

JUDGMENT SUMMARY

AMADOU DEMBÉLÉ AND OTHERS V. REPUBLIC OF MALI APPLICATION No. 023/2017

A DECISION OF THE AFRICAN COURT ON HUMAN AND PEOPLES' RIGHTS

ARUSHA, 4 June 2024: The African Court on Human and Peoples' Rights has rendered a Judgment in the matter of *Amadou Dembélé and others v. Republic of Mali*.

On 7 August 2017, Amadou Dembélé, Bakary Sidi Diabaté, Jacob *aka* A Guirou and Abdoul Karim Keïta (hereinafter "the Applicants") filed with the African Court on Human and Peoples' Rights ('the Court') an application against the Republic of Mali ("Respondent State").

In their Application, the Applicants alleged that the Respondent State violated their rights in connection with proceedings before the domestic courts relating to their dismissal. The Applicants alleged a violation of the following rights: (i) The right to equality before the law and equal protection of the law, protected by Article 3(1) and (2) of the Charter and Article 26 of the International Covenant on Civil and Political Rights (hereinafter "the ICCPR"); (ii) The right to participate freely in the government of one's country, protected by Article 13(2) of the Charter and Article 25(c) of the ICCPR; (iii) The right of equal opportunity to be promoted to an appropriate higher level, subject to no consideration other than those of seniority and competence, as provided for in Article 7(c) of the International Covenant on Economic, Social and Cultural Rights (hereinafter 'ICESCR'); and (iv). The right to education enshrined, protected by Article 17(1) of the Charter, 13(1) of the ICESCR, and Articles 1 and 2 of the UNESCO Convention.

On reparations, the Applicants requested the Court to: (i). Order the State of Mali to pay their accumulated salaries from the date of signature of their appointment order in July 2008 to the date of delivery of the Court's decision, that is, a total of Ten Million Eight

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Hundred Thousand (10,800,000) CFA francs to each Applicant; (ii). Order the State of Mali to pay each Applicant general damages to the tune of One Hundred Million (100,000,000) CFA francs ; and order the Respondent State to pay costs.

The Applicants further request the Court to order the State of Mali to pay each of them an amount of One Hundred and Twelve Million Seven Hundred Thousand (112,700,000) CFA francs as fair compensation for damages and loss of earnings, which breaks down as follows: (i). Twelve Million Seven Hundred Thousand (12,700,000) CFA francs in respect of salary arrears from July 2008 to December 2018, that is, one hundred and twenty-seven (127) months' salary for each Applicant, with a salary difference of One Hundred Thousand (100,000) CFA francs between the salary of a Police Superintendent and that of a Police Inspector; (ii). Ten Million (10,000,000) CFA francs as costs; (iii). Five million (5,000,000) CFA francs for the compilation of procedural documents; (iv). Thirty-Five Million (35,000,000) CFA francs for each of them in respect of damage suffered; and (v). Fifty Million (50,000,000) CFA francs for lost career and mission opportunities.

In its submissions, the Respondent State prayed the Court to: (i). Declare the Application inadmissible for failure to exhaust local remedies and for being written in disparaging and insulting language; (ii). Dismiss the Application as unfounded, together with the request for reparations (iii). Order the Applicants to bear all costs.

The Respondent State did not raise any objection to the Court's jurisdiction. Having found that nothing in the record shows that the Court lacks jurisdiction, the Court declared that it has jurisdiction to hear the Application.

The Respondent State raised two objections to the admissibility of the Application. The first relates to the use of disparaging or insulting language while the second relates to the failure to exhaust local remedies. On the first objection, the Respondent State argued that the Applicants used disparaging and insulting language in their Application. The Applicants did not submit on this objection.

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On this point, the Court noted that the terms used by the Applicants set out the facts and did not reflect any personal animosity, either towards the Minister of Internal Security or towards the administrative or judicial authorities of the Respondent State. Accordingly, the Court dismissed the objection and held that the Application satisfied the requirement of Article 56(3) of the Charter.

As to the second objection based on non-exhaustion of local remedies, the Respondent State submitted that the Applicants did not exhaust the available local remedies insofar as they did not appeal Judgment No. 258 of 5 May 2016 rendered by the Administrative Bench of the Supreme Court of Mali (the Supreme Court). The Applicants also pointed out that Article 256 of Organic Law No. 2016-046 of 23 September 2016, which lays down the rules governing the organisation and functioning of the Supreme Court of Mali (hereinafter “the Organic Law on the Supreme Court”), provides for the possibility of appeal in limited cases such as error in the application of the law or in case of an erroneous interpretation thereof.

