

ECW/CCJ/JUD/06/08 Hadijatou Mani Koraou v. Niger

In the Community Court of Justice of the Economic Community of West African States (ECOWAS)

Holden at Niamey, Niger

On 27 October 2008

Before their Lordships

1. Hon. Justice Aminata Mallé Sanogo - Presiding
2. Hon. Justice Awa Daboya Nana - Member
3. Hon. Justice El-Mansour Tall - Member

Assisted by Athanase Atannon Esq. - Registrar

Between

Hadijatou Mani Koraou - Applicant
(Appearing in Court)
Whose Counsel is SPCA Cha?bu-Nanzir

(A Professional Partnership of Lawyers),

A legal firm registered with the Court of Appeal of Niamey (Niger);

Assisted by Mrs. Helena Duffy, Legal Director, and by

Mr. Ibrahima Kane, Principal Legal Adviser, Inter Rights, London

And

The Republic of Niger - Defendant

Represented by Mossi Boubacar Esq. and Partners,

Lawyers registered with the Court, Niamey (Niger)

Judgment of the Court

1. The Applicant, Hadijatou Mani Koraou, is a Niger national, and a citizen of the Economic Community of West African States (ECOWAS).
2. The Applicant, present in court, is unemployed and resides at the village of Louhoudou, in the *department* (administrative division) of Konni. Her Counsel is Abdourahaman Cha?bou, of SCPA

Cha?bou-Nanzir (A Professional Partnership of Lawyers), a legal firm registered with the Court of Appeal of Niamey, in the Republic of Niger, and she is assisted by Mrs. Helena Duffy and Mr. Ibrahima Kane of Inter Rights, London.

3. The Defendant, the Republic of Niger, is a Member State of the Economic Community of West African States (ECOWAS).

4. The Defendant is represented by Mossi Boubacar Esq. and Partners, Lawyers registered with the Appeal Court of Niamey, in the Republic of Niger.

5. The Applicant brings a complaint against the Defendant for violating her fundamental human rights, asks the Court to find such violation, and to sanction the Defendant.

6. The Defendant raised a Preliminary Objection of inadmissibility of the Application.

7. The Court decided to join the Preliminary Objection to the merits, in accordance with Article 87 (5) of its Rules of Procedure.

Presentation of the Facts and Procedure

8. In 1996, aged twelve (12) years by then, the Applicant, Hadijatou Mani Koraou of Bouzou customary background was sold by the head of the Kenouar tribe, to El Hadj Souleymane Naroua of Hausa customary background, aged 46 years, for the sum of Two Hundred and Forty Thousand CFA Francs (CFA F 240,000).

9. This transaction was carried out within the context of 'wahiya', a practice obtaining in the Republic of Niger, which consists of acquiring a young girl, generally under the conditions of servitude, for her to serve both as domestic servant and concubine. A woman slave who is bought under such conditions is called a 'sadaka', or 'the fifth wife', that is to say, a woman outside those legally married (the number of which cannot exceed four (4), in accordance with the recommendations of Islam).

10. The 'sadaka' generally carries out the domestic chores and caters for the 'master'. The latter can, at any time, during the day or night, engage her in sexual relations.

11. One day, while she was working on her master's fields, he came and pounced on her and sexually abused her. This initial, forced sexual act, was imposed on her under the aforesaid condition, at a time that when she was still less 13 years old. The Applicant thus often became a victim of violent acts perpetrated by her master, in cases of presumed or real insubordination.

12. For about nine (9) years, Hadijatou Mani Koraou served in the house of El Hadj Souleymane Naroua, carrying out all sorts of domestic duties and serving as a concubine for him.

From such relations with her master, four (4) children were born, out of which two (2) survived.

13. On 18 August 2005, El Hadj Souleymane Naroua issued Hadijatou Mani Koraou with a certificate of emancipation (as a slave). This deed was signed by the beneficiary, the master, and countersigned by the chief of the village, who affixed his seal thereto.

14. Following the said deed of emancipation, the Applicant decided to leave the house of the man, who not too long before then, was her master. The latter refused to let her go, upon the grounds that she was and remained her wife. Nevertheless, upon the pretext of going to visit her sick mother, Hadijatou Mani Koraou finally left the house of El Hadj Souleymane Naroua.

15. On 14 February 2006, Hadijatou Mani Koraou brought her case before the Konni Civil and Traditional Court, to assert her desire to regain her total freedom and go and live her life elsewhere.

16. As regards the said request, the Konni Civil and Traditional Court, in its Judgment No. 06 of 20 March 2006, found "that there had never been a marriage in the proper sense of the word, between the Applicant and El Hadj Souleymane Naroua, because there had never been the payment of any dowry, or any religious celebration of marriage, and that Hadijatou Mani Koraou was free to start her life all over with any person of her own choice."

17. El Hadj Souleymane Naroua filed an appeal at the Konni High Court, against the Judgment of the Konni Civil and Traditional Court. By Ruling No. 30, delivered on 16 June 2006, the Konni High Court reversed the contested Judgment.

18. The Applicant filed before the Judicial Chamber of the Supreme Court of Niamey, an appeal for the annulment of the latest decision, by asking for "the application of the law against slavery and slavery-related practices."

19. On 28 December 2006, the Supreme Court, by Judgment No. 06/06/Cout, quashed the Konni High Court Ruling, on grounds of violation of Article 5 (4) of Law 2004 - 50 of 22 July 2004 in regard to the

Judicial Set-Up of Niger, without making any declaration on the question concerning Hadijatou Mani Koraou's status as a slave. The matter was adjourned before the same court, differently composed, for re-examination.

20. Before proceedings were brought to a conclusion, Hadijatou Mani Koraou, who had returned to her paternal home, contracted a marriage with one Ladan Rabo.

