COMMUNITY COURT OF JUSTICE,
ECOWAS

COUR DE JUSTICE DE LA COMMUNATE,
CEDEAO

UBUNAL DE JUSTICA DA COMMUNIDADE,
CEDEAO

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

HOLDEN AT ABUJA, IN NIGERIA

On Wednesday, the 3rd day of July 2013

In the case

Between

1. Assima Kokou Innocent, Azanlekpo Dossey K. Narcisse

2. Da-Silveira Hertnes and 5 Others APPLICANTS

Assisted by: Maitre Ajavon Ata Messan Zeus, Lawyer registered with the Bar Association of Togo

And

Republic of Togo DEFENDANT

Counsel for Republic of Togo: Maitre Ohini Kwao Sanvee, Gabriel Archange Dossou, Edah N'Djelle

General List No. ECW/CCJ/APP/20/11

General List No. ECW/CCJ/APP/24/11

Judgment No. ECW/CCJ/APP/08/11

Wednesday, 8 July 2013

Before their Lordships

Hon. Justice Awa Nana Daboya — Presiding

Hon. Justice Hansine N. Donli — Member

Hon. Justice Clotilde Medegan Nougbode — Member

Assisted by Maitre Athanase Atannon — Registrar

PROCEDItRE

1. By various Applications all dated 22 July 2011 and lodged at the Registry of the Court on 8 August 2011, Messrs. Hermes Da-Silveira, Kodzo Tunu Kpakpo, Kossi Dovi Tudzi, Komi Adjete Djifa Akakpo, Kodzo Zuzuwe Foly and Yaovi Mawulikplimi, on one hand, and Messrs. Innocent Kakou Assima and Narcisse Dosseh Kpanou Azanleko, on the other hand, brought their case before the Court, for the purposes of asking the Court to find: in terms of the claims of the first set of Applicants, that the Republic of Togo violated Articles 4, 5, 7(1)-d and 16(2) of the African Charter on Human and Peoples' Rights, Articles 7, 9(3) and 14(c) of the International Covenant on Civil and Political rights, Article 5 of the Universal Declaration of Human Rights, and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; and in terms of the claims of the second set of Applicants, that -the Republic of Togo violated Articles 4, 5 and 6 *in fine* of the African Charter on Human and Peoples' Rights, Articles 7, 9(1) and 10(1) of the International Covenant on Civil and Political Rights, Articles 5 and 9 of the Universal Declaration of Human Rights, and the Convention against Torture and Other Cruel, lnhuman or Degrading Treatment or Punishment.

2. The Republic of Togo lodged at the Registry of the Court, on 3 August 2011, its Memorial in Defence to each of the two cases.

3. The Court duly proceeded to serve the written pleadings on each of the Parties.

4. The Court heard the Parties at the hearing of 30 October 2012, in the course of which the proceedings were joined by the Court. The Court equally heard the Parties on 11 December 2012 and 18 April 2013.

AS TO FACTS

The facts as narrated by Hermes Da-SilveiraJ Kodzo Tunu Kpakpo, Kossi Dovi Tudzi, Komi Adjete Djifa Akakpo, Kodzo Zuzuwe Foly and Yaovi Mawulipklimi

5. The Applicants averred that armed gendarmes entered Mr. Kossi Dovi Tudzi's home at night, on the grounds that they were in search of arms he had allegedly hidden. That he was coerced into admitting the allegation. That after a fruitless search in his bedroom, in the presence of his wife, they handcuffed him and took him to their car. That he was later on taken to his village, Agome-Kossountou, 3 kilometres from Kpalime.

6. That when they arrived at the said village, the gendarmes conducted searches in his house, which once again yielded nothing. He was then taken that same night to the Intelligence Processing Centre {CTR), now the National Intelligence Agency (ANR), where he was put in a cell.

7. When the day broke, he was brought into the company of five (5) persons among whom he recognised only Mr. Da-Silveira Hermes. They were both interrogated, given slaps in the course of the interrogation, and taken away into a cell. They alleged that they slept on bare cemented floor, without mats; that they were sometimes deprived of food, and that every morning they were flogged. For ten (10) days, they were denied visits from their families.

8. Together with another civilian Merrs. Tudzi Kossi, Dovi and Da-Silveira Hermes were taken to the SRI gendarme camp where they spent four days in cell, where they were coerced to sign a statement without being given the opportunity to know the content of that document.

9. They contended further that they were transferred to the civilian prison of Lome on 27 July 2005 for attempted violation of State security. Further, that as a result of the ill treatments they went through, they all fell sick and that the prison authorities refused to authorise the medical evacuation of Mr. Tudzi Kossi Dovi, whereas the nurse had recommended such a measure, due to the fact that he had an ailment which affected his prostate.

