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الاتحاد الأفريقي <i>African Commission on Human &amp; Peoples' Rights</i>		UNIÃO AFRICANA <i>Commission Africaine des Droits de l'Homme &amp; des Peuples</i>
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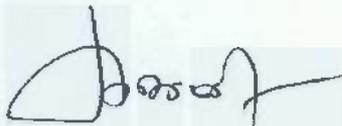
## **Communication 603/16**

**Mrs. Ayatulla Alaa Hosny (represented by Dalia Lotfy)**

**v.**

**Arab Republic of Egypt**

*Adopted by the  
African Commission on Human and Peoples' Rights  
during the 24<sup>th</sup> Extra-Ordinary Session, from the 30 July to 8 August 2018  
Banjul, The Gambia*



.....  
**Commissioner So yata Maiga**  
**Chairperson of the African Commission**  
**on Human and Peoples' Rights**




.....  
**Dr. Mary Maboreke**  
**Secretary to the African Commission on**  
**Human and Peoples' Rights**

DECISION OF THE AFRICAN COMMISSION ON HUMAN AND PEOPLES'  
RIGHTS ON WITHDRAWAL

Communication 603/16 - Mrs. Ayatulla Alaa Hosny (represented by Dalia Lotfy) v. Arab Republic of Egypt

Summary of the Complaint

1. The Secretariat of the African Commission on Human and Peoples' Rights (the Secretariat) received a Complaint on 18 December 2015 from Mrs. Ayatulla Alaa Hosny (the Complainant), represented by Dalia Lotfy, on behalf of Hassan Mahmoud Ragab Al Qabany (the Victim) against the Arab Republic of Egypt (the Respondent State).<sup>1</sup>
2. The Complainant (the wife of the Victim) asserts that the Victim, an Egyptian freelance journalist, born on 27 June 1983 was arrested on 22 January 2015 by State Security Police from his house in 6<sup>th</sup> October City. This arrest, the Complainant claims, was carried out by a team of twenty to thirty masked men who raided his house and damaged its contents without presenting any arrest or search warrant. They also failed to inform the Victim about the reason for his arrest and arrested the Victim's brother Ahmed Hosny who was kept incommunicado for 24 hours but was later released.
3. The Complainant avers that after 72 hours, she was informed that the Victim was held in 6<sup>th</sup> October City State Security Department where he was maltreated and fainted from the severity of the torture, which included beatings on his face and back of his neck, electrocution in various sensitive parts of his body and stripping him of his clothes. She received information only after sending a fax to the Public Attorney inquiring on the Victim. The Victim was allegedly tortured to extract false confessions and he was not allowed a legal representation during interrogations. The Victim reported the torture meted out on him during interrogation to the Prosecutor who ignored the information and failed to send him to a forensic doctor for proper examination.
4. The Victim, the Complainant alleges, was prosecuted and accused of a non-existing offense in the penal law. His detention has been renewed every 45 days and he was first transferred to 'Al Aqrab Prison' in H4 wing 4 for several months before being finally moved to H2 wing 3 where he is currently held. The Complainant avers that a case of espionage for spying

<sup>1</sup> The Arab Republic of Egypt ratified the African Charter on Human and Peoples' Rights on 20 March 1984.



for the US and Norway was included in the Victim's case on 7 August 2014 with another defendant, Dr. Mohamed Bishr, a prominent university Professor.

5. The Complainant asserts that an order for release of the Victim on bail was granted on 26 August 2015. However, the State Security Prosecution claimed an appeal, and continued to renew the Victim's detention without showing the Victim's lawyer a copy of the appeal. The Complainant's complaints to the Public Prosecutor and the Syndicate of Journalism for the release of the Victim, who had stayed in detention for 5 months without going to trial, fell on deaf ears.
6. The Complainant alleges that the Victim has been subjected to ill treatment and humiliation with prison wardens raiding prisoners' cells and beating them with sticks as well as kicking them in different parts of their bodies. The Victim is being held with two others in a tiny, poorly ventilated cell (1.5 by 2) which is meant to accommodate only one prisoner. The Victim and other prisoners were denied visitation rights from their families, their cell were emptied of essential and needful things like blankets, clothes, prayer mats, utensils, etc. The Victim and other prisoners also suffered from other forms of ill-treatment.
7. The Complainant alleges that she has only seen the Victim once since September 2015 and just for three minutes via a glass panel and handset phone. The Complainant further alleges after she brought a case before the Court regarding the duration of the visit, and the Court ruled in her favour. However, the Court's order was not implemented and the glass panel which the Court ruled to be removed and replaced with an alternative method, has not been removed by the prison authorities.
8. On the issue of exhaustion of local remedies the Complainant submits that they had submitted complaints to the Egyptian authorities against the victim's illegal detention and torture to no avail. She argues that the Egyptian judiciary is being "used by the regime to punish dissidents". The Complainant claims that the State of Egypt has not created a climate of safety to avail themselves of local remedies and consequently this impediment renders local remedies ineffective, undesirable and impracticable.

