

Communication 407/11 – Artur Margaryan and Artur Sargsyan v the Republic of Kenya

Summary of the Complaint:

1. The Secretariat of the African Commission on Human and Peoples' Rights (the Secretariat) received a Complaint on 7 October 2011 from Artur Margaryan and Artur Sargsyan (the Complainants) against the Republic of Kenya<sup>1</sup> (the Respondent State).
2. The Complainants are Armenian nationals who normally reside in the United Arab Emirates. The Complainants submit that on 18 January 2006 they applied for work permits for the position of Directors in "Kensington Holdings Limited" and "Brother Link International Limited" in the Respondent State. These companies were registered in the Respondent State's Registrar of Companies on 13 February 2004 and 1 December 2005, respectively. The Complainants submit that they were each granted a work permit for a period of two years on 19 January 2006 by the Inter-Ministerial Committee of the Respondent State.
3. The Complainants aver that their business involved importing a large number of goods, mainly electronic equipment, into the Respondent State.
4. The Complainants allege that since the beginning of their stay in the Respondent State, Mr. Raila Odinga, currently the Prime-Minister of the Respondent State, announced in public, *inter alia*, that the Complainants entered the country without compliance to relevant statutes, that they were mercenaries, they had connections with people known to be dealing in drugs and no meaningful investigation had been carried out in respect of these allegations.
5. The Complainants submit that they held a press conference in which they refuted the statements of Mr. Odinga as false, malicious and defamatory to them. The Complainants submit that they met Mr. Odinga on several occasions in the Respondent State prior to his allegations, when he sought a loan from the Complainants amounting 1.5 million US Dollars to finance certain political activities; however the Complainants declined to grant this loan. The

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<sup>1</sup> The Republic of Kenya ratified the African Charter on Human and Peoples' Rights on 23 January 1992.



Complainants submit that Mr. Odinga subsequently obtained a personal loan from Mr. Artur Margayan, which he did not pay back. The Complainants indicate that Mr. Odinga was publishing false statements with the intention to “close of the door of the Respondent State before them,” in order to avoid returning the borrowed money.

6. The Complainants submit that the scandal was repeatedly published in the mass media and broadcasted on TV with various comments made from other public officials and citizens.
7. The Complainants submit that in the spring of 2006, Mr. Artur Margaryan lodged a civil suit with the High Court of the Respondent State, Case No. 314 of 2006, against Mr. Raila Odinga, seeking to have his false, malicious and defamatory statements refuted. The Complainants submit that each of the parties filed written comments contesting the allegations of Mr. Odinga; however the case is still pending trial.
8. The Complainants submit that on 8 June 2006 at 7.00 pm, Mr. Artur Margaryan went to the Jomo Kenyatta International Airport (JKIA) to meet his guests from Dubai. The Complainants submit that some Customs officials at JKIA alleged that one guest had not declared and paid the duty fee for some of the goods in his luggage. Mr. Artur Margayran objected, stating that no duty fee should be paid for personal belongings. The Complainants aver that the matter dissolved into an argument; however Mr. Artur Margaryan was forced to take the luggage away and resolved to settle the disputed matter later.
9. The Complainants submit that on the same day, 8 June 2006 at 11.45pm, they were arrested at their residence and escorted to the police station where they were put in custody.
10. The Complainants submit that on 9 June 2006 they were compulsorily expelled from the Respondent State to the United Arab Emirates. Further, on the same day, the police searched their house and seized all their goods, including 13 vehicles.
11. The Complainants state that by Gazette Notice No. 4308 of 13 June 2006, the President, acting under Section 3 of the Commissions of Inquiry Act Cap 102, appointed a Commission to inquire into “various wrongful, criminal or



otherwise unlawful acts and omissions, including but not limited to breaches of security proceedings involving the Complainants and Others.” The Commission, also known as the Kiruki Commission, was also requested to recommend, *inter alia*, criminal investigation or prosecution of the Complainants.

12. The Complainants submit that the Kiruki Commission should have been inquiring into the circumstances and events leading to their deportation.
13. The Complainants submit that on 28 June 2006 the Kiruki Commission started its public hearings, which were subsequently completed on 2 August 2006. The Kiruki Commission heard 84 witnesses and produced 83 exhibits against the Complainants.
14. The Complainants submit that their Defense Counsel attempted, twice, to take part in the proceedings, however he was not allowed to attend the proceedings. The Complainants submit that the Kiruki Commission stated, in its report, that this prohibition was necessary because the Complainants, in their criminal transactions, “used intermediaries such as advocates, who were retained in their transactions.”
15. The Complainants submit that, in a letter dated 28 August 2006, the Kiruki Commission submitted its report to the President which stated, *inter alia*, that the issuance of work permits, the handling and custody of their Entry Declaration Cards, the security of Blank Passports before issuance and the deportation were not procedural. The Kiruki Commission also concluded that the issuance of Airport Passes was irregular, the use of the Government VIP lounge was unauthorized and the breaches of security at the Baggage Hall on 8 June 2006 were criminal and threatening to public officers as well as the public. The Kiruki Commission further noted that the procedure for registering the companies associated with the Complainants was not adhered to, such as signature and stamp duty evasion. The Kiruki Commission also noted that following the raid of the Complainants residence, the police recovered the imported goods for which the Complainants refused to pay duty, thirteen vehicles which were believed to have been stolen, six firearms which were not licensed and two forged State passports of the Respondent State, among other items.
16. The Complainants submit that the Kiruki Commission concluded, *inter alia*, that the evidence revealed possible criminal acts committed by the Complainants,



