COMMUNITY COURT OF JUSTICE,

ECOWAS

COUR DE JUSTICE DE LA COMMUNAUTE,

CEDEAO

No. 10 DAR ES SALAAM CRESCENT,

OFF AMINU KANO CRESCENT,

WUSE II, ABUJA-NIGERIA.

PMB 567 GARKI, ABUJA

COURT OF JUSTICE OF THE ECONOMIC COMMUNITY OF WEST AFRICAN STATES (ECOWAS)

Holden at Abuja, Nigeria

On the 1st day of April 2016

Suit No. ECW/CCJ/APP/03/16
Judgment No. ECW/CCJ/JUD/19/16

BETWEEN

Djibril Yipéné Bassolé **APPLICANT**

AND

Burkina Faso **DEFENDANT**

BEFORE THEIR LORDSHIPS

1. **Hon. Justice Yaya Boiro** Presiding
2. **Hon. Justice Hamèye F. Mahalmadane** Member
3. **Hon. Justice Alioune Sall** Member

Assisted By: Maître Aboubacar Djibo Diakité Registrar

I. THE PARTIES AND THEIR REPRESENTATION

The Initiating Application of the instant case was lodged at the Registry of the ECOWAS Court of Justice on 14 January 2016. It was submitted on behalf of Mr. Djibril Yipéné Bassolé, a Burkinabe, represented by:

- **Maître Yérim Thiam**, Lawyer registered with the Bar of Dakar (Senegal);

- **Maître Marc Le Bihan**, Lawyer registered with the Bar of Niamey (Niger);

- **Maître Rustico Lawson-Banku,** Lawyer registered with the Bar of Lome (Togo);

- **Maître Dieudonné Bonkoungou,** Lawyer registered with the Bar of Ouagadougou (Burkina Faso);

- **Maître William Bourdon,** Lawyer registered with the Bar of Paris (France).

The Defendant is Burkina Faso. Its Memorial in Defence was received at the Registry of the Court on 23 February 2016. The Defendant is represented by:

- **Mr. Yao Lamoussa**, Judicial Officer at the Treasury;

- **Madam Stéphanie Zoungrana**, Assistant Judicial Officer at the Treasury;

- **Mr. Landry Yameogo**, Assistant Judicial Officer at the Treasury;

- **Mr. Salomon Ouba**, Assistant Judicial Officer at the Treasury.

II. SUMMARY OF FACTS AND PROCEDURE

On 29 September 2015, the Applicant, Mr. Djibril Yipéné Bassolé, a former Minister of Foreign Affairs of Burkina Faso, was summoned by the national gendarmerie for questioning, from his home, on the strength of letters rogatory dated 28 September 2015, made by a trial judge of a court martial at the Ouagadougou Military Tribunal. The summoning was the aftermath of an attempted coup d'état in Burkina Faso which occurred on 16 September 2015, and formed part of the judicial inquires and proceedings instituted in connection with the failed coup d'état.

On 3 and 4 October 2015, Mr. Djibril Yipéné Bassolé was heard by officers of the Criminal Investigations Department (CID) of the military establishment, and was charged on nine (9) counts by the military trial judge, before he was put in detention. The principal charges made against him were: "violation of State security", "colluding with foreign powers to destabilise internal security", "murder", "wilfully causing harm and injury", "wilful damage of property".

In mid-November 2015, the press reported on "rumours" of the telephone lines of Mr. Djibril Yipéné Bassolé having been tapped, and certain conversations recorded thereby. Again, it was in connection with those rumours concerning the tapping of his telephone lines, that recorded conversations alleged to have taken place between him and Mr. Guillaume Soro, President of the National Assembly of Cote d'Ivoire, may have been obtained and identified to have occurred on 27 September 2015. It is alleged that Counsel for Mr. Djibril Yipéné Bassolé asked the trial judge whether those allegations against his client had any basis at all, but the trial judge never deemed it fit to respond to the correspondences of the plaintiff counsel.

