COMMUNITY COURT OF JUSTICE,
ECOWAS
COUR DE JUSTICE DE LA COMMUNATE,
CEDEAO
TRIBUNAL DE JUSTICA DA COMMUNIDADE,
CEDEAO



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

In the Matter of

LES AYANTS DROIT DE FEU MAHI ZADI RENE

(APPLICANTS)

v

REPUBLIC OF CÔTE D'IVOIRE

(RESPONDENT)

Application No. **ECW/CCJ/APP/01/23;** *Judgt No.* **ECW/CCJ/JUD/44/25**

JUDGMENT

ABUJA

10 NOVEMBER 2025

THE COMMUNITY COURT OF JUSTICE OF THE
ECONOMIC COMMUNITY OF WEST AFRICAN STATES (ECOWAS)
HOLDEN AT ABUJA, NIGERIA

Application No: **ECW/CCJ/APP/01/23;** *Judgt No*. **ECW/CCJ/JUD/44/25**

BETWEEN

LES AYANTS DROIT DE FEU MAHI ZADI RENE **-APPLICANTS**

AND

REPUBLIC OF CÔTE D'IVOIRE **-RESPONDENT**

COMPOSITION OF THE COURT:
Hon. Justice Sengu Mohamed **KOROMA** - Presiding
Hon. Justice Gberi-Be **OUATTARA** - Member
Hon. Justice Edward Amoako **ASANTE** - Judge Rapporteur

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

REPRESENTATION OF PARTIES:

Maitre Mariam Diawara
Iyobosa Brown Osarenkhoe, Esq - Counsel for APPLICANT

Mr. Diabagate Hassane -Counsel for RESPONDENT

I. JUDGMENT

1. This is a 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 Applicants, Jean-Claude Gbouazo Mahi and 12 others (making a total of 13) are the heirs of the late René Zadi Mahi, a citizen of the Republic of Cote d'Ivoire, who died on 6 May 2008.

3. Respondent, the Republic of Côte d'Ivoire, is an ECOWAS Member State.

III. INTRODUCTION

Subject Matter of the Proceedings

4. Applicants allege that their late father, Mr. René Zadi Mahi, a Chief Warrant Officer and an accountant in the Presidential Guard in Yamoussoukro, was detained from October 1973 to June 1975 on allegations of misappropriating funds. He was subsequently acquitted of the charges. However, he was neither reinstated into the army nor paid his pension benefits. This led to the disintegration of their family and caused a prolonged illness of their father that ultimately resulted in his death in 2008. Applicants contend, and request the Court to declare, that the Respondent's conduct violated their father's rights to liberty, security of person, family life, work, and a decent livelihood. They further request that the Court award them 100 million CFA francs each as compensation.

IV. PROCEDURE BEFORE THE COURT

5. Applicants commenced these proceedings by an Initiating Application dated 7 December 2022 and filed at the Registry of the Court on 12 January 2023. The Application was electronically served on the Respondent on 13 January 2023.

6. On 24 October 2023, Applicants filed an Application for Default Judgment, dated 23 October 2023. This was served on the Respondent on 24 October 2023.

7. On 31 October 2023, the Respondent filed an application for extension of time within which to file its Defence. This was served on the Applicants on 1 November 2023.

8. On 15 November 2023, Applicants filed an Opposition to the Respondent's application for extension of time which was served on the Respondent on 16 November 2023.

9. On 17 November 2023, Applicants filed an updated Opposition to the Respondent's application for extension of time. It was served on the Respondent on 20 November 2023.

10. At the session of the Court on 25 September 2025 during which both parties were represented, the Court heard the parties' submissions on the case and adjourned for deliberation and judgment.

V. APPLICANTS' CASE

a. Summary of Facts

11. The case of the Applicants is that their father, Mr René Zadi Mahi, who was a Chief Warrant Officer and an accountant in the Presidential Guard of Yamoussoukro was placed in pre-trial detention from 5 October 1973 to 4 June 1975 for alleged misappropriation of public funds.

12. He was kept in total isolation deprived of any visits or interactions with his family. His family was broken up as his children dropped out of school and dispersed. Applicants say that he was later acquitted and released by the Abidjan Correctional Court, following a correctional judgment dated 28 March 1978.

13. Despite his acquittal, the Respondent State did not reinstate him to his job and function, and did not compensate him, especially by paying his salary and allowances during the period of the pre-trial detention.

14. Unemployed after his release, he finally found a job as an accountant in a company called SICOGI, in order to cope with his numerous family responsibilities and to try to put his family back together. However, the trauma of his unjust imprisonment, his non-reintegration into the presidential guard and the disintegration of his family, which had a disproportionate impact on the moral health of his family, led to a long illness. He died on 6 May 2008 at the Treichville University Hospital leaving behind 13 children, the Applicants in this case.

15. Applicants say that after their father's death, they were unable to benefit from his pecuniary rights, especially the pension rights and other pecuniary benefits granted by the State pension fund, known as CGRAE, and the National Social Security Fund, known as CNPS.

