

Sangaré & Ors v Mali (judgment) (2022) 6 AfCLR 359

Application 007/2019, *Tiéboro Sangaré and 15 Others v Republic of Mali*
 Judgment, 23 June 2022. Done in English and French, the French text being authoritative.

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

Recused under Article 22: SACKO

The Applicants are citizens and police officers of the Respondent State. They brought this Application alleging that they were unfairly denied selection for admission to a police training school which impacted on their career progression when other officers in a similar situation were selected. The Applicants claimed that their non-selection and the failure of their challenge before the domestic courts amounted to a violation of their rights by the Respondent State. The Court found that the Respondent State had not violated the Applicants' rights as claimed. Accordingly, the Court dismissed the Applicants' prayers for reparations.

Admissibility (exhaustion of local remedies, 32-38)

Jurisdiction (duty to confirm all aspects of jurisdiction, 17)

Equality before the law (interconnection with equal protection, 55; onus to prove, 56; proof of unfair grounds, 62-63; implication for judicial authorities; 70-75, 77)

Access to public service (access under conditions of equality, 86-87; unreasonable restriction of, 89-93)

Education (access to higher education, 100-104)

Work (access to promotion opportunities, 108-113)

I. The Parties

1. Mr. Tiéboro Sangaré and fifteen (15) others¹ (hereinafter referred to as "the Applicants") are Malian nationals who are police officers. They allege that their applications to the National Police School were unfairly rejected by the Ministry of Internal Security and Civil Defence.
2. The Application is filed against the Republic of Mali (hereinafter "the Respondent State") which became a party to the African Charter on Human and Peoples' Rights (hereinafter "the Charter") on 21 October 1986 and to the Protocol on 20 June 2000. The

¹ Jean Marie Samake, Saniba Sanogo, Brehima Sangare, Moise Traore, Modibo Traore, Abdoulaye Natie Diarra, Mohamed Dantioko Camara, Tiokon Traore, Fily Coulibaly, Makan Traore, Boubacar Amadou Soumano, Noel Sangare, Ousmane Diarra, Moussa Sow, Aboubacar Samake.

Respondent State also deposited, on 19 February 2010, the Declaration provided for in Article 34(6) of the Protocol, by virtue of which it accepts the jurisdiction of the Court to receive applications from individuals and Non-Governmental Organisations.

II. Subject of the Application

A. Facts of the matter

3. The Applicants aver that pursuant to Decree No 06-53/P-RM of 6 February 2006 setting out the special provisions applicable to the various bodies of the national police force (hereinafter referred to as “Decree of 6 February 2006”), the Minister of Internal Security and Civil Defence instructed the Director General of the national police force to identify officers with higher qualifications, with a view to promoting them to the corps of police inspectors and commissioners after training at the National School Police. The qualifications to be considered in this regard were: a Master’s degree, a Bachelor’s degree, a University Diploma of General Studies (UDGS) and a University Diploma of Technology (UDT).
4. They aver that following the census and verification, the Director General of Police, sent the list of police officers who had the higher qualifications to the Minister of Internal Security and Civil Defence and the Minister, enrolled the identified police officers by Ministerial orders as trainee police commissioners and trainee police inspectors.
5. The Applicants contend that they were not selected although they had the required qualifications. They aver that some of their colleagues whose applications were rejected, appealed to the Administrative Section of the Respondent State’s Supreme Court, which by various judgments,² granted the prayers of the said colleagues, based on the principles of equality of all before the law and non-discrimination, which paved the way for their administrative regularisation by the supervisory authority.
6. They aver that they filed hierarchical appeals with the Minister of Internal Security and Civil Defence to regularise their situation but did not get any replies, following which, they filed a case on 1 August 2016 before the Administrative Section of the Supreme

2 Judgment No 40 of 7 March 2013 of the Administrative Division of the Supreme Court; Judgment No 362 of 22 November 2013 of the Administrative Division of the Supreme Court; Judgment No 093 of 17 April 2014 of the Administrative Division of the Supreme Court.

Court, which dismissed their case by Judgment No 586 of 13 October 2016. They further filed a petition before the same Section of the Supreme Court, for review of its decision alleging an error on record, which was dismissed by Judgment No 498 of 30 August 2018.

7. They aver that by an unjustified reversal of case law, the Administrative Section of the Supreme Court discriminated against them and breached the principle of equality before the law.
8. The Applicants further submit that Article 125 of Law No 10-034 of 12 July 2010 on the status of police officers³ (hereinafter “Law of 12 July 2010”), which requires prior authorisation from the hierarchical superior for enrolment in higher education, is incompatible with human rights instruments ratified by the Respondent State.

B. Alleged violations

9. The Applicants allege the violation of the following:
 - i. The right to equality before the law and the right to equal protection of the law, protected by Article 3(1) and (2) of the Charter and Article 26 of the International Covenant on Civil and Political Rights (hereinafter referred to as the “ICCPR”);
 - ii. The right to equal access to the public service in their country, protected by Articles 13(2) of the Charter and 25(c) of the ICCPR;
 - iii. The right to education protected by Article 17(1) of the Charter and Article 13(1) of the International Covenant on Economic, Social and Cultural Rights (hereinafter referred to as the “ICESCR”);
 - iv. The right to be promoted to a higher category protected by Article 7(c) of the ICESCR.

