

# 242/01 : Interights, Institute for Human Rights and Development in Africa, and Association mauritanienne des droits de l'Homme / Mauritania

## Summary of Facts

1. The complaint was submitted by INTERIGHTS, Institute for Human Rights and Development in Africa, and *Association mauritanienne des droits de l'Homme* (Mauritanian Human Rights Association), on behalf of Mr Ahmed Ould Daddah, Secretary General of *Union des forces démocratiques-Ere nouvelle* (UFD/EN, Union of Democratic Forces-New Era), a Mauritanian political party, which was established on 2<sup>nd</sup> October 1991.

2. The Complainants, mandated by Mr Ahmed Ould Daddah, allege the following facts. By Decree No. 2000/116.PM/MIPT, dated 28<sup>th</sup> October 2000, *Union des forces démocratiques/Ere nouvelle* (UFD/EN), the main opposition party in Mauritania, led by Mr Ahmed Ould Daddah was dissolved by the Prime Minister of the Islamic Republic of Mauritania, Mr Cheick El Avia Mohamed Khouna.

3. This measure, taken pursuant to Mauritanian law, (in particular [Article 11](#) and [Article 18](#) of the Mauritanian Constitution, and Ordinance No.91.024 of 25 July 1991 which deals with political parties in Articles 4, 25 and 26), was imposed, according to this senior official, following a series of actions and undertakings committed by the leaders of this political organisation, and which:

- were damaging to the good image and interests of the country;
- incited Mauritians to violence and intolerance; and
- led to demonstrations which compromised public order, peace and security.

4. On account of this, all the movable and immovable assets of the said political organisation were, *ipso jure*, seized.

5. A few weeks after the proscription of UFD/EN, the Mauritanian authorities arrested several leaders of the party who had participated in a demonstration against the measure, which they considered illegal and illegitimate, for breach of public order.

6. The Secretary General of the party, Mr Ould Daddah, on arrival from a journey abroad, was himself arrested on 9<sup>th</sup> December 2000, at Nouakchott airport, and was only released a few days later.

7. On 25<sup>th</sup> December 2000, the leaders of UFD/EN filed a motion for the repeal of the government's measure before the Administrative Chamber of the Supreme Court, citing:

- Lack of a just cause for the dissolution Decree;
- The unjustified nature of the punishment of a political party due to the alleged machinations of its leaders;
- Lack of competence on the part of the authority by whom the Decree was signed; and
- Absence of any deliberation by the Council of Ministers on the matter of the dissolution, as foreseen by law.

8. On 14<sup>th</sup> January 2001, the Administrative Chamber of the Supreme Court, ruling as court of original and final jurisdiction, delivered its verdict (*No. 01/2001 UFD/EN vs Prime Minister and Minister of Interior, Post and Telecommunications of 14 January 2001*), throwing out Mr Ahmed Ould Daddah's appeal, without really giving the grounds, stating that the claim lacked merit.

9. Since then, the principal leaders and activists of UFD/EN, who did not have the recourse of appealing the Supreme Court's judgement before any other Mauritanian court, have been subjected to

a veritable witch-hunt, throughout the Mauritanian territory, and have suffered acts of intimidation and harassment by the security services.

10. They have also been excluded from participating, under the banner of their political organisation, in the various elections that have been organised in the country.

## Complaint

11. The Complainant claims that there has been a violation of the following provisions of the African Charter on Human and Peoples' Rights: [Articles 1, 2, 7, 9\(2\), 10\(1\), 13](#) and [14](#).

## Procedure

12. The communication was submitted on the 25<sup>th</sup> April 2001, during the 29<sup>th</sup> Ordinary Session, held in Tripoli from 23<sup>rd</sup> April to 7<sup>th</sup> May 2001.

13. The Secretariat acknowledged receipt of the communication on 2<sup>nd</sup> May 2001.

14. At the 30<sup>th</sup> Ordinary Session, the African Commission considered the communication and decided to be seized of the case. Consideration of its merits was deferred until the next session and the Commission asked that the parties be informed accordingly.

15. The Secretariat informed the Respondent State of the decision of the Commission in its Note Verbale of 15<sup>th</sup> November 2001 and the Complainant was informed of the same decision in an official letter dated 19<sup>th</sup> November 2001.

