

101/93 Civil Liberties Organization in respect of the Nigerian Bar Association v. Nigeria

THE FACTS

1. The communication is brought by the Civil Liberties Organization, a Nigerian non-governmental organization, in protest against the Legal Practitioners' Decree. This decree establishes a new governing body of the Nigerian Bar Association, namely the Body of Benchers. Of the 128 members of this body, only 31 are nominees of the Bar Association. The rest are nominees of the government.
2. The functions of the Body of Benchers are (1) the prescription of practising fees one tenth of which are payable every year to the Body and (2) the disciplining of legal practitioners.
3. The decree excludes recourse to the Courts and makes it an offence "to commence or maintain an action or any legal proceeding whatever relating to or connected with or arising from the exercise of any of the powers of the Body of Benchers". The decree is retrospective.

ARGUMENT

4. The communication argues that the prohibition on litigation violates Article 7 of the African Charter.
5. The communication argues that the new governing body for the Nigerian Bar Association, established by governmental decree, violates Nigerian lawyers' freedom of association guaranteed by Article 10 of the African Charter.

THE LAW

6. This communication was declared admissible at the 16th session.
7. The Legal Practitioners (Amendment) Decree 1993, Section 23 A, subsection 1, reads:

"No person shall commence or maintain an action or any legal proceeding whatsoever relating to, connected with or arising from -

 - (a) the management of the affairs of the association; or
 - (b) the exercise or preparation by the Body of Benchers for the exercise of the powers conferred upon it by this Act."
8. A decision must be taken as to whether the above mentioned decree constitutes a violation of the African Charter.

9. The Commission finds that the present case raises questions concerning Article 7, the right to fair trial, and Article 10, the right to freedom of association.

10. The above mentioned Legal Practitioners (Amendment) Decree 1993, Section 23 A, subsection 3 reads:

"A person who contravenes the subsection (1) of this section commits an offence and is liable on conviction to a fine of N 10,000 or to imprisonment for a term of one year or to both such fine and imprisonment."

The Decree is retrospective since it was issued 18 February 1993 but was deemed to come into force on 31 July 1992.

11. Article 6 of the African Charter reads:

"...No one may be deprived of his freedom, except for reasons and conditions previous laid down by law."

No retrospective law may deprive a person of his liberty. The wording of the decree therefore constitutes a violation of Article 6.

12. Article 7(2) of the African Charter reads:

"No one may be condemned for an act or omission which did not constitute a legally punishable offence for which no provision was made at the time it was committed. "

The Commission is of the opinion that the retrospective effect of the decree constitutes a violation of Article 7(2) of the African Charter.

13. Article 7(1) of the African Charter reads:

"Every individual shall have the right to have his cause heard. ..."

The powers of the Body of Benchers include financial and disciplinary matters. The prohibition on litigation against these powers infringes the right to appeal to national organs, and violates Article 7(1) of the Charter.

14. Article 10 of the African Charter reads:

"1. Every individual shall have the right to free association provided he abides by the law. ... "

Freedom of association is enunciated as an individual right and is first and foremost a duty for the State to abstain from interfering with the free formation of associations. There must always be a general capacity for citizens to join, without State interference, in associations in order to attain various ends.

15. In regulating the use of this right, the competent authorities should not enact provisions which would limit the exercise of this freedom¹. The competent authorities should not override constitutional provisions or undermine fundamental rights guaranteed by the constitution and international human rights standards.

16. The Body of Benchers is dominated by representatives of the government and has wide discretionary powers. This interference with the free association of the Nigerian Bar Association is inconsistent with the preamble of the African Charter in conjunction with UN Basic Principles on the Independence of the Judiciary² and thereby constitutes a violation of Article 10 of the African Charter.

FOR THE ABOVE REASONS, THE COMMISSION

holds that there has been a violation of Articles 6, 7, and 10 of the African Charter on Human and Peoples' Rights. The Decree should therefore be annulled.

¹ Resolution on the right to freedom of Association, adopted by the African Commission on Human and Peoples' Rights, at its 11th Ordinary Session.

² UN General Assembly Resolution no. 40/32 of 29 November 1985 and 40/146 of 13 December 1985.