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

In accordance with Article 22 of the Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights (hereinafter referred to as "the Protocol") and Rule 8(2) of the Rules of Court[1] Judge Modibo SACKO, Vice President of the Court and a national of Mali, did not hear the Application.

In the matter of

AMADOU DEMBELE, BAKARY SIDI DIABATE JACOB ALIAS A GUIROU AND ABDOUL KARIM KEITA

Represented by:

i. Barrister Mariam DIAWARA, Advocate of the Mali Bar; and
ii. Mr Felipe ZADI, Chambers of Miriam DIAWARA.

Versus

REPUBLIC OF MALI

Represented by:

i. Barrister Ousmane Mama TRAORÉ, Advocate at the Mali Bar; and
ii. Traoré HAMDALAYE Chambers;
Legal representatives of the General Directorate of State Litigation

after deliberation,

renders this Judgment:

[1] Article 8(2) of the Rules of Court of 2010.

I. THE PARTIES

1. Messrs Amadou Dembélé Bakary Sidi Diabate, Jacob alias A. Guirou and Abdoul Karim Keita (hereinafter referred to as "the Applicants") are nationals and police officers by profession. They allege violation of their right to equal access to the public service owing, in particular, to the dismissal of their applications for admission into the National Police Academy (hereinafter referred to as "the NPA").

2. The Application is filed against the Republic of Mali (hereinafter referred to as "the Respondent State"), which became a party to the African Charter on Human and Peoples' Rights (hereinafter referred to as "the Charter") on 21 October 1986, and to the Protocol on 20 June 2000. The Respondent State also deposited, on 19 February 2010, the Declaration under Article 34(6) of the Protocol (hereinafter referred to as "the Declaration"), by virtue of which it accepts the jurisdiction of the Court to receive cases from individuals and Non-Governmental Organisations with observer status before the African Commission on Human and Peoples' Rights.

II. SUBJECT MATTER OF THE APPLICATION

A. Facts of the matter

3. The Applicants aver that pursuant to Decree No. 06-53/P-RM of 6 February 2006, which lays down the special provisions applicable to the various branches of the National Police Force (hereinafter referred to as "Decree of 6 February 2006"), the Respondent State's Minister of Internal Security and Civil Defence (hereinafter referred to as Minister of Internal Security) directed the Director-General of the National Police Force ("the Director-General") to compile a list of highly qualified police officers, to be upgraded to the corps of Superintendents and Inspectors after training at the NPA. The required qualifications to this effect were Master's Degree, Engineer's Degree, University Diploma of General Studies, and University Technology

Diploma.

4. The Applicants aver that after undertaking the identification and verification process, the Director-General submitted a list of qualified officers to the Minister of Internal Security,[2] who issued a decision appointing Cadet Superintendents and Inspectors of Police

5. The Applicants further aver that their applications were rejected although they possessed the requisite qualifications. They contend that some of their colleagues, whose applications had also been rejected, brought a case before the Administrative Division of th which, by various judgments,[3] ruled in favour of the said colleagues based on the principle of equality before the law and non-discrimination, thus paving the way for the oversight authority to regularise their situation administratively.

6. On 16 July 2013, the Applicants brought a case before the Administrative Division of the Supreme Court seeking to be upgraded to a higher rank based on their qualifications. Their requests were dismissed by Judgment No. 258 of 5 May 2016, on the ground that the Applicants did not meet the requirements specified in Article 125 of Law No. 10-034 of 12 July 2010 (hereinafter referred to as the "Law of and regulations of the police service.

7. The Applicants aver that the police administration, taking a cue from the Administrative Division of the Supreme jurisprudential precedent, treated them in a discriminatory manner, in violation of the principle of equality before the law.

[2] Decision No. 0732/MSIPC-SG of 2 May 2007, No. 0121/DGPN-DPFM of 1 March 2007 and No. 010-0055/MSIPC-SG of 19 January 2010.
[3] Judgment No. 40 of 7 March 2013 of the Administrative Division of the Supreme Court; Judgment No. 55 of 25 March 2010 of the Administrative Division of the Supreme Court; Judgment No. 093 of 17 April 2014 of the Administrative Division of the Supreme Court and Judgment No. 420 of 4 August 2016 of the Administrative Division of the Supreme Court.

8. The Applicants further contend that Articles 125[4] and 127[5] of the Law of 12 July 2010, which make enrolment in higher education programmes subject to prior approval by the hierarchical authority, are incompatible with the human rights instruments ratified by the Respondent State, in particular, Articles 1 and 2 of the United Nations Educational, Scientific and Cultural Organization Convention against Discrimination in Education (hereinafter referred to as "UNESCO Convention against Discrimination in Education").

B. Alleged violations

9. The Applicants allege violation of the following rights by the Respondent State:

i. The right to equality before the law and the right to equal protection of the law without any discrimination, protected by Article 3 of the Charter and Article 26 of the International Covenant on Civil and Political Rights (hereinafter referred to as the "ICCPR");
ii. The right to equal access to the public
protected by Articles 13(2) of the Charter and 25(c) of the ICCPR;
iii. The right to equal opportunity for advancement to the appropriate higher rank without regard to any consideration other than length of service in the most recent rank and competence, protected by Articles 15 of the Charter and 7(c) of the International Covenant on Economic, Social and Cultural Rights (hereinafter referred

[4] Article 125: "Advancement to a higher rank through successfully complete studies at the level corresponding to the higher category he wishes to access. In order to enrol for the aforementioned training, the police officer shall: serve for at least five (5) years in the corps; obtain prior approval of his hierarchical authority, including their last performance appraisal and of the specialization of the corps he plans to access; be, at least five, (5) years away from retirement at the end of the training".

