IN THE COURT OF JUSTICE OF THE ECONOMIC COMMUNITY

OF THE WEST AFRICAN STATES

(ECOWAS)

In the Matter of

AMADOU BAILO DIALLO

V.

THE REPUBLIC OF GUINEA

APPLICATION No. ECW/CCJ/APP/35/24;

Judgment No. ECW/CCJ/JUD/37/25

JUDGMENT

ABUJA

On 3rd July 2025

APPLICATION No. ECW/CCJ/APP/35/24

JUDGMENT No. ECW/CCJ/JUD/37/25

BETWEEN

AMADOU BAILO DIALLO **APPLICANT**

AND

THE REPUBLIC OF GUINEA **DEFENDANT**

COMPOSITION OF THE COURT PANEL

Hon. Justice Ricardo Cláudio Monteiro **GONÇALVES**

- Presiding/Judge Rapporteur

Hon. Justice Gberi-Be **OUATTARA** - Member

Hon. Justice Edward Amoako **ASANTE** - Member

ASSISTED BY:

Dr. Yaouza OURO-SAMA - Chief Registrar

REPRESENTATION OF THE PARTIES

Maitres Thierno Souleymane Barry

Mamadou Saidou Sow - Counsel for the APPLICANT

L'Agent Judiciaire de l'Etat - Counsel for the DEFENDANT

I. JUDGMENT

1. This is the judgment of the Court read virtually in an open court, in accordance with Article 8 (1) of the Practice Directions on Electronic Case Management and Virtual Court Sessions, 2020.

II. DESCRIPTION OF THE PARTIES

2. The Applicant is Mr. Amadou Bailo Diallo, born in 1992 in Mamou, of Guinean nationality, driver, resident in the Koloma quartier, Commune de Ratoma, Conakry, Republic of Guinea.
3. The Defendant is the Republic of Guinea, a member of the Economic Community of West African States (ECOWAS) and a signatory to the African Charter on Human and Peoples' Rights, hereinafter referred to as the African Charter.

III. INTRODUCTION

4. In the instant case, the Applicant came to claim the violation of his human rights, on the ground that, on March 3, 2013, in Koloma, the Applicant left the "garage" to go home, coinciding with the time of the opposition demonstrations for the organization of the legislative elections; that the Applicant encountered the defense and security forces in front of his courtyard, who shot him at point-blank range; that after that shooting, the Applicant was admitted to Donka National Hospital, where he underwent general surgery; that from 2016 until December 2024, the Applicant was hospitalized at Jean Paul II Hospital; that the Applicant is currently unable to walk.

IV. PROCEEDINGS BEFORE THE COURT

5. The originating application (doc.1), accompanied by two (7) annexures, was registered at the Registry of this Court on December 23, 2024.
6. On January 13, 2025, the Defendant State, Guinea, was duly served, but presented no defense.
7. On April 10, 2025, the Applicant filed a motion for judgment by default (doc. 2), which was served on the Defendant on April 28, 2025 and the Defendant said nothing.
8. The date of 9 May 2025 was set for the hearing of the parties, but only the representative of the Applicant attended the hearing, at which he was heard and made his oral observations.
9. The case was adjourned for judgment on 3rd July, 2025.

V. THE APPLICANT'S CASE

a. Summary of Facts

10. On March 3, 2013, in Koloma, at around 4 p.m., the Applicant left the "garage" to go home, coinciding with the opposition demonstrations for the organization of legislative elections;
11. In his neighborhood of Koloma, Ratoma Conakry commune, the Applicant encountered the defense and security forces in front of his courtyard, who shot him at point-blank range;
12. The bullets hit his stomach and exited to the right of his stomach;
13. After that shooting, the Applicant was admitted to the national hospital in Donka, where he underwent general surgery;
14. The Applicant stayed in Donka from 2013 to 2015;
15. The Applicant was admitted to Jean Paul II hospital in 2016;
16. The Applicant was also admitted to the Main Hospital of Dakar, Republic of Senegal, as mentioned in the summary report of the medical file dated

January 25, 2021 of the Jean Paul II Hospital of the Ministry of Social Action and Children; (see page 2 of that report);

(Exhibit 1)