In connection with the same procedure instituted against him, the Applicant was equally denied the choice of certain lawyers "of foreign nationality", against whom the provisions of Article 31 of the Martial Code of Burkina Faso were applied thus: "Subject to specific provisions provided for by international conventions, lawyers of foreign nationality are debarred from appearing before the military tribunals."

It was under those circumstances that Mr. Djibril Yipéné Bassolé brought his case before the ECOWAS Court of Justice, asking the Court to:

"*Declare that it has the jurisdiction to entertain the Application;*

Declare that the Application is admissible;

Find that Burkina Faso did not respect its international obligations; it allowed the adoption of measures which jeopardised the actualisation of his rights, namely, that it allowed, outside the legal framework, the introduction and transcription of a recorded telephone conversation in a criminal trial proceeding in which he was a party, and secondly, it dismissed the lawyers of foreign nationality in the same trial, against his free will;

Order Burkina Faso to scrupulously respect international instruments of its Constitution within the limits of his rights and consequently:

- *Order the withdrawal of all the recordings of the telephone conversation and their transcription;*
- *Annul the order debarring the foreign lawyers from constituting counsel for him;*
- *Order Burkina Faso to pay to him the sum of One Hundred and Fifty Million CFA Francs (CFA F 150,000,000) as damages for the economic harm done him, and a token sum of One CFA Franc (CFA 1) for psychological harm;*
- *Ask Burkina Faso to bear the costs."*

Burkina Faso, on its part, lodged a memorial in response at the Registry of the Court on 23 February 2016, asking the Court to:

"*Declare that it has no jurisdiction, in limine litis, to adjudicate on the Application filed by Mr. Djibril Yipéné Bassolé*;

As to formality,

Declare the Application is inadmissible (…);

As to merits,

Dismiss the all the allegations of human rights violation and the charges made against Burkina Faso as ill-founded;

Dismiss the request to withdraw from the criminal trial, recordings of telephone conversation and SMS implicating the Applicant;

Equally dismiss the request for annulment of the order debarring the foreign lawyers from appearing before the military tribunal, as made by the trial judge of the military tribunal;

Dismiss purely and simply, the request for damages as legally baseless;

Ask the Applicant to bear the costs."

The Burkina Faso Court of Cassation, seised by a complaint from Counsel to Mr. Djibril Yipéné Bassolé, delivered a judgment thereof on 26 May 2016, wherein it:

- Declared admissible the matters brought;
- Dismissed the matters brought by the foreign lawyers as ill-founded;
- Quashed Judgment No. 2015-003 of 22 December 2015, having declared inadmissible the appeal filed by Mr. Djibril Yipéné Bassolé;
- Overturned and annulled the judgment complained of;

- Returned the case before the Ouagadougou military trial chamber, as previously constituted;
- Reserved costs.

Hearing before the Community Court of Justice, ECOWAS was held on 7 June 2016 at Abuja.

III. ARGUMENTS AND PLEAS IN LAW OF THE PARTIES

THE APPLICANT (Mr. Djibril Yipéné Bassolé) insists in his written pleadings that the recordings of his conversations had no legal basis. He argues that there is no legal framework backing the tapping of the telephone conversation. As such, his right to privacy was violated, as provided for in the instruments binding on Burkina Faso.

Considering the lack of clarity of the circumstances within which the telephone recordings were done, the Applicant claims that he is entitled to challenge the authenticity of that procedure, on one hand, and on the other hand, call for a legal consideration of the legitimacy of the method applied. Now, he avers that the exercise of his rights is hampered by the trial judge of the military tribunal, who, till then, had not deemed it fit to reply the two mails his Counsel had addressed to him (mails dated 2 and 3 December 2015).

Given the foregoing circumstances, the Applicant maintains that the disputed telephone conversations be set aside from the criminal proceedings in which he is a party.