[5] Article 127: "In order to lead to promotion, in-service training shall be in a discipline which corresponds to one of the specializations of the Police; furthermore, it shall be justified by need, and undertaken by officers in service or on secondment. The training undertaken shall allow the officer, depending on the diploma obtained, to get an advancement to the next higher grade, or to a higher category which corresponds to the diploma obtained. Promotion resulting from the said training, shall not, in any way, pave the way for access to a higher category in the same corps. To benefit from the right to advancement to a higher grade, the training duration shall not be less than two (2) years."

iv. The right to education, protected by Article 17(1) of the Charter, Article 13(2) of the ICESCR and Articles 1 and 2 of the UNESCO Convention against Discrimination in Education.

III. SUMMARY OF THE PROCEDURE BEFORE THE COURT

10. The Application was filed on 7 August 2017 and served on the Respondent State on 19 December 2017.

11. The Parties filed their submissions on the merits and reparations within the time-limits prescribed by the Court.

12. Pleadings were closed on 6 March 2019 and the Parties were duly notified.

IV. PRAYERS OF THE PARTIES

13. The Applicants pray the Court to:

i. Find that it has jurisdiction to hear the Application;
ii. Declare the Application admissible;
iii. Find that the Respondent State violated the Applicants' right to equality before the law and the right to equal protection of the law without any discrimination in accessing public service, protected by Articles 25 and 26 of the ICCPR and 3 of the Charter;
iv. Find that the Respondent State violated the right to be promoted, protected under Articles 15 of the Charter and 7(c) of the ICESCR;
v. Find that the Respondent State violated the Applicants' right to education, protected by Article 17(1) of the Charter, Article 13(2) of the ICESCR and Articles 1 and 2 of the UNESCO Convention against Discrimination in Education;
vi. Order the Respondent State to cease the violations of their rights, regularise their situation and upgrade them, in line with the provisions of

Decree No 06-053/P-RM of 6 February 2006, in particular Article 47 thereof;

vii. Order the Respondent State to pay each Applicant salary arrears from July 2008, the date of their appointment, to the date of delivery of the present judgment, estimated at Ten Million Eight Hundred Thousand (10,800,000) CFA Francs;

viii. Order the Respondent State to pay each Applicant the sum of One Hundred Million (100,000,000) CFA Francs as reparation for the prejudice suffered; and

ix. Order the Respondent State to bear costs.

14. The Applicants further pray the Court to order the Respondent State to pay each Applicant an amount of One Hundred and Twelve Million Seven Hundred Thousand (112,700,000) CFA Francs as fair compensation for the prejudice suffered and loss of income. They pray that the said amount be distributed as follows:

i. Twelve Million Seven Hundred Thousand (12,700,000) CFA Francs as salary arrears from July 2008 to December 2018, being one Hundred and Twenty-Seven (127) months' salary Applicant, in addition to the payment of the balance of salary, estimated at 100,000 CFA Francs between the ranks of Police Superintendent and Inspector;

ii. Ten Million (10,000,000) CFA Francs in respect of costs;

iii. Five Million (5,000,000) CFA Francs as cost of preparing filings;

iv. Thirty-five Million (35,000,000) CFA Francs per Applicant for the damage suffered; and

v. Fifty Million (50,000,000) CFA Francs as reparation for prejudice suffered and missed career opportunities.

15. The Respondent State prays the Court to:

i. Declare the Application inadmissible for non-exhaustion of local remedies and for containing disparaging and insulting language;

ii. Dismiss the Application on the ground that it is unfounded and further dismiss the request for reparations; and

iii. Order the Applicants to pay costs.

V. JURISDICTION

16. 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.

17. The Court observes that pursuant to Rule 49(1) of the Rules,[6] it "shall conduct a preliminary examination of it the Charter, the Protocol and these Rul

18. Based on the above-cited provisions, the Court must, in every Application, preliminarily ascertain its jurisdiction and rule on objections thereto, if any.

19. The Court notes that the Respondent State does not raise any objection to its jurisdiction. Nonetheless, in line with Rule 49(1) of the Rules, the Court must satisfy itself that all aspects of its jurisdiction are fulfilled before proceeding.

20. The Court finds that it has material jurisdiction, insofar as the Applicants allege a violation of their rights guaranteed by Articles 3(1) and (2) of the Charter, Article 26 of the ICCPR, and Article 13(2) of the ICESCR, instruments to which the Respondent State is a Party.[7]

[6] Formerly, Rule 39(1), Rules of Court, June 2010.
[7] The Respondent State became a party to the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights on 16 July 1974.

21. The Court also finds that it has personal jurisdiction insofar as the Respondent State is a party to the Charter and the Protocol and has deposited the Declaration.

22. The Court further considers that it has temporal jurisdiction insofar as the alleged violations occurred after the Respondent State became a Party to the Charter and the Protocol.

23. Finally, the Court finds that it has territorial jurisdiction, insofar as the facts and the alleged violations took place in the territory of the Respondent State.

24. In view of the foregoing, the Court holds that it has jurisdiction to consider the instant Application.

VI. ADMISSIBILITY

25. Article 6(2) of the Protocol provides: "
of cases taking into account the provis

26. According to Rule 50(1) of the Rules, "The C
admissibility of an Application in accordance with Article 56 of the Charter, Article 6(2) of the Protocol and these Rules" [8].

27. Rule 50(2) of the Rules, which in substance restates the provisions of 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,

[8] Rule 40, Rules of Court, 2010.

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 the Court is seized with the matter, and
g. Do not deal with cases which have been settled by those States involved in accordance with the principles of the Charter of the United Nations, or the Charter of the Organization of African Unity or the provisions of the Charter.

28. In the instant case, the Respondent State raises two objections to the admissibility of the Application. The Court will consider the said objections before examining other admissibility requirements, if necessary.

