

CASE NO. ECW/CCJ/APP/01/09
JUDGMENT NO. ECW/CCJ/JUG/04/09

Case Amouzou Henry and 5 Others v. Republic of Cote d'Ivoire

JUDGMENT OF 17 DECEMBER 2009

Human rights - procedural incidents - joinder - Discontinuance of proceedings - admission as part - intervention - libel - defamation - presumption of innocence - the right to a fair hearing - arbitrary detention - the right of pregnant women and infants - competence - admissibility - disclaimer - reasonable time - dismissal.

SUMMARY OF FACTS

By application addressed to the Community Court of Justice dated 15 January 2009, the Applicants claimed that the Government of Côte d'Ivoire has violated their fundamental rights. They argue that on 11 August 2007, the President of the Republic Côte d'Ivoire instructed the public prosecutor at the Court of First Instance in Abidjan Plateau to carry out an inquiry into the cocoa-coffee sector since its liberalization and flow of money.

In this report, the Prosecutor of the Republic, the Dean of judges opened judicial information that led to the indictment and the remand of those responsible for the coffee-cocoa sector in June 2008.

Following this indictment the prosecutor held a press conference to make public the preliminary findings of the investigation and informed the reporters that the 23 people cited will be charged for embezzlement, misuse of corporate assets, abuse of confidence, fraud, forgery and use of forgery for private or commercial banking.

This conference was followed with the publication in newspapers of the list of names, supporting photographs of the people involved, which are those of the applicants.

According to the applicants they have been victims of a legal and media lynching, by public opinion they had been convicted before trial. They were regularly presented by the press, the judicial authorities and by some politicians as criminals, thieves of billions. They believe that such remarks are likely to undermine their honour and reputation.

They believe that their indictment is not a conviction and therefore it does not in anyway establish their guilt. From this they consider that their detention which lasted for more than seven months as totally illegal and accused the Ivorian authorities of arbitrarily refusing their request for provisional release. This rejection prevented them from participating in the financial audits of the coffee-cocoa sector, requested by the Dean of trial judge on 16 July 2008, in order to prepare their case better.

They also emphasized the situation of one of them, Mrs. Obodji Roselyne who was in custody while she was pregnant. Despite certificates of pregnancy produced, the applicants argued that the trial judge did not consider the particular situation of this woman remanded in custody in violation of the International obligation of Côte d'Ivoire.

Shortly before oral arguments, the Government of Côte d'Ivoire has filed at the Registry a document titled "defense" on the preliminary objections relating to the jurisdiction of the Court and the admissibility of the Application. These objections were not raised in the first defense submitted during the written phase. The applicants objected to the admission of this new document.

The applicants also filed an application for withdrawal of three of them and the inclusion of a fifth intervener who had been forgotten at the beginning of the procedure. They also applied for the appearance of the President of the National Commission on Human Rights of Côte d'Ivoire.

ARGUMENT OF THE PARTIES

Relying on Articles 11, 12, 9 of the Universal Declaration of Human Rights, 137 of the Code of Criminal Procedure of Côte d'Ivoire, the United Nations Convention on the Rights of the Child of 20 November 1989 and Article 30 of the African Charter on the Rights and Welfare of the Child of July 1990, the Applicants contended that the treatment of the case by the Ivorian authorities revealed five sets of serious human rights infringement against them, they are:

- Violation of the principle of presumption of innocence
- Attack on their honor and reputation
- Violation of the rules of preventive detention;
- Violation of the right to a fair trial;
- The violation of rights of pregnant women and infants with

particular reference to the specific circumstances of Mrs. Obodji Houssou nee Amelan Roselyne.

In this context, they claim that the Court should admit their Application by declaring it valid, to order their immediate release on bail, and order the Government of Cote d'Ivoire to pay them the sum of 600 million FCFA for damages as compensation for the enormous prejudice they have suffered. □

The Republic of Côte d'Ivoire, in its statement of defense presented on 16 April 2009, said that in light of the facts of the case, the objections raised by the Applicants did not appear serious. The Government of Cote d'Ivoire relied on Article 1 of its constitution to emphasize that it is a democratic state, which respects separation of powers, which protects individual and collective freedoms.

For Côte d'Ivoire, the argument by the Applicants on the violation of the presumption of innocence as a result of their presentation by the media as the culprits is inoperative due to the fact that, Articles 19 of the Universal Declaration of Human Rights, 8 and 9 of the African Charter on Human and Peoples' Rights, 9 and 10 of the new Ivorian Constitution reaffirms the freedom of press.

Referring to Article 12 of the said declaration, the Government of Cote d'Ivoire believes that the allegations of the Applicants on the violation of their honour and reputation are vague and unsupported by objective evidence, that their preventive detention is entirely legal in the sense that it is a way of ensuring the representation of an accused to justice so as to preserve physical evidence, to prevent any pressure on witnesses or fraudulent consultation, to ensure the safety of the accused, to preserve public order from the disorder caused by the offense.

Therefore, looking at the seriousness of the facts relating to the embezzlement of significant funds from the cocoa-coffee sector, and in order to ensure transparency and good governance, it is useful according to the defendant to take protective measures and safeguard the national economy; that their remand is part of this measure.

The Government also noted that Articles 112, 113 and 115 of the Code of Criminal Procedure provides protection for the accused before the trial judge. That the audits were conducted in accordance with the provisions of Article 156 and pursuant to the code of criminal procedure.

