Ajavon v Benin (reparations) (2019) 3 AfCLR 196

Application 013/2017, *Sébastien Germain Ajavon v Benin*

Judgment, 28 November 2019, done in English and French, the French text being authoritative.

Judges: ORE, KIOKO, NIYUNGEKO, GUISSE, BEN ACHOUR, MATUSSE, MENGUE, MUKAMULISA, CHIZUMILA, and BENSAOULA

The Court had in a merits judgment held that the Respondent State had violated the Applicant's rights to fair trial, property, dignity, and its obligation to guarantee the independence of courts. The Applicant, a businessman and politician, sought and was granted reparations for various financial damages caused by the Respondent State as well for moral prejudice.

Reparations (full reparation, 16, 19; evidence of link between violation and damage, 17, 39; loss of profit, 38, devaluation of shares, 42; loss of real opportunity, 58, 59, 61-66; legal fees, 69, 71; expenditure in exile, family members, 79, 81, 82; moral prejudice, 91-95; moral prejudice of family members 99-101; lifting of seizure of bank accounts, 110, 111, 116, 117; lifting of suspension of operations, 120, 121; evidence for reimbursement of costs, 141, 142)

Separate opinion: NIYUNGEKO

Reparations (compensation, 14)

I. Subject of the Application

1. The Application was filed by Sébastien Germain Ajavon (hereinafter referred to as "the Applicant"), a businessman and politician of Benin nationality. The Application is filed against the Republic of Benin (hereinafter referred to as the "Respondent State").

2. In his Application dated 27 February 2017, the Applicant alleged a number of violations of his rights and also submitted claims for reparations. In its Judgment on the merits rendered on 29 March 2019[1] the Court held as follows:

"O*n the merits*:

xi. *Finds* that the Respondent State violated the Applicant's right to equal protection of the law guaranteed by Article 3 of the Charter, given that Article 12 of the 2 July 2018 Law creating CRIET did not establish equality between the parties;

1 See Application 013/2017. Judgment of 29 March 2019 (Merits), *Sébastien Germain Ajavon v Republic of Benin* (hereinafter referred to as "*Sébastien Germain Ajavon v Republic of Benin* (Merits)", paras 287 and 291.

xii. Finds that the Respondent State has violated Article 5 of the Charter by undermining the Applicant's reputation and dignity;

xiii. Finds that the Respondent State violated the Applicant's right to be tried by a competent court provided under Article 7(1)(a) of the Charter;

xiv. Finds that the Respondent State violated the Applicant's right to presumption of innocence enshrined in Article 7(1)(b) of the Charter;

xv. Finds that the Respondent State violated the Applicant's right to defence provided under Article 7(1)(c) of the Charter;

xvi. Finds that the Respondent State violated the Applicant's right to be notified of the charges and to access the record of the proceedings within the meaning of Article 7(1)(c) of the Charter;

xvii. Finds that the Respondent State violated the Applicant's right to be represented by Counsel as provided under Article 14(3)(d) of ICCPR;

xviii. Finds that the Respondent State violated the Applicant's right of property provided under Article 14 of the Charter;

xix. Finds that the Respondent State violated Article 26 of the Charter for having failed in its duty to guarantee the independence of the Courts;

xx. Finds that the Respondent State violated the Applicant's right to two-tier jurisdiction guaranteed by Article 14(5) of ICCPR, given that Article 19, paragraph 2 of the 2 July 2018 Law establishing CRIET provides that the decisions of this court are not subject to appeal;

xxi. Finds that the Respondent State violated the principle of *"non bis in idem"* provided for under Article 14(7) of ICCPR;

On reparations

xxii. Orders the Respondent State to take all the necessary measures to annul judgment No. 007/3C.COR delivered on 18 October 2018 by CRIET in a way that erases all its effects and to report thereon to the Court within six (6) months from the date of notification of this Judgment;

xxiii. Declares that it will rule on other claims for reparation at a later stage;

On costs:

xxiv. Declares that the Court will make a ruling on the issue of reparation at a later stage."

3. Having found in its judgment on the merits that the Respondent State violated the Applicant's rights and ruled partly on the reparations, the Court deferred its decision on other forms of reparation. It will rule on the said forms of reparation in this judgment pursuant to Article 27(1) of the Protocol.

II. Brief background of the case

4. On 27 February 2017, the Applicant filed an Application with this

Court alleging that in the course of the legal proceedings against him for alleged international drug trafficking, the Respondent State violated a number of his rights guaranteed by international human rights instruments.

5. He averred that following those proceedings, the Cotonou Court of First Instance rendered a Judgment on 4 November 2016, acquitting him *on the benefit of doubt* for the alleged offence of international drug trafficking. In October 2018, he was subsequently tried and sentenced to twenty years in prison by the newly established Anti-Economic Crimes and Terrorism Court referred to as "CRIET", for the same offence.

6. The Applicant also added that in the wake of the said trial on alleged international drug trafficking, the customs administration suspended the container terminal of his brokerage, transit and consignment company (SOCOTRAC SARL), while the High Audio-visual and Communication Authority, for its part, cut the signals of the *Soleil FM* radio station and those of the SIKKA TV television channel, of which he is the majority shareholder.

7. The Respondent State challenged the admissibility of the Application and also prayed the Court to dismiss all the claims for reparations sought by the Applicant.

III. Summary of the procedure before the Court

8. By an Order of 1 October 2019, the Court decided to suspend deliberations and re-open pleadings. The Court addressed to the parties a number of questions on the issue of reparations for the damages arising from the failure of the investment in the oil sector, inviting them to provide all relevant information to substantiate their claims on this point.

9. The parties filed their responses as ordered by the Court.

IV. Prayers of the Parties

A. The Applicant

10. The Applicant prays the Court to:

"i. find that he, the President of the Association of Benin Businessmen, has seen his reputation tarnished in business circles;

ii. find that he is a political figure, candidate at the last presidential elections of March 2016, who scored a total of 23% of the votes and came third in the overall ranking, just behind the current Head of State of Benin who had 24%;

iii. find that the matter of drug trafficking has discredited him and caused him various losses valued at five hundred and fifty thousand million (550, 000, 000, 000) CFA Francs, which he claims as reparation;

iv. order the Respondent State to suspend the following laws until they are amended to be compliant with international human rights instruments to which it is a party:

- Law No. 2018-13 of 2 July 2018, amending and supplementing Law No. 2001-37 of 27 August 2002, on judicial organization in the Republic of Benin as amended and creating the Anti-Economic Crimes and Terrorism Court;
- Organic Law No. 2018-02 of 4 January 2018, amending and supplementing Organic Law No. 94-027 of 18 March 1999 on the High Judicial Council;
- Law No. 2017-05 of 29 August 2017, setting the conditions and procedure for employment, placement of workers and management of employment contracts in the Republic of Benin;
- Law No. 2018-23 of 26 July 2018 on the Charter of Political Parties in the Republic of Benin;
- Law No. 2018-031 on the Electoral Code in the Republic of Benin;
- Law No. 2017-044 of 29 December 2017 on Intelligence in the Republic of Benin;
- Law No. 2017-20 of 20 April 2018 on the Digital Code in the Republic of Benin".

11. In his additional submissions dated 11 October 2019, the Applicant prayed the Court to grant him, in addition to his previous claim for compensation, the sum of ten billion (10,000,000,000) CFA Francs as legal costs and to note PHILLIA's claim for compensation.

12. He further prayed the Court to note that the Respondent State has not complied with the Court Order of 7 December 2018 and the Judgment of 29 March 2019, particularly:

- the refusal to annul the judgment issued by CRIET and to issue him with a clean criminal record and all the "statutory State instruments";
- the ban on his political party, the Social Liberal Union, and on other opposition political parties from running for the legislative elections of 28 April 2019 and the denial of political pluralism in Benin;
- the refusal to lift the seizures of his property;
- the bloody crackdown on demonstrations and the arrest of opposition leaders;
- the criminal prosecution against Messrs. Yayi Boni and Lionel

Zinsou.

B. The Respondent State

13. The Respondent State prays the Court to:

- dismiss the Applicant's requests to annul or stay the application of certain laws enacted by the Respondent State in accordance with its Constitution;
- dismiss any idea of prejudice resulting from a criminal conviction under a law;
- declare inadmissible the claim for reimbursement of expenses incurred in exile;
- dismiss all the prayers for reparation made by the Applicant;
- as a counterclaim, hold the Applicant liable to pay the sum of one billion five hundred and ninety-five million eight hundred and fifty thousand (1,595,850,000) CFA Francs as damages.

