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Communication 592/15

Hesham Hamid Elshenna (represented by Prof. Mostafa Metwaly)

v

Arab Republic of Egypt

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



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Commissioner Soyata Maiga
Chairperson of the African Commission
on Human and Peoples' Rights




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Dr. Mary Maboreke
Secretary to the African Commission on
Human and Peoples' Rights

Communication 592/15 – Hesham Hamid Elshenna (represented by Prof. Mostafa Metwaly) v 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 **15 December 2015** from Prof. Mostafa Metwaly (the Complainant) on behalf of Mr. Hesham Hamid Hamia Elshenna (the Victim) against the Arab Republic of Egypt (the Respondent State).¹
2. The Complainant submits that he has been authorized by the Victim's wife to represent the Victim in the case.
3. The Complainant avers that on 03 July 2013, a discriminatory military coup took place in the Respondent State which violated all human rights, and sought to eliminate a specific sector of the Egyptian society, being the sector that opposed the coup against the government that was fairly and freely elected by the peoples of Egypt. It alleges that the coup leaders (*hereafter, the Authorities*) who subsequently assumed leadership of the Respondent State committed discriminatory segregation of a sector of Egyptians through killing, enforced disappearances, and torture of prisoners and inmates, including violating the rights of women, children and minors in detention. He further avers that the victims of these alleged acts were denied their right to defense due to the arrests and falsification of allegations against lawyers who represented them in order to pressurize them to discontinue their relevant legal services.
4. The Complainant also claims that the Authorities deprived people of their nationalities, violated freedom of thinking, especially that of university lecturers and generally turned Egypt into a large prison to terrify the Egyptian people, through lawlessness and in blatant breach of international human rights law.
5. More specifically, the Complainant alleges that the family of the Victim is one of several families that suffered at the hands of the Authorities after the coup. He avers that the Victim is an Egyptian national born in 1973 in Dakhalia City, Egypt, and is married with four sons.
6. The Complainant alleges that the Authorities fabricated charges against the Victim which led to his subsequent arrest on 23 January 2015 even though he had committed no offence.

¹ The Arab Republic of Egypt ratified the African Charter on Human and Peoples' Rights on 20 March 1984.



7. He avers that the Public Prosecutor claimed that the Victim had committed arson on a property belonging to one Mr. El Sayed Hassan Omar Abu Zaid Saleh, and even though Mr El Sayed testified otherwise and even signed an official document to the contrary, the Public Prosecutor still insisted on the continued detention of the Victim.
8. The Complainant further alleges that the Public Prosecutor later fabricated another charge against the Victim and referred him to the Military Judiciary where Case No. 1793 of year 2015 was filed against him.
9. The Complainant alleges that while in detention at the Mazalah prison, the Victim was tortured with the others arrested with him and was subjected to inhumane treatment, including: putting him and others in a tiny, poorly ventilated cell; denial of visitation rights; denial of access to medication and clean water; denial of access to newspapers and writing materials; and prevention from carrying money. Also, the Victim was denied the urgent medical attention which he needed for his right eye, as he was suffering from a severe illness and had previously undergone surgery on the retina of his right eye.
10. The Complainant avers that all the pleas made by the brother of the Victim² on his behalf to the Attorney General, the Prime Minister, the Ministry of Police and Head of the Human Rights sector went unnoticed.
11. The Complainant names the general authorities at the helm of affairs and who are responsible for committing the alleged violations as being: (i) the current President and coup leader, Abdul Fattah ElSisi; (ii) the former president, Adly Mansour; (iii) the former Interior Minister, Mohamed Ibrahim; (iv) the current Minister of Defense, Sidqi Sobhy; (v) the former Prime Minister, Hazem Beblawi; and (vi) the current Prime Minister, Ibrahim Mahlab.
12. Additionally, the Complainant submits that this Complaint has never been presented before any other international dispute settlement forum for settlement or adjudication and that the Complaint has been filed within a reasonable time in accordance with Article 56(6) of the Charter, after awaiting the outcome/judgements of the Egyptian courts on the issues placed before them so that they could know whether the courts could deliver qualitative judgment or not, which they later realized was impossible.
13. Regarding the need to exhaust domestic remedies, the Complainant submits that the exhaustion of domestic remedies after the coup is totally impossible, because following the coup which upstaged the democratically elected government of the

² Mr. Mohammed Hamed Hamed Elshehna.



people, all those who opposed the coup were arrested, detained and punished for exercising their rights, and harsh sentences including mass death penalties were passed on dissidents. The Complainant however noted that former President Mubarak was released and cleared of any charges.

