



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

In the Matter of

OUSMANE SONKO against **the REPUBLIC of SENEGAL**

Application No.: ECW/CCJ/APP/35/23. Judgment No. ECW/CCJ/JUD/42/23

JUDGMENT

ABUJA

17 November 2023

SUIT No: ECW/CCJ/APP/35/23

JUDGMENT NO. ECW/CCJ/JUD/42/23

OUSMANE SONKO

APPLICANT

V.

THE REPUBLIC OF SENEGAL
DEFENDANT

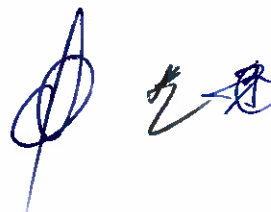
COMPOSITION OF THE COURT:

Hon. Justice Gberi-bè OUATTARA	Judge Rapporteur/Member
Hon. Justice Sengu M. KOROMA	Member
Hon. Justice Claudio Monteiro GONÇALVES	Member
Assisted by: Dr Yaouza OURO-SAMA	Chief Registrar

I. REPRESENTATION OF THE PARTIES:

Maître Ciré Cléodor Ly, member of the Dakar Bar, Maître Saïd Larifou, member of the Moroni Bar (Union of the Comoros), Maître Juan Branco, member of the **Paris Bar Counsel for the applicant**

The State Judicial Officer assisted by Maîtres Papa Moussa Félix Sow, Samba Biteye and Amadou Yéri Ba, **Counsel for the defendant**



II. JUDGMENT OF THE COURT

This current judgment is the one rendered by the Court, in virtual public hearing, pursuant to Article 8 (1) of the 2020 Practice Directions on Electronic Case Management and Virtual Hearings.

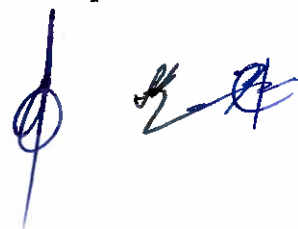
III. DESIGNATION OF THE PARTIES

1. The applicant is OUSMANE SONKO, an expert in tax law, a Senegalese politician detained at the Sébikhotane detention and correction centre, acting in the name and capacity of legal representative of the political party Les Patriotes du Sénégal pour le Travail, l'Ethique et la Fraternité (PASTEF), hereinafter referred to as "the applicant".

2. The Defendant is the Republic of Senegal, a Member State of the Community, signatory to the African Charter on Human and Peoples' Rights and other international instruments relating to the protection of human rights, hereinafter referred to as "the Defendant".

IV. SUBJECT MATTER OF THE PROCEEDINGS

3. The purpose of these proceedings is to examine the application by which the applicant seeks a finding that the respondent violated his right to freedom of movement, his right not to be arbitrarily detained, his right to equality before the law, his right of access to a court, his right to property, his right to security of person, his right to a fair trial, his right to freedom of association and peaceful assembly, and his right to participate in the conduct of the public affairs of his country;



V. PROCEEDINGS BEFORE THE COURT

4. By application received at the Registry on 14 September 2023, Ousmane Sonko filed an action before the ECOWAS Court of Justice against the Republic of Senegal for violation of his human rights.

On the same day, he filed an application for expedited procedure and an application for interim measures at the Registry of the Court.

All these applications were served on the defendant on 18 September 2023. (Exhibit No. 2 and 3)

5. On 16 October 2023 the defendant lodged at the Registry a defence on the substance of the proceedings, a reply to the application for an expedited procedure and a reply to the application for interim measures. These various pleadings were served on the applicant on 18 October 2023.

In addition, the defendant raised preliminary objections which were immediately notified to the applicant. (Exhibit No. 4, 5, 6 and 7)

6. On 20 October 2023, the defendant filed additional documents with the Registry, which were immediately notified to the applicant. (Exhibit No. 8)

7. On 30 October 2023 the applicant lodged at the Registry a reply on the merits, a reply on the expedited procedure, a reply on the interim measures procedure, a reply on preliminary objections and a request that the defendant should forfeit its right to file rejoinder pleadings. These pleadings were served on the defendant on the same day. (Exhibits Nos. 9, 10, 11, 12 and 13)

8. On the same day, the defendant filed additional documents with the Registry and requested that the case be adjourned. All these documents were also served on the applicant on the same day. (Exhibits Nos. 14 and 15)

On 31 October 2023, through Maître Ciré Clédor Ly, the applicant opposed this motion for adjournment on the grounds that the motion was untimely and that the defendant could not validly rely on disruptions to the supply of electricity and the internet connection to request an adjournment. Exhibit No. 16.

9. On the same day, the defendant received a brief and documents filed the previous day by the applicant. At the hearing, through its lawyers, the defendant reiterated its request for an adjournment to reply to these new submissions. (Exhibit No. 17)

The applicant, through Maître Ciré Clédor Ly, again opposed this application for adjournment on the grounds that the defendant could plead after reading the brief and exhibits in question. (Exhibit No. 18)

10. The defendant challenged the legality of the appointments of Maître Saïd Larifou and Maître Juan Branco, lawyers at the Moroni Bar in the Comoros and the Paris Bar in France respectively.

11. In order to verify the legality of the constitution of the two lawyers concerned, the Court heard Mr Juan Branco, in particular as to whether he had completed all the formalities provided for in the judicial cooperation agreement. During the investigation of this procedural incident with a view to settling it, Mr Juan Branco made discourteous remarks about the Court despite being called to order by the Court, whose Presiding Judge repeatedly drew his attention to the fact that he was breaking the rules of politeness and invited him to be more courteous towards the Court.

12. The case was adjourned on this point to allow the Court to rule on the regularity of the constitution of these two lawyers at the hearing of 6 November 2023.

On 02 November 2023, Mr Juan Branco filed documents with the registry attesting to the legality of his constitution. As for Maître Saïd Larifou, he did not



submit any document justifying his right to plead before the ECOWAS Court of Justice. (Exhibit No. 19)

13. On 06 November 2023, the defendant lodged at the Registry a rejoinder to the application for interim measures, a rejoinder to the application for expedited procedure, a rejoinder to the preliminary objections and a rejoinder to the applicant's application for forfeiture of the right to lodge rejoinders. (Exhibits Nos. 20, 21, 22 and 23)

After deliberations, the Court ordered the exclusion of Maître Saïd Larifou from the proceedings on the grounds of irregular constitution;

However, the Court declared that Mr Juan Branco fulfilled all the conditions required to plead before it;


VI. ARGUMENTS OF THE APPLICANT

a) Summary of facts

14. On 14 September 2023, Ousmane Sonko, acting in his own name and as representative of the political party "Patriotes du Sénégal pour le Travail, l'Ethique et la Fraternité" (PASTEF), brought an action before the ECOWAS Court of Justice against the Republic of Senegal for violation of his fundamental human rights.

