



INTERNATIONAL COURT OF JUSTICE

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Press Release

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Ahmadou Sadio Diallo (Republic of Guinea v. Democratic Republic of the Congo)
The Court finds that in carrying out the arrest, detention and expulsion of
Mr. Diallo in 1995-1996, the DRC violated his fundamental rights,
but that it did not violate his direct rights as “associé” in the
companies Africom-Zaire and Africontainers-Zaire

THE HAGUE, 30 November 2010. The International Court of Justice (ICJ), the principal judicial organ of the United Nations, today delivered its Judgment in the case concerning Ahmadou Sadio Diallo (Republic of Guinea v. Democratic Republic of the Congo).

In its Judgment, which is final, without appeal and binding on the Parties, the Court

- (1) finds, by eight votes to six, that the claim of the Republic of Guinea concerning the arrest and detention of Mr. Diallo in 1988-1989 is inadmissible;
- (2) finds, unanimously, that, in respect of the circumstances in which Mr. Diallo was expelled from Congolese territory on 31 January 1996, the Democratic Republic of the Congo violated Article 13 of the International Covenant on Civil and Political Rights and Article 12, paragraph 4, of the African Charter on Human and Peoples' Rights;
- (3) finds, unanimously, that, in respect of the circumstances in which Mr. Diallo was arrested and detained in 1995-1996 with a view to his expulsion, the Democratic Republic of the Congo violated Article 9, paragraphs 1 and 2, of the International Covenant on Civil and Political Rights and Article 6 of the African Charter on Human and Peoples' Rights;
- (4) finds, by thirteen votes to one, that, by not informing Mr. Diallo without delay, upon his detention in 1995-1996, of his rights under Article 36, paragraph 1 (b), of the Vienna Convention on Consular Relations, the Democratic Republic of the Congo violated the obligations incumbent upon it under that subparagraph;
- (5) rejects, by twelve votes to two, all other submissions by the Republic of Guinea relating to the circumstances in which Mr. Diallo was arrested and detained in 1995-1996 with a view to his expulsion;
- (6) finds, by nine votes to five, that the Democratic Republic of the Congo has not violated Mr. Diallo's direct rights as associé in Africom-Zaire and Africontainers-Zaire;

- (7) finds, unanimously, that the Democratic Republic of the Congo is under obligation to make appropriate reparation, in the form of compensation, to the Republic of Guinea for the injurious consequences of the violations of international obligations referred to in subparagraphs (2) and (3) above;
- (8) decides, unanimously, that, failing agreement between the Parties on this matter within six months from the date of this Judgment, the question of compensation due to the Republic of Guinea shall be settled by the Court, and reserves for this purpose the subsequent procedure in the case.

Reasoning of the Court

The Court recalls that the dispute between Guinea and the DRC concerns “serious violations of international law” which are alleged to have been committed by the DRC “upon the person of a Guinean national”, Mr. Ahmadou Sadio Diallo (para. 1). The latter, who founded two sociétés privées à responsabilité limitée (private limited liability companies) in the DRC, Africom-Zaire and Africontainers-Zaire, was arrested and imprisoned on 25 January 1988, before being released a year later following the closure of the case by the public prosecutor in Kinshasa for “inexpediency of prosecution”. The Court further concludes from the evidence submitted to it by the Parties that Mr. Diallo was arrested on 5 November 1995 and detained until 10 January 1996, then rearrested and detained on a date no later than 25 January 1996; those measures were for the purpose of enabling the expulsion decree issued against Mr. Diallo on 31 October 1995 to be effected. Mr. Diallo was finally expelled from Congolese territory on 31 January 1996.

Having declared the Application of the Republic of Guinea to be admissible “in so far as it concerns protection of Mr. Diallo’s rights as an individual” and “in so far as it concerns protection of [his] direct rights as associé in Africom-Zaire and Africontainers-Zaire” in its Judgment of 24 May 2007, the Court addresses those two questions in turn, before examining the claims for reparation made by Guinea.

