

COMMUNITY COURT OF JUSTICE,
ECOWAS
COUR DE JUSTICE DE LA COMMUNATE,
CEDEAO
TRIBUNAL DE JUSTICA DA COMUNIDADE,
CEDEAO



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

In the Case

ALEX NAIN SAAB MORÁN V. REPUBLIC OF CAPE VERDE

SUIT No ECW/CCJ/APP/43/20

RULING N° ECW/CCJ/RUL/07/2020

Ruling

Abuja, Nigeria

On December 2, 2020

SUIT No ECW/CCJ/APP/43/20

RULING N° ECW/CCJ/RUL/07/2020

ALEX NAIN SAAB MORÁN **Applicant**

V.

REPUBLIC OF CAPE VERDE **Respondent**

COMPOSITION OF THE COURT PANEL

Hon. Justice Edward Amoako ASANTE **President**

Hon. Justice Dupe -ATOKI **Member**

Hon. Justice Januária Tavares Silva Moreira COSTA.....

Member/Rapporteur

Assisted by:

Athanasse ATANNON **Deputy Chief Registrar**



I – REPRESENTATION OF THE PARTIES

1 - Femi Falana, SAN

2 - Marshal Abubakar, ESQ.

3 - Dr. José Manuel Pinto Monteiro **Applicant's Counsels**

Dr. Henry Borges **Respondent's Counsel**

III - DESCRIPTION OF THE PARTIES

3 - The Applicant is a Colombian and Venezuelan citizen who was in transit through Cape Verde.

4 - The Respondent is the State of the Republic of Cape Verde, an ECOWAS Member State.

III - INTRODUCTION

5 - In the instant case, the Applicant came to claim the violation of his rights to *liberty and security* and the right *not to be subjected to torture or cruel*

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and inhuman treatment, because, while in transit through Cape Verde, he was detained by the Respondent's authorities for the purposes of extradition demanded by the United States of America.

IV – PROCEDURE BEFORE THE COURT

6 - The application initiating proceedings was lodged at the Registry of this Court on September 29, 2020 and notified to the Respondent State on October 13, 2020.

7 - By separate application pursuant to Article 20 of the 2005 Additional Protocol and Article 79 of the Rules of Procedure of the Court, registered at the Registry and notified to the Respondent on the same date, the Applicant applied for interim measures.

8 - Being appointed the date of November 10, 2020 for the hearing of the parties on the application for interim measures, the Respondent came to request that it be postponed, on the ground that it was notified at very short notice and that the period for submitting its defense is still running, and that it wishes to do so.

9 - After hearing the Applicant's representatives, and on account of the reasons relied on by the Respondent, the hearing was postponed until 30 November so that the Respondent could present its defense.

10 - The Respondent lodged its defense (doc. 3) on November 24, 2020, which was notified to the Applicant's representatives on the same date.

11 - The Applicant responded to the defense by Reply (doc.4) registered at the Registry of this Court on 27th November 2020.

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12 - Meanwhile, on 30 November the Respondent lodged a new defense (doc.5).

On the date appointed for the hearing of the parties, 30 November 2020, only the Applicant attended the virtual hearing and made his oral submissions.

V - APPLICANT'S CASE

a) Summary of Facts:

14 - In terms of facts, the Applicant refers to those claimed in the main proceeding, namely, that:

15 - On June 12, 2020 at 8:09 pm, the plane on which the Applicant was traveling in order to carry out his special mission, made a stopover in the Republic of Cape Verde for refueling. About an hour later, at 9:30 pm, the Applicant was detained, for the purpose of extradition, by the Cape Verdean authorities in response to an international arrest warrant that was allegedly circulated by INTERPOL on the basis of a Red Alert against the Applicant issued at the request of the United States (the "**Red alert**").

16 - That at the time of his arrest, neither the copy of the Red Alert nor the arrest warrant against him were presented to him.

17 - That the Applicant's detention has continued since that date, pending extradition to the United States of America. The Applicant's extradition request is based on the United Nations Convention against Transnational Organized Crime (the "**UNTOC**"), of which both Cape Verde and the United States are signatories, and which arises from the decision issued by the US

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District Court for the District of South Florida on 25th July 2019 to indict the Applicant for alleged money laundering offenses committed between November 2011 and September 2015.

