



Denton v. The Director-General, National Intelligence Agency and Others

HC241/06/MF/087/F1

Country: The Gambia

Region: Africa

Year: 2006

Court: High Court

Health Topics: Health care and health services, Prisons

Human Rights: Right to due process/fair trial, Right to family life, Right to health, Right to liberty and security of person

Facts

The applicant was a detainee seeking: (1) a declaration that her arrest was unlawful under the Constitution of Gambia (the "Constitution"); (2) a declaration that her subsequent detention was unlawful and unconstitutional and (3) an order for release.

The applicant was arrested at her residence on April 6, 2006 in relation with a suspected attempted coup. As of the date of the application, July 10, 2006, the state had yet to charge the applicant with a specific crime and was unwilling to provide whether the investigation into the alleged offense was ongoing. After her arrest, the applicant agreed to be a witness for the state in an upcoming trial. In her affidavit, the applicant alleged that she fell ill during her detention and was not taken to hospital. She feared a relapse. The applicant claimed that her arrest and terms of detention were unlawful and violated the Constitution.

The applicant relied on, and the Court discussed, section 19 of the Constitution, which addressed the right to liberty and security of the person and also prohibited arbitrary arrest or detention. This section of the Constitution also provided that an arrested person must be brought before a court within seventy-two hours of being detained. At the time of application, the applicant had been detained for over three months without being taken to court.

The applicant also relied on the African Charter on Human and Peoples' Rights (the "African Charter") and International Covenant on Civil and Political Rights.

Decision and Reasoning

The Court held that: (1) the applicant's arrest was unlawful in that it violated section 19 of the Constitution; (2) the applicant's detention was unlawful as it was inconsistent with section 19 of the Constitution, article 6 of the African Charter, and article 9 of the International Covenant on Civil and Political Rights; and (3) the applicant was to be immediately released from detention on the conditions that she not leave the country and that she make herself available for future questioning.

The Court found that the state was unwilling to provide information as to whether the investigation into the applicable offense was ongoing. In light of the fact that the applicant had agreed to testify as a witness at an upcoming trial, the Court found it likely that the primary purpose of the applicant's detention was to ensure her availability to provide such testimony. The Court recognized that the right to liberty and freedom from arbitrary detention were provided in numerous international instruments, such as article 6 of the African Charter which stated that "[n]o one may be deprived of this freedom [right to liberty and security of the person] except for reasons and conditions previously laid down by law." The state attempted to defend the detention by claiming that it was in the public interest, but was unwilling to be specific about how it was in the public interest. After a discussion regarding what constituted "public interest" and the significant burden of establishing that the infringement of an individual's fundamental rights was justified by benefit to the public that the state must satisfy in such cases, the Court found that the state had not met its burden in showing that the release of the applicant would be harmful to the public.

The Court noted that article 22 of the African Charter included a right to economic, social, and cultural rights and therefore a right to health. In response to the applicant's claim that she fell ill during detention and did not

receive treatment, the state responded that the prison had medical and feeding arrangements. The Court expressed concern with the state's response in that it did not fully address the issue presented by the applicant.

Decision Excerpts

[33.] The applicant avers at paragraphs 15 and 21 of her affidavit in support that she has fallen ill and was not taken to hospital, that she fears she might relapse and develop further illnesses. In response to this, the state at paragraph 5 of its affidavit in opposition merely states that, the Central Prison Mile 2 has medical and feeding arrangements for all its inmates, without controverting these paragraphs, especially paragraph 15. I take a very dim view of the state's attitude and again wish to draw the state to its obligations under article 22(1) of the Charter, which provides that all people shall have the right to their economic, social and cultural rights, and of course this is the provision that addresses the right to health. I find it unacceptable for the state to cursorily dismiss these averments with such contempt.

[52.] From these cases, it can be said that the general proposition that the authority of the state to exert control over the individual, extends only to activities of the individual, which affect others or the public at large, as it relates to matters of public health, morality, security or safety, or to provide for the general welfare. This tenet is basic to any free society. The state cannot impose its own notions of morality, security or safety on individuals, when the public has no legitimate interest in the affairs of those individuals. The right of the individual to do as he pleases is not absolute, of course: it can be made to yield when it begins to infringe on the rights and welfare of others.

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