



COMMUNITY COURT OF JUSTICE, ECOWAS
COUR DE JUSTICE DE LA COMMUNAUTE, CEDEAO
TRIBUNAL DE JUSTICA DA COMUNIDADE, CEDEAO

In the Case of

ABDOURAHAMANE SANOH and 7 Ors v. STATE OF GUINEA

Suit No.: ECW/CCJ/APP/38/19

BADARA ALIOU CHEIKNA KONE v STATE OF GUINEA

Suit n° ECW/CCJ/APP/49/19

Judgment No. ECW/CCJ/JUD/13/25 (Consolidated)

JUDGMENT

ABUJA

17th March, 2025

JUDGMENT No. ECW/CCJ/JUD/13/25

1. **MR. ABDOURAHAMANE SANOH**
2. **SEKOU KOUNDOUNO**
3. **IBRAHIM DIALLO**
4. **ABDOULAYE OUMOU SOW**
5. **MAMADOU BAILO BARRY**
6. **MAMADOU SANOH**
7. **ALPHA SOUMAH**
8. **MAMADOU BOBO BAH**
9. **BADARA ALIOU CHEIKNA KONE**

- APPLICANTS

AGAINST:

STATE OF GUINEA

- DEFENDANT STATE

BEFORE THEIR LORDSHIPS:

Hon. Justice Sengu Mohamed KOROMA	- Presiding
Hon. Judge Dupe ATOKI	- Member
Hon. Justice Gberi-bè OUATTARA	- Judge Rapporteur/Member
ASSISTED BY: Dr. Athanase ATANNON	- Deputy Chief Registrar

REPRESENTATION OF THE PARTIES:

Mohamed TRAORE, Salifou BEAVOGUI, Pépé Antoine LAMA, Lawyers at the Guinean Bar
Counsel for the APPLICANTS
The Judicial Officer of the STATE **Counsel of the DEFENDANT STATE**

I. JUDGMENT

1. This is the judgment of the Community Court of Justice, ECOWAS (hereinafter referred to as 'the Court') delivered virtually in open Court pursuant to Article 8(1) of the 2020 Practice Direction on Electronic Case Management and Virtual Court Session.

II. DESIGNATION OF THE PARTIES

2. The applicants are:

- 1-Abdourahamane SANOH: born in 1958 in Kindia, economic consultant of Guinean nationality.
- 2- Sékou KOUNDOUNO : born in 1988 in Conakry, Guinean lawyer and activist.
- 3- Ibrahim DIALLO: born in 1987 in Kérouané, Guinean lawyer.

4- Abdoulaye Oumou SOW: born in 1990 in Man (Republic of Côte d'Ivoire), Guinean journalist.

5- Mamadou Bailo BARRY: born in 1988 in Telimele, Guinean lawyer.

6- Mamadou SANO: born in 1966 in Kindia, Guinean Administrator.

7- Alpha SOUMAH known as "Bil de Sam": born in 1968 in Conakry, Guinean artist.

8- Mamadou Bobo BAH: born in 1989 in Pita, Guinean political scientist

9- Badara Aliou Cheikna KONE: Born in 1980 in Conakry

(hereinafter referred to as "the applicants").

3 The Defendant is the State of Guinea, an ECOWAS Member State, signatory to the African Charter on Human and Peoples' Rights (ACHPR) and other international legal instruments relating to the protection of human rights (hereinafter referred to as "the Defendant").

II. INTRODUCTION

4. The purpose of these proceedings is to examine the application by which the applicants are seeking a declaration by the Court that the defendant violated their right to respect for their private home, their right to personal liberty, their right to freedom of assembly, their right to freedom of opinion and expression, their right to freedom of demonstration and their right to a fair trial under the African Charter on Human and Peoples' Rights (ACHPR), the International Covenant on Civil and Political Rights (ICCPR), the Universal Declaration of Human Rights (UDHR) and the International Covenant on Civil and Political Rights (ICCPR), treaties and conventions that have been ratified by the defendant, and order the defendant to compensate them for the prejudice they allegedly suffered.

The defendant challenges these facts and requests that the Court declare the applicants' application unfounded.

IV. PROCEDURE BEFORE THE COURT

5 The applicants filed their application initiating the proceedings and an application for an expedited procedure at the Registry of the Court on 1 November 2019.

10. On 10th December 2019, the Defendant filed its Statement of Defence and its Statement of Reply to the Applicants' Application for Expedited Procedure in the Registry of the Court.

7. The Court held a virtual session on 25th June 2021 in which the Applicants were represented but the Defendant was not represented. The Court heard the Applicants on the merits and adjourned for judgment.

8. However, on 30th September 2021, the Court announced its decision to suspend all proceedings against Mali and Guinea. It subsequently lifted the decision to suspend the processing of proceedings concerning these two countries on 25 November 2022.

9. Three hearings were held by the Court, on 28 September 2023, 13 December 2023 and 10 July 2024 respectively. During the first two hearings, the Court adjourned the case, but on the date of the third hearing, it proceeded to hear the applicants, who were the only party present at the Court, and reserved judgment on the case.

10. Examination of the case file revealed a flagrant connection with the case of Badara Aliou Cheikna KONE, case no. ECW/CCJ/APP/49/19, insofar as the two proceedings were based on the same facts which took place on the same day in relation to demonstrations organised by the Front National pour la Défense de la Constitution (FNDC).

The Court therefore ordered that the two proceedings be joined and disposed of in the same decision.

11 From this second set of proceedings, it appears that on 16 December 2019, the applicant Badara Aliou Cheikna KONE, with the aid of his counsel Mohamed TRAORE, Salifou BEAVOGUI and Pépé Antoine LAMA, filed an application with the Registry of the Court against the defendant for violation of his human rights.

This application was served on the defendant on 18 December 2019.

12. On 31 January 2020, the defendant filed a Statement of Defence at the Registry of the Court. This statement of defence was served on the applicant on 03 February 2020.

13. At the hearing on 11 May 2021, all the parties were absent. As a result, the case was adjourned to 23 June 2021.

14. On that date, the applicant was represented by his counsel but the defendant was absent and unrepresented. The Court adjourned the case to 06 October 2021 for hearing of the parties.

15. Before this adjournment date, 30 September 2021 to be precise, the decision to suspend all proceedings before the Court was taken against Mali and Guinea. The proceedings therefore remained suspended until 25 November 2022, when the suspension measure was lifted.

16. The case was listed again for hearing on 05 May 2023 but both parties were absent and unrepresented at this hearing.

Once again, the case was adjourned and, when the adjournment date of 14 July 2023 expired, the applicant asked the Court to reserve judgment on the case.

17. Examination of the file revealed that the Badara Aliou Cheikna KONE case was related to the case brought by Abdourahamane SANOHI and 7 others against the same Republic of Guinea. The Court therefore ordered that the two proceedings be joined. The facts of both cases are as follows:

V. THE FACTS ACCORDING TO THE APPLICANTS

a) Summary of Facts

18. By application received at the Registry, the applicants applied to the Court from this seat on 1 November 2019 for breach of their human rights guaranteed by various treaties and conventions which had been ratified and incorporated by the defendant into its domestic law.

19. The eight (8) applicants, all Guinean citizens and members of the Front National de Défense de la Constitution (FNDC for short), stated that they were arrested in a political context following the announcement by the President of the Republic, Alpha Condé, of his intention to amend the Constitution.

20. It is claimed that their arrest was premised on their resistance to a proposed third term of the President whose second term of office was to end in October 2020. The Applicants claim that after his consultations on a possible third term, the President sought credibility by calling on Guineans to prepare for a referendum.

21. In the light of these events, the applicants set up the FNDC, which brings together opposition parties, trade unions and members of civil society in Guinea. The aim of the FNDC was to use legal means to oppose any violation of the Constitution.

