

103/93 Alhassan Abubakar/Ghana

THE FACTS

Alhassan Abubakar is a Ghanaian citizen, presently residing in Cote d'Ivoire. He was arrested on 16 June 1985 for allegedly cooperating with political dissidents. He was detained without charge or trial for 7 years until his escape from a prison hospital on 19 February 1992.

After his escape, his sister and his wife, who had been visiting him, were arrested and held for two weeks in an attempt to get information on the complainant's whereabouts. The complainant's brother has informed him that the police have been given false information about his return, and have on several occasions surrounded his house, searched it, and subsequently searched for him in his mother's village. In the early part of 1993 the UNHCR in Cote d'Ivoire informed the complainant that they had received a report on him from Ghana assuring that he was free to return without risk of being prosecuted for fleeing from prison. The report further stated that all those detained for political reasons had been released.

Complainant on the other hand holds that there is a law in Ghana which subjects escapees to penalties from 6 months to 2 years imprisonment, regardless of whether the detention from which they escaped was lawful or not.

PROCEDURE

The communication is dated 26 July 1993. The complainant was sent a questionnaire concerning communications on 11 August 1993 and returned it completed. The Commission was seized at the 14th Session and the communication was sent to the state concerned on 6 January 1994. No response was forthcoming.

The Commission tried without success to resolve this communication amicably

THE LAW

Admissibility

Article 56.5 of the Charter requires that all local remedies be exhausted before the Commission can consider the communication, unless the procedure is unduly prolonged. In this case the complainant is residing outside the state against which the communication is addressed and thus where the remedies would be available. He escaped to Cote d'Ivoire from prison in Ghana and has not returned there. Considering the nature of the complaint it would not be logical to ask the complainant to go back to Ghana in order to seek a remedy from national legal authorities. Accordingly, the Commission does not consider that local remedies are available for the complainant.

As the communication fulfills all the other requirements of Article 56, the Commission declares the communication admissible.

The Merits

Article 6 of the Charter reads:

"Every individual shall have the right to liberty and security of his person. 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."

The complainant contends he was arrested by the Government for alleged collaboration with dissidents to overthrow the administration. He was arrested under section 2 of the Preventive Custody Law of 1992 (P.N.D.C.L. 4) in the interest of national security. However, the complainant states he was never charged with this offence nor brought to trial.

The Government failed to provide further details of the relevant laws on request, merely stating that "if the complainant has violated some laws, he must stand trial for them in the national courts." It is by now well-settled law before the Commission that where no substantive information is forthcoming from the government concerned, the Commission will decide on the facts as alleged by the complainant (see, e.g., decisions on communications 25/89, 59/91, 60/91, 64/92, 87/93 and 101/93).

Article 7.1 of the Charter reads:

"1. Every individual shall have the right to have his case heard. This comprises: (d) the right to be tried within a reasonable time..."

The complainant was detained in prison for seven years without trial before his escape. This period clearly violates the "reasonable time" standard stipulated in the Charter.

Article 12.2 of the Charter reads:

"2. Every individual shall have the right ... to return to his country. This right may only be subject to restrictions, provided for by law, for the protection of national security, law and order, public health or morality."

The complainant alleges the existence of a law in Ghana permitting the detention of escapees on their return to the country. The Government has denied that the complainant would be imprisoned on grounds of escape on his return, but concedes that he could be tried for any criminal offences that he may have committed. The government has stated that all political prisoners have been released, but the complainant provides evidence of other escapees who were arrested on their return to Ghana and that there is some indication that he would also be subject to the same treatment.

The facts provided are insufficient to find that the complainant's right to return to his country has been violated.

FOR THESE REASONS THE COMMISSION

holds there has been a violation of Articles 6 and 7.1(d) the Charter urges the Government to take steps to repair the prejudice suffered.

Taken at the 20th session, Grand Bay, Mauritius, October 1996