


AFRICAN UNION		UNION AFRICAINE
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AFRICAN COURT ON HUMAN AND PEOPLES' RIGHTS COUR AFRICAINE DES DROITS DE L'HOMME ET DES PEUPLES		

MATTER OF

LAURENT GBAGBO

V.

REPUBLIC OF CÔTE D'IVOIRE

APPLICATION NO. 025/2020

JUDGMENT

26 JUNE 2025



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

In the matter of

GBAGBO Laurent,

represented by

Barrister Claude MENTENON

Lawyer at the Bar of Côte d'Ivoire

versus

REPUBLIC OF CÔTE D'IVOIRE

Not represented

After deliberation,

renders the present Judgment.

I. THE PARTIES

1. Mr Laurent GBAGBO (hereinafter referred to as “the Applicant”), is a national of Côte d'Ivoire and its former President. He challenges the violation of his right to participate freely in the government of his country in that his name was removed from the voters' register in the 2020 elections.

2. The Application is filed against the Republic of Côte d'Ivoire (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 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 referred to as "the Protocol"), on 25 January 2004. The Respondent State also deposited, on 23 July 2013, the Declaration provided for in Article 34(6) of the Protocol (hereinafter referred to as "the Declaration") by virtue of which it accepted the jurisdiction of the Court to receive applications from individuals and Non-Governmental Organizations having observer status before the African Commission on Human and Peoples' Rights. On 29 April 2020, the Respondent State deposited with the Chairperson of the African Union Commission an instrument of withdrawal of the said Declaration. The Court has ruled that this withdrawal has no effect either on pending cases or on new cases filed before the entry into force of the withdrawal one year after its deposit, in this case, on 30 April 2021.¹

II. SUBJECT OF THE APPLICATION

A. Facts of the matter

3. The Applicant avers that having discovered on 4 August 2020 that his name had been removed from the voters' register, he submitted, on the following day, a request to the Independent Electoral Commission (hereinafter referred to as "IEC") seeking to be reinstated in the said register. On 18 August 2020, the IEC declared his request inadmissible.
4. He appealed against the said decision before the Abidjan Court of First Instance (hereinafter referred to as "the Abidjan CFI"), which on 25 August

¹ *Kouadio Kobena Fory v. Republic of Côte d'Ivoire* (merits and reparations) (2 December 2021) 5 AfCLR 682, § 2; *Suy Bi Gohoré Émile and Others v. Republic of Côte d'Ivoire* (merits and reparations) (15 July 2020) (merits and reparations) 4 AfCLR 406, § 67.

2020, dismissed his appeal pursuant to Article 4 of Ordinance No. 2020-356 of 8 April 2020 amending the Electoral Code. The Abidjan CFI held that the Applicant had been sentenced in absentia to 20 years' imprisonment and a fine of 10,000,000 CFA francs by the Abidjan Magistrate's Court for conspiracy in group armed robbery and embezzlement of public funds.

5. Following this decision confirming his removal from the voter's register on account of the above-mentioned conviction and against which, as it emerges from the record, no local remedy was available, the Applicant seized this Court, believing that the situation was in violation of his civil and political rights.

B. Alleged violations

6. The Applicant alleges violation of the following rights:
 - i. the right to equality before the law and equal protection of the law, protected by Article 3 of the Charter;
 - ii. the right to a fair trial, including the right to the presumption of innocence, protected by Article 7(1)(b) of the Charter;
 - iii. the right to participate freely in the government of one's country, protected by Article 13(1) of the Charter;
 - iv. the right of access to the public service of his country, protected by Article 13(2) of the Charter;
 - v. the right to vote and to be elected, protected by Article 25 of the International Covenant on Civil and Political Rights (hereinafter referred to as "ICCPR").

III. SUMMARY OF THE PROCEDURE BEFORE THE COURT

7. On 7 September 2020, the Application was filed at the Registry of the Court together with a request for provisional measures, which were served on the Respondent State for its Response within 90 days and 72 hours respectively.

8. At the lapse of the 72-hour time-limit, the Respondent State had not filed a response to the request for provisional measures.

