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| AFRICAN COURT ON HUMAN AND PEOPLES' RIGHTS<br>COUR AFRICAINE DES DROITS DE L'HOMME ET DES PEUPLES | | |

**THE MATTER OF**

**GOH TAUDIER AND OTHERS**

**V.**

**REPUBLIC OF CÔTE D'IVOIRE**

**CONSOLIDATED APPLICATIONS**
**NOS. 017/2019, 018/2019 AND 019/2019**

**RULING**

**4 JUNE 2024**

AFRICAN COURT ON HUMAN AND PEOPLES' RIGHTS
The Registrar
LE GREFFIER
ARUSHA TANZANIA
COUR AFRICAINE DES DROITS DE L'HOMME ET DES PEUPLES

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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:

GOH TAUDIER AND OTHERS

*represented by* Ruyenzi SCHADRACK, Advocate of the Bar of Rwanda

versus

REPUBLIC OF CÔTE D'IVOIRE

*represented by:*

i. Mr. DELBE Zirignon Constant, Magistrate and Technical Advisor to the Keeper of the Seals, Minister of Justice and Human Rights;
ii. Barrister MEITE Abdoulaye Ben, Advocate of the Bar of Côte d'Ivoire;
iii. Barrister SAMASSI Mamadou, Advocate of the Bar of Côte d'Ivoire;
iv. Barrister GUEU Patrice, Advocate of the Bar of Côte d'Ivoire; and
v. Barrister KONE Mamadou, Advocate of the Bar of Côte d'Ivoire;

After deliberation,

*Renders this Judgment:*

## I. THE PARTIES

1. Messrs Goh Taudier, Bamba Lamine and Coulibaly Ousmane (hereinafter referred to as "First Applicant, Second Applicant and Third Applicant", respectively and "the Applicants", jointly) are Ivorian nationals, who at the time of filing their applications, were serving a sentence of twenty (20) years in prison for armed robbery at the Abidjan prison (Arrest and Correctional Centre - MACA). They allege violation of their right to a fair trial during the domestic proceedings and challenge the twenty years imprisonment to which they were sentenced by 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 to the Protocol to the Charter on the Establishment of an African Court on Human and Peoples' Rights (hereinafter referred to as "the Protocol") on 25 January 2004. The Respondent State also filed, on 23 July 2013, the Declaration provided for in Article 34(6) of the Protocol (hereinafter "the Declaration) by virtue of which it accepted the jurisdiction of the Court to receive applications from individuals and Non-Governmental Organizations having observer status before the African Commission on Human and Peoples' Rights. On 29 April 2020, the Respondent State deposited with the Chairperson of the African Union Commission the instrument of withdrawal of the said Declaration. The Court has ruled that the withdrawal has no bearing on pending cases and on new cases filed before the withdrawal came into effect, being a period of one (1) year after the deposit of the instrument relating thereto, that is, on 30 April 2021.[1]

[1] *Kouadio Kobena Fory v. Republic of Côte d'Ivoire*, ACtHPR, Application No. 034/2017, Judgment of 2 December 2021 (merits and reparations), § 2; *Suy Bi Gohoré Émile and others v. Republic of Côte d'Ivoire* (merits and reparations) (15 July 2020) 4 AfCLR 406, § 67; *Ingabire Victoire Umuhoza v. Republic of Rwanda* (jurisdiction) (3 June 2016) 1 AfCLR 540, § 69.

## II. SUBJECT OF THE APPLICATION

### A. Facts of the matter

3. It emerges from the record that on the evening of 27 March 2013, while on his way home, Zerbo Seydou, a lawyer by profession, was attacked by four (4) individuals armed with Kalashnikov rifles and pistols. They robbed him of a sum of money and his briefcase containing various items. In the days that followed, the same lawyer came under repeated death threats issued from three telephone numbers. On 29 March 2013, he filed a complaint against unknown persons for robbery and the death threats made through anonymous telephone calls.

4. Following investigations carried out by the “criminal police”, it emerged that one of the telephone numbers belonged to one of the Applicants while the two other numbers were, respectively, those of his nephew and a public telephone booth.