15. In support of his claim, he explained that, when he was a tax inspector, he had denounced the non-payment of tax by Members of Parliament because this constituted a breach both of the equality of citizens before the law and of the obligations of good governance in a democratic society.

16. By presidential decree no. 2016-1239 issued on 26 August 2016, he was removed from the civil service of Senegal for "failure to comply with the obligation of professional discretion" following his entry into politics and the creation of his political party "Patriotes du Sénégal pour le Travail, l'Ethique et la



Fraternité” (PASTEF), which was registered with the Ministry of Home Affairs with receipt no. 17226/M.INTSP/DGAT//DLP on 6 February 2015.

17. He stated that his popularity among Senegalese and pan-Africanists was so dazzling that he was elected Member of Parliament in the 2017 legislative elections and came 3rd in the 2019 presidential elections, which was his first participation, before being elected mayor of the Municipality of Ziguinchor in the territorial elections of 23 January 2022.

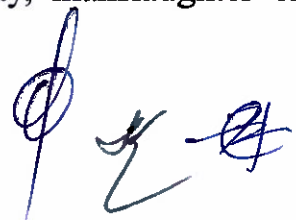
18. He indicated that he was a candidate in the next presidential election in 2024 and that, as such, he was the main political opposition to the camp of President Macky SALL, who had decided to eliminate him from the political arena because, together with the YEWWI ASKAN WI coalition of political parties, he had succeeded in brandishing the prohibition of a 3rd term of office contained in Article 27 of the Constitution, which stipulates that

“The term of office of the President of the Republic shall be five years.

No one may serve more than two consecutive terms.”

19. He reported that the defendant used a young girl to accuse him of rape and death threats when he was a member of the National Assembly, followed by a complaint for defamation against a minister of the Republic.

20. The applicant stated that he was arrested on 28 July 2023, five months prior to the elections, on the pretext of stealing a mobile phone and, using an abuse of process, he was remanded in custody on charges of theft with violence, conspiracy to commit a terrorist act, dissemination of false news, endangering the lives of others, financing of terrorism, direct provocation of an armed gathering, direct provocation of an unarmed gathering, complicity in voluntary manslaughter, acts likely to compromise public security and cause political unrest, money laundering, financing of terrorism, attack on state security, manslaughter or unintentional injury.



21. In the opinion of the applicant, these facts attest to the intention of the defendant to implement legal instruments and use the justice system to deprive him of his right to vote, his right to stand for election and his right to participate in the elections due to be held in less than seven months' time. He alleged that the evidence of a state plot could be deduced from the fact that the alleged victim was a gendarme assigned to the High Command who, without any plausible explanation, found himself outside his home and the speed with which the gendarmerie arrived at the scene to make the arrest.

22. He stated that in the course of these numerous proceedings, his rights, as enshrined in the international human rights instruments on which the proceedings were based, were violated by the Republic of Senegal:

23. The right of defence and to a fair trial, the right of access to a lawyer, the right to freedom of movement, the right to physical and moral health for himself and his family, the right to property and protection of his personal data, the right to security of person, the right to freedom of association and peaceful assembly, the right to participate in free and democratic elections, and the right to vote and to stand for election, the manifest arbitrariness of the dissolution of the Patriote du Sénégal pour le Travail, l'Ethique et la Fraternité (PASTEF) party;

24. The applicant further submitted that, following his arrest on 28 July 2023, the respondent had hastily issued a decree dissolving the PASTEF party on 31 July 2023 and proceeded to arrest the political leadership and independent journalists.

b) *Pleas - in - law relied on*

25. The pleas in law relied on by the applicant are as follows:

-Violation of Articles 9-1, 12-1; 14-1; 14-3b and d; 14-5; 16; 21; 22; 25-a; b and c of the International Covenant on Civil and Political Rights (ICCPR).

- Violation of Article 12-1 of the International Covenant on Economic, Social and Cultural Rights (ICESCR).
- Violation of Articles 4; 5; 6; 7-1; 10-1; 11; 12-1; 13; 14 and 16. The African Charter on Human and People's Rights (ACHPR).
- Violation of Articles 3 and 4-1 of the African Charter on Democracy, Elections and Governance
- Violation of Article 4g of the ECOWAS Revised Treaty.
- Violation of Articles 3;5; 6; 7; 8; 9; 10; 13; 17; 20 and 21 paragraphs 1 and 2 of the 1948 Universal Declaration of Human Rights.
- Violation of Article 17 of the Universal Declaration of Human and Citizens' Rights of 1789 (UDHR).
- Violation of Articles 1a; 1b; 1h; 1i and 1j of Protocol a/sp1/12/01 on democracy and good governance supplementary to the Protocol relating to the mechanism for the prevention, management, resolution of conflicts, maintenance of peace and security.

(c) Conclusions

26. The applicant requested as it may please the Court to:

- Declare and adjudge that the Defendant violated the Applicant's right to physical health and the moral health of his entire family.
- Declare and adjudge that the defendant violated the right of the applicant to equality of citizens before the law, his right to a fair trial, his right not to be arbitrarily detained, his right to freedom of movement, his right to demonstrate and assemble, his right to property and his right to privacy.
- Declare that the defendant violated the right of the PASTEF political party to demonstrate, assemble and exist as a political party.
- Consequently, order that the appeal lodged by the applicant on 28 April 2023 in the case against Mame Mbaye Niang be entered and that the proceedings in the

case against the applicant and Adji Sarr be resumed in accordance with Article 307 paragraph 2 of the Code of Criminal Procedure following his failure to acquiesce in the decision rendered in absentia and his arrest on 28 July 2023.

Order the defendant to re-instate the PASTEF political party, to organise the 2024 presidential election with the participation of the PASTEF political party, and to respect the civil and political rights of the applicant.

-Order the defendant to take all useful and necessary measures to ensure that the applicant can be a candidate in the presidential elections of February 2024.

-Order the provisional release of the applicant.

-Order the defendant to return to the applicant all his property taken during his abduction and to return to the PASTEF party all its property confiscated by the defendant throughout the national territory only five minutes after the announcement of the illegal dissolution.

-Order the defendant to pay the sum of 500 billion in damages to the applicant

Order the Republic of Senegal to pay the PASTEF party the sum of 750 billion CFA F as compensation for the material and moral damage caused.