9. On 25 September 2020, the Court issued a Ruling on provisional measures *suo motu*, the operative part of reads:

Orders the Respondent State to:

- i. Stay the inclusion of the Applicant's criminal conviction and sentence in the criminal record until the Court decides on the merits of the main Application;
- ii. Take all necessary steps to immediately remove all obstacles preventing the Applicant from enrolling in the voters' register;
- iii. Report to the Court within fifteen (15) days from the date of notification of this Ruling on the implementation of the provisional measures ordered.

10. The said Ruling was transmitted to the Parties the same day.

11. At the lapse of the time-limit of 90 days, the Respondent State had not filed a response to the Application. On 20 December 2020, the Registry drew the attention of the Respondent State to Rule 63(1) of the Rules of Court (hereinafter referred to as "the Rules"),² which provides that the Court may render a judgment in default. The Respondent State was then granted an extension of 45 days. At the expiry of the 45-day extension the Respondent State did not file its Response to the Application.

12. Pleadings were closed on 21 October 2024 and the Parties were duly notified.

² Rule 55 of the Rules of Court of 2 June 2010.

IV. PRAYERS OF THE PARTIES

13. The Applicant prays the Court to order the Respondent State to:

- i. Take all necessary measures to annul Ordinance No. 2020-356 of 25 August 2020 issued by the presiding judge of the Abidjan CFI ruling at last instance on electoral matters, and its legal effects, with the effect of lifting all measures restricting his civil and political rights;
- ii. Expunge from his criminal record, or if necessary, refrain from mentioning therein the criminal conviction by default No. 5200/2019 of 29 October 2019 which is not yet final.

14. The Respondent State did not file its Response and did not make any prayers.

V. DEFAULT BY THE RESPONDENT STATE

15. Rule 63(1) of the Rules provides that:

Whenever a party does not appear before the Court or fails to defend its case within the period prescribed by the Court, the Court may, on the application of the other party, or of its own motion, enter judgment in default after it has satisfied itself that the defaulting party has been duly served with the application and all other documents pertinent to the proceedings.

16. The Court notes that the above-mentioned Rule 63(1) lays down three conditions for the delivery of a judgment in default, namely: (i) notification of the application and the pertinent documents to the defaulting party, in the instant case the Respondent State; (ii) failure by the Respondent State to enter an appearance or to file a response; and (iii) a request by the other party or a decision on the Court's own motion.

17. As regards notification of the application and the pleadings, the Court recalls that in the instant case, the Application and the pleadings were served on the Respondent State on 9 September 2020 for its Response within 90 days. The Court finds that the Respondent State was duly notified.
18. As regards the second condition relating to the Respondent State failing to enter an appearance or to file a response, the Court notes that the Respondent State was not represented in the present proceedings and it also failed to file a response to the Application notwithstanding that it was granted an initial time-limit of 90 days and extension of 45 days subsequently. The Court finds that the Respondent State thus failed in its obligation to defend its case.
19. Finally, the Court notes that Rule 63(1) of the Rules empowers it to render a judgment in default either on its own motion or at the request of the other party. In the instant case, the Court decides *suo motu* in the interests of justice, to render a default judgment.
20. In light of the foregoing, the Court renders this judgment by default.³

VI. JURISDICTION

21. The Court notes that Article 3 of the Protocol provides that:
 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.

³ *Fory v. Côte d'Ivoire supra*, § 15-21.

22. Rule 49(1) of the Rules provides that “the Court shall ascertain its jurisdiction and the admissibility of an Application in accordance with the Charter, the Protocol and these Rules”.
23. Based on the abovementioned provisions, the Court must, in each application, conduct a preliminary examination of its jurisdiction and rule on any objections thereto, if necessary.
24. In the instant case, the Respondent State having defaulted, does not raise any objection to the Court’s material, temporal, personal and territorial jurisdiction. Nevertheless, the Court must ensure that its jurisdiction is established with respect to these aspects. Having found that there is nothing in the record to indicate that it lacks jurisdiction, the Court finds that it has:
- i. Material jurisdiction, insofar as the Applicant alleges violations of human rights protected by the Charter and the ICCPR.⁴
 - ii. Personal jurisdiction insofar as the Respondent State deposited the Declaration on 23 July 2013, as indicated in paragraph 2 of this judgment. On 29 April 2020, it deposited the instrument of withdrawal of the said Declaration. In this regard, the Court recalls its jurisprudence that the withdrawal of the Declaration has no retroactive effect and has no bearing on cases pending at the time of the deposit of the instrument of withdrawal, nor on new cases filed before the withdrawal takes effect one year after its deposit, in this case, on 30 April 2021. As the present Application was filed on 19 February 2021, that is, two month and eleven days before the effective date of the withdrawal of the Declaration, it is therefore not affected.
 - iii. Temporal jurisdiction, insofar as the violations alleged by the Applicant occurred after the Respondent State became a Party to the Protocol.⁵
 - iv. Territorial jurisdiction, insofar as the violations occurred in the territory of the Respondent State, which is a Party to the Charter and the Protocol.

