


AFRICAN UNION		UNION AFRICAINE
الاتحاد الأفريقي		UNIÃO AFRICANA
<p style="text-align: center;">AFRICAN COURT ON HUMAN AND PEOPLES' RIGHTS COUR AFRICAINE DES DROITS DE L'HOMME ET DES PEUPLES</p>		

THE MATTER OF

BOUBACAR SISSOKO AND 74 OTHERS

V.

REPUBLIC OF MALI

APPLICATION NO. 037/2017

JUDGMENT

25 SEPTEMBER 2020



TABLE OF CONTENTS

TABLE OF CONTENTS	i
I. THE PARTIES	1
II. SUBJECT OF THE APPLICATION	2
A. Facts of the matter	2
B. Alleged violations	3
III. SUMMARY OF THE PROCEDURE BEFORE THE COURT	3
IV. PRAYERS OF THE PARTIES	4
V. JURISDICTION	5
VI. ADMISSIBILITY	6
A. Conditions of admissibility in contention between the parties	7
i. Objection based on the use of abusive and disparaging language	7
ii. Objection based on non-exhaustion of local remedies	8
B. Other conditions of admissibility	12
VII. MERITS	13
A. Alleged violation of the right to equality before the law and to equal protection of the law	14
B. Alleged violation of the right to non-discrimination	20
C. Alleged violation of the right to be promoted to a higher category	21
D. Incompatibility of Mali's laws with its international obligations	24
VIII. REPARATIONS	27
IX. COSTS	28
X. OPERATIVE PART	29

The Court composed of: Sylvain ORÉ, President; Ben KIOKO, Vice-President; Rafaâ BEN ACHOUR, Ângelo V. MATUSSE, Suzanne MENGUE, M- Thérèse MUKAMULISA, Tujilane R. CHIZUMILA, Chafika BENSAOULA, Blaise TCHIKAYA, Stella I. ANUKAM, Imani D. ABOUD, Judges; and Robert ENO, Registrar.

In the Matter of

Boubacar SISSOKO and Seventy-Four (74) Others

Represented by Barrister Mariam DIAWARA, Advocate of the Mali Bar

Versus

REPUBLIC OF MALI

Represented by Barrister Ousmane Mama TRAORE, from the Directorate General in charge of State Litigation

After deliberation,

Renders the following Judgment.

I. THE PARTIES

1. Mr Boubacar Sissoko and 74 others (hereinafter referred to as "the Applicants"), are nationals of Mali and police officers whose applications into the National Police Academy were rejected by the Ministry of Internal Security.
2. The Application is filed against the Republic of Mali (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 21 October 1986 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 20 June 2000. The Respondent State also deposited, on 19 February 2010, the Declaration required under Article 34(6) of the Protocol, by which it accepted the jurisdiction of the Court to receive cases from individuals and Non-Governmental Organizations with observer status before the African Commission on Human and Peoples' Rights.

II. SUBJECT OF THE APPLICATION

A. Facts of the matter

3. The Applicants submit that in order to cater to the shortage of police personnel, the Respondent State issued Decree No. 06-53/P-RM of 6 February 2006 which lays down the special provisions to recruit more officers and which was applicable to the various branches of the National Police Force. Article 47 of the Decree provides that:

All Police Inspectors and non-commissioned officers holding a Master's degree on the date of entry into force of this decree shall be authorized to enter the National Police Academy in successive batches according to seniority in rank and service in order to be trained as Superintendents of Police.

4. Pursuant to Articles 18, 47 and 49 of the said Decree, the then Minister of Internal Security and Civil Protection, on the proposal of the Director-General of the Police, admitted to the National Police Academy, in successive batches, graduates listed as Cadet Superintendents of the Police.

5. The Applicants aver that, in order to benefit from the provisions of above-mentioned Decree of 6 February 2006, they undertook university studies in law and economics, leading to a Master's degree, which enabled them to apply for admission to the National Police Academy so as to attend the training therein as Cadet Superintendents of Police.

6. However, the Ministry of Security rejected their applications, whereas under the same laws, their colleagues who had obtained similar diplomas and who were at the same level of seniority were admitted to the Academy and appointed as

Cadet Superintendents of the Police.

7. The Applicants contend that some of their colleagues, whose applications had also been rejected referred the matter to the Administrative Division of the Supreme Court of the Respondent State which, by judgments No. 362 of 22 November 2013 and No. 093 of 17 April 2014, granted their application, on the basis of the principles of equality of all before the law and non-discrimination, paving the way for their administrative regularisation by the supervisory authority.
8. The Applicants aver that they equally referred their matter to the same Administrative Division of the Supreme Court which however, dismissed their application by Decision No. 258 of 5 May 2016.

B. Alleged violations

9. The Applicants allege the following against the Respondent State:
 - i. Violation of the right to equality before the law, the right to equal protection of the law without discrimination, provided for in Article 26 of the ICCPR and Article 3(1) and (2) of the Charter;
 - ii. Violation of the right to equal opportunity for advancement to the next higher grade without regard to any consideration other than seniority in the most recent grade and competence, as provided for in Article 7(C) of the ICESCR;
 - iii. The inconsistency of Articles 125 and 127 of Law No. 034 of 12 July 2010 with the international obligations of the Republic of Mali in laying down the rules and regulations governing civil servants of the National Police.

III. SUMMARY OF THE PROCEDURE BEFORE THE COURT

10. The Applicants filed their Application on 8 December 2017 and it was served on the Respondent State on 22 March 2018.
11. The Parties filed their submissions on the merits and on reparations within the prescribed time-limits.