Referring to Decree No. 69-189 of 14 May 1969 on the establishment of prison and determining the procedures for the deprivation of liberty, Article 30 of the African Charter on the Rights and welfare of the child, the Government of Cote d'Ivoire pointed out that the complaints against her by the Applicants in regard to the violation of rights of pregnant women and infants are unfounded. For the respondent State, this text recommends the replacement of the prison for pregnant women or nursing mothers with surrogate measures or other forms of detention conducive to the development of mother and child wherever possible. In this respect, the Mrs. Amelan Roselyne Obodji nee Houssou received special treatment in view of her condition.

Thus, for all these reasons, the Government of Cote d'Ivoire asked the Court to declare the grievances alleged by the Applicants as unfounded and dismiss them.

LEGAL ISSUES

1. Does the publication of information by the media relating to the indictment of the applicants violate their right to presumption of innocence?
2. Is the publication of information by the media a violation of their right to honour and reputation?
3. Does the detention of a pregnant woman and the separation of an infant from the detained mother violate the rights of women and children?
4. Is the detention of the applicants arbitrary?

The Court is called upon to address questions arising from the preliminary objections on admissibility of the Application, incompetence of the Court, discontinuance of certain Applicants from the proceedings, and the appearance of third parties in court.

DECISION OF THE COURT

1. On the issue of jurisdiction the Court held that the claims of the applicants referred to rights guaranteed by the instruments relating to human rights applicable to it and ratified by the Republic of Côte d'Ivoire, including the Universal Declaration of Human Rights, the African Charter on Human and Peoples' Rights and the International Covenant on Civil and Political Rights. Therefore, it has the jurisdiction to hear the case.

2. While analyzing the aspects developed by the parties in their brief, identifying certain instruments of human rights ratified by Côte d'Ivoire and recognized by the Economic Community of West African States and noting that in consideration of the extent of its jurisdiction to hear cases of human rights violations within the Community, the Court takes account of the African Charter on Human and Peoples' Rights and the basic instruments of United Nations such as the Universal Declaration of Human Rights, and the Covenants on Civil and Political Rights which have been signed or ratified by Côte d'Ivoire.

3. Emphasizing also that the Supplementary Protocol of 19 January 2005 was signed by Côte d'Ivoire, the Court declared it had jurisdiction to hear the case.

4. On the admissibility of document titled "defense" presented by Côte d'Ivoire, shortly before the hearing (after the prior filing of an initial defense), the Court stressed that the filing of a document which introduces aspects of a new application, shortly before the hearing or during the hearing, especially if it has been during the written phase constitutes a violation of the Rules of Procedure of the Court. It therefore dismissed the second document titled "defense" which Côte d'Ivoire presented.

5. In addition, regarding the application for withdrawal by some applicants submitted by their counsel, the Court granted the application on the grounds that the parties are free to discontinue the proceedings at any time during the procedure. For the other application on joinder of another person, the Court stated that a third person not mentioned in the original application as principal party can not intervene in the matter except through an application for intervention pursuant to Article 21 of the Protocol of 6 July 1991 on the Court of Justice of the Community and Article 89 of the Rules of Procedure.

6. On the merits, the Court held, in connection with the presumption of innocence that the handling of the case by journalists may undoubtedly contribute to creating a general tendency that may affect the presumption of innocence. However, in as much as the

Applicants can be guaranteed independence of the Judiciary and a fair trial, during the trial, the action by the press cannot render Cote d'Ivoire liable for any offence.

7. As regards injury to honour and reputation, the Court considered that the liability of Cote d'Ivoire may be incurred if there is no provision in the national laws for protecting the honour and reputation of citizens and for safeguarding courts where citizens may seek redress for the violation of their rights. According to the Court, in the instant case, the Applicants are not accusing the Republic of Cote d'Ivoire for such default.
8. On arbitrary detention, the Court held that a detention may be legitimate initially, but it may turn out to be unlawful later on if it extends beyond a reasonable time limit within which the detainee has to be tried.
9. Considering the reasonableness of the observance of a time limit, the Court held that one would have to rely on the eagerness of the judicial authorities to conduct an expeditious trial. By examining the pleadings filed in the case-file by the Parties, the Court emphasized that efforts were made to conduct the trial without any un-justified delay. In the opinion of the Court, the time lapse of seven months for the preventive detention is not above a reasonable time limit.
10. In terms of violation of the rights of pregnant women and infants, the Court acknowledged the importance of the United Nations Convention on the Rights of the Child and the African Charter on the Rights and Welfare of the Child, in the protection of the interests of minors and pregnant women or mothers of minors; and in taking account of Article 30 of the African Charter of Human and Peoples' Rights, the Court considered that the provisions of this article do not impose any strict prohibitions on States in terms of the detention of pregnant women and mothers of infants.

11. In this case, the court held that it was not proven that the respondent State has the conditions that allow it to accord non-deprivation of liberty or imprisonment of the plaintiff in a special prison without undermining the objectives of preventive detention.

12. By considering that the infant did not remain in the prison house, the Court held *in fine* that since a system was put in place whereby the mother of the infant received regular visits, the pangs of separation between the mother and the child were reduced to a bearable minimum.

13. Consequently, the Court dismissed the Applications and other claims brought by the Applicants, and adjudged that each Party shall bear its own costs in accordance with Article 66 paragraphs 3 and 4 of the Rules of Procedure of the Court.