


AFRICAN UNION		UNION AFRICAINE
الاتحاد الأفريقي		UNIÃO AFRICANA
UNIÓN AFRICANA		UMOJA WA AFRIKA
AFRICAN COURT ON HUMAN AND PEOPLES' RIGHTS COUR AFRICAINE DES DROITS DE L'HOMME ET DES PEUPLES		

MATTER OF

N'GUESSAN YAO ANGE

V.

REPUBLIC OF CÔTE D'IVOIRE

APPLICATION NO. 034/2019

RULING

5 FEBRUARY 2025



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

In the Matter of:

N'GUESSAN Yao Ange

Represented by Barrister Ruyenzi SCHADRACK, member of the Rwandan Bar.

Versus

REPUBLIC OF CÔTE D'IVOIRE

Represented by Barrister Khadidiatou LY SANGARE

Judicial Officer of the Treasury

after deliberation

Delivers this Ruling:

I. THE PARTIES

1. Mr N'GUESSAN Yao Ange (hereinafter referred to as “the Applicant”) is an Ivorian national. At the time of filing the present Application, he was serving a sentence of 15 years’ imprisonment for criminal conspiracy, gang armed robbery and indecent assault with violence. He alleges that his right to a fair trial was violated in the domestic legal proceedings.

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. On 23 July 2013, the Respondent State deposited the declaration provided for in Article 34(6) of the Protocol (hereinafter referred to as "the Declaration"), by virtue of which it accepted the Court's jurisdiction to receive applications from individuals and Non-Governmental Organisations 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 this withdrawal has no effect on pending cases, or on new cases filed before the entry into force of the withdrawal one (1) year after its deposit, in this case, on 30 April 2021.¹

II. SUBJECT OF THE APPLICATION

A. Facts of the Matter

3. It emerges from the Application that on 15 February 2013, the Applicant and two other persons who are not parties to the present proceedings, were charged with criminal conspiracy, gang armed robbery and indecent assault with violence, and placed under a committal order. On 1 March 2023, the Applicant was found guilty of these charges and sentenced to 15 years' imprisonment by the Yopougon Court of First Instance by judgment No.0559/2013. Following his appeal, the Abidjan Court of Appeal issued a confirmatory judgment No. 61 of 8 February 2017 (hereinafter referred to as

¹ *Kouadio Kobena Fory v. Republic of Côte d'Ivoire*, (merits and et reparations) AfCHPR (2 December 2021) 5 AfCLR 682, § 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 Umuhiza v. Republic of Rwanda*, (jurisdiction) (3 June 2016), 1 AfCLR 540 § 69.

“Abidjan Court of Appeal judgment”). The Applicant avers that, at all stages of the proceedings, he acknowledged the facts of which he was accused.

4. The Applicant contends that “for reasons beyond his control”, he did not lodge a cassation appeal against the judgment of the Abidjan Court of Appeal since, not having been afforded the assistance of a counsel, he was unaware of its existence. He further contends that, in any event, lodging an appeal “would be unsuccessful in the current legal and judicial system of the State in question”.

B. Alleged Violations

5. The Applicant alleges violation of the right to a fair trial, in particular:
 - i. The right to bring proceedings before the competent national courts against any act violating the fundamental rights recognized and guaranteed to him by the conventions, laws, regulations and customs in force, protected by Article 7(1)(a) of the Charter;
 - ii. The right to a defence, protected by Article 7(1)(c) of the Charter, including the right to legal assistance and respect for the adversarial principle;
 - iii. The right to a reasoned judgment, protected by Article 7(1) of the Charter;
 - iv. Respect for the principle of proportionality of punishment, provided for in Article 15(1) of the International Covenant on Civil and Political Rights (hereinafter “ICCPR”).

III. SUMMARY OF THE PROCEDURE BEFORE THE COURT

6. The Application was filed on 22 July 2019 and served on the Respondent State on 29 August 2019. On 2 September 2019 the Respondent State submitted the names of its representatives.

7. The Parties filed their pleadings and other procedural documents within the prescribed time-limits.
8. Pleadings were closed on 30 September 2021 and the Parties were informed accordingly.

IV. PRAYERS OF THE PARTIES

9. The Applicant prays the Court to order the following measures:
 - i. A presidential pardon;
 - ii. The commutation, in due form, of his 20-year prison sentence to a lesser term;
 - iii. Conditional release;
 - iv. An out-of-court settlement; and
 - v. Financial compensation for the damage suffered as a result of the unfair court rulings against him.
10. The Respondent State prays the Court:
 - i. As a matter of form, to declare the Application inadmissible for violation of Articles 56(5) and (6);
 - ii. On the merits
 - Find that the Applicant does not prove the alleged violations of rights;
 - Consequently, dismiss all his claims as unfounded;
 - Make an order as to costs.