12. The pleadings were closed on 26 September 2018 and the Parties were duly notified.

IV. PRAYERS OF THE PARTIES

13. The Applicants pray the Court to:

- i. Find that it has jurisdiction to hear the Application;
- ii. Declare that the Application is admissible;
- iii. Find that the Republic of Mali has violated the right of the Applicants to equality before the law and the right to equal protection of the law without discrimination provided for in Articles 25 and 26 of the ICCPR and 3(1) and (2) of the Charter;
- iv. Find that the Republic of Mali violated the Applicants' right to advancement under Article 7(c) of the ICESCR;
- v. Order the State of Mali to put an end to the violations of their rights, to regularize their situation and to reclassify them, pursuant to the provisions of Decree No. 06-053/P-RM of 6 February 2006, in particular Article 47 thereof;
- vi. Declare that the State of Mali is required to pay an amount of one hundred million (100,000,000) CFA Francs to each Applicant for the prejudice suffered;
- vii. Order the State of Mali to bear the costs of the proceedings.

14. They further pray the Court to award the following reparations:

Order the State of Mali to pay an amount of one billion, ninety-six million (1,096,000,000) CFA Francs to each Applicant as fair compensation for the damages and loss of income suffered. The amount shall be distributed as follows:

- i. Twelve million (12,000,000) CFA Francs in respect to salary arrears from December 2014 to December 2018, or forty-eight (48) months' salary for each Applicant;
- ii. Twenty-four million (24,000,000) CFA Francs for procedural costs;
- iii. Ten million (10,000,000) CFA Francs for the preparation of the pleadings;
- iv. Seventy-five million (75,000,000) CFA Francs per Applicant in respect of non-pecuniary damage suffered;
- v. Seventy-five million (75,000,000) CFA Francs in respect of missed career opportunities and missed assignments.

15. The Respondent State prays the Court to:

- i. Declare the Application inadmissible for non-exhaustion of local remedies and for containing disparaging and insulting language;
- ii. Dismiss the Application on the ground that it is unfounded and further dismiss the request for reparations;
- iii. Order the Applicants to bear the costs and expenses.

V. JURISDICTION

16. 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 instruments ratified by the States concerned.
2. In the event of a dispute as to whether the Court has jurisdiction, the Court shall decide.

17. According to Rule 39(1) of the Rules: "the Court shall conduct a preliminary examination of its jurisdiction in accordance with the Charter, the Protocol and these Rules".

18. On the basis of the above-cited provisions, the Court must, in every application, preliminarily, conduct an assessment of its jurisdiction and dispose of objections thereto, if any.

19. The Court notes that the Respondent State has not raised any objections to its jurisdiction.

20. After a preliminary examination of its jurisdiction, and having further found that there is nothing in record to indicate that it does not have jurisdiction, the Court holds that it has:

- i. Material jurisdiction, insofar as the Applicants allege violation of Articles 3(1) and (2) of the Charter and also of Articles 25 and 26 of the

ICCPR, 7(2) of the ICESCR to which the Respondent State is a party;¹

- ii. Personal jurisdiction, insofar as the Respondent State is party to the Charter, the Protocol and has deposited the Declaration allowing individuals and Non-Governmental Organizations with observer status before the Commission to bring cases directly before the Court;
- iii. Temporal jurisdiction, in so far as the violations were alleged to have been perpetrated by the Respondent State, after the entry into force of the aforementioned instruments (21 October 1986 for the Charter, 3 January 1976 for the ICESCR and 23 March 1976 for the ICCPR);
- iv. Territorial jurisdiction, insofar as the facts of the case and the alleged violations took place on the territory of the Respondent State.

21. Accordingly, the Court holds that it has jurisdiction to consider the Application.

VI. ADMISSIBILITY

22. In accordance with Rule 39(1) of the Rules of Court, "the Court shall ascertain its admissibility of an application in accordance with the Charter, the Protocol and these Rules".

23. Rule 40 of the Rules of Court, which in substance restates the provisions of Article 56 of the Charter, provides that:

Pursuant to the provisions of Article 56 of the Charter to which Article 6(2) of the Protocol refers, applications to the Court shall comply with the following conditions:

1. disclose the identity of the Applicant notwithstanding the latter's request for anonymity;
2. comply with the Constitutive Act of the Union and the Charter;

¹ The Republic of Mali became a party to the International Covenant on Civil and Political Rights (hereinafter referred to as the "ICCPR") and the International Covenant on Economic, Social and Cultural Rights (hereinafter referred to as the "ICESCR") on 16 July 1974.

3. not contain any disparaging or insulting language;
4. not based exclusively on news disseminated through the mass media;
5. be filed after exhausting local remedies, if any, unless it is obvious that this procedure is unduly prolonged;
6. be filed 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 seized with the Matter;
7. not raise any matter or issues previously settled by the parties in accordance with the principles of the Charter of the United Nations, the Constitutive Act of the African Union, the provisions of the Charter or of any legal instrument of the African Union.

A. Conditions of admissibility in contention between the parties

24. The Respondent State raises two objections to the admissibility of the Application, alleging that the Application uses offensive and disparaging language and that it was filed before local remedies were exhausted.

i. Objection based on the use of abusive and disparaging language

25. The Respondent State asserts that the Applicants used offensive and disparaging language, without further explanation.

26. The Applicants did not file a reply to this point.

27. The Court notes that the issue herein is whether the language used in the Application is insulting or derogatory towards the Respondent State to render the Application inadmissible.

