

Case Summary

Cases summaries combined (by Andrew Smith, 9 January 2012)

Application No 003/2011 - Urban Mkandawire v. Malawi & Application No 010-2011 v Prof Efoua Mbozo'o Samuel v Pan African Parliament

The applications by Urban Mkandawire and Prof Efoua Mbozo'o to the African Court on Human and Peoples' Rights (AfCHPR) both concerned complaints by public servants regarding the termination of their employment contracts. Both applications are considered together in this comment because both raise similar issues. Neither was premised upon a claim that the respondent party had violated the applicants' human rights, as contained in the African Peoples' Charter on Fundamental Freedoms ("the Charter") or any other human rights instrument, as required by [Article 3 \(1\) of the Protocol](#).

While the application of Prof Mbozo'o was rejected on jurisdictional grounds in a [decision](#) summarised on the Court's website, the [application](#) of Mr Mkandawire, also summarised on the Court's website, was withdrawn less than two months after the Registry of the Court received it. The facts of these two cases are as follows.

003/2011 Urban Mkandawire v. The Republic of Malawi

In December 1999, Mr Urban Mkandawire, a citizen of Malawi and Staff Associate at the French Department at Chancellor College, was dismissed from his post on the recommendation of a Disciplinary Committee, following complaints that they had received from students regarding his teaching methods. The Registry of the Court received the application on 13 March 2011, but it has not been possible to ascertain a procedural history for Mr Mkandawire's case prior to this communication. Malawi is one of the five States Parties to the Protocol that has made a [declaration](#) accepting the competence of the Court to receive applications from individuals under Article 5(3) of the Protocol.

Mr Mkandawire advanced three bases for his claim. He contended that (1) the fact that students complained about his teaching methods is an insufficient ground for the University to dismiss him; (2) the recommendations of the Disciplinary Committee to dismiss him amount to unfair labour practices; and (3) that the procedure followed by the University violated Section 31 (right to fair and safe labour practices and fair remuneration) and Section 43 (right to lawful and procedurally fair administrative action) of the Constitution of Malawi. He also argued that the dismissal violated his conditions of service in Papers No. 6083A – 6086A of the University Act (Cap. 30:02 of the Laws of Malawi). According to the summary provided, the application did not allege a violation of the Charter.

In terms of relief, Mr Mkandawire sought reinstatement to his post on the basis that he would not easily find alternative employment as an academician at the same level of seniority or salary. Mr Mkandawire also alleged that the state had failed in its obligation to displace the inference that fairness demanded his reinstatement. Mr Mkandawire also sought compensation for two months salary, professional and housing allowances, remuneration during the counselling period, the payment of damages and legal costs, and a refund of rent paid. His claim totalled 12,839,059 Malawian Kwacha (approximately £51,376).

On 19 May 2011, the Executive Secretary of the African Commission confirmed that the applicant had made a formal request to the Commission to have his communication withdrawn, and that the Commission had granted that request. No explanation as to why the application was withdrawn was provided. Because the application was withdrawn, the AfCHPR was denied the opportunity to decide the jurisdictional question it raised, as well as whether Mr Mkandawire had exhausted local remedies, and whether the AfCHPR has the competence to grant the forms of relief he requested under Article 27 of the Protocol. While these issues are left undecided in this case, the jurisdictional question seems to be answered in the decision relating to the application by Prof Mbozo'o.

010/2011 Prof Efova Mbozo'o Samuel v Pan African Parliament

On 6 June 2011 Prof Efova Mbozo'o Samuel, domiciled in Cameroon, brought a case against the Pan African Parliament, alleging a breach of paragraph 4 of his contract of employment and of Article 13 (a) and (b) of the OAU Staff Regulations, in addition to an improper refusal to renew his contract and to re-grade him. The original application to the Court, or a summary thereof, is not available on the Court's website.

The application by Prof Mbozo'o did not specifically allege any violation of his human rights. By a letter dated 4th August 2011, the Registry requested that Prof Mbozo'o specify those violations as well as evidence of exhaustion of local remedies in accordance with Rule 34 (1) and (4) of the Rules of Court. Responding to this request in a letter dated 22nd August 2011, Prof Mbozo'o repeated the above claim, and in addition cited Executive Council Decision EX.CL/DEC 348 (XI) of June 2007 with regard to the remuneration and grading of his employment. The summary of the decision made in relation to the application of Prof Mbozo'o does not specify the relief he sought, if any.

Addressing the bases of the claim made by Prof Mbozo'o, the AfCHPR stated that disputes arising under the OAU Staff Regulations come under the competence of the Ad hoc Administrative Tribunal of the African Union.

Citing Article 3 (1) of the Protocol, the AfCHPR unanimously found that it had no jurisdiction to hear the case instituted by Prof Mbozo'o, and therefore rejected his application.

Separate Opinion of Judge Fatsah Ouguergouz (Mbozo'o)

Comment

As noted by a number of contributors to this blog in recent weeks, various applications to the AfCHPR have been rejected on jurisdictional grounds. This raises an important question: what can the AfCHPR and those supporting the institution do better? Together, these two applications indicate that one area for improvement may be how the Court - and its outreach support - communicates its important but limited human rights remit to the communities within its jurisdiction.

A positive observation in relation to the applications of Mr Mkandawire and Prof Mbozo'o is that we can surmise that at least these two individuals knew of the Court's existence, and perceived the AfCHPR to be a forum in which they could seek redress for the injustice they felt they had suffered in their domestic legal systems and from the administrative procedures of the OAU.

However, these failed applications also provide an early indication that there is a lack of effective communication and publicity as to the proper remit of the court.

Improving the outreach efforts of the AfCHPR ought to be prioritised in the coming years. The necessity of outreach is demonstrated by the experience of other international justice initiatives, particularly in relation to nations that have no experience of international tribunals, or do not have a strong domestic tradition of an impartial judiciary challenging the legality of state action on a human rights basis. In the cases of Mr Mkandawire and Prof Mbozo'o, it is clear that this should not only be an exercise in raising the profile of the Court, but also one of managing the expectations of what the Court can realistically achieve.

Communicating in legally accurate but accessible terms what human rights are, the purpose of the AfCHPR, the types of cases it is able to consider, and the circumstances and process by which individuals can communicate with the Court, is essential to the ACtHPR achieving its mandate. Maximizing access to information must be central to this program, and the training of domestic judges and lawyers will be essential to these goals. The AfCHPR must prioritize these issues. The ARC project has been founded to assist the Court and its potential users in this vital process.