⁴ *Alex Thomas v. United Republic of Tanzania* (merits) (20 November 2015) 1 AfCLR 465, § 45; *Kouassi Kouamé Patrice and Baba Sylla v. Republic of Côte d’Ivoire*, ACtHPR, Application No. 015/2021, Judgment of 22 September 2022 (merits and reparations), § 23; *Fory v. Côte d’Ivoire*, *supra*, § 26.

⁵ *Fory v. Côte d’Ivoire*, *ibid.*, § 27.

25. In light of the foregoing, the Court considers that it has jurisdiction to entertain the present Application.

VII. ADMISSIBILITY

26. Article 6(2) of the Protocol provides:

The Court shall rule on the admissibility of cases taking into account the provisions of Article 56 of the Charter.

27. Under Rule 50(1) of its Rules,

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.

28. 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;
- 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; and

- g. Do not deal with cases which have been settled by the 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.

- 29. The Court notes that, having defaulted, the Respondent State does not raise any objection. Nonetheless, pursuant to Rule 50(1) of the Rules, the Court must ensure that the requirements under the above-mentioned provisions are met.
- 30. The Court notes that the Applicant submits that his Application complies with the admissibility requirements under Rule 50(2)(a) to (g) of the Rules.
- 31. It emerges from the record that the Applicant has been clearly identified by name, in accordance with Rule 50(2)(a) of the Rules.
- 32. The Court also notes that the Applicant's claims seek to protect his rights under the Charter. It notes, in fact, that one of the objectives of the Constitutive Act of the African Union (hereinafter referred to as "the Constitutive Act"), as set out in Article 3(h) thereof, is the promotion and protection of human and peoples' rights. Moreover, there is nothing in the record that is incompatible with the Constitutive Act. The Court therefore finds that the Application meets the requirement of Rule 50(2)(b) of the Rules.
- 33. The Court further notes that the Application is not drafted in language that is disparaging or insulting to the Respondent State, it therefore complies with Rule 50(2)(c) of the Rules.
- 34. The Court also observes that the Application is not based exclusively on news disseminated by the mass media, but on judicial documents emanating from the Respondent State's domestic courts. The Court

therefore finds that the Application complies with Rule 50(2)(d) of the Rules.⁶

35. As regards the requirement of exhaustion of local remedies, the Court recalls that it has consistently held that the remedies to be exhausted in order to comply with the requirement of Rule 50(2)(e) of the Rules are judicial remedies,⁷ unless these are unavailable, ineffective and insufficient or the procedure is unduly prolonged.⁸
36. The Court notes that, in matters relating to disputes concerning registration on the voters' register in the Respondent State, any interested person may seize the IEC to challenge its decision. If not satisfied with the IEC's decision, the interested person may file an appeal before the Abidjan CFI which is the court of last instance, in accordance with Article 12(8) of the Ivorian Electoral Code.
37. The Court observes that after the Applicant was informed that his name had been removed from the voters' register, he lodged a complaint with the IEC on 4 August 2020, challenging the removal of his name from the register. According to the Applicant, the IEC, declared the request inadmissible by decision of 18 August 2020.
38. The Court notes that on 20 August 2020, the Applicant appealed the said decision before the Abidjan CFI which, by Ruling No. RG 3S05/2020 of 25 August 2020, dismissed his appeal.
39. The Court observes that under Article 12 of Ordinance No. 2020-356 of 8 April 2020 revising the Electoral Code, the Abidjan CFI is the court of last resort in electoral matters. Accordingly, the Applicant exhausted local remedies insofar as the judgment of the Abidjan Court of First Instance is not subject to appeal.