22. The applicants, acting for and on behalf of the FNDC, called on the population to hold peaceful demonstrations on 7 October 2019 and advised mining companies, banks, factories, petrol stations and other public and private companies to suspend all their activities in order to avoid any harmful incidents.

23. The applicants state that on 12 October 2019 the members of the FNDC (the eight applicants in the present case) were arrested at the home of Abdourahamane SANOI, the national coordinator of the FNDC. They claim that they had prepared to go to *the Maison de la Presse* to express their views on the details of the planned demonstration.

24. The applicants maintained that they were arrested in a manner similar to kidnapping, by armed men wearing balaclavas, without a warrant and without being informed of the reason for their arrest.

25. They also report that after their arrest, Abdourahamane SANOI and Ibrahim DIALLO were detained at Villa 26 before being taken to the Direction Centrale de la Police Judiciaire (DCPJ).

26. The Applicants claim that they were separated during interrogations and were sent to destinations unknown to their lawyers. Subsequently, on 14 October 2019, they were all referred to the Office of the Public Prosecutor and remanded in custody to be taken to Conakry Central Prison.

27. They state that on 16 October 2019, they appeared before the Dixinn Court of First Instance (TPI) and that the case was adjourned to 18 October 2019 for the prosecution's closing arguments and the closing arguments of the lawyers. On that date, the Public Prosecutor requested that they be sentenced to five (5) years' imprisonment and a fine of 2,000,000 Guinean francs.

28. As for Badara Aliou Cheikna KONE, who brought an action before the Community Court of Justice against the Republic of Guinea by application dated 16 December 2019 for violation of his human rights, he states that on Sunday 13 October 2019, he was arrested at his home by the security forces.

29. He explains that this arrest took place in a very specific political context, namely that of the announcement made by President of the Republic Alpha Condé on 22 September 2019, of his intention to amend the Constitution in order to run for a third term.

30. He states that indeed Alpha Condé, whose second term of office ends in October 2020, has often contested the relevance of limiting the number of terms in office in Guinea under Article 27 of the current Constitution. At the beginning of September 2019, he tasked his Prime Minister Ibrahima Kassory Fofana to undertake consultations on a possible change to the constitution.

31. The applicant notes that at the end of September 2019, he gave credence to the idea of running as a candidate for his own succession by calling on Guineans to 'prepare' for a referendum and legislative elections.

32. The applicant states that it was against this backdrop of a threat to the stability of Guinean democracy that a Front National pour la Défense de la Constitution (FNDC) (National Front for the Defence of the Constitution) was set up, bringing together opposition parties, trade unions and members of civil society in Guinea.

33. He added that on 07 October 2019, the FNDC called for peaceful and republican demonstrations from 14 October 2019 against President Alpha Condé's ambition to amend the Constitution in order to seek a third term in office. He called for the mobilisation of all Guineans through 'republican demonstrations'.

34. The applicant further maintains that, with the same aim of preventing violence caused by the government's policing techniques, the FNDC recommended that mining companies, banks, factories, service stations and other public and private enterprises should 'suspend all activities during demonstrations in order to avoid any harmful incidents'.

35. He reports that on 13 October 2019, some twenty pick-up trucks full of law enforcement officers abruptly arrived at his family home to arrest him and that during this extremely violent arrest, the law enforcement officers ransacked vehicles, damaged the house and took away some of his family's belongings. He adds that several members of his family were seriously injured.

36. The applicant states that, after his arrest, he was taken to the Direction des Investigations and PM3 and that on 15 October 2019, he was brought before the Public Prosecutor at the Tribunal de Première Instance de Mafanco, who placed him under a detention order at the Maison Centrale de Conakry.

37. The applicant goes on to argue that on 21 October 2019, the trial opened before the Mafanco Court of First Instance and the Public Prosecutor requested 5 years' imprisonment and a fine of 2,000,000 Guinean Francs against him, on the basis of Articles 627, 629, 632, 659 and 679 of the Criminal Code, which punish direct incitement to an unarmed gathering by means of public speeches that have disturbed public order, impersonation and insulting the Head of State.

38. He points out that on Tuesday, 22 October 2019, the Mafanco Court of First Instance sentenced him to 3 years' imprisonment, 2 years of which were suspended, and to pay a fine of 500,000 Guinean francs.

39; The applicant submits that it is under these circumstances that he was forced to apply to the Community Court of Justice for the sanction of the manifest violations of his fundamental rights and freedoms by the Republic of Guinea.

Pleas in law

40. The applicants relied on the following pleas in law:

- Violation of the right to respect for their private residence
- Violation of the right to personal freedom;
- Violation of the right to freedom of assembly;
- Violation of the right to freedom of opinion and expression;
- Violation of the right to freedom of demonstration;
- Violation of the right to a fair hearing.

Conclusions:

41. The applicants make the following claims before the Court:

- a. Declare that the Republic of Guinea violated the right to respect for the private home of Abdourahamane SANOI and Badara Aliou Cheikna KONE pursuant to Article 17 of the International Covenant on Civil and Political Rights and Article 12 of the Universal Declaration of Human Rights;
- b. Declare that the Republic of Guinea violated the right to personal liberty of Mr Abdourahamane SANOI, Mr Sékou KOUNDOUNO, Mr Ibrahima DIALLO, Mr Abdoulaye Oumou SOW, Mr Mamadou Bailo BARRY, Mr Mamadou SANOI, Mr Mamadou Bobo BAH, Alpha SOUMAH and Badara Aliou Cheikna KONE pursuant to Article 6 of the African Charter on Human and Peoples' Rights, Article 9 of the International Covenant on Civil and Political Rights and Articles 3 and 9 of the Universal Declaration of Human Rights.
- c. Declare that the Republic of Guinea also violated the freedom of assembly of the applicants Abdourahamane SANOI, Sékou KOUNDOUNO, Ibrahima DIALLO, Abdoulaye Oumou SOW, Mamadou Bailo BARRY, Mamadou Bobo BAH and Alpha SOUMAH in accordance with Article 11 of the African Charter on Human and Peoples' Rights, Article 21 of the International Covenant on Civil and Political Rights and Article 20 of the Universal Declaration of Human Rights.
- d. Declare that the Republic of Guinea violated the freedom of opinion and expression of Sirs Abdourahamane SANOI, Sékou KOUNDOUNO, Ibrahima DIALLO,

Abdoulaye Oumou SOW, Mamadou Bailo BARRY, Mamadou Bobo BAH, Alpha SOUMAH and Badara Aliou Cheikna KONE in accordance with Article 9 of the African Charter on Human and Peoples' Rights, Article 19 of the International Covenant on Civil and Political Rights and Article 19 of the Universal Declaration of Human Rights.