14. The Respondent State also prays the Court to:

- note that, despite the temporary licenses, BENIN OIL SA and WAF ENERGY had not imported any petroleum product;
- find that PHILIA is not a party to the lawsuit and to dismiss its claim for compensation;
- dismiss the request for payment of the sum of ten billion (10,000,000,000) CFA francs for additional legal costs;
- rule that the new submissions of the parties must remain within the ambit of the re-opened pleadings.

V. Reparations

15. Article 27(1) of the Protocol provides that "If the Court finds that there has been violation of a human or peoples' right, it shall make appropriate orders to remedy the violation, including the payment of fair compensation or reparation".

16. The Court recalls its previous Judgments[2] in matters of reparation and reiterates that in considering claims for compensation for prejudice resulting from human rights violations, it takes into account the principle that the State recognized as the perpetrator of an internationally wrongful act has the obligation to make full reparation of the consequences in a way that covers all the

2 *Beneficiaries of late Norbert Zongo, Abdoulaye Nikiema alias Ablassé, Ernest Zongo, Blaise Ilboudo and Mouvement Burkinabè des Droits de l'Homme et des Peuples v Burkina Faso* (Reparation) (2015) 1 AfCLR 258 para 20; *Lohé Issa Konaté v Burkina Faso* (Reparation) (2016) 1 AfCLR 346 para 15.

damage suffered by the victim.

17. The Court also considers as a principle the existence of a causal link between the violation and the alleged damage and places the burden of proof on the Applicant, who must provide the evidence to justify his claim.[3]

18. In its Judgment on the merits of 29 March 2019, the Court already noted the causal link between the Respondent State's liability and the violations found, namely violation of Article 3, 5, 7(1)(a), (b) and (c) as well as 26 of the Charter and Article 14(3)(d), 14(5) and 14(7) of the ICCPR.

19. The Court has also established that "reparation must, as far as possible, wipe out all the consequences of the illegal act and re-establish the situation which would, in all probability, have existed if that act had not been committed."[4] In addition, reparation must, depending on the particular circumstances of each case, include restitution, compensation and rehabilitation of the victim, as well as measures to ensure non-recurrence of the violations.[5]

20. In addition, the Court reiterates that it has already established that reparation measures for prejudice resulting from human rights violations must take into account the circumstances of each case and the Court will make its assessment on case-by-case basis.[6]

A. Reparations claimed by the Applicant

21. In the instant case, the Court notes that some of the claims for damages made by the Applicant are pecuniary while others are not.

i. Pecuniary reparations

22. The Applicant submits that the violation of his rights by the Respondent State has caused him enormous economic damage,

3 *Reverend Christopher R Mtikila v Tanzania* (Reparation) (2014) 1 AfCLR 72 para 40.

4 PCIJ *Chorzow Factory, Germany v. Poland*, Jurisdiction, Decision on compensation and the merits, 26 July 1927, 16 December 1927 and 13 September 1928, Rec. 1927, para 47.

5 Application 003/2014. Judgment of 7 December 2018 (Reparations) *Ingabire Victoire Umuhoza v. Republic of Rwanda* (hereinafter referred to as *"Ingabire Victoire Umuhoza v Rwanda* (Reparation)*"*, para 20.

6 *Beneficiaries of late Norbert Zongo, Abdoulaye Nikiema alias Ablassé, Ernest Zongo, Blaise Ilboudo and Mouvement Burkinabè des Droits de l'Homme et des Peuples v Burkina Faso* (Reparation) (2015) 1 AfCLR 258, para 20; *Lohé Issa Konaté v Burkina Faso* (Reparation) (2016) 1 AfCLR 346, op cit, para 49.

such as depreciation of his capital assets and the loss of business opportunities. He also submits that he suffered severe moral prejudice as a result of the attacks on his honour and reputation, and that the reparation for all the prejudices is estimated at Five hundred and fifty billion (550,000,000,000) CFA Francs.

23. The Respondent State challenges the overall *quantum* of reparations and argues that in the original Application the total amount of the reparation stood at Two hundred and fifty billion (250,000,000,000) CFA Francs and not Five hundred and fifty billion (550,000,000,000) CFA Francs as reflected in the Applicant's submissions of 27 December 2018. The Respondent State notes that the amount claimed corresponds to half its annual domestic budget and is sufficient on its own to establish the grotesque and whimsical nature of the Applicant's claims.

ii. Material prejudice

24. The Applicant submits that the judicial proceedings brought by the courts of the Respondent State against him in the international drug trafficking case have ruined his once prosperous business. He explains that the losses suffered are the result of the drop-in turnover and the loss of the business opportunities with his partners. He also prays the Court to order the Respondent State to reimburse him for expenses relating to domestic judicial proceedings and those incurred during his stay in exile in France.

a. Prejudice relating to the drop-in turnover

25. The Applicant submits that since the commencement of the international drug trafficking case he experienced a decline in turnover on all of his companies, in particular the following ten: SOCOTRAC SARL, SOLEIL FM SARL, SIKKA TV SA, COMON SA, JLR SA, SGI L' ELITE, CAJAF SA, AGRO PLUS SA, IDEAL PRODUCTION SARL and BENIN OIL ENERGY SA.

26. He asserts that the decline in the turnover of COMON SA and SOCOTRAC SARL led to the devaluation of his company shares at the rate of 60% and 45% respectively, that is, a loss of One billion eight hundred and twenty-one million fifty-five thousand six hundred and sixty-nine (1,821,055,669) CFA Francs for the former, and One hundred and thirty-nine million four hundred and seventy-one thousand and twenty-three (139,471,023) CFA Francs for the latter; hence an estimated loss of One billion nine hundred and sixty million five hundred and twenty-six thousand six hundred and ninety-two (1,960,526,692) CFA Francs as of 31

December 2017.

27. The Applicant argues that the decline in his business is mainly due to the loss of confidence from his partners who terminated their goods supply contracts or cancelled credit facilities. He adds that all the companies in which he held shares were subjected to serious and arbitrary attacks causing him significant economic losses.

***

28. The Respondent State refutes any idea of reparation for the Applicant and argues that none of the conditions required by law to obtain reparation has been fulfilled. The Respondent State further argues that it is not enough to invoke prejudices to obtain reparation, but this must be sufficiently certain and there must be a link between the prejudice and the acts causing the prejudice.

29. On the basis of the foregoing, the Respondent State prays the Court to dismiss all the Applicant's claims for compensation as baseless and unjustified.

***

30. The Court notes that claims in respect of the material prejudice resulting from the violation of a right of the Applicant must be supported by sufficient evidence and backed by explanations that establish the link between the alleged loss and the noted violation.

31. In the instant case, the Court notes that the Applicant attached to his Application several documents including copies of the balance sheet of COMON SA and SOCOTRAC SARL, market research documents and the Articles of Association of other companies in which he holds shares.

32. The Court further notes that the Applicant also attached to his Application a letter dated 31 March 2017 by which Atradius-Assurance-Crédit, that provided credit insurance for orders on behalf of COMON SA, notified the Applicant of the reduction of its coverage to Four hundred thousand (400,000) Euros instead of Two million five hundred thousand (2,500,000) Euros, explaining

that it was because of the international drug trafficking case in which he was implicated.

33. Following what they called an "alert confirming that all events relating to news in Benin, talk of the 2016 drug case", other credit insurers, in this case, *La Coface, Groupama* and *Euler Hermes* also cancelled their credit insurance and demanded the immediate payment of outstanding amounts. For its part, *Heidemark GmbH* reduced its credit insurance from One million three hundred thousand (1,300,000) Euros to Four hundred thousand (400,000) Euros, while *Vim Busschaert* limited its coverage to Twenty thousand (20,000) Euros.

34. The Court notes that the devaluation of the Applicant's shares in COMON SA and SOCOTRAC SARL is linked to the loss of trust on the part of his partners because of the drug trafficking case as well as the suspension of the SOCOTRAC SARL container terminal and the withdrawal of its license as a customs broker.

