

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

In the Matter of:

KOUASSI Kouame Patrice and BABA Sylla

Represented by:

Mr. KOUASSI-ALLAH Murielle, Advocate of the Abidjan Court of Appeal

Versus

REPUBLIC OF CÔTE D'IVOIRE,

Represented by:

Mr KOULIBALY Soungalo, Advocate of the Abidjan Court of Appeal

after deliberation,

renders the following Judgment:

I. THE PARTIES

1. Mr Kouassi Kouamé Patrice and Mr Baba Sylla (hereinafter, “the Applicants”) are nationals of the Republic of Côte d’Ivoire. They were candidates of the *Parti Démocratique de Côte d’Ivoire-Rassemblement Démocratique Africain* (hereinafter, “the PDCI-RDA”) the parliamentary elections held on 6 March 2021 in Electoral District No. 053, Yamoussoukro Commune 2. They allege the violation of their rights in connection with the said election.

2. The Application is filed against the Republic of Côte d'Ivoire (hereinafter, "the Respondent State"), which became a Party to the African Charter on Human and Peoples' Rights (hereinafter, "the Charter") on 31 March 1992 and to the Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights (hereinafter, "the Protocol") on 25 January 2004. The Respondent State also deposited on 23 July 2013 the Declaration provided for under Article 34(6) of the Protocol (hereinafter, "the Declaration"), by virtue of which the Court to receive applications from individuals and Non-Governmental Organisations. On 29 April 2020, the Respondent State deposited with the Chairperson of the African Union Commission, an instrument of withdrawal of its Declaration. The Court has held that this withdrawal has no bearing on pending cases and new cases filed before the withdrawal came into effect, that is, one year after its deposit, which is on 30 April 2021.¹

II. SUBJECT OF THE APPLICATION

A. Facts of the matter

3. From the Application before the Court, it emerges that following the declaration of the provisional results of the 6 March 2021 parliamentary election, the Applicants, who were candidates in the said election, brought an action before the Constitutional Council seeking to invalidate the provisional results in Electoral District No. 053, Yamoussoukro Commune 2. The Applicants contended that the election in the said electoral district was marred by material irregularities and violations of electoral laws during voting and collation of results and during the compilation of collation sheets.

¹ *Suy Bi Gohore Émile and Others*, ACHPR, Application No. 04/2009, Côte d'Ivoire, Judgment of 15 July 2020 (merits and reparations), § 67

4. On 22 March 2021, the Constitutional Council dismissed the Applicants' appeal on the ground that they did not produce evidence in support of the irregularities they alleged.
5. Believing that their rights guaranteed by domestic laws and international instruments were violated, the Applicants brought proceedings before this Court.

B. Alleged violations

6. The Applicants allege violation of the following rights:
 - i. The right to an independent and impartial tribunal guaranteed in Articles 7 of the Charter, 14 of the International Covenant on Civil and Political Rights (hereinafter, "the ICCPR")² and 10 of the Universal Declaration of Human Rights (hereinafter, "the UDHR");
 - ii. The right of political parties to freely engage in political activities and the right of everyone to vote freely guaranteed by Articles 13(1) of the Charter, 2(1)(3)³, 3(1)(4)(7)⁴ and 4⁵ of the African Charter on Democracy, Elections and Governance (hereinafter, "ACDEG")⁶ as well as Articles 6 and 19 (2)⁷ of

² The Respondent State became a State Party to the ICCPR on 26 March 1992.

³ Article 2(1)(3) of the ACDEG provides as follows: "Promote adherence, by each State Party, to the universal values and principles of democracy and respect for human rights. [...] (3) Promote the holding of regular free and fair elections to institutionalize legitimate authority of representative government as well as democratic change of governments."

⁴ Article 3(1)(4)(7) of the ACDEG provides as follows: "State Parties shall implement this Charter in accordance with the following principles: (1) respect Holding of regular, transparent, free and fair elect i democratic and development processes and in governance of public affairs."

⁵ Article 4 of the ACDEG provides as follows: "State Parties shall commit themselves to promote democracy, the principle of the rule of law and human rights; (2) State Parties shall recognize popular participation through universal suffrage as the inalienable right of the people."

⁶ The Respondent State became a party to the ACDEG on 28 November 2013.

⁷ Articles 6 and 19(2) of the ECOWAS Democracy Protocol provide as follows: "The preparation and conduct of elections and the announcement of results shall be done in a transparent manner. The police and other security agencies shall be responsible for the maintenance of law and order and the protection of persons and their properties."

the ECOWAS Protocol on Democracy and Good Governance (hereinafter, “the ECOWAS Democracy Protocol”)⁸;

- iii. The right to credible elections guaranteed by Articles 13(1) of the Charter, 25(a) and (b) of the ICCPR, 21(3) of the UDHR, 2(1)(3) and 3(1)(4)(7) and 4 of the ACDEG and Articles 6 and 19(2) of the ECOWAS Democracy Protocol;
- iv. The right to liberty and security of the person, protected by Article 6 of the Charter.

III. SUMMARY OF THE PROCEDURE BEFORE THE COURT

7. The Application was filed at the Registry on 23 April 2021 and was served on the Respondent State on 21 May 2021.
8. On 16 July 2021, the Respondent State filed its Response, which was served on the Applicants on the same date for their observations.
9. On 31 August 2021, the Applicants filed their Reply. On the same date, the Registry acknowledged receipt and served it on the Respondent State.
10. Pleadings were closed on 9 May 2022 and the Parties were duly notified.

IV. PRAYERS OF THE PARTIES

11. The Applicant prays the Court to:
 - i. Find the violation by the Respondent State of their rights guaranteed by domestic laws and human rights instruments;
 - ii. Amend the results of Electoral District No. 053, Yamoussoukro commune 2 and invalidate seventy-six (76) collation sheets in (15) polling stations;

⁸ The Respondent State became a party to the ECOWAS Democracy Protocol on 31 July 2013.

- iii. Declare the Applicants, who stood on the ticket of PDCI-RDA, winners of the 6 March 2021 parliamentary election or
- iv. Order the Respondent State to rerun the parliamentary election in District No. 053, Yamoussoukro Commune 2;
- v. Order the Respondent State to pay the Applicants the sum of One Hundred and Fifty Million (150,000,000) CFA francs as reparation for campaign and legal costs.

12. The Respondent State prays the Court to:

- i. Rule the Application inadmissible;
- ii. Dismiss all of the Applicants' requests as unfounded.

V. JURISDICTION

13. 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.

14. Under Rule 49 (1) of the ~~Conduct a preliminary~~ Court, examination of its jurisdiction [...] in accordance with the Charter, the Protocol and these Rules. ”

15. Based on the above-mentioned provisions, the Court must, in each application, ascertain its jurisdiction and rule on objections thereto, if any.

16. The Court notes that, in the present case, the Respondent State raises an objection to its personal jurisdiction.

A. Objection to the personal jurisdiction of the Court

17. The Respondent State disputes the personal jurisdiction of the Court and submits that after the withdrawal of its Declaration under Article 34(6) of the Protocol on 29 April 2020, it is no longer subject to the jurisdiction of the Court after the withdrawal took effect on a date set by the Court, that is, on 30 April 2021. The Respondent State contends that it can no longer be served an application since its decision to withdraw the Declaration took effect on 30 April 2021. It submits that by serving this Application on it by a letter dated 12 May 2021, the Court overstepped its personal jurisdiction.

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18. For their part, the Applicants affirm that the fact that the Respondent State deposited the instrument withdrawing its Declaration, which took effect on 30 April 2021, does not in any way affect the personal jurisdiction of the Court to receive an application filed before the effective date of the withdrawal. They submit in support of their claim that their Application was filed with the Court by e-mail on 22 April 2021 and by DHL courier on the same date, and that as of that date, the Respondent State was still subject to the jurisdiction of the Court. The Applicants request the Court to find that it has personal jurisdiction to hear their Application.

