



COMMUNITY COURT OF JUSTICE, ECOWAS
COUR DE JUSTICE DE LA COMMUNAUTE, CEDEAO
TRIBUNAL DE JUSTICA DA COMUNIDADE, CEDEAO

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

In the Case of

- 1) Association des Blogueurs de Guinée (ABLOGUI),
- 2) Association Villageoise,
- 3) Ligue Guinéenne des Droits de l'Homme and
- 4) Centre Africain de Formation et d'Information sur les Droits Humains et
l'Environnement against THE STATE of GUINEA.

Application N° : ECW/CCJ/APP/39/21 Judgment N°. ECW/CCJ/JUD/38/23/22

JUDGMENT

ABUJA

Of 31 OCTOBER 2023

CASE N°: ECW/CCJ/APP/39/21

JUDGMENTS N° ECW/CCJ/JUD/38/23

**Association des Blogueurs de Guinée (ABLOGUI) and 3 others
APPLICANTS**

V.

**STATE OF GUINEA
DEFENDANT**

BEFORE THEIR LORDSHIPS:

Hon. Judge Gberi-bè **OUATTARA** Presiding/Judge Rapporteur

Hon. Judge Dupe **ATOKI** Member

Hon. Judge Sengu Mohammed **KOROMA** Member

ASSISTED BY: Me. Yaouza OURO-SAMA Chief Registrar

I. REPRESENTATION OF THE PARTIES:

MOJIRAYO OGUNLANA NKANGA Counsel to the Applicants

State Judicial Agent

Counsel to the defendant



II. COURT JUDGMENT

This judgment is the one delivered by the Court, in a virtual public hearing in accordance with Article 8 (1) of the Practice Directions on Electronic Case Management and Virtual Hearings, 2020.

III. DESIGNATION OF THE PARTIES

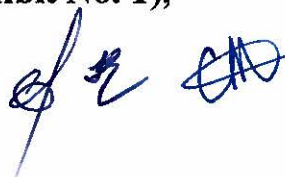
1. The Applicants are Non-Governmental Organizations (NGOs) registered under the Guinean Laws respectively with their Head Office in Conakry, hereinafter referred to as “The Applicants”;
2. The Defendant is the State of Guinea, a Member State of the ECOWAS Community, signatory to the African Charter on Human and Peoples' Rights as well as other international instruments relating to the protection of human rights (hereinafter referred to as “the Defendant”);

IV. INTRODUCTION

3. The purpose of this procedure is to establish the violation by the State of Guinea, of the Applicants' right to freedom of expression;

V. PROCEDURE BEFORE THE COURT

4. On 22nd July 2021, the Applicants filed with the Court Registry an Application against the Respondent State for violation of their right to freedom of expression. This Application accompanied by Annexure A, B, C, D, E and F was served on the Defendant on 8th September 2021. (**Exhibit No. 1**);



5. On 3rd February 2023, the Applicants filed a motion with the Registry seeking a default judgment against the Defendant. (**Exhibit no. 2**);

A copy of this motion was notified to the Defendant on 17th February 2023;

6. At the hearing of 18th May 2023, the one-month time - limit given to the Defendant to file his defence having expired and, in the absence of a request for an extension of time from the Defendant, the Court adjourned the case for deliberation, and for judgment to be rendered on 14th November 2023;

VI. ARGUMENTATION OF THE APPLICANTS

a) Statement of Facts

7. On 22nd July 2021, the Applicants seized the ECOWAS Court of Justice seeking from the Court to find the violations of their human rights by the State of Guinea;

8. In support of their Application, they explained that the Presidential Elections of 18th October 2020 in Guinea, was preceded by long months of protests throughout the country against the then President Alpha Condé, whom the opposition parties criticized of disregarding the Constitution and wanting to run for a third consecutive term of office;

9. They reported that, in fact, President Alpha Condé submitted his candidacy after modifying the Guinean Constitution and inserted a proviso to be authorized a third term, seven months before the said election, and following this election, he remained in power as Head of State. They argued that this amendment to the Constitution was achieved through a referendum held in March 2020;



10. The Applicants averred that protests against the amendment to the Constitution had already erupted in October 2019 throughout Guinea and that a number of national and international news channels, including Al Jazeera, BBC, and the Guardian reported these events in their news items and publications. International human rights organizations such as Amnesty International and Human Rights Watch had announced violent clashes between state authorities and demonstrators;