35. In the Judgment on the merits, the Court held that the Respondent State's suspension of SOCOTRAC SARL's container terminal and the withdrawal of customs brokerage license violated Article 14 of the ICCPR. It further notes that a link between the violations of Articles 5 and 7(1)(c) of the Charter and the prejudice suffered by the Applicant was established in the judgment on the merits.

36. The Court notes that the decrease in turnover of COMON SA and SOCOTRAC SARL caused the Applicant loss of profit and loss of asset valuation of his shares.

Loss of profit

37. Regarding profit losses, evidence adduced by the Applicant dated 13 August 2018 and received by the Registry on 17 August 2018 shows that between 2015 and 2017, COMON SA and SOCOTRAC SARL respectively, recorded a net profit loss of seven billion two hundred million five hundred and sixty-eight thousand seven hundred and sixty-four (7,200,568,764) CFA Francs and eighty-seven million three hundred and seventy-eight thousand nine hundred and five (87,378,905) CFA Francs, calculated on the basis of the profit made by each of them in 2015.

38. In this regard, and in view of the fact that these losses result from violations of the Applicant's rights, the Court awards him the benefit of the *pro rata* reparation of his shares which represent respectively, 60% in COMON SA and 40% in SOCOTRAC, that is, a total of Four billion three hundred and fifty-nine million six hundred and sixty-one thousand seven hundred and sixty-five

(4,359,661,765) CFA Francs.

39. On the other hand, regarding the drop-in turnover and profit losses in JLR SA, SGI L'ELITE, CAJAF SA and IDEAL PRODUCTION SARL, the Court notes that the Applicant merely produced supporting documents and the Articles of Association of the said companies without stating the losses he suffered and the numerical value thereof. As the Applicant did not substantiate his claims with documentary evidence, the said claims are dismissed.

Devaluation of shares

40. Regarding the devaluation of the Applicant's shares, the documents on file, particularly copies of the balance sheets, show that their value dropped by One billion eight hundred and twenty-one million fifty-five thousand six hundred and sixty-nine (1,821,055,669) CFA Francs for COMON SA, and One hundred and thirty-nine million four hundred and seventy-one thousand and twenty-three (139,471,023) CFA Francs for SOCOTRAC SARL.

41. In order to grant the applicant company payment for the entire drop in its shareholding in Sovtransavto-Lugansk, the European Court in its judgment in the matter of *Sovtransavto Holding v Ukraine*[7] held that although it cannot speculate on what the outcome of the trial would have been had the State complied with its obligations under Article 1 of Protocol 1, it will in determining the remedy take into account the situation of the Applicant whose right to a fair trial has been violated.

42. Drawing from the afore-cited judgment, and since the devaluation of the Applicant's shares is related to the drug trafficking case and the violations of his right to a fair trial, the Court grants him reimbursement of the entire loss recorded, namely, One billion nine hundred and sixty million five hundred and twenty-six thousand six hundred and ninety-two (1,960,526,692) CFA Francs as reparation.

b. Prejudice arising from the loss of business opportunities in the oil sector

43. The Applicant submits that, from the beginning of 2016, in

7 ECHR, *Sovtransavto Holding v Ukraine*, Application 48553/99. Judgment of 02 October 2003, paras 55 and 57. In that case, the European Court had taken into account the interventions of the President of Ukraine in the judicial proceedings and other procedural violations in determining the amount of compensation.

partnership with GROUP PLILIA Ltd, he undertook a series of negotiations and initiatives for the purpose of marketing petroleum products, lubricants, domestic and industrial gas within Benin and the landlocked countries through two entities.

44. The first, BENIN OIL ENERGY SA, with the Applicant as the sole shareholder,[8] was to be established in 21 locations in Benin, with sidewalk pumps, 21 service stations and 11 outlets for petroleum by-products, lubricants, domestic and industrial gas. In the short-term, between 2016 and 2018, BENIN OIL ENERGY SA envisaged the construction of 3 service stations with a capacity of 500 to 20,000m^3 and 3 outlets. It estimated acquiring and marketing locally 22,000 metric tons of gasoil per month with a turnover of Ten billion seven hundred and ninety-seven million nine hundred and thirty-seven thousand nine hundred and twenty (10,797,937,920) CFA Francs and a profit of Seven hundred and ninety-five million three hundred and fifty-two thousand six hundred and forty (795,352,640) CFA Francs per month, i.e. at 36.15 CFA Francs per litre.

45. The second, WAF ENERGY SA, of which PHILIA GROUP LTD is the sole shareholder[9] and holds all the social shares, covers 8 localities and has 105 service stations and 93 sale points for petroleum based products, lubricants and domestic and industrial gas. In the short-term, between 2016 and 2018, it was to have 30 service stations, 23 outlets, and estimated that it would acquire and market locally 20,000 metric tons of gasoil per month and export to neighbouring countries 60,000 metric tons of gasoil for a monthly turnover estimated at Thirty-nine billion two hundred and sixty-nine million two hundred and twenty-eight thousand eight hundred (39,269,228,800) CFA Francs and an estimated profit of ten billion two hundred and thirty-eight million seven hundred and twenty-eight thousand eight hundred and seventy-two (10,238,728,872) CFA Francs, that is, 127.98 CFA Francs per litre according to the joint venture platform.

46. The Applicant submits that, under a partnership agreement between his company, COMON SA and PHILIA GROUP LTD, they first signed a Confidentiality Agreement to cover all confidential information exchanged between the two structures as regards oil commercialization projects and then a Memorandum

8 BENIN OIL ENERGY SA was constituted on 9 August 2016 by the Applicant who holds the entire share capital of 300 million CFA F.

9 WAF ENERGY SA was constituted on 3 August 2016 by the PHILIA GROUP LTD which holds all the shares.

of Understanding (MOU) for the establishment of a roadmap to carry out all the activities related to the two projects through a joint venture platform (JV). The two parties agreed on the principle of costs and revenue sharing as follows: 75.5% for COMMON SA and 24.5% for PHILIA GROUP Ltd.

47. The Applicant submits that following the commencement of the international drug trafficking case, he lost the trust of the partner who terminated the said agreement. For the prejudice caused by this loss of business opportunity, he is claiming the amount of One hundred and fifty billion (150,000,000,000) CFA Francs.

***

48. The Respondent State recognises the licenses and authorizations granted to the companies WAF ENERGY SA and BENIN ENERGY OIL SA to import, store and distribute petroleum products in Benin, but declines any responsibility for the failure on the part of the Applicant to implement the projects. It contends that since the Applicant and his partner obtained the licences, it did not take any action to either withdraw or annul the said licences, and the Applicant and his partner remained free to carry out, at all times, the activities in respect of their projects separately or jointly.

49. The Respondent State also argues that, with regard to the letter suspending the partnership between the Applicant and PHILIA GROUP, it expresses serious doubts as to the authenticity of the said letter, and states that it is an invention of the Applicant for the purposes of the case. The Respondent State further rejects any responsibility for the termination of the partnership between PHILIA GROUP LTD and COMON SA, arguing that the criminal proceedings instituted against the Applicant resulted in his release on 4 November 2016 after judgment 26/1FD, and as such, it was open to the Applicant to resume its partnership with PHILIA GROUP LTD or to seek out other reputable partners in the oil business.

50. The Respondent State further submits that the amount of the relief claimed by the Applicant is neither substantiated nor justified and prays the Court to dismiss the same.

***

51. The Court notes that, to justify the alleged damage, the Applicant attached to the file a letter dated 2 November 2016, which reads as follows: "... In view of the recent judicial proceedings against Mr Sébastien Ajavon regarding certain suspected criminal matters, we regret to inform you that all negotiations and discussions concerning the MOU and/or any other commercial discussion between a subsidiary and/or parent company of Philia and a subsidiary and/or parent company of COMON CAJAF, are suspended with immediate effect". The same correspondence states further that for reason of the ethics observed by Philia Group, it is no longer in a position to pursue any business relationship or discussions with COMON CAJAF.

52. The Court also notes that that letter by which PHILIA GROUP announces the suspension with immediate effect of all commercial negotiations or discussions with the Applicant gives as ground for such suspension, the criminal proceedings instituted by the Respondent State against the Applicant in the context of the alleged case of drug trafficking.

53. The Court also notes that even after the Applicant's acquittal and despite the provisional licenses obtained on 9 December 2016, the Applicant remained the subject of a series of actions and measures taken by administrative and judicial authorities against his companies and his property, and was handed down 20 years prison sentence by CRIET.

