

AFRICAN COMMISSION ON HUMAN AND PEOPLES' RIGHTS
Thirty-Third Ordinary Session
15-29 May 2003

MOUVEMENT DES RÉFUGIÉS MAURITANIENS IN SENEGAL

v.

SENEGAL

DECISION

BEFORE: CHAIRPERSON: Kamel Rezag-Bara
VICE CHAIRPERSON: Jainaba John
COMMISSIONERS: A. Badawi El Sheikh, Andrew R. Chigovera, Vera M. Chirwa, Emmanuel V. O. Dankwa, Yasser Sid Ahmed El-Hassan, Angela Melo, N. Barney Pityana, Hatem Ben Salem, Salimata Sawadogo

Citation: Mouvement des Réfugiés Mauritaniens in Senegal v. Sen., Comm. 254/02, 16th ACHPR AAR Annex VII (2002-2003)

RAPPORTEUR

32nd Session: Commissioner Sawadogo

33rd Session: Commissioner Sawadogo

SUMMARY OF FACTS

1. The Complainant alleges that on the eve of the demonstration by the refugees of Podor in commemoration of the International Refugee Day, the Prefect of the town of Podor banned the said demonstration.

2. The Complainant does not show whether he had complied with the necessary procedures to obtain authorisation for the demonstration. He however points out that he had sent the programme of the demonstration to the following institutions and persons:

3. African Commission on Human and People's Rights; United Nations High Commissioner for Refugees; Commission for Assistance to Returnees and Displaced Persons; Governor of Saint-Louis; Prefect of Podor; Deputy Prefect of Thille Boubacar and the Press.

4. The text of the decision of the Prefect of Podor banning the demonstration which was scheduled to take place on Thursday 20th and Friday 21st June 2002 in the towns of Madina

Moussa, Diolly, Podor and Ngaolé was dated 19th June 2002, citing the need to keep law and order as the reason for this action.

5. The submission of the Complainant includes the programme of the demonstration sent to the above mentioned institutions and persons, the decision of the Prefect of Podor dated 19th June 2002 banning the demonstration scheduled to take place on Thursday 20th and Friday 21st June 2002 in towns of Madina Moussa, Diolly, Podor and Ngaolé.

COMPLAINT

6. The Complainant alleges that Senegal violated Articles 5, 9 and 11 of the African Charter on Human and Peoples' Rights.

PROCEDURE

7. The communication was received at the Secretariat of the African Commission on 6th August 2002.

8. On 12th August 2002, the Secretariat of the African Commission acknowledged receipt of the communication and informed the Complainant that the complaint was registered and would be considered at the 32nd Ordinary Session scheduled to take place in Banjul, The Gambia, from 17th to 31st October 2002.

9. At the 32nd Ordinary Session held from 17th to 23rd October 2002 in Banjul, The Gambia, after considering the communication, the African Commission decided to be seized with the said communication.

10. On 30th October 2002, the Secretariat of the African Commission informed the parties of the above-mentioned decision and asked them to provide it with more information on the admissibility of the communication, in accordance with Article 56 of the African Charter. It also sent a copy of the communication to the respondent State. It requested the parties to send their written observations to the Secretariat within two months after notification of the decision.

11. At its 33rd Ordinary Session held from 15th to 29th May 2003 in Niamey, Niger, the African Commission considered this communication and declared it inadmissible.

LAW

ADMISSIBILITY

12. The admissibility of the communications submitted under Article 56 of the African Charter is governed by the conditions set out in Article 56 of the African Charter. The applicable provision in this particular case is that of Article 56(5) which stipulates that: "communications....shall be considered if they: "are sent after exhausting local remedies, if any, unless it is obvious that this procedure is unduly prolonged..."

13. In the case under consideration, the Complainant alleges that on the eve of the demonstration for the commemoration of the International Refugee Day, the Prefect of the town of Podor issued a ban of the demonstration by Mauritanian refugees.
14. The Complainant filed the decision of the Prefect of Podor banning the demonstration scheduled to take place on 20th and 21st June 2002 in the towns of Madina Moussa, Diolly, Podor and Ngaolé.
15. In the Complainant's written observations, it is alleged that according to the information received, the procedure applied in such a case by Conseil d'Etat would be unduly prolonged, but without elaborating how.
16. In its response, the Respondent State refers to the provisions of Article 56 of the African Charter and Rule 116 of its Rules of Procedure which provides for the exhaustion of local remedies as a requirement for the African Commission to rule on the admissibility of communications.
17. The Respondent State also recalls that the guidelines for submission of communications provide that each communication should particularly indicate that local remedies have been exhausted.
18. The representative of the Respondent State stated during the 33rd Ordinary Session that the Complainant had not undertaken any efforts to challenge the decision banning the demonstration.
19. She pointed out the decision complained of was an administrative measure against which the Complainant could have taken legal action and obtained redress in the following 2 ways:
 - a. Appeal to a higher administrative authority which consists of seizing the hierarchical authority for abuse of authority, including the Governor, the Minister of Interior, the Prime Minister and, finally, the President of the Republic in accordance with the Institutional Act No. 92-24 of 30th May 1992 relating to Conseil d'Etat as amended and Article 729 of the Code of Civil Procedure;
 - b. Administrative-law action, through seizure of Conseil d'Etat cancelling the administrative decision complained of for abuse of authority.
20. The representative of the Respondent State demonstrated that these local remedies existed but that the Complainant had not utilised any of them. She further pointed out that in emergency cases, the procedure of hour by hour interim order in an urgent case was also available to those seeking justice. She therefore concluded that the Complainant had not exhausted local remedies.
21. In light of the above submissions, the African Commission notes that the Complainant did not provide proof of attempting to exhaust the local remedies that were available to him.

FOR THESE REASONS, THE AFRICAN COMMISSION declares the communication inadmissible for non-exhaustion of local remedies.

Done at the 33rd Ordinary Session held in Niamey, Niger, from 15th to 29th May 2003.