11. The Applicants argued that since the protests began in October 2019, opposition parties and civil society organisations have consistently raised concerns about the amendments to the Constitution. Instead of responding to these concerns, the Government of the Republic of Guinea has ignored them;

12. They argued that as part of a referendum intended to sample the opinion of the Guinean people on this planned amendment of the Constitution, the Government disrupted the connection to the Internet, banned demonstrations and arrested demonstrators, as well as journalists and civil society activists who called for democratic reforms;

13. The Applicants reiterated that on several occasions the Government restricted access to the internet. According to them, users had limited internet connectivity on 18th October 2020. They also maintained that from 23rd October to 27th October 2020, the internet was completely inaccessible throughout Guinea and that after 27th October Facebook was blocked until December 2020;

14. They indicated that their witnesses described in great details the events that occurred during the relevant periods in their various statements and that these

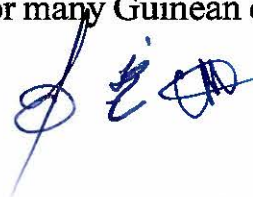


accounts support their conclusions insofar as they described the circumstances in which the interruptions of access to the internet took place;

15. The applicants maintained that the internet disruption in October 2020 was first noticed in the evening of 18th October, the day of the Presidential Elections, by internet monitoring organisations such as Netblocks Internet and Observatory Netblocks which indicated that from 23rd to 27th October 2020 there was a near total disruption of the internet and restriction of access to social media. Netblocks Internet has confirmed major disruptions to the Orange network, reducing the national connection level to just 9% of normal levels. Other cellular network operators MTN and Cellcom have also experienced partial restrictions limiting access to major social media and communications platforms;

16. The Applicants further argued that the impact of the internet disruption as well as the blocking of social media on them in March and October 2020 is contained in the statements of their witnesses. These statements showed the effect of internet disruption on their ability to carry out their professional activities. Their witnesses also described the impact of the internet shutdown on Guinean society as well as the difficulties faced by the Guinean population in receiving vital news, including information on how to participate in the elections, as well as details on demonstrations against the amendment of the Constitution;

17. The applicants claimed that they were seriously affected by the disruption of access to the internet in violation of their human rights as the population needed the internet more, due to the COVID-19 pandemic, which resulted in many people being confined to their homes and had limited physical contact. The use of social media platforms, such as Facebook was vital for many Guinean citizens who used



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it primarily as a source of information on important current affairs issues in their general interest. One of the witnesses noted the importance of Facebook, specifying that it is the “*main form of information exchange in Guinea*»;

18. Considering that these facts constitute a violation of Articles 9, paragraph 1 and 9, paragraph 2, of the African Charter on Human and Peoples' Rights (ACHPR), 19, paragraph 2 of the International Covenant on Civil and Political Rights (ICCPR) and 66, paragraph 2 (point c) of the ECOWAS Revised Treaty, the Applicants appealed to the Court of Justice of the Economic Community of West African States (ECOWAS) to find this violation and to order the Defendant to pay them damages as compensation for the prejudices suffered.

b) *Pleas invoked*

19. In support of their claims, the Applicants invoked the following legal grounds:

- Violation of Articles 9 paragraph 1 and 2 of the ACHPR;
- Violation of Articles 19 paragraph 2 of the ICCPR;
- Violation of Article 66 paragraph 2 point c of the Revised ECOWAS Treaty;

c) *Conclusions*

20. The Applicants requested that the Court:

- To declare and adjudge that by interrupting access to the internet and blocking social media sites, the State of Guinea violated their human rights, in particular the right to information provided for in Article 9 paragraphs 1 and 2 of the African Charter on Human and Peoples' Rights (ACHPR), freedom of expression provided for in Article 19, paragraph 2, of the International Covenant on Civil



and Political Rights (ICCPR), and the rights of journalists under Article 66, paragraph 2, (point c) of the Revised ECOWAS Treaty;

-To order the State of Guinea to take all necessary measures to put an end to the said violations;

-To order the State of Guinea to pay reparations which they will specify and submit to this Court in due time;

VII. DEFENDANT'S ARGUMENT

a) Statement of facts

21. The Defendant, who had a period of thirty (30) days from notification of the initiating motion to file a defence brief with the Registry, neither filed the said brief nor requested a period to file it with the Court registry. .