Mr. Djibril Yipéné Bassolé equally contests certain acts engaged in by the trial judge of the military tribunal, notably the issuing of the orders by which he dismisses the lawyers who constitute his Counsel as being "of foreign nationality" in Burkina Faso – be they of French nationality or citizens of UEMOA (West African Economic and Monetary Union) States. According to the Applicant, such exclusion is contrary to both the domestic law of Burkina Faso and the international commitments Burkina Faso has subscribed to (conventions ratified by Burkina Faso or the norms of UEMOA binding on Burkina Faso).

THE DEFENDANT STATE (BURKINA FASO) first of all advances an argument as to the Court's having no jurisdiction to adjudicate on the matter brought before it, at least as regards having to examine the provisions on the domestic law of Burkina Faso.

Secondly, the Defendant State cites inadmissibility of the Application, on the ground of the pendency of case (*lis pendence*) – that at the time the Court was seised with the matter before it, the same case was already pending before the domestic courts of Burkina Faso, and that it would be worthwhile for the Court to decline to hear the case.

On the issue concerning tapped telephone conversations, Burkina Faso makes the claim that the tapping of the telephone calls had a legal basis, notably Law 061-2008/AN of 27 November 2008, Regulations on Networks and Electronic Communication Services in Burkina Faso (Article 35 in particular, which provides that confidentiality shall be guaranteed: "without prejudice to the powers granted for the conduct of investigations and for the security of the State"), and that the Code of Criminal Procedure (Article 427, states that: "offences may be established by any mode of evidence").

Finally, regarding the rejection of foreign lawyers, Burkina Faso principally argues that the instruments cited by the Applicant, do themselves provide for legal restrictions to be consistently applied to the exercise of rights in general; and that specifically, the rules of UEMOA again provide for restrictions on certain rights, for the sake of public order, public safety, public health, "or other reasons of general interest" (Article 94 of the Treaty of UEMOA). Concerning the 24 April 1964 Convention signed between France and Upper Volta (former name of Burkina Faso), the Defendant State is of the view that its application is subject to the mechanism of reciprocity, and that the Applicant does not provide evidence of the provision made for such reciprocity.

During the court hearing of 7 June 2016, Burkina Faso advanced the argument that despite the progress made in the trial proceedings of the case at the national level, and notably by virtue of the judgments delivered by the Supreme Court of Burkina Faso, Burkina Faso was maintaining its position on the question of the presence of foreign lawyers among the constituted counsel for the Applicant and on the issue concerning tapped telephone conversations.

IV. ANALYSIS OF THE COURT

AS TO FORMALITY

Burkina Faso raised two objections: one based on the Court's lack of jurisdiction in matters concerning application of the domestic law of Burkina Faso in general, and the Constitution of Burkina Faso, in particular; the other, based on *lis pendence*, that the judge at the local level of the Burkina Faso domestic court system was already seised with the same facts of the case, before the matter was brought before the ECOWAS Court of Justice.

Indeed, the written pleadings of the two Parties reveal numerous references to the domestic law of Burkina Faso, be it the Constitution or many other codes. The Applicant in particular meant to contest certain measures taken against him by virtue of provisions of the Constitution. On its part, the Defendant State invoked a number of texts – such as Law 061-2008/AN of 27 November 2008, Regulations on Networks and Electronic Communication Services in Burkina Faso, or the Burkinabe Civil Code – to justify, notably, the tapping of the telephone conversation.

Now, the norms referred to by the Court are, in principle, the norms of international law binding on the Member States. At any rate, that is the reason why only States are defendants in proceedings before the Court for human rights violation. Therefore, and in accordance with a well-established jurisprudence, all the points of argumentation based on the domestic law must be set aside.

In another instance, the Defendant State raised an objection concerning lis pendence, in claiming that the Community Court of Justice, ECOWAS shall decline its jurisdiction in so far as the local courts of Burkina Faso had already been seised with the same case at the time it came before the said Community Court of Justice.

With regard to this point, and judged against the circumstances of the instant case, it remains permissible for the Court to examine the scope within which to adjudicate over the matter brought before it. The truth remains that in principle, where a case is lodged before the local judge under the domestic court system of a Member State, there is no bar on the Community Court preventing it from entertaining the same case. In the terms of Article 10 of the 2005 Supplementary Protocol on the Community Court of Justice, ECOWAS access to the Court is only

impracticable where the same matter is instituted before "***another International Court***" for adjudication.

