

Judgment

007/2015
28/11/2019

Ally Rajabu and Others v. Tanzania
Application No. 007/2015

(001344-001333)BS

Separate Opinion

By

Judge Blaise Tchikaya

Introduction

I. The emptiness of the distinction between the death penalty and the so-called compulsory sentence

- A. A single legal regime is applicable
- B. A relative and insufficient distinction between the two kinds of death sentences

II. A still limited reading of Article 4 of the African Charter

- A. The almost total impetus against the death penalty in Africa should be reflected in the protection of human rights.
- B. Article 4 of the African Charter allows total invalidation of the death penalty.

Conclusion

Introduction

1. Like my Honourable colleagues, I have generally adopted the operative part of the judgment, Ally Rajabu and others v. United Republic of Tanzania,

on 28 November 2019. Without opposing the operative part, it is nevertheless necessary, on my part, to say that it would have been clearer for the Court to take a more straightforward line in its motives. While invalidating Tanzania's provisions on the mandatory death penalty, it left this useless "chiaroscuro" on the law applicable to the death penalty in Africa. It missed an opportunity to strengthen international law on this point. This assessment of the law on the death penalty, by distinction of category of crimes or offenses, is no longer, *de jure*, likely to be supported. This Court, the Human Rights Court, should align itself with the evolution of international law.

2. An application was presented to the Court of Arusha on 26 March 2015 by Messrs. Ally Rajabu, Angaja Kazeni alias Oria, Geoffrey Stanley alias Babu, Emmanuel Michael alias Atuu and Julius Petro, Tanzanian nationals sentenced to death for murder. The question of its admissibility and that of jurisdiction did not embarrass the Court, which settled them without difficulty¹. However, on the merits, what remained was to take a clear position on the question of mandatory sentence which was the sentence confirmed by the national judges.
3. The problem arises from the interpretation of § 108 of the judgment which reads as follows: "the Court notes that Article 4 of the Charter, while not prohibiting the death penalty, is essentially devoted to the right to life considered "inviolable" and aims to guarantee "the integrity" and therefore the sanctity of human life. The Court further notes that Article 4 of the Charter makes no mention of the death penalty"². However, even though it is said, the prohibitive legal elements of punishment are now legion on the international level³. It is up to the judge to give them the desired effect.

¹ AfCHPR, *Matter of Rajabu and others v. United Republic of Tanzania*, 8 December 2019, § 14-53.

² *Idem.*, § 108.

³ Resolution (A/RES/44/128) is titled "Elaboration of a Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the Abolition of the Death Penalty" was voted on 5 January 1990(A/44/PV.82, p.8-9).