17. That since 2016, until the present date, that is, December 2024, the Applicant has been hospitalized at the Jean Paul II Hospital;
18. That Jean Paul II Hospital is a national hospital and therefore a public service;
19. That the Applicant is currently unable to walk;
20. His legs are paralyzed, his wounds haven't healed and he is still bedridden;
21. That this situation is confirmed by the summary report of the medical file of January 25, 2021 of the Jean Paul II Hospital of the Ministry of Social Action and Children;

> *"Circumstances of the occurrence; the patient claims to have been shot in the abdomen on 03/03/2013, at 17:00, in front of his property. He was immediately taken to Donka Hospital to the visceral surgery department for treatment.*
>
> *N.B.: The entry point was in the right lumbar region and the exit point in the left hypochondrium.*
>
> *The post-operative evolution was complicated by anal incontinence after the spinal cord section and by paraplegia of the lower limbs. Currently, bedsores on the buttocks are treated every two days. The patient was offered a permanent colostomy, which he rejected. It is important to note that the patient had spent some time in hospital (Main Hospital) in Dakar (Republic of Senegal) without making any significant improvement.*
>
> *Diagnosis: transfixing abdominal wound caused by a firearm + section of the spinal cord + anal incontinence."*

22. That from 2013 to 2024, during eleven (11) years that the facts set out above occurred, are corroborated by the following documents:

23. The summary report of the medical file dated January 25, 2021 from the Jean Paul II Hospital of the Ministry of Social Action and Children;

(Exhibit 1)

24. Hematology and parasitology file from the Medical Biology Laboratory of the Jean Paul II Hospital of the Ministry of Social Action and Children, dated March 17, 2016;

(Exhibit 2)

25. Medical prescription dated October 31, 2016 from the Jean Paul II Hospital of the Ministry of Social Action and Children;

(Exhibit 3)

26. The medical prescription dated January 18, 2019 from the Jean Paul II Hospital of the Ministry of Social Action and Children;

(Exhibit 4)

27. The Applicant stresses that the aforementioned documents relating to the hospitalization of Mr. Amadou Bailo DIALLO are merely illustrative, since the various hospitals issued him with dozens of prescriptions and examination reports.

b. Pleas in Law

28. The Applicant relied his allegations on Articles:

i) 3 of the Universal Declaration of Human Rights (UDHR).

ii) 4 of the African Charter on Human and Peoples' Rights (ACHPR).

iii) 7 of the International Covenant on Civil and Political Rights (ICCPR);

c. Reliefs Sought

29. The Applicant concluded by seeking from the Court to:

With regards to the form to:

i) Declare that the Court entertains jurisdiction, and that the application is admissible;

On the merit:

ii) Declare that the actions of the agents of the defense and security forces during the opposition demonstrations for the organization of the 2013 legislative elections against the Applicant constitute an attack on his physical integrity, in violation of the provisions of the UDHR, the African Charter and the ICCPR.

And consequently,

iii) Declare and judge that the Defendant is responsible for the human rights violations that affect the physical integrity of the Applicant.

iv) Order the Defendant to pay the Applicant the sum of eight billion Guinean francs (8,000,000,000 GNF) for the assaults.

v) Order the Defendant to pay all the costs.

VI. DEFENDANT'S CASE

30. The Defendant, although duly served, did not lodge any defense.

VII. PROCEEDINGS BEFORE THE COURT

Application for Judgment by Default

31. The Defendant did not submit any defense in response to the proceedings brought by the Applicant, despite having been duly served by the Court.

Application for judgment by default.

32. Following the Defendant's failure to file a defense, the Applicant, pursuant to Article 90 of the Rules, filed an application for a judgment by default, seeking from the Court to make the Declarations and issue the Orders set out in paragraph 30, the contents of which are as if hereby reproduced in seriatim.

The Court's Analysis of the Application for Judgment by Default

33. As the Defendant failed to present its defense within the thirty-day period it had to do so, the Applicant submitted and application for a Judgment by default, under the terms of Article 90 of the Rules, which reads as follows:

34. Article 90 (1) "*If a defendant on whom an application initiating proceedings has been duly served fails to lodge a defense to the application in the proper form within the time prescribed, the applicant may apply for judgment by default.*"

35. Article 90(4) "Before giving judgment by default the Court shall, after considering the circumstances of the case consider: *whether the application initiating proceedings is admissible, whether the appropriate formalities have been complied with, and whether the application appears well founded.*"

36. The requirements laid down in Article 90(4) relate to questions of jurisdiction, admissibility and evidence, which must be addressed before the merits of the application can be examined (see the case of *MOHAMED EL TAYIB BAH v. REPUBLIC SIERRA LEONE (2015) CCJELR ON PAGE 193).*

37. The facts presented to the Court show that the Applicant filed its originating application at the Court Registry on 23rd December 2024. The Defendant on whom the application was served on the following day and did not lodge any defense.

