

Purohit and Moore v. The Gambia, Communication No. 241/2001 (2003)

1) Reference Details

Jurisdiction: African Commission on Human and Peoples' Rights

Date of Decision: 15-29 May 2003

Case Status: Concluded

2) Facts

Purohit and Moore were two mental health advocates who submitted a complaint to the African Commission on Human and Peoples' Rights on behalf of patients of Campama, the psychiatric unit of the Royal Victoria Hospital in The Gambia.

The complainants alleged that the legislation in force in The Gambia, namely the Lunatics Detention Act [LDA], was in violation of the African Charter on Human and Peoples' Rights [African Charter] in particular Articles 2, 3, 5, 7(1) (a) and (c), 13(1), 16 and 18(4). The legislation provided no definition of 'lunatic' beyond 'idiot or person of unsound mind' and did not set out any specific means of appeal or further safeguards against abuse. Certification required the approval of two medical practitioners without requiring specific expertise in psychiatrics and the signature of a judge of the Supreme Court, a magistrate or two justices of the peace. No further safeguards or review procedures were established and the LDA subjects those identified as 'lunatics' to automatic and indefinite detention.

3) Law

- African Charter on Human and Peoples' Rights Articles 2, 3, 5, 7(1) (a) and (c), 13(1), 16 and 18(4)
- Lunatics Detention Act 1917 (last amended 1964)

4) Legal Arguments

Complainants

The complainants submitted that as patients certified under the LDA had no legal right to challenge the Medical Certificates that were the basis for their detention their right to equal access to the law under Article 3 of the African Charter was being denied. Furthermore, they argued that this denial was discriminatory in that mental illness is analogous to a disability which is a prohibited ground of discrimination in application of the rights of the African Charter, under Article 2.

The complainants also argued that the conditions of the units where patients were detained constituted cruel, inhumane and degrading treatment in violation of Article 5 of the African Charter. There is a basic right to human dignity which continues regardless of mental capability or disability and therefore the conditions which psychiatric patients were being subjected to were discriminatory on this ground. The complainants argued that the branding of those certified under the LDA as lunatics and idiots constituted dehumanising treatment in itself, in denial of their inherent right to dignity.

Respondent Government

The Government, in response to the claim of a lack of right of appeal under the LDA, argued that in common practice patients were informed of a right to request review of their situation and that under section 7 (d) of the Constitution the common law forms part of the laws of The Gambia, therefore patients do have the right to bring tort suits for false imprisonment or negligent diagnosis. Furthermore, the Government responded that patients detained under the LDA maintain the right to challenge their detention under the Constitutional provisions in relation to free movement and freedom of association.

5) Decision

The Commission considered the Government's arguments in relation to a right of review and asked whether patients would be eligible to receive legal aid or assistance in pursuing such a tort case or Constitutional challenge. The Government responded that legal aid only existed for persons charged with Capital Offences. The Commission therefore concluded on this count that the right of legal redress would in practice only be available to the wealthy. Considering persons detained under the LDA were more likely to be picked up from the streets or from poor backgrounds, there was therefore a failure to meet the standards of non-discrimination and equal protection of the law in relation to review of detention under the LDA.

The Commission went on to consider whether there was a violation of Article 5 of the African Charter concerning cruel, inhumane and degrading treatment. The Commission accepted that mentally disabled persons have the equal right to dignity and a life as full and normal as possible. The Commission considered the conditions of the detention of patients and ruled that there was a violation of Article 5.

The Commission also found violations of Article 6 of the African Charter with respect to the denial of personal liberty and the freedom from arbitrary detention. The Commission ruled that any domestic law derogating from these rights must conform to international norms and standards. The Commission considered the average length of detention, which was variable according to mental illness and family situation. The fact that any qualified medical practitioner could issue a certificate under the LDA, not just qualified psychiatric practitioners, in combination with the lack of review procedures led the Commission to conclude that the LDA fell short of international norms.

The Commission also agreed with the applicant that Article 7(1) (a) and (c) had been violated by the LDA in its failure to provide patients with the clear right to have their case heard and benefit from the rights of appeal and adequate defence.

In relation to the right to vote guaranteed to every citizen by Article 13(1) the Commission found that there was no objective and reasonable criteria established by law which would provide the basis to exclude mentally disabled persons from voting. The Commission employed the interpretation of Article 35 of the ICCPR as set out by the UN Human Rights Committee to reach this conclusion.

The Commission finally considered whether there was a violation of Article 16 and 18(4) in relation to every citizen's rights to the best attainable standard of physical and mental health

and special measures of protection for the aged and disabled. The Commission determined that it was clear that the LDA was lacking in terms of therapeutic objectives and the provision of recourses and programmes of treatment. The Commission did recognise that there were in reality millions of Africans not enjoying the right to health to the fullest. It noted that due to poverty Governments across Africa were unable to provide amenities, infrastructure and resources to facilitate the full enjoyment of the right to health-care and medical assistance. However, the Commission decided to read into Article 16 the duty upon Governments to take concerted and targeted steps within the resources that they do have in order to ensure the fullest possible realisation of that right without discrimination of any kind.

The Commission found violations of the Charter on every count submitted by the complainants and urged the Government of The Gambia to repeal the LDA and replace it with appropriate legislation. Pending this legislative change they were to create an expert body to review all cases of persons detained and to provide adequate and material care for persons suffering due to mental illness.