III. Summary of the Procedure before the Court

10. The Application was filed on 21 February 2019 and served on the Respondent State on 27 May 2019.

3 Article 125: “To be promoted to a higher category through training, a police officer is required to have successfully completed studies at a level corresponding to the category to which he/she is being promoted. To be eligible to undertake the training referred to in the previous paragraph, the police officer must have: served at least five (5) years in his or her corps; received a favourable evaluation from the hierarchical authority, based in particular on his or her most recent performance appraisal and the speciality of the corps to which he or she is planning to be promoted; be at least five (5) years from retirement at the end of the training.

11. The Parties filed their submissions on the merits and on reparations within the prescribed time limits.
12. Pleadings were closed on 29 January 2021 and the Parties were duly notified.

IV. Prayers of the Parties

13. The Applicants pray the Court to:
 - i. Find that it has jurisdiction to hear the Application;
 - ii. Declare the Application admissible;
 - iii. Find that the Respondent State has violated the rights to equality of all before the law and equal protection of the law without discrimination (Article 3(1)(2) of the Charter and Article 26 of the ICCPR); the right to equal access to public service (Article 25(c) of the ICCPR); the right to education (Article 17(1) of the Charter and Article 13(1)(c) of the ICESCR); and the right to promotion to higher office (Article 7(c) of the ICESCR)
 - iv. To find that Article 125 of Law No 10-034 of 12 July 2010 on the status of civil servants of the National Police is incompatible with Article 17(1) of the Charter, and Articles 7(c) and 13(1)(c) of the ICESCR;
 - v. To order the State of Mali to revise the law of 12 July 2010 so as to make it consistent with the above provisions;
 - vi. Order the Respondent State to regularise and reclassify them to the category of Divisional Commissioner 1st step, the category immediately above that held by their colleagues Djinéssira Siama Ballo, Fantiémé Coulibaly, Bê Dackouo, Issa Coulibaly, Fatoma Fomba and others;
 - vii. Order the State of Mali to pay each Applicant the sum of eight million, eight hundred thousand (8,800,000) CFA francs, in respect of arrears of pay since the signing of their appointment order in July 2008 until the delivery of the Court's decision;
 - viii. Order the State of Mali to pay to each Applicant the sum of one hundred million (100 000 000) CFA francs for all causes of damage;
 - ix. Order the State of Mali to pay the costs.
14. The Respondent State prays the Court to:
 - i. Rule on the admissibility of the application;
 - ii. Dismiss the Application as ill-founded;
 - iii. Order the Applicants to pay all the costs.

V. Jurisdiction

15. The Court notes that Article 3 of the Protocol provides as follows:
 1. 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.
 2. In the event of a dispute as to whether the Court has jurisdiction, the Court shall decide.
16. Under Rule 49(1) of the Rules,⁴ “The Court shall conduct preliminary examination of its jurisdiction [...] in accordance with the Charter, the Protocol and these Rules”.
17. Based on the above-mentioned provisions, the Court must, for every application, examine its jurisdiction and rule, where appropriate, on any objections to its jurisdiction.
18. The Court notes that no objections were raised to its material, personal, temporal and territorial jurisdiction. Nevertheless, in accordance with Article 49(1) of the Rules, it must ensure that all aspects of its jurisdiction are met.
19. The Court notes that it has material jurisdiction, because the Applicants allege the violation of Articles 3(1) and (2), 13(2) and 17(1) of the Charter, Articles 25 and 26 of the ICCPR, as well as Articles 7(2) and 13(1) of the ICESCR to which the Respondent State is a party.⁵
20. The Court further notes that it has Personal jurisdiction, because the Respondent State is a party to the Charter and the Protocol, and has deposited the Declaration that allows individuals such as the Applicants to file cases against it before the Court.
21. As regards temporal jurisdiction, the Court finds that it is established because the alleged violations occurred after the Respondent State became a party to the Charter, the Protocol and had deposited the Declaration allowing individuals to file cases before the Court.
22. The Court finds that it has territorial jurisdiction, because the facts of the case and the alleged violations occurred in the Respondent State’s territory.

4 Rule 39(1) of the Rules of Court of 2 June 2010.

5 The Respondent State became a party to the ICCPR and ICESCR on 16 July 1974.

- 23.** Accordingly, the Court finds that it has jurisdiction to consider the Application.

