

Summary of Facts

1. The Applicant is Lohé Issa Konaté, born on 1 August 1965 in Burkina Faso. He is the editor of the weekly newspaper *L'Ouragan*. Applicant is represented by Me Yakaré-Oulé (Nani) Jansen and Me John R.W.D. Jones, Q.C.

2. On 10 May 2013, the Court of Appeals (*Cour d'Appel*) of Ouagadougou upheld Applicant's conviction by the *Tribunal de Grande Instance* of Ouagadougou of 29 October 2012. The *Tribunal* had found Applicant guilty of defamation, public insult and insulting a magistrate ("*diffamation, injures publiques, outrage a magistrate*"), due to two articles Applicant had published in his paper *L'Ouragan*. Applicant was sentenced to 12 months imprisonment and payment of a fine of FCFA 1,500,000.00 (the equivalent of USD 3,000.00), civil damages of FCFA 4,500,000.00 (the equivalent of USD 9,000.00) and FCFA 250,000.00 in costs (the equivalent of USD 500.00). These convictions followed from the criminal prosecution of Applicant due to two articles written by him, which raised questions about the functioning of a local State Prosecutor.

Complaint

3. Applicant submits that his conviction to a prison sentence, payment of a substantial fine, civil damages and costs violates his right to freedom of expression as protected by the various treaties to which Burkina Faso is a party. In particular, Applicant argues that his rights under Article 9 of the African Charter on Human and Peoples' Rights and Article 19 of the International Covenant on Civil and Political Rights have been violated.

Jurisdiction

4. Applicant's complaint concerns a violation of his human rights under the African Charter and ICCPR. The subject matter of the Application therefore falls within the jurisdiction of the Court. Burkina Faso has made a declaration under Article 34(6) of the Protocol, allowing individuals to directly file cases before the Court, on 14 July 1998. Applicant has duly authorised legal counsel to file this Application on his behalf.

Admissibility

5. Applicant submits that all criteria for admissibility as outlined in Rule 40 of the Rules of the Court have been met, including the exhaustion of local remedies. The Applicant has been identified, the Application complies with the Constitutive Act of the Union and the African Charter, does not contain any disparaging or insulting language and is based on Applicant's personal experience. The Application was filed 5 weeks after local remedies had been exhausted and the complaint was solely brought before this Court.

6. While an appeal in cassation was a formal possibility, Applicant submits that such did not constitute an effective remedy since such appeal would have had to have been filed within 5 days. This deadline is unreasonably short as such, and in this particular case especially so given the specialised nature of procedures in cassation and taking into account the fact that Applicant was never provided with a full and reasoned written judgment in his case. Under the circumstances, Applicant would not have been able to launch such appeal in any meaningful way. Moreover, considering the average duration of 7 years for cassation proceedings in Burkina Faso, it would have offered him no realistic prospect for relief before his prison term had come to an end.

Request for relief

7. Applicant requests interim measures consisting of an order from the Court ordering his immediate release from prison or, alternatively, the provision of adequate healthcare for the remaining duration of his prison term.

On the merits, Applicant seeks the following relief from the Court:

a. a declaration that Applicant's criminal conviction, and in particular his prison sentence and order to pay a substantial fine, civil damages and costs, is in violation of the right to freedom of expression;

- b. a declaration that Burkina Faso's laws on criminal defamation and insult are in violation of the right to freedom of expression or, alternatively, hold that the penalty of imprisonment for defamation is in violation of the right to freedom of expression, and an order to Burkina Faso to amend its laws accordingly;
- c. an order to Burkina Faso to make reparations to the Applicant, consisting of, amongst others, lost income, lost profits and compensation for emotional suffering.