



Doebbler, Curtis Francis v. Sudan

Curtis Francis Doebbler v. Sudan, Afr. Comm'n Human & Peoples' Rights, Comm. No. 236/2000 (2003).

Country: Sudan

Region: Africa

Year: 2003

Court: African Commission on Human and Peoples' Rights

Facts

Eight female university students were arrested for violating public order in Ahila, Sudan for a picnic for which they got permission from the local authorities. The offenses, considered immoral by the Law, consisted in acts such as wearing trousers, talking and dancing with boys, among others. The students were finally sentenced to fines and/or 25-40 lashes (a widespread practice in Sudan) or to a one-month imprisonment.

The students decided to submit a complaint before the African Commission of Human and People's Rights, on grounds that the punishment was disproportionate and constituted a cruel, inhuman and degrading treatment, contrary to Article 5 of the African Charter. The Complainants alleged that no effective domestic remedies existed as the punishments were executed immediately after the verdict and sentencing by the Court of First Instance. Since the sentences had already been executed, any right of appeal would be thus illusory and ineffective. They added that the punishment of lashings were embarrassing and humiliating because a girl had to expose her back in public. Moreover, the unclean instrument used to inflict the lashes and lack of doctors' supervise for the execution could have resulted in severe infections to the victims.

The Respondent State claimed that the women had the chance to submit an appeal and had not done so. On the other hand, it considered that the case did not deserve to be considered by the African Commission, since the acts committed by the students, which were not under discussion, were deemed criminal by the Islamic Law and the Criminal Code of Sudan; and the women were sentenced for their actions and enjoyed their right to defence by a lawyer during trial.

Decision and Reasoning

The Commission states that there was little or no dispute between the Complainant and the Government of Sudan concerning the facts. The only dispute that arises is to whether or not the lashings for the acts committed in this instance violate the prohibition of article 5 as being cruel, inhumane, or degrading punishment. The Commission finds that the lashings are clearly a violation of Article 5 of the African Charter on Human and Peoples' Rights. It refers to the European Court of Human Rights to support its decision, mainly to a decision that held that even lashings that were carried out in private, with appropriate medical supervision, under strictly hygienic conditions, violated Article 3 of the European Charter (the equivalent of Article 5 of the African Charter). The African Commission also establishes that under the African Charter system, applicable to all States Parties to the Charter, as is the case of Sudan, there is no right for the government of a country to apply physical violence to individuals for offenses.

For this reason, the African Commission decides to pronounce Sudan guilty of non-compliance with its human rights treaties commitments and orders to amend the 1991 Criminal Law immediately, to abolish the penalty of lashes and to take appropriate measures to ensure compensation of the victims.

Decision Excerpts

"42. There is no right for individuals, and particularly the government of a country to apply physical violence to individuals for offences. Such a right would be tantamount to sanctioning State sponsored torture under the Charter and contrary to the very nature of this human rights treaty." Page 6.

"43. The facts in this communication have not been disputed by the Respondent State. In their oral submissions at the 33 rd Ordinary Session, the Respondent State confirmed this by stating that it was the opinion of the Respondent State that it was better for the victims to have been lashed rather than hold them

in detention for the said criminal offences and as such deny them of the opportunity to continue with their normal lives." Page 6.

"44. The law under which the victims in this communication were punished has been applied to other individuals. This continues despite the government being aware of its clear incompatibility with international human rights law." Page 6.

Copyright © 2015 www.GlobalHealthRights.org