A. Objections to the admissibility of the Application

29. The Respondent State raises two objections to the admissibility of the Application. First, it alleges that the Application uses disparaging or insulting language and, second, it contends that the Applicants did not exhaust local remedies.

i. Objection based on the use of disparaging or insulting language

30. The Respondent State avers, without substantiation, that the Applicants have used disparaging or insulting language in their Application.

*

31. The Applicants do not make any submission on this allegation.

*

32. The Court notes that under Article 56(3) of the Charter as restated in Rule 50(2) of the Rules, to be admissible, a in disparaging or insulting language directed against the State concerned and its institutions or the African Uni

33. In determining whether the language of an application is disparaging or insulting, the Court must satisfy itself that the language used has intentionally jeopardized the dignity, reputation and integrity of a public official or a judicial body of the Respondent State. The terms used must in particular be aimed at undermining the integrity and reputation of the institution and discrediting it.[9]

34. The Court further notes, particularly that holding the highest office of political power, are legitimately[10] subject to "public figures follows that for the language used in relation to public figures to be qualified as disparaging or insulting, it must be derogatory and intended to bring the concerned authorities into disrepute.

35. In the instant case, the Court notes that the Respondent State does not specify how the language used by the Applicants is disparaging or insulting and how it offends the Minister of Internal Security. Furthermore, it does not specify the terms and expressions that the Applicants used with a view to influencing public opinion or taint the image of any public figure, and to undermine the integrity and office of the Minister of Internal Security.

36. The Court notes that the terms used by the Applicants elucidate the facts and do not reflect any personal animosity, either towards the Minister of Internal Security, or towards the Ministry of Security, let alone towards the administrative and judicial authorities of the Respondent State.

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[9] *Lohé Issa Konaté v. Burkina Faso* (merits) (5 December 2014) 1 AfCLR, 314, § 69-71*; Gihana and others v. Republic of Rwanda* (merits and reparations) (2019) 3 AfCLR, 655, § 53.

[10] *Boubacar Sissoko and 74 Others v. Republic of Mali* (merits reparations) (25 September 2020) 4 AfCLR 641, § 29. See also, UN Human Rights Committee (HRC), General Comment No. 34, Article 19, Freedoms of opinion and expression, 12 September 2011, CCPR/C/GC/34 and *Rafael Marques de Morais v. Angola*, Communication No. 1128/2002, U.N. Doc. CCPR/C/83/D/1128/2002 (2005).

37. Consequently, the Court finds that the Application does not contain any disparaging or insulting language, within the meaning of article 56(3) of the Charter and Rule 50(2)(c) of the Rules.

38. Accordingly, the Court dismisses the Respondent State's objection to admissibility based on the use of disparaging or insulting language and holds that the Application complies with the requirement under Article 56(3) of the Charter.

ii. Objection based on non-exhaustion of local remedies

39. The Respondent State submits that exhaustion of local remedies is an important requirement under Article 56 of the Charter and Rule 50 of the Rules.[11]

40. According to the Respondent State, the purpose of the rule that local remedies must be exhausted is to limit arbitrary and unjustified referrals to the Court and to avoid overloading its cause list.

41. The Respondent State submits that the Applicants did not exhaust the local remedies available to them, insofar as they did not appeal against Judgment No. 258 of 5 May 2016 delivered by the Administrative Division of the Supreme Court of Mali.

42. It, therefore, prays the Court to declare the Application inadmissible for failure to meet the condition laid down in Article 56 of the Charter and the Rules.

***

43. In their response, the Applicants submit that the Court must be seized only after all local remedies have been exhausted, which means that an application against a State can only be brought before the Court if that

[11] Rule 50(2) of the Rules of Procedure of the Court of 2020.

State's domestic courts have had the opportunity to examine the alleged violations.

44. The Applicants also point out that Article 256 of Organic Law No 2016-046 of 23 September 2016, which lays down the rules for the organisation and operation of the Supreme Court of Mali (hereinafter "the Organic Law of the Supreme Court"), provides for the possibility of appeal in limited cases, for example, where there is an error in the application of the law or an erroneous interpretation thereof.

***

45. The Court notes that, according to the Respondent State, the Applicants did not exhaust local remedies as they failed to appeal against Judgment No. 258 of 5 May 2016 delivered by the Administrative Division of the Supreme Court.

46. The Court reiterates that any application brought before it must satisfy the requirement of prior exhaustion of local remedies,[12] unless the remedies are not available, ineffective or insufficient or unless the proceedings in respect of such remedies are unduly prolonged. In its jurisprudence, the Court has held that the remedies to be exhausted must be ordinary judicial remedies.[13] Consequently, local remedies have been exhausted once the Applicants have referred the matter to the highest court of the Respondent State with jurisdiction in the matter.[14]

47. In this respect, the Court notes that in the judicial system of the Respondent State, the procedure for bringing an application for review before the Supreme Court, in accordance with Article 256 of the Organic Law on the

[12] *Lohé Issa Konaté v. Burkina Faso* (merits) (05 December 2014) 1 AfCLR 314, § 77.
[13] *Wilfred Onyango & Others v. Republic of Tanzania* (merits) (18 March 2016) 1 AfCLR 507, § 88.
[14] *Kachukura Nshekanabo Kakobeka v. United Republic of Tanzania*, ACtHPR, Application No 029/2016, Judgment of 4 December 2023 (merits and reparations), §§ 40-44; *Mohamed Selemani Marwa v. United Republic of Tanzania*, ACtHPR, Application No. 014/2016, Judgment of 2 December 2021 (merits and reparations), § 45; *Mohamed Abubakari v. United Republic of Tanzania* (merits) (3 June 2016) 1 AfCLR 599, § 76.

Supreme Court,[15] is subject to specific circumstances, namely, error in the application of the law or misinterpretation thereof.