⁶ *Patrice and Sylla v. Republic of Cote d'Ivoire*, *supra*, § 55.

⁷ *Fory v. Côte d'Ivoire*, *supra*, § 47.

⁸ *Ibid.*

40. In view of the foregoing, the Court finds that the Applicant exhausted local remedies and thus the Application satisfies the requirement of Rule 50(2)(e) of the Rules.
41. As regards the requirement to file an application within a reasonable time after exhaustion of local remedies, the Court recalls that assessment of reasonable time for referral depends on the particular circumstances of each case.⁹ It has held, in particular, that where the period in question is relatively short, the period is regarded as manifestly reasonable.¹⁰
42. In this regard, the Court recalls that local remedies were exhausted on 25 August 2020, the date the Abidjan CFI rendered its decision. This date is therefore the starting point to determine reasonable time for referral.
43. The Court notes that between 25 August 2020 and 7 September 2020 when the present Application was filed, 13 days elapsed. The Court finds that the time taken to seize the Court is manifestly reasonable within the meaning of Article 56(6) of the Charter. The Application therefore meets the admissibility requirement under Rule 50(f) of the Rules.
44. Finally, as regards the admissibility requirement under Article 50(g) of the Rules, the Court finds that there is nothing in the record to indicate that the application concerns a matter that has already been settled by the Parties in accordance with the principles of the Charter of the United Nations, the Constitutive Act, the provisions of the Charter or any legal instrument of the African Union. Accordingly, the Court finds that the Application complies with Article 56(7) of the Charter and Rule 50(2)(g) of the Rules.

⁹ *Beneficiaries of the late Norbert Zongo and Others v. Burkina Faso*, (merits) (24 June 2014) 1 AfCLR 219, § 92; *Thomas v. Tanzania* (merits), *supra*, § 73; *Boniface Aristedes v. United Republic of Tanzania*, AfCHPR, Application No. 025/2018, Judgment of 5 February 2025 (merits and reparations), § 49.

¹⁰ *Niyonzima Augustine v. United Republic of Tanzania*, AfCHPR, Application No. 058/2016, Judgment of 5 September 2023 (merits and reparations), § 55; *Ligue ivoirienne des droits de l'homme (LIDHO) and Others v. Republic of Côte d'Ivoire*, AfCHPR, Application No. 041/2016, Judgment of 5 September 2023 (merits and reparations), § 105, *Kanté and Others v. Republic of Mali* (Admissibility) (25 June 2021) 5 AfCLR 222, § 36, *Komi Koutché v. Republic of Benin* (jurisdiction and admissibility), (26 September 2021) 5 AfCLR 231, § 36.

45. In view of the foregoing, the Court finds that the Application meets all the admissibility requirements under Rules 50(2)(a) and 50(2)(g) of the Rules and therefore declares it admissible.

VIII. MERITS

46. The Court notes that the Applicant alleges violation of the right to full equality before the law and equal protection of the law (A), the right to the presumption of innocence (B), the right to participate freely in the government of his country (C), the right to access the public service of his country (D), and the right to vote and to be elected (E).

47. The Court will examine these allegations successively.

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

48. The Applicant alleges that the Respondent State violated his right to equality before the law and his right to equal protection of the law, protected by Article 3 of the Charter and Article 26 of the ICCPR.

49. Having defaulted, the Respondent State did not file any submission.

50. Article 3 of the Charter provides:

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

51. Article 26 of the ICCPR provides:

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

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

52. The Court notes that the provisions of Article 3 of the Charter guarantee the rights protected by Article 26 of the ICCPR, and that it is necessary to examine the alleged violation of the Charter in conjunction with the ICCPR.
53. The Court emphasises that this instrument enshrines the rights to equality before the law and equal protection of the law, which are inseparable from the right to non-discrimination.¹¹
54. The Court recalls its established jurisprudence that the right to equality before the law means that all persons are equal before the courts and tribunals, which means that the authorities responsible for executing or enforcing the laws do so without discrimination.¹²
55. With regard to the right to equal protection of the law, it means that the law must prohibit discrimination and guarantee equal and effective protection against discrimination for all persons.¹³
56. The Court further notes that, in accordance with its established jurisprudence, the rights to equality before the law and equal protection of the law do not mean that the courts must necessarily deal with all cases in the same way, since the examination of cases depends on their particular circumstances.¹⁴
57. The Court recalls that it is a general principle of law that the burden of proof of a human rights violation lies with the alleging party.¹⁵

¹¹ *Issiaka Keïta and Others v. Republic of Mali*, AfCHPR, Application No. 005/2019, Judgment of 5 September 2023 (merits and reparations), § 90.

