


<b>AFRICAN UNION</b>		<b>UNION AFRICAINE</b>
<b>الاتحاد الأفريقي</b>		<b>UNIÃO AFRICANA</b>
<b>AFRICAN COURT ON HUMAN AND PEOPLES' RIGHTS COUR AFRICAINE DES DROITS DE L'HOMME ET DES PEUPLES</b>		

**THE MATTER OF**

**OULAI MARIUS**

**V.**

**REPUBLIC OF CÔTE D'IVOIRE**

**APPLICATION NO. 032/2019**

**JUDGMENT**

**4 DECEMBER 2023**

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**The Court composed of:** Imani D. ABOUD, President; Modibo SACKO, Vice-President; Ben KIOKO, Rafaâ BEN ACHOUR, Suzanne MENGUE, Tujilane R. CHIZUMILA, Chafika BENSAOULA, Blaise TCHIKAYA, Stella I. ANUKAM, Dumisa B. NTSEBEZA, Dennis D. ADJEI – Judges; and Robert ENO, Registrar.

In the matter of:

OULAI MARIUS

*represented by:*

Advocate Schadrack RUYENZI,  
Member of the Rwandan Bar and Associate Member of the French Bar Association of  
Brussels

*Versus*

REPUBLIC OF CÔTE D'IVOIRE

*Represented by:*

- i. Madam Kadiatou LY SANGARE, Judicial Agent of the Treasury;
- ii. Mr. Constant DELBE ZIRINGNON, Magistrate, Technical Adviser to the Minister of Justice and Keeper of the Seals;
- iii. Mr. Abdoulaye Ben MEITE; Advocate of the Bar of Côte d'Ivoire, SCPA KEBET ET MEITE;
- iv. Advocate Mamadou SAMASSI, Advocate of the Abidjan Court of Appeal; and
- v. Advocate Mamadou KONE, Advocate of the Abidjan Court of Appeal.

*After deliberation*

*Renders this Judgment:*

## I. THE PARTIES

1. Mr. Oulai Marius (hereinafter referred to as “the Applicant”) is a national of Côte d’Ivoire serving a sentence of twenty (20) years’ imprisonment and additional penalties, for criminal conspiracy and group robbery with apparent use of weapons. At the time filing the Application, he was being held at the Abidjan Arrest and Correctional Centre (MACA). He alleges the violation of his rights during proceedings before domestic courts.
2. The Application is filed against the Republic of Côte d’Ivoire (hereinafter referred to as “the Respondent State”), which became a party to the African Charter on Human and Peoples’ Rights (hereinafter referred to as “the Charter”) on 31 March 1992 and the Protocol to the African Charter on Human and Peoples’ Rights on the Establishment an African Court on Human and Peoples’ Rights (hereinafter referred to as “the Protocol”) on 25 January 2004. Furthermore, the Respondent State, on 23 July 2013, deposited the Declaration provided for under Article 34(6) of the Protocol (hereinafter referred to as “the Declaration”), by virtue of which it accepted the jurisdiction of the Court to receive cases from individuals and Non-Governmental Organizations having observer status with the Commission. On 29 April 2020, the Respondent State deposited with the Chairperson of the African Union Commission the instrument of withdrawal of its Declaration. The Court has ruled that the withdrawal of the Declaration has no bearing on pending cases or on new cases brought before it before the withdrawal took effect one (1) year after the filing of the said instrument, in the present case, on 30 April 2021.<sup>1</sup>

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<sup>1</sup> *Suy Bi Gohoré and Others v. Republic of Côte d’Ivoire* (merits and reparations) (15 July 2020) 4 AfCLR 406, § 2.

## II. SUBJECT OF THE APPLICATION

### A. Facts of the matter

3. It emerges from the Application that on 30 May 2014, the Applicant was arrested for the alleged theft of a vehicle belonging to Mr. Tra Youzan Marc, on 12 April 2014, together with an unknown person.
4. The Applicant was found guilty of criminal conspiracy and group robbery with apparent use of weapons and sentenced to twenty (20) years' imprisonment and the following additional penalties: ten (10) years' deprivation of civil and political rights, three (3) years' ban on travelling anywhere outside his region of birth, as well as to pay costs, pursuant to articles 66,<sup>2</sup> 186,<sup>3</sup> 392,<sup>4</sup> 394,<sup>5</sup> 395,<sup>6</sup> and 397<sup>7</sup> of the Criminal Code of the Respondent State.

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<sup>2</sup> Article 66 stipulates: "A judge may deprive a convicted person of the right to: 1 Be appointed to the functions of juror, assessor, expert as well as to administrative and other public posts; 2 Obtain an authorization to carry a weapon; 3 Exercise tutelary functions, wear decorations, open a school and generally exercise all functions relating to teaching, education or child care. The deprivation may concern all or part of the said rights (...)."