48. The Court observes that the Applicants maintain that they were unable to exhaust local remedies in respect of the two complaints raised, namely, the administration's refusal to include the Applicants on the list of cadet superintendents, and the incompatibility of Articles 125 and 127 of the Law of 12 July 2010 with the international obligations of the Respondent State.

49. The Court further notes that before filing the instant Application, the Applicants complied with the procedure before the Administrative Chamber of the Supreme Court, which issued Judgment No. 258 of 5 May 2016 dismissing their request for regularisation as cadet superintendents of Police.

50. The Court also observes that Articles 110[16] and 111[17] of the Organic Law on the Supreme Court provides that decisions of the Administrative Division of the Supreme Court are final and, therefore, not subject to appeal. It follows that the Applicants exhausted local remedies with regard to the request relating to the police administration's list of Cadet Superintendents and Inspectors of Police.

51. As regards the incompatibility of Articles 125 and 127 of the Law of 12 July 2010 with human rights instruments, the Court notes that under article 85[18] of the Respondent State, the only possible remedy is to challenge the constitutionality of the law, in particular its compatibility with fundamental human rights.

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[15] Law No. 2016-046 of 23 September 2016, Article 256: "Where a judgment of the Administrative Division is vitiated by a material error likely to have influenced the judgment of the case, the interested party may lodge a trainee appeal with the Division".

[16] *Ibid*. , Article 110; "The Administrative Division is th the lower administrative courts and of decisions handed down in the final instance by administrative bodies of a judicial nature".

[17] *Ibid*. , Article 111: "The Administrative Division has j appeals for abuse of power against decrees, ministerial or interministerial orders, and acts of national or independent administrative authorities".

[18] Organic law no. 97-010 of 11 February 1997, article 85 "The Co constitutionality of laws and guarantees fundamental

52. The Court also take cognisance of Article 45 of the said Law No. 97-010 of 11 February 1997 on the organic law setting the rules for the organisation and functioning of the Constitutional Court as well as the procedure before it,[19] the Applicants lack standing to bring an action before the Constitutional Court challenging compliance of domestic laws with international obligations. Furthermore, there is nothing on record to indicate that the Applicants had a judicial remedy available to them in the legal system of the Respondent State.

53. In view of the foregoing, the Court holds that there were no local remedies available to the Applicants as regards the compatibility of Articles 125 and 127 of the Law of 12 July 2012 with human rights instruments ratified by the Respondent State.

54. Consequently, the Court dismisses the Respondent State's holds that Applicants exhausted local remedies.

B. Other conditions of admissibility

55. The Court notes that the Parties do not dispute that the present Application complies with the conditions set out in Rule 50(2) (a), (b), (d), (f) and (g) of the Rules. Nonetheless, the Court must satisfy itself that these conditions are met.

56. In this regard, the Court notes, in accordance with Rule 50(2)(a) of the Rules, that the Applicants have clearly indicated their identity.

[19] *Ibid*, article 45: "Organic laws adopted by the Natio Constitutional Court by the Prime Minister before they are promulgated. The letter of transmittal must indicate, where appropriate, that it is urgent. Other categories of law may be referred to the Constitutional Court before promulgation by the President of the Republic, the Prime Minister, the President of the National Assembly or one tenth of the deputies, the President of the High Council of Local Authorities or one tenth of the National Councillors, or the President of the Supreme Court.

57. The Court notes that the Applicants' re
guaranteed under the Charter. Furthermore, 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.
nothing on record indicating that the Application is inconsistent with the Constitutive Act of the African Union. The Court, therefore, finds that the Application is compatible with the Constitutive Act of the African Union and the Charter, and consequently meets the requirements of Rule 50(2) (b) of the Rules.

58. The Court further finds that the Application meets the requirement of Rule 50(2) (d) of the Rules, insofar as it is not based exclusively on news disseminated through the mass media but rather relates to the legislative and regulatory provisions of the Respondent State.

59. With respect to the requirement under Rule 50(2)(f) of the Rules, the Court recalls that it has adopted a case-by-case approach to assessing what constitutes a reasonable time.[20] In this respect, the Court has held that the time taken for the Applicants to attempt to exhaust the remedies before domestic courts should be taken into account in determining reasonable time.[21]

60. The Court considers that between 5 May 2016, when the Administrative Division of the Supreme Court handed down Judgment No. 258, and 7 August 2017, the date on which the present Application was filed, a period of one (1) year, two (2) months and seven (7) days elapsed. In line with its jurisprudence,[22] the Court considers such period as a reasonable time.

[20] *Norbert Zongo and Others v. Burkina Faso* (preliminary objections) (21 June 2013) 1 AfCLR 204, § 121; *Alex Thomas v. United Republic of Tanzania* (merits) (20 November 2015) 1 AfCLR 465, § 73.
[21] *Armand Guéhi v. United Republic of Tanzania* (merits and reparations) (7 December 2018) 2 AfCLR 477, § 56; *Nguza Viking and Johnson Nguza v. United Republic of Tanzania* (23 March 2018) (merits) 2 AfCLR 287, § 61.
[22] *Boubacar Sissoko and 74 Others v. Republic of Mali* (merits and reparations) (25 September 2020) 4 AfCLR 641, § 53, *Lucien Ikili Rashidi v. United Republic of Tanzania* (merits and reparations) (28 March 2019) 3 AfCLR 13, § 56.

61. Furthermore, with regard to the alleged incompatibility of Articles 125 and 127 of the Law of 12 July 2010 with the human rights instruments invoked by the Applicants, the Court considers that there were no local remedies to be exhausted, so that the question of reasonable time does not arise.[23] The Court is also of the considered view that the alleged violations in this respect are ongoing, insofar as they result from a law published on 12 July 2010, which is still in force. As a result, the Applicants are entitled to seize the Court at any time, as long as no measures have been taken to remedy the alleged violations.[24]

62. Finally, the Court notes that in accordance with Rule 50(2)(g) of the Rules, the instant Application does not concern a matter already settled by the parties in accordance with the principles of the Charter of the United Nations, the Constitutive Act of the African Union, or the Charter.