14. In view of the foregoing, the Complainant submits that under the current regime, exhaustion of domestic remedies is impossible, as the military is ruling the country, and that any judge who shows any independence from the military would be punished by being sacked or removed. Lawyers and attorneys are also not left out of such punishments as the judiciary in Egypt has collapsed by subduing itself to the military rules and 'court sentences have become politicized'.
15. In view of the foregoing, the Complainant alleges that the crimes committed by the Authorities against the Victim and his family include the following: (i) discriminatory segregation; (ii) elimination of indigenous people; (iii) crime of torturing of detainees; (iv) violation of detainees' right in the course of trial resulting in denial of justice; and (v) denial of prisoners' rights.

Articles alleged to have been violated

16. The Complainant alleges that the Respondent State has violated Articles 1, 2, 3, 4, 5, 6, 7, 8, 14, 15, 19, 60 and 61 of the African Charter on Human and Peoples' Rights.

Procedure

17. The Secretariat received the Complaint on 15 December 2015 and acknowledged receipt on 01 February 2016.
18. The African Commission on Human and Peoples' Rights (the Commission) was seized of the Communication during the 19th Extra-Ordinary Session of the Commission, held from 16 to 25 February 2016.
19. By letter and note verbale dated 07 March 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.
20. By letter and note verbale dated 04 May 2016 the Complainant and the Respondent State were informed that the Communication was deferred during



the 58th Ordinary Session, pending receipt of the Complainant's submissions on admissibility.

21. By letter dated 22 November 2016 the Complainant was informed that they should submit their submissions within one month, failing which it would be struck out for lack of diligent prosecution. By note verbale on the same date the State was informed that the Communication was deferred.
22. By letter and note verbale dated 11 July 2017 the Secretariat informed the Parties that the Communication was deferred during the 60th Ordinary Session.
23. By note verbale dated 08 August 2017 and received at the Secretariat on 14 August 2017, the Respondent State indicated that they have not yet received the Complainant's submissions on admissibility and requested that the Communication be struck out.
24. By letter and note verbale dated 20 September 2017 the Secretariat informed the Parties that the Complainant had been granted an additional thirty (30) days within which to submit on admissibility, failing which the Communication would be struck out for lack of diligent prosecution.
25. In a note verbale dated 27 October 2017 received at the Secretariat on 24 November 2017, the Respondent State indicated that the additional time had expired and thus requested the Commission to strike out the Communication.

Analysis of the Commission to strike out

26. 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.
27. 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.
28. 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 07 May 2016.



However, the Complainant did not present any evidence and arguments within the stipulated time. The said period was extended by the Commission for a period of 30 calendar days and same had expired on the 22 December 2016.

29. During its 22nd Extraordinary Session which took place from 29 July to 07 August 2017, in Dakar, Republic of Senegal, the Commission decided, because it was not satisfied that the Complainant has received the earlier correspondences based on the evidence on record, to granted the Complainant a further period of 30 calendar days from the date of notification to submit evidence and arguments on the admissibility of the above mentioned Communication.
30. More than three (3) months have lapsed since the expiry of the last extended period and no evidence and arguments have been submitted by the Complainant on the admissibility of the Communication. There is also evidence on record that the Complainant has received the letter granting further extension of time to submit on admissibility.
31. In light of the above, the Commission therefore finds that the Complainant has shown no interest in prosecuting this Communication.
32. 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 412/12L 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

33. 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