5. Arrested by the criminal police, the First Applicant admitted to making phones calls threatening to kill Advocate Zebro Seydou in revenge, for having been fired from his job as security guard at the latter’s law firm. It also emerges from the record that he admitted to being the instigator of the 27 March 2013 attack on the lawyer, with the help of the two other Applicants, who were both members of the Republican forces of Côte d’Ivoire assigned to the presidential motorcade. In addition to participating in the robbery, they were responsible for renting the vehicle and providing the firearms used in the robbery, as well as for trailing the lawyer.

6. By judgment of 23 April 2013, the Abidjan District Court found them guilty of gang robbery, illegal possession of firearms and issuing of death threats, and sentenced them to twenty (20) years in prison. On 25 February 2015, the Abidjan Court of Appeal upheld the District Court’s judgment in its entirety. Believing that they were not afforded a fair trial, the Applicants filed an application before this Court.

## B. Alleged Violations

7. The Applicants allege violation of the following rights:

   i. the right to a fair trial, in particular, the right of access to a judge and to justice, protected by Article 7(1)(a)(b) and 7(2) of the Charter as well as by Article 10 of the Universal Declaration of Human Rights ( UDHR); the right to the adversarial principle, the right to the principle of proportionality of punishment; the right to an effective remedy, protected by Article 8 of the UDHR; and violation of the obligation of a judge to state reasons for his decision in a criminal trial;
   ii. the right to the 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 (the ICCPR).

# III. SUMMARY OF THE PROCEDURE BEFORE THE COURT

8. The three (3) Applications were received at the Registry of the Court on 23 April 2019 and were served on the Respondent State on 22 July 2019.

9. By decision of 2 December 2019, the Court ordered a joinder of the Applications Nos. 017/2019, 018/2018 and 019/2019.

10. On 30 January 2020, the Respondent State filed its Response, which was notified to the Applicants on 6 February 2020 for their reply.

11. On 3 March 2020, the Applicants submitted their Reply, which was notified to the Respondent State the same day.

12. Pleadings were closed on 28 October 2021 and the Parties were duly notified.

## IV. PRAYERS OF THE PARTIES

13. The Applicants pray the Court to order the Respondent State to take the following measures to remedy their incarceration, namely:

    i. Presidential pardon;
    ii. Commutation of their twenty (20) years' prison sentence to a less severe sentence;
    iii. Conditional release;
    iv. Amicable settlement; and
    v. Financial compensation for the harm suffered due to the unfair judicial decisions handed down on them.

14. The Respondent State prays the Court to:

    i. Declare that it lacks jurisdiction to hear the Application;
    ii. Find that the Application does not meet the admissibility requirements under Article 56(5) of the Charter;
    iii. Dismiss the Application and all of the Applicants' requests.

## V. JURISDICTION

15. The Court notes that Article 3 of the Protocol provides:

    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.

16. According to 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."

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

18. The Court notes that in the instant case, the Respondent State does not raise any objection to jurisdiction. Nonetheless, the Court, in line with Rule 49(1) of the Rules, must satisfy itself that it has material, personal, temporal and territorial jurisdiction before proceeding to examine the Application. Having noted that nothing on record indicates that it lacks jurisdiction, the Court considers that it has:

    i. Material jurisdiction, insofar as the Applicants allege violation of their rights protected by the Charter and the ICCPR, to which the Respondent State is a Party.[2]

    ii. Personal jurisdiction, insofar as, as already indicated in paragraph 2 of this judgment, the Respondent State, on 29 April 2020, deposited the instrument of withdrawal of the Declaration. The Court reiterates its position that the withdrawal of the Declaration has no retroactive effect and has no bearing on cases pending at the time of filing the instrument of withdrawal or on new cases filed before the withdrawal took effect, in the instant case, on 30 April 2021. The present Applications, having been submitted before the Respondent State filed the instrument of withdrawal on 23 April 2019, are not affected.

    iii. Temporal jurisdiction, insofar as the violations alleged by the Applicants occurred after the Respondent State became a Party to the Charter and the Protocol.[3]

[2] The Respondent State became a Party to the ICCPR on 26 March 1992.
[3] *Kouadio Kobena v. Republic of Côte d'Ivoire*, ACtHPR, Application No. 034/2017, Judgment of 2 December 2021 (merits and reparations), § 32; *Kouassi Kouame and Baba Sylla v. Republic of Côte d'Ivoire*, ACtHPR, Application No. 015/2021, Judgment of 22 September 2022 (merits and reparations), § 24.

iv. Territorial jurisdiction, insofar as the violations alleged by the Applicants occurred in the territory of the Respondent State, which is a Party to the Protocol. The Court concludes that it has territorial jurisdiction.