Hence, the fact that the Burkinabe courts may have been seised with the case, whether in part or in whole, does not constitute an obstacle for the Court to entertain that same case. In the same vein, it must be recalled that the rule of exhaustion of local remedies is not applicable before the ECOWAS Court of Justice.

AS TO MERITS

Once the foregoing points are clear and precise, the Court now holds that in the light of the totality of all the facts and law produced before it in the course of the proceedings, the instant case poses two problems. Firstly, the issue of disallowing Mr. Djibril Yipéné Bassolé from choosing lawyers of "foreign nationality", and secondly, that of the legitimacy or otherwise of the telephone conversations which may have been tapped. The position of the Court shall condition the fate of the request for reparation, as made by the Applicant.

REGARDING RESTRICTIONS IMPOSED ON THE APPLICANT'S CHOICE OF LAWYERS

To justify the restriction imposed on the Applicant's choice of his Counsel, Burkina Faso advances several arguments worth revisiting.

The first touches on the 24 April 1961 Convention on Judicial Co-operation signed between France and Upper Volta, whose Article 34 provides:

"*Lawyers registered with the Bar Associations of Upper Volta may assist or represent parties before all the courts of France, both at the preliminary inquiry stage and during oral hearings, under the same conditions as lawyers registered with the Bar Associations of France*. *In reciprocal terms, lawyers registered with the Bar Associations of France may assist or represent parties before all the courts of Upper Volta, both at the preliminary inquiry stage and during the oral hearings, under the same conditions as lawyers registered with the Bar Associations of Upper Volta.*"

The Defendant State contests the right of the lawyer of French nationality, Counsel to the Applicant, to assume that capacity, principally because the said lawyer of French nationality did not provide evidence for the reciprocal terms stated in the aforesaid provision.

The Court shall reject such standpoint. Indeed, under the arrangement set out above, it would be unreasonable, and even unrealistic, to condition the enjoyment of the benefits of the subjects of such international law to the administration of the evidence of reciprocity. In cases of such nature, it shall be up to the person challenging the exercise of such right – and also having the means of determining whether or not the treaty may be applied by the other party – to bear the burden of proof, since the issue at stake concerns States. Neither the letter of the above-cited Article 34 nor the spirit of the condition regarding reciprocity, are of such nature as to shift the burden of proof upon an individual, in terms of whether or not an aspect of the treaty is applicable by one party or the other.

Incidentally, in international practice, it is the States, in possessing the diplomatic means for so doing, which are responsible for proving the reciprocal terms of treaties signed among themselves, a condition which is often clearly stated in international conventions. In other words, the Defendant State has no right to contest Maître William Bourdon's right to represent and assist the Applicant before the Courts of Burkina Faso, since Maître William Bourdon is a lawyer registered with the Bar Association of Paris. It is up to Burkina Faso to provide proof if it considers that the condition regarding reciprocity is not fulfilled. Still, nothing in the case-file compels one to think that such reciprocal terms are lacking.

It must thereby be concluded that it is appropriate to dismiss this argument, as advanced by the Defendant State.

The second argument of Burkina Faso relates to the situation of other lawyers who plead UEMOA rules for the purposes of contesting the refusal by the trial judge of the Ouagadougou Military Tribunal to grant them the right of legal representation and assistance.

The text invoked by the lawyers is Article 7 of the 1 January 2015 Rules of Procedure No. 05/CM/UEMOA, which provides:

"*Lawyers registered with the Bar Association of a Member State of UEMOA may practice their profession in the other Member States of UEMOA, or permanently establish their main firm there, or else create a subsidiary law firm there, in accordance with the provisions relating to the Regulations on Free Movement and Establishment of Lawyer Citizens of the Union in the UEMOA Space*".