63. In light of the foregoing, the Court holds that the Application meets all admissibility requirements under Article 56 of the Charter as restated in Rule 50(2) of the Rules of Court and, accordingly, declares it admissible.

VII. MERITS

64. The Applicants allege violations by the Supreme Court and the Ministry of Internal Security of (A) the right to equality before the law and equal protection of the law, and the right to non-discrimination; (B) the right of access to the public services of their country; (C) the right to be promoted to a higher rank; and (D) the right to education.

[23] *Jebra Kambole v. United Republic of Tanzania* (merits and reparations) (15 July 2020) 4 AfCLR 466, § 50; *Yusuph Said v. United Republic of Tanzania*, ACtHPR, Application No. 011/2019, Judgment of 30 September 2021 (jurisdiction and admissibility), § 42.
[24] *Kambole v. Tanzania*, *ibid*, § 53.

A. Alleged violation of the right to equality before the law and equal protection of the law, and the right to non-discrimination

65. The Applicants allege that the Respondent State, through its Ministry of Internal Security and the Administrative Division of the Supreme Court, violated their right to equality before the law and the right to equal protection of the law.

66. The Court notes that although the Applicants allege violation of Article 3 of the Charter, the Application mentions only the violation of their right to equality before the law which, they claim, the Minister of Internal Security and the Supreme Court should have respected, in accordance with Article 3(1) of the Charter. The Court will there examine this claim as such.

i. Alleged violation of the right to equality by the Ministry of Internal Security

67. The Applicants allege that the Respond
Security violated the principle of equality, by applying in a discriminatory manner the criteria for promoting police officers, provided for by Decree No. 06/053 of 6 February 2006 and Article 125 of the Law of 12 July 2010.

68. The Applicants also claim that the authorities of the Police Academy promoted Fantemi Coulibaly, Fouseyni Siaka Berti, Pe Dako, Fatouma Fomba, Ginsera Siama Palu and Issa Coulibaly to the rank of Superintendents of Police although the latter obtained their qualifications after the issuance of the Decree of 6 February 2006.

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69. In its response, the Respondent State asserts that Article 47 of the Decree of 6 February 2006 provides :

> Police Inspectors and non-commissioned officers who
> degree on the date of entry into force of this Decree are authorised to enrol

in the National Police Academy in successive batches, according to seniority in rank and length of service.

70. The Respondent State submits that Article 47 leaves no room for ambiguity. The Police Inspectors and non-commissioned officers concerned are those who had the required qualifications, who graduated before 31 July 2008 and had accumulated fifteen (15) years of experience at the time the aforementioned decree came into force.

71. The Respondent State avers that none of the Applicants had the required qualifications as at the date of entry into force of the aforementioned decree in order to be part of the group admitted to the Police Training Academy to be trained as police Superintendents and Inspectors, as they graduated after the said decree had been issued.

***

72. The Court notes that Article 2 of the Charter provides:

> Every individual shall be entitled to the enjoyment of the rights and freedoms recognised in the present Charter without distinction of any kind …

73. Article 3 of the Charter on its part provides:

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

74. Article 26 of the ICCPR states:

> All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex,

language, religion, political or other opinion, national or social origin, property, birth, or other status.

75. The Court observes that the right to equality before the law and the right to non-discrimination guaranteed by the Charter are interrelated, insofar as the entire legal structure of the domestic and international public order is based on this principle of interrelation, which transcends all norms.[25]

76. The Court recalls its jurisprudence that the burden of proof lies on the party purporting to have been a victim of discriminatory treatment to provide proof thereof.[26] The Court also reiterates that general statements to the effect that a right has been violated are not enough. More substantiation is required.[27]

77. The Court notes, in the instant case, that the Applicants allege that the Respondent State did not include them on the list of cadet Superintendents and Inspectors of Police whose training had been authorised under the Decree of February 2006, whereas some of their colleagues who were in the same situation as theirs were included on the list.

78. The Court observes that Article 47 of the Decree of 6 February 2006 sets out the date of graduation and length of service as prerequisites to qualify to train as Superintendents and Inspectors of Police.[28]

79. The Court also notes that it emerges from the documents produced by the Applicants that they all obtained their qualifications after the date of the aforementioned decree, a fact that they do not dispute.

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[25] See *Open Society Justice Initiative v. Côte d'Ivoire* (merits), Communication of 28 February 2015, Communication 318/06; Inter-American Court of Human Rights, Advisory Opinion OC-18 of 17 September 2003, *African Commission on Human and Peoples' Rights v. Kenya* (merits), *supra*, § 138; *John Mwita v. United Republic of Tanzania,* ACtHPR, Application No. 044/2016, Judgment of 13 February 2024 (merits and reparations), § 103.

[26] *Mohamed Abubakari v. United Republic of Tanzania* (merits) (3 June 2016) 1 AfCLR 599, § 153

[27] *Alex Thomas v. United Republic of Tanzania* (merits) (20 November 2015) 1 AfCLR 465, § 140.

[28] Article 47 "Police commissioners and officers holding the Master's degree of entry of the present decree shall be authorised to enter the National Police Academy in successive batches according to seniority in rank and length of service in order to undergo training as Cadet Superintendent of the Police. »

80. The Court notes that the Respondent State applied the criteria set out in the Decree of 6 February 2006, which is a public and impersonal document, taking into account on the date of the decree the Applicants' si Furthermore, there is no evidence that this provision in any way contains principles of inequality in relation to the Applicants, who do not provide any evidence that they suffered unjustified and discriminatory treatment.