18 - He further claims that on April 9, 2018, the Applicant was appointed as Special Envoy of the Government of Venezuela, which vested on him the responsibility of acquiring humanitarian resources of great need in Venezuela. In this context, and within the scope of his mandate as Special Envoy, on April 1, 2020, Venezuela entrusted the Applicant with the mission of negotiating with organizations in Iran to obtain the necessary resources for Venezuela.

19 - Therefore, in June 2020, the Governments of Venezuela and Iran agreed that the Applicant would travel to Iran to purchase food and medicines that Venezuela needed urgently. In view of obstacles imposed by the United States, it was decided that the Applicant's mission should be secret, which explains why the Applicant's name was not on the passenger list of the plane he was traveling on.

20 - After taking legal cognizance of the arrest of its Special Envoy, Venezuela pleaded the Applicant's immunity and inviolability under international law by means of letters sent to the Minister of Foreign Affairs, Communities and Defense of Cape Verde on 13 and 14 June 2020 and 25 September 2020.

21 - Between June 14, 2020 and July 22, 2020, the Applicant's defense challenged his detention through a series of *habeas corpus* and resources. In general, such appeals were based (1) on the Applicant's inviolability and

immunity, (2) on the illegality of the Red Alert and (3) on the Applicant's health problems, aggravated by his detention. All of these appeals were rejected by the Cape Verdean courts, which decided to maintain the Applicant's detention.

22 - That since July 16, 2020 to the present date, the Applicant has been filing a series of appeals against the extradition request presented by the USA based on the fact that (1) he cannot be extradited on account of his immunity and inviolability, (2) the extradition requested by the United States is purely political, (3) the Applicant has been arbitrarily detained and his procedural rights have been violated, and (4) if he is extradited, the Applicant will be subject to a violation of his human rights. All of these appeals have been denied by the Cape Verdean courts, which have ruled to authorize the Applicant's extradition to the USA.

b) Pleas in Law

23 - The Applicant submits that, with the present application for interim measures, he intends to prevent the violation of his human rights, as follows:

i) The right to liberty and security provided for and guaranteed by Articles 6 of the African Charter on Human and Peoples' Rights (ACHPR) and Articles 9 (1) and (2) of the International Covenant on Civil and Political Rights (ICCPR)

ii) The right not to be subjected to torture or cruel and inhuman treatment enshrined in Article 5 of the ACHPR and Article 7 of the ACHPR.

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24 - The applicant claims that there is an imminent risk that irreparable damage may be caused to him before this Court can give its final decision on the merits of the case, since on July 31, 2020, the Court of Appeal of Barlavento in Cape Verde granted the request for the Applicant's extradition to the USA. On August 13, 2020, he lodged an appeal against that decision before the Cape Verde Supreme Court.

25 - That the Supreme Court of Cape Verde must rule on the appeal within 80 days, which means that it can rule on the matter at any time and unless there is reason to appeal to the Constitutional Court of Cape Verde, he will be extradited to the US within 20 days of the Supreme Court's decision.

26 - The Applicant concludes that in view of the absence of any domestic way to obtain the suspension of his extradition for the period necessary for the Court to decide on the merits of the application, the Applicant's risk is imminent.

27 - The applicant further claims that the damage he faces is irreparable inasmuch as, once extradited, he will not only cease to be under the jurisdiction and control of the Respondent but will also be outside the territorial jurisdiction of this Court.

28 - He further submits that the interim measures sought must be ordered, as the merits of the main proceeding are plausible, on the basis of the following arguments:

a) The illegality of his detention

29 - The Applicant submits that there are two main reasons why his detention is arbitrary and illegal and violates his right to liberty under Article 6 of the African Charter:

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(1) Because he enjoys immunity and inviolability on account of the principle of non-interference under the UN Charter and his status as Special Envoy, since at the time of his arrest he was carrying out a special mission on behalf of Venezuela, and was not the subject of an arrest warrant or even a Red Alert in Cape Verde.