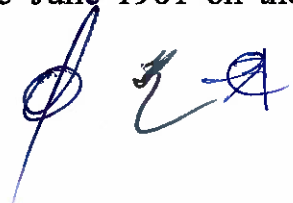
Order the defendant to pay the sum of 250,000,000 CFA F to the family of the applicant.

Order the defendant to pay the legal costs of 20,000,000 CFA F.

VII. ARGUMENT OF THE DEFENDANT

a) Summary of facts

27. In a statement of defence received at the Registry on 16 October 2023, the defendant submitted that the allegations made by the applicant that he was improperly struck off the civil service list shortly after setting up a political party were inaccurate. According to the Defendant this removal is the result of a disciplinary procedure provided for in Act no. 61-33 of 15 June 1961 on the



general status of the civil service. The disciplinary body before which he was duly brought found that there was a violation of the obligation of professional discretion set out in article 14 of the aforementioned law. He was therefore dismissed from the corps of tax inspectors by decree no. 2016-1239 of 29 August 2016.

28. The defendant also pointed out that the President of the Republic had always shown his willingness to respect the Constitution and that he had addressed a message to the nation in which he stated that he would not be running in the presidential election of 24 February 2024. He explained that it was despite this clearly stated option that the applicant made a series of calls for public demonstrations against an alleged third candidacy. Consequently, it considers that the argument put forward by the applicant on this issue reflects his manifest bad faith and his desire to manipulate national and international public opinion.

29. In the Adji Raby SARR case, the defendant asserted that, contrary to the statements made by the applicant, this woman was not used to accuse him of rape and death threats. He explained that in February 2021, despite the restriction on freedom of movement and the right to assemble and meet imposed because of the COVID-19 pandemic, the applicant, taking advantage of his status as a member of parliament, went at night, without his driver and bodyguards, to a beauty salon under the name "SWEET BEAUTE" where Adji Raby SARR worked for a massage session during which he allegedly had intimate relations with her.

30. He claimed that on the same night, the masseuse went to the gendarmerie to lodge a complaint against the claimant, alleging that he took advantage of the massage session to rape her at gunpoint. The subsequent medical examination revealed the presence of sperm and an old tear in the hymen, and samples were taken by the attending physician, confirming the presence of live spermatozoa.

31. The defendant stated that the proceedings, which were initiated as a result of the alleged victim's complaint, were the subject of a preliminary investigation

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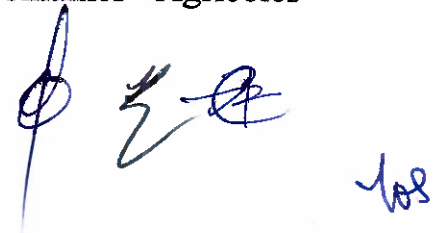
under the authority of the public prosecutor, but in view of his status as a Member of Parliament at the time, the applicant was not heard by the investigators.

32. At the end of the investigation, a judicial investigation was opened against the massage parlour operator, Ndèye Khady Ndiaye, for complicity in rape, incitement to debauchery and dissemination of images contrary to public decency, and against an unnamed person for rape and death threats.

33. After hearing the plaintiff, the accused and the witnesses, and then gathering all the evidence supporting the theory of the applicant's active involvement, the Examining Magistrate, in accordance with Articles 61 of the Constitution and 51 et seq. of the Rules of Procedure of the National Assembly, requested and obtained the removal of the accused's parliamentary immunity and subsequently charged him with the above-mentioned offences.

34. When questioned in accordance with the law, the applicant admitted that he was indeed on the premises indicated and that he had met the plaintiff. However, he refused to carry out the DNA comparison test in order to avoid giving evidence that could compromise him and corroborate the allegations made by the plaintiff. He merely stated that he was the victim of a ruthless plot by a number of political and judicial authorities. At the end of the judicial investigation, the examining magistrate, considering that sufficient charges were brought against the accused, ordered that they be referred to the Criminal Division of the Dakar Court of First Instance following an order of indictment and referral to the Criminal Division issued on 17 January 2023. (*See Exhibit No.9 of the list of documents*)

35. The defendant recalled that on 22 November 2022, at a press briefing, the applicant accused Mame Mbaye NIANG of having been pinpointed by a report of the Inspectorate General of State (IGE), which had allegedly accused him of embezzlement in connection with the management of a project of the Republic of Senegal, known as the Programme National des Domaines Agricoles Communautaires (PRODAC).



36. The applicant claimed to have used terms from the report and to have in his possession all the documents relating to the embezzlement. He then called Mame Mbaye NIANG a liar, for saying that no report had pinpointed him. The latter, through his lawyers, filed a complaint against him with the Public Prosecutor.

37. The defendant also added that, in various public statements, in particular those made on 25 February and 02 March 2021, the applicant openly called on his activists and supporters to rise up, revolt and engage in "mortal combat", issuing death threats and threats of violence or assault against the political and judicial authorities. Unusually violent demonstrations, acts of looting and vandalism were then perpetrated in Dakar and throughout much of the country, resulting in deaths and injuries among both demonstrators and the forces of law and order, as well as the ransacking of public buildings (gendarmerie brigades, town halls, courts, prefectures, etc.) and other private property (shops, petrol stations, etc.) looted by armed individuals.

38. The defendant submitted that it was these facts that had prompted the public prosecutor to bring proceedings against the applicant, which culminated in his being charged by the Dean of Examining Judges, who issued a detention order against him.

The defendant concluded that it did not violate any human rights instrument.

b) *Pleas in law relied on*

39. The defendant relies on the provisions of articles 9-3, 14-3b, 14-3d, 14-3e and 14-5 of the International Covenant on Civil and Political Rights Article 7-1a and c of the African Charter on Human and Peoples' Rights.

Articles 3,7,8,10,11 of the Universal Declaration of Human Rights;

The Constitution of the Republic of Senegal;



Articles L29, L41 and L42 of the Senegalese Electoral Code;

Articles 1, 2, 32, 33, 55, 180, 225, 312 345, 346, 398 and 625 of Law No.2014-28 of 3 November 2014 amending Law No.65-61 of 21 July 1965 on the Code of Criminal Procedure published in the Official Gazette No.6818 of 10 November;

Articles 138, 258, 261 and 324 of the Criminal Code.

c) Conclusion

40. Consequently, the defendant requests that the Court:

Find that it did not violate any of the applicant's rights;

Declare and adjudge that it has no jurisdiction to assess the legality of decisions rendered by the courts of the Member States of the Community and their legislation;

Dismiss all of the claims of the applicant as unfounded.