16. To take the necessary steps to benefit from these rights, they requested and obtained from the Court of First Instance of Abidjan-Plateau, a judgment establishing their respective status as heirs, which has become final and *res judicata*, in accordance with the certificate of no appeal and no opposition issued by the registry of the Court.

17. Therefore, as successors to the estate of the late René Zadi Mahi, Applicants request the Court to find that the Respondent violated the human rights of their father and consequently order the Respondent to make reparations for all damages suffered as a result of the alleged violation of human rights.

b. Pleas in Law

18. Applicants submit the following points of law:

(i) That the Respondent violated Articles 6 and 18(1) of the African Charter on Human and Peoples' Rights.

(ii) That the Respondent violated Article 9(1) of the International Covenant on Civil and Political Rights (ICCPR).

(iii) That the Respondent violated Article 6 and 7(a) of the International Covenant on Economic, Social and Cultural Rights (ICESCR).

(iv) That the Respondent violated Article 9 of the Universal Declaration of Human Rights 1948 (UDHR).

c. *Reliefs sought*

19. Applicants request the Court for the following reliefs:

(i) An order directing the Respondent to pay to each heir of the late René Zadi Mahi the sum of 100,000,000 CFA francs for all losses suffered.

(ii) An order imposing a time limit of 30 days on the Respondent to report to the Court on the execution of the judgment delivered.

VI. RESPONDENT'S CASE

20. Despite service of the Initiating Application and other documents filed by Applicants on it, the Respondent did not file a Defence or other response to the case.

21. During the hearing of the case on 25 September 2024, Counsel for the Respondent responded orally to the submissions of the Applicant. He contended that the action was without merit and should be dismissed. He submitted, among others, that the documents submitted by the Applicants were not legible, that the name on the death certificate

submitted by the Applicants does not correspond to any name in the Respondent's records, and that there are several discrepancies in the facts and documents pleaded by the Applicants. He therefore urged the Court to dismiss the case.

VII. APPLICANTS' REPLY TO RESPONDENT'S CASE

22. Counsel for the Applicants urged the Court to disregard all the arguments made by the Respondent's counsel on the basis that none of those arguments were filed before the Court. According to Counsel for the Applicants, since the Respondent did not file a Defence or other response to the Application, the oral submissions made disputing the Applicant's statement of facts and evidence amount to a surprise. Because the Applicants did not have a chance to file a response to the claims made by the Respondent's counsel, the Court should reject them.

VIII. JURISDICTION OF THE COURT

23. Article 9(4) of the Protocol of the Court vests the Court with "jurisdiction to determine cases of violation of human rights that occur in any Member State." This power of the Court to adjudicate human rights cases, is to be exercised within certain parameters as defined in the Court's Protocol and other relevant rules of international law. (See *Incorporated Trustees of Prince and Princess Charles Offokaja Foundation, Nigeria and Another v Federal Republic of Nigeria* [ECW/CCJ/JUD/09/24], para 66).

24. Accordingly, in *Isaac Mensah v Republic of Ghana* [ECW/CCJ/JUD/30/24], para 46, the Court reiterated, that similar to that of other international courts, its jurisdiction is exercised with respect to particular subject matters, specific entities or persons who may appear as parties (applicants, respondents, or interveners), and within certain territorial limits, and prospectively from a defined cut-off date. These parameters, the Court noted, "give rise to four broad elements or types of jurisdiction described as subject matter or material jurisdiction (*jurisdiction ratione materiae*); personal jurisdiction (*jurisdiction ratione personae*); territorial jurisdiction (*jurisdiction ratione loci*), and temporal jurisdiction (*jurisdiction ratione temporis*)." – (Ibid).

25. In this case, the Court notes that the alleged violations of the rights to liberty, security of the person, family life, and livelihood are human rights issues that ordinarily fall within its subject matter jurisdiction. The case is brought by thirteen individuals against the Respondent, an ECOWAS Member State. The parties are all entities with access to the Court and over whom the Court may exercise its human rights jurisdiction, thereby supporting a conclusion that the Court has personal jurisdiction. Furthermore, the events giving rise to the alleged violations occurred within the territory of the Respondent and are, therefore, arguably within the Court's territorial jurisdiction.

26. The Court observes, however, that the events underlying the Applicants' claims took place between October 1973 and March 1978, at least 27 years before this Court obtained its human rights jurisdiction in 2005, and 14 years before the Respondent, in 1992, ratified the

African Charter, the ICCPR, and the International Covenant on Economic, Social and Cultural Rights (ICESCR), which the Applicants rely upon in this case. The Court must, therefore, examine and satisfy itself that it has temporal jurisdiction.

27. The Court begins by noting that, as is generally the case with international courts, temporal jurisdiction (*jurisdiction ratione temporis*) is often not expressly specified in the statute or treaty establishing such a body. This Court is no different in that regard. However, the temporal delineation of the Court's jurisdiction necessarily arises from the principle of non-retroactivity of treaties, according to which a treaty does not apply to any act or fact that took place, or any situation that ceased to exist, before the treaty entered into force (see *Vienna Convention on the Law of Treaties 1969*, art. 28 and *Case of Gomes Lund et al ("Guerrilha do Araguaia") v Brazil*, Inter-American Court, Judgment of 24 November 2010, paras 15 and 16).