19. The Court recalls that in its judgment in *Suy Bi Gothore Emile and 3 Others v Côte d'Ivoire*, it held that the withdrawal of the Declaration made by the Respondent State under Article 34(6) of the Protocol has no effect on pending

cases and on new cases filed before the effective date of the withdrawal, that is, one year after its deposit, on 30 April 2021.

20. In the present case, the Court notes that the Application was received at the Registry on 23 April 2021, eight (8) days before the effective date of the withdrawal of the Declaration, and it was served on the Respondent State on 21 May 2021. The Court notes that the deadline of 30 April 2021 only relates to the date of filing an application before it. Thus, the Court has personal jurisdiction insofar as the Application was filed prior to the said date. Accordingly, there is no basis to consider that, by serving the Application received on 23 April 2021, on the Respondent State on 21 May 2021, the Court overstepped its personal jurisdiction.
21. In view of the foregoing, the Court finds that the objection based on personal jurisdiction raised by the Respondent State is unfounded and therefore dismisses it.

B. Other aspects of jurisdiction

22. The Court notes that no objections have been raised in relation to its material, temporal and territorial jurisdiction. Nonetheless, in line with Rule 49(1) of the Rules, it must satisfy itself that these aspects of its jurisdiction are fulfilled.
23. As regards its material jurisdiction, the Court observes that, under Article 3(1) of the Protocol, it has jurisdiction to hear all cases before it insofar as they relate to allegations of violation of the Charter, the Protocol and any other human rights instrument ratified by the Respondent State.⁹ The Court notes that the Applicants allege a violation of their rights guaranteed and protected

⁹ *Alex Thomas v. Tanzania* (merits) (20 November 2015) 1 AfCLR 465, § 45; *Owino Onyachi and Njoka v. Tanzania* (merits) (28 September 2017) 2 AfCLR 65, §§ 34-36; *Masoud Rajabu v. United Republic of Tanzania*, ACtHPR, Application No. 008/2016, Judgment of 25 June 2021 (merits and reparations), § 21.

by the Charter, the ICCPR, the ACDEG and the ECOWAS Democracy Protocol, instruments to which the Respondent State is a party. Consequently, the Court finds that it has material jurisdiction to examine this Application.

24. Regarding its temporal jurisdiction, the Court notes that the violations alleged by the Applicants occurred after the Respondent State became a party to the Charter and the Protocol. Consequently, the Court holds that it has temporal jurisdiction to consider the Application.
25. Regarding its territorial jurisdiction, the Court notes that the violations alleged by the Applicants occurred within the territory of the Respondent State. In these circumstances, the Court holds that it has territorial jurisdiction.
26. In light of the foregoing, the Court holds that it has jurisdiction to hear this Application.

VI. OBJECTION BASED ON THE RESPONDENT STATE'S LACK OF STANDING

27. The Respondent State submits that it was erroneously called to respond to challenges arising from proceedings before the Constitutional Council between the Applicants and the Independent Electoral Commission (hereinafter referred to as "the IEC"), and between the Applicants and the candidates on the ticket of *Rassemblement des Houphouëtistes pour la Démocratie et la Paix* (hereinafter, " the RHDP").
28. The Respondent State further submits that the IEC is an independent administrative authority with a legal personality distinct from that of the Respondent State and that at no time did it intervene in relation to the facts of the contested election or the alleged violations of the Applicants' rights.
29. For the Respondent State, even though the Constitutional Council is a state institution which does not have a legal personality distinct from that of the State, the case before the Court is not between the Applicants and the Respondent State.
30. The Respondent State contends that under these conditions, it does not have standing as a Respondent in the present case, in lieu and place of the parties to the trial before the Constitutional Council.
31. The Applicants submit that although the elections were organised by the IEC, the violations of their rights arise from the decision of the Constitutional Council which, by dismissing their motion to annul the provisional results, erred in relation to the irregularities which marred voting in their electoral district.
32. For the Applicants, the Respondent State is logically the respondent in their Application before the Court insofar as it acknowledges and affirms in its Response that the Constitutional Council is a constitutional court which the

State represents. The Applicants further submit that it is the Respondent State, like all other Member States, which is a Party to the Protocol and not the body whose acts are the cause of the violations committed.

33. The Court recalls its constant jurisprudence which holds that that only States Parties to the Protocol can be Respondents before it¹⁰ and that this exclusive jurisdiction is grounded on the principle that respect for, and implementation of, the rights guaranteed by international human rights instruments are first and foremost the responsibility of the State Parties. The Court further clarified that the said principle emanates from Articles 5 and 34(6) of the Protocol, which provide, respectively, as follows: “[...] the State Party complaint has been lodged at the Commission any petition under Article 5(3) involving a State Party which has not deposited the Declaration provided for in Article 5(3) of the Protocol”.¹¹
34. In light of the elements set out in its jurisprudence referred to above, the Court clarifies that under no circumstances can its jurisdiction extend to entities other than a State Party to the Protocol. Consequently, the Independent IEC or the Constitutional Council cannot be respondents before the Court.
35. In the instant case, the Court notes that the Application was filed against the Respondent State, which is the main guarantor of respect for human rights and is responsible under international law for the acts of its officials, whether or not they have legal personality by virtue of the principle of the unity of the legal personality of the State in international law.

¹⁰ *Akwasi Boateng & 351 others v. Republic of Ghana*, ACtHPR, Application 059/2016, Judgment of 27 November 2020 (jurisdiction), §§ 32 and 34; *Femi Falana v. African Union*, (jurisdiction) (26 June 2012) 1 AfCLR 121, §§ 63, 70 and 71; *Atabong Denis Atemnkeng v. African Union* (jurisdiction) (15 March 2013) 1 AfCLR 182, § 40.

¹¹ *Femi Falana v. African Union*, (20 November 2015), (jurisdiction) 1 AfCLR 499, §§ 7 and 9; *Femi Falana v. African Union*, (jurisdiction) (26 June 2012), op cit., §§ 63, 70 and 71;

36. In view of the foregoing, the Court finds that the Respondent State's objection that it cannot be a respondent in the instant case is baseless and is therefore dismissed.

VII. ADMISSIBILITY

37. Pursuant to Article 6(2) of the Protocol, "the Court shall rule on the admissibility of cases taking into account to the provisions of Article 56 of the Charter".

38. Furthermore, according to Rule 50(1) of its Rules of Court, "The Court shall ascertain the admissibility of an Application filed before it in accordance with Article 56 of the Charter, Article 6 (2) of the Protocol and these Rules".

39. Rule 50(2), which in essence restates Article 56 of the Charter provides 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,
- 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;
- 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.

40. The Court notes that in the instant case, Respondent State raises two objections based on (a) the use of disparaging and abusive language and (b) the non-exhaustion of local remedies.

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

41. The Respondent State submits that, the fact that the Applicants affirm that the members of the Constitutional Council are ardent supporters of the RHDP political party, fully committed and submissive to the President of the Executive of the said party, is defamatory and impugns the honour and dignity of the personalities appointed to the Constitutional Council. It submits that such charges are serious and injudicious with respect to the Respondent State and its institutions and requests the Court to dismiss the Application.

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42. The Applicants submit that their claim does not discredit the members of the Constitutional Council who have publicly and openly admitted to being affiliated with the RHRDP party. They further contend that this is information in the public domain that highlights the link between some members of the Constitutional Council and the RHDP party.

43. The Court recalls that it has already established that outrageous or insulting language are those that are said with the aim of undermining the dignity, reputation or integrity of a person. To be considered offensive, the statements must be used for the purpose of slandering or discrediting the person or

institution with the intention to pollute the minds of the public or of any reasonable person.¹²

44. In the present case, the Court notes that by claiming that the members of the Constitutional Council are ardent supporters of the RDHP political party, fully committed to the President of the Executive, the Applicants merely indicate the political leaning of the members of the Constitutional Council without any intention, real or supposed, to disparage them or to undermine their integrity.

