

Below is an unofficial translation by Human Rights Watch of excerpts of a judgment issued by the Rabat Administrative Court of First Instance holding that the governor (wali) of Rabat-Salé-Zemmour-Za'ir violated the Law on Public Assemblies' article 3 when he barred the Moroccan Association for Human Rights from holding a conference at the National Library.

Rabat Administrative Court

Ruling number 5793

November 21, 2014

File 2014/7112/949

Moustapha Simou presiding.

**The Moroccan Association for Human Rights v. the Wali of Rabat-Salé-Zemmour-Za'ir**

On the substance:

The petition seeks a judgment overturning Decree 542 issued by the governor of Rabat-Salé-Zemmour-Za'ir on September 25, 2014, which prohibited the plaintiff, the Moroccan Association for Human Rights, from holding a seminar scheduled for September 27, 2014 at the National Library, with the enforcement of all legal consequences, as well as a ruling against the province, in the person of the governor, and the state, in the person of the prime minister, to compensate the plaintiff for material and moral damages resulting from the ban in the sum of 200,000 dirhams, to compensate for the loss of the usage fee for the conference room at the National Library, valued at 2,400 dirhams, with the judgment effective immediately.

The petition is based on the unlawfulness of the prohibition order, which violates the provisions of Paragraph 6 of Section 3 of the law regulating public assemblies, and the respondent's liability for the moral and material harm sustained by the plaintiff as a result of the prohibition order.

The respondent, the administration, argued the lawfulness of the contested decree insofar as the plaintiff did not comply with the provisions of Section 3 of the amended royal edict (dhahir) on public assemblies, which makes the convening of public assemblies subject to a regime of prior declaration by which the local administrative authority reviews the location of the assembly and the notification that has been submitted, in keeping with the exigencies of the preservation of the public order.

In addition [argues the respondent], the paragraph cited in Section 3 of the aforementioned law does not speak to the type of public assembly organized by the plaintiff, which was an activity of a rights nature, as it affirms in its brief. This activity does not fall within the types enumerated in the final paragraph of the aforementioned section, as is also established by the title of the seminar, "The Media and Democracy." This activity was to be convened in coordination with the

Freedom Now Association, a non-existent, not legally established association, as affirmed by the court in a previous dispute.

As such, the association's activity requires a prior notification. The exception to the notification [requirement] concerns solely those assemblies convened in the offices of associations, not outside of them, based on the interpretation consistent with the aim of the legislature, given that attendance outside the association's offices is open to the general public, which requires planning and the preservation of the public order; in addition, the topic of the meeting lies beyond the scope of the association's objectives. The petition for compensation consequently has no basis, given the lawfulness of the decree and the lack of proof of harm.

An examination of all aspects of the case reveals that the point of contention is limited to a determination of whether a prior notification was necessary for the public assembly scheduled as part of the seminar organized by the plaintiff association in the field of human rights and, more specifically, the topic of media and democracy.

More precisely, an adjudication of the current case requires answering the following questions: should this meeting be considered as falling within the scope of activities having a cultural aim in the sense of Paragraph 6 of Article 3 of the dhahir [royal edict] on public assemblies, which are exempted from the requirement of prior notification of the domestic authorities? Or is the topic of this seminar excluded from this sense by its very nature, insofar as it is a rights activity, and, as construed in the state attorney's brief, it cannot be classified as an activity of a cultural nature? And does the subject of this seminar truly depart from the objectives of the plaintiff association as set forth in its charter? And, assuming that the Freedom Now association was partnering with the plaintiff to organize the seminar in question, is the state attorney correct when he claims that the [earlier] administrative court judgment held that the Freedom Now Association has no legal existence and is not legally established? Finally, is it correct to say that the exception to the notification regime applies only to meetings held in the offices of associations, not outside of them, based on the interpretation considered by the state attorney to be consistent with the aims of the legislature?

In responding to these questions, reference should first be made to the provisions of universal conventions and constitutional and legal authorities regulating the freedom of assembly, proceeding from Article 20 of the Universal Declaration of Human Rights, which gives every person the freedom to participate in peaceful meetings and assemblies, and Article 21 of the International Covenant on Civil and Political Rights, which requires refraining from placing restrictions on the exercise of the right of peaceful assembly except for those required by law in a democratic society to preserve the public order. These concepts have been enshrined in all, successive Moroccan constitutions, most recently in the constitution of July 29, 2011 in the chapter on basic rights and liberties, where Article 29 states, "The freedoms of congregation, assembly, and peaceful protest, and the freedom to establish associations and join trade and

political entities is guaranteed; the law shall determine the conditions for the exercise of these freedoms.”

The statutory regulation of public assemblies is governed by the provisions of Royal Edict 377-58-1 on public assemblies, issued on November 15, 1958, and its amendments, which provides for the following:

*Section 1: Public assemblies are free. A public assembly shall be considered every temporary, organized assembly accessible to the public in which issues on a previously determined agenda are considered.*

*Section 2: Public assemblies may be convened without obtaining a prior permit, provided that due regard is shown the following provisions:*

*Section 3: Every public assembly preceded by a notification shall include the day, hour, and location of the assembly; the notification shall clarify the topic of the assembly and shall be signed...*

*Assemblies convened by legally established associations and bodies with a specifically cultural, artistic, or athletic aim are exempted from the need for a prior notification set forth in the first part of this section, as are assemblies convened by charitable first-aid associations or foundations.*

The topic of the seminar in the current dispute—the media and democracy—falls broadly within the purview of human rights, which includes civil, political, economic, social, and cultural rights. Contrary to the interpretation advanced by the administration, it patently and obviously falls within the scope of cultural activities, just like any other rights activity. Saying otherwise means stripping human rights of its natural, intimate links to knowledge, education, upbringing, raising awareness and consciousness. In and of itself, human rights constitutes a culture and knowledge that should be instilled by every legally available means in the collective consciousness and daily conduct of every individual in society in order to elevate it. Educational and pedagogical institutions and civil society bodies bear a fundamental responsibility in this area, as affirmed by the royal missive commemorating the 51st anniversary of the Universal Declaration of Human Rights, which stated, “Spreading a culture of human rights assumes spreading the light of knowledge. The role of the school remains central in instilling human rights values in young charges, such that human rights becomes natural and innate. As such, the highest priority of concern to us is fighting illiteracy, for eliminating ignorance is a victory for knowledge and human rights. We urge our civil society to actively engage with the issues of our society and work to advance all segments of our people. It soothes the breast to see the spirit of responsibility it evinces and the dynamism it demonstrates.”

