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The Decision of the ECOWAS Court of Justice in *Parounam vs Togo* concerns the violations of two important human rights contained in the African Charter on Human and People's rights and in the International Covenant on Civil and Political Rights (ICCPR) of 1966. The violations in question are the right to freedom from cruel, inhuman or degrading treatment or punishment and the right to due process concerning arrest and detention.

The Court's decision to condemn the State for arbitrary detention becomes even more relevant in a country where such violations have been frequent and systematic, especially those related to political prosecution. It is important then, for individuals, to have the possibility to bring a matter before an international Court which has the legal means to assure them effective justice where the State fails to guarantee a full respect for human rights.

The plaintiff, Mr Konso Kokou Parounam, used to serve as a soldier in the Togolese army and was the supervisor of the weapons' storage at the Army HQ. On April 14th 2009, he was called by his superiors who had started to make enquiries about the alleged disappearance of certain weapons from the deposit Parounam was supposed to watch. Despite his explanation that the missing weapons were not part of the official endowment of the Army, but, on the contrary, were owned by the Colonel Rock Gnassingbe (who had received them from his father, Eyadema Gnassingbe), he was taken to the National Intelligence Agency to be interrogated. Mr. Parounam asserts that the interrogation did not concern the missing weapons, but it

* Nota sottoposta a referaggio.

focused essentially on his relationship with the Colonel Rock Gnassingbe and the events that occurred on the 12th April 2009, when the house of Kpatcha Gnassingbe was attacked by special police forces.

In order to better understand the above-mentioned events and the meaning of the Decision itself, it is necessary to describe the main political facts that happened around the 12th April 2009, considering that the Court does not provide such information. Kpatcha Gnassingbe, who in 2009 was deputy of the Rally of Togolese People (the main Togolese party, founded in 1967 by Eyadema Gnassinbe, who ruled Togo for 38 years), is the brother of Faure Gnassingbe's, the Togolese President. Kpatcha's domicile was attacked by the official police forces because he was suspected of plotting a coup d'état. There was a shootout in which three of Kpatcha's bodyguards were killed and around 30 persons were arrested¹. The Colonel Rock Gnassingbe was believed to have intervened during the shooting in defence of his brother Kpatcha, calling a ceasefire, but there are no official sources that could confirm it (even though this would explain why, in our case, Parounam was asked about his relationship with Rock Gnassingbe). Kpatcha tried to claim asylum in the United States but this was denied and he was subsequently arrested by the Togolese police (the State was the object, in 2014, of a Communication from the UN Human Rights Council for the arbitrary detention of Kpacha and others²). Faure Gnassingbe, in a television speech, confirmed that he was aware of the existence of a plot against the government. Further arrests related to the alleged plot were made in the following days. Mr. Parounam declared that after the interrogation he was lead to a cell, handcuffed to the bed and forced to stay in the same position for days, without food, regularly beaten and without the right to be visited. He also declared that he was arrested by his chief and detained from the 21st December 2009 to the 7th February 2011 and that he had been repeatedly beaten every time he declared that he did not use the missing weapons to defend Kpatcha Gnassingbe's domicile. Mr. Parounam stated that in August 2011 he was brought to Lomé civil prison and was called before the Court six times, without that the counterpart was present. He was not freed until the 16th December 2011, without a fair trial or any compensation.

Hence, Mr. Parounam asserted he had been subject to torture and other inhuman and degrading treatment and that it constituted a violation of his rights guaranteed by the African Charter of Human and Peoples' Rights, the UN Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment and the ICCPR. He asserted also he had been a victim of arbitrary detention and that this

¹ BBC News, Togo leader Gnassingbe's brother jailed for a coup plot, 15 September 2011, available at <http://www.bbc.com/news/world-africa-14935349>, last access April 2017.

² Kpatcha et al. vs. Togo, UN Human Rights Council, Working Group on Arbitrary Detention, A/HRC/WGAD/2014/45, 4 August 2014.

constituted a violation of his right to due process concerning arrest and detention, as protected by the African Charter and the ICCPR.

The State of Togo, in its defence, affirmed that Mr. Parounam's interrogation did not last more than four days and that the crimes he committed constituted a violation of his general military duties. For this reason, he was subject to a disciplinary measure on the 25th February 2011, before having a judgement from the National Gendarmerie.