38. Pursuant to Article 35 of the Rules of the Court, the Defendant has 30 days from receipt of the application to submit its defense.

39. The Court has no record of any defense up to the date of the hearing of this Application. The situation provided for in Article 90(1) of the Rules of the Court has materialized, so the Applicant's application for the Court to deliver judgment by default is pertinent.

40. However, when an application is made for judgment by default, it is for the Court, under Article 90(2), to ensure that all the reliefs sought from from it fall within its jurisdiction and that the application is admissible.

41. This means that the criteria of jurisdiction and admissibility must be checked before the judgment by default is delivered.

42. The Court notes, however, that the fact that a Applicant seeks judgment by default does not automatically mean that the action will be upheld, with the Applicant winning, since the Court must of its own motion examine questions of jurisdiction, admissibility and evidence before determining the merits of the legal proceedings. (see *MOHAMMED EL TAYYIB BAH v. THE REPUBLIC OF SIERRA LEONE (2015) (SUPRA) PAGE 6).*

VIII. JURISDICTION

43. In view of the above, the Court will first address the issue of jurisdiction.

44. The issue of jurisdiction is vital to the hearing and determination of any matter before a court. Whether raised by the parties or not, the Court can, *suo motu*, raise the issue and deal with it before going into the substantive matter. Otherwise, anything done without competence becomes null and void. *WOMEN AGAINST VIOLENCE AND EXPLOITATION IN SOCIETY (WAVES) V. SERRA LEOA, ECW/CCJ/JUD/37/19, Pg.11*

45. As a rule, the jurisdiction of the court is derived from the application submitted by the Applicant. In assessing whether this Court has jurisdiction to hear a case, it must rely on the facts provided by the Applicant, the

relevant Court protocols and its own case law. See the case *FESTUS A.O. OGWUCHE v. THE FEDERAL REPUBLIC OF NIGERIA, JUDGMENT No. ECW/CCJ/JUD/02/18*, pg. 10.

46. Article 9 (4) of the Protocol A/P.1/7/91 on the Court, as amended by the Supplementary Protocol A/SP.1/01/05 of 2005, provides that the Court has jurisdiction to determine cases on the violation of human rights that occur in any Member State.

47. The mere allegation of a human rights violation in a Member State is sufficient, *prima facie*, to invest the Court with jurisdiction to hear the case, without prejudice to the merits of the case, which will be decided after the presentation of evidence by both parties, in accordance with the right to a fair trial. See the case *THE REGISTERED TRUSTEES OF THE SOCIO-ECONOMIC RIGHTS & ACCOUNTABILITY PROJECT (SERAP) & 10 OTHER v. THE FEDERAL REPUBLIC OF NIGERIA & 4 OTHERS, JUDGMENT No. ECW/CCJ/JUD/16/14*, pg. 25.

48. In the instant case, the Applicant claims violations of the right to physical integrity in accordance with the provisions of the African Charter on Human and Peoples' Rights, to which the State of Guinea is a signatory.

49. The Court therefore declares itself competent to hear the instant case.

IX. ADMISSIBILITY

50. It is a rule of common law that the competence to examine and decide an application is distinct from its admissibility. Admissibility refers to the assessment of whether the application will be accepted for consideration on the merits and, eventually, a final decision on the matters in dispute. It is worth noting that international human rights courts have developed the idea that admissibility rules should be applied with a certain "*degree of*

flexibility and without excessive formalism". Human rights treaties must be interpreted and applied in such a way as to ensure that their safeguards are practical and effective. *(YASA v. TURKEY - 1998 - VI; 28 EHRR 408).*

51. In addition, access to the Court for examination of any application is granted if the requirements of Article 10 of the Supplementary Protocol are met. In the instant case, which involves allegations of human rights violations made by an individual, Article 10(d) states that:

> *"Individuals on application for relief for violation of their human rights; the submission of application for which shall: i). Not be anonymous; nor ii). Be made whilst the same matter has been instituted before another International Court for adjudication."*

52. In the case *HADIJATOU MANI KORAOU V. REPUBLIC OF NIGER* (*JUDGMENT No. ECW/CCJ/JUD/06/08*), the ECOWAS Court ruled that the admissibility of an application must be examined on the basis of the sufficiency of the facts and of the alleged violations.

