

COUR INTERNATIONALE DE JUSTICE

RECUEIL DES ARRÊTS,
AVIS CONSULTATIFS ET ORDONNANCES

AFFAIRE
AHMADOU SADIO DIALLO
(RÉPUBLIQUE DE GUINÉE c. RÉPUBLIQUE
DÉMOCRATIQUE DU CONGO)

ARRÊT DU 30 NOVEMBRE 2010

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INTERNATIONAL COURT OF JUSTICE

REPORTS OF JUDGMENTS,
ADVISORY OPINIONS AND ORDERS

CASE CONCERNING
AHMADOU SADIO DIALLO
(REPUBLIC OF GUINEA v. DEMOCRATIC
REPUBLIC OF THE CONGO)

JUDGMENT OF 30 NOVEMBER 2010

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(*République de Guinée c. République démocratique du Congo*),
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placed under surveillance. According to the DRC, having resumed his activities in breach of public order, he was rearrested on an unspecified date, but in any event not earlier than 2 January 1996. He is then said to have been released for a second time on 10 January 1996, because the immigration service could not find a flight leaving for Conakry within the eight-day legal time-limit following his latest arrest. During the first period in question, therefore, according to the DRC, Mr. Diallo was only detained for two days in the first instance and subsequently for no longer than eight days.

With regard to the period from 10 January to 31 January 1996, Guinea maintains that Mr. Diallo was rearrested on 14 January 1996, on the order of the Congolese Prime Minister for the purpose of effecting the expulsion decree, and kept in detention until he was deported from Kinshasa airport on 31 January, i.e., for another 17 days. On the other hand, the DRC asserts that Mr. Diallo remained at liberty from 10 January to 25 January 1996, on which date he was arrested prior to being expelled a few days later, on 31 January.

52. The Parties also differ as to how Mr. Diallo was treated during the periods when he was deprived of his liberty, although on this aspect of the dispute the disagreement relates less to the facts themselves than to their characterization. According to Guinea, Mr. Diallo was held in dire and difficult conditions; he was only able to receive food because of the visits from his next of kin; and he was subjected to death threats from the persons responsible for guarding him. The DRC contests this final point; for the rest, it maintains that the conditions of Mr. Diallo's detention did not amount to inhuman and degrading treatment in breach of international law.

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53. Faced with a disagreement between the Parties as to the existence of the facts relevant to the decision of the case, the Court must first address the question of the burden of proof.

54. As a general rule, it is for the party which alleges a fact in support of its claims to prove the existence of that fact (see, most recently, the Judgment delivered in the case concerning *Pulp Mills on the River Uruguay (Argentina v. Uruguay)*, *I.C.J. Reports 2010 (I)*, p. 71, para. 162).

However, it would be wrong to regard this rule, based on the maxim *onus probandi incumbit actori*, as an absolute one, to be applied in all circumstances. The determination of the burden of proof is in reality dependent on the subject-matter and the nature of each dispute brought before the Court; it varies according to the type of facts which it is necessary to establish for the purposes of the decision of the case.

55. In particular, where, as in these proceedings, it is alleged that a person has not been afforded, by a public authority, certain procedural guarantees to which he was entitled, it cannot as a general rule be dem-