<sup>3</sup> Article 186 provides: "Anyone who joins an association or participates in a conspiracy, regardless of its duration or the number of its members, with the aim of preparing or committing crimes against persons or property, is liable to between one year and five years' imprisonment. The maximum penalty shall be doubled if the offender is in possession instruments or tools for committing crimes against persons or property. The maximum penalty is doubled if the offender is in possession of instruments or tools for committing offences, or if he is carrying visible or concealed weapons."

<sup>4</sup> Article 392 states: "Anyone who fraudulently takes something that does not belong to him is guilty of theft."

<sup>5</sup> Article 394 (Law n° 95-522 of 06 /07/ 1995) of the Penal Code on theft states: "The penalty is ten to twenty years' imprisonment and a fine of between 500,000 to 5,000,000 francs if the theft or attempted theft was accompanied by at least one of the following circumstances: (...) 8 The penalty is twenty years' imprisonment if the theft or attempted theft is committed at night."

<sup>6</sup> Article 395 (Law No. 95-522 of 06 /07/ 1995) stipulates: "Theft or attempted theft shall be punishable by death if committed: 1 At night, when two of the circumstances set out in the preceding article are present; 2 When the perpetrator is carrying a visible or concealed weapon; 3 With violence resulting in death or injury, or when the perpetrator has used a vehicle to facilitate his enterprise or escape, or is carrying a narcotic substance."

<sup>7</sup> Article 397 stipulates: "(...) In addition, convicted persons: 1 Are deprived of the rights provided for in article 66 of the present Code for a period of ten years; 2 Are prohibited from appearing in certain places provided for in article 78 of the present Code; The judge may, by special decision, extend the period of deprivation of rights or prohibition from appearing up to twenty years."

5. By judgment of 24 January 2018, the Abidjan Court of Appeal upheld the judgment of the trial court.
6. On 5 February 2018, the Applicant filed Cassation Appeal No. 14 and, without awaiting the outcome of his appeal, he filed the present Application before this Court.

## **B. Alleged Violations**

7. The Applicant alleges violation of the following rights:
  - i. The right to a fair trial, protected by Article 7 of the Charter;
  - ii. The right to an effective remedy provided for in Article 8 of the Universal Declaration of Human Rights (hereinafter referred to as “the UDHR”);
  - iii. The right of access to a judge and to justice, protected by Article 7(1) of the Charter and Article 10 of the UDHR;
  - iv. The obligation on a judge to proffer reasons for his decision in a criminal trial;
  - v. The right to protection of the dignity of an incarcerated person, protected by Articles 5 of the Charter and 10(1) of the International Covenant on Civil and Political Rights (hereinafter referred to as “the ICCPR”); and
  - vi. The principle of proportionality of punishment.

## **III. SUMMARY OF THE PROCEDURE BEFORE THE COURT**

8. The Application was filed on 22 July 2019, together with a request for legal aid. It was served on the Respondent State on 14 August 2019.
9. On 20 September 2019, the Applicant filed his submissions on reparations.

10. In a Ruling on the request for legal aid, the Court, on 17 October 2019, appointed Advocate Schadrack Ruyenzi to represent the Applicant under its legal aid scheme.
11. After several extensions of time, the Respondent State filed its Response to the Application on 12 March 2020, which was transmitted to the Applicant on 16 March 2020.
12. The Applicant did not file any submission in spite of several extensions of time.
13. Pleadings were closed on 10 June 2021 and the Parties were duly notified.

#### **IV. PRAYERS OF THE PARTIES**

14. The Applicant prays the Court to find that the Respondent State violated the rights enumerated in paragraph 7 above and make an order as follows:
  - i. Special and specific Declaration regarding the Applicant's situation:
    - a. granting of presidential pardon;
    - b. outright commutation of the twenty (20) years' prison sentence to a less heavy sentence;
    - c. conditional release;
    - d. amicable settlement based on respect for human and people's rights.
  - ii. By way of general Declarations on the legal and judicial order of the Respondent State, the Applicant prays the Court for an order compelling the Respondent State to:
    - a. Pay compensation for all material and moral prejudice suffered and all such prejudice resulting from maltreatment;
    - b. Respect the inherent dignity of persons deprived of their liberty in all circumstances;

- c. Hold persons deprived of their liberty only at places officially recognized as places of detention;
- d. Make available an updated detailed register of all persons deprived of liberty;
- e. Provide appropriate medical examination and care for all detainees as soon as possible after their incarceration;
- f. Educate judicial and penitentiary staff on the international ban on acts of torture and cruel, inhuman or degrading treatment or punishment; as well as include the said ban in national legislation, prison regulations and in all training documents designed for penitentiary staff;
- g. Set the day and time of entering and exiting detention centers; and;
- h. Cease from admitting into penitentiary institutions persons without a valid detention warrant, details of which have previously been recorded in the prison register.

