

Communication 212/98, Amnesty International v. Zambia

1) Reference Details

Jurisdiction: African Commission on Human and Peoples' Rights

Date of Decision: 25th Ordinary Session, May 1999

Case Status: Concluded

Link to full case:

2) Facts

The Communication was submitted by Amnesty International on behalf of William Banda and John Chinula. Both were prominent political figures in Zambia who were deported to Malawi following the success of the MMD party in the elections of 1991.

Banda was served with a deportation notice in 1991 which he contested, in 1994 he was deported to Malawi. Chinula was served with a deportation notice and deported in 1994.

3) Law

- African Charter on Human and Peoples' Rights articles 2, 7, 8, 9, 10, 12, 18

4) Legal Arguments

The Complainants argue that they were unlawfully and wrongly deported. The notices stated that they were considered threats to the peace and good order of Zambia and had been signed by the Minister for Home Affairs. Mr Banda had been drugged, blindfolded and driven to Malawi where he was dumped in a police station. Mr Chinula had been taken to the airport, sedated and awoke in a police station in Malawi. The High Court of Malawi has found that neither complainants are Malawi citizens, however the Government of Malawi has failed to comply with the Court's ruling that it should assure the return of both men to Zambia.

The Complainants argue that attempts to seek redress have failed and that while he was alive Mr Chinula was unable to seek recourse in Zambia under threat of imprisonment if he should return. He has since passed away and the family now seek to have his body returned for burial in Zambia.

The Communication alleges violations of article 12 – the right of every individual to leave and return to his country and the rule that non-nationals legally admitted cannot be expelled except by virtue of a decision taken in accordance with the law. It further alleges discrimination on the basis of ethnic group and social origin and on the basis of political opinion, and violations of freedom of movement and rights to dignity. Mr Chinula was denied any right at all to have his case heard.

The Government submitted that investigations into both men began in 1976 and 1974 and are therefore longstanding and not linked to political motives. They denied drugging the victims and dumping them in Malawi stating that they had been properly received by the Malawi authorities. They claimed that Zambia was acting within its sovereign rights in internal affairs and immigration matters.

5) Decision

The Commission noted the fact that the Zambian High Court judge had ruled that there was no evidence to show that Mr Banda had been born in Zambia or had Zambian parents and that Mr Banda had appeared as an unreliable witness. The Judge had also dismissed all arguments from the Government that Mr Banda was Malawi. The Commission considered that the High Court had failed to rule on the reasons for deportation, simply because Mr Banda was not Zambian did not automatically mean that he could be arbitrarily deported.

The Commission also considered that Mr Banda possessed a Zambian National Registration Card and a passport and by deporting him immediately he had been denied the right to apply for citizenship under the Citizenship Act. Furthermore the Commission felt it was impossible to ignore the fact that Mr Banda was a prominent political opponent of the ruling party, also that he had been singled out for his ethnic origin and had been deported to Malawi without any evidence that he had roots or contacts there.

Mr Chinula, the Commission found, was also a prominent figure in the opposition and had been deported without any chance to have his case heard. In this case the Commission held that the arbitrary removal of citizenship could not be justified.

In relation to both victims the Commission found that they had been denied their rights under the African Charter in violation of article 2 assuring equal treatment regardless of political opinion or ethnic origin.

The Commission further noted that the actions against the victims had commenced in the 1970s and lapsed until the return to power of the opposition in 1991 and it can therefore be assumed that the actions were politically motivated.