45. The Court also observe ~~supporter or committed~~ "express" describe the behaviour of belonging, activism or courteous reverence that cannot be interpreted as insults on the part of the Applicants.

46. Consequently, the Court finds that objection raised by the Respondent State is unfounded and dismisses it.

B. Objection based on non-exhaustion of local remedies

47. The Respondent State submits that the Applicants request the Court to find and sanction the violation of their rights whereas they have never initiated a procedure at the domestic level in this regard. The Respondent State therefore requests the Court to dismiss the Application for non-exhaustion of local remedies.

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48. The Applicants maintain that, insofar as they have referred the irregularities found during voting to the Constitutional Council, they no longer have any remedy to exhaust in relation to the irregularities. They further submit that it is indeed the decision of the Constitutional Council that leads to the violations of

¹² *Lohé Issa Konaté v. Burkina Faso* (merits) (5 December 2014) 1 AfCLR 310, § 70; *Ajavon v. Benin* (merits) (29 March 2019) 3 AfCLR 130, § 72.

their rights for which they have brought a case before this Court. The Applicants state that as the decisions of the Constitutional Council were final and not subject to appeal, they had no other remedy to exhaust.

49. The Court recalls that under Article 56(5) of the Charter and Rule 50(2)(e) of the Rules of Procedure, for an application to be admissible, local remedies must have been exhausted, unless such remedies are unavailable, ineffective, inadequate or that the procedure is unduly prolonged.¹³

50. In the present case, the Court notes that in relation to the alleged irregularities of the 6 March 2021 election, the Applicants seized the Constitutional Council, the only body with jurisdiction over the presidential and parliamentary elections¹⁴. Moreover, it emerges from the provisions of the Constitution and the Organic Law on the organisation and functioning of the Constitutional Council that decisions rendered by the Constitutional Council are binding on all and are not subject to appeal.¹⁵ Therefore, the Applicants exhausted the only remedy available, that is, the remedy before the Constitutional Council.

51. Accordingly, the objection based on non-exhaustion of local remedies is dismissed.

¹³ *Norbert Zongo and Others v. Burkina Faso* (preliminary objections) op. cit., § 84.

¹⁴ See Articles 126.4 and 127 and 138 of the Constitution which provide as follows:

Article 126: 4. The Constitutional Council is a judge of the monitoring of presidential and parliamentary elections.

Article 138: Decisions of the Constitutional Council are not subject to appeal. They are binding on the public authorities, on any administrative, judicial, military authority and on any natural or legal person.

¹⁵ Article 15 paragraph 2 of Organic Law No. 2001-303 of 5 June 2001 determining the organization and functioning of the Constitutional Council provides as follows: "Decisions of the Council are rendered at a public hearing upon a report by one of its members and are not subject to appeal. They are binding on public authorities, all administrative, judicial, military authorities and any natural or legal persons."

C. Other conditions of admissibility

52. The Court notes that, in the present case, the Respondent State does not challenge the compliance of the Application with Rule 50(2)(a)(b)(d)(f)(g) of the Rules. Nonetheless, the Court must satisfy itself that these conditions have been met.
53. The Court observes that, in accordance with Rule 50(2)(a), the Applicants have clearly indicated their identity.
54. The Court notes that the requests of the Applicants seek to protect their rights as guaranteed under the Charter. It further notes that one of the objectives of the Constitutive Act of the African Union as stated in Article 3(h) thereof is the promotion and protection of human and peoples' rights. Furthermore, the Application does not contain any request that is incompatible with any provision of the Constitutive Act. Accordingly, the Court considers that the Application is compatible with the Constitutive Act of the African Union and the Charter, and therefore holds that it meets the requirement of Rule 50(2)(b) of the Rules.
55. With regard to the condition set out in Rule 50(2)(d) of the Rules, the Court notes that the Application is not based on information disseminated by the mass media, but rather on challenges relating to a judicial procedure involving the Applicants. The Application therefore meets this requirement.
56. Moreover, as regards the requirement relating to the filing of the application within a reasonable time, the Court considers that the period of one (1) month and two (2) days which elapsed between the Constitutional Council's Decision CI-2021-EL-094/22-03/CC/SG of 22 March 2021 and the filing of the Application before it on 23 April 2021, is a reasonable period of time under Rule 50(2)(f) of the Rules.

57. Finally, the Court considers that the requirement set out in Rule 50(2)(g) is met insofar as there is no indication that the present Application concerns a matter already settled by the parties, in accordance with either the principles of the United Nations Charter or the Constitutive Act of the African Union, or the provisions of the Charter.
58. In view of the foregoing, the Court finds that all admissibility conditions under Rule 56 of the Charter and Rule 50 of the Rules have been met and declares the Application admissible.

VIII. MERITS

59. The Applicants allege the violation by the Respondent State of (a) their right to an independent and impartial tribunal, (b) their right to the free exercise of political activities, (c) their right to vote and the right to credible elections, and (d) their right to the security of their person.

A. Alleged violation of the right to an independent and impartial tribunal

60. The Applicants allege that the Constitutional Council is neither independent nor impartial. They aver that this lack of independence vis-a-vis the Executive and impartiality of the Constitutional Council stems from (i) its structural composition and (ii) is reflected in the absence of grounds in its decision of 22 March 2021.
 - i. **Alleged lack of independence of the Constitutional Council in relation to its composition**

61. The Applicants submit that although the Constitution and the Organic Law determining the organisation and functioning of the Constitutional Council state that it is an independent body, its composition and the method of appointment of its members do not offer any guarantee of independence and impartiality. They contend that the structure of the Constitutional Council, four (4) of whose members are appointed by the President of the Republic and three (3) by the President of the National Assembly who belongs to the same political party as the President of the Republic, does not offer sufficient guarantees in terms of dispelling any legitimate doubt about its independence and inspiring trust in the eyes of court users. The Applicants submit that the composition of the Constitutional Council does not meet the requirements of independence and impartiality as guaranteed by Article 7 of the Charter, Article 14 of the ICCPR and Article 10 of the UDHR.

62. In the Applicants' view, the influence of the executive branch on the President of the Constitutional Council as well as on three other members appointed by the President of the Republic, the political leaning of these members, who have famously admitted to sharing the Head of State's political convictions, and the previous political offices they held, clearly cast doubt on their independence and impartiality. They further contend that the same lack of independence also characterises the members appointed by the President of the National Assembly who belongs to the same political party as the President of the Republic.

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63. The Respondent State submits that the Constitutional Council is independent and impartial and relies on Article 126 of its Constitution, which provides as follows: "The Constitutional Council is a constitutional court. It is independent and impartial." It submits that the Applicants who seized the Constitutional Council seeking to invalidate the provisional results cannot rely on the lack of

independence and impartiality of its judges, given that they neither requested their recusal nor challenged their appointment.

64. The Court notes that the issue is whether the composition of the Constitutional Council, the method of appointing, and the profile, of its members are of a nature to guarantee its independence and its impartiality.
65. The Court recalls that it has already established that the notion of judicial independence essentially involves the ability of the courts to discharge their functions, without outside interference and without dependence on any other authority, be it legislative, executive or the parties to the dispute.¹⁶ Independence thus has two aspects: institutional and individual¹⁷.
66. From the institutional point of view, the Court notes that Article 126 (1) of the Constitution as well as the Organic Law provide that the Constitutional Council is a constitutional court that is independent and impartial. The Constitution further states that every member of the Constitutional Council undertakes to fulfil his function diligently and faithfully, to exercise it with independence and impartiality in accordance with the Constitution.¹⁸ Under these constitutional provisions and the Organic Law, the functions of members of the Constitutional Council are incompatible with the holding of any political office, any public employment or elective office and any professional activity.¹⁹
67. Moreover, the Constitutional Council enjoys administrative and financial autonomy, and the Court has already considered that the administrative and financial autonomy of a body is also an indicator of its independence.²⁰

¹⁶ ACtHPR, Application No. 029/2018, *Oumar Mariko v. Republic of Mali*, Judgment of 24 March 2022 (merits and reparations), § 73; *XYZ v. Republic of Benin*, ACtHPR, Application No. 010/2020, Judgment of 27 November 2020, § 61 *Sébastien Germain Marie Aikoué Ajavon v. Republic of Benin*, ACtHPR, Application No. 062/2019, Judgment of 4 December 2019 (merits), § 277.