¹² *Keïta and Others v. Mali*, *supra*, § 91; *Kijiji Isiaga v. United Republic of Tanzania* (merits) (2018) 2 AfCLR 218, § 84-85; *Oumar Mariko v. Republic of Mali*, AfCHPR, Application No. 029/2018, Judgment of 24 March 2022 (merits and reparations), § 101.

¹³ *Keïta and Others v. Mali*, *supra*, § 92.

¹⁴ *Norbert Zongo and Others v. Burkina Faso* (merits) (28 March 2014) 1 AfCLR 219, § 167.

¹⁵ *Thomas v. Tanzania* (merits), *supra*, § 492; *Deogratious Nicolaus Jeshi v. Republic of Tanzania*, AfCHPR, Application No. 017/2016, Judgment of 13 February 2024 (merits and reparations), *supra*, § 24.

58. The Court notes that in the instant case, the Applicant has failed to prove that he was the victim of unequal treatment before the law, or of unequal protection of the law. In any event, there is no evidence on the record that his case was treated differently from those of other persons in a similar situation.¹⁶
59. Accordingly, the Court finds that, within the context of the 2020 elections, the Respondent State did not violate the Applicant's rights to equality before the law and equal protection of the law, protected by Article 3 of the Charter read in conjunction with Article 26 of the ICCPR.

B. Alleged violation of the right to the presumption of innocence

60. The Applicant submits that, in the proceedings brought against him, the Respondent State violated his right to a fair trial notably, the aspect of presumption of innocence. According to the Applicant, the Respondent State violated his right to the presumption of innocence, in particular connection with the electoral dispute.
61. First of all, he avers that on 2 November 2017, the Public Prosecutor of the Abidjan CFI issued a summons for him to appear in court on account of the armed robbery committed at the Central Bank of West African States (BCEAO).
62. The Applicant submits that, as he was then in detention in Scheveningen in the Netherlands in connection with proceedings before the International Criminal Court, he was unable to attend the hearing on 21 November 2017 before the Abidjan CFI or subsequent hearings. As a result, he was tried in absentia and sentenced to 20 years in prison and a fine of 10, 000 000 CFA francs for gang theft and illegal possession of weapons, by judgment of 18 January 2018.

¹⁶ *Andrew Ambrose Cheusi v. Republic of Tanzania* (merits) (26 June 2020) 4 AfCLR 219, § 129.

63. The Applicant further avers that he filed an appeal, but on 29 October 2019, the Abidjan Magistrate's Court issued a judgment in default, since he was still unable to appear. He points out that the BCEAO withdrew its motion to join the proceedings as a civil party.
64. He also alleges that in the context of the electoral dispute, even before an irrevocable decision was made on his eligibility, the electoral judge had considered him "irremediably guilty" while the time-limits for appealing the default judgment had not expired.
65. The Applicant further avers that on 16 August 2020, the President of the IEC, a magistrate by training, publicly stated on several Ivorian television channels, including NCI and RTI 1, that his criminal conviction had become irrevocable due to the refusal of his lawyers to be served with the default judgment. According to the Applicant, the President of the IEC was thus preparing public opinion for the dismissal of his complaint following the removal of his name from the voters' register.
66. The Respondent State did not file any submission.
67. Article 7(1)(b) of the Charter provides:

Every individual shall have the right to have his cause heard. This comprises [...] the right to be presumed innocent until proved guilty by a competent court or tribunal.