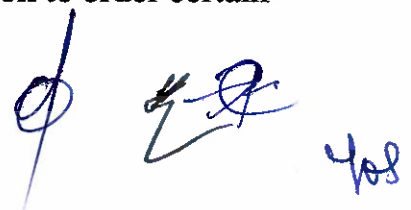
Dismiss all of the applicant's claims for compensation as unfounded.

Order the applicant to bear the entire costs.

VIII. JURISDICTION

41. The applicant asks the Court to declare that it has jurisdiction to hear the case before it.

42. The defendant, without contesting the jurisdiction of the Court to rule on the dispute as a whole, nevertheless considers that it lacks jurisdiction to order certain



interim measures sought by the applicant and to assess the legality of decisions taken by the courts of the Member States of the Community.

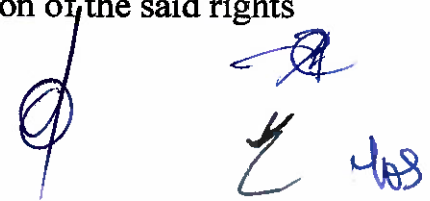
ANALYSIS OF THE COURT

43. 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”*.

44. In the present case, the applicant alleged that the defendant violated his right to freedom of movement, his right not to be arbitrarily detained, his right to equality of citizens before the law, his right of access to a court, his right to property, his right to security of person, his right to a fair trial, his right to freedom of association and peaceful assembly, and his right to participate in the conduct of the public affairs of his country;

45. The Court has always maintained that when it is seised with cases of violations of human rights under international instruments for the protection of human rights ratified by a Member State, it declares in principle that it has jurisdiction to examine the allegations made by the applicant without prejudging the merits of the application. Thus, in the judgment it delivered on 28 November 2013 in the case of Amédéo ADOTEVI v Republic of Benin, the Court held in paragraph 36 of the said judgment that: *“the mere allegation by the applicant of a violation of international instruments for the protection of human rights in an ECOWAS Member State suffices to establish its jurisdiction, which cannot be linked to the proven or unproven nature of the said violations”*.

46. The Court notes that the rights invoked by the applicant are among the human rights falling within its jurisdiction. Consequently, the violation of the said rights



gives it jurisdiction to hear the application, pursuant to the provisions of Article 9 paragraph 4 of the Supplementary Protocol A/SP/1/01/05 of 19 January 2005.

IX. ADMISSIBILITY

47. The defendant requests that the Court declare inadmissible the application brought by Ousmane Sonko in his capacity as representative of the political party PASTEF (Patriotes du Sénégal pour le Travail, l'Ethique, et la Fraternité) on the grounds that the legal person was dissolved by decree number 2023-1407 of 31 July 2023.

48. The applicant retorted that the dissolution occurred six (6) months before the presidential election. He believes that this fact constitutes a violation of Article 2-1 of Protocol A/SP1/12/01 on democracy and good governance according to which *“no substantial reform of the electoral law should take place in the six months preceding the elections, without the consent of a large majority of political actors”*.

He therefore concludes that the objection that the proceedings are inadmissible must be dismissed.

ANALYSIS OF THE COURT

49. 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 ”.*

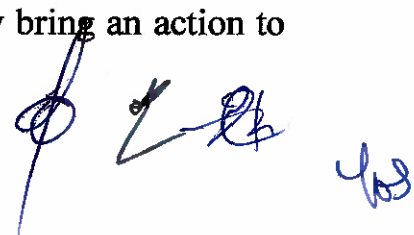
50. In the present case, the Court notes that the applicant Ousmane Sonko, who is also acting in his capacity as representative of the PASTEF political party, is clearly identified. The application is therefore not anonymous.

51. The Court reiterated its case-law concerning the political party PASTEF, according to which, in order for a legal person to be able to bring an action before it, it must have legal personality. This implies that the applicant must be duly registered under national law. See Finance Investment & Development Corporation (Fidc) v. State of Liberia (unreported judgment number).

See Federation of African Journalists & 4 Others v. Republic of The Gambia (Judgment No. ECW/CCJ/JUD/04/18, unreported).

52. The Court observes that in the present case the applicant states that he is acting on his own behalf and as a representative of the PASTEF party. Contrary to the objection raised by the Defendant, the Court notes that the very subject of the dissolution of PASTEF is a matter of dispute between the parties. The applicant asserted that, following his arrest on 28 July 2023, the defendant, without recourse to due legal process, hastily issued a decree dissolving PASTEF on 31 July 2023. In that regard, the applicant asked the Court to order the respondent to reinstate the rights of PASTEF to enable it to participate in the 2024 presidential election. This obviously made the issue of the dissolution of the PASTEF contentious between the parties.

53. Indeed, in a judgment delivered in 2020, the Court made it clear that legal persons may enjoy certain substantive rights and other rights which are not dependent on human rights (i.e. derived from them) and may bring an action to



protect those rights if they are infringed. See *Amnesty International Togo & 7 Autres v. Republic of Togo* (Judgment No. ECW/CCJ/JUD/09/20, unpublished). In those circumstances, to seek to deprive PASTEF of the ability to assert its rights before a competent court, as in the present case, by reason of its alleged dissolution, would be contrary to the principle of natural justice *audi alteram partem*, in particular where the applicant maintains that the alleged dissolution of the party was decided without the party being afforded the opportunity to be heard.

54. The Court therefore considers that, as the leader of the party which serves as the vehicle for the realisation of his political aspirations, the applicant can legitimately be recognised as having the right to act as the legal representative of that political party.

55. For all these reasons, the Court finds that the applicant has the requisite standing to act in the present case on his own behalf and as representative of PASTEF. Consequently, the preliminary objection of the defendant cannot succeed and must be rejected.

56. Furthermore, as there is no evidence that the applicant applied to another international court with jurisdiction in human rights matters to hear the same case, the Court must declare the application admissible.

X PROCEEDINGS BEFORE THE COURT

A. APPLICATION FOR ADMISSION OF THE CASE TO THE EXPEDITED PROCEDURE

57. The applicant explained that in order to participate in the presidential elections, it was necessary to be in possession of his civic and political rights and to be registered on the electoral roll. He argues that the defendant has already drawn the consequences of a conviction that is not final in order to remove him

from the electoral roll. He claims that this will prevent him from running in the elections due to take place on 24 February 2024, five (5) months from now.