¹⁷ *Idem. XYZ v. Republic of Benin*, § 62.

¹⁸ See Articles 130, paragraph 3, of the Constitution and 5 of the Organic Law.

¹⁹ See articles 131 first paragraph of the Constitution and 6 of the Organic Law.

²⁰ *Idem. XYZ v. Republic of Benin*, § 65.

68. The Court further notes that the power to discipline the members of the Constitutional Council is vested with the President of the Constitutional Council in accordance with Article 8 of Organic Law No. 2001-303 of 5 June 2001. The members of the Council are irremovable.²¹
69. In view of the above provisions, the Court finds that the institutional independence of the Constitutional Council is guaranteed by the laws in force.
70. As regards individual independence, the Court has already established that it relates to the personal independence of judges and their ability to perform their duties without fear of reprisal or without bias.²² In this regard, the Court takes into account both subjective and objective considerations, in this case, the profile of members, the method of their appointment, the duration of their term of office, the removability of members, the existence of protection against external pressures and whether or not there is an appearance of independence or impartiality.
71. In the present case, as regards the composition and the method of appointing the members of the Constitutional Council, the Court notes that under the terms of constitutional and legal provisions, in this case Article 128 of the Constitution and Article 2 of the Organic Law, “the Constitutional Council is composed of a President, former Presidents of the Republic who are members by right, unless they expressly waive their right to membership, and six councillors, three of whom are appointed by the President of the Republic, two by the President of the National Assembly and one by the President of the Senate”. As for Article 129 of the Constitution, it stipulates that “The President of the Constitutional Council is appointed by the President of the Republic for

²¹ Article 5 of the Organic Law n°2001-303 of 5 June 2001 determining the organisation and functioning of the Constitutional Council, states that “During their term of office, the members of the Constitutional Council shall have the status of magistrates of the judicial order

²² *Oumar Mariko v. Republic of Mali*, op. cit., § 73.

a non-renewable term of six years from among persons recognised for their competence and proven expertise in legal or administrative matters...”.

72. The Court observes that the trust of court users depends in large part on the fact that the composition, the appointment of the members of the Constitutional Council gives no cause to doubt the independence or the partiality of its members.
73. In the instant case, the Court notes, on the one hand, that the members of the Constitutional Council were appointed in accordance with the provisions of the Constitution and the Organic Law and, on the other hand, that their appointment by the President of the Republic and by the President of the National Assembly is not a form of mandate that binds the Councillors to the appointing authorities. Furthermore, the Court notes that the security of tenure enjoyed by the members of the Constitutional Council and the non-renewable nature of their mandate are such as to strengthen their individual independence.²³
74. Based on these findings, the Court considers that the composition of the Constitutional Council and method of appointment of the councillors do not compromise their independence.
75. The Court further notes that the Applicants aver that four (4) members of the Constitutional Council have publicly admitted to being affiliated with the RHDP party. The Court notes that the Applicants do not provide evidence that the members of the Constitutional Council concerned are affiliated to the RHDP party, or evidence of what they describe as a lack of independence “well known to the public”. They provide no evidence that in the instant case there was any

²³ *XYZ v. Republic of Benin*, ACtHPR, Application No. 010/2020, Judgment (Merits and Reparations) of 27 November 2020, § 70; *Sébastien Marie Aïkoué Ajavon v. Republic of Benin*, ACtHPR, Application No. 062/2019, Judgment of 4 December (Merits and Reparations) 2020, § 287

direct or indirect interference by other powers in the functioning of the Constitutional Council, particularly in the processing of their appeal before it. Moreover, the Court notes that there is no evidence that the Constitutional Council was subject to inappropriate interference directly or indirectly coming from the executive, the legislative power or the RHDP party.²⁴

76. Based on these findings, the Court considers that the Applicant's doubts in relation to the independence and impartiality of the Constitutional Council are not justified and finds that the Respondent State did not violate the provisions of Article 7(1)(d) and 26 of the Charter, Article 17 of the ACDEG and Article 3 of the ECOWAS Democracy Protocol.

ii. Alleged absence of grounds in the decision of the Constitutional Court

77. The Applicants allege that in the course of the proceedings to challenge the election of RDHP candidates in Electoral District No. 053 Yamoussoukro Commune 2, the Constitutional Council “ i n r e l a t i o n t o t h e f o u n d i n g o f i n f r i n g e m e n t o f t h e l a w , r e s p o n d e d i n a l a o n i c m a n n e r . . . a n d o n a l l f i v e a s p e c t s o f t h e s e c o n d g r o u n d o f a n n u l m e n t , t h e C o u n c i l r e s p o n d s i n a v a g u e a n d u n d o c u m e n t e d m a n n e r . . . T h e C o u n c i l d i d n o t t h e r e f o r e r e s p o n d t o t h e s p e c i f i c q u e s t i o n s a n d t h e m u l t i p l e v i o l a t i o n s o f t h e r i g h t s o f v o t e r s a n d c a n d i d a t e s i n t h e 6 M a r c h 2 0 2 1 e l e c t i o n , n e i t h e r d i d i t r e s p o n d t o t h e v i o l a t i o n s o f t h e e l e c t o r a l l a w a n d p r o c e d u r e ” .

78. They aver that, first, they contested the general tallying of votes and the collation sheets compiled in violation of the laws in force, in this case, Article

²⁴ *Oumar Mariko v. Republic of Mali*, op.cit., § 78.

86 of the Electoral Code²⁵ and Article 9 of Deliberation No. 002/EC/CC of 28 January 2021 on the collation and declaration of parliamentary results.²⁶

79. The Applicants submit that before the Constitutional Council, they raised the fact that the Chairperson of the Electoral Commission of the Autonomous District of Yamoussoukro, in violation of the above provisions, took upon himself to single-handedly finalise the collation of the results of Communes 1 and 2, the electoral districts, and to confirm the collation of the results by signing on his own behalf and on behalf of the Vice-President.
80. They submit that in response to these material irregularities in the authentication of the collated results raised before the Constitutional Council, the latter knowingly did not reply and suggested that the mere fact that their representatives were present at the time of vote tallying and the collation of results, is sufficient to cover substantial irregularities which are contrary to the legislation in force.
81. The Applicants further state that the Constitutional Council responded in a hostile manner to their allegation that a violation was committed in barring emergency personnel from voting, by simply stating that it was not established that the emergency personnel who voted did so in favour of RHDP candidates.
82. The Applicants therefore request the Court to find that the Constitutional Council provided no grounds for its decision and that gave rise to the violation of their rights guaranteed by Articles 7 of the Charter, 10 of the UDHR and 14 of the ICCPR.

²⁵ Article 86 of the Ivorian Electoral Code provides as follows: “The Elections Commission shall carry out a general tallying of the votes and a transcript of the provisional results of the ballot at the level of each administrative district in the presence of the representatives present of the candidates or lists of candidates.”

²⁶ Article 9 of the Deliberation No. 002/EC/CC of 28 January 2021 stipulates that “the collation sheets of the general vote count, the CD containing the completed Excel sheet and the inviolable envelopes [] shall be transmitted by the CESP/CEC to the Headquarters of the Commission (Local Electoral Commission of the seat of the competent electoral district).”

