



Chavunduka, et al. v The Commissioner of Police, et al.

[2000] ZLR 418

Country: Zimbabwe

Region: Africa

Year: 2000

Court: Supreme Court

Health Topics: Prisons

Human Rights: Freedom from torture and cruel, inhuman or degrading treatment, Right to due process/fair trial

Facts

In January 1999 the Standard, a weekly newspaper, published an article alleging a failed coup by senior members of the army. Several reasons for the coup were given including mismanagement of the economy and involvement in the war in the Democratic Republic of the Congo. The first applicant, the editor of the Standard, was arrested by the Military Police of the Zimbabwe National Party and held for nine days and the second applicant, the Standard's most senior reporter, who surrendered to the police, was arrested, handed to the Army's Military Police and detained for two days. The applicants allege that their arrest and detention violated their constitutional right to liberty (s 13(1)) and their treatment whilst in detention violated the prohibition against torture or inhuman or degrading punishment or treatment (s 15(1)).

[Adapted from INTERIGHTS summary, with permission]

Decision and Reasoning

As the allegations are neither confirmed nor denied by the Commissioner of Police they constitute prima facie breaches of ss 13(1) and 15(1). Everyone is entitled to protection of the law under s 18(1) of the Constitution, which includes the right to require the police to perform their public duty of law enforcement, including investigation of an alleged crime. From January to September no action was taken in relation to the applicant's complaints despite the applicant's continued attempts to compel the police authorities to act and thereafter any action taken was minimal. Therefore, the Commissioner of Police has failed to afford the applicants protection of the law. Although a substantial margin of discretion is afforded to the police to implement general policies and to decide what to do in a particular situation, where there has been a clear dereliction of duty owed to the public the court can grant an order of mandamus under s 24(2) of the Constitution. In the present case the requirements for a mandamus are satisfied and the first respondent is ordered to institute and/or to complete a comprehensive and diligent investigation of the offences alleged by the applicants with a view to prosecute persons against whom there is a reasonable suspicion.

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Decision Excerpts