21. Having learnt of the marriage of the Applicant to Ladan Rabo, El Hadj Souleymane Naroua filed on 11 January 2007, a case of bigamy against her before the Konni Gendarmerie Squad, who took down a statement of the case and transmitted it to the State Prosecutor at Konni High Court.

22. By Judgment No. 107 of 2 May 2007, the criminal division of the Konni High Court sentenced Hadijatou Mani Koraou, her brother Koraou Mani and Ladan Rabo to six (6) months imprisonment without remission and imposed a fine of CFA F 50,000 on each of them, in compliance with Article 290

× Art. 290 : Quiconque, étant engagé dans les liens de mariage, en aura contracté un autre hors les cas prévus par la loi ou sa coutume, sera puni d'un emprisonnement de deux mois ? un an et d'une amende de 50.000 ? 500.000 francs, ou de l'une de ces deux peines seulement. L'officier public ou l'officiant qui auront sciemment pr?té leur minist?re ? ce mariage seront punis de la m?me peine

of the Penal Code of Niger, which punishes the offence of bigamy. In addition, an arrest warrant was issued against them.

23. The same day, Hadijatou Mani Koraou filed appeal against the said judgment. Despite that, on 9 May 2007, Hadijatou Mani Koraou and her brother Koraou Mani were incarcerated at the Konni Prison House, in compliance with the arrest warrant issued against them.

24. On 17 May 2007, while Hadijatou Mani Koraou was still in detention, SPCA Cha?bu-Nanzir (a Professional Partnership of Lawyers), Hadijatou Mani Koraou's Counsel, filed a case before the State Prosecutor at the Konni High Court, bringing a charge against Souleymane Naroua, for criminal offence of slavery, relying on Article 270 (2)

× Art. 270. 3 : Constitue le délit 'esclavage 2) le fait pour un maître de percevoir les fruits et les revenus résultant de la prostitution de la femme de condition servile ou du travail de toute personne de << condition servile >> ;

and (3)

× 3) l'extorsion de fonds, le chantage exercé ? l'encontre d'une personne de << condition servile >> ;

of the Penal Code of Niger as amended by Law No. 2003 - 025 of 13 June 2003. The case, which was still pending, was being examined under Number R. P. 22, R.I. 53.

25. Concurrent with these criminal proceedings, the Konni High Court, while adjudicating upon the case which was adjourned after being quashed by the Supreme Court, in Judgment No. 15 of 6 April 2007, "found in favour of Hadijatou Mani Koraou's divorce action; ... declared that she shall observe a minimum legal period of three (3) months of widowhood before any remarriage."

26. El Hadj Souleymane Naroua filed an appeal seeking the annulment of the last decision.

27. On 9 July 2007, while adjudicating on the appeal brought by Hadijatou Mani Koraou against the decision of the criminal division of the Konni High Court, the Criminal Chamber of the Court of Appeal of Niamey "ordered in a preliminary ruling, the provisional release of the Applicant from prison, together with her brother, ordered the automatic revocation of the arrest warrant issued against Ladan Rabo, and stayed examination of the merits pending the final decision of the divorce judge."

28. On 14 September 2007, Hadijatou Mani Koraou seised the Community Court of Justice, ECOWAS, upon the basis of Articles 9 (4)

× The Court has jurisdiction to determine case of violation of human rights that occur in any Member State. and 10 (d)

× Access to the Court is open to the following: d) Individuals on application for relief for violation of their human rights; the submission of application for which shall:

of the Supplementary Protocol A/SP.1/01/05 of 19 January 2005 amending Protocol A/P.1/7/91 of 6 July 1991 on the Court, for the purposes of requesting the Court to:

(a) Charge the Republic of Niger for violation of Articles 1, 2, 3, 5, 6, and 18 (3) of the African Charter on Human and Peoples' Rights;

(b) Demand that the Authorities of Niger introduce a new legislation which actually protects women against discriminatory customs in issues of marriage and divorce;

(c) Ask the Authorities of Niger to revise the laws relating to courts and tribunals in such a manner that justice may fully play its role as a guardian of the rights of persons who are victims of the practice of slavery;

(d) Require from the Republic of Niger that it abolishes harmful customs and practices founded upon the idea of inferiority of women;

(e) Grant fair reparation to Hadijatou Mani Koraou, for the harm she had suffered during her 9 years of captivity.

29. The Defendant raised a Preliminary Objection, to the effect that:

(a) The Application was inadmissible, for lack of exhaustion of local remedies;

(b) The Application was inadmissible, due to the fact that the case brought before instant Honourable Court was still pending before the domestic courts of Niger.

30. In compliance with Article 87 (5) of its Rules of Procedure, the Court of Justice of ECOWAS joined the Preliminary Objection to the merits, to adjudicate by virtue of one and the same Judgment.

31. At the 24 January 2008 proceedings, scheduled for the hearing of the Parties, Counsel for the Applicant, citing her state of extreme financial poverty, and the necessity of hearing witnesses residing in Niger (whose transport costs to Abuja seemed to be beyond the financial capacity of the Applicant), requested that the Court's session be transferred to Niamey or any other venue in the Republic of Niger.

32. Counsel for the Defendant averred that "he did not mind if the court session was held outside the seat of the Court" but did, all the same, draw the Court's attention "to negative media coverage and a possible politicisation of the proceedings," before concluding upon the pointlessness of holding such a session in Niger.

33. By its Preliminary Ruling No. ECW/CCJ/APP/08/08 of 24 January 2008, the Court ordered that the court session be held at Niamey in compliance with Article 26 of the 1991 Protocol on the Court.

34. At the hearing of 7 April 2008, at Niamey, the Parties as well as their Witnesses appeared in court.

Consideration of the Parties' Pleas-in-law

As to the Preliminary Objection

35. The Republic of Niger raised, *in limine litis*, the inadmissibility of the Application on grounds of non-exhaustion of local remedies, on one hand, and on the other hand, upon the grounds that the case brought before the Court of Justice of ECOWAS was still pending before the national courts of Niger.