VI. Admissibility

- 24.** Article 6(2) of the Protocol provides that “the Court shall rule on the admissibility of cases taking into account the provisions of Article 56 of the Charter”.
- 25.** According to Rule 50(1) of the Rules of Court, “The Court shall ascertain the admissibility of an Application filed before it in accordance with Article 56 of the Charter, Article 6(2) of the Protocol and these Rules”.⁶
- 26.** Rule 50(2) of the Rules of Court, which restates in substance the provisions of Article 56 of the Charter, provides:
Applications filed before the Court shall comply with all of the following conditions:
- a. Indicate their authors even if the latter request anonymity
 - b. Are compatible with the Constitutive Act of the African Union and with the Charter;
 - c. Are not written in disparaging or insulting language directed against the State concerned and its institutions or the African Union,
 - d. Are not based exclusively on news disseminated through the mass media,
 - e. Are sent after exhausting local remedies, if any, unless it is obvious that this procedure is unduly prolonged,
 - f. Are submitted within a reasonable time from the date local remedies were exhausted or from the date the Commission is seized with the matter, and
 - g. Do not deal with cases which have been settled by those States involved in accordance with the principles of the Charter of the United Nations, or the Constitutive Act of the African Union or the provisions of the Charter.
- 27.** The Court notes that the Respondent State has not raised any objection to the admissibility of the Application. However, it is obliged to examine whether the requirements of the above-mentioned provisions have been met.
- 28.** In this respect, it notes, in accordance with Rule 50(2)(a) of the Rules, that the Applicants have clearly indicated their identity.
- 29.** The Court further notes that the claims made by the Applicants seek to protect their rights guaranteed by the Charter. Also, one of the objectives of the Constitutive Act of the African Union, as set

6 Rule 40 of the Rules of Court of 2 June 2010.

out in its article 3(h) is to promote and protect human and peoples' rights. Moreover, nothing on file indicates that the Application is incompatible with any provision of the Constitutive Act of the African Union. Consequently, the Court finds that the Application is compatible with the African Union Constitutive Act and the Charter, and considers accordingly that it meets the requirement of Rule 50(2)(b) of the Rules.

30. The Court notes that the Application does not contain any disparaging or insulting language about the Respondent State, its institutions or the African Union and it thus fulfils the requirement of Rule 50(2)(c) of the Rules.
31. The Court further finds that the Application meets the requirement of Rule 50(2)(d) of the Rules, given that it is not based exclusively on news disseminated through the mass media but rather relates to the legislative and regulatory provisions of the Respondent State.
32. The Court notes, with regard to the exhaustion of local remedies under Rule 50(2)(e), that the Application is based on allegations of human rights violations in relation to the administration's refusal to enrol the Applicants on the list of trainee police inspectors and commissioners, and on the incompatibility of Article 125 of Law No 10-034 of 12 July 2010 with Articles 25(c) and 26 of the ICCPR, Articles 13(2)(c) and 7(c) of the ICESCR.
33. As regards the administration's refusal to include the Applicants on the list of students authorised to enrol in the national police academy, the Applicants submit, without being challenged, that they exhausted the local remedies because they brought the matter before the Administrative Section of the Respondent State's Supreme Court and awaited the outcome of the said appeal before filing the instant Application.
34. Indeed, the record indicates that the Applicants filed a petition for review before the Administrative Section of the Supreme Court for the purpose of "*regularising* their administrative situations by putting them on the list of trainee commissioners to undergo police commissioners' training", alleging that they were victims of gross inequality before the law. The petition for review resulted in Judgment No 586 of 13 October 2016 by the Administrative Section of the Supreme Court dismissing their petition. Based on Article 256⁷ of Law No 2016-046 of 23 September 2016 on the organic

7 Law No 2016-046 of 23 September 2016, Article 256: "When a judgment of the Administrative Section is vitiated by a material error likely to have influenced the judgment of the case, the interested party may lodge an appeal for trainee before the Division.

law setting out the organisation, operating rules of the Supreme Court and the procedure followed before it (hereinafter referred to as the “Organic Law of 23 September 2016”), the Applicants filed a petition before the same Section for review alleging an error on record. The petition was dismissed by Judgment No 498 of 30 August 2018.

35. The Court notes, moreover, that Articles 110⁸ and 111⁹ of the Organic Law of 23 September 2016, provide that the Administrative Section of the Supreme Court is the final adjudicator and its decision is not subject to appeal. It follows that the Applicants have exhausted local remedies with regard to the claim relating to the administration’s refusal to enrol the Applicants on the list of trainee police inspectors and commissioners.
36. With regard to the incompatibility of Article 125 of the Law of 12 July 2010 with human rights instruments, the Court observes that, in accordance with Article 85 of the Organic Law setting the rules of organisation and functioning of the Constitutional Court,¹⁰ the only remedy that could be exercised is to challenge the constitutionality of the impugned law especially, its compatibility with fundamental human rights.
37. The Court notes that, pursuant to Article 45¹¹ of the said organic law, the Applicants do not have standing to file a case before the Constitutional Court challenging the constitutionality and respect of fundamental rights of organic laws, ordinary laws and international commitments. Moreover, there is no indication in the record that any other judicial remedy was available to the Applicants in the Respondent State’s legal system.

8 *Idem*, Article 110: The Administrative Section is the supreme judge of all decisions rendered by the lower administrative courts as well as of decisions rendered in last resort by administrative bodies of a judicial nature.

