v. Cameroon, Comm. 290/2004, 20th ACHPR AAR Annex IV (2006-2007)

Publications: Documents of the African Commission on Human and Peoples' Rights, Vol. 2, at 851 (Malcolm D. Evans & Rachel Murray eds., 2009); (2006) AHRLR 75 (ACHPR 2006)

RAPPORTEUR

36th Ordinary Session: Commissioner Evo Dankwa

37th Ordinary Session: Commissioner Evo Dankwa

38th Ordinary Session: Commissioner Angela Melo

39th Ordinary Session: Commissioner Angela Melo

SUMMARY OF FACTS

1. The complaint is lodged by the NGO, Open Society Justice Initiative on behalf of a Cameroonian citizen, Pius Njawe Noumeni, against the Government of Cameroon (A state Party to the African Charter)

2. The communication was submitted in accordance with article 55 of the African Charter on Human and Peoples' Rights and the complainant alleges that in November 1999 the Messenger Group based in Douala, Cameroon and headed by Mr. Pius Njawe began operating a radio station in Douala whilst an illegal decision banning the operation of private radio stations was in place.

3. The complainant maintains that following the formal liberalization of air waves in April 2000, the Messenger Group submitted an application with the Ministry of Communications of Cameroon for a license to operate a radio station. After the six (6) months period required under the law, the Ministry of Communication did not respond favorably to the request arguing that the application was still being considered.

4. The complainant, moreover maintains that the Ministry of Communications of Cameroon was in the habit of processing applications for operational licenses in an arbitrary, illegal and discriminatory manner and had on many occasions refused to grant statutory license to operators of radio stations, and on the contrary resorting to the practice of informally issuing temporary authorization to operate on some frequencies, which did not provide any legal cover to the operators of radio stations but only placed them in a situation of uncertainty since the informal authorization could at any given time be withdrawn. In addition, the complainant maintains that by refusing to process applications for operating licenses or providing reasons for refusal to grant licenses, the Ministry of Communications tends to ban, in an arbitrary, discriminatory and politically motivated manner existing operators from continuing to operate.

5. Taking into consideration that the Ministry of Communications did not respond within the legally prescribed period to the Messenger Group's request and in view of the practice of arbitrarily refusing to grant operating licenses for stations, the complainant further maintains that the Messenger announced in mid May 2003 that it will begin broadcasting programs on Radio Freedom FM on 24th May 2003. But on 23rd May 2003, even before Freedom FM began broadcasting, the Ministry of Communications took the decision to ban the broadcasting of the said programs and the police and the army sealed the premises of the radio station.

6. In September 2003, the Messenger took the matter to court requesting for a break of the seals. After 5 months of consecutive adjournments, the court of first instance of Douala decided that the matter came under the competence of the administrative court and took 3 months to deliver a written judgment which should have enabled the Messenger to appeal. Whilst the Court of Appeal should be considering this appeal, equipments worth \$110,000 continue to daily depreciate because of inadequate storage conditions.

7. As the procedure in the civil court followed its course, the Ministry of Communications took Mr. Pius Njawe and the Messenger Group to court for having "set up and operated" without a license a radio broadcasting company.

THE COMPLAINT

8. The complainant maintains that the facts stated above constitute a violation by Cameroon of articles 1, 2, 9, and 14 of the African Charter on Human and Peoples' Rights and consequently request the African Commission to consider as such and request Cameroon to pay adequate compensation to the victims for multiple violations of their rights and freedoms.

9. The complainant moreover, requests the African Commission, in accordance with article 111 of its rules of procedure to request Cameroon to adopt provisional measures with a view to:

- a. Immediately lifting the ban affecting the programs of Freedom FM and authorize it to operate whilst awaiting the outcome of the African Commission's decision on the complaint;
- b. Break the seal on the premises of Freedom FM so that the equipments could undergo proper maintenance whilst awaiting the African Commission's decision on the complaint;
- c. Undertake a quick review of the legislative framework and administrative practices on issuing licenses for operating radio stations with a view to harmonizing them with the provisions of article 9 of the African Charter and the 2002 Declaration of Principles.