The Court must first of all recall that it has no mandate whatsoever to act as a watchdog over the legality of a sister organisation such as UEMOA. In every instance it has been requested to interfere in the relations among organs of UEMOA, or to assume the role of any such organ of UEMOA, notably the Court of Justice of UEMOA, the ECOWAS Court of Justice has declined jurisdiction in the matter, in due regard for those alternate legal or judicial orders.

It shall be appropriate to recall that in its judgment of 4 March 2010 on *Case Concerning Dr. Mahamat Seid Abazene* **v**. *Republic of Mali*, the Court declared that the dismissal of Dr. Mahamat Seid Abazene had to do with a public service dispute within the African Union and that the ECOWAS Court of Justice had no jurisdiction to examine such a dispute. Further, the Court, in its judgment of 8 February 2011, held in *El-Hadji Tidjani Aboubacar* **v**. *BCEAO and Republic of Niger* that: "… ***if the Honourable Court does not decline its avowed rationae materiae jurisdiction, it will inevitably be led to assume a right it is depositary of and whose implementation is conferred expressly and unequivocally on another Regional Court***." (§31). In paragraph 32 of the same Judgment, the Court concludes thus: "***The Court is also of the opinion that although its rationae materiae jurisdiction is relevant, it is incumbent upon it to decline that jurisdiction in view of the exclusive jurisdiction of the Court of Justice of UEMOA over the facts of the instant case***."

The Court must reaffirm that position of principle in the case at hand. The ECOWAS Court of Justice has no mandate to keep watch over a legal system obtaining in the same sub-region but for which specific mechanisms of sanction are provided. The ECOWAS Court of Justice cannot therefore arrogate to itself the duty regarding the observance of the Rules of Procedure of UEMOA.

Nevertheless, by a more general scope of principles, the right to choose one's lawyer constitutes today an undeniable component of the rights to defence, a prerogative which arises from "human rights". The unfettered right to choose one's representative or lawyer before a court is thus consecrated by:

- The African Commission of Human Rights, in its Communication No. 48/90, in *Amnesty International* **v**. *Sudan*: "***The right to freely choose one's counsel is essential to the assurance of a fair trial. To give the tribunal the power to veto the choice of counsel of defendants is an unacceptable infringement of this right***." (§64);

- The United Nations Human Rights Committee, while examining the meaning and scope of Article 14 of the International Covenant on Civil and Political Rights, was of the view that the right to choose one's counsel: "… ***apply to all courts and tribunals within the scope of that article whether ordinary or specialised, civilian or military.***" (General Comment No. 32, Right to equality before the courts and tribunals and to a fair trial, 90th Session (2007) of the United Nations Human Rights Committee, Part III, paragraph 22).

This last point, at any rate, urges the Court to consider another aspect of the argument put forth by Burkina Faso, equally canvassed in the course of the hearing of 7 June 2016. That argument consists of particular emphasis being placed on the peculiar nature of the procedure in question – as having been initiated on the basis of the Martial Code of Justice, as applied to a military person and for offences relating to "State security" – so as to advance the claim that normal procedural rules may not apply in the case at hand; simply put, that the 'military' and 'political' nature of the case precludes the application of the ordinary criminal procedure, and does justify restrictions placed on the rights of a defence. It was by virtue of that narrowly-defined standpoint, founded upon the exceptional nature of the context within which the events unfolded, that Burkina Faso, the Defendant State, was thus able to affirm that certain instruments invoked by the Applicant "… did not contain provisions relating to martial courts".

The Court holds that such argument can be refuted, even by virtue of the letter of the texts. Indeed, the texts clearly provide that the right to choose one's counsel shall be upheld before "… ***all the courts …***" (cf. above-cited Article 34 of the 24 April 1961 Convention on Judicial Co-operation signed between France and Upper Volta), or before "… ***all courts and tribunals***…" (cf. above-cited General Comment No. 32, Right to equality before the courts and tribunals and to a fair trial, 90th Session (2007) of the United Nations Human Rights Committee).