Regarding Non-Exhaustion of Local Remedies

36. While acknowledging that the condition of non-exhaustion of local remedies does not form part of the conditions of admissibility of cases of human rights violation brought before the Court of Justice of ECOWAS, the Republic of Niger considered such absence as a lacuna which should be filled by the Court.

37. Besides, Counsel for the Defendant further averred that it is the rule of exhaustion of local remedies, which enables one to assert whether a State sufficiently or insufficiently safeguards human rights on its territory. He furthermore averred that the protection of human rights by international mechanisms is only a subsidiary protection which is available only when a State, on the national plane, has failed to fulfil its duty of ensuring the observance of such rights.

38. Furthermore, by relying on Article 4 (g) of the Revised Treaty of ECOWAS, the Defendant maintained that the Court of Justice of ECOWAS must apply Article 56 of the African Charter on Human and Peoples' Rights, to make up for the silence of the texts governing the operation of the Court, particularly as regards the preliminary exhaustion of local remedies.

39. Even if it is irrefutable that the protection of human rights by international mechanisms is subsidiary in nature, it is no less true that such subsidiary nature of the protection has undergone, for some time now, a remarkable evolution which translates into a very flexible interpretation of the rule of exhaustion of local remedies. At any rate, this was what the European Court on Human Rights was saying, in its Judgment on the case concerning *De Wilde, Versyp v. Belgium*, 18 June 1971, when it found that: "in accordance with the evolution of international practice, States may well renounce the benefits of the rule of exhaustion of local remedies"

40. In refraining from making the rule of preliminary exhaustion of local remedies a condition for admissibility of applications filed before the Court, the Community lawmaker of ECOWAS has undoubtedly responded to this call. The renunciation of such a rule is binding on all the Member States of ECOWAS, and the Republic of Niger cannot claim to be an exception in that regard.

41. Moreover, in affirming in Article 4 (g) of the Revised Treaty that "*recognition, promotion and protection of human and peoples' rights in accordance with the provisions of the African Charter on Human and Peoples' Rights*", the Community lawmaker simply intended to subsume that instrument in the law applicable before the Court of Justice of ECOWAS.

42. The adherence of the Community to the principles of the Charter signifies that in the absence of ECOWAS legal instruments relating to human rights, the Court ensures the protection of the rights spelt out in the Charter, without necessarily proceeding to do so in the same manner as would the African Commission on Human and Peoples' Rights.

43. Indeed, from the interpretation of Article 4 (g) of the Revised Treaty, one cannot deduce that the modalities for the protection and promotion of human rights by the Court must be those provided for by the Charter.

44. A distinction must be made between the setting out of the fundamental principles of the Charter (Part I), and the modalities for implementing such rights (Part II). These modalities comprise the creation of the Commission (Article 30), its composition (Articles 31 to 41), its functioning (Articles 42 to 45) and the procedure to be followed before it (Articles 46 to 59), whereas the Revised Treaty of ECOWAS on its part, has prescribed other mechanisms to the Court of Justice of ECOWAS, for implementing these same fundamental principles.

45. In the final analysis, there are no grounds for considering the absence of preliminary exhaustion of local remedies as a lacuna which must be filled within the practice of the Community Court of Justice, for the Court cannot impose on individuals more onerous conditions and formalities than those provided for by the Community texts without violating the rights of such individuals.

46. In tracing the origins of the entire pleadings filed before the national courts of Niger, the Defendant averred that on 14 February 2006, the Applicant brought a divorce case before the Konni Civil and Traditional Court; that the said court decided in favour of his request; that following the appeal filed, the Judgment was reversed; that the reversed decision made upon appeal was quashed by the Supreme Court; that the decision made after the quashing, with an adjournment, was in favour of the Applicant; that a second appeal was made by the Defendant against the last decision, and that the Supreme Court has not yet brought its proceedings on the matter to a close.

47. The Defendant further averred that on 11 January 2007, a criminal proceeding was initiated against the Applicant; that an appeal was filed against the criminal sentence made against the Applicant and her co-accused, delivered on 2 May 2007; that the Court of Appeal Niamey, after ordering the release from

prison of the Applicant and her brother, adjourned proceedings, pending the determination of the civil proceedings.

48. In this wise, is there any basis for Hadijatou Mani Koraou, who has already seised the domestic courts, to bring her case before the Court of Justice of ECOWAS, whereas the said national courts have not exhausted their proceedings on the case?

49. In the terms of the provisions of Article 10 d)

× Access to the Court is open to the following: d) Individuals on application for relief for violation of their human rights; the submission of application for which shall:

[sic] of the Supplementary Protocol A/SP.1/01/05 relating to the Community Court of Justice, ECOWAS: "*Access to the Court is open to ... individuals on application for relief for violation of their human rights ... the submission of application for which shall i) not be anonymous; nor ii) be made whilst the same matter has been instituted before another International Court for adjudication*"

It therefore follows that the rule of exhaustion of local remedies is not applicable before the Court.