10. In the case of Mr. Komi Adjete Djifa Akakpo, the Applicants alleged that Corporal Amepe had arranged to meet him in a bar, but to his surprise, he saw Officer Pali appear on the scene with other operatives of the Security Forces; and that after questioning him, they handcuffed him. That he was taken away to the CTR, where he was tortured and coerced, under the watch of Agents Pali and Abina, to make certain statements

which were filmed by a cameraman. That he remained at the CTR for thirteen (13) days and that the handcuffs were removed only when he went to the toilet or took his bath, as it pleased Officer Pali. They further pleaded that on 27 July 2005, Mr. Komi Adjete Djifa Akakpo was sent back to the civilian prison of Lome and that despite the deterioration in his state of health, the prison authorities refused to have him medically examined at the University Hospital, on the grounds that Mr. Da-Silveira Hermes, a co-accused, had bolted during his hospitalisation period at the same University Hospital.

11. The Applicants affirmed that Messrs. Kpakpo Kodzo Tunu, Kodzo Zuzuwe and Ametepe Yaovi Maw,ulikplimi went through the same unfortunate treatment at the hands of Messrs. Nabiou, Yark and Massina, who are agents of the Security Forces. They averred that after spending more than five months, first at the CTR, and subsequently at the RIT, regardless of the seriousness of their condition of health, they were transferred to the civilian prison of Lome on 12 December 2005.

The facts, as narrated by Innocent Kokou Assima and Narcisse Dosseh Kpanou Azanleko

12. The Applicants avert that in the night of 1 July 2010,they were arrested and detained, and handcuffed for five (5) days at the National Gendarmerie of Lome, within the premises of the SRI. They affirmed that they were interrogated on their involvement in a drivers' public demonstration against increased fuel prices, and were accused of forming part of those who mounted road blocks and barricaded streets.

13. They further contended that after five (5) days, they were taken to the ANR, where they were interrogated several times on a group they were alleged to be forming, journeys undertaken to Ghana and Gabon, anon their relations with certain Togolese politicians widely known to be opponents of the regime in place.

14. They alleged that they were subjected to cruel, inhuman and degrading treatment. Mr. Innocent Kokou Assima alleged that he was tied against a bed for ninety four (94) hours, and was allowed to go to toilet and take his bath only once in a day; that he stayed on the ANR premises for one hundred and forty (104) days in only one pair of shorts, and that the food took was poor in quality.

15. They affirmed that the ill treatments they received led to a deterioration in the health of Mr. Narcisse Dosseh Kpanou Azanleko, who, after a second visit to the SRI, was sent to the civilian prison of Lome.

The facts, as narrated by the Republic of Togo

16. In relation to the facts as narrated by Hermes Da-Silveira, Kodzo Tunu Kpakpo, Kossi Dovi Tudzi, Komi Adjete Djifa Akakpo, Kodzo Zuzuwe Foly and Yaovi Mawulikplimi, the Republic of Togo pleaded that the Applicants are being investigated for attempted violation of internal State security and for complicity in attempted violation of the internal security of the Republic of Togo, relating to incidents which date back to 2005.

17. The Defendant State con ended that, from the information availed the , Trial Chamber I of the Court of First Instance of Lome, Mr. Da-Silveira approached a Togolese Catholic priest for financial assistance to overthrow the regime in place; that he recruited the other Applicants, who are military men in the Togolese Army, in addition to other youths, and trained them in the use of arms.

18. The Republic of Togo further claimed that the said priest who was heard by Trial Chamber I referred to above, acknowledged having given the sum of Ninety Seven Million CFA Franc(CFA 97,000,000) to Mr. Da-Silveira, but denied giving his backing to any attempt to overthrow the regime. The priest stated that the money was meant for assisting Togolese refugees.

19. The Republic of Togo affirmed that the documents found at the home of the priest do attest to the hypothesis of a coup plot, and that when confronted on the issue, Mr. Da Silveira Hermes maintained his version, according to which the incident in question was a case of mutiny. The Republic of Togo asserted that the Applicants Kpakpo, Akakpo, Tudzi, Folly and Ametepe were temporarily released on 12 March 2012 and that Mr. Da-Silveira, conscious of the seriousness of the case at hand, escaped from the detainee health unit at the Centre Hospitalier Universitaire (University Teaching Hospital) of Lome.

20. Vis-a-vis the .facts narrated by the Applicants Innocent Kakou Assima and Narcisse Dosseh Kpanou Azanleko, the Republic of Togo averred

that within this period from March to July 2010, the Togolese intelligence services got wind of the subversive activities of a group of Togolese citizens resident on Ghanaian and Togolese territory, which indicated that they were preparing to engage in violent acts aimed at breaching the internal security of the Republic of Togo. He declared that investigations led to the arrest of the Applicants on 1 July 2010 and that a third accomplice managed to escape. The Republic of Togo further averred that the trial of the case was handed over to Trial Chamber 3 of the *parquet d'instance* of the Court of First Instance of Lome; that the said trial is still going on, and that since 12 March 2012, the Applicants have been released on temporary basis.

