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

In the matter of

ELIAM MONSEDJOUENI POTEY

V.

REPUBLIC OF CÔTE D'IVOIRE

Application No. ECW/CCJ/APP/16/24;

JUDGMENT No. **ECW/CCJ/JUD/35/25**

JUDGMENT

ABUJA

On the 2nd July 2025

APPLICATION No. ECW/CCJ/APP/16/24;
JUDGMENT No. ECW/CCJ/JUD/35/25

BETWEEN

ELIAM MONSEDJOUENI POTEY **APPLICANT**

AND

REPUBIC OF CÔTE D'IVOIRE **DEFENDANT**

COMPOSITION OF THE COURT PANEL

Hon. Justice Ricardo Cláudio Monteiro **GONÇALVES** - Presiding/Judge Rapporteur
Hon. Justice Dupe **ATOKI** - Member
Hon. Justice Edward Amoako **ASANTE** - Member

ASSISTED BY:
Dr. Yaouza OURO-SAMA - Chief Registrar

REPRESENTATION OF THE PARTIES:

Maitre Abbé YAO - Counsel for the Applicant

LY Kadiatou Epouse SANGARE
STATE JUDICIAL AGENCY - Counsel for the DEFENDANT

I. JUDGMENT

1. This is the judgment of the Court read virtually in open Court pursuant to 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. Eliam Monsedjoueni POTEY, a citizen and retired magistrate of the Republic of Côte d'Ivoire, residing in Abidjan.
3. The Defendant is the Republic of Côte d'Ivoire, a Member State of the Economic Community of West African States (ECOWAS).

III. INTRODUCTION

4. In the instant case, the Applicant, Mr. Eliam Monsedjoueni POTEY, a magistrate by profession since 1984, came to claim that he remained for twenty (20) years in the rank of "first grade, first group", which is the highest level of the judicial career that he reached in 2002. He maintains that, until his retirement in 2022, he did not progress beyond that rank, while in the same period several magistrates in the same category as his or even less senior were promoted to the category of *magistrat hors hiérarchie* (highest-ranking magistrates).
5. The Applicant considers that the failure of the Republic of Côte d'Ivoire to promote him to the said special category constitutes a violation of his right to equality before the law, and he has therefore brought this action before the Community Court of Justice, ECOWAS. He therefore sought that the Defendant State be ordered to pay compensation for the material and moral damage he claims to have suffered.
6. The Republic of Côte d'Ivoire, on its part, contests the Applicant's allegations, arguing that, under the applicable national legislation, appointment to the special category is not an automatic right for all magistrates, but rather a discretionary option of the President of

the Republic, applicable to a certain category. The Defendant State concludes by seeking that the Court dismiss the reliefs sought.

IV. PROCEEDINGS BEFORE THE COURT

7. The application initiating proceedings (doc.1) was lodged at the Registry of this Court on 24th Many 2024. The Defendant was duly served on the same day.
8. The statement of defense (doc.2) to application initiating proceedings was registered at the Registry of this Court on 24th June 2024. This was duly served on the Applicant on the same day.
9. On July 18, 2024, the Applicant wrote to the Court stating that he did not wish to reply to the Defendant's statement of defense. The Defendant State was served of this on the same day.
10. At the virtual hearing held on 12th March 2025 to hear the parties on the merits of the case, in which both parties were represented and made their oral submissions. The judgment was adjourned to the 3rd July 2025.

V. THE APPLICANT'S CASE

a. Summary of Facts

11. The Applicant claims that he was appointed judicial magistrate by presidential decree in October 1984 and that in the same year he was appointed civil and commercial judge at the Abidjan Court of First Instance.
12. He avers that he performed his duties without interruption from October 1984 until February 2009, when he was appointed a member of the ECOWAS Community Court of Justice; he recalls that, at the time of his appointment, he was a magistrate of the first grade, the first group, which is the last grade in the judicial hierarchy, with effect from January 1, 2002, and held the post of general counsel.

