


AFRICAN UNION		UNION AFRICAINE
الاتحاد الأفريقي		UNIÃO AFRICANA
AFRICAN COURT ON HUMAN AND PEOPLES' RIGHTS COUR AFRICAINE DES DROITS DE L'HOMME ET DES PEUPLES		

**APPLICATION N0.026/2020**

**EMIL TOURAY AND 3 OTHERS**

**V.**

**THE REPUBLIC OF THE GAMBIA**

**CASE SUMMARY**

## **I. THE PARTIES**

1. Emil Touray, Saikou Jammeh, Haji Suwareh, Isatou Susso, Lamin F. Sonko, (Hereinafter referred to as “First Applicant”, “Second Applicant”, “Third Applicant” and “Fourth Applicant” respectively). The first and second Applicants are journalists, the third and fourth Applicants are business persons.
2. The Respondent State became a Party to the African Charter on Human and Peoples’ Rights (hereinafter referred to as “the Charter”) on 21 October 1986 and to the Protocol to the African Charter on Human and Peoples’ Rights on the Establishment an African Court on Human and Peoples’ Rights on 25 January 2004. It deposited the Declaration prescribed under Article 34(6) of the Protocol on 3 February 2020.

## **II. SUBJECT OF THE APPLICATION**

### **a) Facts of the matter**

3. The Applicants are all nationals of Republic of the Gambia. The first and second Applicants seize this Court by virtue of the principle of *actio popularis*. The third and fourth Applicants are business persons who allege that the Respondent State violated their rights to freedom of assembly and expression by virtue of the application of Section 5(2) of the Public Order Act of the Gambia.
4. The Public Order Act is a statute of the Republic of the Gambia “enacted to prohibit unlawful associations of private persons with military aims and for the maintenance of public order as regards public processions.” Section 5(2) of the Public Order Act requires an application for a licence from the Inspector-General of Police (IGP) or the Governor of the region prior to undertaking any public procession. Such licence may be granted subject to conditions the IGP or the Governor deems fit. The licence can be denied if the IGP or Governor believes that granting it will result in breach of peace. If the licence is denied then a procession cannot take place or it will result in unlawful assembly which

constitutes an offence punishable by imprisonment. There is no mechanism to review the discretionary powers exercised by the IGP or the Governor in allowing or rejecting the application for a licence to undertake public procession.

5. Additionally, in accordance with Section 5(4) of the Public Order Act, a magistrate or police officer above the rank of Sub-Inspector is entitled to stop any public procession where a licence has not been issued or where the licence violates any condition under which it was given. Where this is the case such assembly is considered unlawful and all persons taking part can be charged with an offence which upon conviction may result in imprisonment and/or fine.
6. The Applicants allege, that on 14 April 2016, some members of the United Democratic Party (UDP) of the Gambia were arrested at Kanifing Municipality, within the Respondent State because they were leading a protest – calling for electoral reforms – without a licence. They were confronted and arrested by paramilitary officers. The above mentioned suspects were charged with crimes under Section 5 of the Public Order Act and convicted. A few days later UDP led another peaceful march and the marchers were confronted by paramilitary officers and most of the members were arrested. The arrested persons were charged with seven counts, two of which were framed under Section 5 of the Public Order Act, convicted and imprisoned until the new President Adama Barrow pardoned them in 2017.
7. On 18 May 2018, members of the UDP petitioned the Supreme Court challenging the constitutionality of Section 5 of the Public Order Act. The Supreme Court dismissed the case holding that the impugned law did not breach the right to assemble and other rights guaranteed in the Gambian Constitution.
8. On 8 May 2019, “news filtered” through the country that the Gambia’s coalition government intended to sign an agreement that would prolong the transitional government’s initially agreed 3 years’ term to 5 years. Some “concerned citizens” formed a group “3 years jotna” which included the third and fourth Applicants that planned to protest the signing of an agreement to extend the

government's term. On 9 May 2019, the group submitted an application for authorisation to stage a protest to the IGP at Banjul. By 10 May 2019, the group had not received a reply on their request and they assembled at Senegambia with an intention to go to Kairaba Hotel to hold the protest there. But before they could start their march to Kairaba Hotel, they were intercepted by police and escorted to Kairaba Police Station and then released but ordered to keep reporting to the police station. They were later charged with "unlawful assembly", "conduct likely to cause breach of peace" and "conspiracy to commit offences". The group subsequently re-applied for a permit to hold the protest but never received a response. On 9 July 2019, the group was informed that the charges levelled against them had been dropped.

#### **b) Alleged Violations**

9. The Applicants allege the following:
  - i. Violation of the rights to freedom of assembly under Article 11 of the Charter and Article 21 of the ICCPR and freedom of expression under Article 9(2) of the Charter and Article 19(2) of ICCPR.
  - ii. Violation of Article 1 of the Charter and Article 2(2) of ICCPR.

### **III. PRAYERS OF THE APPLICANTS**

10. The Applicants pray the Court for:
  - i. A declaration that Section 5 of the Public Order Act of the Gambia is a violation of the right to freedom of assembly under Article 11 of the Charter and Article 21 of ICCPR.
  - ii. A declaration that Section 5 of the Public Order Act of the Gambia is a violation of the right to freedom of expression under Article 9(2) of the Charter and Article 19(2) of ICCPR.
  - iii. A declaration that the rights of the third and fourth Applicants under Article 11 of the Charter and Article 21 on one hand, and further under Article 9(2) of the Charter and 19(2) of the ICCPR on the other hand, were violated by the 10 May disbandment of the 10 May 2019 protest and their subsequent arrest.

- iv. A declaration that the Republic of the Gambia has violated Articles 1 of the Charter and 2(2) of the ICCPR.
- v. Order the Republic of the Gambia to immediately repeal or amend Section 5 of the Public Order Act to align with provisions of the Article 9(2) and 11 of the Charter and Articles 19(2) and 21 of the ICCPR.
- vi. An order of costs against the Respondent State
- vii. Any further order or orders as the Court deems fit to make in circumstances.