1. Protection of Mr. Diallo’s rights as an individual

(a) The claim concerning the arrest and detention measures taken against Mr. Diallo in 1988-1989

Before pronouncing on Guinea’s request for the Court to declare that Mr. Diallo was the victim in 1988-1989 of arrest and detention measures which were contrary to international law, the Court considers the DRC’s assertion that the said request is inadmissible on the grounds that it was presented late. It notes that the claim in respect of the events in 1988-1989 was first presented by Guinea in its Reply, in which it “describes in detail the circumstances surrounding Mr. Diallo’s arrest and detention in 1988-1989” and states that these “inarguably figure among the wrongful acts for which Guinea is seeking to have the Respondent held internationally responsible” (para. 32). The Court considers that the said claim is not “implicit in the Application”, nor does it “arise directly out of the question which is the subject-matter of the Application” (para. 41). It points out in this connection that the Application concerns “violations of Mr. Diallo’s individual rights alleged by Guinea to have resulted from the arrest, detention and expulsion measures taken against him in 1995-1996”. However, the claim in respect of the events in 1988-1989 concerns “other arrest and detention measures, taken at a different time and in different circumstances” and, moreover, on “completely different” legal bases (para. 43). The Court finds that “the claim concerning the arrest and detention measures to which Mr. Diallo was subject in 1988-1989 is inadmissible” (para. 47).

(b) The claim concerning the arrest, detention and expulsion measures taken against Mr. Diallo in 1995-1996

The Court first considers Guinea's claim that Mr. Diallo's expulsion was in breach of Article 13 of the International Covenant on Civil and Political Rights (hereinafter the "Covenant") and Article 12, paragraph 4, of the African Charter on Human and Peoples' Rights (hereinafter the "African Charter"). The Court observes that, in order to comply with these provisions, the expulsion of an alien lawfully in the territory of a State which is a party to these instruments must be decided in accordance with the domestic law applicable in that respect — which itself must be compatible with the other requirements of the Covenant and the African Charter — and must not be arbitrary in nature (para. 65). The Court notes that this interpretation is "fully corroborated by the jurisprudence of the Human Rights Committee established by the Covenant" (para. 66) and by "the case law of the African Commission on Human and Peoples' Rights" (para. 67). The Court takes the view that the expulsion decree of 31 October 1995 did not comply with the provisions of Congolese law for two reasons: (1) it was not preceded by consultation of the National Immigration Board, whose opinion is required by Article 16 of the Legislative Order of 12 September 1983 concerning immigration control; (2) it was not "reasoned", as required by Article 15 of that same Legislative Order (para. 72). It follows that in these two respects the expulsion was not decided "in accordance with law" and was in violation of Article 13 of the Covenant and Article 12, paragraph 4, of the African Charter (para. 73). The Court further considers that Guinea is justified in contending that the right afforded by Article 13 of the Covenant to an alien who is subject to an expulsion measure to "submit the reasons against his expulsion and to have his case reviewed by . . . the competent authority" was not respected in the case of Mr. Diallo. The Court believes, moreover, that the DRC has failed to demonstrate the "compelling reasons of national security" which supposedly justified Mr. Diallo being denied the right to submit the reasons against his expulsion and to have his case reviewed by the competent authority. The Court concludes that, on these grounds too, Article 13 of the Covenant was violated in respect of the circumstances in which Mr. Diallo was expelled (para. 74).

Second, the Court addresses Guinea's claim that Mr. Diallo's arrest and detention violated Article 9, paragraphs 1 and 2, of the Covenant and Article 6 of the African Charter: in particular, that the deprivations of liberty suffered by Mr. Diallo did not take place "in accordance with such procedure as [is] established by law" within the meaning of Article 9, paragraph 1, of the Covenant, or on the basis of "conditions previously laid down by law" within the meaning of Article 6 of the African Charter; further, that those deprivations of liberty were "arbitrary" within the meaning of those provisions; finally, that Mr. Diallo was not informed, at the time of his arrests, of the reasons for those arrests, nor was he informed of the charges against him, which constituted a violation of Article 9, paragraph 2, of the Covenant (para. 76).

