Purohit and Moore V The Gambia Communication 241/2001 (2003) AHRLR 96 (ACHPR 2003)

Mental patients' rights – right to health – the nature of socio-economic rights obligations under the African Charter on Human and People's Rights - respect for human dignity – right to liberty and security of the person – right to have one's cause heard – right to freely participate in one's own government

The facts

The communication was brought before the African Commission on Human and Peoples' Rights (the Commission) by two mental health advocates, Ms H. Purohit and Mr P. Moore, on behalf of mental patients at a psychiatric unit in the Gambia, and existing and future mental patients detained under the Mental Health Acts of the Republic of The Gambia.

The complainants alleged that the provisions of the Lunatic Detention Act of The Gambia and the manner in which mental patients were being treated amounted to a violation of various provisions of the African Charter on Human and Peoples' Rights (the African Charter), including the right to health. The applicants alleged that the Act failed to provide safeguards for patients who were suspected of being insane during their diagnosis, certification and detention. Among other things, it did not make provision for the review of, or appeal against, orders of detention or any remedy for erroneous detentions. It was also argued that no provision existed for the independent examination, management and living conditions within the unit itself.

The decision

The Commission found that The Gambia had violated an array of rights protected in the Charter. It was held that the Lunatic Detention Act was discriminatory because of the categories of people who would be detained under it were likely to be people picked up from the streets and people from poor backgrounds.

The Commission also found that the legislative scheme of the Lunatic Detention Act, its implementation and the conditions under which persons were detained, amounted to a violation of respect for human dignity. Among other things, the Act used such terms as "idiots" and "lunatics" to describe persons with mental illness. Such terminology, according to the African Commission, dehumanised them. The respondent state was also found to have violated the right to liberty and security of the person and the right to have one's cause heard for a number of reasons, including the lack of procedural provisions allowing for the review or appeal against detention under the Act. The exclusion of mentally ill persons from political participation was held to be a violation of the right to freely participate in one's own government.

The court made a finding on the right to health stating that the right to health includes 'the right to health facilities, access to goods and services to be guaranteed to all without discrimination of any kind'. The Commission said mental health patients deserve special treatment because of their condition and by virtue of their disability. The Commission held that the Lunatic Detention Act was deficient in terms of therapeutic objectives and provision of matching resources and programmes for the treatment of persons with mental disabilities.

In terms of resources, the Commission took cognisance of poverty levels in Africa and adopted a position similar to that of the UN Committee on Economic, Social and Cultural Rights. The Commission pronounced that article 16 of the Charter on the right to health, obliges the state to take concrete and targeted steps, while taking full advantage of its available resources, to ensure that the right to health is fully realised in all its aspects without discrimination.