- e. Declare that the Republic of Guinea violated the freedom to demonstrate of Abdourahamane SANOH, Sékou KOUNDOUNO, Ibrahima DIALLO, Abdoulaye Oumou SOW, Mamadou Bailo BARRY, Mamadou Bobo BAH and Alpha SOUMAH in accordance with Articles 9 and 11 of the African Charter on Human and Peoples' Rights, Articles 19 and 21 of the International Covenant on Civil and Political Rights and Articles 19 and 20 of the Universal Declaration of Human Rights.
- f. Declare that the liability of the Republic of Guinea, through its judicial authorities, is engaged.
- g. Declare that the Republic of Guinea violated Badara Aliou Cheikna KONE's right to a fair trial and, in particular, his right to a defense in accordance with Article 7 of the ACHPR, Article 14 of the ICCPR and Article 11 of the UDHR.
- h. Order the Republic of Guinea to order the warden of Conakry Central Prison to release Abdourahamane SANOH, Sékou KOUNDOUNO, Ibrahima DIALLO, Abdoulaye Oumou SOW, Mamadou Bailo BARRY, Mamadou SANO, Mamadou Bobo BAH and Alpha SOUMAH without delay, subject to a fine of 10,000,000 CFA francs per day of delay.
- i. Order the Republic of Guinea to pay to Abdourahamane SANOH and Badara Aliou Cheikna KONE the sum of 3 billion CFA francs each, and to Sékou KOUNDOUNO, Ibrahima DIALLO, Abdoulaye Oumou SOW, Mamadou Bailo BARRY, Alpha SOUMAH, Mamadou Bobo BAH and Mamadou SANOH the sum of 2 billion CFA francs each for damages.
- j. Any other relief that the Court deems appropriate in the circumstances.
- k. Order the Republic of Guinea to bear the entire costs

VI. THE FACTS ACCORDING TO THE DEFENDANT

a) Summary of Facts

42. In its statement of defence of 10 December 2019, the defendant retorted that it had made progress in protecting public freedoms, in particular by authorising and tolerating approximately six hundred and two (602) demonstrations in the space of nine years. It also submits that it has created several frameworks towards the substantial guarantee of the proper functioning of justice.

43. The defendant submits that the FNDC is composed of opposition parties, non-governmental organizations (NGOs) and civil society that have joined as members. The defendant maintains that the FNDC is not a legal body and that its aim is to overthrow the current regime.

44. With regard to the applicants' application relating to the expedited procedure, the defendant points out that the case has lost the urgency essential for the implementation of the expedited procedure and that, consequently, the Court should strike out this application in accordance with its Rules.

In addition, the defendant asserts that the eight applicants who were convicted by the Dixinn Court of First Instance were released on appeal. This completely jettisons the reliefs sought by the Applicants.

45. With regard to the second set of proceedings, the defendant points out that the claims, purposes, pleas and conclusions of the applicant Badara Aliou Cheikna KONE contained in his application are virtually the same as those in the application of Abdourahamane SANOHI and 7 others, all members of the FNDC, the subject of case no. ECW/CCJ/APP/38/19 which is still pending before this Court.

46. The defendant concludes that the present applications must be dismissed by the Court as unfounded.

b) Pleas in law

47. The defendant relies on legal pleas in law:

-The absence of the violation of legal instruments for the protection of human rights raised by the applicants;

c) Conclusions:

48. The defendant State advanced the following claims:

-Form: To rule on the admissibility of the action brought by the applicants Abdourahamane Sanoh, Sekou Koundouno, Ibrahima Diallo, Abdoulaye Oumou Sow, Mamadou Bailo Barry, Mamadou Sanoh, Mamadou Bobo Bah, Alpha Soumah and Badara Aliou Cheikna KONE.

-On the merits: Declare that the violations of human rights alleged by Abdourahamane SANOHI and eight (8) other defendants have not been proven.

-Dismiss all the above claims, pleas in law and submissions to the contrary;

-Order them to bear the entire costs.

II. JURISDICTION

49. The Court points out that its jurisdiction in human rights matters is governed by the provisions of Article 9(4) of Supplementary Protocol A/SP.1/01/05 of 19 January 2005 amending Protocol A/P.1/7/91 on the Court of Justice, which provides that: *"The Court shall have jurisdiction to determine cases of human rights violations that occur in any Member State"*.

50. In the present case, the applicants alleged a violation of Article : 17 of the International Covenant on Civil and Political Rights, Article 12 of the Universal Declaration of Human Rights, Article 6 of the African Charter on Human and Peoples' Rights, Article 9 of the International Covenant on Civil and Political Rights, Articles 3 and 9 of the Universal Declaration of Human Rights, Article 11 of the African Charter on Human and Peoples' Rights, article 21 of the International Covenant on Civil and Political Rights, article 20 of the Universal Declaration of Human Rights, article 9 of the African Charter on Human and Peoples' Rights, article 19 of the International Covenant on Civil and Political Rights, article 19 of the Universal Declaration of Human Rights, article 7 of the ACHPR, article 14 of the ICCPR and article 11 of the UDHR.

51. The Court observes that, according to its well-established case-law it is sufficient for the application simply to refer to the violation of international human rights instruments to induce its formal jurisdiction as determined by the provisions of articles 9.4 and 10 of Supplementary Protocol AP1/01/05 relating to the Court.

52. The Court recalled this principle in judgment No ECW/CCJ/JUD/09/11 delivered on 07 October 2014 in the case of AMEGANVI MANAVI ISABELLE and others v the Republic of Togo.

53. The Court notes that the subjective rights enumerated by the applicants form part of the human rights whose protection it is responsible for ensuring.

As the defendant is an ECOWAS member state, all the conditions are met for the Court, in accordance with its own established case law, to declare itself to have jurisdiction to hear this case.

VIII ADMISSIBILITY

Arguments of the Defendant

54. In limine litis, the defendant raises the inadmissibility of the motion to institute proceedings filed by Badara Aliou Cheikna KONE. It submits that, while article 33.1-a of the Rules of Court provides that "*the application referred to in article 11 of the Protocol shall contain*

a) The name and address of the Applicant",

In the present case, in clear violation of this legal provision, Badara Aliou Cheikna KONE's application to institute proceedings makes no mention of the domicile or location of the offices of the Judicial Official of the State representing him.

Accordingly, it requests that the Court declare Badara Aliou Cheikna KONE inadmissible in his application.

Arguments of the applicants

55. The applicants, in particular Badara Aliou Cheikna KONE, made no comment on this preliminary objection raised by the defendant.

Analysis of the Court

56. The Court notes that the Judicial Officer of the State whose domicile or office location was not indicated by Badara Aliou Cheikna KONE in his application is not the applicant but the counsel to the defendant. Consequently, pursuant to Article 33 of the aforementioned Rules of Court, the applicant was not required to indicate his domicile or the location of his offices.

57. The Court further notes that according to Article 33 -6 *“Where an application does not comply with the requirements set out in paragraphs 1-4 of this Article, the Chief Registrar shall prescribe a period not more than 30 days within which the Applicant is to comply with them, whether by putting the application itself in order or by producing any of the above mentioned documents. If the applicant fails to put the application in order or to produce the required documents within the time prescribed, the Court shall, after hearing the Judge Rapporteur, decide whether the non-compliance with these conditions renders the application formally inadmissible”*.

The Court finds that the application in question is not vitiated, at this stage, by any irregularity likely to justify its being declared inadmissible.

58. The Court notes that the admissibility of applications before it is governed by the provisions of Article 10-d of Supplementary Protocol A/SP.1/01/05 of 19 January 2005 amending Protocol A/P.1/7/91 relating to the Court, which provides that: *“Any person who has suffered a violation of human rights may apply to the Court;*

The application submitted for this purpose shall:

- i) *not be anonymous nor;*
- ii) *be made whilst the same matter has been instituted before another International Court for adjudication”*.

This is clear from the decision of the Court in SAWADOGO PAUL & 3 OTHERS v. REPUBLIC OF BURKINA FASO JUDGMENT No.: ECW/CCJ/JUD/07/20 (unreported) at page 9, where it held that *“From the provisions of Article 10(d), it is clear that three conditions must be fulfilled before an application can be declared admissible before the Court. These are: a) the applicants must be victims of human rights violations, b) the applicants must not be anonymous, and c) the application must not have been filed with another international court competent to examine it”*.

59. In the present case, the Court finds that the applicants are well identified. These are: 1- Abdourahamane SANO: born in 1958 in Kindia, consultant of Guinean nationality.

2- Sékou KOUNDOUNO : born in 1988 in Conakry, Guinean lawyer and activist.

3- Ibrahim DIALLO: born in 1987 in Kéroutan, Guinean lawyer.