(2) The Red Alert issued by INTERPOL against the Applicant is illegal since it was issued after his arrest and violates international law and consequently the rules of INTERPOL.

b) Cruel and inhuman treatment

30 - The Applicant submits that all civilized countries, including Cape Verde, embrace the principle that those who are convicted of criminal offenses should receive a fair punishment.

31 - However, international law is opposed to extreme sentence practices.

32 - Such penalties are considered incompatible with the prohibition of cruel and inhuman treatment and the requirement that all persons deprived of their liberty must be treated with humanity and with respect for the inherent dignity of the human person.

33 - In the instant case, each of the charges against the Applicant implies a maximum potential penalty of 20 years in prison and a fine of up to \$500,000 or twice the amount of the transactions in question, whichever is greater.

34 - The judge has the legal authority to impose consecutive sentences for each charge, causing his maximum penalty to be 160 years in prison.

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35 - In addition, there is no probation in the federal system and it is unlikely that the Applicant will be eligible for house arrest.

36 - Therefore, considering the current global life expectancy at birth, the maximum sentence to which the Applicant is subject is equivalent to a *de facto* life sentence.

37 - The practices of extreme sentences, including the *de facto* perpetual penalty without probation, violate Article 10 (3) of the ICCPR by imposing sentence regimes that are retributive rather than reformist.

38 - In addition, if extradited to the US, the Applicant would be subject to torture because of his political position and the confidential information he possesses, which would also constitute a violation of Article 5 of the African Charter.

39 - The Applicant concludes that, in view of his penalty to a *de facto* perpetual sentence and to torture, the international law would demand that extradition be denied by Cape Verde.

c) Reliefs Sought

40 - In conclusion, the Applicant requests that, until the decision on substance is delivered, the Court should order the following interim measures:

(a) That the Respondent suspend the extradition procedure against the Applicant, which was initiated at the request of the United States of America and release him under the supervision and responsibility of the Ambassador

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of the Bolivian Republic of Venezuela, accredited at the Republic of Cape Verde;

(b) That the Respondent ensures that the Applicant is treated as a Special Envoy in Transit, in particular, ensuring his inviolability, freedom of communication and security;

(c) That the Respondent refrains from taking any other action that could prejudice the rights claimed by the Applicant and/or aggravate or extend the litigation submitted to the Court or compromise the implementation of any decision that the court may render.

41- In his response to the defense and with relevance, the Applicant in summary claimed that he is an oncological patient undergoing treatment and that since his arrest he requested medical visits and periodic examinations to certify his health status, but was denied access to adequate medical facilities.

VII – RESPONDENT'S CASE

a) Summary of Facts:

42 - The Respondent confirms that the Applicant's detention on June 12, 2020, at the airport on the island of Sal, occurred in response to a request from the American Government, more specifically by the Florida District Court, due to a series of crimes allegedly committed by the Applicant in American territory.

43- This detention was carried out based on the general principles of international judicial cooperation in criminal matters, in strict compliance with the provisions of Arts. 3 and 4 of Act no. 6/VIII/2011, of 29 August and

that there is no non-conformity with Cape Verdean law or with any international agreement, treaty or convention of which Cape Verde is a party, in the detention procedure of Mr. Alex Saab.

44 - After the arrest, the applicant was brought before the judge for the purpose of legalizing the arrest, which he did, considering that the proceedings were in accordance with Cape Verdean law, and the subsequent legal proceedings were provided for with a view to the extradition of the detainee.

45 - It also confirmed that on the day after the arrest, i.e. on 13th June 2020, Venezuela, through its Minister of Foreign Affairs, informed the State of Cape Verde of the quality in which the detainee was traveling and sought recognition of the immunity of Mr Alex Saab, saying that "the applicant traveled as a representative of the President of Venezuela, Nicolás Maduro Moras, who was unable to leave Venezuela in his capacity as the guide and leader in the country in the fight against the COVID-19 pandemic".