50. These provisions are essentially intended to prevent individuals from abusing the possibilities offered them for seeking redress in the courts, and to avoid the same case being handled by several bodies at the same time. See Cohen Jonathan, European Convention of the Safeguard of Human Rights and Fundamental Freedoms, Economica, Paris, 1989, page 143, where it is rightly stated that this condition was expressly posed "to exclude the accumulation of international proceedings"

51. At the source of this condition, provided for in all the international mechanisms of examining and settling cases, can be found the idea of avoiding a situation whereby one and the same case is brought before several international bodies (Cf. Article 35 (2) b

× The Court shall not deal with any application submitted under Article 34 that (b) is substantially the same as a matter that has already been examined by the Court or has already been submitted to another procedure of international investigation or settlement and contains no relevant new information.

of the European Convention of the Safeguard of Human Rights and Fundamental Freedoms, Article 56 (7) of the African Charter on Human and Peoples' Rights, Article 46 (c)

× 1. Admission by the Commission of a petition or communication lodged in accordance with Articles 44 or 45 shall be subject to the following requirements: c. that the subject of the petition or communication is not pending in another international proceeding for settlement;

of the American Convention of Human Rights, Article 5 (2)

× 2. The Committee shall not consider any communication from an individual unless it has ascertained that: (a) The same matter is not being examined under another procedure of international investigation or settlement; (b) The individual has exhausted all available domestic remedies. This shall not be the rule where the application of the remedies is unreasonably prolonged.

a of the First Optional Protocol relating to the International Covenant on Civil and Political Rights).

52. But the interpretation of this rule has revealed, as Stefan Trechsel points out, in *Die europäische Menschenrechts-konvention ihr Schutz der persönlichen Freiheit und die schweizerischen Strafprozessrechte*, Stämpfli, Bern, 1974, p.125, that it "is not limited to the '*non bis in idem*', but equally covers the situation of pendency of cases, since it is sufficient for a case to have been brought, in substance, before another international court. It is therefore a question of avoiding the parallelism of various international proceedings, on one hand, and on the other hand, to avoid conflict between various international courts; indeed, there is no order of hierarchy between such international courts and it follows that none among them should be competent to revise, indeed, the decision of another international court."

53. Consequently, by providing for Article 10 (d) ii

× Access to the Court is open to the following: d) Individuals on application for relief for violation of their human rights; the submission of application for which shall: ii. Be made whilst the same matter has been instituted before another International Court for adjudication;

[sic] of the Supplementary Protocol in the manner it did, the Community lawmaker of ECOWAS intended to remain within the strict confines of what international practice has deemed appropriate to abide by. It is therefore not the duty of the instant Court to add to the Supplementary Protocol conditions which have not been provided for by the texts.

Ultimately, and for all these reasons, the Objection raised by the Defendant cannot thrive.

As to the Applicant's Status in the Action Brought

54. In his last brief, and in his Reply of 9 April 2008, the Defendant raised the issue of the Applicant's status in the action brought. He put forward that, being an emancipated 'wahiya' at the time of her Application, Hadijatou Mani Koraou was therefore not a slave anymore; that, on that score, she had come out of her condition of servitude; that she could have instituted proceedings before her emancipation; and that since she did not do so, her action had become ineffective and must be declared inadmissible on grounds of being unqualified to file the suit.

55. Such Preliminary Objection lately raised, must be declared inadmissible. Moreover, in regard to the provisions of Articles 9(4)

× The Court has jurisdiction to determine case of violation of human rights that occur in any Member State. [sic] and 10 (d)

× Access to the Court is open to the following: d) Individuals on application for relief for violation of their human rights; the submission of application for which shall: i. Not be anonymous; nor ii. Be made whilst the same matter has been instituted before another International Court for adjudication;

[sic] respectively, of its Supplementary Protocol, "*The Court has jurisdiction to determine cases of violation of human rights that occur in any Member State*", and "*Access to the Court is open to ... individuals on application for relief for violation of their human rights*"

56. It must be emphasised that human rights, in being inherent to the human person, are "inalienable, irrevocable and sacred", and cannot therefore suffer any limitation whatsoever.

As to the Pleas in the Merits

57. The Applicant filed several pleas alleging violation of her rights. In the first place, she pleaded that the Defendant did not take the necessary measures to guarantee its citizens the rights and freedoms proclaimed in the African Charter on Human and Peoples' Rights, thus violating Article 1 of the said charter. She contended that this violation derives from the other violations contained in the other pleas filed before the instant Honourable Court, in as much as Article 1 of the said African Charter makes it binding upon the States to respect such rights; and that in the terms of the cited article, "*The Member States ... shall recognise the rights, duties and freedoms enshrined in this Charter and shall undertake to adopt legislative or other measures to give effect to them*".

58. The Applicant stated further that in accordance with the legislation of Niger, "The Republic of Niger shall be a constitutional State; it shall ensure equality of the law before all, without distinction of sex, social, racial, ethnic or religious origin ..." (Article 11

× Each person shall have the right to life, health, security, physical well-being, education, and instruction according to conditions established by law.

of 1996 Constitution); "None shall be subjected to torture, abuses, or cruel, inhuman or degrading treatment" (Article 12

× No person shall be subjected to torture, slavery, cruelty or to cruel, inhuman or degrading treatment.

of 1996 Constitution); "Any individual ... who shall be guilty of acts of torture, ... or of cruel, inhuman or degrading treatment ... shall be punished in accordance with the law" (Article 14 of 1989 and 1992

Constitutions).

59. The Applicant pointed out that despite the existence of the aforementioned legislation, she faced sexually and socially based discrimination because she was held in slavery for almost 9 years; that after being emancipated, she was unable to fully enjoy her freedom despite her calls for justice, that she was put into detention, and that all these incidents contributed to the loss of her fundamental rights. She therefore asked that the Defendant be charged for violation of the various articles cited in the African Charter on Human and Peoples' Rights, and demanded the adoption of new laws which are more protective of the rights of women against discriminatory customs.

60. As regards the Applicant's first plea-in-law, the Court finds that it does not have the mandate to examine the laws of Member States of the Community *in abstracto*, but rather, to ensure the protection of the rights of individuals whenever such individuals are victims of the violation of those rights which are recognised as theirs, and the Court does so by examining concrete cases brought before it.

The Court indicates that other mechanisms are employed in the consideration of cases, such as the

checking of the situation in each country, the submission of periodic reports as provided for by certain international instruments, including Article 62 of the African Charter on Human and Peoples' Rights, which provides: "*Each state party shall undertake to submit every two years, from the date the present Charter comes into force, a report on the legislative or other measures taken with a view to giving effect to the rights and freedoms recognised and guaranteed by the present Charter*".