Articles alleged to have been violated



9. The Complainant alleges that Articles 5, 6 & 7 of the African Charter on Human and Peoples' Rights (the African Charter) have been violated by the Respondent State.

#### Prayers

10. The Complainant prays the African Commission on Human and Peoples' Rights (the Africa Commission) to:
- i. Request the State of Egypt to end the illegal detention of the Victim and release him immediately as there is no credible evidence against him, since the Victim's arrest he was not arraigned in Court and no evidence of the charges against him were found;
  - ii. Urge Egypt to open an investigation into the reports of enforced disappearances, conditions of detention and torture during interrogation and detention;
  - iii. Urge the State of Egypt to end its crackdown on journalists and union members;
  - iv. Cause the authorities to implement the Court's order which allows visitation for up to one hour rather than 3 minutes, and remove the glass panel.

#### Procedure

11. The Complaint was received at the Secretariat on 18 December 2015, and the Secretariat acknowledged receipt on 09 March 2016.
12. The Communication was seized during the 58<sup>th</sup> Ordinary Session of the Commission, held from 06 to 20 April 2016 and transmitted the decision to the Parties by letter and Note Verbale on 04 May 2016. By the same correspondence the Complainant was requested to submit on the admissibility of the Communication within two (2) months.
13. The Complainant's submissions were received at the Secretariat on 12 July 2016. The Secretariat acknowledged receipt and transmitted the Complainant's submissions on admissibility to the Respondent State on 24 November 2016, requesting the State to submit on admissibility within two (2) months.
14. The submissions of the Respondent State was received at the Secretariat on 28 April 2017.
15. On 11 July 2017 the Secretariat informed the Parties that at the 60<sup>th</sup> Ordinary Session of the Commission, held from 08 to 22 May 2017 in



Niamey, Niger, the consideration of the Communication was deferred to a later Session.

16. On 13 July 2017 the Secretariat acknowledged receipt of the admissibility submissions of the Respondent State and requested the Complainant to submit any additional written observations within thirty (30) days.
17. On 06 August 2017 the Complainant submitted a request for an extension of time in submitting the additional observations.
18. On 14 August 2017 the Respondent State requested the Commission to strike out the Communication because the Complainant had not yet submitted additional observations within the timeline provided.
19. On 25 September 2017 the Secretariat informed the parties that during the 22<sup>nd</sup> Extra-Ordinary Session of the Commission, held from 29 July to 07 August 2017 in Dakar, Senegal, the consideration of the Communication was deferred pending submission of additional observations by the Complainant.
20. On 01 March 2018 the Secretariat informed the Parties that the Complainant's request for the extension of time, received before the deadline of submissions, had been granted.
21. In correspondence received at the Secretariat on 15 May 2018, the Complainant requested the withdrawal and closure of the case, and the Secretariat acknowledged receipt of the request for withdrawal on 02 July 2018, informing the Complainant that the request would be tabled before the Commission for consideration.

#### Complainant's request for withdrawal

22. The Complainant is requesting the withdrawal and closure of the case on the basis that the family of the Victim no longer wishes to pursue the claim. The representative of the Complainant further informs the Commission that they had been trying to reach the Complainant for a long time, and were eventually informed by the Complainant that the Victim had been released by the authorities, "on precautionary and surveillance measures" for a five years' period. In addition, they submit that the lawyer of the family had been arrested, which makes it difficult to obtain documents. For these reasons the Complainant does not wish to proceed with the claim.

#### Analysis of the African Commission



23. The Commission is of the view that whether the Complainant wishes to continue with a given case before the Commission is an important, albeit not the sole consideration in determining whether a case before the Commission should continue or be closed. The reasons provided by the Complainant for seeking to withdraw the Communication is twofold, firstly because the Victim had been released by the authorities, as per the first prayer of the Complainant, and secondly because the family's lawyer had been arrested, making it difficult to obtain documents.
24. Given that the Communication is currently still at the level of admissibility, the Commission foresees that the difficulty in accessing documents, because of the arrest of the lawyer, would be a serious impediment for the Complainant in building a case on the merits. The Commission would also not be able to make a determination on the merits in the absence of submissions by the Complainant. In addition, the Commission considers the release of the Victim as the primary prayer of the Complainant, with the fourth prayer being premised on the former, and the other prayers being of a more general nature, and not specific to the Victim in the present case.
25. For these reasons, the Commission decides to grant the request for withdrawal.

#### Decision of the African Commission

26. Based on the above, the Commission declares the Communication closed.

Done in Banjul, The Gambia during the 24<sup>th</sup> Extra-Ordinary Session held from 30 July to 08 August 2018