54. The Court further notes that in the judgment on the merits, it held that the judicial proceedings instituted by the Respondent State were unfair and violated the Applicant's right to the presumption of innocence and his right to defence guaranteed under Article 7(1)(b) and (c) of the Charter. The Court consequently finds in conclusion that the failure of the investment plan in the petroleum sector is linked to the drug trafficking case and to the legal proceedings initiated by the Respondent State against the Applicant which the Court held to be unfair.

55. Therefore, the question before the Court is whether or not, in the circumstances, the Applicant is entitled to pecuniary reparation by way of compensation for the loss of business opportunity, given that the sale of petroleum products under the aforesaid projects, had not taken off.[10]

56. The Court is persuaded by the definition given by the *Cour de Cassation* in France, that the loss of opportunity "implies the

10 ECHR, Application 25444/94. Judgment of 25 March 1999, *Pélissier and Sassi v France,* paras 77 and 80.

deprivation of a potential with a reasonable probability and not a certainty. It is necessary for the damage suffered to have removed the probability that a positive event will occur or that a negative event will occur".[11] The Supreme Court of Portugal,[12] follows the same line of reasoning as the judgments of the supreme courts of Italy, Germany, Austria, The Netherlands and the United Kingdom, has adopted the same definition in several judgments.

57. Moreover, in the case of *Société Benin Control SA v State of Benin*, the OHADA[13] Arbitral Tribunal, taking into account the fact that the unilateral suspension of the contract by the State of Benin resulted in a loss of profit for the company, concluded that the said loss of profit must be remedied.[14]

58. In the instant case, the Court holds that prior to the PHILIA GROUP LTD decision to suspend its partnership with the Applicant, the likelihood of actualizing the investment in the oil sector was real given the agreement of 28 September 2016, such that both partners could have a reasonable expectation of realizing the expected benefits. The probability of carrying out such project was further confirmed with the obtaining of the requisite licenses on 9 December 2016, but this probability was soon dissipated by the criminal proceedings before CRIET which forced the Applicant into exile. The Court consequently finds that the Applicant actually lost a business opportunity.

59. Accordingly, this Court holds that the Applicant is entitled to appropriate compensatory relief for loss of real opportunity[15].

60. The Applicant estimates the amount of the damage suffered at One hundred and fifty billion (150,000,000,000) CFA Francs, which represents, according to him, a quarter of what the projects WAF ENERGY SA and BENIN OIL ENERGY SA would have realized as profit between 2017 to 2021 under their joint venture

11 Civil Chamber of the Court of Cassation in France, Judgment of 7 April 2016. Appeals 15-14.888 and 15-11.342.

12 Supreme Court of Portugal, Judgment 9 July 2015, Appeal 5105/12.2TBXL.L1. S1 with references to several countries' jurisprudence.

13 Organization for the Harmonization of Business Law in Africa

14 Arbitral Award of 13 May 2014.

15 The European Court had also stated that "the loss of real prospects justifies the award of fair satisfaction"…. "at times evaluated in pecuniary compensation": ECHR, Matter of ***Sovtransavto Holding v Ukraine***, ***op cit***, para 51; ECHR, Application 42317/98. Judgment of 16 November 2004, ***Hooper v United Kingdom***, para 31; Application 45725/99. Judgment of 14 March 2002, ***Malveiro v Portugal***, para 30.

platform.

61. The Court notes that, in assessing the amount of reparation for loss of opportunity, it takes into account the amounts claimed by the Applicant at the moment when the Applicant's expectation arose and the bases of the calculation that led to the amount claimed. In the instant case, the Court's calculation base is the profit that can be earned as shown in the business plan of the so-called "joint venture" platform estimated at Ten billion two hundred and thirty-eight million seven hundred and twenty-eight thousand eight hundred and seventy-two (10 238 728 872) CFA Francs per month for an estimated monthly sale of eighty-two million (82,000, 000) liters.

62. With regard to the time reference, the Court notes that upon the signing of the Memorandum of Understanding (MOU) between PHILIA GROUP LTD and COMON SA on 28 September 2016, the Applicant's expectation to benefit from the "solid experience of PHILIA GROUP LTD in the oil trading and logistics sector" was real and marks the beginning of its chances of success in the sector. The period to be considered therefore runs from that date.

63. However, the Court considers that compensation for damages resulting from loss of opportunity is a lump sum that cannot be equal to the benefit that would have been earned had the intervening event not occurred and, hence, could not to be equal to the entire expected gain.

64. In assessing the amount of the compensation, the Court also takes into account the circumstances of this case. In this respect, the Court considers the Applicant's financial capacity to acquire and sell the estimated volumes as *per* the business plan, his knowledge of the business world, and his business experience which led him to develop business strategies in companies that built its reputation.

65. The Court further takes into account the fact that the expected benefits in the business plan are forecasts which may, during implementation of the project, undergo significant changes on account of the hazards inherent in any commercial activity, as well as the unpredictability and changes in the cost of petroleum products on the world market.

66. The Court lastly takes into account fairness and reasonable proportionality[16], and awards the Applicant a lump sum

16 Application 003/2014. Judgment of 7 December 2018 (Reparation), *Ingabire Victoire Umuhoza v Republic of Rwanda* (hereinafter referred to as *"Ingabire Victoire Umuhoza v. Rwanda (Reparation)*", para 72. See also ECHR: Application 40167/06. *Sargsyan v Azerbaijan* and Application 13216/05. *Chiragov and others*

compensation of Thirty billion (30,000,000,000) CFA Francs, tax free, for the loss of business opportunity in the oil sector.

c. Expenditure arising from national judicial proceedings

67. The Applicant prays the Court to order the Respondent State to reimburse him all the expenses incurred before the national courts, including the costs of preparation of documents, the fees of ten (10) lawyers engaged for his defence before CRIET, travel expenses and subsistence allowance for ten (10) lawyers and bailiff's fees.

68. The Respondent State did not comment on this request.

***

69. The Court notes that for the claims in respect of preparation of court documents, the fees for ten lawyers, their travel expenses and subsistence allowance, no supporting documents were submitted by the Applicant to buttress the said claims.

70. Consequently, the Court rules in conclusion that the Applicant's request for reimbursement is dismissed.

71. With regard to bailiff's fees, the Court notes that it is clear from the documents on file that the Applicant had to pay several fees for the transcription of audio and video materials, bailiff's reports and bailiff services.

72. The Court notes that the bailiff's fees amounting to Two million three hundred and twenty-two thousand nine hundred and ninety (2,322,990) CFA Francs were incurred by the Applicant in the domestic proceedings on the international drug trafficking case up to the filing of the cassation appeal against the CRIET Judgment of 18 October 2018. Therefore, the said expenses, of which the supporting documents are provided on file, have a causal link with the violations of the Applicant's right to a fair trial guaranteed by Article 7 of the Charter, and his right not to be tried twice for the

v Armenia. Judgment on just satisfaction, Grand Chamber, 12 December 2017. In this jurisprudence, the European Court states that "it is guided by the principle of equity, which above all implies a degree of flexibility and an objective examination of what is fair, equitable and reasonable in light of all the circumstances of the case, that is, not only of the situation of the applicant but also of the general context in which the violation was committed."

same offence provided under Article 14(7) of the ICCPR and must be fully reimbursed.

73. Accordingly, the Court holds in conclusion that the Respondent State must reimburse the Applicant the sum of Two million three hundred and twenty-two thousand nine hundred and ninety (2,322,990) CFA Francs being the amount of various bailiff's fees.

d. Expenditure incurred in exile

74. The Applicant avers that it is the violation of his rights by the Respondent State, especially by having him tried a second time by CRIET, which pushed him into exile and resulted in the expenses that he would not have incurred had he not been in exile. He summarizes the said expenses as purchase of travel documents, hotel expenses and communication charges to discuss with his family and political supporters in Benin.

***

75. The Respondent State submits that with regard to the purchase of travel documents not used by the Applicant to return from exile, the Applicant has not sufficiently proven that he was prevented from travelling to Benin. The Respondent State claims that asking the Respondent State to reimburse the amounts of the said travel documents would tantamount to asking the Respondent State to pay for the holidays or leisure trips of a citizen who flouts the law by refusing to assume the criminal consequences of his actions.