61. In this regard, the Court finds that such considerations have already taken place, notably before the Human Rights Committee and the Children's Rights Committee of the United Nations, particularly in regard to the Republic of Niger, followed by Recommendations.

Consequently, the Court declares that it cannot overstep the bounds of its core jurisdiction, which is that of entertaining concrete cases of human rights violation and sanctioning such where necessary.

As to Discrimination

62. The Applicant maintained that she was a victim of sexually and socially based discrimination, in violation of Articles 2 and 18 (3) of the African Charter on Human and Peoples' Rights; she further stated that she did not benefit from *equal protection of the law and equality before the law* as provided for by Article 3 of the said charter. She made it clear that the system of 'sadaka' or the act of selling a woman to a man to serve as a *concubine* for him, is a practice exclusively affecting women and thus constitutes a form of discrimination based on sex; that, moreover, the fact that she was not in a position to freely give her consent to marry or to divorce do bear ample testimony of discrimination in relation to her social origin.

63. The following statement comes from the testimony of Djouldé Laya, a sociologist, and it was cited by the Defendant during the court session of 8 April 2008 at Niamey: "In the case of the 'wahiya' woman, one does not say that she is emancipated, since she is a slave. Therefore, she is someone else's property; ... the 'wahiya' system or 'fifth wife' is a system which was put in place by the advocates and practitioners of slavery; ... I consider that women are not emancipated from their 'wahiya' condition; ... it is a system which permits the movement of a woman from one status to another, meaning that the slavery condition continues, in any case, because women still have to be captured, war must be fought, one has to buy".

64. After a careful consideration of all the pleas-in-law of the Applicant, drawn from *discrimination, equality before the law, and equal protection by the law*, the Court finds that, as pointed out by Frédéric Sudre, on page 259 of his work Le Droit International et Européen des Droits de l'Homme (2005 edition), "The principle of non-discrimination is a principle drawn from the general postulate according to which **all human beings are born free and equal in dignity and rights** (cf. Article 1

× All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.

of the Universal Declaration of Human Rights). It is this principle which helps to define the domain of *equality*.

65. According to the texts cited by the Applicant, every form of discrimination based on race, ethnic group, sex, religion, and social origin, is forbidden, and constitutes a human rights violation recognised by the various Constitutions of the Republic of Niger (1989, 1992 and 1996) and by the provisions of the Penal Code of Niger, which enshrines the same protective principles.

66. In the instant case, to determine if the Applicant has been discriminated against or not, it is worthwhile to take a close look at the practice of 'wahiya' or 'sadaka' as described by the Witnesses, in order to know whether, on one hand, all women have the same rights in respect of marriage, and whether, on the other hand, men and women have the same capacities of enjoying the rights and freedoms proclaimed in the international instruments ratified by the Defendant.

Indeed, Halilou Danda, a farmer and livestock breeder, Witness called by the Applicant, declared during the hearing of Monday, 7 April 2008 that: "The *préfet* (district administrative officer) summoned us to his office to tell us that he had received a paper from Niamey which says that we should hand over El Hadj Souleymane Naroua's wife back to him. The *préfet* asked him: - Would you like to remarry her, since you have emancipated her? If so, bring cola and let us perform the marriage ceremony. El Hadj Souleymane Naroua said - No! I cannot marry her, since it is God who has already given her to me."

67. Besides, Almou Wangara, farmer and Witness called by the Applicant, declared that: "When the former master of Hadijatou was asked to bring the dowry, he said that it was God who gave him the woman and so how could we be asking him for money as payment for dowry? The *préfet* told the former master: - Since you have already emancipated this woman, what is appropriate to be done is to provide the dowry; we are

going to implore her to accept the marriage. The former master got up and said - No! How! Am I to buy a woman and be asked to pay dowry on her? ... After this reaction, the *préfet* said - Listen, as for me, I can do nothing - you must go away".

68. The Court therefore holds that when summoned to the office of the administrative authority, namely, to the *préfet's* office, the Applicant's former master not only refused to accomplish the marriage formalities with her but equally did not grant her the freedom due her, regardless of the certificate of emancipation.

69. In the Republic of Niger, the celebration of marriage is recognised by the payment of dowry and the holding of a religious ceremony.

Now, in the instant case, El Hadj Souleymane Naroua fulfilled neither the customary nor civil requirements in regard to the Applicant.

70. Moreover, the Court holds that the Applicant was discriminated against vis-?-vis the wives in the family of her former master.

71. The Court finds that even if the complaint drawn from *discrimination* - to which the Applicant lays claim for the first time before the Court - is founded, that violation is not attributable to the Republic of Niger but rather to El Hadj Souleymane Naroua, who is not a party to the instant proceedings.

Consequently, the Court finds this plea-in-law inoperative.

Was the Applicant held in Slavery?

72. The Applicant complains having been held in slavery, in violation of Article 5 of the African Charter on Human and Peoples' Rights and other international instruments relating to human rights enacting absolute prohibition of slavery.

She declared being born of parents who were themselves of the status of slaves and that she had always been treated as a slave under the roof of her former master, El Hadj Souleymane Naroua.

73. On its part, the Defendant refuted the grounds of slavery and maintained that the Applicant was certainly under conditions of servitude but was the wife of El Hadj Souleymane Naroua, with whom she had more or less lived happily as in the lives of all couples.