16. On 22<sup>nd</sup> January 2002, the Secretariat received the observations on the admissibility and merits of the case from the Respondent State. Those observations were forwarded to the Complainant.

17. The following documents in Arabic were attached to the observations of the Respondent State:

- Petition dated 27/01/2001 of Mr Mohamed Oula Gowj requesting the review of the decision of the Supreme Court No. 01/2002 of 14/01/2001;
- Letter of the Assistant Secretary General of UDF/EN dated 24/01/2001;
- Letter of Mr Mohamed O. Gowj cancelling his petition of 27/01/2001;
- Statement of no appeal issued by the Registrar of the Supreme Court dated 12/01/2001
- Communiqué of UDF/EN to development partners;
- Statement of general policy of UDF/EN.

18. On 25<sup>th</sup> March 2002, the Complainants, comprising of INTERIGHTS, *l'Association mauritanienne des droits de l'Homme* and *l'Institut pour les droits humains et le développement*, presented the Secretariat of the Commission with their written observations on the admissibility of the complaint, in reply to the arguments on admissibility of the complaint as advanced by the Respondent State.

19. At its 31st Session, held from 2-16 May 2002 in Pretoria, South Africa, the African Commission declared the communication admissible and called on both parties to submit their observations on the merits of the case without undue delay.

20. By letter dated 29<sup>th</sup> May 2002, the Secretariat of the Commission informed both of the concerned parties of the Commission's decision.

21. On 7<sup>th</sup> August 2002, the Secretariat of the Commission acknowledged receipt of the written observations on the merits of the communication, received on 5<sup>th</sup> August 2002 from the Complainant. A copy of these observations was forwarded to the Respondent State.

**22.** At its 33<sup>rd</sup> Ordinary Session held in Niamey, Niger, the African Commission listened to the oral remarks of both parties and decided to defer its decision on the merits to the 34<sup>th</sup> Ordinary Session. The parties concerned were notified of the decision on 4<sup>th</sup> July 2003.

**23.** At its 35<sup>th</sup> Ordinary Session held from 21st May to 4<sup>th</sup> June 2004 in Banjul, The Gambia, the African Commission considered this communication and decided to deliver its decision on the merits.

## Law

23. At its 35<sup>th</sup> Ordinary Session held from 21st May to 4<sup>th</sup> June 2004 in Banjul, The Gambia, the African Commission considered this communication and decided to deliver its decision on the merits.

## Admissibility

**24.** [Article 56](#) of the African Charter on Human and Peoples' Rights sets out seven conditions, which, under normal circumstances, must be fulfilled for a communication to be admissible. Out of the seven conditions, the government raised the issue regarding the exhaustion of local remedies as provided under [Article 56.5](#) of the Charter, which stipulates :-

"Communications... to be considered, are sent after exhausting local remedies, if any unless it is obvious this procedure is unduly prolonged".

**25.** In its submission of 7<sup>th</sup> January 2002, the Respondent State requested that the African Commission: "...enquire whether the Complainants had duly seized the African Commission...". The Respondent State also informed the African Commission that the rulings of the Administrative Chamber of the Supreme Court could not be appealed against. It however went on to say: "appeal is not the only legal remedy in Mauritanian law. The rulings made by this jurisdiction are often required for revision on the basis of Article 197 and in accordance with the Civil Commercial and Administrative Procedure Code (CPCCA). Practically, the Respondent State affirmed that applications for revision have recently culminated into rulings of withdrawal by the same Chamber.

**26.** To support its line of reasoning, the Respondent State indicated that one of the lawyers of UDF/EN, Lawyer Mohamed Ould Gowf made a plea in the same vein on 27/01/2001 but withdrew it the same day. Based on the above facts and on [Article 56.5](#) of the African Charter, the Respondent State requested that the communication be declared inadmissible due to the fact that the local remedies were not exhausted.

**27.** However, the fact remains that the generally accepted meaning of local remedies, which must be exhausted prior to any communication/complaint procedure before the African Commission, are the ordinary remedies of common law that exist in jurisdictions and normally accessible to people seeking justice.

**28.** However, it is a known fact that the revision procedure is an extraordinary legal remedy that exists only if a number of conditions specifically stipulated by the law are fulfilled. In this regard, Articles 197 and 198 CPCCA of the Republic of Mauritania do not allow access to revision unless it is proven that the legal decision taken was wrong or due to the fact that the other party is in possession of decisive evidence.