28. In determining whether language is derogatory or insulting, the Court must satisfy itself that the language used has intentionally violated the dignity,

reputation or integrity of a public official or judicial body. The terms must be aimed at undermining the integrity and status of the institution and discrediting it.²

29. The Court also notes that “public figures, particularly those holding the highest offices of political power are legitimately subject to criticism.”³ Therefore, for the terms used against them to be considered as outrageous and insulting, they must be offensive, seeking to belittle and undermine their integrity and reputation.
30. In the instant case, the Respondent State has not specified how the disparaging or insulting language used by the Applicants offended the Minister of Internal Security and Civil Protection. Furthermore, it has not specified the terms and expressions that the Applicants used with the aim of corrupting the public mind or any other public figure and of undermining the integrity and function of the Minister of Internal Security and Civil Protection.
31. The Court notes, in any event, that the terms used by the Applicants set out the facts and do not reflect any personal animosity, either towards the Minister of Internal Security and Civil Protection of Mali, or towards the Ministry of Security, or towards the Malian judiciary.
32. Consequently, as the Application does not contain any terms that are disparaging or insulting to the administrative and judicial authorities of Mali, the Court dismisses the objection to the admissibility herein.

ii. Objection based on non-exhaustion of local remedies

²*Lohé Issa Konaté v. Burkina Faso*, (merits) (5 December 2014) 1 AfCLR 314; *Kennedy Gihana and others v. Republic of Rwanda*, ACtHPR, Application No. 017/2015, Judgment of 28 November 2019 (merits and reparations).

³UN Human Rights Committee (HRC), General Comment No. 34, Article 19, Freedoms of opinion and expression, 12 September 2011, CCPR/C/GC/34 and *Rafael Marques de Morais v. Angola*, Communication No. 1128/2002, U.N.Doc. CCPR/C/83/D/1128/2002 (2005).

33. The Respondent State states that the exhaustion of local remedies is an important requirement under Article 56 of the Charter and Rule 40 of the Rules.
34. The Respondent State contends that the purpose of these articles is to limit the unjustified and arbitrary referral of cases to the Court and to avoid overloading the Court with many cases.
35. The Respondent State draws the Court's attention to the fact that the Applicants have not exhausted the local remedies available to them, inasmuch as they have not lodged an application for review of Judgment No. 258 of 5 May 2016 delivered by the Administrative Division of the Supreme Court of Mali.
36. It further argues that it is therefore necessary for the Court to declare the Application inadmissible for the above reasons as it is not compatible with the Court's case-law and violates Rules 34(4) and 40 of the Rules of Court, and Article 56 of the Charter.
37. In their Reply, the Applicants submit that the Court should only be seized after all local remedies have been exhausted, which means that an application against a State may be brought before the Court only if the national courts of that State have had an opportunity to consider the alleged violations.
38. The Applicants further submit that the exhaustion of local remedies has two aspects:
 - i. Firstly, exhaustion of the complaints, in other words, the Applicant must have raised before the Court the same complaints as those raised before the domestic courts. In that regard, they refer to the case-law of the European Court of Human Rights (hereinafter referred to as "ECtHR") in the matter of *Guzzardi v. Italy*.⁴
 - ii. Secondly, it is the duty of the Applicant to prove he has exhausted local remedies while the Respondent State must demonstrate the availability of the judicial remedies that the Applicant should have

⁴*Guzzardi v. Italy*, ECtHR, 10 March 1977, § 70.

exhausted.

39. The Applicants further submit that the ECtHR held, in *Van Oosterwijck v. Belgium*, and *Radio France and others v. France*, that the Applicant is not required do anything other than exhaust appropriate, available, accessible and effective remedies.⁵
40. The Applicants also submit that Article 254 of Organic Act No. 2016-046 of 23 September 2016 of the Supreme Court of Mali only provides for the possibility for an application for review in a limited number of cases.
41. The Applicants consider that only one of the options of the above mentioned provision was available to them, that is, "failure to apply the law, an error in its application or a misinterpretation of the law".
42. Even so, the Applicants assert that the review of this complaint would have been ineffective because the Administrative Chamber of the Supreme Court of Mali had, by judgment No. 186 of 7 April 2016, dismissed the appeal of the civil servants Broulaye Coulibaly and others.
43. The Applicants assert that, the Supreme Court seeking to comply with the above-mentioned jurisprudence, in Decision No. 412 of 10 August 2017, also granted the appeal of the Respondent State by retracting Decisions No. 295 of 17 December 2015 and No. 420 of 4 August 2016 rendered in favour of Mr. Salif Traoré and Mr. Sékou Oumar Coulibaly for their regularization as Cadet Superintendents of Police.
44. The Applicants state that, having obtained their Master's degree without having required approval from the hierarchy, in accordance with Article 125 of Law No. 034-2010 of 12 July 2010 which lays down the national police officers' rules and regulations, any application for review would have been futile.

⁵*Van Oosterwijck v. Belgium*, ECtHR, 6 November 1980, § 270; *Radio France and others v. France*, 23 September 2003 § 34.

45. The Applicants contend that they cannot therefore file an application for review in the present case, since the Administrative Chamber of the Supreme Court of Mali has a well-established and consistent body of case law on this point.

46. The Court recalls that any application submitted to it must satisfy, *inter alia*, the condition of prior exhaustion of local remedies,⁶ unless the remedies are not available, effective or sufficient or the proceedings of such remedies are unduly prolonged. In its case-law, the Court has consistently held that the remedies to be exhausted must be ordinary domestic judicial remedies.⁷

47. In this regard, the Court notes that in the Malian judicial system, the procedure for appealing for review before the Supreme Court, under Article 254 of Act No. 2016-046 of 23 September 2016 on the Organization Act establishing the organization and operating rules of the Supreme Court and the procedure followed before it, is subject to specific cases of initiation.

48. The Court further notes that before filing their Application at the Court, the Applicants had filed an application before the Administrative Division of the Supreme Court, which issued judgment No. 258 of 5 May 2016 dismissing their application for their regularization as Cadet Superintendents of police.