namely robbery with violence (Section 296(2) of the Penal Code); handling suspected stolen property (Section 322 of the Penal Code); being in possession of firearms without a certificate (Section 4(2), as read with Section 3(a) of the Firearms Act Cap 114); forgery (Section 349 of the Penal Code); being in possession of un-customed goods (Section 220(d)(iii) as read with Section 201 of the East African Community Management Act); establishing radio communication apparatus without a license (Section 35(a)(ii) of the Communication Commission Act No.2 of 1998 and fraudulent immigration (Section 114(i) of the Traffic Act Cap 403). The Kiruki Commission recommended that criminal investigation and prosecution of the Complainants for the stated criminal offences.

17. The Complainants submit that since the Kiruki Commission submitted its report to the President, no further proceedings have been conducted by an investigation authority, or the Courts.

#### Articles alleged to have been violated

18. The Complainants allege that the Respondent State has violated Articles 7(1)(a), (b), (c),(d), 12(4) and 14 of the African Charter.

#### Procedure

19. The Secretariat of the African Commission received the Complaint on 7 October 2011.
20. By letter ACHPR/COMM/407/11/KEN/0.1/757.11 dated 19 October 2011, the Secretariat acknowledged receipt of the Compliant and informed the Complainants that it has been registered as Communication 407/11 – Artur Margaryan and Artur Sargsyan v. The Republic of Kenya.
21. During its 50<sup>th</sup> Ordinary Session held from 24 October to 5 November 2011, in Banjul, The Gambia, the Commission considered and decided to be seized with the Communication, and the Complainants and the Respondent State were informed of the said decision by a letter dated 18 November 2011 and Note Verbale dated 21 November 2011 respectively.
22. During its 51<sup>st</sup> Ordinary Session held from 18 April to 2 May 2012 in Banjul, The Gambia, the Commission decided to defer its decision on the Admissibility of the Communication pending submissions from both parties. Both parties were



informed of such decision by Note Verbale and letter dated 8 May 2012, and in the same letter the Secretariat also requested the Complainants if they want their submissions on seizure to be also considered for admissibility.

23. On 10 August 2012 the Secretariat received the submissions of the Respondent State, and by a Note Verbale dated 16 August 2012 it acknowledged receipt, and on the same day forwarded the submissions to the Complainants.
24. At its 52<sup>nd</sup> Ordinary Session the Commission deferred the consideration of the Communication due to time constraints, and informed the parties of the same by a Note Verbale and letter dated 5 November 2012.

#### Reasons for Strike out

25. Rule 105(1) of the Rule of Procedures of the Commission provides that when the Commission decides to be seized with a Communication, it shall inform the Complainant of the decision and request the latter to submit evidence and arguments on admissibility within two months. In accordance with this Rule, the Complainants by a letter dated 18 November 2011 were informed that the Commission was seized with the Communication, and were requested to present evidence and arguments on Admissibility within two months.
26. However, the Secretariat did not receive any submissions or correspondence of any kind from the Complainants within the two months deadline. Accordingly, in a letter dated 8 May 2012 the Secretariat requested the Complainants if they want their original submissions on seizure to be also considered for admissibility. Nonetheless, the Secretariat did not receive any response from the Complainants.
27. On 10 August 2012 the Secretariat received the submissions on the Admissibility of the Communication from the Respondent State, and acknowledged receipt of the same by a Note Verbale dated 16 August 2012.
28. Even though the Complainants failed to initiate the admissibility proceedings by submitting their arguments as required under Rule 105(1) of the RoPs, the Secretariat on 16 August 2012 forwarded the submissions of the Respondent State to the Complainants and requested them to forward their observations within one month of notification, that is before 18 September 2012.



29. The Complainants did not acknowledge receipt of the Respondent State's submissions or forward their observations on the said submissions.
30. During the 52<sup>nd</sup> Ordinary Session the Commission did not consider the Communication due to time constraints, and subsequently by a Note Verbale and letter dated 5 November 2012 the parties were informed of such fact, and were further informed that they will be duly informed of the outcome of the consideration, when a decision is taken regarding the Communication by the Commission.
31. The Commission notes that between 5 November 2012 and January 2013, the Secretariat has made numerous attempts to communicate the Complainants via email and telephone to no avail.
32. The Commission also notes that since the Secretariat received the original Complaint from the Complainants on 7 October 2011, it has not received any submissions or correspondence of any kind from the Complainants.

#### Decision of the Commission

33. In view of the above the Commission hereby decides to:
  - I. strike out the Communication for lack of due diligence in prosecuting the case; and
  - II. notify both parties of the decision.

**Done in Banjul, The Gambia, at the 13<sup>th</sup> Extraordinary Session of the African Commission on Human and Peoples' Rights held from 19 to 25 February 2013**