**29.** Furthermore, the fact that one of the lawyers of the Complainants who was probably not empowered to do so, had indeed applied for a revision and withdrew it the same day, was a clear indication of the Complainant's intention not to resort to such a remedy. In fact, this does not affect at all the exceptionally legal nature of such a legal remedy as outlined above.

**30.** Consequently, it is a fact that the party that seized the African Commission had indeed exhausted, with regard to this particular case, the entire local remedies of common law that exist and can be resorted to before Mauritanian jurisdictions.

## Merits

30. Consequently, it is a fact that the party that seized the African Commission had indeed exhausted, with regard to this particular case, the entire local remedies of common law that exist and can be resorted to before Mauritanian jurisdictions.

**31.** In view of the above-stated reasons, the African Commission declared the communication admissible.

### On the principles governing the right to a fair trial

31. In view of the above-stated reasons, the African Commission declared the communication admissible.

**32.** The communication relative to the dissolution of the Mauritanian political party *UFD/Ere nouvelle* in accordance with established and legally confirmed regulations is attacked by the Complainant before the African Commission for being in violation of [Articles 1, 2, 7, 9\(2\), 10.1, 13 and 14](#) of the African Charter, on the basis of the following points:

- The non-conformity of the legal ruling ratifying the dissolution on the principles governing the right to a fair hearing;
- The criticism levelled against the legality of the decision for dissolution in accordance with established regulations and illegal and unjustified lapses blamed on the political party *UFD/Ere nouvelle*.

**33.** The Complainant contends that the Mauritanian Courts are in violation of the provisions of [Article 7.1.a](#) of the African Charter which stipulates:

“Every individual shall have the right to have his cause heard. This comprises the right to an appeal to competent national organs against acts violating his fundamental rights as recognised and guaranteed by conventions, laws, regulations and customs in force.”/

34. The Complainant alleges that the dissolution of the main Mauritanian opposition party UFD/EN, the seizing of its assets and the conditions in which the measure has been confirmed by the highest court in the land have violated the relevant provisions of the African Charter and other Conventions to which the country is signatory.

**35.** The Complainant contends that these violations are both procedural and substantial. Procedural, because the basic rules and principles of a fair hearing were not respected during the hearing. Substantial, because the dissolution of the UFD/EN party violated the right of association and freedom of expression of the members and leaders of this political party and violated the principles of democracy outlined in the African Charter.

**36.** The Complainant alleges that the procedure before the Administrative Chamber of the Supreme Court did not respect the principles relative to the right to a fair hearing in particular that which is relative to two-tier proceedings. The Complainant also alleges that from the investigation of the case up to the public hearing which decided the destiny of the UFD/EN, the principles of inter parties had not been respected and that the final ruling by the Judge did not contain pertinent legal arguments justifying the dissolution of the said party.

**37.** The Respondent State emphasises that the judicial examples and arguments and all the documentation on the right to a fair hearing raised by the Complainant are only applicable in a penal case. The Respondent State imagines evidently that the accusations levelled against the UFD/EN may well have a penal qualification according to the law governing the activities of political parties, but this

is not enough to give this case a penal character since no penal lawsuit had been brought against the leaders of the said Party.

**38.** The Respondent State indicates that concerning the respect for the principle of two-tier proceedings, which consists of bringing the entire dossier of the merits of a case before a differently composed higher legal authority for examination, it is established that it concerns a broad based rule which can be widely applied, notably in penal cases. This principle forms the basis of proper administration of justice and allows the well-intentioned applicant to obtain the guarantee of a correct application of the law.

**39.** The fact remains however that, as stipulated by [Article 7.1.a](#) of the African Charter, every individual has the right to have his cause heard, which includes: "... The right to appeal to competent national organs..."

**40.** In this particular case, and in conformity with Article 26 of the Decree 91-024 of the 25<sup>th</sup> July 1991 governing the activities of political parties, the Respondent State underscores the fact that the competent legal authority to examine the legality and validity of a Decree passed by the Prime Minister of the Islamic Republic of Mauritania is the Administrative Chamber of the Supreme Court, according to the procedure in force in this country. However, the Supreme Court is the highest authority in the Mauritanian legal system and in the matter of appeal against decisions taken by the administrative authorities; the existing procedure requires that annulment takes place only as a first and last resort.