9 *Idem*, Article 111 “The Administrative Section has jurisdiction to hear, in the first and last instance, appeals on grounds of abuse of power directed against decrees, ministerial or inter-ministerial orders and acts of national or independent administrative authorities...”

10 Organic Law No 97-010 of 11 February 1997, Article 85 “the Constitutional Court is the judge of the constitutionality of laws and it guarantees the fundamental rights of the human person and public liberties”.

11 *Idem*, Article 45 “Organic laws adopted by the National Assembly must be transmitted to the Constitutional Court by the Prime Minister prior to promulgation. The accompanying letter shall state, where appropriate, that there is an emergency. Other categories of laws, before their promulgation, may be referred to the Constitutional Court either by the President of the Republic, or by the Prime Minister, or by the President of the National Assembly or one tenth of the Deputies, or by the President of the High Council of the Collectivities or one tenth of the National Councillors, or by the President of the Supreme Court.

38. Based on the foregoing, the Court considers that no remedy was available to the Applicants regarding the compatibility of Article 125 of the Law of 12 July 2010 with human rights instruments ratified by the Respondent State.
39. The Court therefore finds that the Applicants have exhausted local remedies so that the Application complies with Rule 50(2) (e) of the Rules.
40. With regard to the requirement under Rule 50(2)(f) of the Rules that the Application be filed within a reasonable time, the Court recalls that it has adopted a case-by-case approach to assessing what constitutes a reasonable time, taking into account the particular circumstances of each case.¹² The Court has thus held that the time taken by the applicant to attempt to exhaust a remedy before domestic courts should be taken into account in determining the reasonableness of the time.¹³
41. The Court notes in the instant case that following the Supreme Court's judgment of 13 October 2016, the Applicants filed a petition for review of the case on the account that the Supreme Court erred in its judgment which resulted in the judgment of 30 August 2018. The Court considers that it must take into account the time taken by the Applicants in the review proceedings before coming before it. Thus, between 30 August 2018, the date of the decision of the review, and 21 September 2019, when the Applicants seized this Court, twelve (12) months and twenty-one (21) days elapsed. In accordance with its jurisprudence,¹⁴ the Court considers that this period constitutes reasonable time.
42. Furthermore, with regard to the complaint concerning the incompatibility of Article 125 of the Law of 12 July 2010 with the human rights instruments invoked by the Applicants, the Court found that there was no remedy to be exhausted, so that there is no reasonable period to be taken into account.¹⁵ The Court also emphasised that the violations alleged in this connection were of

12 *Beneficiaries of the late Norbert Zongo and Others v Burkina Faso* (preliminary objections) (21 June 2013) 1 AfCLR 204, §121; *Alex Thomas v United Republic of Tanzania* (20 November 2015) (merits) 1 AfCLR 465, §73.

13 *Guehi v Tanzania* (7 December 2018) (merits and reparations) 2 AfCLR 477, §56; *Nguza v Tanzania* (23 March 2018) (merits) 2 AfCLR 287 §61.

14 *Boubacar Sissoko and 74 others*, ACTHPR, Application No 037/2017, judgment of 25 September 2020 (merits and reparations), §53(iv); *Lucien Ikili Rashidi v Tanzania* (merits and reparations) (28 March 2019) 3 AfCLR 13, §56;

15 *Jebra Kambole v United Republic of Tanzania*, ACTHPR, Application No 018/2018, Judgment of 15 July 2020 (merits and reparations), § 50; *Yusuph Said v United Republic of Tanzania*, ACTHPR, Application No 011/2019, Judgment of 30 September 2021 (jurisdiction and admissibility), §§ 42.

a continuing nature and therefore recurred on a daily basis given that they arise from a law passed on 12 July 2010 that is still in force. Consequently, the Applicants could have seized the Court at any time as long as measures had not been taken to remedy the said alleged violations.¹⁶

43. Finally, the Court notes that, in accordance with Rule 50(2)(g) of the Rules, the instant Application does not concern a matter already settled by the parties in accordance with either the principles of the Charter of the United Nations, the Constitutive Act of the African Union or the provisions of the Charter.
44. In view of the foregoing, the Court finds that the Application meets all the requirements of Article 56 of the Charter and Rule 50(2) of the Rules and accordingly declares it admissible.

VII. Merits

45. The Applicants allege: (A) the violation of the right to equality before the law and equal protection of the law and non-discrimination by the Supreme Court and the Ministry of Internal Security and Civil Defence, (B) the violation of the right to equal access to public service, (C) the violation of the right to education, and (D) violation of the right to be promoted to a higher category.

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

46. The Applicants allege that the Respondent State, through the Ministry of Internal Security and Civil Defence and the Administrative Section of the Supreme Court violated their rights to equality before the law and equal protection of the law and to non-discrimination, protected by Articles 3(1) and (2) of the Charter and Article 26 of the ICCPR.
47. The Court notes that although, the Applicants allege the violation of Article 3(1) and (2) of the Charter, their alleged violations occasioned by both the Minister of Internal Security and Civil Defence and the Supreme Court, in fact only fall under the right to equality before the law, a right protected by Article 3(1) of the Charter.