ORDERS AND REQUESTS SOUGHT FROM THE COURT

Orders and request; sought by Messrs. Hermes Da-Silveira, Kodzo'runu Kpakpo, Kossi Dovi Tudzi, Komi Adjete Djifa Akakpo, Kodzo Zuzuwe Foly and Yaovi Mawulipklimi

21. The Applicants requested the Court to:

- Ask the Republic of Togo to ensure that all the declarations obtained through torture are set aside as evidence, in acco1dance with the the terms of article 15 of the 10 December 1984 Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment;

- Order the temporary release of the Applicants who are still in detention at the civilian prison of Lome, in accordance with the provisions of Articles 115 and 116 of the 2 March 1983 Togo Code of Criminal Procedure, Articles 9(3) and (4) of the 16 December 1966 International Covenant on Civil and Political Rights, and Principle 38 of the 19 December 1988 Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.

22. Alternatively, they requested the Court to:

- Order the Republic of Togo to grant the Applicants their right to exercise of fair trial in accordance with the terms of Article 19 of the 14 October 1992 Constitution of Togo, Article 7 of the 27 June 1981 African Charter on Human and Peoples' Rights, Article 10 of the 10

- … December 1948 Universal Declaration of Human Rights, and Article 14 of the 16 December 1966 International Covenant on Civil and Political Rights;

- Order that the said right be effectively exercised within the shortest possible time in line with the terms Article 19 of the Constitution of Togo, Article 7(1)-d of the 27 June 1981 African Charter on Human and Peoples' Rights, Articles 9(3) and 14(3) of the 16 December 1966 International Covenant on Civil and Political Rights, and Principle 38 of the 19 December 1988 Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment;

- Ask the Republic of Togo to take measures towards et.1suring the Protection of the Applicants against all forms of ill treatment, in accordance with the terms of Article 13 of the 10 December 1984 Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment;

- Ask the Republic of Togo to pay to each of the Applicants such sums as the Court may deem sufficient, as damages (CFA F 20,000,000- these requests were made upon the instructions of the Court), in accordance with the .terms of Article 14 of the 10 December 1984 Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Article 9(5) of the 16 December 1966 International Covenant on Civil and Political Rights, Principle 35 of the 19 December 1988 Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment

Orders and requests sought by Messrs. Innocent Kakou Assima and Narcisse Dosseh Kpanou Azanleko

23. The Applicants requested the Court to:

- Order the Republic of Togo to conduct an investigation into the matter, so as to arrest those guilty of the criminal acts, in accordance with the terms of Article 12 of the 10 December 1984 Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment;

- Ask the Republic of Togo to pay to each of the Applicants such sums as the Court may deem sufficient, as damages (CFA F 20,000,000-

these requests were made upon the instructions of the Court), in accordance with the terms of Article 14 of the of the 10 December 1984 Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Article 9(5) of the 16 December 1966 International Covenant on Civil and Political Rights, Principle 35 of the 19 December 1988 Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment

Orders and requests sought by the Republic of Togo

24. In regard to the claims brought by Messrs. Hermes Da-Silveira, Kodzo Tunu Kpakpo, Kossi Dovi Tudzi, Komi Adjete Djifa Akakpo, Kodzo Zuzuwe Foly and Yaovi Mawulipklimi, the Republic of Togo contends that it has taken measures towards addressing the violent incidents which rocked Togo in the aftermath - of the presidential election of 24 April 2005. Notably, the Republic of Togo avers that the socio-political actors signed a general political agreement on 20 August 2006 which advocated the setting up of a Truth, Justice and Reconciliation Commission (CVJR).

25. Following that agreement, the President of the Republic of Togo, by Decree No. 046/PR of 25 February 2009, created the said Commission, which was given the mandate to:

- Determine the extent and consequences of incidents of human rights violation which rocked the very foundation of the country;
- Conduct in-depth investigations into the incidents by contacting persons, institutions, administrative bodies, political, religious and traditional authorities, and the civil society;
- Set up inquiries aimed at accounting for the victims of the violent incidents and their heirs.

26. The Republic of Togo affirms that by acting in line with the mandate conferred on it, the Commission conducted inquiries and investigations in all the *préfectures* (local government administrative units) covering the period .from 1958 to 2005. Upon completion of its assignment, the Commission submitted its report, with recommendations.

27. The Republic of Togo thus maintains that since the inquiries relating to the incriminating charges have already been carried out within the

framework of the Truth, Justice and Reco11ciliation Commission (CVJR), the recommendations which propose that the victims should be compensated will soon be implemented.