**41.** Finally, it means that the Mauritanian legislator, like other similar legislations [sic], has given exclusive authority to the highest legal body in the country due to the legal and political importance of the matter relative to the dissolution of a political party. It is before this high authority that the entire Mauritanian legislative system is built and it is here that the uniform rules for applying the law in this country, in all fields, are established.

**42.** Concerning the respect for the principle of judgement after due hearing, the Respondent State maintains that the Complainant never mentioned in his written submissions, any opposition to or complaint against the holding of audiences, or of the quality of the representation and the defense of the political party which was dissolved before the Mauritanian legal authorities.

**43.** After having studied the comments made by the Complainant and the Respondent State, it is well established that the representatives of the *UFD/Ere nouvelle* received, in good time, all the notifications of the actions and documents relating to this litigation, and had had access to the entire dossier of the case to study all the points and make the relevant criticisms both in writing and by oral advocacy before the competent legal authority.

**44.** However, regarding this particular case, the parties before the Mauritanian administrative court are, on the one hand, the Minister of the Interior, representing the government and, on the other hand, the political party *UFD/Ere nouvelle*. As for the Government Commissioner, he carries out the functions of the representative of the Department of Public Prosecution i.e. representative of the public interest charged to ensure, on behalf of society, the sound application of the laws. In this regard, he can resort to methods of public nature that might not have been resorted to by the parties which might have escaped the vigilance of the reporting judge.

**45.** Thus, the criticism levelled against the Government Commissioner, who is the representative of the Department of Public Prosecution, before the Administrative Division [sic] of the Supreme Court because of its so called "collusion" with the ruling, seemed to lack merit due to the absence of hard facts and concrete material evidence to back such a value judgment.

**46.** In seeking to know if the decision of the Mauritanian highest court had been sufficiently justified or not, the report on the ruling by the Administrative Chamber of the Mauritanian Supreme Court amply covers all the arguments raised by the Complainant's defense, as much in their written

submissions as in their oral address before the audience and provides responses based on the provisions of the Mauritanian laws. From that moment it is not possible to support this grievance with regard to the aforementioned decision.

**47.** In this context, the African Commission does not admit the violation of the provisions of [Article 7.1.a](#) of the African Charter for it considers that Mr Ahmed Ould Daddah's case has been adequately heard by the Administrative Chamber [of the Supreme Court].

**48.** [Article 9.2](#) of the African Charter stipulates: "every individual shall have the right to express and disseminate his opinions within the law". [Article 10.1](#) of the African Charter stipulates: « every individual shall have the right to free association provided that he abides by the law"; and [Article 13.1](#) of the Charter indicates: "every citizen shall have the right to participate freely in the government of his country, either directly or through freely chosen representatives in accordance with the provisions of the law".

**49.** The Complainant alleges that by a Decree No. 2000/116/PM/MITP dated 28<sup>th</sup> October 2000 and signed by the Prime Minister, the Mauritanian Government dissolved the [*Union de forces démocratiques/Ere nouvelle* (UFD/EN), the main opposition party in the country. The same day, Mr Ahmed Ould Daddah, Secretary General of the said political party received, by letter (No. 58/2000) from the Minister of the Interior, Posts and Telecommunications of even date, notification of the measure that the political group's buildings and assets have been impounded.

**50.** According to the Decree governing the dissolution, the measure had been taken in application of the provisions of the Constitution of the 20<sup>th</sup> July 1991 [Article 11](#) and [Article 18](#) and the Decree No. 91 024 of the 25<sup>th</sup> July 1991 (Articles 4, 25 and 26) which formally prohibited political parties from destroying the country's important image and interests, from inciting intolerance and violence and from organising demonstrations that are likely to compromise public order, peace and security.

**51.** The Complainant contends that the acts by the leaders of the political parties mentioned in Articles 4 & 5 of the Decree No. 91 – 024 of 25<sup>th</sup> July 1991 relative to political parties and liable to lead to the dissolution of their organisation (inciting intolerance and violence, organising demonstrations likely to compromise public order, peace and security, setting up of military or paramilitary organisations, armed militia or combat groups) are already considered by Articles 83 and others of the Mauritanian Criminal Code as offences or punishable crimes.