74. In the terms of Article 1

× For the purpose of the present Convention, the following definitions are agreed upon: (1) Slavery is the status or condition of a person over whom any or all of the powers attaching to the right of ownership are exercised. (2) The slave trade includes all acts involved in the capture, acquisition or disposal of a person with intent to reduce him to slavery; all acts involved in the acquisition of a slave with a view to selling or exchanging him; all acts of disposal by sale or exchange of a slave acquired with a view to being sold or exchanged, and, in general, every act of trade or transport in slaves.

of the Geneva Convention 1926, slavery is "*The status or condition of a person over whom any or all of the powers attaching to the right of ownership are exercised*" and slave trade was defined to include "*all acts involved in the capture, acquisition or disposal of a person with intent to reduce him to slavery; all acts involved in the acquisition of a slave with a view to selling or exchanging him; all acts of disposal by sale or exchange of a slave acquired with a view to being sold or exchanged, and, in general, every act of trade or transport in slaves.*"

75. Thus defined, slavery is considered a grave violation of human dignity, and it is strictly prohibited by all the international instruments relating to human rights. Other instruments such as the European Convention on Human Rights and Fundamental Freedoms (Article 4 (1)

× Prohibition of slavery and forced labour 1. No one shall be held in slavery or servitude.

), the American Convention on Human Rights (Article 6

× Freedom from Slavery 1. No one shall be subject to slavery or to involuntary servitude, which are prohibited in all their forms, as are the slave trade and traffic in women. 2. No one shall be required to perform forced or compulsory labor. This provision shall not be interpreted to mean that, in those countries in which the penalty established for certain crimes is deprivation of liberty at forced labor, the carrying out of such a sentence imposed by a competent court is prohibited. Forced labor shall not adversely affect the dignity or the physical or intellectual capacity of the prisoner. 3. For the purposes of this article, the following do not constitute forced or compulsory labor: a. work or service normally required of a person imprisoned in execution of a sentence or formal decision passed by the competent judicial authority. Such work or service shall be carried out under the supervision and control of public authorities, and any persons performing such work or service shall not be placed at the disposal of any private party, company, or

juridical person; b. military service and, in countries in which conscientious objectors are recognized, national service that the law may provide for in lieu of military service; c. service exacted in time of danger or calamity that threatens the existence or the well-being of the community; or d. work or service that forms part of normal civic obligations.

), and the International Covenant on Civil and Political Rights (Article 8 (1)-2

× 1. No one shall be held in slavery; slavery and the slave-trade in all their forms shall be prohibited. 2. No one shall be held in servitude.

as ratified by the Republic of Niger) consider the prohibition of slavery as an inviolable right, that is to say, an unbreakable or a right which cannot be transgressed.

Similarly, the Penal Code of Niger as amended by Law No. 2003-025 of 13 June 2003, in its Article 270 (1) to (5), defines and stamps out the crime and offence of slavery.

76. From the foregoing, it is incontrovertible that Hadijatou Mani Koraou was sold off from El Hadji Ghoumane to El Hadj Souleyman Naroua, at the age of twelve (12), at a monetary price of Two Hundred and Forty Thousand CFA Francs (CFA F 240,000). She was led to the home of her buyer, went through almost a decade of numerous psychological pressures characterised by subjugation, sexual exploitation, forced labour in the home and on the farm, physical violence, insults, and a permanent constraint on her movements exercised by her buyer, who, on 18 August 2005, issued her with a document entitled "certificate of emancipation (from slavery)", stating that from the date of signature of the said deed, "she (the Applicant) was free and was nobody's slave."

77. The foregoing do portray the Applicant's condition of servitude and they bring out all the indicators of the definition of slavery as contained in Article 1

× For the purpose of the present Convention, the following definitions are agreed upon: (1) Slavery is the status or condition of a person over whom any or all of the powers attaching to the right of ownership are exercised. (2) The slave trade includes all acts involved in the capture, acquisition or disposal of a person with intent to reduce him to slavery; all acts involved in the acquisition of a slave with a view to selling or exchanging him; all acts of disposal by sale or exchange of a slave acquired with a view to being sold or exchanged, and, in general, every act of trade or transport in slaves.

of the Geneva Convention 1926, and as interpreted by the Appeals Chamber of the International Criminal Tribunal for former Yugoslavia (ICTY), in the case concerning Public Ministry v. Dragoljub Kunarac, Radomir Kovac and Vukovic Zoran, Judgment of 12 June 2002, IT-96-23 & 23/1, paragraph 119.

According to that case-law, in addition to the attributes of the right of ownership which characterises slavery, "*whether a particular phenomenon is a form of enslavement will depend on the operation of the factors or indicia of enslavement identified by the Trial Chamber. These factors include the 'control of someone's movement, control of physical environment, psychological control, measures taken to prevent or deter escape, force, threat of force or coercion, duration, assertion of exclusivity, subjection to cruel treatment and abuse, control of sexuality and forced labour'*"

78. The Defendant, while acknowledging the continued existence of slavery, contended that this practice had become more discreet and had been confined to very restricted social circles. The Defendant maintained that the Applicant was rather the wife of El Hadj Souleyman Naroua, with whom she had lived a more or less happy marital relationship as in all homes, up to 2005, and that from their union, children were born.

79. The Court cannot countenance such a manner of arguing, for it is trite that slavery may exist without the presence of torture. Even with the provision of square meals, adequate clothing and comfortable shelter, a slave still remains a slave if he is illegally deprived of his freedom through force or constraint. All evidence of ill treatment may be erased, hunger may be forgotten, as well as beatings and other acts of cruelty, but the acknowledged fact about slavery remains, that is to say, forced labour without compensation. There is nothing like goodwill slavery. Even when tampered with humane treatment, involuntary servitude is still slavery. And the issue of knowing the nature of relationship between the accused and the victim is essential. See Judgment of 3 November 1947, in Trials of Major War Criminals before the Nuremberg Military Tribunals under Control Council Law No. 10, Vol. 5, 1997, page 958, as cited by the International Criminal Tribunal for former Yugoslavia (ICTY), in the case concerning *United States of America v. Oswald Pohl et al.*

80. The Court finds in the instant case that beyond well constituted deeds, the moral element in reducing a person to slavery resides, moreover, in the intention of El Hadj Souleyman Naroua to exercise the attributes of the right of ownership over the Applicant, even so, after the document of emancipation had been made.