49. The Court further underscores that, following the application for review by the Malian authorities against the regularization judgments handed down by the Administrative Division of the Supreme Court of Mali, the Supreme Court quashed and set aside those judgments.

50. In the circumstances, it is clear that the Applicants could not expect a different result from the Supreme Court in respect to any application for review.

⁶ *Lohé Issa Konaté v. Burkina Faso* (merits) (5 December 2014) 1 AfCLR 314 § 77.

⁷ *Wilfred Onyango Nganyi and others v. Tanzania* (merits) (18 March 2016) 1 AfCLR 507.

51. In this connection, the Court stated that "it was not necessary to resort to the same judicial process if the result was known in advance"⁸.

52. Consequently, the Court finds that the Applicants exhausted local remedies and dismisses the objection to admissibility of the Application herein.

B. Other conditions of admissibility

53. The Court notes that the compliance of the present Application with the conditions set out in subparagraphs 1, 2, 4, 6 and 7 of Rule 40 of the Rules are not in contention between the Parties. However, the Court must satisfy itself that these conditions are met.

- (i) The Court notes from the record, that the condition set out in Rule 40(1) of the Rules has been met, as the Applicants have clearly indicated their identity.
- ii) The Court also finds that the Application is compatible with the Constitutive Act of the African Union or the Charter insofar as it concerns allegations of violations of human rights enshrined in the Charter and therefore complies with the Rule 40(2) of the Rules.
- (iii) The Court notes that since the present Application is not based exclusively on news disseminated by mass media but rather on the record of proceedings of the courts of the Respondent State, it meets the requirement of Rule 40(4) of the Rules.
- iv) The Court notes that the appeal lodged by the Applicants was dismissed by Decision No. 258 of 5 May 2016 and that their

⁸*Lohé Issa Konaté v. Burkina Faso* (merits) *op.cit.*; *Tanganyika Law Society v. the Legal and Human Rights Centre*; *Reverend Christopher R. Mtikila* (merits) (14 June 2013) 1 AfCLR 34; *Action pour la protection des droits de l'homme v. Côte d'Ivoire*, (merits) (18 June 2016) 1 AfCLR 668.

application was filed with this Court on 8 December 2017, that is, one (1) year, six (6) months and eight (8) days later. The Court considers that the Application was brought within a reasonable time after the exhaustion of local remedies in accordance with the Rule 40(6) of the Rules and its case-law⁹.

- v) Lastly, the Court notes that the present matter does not concern a case that has already been settled by the Parties in accordance with either the principles of the Charter of the United Nations, the Constitutive Act of the African Union, or the provisions of the Charter or any legal instrument of the African Union. It therefore fulfils the condition set out in the Rule 40(7) of the Rules of Court.

54. In light of the foregoing, the Court concludes that the Application meets all the conditions of admissibility set out in Article 56 of the Charter and the Rule 40 of the Rules of Court and, accordingly, declares it admissible.

VII. MERITS

55. The Applicants allege:

- i. Violation of the right to equality before the law, equal protection of the law and non-discrimination by the Supreme Court and the Ministry of the Internal Security.
- ii. Violation of the right to be promoted to a higher category;
- iii. The inconsistency of Articles 125 and Law No. 10-034 of 12 July 2010 which lays down the national police officers' rules and regulations with Mali's international obligations.

⁹ *Christopher Jonas v. Tanzania* (merits) (28 September 2017) 2 AfCLR 105; *Beneficiaries of late Norbert Zongo, Abdoulaye Nikiema alias Ablasse, Ernest Zongo, Blaise Ilboudo and Mouvement Burkinabe des Droits de l'Homme et des Peuples v. Burkina Faso* (preliminary objections) (21 June 2013) 1 AfCLR 197.

A. Alleged violation of the right to equality before the law and to equal protection of the law

56. The Applicants allege, that the Respondent State, flagrantly violated their rights guaranteed by international human rights instruments, including Article 3 of the Charter, Articles 25(c) and 26 of the ICCPR and Article 2(1) of the Charter, at two levels, through the Administrative Chamber of the Supreme Court and the Ministry of Internal Security and Civil Protection.

i. Alleged violation of the right to equality and equal protection of the law by the Supreme Court

57. The Applicants submit that they are not praying the Court to rule on the legality of a domestic court's decision, but rather to determine whether that decision results in violation of human rights.

58. The Applicants aver that, while the judges of the Court cannot assess the application of domestic law by national judges, they nevertheless have jurisdiction to identify human rights violations, even if they result from the judgment of a domestic court of a member State.

59. They claim that this Court cannot play its role in protecting human rights if it disregards the flagrant violations resulting from the judgments of national courts, in particular, the contradictory Judgment No. 258 of 5 May 2016, handed down by the Administrative Division of the Supreme Court of Mali.

60. Furthermore, they assert that human rights' treaties are legal instruments that Member States must incorporate into their domestic legislation so as to be binding on their courts. By virtue of this special regulation, it is the duty of the national judge to apply the rights guaranteed by these treaties in the cases brought before him.

61. The Applicants allege that in the present case, the Administrative Division of the Supreme Court dismissed their appeal in Judgment No. 258 of 5 May 2016,

whereas in Judgments No. 362 of 22 November 2013 and No. 93 of 17 April 2014, the same Chamber had granted the application of other colleagues in a similar situation of seniority and grade.

62. They further indicate that a reversal of the case law cannot have the effect of undermining an international commitment of the State, in this case, the principle of equality of all before the law.

63. Consequently, they conclude that they did not enjoy equal protection of the law before the Supreme Court, thus leading to a breach of equality between them and their police colleagues, who had the same seniority and qualifications, in violation of the provisions of Article 3 of the Charter.