46 - The Court of Appeal of Barlavento ratified the decision of the Judge of the Court of First Instance of the island of Sal, maintaining Mr Alex Saab's imprisonment, which gave rise to an application for *habeas corpus*, a measure which he sought against the decision of the Court of First Instance and not against the decision which ratified his decision, which rendered the appeal inoperative since the decision maintaining the imprisonment was not challenged. That is why the request for *habeas corpus* was rejected by the Supreme Court of Justice of Cape Verde.



47 - The Respondent concluded that the Applicant does not enjoy the immunity on which he relies, since he does not meet the requirements of a special envoy, for the purposes of diplomatic immunity enshrined in the 1969 United Nations Convention on Special Missions, and consequently the whole construction and the grounds which he used in all his challenges to the decisions of the Cape Verdean judicial authorities thus crumbled.

b) *Pleas in Law*

48 - The Respondent submits, in its last statement of defense (doc. 5 that replaced doc.3), that, with the application for interim measures made by the Applicant, the latter intends, in a subtle way, to obtain decisions from this Court that, under the guise of interim measures, will ultimately put an end to the extradition process and the decision on the substance of the case that will be pronounced in the substantive cases, either by the Internal Jurisdiction or by the Community Court of Justice, will be deprived of any usefulness.

49 - It further added that asking the Respondent to refrain from taking any other measure which might adversely affect the rights claimed by the Applicant and/or aggravate or extend the dispute before the Court or compromise the implementation of any decision which the Court may render is to prevent that State from exercising its sovereignty over international judicial cooperation in criminal matters.

50 - That there are no specific requirements governing the application and the granting of interim measures.

Non-exhaustion of domestic remedies

51 - The Respondent further submitted that the conditions for bringing this dispute to the attention of an international jurisdiction have not yet been met, precisely because domestic remedies have not yet been exhausted.

52 - That, with the filing of this application and under the pretext of requesting interim measures, what the Applicant actually intends is to cause the ECOWAS Court of Justice to interfere in the internal jurisdiction of the Republic of Cape Verde, in order to deflate or disturb exercise of the sovereignty of that State in the context of international judicial cooperation in criminal matters.

53 - In Cape Verde, and by virtue of the Constitution of the Republic, the process of passive extradition is completely jurisdictional in the sense that no citizen will be extradited to another country, without the authorization of the Courts, which will take place at the end of a process in which all guarantees of defense are respected.

54 - There is therefore no reason why an extradition procedure which is following the normal procedure before the Cape Verde courts, with full respect for all the guarantees of defense and the time limits laid down by law, should be submitted in parallel to an international jurisdiction in a clear attempt to deprive the Cape Verde courts of exercising their sovereign jurisdiction over that dispute.

55 - From all that we have shown so far, it seems clear that internal resources are not exhausted yet, and it is therefore premature to interfere in this internal matter from any international jurisdiction, be it sub-regional, regional or global.

56 - Neither is there any of the situations that in international law are considered as lack or inefficiency of effective remedies at the internal level, because, as has already been said, the Courts are effectively independent and

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the extradition process in question is proceeding with all normality and with strict observance of the guarantees of defense of the extraditee.

57 - It further submits that the rule of exhaustion of internal resources contained in Article 56(5) of the African Charter on Human and Peoples' Rights must be observed by any Court with a mandate to enforce the rights contained in that Regional Instrument for the Protection of Human Rights.

58 - Therefore, as the process is running smoothly before the internal jurisdiction, which offers every guarantee of a defense, the ECOWAS Court of Justice must refrain, at least for the time being, from interfering in this extradition procedure.

59 - Any interference by Community jurisdiction in the said extradition procedure at this stage, imposing some measure on the State of Cape Verde, risks placing the Republic of Cape Verde in a conflict of duties between respecting the measures of the ECOWAS Court or respecting the decisions of its own courts, as required by its Constitution.

60 - That it is certainly up to the Cape Verdean Courts, and not the ECOWAS Court of Justice, to decide whether or not a particular citizen should be extradited to another country.

61 - It also stated that the Applicant benefits from all the health and other benefits which the State of Cape Verde provides to its national detainees, regardless of their nationality, political color, religious belief, race, economic condition and that there is no torture, whether to detainees or to any other person.

a) Reliefs Sought

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62 - The Respondent concluded asking the Court to consider that the requirements for admissibility of the application have not been met, in particular because the internal remedies have not yet been exhausted.