4- Abdoulaye Oumou SOW: born in 1990 in Man (Republic of Côte d'Ivoire), Guinean journalist.

5- Mamadou Bailo BARRY: born in 1988 in Telimele, Guinean lawyer.

6- Mamadou SANO: born in 1966 in Kindia, Guinean Administrator.

7- Alpha SOUMAH known as "Bil de Sam": born in 1968 in Conakry, Guinean artist.

8- Mamadou Bobo BAH: born in 1989 in Pita, Guinean political scientist.

9- Badara Aliou Cheikna KONE: born in 1980 in Conakry, Deputy-Mayor of the commune of Matam of Guinean nationality.

The application is therefore not anonymous.

60. Furthermore, there is no evidence that the applicants have applied to another international court with jurisdiction in human rights matters to hear the same case. In these circumstances, in accordance with its usual jurisprudence, the Court has no option but to declare the application admissible insofar as it has satisfied all the textual requirements.

IX PROCEEDINGS BEFORE THE COURT

APPLICATION FOR ADMISSION OF THE CASE TO THE EXPEDITED PROCEDURE

61. The applicants state that by application received at the registry of the ECOWAS Court of Justice on ¹ November 2019, they sued the Republic of Guinea before the said Court for violation of their fundamental human rights.

62. The applicants explain that by the present separate application they request the President of the Court to submit this case to the expedited procedure in accordance with the provisions of Article 59 of the Rules of Court.

63. In support of their application, the applicants argue that the violations of their human rights are serious and manifest. They report that, since 12 October 2019, they have been arbitrarily

detained and deprived of their right to liberty, their right of assembly, their right to freedom of demonstration and expression, all guaranteed by legal instruments for the protection of human rights.

64. They point out that the continued detention of the FNDC leaders is likely to cause serious public disturbances due to the extensive media coverage of this case.

For these reasons, they consider it a matter of manifest urgency that the ECOWAS Court of Justice rule as soon as possible on the violations allegedly suffered by them at the hands of a Member State of the Community.

65. As far as the defendant is concerned, it points out that a case may be submitted to the expedited procedure only if the particular urgency of the case requires the Court to rule as soon as possible.

In so doing, it argues that there is no urgency in this case, let alone a particular urgency such as to justify recourse to the expedited procedure.

66. The defendant points out that, in support of their claim, the applicants rely on the fact that they are detained at the Conakry central prison, deprived of their rights to various freedoms.

67. It points out that the grounds on which the applicants requested the President of the Court to subject the present case to an expedited procedure no longer exist, since the Court of Appeal, in its judgment on the appeal against the judgment of the Dixinn Court of First Instance (TPI) sentencing the applicants to imprisonment, granted their application for release, with the result that their motion for an expedited procedure is now moot.

It requests that the ECOWAS Court of Justice dismiss the application for expedited proceedings.

ANALYSIS OF THE COURT

68. The Court recalls that it is apparent from the provisions of Article 59 of the Rules of Court that *"On application by the applicant or the defendant, the President may exceptionally decide, on the basis of the facts before him and after hearing the other party, that a case is to be*

determined pursuant to an expedited procedure derogating from the provisions of these Rules, where the particular urgency of the case requires the Court shall give its ruling with the minimum of delay”.

69. The Court notes that, in the present case, the facts relied on by the applicants to justify the submission of the present case to the expedited procedure relate to their detention in the Conakry Central Prison and the deprivation of their rights to various freedoms. It is for these reasons that they assert that there is manifest urgency for the Court to rule as soon as possible using the expedited procedure.

70. The Court notes that, as stated by the defendant, the urgency relied on by the applicant in requesting that the present case be admitted to the expedited procedure is not of a special nature. However, it is clear from the provisions of Article 59 of the Rules of Court that it is only “*when the particular urgency of the case requires the Court to rule as soon as possible*” that “*at the request of either the applicant or the defendant, the President may exceptionally decide, on the basis of the facts before him and after hearing the other party, that a case is to be determined pursuant to an expedited procedure derogating from the provisions of these Rules.*”

71. *In the present case, the Court considers that there is no special urgency. Consequently, as it is clear from the parties' explanations that the conditions of Article 59 of the Rules of Procedure have not been met, the Court can only reject the motion that the case be admitted to the expedited procedure.*

X. ON THE MERITS

72. The applicants claimed that the defendant violated their right to respect for their private homes provided for in Article 17 of the ICCPR and Article 12 of the UDHR (A), their right to personal liberty provided for in Articles 6 of the ACHPR, Article 9 of the UDHR and Article 9 of the ICCPR (B), their right to freedom of assembly provided for in Articles 11 of the ACHPR, Article 21 of the ICCPR and Article 20 of the UDHR (C), their right to freedom of opinion and

expression provided for in Articles 9 of the ACHPR, Articles 8 and 19 of the UDHR and Article 19 of the ICCPR (D) and their right to freedom of demonstration provided for in articles 9 and 11 of the ACHPR, articles 19 and 21 of the ICCPR and 19 and 20 of the UDHR (E) and their right to a fair trial provided for by articles 7 of the ACHPR, 14 of the ICCPR and 11 of the UDHR(F).

The Court will examine all the applicants' claims in turn.

A- THE VIOLATION OF THE RIGHT TO RESPECT FOR THE PRIVATE HOME

Arguments of the Applicants

73. The applicants alleged that their right to respect for their private homes provided for in Article 17 of the ICCPR and Article 12 of the UDHR was violated.

They claim they were arrested on 12 October 2019 at the home of Abdourahamane SANOH by hooded men without a warrant or authorisation and that Badara Aliou Cheikna KONE was arrested at his own home the following day, 13 October 2019.

74. In addition, they maintained that the use of force to enter the residences was unnecessary and disproportionate to the objective, which was to detain them.

75. In support of their allegations, the applicants rely on the decision of the European Court of Human Rights in GUTSANOV v. BULGARIA, No. 34529/10, 2013, in which it held that “*the entry into and search of the home by the police constituted interference with the exercise of the applicants’ right to respect for their private home*”.

Accordingly, the applicants pray that the Court should find a violation of their right to respect for their private homes in application of Article 17 of the ICCPR.

Argument of the defendant

76. The respondent submits that no measures were ordered, taken or directed against the applicants' homes.

The Republic of Guinea maintains that Article 17 of the ICCPR and Article 12 of the UDHR only condemn arbitrary or unlawful interference or violations and not those that are not.

77. It added that in this case the aim was to arrest people suspected of committing an offence or presenting evidence suggesting that they had participated in one as part of an investigation under the supervision of the Public Prosecutor. Consequently, these arrests cannot constitute arbitrary interference in the homes of the applicants.

The defendant therefore seeks to have the plea dismissed as unfounded.

Analysis of the Court

78. The Court notes that the home is the place where a human being is situated. In other words, it is the location of his principal place of business, i.e. the place where his civil and legal life takes place.

79. The Court points out that the home is a private place which the police cannot enter at any time and without good reason.

The Court notes that respect for the home is a fundamental right provided for and protected by Article 17 of the ICCPR and Article 12 of the UDHR respectively:

1. *"No one shall be subjected to arbitrary or unlawful interference with his privacy, family, or correspondence, nor to unlawful attacks on his honour and reputation.*
2. *Everyone has the right to the protection of the law against such interference or attacks.*

"No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks.

80. The Court notes that Article 17 of the International Covenant on Civil and Political Rights (ICCPR) and Article 12 of the UDHR, to which the Republic of Guinea is a party, prohibit arbitrary interference with a person's home. On the contrary, they enshrine the sacredness of the home.

81. The Court points out that a person's home is inviolable because, as the European Court of Human Rights (ECHR) emphasised in its judgment of 14/09/1987 in the case of *Gillow v United*

Kingdom, "*respect for the home is a matter of personal safety and well-being*". It contributes to and reinforces respect for privacy.

