

## Diarra v Mali (provisional measures) (2021) 5 AfCLR 124

Application 047/2020, *Adama Diarra a.k.a Vieux Blen v Republic of Mali*  
Order, 29 March 2021. Done in English and French, the French text being authoritative.

Judges: ORÉ, KIOKO, BEN ACHOUR, MATUSSE, MENGUE, MUKAMULISA, CHIZUMILA, BENSAOULA, TCHIKAYA, ANUKAM and ABOUD

The Applicant, a radio host in the Respondent State, brought this Application to challenge national processes leading to his committal to prison based on the complaint of two magistrates' unions, allegedly for contempt and making insulting statements. Together with the main Application, the Applicant filed a request for provisional measures. The Court held that the request for provisional measures was moot.

**Jurisdiction** (*prima facie*, 17-20)

**Provisional measures** (proximity to examination on the merit, 23; moot application, 24)

### I. The Parties

1. Mr. Adama Diarra, also known as “Vieux Blen” (hereinafter referred to as “the Applicant”) is a Malian national and a radio host. He challenges the legality of procedure that led to his being placed under a committal order on 22 October 2020, following a joint complaint filed by two magistrates’ unions for contempt of court as well as for making insulting statements.
2. The Application is filed against the Republic of Mali (hereinafter referred to as “the Respondent State”), which became a party to the African Charter on Human and Peoples’ Rights (hereinafter “the Charter”) on 21 October 1986, and the Protocol to the African Charter on Human and Peoples’ Rights on the Establishment of an African Court on Human and Peoples’ Rights (hereinafter referred to as “the Protocol”) on 10 May 2000. The Respondent State also deposited, on 19 February 2010, the Declaration prescribed under Article 34(6) of the Protocol, by which it accepts the Court’s jurisdiction to receive applications from individuals and Non-Governmental Organisations (hereinafter referred to as “the Declaration”).

### II. Subject of the Application

3. It emerges from the Application dated 27 November 2020 that,

on 22 October 2020, the Applicant was placed under a committal order by the Substitute Public Prosecutor of the High Court of Commune III of Bamako.

4. The alleged deprivation of liberty of the Applicant follows a joint complaint filed by the two magistrates' unions in Mali, namely, *Syndicat Autonome de la Magistrature* (SAM) and the *Syndicat Libre de la Magistrature* (SYLIMA) for broadcasting a video on the internet. Subsequently, the Prosecutor's office of the High Court of Commune III prosecuted him for contempt of court as well as for making insulting statements.
5. The Applicant submits that in accordance with the Criminal Procedure Code of the Respondent State, a trial must be held within three (3) months, but a detainee has the right to apply for bail; provided that, this does not pose any threat and the detainee's legal representation is guaranteed.
6. The Applicant argues that the provisions of Article 155 of the said Code of Procedure confers on him the right to apply for bail at any stage of the proceedings, and that his three advocates applied for bail on 25 October, 10 and 11 November 2020, pending judgment on his case.
7. The Applicant states that the said applications for bail initiated successively by his advocates were listed for hearing on 15 December 2020 after their joinder. The hearing resulted in Interlocutory Judgment No. 25 of 27 January 2021 granting the Applicant bail, against which the prosecution appealed and the appeal is still pending.

### III. Alleged violations

8. In the Application, the Applicant alleges:
  - i. The violation of the right to freedom, protected by Article 6 of the Charter;
  - ii. The violation of the right to have his cause heard, protected by Article 8 [sic]<sup>1</sup> of the Charter and Article 14 of the International Covenant on Civil and Political Rights (ICCPR).<sup>2</sup>

### IV. Summary of the Procedure before the Court

9. On 7 December 2020, the Registry of the Court acknowledged receipt of the Application dated 27 November 2020, filed together

1 Article 7(1)(a)(b)(c) of the Charter.

2 The Respondent State became a Party to the said instrument on 16 July 1974.

with the request for provisional measures.

10. On 15 January 2021, the Registry served the Application and the request for provisional measures on the Respondent State for its response within respectively ninety (90) days and fifteen (15) days of receipt of the notification.
11. On 5 February 2021, the Respondent State filed its response to the request for provisional measures. On the same date, the Applicant filed his reply to the request for information made by the Registry regarding the outcome of the hearing of 15 December 2020 as well as that of the appeal by the Prosecutor. The Applicant indicated in the said reply that the hearing of 15 December could not be held because of the suspension of hearings due to the Covid-19 pandemic. He also mentioned through a document received at the Registry on 28 January 2021, that following the preliminary motion No. 25 for release of 27 January 2021, the Public Prosecutor's Office filed an appeal. On 5 February 2021, the said correspondence was notified to both Parties.
12. On 11 February 2021, the Registry requested the Applicant for further information on the outcome of the Public Prosecutor's appeal against the pre-trial judgment of 27 January 2021. The Applicant replied on 12 February 2021, indicating that the said appeal by the Public Prosecutor had not been ruled on and that the Public Prosecutor's Office had indeed examined the 3 successive applications for provisional release, at the same time as though they were the same application. The Applicant's replies were notified to the Respondent State on 15 February 2021.
13. On 2 March 2021, the Registry requested for further information from the Applicant's lawyer regarding the outcome of the hearing of the Bamako Court of Appeal of 25 February 2021 against the Interlocutory Judgment No. 25 of 27 January 2021 granting the Applicant bail pending hearing of the criminal case. On 11 March 2021, the Applicant informed the Registry that his release on bail pending hearing had been confirmed.

