

73/92 Mohammed Lamine Diakit /Gabon

Rapporteur: 17th Session: Commissioner Nguema
18th Session: Commissioner Nguema
19th Session: Commissioner Nguema
20th Session: Commissioner Nguema
21st Session: Commissioner Nguema
22ND Session: Commissioner Nguema
23rd Session: Commissioner Nguema
24th Session: Commissioner Nguema
25th Session : Commissioner Nguema
26th Session: Commissioner Nguema
27th Session: Commissioner Nguema

Summary of Facts:

1. The complainant is a citizen of Mali who lived in Gabon for 17 years, and was expelled on 4 November 1987, leaving his wife and 5 children who were all born in Gabon. According to the complainant, the reason for his expulsion is that his friend (a certain Mr. Coulibaly Hamidou) was accused of having a sexual relationship with the first wife of a Gabonese Government Minister, Mr. Mba Eyoghe, former member of government. Consequently, the latter using his connections with certain Gabonese administration humiliated the complainant, his family and friend. The complainant also claims that Mr. Mba Ejoghe owes him money. The complainant and his friend were expelled from Gabon and on 27 August 1989 following expulsion order No. 182/MATCLI-DGAT-DDF-SF. A second order No. 126/MAT/CLD/SE/SG/DGAT/DDF/SF of 22 June 1992 nullified the first order, therefore the complainant and his friend were authorised to come back to Gabon.

Complaint:

2. Though the complainant does not indicate specific violations of the provisions of the Charter to substantiate his communication, it appears that Articles 12(4), 14 and 18 (1) and (2) have been violated.

Procedure

3. The communication is dated 10 April 1992. The Commission was seized of it at its 12th session.

4. The Secretariat of the Commission exchanged many correspondences with the parties on the issue of exhaustion of local remedies and reparation by the Gabonese authorities to the complainant for the prejudice suffered.
5. The complainant responded and indicated that he had exhausted local remedies and that the Gabonese authorities were yet to remedy the violations occasioned.
6. At its 14th Session held in Banjul, the Gambia from 25 October to 3 November 1994, the communication was declared admissible.
7. At its 16th session held in October 1995, the Commission directed that a letter be sent to the Government of Gabon to find out what steps had been taken to deal with the complainant's case.
8. At the 17th session in March 1996, it was decided that Commissioner Nguema would take the matter up with the Foreign Minister of Gabon.
9. On 30 March 1995, a Note Verbale was received from the Ministry of Foreign Affairs of Gabon stating that Commissioner Nguema had met the Minister of Foreign Affairs for discussions. The case of M. Diakite had been discussed but a resolution had not been reached. However the Gabon authorities promised to work on a solution.
10. The case was deferred on many occasions to allow parties to settle the matter amicably with the assistance of Commissioner Isaac Nguema. Unfortunately, these attempts did not succeed.
11. On 11 May 1999, the Secretariat received a letter sent by the complainant and addressed to the Chairman of the Commission. The said letter was soliciting his intervention *ex qualite* to the Gabonese Head of State. The content of the letter was brought to the attention of the Chairman. He then wrote to the President of Gabon, on 10 June 1999, requesting him to help find a lasting solution to the matter. The latter is yet to react.
12. On 30 March 2000, the Secretariat received a letter from the complainant acknowledging receipt of the letter conveying the decision of the Commission to postpone consideration of the communication to the 27th session. But at the same time expressed his wishes that a final decision will be taken at the said session.
13. On 30 April 2000, the Respondent State submitted fresh evidence thereby throwing more light on the matter and the way the complainant and his friend returned to Gabon

Law

Admissibility:

14. According to the provisions of Article 56(5) and (6) of the African Charter on Human and Peoples' Rights, communications received at the Commission, concerning human and Peoples' rights shall, in order to be considered, necessarily fulfil the following conditions – they must be:

(5) “sent after exhausting local remedies, if any unless it is obvious that this procedure is unduly prolonged”;

(6) “submitted within a reasonable period from the time local remedies are exhausted or from the date the Commission is seized with the matter”.

15. Mr Mohamed Lamine Diakité, was expelled from Gabonese territory on 22 August 1989, pursuant to a warrant issued by the administrative authority of the State. Though he had returned to his country of origin, Mali, he undertook démarches with a view to causing the revocation of his warrant of expulsion, as well as obtaining compensation for the injury suffered due to the expulsion. He was later on authorised to return to Gabon where he is residing since 9 December 1997.

16. However, the focus of the Commission's attention is really on the fact that the condition regarding the exhaustion of internal remedies before seizing an international forum is based on the principle that the defendant State should have had the opportunity to redress the injury caused to the victim by its own means, within the framework of its own judicial system. This principle does not however mean that the complainant should necessarily exhaust remedies, which, in practical terms, are not available.

17. The Respondent State by correspondence dated 30 April 2000 has submitted fresh evidence from which it essentially appears that Mr. Mohammed Lamin Diakite had never contested the decision of expulsion No. 182/MATCLI-DGAT-DDF-SF issued against him. His return to the Gabonese territory is based on a political decision by the Gabonese Head of State following talks with his Malian counterpart during an official visit to Mali.

For the above reasons, the Commission

declares the communication brought by Mr. Mohammed Lamin Diakite inadmissible for non-exhaustion of local remedies.

Done in Algiers, Algeria on 11 May 2000.