19. In light of the foregoing, the Court finds that it has jurisdiction to hear the present Applications.

## VI. ADMISSIBILITY

20. Under Article 6(2) of the Protocol, "[t]he Court shall decide on the admissibility of applications taking into account the provisions set out in Article 56 of the Charter".

21. Rule 50(1) of the Rules provides: "[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".

22. 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.

23. The Court notes that in the present case, the Respondent State raises an objection to admissibility based on non-exhaustion of local remedies. The Court will rule on this objection before examining other admissibility requirements, if necessary.

## A. Objection based on non-exhaustion of local remedies

24. The Respondent State asserts that the requirement of exhaustion of local remedies implies that before a case relating to human rights violations is brought before this Court, it must be first heard by all relevant courts in the domestic court system of the State concerned, in order to afford the latter the opportunity to remedy the alleged violation. The Respondent State maintains that before domestic courts, the Applicants raised neither the violations that they allege, nor the treaty provisions invoked.

25. The Respondent State submits that in the domestic proceedings preceding referral to this Court, the Applicants did not exhaust all available remedies, including the Court of Cassation. The Respondent State therefore prays the Court to declare the Application inadmissible for failure to exhaust local remedies.

*

26. The Applicants, for their part, maintain that their Applications are admissible within the meaning of Article 56(5) of the Charter. They contend that they did not appeal to the Court of Cassation for reasons beyond their control.

The Applicants contend that they were time-barred from appealing to the Court of Cassation due to lack of awareness of this local remedy. They further submit that apart from being unaware of the existence of such a remedy, they were also not aware of their right to be assisted by counsel who could have initiated such a procedure on their behalf before the domestic courts.

27. The Applicants further submit that even if they had appealed to the Court of Cassation, this remedy would not have been successful since it is an extraordinary remedy that is not effective.

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28. The Court recalls that under Article 56(5) of the Charter, the provisions of which are restated in Rule 50(2)(e) of the Rules, Applicants are required to exhaust local remedies before bringing any Application before it.

29. The Court emphasizes that the local remedies to be exhausted are remedies of a judicial nature which must be available, that is, they can be used without impediment by the Applicant, effective and sufficient, in the sense that they are able to give satisfaction to the Applicant or are of such a nature as to remedy the disputed situation.[4]

30. The Court further recalls that, in line with the Court's established jurisprudence, this requirement is waived only if the Applicant demonstrates that the remedies are unavailable, ineffective, unsatisfactory or if the procedure relating thereto is unduly prolonged.[5]

[4] *Lohé Issa Konaté v. Burkina Faso* (merits) (5 December 2014) 1 AfCLR 314, § 108*; Sébastien Germain Marie Ajavon v. Republic of Benin*, ACtHPR, Application No. 027/2020, Ruling of 2 December 2021 (jurisdiction and admissibility), § 73.
[5] *Kijiji Isiaga v. United Republic of Tanzania* (merits) (21 March 2018) 2 AfCLR 218, § 44; *African Commission on Human and Peoples' Rights v. Republic of Kenya* (merits) (26 May 2017) 2 AfCLR 9, §§ 93-94.

31. Furthermore, the Court has consistently held that examining the requirement of exhaustion of local remedies must take into account the circumstances of the case. Thus, it has taken into account in a realistic manner not only the remedies available in the domestic legal system of the Respondent State but also the legal or political context which could impact the availability, effectiveness or the sufficient nature of the remedies, as well as the personal situation of the Applicant.[6]

32. In the instant case, the Court notes that the Applicants acknowledge that they did not exhaust existing and available local remedies. It further notes that to justify the fact that they did not exercise the cassation remedy, the Applicants argue that they were not assisted by counsel, that they themselves were unaware of the existence of the cassation remedy which, by the way, is an ineffective extraordinary remedy.

33. The Court observes that after the judgment of 23 April 2013 by which the Abidjan District Court found the Applicants guilty of gang robbery, illegal possession of firearms and issuing death threats, and sentenced them to twenty (20) years imprisonment, the Applicants filed an appeal.

