

21 May - 4th June 2004
Communication No. 199/97

AFRICAN COMMISSION ON HUMAN AND PEOPLES' RIGHTS
Thirty-Fifth Ordinary Session
21 May - 4th June 2004

ODJOURIBY COSSI PAUL

v.
BENIN

DECISION

BEFORE: CHAIRPERSON: Salimata Sawadogo
VICE CHAIRPERSON: Yassir Sid Ahmed El Hassan
COMMISSIONERS: Mohammed Abdulahi Ould Babana, Andrew R Chigovera, Vera M Chirwa,
E.V.O. Dankwa, Angela Melo, Jainaba Johm, Sanji Mmasenono Monageng, Bahame Tom Mukirya
Nyanduga, M. Kamel Rezag-Bara

Citation: Odjouriby v. Benin, Comm. 199/97, 17th ACHPR AAR Annex VI (2003-2003)
Publications: Documents of the African Commission on Human and Peoples' Rights, Vol. 2, at 580 (Malcolm D.
Evans & Rachel Murray eds., 2009); (2004) AHRLR 15 (ACHPR 2004)

RAPPORTEUR

22nd Session: Commissioner Nguéma

23rd Session: Commissioner Nguéma

24th Session: Commissioner Nguéma

25th Session: Commissioner Nguéma

26th Session: Commissioner Nguéma

27th Session: Commissioner Nguéma

28th Session: Commissioner Nguéma

29th Session: Commissioner Nguéma

30th Session: Commissioner Sawadogo Salimata

31st Session: Commissioner Sawadogo Salimata

32nd Session: Commissioner Sawadogo Salimata

33rd Session: Commissioner Sawadogo Salimata

34th Session: Commissioner Sawadogo Salimata

35th Session: Commissioner Sawadogo Salamata

SUMMARY OF FACTS

1. The Complainant is a national of Benin who alleges violation of his rights by the judiciary of his country.
2. It is alleged that the Appeal Court of Cotonou refused to restore his rights in a case pending before the said court since 1995 which sets him up against Mr. Akitobi Honoré whom he accuses of having despoiled him of his real estate property with the complicity of some judges.
3. The Complainant considers that the attitude of the Appeal Court constitutes a denial of justice.

COMPLAINT

4. The Complainant alleges violation of Articles 7 and 14 of the African Charter

PROCEDURE

5. The Secretariat of the African Commission acknowledged having received the communication on 8th April 1997.
6. The African Commission was seized of the communication at its 22nd ordinary session and deferred its decision on admissibility to its 23rd ordinary session scheduled for April 1998.
7. During its 23rd session held from 20th to 29th 1998 in Banjul, The Gambia, the African Commission declared the communication admissible and deferred consideration of the merits of the case to its 24th ordinary session.
8. On 1st June 1998, a note was sent to the Government of Benin informing them that the communication had been declared admissible by the African Commission, pursuant to Article 56 paragraph 5, and that the Commission would rule on the merits during its 24th ordinary session scheduled for October 1998. A letter with the same message was sent also to the Complainant.
9. During the 28th Ordinary Session, the African Commission heard both parties. Through its representative, the Respondent State asked the African Commission to review its decision on admissibility as the Complainant had not exhausted local remedies.
10. The African Commission, noting that the Complainant had not put his case across logically,

advised some NGO's to assist him. To this end, the case was entrusted to Interights and to the Institute for Human Rights and Development in Africa on behalf of the Complainant.

11. In any case, the African Commission took note of the undue delay of the Complainant's case before the courts.

12. From the submissions, it became apparent that in a civil case like this one, the conduct of proceedings is the responsibility of the parties in the case. The appeal filed against the judgment of the court of first instance is dated 19th September 1995 and the Commission was seized of the case on 8th April 1997, that is 20 months after the filing of the appeal. It appears from the practice of the Appeal Court accepted by the Supreme Court that average period ranges between 4 and 5 years.

13. The African Commission upheld its decision on admissibility and deferred its decision on the merits to the 30th Ordinary Session held in Banjul, The Gambia, from 13th to 27th October 2001.

14. The communication was deferred on several occasions because the Complainant was not very familiar with the procedures of the African Commission.