***

76. The Court notes that for fear of the consequences of the criminal proceedings against him before CRIET, the Applicant found himself in exile in France with four (4) members of his family. The Court, having found that this procedure, which resulted in the Applicant being sentenced to 20 years in prison violated his right to a fair trial and the right not to be tried twice for the same cause,

holds that the Applicant is entitled to appropriate reparation.

77. The Court notes that the reparation being claimed includes the expenses incurred on behalf of four other members of his family. With regard to the latter, the Court deems it necessary to determine the links between them and the Applicant.

78. Generally, to award reparation to persons other than the Applicant, the latter must prove the relationship between the said persons and herself or himself.

79. The Court notes that no identification document to justify the kinship ties between the Applicant and the persons whom he claims are members of his family was tendered for the appreciation of the Court. However, it is apparent from the copies of air tickets attached to the file that Goudjo Ida Afiavi is Ajavon's wife and that Ronald, Evaella and Ludmilla are named as Ajavon Ronald and Misses Evaella and Ludmilla Ajavon. The Court also notes that according to the medical report prepared by the medical psychologist of the *Groupement Hospitalier de Territoire de Saint-Denis* in France, Sébastien Ajavon, Ida Afiavi, Ronald, and Ludmilla were received at the clinic in their respective capacity as father, wife and children. The Court concludes that these four persons have direct family ties with the Applicant and the alleged expenses must be taken into account.

80. The Court notes that in its remarks on this request, the Respondent State did not challenge the direct family link between the persons concerned and the Applicant.

81. In the present case, the Court notes that the Applicant submits as evidence of the expenses relating to his exile, five (5) air tickets at the price of One million five hundred and eighty-one thousand nine hundred (1,581,900) CFA francs each, bought on behalf of the Applicant himself, his wife Ajavon Goudjo Ida Afiavi, his son Ajavon Ronald, as well as his daughters Ajavon Evaella and Ajavon Ludmilla.

82. Accordingly, the Court awards the Applicant reimbursement of the sum of Seven million nine hundred and nine thousand five hundred (7,909,500) CFA Francs, being the total amount spent on the purchase of the five (5) air tickets.

iii. Moral prejudice

a. Moral prejudice suffered by the Applicant

83. The Applicant submits that he suffered significant reputation damage for being presented by Benin's public authorities as a

drug trafficker and, to this effect, attached newspaper clippings with headlines of insulting and defamatory titles with contents that reflect all the fury unleashed against his person on the part of public authorities.

84. The Applicant submits that the violation of his rights by the Respondent State tarnished his reputation as a "business magnate", President of Benin Businessmen's Association and as a politician on the national arena, who obtained 23% of the votes at the first round of the March 2016 presidential elections and ranked 3rd just after the current Head of State of Benin who scored 24%.

85. He refers to numerous administrative measures taken by the customs and tax administrations as well as the *Préfecture de l'Atlantique* to strip him of his movable and immovable property, and alleges that since the commencement of the case against him, he lives in grief, anxiety and dismay, seeing his businesses destroyed and his family attacked.

86. The Applicant states that the judicial proceedings before CRIET forced him into exile where he lives with his family in fear of extradition for the purpose of being imprisoned. He alleges that his trials and subsequent criminal convictions have tarnished his image and dealt a severe blow on his reputation both domestically and with his international business partners.

87. The Applicant claims payment of the sum of One hundred billion (100,000,000,000) CFA Francs as reparation for the damage to his image and his reputation vis-à-vis his economic partners as well as the physical and psychological prejudice that he and members of his family have suffered.

88. The Respondent State refutes the very idea of non-pecuniary prejudice suffered by the Applicant and members of his family. It argues that if the Applicant had suffered morally from the publications of those he describes as "glorifiers of the powers that be", it would be better for him to go after them, instead of claiming reparations from the State of Benin.

***

89. The Court recalls its jurisprudence according to which there is a presumption of moral prejudice suffered by an Applicant when the Court finds that his rights have been violated, such that it is no longer necessary to seek to establish the link between

the violation and the damage.[17] The Court also held that the assessment of the amounts to be awarded as reparation for non-pecuniary damage should be made on equitable basis taking into account the circumstances of each case.[18]

90. In the instant case, the Applicant's claim for reparation for non-pecuniary damage resulted from the violation of Articles 5 and 7(1)(a) and (b) of the Charter on respect for dignity and the right to a fair trial established in the Judgment of 29 March 2019.

91. The Court recalls that in its Judgment of 29 March 2019, it concluded that the statements made by certain political authorities, the media propaganda on the drug trafficking case and the resumption of the trial by CRIET tarnished the image of the Applicant, just as they damaged his reputation and the high personality as a politician and businessman he enjoys on the national and international scene. The Court also notes that the Applicant stated that since the beginning of the case against him, he lost the confidence of his business partners and that he is living in anguish seeing all his businesses destroyed and in fear of being imprisoned for twenty years. The Court notes that the Applicant has also been deeply terrified since the CRIET Judgment and the convictions against him, and suffered from being the victim of arbitrariness.

92. In its Judgment of 29 March 2019, the Court ordered the Respondent State to quash the CRIET Judgment 007/3C.COR rendered on 18 October 2018, in a way that wipes out all its effects. That being the case, the Court considers such a measure as a source of moral satisfaction which, however, does not exclude the possibility of reparation in the form of pecuniary compensation.

93. In this respect, the Court notes, for example, that in the case of *Société Benin Control SA v State of Benin*,[19] the OHADA Arbitral Tribunal[20] considered that the unsubstantiated fraud charges brought against Benin Control SA caused the latter non-pecuniary prejudice in the eyes of its partners, and awarded the said company the tax-free lump sum of Two billion (2,000,000,000) CFA Francs

17 *Ingabire Victoire v Rwanda*, op cit, para 59 ; *Beneficiaries of late Norbert Zongo, Abdoulaye Nikiema alias Ablassé, Ernest Zongo, Blaise Ilboudo and Mouvement Burkinabè des Droits de l'Homme et des Peuples v Burkina Faso* (Reparation) (2015) 1 AfCLR 258, op cit, para 10. *Lohé Issa Konaté v Burkina Faso* (Reparation) (2016) 1 AfCLR 346, op cit, para 61.

18 *Ibid*, Judgment *Beneficiaries of late Norbert Zongo v Burkina Faso* (Reparation) para 61.

19 Arbitral Award of 13 May 2014 *op cit*.

20 Organization for the Harmonization of Business Law in Africa.

in reparation for the non-pecuniary prejudice suffered.

94. Having regard to these findings, the Court notes that the amount of the reparation to award the Applicant in the instant case, must be commensurate with the gravity of the charge levelled against him and the degree of humiliation and moral suffering he must have endured as a businessman and politician, President of the Employers' Association and a candidate who ranked 3rd in the 2016 presidential election in his country.

95. For all the above reasons, the Court awards the Applicant reparation in a lump sum of Three billion (3,000,000,000) CFA Francs for the non-pecuniary damage he personally suffered.

b. Moral prejudice suffered by the Applicant's family members

96. The Applicant alleges that his wife Ajavon Goudjo Ida, Afiavi and all his children Ajavon Ronald, Ajavon Evaella and Ajavon Ludmilla were affected and traumatized by these judicial setbacks and taunts from neighbours and friends. He argues that since their exile in France, his family members have fallen into a severe depression marked by insomnia and seizures in the children, in the form of agitation and hysterical howling, notwithstanding the antidepressant care they are given.

***

97. The Court reiterates that it has already ruled that members of the immediate or close family who have suffered physically or psychologically from the situation may be entitled to reparation for the moral prejudice caused by the said suffering.[21] However, in order to award reparation for the moral prejudice to the Applicant's family members, they must show proof of kinship.

98. In the instant case, the Court, taking as evidence the copy of the air tickets and the medical report attached to the file, in paragraph 80 of the present Judgment, has already held that Goudjo Ida

21 *Beneficiaries of late Norbert Zongo, Abdoulaye Nikiema alias Ablasse, Ernest Zongo, Blaise Ilboudo and Mouvement Burkinabè des Droits de l'Homme et des Peuples v Burkina Faso* (Reparations) (2015) 1 AfCLR 258, para 20; *Lohé Issa Konaté v. Burkina Faso* (Reparation) (2016) 1 AfCLR 346, op cit, para 47.