28. The Republic of Togo therefore requests the Court to find that inquiries have already been conducted on the criminal charges brought, and to declare in favour of the Republic of Togo, that it will soon give effect to the reparation of the harms done.

29. Finally, with respect to all the Applicants, the Republic of Togo asks the Court to adjudge and declare that the applications for compensation have no basis, to dismiss the requests brought by Applicants in all their intents and purposes, and to ask the Applicants: to pay the costs.

LEGAL ISSUES

Jurisdiction of the Court and admissibility of the applications

30. The Republic of Togo neither contests the jurisdiction of the Court over the matter in issue nor the admissibility of the applications filed. The Court shall ensure nevertheless that in all the cases brought before it, it has jurisdiction to adjudicate over th-e matter and that the application is admissible.

31. In the instant case, the Applicants allege human rights violation pursuant to the African Charter on Human and Peoples' Rights, the International Covenant on Civil and Political Rights, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, instruments ratified by the Republic of Togo. The Court adjudges. that, following its consistently held case law, it has jurisdiction to adjudicate in a case once the subject-matter of the application is on allegations of human rights violations which occurred in a Member State of ECOWAS.

32. Moreover, the Applicants are the persons who declare. having suffered the allegations they brought forth. They therefore assume the status of victims. Besides, since the Application is not anonymous and has not been filed before another competent International Court, the criteria for admissibility as provided for by Article 10(d) of the new Protocol on the Court as amended by the 19 January 2005 Supplementary Protocol, are

satisfied. The Court therefore adjudges that the requests brought are admissible.

A- Arbitrary arrest and detention

Arguments advanced by Innocent Kakou Assima and Narcisse Dosseh Kpanou Azanleko

33. Messrs. Innocent Kakou Assima and Narcisse Dosseh Kpanou Azanleko contend that they were detained for five (5) days at the National Gendarmerie for more than one hundred and four (104) days, on the premises of National Intelligence Agency (ANR), in serious and manifest violation of Article 52 of the Code of Criminal Procedure of Togo.

34, They maintain that the measures of detention were arbitrary and violate Article 6 *in fine* of the African Charter on Human and Peoples' Rights, Article 9 of the Universal Declaration of Human Rights and Article 9(1) of the International Covenant on Civil and Political Rights.

Arguments advanced by the Republic of Togo

35. The Republic of Togo counter? that assertion by stating that in the terms of Article 9 of the International Covenant on Civil and Political Rights, a measure of detention is arbitrary when it has no basis and when it is inconsistent with the procedure provided by law.

36. The Defendant State observes that in the instant case, the Applicants are in the grips of the law for acts dating back to the period from March to July 2010, which may be described as acts amounting to criminal association and attempted violation of State security. The Republic of Togo contends further that the case is pending before Trial Chamber 3 of the Court of First Instance of Lome, and that as things stand, the Applicants have acknowledged having committed the offences in question. The Republic of Togo maintains that the Applicants were arrested and detained in accordance with the procedure in force. It pleads further that since 12 March 2012, the Applicants have been granted provisional release by the Investigating Judge, in line with the law.

37. The Republic of Togo therefore concludes that it is erroneous for the Applicants to talk of arbitrary detention, and asks the Court to dismiss their requests, intents and orders sought.

Analysis of the Court

38. Article 6 *in fine* of the African Charter on Human and Peoples' Rights provides:"... ***no one may be arbitrarily arrested or detained."***

39. Article 9 of the Universal Declaration of Human Rights provides: ***"No one shall be subjected*** **to** ***arbitrary arrest, detention or exile."***

40. Article 9(1) of the International Covenant on Civil and Political Rights provides: ***"Everyone has the right to liberty and security of person. No one shall be subjected*** **to** ***arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law."***

41. The combination of these provisions prohibit all forms of arbitrary arrest, detention and exile; the same provisions equally prohibit denial of liberty except on grounds provided by law.

42.The Court notes that the Applicants Innocent Kakou Assima and Narcisse Dosseh Kpanou Azanleko were arrested and charged with the offences of criminal association and attempted violation of State security, and that they were detained for five (5) days at the National Gendarmerie and more than one hundred and four (104) days on the premises of the National Intelligence Agency (ANR).

43. Act No. 80-1 of 13 August 1980 which put in place the criminal code applicable to Togo provides in its Article 9:

"... Crimes and less serious offences are categorised as follows, as to whether they violate: (1) individuals (2) families (3) moral values (4) properties (5) State authority (6) public peace (7) the national treasury, the public domain or the national economy (8) State security."

44. Chapter VIII of the said Act spells out offences against State security and prescribes the applicable punishments and sanctions.