15. The Applicant further prays the Court to order the Respondent State to:

- i. Pay the Applicant pecuniary reparation in the amount of Three Million (3,000,000) FCFA for the legal prejudice suffered;
- ii. Pay the Applicant pecuniary reparation in the amount of Three Million (3,000,000) FCFA for the material prejudice suffered;
- iii. Pay the Applicant pecuniary reparation in the amount of Four Million (4,000,000) FCFA for the moral prejudice suffered.

16. Furthermore, the Applicant prays the Court to undertake the following measures:

- i. Organize continuing training in human rights not only for its staff but also, and above all, for all the lawyers appearing before it;
- ii. provide effective access to the Court's legal aid to all indigent and vulnerable Applicants who meet the eligibility criteria for such assistance, having duly seized the Court.



17. In its response, the Respondent State prays the Court to:

- i. Declare the Application inadmissible for non-compliance with the provisions of Article 56(5) and (6) of the Charter;
- ii. Find that the Applicant does not substantiate the alleged violation of rights committed by the State of Côte d'Ivoire;
- iii. Dismiss all of the Applicant's prayers as unfounded; and
- iv. Rule in accordance with the law as regards costs.

## **V. JURISDICTION**

18. The Court notes that Article 3 of the Protocol provides as follows:

1. The jurisdiction of the Court shall extend to all cases and disputes submitted to it concerning the interpretation and application of the Charter, this [...] Protocol, and any other relevant human rights instrument ratified by the States concerned.
2. In the event of a dispute as to whether the Court has jurisdiction, the Court shall decide.

19. Under Rule 49(1) of the Rules, “[t]he Court shall conduct preliminary examination of its jurisdiction [...] in accordance with the Charter, the Protocol and these Rules.”

20. Based on the above provisions, the Court must, in each Application, conduct a preliminary assessment of its jurisdiction and rule on objections thereto, if any.

21. The Court notes that the Respondent State does not raise an objection to its jurisdiction. Nonetheless, it must, in accordance with Rule 49(1) of the Rules,

satisfy itself that all aspects of its jurisdiction are met before proceeding to examine the Application.

22. Having noted that nothing on record indicates that it lacks jurisdiction, the Court considers that it has:

- i. material jurisdiction, as the Applicant alleges violation of the rights protected by the Charter, the UDHR and the ICCPR<sup>8</sup>, international human rights instruments to which the Respondent State is a Party.
- ii. personal jurisdiction, as the Respondent State deposited the Declaration. On 29 April 2020, the Respondent State deposited with the Chairperson of the African Union Commission an instrument of withdrawal of its Declaration. The Court has ruled that the withdrawal of the Declaration has no bearing on pending cases, or on new cases filed one (1) year before the relevant instrument takes effect, in the present case, on 30 April 2021.<sup>9</sup> The withdrawal therefore has no bearing on the present Application, which was filed on 22 July 2019.
- iii. Temporal jurisdiction, as the alleged violations were committed after the Respondent State became a Party to the Protocol.
- iv. Territorial jurisdiction, as the facts of the case occurred in the territory of the Respondent State.

23. In view of the foregoing, the Court holds that it has jurisdiction to hear the present Application.

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<sup>8</sup> The Respondent State became a party to the International Covenant on Civil and Political Rights on 26 March 1992.

<sup>9</sup> *Suy Bi Gohoré Émile and others v. Republic of Côte d'Ivoire* (merits and reparations) (15 July 2020) 4 AfCLR 406, § 2.

## VI. ADMISSIBILITY

24. Article 6(2) of the Protocol provides that: “the Court shall decide on the admissibility of applications taking into account the provisions set out in Article 56 of the Charter.”
25. Under Rule 50(1) of the Rules, “[t]he Court shall ascertain the admissibility of an Application filed before it in accordance with Articles 56 of the Charter, Article 6 (2) of the Protocol and these [...] Rules”.
26. Rule 50(2) of the Rules, which in substance restates the provisions of Article 56 of the Charter, provides:

Applications filed with the Court must meet all of the following conditions:

- a. Indicate their authors even if the latter request anonymity;
- b. Are compatible with the Constitutive Act of the African Union and with the Charter;
- c. Are not written in disparaging or insulting language directed against the State concerned and its institutions or the African Union;
- d. Are not based exclusively on news disseminated through the mass media;
- e. Are sent after exhausting local remedies, if any, unless it is obvious that this procedure is unduly prolonged;
- f. Are submitted within a reasonable time from the date local remedies were exhausted or from the date set by the Court as being the commencement of the time limit within which it shall be seised with the matter; and
- g. Do not deal with cases which have been settled by those States involved in accordance with the principles of the Charter of the United Nations, or the Constitutive Act of African Union or the provisions of the Charter.