34. The Court observes that having filed a proper and timely appeal against the judgment of the District Court as required by the Code of Criminal Procedure, even though, they did not receive legal assistance throughout their trial, the Applicants cannot rely on the argument that they were not assisted by a lawyer to justify their failure to pursue the cassation remedy.

35. Similarly, the Court further considers that the Applicants cannot claim that they were unaware of the existence of the cassation remedy.

36. As regards the extraordinary nature of the cassation remedy, the Court notes that in the Respondent State's judicial system, the existing and available legal remedies are those that can be exercised before the trial

[6] *Sébastien Germain Ajavon v*. *Republic of* Benin (merits) (29 March 2019) 3 AfCLR 130, § 110.

courts, the courts of appeal and the Supreme Court, which is the highest court of the land.[7] Thus, the cassation appeal is not an extraordinary remedy as claimed by the Applicants.

37. As regards the effectiveness of the cassation remedy, the Court recalls, as it has previously held, that the effectiveness of a remedy lies in its capacity to redress the situation contested by the appellant.[8] The Court observes that in the legal system of the Respondent State, the cassation appeal is a remedy that seeks vacation of a final ruling or judgment for violation of the law, thereby enabling the country's highest court to sanction violations of the law by lower courts.[9] Furthermore, decisions of the Supreme Court are binding on the lower courts and may result in a change in the situation of the appellants on the merits.[10] Consequently, the cassation appeal is an effective remedy that the Applicants should have exercised.

38. The Court further recalls that it has held, in cases concerning countries with the same legal and judicial traditions as the Respondent State, that the cassation appeal is in principle an effective and satisfactory remedy that every Applicant is required to exhaust.[11]

39. In view of the foregoing, the Court upholds the Respondent State's objection and finds that the Application does not meet the requirement of exhaustion of local remedies set out in Article 56(5) of the Charter. Consequently, the Court finds the Applications inadmissible.

[7] Article 1 of Law No. 61-155 of 18 May 1961 on judicial organization and amended by Law No. 99-435 of 6 July 1999
[8] *Norbert Zongo and Others v. Burkina Faso* (merits) (28 March 2014) 1 AfCLR 219, § 68.
[9] Articles 28 and 32 of Law 97-243 of 25 April 1997 amending Law 94-440 of 16 August 1994 determining the jurisdiction, organization, attributions and functioning of the Supreme Court.
[10] *Woyome v. Ghana* (merits and reparations) (28 June 2019) 3 AfCLR 235, § 65; *Zongo and Others v. Burkina Faso*, *supra*, § 69.
[11] *Zongo and Others v. Burkina Faso*, *ibid.*, § 70; *Konaté v. Burkina Faso*, *supra*, § 93.

### B. Other admissibility requirements

40. The Court recalls that the admissibility requirements for an Application are cumulative, so that if any one of them is not met, the entire Application becomes inadmissible.[12]

41. The Court observes that having held that local remedies were not exhausted, there is no need to rule on the other admissibility requirements.

42. Accordingly, the Court finds that the present Application does not meet the admissibility requirements set out in Article 56 of the Charter and declares it inadmissible.

## VII. COSTS

43. The Parties did not submit on costs.

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

45. The Court considers in the present case that there is no reason to depart from this principle. Accordingly, it orders that each Party should bear its own costs.

[12] *Aminata Soumaré v. Republic of Mali*, ACtHPR, Application No. 038/2019, Judgment of 5 September 2023 (jurisdiction and admissibility), § 47; *Yacouba Traoré v. Republic of Mali*, ACtHPR, Application No. 002/2019, Judgment of 22 September 2022 (jurisdiction and admissibility), § 49; *Mariam Kouma and Ousmane Diabaté v. Republic of Mali* (merits) (21 March 2018) 2 AfCLR 237, § 63; *Rutabingwa Chrysanthe v. Republic of Rwanda* (jurisdiction and admissibility) (11 May 2018) 2 AfCLR 361, § 48.

## VIII. OPERATIVE PART

46. For these reasons,

THE COURT

*Unanimously*

*On jurisdiction*

i. *Declares* that it has jurisdiction.

*On admissibility*

ii. *Upholds* the objection to admissibility;
iii. *Declares* the Application inadmissible.

*On costs*

iv. *Orders* each Party to bear its own costs.

**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 Arusha this Fourth Day of the Month of June in the Year Two Thousand and Twenty-Four, in French and English, the French text being authoritative.