53. In the same vein, in *AMBASSADOR RALPH UWECHUE (JUDGMENT No. ECW/CCJ/JUD/03/13)*, the Court reaffirmed that the primary purpose of admissibility rules is to ensure that human rights are safeguarded in an effective and practical manner, applying procedural rules flexibly when necessary.

54. The Applicant identified himself as a victim of human rights violations. The Court finds that the application is neither manifestly unfounded under the above-mentioned article nor inadmissible for any other reason. As indicated in the Court's case law, the mere allegation of a human rights violation by an individual is, *prima facie*, sufficient to keep the case alive and proceed on to the analysis of the merits.

55. Consequently, the application is declared admissible.

In compliance with the appropriate formalities.

56. Having the Court has established its jurisdiction over the case and has ruled it admissible, Article 90(2) of the Rules of the Court also requires that the appropriate formalities set out in Articles 33, 34 and 35 of the Rules of the Court be complied with.

57. Articles 33 and 34 are provisions relating to the constituent elements of an application that may be accepted by the Court, as well as the details of the notification protocols, including the methods of notification. On the other hand, the provisions of Article 35 are instructions for the Defendant regarding the time limit for responding to an application.

58. Having carefully examined the documents submitted by the Applicant, the Court is convinced that the application for judgment by default complies with the aforementioned formalities. Furthermore, the application for judgment by default is dated December 2, 2021, and duly served on the Defendant State, which said nothing.

Whether the application is well-founded

59. Article 90(1) of the Rules of the Court orders that judgment by default be given on behalf of the Applicant when the Defendant fails to appear or file a defense.

60. The Court recalls that the granting of an application for judgment by default is not an obvious question, since the facts must be sufficiently proven. In other words, the Court must examine the totality of the evidence submitted by the Applicant in order to determine whether a cause of action exists and whether the claim has been satisfactorily proved (see *VISION KAM JAY INVESTMENT LIMITED v. PESIDENT OF THE COMMISSION & ANOR, DECISION No. ECW/CCJ/JUD/01/18. (2016) CCJELR PAGE 605).*

X. MERITS

61. The Court will now examine the human right allegedly violated by the Defendant State, taking into account the questions as put forth by the Applicant for determination of the Court.

62. It should be noted that the Applicant is asking the Court to declare that the actions of the defense and security forces during the demonstrations constitute an attack on his physical integrity.

63. The Applicant refers to the violation of Article 3 of the UDHR, which provides for various human rights, without specifying which of those rights were allegedly violated; Article 4 of the African Charter, which provides for the rights to life and physical integrity, in relation to which he alleges that the Respondent State, through the actions of its agents, caused blows and injuries to the victim, resulting in his paralysis; and Article 7 of the ICCPR, alleging that it follows from these provisions that the Guinean authorities flagrantly violated the physical integrity of the Applicant.

64. In this sense, it is understood that, in view of the facts alleged by the Applicant and his application, the instant case is about the alleged violation of his right to physical integrity.

a) The alleged violation of the right to physical integrity of the Applicant

Applicant's Arguments

65. In order to sustain the violation of the aforementioned right, the Applicant claimed, in summary, that the Defendant State, through the actions of its agents described above, caused him to suffer blows and injuries, which resulted in his paralysis.

Defendant's Arguments

66. The Defendant, although duly served, did not lodge any defense.

The Court's Analysis

67. This right is provided for in Article 4 of the African Charter, which establishes that:

> *"Human beings are inviolable.* Every human being shall be entitled to respect for his life and the integrity of his person. No one may be arbitrarily deprived of this right."