16 *Idem. Jebra Kambole v United Republic of Tanzania*, §53.

B. Alleged violation by the Ministry of Internal Security and Civil Defence

48. The Applicants contend that the principle of equality was breached by the Minister of Internal Security and Civil Defence of the Respondent State, who applied the criteria for promoting police officers in a discriminatory manner, with regard to Decree No 06/053 of 6 February 2006 and Article 125 of Law No 10-034 of 12 July 2010.
49. They submit that without legal justification, the authorities enrolled to the Police Academy as trainee police commissioners Fantiémé Coulibaly, Fousseiny Siaka Berthé, Bê Dackouo, Fatoma Fomba, Djinessira Siama Ballo and Issa Coulibaly although they obtained their diplomas after the decree of 6 February 2006.
50. In response, the Respondent State emphasises that Article 47 of the Decree of 6 February 2006 provides that:
Police inspectors and non-commissioned police officers who hold a Master's degree on the date of entry into force of this Decree are authorised to enter the National Police Academy in successive waves, according to seniority in category and in service.
51. It considers that the above-mentioned Article 47 leaves no room for ambiguity. The police inspectors and non-commissioned officers concerned are those who held the required qualifications on the date the said decree entered into force.
52. The Respondent State asserts that none of the Applicants held the required qualifications on the date of entry into force of the above-mentioned decree to be part of the contingent admitted to the training institute for the trainee commissioners and inspectors, given that all of them obtained diplomas after the said decree had been signed.

53. The Court notes that Article 3 of the Charter provides:
1. Every individual shall be equal before the law.
 2. Every individual shall be entitled to equal protection of the law.
54. Article 26 of the ICCPR states that:
All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground

such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status

55. The Court observes that there is an interconnection between equality before the law and equal protection of the law, on the one hand, and the right to the non-discriminatory enjoyment of the rights guaranteed by the Charter, on the other, insofar as the entire legal structure of the national and international public order is based on this principle, which transcends any norm.¹⁷
56. The Court has held that “ it is incumbent on the Party purporting to have been a victim of discriminatory treatment to provide proof thereof.¹⁸ and that general statements that a right has been violated are not sufficient. More substantiation is required”.¹⁹
57. The Court notes in the instant case that the Applicants accuse the Respondent State of not having included them on the list of trainee police inspectors and commissioners whose training had been authorised under the Decree of 6 February 2006, whereas some of their colleagues who were in the same situation as them were included on the list.
58. The Court notes that Article 47 of the Decree of 6 February 2006 sets out the conditions relating to the date of graduation and length of service, in order to qualify to train as police commissioners and inspectors.²⁰
59. The Court further observes that it is clear from the documents produced by the Applicants that they all obtained their diplomas after the date of the above-mentioned decree, which they do not dispute.
60. The Court notes that, on the one hand, the Respondent State applied the criteria laid down by the decree of 6 February 2006, which was a general and impersonal instrument, taking into account the situation of the Applicants on the date of the decree. On the other hand, there is nothing on record to indicate that the said decree occasions inequality to the detriment of the Applicants and also, the latter did not prove that they were unjustifiably

17 This is shared by: African Commission on Human and Peoples' Rights, *Open Society Justice Initiative v Côte d'Ivoire*, 28 February 2015, 318/06, and the Inter-American Court of Human Rights, Legal Opinion OC-18 of 17 September 2003.

18 *Mohamed Abubakari v United Republic of Tanzania* (3 June 2016) (merits) 1 AfCLR 599 §153.

19 *Alex Thomas v United Republic of Tanzania* (20 November 2015) (merits) 1 AfCLR 465 §140.

20 Article 47 “Police inspectors and non-commissioned officers holding the master's degree on the date of entry of the present decree shall be authorised to enter the National Police Academy in successive batches according to seniority in rank and length of service in order to undergo training as police commissioners.

treated differently.

61. The Court notes, moreover, that the Applicants' allegation that Fantiémé Coulibaly, Fousseiny Siaka Berthé, Bê Dackouo, Fatoma Fomba, Djinessira Siama Ballo and Issa Coulibaly were enrolled as trainee police commissioners although they were in the same situation is not supported by any evidence.
62. The Court observes that the Applicants did not provide any evidence to show that they were not allowed to enter the National Police College to be trained as commissioners or inspectors because of their status such as race, ethnicity, colour, sex, language, religion, political or other opinion, national or social origin, property or birth.
63. Accordingly, the steps taken by the Ministry of Internal Security and Civil Defence did not violate the Applicants' rights to equality before the law and non-discrimination under Article 3(1) of the Charter [as read together with] Article 26 of the ICCPR.
64. Alleged violation by the Supreme Court
65. The Applicants allege that the Administrative Section of the Supreme Court, through its reversal of its jurisprudence, established a disproportionate and unjustified infringement of the principle of equality of all before the law.
66. They contend that the Supreme Court dismissed their appeal, while it granted their colleagues' request for enrolment to the Police Academy in a similar situation of graduation date, length of service and rank.²¹
67. The Applicants conclude that the Supreme Court's decision resulted in a breach of equality between them and their police colleagues, in violation of Article 3 of the Charter.
68. The Respondent State submits that the Supreme Court reversed its decision because it realised that it had misinterpreted the legislation governing the training of national police officers.
69. It asserts that this jurisprudential turnaround took place well before the Applicants' appeal, in particular by Judgment No 186 of 7 April 2016 in which the Supreme Court dismissed the Applicants' application for regularisation, stating for the first time that "*it is a general principle of civil service law that a civil servant cannot avail himself of a right illegally obtained by another; that he who claims to have a right is required to prove it*".
70. The Respondent State submits that the Applicants want to mislead the Court by arguing that all other civil servants benefited