V. JURISDICTION

11. The Court notes that Article 3 of the Protocol provides that:
 1. The jurisdiction of the Court shall extend to all cases and disputes submitted to it concerning the interpretation and application of the

Charter, the (...) 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.
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12. Under Rule 49(1) of the Rules of Court, the Court “shall conduct a preliminary examination of its jurisdiction and the admissibility of an Application in accordance with the Charter, the Protocol and these Rules”.
 13. On the basis of the aforementioned provisions, the Court must conduct a preliminary examination of its jurisdiction and rule on any objections thereto, if any.
 14. The Court notes that, in the instant case, the Respondent State does not raise any objection as to its jurisdiction. However, it must, in accordance with Rule 49(1) of the Rules of Court, satisfy itself that the conditions relating to all aspects of its jurisdiction are met.
 15. Having found that there is nothing, on the record, to indicate that it lacks jurisdiction, the Court considers that it has:
 - i. material jurisdiction, insofar as the Applicant alleges violation of human rights protected by the Charter and the International Covenant on Civil and Political Rights (hereinafter ‘the ICCPR’) to which the Respondent State is a party.²
 - ii. personal jurisdiction, given that, as indicated in paragraph 2 of this judgment, the Respondent State deposited the Declaration on 23 July 2013. On 29 April 2020 it deposited the instrument of withdrawal of that Declaration. In this regard, the Court reiterates its jurisprudence 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 takes effect, in

² The Respondent State is a party to the International Covenant on Civil and Political Rights (‘the ICCPR’), 26 March 1992.

this case, on 30 April 2021. As the present Application was filed on 22 July 2019, that is, before the withdrawal of the Declaration, it is therefore not affected.

- iii. temporal jurisdiction, insofar as the alleged violations occurred after the Respondent State became a party to the Protocol,³ and
- iv. territorial jurisdiction, insofar as the alleged violations took place in the territory of the Respondent State.

16. In the light of the foregoing, the Court holds that it has jurisdiction to entertain the present Application.

VI. ADMISSIBILITY

17. In accordance with Article 6(2) of the Protocol, '[t]he Court shall rule on the admissibility of cases taking into account the provisions of Article 56 of the Charter'.

18. Under Rule 50(1) of the Rules of Court, '[t]he Court shall ascertain the admissibility of an Application filed before it in accordance with Article 56 of the Charter and Article 6(2) of the Protocol and these Rules'.

19. Rule 50(2) of the Rules of Court, which reproduces in substance the provisions of Article 56 of the Charter, reads as follows:

Applications filed before the Court shall comply with 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;

³ *Kouadio Kobena v. Republic of Côte d'Ivoire*, AfCHPR (2 December 2021) (merits and reparations) 5 AfCLR, § 32; *Kouassi Kouame and Baba Sylla v. Republic of Côte d'Ivoire*, AfCHPR, Application No. 015/2021, Judgment of 22 September 2022 (merits and reparations), § 24.

- 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 the 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 the African Union or the provisions of the Charter.

20. The Court notes that, in the instant case, the Respondent State raises two objections to admissibility, one based on non-exhaustion of local remedies (A) and the other on the Application having been filed within an unreasonable time. The Court will rule on the objections before examining, if necessary, the other conditions of admissibility (B).

A. Objection based on non-exhaustion of local remedies

21. The Respondent State submits that the Application is inadmissible for non-exhaustion of local remedies. It contends that it was not given the opportunity to remedy the alleged violations inasmuch as those violations were never brought before its courts. It emphasises that the application of the rule on exhaustion of local remedies should enable its superior courts to remedy the failings of the lower courts.

22. The Respondent State contends that the Applicant himself acknowledges that he did not file a cassation appeal, which is an available, satisfactory and effective remedy, even though the judgment of the Abidjan Court of Appeal could have been the subject of such an appeal.

23. For his part, the Applicant contends that the objection should be dismissed. He points out that the rule of exhaustion of local remedies, which is not absolute, must be interpreted with flexibility.
24. The Applicant also contends that he was not assisted by Counsel and was unaware of the existence of the cassation appeal. He adds that, in any event, a cassation appeal “would not be successful in the current legal and judicial system of the State in question”.

25. The Court notes that, under Article 56(5) of the Charter, as restated in Rule 50(2) of the Rules of Court, applications brought before it must be filed after exhaustion of local remedies, if any, unless it is clear that the procedure for such remedies is unduly prolonged.
26. The Court emphasises that the remedies to be exhausted are judicial remedies, which must be available, that is, they must be unimpeded. They must also be effective and satisfactory in the sense that they must be capable of remedying the situation in question.⁴ In line with the Court’s established jurisprudence, the only exception to this rule is when such remedies fail to meet these requirements or are unduly prolonged.⁵
27. Moreover, the Court has consistently held that it examines the exhaustion of local remedies in light of the circumstances of each case and taking into account the remedies available in the judicial system of the Respondent State.⁶

⁴ *Lohé Issa Konaté v. Burkina Faso* (merits) (December 5, 2014) 1 AfCLR 324, §108; *Sébastien Germain Marie Aïkoué Ajavon v. Republic of Benin* (jurisdiction and admissibility), (December 2, 2021) 5 AfCLR 93, § 73.