68. Article 5 of the African Charter also aims to protect both the dignity of the human person and the physical and mental integrity of the individual. (See African Commission, *SUDAN HUMAN RIGHTS ORGANISATION, CENTRE ON HOUSING RIGHTS AND EVICTIONS v. SUDAN*, Communication No. 279/03, 296/05, para.155)

69. Integrity rights are protections that seek to safeguard the control of someone's personality, free from intrusion and interference not consented to by third parties. Integrity is a broad right, sometimes considered a set of rights. When framed as "bodily integrity", this right includes issues such as the autonomy of physical integrity, privacy and self-determination rights. As a normative principle, integrity has also been widely invoked in health law and ethics. Integrity rights also go beyond the physical body to protect against non-bodily interference, including the protection of mental integrity.

70. In international law, the right to integrity is enshrined in different ways. Integrity is sometimes expressed as a component of the right to liberty and security (Articles 6 of the African Charter and 9 of the ICCPR are similar). For example, the Commission on Human Rights (CHR) has defined the right to security of person as "*Freedom from harm to body and mind, or physical and mental integrity.*". (See UN Human Rights Committee (HRC) General Comment 35 on art 9, para 3; see *yet THE REG. TRUSTEES OF JAMA'A FOUNDATION & 5 ORS v. NIGERIA & THE ATTORNEY*

GENERAL AND MINISTER OF JUSTICE OF THE FEDERATION, ECW/CCJ/JUD/04/20, para. 104).

71. In other systems, the right to physical integrity is an autonomous right and a right distinct from security. For example, the African Charter provides for the right to "integrity of the person" in Article 4, alongside the right to life and the right to liberty and security under Article 6.

72. In the instant case, the Applicant has attached the following documents to prove the above facts:

1. The summary report of the clinical file of January 25, 2021 of the Jean Paul II Hospital, of the Ministry of Social Action and Children (see page 2 of the aforementioned report);

2. The hematology and parasitology file of the Medical Biology Laboratory of the Jean Paul II Hospital, of the Ministry of Social Action and Children, dated March 17, 2016;

3. The medical prescription dated October 31, 2016 from the Jean Paul II Hospital, of the Ministry of Social Action and Children;

4. The medical prescription dated January 18, 2019 from the Jean Paul II Hospital of the Ministry of Social Action and Children.

(Documents whose contents are deemed to be reproduced here for all legal purposes).

73. It is a general principle of law that he who asserts must prove). (See the case *REGISTERED TRUSTEES OF THE SOCIO-ECONOMIC RIGHTS & ACCOUNTABILITY PROJECT (SERAP) v. FEDERAL REPUBLIC OF NIGERIA & 1 OR, ECW/CCJ/JUD/19/16, CCJLR (2016), p. 462, para. 8.2.9)).*

74. It was therefore up to the Applicant to allege and prove, in particular, that on March 3, 2013, in Koloma, he left his garage to go home, coinciding

with the time of the opposition demonstrations for the organization of legislative elections; that the Applicant encountered the defense and security forces, in front of his front yard, who shot him at point-blank range.

75. According to the aforementioned medical documents, the Applicant was hit by a firearm and is still suffering from the sequelae resulting from that event (see Exhibit No. 1 "*The summary report of the medical file of January 25, 2021 of the Jean Paul II Hospital of the Ministry of Social Action and Children (see page 2 of that report)*").

76. However, there is no evidence in the case file, especially testimonial evidence, to show that this firearm belonged to the defense and security forces, as alleged by the Applicant.

77. As shown above, no statement was attached to the case file from the people who were there at the time and place of the events and witnessed them.

78. These facts could have been ascertained by an efficient investigation carried out by the Defendant's competent authorities, with a view to identifying the possible perpetrators.

79. However, an illegal act that violates human rights and that is initially not directly attributable to a State can lead to the international responsibility of the State, not for the act itself, but for the lack of due diligence to prevent the violation or for not taking the necessary measures to identify the perpetrators, punish them and provide reparation to the victims as required by the African Charter (see African Commission, *ZIMBABWE HUMAN RIGHTS NGO FORUM c. ZIMBABWE*, Communication No. 245/02 § 145; *MRS MODUPE DORCAS AFOLALU v. FEDERAL REPUBLIC OF NIGERIA,* ECW/CCJ/JUD/15/14 § 55; *THE REGESTERED TRUSTEES OF GAN ALLAH FULANI DEVELOPMENT ASSOCIATION OF NIGERIA v. FEDERAL REPUBLIC OF NIGERIA, TARABA STATE GOVERNMENT OF NIGERIA*, ECW/CCJ/JUD/06/23 § 60).