81. The Court further observes that the Ap Coulibaly, Fousseiny Siaka Berthé, Bê Dackouo, Fatoma Fomba, Ginsera Siama Palu and Issa Coulibaly were enrolled as cadet Superintendents of Police although they were in the same situation, is not supported by any evidence.

82. The Court, finally, observes that the Applicants do not provide any evidence to show that they were not allowed to enrol at the National Police College to be trained as Superintendents of Police because of their race, ethnicity, colour, sex, language, religion, political or other opinions, national or social origin, wealth, or birth, or any other consideration.

83. Accordingly, the measures taken by the Ministry of Internal Security and Civil Defence cannot be said to have been incompatible with the Applicant rights to equality before the law and to non-discrimination. The Court, therefore, dismisses the Applicants' allegatio the Respondent State did not violate Articles 2 and 3 of the Charter as read jointly with Article 26 of the ICCPR.

ii. Alleged violation committed by the Supreme Court

84. The Applicants allege that by disregarding the applicable case-law, the Administrative Division of the Supreme Court, unjustifiably violated the principle of equality before the law.

85. They contend that while the Supreme Court dismissed their appeal, it granted their colleagues' request for enrolment into the Police Academy,

even though they were in a similar situation in terms of graduation date, length of service and rank.[29]

86. The Applicants thus submit that the Supreme Court's de breach of equality between them and their police colleagues, in violation of Article 3 of the Charter.

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87. In response, the Respondent State submits that the Supreme Court overturned its decision because it realised that it had misinterpreted the legislation governing the training of police officers.

88. It is the Respondent State's contention occurred well before the Applicants lodged their appeal, in particular by Judgment No. 186 of 7 April 2016, in which the Supreme Court dismissed the Applicants' application for regular is a general principle of public service that a public servant cannot avail himself of a right illegally obtained by another; that he who claims to have a right is required to prove it".

89. The Respondent State also submits that the Applicants are intent on misleading this Court in arguing that all other police officers benefited from the privileges, as if illegality constituted a source of rights accruing to them.

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90. The Court recalls that the right to equ persons shall be equal bef[30] In other words, court the entities responsible for applying or enforcing the law must treat all persons without discrimination.

[29] Supreme Court of Mali, Judgment No. 55 of 25 March 2010; Judgment No. 362 of November 2013 Judgment No. 93 of 17 April 2014.
[30] *Kijiji Isiaga v. United Republic of Tanzania* (merits) (21 March 2018) 2 AfCLR 218, § 85.

91. The Court observes that the principle of equality before the law does not mean that judicial institutions must necessarily deal with all cases in the same way, since the treatment of each case may depend on its specific circumstances.[31]

92. In this regard, the Court endorses the position of the European Court of Human Rights that "law is not, in itself, contrary to the case proper administration of justice; and a different understanding would amount to a failure to appreciate a dynamic and evolutionary approach, which would in turn risk impeding any reform or imp[32]

93. The Court holds, in general, that the term "recourse to" refers of opinion or behaviour. In a particular type of fact or legal relationship under litigation, it applies to any change in how a court interprets the law.

94. In the instant case, the Court notes that although the judgments of the Supreme Court cited by the Applicants regularised the situation of their colleagues who, in their opinion, were in the same situation, the Applicants do not challenge the fact that the Supreme Court, in its judgment No. 186 of 7 April 2016, had already overturned its previous decisions.

95. This Court observes that in its judgment, the Supreme Court noted that "these Applicants graduated after 31 Jul evidence that they obtained prior approval of their hierarchical authority, in accordance with Article 125 of the Law of 12 July 2010 on the Statute governing police officers".

96. The Court also notes that the Applicants do not dispute the fact that they graduated after the date of the Decree of 6 February 2006, nor do they contest that they did not obtain prior approval of their hierarchical superiors.

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[31] *Norbert Zongo & others v. Burkina Faso* (merits) (28 March 2014) 1 AfCLR 219, § 106.
[32] *Micallef v. Malta*, Application no. 17056/06, Judgment of 15 October 2009, § 51. See also, *Boubacar Sissoko and 74 others v. Mali* (merits and reparations) (2020) 4 AfCLR 641; §73. *Tiekoro Sangare and Others v. Republic of Mali,* ACtHPR, Application No. 007/2019, Judgment of 23 June 2022, (merits), § 72.

It is on this basis that the Supreme Court adopted a different interpretation of the applicable law, and, in its Judgment No. 186 of 7 April 2006, dismissed the Applicants' request for regularisation after reconsideration thereof stating the grounds for doing so

97. The Court observes that, the Supreme Court was entirely within its decision its prerogative to develop its own jurisprudence. As such, the Court does not find that the Applicants were treated unfairly or discriminated against during the proceedings before the Supreme Court.

98. In view of the foregoing, the Court dismisses the Applicants' allegations that the Respondent State, through its Supreme Court's decision, infringed upon on their rights to equality before the law and to non-discrimination. The Court thus holds that the Respondent State has not violated Articles 2 and 3 of the Charter read jointly with Article 26 of the ICCPR.

B. Alleged violation of the right of access to the public service

99. The Applicants submit that Article 125 of the Law of 12 July 20120 restricts the right to hold a public service office, protected by Article 25(c) of the ICCPR as regards the obligation to obtain prior approval of the hierarchical superiors.

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100. The Respondent State points out that the Law of 12 July 2010 on the status of police officers does not contain any provisions that are contrary to national or international legal standards, and that it is the Applicants who want the administration to apply it inappropriately.