64. The Respondent State avers that the Applicants are wrong to criticize it for the appointment of Cadet Superintendents of Police Salif Traore and Sekou Oumar Coulibaly in accordance with Judgments No. 295 of 17 December 2015 and No. 420 of 4 August 2016 of the Administrative Chamber of the Supreme Court, considering that, they are in the same *de facto* and *de jure* situation but did not benefit from the same appointment.

65. The Respondent State notes that, contrary to the allegations made by the Applicants, the Ministry of Security lodged an appeal with the Supreme Court seeking withdrawal of Judgments No. 295 and No. 420.

66. According to the Respondent State, the Supreme Court, noting that the police officers concerned had obtained their Master's degree without the prior authorization of their hierarchical authority, as provided for in Article 125 of Law No. 034-2010 of 12 July 2010 which lays down the national police officers' rules and regulations stated that; "it is a general principle of civil service law that a civil servant may not invoke a right illegally obtained by another; that he who claims to hold a right is required to prove it". It therefore, according to Judgment No. 412 of 10 August 2017, retracted Judgments No. 295 and No. 420 and rejected the request of Salif Traoré and Sekou Oumar Coulibaly for regularization.

67. It indicated that, in compliance with the above-mentioned judgment, the Ministry of Security took a decision to withdraw the appointment of these two Cadet Superintendents of Police.

68. In fact, according to the Respondent State, the Applicants seek to mislead the Court by claiming that others had enjoyed privileges, as if that illegality constituted a source of acquired rights.

69. The Court observes that the right to equal protection of the law and equality before the law is guaranteed by Article 3 of the Charter, which reads as follows:

- 1) Every individual shall be equal before the law.
- 2) Every individual shall be entitled to equal protection of the law.

70. The Court recalls that the principle of equality before the law implied by the principle of equal protection of the law and equality before the law does not mean that all cases must necessarily be treated by the judicial institutions in the same manner. The treatment of the case may indeed depend on the particular circumstances of each case.¹⁰

71. It recalls that "an evolution of case-law is not, in itself, contrary to the proper administration of justice, since to assert the opposite would be to fail to maintain a dynamic and evolving approach, which might hinder any reform or improvement".¹¹

72. The Court notes in the present case that although initially Judgments No. 295 of 17 December 2015 and No. 420 of 4 August 2016 of the Administrative Division of the Supreme Court were in favour of regularizing the status of some of the Applicants' colleagues who were in the same position in terms of seniority and qualifications as them, the fact remains that through Judgment No. 412 of 10 August 2017, the Supreme Court retracted those judgments because "these

¹⁰*Norbert Zongo and others v. Burkina Faso* (merits) (28 March 2014), 1 AfCLR 219.

¹¹*Micallet v. Malta*, ECtHR, Application No. 17056/06 § 51.

Applicants had obtained their diplomas after the reference date and did not provide proof that they had obtained prior authorization from their hierarchical authority to enrol in a training course, as provided for in Article 125 of Law No. 034-2010 of 12 July 2010 on the status of police officers".

73. The Court observes that the Applicants do not deny that they obtained their diplomas after the date of the decree in question and also did not obtain prior authorization from their hierarchical authority. It was on this same argument, as it did in the above-mentioned Judgment No. 421, that the Supreme Court dismissed the Applicants' request for regularization.

74. In so doing, the Applicants cannot claim that there has been a breach of equality between them and their other colleagues. It follows that the Respondent State has not violated the Applicants' right to equality before the law and to equal protection of the law before the Supreme Court under Article 3 of the Charter.

ii. Alleged violation of the right to equality before the law and to equal protection of the law by the Ministry of Internal Security and Civil Protection

75. The Applicants submit that the administration of the Respondent State violated the principle of equality before the law and equal protection of the law by discriminating in the promotion of police officers, without any justification whatsoever, and by disregarding the disputed laws which lays down the national police officers' rules and regulations, in particular Decree No. 06/053 of 6 February 2006 and Article 125 of Law No. 10-034 of 12 July 2010 which lays down the rules and regulations governing police officers.

76. They further maintain that by Decision No. 2017/1239 of 5 May 2017, the Ministry of Security and Civil Protection promoted two Cadet Superintendents of police on the basis of Decisions No. 295 of 17 December 2015 and No. 420 of 4 August 2016 issued by the Administrative Chamber of the Supreme Court.

77. The Applicants also aver that, the effects of Article 47 of Decree No. 06-053 of 6

February 2006 were extended by letter No. 0586 of 26 August 2009 from the Minister of the Interior to the Director General of the Police.

78. They add that, on the basis of this letter, some of their colleagues were promoted to the rank of Cadet Superintendents of Police while they did not obtain the favourable recommendation of their superior before starting their studies and even obtained their master's degree after the aforementioned decree.

79. The Applicants conclude that the Respondent State violated the principles of equality of all before the law and equal protection enshrined in Article 3 of the Charter.

80. The Respondent State, in reply, recalls that Article 47 of that Decree reads as follows: "Police inspectors and non-commissioned police officers holding the Master's degree on the date of entry into force of this decree shall be authorized to enter the National Police Academy in successive waves according to seniority in rank and service".

81. It considers that the above-mentioned Article 47 leaves no room for ambiguity. The police inspectors and non-commissioned police officers concerned are those who hold the requisite diplomas on the date of entry into force of the decree in question.

82. The Respondent State further states that the Applicants did not hold the requisite degree on the date of entry into force of this aforementioned decree and were therefore not eligible to join the contingent admitted for vocational training for Cadet Superintendents and Inspectors. This is because, all of them obtained their diplomas after the decree was signed.

83. The Court restates that equality and equal protection of the law, guaranteed under Article 3 of the Charter are fundamental principles of international human rights law and that everyone, without distinction of any kind, is entitled to all

rights.