Afiavi, Ronald, Evaella and Ludmilla are the wife and the children of the Applicant, respectively.

99. The Court notes that the Applicant submits that the conditions and lifestyle of his wife Goudjo Ida Afiavi and his children Ronald, Evaella and Ludmilla, have deteriorated since the seizure of their accounts. The Court also notes that according to the medical report made out on 4 December 2018 by the psychologist of the *Groupement Hospitalier de Territoire de Saint-Denis* in France, the Applicant, his wife Ida and his children Ronald and Ludmilla, who were received in emergency on 11 October and 28 November 2018, "suffer from a major psychological trauma that was complicated by insomnia, headaches and behavioural crises that require neuroscience investigation".

100. The Court also notes that the exile of the Applicant's family members is linked to the violations of the Applicant's rights before CRIET, such that the alleged psychological distress or sufferings are established.

101. In this respect, the Court, ruling on the basis of equity, grants the claim for reparation for the moral prejudice suffered by the Applicant's family members and awards them the lump sum of Fifteen million (15,000,000) CFA Francs for the wife and Ten million (10,000,000) CFA Francs for each child.

i. Non-pecuniary reparation

102. In the instant case, the Applicant submits that since the initiation of the international drug trafficking case, he and his family members have been facing numerous difficulties resulting from the seizure of their bank accounts and from prohibition from carrying out transactions on the accounts.

103. Following the reopening of the proceedings on the prejudice resulting from the failure of the investment in the petroleum sector, the Applicant prays the Court to find that the Respondent State has refused to implement the Court's judgment of 29 March 2019.

ii. Reparation inferred from violation of the "*Non bis in idem"* principle

104. In terms of Article 27 of the Protocol, if the Court finds that there has been a violation of a human or peoples' rights, it shall make appropriate orders to remedy the violation. In the present case, the Court recalls that in its judgment of 29 March 2019, following the finding that the Respondent State violated the principle of *"non bis in idem",* it ordered the latter to take all the necessary measures

to annul judgment 007/3C.COR rendered on 18 October 2018 by CRIET in a way to erase all its effects and to report to the Court within six (6) months from the date of notification of that judgment.

105. The Court no longer deems it necessary to make a fresh ruling on this reparation which stems from the dual finding regarding CRIET's lack of jurisdiction[22] to try the Applicant and the fact of trying him twice for the same offence, in violation of the "*Non bis in idem*" principle.

iii. Prejudice resulting from the freezing of bank accounts

a. Seizure of the Applicant's bank accounts and those of his family members

106. The Applicant avers that following the proceedings instituted against him in the international drug trafficking case, the tax administration on 14 August 2017, carried out tax adjustments on his companies resulting in seizures amounting to Two hundred and fifty-four million (254,000,000) Euros in his bank accounts, the accounts of JRL SA, SGI ELITE and COMON SA, as well as those of his children who have since been experiencing serious economic difficulties, and thus shrinking their recreational space. The Applicant prays the Court to consider the prejudice caused by the measure and award him reparation.

***

107. The Respondent State submits that the tax procedures against the Applicant's companies are quite legal and prays the Court to dismiss the claim for reparation sought by the Applicant.

***

22 IACHR: *Cantoral Benavides v Peru* (Reparation) Judgment of 3 December 2001, Series C No 88, paras 77 and 78.

108. The Court notes that the tax adjustments followed by the seizure effected on the Applicant's accounts, those of his family members and all the other seizures consequent upon the fiscal procedures triggered in the wake of the international drug trafficking case, cover the accounting and financial years 2014, 2015, 2016 and 2017 of the companies JRL SA, SGI ELITE and COMON SA, the latter involved in the importation of frozen products and is, besides, the sole shareholder of SGI ELITE. As for JLR SA, it operates in the frozen food business just like COMON SA.

109. The documents on file reveal that the said seizures were made in all the local banks where the Applicant and members of his family have accounts as well as in the accounts of JLR SA, SGI ELITE and COMON SA without specifying the amount representing the portion exempt from legal attachment.

110. The Court notes that such a seizure which disregards the non-sizeable portion, notwithstanding the reason, is clearly unlawful and places the Applicant in a situation which prevents him from carrying on his normal economic activities and deprives his family of the means of subsistence. The Court is of the opinion that in these circumstances, the Applicant suffered real prejudice arising from the violation of his right to a fair trial guaranteed under Article 7 of the Charter.

111. Accordingly, the Court, ruling on the basis of equity, finds that the Respondent State must take the necessary measures, including lifting forthwith the seizures of the Applicant's accounts and those of his family members.

b. Lifting of the ban on executing transactions in the accounts of AGROPLUS

112. The Applicant submits that following the money laundering proceedings instituted against AGROPLUS, the National Financial Information Processing Unit (*CENTIF*) objected to the execution of transactions in the accounts of the said company for a period of one year. On expiry, the Applicant claims to have requested, but did not obtain, the lifting of the ban on execution of transactions. However, on 2 May 2018, the Examining Magistrate ordered the 14 banks concerned to extend the period of the ban on execution of transactions in the accounts opened in their books and belonging to AGROPLUS. The Applicant submits that this was a measure taken by the Respondent State with the intent

to liquidate his property.

113. The Respondent State submits that the Applicant's claim lacks legal basis and asserts that it deserves to be dismissed.

***

114. The Court notes that the ban on the execution of transactions in the bank accounts opened in the name of AGROPLUS, ordered in 2017 and extended in 2018, came just after the drug trafficking case which implicated the Applicant and is perceived as one of the direct consequences of the case.

115. To that end, it is noteworthy that in the instant case, several important services of the Respondent State, upon the commencement of the international drug trafficking case, initiated various proceedings relating in particular to the Applicant's companies and property. The action taken by CENTIF could be seen within this generalized context. In any case, the doubt as to the reputation of the Applicant and the ensuing mistrust are the outcome of the violation of his right to a fair trial noted in the Judgment of 29 March 2019.

116. Thus, the Court holds in conclusion that the link between the ban on the execution of banking operations and the violations noted in its Judgment on the merits has been established and entitles the parties to reparation for the prejudice suffered.

117. Accordingly, the Court holds that the Respondent State must lift the ban on execution of banking operations in the accounts opened in the name of AGROPLUS.

iv. Lifting the suspension of the container terminal and the closure of the radio station Soleil FM and television channel SIKKA TV

118. The Applicant submits that by two decisions dated 28 November 2016, the High Audio-Visual and Communication Authority cut the signals of the radio station Soleil FM and those of the television channel SIKKA TV. He contends that the prohibitions have never been lifted and prays the Court to consider the prejudice caused to him by the aforesaid prohibitions and award him reparation.

119. The Respondent State asserts that the decisions of the media regulatory authority are lawful and official and that, consequently,

the Applicant cannot claim any reparation.

***

120. The Court recalls that in regard to the suspension of SOCOTRAC SARL container terminal, the closure of the radio station Soleil FM and the TV channel SIKKA TV, it had concluded in the Judgment of 29 March 2019 that by suspending the activities of those companies, the Respondent State had violated the Applicant's right to property enshrined in Article 14 of the Charter.

121. Accordingly, the Court holds that the Respondent State must reopen the said media outfits and lift the suspension of SOCOTRAC SARL container terminal.

v. Guarantee of non-repetition

122. The Applicant prays the Court to order the Respondent State to stay the application of certain domestic laws considered unconstitutional and inconsistent with international human rights instruments ratified by the Respondent State.

123. The Respondent State submits that the laws invoked by the Applicant were adopted by a sovereign State in accordance with its laws and thus, no authority can order a stay of their application or their nullity.

***

124. The Court recalls that in its Judgment of 29 March 2019, it found that the provisions of Sections 12 and 19(2) of Law 2018-13 of 2 July 2018 establishing CRIET are not consistent with international human rights instruments ratified by the Respondent State, notably Article 3(2) of the Charter and Article 14(5) of the ICCPR.

125. The Court noted in particular that the Respondent State violated the Applicant's right to equal protection of the law guaranteed under Article 3 of the Charter for the reason that Section 12 of the Law of 2 July 2018 establishing CRIET does not establish

equality between the parties.