PROCEDURE

10. The complaint was received at the Secretariat of the African Commission on 28/06/2004.

11. By a letter ref. ACHPR/COMM 290/2004/RK addressed to the complainant, the Secretariat of the African Commission acknowledged receipt of this communication on 5th July 2004 and indicated that the seizure of the complaint will be considered by the African Commission at its 36th Ordinary Session (23rd November to 7th December 2004, Dakar, Senegal).

12. By a letter ref. ACHPR/GOV/COMM/3/RK of 15th July 2004, the Chairperson of the African Commission sent an urgent request for the adoption of provisional measures in accordance with the provisions of article 111 of the African Commission's rules of procedure, to H.E Mr. Paul Biya, President of the Republic of Cameroon requesting that provisional measures be taken to ensure that no irreparable damage is done to the equipment of Radio Freedom FM.

13. By a letter of 16th November 2004, the complainant informed the Chairperson of the African Commission, Commissioner Sawadogo, that the request for provisional measures had not been complied with and that further the complainant had received death threats over the matter.

14. During the 36th Ordinary Session held in Dakar, Senegal from 23rd November to 7th December 2004, the African Commission considered the communication and decided to be seized of it. The Complainants made oral submissions on the failure of the State to comply with the request for provisional measure. The State delegates indicated that they has not been made aware of the request and the head of delegation, Minister Joseph Dion Ngute offered his good offices with a view to facilitating an amicable solution of the matter.

15. On 22nd December 2004, the Secretariat informed the parties that the African Commission had been seized of the communication and requested them to submit arguments on admissibility in three months from the date of notification.

16. On 22nd February 2005, the Secretariat reminded the State through a Note Verbale to submit its arguments on admissibility within one month from the date of the reminder.

17. On 22nd March 2005, the complainant submitted further arguments on admissibility, which were transmitted to the Respondent State on 29th March 2005 through the Embassy of the Respondent State.

18. At its 37th Ordinary Session, which was held from 27th April to 11th May 2005 in Banjul, The Gambia, the African Commission considered the case and heard oral submissions from the parties. The African Commission subsequently deferred its decision on admissibility of the case pending receipt of arguments of the Respondent State on the same.

19. On 8th December 2005, the Respondent State sent to the Secretariat a letter informing it that amicable settlement was underway in the matter.

20. On 4th October 2005, the Secretariat informed the complainant of the above letter and forwarded the attached documentation and requested them to send in their comments on the same.

21. At its 38th Ordinary Session held from the 21st November to 5th December 2005 in Banjul, The Gambia, the African Commission deferred its decision on the matter awaiting for comments of the complainant on the outcome of the said amicable settlement

22. On 28th April 2006, the Secretariat received a note from the complainant informing it that:

1. The Government of Cameroon dropped the criminal charges against the Freedom FM director and released the equipment of the Radio;

2. The Government committed itself to grant Radio Freedom FM a provisional authorization to broadcast, and process its application for a full license in a fair and equitable manner;

3. Freedom FM, for its part, agreed to discontinue the communication before the Commission, and settle the case;

4. The ongoing negotiations between the parties on the compensation issue have now produced a mutually acceptable compromise, with the Government of Cameroon agreeing to re-open the discussions with Radio Freedom FM in relation to the compensation of the damages suffered by the radio, with a view to reaching a fair, comprehensive and final settlement of the case; and

5. The Government has reiterated its commitment to grant Freedom FM a provisional authorization as soon as consideration of the current Communication is discontinued – as well as process the Radio's application for a broadcasting license in a fair, transparent, and expeditious manner.

23. In consideration of the above, the Open Society Justice Initiative, acting on behalf of Mr. Pius Njawe and Groupe Le Messenger, requested the African Commission to discontinue the consideration of Communication 290/04 against the Republic of Cameroon and that the amicable settlement be registered in its lieu.

24. At its 39th Ordinary Session held from 11th to 25th May 2006 in Banjul, The Gambia, the African Commission considered the communication and decided to close the file.

DECISION

25. The African Commission takes note of the above request and decides to close the file.

26. The African Commission also requests the parties to forward to the Secretariat the written copy of the said amicable settlement for inclusion in the file.

Done at the 39th Ordinary Session held in Banjul, The Gambia, from 11th to 25th May 2006