80. It is the duty of the State to protect the physical integrity of persons against unjustified or arbitrary actions by public authorities, as well as by private individuals.

81. The Defendant State is therefore not directly responsible for human rights violations perpetrated by private individuals. But the Defendant State is obliged to investigate properly, prosecute the perpetrators and compensate the victims.

82. In order to be effectively exonerated from responsibility, it is not enough to investigate.

83. So in the case of *JORDAN v. UNITED KINGDOM*, the European Court of Human Rights considered that "*an effective official investigation must be carried out with promptness and reasonable expedition. The investigation should be carried out with the aim of ensuring the effective implementation of domestic laws protecting the right to life. The investigation or its outcome should be open to public scrutiny in order to ensure accountability. For an investigation into a summary execution carried out by a State agent to be effective, it can generally be considered necessary for the person responsible for conducting the investigation to be independent of the persons involved in the facts. This means not only a lack of hierarchical or institutional connection, but also practical independence*" (see *Application no. 24746/94 ((2003) 37 EHRR 2)*, Judgment of 4/8/2001).

84. In the instant case, the Court recalls that there is no information in the case file as to whether, in relation to the Applicant's case, the Applicant lodged a complaint with the competent authorities against the Defendant, to allow the latter to open an investigation and to inform them of its outcome.

85. Thus, in this case, we consider that the Defendant would only be liable if it had knowledge of the above facts and refused to carry out an effective investigation as described above, i.e., refused to adopt measures in view of the alleged human rights violations, including the arrest and prosecution of

the perpetrators and the possible payment of compensation to the Applicant (See, *a contrario sensu*, *MR. AGBOGBO KOSSI EDEM v. REPUBLIC OF TOGO,* ECW/CCJ/JUD/28/23 paragraphs 89 to 91).

86. In this sense, since it does not appear from the case file that the Defendant was aware of the above facts and that it possibly refused to carry out an effective investigation, as described above, the Court finds that the Defendant did not violate Article 4 of the African Charter.

XI. REPARATION

87. The Applicant sought from the Court to:

- Declare and judge that the Defendant is responsible for the human rights violations that affect the physical integrity of the Applicant.
- Order the Defendant to pay the Applicant the sum of eight billion Guinean francs (8,000,000,000 GNF) as reparation for the violations.
- Order the Defendant to pay all the costs.

The Court's Analysis

88. The Republic of Guinea, as State party to the International Covenant on Civil and Political Rights (ICCPR), is bound by inalienable legal obligations to protect the rights enshrined therein.

89. In accordance with Article 2(3) of the ICCPR:

"Each State Party to the present Covenant undertakes: (a) To ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy..."

90. In the instant case, since no violation of the right as claimed by the Applicant has been established, the claims for compensation are unfounded.

91. The Court therefore dismisses the claims for compensation and, consequently rejects them.

XII. COSTS

92. The Applicant sought that the Defendant be ordered to pay the costs.

93. Article 66 (1) of the Rules of the Court establishes that "*A decision as to costs shall be given in the final judgment or in the order, which closes the proceedings.*"

94. Paragraph 2 of the same article states that "*The unsuccessful party shall be ordered to pay the costs, if so decided.*"

95. Therefore, considering the circumstances of the case, the Court finds that the parties should bear their respective costs.

XIII. OPERATIVE CLAUSE

96. For these reasons, the Court held a public hearing and having heard the applicant:

As to Jurisdiction:

i. Declares that it entertains jurisdiction to hear the case.

As to admissibility:

ii. Declares the application admissible.

On the merit:

iii. **Declares as not established** the violation of Article 4 of the African Charter by the Defendant.

As a result,

iv. All other claims are dismissed.

XIV. ON THE COSTS:

97. The parties shall bear their own costs of the proceedings.

Signature:

Hon. Justice Ricardo C. M. GONÇALVES - Presiding/Judge Rapporteur

Hon. Justice Gberi-Be OUATTARA - Member

Hon. Justice Edward Amoako ASANTE - Member

Dr. Yaouza OURO-SAMA – Chief Registrar

98. Done in Abuja on the 3rd day of July 2025, in Portuguese and translated into English and French.