63 - And that under no circumstances should the interim measures be ordered.

VII - THE INTERIM MEASURES

64 - As provided in Article 21 of the 2005 Additional Protocol *“The court may, whenever a dispute is submitted before it, order the provisional preparatory inquiries that it deems necessary or opportune”*.

65 - And, for the definition of interim measures, the rule of Article 79 of the Court’s Rules of Procedure establishes that: *“the applications referred to in the present Article 21 (as is clear from the re-enumeration introduced by Article 5 of the 2005 Protocol) specify the object of the dispute, the grounds of urgency, and the pleas of fact and law establishing a prima facie case for the adoption of the interim measure sought.”*

66 - As this Court ruled in the case *GODSWILL MRAKPOR ET 5 OTHERS V. AUTHORITY OF HEADS OS STATE AND GOVERNMENT, ECOWAS & ANOR*, Judgment No. ECW/CCJ/JUD/01/11 of March 18, 2018, that from the above rules it can be deduced that: *“... The court would not be in a position to order the interim measures asked for except upon be fulfillment of three conditions:*

- 1. If it is competent prima facie to adjudicate on the substantive case or if it is not manifestly incompetent to adjudicate on the substantive applications filed;*

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2. *If the substantive application is prima facie admissible or if it is not manifestly inadmissible;*
3. *If there is urgency in regard to the circumstances of fact and law invoked in support of the application for interim measures.” (see 17)*

67 - It follows that the Court can only determine interim measures within its jurisdiction. This determines that it should be examined whether, in terms of substance, whether the case before the Court falls within its jurisdiction, whether the application may be granted and whether there is an urgency to be determined.

68 - Therefore, the aforementioned rules allow this Court to enact interim measures when it finds a violation of human rights in a Member State. This position supported by this Court in the case *BALDINI SALFO V. BURKINA FASO*, in Judgment No. ECW/CCJ/JUD/13/12, Suit No. ECW/CCJ/APP/14/10 in L, wherein it ruled that “*The main objective behind the making of an order when the court finds an occurrence of human rights violation, is the cessation of the said violation and the institution of reparation.*” (§59).

69 - The Court then proceeds to examine whether, in the instant case, the three conditions mentioned above are met.

VIII – JURISDICTION

70 – It is primarily incumbent on the Court to establish its own jurisdiction to hear and determine the merits of the case brought by the Applicant.

71 – In terms of human rights matters, the jurisdiction of this Court is regulated by Article 9(4) of Protocol A/P1/7/91 on the Court, as amended by Additional Protocol A/SP.1/01/05, which provides that:



"The Court has jurisdiction to determine the cases of human rights violations that occur in any Member State."

72 – So this Court maintained in the case *KARIM MEISSA WADE V. RÉPUBLIQUE DU SENEGAL*, Judgment No. ECW/CCJ/JUD/19/13, Suit No. ECW/CCJ/APP/09/13, (2013) CCJELR, pag. 231 that: "... *That simply invoking human rights violation in a case suffices to establish the jurisdiction of the Court over that case.*"

71 - In the instant case, the Applicant claims the violation of his human rights to liberty and security and not to be subjected to torture or degrading treatment, all guaranteed by the African Charter on Human and Peoples' Rights and by other international legal instruments, ratified by the ECOWAS Member States.

73 – Such an allegation of violation of human rights in an ECOWAS Member State is sufficient to confer on this Court the jurisdiction to hear the instant case.

74 - Accordingly, this Court declares itself competent to know the cause.

IX – ADMISSIBILITY

Non-exhaustion of domestic remedies

75 - The Respondent submitted that the requirements for the admissibility of the application have not been met, in particular because the internal resources have not yet been exhausted.

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76 - In order to support this position, the Respondent submits that by lodging this application and under the pretext of seeking interim measures, what the Applicant effectively seeks is to cause interference by the Court of Justice of ECOWAS in the internal jurisdiction of the Republic of Cape Verde, so as to empty or disrupt the exercise of that State's sovereignty in international judicial cooperation in criminal matters.