VIII. JURISDICTION

22. The Court recalls that its jurisdiction in matters of human rights is governed by the provisions of Article 9-4 of the Supplementary Protocol A/SP.1/01/05 of 19th January 2005 amending Protocol A/ P.1/7/91 on the Court of Justice which provides that: "*The Court has jurisdiction over cases of human rights violations that occur in any Member State. »* .

23. The Court observes that the rights invoked by the Applicants are part of the human rights which fall within its jurisdiction. Consequently, it must declare itself competent to hear the request.



IX. ADMISSIBILITY

24. The Court notes that the admissibility of Applications by it is governed by the provisions of Article 10-d of the Supplementary Protocol A/SP.1/01/05 of 19th January 2005 amending Protocol A/P.1/ 7/91 on the Court which provides that: *“Access to the Court is open to: any person who is the victim of a human rights violation may refer the matter to the Court;*

The application submitted for this purpose:

- i) must not be anonymous;*
- ii) will not be brought before the Community Court of Justice when it has already been brought before another competent international Court »*

In the present case, the Court notes that the Applicants are clearly identified. The request is therefore not anonymous;

25. The Court notes, however, that it appears from the aforementioned Article that anyone who wishes to submit an Application before it must have *locus standi*, failing which their application will be declared inadmissible. The term standing simply means the legitimate interest or right to protect held by the Applicant;

26. In the instant case, the Applicants argued that they are non-governmental organizations (NGOs) which work for the protection of human rights and that when they are denied access to the internet, this constitutes a violation of their rights, as being deprived of the Internet constitutes a violation of their right to freedom of expression, in particular the right to research, receive and share information;



27. The Court therefore considers that the Applicants have established an interest and a right worthy of protection. However, since the Applicants are NGOs and therefore legal entities, the question may arise as to whether they can petition the Court for human rights violations pursuant to Article 10-d of Supplementary Protocol A/SP .1/01/05 of 19th January 2005 amending Protocol A/P.1/7/91 on the Court;

28. To address this concern, the Court recalls its ruling in *Dexter Oil v. Republic of Liberia* (2019) ECW/CCJ/JUD/03/19, where it decided the issue whether legal persons can bring an action for human rights violations under Article 10(d). The Court ruled in fact that: *“Human rights mean the rights belonging to the human person, regardless of nationality, race, caste, religion and gender, among others, such as the right to life, the right to health and the right not to suffer torture and inhuman and degrading treatment. On the other hand, the rights of a legal entity are fundamental rights necessary for the existence of a legal entity, rights which a legal entity can enjoy and which it can be deprived of; for example, the right to freedom of expression since the company has the right to talk about its product; the right to property since the company generates profits and shares and/or cash and the right to enjoy this money. The established exemptions, under which legal persons can bring legal action, are: fundamental rights which are not dependent on human rights and which include the right to a fair trial and the right to freedom of 'expression '”;*

29. In accordance with the decision cited above, the Court indicates that legal persons can enjoy freedom of expression, including other rights which do not



depend on human rights (i.e. derived rights), and can take legal action to protect these rights if they are violated;

30. Consequently, the Applicants, although not natural persons, have the standing to act before the Court as victims when the rights guaranteed to them as legal persons are either violated or threatened without any legal justification;

31. The Court therefore considers that in the instant case, the Applicants have standing to act although they are not natural persons insofar as the rights whose violation is alleged are part of the rights which are recognized to legal entities;

32. Furthermore, the proof that the Applicants seized another international court competent in human rights matters to hear this same case is not provided. It is therefore not established that the Application has already been brought before another competent international Court. Consequently, the Court must declare the Application as admissible.

X ON THE NATURE OF THE DECISION

33. The Applicants requested that the Court should deliver a default decision against the respondent. In support of their request, they explained that they petitioned the Honourable Court of Justice against the State of Guinea on 22nd July 2021 and that on 8th September 2021, the Chief Registrar of the Court notified their Application on the Defendant's Judicial Agent, specifying to him



that a period of one month, (30) days, was given to him to produce a defence statement;

34. The applicants argued that the period of one month (30 days) given to the Respondent to produce a defence statement has expired without it doing so, whereas under Article 90 of the Rules of Court: "*If a defendant on whom an application initiating proceedings has been duly served fails to lodge a defence to the application in the proper form within the time prescribed, the applicant may apply for judgment by default.*»

The Applicants therefore requested that the Court render a default judgment against the Defendant in accordance with the provisions of Article 90 cited above;