45. Act No. 83-1, which put in place the Criminal Code of Togo, provides in Article 52:

"If, for the necessities of an inquiry, the criminal investigations officer is compelled to hold in custody a person against whom serious and consistent points of proof have been found, of such nature as to warrant his accusation, ***such a person shall not be held for more than 48 hours.***

The time period provided in the paragraph above may be extended by another time-limit of 48 hours upon the authorisation of the Public Prosecutor or the judge in charge of the ministère public.

Where the facts in question are particularly serious and complex, the time-limits provided in the paragraphs above ***may be extended by 8 days upon the written authorisation of the Public Prosecutor or the judge in charge of the ministère public."***

46. In the light of the foregoing, the Court is of the view that the arrest of the Applicants Innocent Kokou Assima and Narcisse Dosseh Kpanou Azanleko, which measure was taken within the framework of a judicial procedure on grounds of offences provided for and punished by the Criminal Code of Togo, is not arbitrary.

47. Conversely, the Court notes, in respect of the detention of the Applicants Innocent Kokou Assima and Narcisse Dosseh Kpanou Azanleko, that the time-limit provided by the Code of Criminal Procedure of Togo in its Article 52, as eked above, is two (2) days, and that such time-limit may be extended only upon the authorisation of the Public Prosecutor or the judge in charge of the *ministère public* (public prosecution), for a further two (2) or eight (8) days where the facts are particularly serious and complex.

48. The Defendant State does not contest the time-periods of detention as alleged by the Applicants, as having taken place within the premises of National Gendarmerie and of the ANR, totalling one hundred and nine (109) days. The Defendant State does not also demonstrate that the further time-period during which the Applicants continued to be held in custody was authorised by a competent judicial authority. Whatever the case may be, even if the extension in holding them in custody was duly authorised, the detention shall not exceed eight (8) more days, i.e. a total of twelve (12) days.

49. In such conditions, the Court deduces that holding-the Applicants in custody, at the mercy of the Criminal Investigations Department, in excess of the two (2) days provided for by the Code of Criminal Procedure, without a judicial decision authorising so, is arbitrary and abusive, in the instant case.

50. The Court adjudges therefore that the Republic of Togo violated Article 6 *in fine* of the African Charter on Human and Peoples' Rights.

B- Torture

Arguments advanced by Hermes Da-Silveira, Kodzo Tunu Kpakpo, Kossi Dovi Tudzi, Komi Adjete Djifa Akakpo, Kodzo Zuzuwe Foly and Yaovi Mawulikplimi, and Innocent Kakou Assima and Narcisse Dosseh kpanou Azanleko

51. Hermes Da-Silveira, Kodzo Tunu Kpakpo, Kossi Dovi Tudzi, Komi Adjete Djifa Akakpo, Kodzo Zuzuwe Foly and Yaovi Mawulikplimi argue that at the Intelligence Processing Centre (CTR), currently National Intelligence Agency (ANR), and at the National Gendarmerie (SRI) and RIT, they were subjected to daily beatings, constant slaps and morning floggings. They claimed that they were forced to sleep on bare cem .e11ted floor, without m-a that they were made to wear their handcuffs for several consecutive days, without virtua lly having to remove them; that they were incarcerated in spite of their precarious health condition, and that the prison authorities denied them appropriate healthcare.

52. They maintain that such treatments violate their dignity and their physical and mental health; that when considered together with the refusal by the prison authorities to offer healthcare to the Applicants Yaovi Mawulikplimi Ametepe, Kodzo Zuzuwe Foly and Tunu Kodzo Kpakpo, those acts constitute acts of torture, and that the said maltreatments are still going on.

53. On their part, Innocent Kokou Assima and Narcisse Dosseh Kpanou Azanleko contend that by the acts of its officers, the Republic of Togo inflicted "atrocious suffering" on them. In particular, they allege that they were tied to a bed for ninety-four (94) hours, denied the right to receive visits, and were allowed to go to toilet and take their bath only once a day.

54": In the light of such circumstances, the Applicants affirm that the Republic of Togo violated Articles 4 and 5 of the African Charter on Human and Peoples' Rights, Article 5 of the Universal Declaration of Human Rights, Articles 7 and 10(1) of the International Covenant on Civil and Political Rights, Point 1 of the 10 December 1990 Basic Principles for the Treatment of Prisoners, and the Principles 1 and 6 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment. They notably argue that the Republic of Togo violated the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

Arguments advanced by the Republic of Togo

55. Against the allegations of torture made by the Applicants, the Republic of Togo argues that in order to stamp out acts of torture, the Republic of Togo must necessarily be informed of their origin; that that was the reason why Article 13 of the Convention against Torture provides that any person who considers himself a victim of torture must file a complaint before the competent authorities. It alleges that in violation of Article 33 of the Rules of Procedure of the Court, no evidence was provided by the Applicants to that effect. No.tgp.ly, the Republic of Togo contends that the Applicants, who claimed that their state of health got worsened as a result of the torture inflicted on them, should at least, have supported their averments with medical reports from a competent, objective and impartial doctor. It maintains that in such circumstances, the Court cannot adjudge that the acts of torture are proven.

