

**15 April - 24 April 1997
Communication No. 39/90**

**AFRICAN COMMISSION ON HUMAN AND PEOPLES' RIGHTS
Twenty-First Ordinary Session
15 April - 24 April 1997**

**ANNETTE PAGNOULLE (ON BEHALF OF ABDOULAYE MAZOU)
v.
CAMEROON**

DECISION

BEFORE: CHAIRMAN: Prof. Isaac Nguema VICE CHAIRMAN: Prof. Emmanuel V.O. Dankwa COMMISSIONERS: Mrs. Julienne Ondziel-Gnelenga, Mr. Youssoupha Ndiaye, Mr. Kamel Rezzag-Bara, Mr. Prof. U. Oji Umzurike, Dr. Hatem Ben Salem.

Citation: Pagnouille v. Cameroon, Comm. 39/90, 10th ACHPR AAR Annex X (1996-1997)

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 62 (2002); Documents of the African Commission on Human and Peoples' Rights, at 555 (Malcolm D. Evans & Rachel Murray eds., 2001; (2000) AHRLR57 (ACHPR 1997))

FACTS

[1] This communication was submitted by Annette Pagnouille of Amnesty International and concerns Abdoulaye Mazou, a Cameroonian national. Mr. Mazou was imprisoned in 1984 by a military tribunal without trial, without witnesses, and without right to defense. He was sentenced to 5 years imprisonment for hiding his brother who was later sentenced to death for attempted coup d'etat. Even after he had served his sentence in April 1989, he continued to be held in prison and was only freed by the intervention of Amnesty International on 23 May 1990. He continued to be under detention at his residence until the law of amnesty of 23 April 1991.

[2] Although Mr. Mazou has now been freed, he has not been reinstated in his position as a magistrate. The complainant therefore requests action be continued on his behalf.

[3] The government was represented by a delegation at the 20th session of the Commission held in Mauritius in October 1996, which asked that the communication should be declared inadmissible because it was still pending at the Supreme Court.

[4] The alleged victim petitioned the President of the Republic in order to solicit his reinstatement as a magistrate. He then submitted an out of court settlement to the Ministry of Justice. When no response from the President or the Ministry was forthcoming the alleged victim made a submission for a legal settlement to the Administrative Chamber of the Supreme Court which rejected his case in principle. He submitted further petitions to the Supreme Court and seized the Ministry of Justice for reinstatement in his position. He has also undertaken to bring political pressure, jointly with others, to reclaim his profession. As yet, none of these actions has produced any result.

PROCEDURE

[5] The Commission was seized of the communication at the 7th Session in April 1990.

[6] On 31 May 1990, the Secretariat of the Commission notified the state of Cameroon of the communication and asked it for its views on admissibility.

[7] On 1 March 1995, the Secretariat informed the complainant that the Commission takes note of the release of Mr. Mazou. The complainant was advised to inform the Commission whether or not his release was satisfactory reparation for Mr. Mazou no later than July 1, 1995.

[8] On 8 June 1995, a fax was received from the complainant stating that although the victim, Mr. Abdoulaye Mazou, had been released he had not been reinstated in his position as a magistrate, to which he is legally entitled.

[9] At the 19th session, in March 1996, the communication was declared admissible. The parties were notified of this decision

[10] At the 20th Session, held in October 1996, a delegation of the government of Cameroon was present and submitted a written response to the effect that the communication was inadmissible. The delegation also admitted, however, that the conditions under which Mr. Mazou was tried by a military tribunal fell short of the standards provided for in the African Charter, but that the laws governing such tribunals had since been changed. The delegation promised to forward to the Commission the written judgement of the Military Tribunal, any judgement concerning the alleged disciplinary measures against Mr. Mazou, a document proving the existence of recourse a concerns disciplinary measures and the law after which Mr. Mazou was condemned. The Commission decided to postpone consideration of the case to the 21st session.

[11] On 24 March the Secretariat received received a letter from the Ministry of Foreign Affairs of Cameroon informing the Secretariat that the question had been dealt with in the Administrative Chamber of the Supreme Court and that all interested parties had the possibility of exhausting local remedies. The Ministry also sent the Supreme Court judgment, the ordinance no 304 which placed Mr. Mazou under surveillance, ordinances no 72/5 and 72/20 concerning the competence of the military court and law no. 74/4 modifying ordinance no. 72/5, the judgment of the military court, ordinance no. 72/13 concerning state of emergency, ordinance 72/6 concerning the organisation of the Supreme Court and law no. 76/28 modifying this ordinance, Decree no. 80/276 concerning the nomination of Secretary Generals of Ministries and Decree no. 82/467 relating to the judiciary.