In respect of the first of Guinea's allegations, namely, that Mr. Diallo's arrest and detention were not in accordance with the requirements of the law of the DRC, the Court notes that Article 15 of the Legislative Order of 12 September 1983 provides that an alien "likely to evade implementation" of an expulsion measure may be imprisoned for an initial period of 48 hours, which may be "extended by 48 hours at a time, but shall not exceed eight days". The Court finds that "Mr. Diallo's arrest and detention were not in accordance with these provisions". In fact, "[t]here is no evidence that the authorities of the DRC sought to determine whether Mr. Diallo was 'likely to evade implementation' of the expulsion decree and, therefore, whether it was necessary to detain him". The Court further observes that "[t]he overall length of time for which he was detained — 66 days following his initial arrest and at least six more days following the second arrest — greatly exceeded the maximum period permitted by Article 15". Finally, the Court finds that "the DRC has produced no evidence to show that the detention was reviewed every 48 hours, as required by that provision" (para. 79).

In respect of the second of Guinea's allegations, namely, that Mr. Diallo's arrest and detention were arbitrary within the meaning of Article 9, paragraph 1, of the Covenant and

Article 6 of the African Charter, the Court first observes that Mr. Diallo “was held for a particularly long time and it would appear that the authorities made no attempt to ascertain whether his detention was necessary”. It then notes “not only that the decree itself was not reasoned in a sufficiently precise way” but that “throughout the proceedings, the DRC has never been able to provide grounds which might constitute a convincing basis for Mr. Diallo’s expulsion”. Finally, the Court finds that the allegations of “corruption” and other offences made against Mr. Diallo did not give rise to any proceedings before the courts or, a fortiori, to any conviction. The Court concludes that Mr. Diallo’s arrest and detention were arbitrary within the meaning of Article 9, paragraph 1, of the Covenant and Article 6 of the African Charter (para. 82).

In respect of the third of Guinea’s allegations, namely, that Mr. Diallo was not informed, at the time of his arrests, of the reasons for those arrests, in violation of Article 9, paragraph 2, of the Covenant, the Court considers that “[t]he DRC has failed to produce a single document or any other form of evidence to prove that Mr. Diallo was notified of the expulsion decree at the time of his arrest on 5 November 1995, or that he was in some way informed, at that time, of the reason for his arrest”. The Court notes that it has also not been established that, at the time of his arrest in January 1996, Mr. Diallo was informed that he was being forcibly removed from Congolese territory in execution of an expulsion decree. It further observes that “on the day when he was actually expelled, he was given the incorrect information that he was the subject of a ‘refoulement’ on account of his ‘illegal residence’”. The Court finds that the requirement for him to be informed, laid down by Article 9, paragraph 2, of the Covenant, was not complied with on those two occasions (paras. 84-85).

Third, the Court examines Guinea’s claim that Mr. Diallo suffered conditions in detention comparable to forms of inhuman or degrading treatment prohibited by international law. It finds that “Guinea has failed to demonstrate convincingly that Mr. Diallo was subjected to such treatment during his detention” (para. 88).

Finally, the Court considers Guinea’s claim that Mr. Diallo was not informed, when he was arrested, of his right to request consular assistance from his country, in violation of Article 36 (1) (b) of the Vienna Convention on Consular Relations of 1963. The Court notes that the DRC’s assertion that it “orally informed Mr. Diallo immediately after his detention of the possibility of seeking consular assistance from his State” was made “very late in the proceedings, whereas the point was at issue from the beginning”, and that there is “not the slightest piece of evidence to corroborate it” (paras. 94-96). It finds that there was a violation by the DRC of Article 36, paragraph 1 (b), of the Vienna Convention on Consular Relations (para. 97).

2. Protection of Mr. Diallo’s direct rights as associé in Africom-Zaire and Africontainers-Zaire

After clarifying certain matters relating to the legal existence of the two companies and to Mr. Diallo’s role and participation in them, the Court addresses the claims made by Guinea relating to Mr. Diallo’s direct rights as associé.