COURT ANALYSIS

35. The Court recalls that a judgment is considered to be rendered "by default" when the Defendant, although informed of the trial by through notification of the Application and related documents, but fails, without reasons brought to the attention of the Court, to organise its defence by producing a defence brief. The judgment which is rendered in its absence is called a "default judgment";

36. The Court notes that in the present case, the Applicants filed their Application against the State of Guinea with the Registry on 22nd July 2021. The Court also notes that on 8th September 2021, the Chief Registrar notified their Application to the Defendant's legal agent, informing him that a period of one month, (30) days, is granted to him to produce a defence statement;

37. The Court equally observes that the one month (30 days) time-limit given to the Defendant to produce a defence has expired since 8th October 2021 and that



on 3rd February 2023, the Applicants filed an Application with the registry seeking a default judgment, from the Court. The Court notes that this request was notified on the Defendant on 17th February 2023, which remained without reaction.

38. The Court notes that under Article 90 of the Rules of Court: *“If a defendant on whom an application initiating proceedings has been duly served fails to lodge a defence to the application in the proper form within the time prescribed, the applicant may apply for judgment by default. »*

The Court therefore concludes that in the present case, pursuant to Article 90 of the Rules of Court, it is appropriate to enter a default judgment against the Defendant.

XI ON THE MERITS OF THE CASE

39. The Applicants invoked the violation, by the Respondent, of their right to information (A), their right to freedom of expression (B), and the rights of journalists (C).

A- ON THE VIOLATION OF THE RIGHT TO INFORMATION

40. The Applicants alleged that by interrupting access to the internet and blocking social media sites, the Respondent violated their human rights in particular the right to information enshrined under Article 9 paragraphs 1 and 2 of the African Charter on Human and Peoples' Rights (ACHPR);

The defendant has not filed any brief to state its opinion on this allegation;

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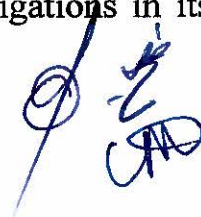
COURT ANALYSIS

41. The Court notes that information is the set of data in the technical, scientific, economic, institutional, cultural and historical fields which can be in the form of images, texts, speeches and sounds. Freedom of access to information is supposed to guarantee to as wide a public as possible, the provision of all knowledge (event, fact, judgment, figures, document, etc.) by all means including the media (the television, radio, press) and the Internet which disseminates information more quickly and on a global level;

42. The right to information is a right recognised in particular by UNESCO which prescribes free access to knowledge. The aim of this right is to guarantee citizens the possession of the information necessary to participate usefully in the democratic process and in decisions which concern their future. Indeed, access to information is considered the foundation of democracy;

43. The right to information is for some a sort of extension or synonym of freedom of the press or freedom of expression. The International Covenant on Civil and Political Rights (ICCPR) states that the right to freedom of expression "*includes the freedom to seek, receive and impart information and ideas of all kinds*". There is therefore, in the idea of free circulation of information, the recognition of a right to have access to information;

44. The right to information is above all a standard right in that it requires the interpreter to weigh the interests involved, to distinguish between values and issues and to draw the concrete limit of the different fundamental rights which come into play. The right to information takes on the appearance no longer of a right capable of producing prerogatives and obligations in itself but as a tool

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making it possible to help resolve a contradiction between rights tending to prevent the circulation information and those which tend to favour it;

45. Being a fundamental right, it seems entirely normal that the right to information benefits from specific legislation. This need for supervision is justified by the need to promote democracy. There are therefore numerous legal provisions guaranteeing everyone access to information.

Thus, pursuant to Article 9 of the African Charter on Human and Peoples' Rights (ACHPR), "1) *every individual shall have the right to receive information.* 2) *Every individual shall have the right to express and disseminate his opinions within the law.*"

Under Article 19 of the Universal Declaration of Human Rights (UDHR), "*Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.* »;

46. In Switzerland, the Federal Constitution guarantees freedoms of opinion and information in Article 16 which provides that:

« Freedom of opinion and freedom of information are guaranteed. Everyone has the right to freely form, express and disseminate their opinion. Everyone has the right to freely receive information, obtain it from generally accessible sources and disseminate it. »

47. In view of all of the above, the Court adjudges that any unjustified measure which aims to suspend or restrict free access to information constitutes a violation of the right to information.