The Court further noted that, before filing the present Application, the Applicants brought a case before the Administrative Bench of the Supreme Court, which issued Judgment No. 258 of 5 May 2016 dismissing their application for regularisation as cadet police superintendents. The Court further noted that Articles 110 and 111 of the Organic Law on the Supreme Court provide that a judgment of the Administrative Bench of the Supreme Court is not subject to appeal. Accordingly, the Court held that the Applicants exhausted local remedies in respect of their request relating to the government’s refusal to include them in the list of cadet police superintendents.

As regards the incompatibility of Articles 125 and 127 of the Law of 12 July 2010 with human rights instruments, the Court noted that, under Article 85 of the Respondent State’s Constitution, the only available remedy was to mount a constitutional challenge of the law, in particular, its compatibility with fundamental human rights. The Court noted that, by virtue of

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Article 45 of the said Law No. 97-010 of 11 February 1997 on the organic law laying down the rules relating to the organisation and functioning of the Constitutional Court, as well as the procedure before it, the Applicants did not have standing to bring an action before the Constitutional Court to challenge compliance of domestic laws with international obligations. Moreover, there was nothing in the record to show that the Applicants had a legal remedy available to them in the Respondent State's legal system. Accordingly, the Court dismissed the objection raised by the Respondent State and held that the Applicants exhausted local remedies.

On the merits, the Applicants alleged four (4) human rights violations, namely, violation by the Supreme Court and the Ministry of Internal Security of the right to full equality before the law and to equal protection of the law, and to non-discrimination, violation of the right to participate freely in the government of one's country, violation of the right of equal opportunity to be promoted to a higher level and violation of the right to education.

Regarding the violation of the right to full equality before the law and equal protection of the law, the Applicants alleged that the Respondent State, through the Ministry of Internal Security and the Administrative Bench of the Supreme Court (Supreme Court), violated their rights to full equality before the law and equal protection of the law.

The Applicants averred that the Respondent State's Minister of Internal Security violated the principle of equality by applying in a discriminatory manner the police officers' promotion criteria, as set out in Decree No. 06/053 of 6 February 2006 and in Article 125 of the Law of 12 July 2010.

The Respondent State contended that none of the Applicants had the requisite qualifications on the date of entry into force of the aforementioned Decree to enrol in the National Police College as trainee police superintendents, as they all obtained their certificates after the said decree had been issued.

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The Court noted that the Respondent State applied the criteria set out in the Decree of 6 February 2006, which decree is a public and an impersonal instrument, taking into account the situation of the Applicants as at the date of issuance of the said decree. Furthermore, there was no evidence to show that this provision contained any principles of inequality in relation to the Applicants who did not provide evidence of unfair and discriminatory treatment. The Court underscored that the Applicants failed to show that they were not authorised to enrol in the national police college as trainee police superintendents on grounds of their race, colour, sex, language, religion, political or any other opinion, national or social origin, fortune, birth or any status. The Court therefore found that the Respondent State did not violate the Applicants' rights to equality before the law and to non-discrimination, protected by Article 3 of the Charter and Article 2 of the ICCPR in relation to the measures taken by the Ministry of Internal Security.

As regards violation of the right to equality before the law, the Applicants alleged that the Supreme Court unjustifiably disregarded its case law.

The Respondent State countered that the Supreme Court made a jurisprudential about-turn after it found that it had misinterpreted the law governing the training police officers.

The Court emphasised that the principle of equality before the law does not mean that courts must necessarily deal with all cases in the same manner, since dealing with each case may depend on its specific circumstances. The Court further noted that the Applicants did not dispute the fact that they obtained their qualifications after the issuance of the decree of 6 February 2006, neither do they dispute that they did not obtain prior authorisation from their superiors. On the basis of this argument, the Supreme Court, by Judgment No. 186 of 7 April 2006, dismissed the Applicants' request for regularisation. The Court held that the Supreme Court has the latitude to develop its jurisprudence by interpreting the applicable law differently, without further consideration, and that it explained the reason for doing so. The Court therefore found that the Applicants were not treated unequally or discriminated against

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during the proceedings before the Supreme Court. Accordingly, the Court dismissed the allegation that the Respondent State, by virtue of the Supreme Court judgment, violated the Applicants' right to equality before the law and to non-discrimination, protected by Article 3(1) of the Charter and Article 26 of the ICCPR.