(a) The right to take part and vote in general meetings

The Court first notes that it follows from Article 79 of the Congolese Decree on commercial corporations of 1887 that “the right to participate and vote in general meetings belongs to the associés and not to the company” (para. 119). Next, it observes that under Article 83 of that same Decree, associés have the right to request that a general meeting be convened if they hold a fifth of the total number of shares. In view of the evidence submitted to it by the Parties, the Court finds that there is “no proof that Mr. Diallo, acting either as gérant or as associé holding at least one-fifth of the total number of shares, has taken any action to convene a general meeting, either after having

been expelled from the DRC, or at any time when he was a resident in the DRC after 1980". In the opinion of the Court, "the right of Mr. Diallo to take part in general meetings and to vote could only have been breached if general meetings had actually been convened after his expulsion from the DRC". The Court notes in this respect that,

"even assuming that Article 1 of Legislative Order No. 66-341 of 7 June 1966 were to oblige corporations having their administrative seat in the DRC to hold their general meetings on Congolese territory, no evidence has been provided that Mr. Diallo would have been precluded from taking any action to convene general meetings from abroad, either as gérant or as associé" (para. 121).

The Court then turns to the question of whether

"Mr. Diallo has been deprived of his right to take part and vote in any general meetings because, as Guinea argues, after his expulsion he could only have exercised that right through a proxy, whereas Congolese law afforded him the right to choose between appointing a representative or attending in person" (para. 122).

The Court believes that it follows from the relevant provisions of Congolese law that "an associé's right to take part and vote in general meetings may be exercised by the associé in person or through a proxy of his choosing". On the other hand, the Court finds that it cannot be inferred with certainty from the said provisions that they establish "the right . . . for the associé to attend general meetings in person" (para. 124). Therefore, it cannot sustain Guinea's claim that the DRC has violated Mr. Diallo's right to take part and vote in general meetings (para. 126).

(b) The rights relating to the "gérance"

The Court observes that Guinea has asserted that, by unlawfully expelling Mr. Diallo, the DRC has committed: (1) a violation of his alleged right to appoint a gérant, (2) a violation of his alleged right to be appointed as gérant, (3) a violation of his alleged right to exercise the functions of a gérant, and (4) a violation of his alleged right not to be removed as gérant (para. 127).

As regards the first assertion put forward by Guinea, the Court recalls that, under the terms of Article 65 of the 1887 Decree, "[g]érants shall be appointed either in the instrument of incorporation or by the general meeting". The Court finds that when the appointment of the gérant takes place by decision of the general meeting, it falls under the responsibility of the company itself, without constituting a right of the associé. Accordingly, the Court concludes that Guinea's claim that the DRC has violated Mr. Diallo's right to appoint a gérant must fail (para. 133).

As regards the second assertion put forward by Guinea, the Court finds that Mr. Diallo's right to be appointed gérant cannot have been violated in this instance because Mr. Diallo has in fact been appointed as gérant, and still is the gérant of both companies in question (para. 134).

As regards the third assertion put forward by Guinea, the Court refers to Article 69 of the 1887 Decree, which provides that "the gérance may entrust the day-to-day management of the company and special powers to agents or other proxies, whether associés or not", and to the Articles of Incorporation of Africontainers-Zaire, which entitle the gérance to establish administrative bases and offices in the DRC or abroad. The Court finds that "[w]hile the performance of Mr. Diallo's duties as gérant may have been rendered more difficult by his presence outside the country, Guinea has failed to demonstrate that it was impossible to carry out those duties" (para. 135). Further, it observes that "it is clear from various documents submitted to the Court that, even after Mr. Diallo's expulsion, representatives of Africontainers-Zaire have continued to act on behalf of the company in the DRC and to negotiate contractual claims with the

Gécamines company” (para. 136). The Court concludes that “Guinea’s claim that the DRC has violated a right of Mr. Diallo to exercise his functions as gérant must fail” (para. 137).

As regards the fourth assertion put forward by Guinea, the Court observes that Mr. Diallo could not have been removed “for good cause, by a general meeting”, in accordance with Article 67 of the 1887 Decree, in so far as “no evidence has been provided to it that Mr. Diallo was deprived of his right to remain gérant, since no general meeting was ever convened for the purpose of removing him, or for any other purpose”. It finds that although “it may have become more difficult for Mr. Diallo to carry out his duties as gérant from outside the DRC following his expulsion . . . he remained, from a legal standpoint, the gérant of both Africom-Zaire and Africontainers-Zaire”. The Court concludes that “Guinea’s claim that the DRC has violated Mr. Diallo’s right not to be removed as gérant must fail” (para. 138).