84. The Court notes that, in the instant case, Article 47 of Decree No. 06-053 of 6 February 2006 sets out the conditions relating to the date of graduation and seniority in the service, in order to receive the training in question.
85. The Court confirms that the evidence provided by the Applicants prove that they graduated after 31 July 2008.
86. The Court notes that the Respondent State applied the provisions of the decree of 6 February 2006 and the Law of 12 July 2010 which lays down the national police officers' rules and regulations, taking into account the situation of the Applicants on the date the decree was signed.
87. The Court further observes that the purpose of the letter of 26 August 2009 from the Minister of the Interior, was to provide an exception and allow a selection based on seniority (at least 15 years) and date of graduation (obtained before 31 July 2008). Police officers admitted to the National Police Academy on an exceptional basis were appointed by Orders Nos. 2330 and 2331 of 23 June 2016 on the basis of the criteria set out in the above-mentioned letter and not those of the decree in question, which had already been repealed.
88. The Court notes that the Applicant's argument that the temporal effects of Article 47 of the above-mentioned Decree of 6 February 2006 were extended by letter No. 0586 of 26 August 2009 is unfounded.
89. The Court concludes that the Respondent State made a simple application of the provisions in the matter. Consequently, it has not violated the Applicants' right to equality before the law and equal protection of the law under Article 3(1) and (2) of the Charter.

B. Alleged violation of the right to non-discrimination

90. The Applicants allege that they did not enjoy the same rights as their colleagues who were regularized through the decisions rendered by the Supreme Court who were in the same position in terms of seniority and qualifications as them.
91. They stated that their right to non-discrimination is guaranteed under Article 2 of the Charter and Articles 25 and 26 of ICCPR.
92. The Respondent State contends that the Applicants did not suffer any discrimination. Their applications were rejected because they did not comply with the provisions of Article 47 of the decree of 6 February 2006.

93. Article 2 of the Charter provides that:

Every individual shall be entitled to the enjoyment of the rights and freedoms recognized and guaranteed in the present Charter without distinction of any kind such as race, ethnic group, colour, sex, language, religion, political or any other opinion, national, social origin, fortune, birth or any status.

94. This provision is similar to those reflected in Articles 25 and 26 of the ICCPR in that they present the same elements of distinction enshrined in Article 2 of the Charter¹².

95. The Court notes that there is an interconnection between equality before the law and equal protection of the law on the one hand and the enjoyment, without discrimination, of the rights guaranteed by the Charter on the other in the sense that the entire legal structure of national and international public order relies on

¹² Article 25: Every citizen shall have the right and the opportunity, without any of the distinctions mentioned in article 2 and without unreasonable restrictions: (c) To have access, on general terms of equality, to public service in his country.

Article 26: All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

this principle which transcends all norms¹³.

96. In other words, when the rights to equality before the law and equal protection of the law are violated, the rights under Article 2 are equally violated.

97. The Court notes that the Applicants failed to demonstrate that they suffered discrimination as a result of their race, ethnic group, colour, sex, language, religion, political or any other opinion, national and social origin, fortune or birth.

98. In the instant case, the Court found that the Respondent State did not violate the rights to equality before the law and equal protection of the law. Consequently, the right to non-discrimination has not been violated.

C. Alleged violation of the right to be promoted to a higher category

99. The Applicants claim that there has not been equality of treatment between them and some of their fellow police officers who are in the same position of seniority and qualifications as them. The status of these colleagues had been resolved by judgments of the Supreme Court, which showed a manifest refusal to promote the Applicants to a higher category, so that the Respondent State had violated Article 15 of the Charter and Article 7(c) of the ICESCR.

100. In its Response, the Respondent State asserts that it was originally Decree No. 053-06 of 6 February 2006 that set out the special provisions applicable to the various cadres of national police officers, including Superintendents, Inspectors and non-commissioned officers.

101. Articles 14 and 15 of the said Decree provide that recruitment into the corps of Police Officers and Police Inspectors may be by way of training for police officers authorized to undertake training entitling them to change category. In addition, officials from the police inspectorate and the police officers' corps who

¹³ This notion is shared by ACmHPRComm, *Open Society Justice Initiative v. Côte d'Ivoire*, 28 February 2015, 318/06; Inter- American Court of Human Rights, Advisory Opinion OC-18 of September 17, 2003.

have successfully completed studies at a level corresponding to the Master's degree are integrated into the corps of Superintendents of Police.

102. The same text also regulates the training framework, due to the specificity of the police corps.

103. The Respondent State also argues that a Police Officer must be authorized to undertake the training. In order to obtain such authorization, the Police Inspector or non-commissioned Police Officer must have at least five years of seniority in his rank, three of which must have been spent in his post, obtain the approval of the hierarchical authority on the basis of the last rating and the speciality to which he intends to accede, and be at least five years away from retirement at the end of the training.

104. The Respondent State asserts that, contrary to the Applicants' allegations, the right to be promoted in one's work to a higher category, guaranteed by the ICESCR, is incorporated into Mali's domestic legislation.

105. It argues that training and promotion in the course of one's career are statutory rights recognised for all Police Officers. These rights are part of the regulatory provisions provided for by Law No. 039 of 12 July 2010 which lays down the National Police Officers' rules and regulations, in particular Article 125, which sets the conditions for promotion in grade, and Article 127, which sets conditions for the promotion of training in the course of one's career with regard, *inter alia*, to the criteria of seniority in the corps, the favourable recommendation of their superior, prior authorization and study leave.

106. It asserts that none of the Applicants met the criteria required by those legal provisions.

107. The Court recalls that Article 15 of the Charter provides that "Every individual shall have the right to work under equitable and satisfactory conditions and shall

receive equal pay for equal work".