48. In the present case, the Court notes that while the Applicants maintain that the actions of the Respondent in limiting access to the internet and blocking social media constitute a violation of their right to information provided for by Article 9 paragraphs 1 and 2 of the ACHPR, and that disruptions to telecommunications services constitute an interference with their right to freely seek, receive and disseminate information and ideas, the Respondent has not concluded to demonstrate that these measures are justified. Therefore, the Court adjudges that by interrupting access to the internet and social media without justification, the Respondent violated the Applicants' right to information.

B ON THE VIOLATION OF THE RIGHT TO FREEDOM OF EXPRESSION

49. The Applicants argued that by interrupting access to the internet from the evening of 18th to 27th October 2020, as well as access to social media sites from 20th to 23rd March 2020 and by keeping Facebook blocked from 18th October until in December 2020, the Defendant violated their right to freedom of expression.

The Defendant failed to make its defence known to the Court.

COURT ANALYSIS

50. The Court notes that the right to freedom of expression is provided for by Article 19, paragraph 2 of the International Covenant on Civil and Political Rights (ICCPR) and Article 9 of the African Charter on Human and Peoples' (ACHPR) thus conceived:



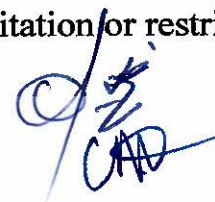
Article 19 paragraph 2 of the ICCPR: “*Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.*” »;

Article 9 of the ACHPR «*1. Every individual shall have the right to receive information. 2. Every individual shall have the right to express and disseminate his opinions within the law.* »>»;

51. The Court notes that the right to freedom of expression is an essential right which guarantees the exercise of freedom of the press. It is recognised by international human rights mechanisms as a necessary and indispensable element of any democratic society and a valuable instrument for the defence and protection of human rights. Also, States not only have an obligation to refrain from interfering with the exercise of the right to freedom of expression but they are also under the obligation to adopt all necessary measures to give effect to this right. In this regard, the UN Human Rights Committee, in relation to Article 19 of the ICCPR, has stated that the right to freedom of expression encompasses “*the expression and receipt of communications of any form of ideas and opinions likely to convey the discussion of human rights to others* »;

52. The Court notes that the Respondent acceded to the ICCPR in 1978 and ratified the ACHPR in 1982. It concludes that the Defendant consented to be bound by the obligation to respect and protect the right to freedom of expression under the ICCPR and the ACHPR;

53. The Court is certainly of the opinion that under Article 19, paragraph 3, of the ICCPR and 27, paragraph 2, of the ACHPR, the right to freedom of expression has limits or restrictions. However, it recalls that a limitation or restriction of the



right to freedom of expression is only justified if it is provided for by law, serves a legitimate interest, is necessary and proportionate, and respects the rights of others, the collective security, morality and the common interest. Therefore, any restriction or limitation must satisfy these cumulative conditions in order to be considered a legitimate restriction on the right to freedom of expression;

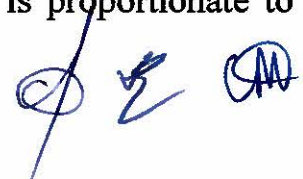
54. The Court notes that the first criterion according to which the restriction or limitation must be "provided for by law", requires that the measure be imposed under a law which is accessible to the public, formulated with sufficient precision to enable a person to regulate his or her behaviour accordingly, and provides adequate safeguards against absolute discretion regarding the restriction of freedom of expression on the part of those responsible for its execution;

55. The Court notes that in the present case, the restrictions on access to the internet on the dates indicated were not prescribed by law.

Furthermore, the restriction must pursue one of the objectives listed in Article 19, paragraph 3, 27, paragraph 2 of the ACHPR. Restrictions or limitations on the right to freedom of expression may only be used for the purposes of respecting the rights or reputation of others, or of safeguarding national security, public order, health or public morality;

56. In the present case, the Court notes that the defendant did not specify the objective it wished to achieve since the internet disruptions coincided with demonstrations relating to constitutional reforms and the elections;

57. The Court notes that the criterion according to which the restriction or limitation of the right to freedom of expression must be "necessary in a democratic society", requires that such restriction or limitation be absolutely necessary to achieve a legitimate objective and that it is proportionate to the



interest to be protected. This criterion requires that the measures be the least intrusive instrument among those which could make it possible to achieve this objective;

58. The Court observes that in the present case, even if a legitimate objective was pursued by the Defendant, the measures used to block access to the Internet would remain a disproportionate means insofar as they render communications almost impossible, and the internet inaccessible to all users;

59. The Court notes that to know whether a measure restricting the right to freedom of expression is appropriate and proportionate to the objective pursued, the African Court on Human and Peoples' Rights (ACHPR) listed in the 'Case of *Zimbabwe Lawyers for Human Rights & Associated Newspapers of Zimbabwe c. Zimbabwe*, a series of questions. According to this jurisdiction, it is important to seek to know:

- 1°) If there are sufficient reasons justifying the restrictive measure;
- 2°) If there is a less strict solution;
- 3°) If the procedure leading to this decision being taken is fair;
- 4°) If there are safeguard clauses against abuse;

60. The Court considers that in the present case, the answers to all these questions will remain unknown since the Defendant has not spoken out to shed light.