**52.** The Complainant points out that the dissolution of the UFD/EN is justifiable by the inflammatory nature of a certain number of documents and expressions attributed to its leaders. In other words, it is the abuse of the freedom of expression by the leaders of this party which gave rise to its expulsion from the Mauritanian political arena. The Complainant specifies that such assertions are unacceptable in a State which is said to base its activities on the principles of democracy and on the principles of the African Charter. Indeed, there had been, not only prejudice to the freedom of expression, to the right of association and to the right of the leaders of the UFD/EN to participate in the management of public affairs in Mauritania, but also to the fundamental rights of the said party which, through this measure, has lost all its assets.

**53.** The Complainant indicates that the notions of the right of association and of the freedom of expression are complementary in a democratic state, in the sense that the association or the political party is, the means *par excellence*, for the freedom of expression. It is well known that political parties contribute greatly to the political debate of democratic states, notably through elections which are organised periodically to guarantee the freedom of choice of its leaders by the citizens.

**54.** In paying special attention to the terms used in the party's declarations, in the statements of its leaders and indeed to the context in which these had been published or delivered, the Complainant voices his surprise to note that the authors of this measure were unaware that the activities for which the UFD/EN was being blamed had taken place in the context of "training and the expression of the

political will of its members” and in the context of Mauritians enjoying their right to be differently informed about the political, economic and social situation of their country.

**55.** The Complainant alleges that the contentious statements and publications had been made and/or distributed during a time when Mauritania was making pre-campaign preparations for the legislative and local elections for the year 2001. In such a context, each party was endeavouring, with due respect for democratic rules, to put its opponent in a position of weakness before the voters during the electoral campaign.

**56.** The Complainant exposes that it is for this reason that the statement of the 17<sup>th</sup> September 1998 had been drafted following the dissemination, by several reliable sources, of information relating to the discovery of a case of misappropriation of public funds, particularly of the aid received from development partners, of financial chaos and of the mismanagement of public affairs <sup>1</sup>.

**57.** According to the Complainant, the objective of this document was, among other things, to remind Mauritania’s partners that the Mauritanian citizen, in view of the total silence of the authorities on this issue “has the right and the duty to ask for explanations and to know what happened to the money obtained in his name and which should be refunded” <sup>2</sup>, that a happy outcome of this crisis which is threatening the existence of Mauritania, since more than 57% of the population lived below the poverty threshold, could only be obtained through “responsible, dispassionate and constructive dialogue the only means to realise consensual solutions to the major problems which exist”. The document also insisted on the need for the country to have a pluralist Parliament resulting from transparent elections, an independent judiciary, a really free press, the opening of the public media for opposition debates and to give free access to airtime. And in conclusion, the authors of the statement affirmed that “the UFD/EN, as a political force of major significance, whilst expressing its sincere gratitude to all of Mauritania’s development partners for their large contributions to this country, and in expressing the hope to see this assistance increased, invites them to avoid, as much as possible, easy solutions and complacent attitudes which is costing [sic] Mauritania enormously for the past several years” <sup>3</sup>

**58.** Concerning the statement of the 30<sup>th</sup> October 1999 made by the UFD/EN, the Complainant argues that it had been published at the end of the Party’s 2<sup>nd</sup> Ordinary Congress which had brought together some fifteen African Political Parties. The text, a report of the 3-day meeting of the Party, had been divided in two sections, devoted respectively to the political, economic and social situation of the nation and to the Party’s internal activities.

**59.** The Complainant claims that the first part of the document was a presentation of the major facts of life in the nation which had been examined by the participants at the Congress and ideas and solutions, outlined in the resolutions which had been advocated by the party as definitive solutions. These were obviously problems which the Authorities did not wish and still do not wish to see exposed to the public view, such as:

- the threats to national unity brought about by racist, slave-like, tribalistic and regionalistic practices;
- the maintenance of repressive texts which legalise the muzzling of the press, the violation of individual and collective freedoms and the regular and shameless rigging of elections;
- the economic bankruptcy resulting from the systematic looting of national resources and the diverting of national aid by the ruling clique, giving rise to the aggravation of social inequality, of unemployment, of impoverishment and the abandonment by the State of its essential functions of regulation, health, education and security;
- the diplomatic isolation of Mauritania from its natural arabo-african environment and its most spectacular action which was the elevation of Israel’s diplomatic representation to the rank of Ambassador.