58. He also points out that one of the conditions for the admission of candidates is that 0.6% of the electorate must be sponsored. The sponsorship period begins on 29 September 2023 and the deadline for submitting applications is 25 December 2023, less than three months away. He therefore considers that there is an urgent need to submit the case to an expedited procedure in view of the deadlines relating to sponsorship and the date of the elections, which will be held in five months' time, because if the parties are subject to the ordinary deadlines for the handling of a case by the court, the result will be a worsening of the situation and even irreversible, definitive and irreparable damage.

59. The applicant further maintains that candidates may be independent or nominated by a party or a coalition of political parties. However, to stand as an independent candidate, the person must have ceased all political activity for one year or never have been active in a political party. There is therefore a clear urgency to adjudicate on the expedited procedure, since the applicant, head of a political party, only has this means to be a candidate and the dissolution of his political party and his abusive removal from the electoral roll will have final consequences irreversibly damaging for his party and himself any possibility of participating in the presidential election of 25 February 2024 if the case is submitted to the ordinary procedural time limit, hence the urgency of submitting the case to an expedited procedure.

60. The defendant retorted that the application of Article 59 of the Rules presupposes the existence of a particular urgency, the materiality of which must be established by the applicant. It states that, to this end, Article 10 of the Practice Directions of the Court requires the requesting party to state in a specific statement of reasons why it considers that an urgent decision is required in the case.

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JOS

61. It pointed out that according to the ECOWAS Court of Justice, in matters of human rights violations, *“the particular urgency likely to justify admission to the accelerated procedure must result from the existence of a special reason justifying that it be decided as soon as possible either to put an end to a manifest violation of the applicant's rights or to prevent an imminent risk of violation of his fundamental rights”* (CJ/ECOWAS ORD No. ECW/CCJ/ADD/09/15 of 14 December 2015).

62. The Defendant added that in another dismissal order issued on 31 May 2016, the Court, again in line with its jurisprudence, considered that the facts put forward by the applicant in no way made it possible to characterise the existence of *“an imminent and irreversible peril”* that could justify a prompt decision (Order No. ECW/CCJ/ORD/06/12 Idrissa Maïga v Republic of Mali).

63. It considered that, in the present case, there was no urgency that could justify the case being admitted to the expedited procedure because the appeal filed by the applicant suspended the criminal aspects of the judgment delivered on 03 May 2023;

The appeal proceedings against the judgment of 1 June 2023 are pending before the Court of Appeal;

The Supreme Court dismissed his application for interim measures against the refusal of the Administrative Authority to issue sponsorship forms to his representative (*Exhibit 18*).

The applicant appealed to the President of the Tribunal d'Instance de Ziguinchor against his removal from the electoral roll, and the court ordered his reinstatement on the electoral roll, rendering his claims relating to his electoral rights moot;

The detention order issued against him is justified by the proceedings brought against him for various criminal and misdemeanour offences, including attacks on state security and calls for insurrection. (*Exhibit No. 10*)



64. The defendant argues that there is no special urgency in the present case which would justify the use of the expedited procedure and asks the Court to rule that there are no grounds for submitting the case to the expedited procedure.

ANALYSIS OF THE COURT

65. 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”*.

66. The Court notes that it is clear from the procedural documents that the admission of candidates to the presidential election is subject to obtaining 0.6% of the electorate through sponsorship and that the start date for sponsorship is 29 September 2023, whereas the deadline for submitting applications is 25 December 2023.

67. The Court notes that for this reason, although the application initiating the proceedings was received at the Registry on 14 September 2023, after the parties had sufficiently exchanged their written submissions, it held two hearings with the parties and reserved the case for judgment on 17 November 2023; this shows that the Court decided to deal with the case expeditiously.

68 The Court found that the particular urgency of the case required it to give judgment as soon as possible. It must therefore grant the application for the admission of the case to the expedited procedure in accordance with the provisions of Article 59 of the Rules of Court.



B. APPEAL PROCEEDINGS

69. The applicant lodged an application for interim measures, asking the Court to rule on the matter:

-Order the defendant to refrain from any action likely to aggravate the dispute between them, and in particular his removal from the electoral register and the electoral roll;

-Order the suspension of his removal from the electoral roll for the presidential election of 25 February 2024 and the reinstatement of his name on the electoral register, if this measure has already been taken;

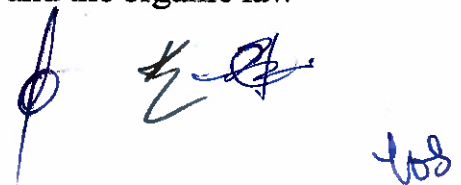
-Order the suspension by the defendant of the dissolution measure and the provisional reinstatement of the political rights of PASTEF;

-Order the defendant not to take any action that might impede the lawful political activities of the PASTEF political party until a decision of the Court is rendered and in any event until after the 2024 presidential election;

Order the defendant to end his pre-trial detention if there are alternatives to detention that do not hinder his political activities.

70. The defendant retorted that the facts presented were truncated, that there was no urgency and that the grounds raised could not in any way justify the measures requested. He considered that the applicant failed to show how he was the victim of any violation of his human rights likely to cause him irreparable harm capable of persuading the Court to give an interim ruling.

71. The respondent states that the applicant applied to the Tribunal d'Instance de Ziguinchor, which decided to reinstate him on the electoral roll by decision of 12 October 2023. According to the respondent, this decision renders the claim of the applicant devoid of purpose, notwithstanding the appeal in cassation of the defendant in accordance with the Electoral Code (article L44) and the organic law



on the Supreme Court in articles 76 et seq. He pointed out that the applicant was seeking a stay of the dissolution of his party, but at no time did he claim that the dissolution would be unlawful or demonstrate how it would violate his right to freedom of peaceful assembly and association.

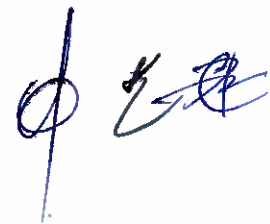
72. Lastly, the Defendant considered that the applicant could not be released on bail because the detention of the applicant was justified by the charges brought against him for robbery with violence, conspiracy to commit a terrorist act, dissemination of false news, endangering the lives of others, financing terrorism, direct incitement to form an armed group, direct incitement to form an unarmed group, complicity in intentional homicide, acts likely to jeopardise public security and cause political unrest, money laundering, financing terrorism, attack on State security and intentional homicide. He was remanded in custody by the dean of Judge of the Dakar High Court on 31 July 2023, in accordance with article 110 of the Code of Criminal Procedure (CCP). (*See Exhibit No. 10*).