Consequently, there is no doubt that the Applicant, Hadijatou Mani Koraou, was held in slavery for almost nine (9) years, in violation of the legal prohibition of such practice.

81. In Niger's criminal law, just as is evident in international instruments, the prohibition and stamping out of slavery are inviolable and fall within public policy. As was asserted by the International Court of Justice (ICJ), in the *Barcelona Traction Judgment* (5 February 1970), "Outlawing slavery is an *erga omnes* obligation binding on all organs of the State."

82. Consequently, the national judge who sat at the Konni High Court upon the case relating to persons whose condition was akin to that of Hadijatou Mani Koraou, was under an obligation to raise at the first instance, the issue of slavery and set in motion the procedure for stamping out such a practice, once the case brought to light an obvious issue of slavery.

83. In conclusion, as regards this particular point above, the Court finds that, the national judge of Niger before whom the case of *Hadijatou Mani Koraou v. El Hadj Souleymane Naroua* was brought, instead of denouncing the slavery status of the Applicant, as constituting a violation of Article 270 (1) to (5) of the Penal Code of Niger as amended by Law No. 2003-025 of 13 June 2003, rather affirmed that, "The marriage of a free man with a slave woman is licit, in as far as he does not have the means of marrying a free woman, and if he fears falling into fornication".

84. The Court considers that, acknowledging thus the status of Hadijatou Mani Korao as a slave, without denouncing that condition constitutes a form of acceptance, or at least a tolerance of this crime, against which the domestic judge of Niger was under obligation to ensure that proceedings were instituted or that sanctions were preferred where necessary.

85. The Court further considers that even if the Applicant's condition of being a slave arises from a supposedly customary or personal context, there was an avenue of protection open to her from the authorities of the Republic of Niger, be they administrative or judicial.

And that, consequently, the Defendant becomes responsible, in terms of both national and international law, for every form of human rights violation against the Applicant, on the basis of slavery, as a result of the tolerance, passiveness, inaction, and abstention of these same authorities of Niger vis-?-vis the practice of slavery.

86. Ultimately, by failing to raise an instant charge regarding an act prohibited as a public policy, and in omitting to adopt or have adopted the appropriate measures for stamping out such prohibited act, the national judge of Niger has not carried out his mandate of protecting the rights of Hadijatou Mani Koraou, and has thereby committed the Defendant into becoming liable on the same scale as the State administrative authority, when the latter declared that: "Listen, as for me, I can do nothing - you must go away."

87. Besides, by relying on international texts, notably, Article 7 (1) - c

× Crimes against humanity 1. For the purpose of this Statute, "crime against humanity" means any of the following acts when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack: (c) Enslavement;

and - g

× (g) Rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity;

of the Statute of the International Criminal Court, the Applicant maintained that her status of being a slave is a crime against humanity.

88. If it is true that slavery features on the list of acts constituting crimes against humanity, it is nevertheless worthy to indicate that, for it to constitute a crime against humanity, the *slavery* in question must form part of a "widespread or systematic attack" as enshrined in Article 7

× Crimes against humanity 1. For the purpose of this Statute, "crime against humanity" means any of the following acts when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack: (a) Murder; (b) Extermination; (c) Enslavement; (d) Deportation or forcible transfer of population; (e) Imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law; (f) Torture; (g) Rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity; (h) Persecution against any identifiable group or collectivity on political, racial, national, ethnic, cultural, religious, gender as defined in paragraph 3, or other grounds that are universally recognized as impermissible under international law, in connection with any act referred to in this paragraph or any crime within the jurisdiction of the Court; (i) Enforced disappearance of persons; (j) The crime of apartheid; (k) Other inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or

to mental or physical health. 2. For the purpose of paragraph 1: (a) "Attack directed against any civilian population" means a course of conduct involving the multiple commission of acts referred to in paragraph 1 against any civilian population, pursuant to or in furtherance of a State or organizational policy to commit such attack; (b) "Extermination" includes the intentional infliction of conditions of life, inter alia the deprivation of access to food and medicine, calculated to bring about the destruction of part of a population; (c) "Enslavement" means the exercise of any or all of the powers attaching to the right of ownership over a person and includes the exercise of such power in the course of trafficking in persons, in particular women and children; (d) "Deportation or forcible transfer of population" means forced displacement of the persons concerned by expulsion or other coercive acts from the area in which they are lawfully present, without grounds permitted under international law; (e) "Torture" means the intentional infliction of severe pain or suffering, whether physical or mental, upon a person in the custody or under the control of the accused; except that torture shall not include pain or suffering arising only from, inherent in or incidental to, lawful sanctions; (f) "Forced pregnancy" means the unlawful confinement of a woman forcibly made pregnant, with the intent of affecting the ethnic composition of any population or carrying out other grave violations of international law. This definition shall not in any way be interpreted as affecting national laws relating to pregnancy; (g) "Persecution" means the intentional and severe deprivation of fundamental rights contrary to international law by reason of the identity of the group or collectivity; (h) "The crime of apartheid" means inhumane acts of a character similar to those referred to in paragraph 1, committed in the context of an institutionalized regime of systematic oppression and domination by one racial group over any other racial group or groups and committed with the intention of maintaining that regime; (i) "Enforced disappearance of persons" means the arrest, detention or abduction of persons by, or with the authorization, support or acquiescence of, a State or a political organization, followed by a refusal to acknowledge that deprivation of freedom or to give information on the fate or whereabouts of those persons, with the intention of removing them from the protection of the law for a prolonged period of time. 3. For the purpose of this Statute, it is understood that the term "gender" refers to the two sexes, male and female, within the context of society. The term "gender" does not indicate any meaning different from the above.

of the Statute of the International Criminal Court.