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83. The Respondent State refutes the Applicants' allegations and describes them as serious and unfounded accusations. The Respondent State submits that the Constitutional Council's decision of 22 March 2021 was independent and impartial. It requests the Court to consider the Applicants' allegations as unjustified and to dismiss them.

84. The Court recalls its jurisdiction that it is not an appellate court in relation to the decisions rendered by domestic courts, including those not subject to any local remedy. However, it has stated that this does not preclude it from examining whether domestic courts have rendered their decisions in accordance with international standards established by the Charter or by any other human rights instruments to which the Respondent State is a party.²⁷

85. The Court also observes that it is in the interest of justice that judicial decisions sufficiently state the grounds on which they are based. The obligation to state the grounds of its decision implies that a court bases its decision on objective and sufficiently clear arguments to give the parties the assurance that they have been heard.

86. In the present case, the Court notes that the Applicants submit that the Constitutional Council did not state the grounds for its decision with regard to their grievances in relation to the fact that the President of the Electoral Commission of the Autonomous District of Yamoussoukro counted, compiled and finalised the election results in the absence of their representatives, on the one hand, and the fact that on-call staff were prohibited from voting, on the other.

²⁷ *Godfred and Kisite v. Tanzania* (jurisdiction and admissibility) (26 September 2019) 3 RJCA 470, § 11; *Alex Thomas v. Tanzania* (merits), op. cit., § 130. See also *Christopher Jonas v. Tanzania* (28 September 2017) (Merits) 2 AfCLR 101, § 28; *Ingabire v. Rwanda* (merits) (24 November 2017) 2 RJCA 165, § 52; *Abubakari v. Tanzania* (merits) (3 June 2013) 1 AfCLR 599, § 29.

87. On the claim that the President of the Electoral Commission of the Autonomous District of Yamoussoukro counted, compiled and finalised the election results in the absence of the Applicants' representatives, the Court notes that the Constitutional Council responded as follows: "Considering that the applicants, who complain that the President of the Electoral Commission of the Autonomous District of Yamoussoukro unilaterally finalised the compilation of the results, do not provide evidence that this action took place without the knowledge of their representatives; that failing to provide such evidence, this argument cannot succeed, especially since all the representatives of the candidates signed the collation sheet in respect of the vote count without having expressed any reservation, complaint or observation" The Constitutional Council then concluded that the presence of the Applicants' representatives during the collation was sufficient to satisfy the requirement of Article 86 of the Electoral Code and Article 18 of Law No. 2001-634 of 09 October 2001.
88. Based on these findings, the Court considers that the Constitutional Council adequately stated the grounds for its decision on this issue.
89. With regard to the question whether the Constitutional Council met the requirement to state the ground of its decision with regard to irregularities relating to the vote of emergency personnel, the Court notes that the Constitutional Court decided as follows: "Considering, in relation to the complaint about the vote of on-call staff and election officials, that according to the combined reading of Article 34 of the Electoral Code and Article 1 of Ordinance No. 008/CEI/PDT of 4 March 2021, on-call staff and election officials are not prohibited from voting unless they are not registered in the polling stations where they are assigned. In the present case, the Applicants allege that the persons concerned voted in their assigned polling stations without proving that they are not registered there; moreover, assuming that the

on-call staff concerned voted under these conditions, it is not demonstrated that they voted only in favour of RHDP candidates”.

90. In these circumstances, the Court observes that by holding that the Applicants do not provide evidence that the staff in question were not registered in their assigned stations and especially that it was not demonstrated that the emergency staff voted solely in favour of RHDP candidates, the Constitutional Council stated the grounds for its decision.
91. It follows that the Applicants’ allegation that their right to a reasoned decision was violated lacks merit and is dismissed.
92. The Court therefore finds that the Respondent State did not violate the Applicants’ right to an independent and impartial tribunal guaranteed in Articles 7 of the Charter, 10 of the UDHR and 14 of the ICCPR.

B. Alleged violation of the right to undertake political activities

93. The Applicants allege that their delegates were excluded and driven out of several polling stations at the instruction of the Chairperson of the Electoral Commission of Commune 2, thus preventing them from monitoring voting operations, checking the identity of voters and vote counting at polling stations. They contend that in order to carry out such activities, they had requested and obtained from the IEC the duplicate of the biometric voters’ signatures sheet and that the said duplicates were simply confiscated from their delegates.
94. They state that before the Constitutional Council they argued that in many polling stations, election officials prevented voters of their PDCI-RDA party from voting, even though they were entitled to vote, while supporters from the RHDP party voted several times in several polling stations. The Applicants

submit that all these actions constitute impediments to their rights guaranteed by the Constitution.

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95. The Respondent State did not respond to these allegations. However, it cautions the Court against influential actors who, acting as the opposition or holders of political power, misconstrue their experiences as new cases of human rights violations. The Respondent State submits that the Court is besieged by politicians of all kinds and of all persuasions who only care about their own person and therefore urges the Court not to be distracted at the risk of relegating the real thorny cases of peoples' rights to the background.

96. Article 13(1)(b) of the Charter provides:

Every individual shall have the right to freedom of movement and residence within the borders of a State provided he abides by the law.

97. Articles 2(3), 3(1)(4)(7) and 4 of the ACDEG provide, respectively, as follows:

The objectives of this Charter are to [...] (3) Promote the holding of regular free and fair elections to institutionalize legitimate authority of representative government as well as democratic change of governments. (Article 2(3));

States Parties undertake to implement this Charter in accordance with the principles set out below: (1) Respect for human rights and democratic principles; [...] (4) Holding of free and fair elections, transparency [...] (7) Effective participation of citizens in democratic and development processes and in governance of public affairs. (Article 3(1)(4)(7));

State Parties shall commit themselves to promote democracy, the principle of the rule of law and human rights. (2) State Parties shall recognize popular participation through universal suffrage as the inalienable right of the people. (Article 4(1)(2)).

98. Articles 6 and 19(2) of the ECOWAS Democracy Protocol provide as follows:

The preparation and conduct of elections and the announcement of results shall be done in a transparent manner (Article 6).

The police and other security agencies shall be responsible for the maintenance of law and order and the protection of persons and their properties (Article 19(2)).

99. The Court notes that Article 13(1) of the Charter and the texts that the Applicants rely on above guarantee citizens of States parties the right to participate in the conduct of public affairs as voters or as candidates for elections, in total freedom and in accordance with legal rules previously established. It follows that all acts of intimidation, coercion or exclusion are prohibited and discrimination based on party membership or any other consideration violates the rights guaranteed.²⁸

100. In the present case, the Court notes that the Applicants aver, respectively, that their delegates were driven out of the polling stations, that the duplicates of collation sheets were confiscated from them, and that their party supporters were prevented from voting.

101. The Court also notes that the Respondent State does not dispute the Applicants' allegations. Moreover, it emerges from the records that, on the morning of the voting day, the Applicants drew the attention of the IEC

²⁸ See General Comment HRI/GEN/1/Rev.1 (1994) adopted by the Human Rights Committee, paragraphs 10 and 11.

Supervisor of the Yamoussoukro Autonomous District to the fact that their representatives had been expelled from polling stations and prohibited from using duplicates and, at around 16 hours GMT, lodged a complaint to denounce these acts.

102. The Court finds that under the provisions of Ordinance No. 2020-356 of 8 April 2020 amending the Electoral Code, “Any candidate or candidate at the top of the list has free access to all polling stations. They have the right by themselves, or acting through one of the candidates on the list or by one of its delegates, to monitor all voting operations, ballot tallying and vote counting in the premises where these operations are carried out.”²⁸ The Court therefore finds that the confiscation of duplicates of the signature sheet and the expulsion of the Applicants’ representatives from polling stations constitute impediments to the exercise of the right of suffrage guaranteed under Article 13(1) of the Charter and to the effective participation of the Applicants’ representatives in the democratic processes guaranteed by Article 3 and 4 of the ACDEG.

