

# **African Court on Human and Peoples' Rights**

**The Matter of  
Aminata Soumaré**

**V**

**Republic of Mali**

**Application No. 038/2019**

**Ruling of 5 September 2023**

**Declaration**

1. I dissent from the opinion of the majority of the judges insofar as the Court declared the Application referred to above inadmissible and dismissed the request for provisional measures on the ground that it was moot.

**I. On the inadmissibility of the Application.**

2. It emerges from the above-mentioned Ruling, in particular paragraphs 37 and 45 thereof, that the Court declared the Application inadmissible on the ground that, pursuant to some articles of the Code of Criminal Procedure of Mali, the Applicant had the opportunity to file a complaint as a civil party before the competent investigating judge, which she said she did, without providing any evidence. (Paragraph 46 of the Ruling).

3. Pursuant to Rules 41 and 45 of the Rules of Court, the Court may, before or during the proceedings, call upon the parties to file any

pertinent document or to provide any relevant explanation. In the event of failure to comply, the Court shall take notice of the same.

4. The Court may also, of its own accord or at the request of a party, obtain any evidence which, in its opinion, may clarify the facts of the matter.
5. However, at no point in the proceedings did the Court order the Applicant to file documents proving that she exercised her right of appeal, or any other relevant document that may have led to the Application being declared admissible, especially since pleadings were not closed until 28 September 2021, that is, two years after the Application was filed.
6. In my opinion, as a human right court whose procedures are not always familiar to applicants who, in any case, do not master legal intricacies, the Court must at all times play a positive role during deliberations because doing justice means delivering a judgment on the merits, including a dismissal, and not declaring it inadmissible for lack of evidence, which would leave the dispute in abeyance, a situation that the applicants would not understand.
7. Thus, by declaring the request inadmissible, the Court failed to comply with Rule 61 of the Rules of Court, which requires the Court to state reasons for its decisions. Such an approach is contrary to the spirit of the aforementioned instruments and the positive role that a judge must play in the proper administration of justice.

## II. ON THE DISMISSAL OF THE REQUEST FOR PROVISIONAL MEASURES

8. It emerges from paragraph 51 of the Ruling that the Court dismissed the request for provisional measures for an order compelling the Respondent State to put an end to the psychological pressure to which the Respondent State's security services subjected the Applicant, for the simple reason that, after declaring the Application inadmissible, the request became moot.
9. As it emerges from the summary of the procedure before the Court, the request for provisional measures was filed on 26 August 2019.
10. It also emerges from the same proceedings that at no time did the Court decide to consider the provisional measures and the Application on the merits together.
11. As such, for 4 years, the Applicant kept hoping that her urgent request would be decided and that the Court would rule on the request pursuant to Rule 27 of the Rules of Court, either by dismissing the request or by ordering provisional measures, thereby acknowledging the urgency of the case.

**Judge Bensaoula Chafika**

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