101. The Respondent State also submits that Amadou Dembélé, one of the four Applicants and candidate in the professional competitive examination, was enrolled as a Cadet Superintendent of Police at the NPA on 16 January 2018, pursuant to Decision No. 2017-3261/MSPC-SG of 2 October 2017. According to the Respondent State, this is ample proof that it still respects

the principle of affording all citizens the opportunity to access the public service as long as they meet the prerequisites under the law.

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102. The Court recalls that Article 13(2) of the Charter provides: “ E v e r y c i t i z shall h a v e t h e r i g h t o f e q u a l a c c e s s t o t h e

103. The Court also recalls Article 25(c) of the ICCPR, which provides: “Every citizen shall have the right and the opportunity, without any of the distinctions mentioned in Article 2 and without unreasonable restrictions. (c) To have access, on general terms of equality, to public service in his country.”

104. Article 2(1) of the ICCPR on its part provides:

> Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognised in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth, or other status.

105. The Court notes that to ensure access to the public service on general terms of equality, the criteria and processes for appointment, promotion, suspension, and dismissal must be objective and reasonable.

106. The Court also considers that it is important to ensure non-discrimination against such persons in the exercise of their rights under Article 25(c) of the ICCPR, based on one of the grounds referred to in Article 2 of the same instrument.

107. The Court also notes, in the present case, that Article 125 of the Law of 12 July 2010 does not contain any ground of discrimination within the meaning of Article 2 of the ICCPR.

108. However, it is for the Court to assess whether the requirement to obtain prior approval from one's hierarchical superiors to p quest for promotion constitutes an unreasonable restriction within the meaning of Article 25(c) of the ICCPR.

109. The Court notes that Article 125 of the Law of 12 July 2010 provides that a police officer who obtains an in-service training qualification after obtaining a higher education qualification should be upgraded to a higher category after training at the police academy.

110. The Court notes that the mechanism provided for under Article 125 of the Law of 12 July 2010 does not preclude the administration from ensuring that police officers have the required skills to perform the tasks assigned to them upon completion of their training.

111. The Court considers that, in view of the competence criterion, which is a general requirement to be met in both public and private service, the hierarchical authority can reasonably be expected to give their opinion. Moreover, this opinion is not subjective, as it is based on an objective assessment, as well as on the officer's The assessment report of the concerned officers is also forwarded by their hierarchical authority to the Minister of Security to verify compliance with the relevant provisions.[33] In addition, an officer who is dissatisfied with the assessment may appeal against it.[34]

112. In view of the above, the Court considers that the requirement of obtaining prior approval in order to enrol in the National Police Academy as Cadet Superintendents and Inspectors of Police for purposes of promotion to a higher rank, does not constitute an unreasonable restriction.

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[33] The Law of 12 July 2010, Article 108: "National police officers ratings a concerned, submitted for weighting to the Minister in Charge of Security. The weighting consists of verifying compliance with the provisions of Article 108 above".

[34] *Ibid,* article 34: "When a national police officer considers that his rights have been violated, he shall have access to administrative and legal remedies."

113. Accordingly, the Court holds that the Respondent State did not violate the Applicants' right to equal access to the public services, protected by Article 13(2) of the Charter read together with Article 25(c) of the ICCPR.

C. Alleged violation of the right to promotion to a higher rank

114. The Applicants allege that their unequal treatment in relation to some of their police colleagues with the same qualifications and length of service violated their right to work. In this vein, they assert that the Supreme Court, in its judgments, regularised the situation of these colleagues while declining to promote the Applicants to a higher rank. Consequently, the Applicants alleges that the Respondent State violated Article 15 of the Charter and Article 7(c) of the ICESCR.

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115. In its Response, the Respondent State asserts that the Decree of 6 February 2006 sets out the special provisions applicable to the various senior police officers, including Superintendents and Inspectors.

116. The Respondent State further avers that Articles 14 and 15 of the aforementioned decree provide that recruitment into the corps of Police Officers and Police Inspectors shall be through training of police officers authorised to undergo training that entitles them to change categories. In addition, Police Inspectors and police officers who have successfully obtained qualifications equivalent to t the corps of Police Superintendents.

117. The same provisions also regulate the training framework, taking into account the specificity of each police corps.

118. The Respondent State further submits that a police officer must obtain authorisation in order to undertake the training. To obtain such authorisation, a police inspector or non-commissioned officer must have served at his rank for at least five years, three of which must be post-

probation, obtain the approval of the hierarchical head on the basis of the most recent scores and his intended area of specialisation, as well as be at least five years away from retirement at the end of the training.

119. The Respondent State asserts that, cont
the right to be upgraded to a higher category, guaranteed by the ICESCR, is adopted into Malian domestic law.

120. It is the Respondent State's submission that the
course of one's career are statutory rig
rights are part of the regulatory provisions under Law No. 039 of 12 July 2010 on the status of police officers, in particular Article 125, which sets the conditions for promotion, and Article 127, which sets the conditions for validating in-service education with regard, inter alia, to the criteria of length of service, favourable recommendation of their superior and prior approval to pursue further studies.

121. It asserts that none of the Applicants met the criteria spelt out in those legal provisions.

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122. The Court recalls that Article 15 of
individual shall have the right to work under equitable and satisfactory conditions and shall receive equal pay

123. The Court notes that although the above-mentioned Article 15 of the Charter does not expressly provide for the right to promotion to a higher category, it may nevertheless be interpreted in the light of Article 7(c) of the ICESCR, which provides:

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

of seniority and competence."

124. The UN Committee on Economic, Social and Cultural Rights also stated that:

> All workers have the right to equal opportunity for promotion through fair, merit-based, and transparent processes that respect human rights. The applicable criteria of seniority and competence should also include an assessment of individual circumstances, as well as the different roles and experiences of men and women, in order to ensure equal opportunities for all.[35]

125. The Court observes in the instant case that, in respect of the provisions of Articles 125[36] and 127[37] of Law No. 034 of 12 July 2010, which lay down the Malian National Police rules and regulations, that the promotion criteria for the Respondent State's police offi competence, which is in accordance with Article 7 of the ICESCR.