Furthermore, the Court is of the opinion that the Internet plays an important role in the development of a country because websites contribute to improving access to news through real-time dissemination of information. It is for this reason that the UN Special Rapporteur affirmed that *"By expanding people's ability to enjoy their right to freedom of opinion and expression, which is a "trigger" for other human rights, the Internet stimulates economic, social and political development and contributes to the progress of humanity as a whole »;*



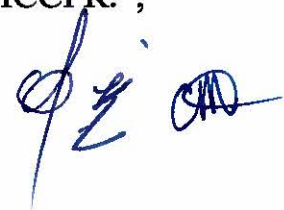
61. Therefore, Article 19(2) of the ICCPR not only requires States to refrain from taking measures that might interfere with the independence of online media and individuals' access to such media, but it also imposes an obligation on States to ensure that citizens can access and use the internet freely;

62. The Court recalls that disrupting or blocking access to the internet and websites constitutes a prior restriction. However, because of the extremely paralysing effect that prior restriction can have on the exercise of the right to freedom of expression, Article 13, paragraph 2, of the American Convention on Human Rights explicitly prohibits any form of prior restriction to the right to freedom of expression.

63. The Court observes that any restrictions imposed on the operation of websites, blogs and any other system of dissemination of information through the Internet, electronic or other means, including support systems related to these means of communication, such as internet service providers or search engines, is lawful only to the extent that it is compatible with Article 19(3) of the ICCPR;

64. Lawful restrictions should generally be aimed at specific content; general operating bans on certain sites and systems are not compatible with Article 19(3) of the ICCPR;

65. In fact, the Court considers that prohibiting a site or an information distribution system from publishing content solely on the grounds that it may be critical of the Government or of the political and social system adopted by the Government is equally inconsistent with Article 19(3) of the ICCPR.”;

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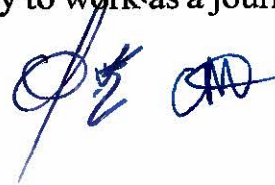
66. The African Court on Human and Peoples' Rights explained in the case of *Media Rights Agenda and others v. Nigeria*, that "given that Nigerian law contains all the traditional provisions for defamation suits so that individuals can defend themselves when necessary, the government's banning of a particular publication by name is disproportionate and unjustified. This fact constitutes a violation of [article 9, paragraph 2, of the African Charter. »;

67. Likewise in the case of AMNESTY INTERNATIONAL TOGO and 7 others against THE TOGOLAISE REPUBLIC, judgment No. ECW/CCJ/JUD/09/20, the Honourable Court ruled that: "*the blocking of Internet access by the Respondent State violated the Applicants' rights to freedom of expression*";

68. In the present case, it appears from the facts of the proceedings that the Defendant limited access to the internet and blocked social media. Consequently, failing to provide proof that these measures fell within the very limited framework of the exceptions provided for in paragraph 3 of Article 19 of the ICCPR and 27 of the ACHPR, the Court adjudges that the Defendant violated the Applicants' right to freedom of expression;

C) ON THE VIOLATION OF THE RIGHTS OF JOURNALISTS

69. The Applicants argued that by blocking access to the internet, social media sites and keeping Facebook, from 18th October to December 2020, the Respondent violated their right to freedom of expression. Furthermore, by this action, the Defendant impaired the fifth Applicant's ability to work as a journalist.