13. The Applicant states that, until he was entitled to retire with effect from December 31, 2022, he remained a magistrate of the 1st grade, 1st group for 20 years, with the exception of automatic increases.

14. He explains that this situation is due to the fact that the Defendant state has subjected to its discretion the career development of magistrates of the 1st grade, 1st group; in accordance with Law No. 78-662 of August 4, 1978 on the status of the judiciary, which stipulates "*The rules governing the career of a magistrate do not apply to hierarchical progression*" (Copy of Côte d'Ivoire Law No. 78-662 of August 4, 1978 on the status of the judiciary).

15. He points out that the new law on the Statute of the Judiciary has slightly attenuated the discretionary power, limiting it in time; that, according to Article 34 in fine of Law No. 2022-194 of March 14, 2022, on the Statute of the Judiciary: "*Magistrates who have been on the 1st grade, 1st group for at least 10 years may be appointed to the special category, on a proposal from the Minister of Justice, following a favorable opinion from the Superior Council of the Judiciary in the case of judges*" (Copy of Côte d'Ivoire Law No. 2022-194 of March 11, 2022 on the Statute of the Judiciary).

16. He recalled that he had written to the Minister of Justice in which he lamented the fact that he had remained in the 1st grade, 1st group for almost 20 years, while all the magistrates enrolled in the same year as him, and even many after him, had been promoted to the special category.

17. The Applicant claims that the Minister's response was characterized by a lack of vision, despite the fact that a new law on the status of the judiciary had recently been adopted, which attenuated the Executive's discretionary power in this domain (Copy of the letter sent to the Minister of Justice on January 20, 2022 - Copy of the letter of May 22, 2022 from the Ministry of Justice informing the Applicant of his retirement with effect from December 31, 2022 - Copy of Decree No. 2022-935 of December 2, 2022 on the confirmation of the retirement of Mr. Eliam Monsedjoueni POTEY with effect from December 31, 2022).

18. He claims that, with its reform by Decree No. 2022-935 of December 2, 2022, the Republic of Côte d'Ivoire violated his right to equality of all before the law for 20 years and failed to respect his fundamental obligation under Article 7 of the UDHR and Article 3 of the ACHPR, international instruments to which the Republic of Côte d'Ivoire is a party.

b. Pleas in Law

19. The Applicant relied on the following legal provisions:
    i. Universal Declaration of Human Rights (UDHR, Article 7).
    ii. African Charter on Human and Peoples' Rights (ACHPR, Article 3).

c. Reliefs Sought

20. The Applicant prayed the Court to grant him the following reliefs:

i. With regards to the form:

- To declare itself competent;
- To uphold the Applicant's legitimate claims

ii. On the merit:

To declare that the Republic of Côte d'Ivoire has failed to fulfill its obligations by discriminating against him, ignoring his right to equality before the law and equal protection of the law, thus violating, to his detriment, the provisions of Article 7 of the UDHR and Article 3 of the ACHPR.

iii. By way of reparation:

To order the Republic of Côte d'Ivoire to pay him:

- Two hundred and thirty million, one hundred and thirty-nine thousand, three hundred and sixty (230,139,360) FCFA as loss of income on salaries from January 2004 to December 31, 2022;

- Forty-nine million seven hundred and twenty-seven thousand four hundred and twenty (49,727,420) FCFA as compensation for the reduction of their retirement pension for 20 years;

- Three hundred million (300,000,000 FCFA) in compensation for moral damages *ad vitam*;

VI. THE DEFENDANT'S CASE

a. Summary of Facts

21. The Defendant maintains that, under Article 4 of Law 94-498 of September 6, 1994 (amending Law 78-662 of August 4, 1978, on the Statute of the Judiciary), only certain magistrates are automatically placed outside the hierarchy by virtue of the functions they perform; namely the magistrates of the Supreme Court (with the exception of referendum councilors and auditors), the chief justices of the courts of appeal, the prosecutors before these courts and the central administration.