82. The Court observes, however, that contrary to the applicants' allegations, the violation of the right to a private home does not result from the fact that the police did not have a warrant, since they do not indicate the nature of the warrant which the police did not have.

83. The Court notes that judges may issue four (4) types of warrant. These are the appearance warrant, the committal warrant, the detention warrant and the arrest warrant.

84. The Court points out that the purpose of the appearance warrant is to give the person concerned formal notice to appear before the judge who issued it on the date and at the time specified in the warrant.

The warrant to bring a person to court is the order given by the judge to the police to immediately bring the accused before him.

The committal order is the order given by the judge to the head guard of the prison to receive and detain the person concerned.

The arrest warrant is the order given by the judge to the police to search for the person concerned and take them to the prison indicated on the warrant, where they will be received and detained.

85. The Court notes with ease that all the warrants cited can only be issued against a person involved in proceedings pending before a criminal court. Consequently, the applicants were genuinely wrong to argue that their right to respect for their private home was infringed by the fact that the police had no warrant allowing them access to their respective homes.

86. The Court points out that the violation of the right to respect for the private home consists rather in the intrusion of others into a person's home without that person's consent and against his or her will.

87. The Court observed that in the instant case it was not disputed that the police, wearing balaclavas and carrying weapons, barged into the homes of Abdourahamane SANOHI and Badara Aliou Cheikna KONE.

88. The Court notes that it is apparent from the material in the case file, in particular from the applicant Badara Aliou Cheikna KONE's statements, that on 13 October 2019 some twenty pick-

ups full of law-enforcement officers arrived at his family home in order to arrest him and that during this operation, which was carried out with extreme violence, the law-enforcement officers ransacked vehicles, caused extensive damage to his home, seriously injured people and took away some property belonging to members of his family.

89. The Court notes that it is also undisputed that it was as a result of this irruption that the applicants were taken by force and handed over to the Criminal Investigation Department.

90. The Court points out that it is this gratuitous and unnecessary violence displayed by the law-enforcement officers when they broke into the applicants' homes, even though it is neither alleged nor established that the applicants put up fierce resistance to them, that constitutes the violation of the right to respect for the private home relied on.

91. The Court accordingly held that the defendant was wrong to argue that it had not infringed the right to respect for the applicants' private home where they were suspected of committing an offence or where there were indications that they had participated in one.

92. The Court concludes that the defendant undoubtedly violated the right to respect for the private home of the applicants Abdourahamane SANOI and Badara Aliou Cheikna KONE.

B- VIOLATION OF THE RIGHT TO PERSONAL FREEDOM

Arguments of the Applicants

93. The applicants maintained that their questioning and arrests were unlawful ; they pointed out that they were militants of the Front national pour la défense de la Constitution (FNDC), which was opposed to the amendment of the Constitution by President Alpha Condé, who was seeking a 3rd term in office.

94. The meeting was held at the residence of Abdourahamane SANOI to prepare for a public press conference to set out the details of the demonstration, which they had invited Guineans to join.

95. They maintain that their arrests by armed men without arrest warrants are arbitrary because they have no legal grounds.

96. They relied on articles 6 of the African Charter on Human Rights, 9 of the International Covenant on Civil and Political Rights, and 3 and 9 of the Universal Declaration of Human Rights.

97. They submit to the proceedings Opinion No. 33/2018 of the Working Group on Arbitrary Detention of the Human Rights Council concerning Mohamed Ould Ghadde, who was arrested in Mauritania for similar reasons, as he also opposed the amendment of the Constitution by the President of Mauritania, who wanted to run for a third term.

Argument of the defendant

98. The defendant maintained that the applicants had been lawfully held in police custody in accordance with the provisions of Articles 85 et seq. and 134 of the Guinean Code of Criminal Procedure;

99. It added that the legality of this police measure was never called into question in the context of the criminal proceedings brought against them for manoeuvres and acts likely to compromise public safety and cause serious disturbance to public order, for which they were found guilty and sentenced to prison terms.

100. That the detention of the applicants is justified by the legal provisions that preceded their conviction by the Dixinn Criminal Court, before their release by the Court of Appeal of Conakry.

Analysis of the Court

101. The Court notes that pursuant to Article 6 of the African Charter on Human and Peoples' Rights, *"Everyone shall have the right to liberty and the security of person. No one shall be deprived of his liberty except on such grounds and subject to such conditions prescribed by law; in particular, no one shall be arbitrarily arrested or detained"*.

102. The Court notes that while the applicant, Badara Aliou Cheikna KONE, was arrested at his home, all the other applicants were meeting at the home of the FNDC coordinator, Abdourahamane SANOI, to discuss the organisation of the protest march they were planning at the time of their arrest; the purpose of the meeting was to prepare the press conference they intended to hold before the demonstration in order to determine the steps to be taken; there is

nothing to indicate that the applicants had any ill intent or were planning to commit a crime or offence;

103. The provisions of Article 85 et seq. on which the defendant relies to justify the intervention of the armed forces are not appropriate in the present case because the applicants' meeting, although political in nature, was peaceful; rather, these provisions, taken from the Guinean Code of Criminal Procedure, concern "*a person in respect of whom there are one or more plausible grounds for suspecting that he committed or attempted to commit a felony or misdemeanour punishable by imprisonment*".

104. The Court notes that the applicants were arrested and detained in order to prevent them from participating in the organisation of demonstrations to express their opposition to the President of the Republic's plan for constitutional change; the applicants thus sought to exercise the public freedoms guaranteed by the Constitution of Guinea, which correspond to the rights recognised and protected by international instruments such as the International Covenant on Civil and Political Rights, in particular Articles 19 and 21.

105. The Court recalls that the UN Commission on Human Rights considers as arbitrary 'deprivations of liberty which are contrary to the relevant international standards set forth in the Universal Declaration of Human Rights or in the relevant international instruments ratified by States (resolution 1991/42).

106. For its part, the Working Group on Arbitrary Detention considers that detention is arbitrary if the legal situation falls into one of the following three categories:

(a) It is manifestly impossible to invoke any legal basis to justify the deprivation of liberty (case of continued detention of a person while he has served his sentence or while he is subject to an amnesty law) (category I);

(b) The deprivation of liberty results from the exercise by the person concerned of rights or freedoms proclaimed in Articles 7, 13, 14, 18, 19, 20 and 21 of the Universal Declaration of Human Rights and, insofar as the States concerned are parties to the International Covenant on Civil and Political Rights, in Articles 12, 18, 19, 21, 22, 25, 26 and 27 of that instrument (category II);

c) *The total or partial disregard of international standards relating to the right to a fair trial, as set out in the Universal Declaration of Human Rights and in relevant international instruments accepted by the States concerned, is of such gravity as to render the deprivation of liberty arbitrary (category III).*

107. In the light of the foregoing, the Court is of the opinion that, by arresting and detaining the applicants in the circumstances described above, the Republic of Guinea infringed the applicants' right to personal liberty, even though they were merely exercising rights and freedoms recognised by Guinean law and enshrined in international human rights instruments.

C- VIOLATION OF THE RIGHT TO FREEDOM OF ASSEMBLY

Arguments of the Applicants

108. The applicants claimed that the defendant violated their right to freedom of assembly, as guaranteed by Article 11 of the ACHPR, by arresting them when they had gathered at the home of Abdourahamane SANOHI to prepare the press briefing they were about to give at the press centre on the preparations for the demonstration organised by the FNDC.

The applicants point out that freedom of assembly is an essential freedom for all Guinean citizens.

Argument of the defendant

109. The defendant maintains that no individual was arrested, prosecuted or convicted in its territory for holding one or more meetings with other persons. The defendant asserted that the applicants held meetings before and after their arrest without being harassed because they did so within the framework of the law. However, it explained that the applicants were arrested for committing "*acts likely to endanger public safety and seriously disrupt public order*". *Facts for which they have been convicted*".