#### **V. *Prima facie* jurisdiction**

14. Applicant alleges that the Court has jurisdiction to order the measures requested since the Respondent State is a Party to the Charter, the Protocol and the other human rights instruments cited in the Application.

15. The Respondent State has not made any submissions on the jurisdiction of the Court.

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16. Article 3(1) of the Protocol provides that:  
The jurisdiction of the Court shall extend to all cases and disputes submitted to it concerning the interpretation and application of the Charter, this Protocol and any other relevant Human Rights instrument ratified by the States concerned.
17. However, with regard to provisional measures, the Court does not have to ensure that it has jurisdiction on the merits in the matter but only that it has *prima facie* jurisdiction.<sup>3</sup>
18. In the instant case, the Applicant alleges violation of Articles 6, 7(1)(a),(b),(c) of the Charter and Article 14 of the ICCPR. These are instruments that the Court has jurisdiction to interpret and apply by virtue of Article 3(1) of the Protocol.
19. The Court notes, as set out in paragraph 2 above, that the Respondent State is a party to the Charter, the Protocol and has also deposited the Declaration by virtue of which it accepts the Court's jurisdiction to receive applications from individuals and NGOs in accordance with Article 34(6) read in conjunction with Article 5(3) of the Protocol.
20. From the foregoing, the Court concludes that it has *prima facie* jurisdiction to hear the instant Application for provisional measures.

## VI. Provisional measures requested

21. The Applicant requests the Court to order the following provisional measures:

3 *Harouna Dicko and 4 Others v Burkina Faso*, ACtHPR, Application No. 037/2020, Order of 20 November 2020 (provisional measures) § 14; *Guillaume Kigbafori Soro and Others v Republic of Côte d'Ivoire*, ACtHPR, Application No. 012/2020, Order of 15 September 2020 (provisional measures) § 17 ; *Babarou Bocoum v Republic of Mali*, ACtHPR, Application No. 023/2020, Order of 23 October 2020 (provisional measures), § 14 ; *Suy Bi Gohore Emile and Others v Republic of Côte d'Ivoire*, ACtHPR, Application No. 044/2019, Order of 28 November 2019 (provisional measures), § 18 ; *African Human and Peoples' Rights Commission v Libya* (provisional measures) (15 March 2013) 1 AfCLR 149, § 10, *Amini Juma v United Republic of Tanzania* (provisional measures) (3 June 2016) 1AfCLR 687, § 8.

- i. Find that the issuance of a committal order by the Public Prosecutor's Office of the *Tribunal de la Grande Instance of Commune III* as well as the refusal to register the 3 applications for release on bail of the Applicant constitute violations of the Applicant's human rights, insofar as they violate Articles 6 and 8 [sic]<sup>4</sup> of the Charter, Article 9 of the Constitution of the Respondent State as well as Article 1 of Law No. 01-79 of 20 August 2001 of the Criminal Procedure Code of the Respondent State;
  - ii. To cease the violations by ordering the release on bail of the Applicant, pending the judgment on the merits.
  - iii. To report back, within one month, on the measures taken with regard to this stay.
- 22.** The Respondent State submits that the provisional measures requested are not well founded in law and that they do not comply with the conditions laid down in Rule 59(1) of the Rules of Court, which reproduces the provisions of Article 27(2) of the Protocol. The request should therefore be dismissed by the Court.

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- 23.** The Court observes that the measure requested by the Applicant concerning the issuance of the committal order and the refusal to list the applications for release, being violations of human rights, is of such a nature that its examination would require a determination of whether the procedural acts of the domestic courts comply with the Charter. It follows that such an examination would go to the merits of the case, which is outside the scope of provisional measures.
- 24.** The Court notes that, following the confirmation of the Applicant's release referred to in paragraph 13 above, the request for provisional measures to release the Applicant has consequently become moot.
- 25.** For the avoidance of doubt, this Ruling is provisional and is without prejudice to any decision the Court may make on its jurisdiction, the admissibility of the Application and the merits.

4 Article 7(1)(a)(b)(c) of the Charter.

## VII. Operative part

**26.** For these reasons,

The Court,

*Unanimously,*

- i. *Declares* that the Applicant's request for provisional measures is moot.