**60.** The Complainant notes that in these two documents, there is no passage that contains an insulting or outrageous word against the Authorities or advocating violence and/or calling on the populations to rise against the leaders of the country. And in the two cases, the Party was acting as an activist in the national political life and playing its natural and important role in drawing public attention to the facts outlined by the information disseminated by independent organisations, and all of this with due respect for the laws and regulations of the country, argues the Complainant.

**61.** The Complainant party recalls that in a democratic society, “the Authorities should tolerate criticism even where it can be considered as insulting or provocative”<sup>4</sup> and one of the characteristics of democracy is “to allow the proposal and the discussion of diverse political projects even those which challenge the State’s current mode of organising, so long as these do not cause prejudice to democracy itself”<sup>5</sup>, this is what the Mauritanian Constitution requires in its [Article 11](#) .

**62.** As for the incriminating speech, the Complainant continues, it had been delivered by Mr Ahmed Ould Daddah in his capacity as Secretary General of the UFD/EN during one of the rare occasions when the party had obtained approval to hold a rally. The essence of his speech related, that day, to the respect which should be accorded by the Mauritanian Authorities to the main opposition party of the country as it’s due. In his view, the party should no longer accept the harassment to which it was being subjected and if it should continue the changes being fervently called for by its militants would not come about in a peaceful manner for the UFD/EN would no longer leave the initiative to the authorities. He ended his speech by calling on all the members of the party to prepare for battle in the coming elections. The Complainant alleges that nowhere in the speech was there use of a word to make people think that his party was, from henceforth, going to resort to violence. That was all the more important considering that at the end of the meeting the thousands of militants dispersed without any incident in spite of an impressive police presence.

**63.** The Respondent State alleges that political pluralism in the Islamic Republic of Mauritania has its political bases in [Article 11](#) and [Article 18](#) of the 1991 Constitution and its legal basis in Articles 4, 25 and 26 of the Law of 25<sup>th</sup> July 1991 relative to political parties.

**64.** In this context, [Article 11](#) of the Constitution of the Islamic Republic of Mauritania stipulates: “Political parties work towards the formation and the expression of political will. They form and exercise their activities freely on condition that they respect the democratic principles and do not jeopardise, either by object or by action, national sovereignty, territorial integrity and the unity of the nation and of the Republic. The law fixes the conditions for the creation, operation and dissolution of political parties.”

**65.** [Article 18](#) of the Constitution of the Islamic Republic of Mauritania puts down all offences committed, which are prejudicial to the security of the State.

**66.** Article 4 of the Decree No. 91-024 of 25<sup>th</sup> July 1991 relative to Political Parties reads as follows: [quote]“Political parties are prohibited all propaganda against the principles of Islam. Islam cannot be the exclusive prerogative of any political party. In their statutes, programmes, in their speeches and in their political activities, political parties are prohibited from:

- Any form of incitement to intolerance and to violence;
- Organisation of demonstrations likely to compromise public order, peace and security;
- Any transformation aimed at establishing military or paramilitary organisations or armed militia or combat groups;
- Any propaganda with the objective of causing prejudice to territorial integrity or to the unity of the nation”

**67.** Article 25 of the Decree No. 91-024 of 25<sup>th</sup> July 1991 relative to political parties makes it possible for a political party to be dissolved if the latter violates the rules, which govern it.

**68.** The Respondent States argues that it is on the basis of these two texts that the political party *UFD/Ere nouvelle* received its legal sanctioning and was able to carry out its activities normally. These two texts, one of which has a constitutional value and the other an organic value, fix the framework for the activities of political parties as organs for participation in the democratisation of public life and determine the modalities of the sanctions to be imposed in case of transgression of the constitutional requirements and the legal rules governing the activities of political parties in the Islamic Republic of Mauritania.

**69.** Pertaining to the dissolution of the UFD/EN, the Respondent State alleges that the lack of direction and extremism of this Party was such that the dissolution was not only justified but also necessary in view of the danger that it represented for the State and for social peace.

**70.** The Respondent State insists that the UFD/EN, because of its radicalism, constituted a grave threat to public order and seriously threatened the rules of the democratic game. In this context it was quite legitimate for the State, in order to avoid a drifting to unforeseeable consequences, to take all the requisite measures to safeguard the general interest of the country and to preserve the social fabric as well as to maintain public order and security in a democratic society, and this in conformity with the relevant provisions of the Decree for the creation and dissolution of political parties.