22. On the other hand, magistrates such as the Applicant; Chief Justices of Chambers, Prosecutors General and Chief Justices of the Court of First Instance of Abidjan; can only be promoted to the rank of *hors hiérarchie* (highest-ranking magistrates) if they have remained for at least two years in the first group of the first grade. This promotion, however, is not automatic and does not constitute an acquired right, but is at the discretion of the President of the Republic.

23. Thus, the Defendant argues that the failure to elevate the Applicant to the special category does not constitute any violation of his rights, since such an appointment depends on a subjective assessment and not on a legal obligation.

b. Pleas in Law

24. The Defendant State relies on:

i. Article 7 of the Universal Declaration of Human Rights (UDHR).

ii. Article 3 of the African Charter on Human and Peoples' Rights.

iii. Supplementary Protocol (A/SP.1/01/05) on the Court - Articles 9(4) and 10(d).

iv. Law No. 94-498, of September 6, 1994, amending Law No. 78-662, of August 4, 1978, on the Statute of the Judiciary;

v. Reliefs Sought

25. The Defendant seeks from the Court to:

i. Rule on its jurisdiction and the admissibility of the application;

ii. Declare that the Republic of Côte d'Ivoire did not violate the Applicant's rights under Article 7 of the UDHR and Article 3 of the ACHPR;

iii. Dismiss the claim for damages as unfounded.

VII. JURISDICTION

26. 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. SIERRA LEONE, ECW/CCJ/JUD/37/19, Pg.11*

27. 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.

28. A mere allegation of a violation of human rights in the territory of a Member State is sufficient, *prima facie*, to vest the Court with jurisdiction. *KONE MAMOUROU V. CÔTE D'IVOIRE ECW/CCJ/JUD/28/24.*

29. The instant case is based on allegations that the Defendant has violated the Applicant's right to equality before the law under the provisions of the African Charter on Human and Peoples' Rights, the ICCPR, and the UDHR.

30. The Court therefore holds that it is vested with jurisdiction to hear the instant case.

VIII. ADMISSIBILITY

31. The Court must now examine whether the case meets the admissibility criteria as set out in Article 10 (d) of the Protocol A/P.1/7/91 on the Court, as amended by the Supplementary Protocol A/SP.1/01/05 of 2005. The said article provides for access to the Court to "*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;*"
32. Thus, an application whose subject matter concerns human rights violation, shall only be admissible when three criteria are met: the Applicant's status as "victim" must be established, the non-anonymity of the application, and the absence of *lis pendens* before another international Court or Tribunal. See *DANIEL AGADA OKOH & 42 ORS. v. FEDERAL REPUBLIC OF NIGERIA ECW/CCJ/JUD/04/21, @ pg. 16, para. 37.*
33. In the instant case *sub judic*e, the Applicant is not anonymous (he is duly identified), and there is no indication that the case has been submitted to another internationally competent Court for adjudication.
34. The Applicant alleges that the Defendant violated his right to equality by not promoting him to the special category of *magistrat hors hiérarchie (highest-ranking magistrates)*.
35. As a direct victim of the alleged human rights violation, as outlined in the Application, the Applicant has sufficiently satisfied the requirement of victim status for the case to proceed to a determination on the merits. Furthermore, the petition is not anonymous, nor is there any evidence that a similar case is pending before an internationally competent court.
36. The Court, therefore, finds that this case meets the admissibility criteria and is therefore admissible.

IX. MERITS

37. Having held that the Court has jurisdiction in the instant case and that the case is admissible, the Court will now proceed to examine the case's merits to determine whether the Applicant's claims are well founded.

a. Alleged violation of the right to equality before the law and equal protection of the law

The Applicant's Case

38. The Applicant, a magistrate by profession since 1984, claims that he remained for twenty (20) years in the rank of "first grade, first group", which is the highest level of his judicial career and which he reached in 2002. He maintains that, until his retirement in 2022, he did not progress beyond that rank, while in the same period several magistrates in the same category as his or even less senior were promoted to the category of *magistrat hors hiérarchie* (highest-ranking magistrates).