ANALYSIS OF THE COURT

73. The Court holds that, since its judgment on the merits will be available within a few days of its delivery, it follows that the application for interim measures is now devoid of purpose.

XI ON THE MERIT OF THE CASE

74. The applicant alleged that the defendant infringed his right to a fair trial (A), his right to property (B) and his right to health (C).



A THE VIOLATION OF THE RIGHT TO A FAIR HEARING

75. The applicant alleged a violation of his right to a fair trial in three separate judicial proceedings and one administrative proceeding. The procedures involved are:

- a) - the proceedings subsequent to the claim brought against him by a young woman named Adji Raby Sarr for rape and death threats ;
- b) - the proceedings subsequent to the claim brought against him for defamation by the Minister of State Mame Mbaye Niang ;
- c) - proceedings concerning the charges brought against him for acts likely to jeopardise public security or cause serious disorder, an attack and a conspiracy against the authority of the State in connection with a terrorist undertaking, the financing of terrorism, the direct provocation of an armed gathering, the dissemination of false news and complicity in intentional homicide, for which he remains in custody.
- d) The administrative procedure concerning the dissolution of PASTEF by decree issued by the President of the Republic of Senegal.

The Court will examine each of the proceedings and the right to a defence in order to determine whether the right of the applicant to a fair trial was violated.

a) On the procedure concerning the facts of rape and death threats

76. In alleging breach of his right to a fair trial in this case, the applicant relies on the judgment delivered in absentia on 1 June 2023. He explained that while he was barricaded in his residence surrounded by hundreds of elite police officers who denied him any access to the outside, his lawyers were sprayed with tear gas when they tried to see him for legal advice. During the trial, the facts were truncated, leading to his conviction for “corruption of youth” instead of the original charges of rape and death threats, without retaining the substituted charge.

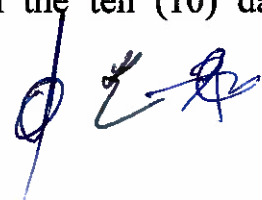


77. The defendant states in reply that the applicant was never prevented from attending court or from availing himself of the services of his lawyers. According to the defendant, following various calls from the applicant via social networks, gatherings were organised on 30 May 2023 in the vicinity of his home, forcing the police to intervene to ensure security and protect life and property.

78. At the end of the hearing, attended by the applicant's lawyers but unable to appear due to the absence of their client, on 1 June 2023, the Court acquitted him of the charge of death threats and then disqualified the charges of rape initially brought against him as those of corruption of young people before sentencing him, in accordance with Article 324 of the Criminal Code, to two years' imprisonment and payment to the victim of FCFA 20,000,000 in damages.

ANALYSIS OF THE COURT

79. The Court notes that the applicant justifies his inability to attend the hearing by the presence of the police near his residence. However, there is no evidence that law enforcement prevented him from appearing in court. The mere presence of the police is not a sufficient reason to justify the absence of the applicant from court. The applicant did not provide proof of any fault attributable to the courts or the administration as the cause of his absence from the trial. Senegalese law permits trials in absentia. The inability of his lawyers to intervene in the trial in his absence is based on the law, namely Article 398 of the Code of Criminal Procedure. The applicant did not establish that the judges took advantage of his absence to commit abuses to his detriment. On the contrary, the documents in the file show that the court, in his absence, dismissed the offences against him by disqualifying them as less serious offences, in accordance with the law. According to the applicant, the registrar issued him with a certificate of non-acquiescence in respect of the judgment delivered in his absence within the ten (10) days prescribed by law.



80. For all these reasons, and particularly in view of the fact that there was a possibility of retrying the applicant after his arrest, the Court finds that the respondent did not violate the right of the applicant to a fair trial in the course of these proceedings.

b) On the proceedings concerning the facts of defamation

81. The applicant alleged that in the case brought against him by Mame Mbaye NIANG, all the parties, including himself, appealed against the first instance judgment, but that only the appeals of the public prosecutor and the civil party were heard by the Court of Appeal. This fact constitutes an infringement of his right to a defence and his right to a fair trial.

82. The defendant contests the allegations made by the applicant and maintains that, contrary to his statements, his appeal dated 28 April 2023 was indeed entered in the file, and the Court of Appeal ruled on this point by judgment no. 137 of 8 May 2023. To this end, the defendant produced as evidence Exhibit No. 08 of the lists of exhibits, in which the Court ruled as follows:

“At today's hearing, the Court, after deliberation, handed down the following judgment:

The Court

Having regard to the judgment of the Tribunal de Grande Instance Hors Classe de Dakar dated 30/03/2023;

Having regard to the appeals found by the Office of the Public Prosecutor, the civil party and the Defendant, according to the minutes of the registry dated 30 March, 31 March and 28 April 2023 respectively;

Having heard the report of President Mamadou Cissé Fall;

Having heard the Opinion of the Attorney General;



Having heard the civil party in all its claims, pleas and submissions;

Null for the accused in abstentia”.

ANALYSIS OF THE COURT

83. It is relevant to note that “the granting of applications before a Court falls within its discretion. Failure to grant a request should not be construed as a violation of a party's right to a fair trial”. See *Ousainoe Darboe & 31 Others v. Republic of The Gambia* Unpublished Judgment No. ECW/CCJ/JUD/01/20 at pg. 30.

84. As rightly pointed out by the defendant, the above reference to his appeal by the Court of Appeal reviewing the dispute is sufficient evidence that his right to a fair trial and access to a court was not violated, still less his right to an effective remedy. Consequently, his allegations of violation of his right to a defence, to an effective remedy and therefore to a fair trial are manifestly unfounded and must be dismissed.

c) The proceedings concerning the charges brought against him for acts likely to jeopardise public security or cause serious disorder, an attack and a conspiracy against the authority of the State in connection with a terrorist undertaking, the financing of terrorism, the direct provocation of an armed gathering, the dissemination of false news and complicity in intentional homicide, for which he remains in custody.

85. With regard to the current criminal proceedings involving the applicant, he alleges that he was the victim of arbitrary detention and abuse of process which violated his right to a fair trial in breach of Article 7(1) a & c of the African Charter on Human and Peoples' Rights.

86. The defendant submitted that the Dean of the Examining Magistrates charged the applicant with counts of acts likely to jeopardise public security or cause serious disorder, an attack and conspiracy against the authority of the State in relation to a terrorist undertaking, the financing of terrorism, direct provocation of an armed gathering, dissemination of false news, and complicity in intentional homicide.

87. This indictment took place in the presence of some thirty lawyers appointed by the applicant, who exercised their professional functions from the time of the arrest, as attested by the investigation report of 28 July 2023 (exhibit No. 16).