110. The defendant claimed that the FNDC had always organised demonstrations or marches with the support of the local administrative authorities. This was done with the prior indication of the itineraries in order to obtain the support of the authorities.

The defendant concluded that the allegations that it had violated Article 11 of the ACHPR relating to the applicants' right of assembly were unfounded. Consequently, the defendant requests that the Court dismiss them.

Analysis of the Court

111. The Court notes that freedom of assembly is a right enshrined in Article 11 of the ACHPR which states, “Everyone *has the right to assemble freely with others. The exercise of this right shall be subject only to necessary restrictions provided for by law, in particular those enacted in the interest of national security, the safety, health, ethics and rights and freedoms of others*”. This right is also guaranteed by Article 21 of the ICCPR and Article 20 of the UDHR.

112. The Court noted that a meeting was a voluntary gathering in a private or public place. The right of assembly can be exercised through demonstrations, processions, rallies, sit-ins and even the use of online platforms or any other means used by those concerned to gather.

113. The right of peaceful assembly protects everyone's ability to exercise their autonomy in solidarity with others. It protects the non-violent gathering of people for specific purposes, mainly for the expression of opinions. It is an individual right that is exercised collectively. It therefore assumes the association of several individuals. Recognition of the right to peaceful assembly imposes a correlative obligation on States Parties to respect and guarantee the exercise of this right without discrimination. This requires that States allow such meetings to take place without undue interference, facilitate the exercise of the right and protect participants. States must allow participants to choose freely the purpose of the meeting or the opinion to be conveyed by the meeting. The way in which the authorities view peaceful assemblies and any restrictions they impose on their holding should therefore, in principle, not be linked to the content of the assemblies, nor should it depend on the identity of the participants or their relationship with the authorities.

114 Furthermore, while the time, place and manner of meetings may in some circumstances be subject to the restrictions set out in Article 21 of the ICCPR, given that meetings are generally a

forum for expression, participants should, as far as possible, be able to hold meetings in places accessible to the intended audience. Article 21 of the ICCPR lists the legitimate grounds on which the right of peaceful assembly may be restricted. The reasons are as follows:

- guarantee national security,
- guarantee public safety,
- protect public order,
- protect public health or morals, and
- to protect the rights and freedoms of others.

115. The Court recalls that in the present case the applicants were arrested at the home of the national coordinator of the FNDC when they met there to prepare for their appearance at the press centre to explain the arrangements for the demonstration to the participants. The Court therefore held that their arrest and detention restricted the enjoyment of a fundamental right in violation of the provisions of Article 11 of the ACHPR, which states that *'Everyone has the right to freedom of assembly with others.*

The exercise of this right shall be subject only to necessary restrictions provided for by law in particular those enacted in the interest of national security, the safety, health, ethics and rights and freedoms of others".

116. The Court noted that in the present case the defendant had produced documents relating to the declaration of demonstrations or marches on the public highway and the authorisation of the competent authorities.

The Court therefore held that the arrest of the applicants on the eve of a demonstration planned to take place throughout the national territory was a deliberate act of restriction of the enjoyment of the right to liberty guaranteed by Article 11 of the ACHPR, inasmuch as the defendant had failed to prove that the restriction was carried out in accordance with the provisions of that article. The Court concluded that the defendant had violated the right of the applicants to freedom of assembly as provided for in Article 11 of the ACHPR.

D- THE VIOLATION OF THE RIGHT TO FREEDOM OF OPINION AND EXPRESSION

Arguments of the Applicants

117. The applicants submitted that, by depriving them of their right to freedom of assembly through their arrest during the meeting at the home of the FNDC coordinator to prepare for their press conference, the respondent also violated their right to freedom of expression of political opinion and to participate freely in the conduct of the public affairs of their country.

118. They argued that this prevented them from specifying the details of the demonstration to which they had called the public and from informing the public of their political ideas. Consequently, they maintain that the defendant violated Article 9 of the ACHPR.

Argument of the defendant

119. The defendant avers that the freedom of expression and opinion are exercised without anyone being prosecuted or harassed. The FNDC and other political parties are using this cover to express their opposition to, and refusal to participate in, the national consultations organised under the auspices of the Prime Minister on the imperative need for a constitutional revision. It maintains that the applicants expressed their opposition by all means of communication (newspapers, media, websites, social networks, etc.).

The defendant concludes that the alleged violation of freedom of expression and opinion is as imaginary as it is ill-founded. It therefore, prays the Court to reject same.

Analysis of the Court

120. The Court notes that the freedom of every person to express his or her opinions is provided for in Article 9 of the ACHPR in the following terms: *“Everyone has the right to express and disseminate their opinions within the framework of laws and regulations”*.

As for Article 19 of the ICCPR, it provides: *“Everyone shall have the right to hold opinions without interference”*;

And Article 19 of the UDHR provides: *Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers*".

121. The Court notes that the purpose of the meeting, chaired by the FNDC's coordinator, Mr Abdourahamane SANOHI, was to meet with the public press in order to explain to the citizens who wished to demonstrate their opposition to the constitutional change the arrangements for organising the march planned by the FNDC.

122. The Court finds that the decision of the Guinean authorities to detain the applicants in the circumstances described above had the effect of depriving them of their right to freedom of opinion and expression, as guaranteed by both Guinean law and international human rights law.

123. The Court recalls that freedom of expression is one of the precious human rights whose limitations must be provided for and determined by law in accordance with the international obligations of the State.

Thus, in case of *DEYDA HYDARA JR. & 2 ORs v. REPUBLIC OF THE GAMBIA* (/2014) CCJELR the Court held that "*Freedom of expression includes the freedom to criticize the government and its functionaries subject to limitations imposed by the domestic law*".

124 In the present case, the defendant arrested and then detained the applicants without any reason, thereby demonstrating its intention to silence them and to prevent any hint of challenge to the constitutional change decided by the President of the Republic.

125. The Court finds that, by interrupting the applicants' meeting, the defendant deliberately obstructed the holding of the applicants' planned press conference and infringed their right to freedom of opinion and expression.

The Court finds that the defendant violated the provisions of Article 9 of the ACHPR.

E- THE VIOLATION OF THE RIGHT TO FREEDOM OF DEMONSTRATION

Arguments of the applicants

126. The applicants alleged that the defendant had seriously infringed their right to demonstrate in accordance with the Constitution of Guinea and international texts, because, as the NGO

Human Rights Watch stated in its press release of 03 October 2019, the Government of Guinea had effectively banned street demonstrations, citing risks to public safety. This NGO said in the said statement that the local authorities banned several demonstrations since July 2018.

127. The applicants argued that although the right to demonstrate was not explicitly enshrined in international human rights instruments, freedom of demonstration could be effectively protected if the provisions on freedom of peaceful assembly (Article 11 of the Charter) and freedom of expression (Article 9 of the Charter) were interpreted together.

Argument of the defendant

128. The defendant considered that this was a bad argument against it, since it had on several occasions authorised demonstrations by members of the FNDC.

The defendant claimed that it had monitored the demonstrations in question in order to avoid or limit excesses and that this had made it possible to hold some peaceful marches, whereas all the previous ones had always resulted in loss of life, fires, damage and destruction of public and private property.

Analysis of the Court

129. The Court notes that the freedom to demonstrate is enshrined in Title II ('Fundamental freedoms, duties and rights') of the 2010 Constitution of Guinea, Article 10 of which provides that "*All citizens have the right to demonstrate and march*".

At international level, the freedom to assemble with others and to hold meetings or lead peaceful marches is enshrined in Article 11 of the ACHPR, as well as in the ICCPR and the UDHR relied on by the applicants.