The above-cited provisions equally enable one to object to the thesis which claims that military courts did not exist in France and so the reciprocal nature of the agreement was lacking. The texts indeed do talk of "all courts …" and "… all the courts and tribunals …".

On the other hand, the case law of the ECOWAS Court of Justice itself has always held that the peculiar nature of a procedure, notably in regard to political

considerations, does not in any way constitute a factor which could on its own render the Court incompetent to adjudicate on a case or 'justify' an occurrence of human rights violation. It is therefore erroneous for Burkina Faso to invoke the exceptional nature of the political context which prevailed at that material time, as a ground for justifying the acts it engaged in.

The Court shall add two other points which go to consolidate the position that the Applicant is free to choose his own lawyers.

The first point relates to an instance in the judicial proceedings of the case, at the domestic level, wherein the very conclusions of the Government Commissioner at the Ouagadougou Military Tribunal, who, opposed to the position adopted by the Investigating Judge, declared at the hearing that: "***Whereas in regard to the foregoing, it shall be appropriate to admit, in the instant procedure, the constitution of lawyers of foreign nationality who are registered with the bars of the signatory States of the above-named conventions or rules, notably the Member States of the former OCAM, ANAD, UEMOA and the Republic of France***." The Republic of France is a signatory State to the Convention of 24 April 1961 as cited above.

The Court must finally recall a general principle of law which, on its own, would suffice to invalidate the stand adopted by Burkina Faso: the principle of superiority of international law over the national or domestic law. Indeed, no State may brandish its domestic law as a means of reneging on its international obligations; again, the State is duty bound to conform its domestic laws to its international obligations. In the case at hand, Burkina Faso is *ab initio* out of order in invoking its Martial Code of Justice, particularly as a means of narrowing down the scope of the international conventions to which it is a party. Besides, incidentally, it is because the commitments made under domestic law are subservient to municipal law, that Article 31 of the Martial Code of Justice itself stipulates that: "***Subject to specific provisions provided for by international conventions, lawyers of foreign nationality are debarred from appearing before the military tribunals***." Strangely, Burkina Faso cites this provision in its written pleadings without seemingly taking into account the exception made to the rule, by the text itself.

It would be relevant to state, at this juncture, that in its Judgment of 26 May 2016, the Burkina Faso Court of Cassation, among others, upheld the plea in law regarding violation of international conventions, as regards the legitimacy of

clients having recourse to foreign lawyers to assist them in pleading their cases in court.

Upon the strength of all the reasons which have just been detailed out, above, the Court finds that Burkina Faso is ill-founded in restricting the Applicant in the choice of his lawyers. It is therefore appropriate to grant the Plaintiff Counsel access to the procedure, for purposes of the trial of Mr. Djibril Yipéné Bassolé.

REGARDING TAPPED TELEPHONE CONVERSATIONS AND THE PURPOSE THEY MAY HAVE SERVED

The second wing of the argumentation engaged in before the Court relates to tapped telephone conversations. The Applicant makes a complaint by alleging that his telephone conversations were tapped on no legal grounds, and that the exercise was therefore carried out in violation of his rights, notably the right to protection of his privacy.

Basically, the Applicant contends that the charges made against him are related exclusively to the recorded telephone conversations. He avers that: "The said recording, whose source remains unknown and whose authenticity is questionable, is the only basis upon which the investigation authorities have since relied, in claiming that he participated in a coup d'état." (Refer to page 3 of Application). The Applicant therefore seeks *an order from the Court for withdrawal* of the recorded telephone conversations from the criminal trial proceedings.

In response to this argument, the Defendant State, Burkina Faso, maintains that the rules themselves which protect individuals' rights provide for restrictions on those rights. That restrictions on the privacy of individuals is a case in point; and that Article 29 of the Universal Declaration of Human Rights as well as provisions of the International Covenant on Human and Peoples' Rights legislate limits to the rights they proclaim. Hence, Burkina Faso concludes, that recourse to recorded telephone conversations, conducted as an integral part of a criminal trial, can be justified.