108. The Court notes that, while Article 15 of the Charter does not expressly provide for the right to promotion to a higher category. It may nevertheless be interpreted in light of Article 7(c) of the ICESCR, which provides as follows:

The States Parties to the present Covenant recognize the right of everyone to the enjoyment of just and favourable conditions of work which ensure, in particular ... Equal opportunity for everyone to be promoted in his employment to an appropriate higher level, subject to no considerations other than those of seniority and competence.

109. The Committee on Economic, Social and Cultural Rights has also stated that:

All workers are entitled to equal opportunities for promotion through fair, merit-based and transparent procedures which respect human rights. The criteria for seniority and competence should include an assessment of personal circumstances and the different roles and experiences of men and women, in order to ensure equal opportunities for promotion for all.¹⁴

110. The Court observes in the instant case that, in respect of the provisions of Articles 125¹⁵ and 127¹⁶ of Law No. 10-034 of 12 July 2010 which lays down the National Police Officers of Mali's rules and regulations, the criteria for promotion of a police officer in the Respondent State, are seniority and competence, in

¹⁴ UN Committee on Economic, Social and Cultural Rights (CESCR), General comment No. 23 (2016) on the right to just and favourable conditions of work (article 7 of the International Covenant on Economic, Social and Cultural Rights), 7 April 2016, E/C.12/GC/23:available at: <https://www.refworld.org/docid/5550a0b14.html> [accessed 28 September 2020], § 31.

¹⁵ Article 125: Advancement to a higher grade through training requires that a national police officer successfully complete studies at the level corresponding to the higher category he wishes to access. In order to enroll for the aforementioned training, the police officer shall:

obtain prior approval of his hierarchical authority, including their last performance appraisal and of the specialization of the corps he plans to access.

be, at least five, (5) years away from retirement at the end of the training.

¹⁶ Article 127: In order to lead to promotion, in-service training shall be a discipline which corresponds to one of the specializations of the Police; furthermore, it shall be justified by need, and undertaken by officers in service or on secondment.

The training undertaken shall allow the officer, depending on the diploma obtained, to get an advancement to the next higher grade, or to a higher category which corresponds to the diploma obtained.

Promotion resulting from the said training, shall not, in any way, pave the way for access to a higher rank in the same corps.

To benefit from the right to advancement to a higher grade, the training duration shall not be less than two (2) years.

accordance with Article 7 of the aforementioned ICESCR.

111. It notes that the Applicants, at the date of the decree of 6 February 2006, did not meet these criteria for access to the training of Superintendents of Police as they obtained their Master's degrees after the date of the decree.

112. The Court concludes that the State of Mali has not violated the Applicants' right to be promoted to a higher category.

113. It therefore dismisses the Applicants' allegation of violation of Article 15 of the Charter and Article 7(c) of the ICESCR.

D. Incompatibility of Mali's laws with its international obligations

114. The Applicants submit that Articles 125 and 127 of Law No. 10-034 of 12 July 2010 which lays down the National Police Officers' rules and regulations are inconsistent with the obligations in the international instruments ratified by the Republic of Mali, in particular Article 26 of the UDHR and Articles 1 and 3 of the Convention against Discrimination in Education (the "UNESCO Convention of 14 December 1960"), ratified by Mali on 7 December 2007, and that the Respondent State is therefore required to comply with those obligations.

115. They also aver that, access to a higher grade in an administration is obviously freely regulated by the State, which sets the legal and regulatory conditions for it. Articles 125 and 127 of Law No. 10-034 of 12 July 2010 are consistent with this. In order to reconcile the right to education of public officials with the continuity of public service, the State may make temporal adjustments for service needs.

116. The Applicants question the relevance of the prior opinion of the hierarchical authority, given that the higher education diploma is part of the need to ensure continuity of public service during the staff member's training cycle.

117. They maintain that, when analysing the criteria set out in Articles 125 and 127

of Law No. 10-034 of 12 July 2010, the taking into account of the years of service, the staff member's rating and the favourable recommendation of their superior are in no way linked to any need to ensure the continuity of public service. Rather, it is an obstacle to the right to education, in particular the right of access to higher education with a view to obtaining social promotion, since making enjoyment of such a right conditional on the favourable recommendation of their superior constitutes an obstacle to promotion to a higher grade and access to higher education.

118. The Applicants conclude by stating that in the circumstances, it is undeniable that the right to education has been deprived of its substance.

119. The Respondent State contends that the impugned law does not contain any provisions contrary to national or international legal standards. Articles 125 and 127 merely lays down conditions for the promotion of police officers, it being understood that such promotion may not be arbitrary or merely subject to the will of the hierarchical authority, in the interests of the equality of all officials.

120. In order to determine whether Articles 125 and 127 are in conformity with the international obligations of the Republic of Mali, the Court must answer the following questions:

- i. Are the studies necessarily aimed at promotion to a higher grade?
- ii. Does the requirement of a favourable recommendation of a superior for upgrading of a higher education certificate obtained by a police officer hoping to be promoted constitute an obstacle to the right to education?

121. Regarding the first question, the Court notes that Article 13(1) of the ICESCR provides as follows:

The States Parties to the present Covenant recognize the right of everyone to education. They agree that education shall be directed to the full development of the human personality and the sense of its dignity, and shall strengthen the respect for human rights and fundamental freedoms. They further agree that

education shall enable all persons to participate effectively in a free society, promote understanding, tolerance and friendship among all nations and all racial, ethnic or religious groups, and further the activities of the United Nations for the maintenance of peace.

122. The Court notes that technical and vocational education is an integral part of education at all levels, including higher education¹⁷.

123. Article 26(2) of the UDHR provides as follows:

Education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms. It shall promote understanding, tolerance and friendship among all nations, racial or religious groups, and shall further the activities of the United Nations for the maintenance of peace.

