

XYZ v Benin (provisional measures) (2019) 3 AfCLR 750

Application 058/2019, *XYZ v Republic of Benin*

Ruling, 2 December 2019. Done in English and French, the French text being authoritative.

Judges: ORE, KIOKO, BEN ACHOUR, MATUSSE, MENGUE, MUKAMULISA, CHIZUMILA, BENSAOULA, TCHIKAYA, ANUKAM and ABOUD

The anonymous Applicant claimed that the prohibition of issuance of legal documents to certain persons sought by justice in the Respondent State violated the Charter. The Court dismissed the request to issue provisional measures holding that the Applicant had failed to provide evidence of the urgency or gravity or irreparable harm.

Jurisdiction (*prima facie*, 14-18)

Provisional measures (evidence, 23; in favour of persons not party of the case, 23)

I. The Parties

1. On 3 August 2019, the Applicant (hereinafter referred to as “XYZ”), a national of Benin who requested anonymity, applied to the Court for provisional measures against the Republic of Benin. In the same application, he also requested the Court to decide on the merits of the matter.
2. During its 53th Ordinary session, the Court granted the Applicant request for anonymity.
3. The Republic of Benin (hereinafter referred to as “the Respondent State”) became a Party to the African Charter on Human and Peoples’ Rights (hereinafter referred to as “the Charter”) on 21 October 1986, to the Protocol to the African Charter on Human and Peoples’ Rights on the Establishment of an African Court on Human and Peoples’ Rights (hereinafter referred to as “the Protocol”) on 22 August 2014. On 8 February 2016, the Respondent State also filed the Declaration provided for in Article 34(6) of the Protocol whereby it accepts the jurisdiction of the Court to receive applications from individuals and Non-Governmental Organizations.

II. Subject of the Application

4. The Applicant submits that on 22 July 2019, the Respondent State issued Inter-Ministerial Decree 023/MJL/DC/SGM/DACPG/

SA/023SGG19 to prohibit the issuance of legal documents to certain persons sought by justice in the Republic of Benin.

5. Pursuant to the said decree, prohibited the issuance of legal documents for the benefit and on behalf of persons “whose appearance, hearing or interrogation is necessary for the purpose of a judicial police investigation, court of law or who is the subject of an enforceable decision of condemnation and who does not defer to summons and to the injunction of the authorities”.
6. According to the Applicant, “legal documents” means “extracts from civil status certificates, certificates of nationality, identity cards, passports, laissez-passer, safe-conducts, Residence Cards, Consular Card, Criminal Record No. 3, Residence Certificate, Collective Life Certificate, Certificate or Attestation of State Possession, Driver’s License, Voter’s Card, Tax Clearance Certificate.”
7. The Applicant submits that the order concerns well-known members of the political opposition in exile, such as Sébastien Ajavon, former ministers including Komi Koutché and Valentin Djenontin, former Members of Parliament and Mayors.
8. The Respondent State did not submit a response to this request for provisional measures.

III. Alleged violations

9. The Applicant alleges that the Respondent State violated:
 - i. Article 4 of the Charter (right to life, physical and moral integrity);
 - ii. Articles 2 and 3 of the Charter (right to enjoy the rights and freedoms guaranteed by the Charter);
 - iii. Article 5 of the Charter (right to respect for the inherent dignity of the human person);
 - iv. Article 7(1) of the Charter (right to have one’s case heard);
 - v. Articles 12 and 13(1) of the Charter (right to freedom of movement);
 - vi. Articles 14 and 15 of the Charter (right to property and right to work);
 - vii. Article 22 of the Charter (right to economic development);
 - viii. Article 1 of the Charter.

IV. Summary of the procedure before the Court

10. On 3 August 2019, the Applicant submitted an application requesting the Court to order provisional measures and also to decide on the merits of the case.
11. The Application for provisional measures was served on the Respondent State on 15 August 2019 and granting the

Respondent State fifteen (15) days in which to respond.

12. The Respondent State did not file any response.

V. Jurisdiction of the Court

13. When considering an Application, the Court conducts a preliminary examination of its jurisdiction on the basis of Articles 3, 5(3) and 34(6) of the Protocol.
14. However, with regard to provisional measures, the Court does not have to ensure that it has jurisdiction on the merits of the case, but simply that it has *prima facie*¹ jurisdiction.
15. Pursuant to Article 5 (3) of the Protocol, “The Court may entitle relevant Non-Governmental Organizations (NGOs) with observer status before the Commission, and individuals to institute cases directly before it, in accordance with Article 34(6) of this Protocol”.
16. As mentioned in paragraph 2 of this Ruling, the Respondent State is a Party to the Charter, the Protocol and has also made the Declaration accepting the jurisdiction of the Court to receive applications from individuals and Non-Governmental Organizations in accordance with Article 34(6) of the Protocol read together with Article 5(3) of the Protocol.
17. In this case, the rights claimed by the Applicant as having been violated are protected by the Charter, the Protocol of the Economic Community of West Africa (ECOWAS) on Democracy and Good Governance in addition to the Protocol on the Mechanism for Conflict Prevention, Management, Resolution, Peacekeeping and Security and the African Charter on Democracy, Elections and Governance (CADEG), which are instruments that the Court is empowered to interpret and apply pursuant to Article 3(1) of the Protocol.
18. In light of the foregoing, the Court concludes that it has *prima facie* jurisdiction to consider the Application.

VI. Provisional measures requested

19. The Applicant requests the Court to order:
 - i. the Respondent State to take all necessary measures to stay the implementation of Decree 2019-No023/MJL /DC/SGM/DACPG/

1 Application 002/2013, Order of 15 March 2013 on provisional measures, *African Commission on Human and Peoples Rights v Libya* (hereinafter referred to as the “*African Commission on Human and Peoples’ Rights v Libya, Order for Provisional Measures*”), para 10; Application 024/2016, Order of 03 June 2016 on Provisional Measures, *Amini Juma v Republic of Tanzania* (hereinafter referred to “*Amini Juma v United Republic of Tanzania, Order for Provisional Measures*”, para 8.

SA/023SGG19 prohibiting the issuance of legal documents to the persons sought by justice.

- ii. the Respondent State to report to the Court within a time period that the Court may decide to set.

20. The Court notes that Article 27(2) of the Protocol provides as follows: “In cases of extreme gravity and urgency and when necessary to avoid irreparable harm to persons, the Court shall adopt such provisional measures as it deems necessary”.
21. Furthermore, Rule 51(1) of the Rules of Court provides that:” the Court may, at the request of a party, the Commission or on its own accord, prescribe to the parties any interim measure which it deems necessary to adopt in the interest of the parties or of justice”.
22. Based on the foregoing, the Court will take into account the law applicable to provisional measures, which are of a preventive nature and do not prejudice the merits of the Application. The Court may order them only when the conditions have been met, that is, extreme gravity, urgency and prevention of irreparable harm to persons.
23. The Court also notes that the Applicant is asking the Court to order provisional measures in favour of persons who are not parties to the present case. Furthermore, the Applicant failed to provide evidence of the urgency or gravity or irreparable harm that the implementation of the Decree could cause him personally.
24. In the light of the above, the request for provisional measures is dismissed.

VII. Operative Part

25. For these reasons,
The Court,
unanimously,

- i. *Dismisses* the application for provisional measures.