(c) The right to oversee and monitor the management

The Court addresses Guinea’s contention that in detaining and expelling Mr. Diallo, the DRC deprived him of his right to oversee and monitor the actions of management and the operations of the two companies. It concludes from Article 71, paragraph 3, of the 1887 Decree, which provides that “[i]f the number of associés does not exceed five, the appointment of auditors is not compulsory, and each associé shall have the powers of an auditor”, that “since both Africom-Zaire and Africontainers-Zaire had fewer than five associés, Mr. Diallo was permitted to act as auditor”. The Court finds that while Mr. Diallo’s detentions and expulsion from the DRC could have rendered the business activity of the companies more difficult, “they simply could not have interfered with his ability to oversee and monitor the gérance, wherever he may have been” (para. 147). The Court concludes that “Guinea’s claim that the DRC has violated Mr. Diallo’s right to oversee and monitor the management fails” (para. 148).

(d) The right to property of Mr. Diallo over his “parts sociales” in Africom-Zaire and Africontainers-Zaire

The Court considers Guinea’s contention that

“Mr. Diallo, no longer enjoying control over, or effective use of, his rights as associé, has suffered the indirect expropriation of his parts sociales in Africom-Zaire and Africontainers-Zaire because his property rights have been interfered with to such an extent that he has been lastingly deprived of effective control over, or actual use of, or the value of those rights” (para. 149).

The Court first observes that “international law has repeatedly acknowledged the principle of domestic law that a company has a legal personality distinct from that of its shareholders”. Therefore, “the rights and assets of a company must be distinguished from the rights and assets of an associé” (para. 155). The Court recalls that “the capital is part of the company’s property, whereas the parts sociales are owned by the associés”: “[t]he parts sociales represent the capital but are distinct from it, and confer on their holders rights in the operation of the company and also a right to receive any dividends or any monies payable in the event of the company being liquidated”. The Court finds that there is “no evidence that any dividends were ever declared or that any action was ever taken to wind up the companies, even less that any action attributable to the DRC has infringed Mr. Diallo’s rights in respect of those matters” (para. 157). The Court concludes that “Guinea’s allegations of infringement of Mr. Diallo’s right to property over his parts sociales in Africom-Zaire and Africontainers-Zaire have not been established” (para. 159).

3. Reparation

In the light of the circumstances of the case, in particular the fundamental character of the human rights obligations breached and Guinea's claim for reparation in the form of compensation, the Court finds that, "in addition to a judicial finding of the violations, reparation due to Guinea for the injury suffered by Mr. Diallo must take the form of compensation" (para. 161). The Court is of the opinion that the Parties should "engage in negotiation in order to agree on the amount of compensation to be paid by the DRC to Guinea for the injury flowing from the wrongful detentions and expulsion of Mr. Diallo in 1995-1996, including the resulting loss of his personal belongings" (para. 163). It believes that, in the interest of the sound administration of justice, "failing agreement between the Parties within six months following the delivery of the present Judgment on the amount of compensation to be paid by the DRC, the matter shall be settled by the Court in a subsequent phase of the proceedings" (para. 164).

Composition of the Court

The Court was composed as follows: President Owada; Vice-President Tomka; Judges Al-Khasawneh, Simma, Abraham, Keith, Sepúlveda-Amor, Bennouna, Skotnikov, Cañado Trindade, Yusuf, Greenwood; Judges ad hoc Mahiou, Mampuya; Registrar Couvreur.

Judges Al-Khasawneh, Simma, Bennouna, Cañado Trindade and Yusuf append a joint declaration to the Judgment of the Court; Judges Al-Khasawneh and Yusuf append a joint dissenting opinion to the Judgment of the Court; Judges Keith and Greenwood append a joint declaration to the Judgment of the Court; Judge Bennouna appends a dissenting opinion to the Judgment of the Court; Judge Cañado Trindade appends a separate opinion to the Judgment of the Court; Judge ad hoc Mahiou appends a dissenting opinion to the Judgment of the Court; Judge ad hoc Mampuya appends a separate opinion to the Judgment of the Court.

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A summary of the Judgment appears in the document "Summary No. 2010/3". This press release, the summary, and the full text of the Judgment can be found on the Court's website (www.icj-cij.org), under the heading "Cases".

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