

Case summary

By Katherine Iliopoulos, 25 March 2013

Application 002/2013 African commission v. Lybia

Application

Commission brought application under Article 5(1)(a) of the Protocol against Libya alleging violations of the rights of Saif Al-Islam Gaddafi, guaranteed under Articles 6 and 7 of the African Charter. On 2 April 2012 Commission received a complaint from Ms. Hosseinoun on behalf of Gaddafi alleging that the NTC detained Gaddafi in isolation without charge and without bringing him before a court, at an unknown address in Zintan; and that he faces an imminent trial with the threat of death penalty, following arbitrary detention based on interrogations in the absence of a lawyer. Applicant seeks order to Libya to discontinue with any actions concerning legal proceedings against Gaddafi; to allow Gaddafi access to a lawyer immediately. The Commission had requested provisional measures directly of Libya requesting it to allow visits from family and friends; disclose the location of his detention; guarantee the integrity of his person and his right to be tried within a reasonable time by an impartial court.

Decision

In light of the length of detention of Gaddafi without access to a lawyer family or friends, Libya's failure to respond to the provisional measures requested by the Commission, and the right of every person to be accorded a fair and just trial, the Court ordered Libya to

- (i) refrain from all judicial proceedings that could cause irreparable damage to Gaddafi, in violation of the Charter or any other international instruments to which Libya is a party;
- (ii) allow Gaddafi access to a lawyer of his own choosing;
- (iii) allow visits by family members;
- (iv) refrain from taking action that may affect Gaddafi's physical and mental integrity and his health; and
- (v) report to the Court within 15 days on the measures taken to implement the Order.

Separate Opinion of Judge Ouguerouz

Since this is a request for provisional measures, it should have been communicated to Libya immediately and invited the latter to make any observations with respect thereto, in order to comply with the adversarial principle. This is what occurred with respect to *African Commission v. Kenya*. In this case Libya has been unable to respond to the allegations. Two months elapsed between the date of the Application (8 January) and the date of the Order (15 March). It is possible that Libya may have already adopted some of the measures, rendering them purposeless. The Court did not demonstrate that there "exists a situation of extreme gravity and urgency" pursuant to Article 27(2) of the Protocol.

Comment:

It is clear in this case that the Court was acting on incomplete information. It is surprising that the Court did not see fit to make independent enquiries into the status of the proceedings against Gaddafi in order to verify whether (i) the measures it ordered were necessary and/or (ii) the measures would not be rendered moot due to the passage of time and intervening events. In the face of its defiance of the ICC, it remains to be seen whether Libya will comply with any of these measures.