21 §140.Judgment No 55 of 25 March 2010; Judgment No 362 of November 2013 Judgment No 93 of 17 April 2014.

from privileges, as if this illegality constituted a source of rights which accrued to them.

71. The Court recalls that the right to full equality before the law means that “all persons are equal before the courts and tribunals”.²² In other words, the authorities responsible for enforcing or applying the law must do so without discrimination, depending on the situation in question.
72. The Court recalls that the principle of equality before the law does not mean that judicial institutions must necessarily deal with all cases in the same way, since the treatment of each case may depend on its specific circumstances.²³
73. The Court endorses the position of the European Court of Human Rights that “an evolution of case law is not, in itself, contrary to the proper administration of justice, since to assert the opposite would be to fail to maintain a dynamic and evolutionary approach, which would risk impeding any reform or improvement”.²⁴
74. The Court considers that, in general, the term “reversal” refers to a change of opinion or behaviour. In a particular type of facts or legal relationship under litigation, it applies to any change in how a court interprets the law.
75. The Court notes in the instant case that although the Supreme Court judgments referred to by the Applicants were favourable to regularising the status of their colleagues who were, according to them, in the same situation as them, it is not in contention that the said Court, by Judgment No 186 of 7 April 2016, had already reversed its case law on the grounds that “it is a general principle of civil service law that a civil servant may not avail himself of a right unlawfully obtained by another; that the person who claims to have a right is obliged to prove it”.

22 *Kijiji Isiaga v United Republic of Tanzania* (Judgment of 21 March 2018) (merits) 2 AfCLR 218 § 85.

23 *Zongo and Others v Burkina Faso* (Judgment of 28 March 2014) (merits) 1 RJCA 219.

24 *Boubacar Sissoko and 74 others*, ACtHPR, Application No 037/2017, judgment of 25 September 2020.

76. The Supreme Court also noted in the said judgment that “these applicants obtained their diplomas after the reference date and did not provide proof that they had obtained prior authorisation from their hierarchical authority to enrol in the training, as provided for in Article 125 of Law No 034-2010 of 12 July 2010 on the status of police officers”.
77. The Court observes that the Applicants are not contesting that they obtained their diplomas after the date the decree of 6 February 2006 was signed and also that they did not obtain prior authorisation from their superiors. It is on this ground, as it did in Judgment No 186 of 7 April 2006, that the Supreme Court dismissed the Applicants’ request for regularisation after considering their submissions.
78. The Court considers that since the Supreme Court had a different interpretation of the applicable law, without any other considerations, and did explain this, it was perfectly within its powers to develop the jurisprudence. In so doing, the Court does not consider that the Applicants were treated unfairly or that they were discriminated against in the proceedings before the Supreme Court.
79. Accordingly, the Court dismisses the allegation that the Respondent State violated the right to equality before the law and non-discrimination before the Supreme Court provided for under Article 3(1) of the Charter and Article 26 of the ICCPR.

C. Alleged violation of the right to equal access to the public service

80. The Applicants allege that Article 125 of the Law of 12 July 2010 unreasonably restricts the right to equal access to the public service protected by Article 25(c) of the ICCPR.
81. The Respondent State recalls that Article 70 of its Constitution provides that: “the law shall establish the rules pertaining to civil rights and the fundamental guarantees granted to citizens for the exercise of public freedoms...; the general status of civil servants; the general status of the personnel of the armed and security forces”.
82. It further contends that the above-mentioned legal provisions come with a set of regulations that set out the modalities of implementation. The public servant, irrespective of the body he belongs to, is therefore in a legal and regulatory situation and no derogation can be granted outside the above-mentioned framework, without committing an illegality.