**71.** The authorities clearly defined the legal causes and bases of this measure. On the causes relating to the dissolution, the Respondent State noted as follows:

1. The activities carried out both inside and outside the country to discredit and destroy the interests of Mauritania. In this regard, the Respondent State cites the communiqué by the UFD/EN dated 17<sup>th</sup> September 1998 addressed to Mauritania's development partners with the objective of convincing the donor countries to arrest all economic assistance to Mauritania and the orchestrated disinformation campaign against the country relating to the dumping in the national territory of nuclear waste from Israel;
2. The fact that the UFD/EN had advocated violence as an instrument of its political activities. It also mentioned the Party's General Political Statement of the 30<sup>th</sup> October 1999 certain passages of which, notably those speaking of the marginalisation and ignorance of the rights of black-Africans, are seen by the Respondent as trying to re-ignite ethnic and racial upheavals in a pluri-ethnic country, disturbances against public law and order blamed on this party and declarations attributed to certain leaders of this party who are reported to have said that they would no longer organise peaceful demonstrations.

**72.** With regard to the legality of the measure, the Respondent State affirms that this legality is based in [Article 11](#) of the Constitution which governs the principle of the freedom to set up political parties, on condition that they respect the democratic principles and do not cause prejudice either by objective or by their actions to national sovereignty, to the territorial integrity, to the unity of the Nation of the Republic and Articles 4, 25 and 26 of Decree 91-024 of the 25<sup>th</sup> July 1991 relative to Political Parties which prohibits any action that may incite intolerance and violence and any effort to organise demonstrations that may compromise public order, peace and security.

**73.** The Respondent State reiterates that factual evidence existed whereby the UFD/EN was advocating violence, was carrying out subversive activities which were prejudicial to national unity, was training dangerous hooligans who were likely to jeopardise the lives and property of peaceful citizens.

**74.** This factual evidence, continues the Respondent State, fully justifies the regulatory measure taken against the UFD/EN decided by the Council of Ministers since the threat against order, peace and security was evident.

**75.** The Respondent State advances several arguments against the authors of the communication to justify the basis of the decision to dissolve the UFD/EN, in particular:

- The fact that the activities of and positions taken by the leaders of this party constituted a threat to the fundamental interests and image of the country;
- The fact that certain actions and declarations by the party appear to be meant to incite Mauritians to intolerance and violence;
- The fact that some of its members were involved in activities geared towards pushing people to disobedience and disorder thereby endangering public peace and security.

**76.** According to the interpretation given by the African Commission to freedom of expression and to the right of association as defined in the African Charter, States have the right to regulate, through their national legislation, the exercise of these two rights. [Articles 9\(2\), 10\(1\), 13\(1\)](#) of the African Charter all specifically refer to the need to respect the provisions of national legislation in the implementation and enjoyment of such rights. In this particular case, the relevant provisions of Mauritanian laws that had been applied are [Article 11](#) and [Article 18](#) of the Constitution and Articles 4, 25 and 26 of the Decree 91-024 of the 25<sup>th</sup> July 1991 relative to political parties.

**77.** However these regulations should be compatible with the obligations of States as outlined in the African Charter <sup>6</sup>. In the specific case of the freedom of expression that the African Commission considers as “a fundamental human right, essential for the development of the individual, for his political awareness and his participation in public affairs” <sup>7</sup>. A recent decision <sup>8</sup> clearly delineated that the right of States to restrain, through national legislation, the expression of opinions did not mean that national legislation could push aside entirely the right to expression and the right to express one's opinion. This, in the Commission's view, would make the protection of this right inoperable. To allow national legislation to take precedence over the Charter would result in wiping out the importance and impact of the rights and freedoms provided for under the Charter. International obligations should always have precedence over national legislation, and any restriction of the rights guaranteed by the Charter should be in conformity with the provisions of the latter.