15. The African Commission considered this communication at its 35th Ordinary Session held in Banjul, The Gambia and decided to deliver its decision on the merits.

LAW

ADMISSIBILITY

16. Article 56 of the Charter provides, among other things, that communications shall be considered by the Commission if they:

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

17. Odjouoriby Cossi Paul (the Complainant) claims that the case opposing him to Mr Akitobi Honore has been pending before the Appeal Court of Cotonou since 19th September 1995 and that up to now the Court has delivered no judgment.

18. And yet, it is obvious that the local proceedings will remain in impasse as long as the Appeal Court has not made any ruling on the appeal pending before it.

19. The African Commission has moreover established the evidence of silence of the State of Benin to all the notifications and other requests for clarification addressed to it through its Secretariat.

20. This situation has led the African Commission to rule on the admissibility of the communication submitted to it on the basis of the facts brought to its attention by the Complainant.

21. In accordance with the provisions of Article 7, paragraph 1(d) of the African Charter and its previous decisions, (cf. in particular communication 39/90, Annette Pagnouille – on behalf of A. Mazou/Cameroon [FN1]), the Commission considered that the waiting period before the Appeal Court of Cotonou had been unduly prolonged and on these grounds, it had declared the communication admissible.

[FN1] Communication N°39/90: Annette Pagnoule on behalf of Abdoulaye Mazou c/ Cameroon. The victim had unsuccessfully initiated many proceedings both non-contentious and contentious. The Commission felt then that local remedies had been exhausted

22. Details brought later to the case file by Interights and the Institute for Human Rights and Development as well as by the Government of Benin indicate that:

- a. Following an appeal lodged by the two parties, the case was the subject of a joinder by interlocutory decision dated 9th March 1996.
- b. After several adjournments due mainly to non attendance by one or the other party at the hearings, the court gave judgment by default on 5th August 1999 indicating that non production of the disputed decision and conclusions by the parties causes damage to the smooth administration of justice.
- c. Mr. Akitobi Honoré, the opponent of Mr. Odjouri by, lodged an appeal against this decision and Mr. Yansunnu, counsel of Mr. Odjouri by, submitted further pleadings in defence before the chamber of the Supreme Court on 27th June 2001.

23. But the African Commission maintains that in any case, the State of Benin remains the guarantor of a good administration of justice on its territory and for the reasons, the African Commission upholds its decision on admissibility.

MERITS

24. The African Charter on Human and Peoples' Rights stipulates in Article 7, paragraph 1(d) that "every individual shall have the right to have his cause heard. This comprises...the right to be tried within a reasonable time".

25. On 19th September 1995, the plaintiff lodged an appeal against judgment No. 75/95 4° CCM delivered on 7th August 1995 by the civil chamber of the court of first instance of Cotonou in its provisions on damages granted to him by the said court.

26. On his part, Mr. Honore Akitobi (the opponent of Mr. Odjouri by) filed a cross-appeal in reply to the principal appeal and as pointed out earlier, the proceedings pending before the appeal court are unduly prolonged.

27. Accordingly, the African Commission observes that the case before the Appeal Court has been unduly prolonged.

28. The African Commission is of the view that this undue prolongation of the case at the level of the Appeal Court is contrary to the spirit and the letter of above-mentioned Article 7(1)(d).

29. Concerning the allegations of the plaintiff of violation of his right to property, the Commission recalls that the right to property is recognized and guaranteed by the African Charter of which Article 14 stipulates that this right may be encroached upon only "in the interest of public need or

in the general interest of the community and in accordance with the provisions of appropriate laws”.

30. The African Commission, however, is of the opinion that to the extent that there has been no definitive decision in this case, it cannot substitute itself to the national courts to appreciate violation of the enjoyment of the right to property of the plaintiff.

FOR THESE REASONS THE AFRICAN COMMISSION finds the Republic of Benin in violation of Article 7(1)(d) of the African Charter; requests the Republic of Benin to take appropriate measures to ensure that the Complainant’s appeal is determined by the Court of Appeal as quickly as possible; and urges the Republic of Benin to take the necessary steps to pay appropriate compensation for damages suffered by Mr Odjouoriby Cossi Paul due to the unduly prolonged proceedings in the processing of his case.