In the face of such arguments, the Court is of the view that its first duty consists of conducting an assessment as to the existence, and the impact, of the allegedly tapped telephone conversations, on the criminal case. In that regard, the Court has several remarks to make.

The Court detects a degree of inconsistency in the written pleadings of the Applicant. On one hand, the Applicant claims that "in the course of the hearings and interrogations, no recorded telephone conversation was tendered in court against him" (page 3 of Application); but on the other hand, he pleads that "the trial proceedings is going to be exceptionally and fully furnished with the transcriptions of the telephone conversations" (page 3 of Application).

Mr. Djibril Yipéné Bassolé's Application, at any rate, makes reference to those conversations, but as a means of corroborating the existence of same, he defers to newspapers meant for the general public, which themselves are not assertive enough of the statements made on the subject; thereby, he even defers to mere "rumours". This last word (i.e. "rumours") is often resorted to in the written pleadings of the Applicant, and as frequently used as the word "press". No particularly exact court process is filed in the case-file in respect of the alleged telephone conversations. The impression of uncertainty and perplexity is reinforced by the Applicant himself, who paints a picture which only seems to "suggest" that there may have been "a fabricated court process dating back to … whoever knows" (page 4). In other instances, the Applicant uses the conditional tense – a tense denoting uncertainty – in speaking of his alleged recorded telephone conversations, as on page 6, where he again writes that: "The disputed recorded telephone conversations may have been carried out from 17 September 2015 onwards."

The Court must admit that this leaves a huge gap to be filled in the case; the Court finds that the case-file does not contain any decisive pleading which may provide evidence for proving that the said telephone conversations had any effect on the Applicant's criminal status, to any such extent that may warrant that the Court pay any particular attention to his case. The issue of the recorded telephone conversations is surrounded by shadowy images and conjectures, opacity and approximations, preventing the Court from making any pronouncements thereupon. Nothing was produced before the Court concerning the telephone conversations alleged.

The Court notes that even if the two Parties did profusely argue on the very principle concerning restricting the right to privacy through the instrumentality of tapping conversations on the telephone, the two Parties did not in any way indicate with certainty, the impact such recorded telephone conversations may have had during the procedure.

Given the circumstances of the case, it will not suffice to demonstrate the mere existence of such conversations, as to having been tapped, so as to win one's case; it must still be proved that the recorded conversations did indeed seriously affect the rights of the Applicant.

The act of tapping telephone conversations is not in itself illegal. Several judicial systems admit the principle underlying it, for the purposes of the necessities of an inquiry. In such circumstances, one cannot criticise its mere application, but adduce evidence to the effect that at a given time of the procedure, the conditions under which it was applied violated the rights of the person targeted. Without that convincing requirement, without any proof of concrete violation, the Court would purely and simply be making pronouncements on the domestic legislations of the Member States, but to engage in such an exercise is contrary to the time-held case law of the Court. As held by the Court in its Judgment of 27 October 2008, in *Hadijatou Mani Koraou* **v**. *Republic of Niger*: "… ***the Court … does not have the mandate to examine the laws of Member States in abstracto, but rather, to ensure the protection of the rights of individuals whenever such individuals are victims of violation of those rights which are recognised as theirs, and the Court does so by examining concrete cases brought before it.***" (§60)

In other words, the Applicant will be required to produce evidence which establish that wrongful acts were committed against him, and that such violation must have occurred in relation to the contentious recorded conversations. It is only on that condition that one may assert that the admission of the recorded conversations formed part of the procedure, and that such admission harmed the rights of Mr. Djibril Yipéné Bassolé. A direct and concrete violation would therefore be found. In the current state of affairs, no court process has been produced to clearly demonstrate that there is a link between the telephone conversations alleged to have been recorded and the criminal attributions made concerning the status of the Applicant.