103. Consequently, the Respondent State violated the Applicants’ rights to monitor voting operations as well as the right of their representatives to vote freely in the election of 6 March 2021 in Electoral District No. 053 of Yamoussoukro Commune 2.

C. Alleged violation of the right to credible elections

104. The Applicants allege that the results of the vote in Electoral District No. 053 of Yamoussoukro Commune 2 do not reflect the actual votes cast. They allege that numerous and serious irregularities marred voting operations, vote monitoring, vote tallying and collection of collation sheets. For the Applicants, the results submitted to the Constitutional Council by the IEC were neither

²⁹ See Article 38 of Decree No. 2020-356 of 8 April 2020 amending the Electoral Code.

authentic, insofar as (i) they did not comply with the formal requirements laid down in the rules, nor credible, insofar as (ii) they did not reflect the exact vote count.

i. Alleged violations of regulatory requirements

105. The Applicants submit that the regulatory requirements emanating from the first Articles of the Ordinances N°035/IEC/PDT and N°036/IEC/PDT of 17 February 2021 on securing collation sheets and ballot papers were not complied with. They contend that, contrary to the requirements of the two ordinances, the collation sheets of the fifty (52) polling stations did not have the sticker or the signatures of polling station election officers. They allege that in some polling stations, less than five (5) collation sheets were drawn up while other polling stations had more.
106. The Applicants submit that, clearly, placing a *sticker* on collation sheets is not only a formal requirement, but is of public order and is prescribed in the interest of the public in order to attest to the authenticity and credibility of the vote, so that any alteration or omission undermines the credibility of the vote and should lead to its cancellation.
107. They contend that by refusing to annul the vote in the CEC 2 on the grounds that these irregularities are merely formal and do not arithmetically alter the data on the collation sheets, the Constitutional Council is making a distinction where the law does not consider certain requirements as optional or facultative and others as mandatory. The Applicants argue that, under these conditions, their right to credible elections, guaranteed in Articles 13(1) of the Charter, 25(a) and (b) of the ICCPR, 21 of the UDHR, 3 and 4 of the ACDEG, 6 and 19 of the ECOWAS Democracy Protocol, was violated.

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108. The Respondent State submits that, the good faith of its judges notwithstanding, the Court, has been distracted by selfish politicians, many of whom are working solely to challenge the sovereignty of States and the credibility of their institutions. It submits that it is urgent for the Court to distance itself from such delaying tactics that have ended up causing discord between it and the States parties.

109. Article 13(1)(b) of the Charter provides that:

Every citizen shall have the right to participate freely in the government of his country, either directly or through freely chosen representatives in accordance with the provisions of the law.

110. Article 25(a) and (b) of the ICCPR provides that:

Every citizen shall have the right and the opportunity, without any of the distinctions mentioned in article 2 and without unreasonable restrictions:

- a) To take part in the conduct of public affairs, directly or through freely chosen representatives;
- b) To vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors.

111. Article 6 of the ECOWAS Democracy Protocol provides that “The preparation and conduct of elections and the announcement of results shall be done in a transparent manner”.

112. The Court observes that in order to ensure the credibility of elections, Governments are required to take legislative, regulatory or practical measures to ensure that results collated and published after voting are exactly those

expressed by all voters without any alterations that understate or exaggerate the votes cast.

113. The Court notes that the Applicants challenge the credibility of the vote because of the fact that some collation sheets did not bear a hologram (*sticker*) contrary to the relevant regulation which provides that a *sticker* be “ p l a c e d o n the collation sheet after it has been filled in and signed by the polling officials and the candidates’ r e p r e s e n t a t i v e s p r e s e n t . ”
114. The Court also notes that the Respondent State does not contest that some collation sheets did not bear stickers and that placing stickers on collation sheets is a requirement under Article 1 of Ordinance No. 035/CEI/PDT of 17 February 2021, which provides as follows: “A hologram (sticker), made available to the polling station by the IEC, shall be put at a place indicated on the collation sheet after the latter has been filled in and signed by the members of the polling station and candidates’ representatives present” .
115. In the present case, the Court notes that placing *stickers* on ballot papers and collation sheets is a way of substantially authenticating these documents, with a view to avoid the risk of alteration or substitution of votes. The Court considers that the absence of a “sticker” on the collation sheets undermines the authenticity of the collation sheets.
116. The Court finds that electoral laws and the Applicants’ right guaranteed under Article 13 of the Charter and Article 6 of the ECOWAS Democracy Protocol were violated.

ii. Alleged material irregularities affecting the credibility of the election

³⁰ See Article 1 of Decree No. 035/IEC/PDT of 17 February 2021.

117. The Applicants allege that they identified fifty-nine (59) electoral or emergency officers assigned to the CEC 2 polling stations who voted in thirteen (13) polling stations where they were not registered as voters. They contend that, as a result, they requested the Constitutional Council to exclude from the vote count three hundred and seventy five (375) votes being the total number of votes cast by electoral officers and emergency persons assigned to the one hundred and twenty five (125) offices of the CEC 2.
118. They also allege that in several polling stations, their representatives saw people who voted more than once (on several occasions) and that at the end of the vote count, the number of voters exceeded those mentioned, by fifty-five (55) votes on the collation sheets of thirteen (13) polling stations in their possession.
119. The Applicants further submit that during the 6 March 2021 vote, there were eight hundred and eighty (880) spoilt ballots in Electoral District No. 053 of Yamoussoukro Commune 2. They state that this large number of spoilt ballots was due to the discrepancies in the collation sheets of fourteen (14) polling stations, so that there were discrepancies between the number of ballots supplied to polling stations, those counted in the ballot box and the unused ballots
120. They further submit that all of these numerous irregularities they found in electoral district No. 053 of Yamoussoukro Commune 2 contributed to the fourteen thousand (14,000) extra ballots fraudulently granted to RHDP candidates, who were declared winners of the election.
121. Finally, the Applicants submit that in several polling stations the copies of the collation sheets were either fewer or more than the number five (5) provided for in the rules.

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122. The Respondent State submits that contrary to the alleged violations of the Applicants' rights, the present case is nothing more than a political gimmick like many others filed before this Court since its judgment in 2016 against the Respondent State on the independence and impartiality of the electoral body and on the right to participate in the conduct of public affairs. The Respondent State calls on the Court to distance itself from these political battles, whose sole purpose is to conquer power, in order to avert the risk of becoming mired in politicians' ambitions and of deviating from its core mandate.

123. The Court notes that the Applicants challenge the results of the 6 March 2021 election by arguing that polling staff and emergency staff assigned to some polling stations voted in polling stations where they were not registered and that there were discrepancies in the vote count in terms of the difference between the number of ballots supplied to polling stations, those counted in the ballot box and the unused ballots.

124. As regards the allegations relating to the vote of polling officials and emergency staff, the Court notes that the ban on voting in their assigned polling stations is not absolute insofar as Article 1 of Deliberation No. 008/CEI/PDT of 4 March 2021 states that: "For the elections of deputies to the National Assembly on 6 March 2021, the on-call personnel consisting of IEC central commissioners on mission, polling station officials and electoral police officers on mission, are not allowed to vote in their assigned polling stations, unless they are registered there".

125. In the present case the Applicants do not provide evidence that the fifty-nine (59) election officials who voted were not registered on the voters' list of the polling stations in question. Moreover, the Court notes that the Constitutional

Council noted the same lack of evidence and admitted the vote of the fifty nine (59) officials concerned.