**78.** For the African Commission the only legitimate reasons for restricting the rights and freedoms contained in the Charter are those stipulated in [27\(2\)](#), namely that the rights “shall be exercised with due regard to the rights of others, collective security, morality and common interest” <sup>9</sup> And even in this case the restrictions should “be based on legitimate public interest and the inconvenience caused by these restrictions should be strictly proportional and absolutely necessary for the benefits to be realised” <sup>10</sup>

**79.** Furthermore, the African Commission requires that for a restriction imposed by the legislators to conform to the provisions of the African Charter, it should be done “with respect for the rights of others, collective security and common interest” <sup>11</sup> that it should be based “on a legitimate public interest ...and should be strictly proportional and absolutely necessary” to the sought after objective <sup>12</sup> . And more over, the law in question should be in conformity with the obligations to which the State has subscribed in ratifying the African Charter <sup>13</sup> and should not “render the right itself an illusion” <sup>14</sup>

**80.** It is worthy of note that the freedom of expression and the right to association are closely linked because the protection of opinions and the right to express them freely constitute one of the objectives of the right of association. And this amalgamation of the two norms is even clearer in the case of political parties, considering their essential role for the maintenance of pluralism and the proper functioning of democracy. A political group should therefore not be hounded for the simple reason of wanting to hold public debates, with due respect for democratic rules, on a certain number of issues of national interest.

**81.** In this particular case it is obvious that the dissolution of the UFD/EN had the main objective of preventing the party leaders from continuing to be responsible for actions for declarations or for the adoption of positions which, according to the Mauritanian government, caused public disorder and seriously threatened the credit, social cohesion and public order in the country.

**82.** Nonetheless, and without wanting to pre-empt the judgement of the Mauritanian authorities, it appears to the African Commission that the said authorities had a whole gamut of sanctions which they could have used without having to resort to the dissolution of this party. It would appear in fact that if the Respondent State wished to end the verbal “drifting” of the UFD/EN party and to avoid the repetition by this same party of its behaviour prohibited by the law, the Respondent State could have used a large number of measures enabling it, since the first escapade of this political party, to contain this “grave threat to public order”.

**83.** The Decree No. 91-024 had in effect, made provision for other sanctions in order to deal with “slips” of political parties. Furthermore, the African Commission finds that the dissolution of UFD/EN was in conformity with the provisions of the Decree relating to the political parties.

**84.** The African Commission observes that the UFD/EN party transformed itself legally into UFD/EN retaining its recognised representatives on the basis of its political statement and its programmes of action. The African Commission also calls on all the Republican political forces in the Islamic Republic of Mauritania to work, within the framework of the Constitution, towards the reinforcement of healthy pluralist and democratic practice which would preserve social unity and public peace.

**85.** The African Commission notes that the Respondent State contends rightly that the attitudes or declarations of the leaders of the dissolved party could indeed have violated the rights of individuals, the collective security of the Mauritians and the common interest, but the disputed dissolution measure was “not strictly proportional” to the nature of the breaches and offences committed by the UFD/EN.

## Holding

### **For these reasons, the African Commission:-**

Finds that the dissolution of *UFD/Ere nouvelle* political party by the Respondent State was not proportional to the nature of the breaches and offences committed by the political party and is therefore in violation of the provisions of [Article 10.1](#), of the African Charter.

## Footnotes

1. The Complainant refers particularly to the article which appeared in the French daily *Le Monde*, which is generally well informed and which was [e]ntitled “Mauritania plagued by affairism [sic] and a return to tribalism” and in which could be read the following “the word deprivation is not strong enough (to describe the situation of the Mauritanian) and that to remain afloat the only solution available for the administration is to divert for its own benefit, part of the monies given by the international community to finance development projects”.

10. *Ibid* , para. 69.

11. Cf. *Communication 140/94* [sic] cited above, para. 41

12. Cf. *Communication 140/94* [sic] cited above, para. 42.

13. Cf. *Communication 147/95 and 149/96 Sir Dawda K. Jawara/The Gambia* , para. 59

14. Cf. *Communication 140/94* cited above, para. 42.

2. Cf. Declaration made for the attention of Mauritania’s development partners, page 2.

3. Cf. Declaration quoted above, page 2.

4. Cf. Cr.EDH, [Arrest of Ozgur Gundem c. Turkey](#) of 16<sup>th</sup> March 2000, para. 60

5. Cf. Cr.EDH, *Arrest of Ybrahim Askoy c. Turkey* of 10<sup>th</sup> January 2001, para. 78.

6. Cf. [Resolution on the Right to Freedom of Association](#) , para. 3

7. *Communication 212/98 Amnesty c/Zambia* para. 54.

8. *Communication 105/93, 128/94, 130/94 and 152/96 Media Rights Agenda and Constitutional Rights Project v/Nigeria* para. 66

9. *Ibid* , para. 68.