126. The Court notes that the Applicants, as at the date of the decree of 6 February 2006, had not met these criteria for enrolling in the police Superintendents training program as they obtained their Masters' degrees only after the effective date of the decree.

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[35] UN Committee on Economic, Social and Cultural Rights (CESCR), General comment No 23 (2016) on the right to just and favourable conditions of work (Article 7 of the International Covenant on Economic, Social and Cultural Rights), 7 April 2016, § 31.

[36] Article 125: To be promoted to a higher category through training, a police officer is required to have successfully completed studies at a level corresponding to the category to which he/she is being promoted. To be eligible to undertake the training referred to in the previous paragraph, the police officer must have: Received a favourable evaluation from the hierarchical authority, based in particular on his or her most recent performance appraisal and the speciality of the corps to which he or she is planning to be promoted; ».

[37] Article 127 reads: In order to lead to promotion, in-service training shall be a discipline which corresponds to one of the specializations of the Police; furthermore, it shall be justified by need, and undertaken by officers in service or on secondment. The training undertaken shall allow the officer, depending on the diploma obtained, to get an advancement to the next higher grade, or to a higher category which corresponds to the diploma obtained. Promotion resulting from the said training, shall not, in any way, pave the way for access to a higher category in the same corps. To benefit from the right to advancement to a higher grade, the training duration shall not be less than two (2) years. »

127. The Court also notes that the Applicants do not meet the requirement of seniority under the above-mentioned articles.

128. It, therefore, dismisses the Applicants' allegations a Respondent State did not violate their rights under Article 15 of the Charter and Article 7(c) of the ICESCR in respect of promotion to a higher category.

D. Alleged violation of the right to education

129. The Applicants aver that the right to education enshrined in Articles 17(1) of the Charter, 13(2)(c) of the ICESCR and 1 and 2 of the UNESCO Convention against discrimination in education is an unconditional right afforded to every person who aspires to acquire knowledge for a better and brighter future.

130. They further submit that Article 125 of the Law of 12 July 2010 violates the right to education insofar as it requires police officers to obtain prior approval of their hierarchical head before enrolling in the national police academy in order to be promoted to a higher category, failing which the administration will not recognise the qualification obtained.

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131. The Respondent State submits in its reply that the Law of 12 July 2010 only spells out the rules applicable to serving police officers who wish to pursue further studies for purposes of reclassification.

132. It further argues that it is within th determine how the training will be provided, by clarifying the requirements, without violating its international obligations. It submits, therefore, that the Court should dismiss the Applicant's pr

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133. The Court observes that the right claimed by the Applicants is not guaranteed by Article 17(1) of the Charter, which provides that: " Every individual shall have the right to educa the ICESCR, which states that: "Higher education shall be made equally accessible to all, on the basis of capacity, by every appropriate means, and in particular by the progressive introduction of free education."

134. The Court notes that access to higher education, as guaranteed by Article 13(2)(c) of the ICESCR, must be non-discriminatory and based on the individual ability of every citizen.

135. The Court further notes in this regard that while the Applicants allege violation of Articles 1 and 2 of the UNESCO Convention against discrimination in education,[38] their claim actually revolves around Article 1 of the said treaty which provides:

> For the purposes of this Convention, the distinction, exclusion, limitation, or preference which, being based on race, colour, sex, language, religion, political or other opinion, national or social origin, economic condition, or birth, has the purpose or effect of nullifying or impairing equality of treatment in education and in particular:
>
> (a) of depriving any person or group of persons of access to education of any type or at any level;
>
> (b) of limiting any person or group of persons to education of an inferior standard; .

136. In light of the above provisions, the Court notes that the requirement to obtain prior approval to pursue further studies for one's qual recognised does not constitute a discriminatory act within the meaning of Article 1 of the UNESCO Convention against discrimination in education, insofar as it is a legal provision applicable to all police officers and there is nothing to indicate that this provision violates the right to education.

[38] The Republic of Mali ratified the UNESCO Convention on 7 December 2007.

137. Furthermore, as regards the requirement
Court notes that, as regards access to higher education, Article 125 of the Law of 12 July 2010 takes into account length of service and rank, which is fully in compliance with the provisions of Article 13(2)(c) of the ICESCR.

138. The Court finds, therefore, that the Respondent State did not violate the Applicants' right of access to higher protected under Article 17(1) of the Charter, 13(2)(c) of the ICESCR and 1 of the UNESCO Convention against discrimination in education by implementing Article 125 of the Law of 12 July 2010.

VIII. REPARATIONS

139. Article 27(1) of the Protocol provides as follows:

> If the Court finds that there has been
> right, it shall make appropriate orders to remedy the violation, including the payment of fair compensation or reparation.

140. The Court notes that in the present case, no violation has been found, so that there is no need to consider prayers made by the Parties or order any reparations.

IX. COSTS

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

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142. The Respondent State prays the Court to order the Applicants to bear the full costs.

143. Rule 32(2) of the Rules provides that "unless the Court, each party shall bear its own costs, if any".

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144. The Court considers, in the present case, that there is no reason to depart from the above provision and thus decides that each Party shall bear its own costs.

X. OPERATIVE PART

145. For these reasons,

The Court,

Unanimously,

On jurisdiction

i. *Declares* that it has jurisdiction.

On admissibility

ii. *Dismisses* the objections to admissibility;
iii. *Declares* the Application admissible.

On merits

iv. *Holds* that the Respondent State did not violate the right to equality before the law, the right to equal protection of the law and to non-discrimination provided for in Articles 2 and 3 of the Charter read jointly with Article 26 of the ICCPR;