⁵ *Kijiji Isiaga v. United Republic of Tanzania* (merits) (March 21, 2018), 2 AfCLR 226, § 44; *African Commission on Human and Peoples’ Rights v. Republic of Kenya* (merits) (May 26, 2017) 2 AfCLR 9, §§ 93 to 94.

⁶ *Sébastien Germain Marie Aïkoué Ajavon v. Republic of Benin* (merits) (March 29, 2019) 3 AfCLR, 136 § 110.

28. In the present case, the Court notes that the Applicant acknowledges that he did not file a cassation appeal against the judgment of the Abidjan Court of Appeal because he was not represented by Counsel and was unaware of the existence of the remedy which, in any event, is ineffective.
29. The Court notes that it has consistently held that in the judicial system of the Respondent State, the cassation appeal is an available, effective and satisfactory remedy.⁷
30. In addition, and in accordance with its established jurisprudence, the Court emphasises, on the one hand, that the fact of not being assisted by Counsel and being ignorant of the existence of a remedy cannot be grounds for not pursuing that remedy.⁸ On the other hand, the Court considers that an applicant cannot merely allege that a remedy is ineffective but must at least attempt to pursue it.⁹
31. Based on the foregoing, the Court considers that the Applicant did not exhaust local remedies and that the Application, therefore, does not satisfy this admissibility requirement.
32. Accordingly, the Court upholds the Respondent State's objection and holds that the Applicant did not exhaust local remedies.

B. Other admissibility requirements

33. The Court notes that the admissibility requirements are cumulative such that if one of them is not met, an Application is inadmissible.¹⁰ Having found that

⁷ *Oulaï Marius v. Republic of Côte d'Ivoire*, AfCHPR, Application No. 032/2019, Judgment of 4 December 2024 (jurisdiction and admissibility) § 34; *Goh Taudier and Others v. Republic of Côte d'Ivoire*, AfCHPR, Applications (consolidated applications) Nos. 017/2019, 018/2019 and 019/2019, Judgment of 4 June 2024 (jurisdiction and admissibility), § 38.

⁸ *Taudier and others v. Côte d'Ivoire*, *ibid*, §§ 34-35.

⁹ *Moussa Dombia v. Côte d'Ivoire*, AfCHPR, Application 029/2019, Judgment of 13 September 2024, § 30.

¹⁰ *Aminata Soumaré v. Republic of Mali*, AfCHPR, Application No. 038/2019, Judgment of 5 September 2023 (jurisdiction and admissibility), § 47 ; *Yacouba Traoré v. Republic of Mali*, AfCHPR, Application No. 002/2019, Judgment of 22 September 2022 (jurisdiction and admissibility), § 49 ; *Mariam Kouma and Ousmane Diabaté v. Republic of Mali* (jurisdiction and admissibility) (21 March 2018) 2 AfCLR 237,

local remedies were not exhausted, the Court considers it superfluous to rule on the other admissibility requirements under Article 56(1)(2)(3)(4)(6) and (7) of the Charter and Rule 50(2)(a)(b)(c)(d)(f)(g).

34. Consequently, the Court holds that the Application is inadmissible.

VII. COSTS

35. No Party submitted on the costs of the proceedings.

36. The Court recalls that under Rule 32(2) of its Rules, “unless the Court decides otherwise, each party shall bear its own costs”.

37. The Court considers that, in the instant case, there is no reason to depart from this provision and therefore orders that each party bear its own costs.

VIII. OPERATIVE PART

38. For these reasons,

THE COURT,

Unanimously

On jurisdiction

i. *Declares* that it has jurisdiction;

§ 63 ; *Rutabingwa Chrysanthe v. Republic of Rwanda* (jurisdiction and admissibility) (11 May 2018) 2 AfCLR 361, § 48 et *Oulai v. Côte d’Ivoire*, *supra*, § 36 ; *Taudier and Others v. Côte d’Ivoire*, *supra*, § 40.


On admissibility


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


Rafaâ BEN ACHOUR, Judge; 


Suzanne MENGUE, Judge; 


Tujilane R. CHIZUMILA, Judge; 

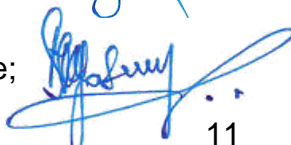
Chafika BENSAOULA, Judge; 

Blaise TCHIKAYA, Judge; 


Stella I. ANUKAM, Judge; 

Dumisa B. NTSEBEZA, Judge; 

Dennis D. ADJEI, Judge; 

Duncan GASWAGA, Judge; 

and Robert ENO, Registrar.



Done at Arusha, this Fifth Day of February in the year Two Thousand and Twenty-Five, in English and French, the French text being authoritative.