88. This measure complies with the Code of Criminal Procedure in Senegal, in particular Article 110, which states that “the examining magistrate may, where appropriate, issue a warrant for appearance, bringing, detention or arrest”.

89. Article 6 of the African Charter provides that “*No one may be deprived of his freedom except for reasons and conditions previously laid down by law.*” The defendant stated that the applicant was arrested for “serious reasons classified as criminal offences under the Code of Criminal Procedure and in accordance with the procedure laid down by law”. (Citing the Code of Criminal Procedure and the Criminal Code). (*Exhibit No. 17*)

ANALYSIS OF THE COURT

90. The Court has always refrained from interfering in national judicial proceedings, whether by confirming, setting aside or annulling judgments and decisions of the courts of the Member States. See *Social Democratic Convention, CDS Rahama v. Republic of Niger*, (ECW/CCJ/JUD/03/15).

91. The applicant did not prove any violation of his right to a fair trial in the criminal proceedings brought against him. He was represented at the trial by lawyers of his choice. The Court reiterated that the right to a defence is an integral

part of a fair trial, and like the right to the presumption of innocence, the right to a defence is above all a fundamental requirement of all stages of judicial proceedings. From this perspective, the right to a defence implies not only that both parties should be heard, but also that the person subject to trial should be free to choose the person who will defend him or her. See *Mr. Kpatcha Gnassingbe & Others v. Republic of Togo, Reports of the Court* 2013, p. 154 para 53.

92. For all the reasons given under this heading, the Court finds that the criminal proceedings against the applicant were instituted in accordance with the laws in force in the defendant and the applicant did not demonstrate that he was deprived of his right to a defence in order to conclude that his right to a fair trial was violated. Consequently, the allegation made by the applicant of a breach of the right to a fair trial was not substantiated and must be dismissed.

93. Consequently, the Court considers that it is not for it in these circumstances to order the release of the applicant when he is the subject of judicial proceedings in his country and that, apart from unsubstantiated allegations, he is the subject of judicial harassment the sole purpose of which is to prevent him from standing for election to the supreme office of his country in the presidential election of 25 February 2024. The evidence in the case file does not show that his detention was arbitrary.

d) On the administrative procedure concerning the dissolution of the PASTEF political party and the infringement of property rights

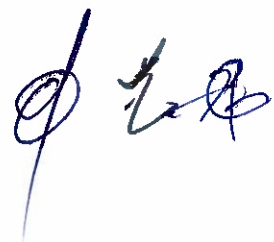
94. The applicant states that, following his arrest on 28 July 2023, the respondent, in breach of the right to be heard, issued a decree dissolving PASTEF on 31 July 2023. The political leadership of the said party as well as independent journalists were arrested and imprisoned.



95 The applicant contends that the dissolution of the PASTEF political party without a court decision by arbitrary decree of the President of Senegal violated the right of PASTEF to a fair trial.

96. In reply, the defendant submitted that PASTEF violated its obligations under the provisions of Article 4 of the Constitution and Article 4 of Law No 81-17 of 6 May 1981 on political parties, as amended by Law No 89-36 of 12 October 1989, and that it was therefore liable to be dissolved. He explained that this dissolution was carried out by decree in accordance with article 4 of the aforementioned 1981 law. In the light of an introductory report, the President of the Republic issued Decree No. 2023-1407 of 31 July 2023 dissolving PASTEF. Article 1 of the said decree states: “The political party known as “Patriotes du Sénégal pour le Travail, l’Ethique et la Fraternité” (PASTEF), registered under registration receipt no. 17226/MINTSP/DGAT/DLP dated 06 February 2015, is dissolved for failing to meet its obligations under Article 4 of the Constitution and Article 4 of Law no. 81-17 of 06 May 1981 on political parties, amended by Law no. 89-36 of 12 October 1989”.

97. The defendant further argued that, according to these texts, the decree of the President dissolving PASTEF was not subject to a judicial decision or the conviction of a member of PASTEF for the offences committed which gave rise to the dissolution. Therefore, the decision to dissolve the party does not constitute a violation of the right to a fair trial. Political parties are governed by the law, which cannot be broken under threat of prosecution. Since PASTEF violated the provisions of the law, it is legal for it to be dissolved by presidential decree. This cannot be interpreted as an infringement of the right to participate in a presidential election.



ANALYSIS OF THE COURT

98. The Court noted that political parties are governed by the Constitution of 22 January 2001 which, in Article 4, defines their purpose and by Act 81-17 of 6 May 1981 as amended by Act 89-36 of 12 October 1989. According to article 4 of the Constitution, "*Political parties and coalitions of political parties contribute to the expression of suffrage under the conditions laid down by the Constitution and the Law. They work to train citizens, promote their participation in national life and manage public affairs*". This article imposes, at the same time, a number of obligations on them, namely:

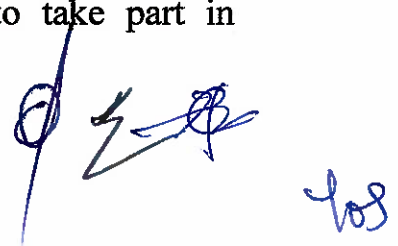
-Observance of the Constitution and the principles of national sovereignty and democracy;

Prohibition of identification with a race, ethnic group, sex, religion, sect, language or part of the territory;

-Strict observance of the rules of good associative governance, on pain of sanctions likely to lead to the suspension and dissolution of the party in the circumstances set out in article 4 of the law on political parties.

99. The Court notes that a political party may be dissolved in a number of cases, as specified in Article 4 of the 1981 Law, in the event of serious disregard, by virtue of its general activity or its public statements, of the obligations incumbent upon it under Articles 1 and 4 of the Constitution and set out in the undertakings provided for in Article 2 of the Law on political parties, in particular as regards the observance of public order and civil liberties.

100. The Court emphasised that it was clear from the case file, in particular from the uncontested statements made by the defendant that the applicant, the president of the PASTEF party, frequently called on his supporters to take part in



insurrectionary movements by means of press statements. These calls were widely heeded, leading to serious public order disturbances during March 2021 and June 2023, resulting in several deaths and injuries and the ransacking and looting of public and private property.

101. The Court recalls that it is clear from the pleadings that the administrative authority competent to dissolve a political party is the President of the Republic. This dissolution is effected by decree issued on the report of the Minister of Home Affairs, as specified in article 4 of the 1981 law as amended.