27. The Court notes that the Respondent State raises an objection to the admissibility of the Application based on failure to exhaust local remedies. The Court will rule on this objection before examining the other conditions of admissibility, if necessary.

**A. Objection to admissibility based on non-exhaustion of local remedies**

28. The Respondent State submits that the Applicant did not exhaust local remedies and therefore seized the Court prematurely. The Respondent State submits that the Applicant, who filed the present Application while his cassation appeal was pending, does not demonstrate that the procedure in respect of the said remedy was unduly prolonged.

29. The Respondent State submits that, by this premature referral to the Court, the Applicant does not give the Respondent State the opportunity to remedy the alleged violation. It further contends that the Applicant should have awaited the outcome of his cassation appeal before seizing this Court.

30. The Respondent State concludes that the Applicant did not exhaust local remedies and, consequently, submits that the Application be declared inadmissible.

31. The Applicant did not submit on this point.

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32. The Court recalls that under Article 56(5) of the Charter and Rule 50(2)(e) of the Rules, for an application to be admissible, local remedies must have been exhausted, unless the said remedies are unavailable, ineffective and insufficient or the procedure relating thereto is unduly prolonged. The requirement of exhaustion of local remedies aims to give States the opportunity to address human rights violations within their jurisdiction before an

international human rights body is seized to determine the liability of the State in this regard.<sup>10</sup>

33. The Court notes that the Applicant brought his Application before this Court notwithstanding that the Cassation Court had yet to rule on his appeal.
34. Given that the cassation remedy in the Respondent State is an available and effective remedy, the Court notes that the Applicant had not exhausted local remedies at the time he filed his Application.
35. Accordingly, the Court finds that the Application does not meet the requirement under Article 56(5) of the Charter as restated under Rule 50(2)(e) of the Rules.

#### **B. Other conditions of admissibility**

36. Having found that the Application does not meet the requirement under Rule 50(2)(e) of the Rules, and in view of the cumulative nature of the conditions of admissibility,<sup>11</sup> the Court does not have to rule on the conditions of admissibility listed in paragraphs 1, 2, 3, 4, 6 and 7 of Article 56 of the Charter restated under Rule 50(2)(a)(b)(c)(d)(f) and (g) of the Rules.<sup>12</sup>
37. Accordingly, the Court declares the Application inadmissible.

#### **VII. COSTS**

38. Each Party requests that the other be made to bear the costs.

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<sup>10</sup> *African Commission on Human and Peoples' Rights v. Republic of Kenya* (merits) (26 May 2017) 2 AfCLR 9, §§ 93- 94; *Kouassi Kouame Patrice and Baba Cylla v. Republic of Côte d'Ivoire*, AfCHPR, Application No. 015/2021, Judgment 22 September 2022 (merits and reparations), § 49.

<sup>11</sup> *Mariam Kouma and Ousmane Diabaté v. Republic of Mali* (jurisdiction and admissibility) (21 March 2018) 2 AfCLR 237, § 63; *Rutabingwa Chrysanthe v. Republic of Rwanda* (jurisdiction and admissibility) (11 May 2018) 2 AfCLR 361, § 48; *Collectif of former ALS workers v. Republic of Mali*, AfCHPR, Application No. 042/2015, Judgment of 28 March 2019 (jurisdiction and admissibility), § 39.

<sup>12</sup> *Ibid*

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39. The Court recalls that under Rule 32(2) of its Rules,<sup>13</sup> “Unless otherwise decided by the Court, each party shall bear its own costs, if any”.

40. The Court considers that there is no reason to depart from the above provision.

41. It therefore decides that each Party should bear its own costs.

## VIII. OPERATIVE PART

42. For these reasons,

THE COURT,

*Unanimously,*

*On jurisdiction*

i. *Declares* that it has jurisdiction.

*On admissibility*

ii. *Upholds* the objection to admissibility based on non-exhaustion of local remedies;

iii. *Declares* the Application inadmissible.


*On costs*

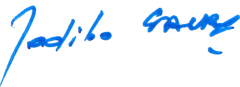
iv. *Orders* that each Party should bear its own costs.

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<sup>13</sup> Rule 30(2) of the Rules, 2 June 2010.


**Signed:**


Imani D. ABOUD, President; 


Modibo Sacko, Vice-President; 


Ben KIOKO, Judge; 


Rafaâ BEN ACHOUR, Judge; 


Suzanne MENGUE, Judge; 


Tujilane R. CHIZUMILA, Judge; 


Chafika BENSAOULA, Judge; 

Blaise TCHIKAYA, Judge; 

Stella I. ANUKAM, Judge; 

Dumisa B. NTSEBEZA, Judge; 

Dennis D. ADJEI, Judge; 

and Robert ENO, Registrar. 

Done at Algiers, this Fourth Day of December in the Year Two Thousand and Twenty-Three, in English and French, the French text being authoritative.