Analysis of the Court

56. In the terms of Article 4 of the African Charter on Human and Peoples' Rights: ***"Human beings are inviolable. Every human being shall be entitled to respect for his life and the integrity of his person. No one maybe arbitrarily deprived of this right."***

57. Equally, Article 5 provides: ***"Every individual shall have the right to the respect of the dignity inherent in a human being and to the recognition of his legal status. All forms of exploitation and degradation of man, particularly slavery, slave trade, torture, cruel, inhuman or degrading punishment and treatment shall be prohibited."***

58. Article 10(1) of the International Covenant on Civil and Political Rights provides: *"All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person."*

59. The Court insists on the fact that before it concludes on the issue of occurrence of human rights violation, the concrete proof of the facts upon which the Applicants base their claims must be established with a high degree of certainty, or at least, there must be a high possibility of the claims appearing to be true, upon scrutiny. In this regard, mere allegations do not suffice to elicit the conviction of the Court. Nevertheless, as regards the allegations of torture levelled against the authorities responsible for investigation and the prison administration, the Court considers whether real opportunities existed for the Applicants to obtain proofs of evidence. Finding themselves in a vulnerable situation, it can reasonably be presumed that real difficulties existed for the Applicants to gather evidence on the appalling acts they were subjected to, such that the burden of proof shall be shifted to the Republic of Togo, to prove that there were no acts of torture or acts similar to torture.

60. It is incontrovertible that items of Article 13 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment: *"Each State Party shall ensure in its legal system that any individual who alleges he has been subjected to torture in any territory under its jurisdiction has the right to complain to, and to have his case promptly and impartially examined by, its competent authorities. Steps shall be taken to ensure that the complainant and witnesses are protected against all ill-treatment or intimidation as a consequence of his complaint or any evidence given."*

61. Besides, Article 12 of the same instrument provides: *"Each State Party shall ensure that its competent authorities proceed to a prompt and impartial investigation, wherever there is reasonable ground to believe that an act of torture has been Committed in any territory under its jurisdiction."*

In the terms of Article 15 of the same Convention: *"Each State Party shal1 ensure that any statement which is established to have been*

made as a result of torture shall not be invoked as evidenced in any proceedings, except against a person accused of torture as evidence that the statement was made."

62. In its mandate to protect human rights, the Court always endeavours to ensure that all the obligations entrusted upon the States constitute an indivisible whole. In that sense, and in the light of the above-cited Articles 12 and 13, the Court is of the view that the State authorities are first and foremost required to investigate allegations of torture any time there are reasonable grounds to believe that such acts have been committed.

63. Hence, the Court considers that the allegations brought before it by the Applicants in 2011 against the Republic of Togo do prove that there are reasonable grounds to believe that such acts were perpetrated. Consequently, the Republic of Togo is under obligation to abide by the relevant provisions of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. Therefore, the Defendant State cannot make a claim on the ground that it had not been informed .of the existence of acts of torture. Thus, if it has not initiated inquiries into the matter since the case came before the instant Court, it must take the appropriate- measures to that effect, in accordance with the Article 12 cited above.

64. Consequently, the Court adjudges that at this stage of the proceedings, the Applicants' request that the Court find that there is violation of Articles 4 and 5 of the African Charter on Human and Peoples: Rights, Article 5 of the Universal Declaration of Human Rights, Articles 7 and 10(i) of the International Covenant on Human and Peoples' Rights, in terms of the alleged acts of torture, is premature and cannot thrive as at now.

65. The Applicants equally ask to be set aside, in accordance with Article 15 of the Convention against Torture, all the declarations extracted from them under duress, to be used as evidence in the proceedings brought against them. The Court is of the view that the Republic of Togo must ensure that its courts observe the provision cited above, for the purposes of ensuring that the Applicants are guaranteed fair trial.

70. Paragraphs 1 and 2 of Article 22 of Standard Minimum Rules for the Treatment of Prisoners, adopted by the 1st United Nations Congress for the Prevention of Crime and the Treatment of Offenders, held at Geneva in 1955, and approved by the Economic and Social Council by its Resolutions 663 C (XXIV) of 31July 1957 and 2076 (LXII) of 13 May 1977, provide as follows:

"1. The following rules are not intended to describe in detail a model system of penal institutions. They seek only, on the basis of the general consensus of contemporary thought and the essential elements of the most adequate systems of today, to set out what is generally accepted as being good principle and practice in the treatment of prisoners and the management of institutions.