89. Now, the appreciation of such cases fall within the jurisdiction of other international judicial set-ups, more precisely, the international criminal courts.

The instant Honourable Court is therefore incompetent to consider whether the complaint drawn from this particular plea-in-law is well founded or not.

Are the arrest and detention of the applicant arbitrary?

90. The Applicant averred that her arrest and detention on 9 May 2007, as well as her detention at the Konni Prison, were arbitrary and do constitute a violation of Article of the African Charter on Human and Peoples' Rights. According to her, the said bigamy is unfounded, for lack of a marriage between her and El Hadj Souleymane Naroua - whereas it has been proved that the said detention was consequent upon the complaint deposited by El Hadj Souleymane Naroua, and whereas the arrest and detention of the Applicant were decided upon following the same complaint which had been deposited by her ex-master before the Konni Criminal Court.

91. A detention is said to be arbitrary when it does not repose on a legal basis. Now, in the instant case, the arrest and detention of the Applicant were carried out in implementation of the judicial decision made by the said Konni Criminal Court. This decision constitutes a legal basis, and it does not fall within the jurisdiction of the Court to consider whether such a decision is well founded or ill founded.

Does the applicant have a right to relief for reparation?

92. In her Reply dated 7 April 2008, the Applicant requested that the Republic of Niger be made to pay the amount of Fifty Million CFA Francs (CFA F 50,000,000) as relief for the reparation of the harm suffered.

93. In reaction to the foregoing, the Defendant asserted that this request amounts to the filing of a new plea-in-law, and he cited Article 37 (2) of the Rules of Procedure of the Court, thus concluding upon the inadmissibility of the application for reparation.

94. The Court recalls that the inadmissibility provided for in Article 37 (2) of the Rules of Procedure concerns new pleas-in-law raised by a party during the course of proceedings. In the instant case, the quantification of the reparation asked for cannot be considered as a new plea-in-law, but rather, as a specification of the request for relief as contained in the application instituting proceedings.

Consequently, there are grounds for dismissing the argument of the Defendant.

95. The Applicant did not furnish the Court with any guideline for an accurate calculation of the amount involved as reparation for the harm pleaded. The Court deduces thereof that an all-inclusive amount may be paid to the Applicant.

96. A close examination of the facts in cause clearly demonstrate that the Applicant has gone through undeniable physical, psychological and moral harm, as a result of her nine (9) years of servitude, justifying the award of a relief in reparation for the harm thus suffered.

Consequently

1. Whereas in any instance where the texts do not make provision for particular conditions in respect of admissibility of applications, the Court cannot impose heavier ones thereof;

2. Whereas the practice of 'wahiya?? or 'sadaka' - founded upon considerations of belonging to a social class - put the Applicant in an unfavourable condition and excluded her from the sure and certain benefits of equal dignity recognised for all citizens; whereas she was thus discriminated against by virtue of her belonging to a social class; but, whereas such discrimination is not attributable to the Republic of Niger;

3. Whereas the Court finds that the Republic of Niger did not sufficiently protect the rights of the Applicant in regard to the practice of slavery;

4. Whereas this condition of slavery has caused the Applicant undeniable physical, psychological, and moral harm.

5. Whereas the Applicant is therefore entitled to an all-inclusive relief in reparation for the harm resulting from such practice of slavery.

For these reasons

The community Court of Justice, ECOWAS,

Adjudicating publicly, in first and last resort, after hearing both Parties on the issue of human rights violation;

-Having regard to the 24 July 1993 Revised Treaty of ECOWAS;

-Having regard to the 10 December 1948 Universal Declaration of Human Rights,

-Having regard to the 18 December 1979 Convention on the Elimination of All Forms of Discrimination against Women,

-Having regard to the 25 September 1926 Convention relating to Slavery, and the 7 September 1956 Supplementary Convention relating to the Abolition of Slavery, Slave Trade and Institutions and Practices Similar to Slavery,

-Having regard to the 27 June 1981 African Charter on Human and Peoples' Rights,

-Having regard to the 6 July 1991 and the 19 January 2005 Supplementary Protocols on the Community Court of Justice, ECOWAS,

-Having regard to the 28 August 2002 Rules of Procedure of the Community Court of Justice, ECOWAS;

-Having regard to the 24 January 2008 Preliminary Ruling No. ECW/CCJ/APP/08/08;

In Terms of Form

- Dismisses the Preliminary Objection raised by the Republic of Niger as inadmissible in all its aspects;

- Admits the Application of Hadijatou Mani Koraou and declares that she is qualified to bring such an Application before the Court;

On Merits

1. Declares that the discrimination from which Hadijatou Mani Koraou suffered is not attributable to the Republic of Niger;
2. Declares that Hadijatou Mani Koraou was victim of slavery and that the Republic of Niger is to be blamed for the inaction of its administrative and judicial authorities;
3. Receives the request of Hadijatou Mani Koraou for reparation of the harms she had suffered and grants her an all-inclusive award of Ten Million CFA Francs (CFA F 10,000,000);
4. Orders the said sum to be paid to Hadijatou Mani Koraou by the Republic of Niger;
5. Dismisses all other points of request made by Hadijatou Mani Koraou;
6. Asks the Republic of Niger to bear the costs, in accordance with Article 66 (2) of the Rules of Procedure of the Court;

Thus made, adjudged and pronounced publicly by the Community Court of Justice, ECOWAS, at Niamey (Republic of Niger), on the day, month and year above.

And the Members have appended their signatures as below:

Hon. Justice Aminata Mallé Sanogo - Presiding

Hon. Justice Awa Daboya Nana - Member

Hon. Justice El Mansour Tall - Member

Assisted by Athanase Attanon Esq. - Registrar