As regards the violation of the right to participate freely in the government of one's country, the Applicants submitted that Article 125 of the Law of 12 July 2010 impairs the right to participate in the government of one's country, protected by Article 25(c) of the ICCPR.

The Respondent State pointed out that the law of 12 July 2010 on the status of the national police force does not contain any provision contrary to national or international legal standards, and that it was the Applicants who wanted the government to apply it inappropriately.

The Court noted that the requirement of prior authorisation for training as a cadet superintendent or cadet inspector at the National Police College, which enabled promotion to a higher level, did not constitute an unreasonable restriction. Accordingly, the Court held that the Respondent State did not violate the Applicants' right to participate freely in the government of one's country, protected by Article 13(2) of the Charter, read in conjunction with Article 25(c) of the ICCPR.

As to violation of the right to promotion to a higher level, the Applicants alleged that they were treated unequally in relation to some of their colleague police officers with the same seniority and the same qualifications. They maintained, in that regard, that the situation of those colleagues was regularised by the Supreme Court's judgments annulling the Applicants' promotion to a higher rank. Hence the Applicants submitted that the Respondent State violated Article 15 of the Charter and Article 7(c) of the ICESCR.

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The Respondent State submitted that contrary to the Applicants' allegations, the right to be promoted to a higher level, guaranteed by the ICESCR, is enshrined in Mali's domestic legislation. The Respondent State argued that continuing education and promotion were rights provided for by law and applicable to all members of the national police force. These rights derive from the rules and regulations set out in Law No. 039 of 12 July 2010 on the status of police officer, in particular, Article 125, which lays down the conditions for promotion to a higher rank, and Article 127, which sets forth the conditions validating continuing education, including, among others, the criteria of seniority in the corps, a recommendation from one's superior and prior authorisation to undergo training. The Respondent State maintained that none of the Applicants satisfied the requirements set out in these legal provisions.

The Court observed, with reference to the provisions of Articles 125 and 127 of Law No. 10-034 of 12 July 2010 on the status of members of the national police force of Mali, that the promotion criteria for police officers are seniority and competence, in accordance with Article 7 of the ICESCR. The Court found that as at the date of issuance of Decree No. 06/053, that is, 6 February 2006, the Applicants did not meet the criteria to undergo police superintendents' training, insofar as they obtained their Master's degree after the decree had come into force. The Court also noted that the Applicants did not meet the seniority requirement under the aforementioned provisions. Accordingly, it dismissed the Applicants' allegations, holding that the Respondent State did not violate their rights protected by Article 15 of the Charter and Article 7(c) of the ICESCR pertaining to promotion.

As concerns violation of the right to education, the Applicants argued that the right to education, protected by Article 17(1) of the Charter and Article 13(1)(c) of the ICESCR, is a fundamental right of every person who aspires to acquire knowledge. They also submitted that Article 125 of the Law of 12 July 2010 violates the right to education insofar as it requires the prior authorisation of one's hierarchical superior to enrol in the National Police College, which opens the way to promotion to a higher level in the national police corps.

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For its part, the Respondent State pointed out that the Law of 12 July 2010 sets out the rules and regulations applicable to active-service police officers who wish to pursue further studies with a view to reclassification.

The Court found that the requirement of prior authorisation to recognise qualifications obtained does not constitute discriminatory criterion within the meaning of Article 1 of the UNESCO Convention, insofar as it is a legal provision applicable to all police officers, and that, in any event, there is nothing to indicate that this provision infringes the right to education. Furthermore, as regards the requirement relating to a citizen's abilities, the Court noted that, Article 125 of the Law of 12 July 2010 on access to higher education takes into account a police officer's years of experience, seniority and rank, which is fully consistent with the provisions of Article 13(2)(c) of the ICESCR. Accordingly, the Court held that the Respondent State did not violate the Applicants' right to higher education in applying Article 125 of the Law of 12 July 2010.

As regards reparations, the Court dismissed the Applicants' request for reparation.

As to costs, the Court decided that each Party shall bear its own costs.

Further information

Further information on this case, including the full text of the African Court's judgment, is available on the website : <https://www.african-court.org/cpmt/fr/details-case/0232017>

For any other questions, please contact the Registry at the following e-mail address:
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The African Court on Human and Peoples' Rights is a continental court established by African countries to ensure the protection of human and peoples' rights in Africa. The Court has jurisdiction over all cases and disputes brought before it in respect of the interpretation and application of the African Charter on Human and Peoples' Rights and any other relevant human rights instrument ratified by the State concerned. For more information, please visit our website: www.african-court.org