39. He claims that by failing to elevate him to the rank of special category, the State of Côte d'Ivoire has repeatedly violated his right to equality before the law for 20 years.

The Defendant's Case

40. On the contrary, the Defendant State maintained that no violation could result from the fact that the Applicant had not been elevated to a special category position. In support of its submission, it relies on the new Article 4 of Law No. 94-498 of September 6, 1994, amending Law No. 78-662 of August 4, 1978, on the Statute for Magistrates, which states that:

> *"The magistrates of the Supreme Court are placed in the special category, with the exception of referendum councilors and auditors, the Chief Justices of the Courts of Appeal, the magistrates of the Public Prosecutor's Office before those Courts and before the Central Administration.*

The Chief Justices of the chambers of the courts of appeal, the general counsels of the said courts and of the central administration, the chief Justice of the court of first instance of Abidjan and the prosecutor of the said court, who have belonged for at least two years to the first group of the first degree, may be placed in the special category".

41. According to the Defendant State, it is clear from reading this text that the judges referred to in subparagraph 1 are automatically placed in a special category position by virtue of the functions they perform; as for those referred to in subparagraph 2 of the text, the category to which the Applicant belongs, a decision by the Head of State is required to elevate them to a special category position.

42. The Defendant concluded from this that appointment to a special category position was not a right for a judge of the Applicant's category, but merely an option left to the discretion of the President of the Republic and not an obligation imposed on him, as the Applicant claims.

The Court's Analysis

43. The Court recalls that the principle of equality before the law and equal protection of the law means that all persons in an identical situation must be treated in the same way by the legal system. For a violation of this principle to be established, it must be shown that a person has been discriminated against in relation to others in a comparable situation, without objective and reasonable justification. In this regard, the Court reaffirmed, in judgment No. *ECW/CCJ/JUD/19/21, FODI MOHAMED & ORS v. NIGER STATUS*, that: *"Discrimination occurs when people under identical situations are treated differently, without any objective and reasonable justification."*

44. The Court underlines that the right to equality before the law is enshrined in Article 7 of the Universal Declaration of Human Rights (UDHR) and in Article 3(1) and (2) of the African Charter on Human and Peoples' Rights (ACHPR). Article 7 of the UDHR establishes that: *"All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any*

discrimination in violation of this Declaration and against any incitement to such discrimination." In turn, the Article 3 of the ACHPR, provides that: *"1. Every individual shall be equal before the law. 2. Every individual shall be entitled to equal protection of the law."*

45. The Applicant claims that he remained in the rank of first grade, first group, from 2002 until his retirement in December 2022, totaling a period of twenty (20) years without promotion to the special category, despite the fact that several of his peers, including less senior magistrates, were promoted to that category.

46. The Tribunal notes that, according to the Applicant, he had met the eligibility requirements for promotion to the special category since January 1, 2004, and therefore considers that he had a legitimate right to that promotion, which he claims to have been denied on discriminatory grounds until his retirement.

47. However, the Court notes that, throughout this period, the Applicant did not take any formal initiative, of an administrative or judicial nature, to claim the alleged right. With the exception of the letter sent to the Minister of Justice on January 20, 2022, there is no prior diligence in the proceedings. Moreover, the present action was only brought almost two years after his retirement, and its essential object is to reconstitute his career as a magistrate, which ended on December 31, 2022.

48. This inertia substantially undermines the Applicant's claim. Furthermore, no administrative act was presented to prove that less senior magistrates or their peers were actually promoted. Although the State did not expressly contest this allegation, the burden of proof was on the Applicant. It was his responsibility to demonstrate that his stagnation was the result of discrimination or unjustified treatment by the authorities.

49. The Court understands that such acts of appointment are, in principle, published in the Official Journal and therefore accessible to the Applicant. In the absence of an internal judicial decision on the interpretation of the legislation applicable to the judiciary statute, such acts would at least have allowed the Court to assess the criteria used for the selection of magistrates promoted to the special category.