77 - It is evident that domestic remedies have not yet been exhausted and, therefore, interference in this internal matter of any international jurisdiction, whether sub-regional, regional or global, is premature.

78 - That there are no situations that in international law are considered as lack or inefficiency of effective remedies at the internal level, because, as has already been said, the Courts are effectively independent and the extradition process in question is proceeding with all normality and with strict observance of the guarantees of defense of the extraditee.

79 - That any interference by Community jurisdiction in the said extradition procedure, at this stage, which would impose any measure on the Respondent, risks placing the State of Cape Verde in a conflict of duties, between respecting the measures of the ECOWAS Court or respecting the decisions of its own Courts, as required by its Constitution.

80 - And that the rule of exhaustion of internal resources, which is established in article 56.5 of the African Charter on Human and Peoples' Rights, must be observed by any Court with a mandate to enforce the rights enshrined in that regional instrument for the protection of human rights.

81 - In this regard, the Applicant argued that, although cases are still pending before the national court, this Court is not precluded from considering the matter if the application contains allegations of human rights violations.

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65 – The Court cannot fail to agree with the Applicant on this point that no requirement of exhaustion of internal remedies exists as a condition of access to this Court. This particularity distinguishes this Court from other international human rights courts and makes it unique in dispensing with such a requirement.

83 - This Court, based on the interpretation given to Articles 9 (4) and 10 (d) of the Supplementary Protocol relating to the Court, has repeatedly reaffirmed that the exhaustion of domestic remedies (whether administrative or judicial) does not constitute a condition for lodging applications before this Court. (See Judgments ECW/CCJ/JUD/07/11 in the case *OCEAN KING LTD. V. REPUBLIC OF SENEGAL*, Suit ECW/CCJ/APP/05/08, in (2011) CCJELR, pag. 139; ECW/CCJ/JUD/25/2015, in the case, *HANS CAPEHART WILLIAMS SR. AND OTHERS V. REPUBLIC OF LIBERIA AND OTHERS* (page 11, Suit ECW/CCJ/APP/06/14.)

84 - On the other hand, the Court is not bound by the aforementioned provision of Article 56(5) of the African Charter, applicable to the African Commission and the African Court on Human and Peoples' Rights.

85 – As provided in Article 10 (d) of Protocol A/PI/7/91 on the Court, as amended by Additional Protocol A/SP.1/01/05: “*Can consult the Court: ... Anyone who is a victim of human rights violations...*”

- (i) “*As long as the case is not anonymous and*
- (ii) *That the same case is not pending before another competent international court.*”

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86 – In other words, in order to substantiate an action concerning the violation of human rights, it is necessary that the Applicant is a victim and that the Respondent State is responsible for the alleged violations. (See, among others, the Judgments n° ECW/CCJ/RUL/04/09 delivered in the case *MUSA SAIDYKHAN v. REPUBLIC OF GAMBIA* (§43) and more recently, Judgment No. ECW/CCJ/JUD/06/19, issued in the case *REV. FR. SOLOMON MFA & 11 ORS V. FEDERAL REPUBLIC OF NIGERIA* (§ 32).

87 - In the instant case, the Applicant identifies himself as a victim of human rights violations, showing his interest in the cause.

88 - There is no evidence that the same case is pending before another international court.

89 – These are the requirements provided for in Article 10 (d) of the 2005 Additional Protocol that condition the admissibility of the cause, and which are shown to be met in the instant case.

90 – Consequently, considering the facts relied on by the Applicant as infringing his human rights, the Court considers that the present action is admissible.

X - ANALYSIS OF THE INTERIM MEASURES SOUGHT

91 - The Applicant requests the Court to order the following measures:

a) That the Respondent suspend the extradition procedure against him and release him under the supervision and responsibility of the Ambassador of the Bolivian Republic of Venezuela, accredited at the Republic of Cape Verde;



(b) That the Respondent ensures that he is treated as a Special Envoy in Transit, in particular, ensuring his inviolability, freedom of communication and security;

(c) That the Respondent refrains from taking any other action that could prejudice the rights claimed by the Applicant and/or aggravate or extend the litigation submitted to the Court or compromise the implementation of any decision that the court may render.