126. With regard to the non-compliance of Section 19(2) with the provisions of ICCPR, the Court recalls that it held that the Respondent State violated the Applicant's right to appeal guaranteed by Article 14(5) of the ICCPR for the reason that Section 19(2) of the 2 July 2018 law establishing CRIET provides that the decisions of that court are not subject to appeal.

127. On the above two points, the Court considers that the Respondent State must take the necessary measures to review the two provisions of the law establishing CRIET to have them comply with the provisions of Articles 3(2) of the Charter and 14(5) of the ICCPR. [23]

vi. Non-application of the judgment of 29 March 2019 and the censure of opposition political parties or their leaders

128. The Applicant submits that despite the measures required by the Court in its Order of 7 December 2018 and in its judgment of 29 March 2019, the Respondent State obstinately failed to comply with the measures ordered and has, instead, taken measures against him, thereby continuously violating his rights.

129. He further alleges that the Respondent State, by a series of acts, violates his civil and political rights as well as those of the leaders of the opposition parties in Benin. The Applicant requests the Court to note the said violations against him and the other leaders of the opposition political parties, including Thomas Yayi Boni and Lionel Zinsou.

***

130. The Respondent State objects to the examination of the Applicant's

23 See ACHPR, Communication 231/99. *Lawyers without Borders v Burundi*, November 2000 (28th Session); Communication 218/98. *Civil Liberties Organization, Legal Defense Centre, Legal Defense and Assistance Project v Nigeria*, May 2001 (29th Session).
See also HRC, *Suárez de Guerrero v Colombia*, 30 March 1982, CCPR/C/15/D/45/1979, para 15; Cesario Gómez Vázquez v Spain, 11 August 2000, CCPR/C/69/D/701/1996, para 13.

new allegations and prays the Court to disregard them.

***

131. The Court reiterates that in its Order of 1 October 2019 on the reopening of the pleadings, it clearly specified the purpose of the Order and the points on which the parties should provide further clarification. The Court cannot, thus, receive and consider, in the instant case, new allegations which do not fall within the ambit of that Order.

b. The Respondent State's counterclaim

132. The Respondent State submits that the proceedings instituted by the Applicant in this Court are abusive, void of any serious grounds, tend to satisfy a neurosis and weaken the State of Benin financially. It avers that the Applicant seized this Court for the sole purpose of harming the State. Accordingly, the Respondent State prays the Court to order the Applicant to pay the sum of One billion five hundred and ninety-five million eight hundred and fifty thousand (1,595,850,000) CFA Francs as damages.

***

133. The Applicant challenged the Respondent State's claim for reparation. He asserted that the proceedings he brought against the Respondent State before this Court are founded and prays the Court to dismiss its counterclaim.

***

134. The Court recalls that in the Judgment of 29 March 2019, it declared that it had jurisdiction to hear the present case and also concluded that the Application fulfilled all the statutory conditions

of admissibility and was thus admissible. The Court also found a series of violations of the Applicant's rights by the Respondent State, and consequently, it rests on the Respondent State to make good the prejudice suffered by the Applicant. Thus, the Application filed before this Court is in order and is not abusive.

135. Accordingly, the Respondent State's counterclaim for damages is unfounded and therefore dismissed.

VI. Costs

136. The Applicant seeks reimbursement of the expenses incurred in the course of the judicial proceedings before this Court. He pleads for reimbursement of the costs of administrative processing of his documents, DHL shipping costs and those of procedural deeds, the fees of three (3) lawyers, as well as the expenses for their travel and stay in Arusha. The Applicant further requests the Court to order the Respondent State to pay the costs.

137. He also claims reimbursement of the sum of Ten billion (10,000,000,000) CFA Francs for additional legal costs occasioned by the partial reopening of proceedings.

***

138. The Respondent State requests the Court to dismiss all the Applicant's claims and order him to pay the costs.

***

139. In terms of Rule 30 of the Rules, "unless otherwise decided by the Court, each party shall bear its own costs".

140. As regards the costs of administrative processing of documents, procedural deeds and their dispatch by DHL, the Court holds that even though these expenses were incurred for the purposes of the proceedings before it, the Applicant did not provide any supporting documents. The same obtains for the Applicant's claim for reimbursement of additional procedural costs following the partial reopening of the proceedings in the wake of the Order

of 1 October 2019.

141. As the Court reiterates in this Judgment, reimbursement of the costs of proceedings must be substantiated by evidence.

142. In the instant case, the Court cannot order the reimbursement of lawyers' fees, the cost of administrative processing of documents, procedural deeds and their dispatch by DHL, for lack of justification of the said expenses.[24]

143. In view of the circumstances of this case, the Court decides that each party shall bear its own costs.

VII. Operative part

144. For these reasons,

The Court,

On the reparations claimed by the Applicant

Pecuniary reparations

Material prejudice:

Unanimously

i. *Dismisses* the request for reimbursement of the cost of administrative processing of documents, lawyers' fees and travel expenses before domestic courts;

ii. *Dismisses* the request for reparation of the losses suffered by JLR SA, SGI L'ELITE, CAJAF SA and IDEAL PRODUCTION SARL;

iii. *Orders* the Respondent State to pay the Applicant the sum of thirty-six billion three hundred and thirty million four hundred and forty-four thousand nine hundred and forty-seven (36,330,444,947) CFA Francs, made up as follows:

   1. Four billion three hundred and fifty-nine million six hundred and sixty-one thousand seven hundred and sixty-five (4,359,661,765) CFA Francs for loss of profit on COMON SA and SOCOTRAC SARL between 2016 and 2017;
   2. One billion nine hundred and sixty million five hundred and twenty-six thousand six hundred and ninety-two (1,960,526,692) CFA Francs for the depreciation of the Applicant's shares in COMON SA and SOCOTRAC SARL;
   3. Two million three hundred and twenty-two thousand nine hundred and ninety (2,322,990) CFA Francs being the costs of bailiff's deeds;
   4. Seven million nine hundred and nine thousand five hundred (7,909,500) CFA Francs representing the total amount expended for the purchase of five air tickets;

By a majority of 6 votes for and 4 against, Justices Gérard Niyungeko,

24 Judgment *Ingabire Victoire Umuhoza v Rwanda* (Reparation), op cit, paras 48, 49, 52.

Suzanne Mengue, M-Thérèse Mukamulisa and Chafika Bensaoula dissenting,

iv. Thirty billion (30,000,000,000) CFA Francs as compensation for the loss of investment opportunity in the oil sector;

On moral prejudice
Unanimously

v. *Orders* the Respondent State to pay the following amounts:
   1. Fifteen million (15,000,000) CFA Francs to the Applicant's wife;
   2. Ten million (10,000,000) CFA Francs to each of the Applicant's children – Ajavon Ronald, Ajavon Evaella and Ajavon Ludmilla – for the moral prejudice they suffered;

By a majority of 7 votes for and 3 against, Justices Gérard NIYUNGEKO, M-Thérèse MUKAMULISA and Chafika BENSAOULA dissenting,

vi. Three billion (3,000,000,000) CFA-Francs to the Applicant;

On non-pecuniary reparations
Unanimously

vii. *Declares* that the request for a declaration that the Respondent State has not complied with its obligations resulting from the judgment of 29 March 2019, is dismissed;

viii. *Orders* the Respondent State to take the necessary measures to:
   1. lift forthwith the seizure of the accounts and property of the Applicant and those of members of his family;
   2. lift forthwith the prohibition to carry out operations in the accounts opened in the name of AGROPLUS;
   3. lift forthwith the suspension of SOCOTRAC SARL's container terminal and the closure Soleil FM radio station and SIKKA TV, and report thereon within three (3) months from the date of service of this judgment;

On the guarantee of non-repetition
Unanimously

ix. *Orders* the Respondent State to amend Sections 12 and 19(2) of Law No. 2018-13 of 2 July 2018, establishing CRIET in order to make them compliant with the provisions of Articles 3(2) of the Charter and 14(5) of the ICCPR;

On the counterclaim
Unanimously

x. *Dismisses* the Respondent State's counterclaim.

