



PRESS RELEASE
RULING SUMMARY

EMIL TOURAY AND OTHERS v. REPUBLIC OF THE GAMBIA
APPLICATION NO. 026/2020
RULING ON JURISDICTION AND ADMISSIBILITY

A DECISION OF THE AFRICAN COURT ON HUMAN AND PEOPLES' RIGHTS

Date of Press Release: 24 March 2022

Arusha, 24 March 2022: The African Court on Human and Peoples' Rights (the Court) today delivered a ruling in the case of *Emil Touray and others v. Republic of The Gambia*.

Emil Touray, Saikou Jammeh, Haji Suwareh, Isatou Susso, ("First Applicant", "Second Applicant", "Third Applicant" and "Fourth Applicant" respectively, or "the Applicants" jointly) are nationals of the Republic of The Gambia. The First and Second Applicants are journalists while the Third and Fourth Applicants are entrepreneurs. The Applicants challenge the legality of Section 5 of the Respondent State's Public Order Act No. 7 of 1961 as revised in 1963 and 2009 (Public Order Act) in relation to the provisions of the African Charter on Human and Peoples' Rights (the Charter).

The Respondent State did not participate in the proceedings and the Court, applying Rule 63 of the Rules of Court (the Rules), had to determine whether it could adopt the default procedure. Rule 63 provides for three conditions that must be satisfied before the Court employs the default procedure and these are: first, the notification of the defaulting party, second, the default of one of the parties and, third, a request from one of the parties for a decision in default or in the absence of such a request, the Court may rule by default in the interests of justice.

With respect to the notification of the defaulting party, the Court found that the Application was duly served on the Respondent State on 23 September 2020 and subsequently, all the other pleadings filed by the Applicant were transmitted to the Respondent State.

As regards the default of one of the parties, the Court found that the Application was served on the Respondent State on 23 September 2020 and it was given sixty (60) days to file its Response but it failed to do so within the time allocated. The Court noted that subsequently two reminders were sent to the Respondent State to file its Response but it failed to do so. Consequently, the Court held that the Respondent State defaulted in appearing and defending the case. Finally, the Court noted the fact that the



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Applicants requested for a judgment in default and thus it could rule in default as the three conditions required for a judgment in default were fulfilled.

The Court then determined whether it had jurisdiction to hear the case. With respect to its personal jurisdiction, the Court found that it had personal jurisdiction since the Respondent State ratified the Charter on 21 October 1986, the Protocol to the Charter on the Establishment of the African Court on Human and Peoples' Rights (the Protocol) on 25 January 2004 and on 3 February 2020, it deposited the Declaration provided for under Article 34(6) of the Protocol (Declaration) and this Declaration allows individuals to file applications against it.

The Court also held that it had material jurisdiction as the Applicants had alleged violations of rights protected under the Charter, to which the Respondent State is a Party.

The Court further held that it had temporal jurisdiction because the alleged violations occurred after the Respondent State had ratified the Charter, the Protocol and deposited the Declaration. Lastly, the Court held that it had territorial jurisdiction, given that the facts of the matter occurred within the territory of the Respondent State which is a Party to the Protocol.

The Court then considered whether the Application was admissible. In this regard, it held that, the Applicants had been clearly identified by name in fulfilment of Rule 50(2)(a) of the Rules. It also held that the claims made by the Applicants sought to protect their rights in line with Article 3(h) of the objectives of the Constitutive Act of the African Union and thus the Application was compatible with Rule 50(2)(b) of the Rules. Furthermore, the Court found that the language used in the Application was not disparaging or insulting to the Respondent State or its institutions in fulfilment of Rule 50(2)(c) of the Rules and also that the Application was not based exclusively on news disseminated through the mass media in fulfilment of Rule 50(2)(d) of the Rules.

As regards the exhaustion of local remedies, the Court noted that the Applicants had filed two claims. the first claim related to whether Section 5 of the Public Order Act violated Articles 9 and 11 of the Charter, the Court held that there were no effective remedies to exhaust because the Supreme Court of the Gambia had already decided in 2017 that Section 5 of the Public Order Act was in conformity with the Constitution of the Respondent State. Therefore, the Applicants were not required to also file a case at the Supreme Court because the result of their challenge was already known.



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The Third and Fourth Applicants also submitted that their rights were violated when they were arrested and detained following a protest. The Court held that for this claim, the Applicants were required to file their cases at the High Court and other Courts before filing their claim at the Court. Therefore, they had not exhausted local remedies for that claim and so it would not be considered by the Court.

With respect to filing an Application within a reasonable time after exhaustion of local remedies, the Court held that the Application which was filed seven months and thirteen days after the filing of the Declaration by the Respondent State complied with Rule 50(2)(f) of the Rules.

As regards whether the case had been settled in accordance with the principles of the Charter of the United Nations, the Constitutive Act of the African Union, the provisions of the Charter or of any legal instrument of the African Union, the Court considered three issues. The first issue was whether there was a judgment on merits in relation to the subject matter before the Court, namely, the legality of Section 5 of the Public Order Act of the Gambia. For this issue, the Court held that there was a decision on the merits of 20 January 2020 by the ECOWAS Court of Justice, in the case of *Ousainou Darboe and 31 others v the Gambia*.

The second issue was whether the parties in the *Ousainou Darboe* case were similar to the parties in the present case. The Court found that the Respondent State was the Republic of Gambia in both cases however, the Applicants were different. Even so, the Court held that both the parties in the *Ousainou Darboe* case and the parties in the present case filed their case on the basis of the interest of the public and in that regard, the identity of the parties was taken to be similar.

Finally, the Court decided on whether the claims in the *Ousainou Darboe* case were similar to the claims in the present case and found that in both cases the Applicants were challenging the validity of Section 5 of the Public Order Act against the provisions of the Charter. In that regard, the claims were similar in both cases. Therefore, the Court held that the claim against section 5 of the Public Order Act had been settled in accordance with the principles of the Charter, consequently, the Application was found to be inadmissible in line with Article 56(7) of the Charter.

Each Party was ordered to bear its own costs.

The Vice President, Justice Blaise Tchikaya and Justice Rafaâ Ben Achour issued a Joint Dissenting Opinion as regards the admissibility of the Application, Justice Ben Kioko issued a Separate Opinion, while Justice Stella I. Anukam made a Declaration.



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Further Information

Further information about this case, including the full text of the decision of the African Court, may be found on the website at: <https://www.african-court.org/cpmt/details-case/0262020>

For any other queries, please contact the Registry by email registrar@african-court.org.

The African Court on Human and Peoples' Rights is a continental court established by African Union Member States to ensure the protection of human and peoples' rights in Africa. The Court has jurisdiction over all cases and disputes submitted to it concerning the interpretation and application of the African Charter on Human and Peoples' Rights and any other relevant human rights instrument ratified by the States concerned. For further information, please consult our website at www.african-court.org.