28. It follows that this Court's human rights jurisdiction granted by the 2005 Supplementary Protocol applies prospectively from 19 January 2005, the date on which the Supplementary Protocol provisionally entered into force for Member States of the Community. And it is important to add that this jurisdiction may generally be exercised only in respect of acts or situations occurring on or after that date which implicate the extant and binding human rights obligations of Member States.

29. It is for this reason that the Court held in *Khafila Abiola & Others v Federal Republic of Nigeria* [ECW/CCJ/RUL/01/25] (para 32) as follows:

> 32. Generally, this Court has temporal jurisdiction only when the alleged human rights violation occurred after the entry into force, for the Respondent, of both the substantive human rights treaty (here, the African Charter) and the 2005 Supplementary Protocol, which established the Court's human rights mandate. (See *Global Justice and Research Project v Republic of Liberia* [ECW/CCJ/RUL/04/24], paras 36-40; and *Beneficiaries of the late Norbert Zongo and Others v Burkina Faso* (preliminary objections) (2013) 1 AfCLR 197, paras 62 and 68).

30. Having said this, the Court is not oblivious to the exception to the above position, which allows it to assume jurisdiction over an act or situation preceding the entry into force of its human rights mandate, or of the substantive treaty under which the case is brought, where the alleged human rights violation is of a continuing character. (See *Khafila Abiola & Others v Federal Republic of Nigeria* [ECW/CCJ/RUL/01/25], para 33 and *Tanganyika Law Society and Others* v *Tanzania* (merits) (2013) 1 AfCLR 34, para 84).

31. Reverting to the relevant facts of the present case, the Applicants say that their father was detained from 5 October 1973 to 4 June 1975 for alleged misappropriation of public funds. By a judgment of the Abidjan Correctional Court dated 28 March 1978, he was acquitted of the charges but was not reinstated to his position in the Ivorian army. These events, namely, the arrest and detention of the Applicants' father, his acquittal, and the decision of the Ivorian government not to reinstate him were acts which were completed in 1978 or earlier. The African Charter, the ICCPR and the ICESCR on which this Application is based were ratified and entered into force for the Respondent in 1992, while

this Court's human rights jurisdiction became effective for the Respondent on 19 January 2005.

32. Clearly, the Respondent's conduct and the alleged human rights violations arising from it occurred before the African Charter, the ICCPR, and the ICESCR became binding upon it, and before this Court obtained jurisdiction to adjudicate human rights cases. The case is, therefore, outside the Court's temporal jurisdiction. The Court cannot apply its Protocol (as amended), the African Charter, the ICCPR, or the ICESCR retroactively to cover a fact or situation that predates these instruments.

33. The Court would also emphasize that the principle of continuing violation will not avail the Applicants on the facts of this case. In reaching this conclusion, the Court takes note of Article 14 of the Articles on Responsibility of States for Internationally Wrongful Acts, 2001, which states that "[t]he breach of an international obligation by an act of a State not having a continuing character occurs at the moment when the act is performed, even if its effects continue." In its commentary on this provision, the International Law Commission explains as follows:

> An act does not have a continuing character merely because its effects or consequences extend in time. It must be the wrongful act as such which continues. In many cases of internationally wrongful acts, their consequences may be prolonged. The pain and suffering caused by earlier acts of torture or the economic effects of the expropriation of property continue even though the torture has ceased or title to the property has passed.... The prolongation of such effects will be relevant, for example, in determining the amount of compensation payable. They do not, however, entail that the breach itself is a continuing one.

34. Consequently, there may, no doubt, have been some lingering effects of the arrest and detention of the Applicants' father, and of his non-reinstatement after his acquittal in March 1978. However, it does not follow that the arrest and detention, or the non-reinstatement as such, continued until the African Charter, the ICCPR, and the ICESCR entered into force for the Respondent in 1992, or until this Court obtained its human rights jurisdiction on 19 January 2005.

35. In light of the above, the Court concludes that it has no jurisdiction over the Application, as the underlying events giving rise to the alleged human rights violations fall outside the limits of its temporal jurisdiction.

IX. OPERATIVE CLAUSE

36. For the foregoing reasons, the Court sitting in public and after hearing the parties:

On jurisdiction

i. *Declares* that the Court has no jurisdiction over the Application, and accordingly dismisses it.

On costs

ii. *Decides*, pursuant to Article 66 of the Rules of the Court, that each party shall bear their own costs.

Done at Abuja this 10th day of November 2025 in English and translated into French and Portuguese.

Hon. Justice Sengu Mohamed **KOROMA**
Presiding .....

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

Hon. Justice Edward Amoako **ASANTE**
Judge Rapporteur .....

ASSISTED BY:
Dr. Yaouza **OURO-SAMA** (Chief Registrar) .....