130. The Court recalls that where freedom of demonstration is guaranteed, as is the case in the Republic of Guinea, citizens must be able to exercise it without hindrance, subject to the restrictions laid down by law.

131. The Court notes that, as in the case of freedom of expression and opinion, the purpose of the applicants' arrest and detention was also to prevent them from organising the press conference they had planned to hold with a view to preparing and mobilising the population to participate in the planned demonstration.

132. The defendant therefore prevented the event from taking place without any reason capable of justifying such a measure. It thus deprived the applicants of their right to demonstrate peacefully, in breach of the relevant provisions of Article 11 of the African Charter on Human and Peoples' Rights.

F- THE VIOLATION OF THE RIGHT TO A FAIR TRIAL

Argument of the applicants

133. In particular, the applicant Badara Aliou Cheikna KONE submits that the preliminary investigation in the present case was so speedy that he was deprived of his right to a defence, in particular the assistance of counsel, from the time of the preliminary investigation. He explained that he was interrogated by police and gendarmerie units on 13 October 2019, and that the PM3 Judicial Investigations Department interviewed him and closed the preliminary investigation on 15 October 2019. On the same day, it referred the case to the Public Prosecutor of the Mafanco Court of First Instance (TPI), who immediately began questioning him and issued a warrant for his arrest.

134. He points out that at no time during his interrogation was he informed of his right to the assistance of a lawyer, although international human rights standards and domestic law provide for this right from the moment of interrogation.

Consequently, he argues that he was deprived of this fundamental right during the pre-trial phase and seeks to have the defendant convicted for violating his right to a fair trial, in particular the right to a defence.

Argument of the defendant

135. The defendant argued that, since the duration of police custody could not exceed 48 hours, the judicial police officer (OPJ) who had held the applicant in custody since 13 October 2019 was obliged to present him to the Public Prosecutor in accordance with the law.

136. He explained that since the applicant had refused to answer the OPJ's questions, there was no longer any reason for the OPJ to continue the investigation.

The defendant found it surprising that the applicant criticised the OPJ for having forwarded his file too quickly to the Public Prosecutor when he maintained that he did not commit any criminal offence.

137. It pointed out that the applicant had appointed at least 11 lawyers to defend him and the Court did not reject the appointment of any of them. It therefore considers that it is inaccurate to say that he did not have the right to a fair trial.

138. With regard to the obligation incumbent on the OPJ to inform the defendant at the time of his arrest that he has the right to be assisted by counsel, the defendant considers that no breach of the law can be validly invoked because Article 82 of the Code of Criminal Procedure of Guinea provides that,

“A person in respect of whom there are plausible reasons to suspect that he has committed or attempted to commit an offense may not be heard freely on these facts only after having been informed:

- 1. the alleged qualification, date and place of the offence which he is suspected of having committed or attempted to commit*
- 2. the right to leave at any time the premises where he/she is heard;*
- 3. where applicable, the right to be assisted by an interpreter;*
- 4. the right to make statements, answer questions asked or keep silent;*
- 5. if the offence for which he/she is being heard is a felony or misdemeanour punishable by imprisonment, the right to be assisted during his/her hearing or confrontation, in accordance with the procedures laid down in Articles 97 and 98, by a lawyer chosen by*

him/her or, at his/her request, appointed ex officio by the President of the Bar Association ; he/she is informed that the costs will be borne by him/her unless he/she meets the conditions for access to legal aid, which are reminded to him/her by any means; he/she may expressly agree to continue the hearing without the presence of his/her lawyer;

6. the possibility of benefiting, where appropriate free of charge, from legal advice in a legal access structure.

Notification of the information provided pursuant to this article shall be recorded in the minutes. If the course of the investigation so permits, when the person is summoned in writing to appear for a hearing, the summons shall indicate the offence of which he or she is suspected, his or her right to be assisted by a lawyer and the conditions for access to legal aid, the procedure for appointing a court-appointed lawyer and the places where he or she may obtain legal advice before the hearing.

This article shall not apply if the person was taken, under duress, by the police before the judicial police officer '.

139. As the applicant had been taken to the Office of the Public Prosecutor by the police and handed over to him, the defendant considered that the right to a defence invoked by the applicant, Badara Aliou Cheikna KONE, was not violated.

It therefore requests that the Court dismiss all his claims as ill-founded.

Analysis of the Court

140. The Court notes that the concept of a fair trial encompasses a number of rights granted to persons who are the subject of judicial proceedings or preliminary investigation. These include the right to defence, adversarial proceedings, res judicata, equality of arms, the right to an effective remedy, presumption of innocence, and right to be tried within a reasonable time...

141. The right to a fair trial is a fundamental right. It is governed in particular by Article 14 of the ICCPR, which states that "All persons shall be equal before the courts and tribunals. Everyone is entitled to a fair and public hearing by a competent tribunal established by law, in a fair and public hearing of any criminal charge against him or her..."

142. The Court notes that, in the present case, although the applicant claims that the defendant violated his right to a fair trial, he specifies that this concerns the violation of his right to a defence.

The Court points out that the right of defence is a prerogative available to a person during a trial. It ensures equality and fairness between adversaries in this process.

143. The Court notes that observance of the rights of the defence is a general principle of law which consists, *inter alia*, in the right of every person involved in proceedings to have the assistance of counsel.

144. The Court notes that in the present case it is apparent from the material in the file, in particular from the statements made by the applicant, that when he was interrogated the defendant omitted to notify him that he had the right to be assisted by counsel and that he thus infringed his right of defence by failing to comply with a substantial formality.

145. The Court recalls that pursuant to the relevant provisions of Article 9 (1) of the International Covenant on Civil and Political Rights (ICCPR): *"Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law"*.

This provision of the covenant means that an arrest is arbitrary when:

- The reason for the arrest is illegal;
- The victim was not informed of the reasons for his arrest;
- The victim's procedural rights were not respected;
- The victim was not brought before a judge within a reasonable time;

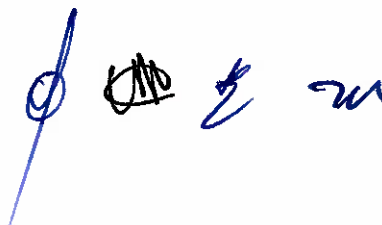
146. The Court points out that the obligation on the defendant to inform the applicant that he has the right to be assisted by a lawyer is a recognised procedural right. Consequently, the defendant must provide formal proof that it notified the applicant of his various rights at the time of his arrest, in particular the right to be assisted by a lawyer during questioning and hearings.

147. Indeed, the jurisprudence accepts that the burden of proof of the notification of rights to the arrested person lies with the State. For example, in *Avena and Other Mexican Nationals (Mexico v. United States of America)*, *Judgment, I.C.J. Reports 2004 (I)*, p. 46, para. 76). the International Court of Justice (ICJ) has ruled that “*it is for the authorities of the arresting State to spontaneously inform the arrested person of his right to request that his consulate be notified*”; *the fact that the arrested person did not ask for such a notification not only did not justify non-compliance with the obligation to inform which is incumbent on the arresting State, but could well be explained, in some cases, precisely by the fact that the person was not informed of his rights in this respect*”.

Similarly, in the case of Ahmadou Sadio Diallo (Republic of Guinea v. Democratic Republic of Congo), the International Court of Justice (ICJ) held that Guinea was entitled to argue that Mr Diallo's right to be “*informed, at the time of his arrest, of the reasons for his arrest*”, a right that is guaranteed in all cases, regardless of the reason for the arrest, had been disregarded.