68. The Court recalls that the right to the presumption of innocence means that any person suspected or accused of an offence is presumed not to have committed it as long as his guilt has not been established by a final judicial decision.¹⁷ In this sense, the scope of the right to the presumption of

¹⁷ *Conaïde Togla Latondji Akouedenoudje v. Republic of Benin*, AfCHPR, Application No. 024/2020, Judgment of 13 June 2023, § 62.

innocence covers the entire procedure from the arrest of the accused person to the pronouncement of the decision.¹⁸

69. The Court has also held that respect for the presumption of innocence is not only binding on criminal court, but also on all other judicial, quasi-judicial and administrative entities.¹⁹

70. The Court notes that the Applicant predicates his complaint on the fact that the electoral court rendered its decision on the strength of a judicial decision that was not yet final. The Applicant therefore submits that the confirmatory judgment rendered by Abidjan CFI, the highest court in electoral matters, was vitiated by an error.

71. The Court observes that the IEC is legally obliged to apply the provisions of the Electoral Code. In the present case, it applied Article 4 of the Electoral Code, which stipulates that

[I]ncapacitated or unworthy persons may not be voters, in particular:
Individuals convicted of crimes; individuals sentenced to a suspended prison sentence for theft, fraud, breach of trust, embezzlement of public funds, forgery and use of forgery, corruption and influence peddling, as well as for indecent assault.

72. The Court notes that in the instant case, under the above-mentioned instrument, both the IEC and the Abidjan CFI rely on judicial decisions to determine the standing of a voter. They however cannot, without exceeding their prerogatives, question the finality of a judgment to which are attached the legally required documents attesting thereto.

73. The Court further notes that it emerges from the record that the default judgment on which the Abidjan CFI relied to confirm the decision to remove

¹⁸ *Sébastien Germain Ajavon v. Republic of Benin* (merits) (29 March 2019) 3 AfCLR 130, § 190; *Houngué Éric Noudéhouenou v. Republic of Benin*, (4 December 2020) 4 AfCLR 749, § 100.

¹⁹ *Ajavon v. Benin*, *ibid*, § 192; *Noudéhouenou v. Benin*, *ibid*, § 101.

the Applicant's name from the voter' register was accompanied by a certificate of no opposition or non-appeal.²⁰

74. The Court therefore considers that the IEC complied with the applicable legal provisions and drew the appropriate conclusions from a pre-existing judicial decision. It follows that its decision cannot therefore be considered to have occasioned the violation of the Applicant's right to the presumption of innocence.

75. Accordingly, the Court considers, that the Respondent State did not violate the Applicant's right to defence protected under Article 7(1)(b) of the Charter with regard to the presumption of innocence.

C. Alleged violation of the right to freely participate in government

76. The Applicant alleges violation of the right to participate freely in the government of his country, contending that he could be declared ineligible only if his conviction had acquired the force of *res judicata*. It is his case, however, that the default judgment 29 October 2019 did not meet this criterion, insofar as it was not duly served, and the remedies remained open.

77. The Respondent State did not file any submission.

78. Article 13 of the Charter provides:

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.

²⁰ Under Ivorian law, the certificate of non-opposition or appeal is a registry document issued to establish that no appeal has been lodged within the legal time limits against a court decision. Although it is not mentioned verbatim in an article of law as such, its issuance is based on several legal bases implicit in the Code of Civil, Commercial and Administrative Procedure of Côte d'Ivoire.

79. The Court recalls, in line with its jurisprudence, that the right to participate freely in the government of one's country is an essential tenet of democracy and that any restriction on its enjoyment must be justified, necessary and proportionate.²¹ It also emphasizes that the requirements for contesting elections must not be excessively restrictive or unfairly prevent some citizens from running.²²
80. The Court further recalls that any restriction on a fundamental right is subject to strict conditions, in particular the restriction imposed must (i) be provided for by law; (ii) pursue a legitimate aim; and (iii) be proportionate to the legitimate aim pursued.²³
81. Thus, in line with the principles of international human rights law, the restriction must be provided for by an accessible, clear and predictable law enacted by a competent authority. This requirement seeks to prevent arbitrariness and to ensure that citizens can know in advance the legal consequences of their actions. In addition, the restriction must pursue a legitimate objective, such as the protection of public order, national security, public health or morals, or the rights and freedoms of others. Finally, any restriction in a democratic society must be necessary and proportionate. This means that it must not go beyond what is strictly required to achieve the legitimate objective pursued. In other words, the State must demonstrate that to achieve the same result such a measure is the least prejudicial to fundamental rights.
82. In addition, the Court endorses General Comment No. 25 of the UN Human Rights Committee, according to which the right to participate freely in government may be subject to legal restrictions, including in the case of criminal conviction for serious offences, in order to preserve the integrity of

²¹ *Reverend Chrisotpher Mtikila v. United Republic of Tanzania* (merits) (14 June 2013) 1 AfCLR 74, § 106.