LAW ADMISSIBILITY

[12] Article 56 of the African Charter reads:

"Communications...shall be considered if they:

5. Are sent after exhausting local remedies, if any, unless it is obvious that this procedure is unduly prolonged..."

[13] In this case, the alleged victim petitioned the President of the Republic in order to solicit his reinstatement as a magistrate. He then submitted an out of court settlement to the Ministry of Justice. When no response from the President or the Ministry was forthcoming the alleged victim made a submission for a legal settlement to the Administrative Chamber of the Supreme Court. He submitted further petitions to the Supreme Court and seized the Ministry of Justice for reinstatement in his position. In light of the above actions taken by the victim and their failure to yield any results the Commission holds that local remedies have been duly exhausted.

MERITS

[14] Article 6 of the Charter reads:

"No one may be deprived of his freedom except for reasons and conditions previously laid down by law. In particular, no one may be arbitrarily arrested or detained".

[15] In conformity with Article 65 of the Charter, the Commission cannot pronounce on the equity of court proceedings that took place before the African Charter entered into force in Cameroon on 20 September 1989 (See the Commission's decision on communication 59/91). If however irregularities in the original sentence has consequences that constitute a continuing violation of any of the Articles of the African Charter, the Commission must pronounce on these.

[16] Mr. Mazou was held in prison after the expiration of his sentence in April 1989 until 23 May 1990. After his release, he was placed under house arrest. The delegation of Cameroon at the 20th session stated that:

"After serving his sentence he was released, but the problem is that he was the subject of purely administrative measures based on existing laws at that time. These laws were however abrogated only in 1989".

[17] All parties agree that Mr. Mazou was held beyond the expiry of his sentence. No judgment was passed to extend his sentence. Therefore the detention is arbitrary, and the Commission finds that this constitutes a violation of Article 6.

[18] Article 7 of the African Charter reads:

"1. Every individual shall have the right to have his cause heard. This comprises:

(b) the right to be presumed innocent until proved guilty by a competent court or tribunal;

(d) the right to be tried within a reasonable time by an impartial court or tribunal".

[19] Mr. Mazou has not yet had a judgment on his case brought before the Supreme Court over 2 years ago, without being given any reason for the delay. At the 20th session the delegation held that the case might be decided upon by the end of October 1996, but still no news of it has been forwarded to the Commission. Given that this case concerns Mr. Mazou's ability to work in his profession, two years without any hearing or projected trial date constitutes a violation of article 7.1(d) of the African Charter.

[20] At the 20th session, the delegation of Cameroon stated that

"the administrative detention had not for its reason the fact that sentenced Mazou, it was not linked to the trial. When the state believes that an individual who is free can trouble public order we can take preventive measures, and this explains why he was detained administratively. This can be renewed at any time when the administrative authorities deem that there is a risk and therefore they deem need of preventive measures".

[21] Detention on the mere suspect that an individual may cause problems is a violation of his right to be presumed innocent.

[22] Article 15 of the African Charter reads:

"Every individual shall have the right to work under equitable and satisfactory conditions..."

[23] Article 2 of the Amnesty Law of 23 April 1992 reads:

"Have been amnestied: -All persons sentenced of subversion to penalty of imprisonment and/or fined; -All persons sentenced a punishment of detention or serving an penalty of detention; All persons authors of offences of a political nature, condemned to death penalty."

[24] Article 3 of the Amnesty Law of 23 April 1992 reads:

".... the persons condemned who have been granted amnesty and who had public employment will be reintegrated..."

[25] Still after the Amnesty Law of 23 April 1992, Mr. Mazou has been denied reinstatement by the government in his former professional capacity as a magistrate.

[26] The delegation of the government which appeared at the 20th session claimed the reason to be that he is not covered by the Amnesty law of 23 April 1992, because he has not been judged of subversion or sentenced to detention. It also stated that disciplinary action was taken against Mr. Mazou because of his sentence".

[27] Although according to the delegation, Mr. Mazou was judged for an ordinary criminal offence in Cameroon, he was still judged by a Military Tribunal. The delegation answered the Commission's questions about this as follows: "Why he was tried by a Military Tribunal? Everybody knows that when you are involved in a problem which includes the attempt to violently, using arms, overthrow a government and a president, then you are actually taking actions in political acts, something of a political nature. The coup plotters of 1984 were

judged by the Military Tribunal and since Mr. Mazou hid for some time a brother of his who was involved, then there was, there could have been a connection between the coup attempt and the fact that Mr. Mazou had accepted to hide his brother".

[28] To the Commission it still seems peculiar that Mr. Mazou was tried by a Military Tribunal like the coup plotters and that afterwards he is not given amnesty like them. The delegation promised to forward to the Commission the written judgement of the Military Tribunal. This has not yet happened.

[29] The Commission finds that by not reinstating Mr. Mazou in his former position after the Amnesty Law, the government has violated Article 15 of the African Charter, because it has prevented Mr. Mazou to work in his capacity of a magistrate even though others who have been condemned under similar conditions have been reinstated.

[30] FOR THE ABOVE REASONS, THE COMMISSION declares the violations of Articles 6, 7.1(b), 7.1(d) and 15; recommends that the government of Cameroon draw all the necessary legal conclusions to reinstate the victim in his rights.

[31] Taken at the 21st Ordinary Session, Nouakchott, Mauritania, April 1997