However, Article 66, paragraph 2, point (c), of the Revised ECOWAS Treaty recognises the obligation of Member States to “*commit to respecting the rights of journalists*”;

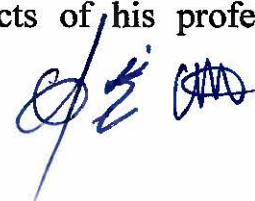
70. They argued that States not only have an obligation to refrain from interfering with the exercise of the right to freedom of expression and the rights of journalists under Article 19 of the ICCPR, Article 9 of the African Charter and Article 66, paragraph 2, point (c), of the Revised Treaty, but they are also under an obligation to adopt all necessary measures to “give effect” to these rights. They asserted that this Court has recognised that Article 66, paragraph 2, point (c), of the Revised ECOWAS Treaty imposes on Member States the obligation to ensure “*a safe and supportive atmosphere for the practice of journalism.*”;

The defendant did not file any submissions in the file to ensure his defence;

COURT ANALYSIS

71. The Court notes that journalism consists of searching, verifying, contextualising, prioritising, formatting, commenting on and publishing quality information; it cannot be confused with communication. Its exercise requires time and resources, whatever the medium. The notion of urgency in the dissemination of information or exclusivity must not prevail over the seriousness of the investigation and the verification of sources;

72. The journalist cannot be forced to perform an act or express an opinion contrary to his conviction or his professional conscience, nor to the principles and rules of his profession. The journalist performs all acts of his profession



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(investigation, taking images and sounds, etc.) freely, has access to all sources of information concerning the facts which condition public life and sees the protection of secrecy from its guaranteed sources;

73. The Court notes that under the terms of Article 66 paragraph 1 point c of the Revised Treaty: *<<1. In order to involve more closely the citizens of the Community in the regional integration process, Member States agree to cooperate in the area of information;*

2. To this end they undertake as follows:

a) to maintain within their borders, and between one another, freedom of access for professionals of the communication industry and for information sources;

b) to facilitate exchange of information between their press organs; to promote and foster effective dissemination of information within the Community;

c) to ensure respect for the rights of journalists. »;

74. The Court accepts that suspending access to the internet and social media sites does not guarantee the freedom of access of communication professionals to sources of information. It also does not facilitate the exchange of information between media outlets and does not promote or encourage the effective dissemination of information within the Community;

Therefore the Court adjudges that this action does not respect the rights of journalists;

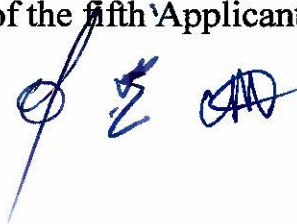
75. The Court observes, however, that the fifth Applicant whose rights were allegedly thus violated by the respondent is not identified.

The Court recalls that in their Application instituting proceedings, the Applicants themselves indicated on the first page that there are four of them and that the first applicant is the Association of Bloggers of Guinea, the second Applicant is the Village Association, the third Applicant being the Guinean Human Rights League and the fourth and final Applicant is the African Training and Information Center on Human Rights and the Environment which are established non-governmental organisations in Guinea carrying out activities in the field of protection, promotion and realisation of human rights particularly with regard to freedom of expression and of the press, as well as the right not to be subjected to torture and other cruel, inhuman and degrading treatment in Guinea. Nowhere is there mention of the presence of a fifth Applicant who would be a journalist whose rights were allegedly violated by the Respondent in this case. The Court therefore adjudges that the rights of journalists have in no way been violated by the Defendant.

XI ON THE ORDERS SOUGHT FOR COMPENSATION FOR ALLEGED PREJUDICES SUFFERED

76. The Applicants requested that may it please the Court:

- To find and adjudge that the Respondent State violated their right to freedom of expression as well as the journalistic rights of the fifth Applicant;



- To order the Defendant to take all necessary measures to prevent these violations from recurring in the future;

- To order the Defendant to grant them reparations such as restitution, compensation and satisfaction, which they will specify and submit to them in due time;

To grant them any other relief it deems appropriate:

COURT ANALYSIS

77. The Court recalls that its jurisdiction in matters of human rights violations allows it not only to note such violations but also to order their reparation if necessary;

78. The Court notes that it is accepted in international law that any violation of an international legal instrument for the protection of human rights entails the obligation to compensate the damage caused to the victim of the violation. The judgment rendered by this Court in the case of HEMBADOON CHIA ET 7 OTHERS v. FEDERAL STATE OF NIGERIA AND ANOTHER ECW/CCJ/JUD/21/18 PAGE 33 is a good illustration of this;

79. The Court recalls that a State is required to make full reparation for any harm caused by a human rights violation for which it has been found internationally responsible. Reparation takes various forms, including restoration of the original situation if possible, compensation, and satisfaction, that is, recognition of the violation or an apology for it. In this regard, the MOUKHTAR IBRAHIM v. JIGAWA STATE GOVERNMENT AND 2 OTHERS ECW/CCJ/JUD/12/14,