2. In view of the great variety of legal, social, economic and geographical conditions of the world, it is evident that not all of the rules are capable of application in all places and at all times. They should, however, serve to stimulate a constant endeavour to overcome practical difficulties in the way of their application, in the knowledge that they represent, as a whole, the minimum conditions which are accepted as suitable by the United Nations."

7.1. Paragraph 2, Article 16 of Africa Charter on Human and Peoples' Rights, whose violation is alleged, prescribes to States parties signatory to the Charter to take the necessary measures to protect the health of their people and to provide them with medical assistance in case of sickness. The Court is of the view that even if the States are given some room for maneuvers, the objective of that provision or its ultimate aim is to ensure, in accordance with paragraph 1 of the cited Article above, that everyone enjoys the best physical and mental health possible.

72. In such conditions, every Member State of ECOWAS signatory to the Charter shall particularly see to it that persons whose freedom is curtailed as well as those incarcerated are offered the best possible healthcare by adopting appropriate measures. It is apparent from the arguments by the Parties that such framework of medical care for detainees and prisoners exists in the Republic of Togo.

73. Therefore, when a detainee or prisoner complaints of violation of his right to health, as enshrined in Article 16 of the Charter, the onus is on

him to demonstrate that the prison authorities did not take the required measures, or that the measures taken did not suit the particular circumstances of the case.

74. Now, the Court notes that in the instant case, the Applicants do not cite any notable reported incident or proof in support of their complaints, which may have demonstrated either the non-existence or unsuitability of the healthcare they complained of. The Court therefore concludes that the arguments made by the Applicants in that regard have no basis. Consequently, the Court adjudges that violation of the Applicants' right to health as sanctioned by Article 16 of the said Charter, is not established.

D- Right to trial in reasonable time and time for preventive detention

Arguments advanced by Hermes Da-Silveira, Kodzo Tunu Kpakpo, Kossi Dovi Tudzi, Komi Adjete Djifa Akakpo, Kodzazuzuwe Foly and Yaovi Mawulikplimi

75. The Applicants maintain, in terms of their six-year long preventive detention, that the Republic of Togo violated Article 7(1)-d of the African Charter on Human and Peoples' Rights, Articles 9(3) and 14(3)-c of the International Covenant on Civil and Political Rights, Principle 38 of the 16 December 1988 Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, which essentially sanction the right to trial in reasonable time.

76. They plead that the European Court of Human Rights declared that the existence of serious evidence of guilt in respect of an accused person does not, alone, justify continued provisional detention (Judgments: Daugy v. France, 23 March 1999; Richard v. France, 12 October 1999). They submitted further that the persistence of plausible suspicion against a detainee does not suffice, all alone, to justify detention at the end of a certain period of time, and that the only concern to preserve public order and avoid a repetition of the offence cannot serve as a substitute (Judgment: Debboud v. France, 9 November 1999).

Arguments advanced by the Republic of Togo

77. The Republic of Togo argues that it is erroneous for the Applicants to claim violation of their right to trial in reasonable time, by virtue of the long period of their preventive detention, more so when since 12 March

82. Article 9(3) of the International Covenant on Civil and Political Rights provides: *"Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorised by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release. It shall not be the general rule that persons awaiting trial shall be detained in custody, but release may be subject to guarantees to appear for trial, at any other stage of the judicial proceedings, and, should the occasion arise, for execution of the judgment."*

83. Article 14(3)-c of the same instrument provides: *"In the determination of any criminal charge against him, everyone shall be entitled; to the following minimum guarantees, in full equality:(...) to be tried without undue delay."*

84. The combination of all these articles places an obligation on 'the Republic of Togo to respect the right of any one accused of a criminal offence, and to try him in reasonable time without undue delay; in this case, Article 9(3) states that: *"it shall not be the general rule that persons awaiting trial shall be detained in custody";* whatever the case . maybe, no one shall be unjustifiably detained for an unduly long period.

85. The Court notes that as at the time it is delivering its judgment, no decision has been made against the Applicants, who have remained under preventive detention for more than 6 years. This fact is not disputed by the Federal Republic of Togo; at any rate, the latter released the Applicants on provisional grounds on 12 March 2012, **i.e. after the Applicants had brought their case before the Honourable Court on 8 August 2011.**

86. The Court equally notes that the Republic of Togo asserts as ground for the Applicants' unduly long preventive detention period, the exceptional character of the events, without any other form of explanation or further detail, the complexity of the procedure, whereas it did not demonstrate any abuse of procedure on the part of the Applicants. The Court is of the view that such ground, as submitted in the instant case, without any concrete fact to back it up, does not suffice, and cannot

- constitute justifiable ground which could warrant the long preventive detention of the Applicants.

