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African Commission on Human & Peoples' Rights

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Commission Africaine des Droits de l'Homme & des Peuples

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Communication 625/16

Basem Kamali Mohammed Odeh (represented by AED and 4 ors)

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

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

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Communication 625/16 – Basem Kamali Mohammed Odeh (represented by AED and 4 ors) 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 **04 May 2016** from **AED and ors** (the Complainants) on behalf of Mr. Basem Kamali Mohammed Odeh (the Victim) against the Arab Republic of Egypt[1] (the Respondent State).

2. The Complainants submit that they have been authorized by the Victim to represent him in this 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 people of Egypt. It alleges that the coup leaders (hereinafter, 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. It further avers that the victims of these alleged acts were denied their right to defence 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. It avers that the Victim is an Egyptian national born on 16 March 1975, resides in Cairo City Egypt, and is married with children.

6. The Complainants aver that the Victim, a former Minister of Supply and Internal Trade and Professor of Engineering in the Faculty of Engineering, Cairo University was arrested on 12 November 2013.

[1]The Republic of Egypt ratified the African Charter on Human and Peoples' Rights on 20 March, 1984

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7. The Complainants allege that the Authorities falsified charges against the Victim and that the Victim was indicted in four trials in which he was sentenced to life imprisonment in three, the total verdict being seventy-five years and the fourth case is still pending before the court.

8. The Complainants allege that while in detention, the Victim was tortured and subjected to inhumane treatment, including: being put in a tiny poorly ventilated cell with no bed; denial of visitation rights; denial of access to medication; clean water; denial of access to newspapers and writing materials; prevention from carrying money; denial of medical care and denial of access to legal representation.

9. The Complainants alleged that the Victim was tried in: Case 7294 of 2013 - 'the issue of the Protest in the road Qualioub' where the Victim was accused of associating with protesters and sentenced alongside 37 others to life imprisonment; Case 1818 of 2013 -'the issue of Ostqaamh mosque' where he was sentenced to life imprisonment with eight others; Case 11531 of 2013 -'the issue of events of the Great Sea Street' where the instruction of the Court of Cassation for a re-trial of the case before another judicial district after the successful appeal of the Victim against his sentence of life imprisonment was never carried out by the authorities and lastly, Case number 34150 of 2015 which is pending before the Court.

10. The Complainants claim that the Complaint has been filed within a reasonable time in accordance with Article 56(6) of the Charter, after awaiting the outcome/judgments of the Egyptian courts, and finally that the Complaint has not been presented before any other international dispute settlement forum for settlement or adjudication.

Articles alleged to have been violated

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

Procedure

12. The Secretariat received the Complaint on 04 May 2016 and acknowledged receipt on 18 May 2016.

13. The African Commission on Human and Peoples' Rights (the Commission) was seized of the Communication during the 20th Extra-Ordinary Session of the Commission, held from 09 to 18 June 2016.

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14. By letter and note verbale dated 24 June 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.

15. By letter and note verbale dated 22 November 2016 the Complainant and the Respondent State were informed that the Communication was deferred during the 59th Ordinary Session, pending receipt of the Complainant's submissions on admissibility. By the same communication, the Complainant was reminded to submit submissions on admissibility within one (1) month, failing which it would be struck out for lack of diligent prosecution.

16. By note verbale dated 13 March 2017 and received at the Secretariat on 17 March 2017, the Respondent State forwarded its submissions on admissibility.

17. By letter and note verbale dated 11 July 2017 the Secretariat informed the Parties that the Communication was deferred during the 60th Ordinary Session.

18. By note verbale dated 11 August 2017 and received at the Secretariat on 19 October 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.

19. 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.

20. 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

21. 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.

22. 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.

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The Commission may grant an extension of time for a period not longer than one (1) month.

23. 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 24 August 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.

24. 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.

25. 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.

26. In light of the above, the Commission therefore finds that the Complainant has shown no interest in prosecuting this Communication.

27. 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

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

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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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