83. The Court recalls that Article 13(2) of the Charter provides that “[e]very citizen shall have the right of equal access to the public service in their country.
84. Article 25(c) of the ICCPR, which is more detailed, provides that “[e]very citizen shall have the right and the opportunity, without any of the distinctions mentioned in article 2 and without unreasonable restrictions ... c) to have access, on general terms of equality, to public service in his country”.
85. The Court recalls that Article 2 of the ICCPR provides that
Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.
86. Article 13(2) of the Charter will be interpreted in the light of Articles 25(c) and 2 of the ICCPR.
87. The Court notes that in order to guarantee access to public office under general conditions of equality, the criteria and procedures for appointment, promotion, suspension and dismissal must be objective and reasonable.
88. The Court is also of the view that it is particularly important to ensure that there is no discrimination against such persons in the exercise of their rights under Article 25(c) on any of the grounds referred to in Article 2.
89. The Court observes, in the instant case, that Article 125 of the Law of 12 July 2010 does not contain any ground of discrimination as provided under Article 2.
90. However, it is for the Court to assess whether the requirement to obtain authorisation from the hierarchical superior in order to access training for promotion is an unreasonable restriction within the meaning of Article 25(c) of the ICCPR.
91. The Court notes in this respect that Article 125 of the Law of 12 July 2010 provides that a police officer who has obtained the diploma attesting to new training shall join a higher category after his or her training at the Police Academy.
92. The Court observes that the “automatism” of Article 125 does not prevent the administration from ensuring that the police officer has the skills required to take up the post envisaged after the training.

93. The Court considers that, given this understandable concern for competence, which is a general requirement of public and private administrations, it is therefore reasonable for the hierarchical superior to give his or her opinion. This opinion, moreover, is not discretionary since it is based on a known objective assessment, in this case the official's report. The aforementioned staff report is forwarded by the hierarchical superior to the Minister for Security for verification of the relevant provisions.²⁵ Moreover, an officer who feels aggrieved by the report may contest it.²⁶
94. The Court thus notes that the requirement to obtain prior authorisation in order to enter the National Police College to undergo training as a trainee commissioner or trainee inspector, which allows access to a higher post, does not constitute an unreasonable restriction.
95. The Court finds that the Respondent State did not violate the Applicants' right to equal access to the public service protected by Article 13(2) of the Charter as read together with Article 25(c) of the ICCPR read together.

D. Alleged violation of the right to education

96. The Applicants argue that the right to education enshrined in Article 17(1) of the Charter and Article 13(1)(c) of the ICESCR is an unconditional right for every individual who aspires to gain knowledge, with a view to a better and brighter future.
97. They submit that Article 125 of the Act of 12 July 2010 violates the right to education because it requires prior authorisation of the hierarchical superior before starting training for promotion to a higher category in the national police force, failing which, the administration would not recognise the diploma obtained.
98. The Respondent State points out that the Law of 12 July 2010 merely lays down the rules applicable to serving police officers who wish to undertake training for the purpose of changing category.
99. It further submits that it is up to the Respondent State to define the modalities for implementing the purported training by spelling out the requirements, without this being in contradiction with

25 The Law of 12 July 2010, Article 109: "the ratings are, prior to notification to the National Police officers concerned, submitted for weighting to the Minister in charge of Security...the weighting consists of verifying compliance with the provisions of Article 108 above"

26 *Idem*, Article 34 "When a National Police officer considers that his rights have been violated, he shall have access to administrative and legal remedies".

its international commitments. Consequently, the Court should dismiss the Applicants' case.

- 100.** The Court notes that the Applicants' allegation does not fall under Article 17(1) of the Charter which provides that "[e]very individual shall have the right to education " but rather under Article 13(2) (c) of the ICESCR which provides that " Higher education shall be made equally accessible to all, on the basis of capacity, by every appropriate means, and in particular by the progressive introduction of free education".
- 101.** The Court notes that access to higher education as guaranteed by Article 13(2)(c) of the ICESCR must be without discrimination and based on ability.
- 102.** The Court notes in this regard that the United Nations Educational, Scientific and Cultural Organization's Convention against Discrimination in Education²⁷ (hereinafter referred to as the "UNESCO Convention"), provides in Article 1 that:
For the purposes of this Convention, the term 'discrimination' includes any distinction, exclusion, limitation or preference which, being based on race, colour, sex, language, religion, political or other opinion, national or social origin, economic condition or birth, has the purpose or effect of nullifying or impairing equality of treatment in education and in particular:
 - a. Of depriving any person or group of persons of access to education of any type or at any level;
 - b. Of limiting any person or group of persons to education of an inferior standard.
- 103.** In view of the above provisions, the Court notes that the requirement to obtain prior authorisation in order to upgrade a diploma to a higher category does not constitute a discriminatory act within the meaning of Article 1 of the UNESCO Convention insofar as it is a legal provision applicable to all police officers and there is nothing to indicate that this provision violates the right to education.
- 104.** Furthermore, with regard to the condition relating to the citizen's ability, the Court observes that with regard to access to higher

27 It was ratified by the Republic of Mali on 7 December 2007.

education, Article 125 of the Law of 12 July 2010 takes into account the officer's length of service and rating, which is perfectly compatible with the provisions of Article 13(2)(c) of the ICESCR.

- 105.** The Court finds that by virtue of Article 125 of the Law of 12 July 2010, the Respondent State has not violated the Applicants' right of access to higher education.

E. Alleged violation of the right to be upgraded to a higher category

- 106.** The Applicants assert that the right to be upgraded to a higher category is accorded to every individual without any consideration with exception to, the length of service and aptitude in accordance with Article 7(c) of the ICESCR.