50. Thus, it can be seen that, apart from the long period of permanence in the same rank, the Applicant has not presented any objective evidence capable of supporting his allegations.

51. The Court recalls that, according to well-established case law, mere allegations cannot be the sole basis for recognizing a human rights violation. In the judgment *ECW/CCJ/JUG/17/15*of *KODJOVI GBELENGO DJELOU v. STATE OF TOGO*, §32), the Court stated that: *"Cases of human rights violations brought before it by a Applicant must be specifically supported by sufficiently convincing and unequivocal evidence."* This approach has been reiterated in several judgments, including the recent judgment No. *ECW/CCJ/JUD/28/24, KONE MAMOUROU v. Republic of Côte d'Ivoire*.

52. The Court also recalls that under Article 4 of Law No 94-498 of 6 September 1994 amending Law No 78-662 of 4 August 1978 on the Statute of the Judiciary, only certain judges are automatically placed in the special category. Magistrates such as the Plaintiff; Presidents of Chambers, Attorney-General and Presidents of the Court of First Instance, Abidjan; They may only be promoted to the Hors Hiérarchie category after at least two years in the first group of the first degree. Such promotion is not automatic, nor does it constitute an acquired right, but is a discretionary power of the President of the Republic.

53. In view of the above, the Applicant's reliefs sought should be dismissed.

X. REPARATION

The Applicant's Case

54. The Applicant claims that the violation of his right to equality before the law has caused him material and moral damage; the material damage consists of a huge loss of income in terms of salary and retirement pension during the long years of his career during which he was eligible for the special category since he retired. He estimates his accumulated losses at a total of two hundred and seventy-nine million eight hundred and sixty-six thousand seven hundred and eighty (279,866,780) CFA francs, and his moral damage at three hundred million (300,000,000) CFA francs.

Defendant's Case

55. The State of Côte d'Ivoire concluded that the Applicant's claim for damages should be dismissed because he had not suffered any violation of his rights.

The Court's Analysis

56. The kind of reparation to be granted by the Court depends on the circumstances of each case. *WOMEN AGAINST VIOLENCE AND EXPLOITATION IN SOCIETY (WAVES) V. SIERRA LEONE, ECW/CCJ/JUD/37/19, pg. 29.*
57. The Court observes that, in the instant case, the Applicant claims to have suffered material and non-material damage as a result of the violation of his right to equality before the law and equal protection of the law.
58. The Court further stresses that the award of compensation is the consequence of violations duly established. In the instant case, however, the Court found that the Applicant had not sufficiently substantiated his claims or demonstrated the violation of any right; consequently, he should not be awarded any damages.

XI. ON THE COSTS:

59. The Applicant sought that the Defendant be ordered to pay all of the costs, while the Defendant sought that the Applicant be ordered to pay them in full.
60. It is provided under Article 66(2) that the unsuccessful party shall be ordered to pay the costs if they have been applied for in the successful party's pleadings.
61. Pursuant to Article 66(2) of the Rules of the Court, the Defendant is ordered to pay the costs of the proceedings, quantum to be assessed by the Registrar of the Court.

XII. OPERATIVE CLAUSE

62. For the reasons stated above, the Court sitting in public, after hearing both Parties:

As to Jurisdiction:

i. Declares that it has jurisdiction to determine this case;

As to admissibility:

ii. Declares that the case is admissible;

On the merit:

iii. **Declares as not established** the violation of the Applicant's right to equality under Article 3 of the African Charter on Human and Peoples' Rights has not been violated.

iv. Declares the request for compensation for material and moral damages to be dismissed.

XIII. ON THE COSTS:

63. Orders the Applicant to bear the costs of the proceedings to be assessed by the Registrar of the Court.

Done in Abuja on the 2nd day of July 2025, in Portuguese and translated into English and French.

Signed by:

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

Hon. Justice Dupe **ATOKI** – Member

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

Dr. Yaouza **OURO-SAMA** – Chief Registrar