On the costs of the proceedings and legal costs
Unanimously
xi. *Rules* that each party shall bear its own costs;

On implementation and reports
Unanimously
xii. *Orders* the Respondent State to pay all the net amounts specified in sub-paragraphs iii and iv of this Operative Part, exclusive of tax, within six (6) months from the date of service of this Judgment, failing which it will also have to pay default interest calculated on the basis of the applicable rate set by the Central Bank of West African States (BCEAO) for the entire period of delay and until full payment of the amounts due;
xiii. *Orders* the Respondent State to submit to the Court a report on the status of implementation of point (vii) of this Operative Part within a period of one (1) year from the date of service of this Judgment;
xiv. *Orders* the Respondent State to submit to the Court a report on the status of implementation of the decisions taken in this Judgment in respect of sub-paragraphs iii, iv and vi.1 and 2 of this Operative Part, within six (6) months from the service of this Judgment.

***

Separate opinion: NIYUNGEKO

1. I concur with the decisions of the Court on reparations in favour of the Applicant, except for the amount of Thirty Billion (30 000 000 000) CFA Francs granted as reparation of the prejudice for loss of business opportunity in the oil sector on the one hand (paragraph iii.5 of the operative part), and on the other, in regard to the amount of Three Billion (3 000 000 000) CFA Francs granted as reparation for moral prejudice suffered by the Applicant (paragraph iv.3 of the operative part). In my opinion, these amounts are exorbitant and cannot be objectively justified.

I. Reparation of prejudice relating to the loss of business opportunity in the oil sector

2. It emerges from the case file, that in 2016, the company belonging

to the Applicant, *Common SA,* reached an agreement with *Philia Group Ltd*, within the framework of a partnership, a confidential agreement aimed at covering every confidential information that had been exchanged in relation to the projects of the marketing of petroleum products and further a memorandum of understanding for the establishment of a roadmap to guide all the activities relating to the said projects through a *joint-venture* platform [paragraph 46 of the Judgement].

3. It further emerges from the case file that as a result of criminal proceedings against the Applicant by the Respondent State in the matter of presumed drug trafficking, *Philia Group Ltd* announced the suspension, with immediate effect, of all negotiations or ongoing commercial discussions with the Applicant in relation to these projects [paragraphs 51 and 52 of the Judgement].

4. As the Court noted, there is no doubt that the Applicant suffered a loss in business opportunities [paragraphs 54 and 55 of the Judgement]. Furthermore, there is no doubt that the Applicant is entitled to reparation, in this regard [paragraph 59 of the Judgement].

5. The Applicant claims pecuniary reparation of the amount of One Hundred and Fifty Billion (150 000 000 000) CFA Francs [paragraph 60 of the Judgement]. However, as we have noted, the Court granted him a lump sum of Thirty Billion (30 000 000 000) CFA Francs. To justify its decision, the Court stated that it based its decision, *inter alia,* on the following: the amounts claimed by the Applicant and the calculation to justify them; the amount or anticipated profits; the lump sum nature of this type of reparation; the particular circumstances of the case; (the financial clout of the Applicant; his knowledge of the business world and his reputation); the risky nature of any commercial activity; as well as the criteria of reasonable equity and proportionality [paragraphs 61 and 66 of the Judgement].

6. It is precisely the reasonable nature of the amount granted which however poses a problem. In my opinion, in the assessment of these decisive criteria, the Court omitted: (i) to give the full weight of the risky nature of the investment project initiated by the Applicant, and (ii) to take into consideration the amounts claimed by the same Applicant in regard to other claims for reparation for material prejudice.

7. Regarding *the risky nature of the Applicant's investment project*, it would have been necessary, in my view, to seriously consider that the said project was still at the embryonic stage, and that as the Court itself admits, "no sale of petroleum products had been made in this project" [paragraph 55 of the Judgement]. At this stage

and under such conditions, an investor may make skyrocketing plans which may be realised or may not be realised. The investor may also gain or lose. These forecasts are only at the level of imagination. The observation is valid for all investments, and it has not been proven that the oil sector is an exception. So, we cannot therefore rely on this type of forecast, to make a reliable calculation even if it is to grant a given percentage of the amount claimed implicitly.

8. As regards consideration *of the amounts claimed by the same Applicant in relation to the other claims for reparation for material prejudice*, the Court, in my opinion, could have considered the amount that the same Applicant claimed for reparation for loss in profit and a reduction in his shares, in relation to his companies, stemming from the violation of his rights by way of comparison. From this dual perspective, the Applicant claims a total amount of Six Billion CFA Francs (4 359 661 765 + 1 960 526 692 = 6 320 188 457), and the Court, based on affidavits, granted him these amounts, rightly [paragraphs 38 and 42 of the Judgement]. From thereon, it is difficult to understand how someone who claims, unjustifiably so, a reparation of an amount of Six Billion CFA Francs for such a damage relating to his companies which have been functioning for many years and were very prosperous (making him a "prosperous businessman" and a "business magnet" in the country), can at the same time claim for a project which is still at the level of negotiation and which has not gone operational, reparation of an amount *twenty five times higher* [One Hundred and Fifty Million], and that the Court goes as far granting him an amount *five times higher* [Thirty Billion]! How can we also consider in the circumstances such an amount as being reasonable, equitable and proportionate? Asking the question is a way of providing an answer to the very question.

9. In my opinion, by taking into account the risky nature of a project which has not yet seen the light of day, on the one hand, and the amounts claimed and granted in relation to the ongoing prosperous projects for several years, on the other, it would have been reasonable to grant the Applicant, for reparations of the prejudice resulting from the loss of business opportunities, an amount clearly lower to the one granted in relation to his existing running projects.

II. Reparation of moral prejudice suffered by the Applicant

10. The Applicant contends, and the Court notes correctly, that he suffered moral prejudice at two levels [paragraphs 83 to 87;

91]. First of all, as a result of the damage to his reputation and his image as an important political figure, and a successful businessman at the national and international level, as a result of criminal proceedings instituted against him for drug trafficking, and finally as a result of his sentence to twenty years imprisonment. Furthermore, as a result of the moral suffering he underwent, sadness, anxiety and pain to see his enterprises destroyed and to live in exile and the fear to be imprisoned for a period of twenty years.

11. Considering these two aspects, the Applicant claims pecuniary reparation of an amount of One Hundred Billion (100 000 000 000) CFA Francs [paragraph 87], but the Court grants him a lump sum of Three Billion (3 000 000 000) CFA Francs [paragraph 95]. In this regard, the Court holds that "the amount of reparation to be granted to the Applicant, in the instant case, has to be accessed based on the gravity of the accusation made against him, the degree of humiliation and moral suffering which he must have felt as a businessman and politician, Chief Executive Officer of a company and a candidate who came third in the presidential elections of his country in 2016". [paragraph 94 of the Judgement].

12. In my opinion, this amount, though clearly lower than what the Applicant claimed, remains exorbitant, taking into consideration the circumstances of the case. Regarding the *prejudice resulting from the damage to his image and his reputation as a politician and businessman*, this was more or less repaired through the judgement of this Court on the merits of the case on 29 March 2019 [paragraph 292 xxii] which ordered the Respondent State to annul judgement No. 007/3C.COR rendered on 18 October 2018 by CRIET so as to erase all the effects. The Court itself admits "such a measure as a source of moral satisfaction" [paragraph 92], but in my opinion, it fails to take into consideration all the consequences. As a matter of fact, the image and reputation of the Applicant, which had been tarnished by the cases on drug trafficking and the sentences which followed were completely restored in the eyes of his partners following the above mentioned judgement of this Court, ordering the cancelling of the sentences and the material prejudice resulting from the same facts had already been taken into account by the Court, to the extent that no other pecuniary compensation should have been granted to him.

13. The only pecuniary compensation for the Applicant should have been only the second aspect of the alleged moral prejudice, that is, *the moral suffering underwent by the Applicant as a result of the pain in the risk of the destruction of his enterprises, his life in*

exile and the risk of imprisonment if he returned to the Country. And in our opinion, the amount of reparation for this aspect of moral prejudice should have been symbolic and far lower than the amount granted by the Court. Here once more, in my opinion the Court had shown proof of unjustified generosity.

***

14. In conclusion on the two issues of disagreement, I hold the view that pecuniary reparation for prejudice legitimately found by the Court must remain what it is, that is, a measure of simple compensation,[1] and not a source of enrichment for the beneficiary.

1 See, inter alia, *Dictionary of International Law*, Jean Salmon, ed., Bruxelles, Bruylant, 2001, p. 975 : "In its general meaning, reparation consists in re-establishing an earlier situation after a prejudice either by reinstating things as they were before or through compensation for the prejudice suffered"