²² *Actions for the Protection of Human Rights v. Republic of Côte d'Ivoire* (merits) (18 November 2016) 1 AfCLR 668, § 136.

²³ *Lohe Issa Konate v. Burkina Faso* (merits) (5 December 2014) 1 AfCLR 314, §133; *Ingabire Victoire Umuhuza v. Republic of Rwanda* (merits) (24 November 2017), 2 AfCLR 165, §133.

democratic institutions. These limitations are intended to maintain public confidence in the political system and to ensure that elected representatives adhere to high ethical standards.

83. In the instant case, the Court notes that the restriction that the Applicant contests is provided for by Article 4 of Ordinance No. 2020-356 of 8 April 2020 revising the Electoral Code. The said restriction also pursues a legitimate aim, as it seeks to guarantee the integrity and credibility of the electoral process. It seeks to safeguard public morality by excluding persons whose conduct has seriously undermined public order or fundamental societal values. In this sense, it helps to protect the legitimacy of the electorate, to prevent abuses, and to affirm the link between responsible citizenship and respect for essential social norms.
84. The Court further observes that the restriction in question strikes a reasonable balance between the objective pursued and the restriction of the protected right, insofar as it is neither general nor automatic, but is the result of a court decision. In the instant case, the Court observes that the electoral court, having considered the criminal decision as final, ruled on the basis of a judicial decision whose irrevocability it could not challenge. It follows that, on the strength of this irrevocable conviction, the Applicant's right to participate in political affairs may be subject to restrictions on the basis of his conviction.
85. In the light of the foregoing, the Court finds that the restrictions imposed on the Applicant are within the applicable legal and normative framework and do not constitute a violation of his right to participate freely in government.
86. Accordingly, the Court finds that the Respondent State did not violate the Applicant's right to participate freely in the government of his country, protected by Article 13(1) of the Charter.

D. Alleged violation of the right of equal access to the public services of his country

87. The Applicant alleges the violation of his right of access to the public services of his country.
88. The Respondent State did not file a response.
89. Article 13(2) of the Charter provides:

Every citizen shall have the right of equal access to the public service of his country.

90. The Court notes that the Applicant alleges the violation of his right of access to the public services. However, he does not adduce any evidence in support of this allegation.
91. The Court recalls the principle which holds that he who claims a right must prove that it exists.²⁴ As the Applicant merely makes an allegation without providing proof, the Court, cannot adduce evidence on behalf of the Applicant.
92. Accordingly, the Court finds no basis to find the Respondent State violated the Applicant's right of access to the public services of his country, as protected by Article 13(2) of the Charter.

E. Alleged violation of the right to vote and to be elected

93. The Applicant alleges violation of the right to vote and to be elected.
94. The Respondent State did not file a response.

²⁴ *Lohé Issa Konaté v. Burkina Faso* (reparations) (3 June 2016) 1 AfCLR 346, §§ 52-59; *Sébastien Germain Marie Aïkoué Ajavon v. Republic of Benin* (merits and reparations) (29 March 2021) 5 AfCLR 94, § 140.

95. Article 25(b) of the ICCPR provides:

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

(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.

96. The Court reiterates the principle that the burden of proving a human rights allegation lies with the applicant.²⁵ In the present case, the Applicant has not adduced any argument in support of the allegation of a violation of the right to vote and to be elected. The Court therefore considers that the related allegation is unfounded.

97. Accordingly, the Court finds that the Respondent State did not violate the Applicant's right to vote and to be elected protected by Article 25 of the ICCPR.

IX. REPARATIONS

98. The Applicant prays the Court to order the Respondent State to take all necessary measures to annul Order No. 2020-356 of 25 August 2020 issued by the President of the Abidjan CFI ruling on electoral matters.

