

JUGMENT SUMMARY

YOUSOUF TRAORE AND 9 OTHERS

V.

REPUBLIC OF MALI

APPLICATION NO. 022/2018

JUDGMENT ON MERITS AND REPARATIONS

7 NOVEMBER 2023

A DECISION OF THE AFRICAN COURT ON HUMAN AND PEOPLES' RIGHTS

Algiers, 7 November 2023: The African Court on Human and Peoples' Rights (the Court) has delivered a judgment in the case of *Youssouf Traoré and 9 others v. Republic of Mali*.

On 11 September 2018, Mr Youssouf TRAORE, Mr Diakaridia COULIBALY, Mr Mery SIDIBE, Mr Diatigui Coulibaly, Mr Karim DIARRA, Mr Mamadou KAMATE, Mr Diasse COULIBALY, Mr Boubacar DEMBELE, Mr Issiaka KONE and Mr Landry DAKOUA (the Applicants), filed an Application with the Court against the Republic of Mali (the Respondent State).

The Applicants alleged a violation of their fair trial rights guaranteed by Articles 7(1) and 26 of the African Charter on Human and Peoples' Rights (the Charter) and Articles 2(3)

JUGMENT SUMMARY

and 14 of the International Covenant on Civil and Political Rights (the ICCPR), insofar as they were not afforded equal treatment before the law.

The Applicants prayed the Court to declare that it had jurisdiction, declare the Application admissible, establish the alleged violations and order the Respondent State to remedy the violations.

On jurisdiction, the Respondent State challenged the Courts material jurisdiction on the following grounds: firstly, that the Application did not clearly indicate the alleged violation of human rights but merely cited the Articles of the Charter allegedly violated; secondly, that the presentation of the Application did not enable either the State of Mali or the Court to identify precisely the human right(s) violated, contrary to Rule 40(2) of the Rules of Court ; thirdly, that this Court is not a social court empowered to censure the decisions of domestic courts but is rather a court empowered to find and remedy cases of human rights violations.

The Applicants prayed the Court to dismiss this objection, arguing that the Court had jurisdiction to hear the Application insofar as they complied with the requirements of Rule 40 of the Rules and Article 56 of the Charter.

The Court recalled that under Article 3(1) of the Protocol, it has jurisdiction to examine any application submitted to it, provided that the rights of which a violation is alleged are protected by the Charter or any other human rights instrument ratified by the Respondent State. The Court recalled that it is sufficient that the subject matter of the complaint related to rights guaranteed by the Charter or any other human rights instrument ratified by the State concerned, without necessarily requiring that the rights alleged to have been

JUGMENT SUMMARY

violated be specified in the Application. The Court considered that the objection could not be upheld, given that the Applicants clearly indicated in their reply to the Respondent State's response that they were alleging a violation of their fair trial rights guaranteed by Articles 7(1) (a) and (d), 26 of the Charter and Articles 2(3) and 14(1) of the ICCPR.

The Parties did not contest the Court's jurisdiction. Nonetheless, the Court examined the personal, temporal and territorial aspects of its jurisdiction and concluded that it had jurisdiction.

Accordingly, the Court assumed jurisdiction to hear the Application.

On admissibility, the Respondent State raised two objections, one based on non-exhaustion of local remedies and the other based on failure to specify the provisions alleged to have been violated.

With regard to the first objection, the Respondent State asserted that the Applicants had indicated, without providing any evidence, that all local remedies were exhausted as a result of Judgment No. 38 of 15 November 2016, by which the Social Chamber of the Supreme Court dismissed their cassation appeal. The Respondent State argued, on the contrary, that the Applicants voluntarily refrained from pursuing the domestic judicial remedies provided for in Article 173 of Law 2016-046 of 23 September 2016 on the Organic Law establishing the organisation and operating rules of the Supreme Court and the procedure followed before it.

For their part, the Applicants argued that local remedies were exhausted once the Supreme Court, which is the highest court with jurisdiction in the case, delivered its ruling.

JUGMENT SUMMARY

The Court concluded that local remedies were exhausted insofar as, following their dismissal, the Applicants brought an action against the ALS-Mali Group of laboratories and ETS KLENE before the Bamako Labour Court, which was dismissed by Judgment No. 196 handed down on 14 November 2011. They subsequently appealed to the Bamako Court of Appeal, which, by Judgment No. 55 of 21 March 2013, upheld the said judgment in all its provisions. Lastly, seized with a cassation appeal, the Supreme Court of Mali, the highest court in the Malian judicial system, dismissed the Applicants' claim by Judgment No. 38 of 15 November 2016.

For this reason, the Court dismissed the objection based on non-exhaustion of local remedies.

As regards the objection on the ground that the provisions alleged to have been infringed were not specified, the Respondent State argued that Rule 41(f) of the Rules of Court required the Application to contain, inter alia, a concise and clear statement of the alleged violation(s) and not merely to cite the Articles of the Charter alleged to have been violated.

The Respondent State also pointed out that the articles cited in the Application enshrined one or more human rights, the express enunciation of which would have enabled it to know precisely the violation of which it was accused and to defend itself more effectively. In this respect, it submitted that the Application was deficient in its presentation and should be declared inadmissible.

For their part, the Applicants maintained that the Respondent State's arguments had no legal basis and were unfounded insofar as the alleged violations were clearly indicated in

JUGMENT SUMMARY

their Application. In support of their assertion, they cited the combined provisions of Articles 7(1) and 26 of the Charter.

The Court took the view that, in ruling on its material jurisdiction, it already examined the objection based on failure to specify the provisions alleged to have been violated and that there was therefore no need to re-examine the objection to the admissibility of the Application.

