



Equality Now and Ethiopian Women Lawyers Association (EWLA) v. Federal Republic of Ethiopia

Communication 341/2007

Country:

Region: Africa

Year: 2015

Court: African Commission on Human and Peoples' Rights

Health Topics: Child and adolescent health, Violence

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

Facts

A 13-year-old girl was abducted and raped by Aberew Jemma Negussie (accused) and his accomplices. The medical report proved non-consensual sexual intercourse. The accused was released on bail and he abducted the girl again and forced her to sign a marriage contract. The girl managed to escape. The accused was sentenced to 10 years of imprisonment and his accomplices were sentenced to 8 years of imprisonment. The High Court on the recommendation of the Zonal Prosecutor reversed the conviction stating that evidence suggested consent.

The Penal Code of Ethiopia provided for the age of consent as 15 years. The Cassation Bench of the Oromia Supreme Court held in 2005 that there had been no fundamental error of law and a further appeal to the Federal Supreme Court was also dismissed. The complainant alleged that there had been various violation of the African Charter including the right to equal protection before the law and freedom from cruel, inhuman and degrading treatment.

Decision and Reasoning

The Commission found that the State party had failed to protect the victim. It further stated that as marriage by abduction was a common practice, the State party should have been more proactive in preventing it and should have adopted and implemented laws to prevent such occurrences and provide redressal mechanisms. The State party should have heightened measures in addition to the criminalization of abduction and rape under the Penal Code. The Commission also suggested a few measures such as heightened patrolling and security in the crime-prone areas.

The non-responsiveness in the case pointed towards the Government's failure in investigating the crime and adequately punishing the criminals.

The Commission found that the criminal proceedings in the domestic courts were highly arbitrary. The Commission ordered the state party to pay a sum of 150,000 USD to the victim as non-pecuniary damages. It also directed the State part to put in place measures addressing the issue of marriage and rape by abduction and report to the Commission in 6 months with statistics and progress on the crime.

Decision Excerpts

“In addition to the duty to prevent violations, the duty to protect also entails the duty to provide for a mechanism or take measures for redressing violations when they occur. This is part of the prerequisites for the effective protection of rights and freedoms under the Charter. The actual steps for meeting this duty depend on the circumstances of the case, including the nature of the violations. Among others, the State has the duty to investigate human rights violations that occur within its jurisdiction. Specifically, where the violations are of a criminal nature, the State has the duty to establish criminal responsibility by diligently investigating the violations with a view to ascertaining the facts; identifying the perpetrators; diligently prosecuting the perpetrators, and when convicted to adequately punish them. This is in addition to civil remedies that may be availed to the victim against the perpetrators.” (Para 133)

“In the case at hand, the Respondent State clearly failed in its duty to diligently investigate the acts, identify all

those who participated in or facilitated the abduction and rape of Ms Negash, and sanction their acts. Further, whereas Arsi high court adopted the zonal prosecutor's comments that the court a quo had convicted out of emotion, the Arsi high court wilfully disregarded the comments of the same zonal prosecutor to the effect that the principal offender and one of his accomplices could be judged again after hearing them in defence. No reason was offered for disregarding this latter suggestion. Instead of remitting the case to the court a quo for retrial, the Arsi high court outright acquitted the perpetrators and suffered no concern about rendering any form of justice to Ms Negash.â€• (Para 134)

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