148. The Court observes that “*the DRC did not produce any documents or other evidence capable of establishing that the expulsion order was notified to Mr Diallo at the time of his arrest on 5 November 1995, or that he was in any way informed at that time of the reason for his arrest. Although the expulsion decree itself lacked a precise statement of reasons, notification of the decree at the time of the arrest of Mr Diallo would have constituted sufficient information, for the purposes of Article 9(2), of the reasons for his arrest, since it would have indicated to him that he was being arrested for the purposes of expulsion proceedings and would have enabled him, if necessary, to initiate the appropriate procedures to challenge the legality of the decree. But no such information was provided to him; the DRC, which should be able to prove the date of service of the decree to Mr Diallo, did not present any evidence to this effect, the Court notes.*” (ICJ Ahmadou Sadio Diallo (Republic of Guinea v. Democratic Republic of the Congo) judgment of 30 November 2010.)

149. The Court notes that in the present case, the defendant does not offer to prove that he made all the mandatory notifications when the applicant was questioned. On the contrary, it tries to justify its failure to comply with these legal requirements by invoking the provisions of its own



legislation, in particular article 82 of the Code of Criminal Procedure of Guinea, according to which:

"A person in respect of whom there are plausible reasons to suspect that he has committed or attempted to commit an offense may not be heard freely on these facts only after having been informed:

- 1. the alleged qualification, date and place of the offence which he is suspected of having committed or attempted to commit*
- 2. the right to leave the premises where he/she is heard at any time;*
- 3. where applicable, the right to be assisted by an interpreter;*
- 4. the right to make statements, answer questions asked or keep silent;*
- 5. if the offence for which he/she is being heard is a felony or misdemeanour punishable by imprisonment, the right to be assisted during his/her hearing or confrontation, in accordance with the procedures laid down in Articles 97 and 98, by a lawyer chosen by him/her or, at his/her request, appointed ex officio by the President of the Bar Association ; he/she is informed that the costs will be borne by him/her unless he/she meets the conditions for access to legal aid, which are reminded to him/her by any means; he/she may expressly agree to continue the hearing without the presence of his/her lawyer;*
- 6. the possibility of benefiting, where appropriate free of charge, from legal advice in a legal access structure.*

Notification of the information provided pursuant to this article shall be recorded in the minutes. If the conduct of the investigation permits, when a written summons is sent to the person with a view to his or her hearing, this summons shall indicate the offence of which he or she is suspected, his or her right to be assisted by a lawyer as well as the conditions for access to legal aid, the procedures for appointing a court-appointed lawyer and the places where he or she may obtain legal advice before the hearing.

This article shall not apply if the person was taken, under duress, by the police before the judicial police officer '.

150 The Court notes that the defendant concludes, on the basis of Article 82 in fine of the Guinean Code of Criminal Procedure, that, since the applicant was brought before the public prosecutor

by force, there was no breach of the right to a defence if he had not been informed of his procedural rights.

151. The Court observes that the defendant is indeed wrong to make such observations, since not only may it not invoke the provisions of its domestic law as a reason for failing to fulfil its obligations arising from the application of treaties and other international agreements freely entered into, but such observations also constitute an admission that it did not observe the right of defence of the applicant invoked against him.

152. The Court therefore held that the defendant violated the right to a defence provided for in Article 7 of the ACHPR and Article 14 of the International Covenant on Civil and Political Rights (ICCPR) by failing to notify the applicant that he had the right to be assisted by a lawyer at the time of his arrest and, consequently, the right to a fair trial.

XI COMPENSATION

Arguments of the Applicants

153. The applicants maintained that they had suffered clear psychological harm as a result of their violent arrest by hooded men. They request that it may please the Court:

- Order the defendant to release them immediately under penalty of 10,000,000 CFA Francs per day of delay;

- Order the Republic of Guinea to pay Abdourahamane Sanoh the sum of 3 billion CFA francs;

- Badara Aliou Cheikna KONE: 3 billion CFA francs

Sékou KOUNDOUNO: 2 billion CFA francs

Ibrahima DIALLO: 2 billion CFA francs

Abdoulaye Oumou SOW: 2 billion CFA francs

Mamadou Ballo BARRY: 2 billion CFA francs

Alpha SOUMAH: 2 billion CFA francs

Mamadou BAH: 2 billion CFA francs

Mamadou SANOH: 2 billion CFA francs.

Argument of the defendant

154. The defendant considers that the alleged violations relied on by the applicants are ill-founded. He asked the Court to dismiss their claim for compensation for the psychological harm they allegedly suffered.

Analysis of the Court

155. The Court found the following human rights violations: violation of the right to respect for the private home, violation of the right to personal liberty, violation of the freedom of assembly, violation of the freedom of opinion and expression, violation of the freedom to demonstrate, and violation of the right to a fair trial.

156. The Court notes that the request for the applicants' release subject to a penalty payment of 10,000,000 CFA francs per day of delay has become moot since the applicants regained their freedom as a result of the judgment of the Conakry Court of Appeal.

With regard to the compensation sought by the applicants for the psychological damage they allegedly suffered, the Court found that the sums claimed were exorbitant and were not based on any evidence that would allow such sums to be awarded to the victims. The Court considers that, while it is certain that the applicants suffered psychological harm at the time of their violent and brutal arrest by men in hoods, that harm must be assessed objectively, taking into account the circumstances of the case, in order to award compensation that reflects the harm suffered by the victims.

The Court considers that in these circumstances the award of the sum of five million (5 000 000) CFA francs to each of the victims constitutes fair compensation for their loss.

Handwritten signatures and initials in blue ink, including a large stylized 'S' or 'Z' shape, a signature that appears to be 'E', and some other illegible marks.

XII. COSTS

Pursuant to Article 66, paragraph 2 of the Rules of the Court, the unsuccessful party is ordered to pay the costs, if the other party has applied for it. The Court notes that in the present case the applicant and the defendant have concluded to this effect. Consequently, as the defendant has been unsuccessful, the Court orders the costs to be borne by it.

XIII OPERATIVE PART OF THE JUDGEMENT

For these reasons, the Court sitting in open court and after hearing both parties:

AS TO JURISDICTION

Declares that it has jurisdiction to hear the dispute.

ON ADMISSIBILITY

Declares the applications admissible.

ON THE MERIT OF THE CASE

Holds that the defendant violated the right of the applicants to respect for their private home, their right to personal liberty, their right to freedom of assembly, their right to freedom of opinion and expression, their right to freedom of demonstration, and their right to a fair trial.

Orders the defendant to pay the sum of five million (5 000 000) CFA francs to each of the nine (9) victims by way of damages for the harm suffered, namely:

Abdourahamane SANOH (1), Badara Aliou Cheikna KONE (2), Sékou KOUNDOUNO (3), Ibrahima DIALLO (4), Abdoulaye Oumou SOW (5), Mamadou Ballo BARRY (6), Alpha SOUMAH (7), Mamadou BAH (8) and Mamadou SANOH (9).

Declares that the request for the immediate release of the applicants subject to a penalty of 10,000,000 CFA francs per day of delay has become devoid of purpose.

COSTS:

Orders **the** Defendant to pay the costs.

Thus done and adjudged on the day, month and year above.

And the following having appended their signatures:

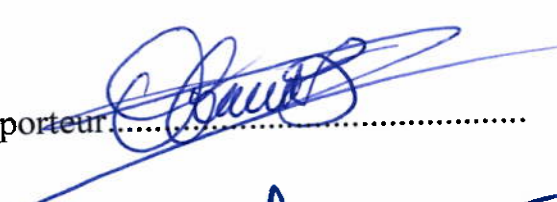
Hon. Justice Sengu M. **KOROMA**

Presiding.....

Hon. Justice Dupe **ATOKI**

Member.....

Hon. Justice Gberi-bè **OUATTARA**

Judge Rapporteur.....

ASSISTED BY : Dr. Athanase ATANNON

Deputy Chief Registrar.....