- 107.** They emphasise that by making any training for reclassification subject to prior authorisation by the hierarchical authority under the terms of Article 125 of the Law of 12 July 2010, the Respondent State violated this right under Article 7(c) of the ICESCR.

- 108.** In response, the Respondent State submits that Article 125 does not contradict the provisions of the ICESCR insofar as it only aims to ensure the well-functioning and continuity of the National Police Service while guaranteeing officers the right to training and personal development without discrimination.

- 109.** The Court recalls that Article 7(c) of the ICESCR provides that:

The States Parties to the present Covenant recognize the right of everyone to the enjoyment of just and favourable conditions of work which ensure, in particular [...] equal opportunity for everyone to be promoted in his employment to an appropriate higher level, subject to no considerations other than those of seniority and competence.

- 110.** The Court notes that in this context, the UN Committee on Economic, Social and Cultural Rights has stated that:

All workers have the right to equal opportunity for promotion through fair, merit-based and transparent processes that respect human rights. The applicable criteria of seniority and competence should also include an assessment of individual circumstances, as well as the

different roles and experiences of men and women, in order to ensure equal opportunities for all.²⁸

111. The Court also notes that while Article 7(c) of the ICESCR sets out in general terms the requirements of seniority and competence, it is for each State to define the modalities of application in accordance with international law.
112. The Court observes, in the instant case, with reference to Article 125²⁹ of Law No 10-034 of 12 July 2010, that the criteria for promoting the Respondent State's police officers are length of service and competence through training, without any other consideration, in accordance with Article 7 of the ICESCR.
113. It notes that the opinion of the hierarchical authority is a means by which it assesses competence and that does not have any discretionary power in the matter, insofar as it must rely on the official's staff report to verify his or her suitability for training in the speciality of the body to which he or she is considering joining.
114. The Court finds that the Respondent State did not violate the Applicants' right to be upgraded to a higher category protected by Article 7(c) of the ICESCR.

VIII. Reparations

115. The Applicants pray the Court, in accordance with Article 27(1) of the Protocol and Article 34(5) of the Rules, to order the Respondent State to promote them and reclassify them to the rank of Divisional Commissioner, and to order the Respondent State to pay each of them the sum of:
 - i. Eight Million Eight Hundred Thousand (8,800,000) CFA francs as salary arrears corresponding to the rank claimed, starting from the signing of the appointment order of 10 July 2008;
 - ii. One hundred million (100 000 000) CFA francs for harm suffered as a result of the violations of rights proven;
116. They also pray the Court to order the Respondent State to amend the Law of 12 July 2010 and bring it in compliance with the relevant provisions of the Charter and the ICESCR.

28 General Comment No 23, Committee on Economic, Social and Cultural Rights 2016, § 31.

29 *Idem*. Note 5.

- 117.** The Respondent State prays the Court to dismiss the Applicants' prayers for reparation insofar as it did not commit any violation.

- 118.** Article 27(1) of the Protocol reads as follows:

If the Court finds that there has been a violation of a human right, it shall make appropriate orders to remedy the violation, including the payment of fair compensation or reparation.

- 119.** The Court notes that in the instant case no violation of the Applicants' rights has been found, consequently there are no grounds for ordering reparations.

- 120.** The Court therefore dismisses the Applicants' prayers for reparations.

IX. Costs

- 121.** The Applicants pray the Court to order that Respondent State to pay costs.

- 122.** The Respondent State prays the Court to order the Applicants to pay costs.

- 123.** According to Rule 32(2) of the Rules, "Unless otherwise decided by the Court, each party shall bear its own costs, if any".

- 124.** In the light of the above provision, the Court decides that each Party shall bear its own costs.

X. Operative part

- 125.** For these reasons,

The Court

Unanimously,

On jurisdiction

- i. *Declares* that it has jurisdiction.

On admissibility

- ii. *Declares* that the Application is admissible.

On merits

- iii. *Finds* that the Respondent State did not violate the Applicants' rights to equality before the law and non-discrimination, protected by Article 3(1) of the Charter as read together with Article 26 of the ICCPR;
- iv. *Finds* that the Respondent State did not violate the Applicants' right not to be discriminated against protected by Article 26 of the International Covenant on Economic, Social and Cultural Rights as read together with Article 2 of the Charter;
- v. *Finds* that the Respondent State did not violate the Applicants' right to equal access to the public service protected by Article 13(2) of the Charter as read together with Article 25(c) of the International Covenant on Civil and Political Rights;
- vi. *Finds* that the Respondent State did not violate the Applicants' right of access to higher education, protected by Article 13(2)(c) of the International Covenant on Economic, Social and Cultural Rights;
- vii. *Finds* that the Respondent State did not violate the Applicants' right to be upgraded to a higher category based only on length of service and competence, protected by Article 7(c) the International Covenant on Economic, Social and Cultural Rights;

On reparations

- viii. Dismisses the Applicants' prayers for reparations.

On costs

- ix. Decides that each Party should bear its own costs.