92 - As stated by this Court in the case *THE REGISTERED TRUSTES OF ADVOCAT SANS FRONTIERES FRANCE AND OTHER V. FEDERAL REPUBLIC OF NIGERIA AND OTHER*, in the Suit No. ECW/CCJ/APP/14/13, "The Court ought to consider whether the reasons given in the affidavit show the situation of the applicant to be of extreme gravity and urgency and also whether it would be necessary to avoid irreparable damage of persons by granting the interim measures." (See §41)

93 - That is, in order to decide on interim measures, it is for the Court to first determine whether the reasons claimed demonstrate that the Applicant is in an extremely serious situation and whether there is a need to avoid a *irreparable damage to the Applicant*.

94 - The Applicant submits that, with the present application for interim measures, he intends to prevent the violation of his human rights, namely:

1. The right to liberty and security, claiming that his *detention is arbitrary and illegal* and violates his right to liberty under Article 6 of the African Charter, for two reasons:

a) Because he enjoys immunity and inviolability in view of the principle of non-interference arising from the UN Charter and his status as Special Envoy, since at the time of his arrest he was carrying out a special mission



on behalf of Venezuela, and he was not the subject of an arrest warrant or even of a red alert in Cape Verde;

b) The Red Alert issued by INTERPOL against the Applicant is illegal since it was issued after his arrest and violates international law and consequently the rules of INTERPOL.

2. And the right not to be subjected to cruel and inhuman treatment.

95 - The Court considers that the arguments put forward above in support of the alleged infringement of the Applicant's right to liberty and security and his failure to be subjected to cruel and inhuman treatment are matters to be assessed on the merits of the case and it is not for the time being for the Court to make any pronouncement on them.

However, because the parties admit that the Applicant was arrested, on June 12, 2020, by the Respondent's judicial authorities, while in transit, on a trip to Iran, allegedly, justifying that he was on a mission as Envoy Special of the President of the Bolivian Republic of Venezuela.

96 - The Applicant gathered a copy of a diplomatic passport attached as Exhibit 1 (next to doc. 1).

97 - Considering furthermore that after his arrest, the Venezuelan authorities informed the Respondent that the Applicant was traveling as Special Envoy of the Bolivian Republic of Venezuela and therefore enjoys immunity and inviolability.

98 - Considering also that the Applicant thus claims a diplomatic status;

99 - Considering that the Applicant claims to be an oncological patient undergoing treatment (which the Respondent does not challenge) which he has not been receiving since his arrest, and that he needs care and access to medical services appropriate to his clinical situation.

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100 - The Court considers that there is a situation of imminent damage which determines the urgent need to protect and secure, even in part, the human rights relied on and which the Applicant is entitled to, until a decision is taken on the merits.

101 - Thus, it is the understanding of this Court that the Respondent must allow the Applicant better conditions of accommodation, placing him under permanent home detention, under the supervision of the national judiciary authorities of the Respondent, and better access to medical care and visits of his choice, at his own expense, while awaiting the decision on the merits of the substantive cause.

XIV – OPERATIVE CLAUSE

102 - Accordingly, the Court:

- a) Declares that it entertains jurisdiction to examine the cause, since it is admissible.
- b) Orders the Respondent to place the Applicant under permanent home detention, under the supervision of the national judiciary authorities of the Respondent, in order to guarantee him better conditions of accommodation and access to medical treatment and visits, compatible with his personal situation, at the Applicant's own expense, and that the Applicant should not be extradited until a decision has been made on the merits of the substantive cause.
- c) Declares the remaining sought interim measures unfounded and consequently dismisses them.
- d) Orders that the parties to be notified of this order.
- e) This Orders takes effect immediately.

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Signed by:

Hon. Justice Edward Amoako **ASANTE** - President



Hon. Justice Dupe **ATOKI** - Member



Hon. Justice Januária T. S. Moreira **COSTA**-Member/Rapporteur



Assisted by:

Maitre Athanase **ATANNON** - Chief Registrar Deputy



103 – Done in Abuja, on the 2nd day of December 2020, in Portuguese and translated into French and English.