Accordingly, the Court dismissed the Respondent State's objection to its material jurisdiction.

As regards the other admissibility requirements, the Court noted that, as per the records, it was not in contention between the Parties that the Application complied with the requirements of Article 56 (1), (2), (3), (4), (5) and (7) of the Charter, as restated in Rule 50(2)(a), (b), (c), (d), (e) and (g) of the Rules of Court.

In view of the foregoing, the Court found that the Application met all the admissibility requirements under Article 56 of the Charter, as restated in Rule 2 the Rules of Court.

Accordingly, the Court declared the Application admissible.

On the merits, the Applicants alleged three (3) violations of human rights: the right to bring a case before the competent domestic courts, the right to be tried within a reasonable time by an impartial court and the obligation to guarantee the independence of the courts.

JUGMENT SUMMARY

With regard to the violation of the right to bring a case before the competent domestic courts, the Applicants argued that it was common ground that no appeal remedy was available at national level because if the Supreme Court had wished to apply the law, it would have referred the case and the parties to the Court of Appeal differently composed.

The Respondent State argued that the Applicants exercised their right to bring proceedings before domestic courts through the Bamako Labour Court, the Bamako Court of Appeal and the Supreme Court of Mali. According to the Respondent State, the very fact that the domestic courts ordered their former employer to pay benefits and damages to other workers in similar disputes attested to the effectiveness of local remedies. The Respondent State therefore concluded that the Application be declared unfounded and the Applicants dismissed.

The Court found that the Applicants' right to bring proceedings before domestic courts was not violated insofar as, as it emerged from the Application, they were not in any way prevented from seizing the competent domestic courts, which had ruled on the points of law raised. The Court held that the mere fact that the domestic courts dismissed the Applicants' claims could not be regarded as a violation of the right to a fair trial.

As regards the violation of the right to be tried within a reasonable time, the Applicants argued that their right to be tried within a reasonable time was violated, without presenting any concrete arguments in support of their allegation.

The Respondent State rejected this allegation as unfounded since no violation was attributable to the Respondent State.

JUGMENT SUMMARY

The Court noted, as it emerged from the records, that five (5) months and fourteen (14) days elapsed between the referral of the case to the Bamako Labour Court and the delivery of the judgment by that court; nine (9) months and fifteen (15) days elapsed between the filing of the appeal before the Court of Appeal and the delivery of its judgment; three (3) years and three (3) days between the hearing of the cassation appeal and the delivery of the judgment by the Supreme Court. The Court considered that, having regard to the nature of the proceedings concerned and the conduct of the Respondent State, these time-limits were not unreasonable in the circumstances of the case.

Accordingly, the Court found that the Respondent State did not violate the Applicant's right to be tried within a reasonable time, as guaranteed by Article 7(1)(d) the Charter.

As to the violation of the obligation to guarantee the independence of the courts, the Applicants alleged that the Respondent State violated the obligation to guarantee the independence of the courts, without presenting any arguments in support of their assertion.

For its part, the Respondent State argued that in the present case, there was no malfunction of its administrative or judicial services to the detriment of the Applicants.

The Court noted that the Applicants did not specify the facts of the alleged violation, so that the alleged violation was not established. Accordingly, the Court found that the Respondent State was not liable.

On reparations, the Applicants prayed the Court to restore their fair trial rights. They further prayed the Court to order the Respondent State to pay them the following

JUGMENT SUMMARY

reparations: accrued salaries from 2009 to 2018, severance pay, outstanding leave, pay in lieu of notice, compensation for formal defects and damages; reimbursement of all medical expenses in respect of their spouses and children from 2009 to 2018; payment of damages in the amount of Twenty (20) Million CFA francs per worker, that is, a total of Two Hundred Million (200.000.000 CFA francs for the ten (10) workers as reparation for moral and material damages; issuance of work certificates for the seventy-one (71) people, including the eleven (11) people expressly named in the present Application, under a fine of One Hundred Thousand (100.000) CFA Francs per person and per day of delay; medical examinations for the workers concerned under penalty of One Hundred Million (100,000,000) CFA Francs for the ten (10) ex-employees; payment of half of the benefits mentioned as soon this Court has delivered its judgment.

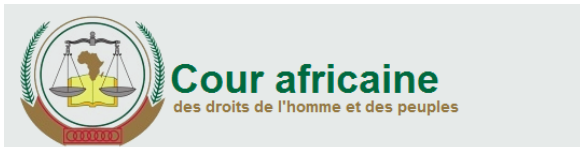
Without responding to the measures sought by the Applicants, the Respondent State submitted that the said claims be rejected outright.

The Court noted that it did not find any violation of the Applicants' rights, so that their claims for reparations were not justified. Accordingly, the Court dismissed the Applicants' claims for reparations.

Finally, the Court ordered that each Party bear its own costs.

More information

Further information on this case, including the full text of the African Court's judgment, is available at <https://www.african-court.org/cpmt/fr/details-case/0222018>



Arusha, Tanzania
Website: www.african-court.org
Telephone: +255-27-970-430

JUGMENT SUMMARY

For any other questions, please contact the Registry at the following e-mail address registrar@african-court.org or registry@african-court.org

The African Court on Human and Peoples' Rights is a continental court established by African countries to ensure the protection of human and peoples' rights in Africa. The Court has jurisdiction over all cases and disputes submitted to it concerning the interpretation and application of the African Charter on Human and Peoples' Rights and any other relevant human rights instrument ratified by the State concerned. For more information, please visit our website: www.african-court.org