124. It follows from the foregoing that promotion to a higher category is not an objective of education within the meaning of Article 26(2) of the UDHR and Article 13(1) of the ICCPR.

125. In answer to the first question, the Court concludes that promotion to a higher category is not a higher education goal and hence obtaining a higher education certificate does not necessarily lead to promotion at work.

126. Regarding the second question, the Court recalls that Article 17(1) of the Charter provides that "everyone has the right to education" and Article 26(1) of the UDHR stipulates that:

Everyone has the right to education. Education shall be free, at least in the elementary and fundamental stages. Elementary education shall be compulsory. Technical and professional education shall be made generally available and higher education shall be equally accessible to all on the basis of merit.

¹⁷ This opinion is reflected in the International Labour Organization's Human Resources Development Convention, 1975 (No. 142) No. 142) and Social Policy (Basic Aims and Standards) Convention, 1962 (No.117).

127. The UNESCO Convention against Discrimination in Education (hereinafter referred to as the "UNESCO Convention"), adopted on 14 December 1960 and ratified by the Republic of Mali, provides in Article 1 that:

For the purposes of this Convention, the term 'discrimination' includes any distinction, exclusion, limitation or preference which, being based on race, colour, sex, language, religion, political or other opinion, national or social origin, economic condition or birth, has the purpose or effect of nullifying or impairing equality of treatment in education and in particular...:

- a. To exclude any person or group from access to the various types or levels of education;
- b. Limiting the education of a person or group to a lower level.

128. In view of the foregoing, the Court considers that the requirement of prior authorization for the use of a diploma within a particular service does not constitute discrimination within the meaning of Article 1 of the UNESCO Convention, since it does not impede the right of access to higher education.

129. Moreover, Article 13(2) of the ICESCR provides that "higher education shall be made equally accessible to all, on the basis of capacity," which is in line with the provisions of Article 125 of the impugned law, which takes into account the years of service and the staff member's rating in addition to the favourable recommendation of their superior who makes the assessment.

130. The Court concludes that Articles 125 and 127 of the impugned law cannot be said to be incompatible with the international obligations of the Republic of Mali under the international human rights instruments it has ratified, including the UDHR and the UNESCO Convention.

VIII. REPARATIONS

131. The Applicants pray the Court, pursuant to Article 27(1) of the Protocol and Rule 34(5) of the Rules, to make an order for reparations to remedy the violations of their fundamental rights, including the payment to each Applicant of the sum of:

1,096,000,000 CFA francs as fair compensation for damages and loss of income suffered. The amount is distributed as follows:

- i) Twelve million (12,000,000) CFA francs in respect of salary arrears from December 2014 to December 2018, or forty-eight (48) months' salary for each Claimant;
- ii) Twenty-four million (24,000,000) CFA francs for procedural costs;
- iii) Ten million (10,000,000) CFA francs for the constitution of pleadings;
- iv) Seventy-five million (75,000,000) CFA francs per claimant in respect of non-pecuniary damage suffered;
- v) Seventy-five million (75,000,000) CFA francs in respect of missed career opportunities and missed assignments.

132. They also pray the Court to order such other reparation as it considers appropriate in the circumstances of the case.

133. The Respondent State prays the Court to dismiss the prayer for reparations in so far as no violation is attributable to it.

134. Article 27(1) of the Protocol reads as follows: "If the Court finds that there has been a violation of a human or peoples' right, it shall make appropriate orders to remedy the violation, including the payment of fair compensation or reparation".

135. The Court notes that in the present case, no violation has been found against the Respondent State and that, consequently, there is no need to order any reparation. The Court therefore dismisses the Applicants' prayer for reparations.

IX. COSTS

136. The Applicants pray the Court to order the Respondent State to bear the costs.

137. The Respondent State prays the Court to Order the Applicants to pay the full

costs of the proceedings.

138. Rule 30 of the Rules provides that "unless otherwise decided by the Court, each party shall bear its own costs".

139. In the light of the above provisions, the Court decides that each Party shall bear its own costs.

X. OPERATIVE PART

140. For these reasons,

THE COURT,

Unanimously,

On jurisdiction

- i. Dismisses objections to jurisdiction;
- ii. Declares that it has jurisdiction.

On admissibility

- iii. Dismisses objections to admissibility;
- iv. Declares the Application admissible.

On the merits

- v. Finds that the Respondent State has not violated the right to equality before the law, the right to equal protection of the law provided for in Article 3(1) and (2) of the Charter;
- vi. Finds that the Respondent State has not violated the right to non-discrimination provided for in Articles 25(c) and 26 of the ICESCR;
- vii. Holds that the Respondent State has not violated the right to equal advancement to a higher grade without regard to any

consideration other than seniority and competence, as set out in Article 15 of the Charter and 7(c) of the ICESCR;

- viii. Holds that Articles 125 and 127 of Law No. 10-034 of 12 July 2010 are not incompatible with the international obligations of the Republic of Mali.


On reparations

- ix. Dismisses the Applicants' prayers for reparations.

On costs

- x. Decides that each Party shall bear its own costs.


Signed:

Sylvain ORE, President; 

Ben KIOKO, Vice-president; 

Rafaâ BEN ACHOUR, Judge; 


Ângelo V. MATUSSE, Judge; 


Suzanne MENGUE, Judge; 

M-Thérèse MUKAMULISA, Judge; 


Tujilane R. CHIZUMILA, Judge; 

Chafika BENSAOULA, Judge; 

Blaise TCHIKAYA, Judge; 

Stella I. ANUKAM, Judge; 

Imani D. ABOUD, Judge; and 

Robert ENO, Registrar. 

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