126. In conclusion, the Court considers that in the absence of evidence, the Applicants' allegation is dismissed.
127. With regard to the allegations that the vote lacked credibility in relation to the difference between the Applicants' votes and those of RHDP candidates, the Court notes that the Applicants affirm that by their count, there was a difference of eight hundred and eighty (880) votes between the combined number of ballots supplied to the polling stations, those counted in the ballot box and the unused ballots, on the one hand, and fourteen thousand (14,000) votes which they consider were fraudulently granted to RHDP candidates, on the other.
128. It merges from the documents on record that, in order to obtain the number of votes cast, the Independent Electoral Commission proceeded, as it did for all electoral districts, to deduct spoilt ballots and blank ballots from the total number of ballots in the ballot boxes. In Electoral District No. 053 Yamoussoukro Commune 2, total number of blank and spoilt ballots was one thousand one hundred and forty-five (1145), a number well over the eight hundred and eighty (880) considered irregular by the Applicants.
129. On this issue, the Court finds that the vote count took into account what should normally be excluded from the count of votes cast.
130. The Court further notes that the Applicants consider irregular all the results shown on the seventy-six (76) collation sheets without *stickers* totalling fourteen thousand (14,000) votes. In this respect, the Court considers that before considering the fourteen thousand (14,000) votes null and void, it is incumbent on it to investigate whether this number of votes is different from the one counted and collated by the parties' representatives at the close of

voting. On this issue, the Court observes that even if, from a formal point of view, the absence of a sticker violates regulatory requirements, as stated in paragraph 113 above, the Applicants do not prove that the number of votes captured on the seventy six (76) collation sheets do not correspond to the actual votes cast and which were collated in the presence of all of the candidates' representatives at the close of voting.

131. In view of the foregoing, the Court considers that the credibility of the election was not in doubt insofar as the results communicated by the IEC correspond to those counted and collated in the presence of the candidates' representatives, and which are the expression of the voters' will.

132. With regard to the challenges raised in relation to the fact that there were sometimes fewer than five (5) copies of the collation sheet and sometimes more, the Court considers that credibility of the vote is not compromised as long as the Applicants do not dispute that the collation sheets for every polling station shows the same number of votes as cast.

133. Based on the foregoing, the Court finds that the Applicants' right to credible elections guaranteed by Article 13 of the Charter, Article 25 of the ICCPR and Article 6 of the ECOWAS Democracy Protocol is not violated.

D. Alleged violation of the right to "the security of the person"

134. The Applicants submit that in the 6 March 2021 elections, although all candidates were entitled to the protection of the Security Forces (FDS) during the campaign, they addressed a request to police and gendarmerie commanders on 17 February and on 3 and 4 March 2021 respectively, seeking protection for their headquarters, their homes and for their persons, but to no avail. They further aver that the security officials did not respond to their request until the fire at the first Applicant's home had begun.

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135. The Respondent State did not respond on this issue.

136. Article 6 of the Charter provides:

Every individual shall have the right to liberty and to the security of his person. No one may be deprived of his freedom except for reasons and conditions previously laid down by law. In particular, no one may be arbitrarily arrested or detained.

137. The Court observes that the arrest and detention of a person must be based on plausible suspicion that the person has committed an offence and must be brought before a court of competent jurisdiction which shall decide on the legality and merits of his arrest and/or detention. Arrest or detention without a legal basis is arbitrary³¹. The jurisprudence of the African Commission also holds that detention is arbitrary whenever it is not based on any grounds or where the person detained is not brought before a judge.³²

138. In the present case, the Court notes that the Applicants claim that the fire that occurred in the home belonging to one of them, and the administration's silence in response to a request for close protection constitute a violation of their right to security.

³¹ *Onyachi v. Tanzania*, (28 September 2017) (merits) 2 AfCLR 65, § 132.

³² *Ouko v. Kenya*, Communication 232/99 (2000), AHRLR 135 (ACHPR 2000), § 20. See also *Institute for Human Rights and development in Africa and others v. Democratic Republic of the Congo*, Communication 393/10. (ACHPR 2016) 20th Extraordinary Session, June 2016, § 117.

139. With regard to the allegation that a fire broke out at the first Applicant's home although they requested for the protection of security forces, the Court notes that the Applicants state neither the circumstances nor the date of the fire or whether it was related to the organisation and conduct of the election. The Court further notes that nothing in the Application indicates the nature of the fire, its extent and whether it was of criminal origin.
140. Accordingly, the Court considers that the Applicants' allegation that a fire in the home belonging to one of them constitutes a violation of their right under Article 6 of the Charter is unfounded and dismisses it.
141. The Applicants further aver that they repeatedly requested that two "units of public forces" be dispatched to ensure their security during the election campaign until the results were announced, but to no avail. It emerges from the documents on record that the said requests were made at the beginning of the election campaign on 17 February 2021 and during the campaign on 3 and 4 March 2021 without any reply from the authorities.
142. The Court notes that, before and during the elections period, the Security Forces (SDF) in charge of securing the electoral process had been tasked to take all measures to maintain public order in relation to the organisation of the elections; ensure safety of public meetings or campaign rallies, polling stations, candidates, electoral commissions, political party leaders and electoral materials, in all neutrality. Denying the Applicants the State protection they were entitled to violates their right to security of their person.
143. Accordingly, the Court finds that the Applicants' right to security of their person, guaranteed by Article 6 of the Charter, was violated.

IX. REPARATIONS

144. The Applicants request the Court to consider the numerous irregularities that marred voting in Electoral District No. 053 Yamoussoukro Commune 2 in order to annul seventy-six (76) collation sheets from fifteen (15) polling stations and declare them winners of the election in the said electoral district, or failing that, order the Respondent State to rerun the parliamentary elections in Electoral District No. 053 of Yamoussoukro Commune 2.

145. The Applicants also request the Court to award them the sum of One Hundred and Fifty Million (150,000,000) CFA francs as reparation for campaign and legal costs.

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146. The Respondent State prays the Court to dismiss all of the Applicants' requests as unfounded.

147. Article 27(1) of the Protocol provides that:

If the Court finds that there has been violation of a human or peoples' rights, it shall make appropriate orders to remedy the violation including the payment of the fair compensation or reparation.

148. The Court recalls its earlier judgments on reparations³³ and restates its position that, to examine and assess Applications for reparation of prejudices resulting from human rights violations, it takes into account the principle according to which the State found guilty of an internationally wrongful act is required to make full reparation for the damage caused to the victim.

³³ *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) Sébastien Germain Marie Aïkoué Ajavon v. Bénin 065/2019, (merits and reparations) (29 March 2021) 1 AfCLR, § 139.

149. The Court also takes into account the principle that there must be a causal link between the violation and the alleged injury and places the burden of proof on the applicant who must provide evidence to justify his request.³⁴

150. The Court has also established that reparation must, as far as possible, erase all the consequences of the wrongful act and restore the state which would presumably have existed if that act had not been committed. Moreover, reparation measures must, depending on the particular circumstances of each case, include restitution, compensation, rehabilitation of the victim and measures to ensure the non-repetition of violations, taking into account the circumstances of each case.³⁵

151. In the present case, the Court finds that the Respondent State violated the Applicants' rights guaranteed by Article as those guaranteed by Articles 6 and 19(2) of the ECOWAS Democracy Protocol.

152. In the present case, the Court notes that the Applicants are seeking pecuniary and non-pecuniary reparations.

A. Pecuniary reparations

153. The Applicants request the Court to order the Respondent State to pay them the sum of One Hundred and Fifty Million (150,000,000) CFA francs as compensation for campaign and procedural costs. The Court will examine the Applicants' claim for reparation for (i) material and (ii) moral prejudice they allegedly suffered.

³⁴*Reverend Christopher Mtikila v. Tanzania* (reparations) (13 June 2014) 1 AfCLR 72, § 31.

³⁵*Ingabire v. Rwanda* (reparations) (7 December 2018) 2 AfCLR 165, § 20.

i. Material Prejudice

154. The Court recalls its consistent jurisprudence that any material prejudice must be proven by supporting documents and the causal link between the alleged prejudice and the violation found must be established.