The Court, after declaring its competence in examining and judging the case (in paragraph 22, the Court considers this competence effectively acquired every time a simple allegation of violation of human rights is presented, and every time this violation has been perpetrated on the territory of ECOWAS Member States), analysed the two accusations brought by Mr. Parounam. Concerning the violation of the right of freedom from torture, which would constitute a violation of articles 4 and 5 of the African Charter (inviolability of the person, respect of its physical integrity and dignity, prohibition of torture and inhuman and degrading treatments) and of the articles 7 and 10 of the ICCPR, the Court affirmed that «[c]ependant que le requérant ne fournit aucune preuve des actes de torture subis. Il n'existe dans le dossier ni témoignage, ni surtout des constatations d'ordre scientifique ou médical propres à étayer les affirmations contenues dans la requête».

The Court also affirmed that the burden of proof of the alleged violation must be carried by the plaintiff and, since Mr. Parounam did not provide evidence to support the accusations, his request was rejected. Actually, by virtue of the general principles of international human rights law, it is not the victim, if detained in prison, that has to prove the violations but, on the contrary, it is a task that has to be accomplished by State.

Concerning the accusation of arbitrary detention, the Court's opinion was diverse. In relation to the violations lamented by the plaintiff, which implied a violation of the article 6 of the African Charter (right to freedom and security) and article 9 of the ICCPR (right to freedom and security, freedom from arbitrary arrest and detention, right to be judged in a reasonable period), the Court affirmed that “[l]’état défendeur n’a ni produit, ni offert de produire un titre susceptible de justifier la détention du requérant au régiment blindé de reconnaissance toute cette période” (§ 38). The Court added that “[il faut ajouter que le sieur Parounam a été remis aux gendarmes de la Section de recherches et d’investigation (SRI), qui l’auraient gardé pour l’interrogatoire a partir du 7 février 2011 jusqu’au moment où il a été présente au juge d’instruction, le 5 aout 2011” (§ 39) and that “[i]l apparait manifeste que la détention du requérant dans le locaux de la SRI est abusive en ce sens que l’Etat togolaise n’a fourni aucune élément pouvant justifier que la gendarmerie

puisse, sur la base d'un simple soupçon d'infraction, garder une personne dans ces locaux pendant plusieurs mois avant de se résoudre à la présenter devant un juge" (§ 40).

The weakness of the Republic of Togo's argument for justifying the detention of Mr. Parounam has been a crucial point in the Decision of the Court, since the violation of the right to freedom from arbitrary arrest and detention is evident and incontrovertible. In condemning the Republic of Togo, the Court leaned on previous case law, such the decision *Badini Salfo vs. Republic of Faso*, where it stated "qu'est arbitraire, conformément a la Charte toute arrestation intervenue sans motif légitimes ou raisonnable et en violation des conditions préalablement établies par la loi". In Parounam's case, there was no doubt that he has been, at least for a certain period, victim of arbitrary detention and that it was convenient to give him fair compensation for the violation of his rights.

The Court, therefore, declared that the detention of Mr. Parounam had been arbitrary and imposed on the Republic of Togo to pay eight million francs CFA to Mr. Parounam reparation for the damage suffered.

The juridical mechanism that has been instituted through the ECOWAS Court of Justice appears to be extremely necessary in situations where individuals are victims of human rights violations committed by States. The case law of Parounam is emblematic since it represents a situation which was, unfortunately, common in the Republic of Togo. Although the Court rejected his appeal concerning torture and inhuman treatments for the lack of proofs, it still remained a likely situation that could have happened in Togo's prisons. According to the 2010 US Country Report on Human Rights³ even though "the constitution prohibits such practises [torture and other cruel, inhuman and degrading treatments], however in January 2009 a special UN rapporteur found evidence that police and gendarmes abused detainees during interrogation, guards beat prisoners [...] The government did not prosecute officials for such abuses and impunity remained a problem". In the same report, regarding the arbitrary detention, we can read that "[t]he constitution and law prohibit arbitrary arrest and detention; however, the government did not always respect these prohibitions [...] The law authorizes judges, senior police officials, prefects, and mayors to issue arrest warrants; however, persons were detained arbitrarily and secretly. Although detainees have the right to be informed of the charges against them, police sometimes ignored this right".

³ US Country Report on Human Rights: Togo, available at <https://www.state.gov/j/drl/rls/hrrpt/2010/index.htm>, last access April 2017.



From this report, it seems that many people could address ECOWAS Courts of justice to claim compensation for the violation of their rights guaranteed by international instruments such as the African Charter and the ICCPR.

The functioning of international Courts is of crucial importance in these situations by virtue of the principle of subsidiarity, where the State fails to guarantee, within its jurisdiction, the respect of fundamental human rights and no other institution could intervene in defending individuals.

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