**Media Rights Agenda and Others v. Nigeria**

31 October 1998, Nos. 105/93, 128/94 and 152/96 (African Commission on Human and Peoples’ Rights)

Theme: print regulation

Sub-issues: licensing/registration

Test: necessity, importance of foe

Penalty: ban/suspension/seizure, other

Decision: violation of freedom of expression (Article 9 ACHPR)

Jurisdiction: African Commission on Human and Peoples’ Rights: Nigeria

Summary:

Following the annulment of presidential elections, the military government seized publications and passed decrees introducing a licensing regime.

Facts: A number of communications were joined by the Commission in this case. After the annulment of the 1993 Presidential elections, the military government passed a number of decrees. These proscribed particular publications and retrospectively required the registration of all newspapers, including the payment of large registration fees, before publication. Since the requirement was retrospective, all owners, publishers and printers of newspapers immediately became liable to arrest. Other decrees ousted the jurisdiction of the courts to challenge these decrees or anything done pursuant to them. A popular weekly magazine whose aim was to promote and protect human rights in Nigeria, TELL, had a whole edition (50,000 copies) seized before publication; the issue contained an article critical of legislation enacted by the military government. No remedies were available, since the jurisdiction of the courts had been ousted in

considering the validity of such actions. The editor-in-chief of TELL was arrested and detained. TELL was then declared illegal.

Held:

Importance of FOE

In discussing the significance of Article 9 of the Charter, the Commission stated:

Freedom of expression is vital to an individual’s personal development, his political consciousness and participation in the conduct of public affairs in his country. (para. 52)

Licensing/Registration and Other Penalties

A payment of a registration fee and a pre-registration deposit for payment of penalty or damages is not in itself contrary to the right to freedom of expression. However, the amount of the registration fee should not be more than necessary to ensure the administrative expenses of the registration and the pre-registration fee should not exceed the amount necessary to secure against penalties or damages against the owner, printer or publisher of the newspaper. Excessively high fees are a restriction on the publication of news media. However, the fees required in this case, while high, were not excessive.

The total discretion and finality of the decision of the registration board, gave the government the power to prohibit the publication of any newspapers or magazines. Such a power invites censorship, seriously endangers the right to receive information and is a violation of Article 9(1) (the right to receive information).

Necessity

While freedom of expression may be subject to legitimate restrictions, it may not be completely set aside by national law and no limitation may ever have the consequence of making the right itself illusory. International human rights standards always prevail over contradictory national laws. Since the African Charter does not contain a derogation clause, limitations on the rights contained in it which are not in conformity with it cannot be justified.

The reasons for possible limitations must be founded in a legitimate state interest and they must be strictly proportionate with and absolutely necessary for the advantages which are to be obtained.

The government provided no evidence that the prohibitions on particular publications pursued any of the legitimate aims provided for in the African Charter. In addition:

Laws made to apply specifically to one individual or legal personality risk the serious danger of discrimination and lack of equal treatment before the law, guaranteed by Article 3. (para. 69)

Given the existence of libel laws, allowing individuals to defend their reputations where necessary, the proscription of a publication by name was disproportionate and unjustified. The proscription of named publications could not be said to be within the law and violates Article 9(2) (the right to express and disseminate opinions within the law).

Ban/suspension/seizure

The government provided no evidence that the seizure of 50,000 copies of TELL magazine was for any reason other than simple criticism of the government. There was no threat to, for example, national security or public order. All of the legislation criticised in the magazine was already known to members of the public, as laws must be in order to be effective. The only person whose reputation may have been tarnished was that of the Head of State. However, it should not be assumed that criticism of the government amounts to an attack on the personal reputation of the Head of State. In this regard the Commission noted that:

people who assume highly visible public roles must necessarily face higher degree of criticism than private citizens; otherwise public debate may be stifled altogether. (para. 72)

It is important for the conduct of public affairs that opinions critical of the government be judged according to whether they represent a real danger to national security. The seizure of TELL was therefore a violation of Article 9(2).