155. In the present case, the Court notes that the Applicants' request for reimbursement of the sum of One Hundred and Fifty Million (150,000,000) CFA francs is not based on any supporting document with the exception of a "bon à tirer", the duplicate of the biometric electoral register in the amount of One Million Four Hundred and Eighty-Five Thousand (1,485,000) CFA francs paid on 25 February 2021 by the Applicants.

156. The Court recalls its jurisprudence that if the Court finds that there has been violation of a human or peoples' rights, it shall make appropriate orders to remedy the violation including the payment of fair compensation or reparation.³⁶

157. In the present case, the Court finds that the withdrawal of the duplicate biometric voter register violated the Applicants' rights guaranteed under Article 13(1) of the Charter. Accordingly, based on the documents attached to the docket, it awards them the reimbursement of the amount of One Million Four Hundred and Eighty-Five Thousand (1,485,000) CFA francs.

ii. Moral prejudice

158. The Court recalls its jurisprudence that there is a presumption of moral injury suffered by the applicant as soon as the Court has found a violation of the applicant's rights, so that it is no longer necessary to look for evidence to

³⁶ *Ingabire v. Rwanda* (reparations) (7 December 2018) 2 AfCLR, 165, § 19.

establish the link between the violation and harm³⁷. The Court also held that the assessment of the amounts to be awarded as reparation for moral prejudice should be made on the basis of fairness, taking into account the circumstances of each case.³⁸

159. The Court notes that in the present case it finds that the fact that the Applicants were prevented from verifying the vote based on the duplicate biometric voters' register and the absence of a sticker on the collation sheets constituted a violation of the regulations in force Article 6 of the ECOWAS Democracy Protocol.

160. Furthermore, the Court considers that the administration's failure to respond to the Applicants' multiple requests for close protection placed them in a situation of fear and anxiety during the electoral process. In the end, the Court considers that a lump sum compensation can be awarded to the Applicants.

161. The Court, ruling in equity and in accordance with its inherent power under the Protocol, awards the Applicants the lump sum of Two Million (2,000,000) CFA francs as reparation for the moral prejudice they suffered.

B. Non-pecuniary reparations

162. The Applicants request the Court to annul the votes of fifty nine (59) election officials assigned to some polling stations as well as collation sheets of seventy six (76) polling stations. They pray the Court to amend the results of Electoral District No. 053, Yamoussoukro Commune 2 and declare them winners of the

³⁷ *Oumar Mariko v. Republic of Mali*, op.cit, § 184; Sébastien Germain Marie Aïkoué Ajavon v. Republic of Benin, 168; *Armand Guehi v. United Republic of Tanzania* (Merits and Reparations), § 55; *Lohe Issa Konaté v. Burkina Faso* (Reparations) (2016) 1 AfCLR 358, op cit., § 41

³⁸ *Ingabire v. Rwanda*, op. cit. § 59; *Beneficiaries Norbert Zongo, Abdoulaye Nikiema alias Ablasse, Ernest Zongo and Blaise Ilboudo and Burkinabè Movement for Human and Peoples' Rights v. Burkina Faso* op cit., § 20; *Lohe Issa Konaté v. Burkina Faso* op. cit., § 61.; *Ajavon v. Benin* (reparations) (3 November 2019)3 AfCLR 196, § 89.

6 March 2021 election in electoral district 053 Yamoussoukro Commune 2 or to order the Respondent State to rerun the vote in that electoral district.

163. The Court emphasises that it cannot order reparation measures based on allegations for which no human rights violations have been established.³⁹ In the present case, the Court finds in this judgment that although the absence of a sticker on the collation sheets of the seventy-six (76) polling stations constitutes a formal irregularity, it did not result in any material alteration of the results of the vote count, so that the votes remain credible.

164. As regards the cancellation of the votes of fifty-nine (59) electoral officers on duty, the Court recalls that it found that the Applicants did not provide any evidence that the said election officials were not registered in the places where they voted and dismisses this allegation.

165. The Court finds that the Applicants' request to annul the collation sheets as well as the votes of fifty nine (59) election officials and declare them winners or to order the rerun of the 6 March 2021 elections in Electoral District No. 053 Yamoussoukro commune 2 lacks merit and dismisses it.

X. COSTS

166. The Applicants request the Court to order the Respondent State to pay them the sum of One Hundred and Fifty Million (150,000,000) CFA francs as reparation for campaign and procedural costs.

*

³⁹ *Sébastien Germain Marie Eléqué Ajavon v. Benin*, ACTHPR, Application No. 065/2019, Judgment of 29 march 2021(merits and reparations), § 169.

167. The Respondent State prays the Court to dismiss all the Applicants' claims as unfounded.

168. The Court notes that the Applicants' request for reparation for procedural costs is vague. The Court notes that this request is not supported by any documentary evidence of the said costs.

169. The Court recalls that it has held that any claim for pecuniary reparation or reimbursement of expenses must be supported by documentary evidence, failing which it will be rejected. In particular, the Court has established that "the Applicant has to remit probative documents and to develop arguments relating the evidence to the facts under consideration and, when dealing with alleged financial disbursements, clearly describe the items and justification thereof"⁴⁰.

170. In the present case, the Court finds that the Applicants have not submitted any supporting documents in respect of the costs of the proceedings. Accordingly, their request for reimbursement of the costs of the proceedings is therefore dismissed.

171. Under Article 32(2) of the Rules, "[u]nless otherwise decided by the Court, each party shall bear its own costs, if any".

172. In the present Application, the Court decides that each Party shall bear its own costs.

XI. OPERATIVE PART

173. For these reasons,

⁴⁰ *Reverend Christopher R. Mtikila c. Tanzanie* (réparations) (2014) 1 AfCLR 72, § 40.

THE COURT

Unanimously,

On Jurisdiction

- i. *Dismisses* the objection based on lack of personal jurisdiction
- ii. *Declares* that it has jurisdiction.

On the Respondent State's lack of standing

- iii. *Dismisses* the objection based on the Respondent State's alleged lack of standing;
- iv. *Finds* that the Respondent State has standing.

On Admissibility

- v. *Dismisses* the objections based on the use of insulting language and the non-exhaustion of local remedies;
- vi. *Declares* the Application admissible.

On Merits

- vii. *Finds* that the Respondent State did not violate the Applicants' right to a reasoned decision guaranteed by Article 7(1) of the Charter;
- viii. *Finds* that the Respondent State did not violate the Applicants' right to credible elections guaranteed by Article 13 of the Charter and Article 6 of the ECOWAS Democracy Protocol;
- ix. *Finds* that the Respondent State did not violate the Applicants' rights to an independent tribunal guaranteed by Article 26 of the Charter;

- x. *Finds* that the Respondent State violated the Applicants' right to transparent elections guaranteed under Article 6 of the ECOWAS Democracy Protocol by failing to comply with the regulatory requirements regarding the authentication of some of the collation sheets;
- xi. *Finds that* Respondent State violated the Applicants' rights to engage in political activity guaranteed by Article 13 of the Charter;
- xii. *Finds* that the Respondent State violated the Applicants' rights to security of the person guaranteed by Article 6 of the Charter.

On Reparations

Pecuniary Reparations

- xiii. *Awards* the Applicants the sum of Three Million Four Hundred Eighty-Five Thousand (3,485,000) CFA francs which breaks down as follows:
 - 1,485,000 CFA Francs as reimbursement of the costs of obtaining duplicates of the voter register;
 - 2,000,000 CFA francs as reparation for the moral prejudice that they suffered.

Non-pecuniary Reparations

- xiv. *Dismisses* the request for the annulment of the legislative election of 6 March 2021 in electoral district N°053 053 Yamoussoukro, Commune 2.

On Implementation and reporting

- xv. *Orders* the Respondent State to pay the amounts indicated under (xiii) above free from taxes within six (6) months from the date of notification of this Judgment, failing which it will pay interest on arrears calculated