Furthermore, the Court has always held that it lacks the jurisdiction to interfere with the acts of trial judges in the domestic courts of Member States, except where such acts substantially affect the rights of a person. The Court has therefore had to decline the jurisdiction for examining certain measures of trial proceedings. In the Judgment of 7 October 2011 on *Cheikh Abdoulaye Mbengue* **v**. *Republic of Mali*, the Court was of the view that: "… ***the requests to re-open the judicial inquiry and annul the arrest warrant derive from the sphere of the***

domestic judicial competence of the Republic of Mali, and that in that respect, the Court recalls its consistently held case law and declines jurisdiction on any application brought seeking to overturn decisions of the domestic courts of Member States …" (§38). Then in *Case Concerning Barthélémy Diaz* **v**. *Republic of Senegal* (Judgment of 23 March 2012), the Court recalls in paragraph 25, regarding a committal order by a judge, that all the concepts at stake called for a closer look to be taken at the facts of the case, in relation to the individuals indicted, and therefore fell exclusively within the ambit of the domestic courts; as contrasted with the jurisdiction of the Community Court, when seised with a matter on human rights, and instituted against a Member State of the Community. Finally, in the case law of *Aziagbede Kokou and Others* **v**. *Republic of Togo* (Judgment of 3 July 2013), the Court finds that: "… ***it is not within its human rights protection mandate to substitute its own viewpoint on the facts of a case for that of the domestic courts seised with the same case, in terms of determining the authenticity of certain exhibits pleaded in relation to charges of a criminal nature. The issue would have been completely different if the question before the Court were to be limited to determining the fairness of the entire procedure which may have been employed at the national level***."

The Court concludes that it is impossible for it to make a pronouncement on the disputed recorded telephone conversations, given the failure to demonstrate a direct effect of the said recordings on the procedure. The Court therefore dismisses the claims made by the Applicant in that regard.

AS TO THE APPLICANT'S REQUESTS FOR RELIEF

The Applicant equally requested the Court to award him the sum of One Hundred and Fifty Million CFA Francs (CFA F 150,000,000) "in legal fees and honorariums".

The Court is however of the view that any request for monetary compensation shall be buttressed by adequate proof, and must be as a result of a physical or psychological harm suffered by an applicant. In the instant case, the Court has rectified the procedural aberration amounting to human rights violation, which consisted of putting impediments in the way of Applicant in the exercise of his right to free choice of counsel. The Applicant's counsel can now fully exercise the mandate of representing him, for the purposes of putting up his defence.

There is no apparent link between the violation of that right – which has been restored – and the request for monetary compensation. As things stand, the

Applicant does not prove any loss to be redeemed or denial to be claimed; he does no more than cite “legal fees and honorariums of lawyer”, as the one and sole justification for his request.

In the instant case, the transgressed right is restored, and that suffices for the Court. Like other courts, this Court is of the view that having found that there was violation of a right may constitute in itself a fair and sufficient satisfaction, and a relief for the injury suffered.

Thus, the Court shall reject the application for compensation as filed.

AS TO COSTS

Pursuant to Article 66 of its Rules of Procedure, the Court holds that considering the circumstances of the case, it shall be normal for Burkina Faso to bear the costs.

FOR THESE REASONS

The Court,

Adjudicating in a public session, after hearing both Parties, in a matter on human rights violation, in first and last resort;

As to formal presentation,

Dismisses as ill-founded the objections raised by Burkina Faso regarding incompetence of the Court to sit on the case and lis pendence of the case before another court;

As to merits,

Adjudges that the Applicant’s right to the free choice of his lawyers was violated;

Orders, as a result, Burkina Faso to restore the Applicant back to his right to free choice of counsel;

Adjudges that given the current state of affairs, there is no ground for making a declaration on the recorded telephone conversations as alleged;

Dismisses the Applicant’s request for monetary compensation as ill-founded;

Asks Burkina Faso to bear the costs.

Thus made, declared and pronounced in a public hearing at Abuja, Nigeria, on the day, month and year stated above.

On the Bench for this Judgment were:

- **Hon. Justice Yaya Boiro** Presiding

- **Hon. Justice Hamèye F. Mahalmadane** Member

- **Hon. Justice Alioune Sall** Member

Assisted By: Maître Aboubacar Djibo Diakité Registrar