99. He also prays the Court to order that the legal effects of that order be erased.

100. He therefore prays that all measures restricting his civil and political rights be lifted.

²⁵ *Konaté v. Burkina Faso*, *ibid*; *Ajavon v. Benin*, *ibid*, § 140.

101. Finally, the Applicant prays the Court to order that reference to the criminal conviction in absentia No. 5200/2019 of 29 October, which is not yet final, be expunged from his criminal record, or failing that, suspended.

102. The Respondent State did not respond.

103. Article 27(1) of the Protocol states that “If the Court finds that there has been a violation of a human or peoples’ right, it shall make appropriate orders to remedy the violation, including the payment of fair compensation or reparation”.

104. The Court recalls, in line with its established jurisprudence, that reparations are granted only if, first, the responsibility of the Respondent State for an internationally wrongful act is established and, second, if the causal link between the wrongful act and the alleged injury is established.²⁶

105. Having found that none of the Applicant’s rights was violated, the Court dismisses his requests for reparation.

X. COSTS

106. The Applicant did not pray for costs.

107. Having defaulted, the Respondent State did not submit on costs.

108. Under Rule 32(2) of the Rules, “[u]nless otherwise decided by the Court, each Party shall bear its own costs”.

²⁶ *XYZ v. Republic of Benin* (judgment) (27 November 2020) 4 AfCLR 49, § 158; *Sébastien Germain Ajavon v. Republic of Benin* (reparations) (28 November 2019) 3 AfCLR 196, §§ 17 and 69; *Nguza Viking (Babu Seya) and another v. United Republic of Tanzania* (reparations) (8 May 2020) 4 AfCLR 3, § 15 and *Amir Ramadhani v. United Republic of Tanzania* (reparations) (25 June 2021) 5 AfCLR 303, § 20.

109. In the instant case, the Court decides that the Applicant shall bear his costs.

XI. OPERATIVE PART

110. For these reasons:

THE COURT,

Unanimously

By default, in relation to the Respondent State

Jurisdiction

- i. *Declares* that it has jurisdiction.

Admissibility

- ii. *Declares* the Application admissible.

Merits

- iii. *Holds* that the Respondent State did not violate the Applicant's right to equality before the law and equal protection of the law, as protected by Article 3 of the Charter, read in conjunction with Article 26 of the ICCPR;
- iv. *Holds* that the Respondent State did not violate the Applicant's right to the presumption of innocence, guaranteed by Article 7(1)(b) of the Charter.
- v. *Holds* that the Respondent State did not violate the Applicant's right to participate in the government of his country, protected by Article 13(1) of the Charter.

- vi. *Holds that the Respondent State did not violate the right of access to the public services of one's country, protected by Article 13(2) of the Charter;*
- vii. *Holds that the Respondent State did not violate the right to vote and to be elected, protected by Article 25(b) of the ICCPR.*


Reparations

- viii. *Dismisses the Applicant's prayer to stay execution of Order RG 3505/2020 of 25 August 2020 issued by the Abidjan CFI confirming the removal of the Applicant's name from the voter' register;*
- ix. *Dismisses the request for vacation of the criminal conviction and the request for stay of execution of the said sentence.*

Costs

- x. *Holds that the Applicant shall bear his own costs.*


Signed:

Modibo SACKO, President; 

Chafika BENSAOULA, Vice President; 

Rafaâ BEN ACHOUR, Judge; 

Suzanne MENGUE, Judge; 

Tujilane R. CHIZUMILA, Judge; 

Blaise TCHIKAYA, Judge; 

Stella I. ANUKAM, Judge; 

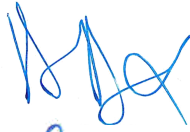
Imani D. ABOUD, Judge;



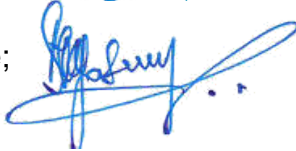
Dumisa B. NTSEBEZA, Judge;



Dennis D. ADJEI, Judge;



Duncan GASWAGA, Judge;



and Robert ENO, Registrar.



Done at Arusha, this twenty-sixth day of the month of June in the year two thousand and twenty-five, in English and French, the French text being authoritative.