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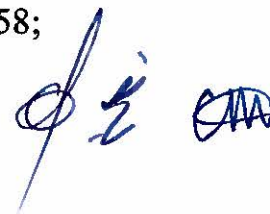
PAGE 40 can be usefully consulted. See also HAMMA HIYA AND ANOTHER v. STATE OF MALI JUDGMENT N°. ECW/CCJ/JUD/05/21 PARAGRAPH 64;

80. The Court also recalls that granting of reparations is subject to the establishment of a causal link between the violation found and the damage caused to a victim for whom reparation is requested. In this regard, the Court held that *“To be a victim, a link must be established between the Applicant and the alleged human rights violation, i.e. there must be facts demonstrating that the Applicant suffered direct harm or loss attributable to the actions of the Defendant.”*

The Court stated this in the case of SAWADOGO PAUL and 3 others v. REPUBLIC of BURKINA FASO ECW/CCJ/JUD/07/20 PAGE 10;

81. The Court accepts that compensation may relate to material and moral prejudices. Regarding prejudices for material harm, they are awarded in compensation for tangible harm, damage or loss which can be assessed in monetary terms. When monetary compensation is requested, the victim or Applicant must provide documentary evidence of the losses suffered, including receipts, proof of ownership of property, proof of employment and payment of wages, medical certificates or other expert opinions, etc.;

82. Non-pecuniary damages or moral damages, as they are sometimes called, are intended to compensate victims for suffering, including psychological harm, anguish, grief, sadness, distress, fear, frustration, anxiety, inconvenience, humiliation and damage to reputation caused by the violation as was found in the case of THE RIGHTS OF THE FEU NORBERT ZONGO AND 4 OTHERS v. BURKINA FASO (REPAIRS) 2015 1 AFCLR 258;



83. In the present case, in support of their allegations, the Applicants add to the file testimonies contained in Exhibits No. A, B, C, D, E and F annexed to the Application to corroborate their statements.

In view of all these documents, the Court admitted above that the Defendant violated the Applicants' right to freedom of expression so that it can only grant their request for payment of damages.

84. Nevertheless, the Court specifies that damages being awarded to the victim of prejudices is meant to repair the harm which he suffered through the fault of the author of this harm, it must indicate the quantum of the sum which the victim would like to receive as compensation;

85. In the present case, the Applicants have not quantified their claim for compensation for the prejudices they claim to have suffered as a result of the violation of their right to freedom of expression. Having failed to do so, the Court can only reject their request for compensation for the alleged prejudice.

XIII. COSTS

86. Under the terms of Article 66, paragraph 2 of the Rules of Procedure, the unsuccessful party shall be ordered to pay the costs if they have been applied for in the successful party's pleadings.

The Court notes that in the present case the applicants did not apply this effect. The defendant did neither conclude so.

The Court therefore states that each party will bear its own costs.

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FOR THESE REASONS

The Court

Sitting in a public hearing and having heard the Applicants
Delivered a default judgment with regard to the Defendant;

On jurisdiction

Declares itself competent to hear the dispute;

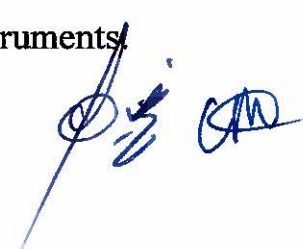
On admissibility

Declares the Application as admissible;

On the merit

- Holds that the Defendant did not violate the rights of journalists;
- Holds, on the other hand, that the Respondent violated the Applicants' right to information;
- Holds that the Respondent violated the Applicants' right to freedom of expression;
- Nevertheless rejects the Applicants' unquantified request for payment of damages;
- Orders the Respondent State to take all necessary measures to ensure that this violation does not occur in the future;
- Orders the respondent State to adopt and implement laws, regulations and safeguards to fulfill its obligations regarding the right to freedom of expression under international human rights instruments;

-



ON COSTS :

Holds that each party bears its own costs.

Thus done and adjudged on the day, month and year above.

And the following have appended their signatures

Hon. Judge Gberi-bè **OUATTARA**

Presiding/Judge Rapporteur

Hon. Judge Dupe **ATOKI**

Member

Hon. Judge Sengu M. **KOROMA**

Member

ASSISTED BY: Me. Yaouza **OURO-SAMA**

Chief Registrar