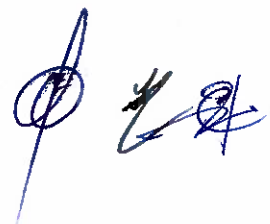
102. The Court also notes that the President of the Republic of Senegal, in the exercise of this regalian mission, has, by decree, dissolved the PASTEF party for having failed to fulfil its obligations under the provisions of Article 4 of the Constitution and Article 4 of Law No 81-17 of 6 May 1981 on political parties,

103. Lastly, the Court notes that it is apparent from the proceedings that the applicant brought an action for ultra vires against this decision.

104. The Court therefore considers that, in reality, under the pretext of a breach of his fundamental human rights, the applicant is asking the Court to interfere with the prerogatives of the national court.

105- The ECOWAS Court of Justice reiterates its settled jurisprudence on the subject, according to which it has always affirmed that it is not its role to review the decisions of national courts.

106- Thus, in the case of *Mr Karim Meissa Wade v Republic of Senegal*, the Court specified "*it is not its role to examine the laws of the Member States of the Community in the abstract nor having jurisdiction to examine the decisions of the courts of Member States. It pointed this out in its judgment of 27 October 2008, in the case of Hadijou Manou Koraou v. Republic of Niger, it reiterated in its*



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*Judgments Hissène Habré v. Republic of Senegal, Abdoulaye Baldé and 5 others v. Republic of Senegal of 22 February 2013, §70, 71, 72”.*¹

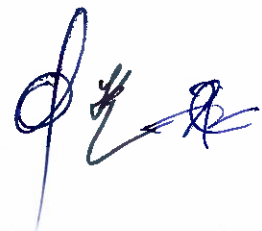
Consequently, it cannot in this case replace the Supreme Court of Senegal.

B VIOLATION OF RIGHT TO PROPERTY

107. The applicant stated that he was arrested without a court order by the special defence and security forces and that his belongings, namely his Toyota Land Cruiser, his passport, a Taurus Sp revolver, a box of 38 calibre ammunition, an authorisation to carry a weapon, an IPHONE mobile phone, 2 Techno mobile phones, a Black Berry mobile phone, a Mackbook Pro computer, a large travel bag, a small bag, clothes and the sum of 2. 000,000 FCFA were illegally seized, even though they were not connected to any legal proceedings to date. He alleged that his personal data were disclosed without legitimate or lawful grounds, which, in his view, constituted a violation of his right to property.

108. The applicant further submitted that, before the publication of the decree dissolving PASTEF and its notification to the party leadership, the forces of law and order had stormed PASTEF's headquarters and its offices throughout the national territory simultaneously, between 3 p.m. and 6 p.m. on the same day, removing the signs and posters bearing the party emblem from the facades and confiscating the property of the party on the premises, without carrying out a prior inventory in the presence of a bailiff.

110. The defendant submits that the applicant alleges that it violated his right to property and infringed his privacy without proving this. According to the defendant, any infringement of a fundamental right must be proven. It considered



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that the applicant did not provide the slightest proof of his allegations on this point.

ANALYSIS OF THE COURT

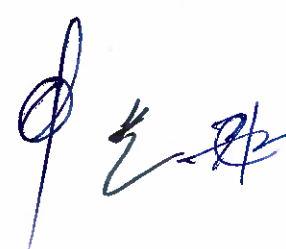
111. The Court notes that the personal items relied on by the applicant were seized in the course of judicial proceedings for the purposes of the investigation following a complaint against him. As the proceedings are still in progress, he cannot claim that his right to property in these assets was infringed.

112. The Court notes that, as regards the assets of the dissolved political party, the applicant did not adduce evidence of his allegations, whereas it is for those who allege a violation of a right to adduce such evidence. Consequently, the Court concludes that the right to property of the applicant was not infringed in the current state of the proceedings.

D. THE VIOLATION OF THE RIGHT TO HEALTH

113. The applicant stated that the special police and gendarmerie forces attacked his vehicle and subjected him to the most severe physical abuse. He argued that, as it is not the rule under international law for a person to be held in pre-trial detention pending trial, his continued detention at a time when his health is steadily deteriorating is justified only by the desire to undermine the electoral influence he may have over the electorate in February 2024.

114. The defendant retorted that the deterioration in his state of health was attributable to the hunger strikes he had embarked upon.



ANALYSIS OF THE COURT

115. The Court notes that the enjoyment of the highest attainable standard of health is one of the fundamental rights of every human being". The right to health includes timely access to acceptable health care of satisfactory quality at an affordable cost.

116. The Court finds that in the present case the case file shows that the hunger strike voluntarily observed by the applicant was the cause of the alleged deterioration in his state of health. As a result, he cannot validly argue that the defendant violated his right to health.

XII COMPENSATIONS FOR ALLEGED DAMAGES

117. The applicant claimed that his rights were violated by the defendant and that he suffered damages as a result.

Accordingly, he requests that the Court order the defendant to pay him the sum of 500 billion CFA francs by way of damages, 750 billion by way of reparation for the material and moral prejudice caused to the PASTEF party, and 250,000,000 CFA francs to his family.

118. The defendant asks the Court to find that it did not infringe any of the applicant's rights and accordingly to dismiss all his claims for compensation.

ANALYSIS OF THE COURT

118. The Court recalls that its jurisdiction over human rights violations allows it not only to find such violations but also to order redress where appropriate.

120. Nevertheless, damages are awarded to the victim of damage only to compensate for the damage suffered by the victim as a result of the fault of the perpetrator of the damage.

121. It follows that the victim must provide proof of the loss for which he or she is seeking compensation.

123. In the present case, the Court ultimately held that the defendant did not violate any of the applicant's human rights.

The Court therefore considers that his claims for damages are ill-founded and must be dismissed.

XIII. COSTS

124. 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, the Court holds that the applicant, having been unsuccessful, shall pay the costs.

XIV. OPERATIVE PART OF THE JUDGMENT

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

On the Jurisdiction of the Court:

-Declares itself competent to hear the case;

On admissibility

Declares the application admissible;

On the merits of the case

Admits the case to the expedited procedure;



Holds that the request for interim measures is moot;

Holds that the defendant did not violate any of the human rights of the applicant;

Dismisses the claim for damages by the applicant;

COSTS:

Orders the applicant to bear the costs;

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

Hon. Justice Gberi-bè OUATTARA

Judge Rapporteur/Member

Hon. Justice Sengu M. KOROMA

Member

Hon. Justice Claudio Monteiro GONÇALVES

Member

Assisted by: Dr Yaouza OURO-SAMA

Chief Registrar