Secondly, the subject of the seminar is intimately related to the objectives of the plaintiff association since, according to its charter, it aims to defend human rights broadly construed. Its

missions include increasing familiarity with human rights, and spreading and promoting them. As such, it has the right to organize this activity wherever it wishes, provided it does not infringe public security, which there is no evidence would be threatened or infringed if the seminar were to be organized in the National Library.

Thirdly, as to the argument regarding the involvement of an association which the court has ruled non-existent and not legally established, upon returning to this judgment, issued as no. 4409 on July 22, 2014, it must be stated that it does not in any way refer to the non-existence of the Freedom Now Association as a legal entity or that it is not legally established, insofar as the provisions of Section 2 of the law on the establishment of associations, which the court adduced in its reasoning, make the establishment of associations dependent merely on the agreement of their founders, which is ongoing until they are dissolved judicially. The conclusions of the court in this judgment were limited strictly to the formal aspect of the case, to the exclusion of any discussion of the merits. At the time, the court considered that the association's failure to complete the formal notification process for establishment deprived it of the legal capacity to sue under Section 6 of the same law, but not of its legal existence, as the court was careful to avoid the common misconception in this area between standing and capacity and between establishment and licensed establishment. This means that the aforementioned association's lack of capacity, though it precluded it at that stage from litigating as an entity independent of its founding members and from entering into legal contracts, did not prevent it, in principle, from participating in the organization of the cultural activity in question in the current dispute provided it was legally established. Moreover, the responding body did not prove the facts of this argument, which renders it unsound.

Fourthly, there is no basis to the state attorney's argument that the exception to the notification set forth in Paragraph 6 of Section 3 of the law on public assemblies is limited solely to assemblies held in the offices of associations, not outside of them, insofar as Section 1 of this law, as correctly noted by the plaintiff's argument in its petition, explicitly and clearly states that "a public assembly shall be considered every temporary, organized assembly accessible to the public." In addition, the provisions of the exception adopted under the later amendment to the original text did not state that it applied exclusively to assemblies held within the offices of associations.

Based on the foregoing, the decree banning the seminar of the Moroccan Association for Human Rights, based on a breach of Section 3 of the royal edict of November 15, 1958 on public assemblies, is flawed by its violation of the law and for this reason must be overturned.

As a consequence of the unlawfulness of the administration's decree prohibiting the seminar planned by the plaintiff association, a consideration of administrative liability and eligibility for compensation requires proof of its constituent elements in accordance with Section 79 of the law on obligations and contracts.

The issuance and enforcement of the ban based on a misinterpretation of the law regulating public assemblies proves the element of error against the respondent and makes it liable for compensation for damages sustained by the plaintiff.

Insofar as the damage entailed by liability and compensation is the harm sustained by the person as a result of the infringement of his rights or a legitimate interest, the damage may be material or moral depending on the type of right that was damaged or harmed, provided it is a proven, realized damage, personal and direct, that infringed a material or moral legal interest under Sections 77 and 78 of the law on obligations and contracts.

The material damages claimed by the association as a result of the prohibition order remain unproven. Its claim to have sustained a loss due to the payment of a fee for the lease of the room where the assembly was scheduled lacks legal evidence as well because the rental fee, although referenced in the rental contract adduced, was not supported by the plaintiff in its petition with a receipt of actual payment of this sum, as set forth in the terms of the contract, which requires denying the petition for compensation for these damages.

Regarding the petition for compensation for moral harm, it is established in the facts of the case that the prohibition decree constituted an assault on an established right—the right of assembly and congregation—which inflicted moral harm on the association as a moral entity exercising rights and assuming duties within the framework of a statutory law, in which capacity it benefits from legal protection. This calls for an examination of how the unlawful banning of the harmed party's seminar infringed its image as an association and went to the heart of its mission to defend human rights and spread and promote this culture. It further requires a reconsideration of full, rather than nominal, compensation as restitution for this moral harm.

Based on the facts and circumstances of the petition and exercising the court's discretionary authority in this area, the court sets compensation in the sum of 100,000 dirhams, to be paid by the state in the person of the prime minister in keeping with the provisions of Section 515 of the Civil Code.

The petition for expedited enforcement is unjustified.

Both parties should bear the respective costs of the case.

### **Pronouncement**

Pursuant to Law 41-90 creating the administrative courts, particularly Article 20, and the law on public assemblies—

For these reasons, the Administrative Court has ruled publicly, preliminarily, and in presence:

On form: to accept the petition

On substance: to overturn Decree 542, issued by the governor of Rabat-Salé-Zemmour-Zaer on September 25, 2014, prohibiting the Moroccan Association for Human Rights from holding a seminar scheduled to take place in the National Library on September 27, 2014; to order the state, in the person of the prime minister, to **compensate the plaintiff for moral harm in the amount of 100,000.00 dirhams**; to deny the rest of the petition; and to order both parties to bear respective costs.