87. The Court observes at any rate that the time period expended on the procedure (more than 6 years), without any judicial decision having been made in the course that period, necessarily contributed to the Applicants' long preventive detention. The Court therefore concludes that the Republic of Togo violated Article 7(1)-d of the Charter, which sanctions the right of every one to be tried in reasonable time.

E- Requests for reparation

88. The Applicants substantially ask the Court to order that:

(a) they be released;
(b) the Republic of Togo try them in reasonable time;
(c) an inquiry be instituted and the architects of the alleged acts of torture be punished;
(d) each of the victims be paid 20 Million CFA Francs (CFA F 20,000,000) as damages, and that they be protected.

89. The Court finds that the Applicants have been released on provisional grounds since 12 March 2g12. The Court adjudges therefore that the request brought before the Court by the Applicants to seek provisional release has become devoid of purpose.

90. As regards the request for reparation, the Court recalls that it has already concluded that holding the Applicants beyond two (2) days is arbitrary and abusive; that the Applicants' right to be tried in reasonable time, and thus without undue delay, has been continuously violated. The Court adjudges therefore that such violations give ground for reparation as a result of the prejudices suffered. However, even if the Court considers that the application for reparation is justified in principle, it finds that the quantum of reparation applied for is exaggerated. Consequently, by virtue of its sovereign power for determining such issues, and considering equity, the Court awards to each victim the sum of Two Million CFA Francs (CFA F 2,000,000} as damages for all the harms caused. The Court equally adjudges that the Republic of Togo must cease all violations of Article 7(1)-d of the Charter by giving the

Applicants a speedy and fair trial, expeditiously, and justified by the prevailing circumstances.

91. The Court recalls, as regards the alleged charges of torture, that pursuant to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the Republic of Togo is bound to inquire into and try those responsible for the acts of torture and compensate the victims thereof. The Court therefore urges the Republic of Togo to abide by the provisions of the said instrument. Besides, since the Court cannot speculate on the outcome of the implementation of the obligations owed by the Republic of Togo towards the said Convention, it adjudges, in line with its consistently held case law, that, in the current state of the proceedings, it cannot adjudicate on the request for compensation for the harms suffered.

DECISION

FOR THESE REASONS

2. The Court, adjudicating in a public session after hearing both Parties, and after deliberation on the case:

- Adjudges that it is competent to adjudicate on the case;
- Adjudges that the Application is admissible;
- Adjudges that the Republic of Togo violated Article 6 *in fine* of the African Charter on Human and Peoples' Rights, in that the 109-period within which the Applicants Innocent Kakou Assima and Narcisse Dosseh Kpanou Azanleko were held (in custody) exceeded the 2- day period stipulated in the Criminal Code of Procedure, without any judicial decision having been made to extend the initial two-day period;

  Adjudges that the request brought asking the Court to find that there was violation of Article 5 of the said Charter, which prohibits torture and all forms of exploitation and degradation of human beings, or cruel, inhuman or degrading treatments, is premature and cannot succeed in the current circumstances of the case;

  Adjudges however, that there are reasonable grounds to believe that the Applicants were tortured;

- Adjudges that violation of the right to health is not established;
  Adjudges that there was violation of the Applicants' right to trial in reasonable time as enshrined in Article 7(d)-1 of the said Charter and Articles 9(3) and 14(3)-c of the International Covenant on Civil and Political Rights;
- Adjudges that the application for the provisional release of the Applicants is devoid of purpose;
- Adjudges that the harms suffered as a result of the proven violations do give ground for reparation.

Consequently,

- Orders the Republic of Togo to pay to each of the victims of the proven violations, the sum of Two Million CFA Francs (CFAF 2,000,000) as reparation for all the harms caused;
  Orders the Republic of Togo to abide by the relevant provisions of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, by conducting an inquiry into the allegations of torture, in offering suitable protection to the Applicants while such an inquiry is going on, and if need be, appropriate reparation;
  Adjudges that given the current circumstances, it cannot adjudicate on the application for reparation in regard to the allegations of torture;
  Orders the Republic of Togo to carry out the trial of the Applicants with all due diligence, on the criminal charges made against them, with guarantees for fair trial, in ensuring that Articles 12, 13 and 15 of the Convention Against Torture are observed;

COSTS

93. In compliance with paragraph 2, Article 66 of the Rules of Procedure, asks the Republic of Togo to bear all the costs.

Thus made, declared and pronounced in French, the language of proceedings, in a public hearing at Abuja, by the Court of Justice of the Economic Community of West African States (ECOWAS) on the day, month and year stated above.

94. And the following append their signatures:

- Hon. Justice Awa Nana Daboya — Presiding

- Hon. Justice Hansine Donli — Member

Hon. Justice Clotilde Medegan Nougbode — Member

Assisted by Maitre Athanase Atannon — Registrar