

## Ajavon v Benin (provisional measures) (2020) 4 AfCLR 117

Application 027/2020, *Sébastien Germain Marie Aïkoué Ajavon v Republic of Benin*

Ruling (provisional measures), 27 November 2020. Done in English and French, the French text being authoritative.

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

The Applicant, who was facing criminal proceedings before a specialised national court, brought this action to challenge his indictment which had been upheld by an appellate chamber of the specialised criminal court. Along with the main action, the Applicant filed this request for provisional measures to stay the judgment indicting him. The Court dismissed the application for provisional measures.

**Jurisdiction** (*prima facie*, 14; withdrawal of Article 34(6) Declaration, 17)

**Provisional measures** (application when domestic appeal has suspensive effect, 30)

## I. The Parties

1. Mr. Sébastien Germain Marie Aïkoué Ajavon (hereinafter referred to as “the Applicant”) is a national of Benin. He challenges the criminal proceedings brought against him before the Court of Repression of Economic Offences and Terrorism (hereinafter referred to as “the CRIET”).
2. The Application is filed against the Republic of Benin (hereinafter referred to as “the Respondent State”), which became party to the African Charter on Human and Peoples’ Rights (hereinafter referred to as “the Charter”) on 21 October 1986 and 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. Furthermore, on 8 February 2016, the Respondent State deposited the Declaration provided for under Article 34(6) of the Protocol (hereafter referred to as “the Declaration”) through which it accepted the jurisdiction of the Court to receive applications filed by individuals and Non-Governmental Organisations. On 25 March 2020, the Respondent State deposited with the African Union Commission an instrument withdrawing the said Declaration. The Court has held that this withdrawal has no bearing on pending cases and new cases filed before the withdrawal comes into

effect, one year after its filing, that is, on 26 March 2021.<sup>1</sup>

## II. Subject of the Application

3. On 22 June 2020, the Application was filed together with a request for provisional measures. In the said Application, the Applicant states that a judicial inquiry for “forgery in public writing, complicity in forgery and fraud” had been opened against him before the CRIET; which comprises of investigation and trial chambers, and these chambers have, first instance and appellate jurisdictions.
4. The Applicant states that the CRIET’s investigation chamber rendered a first instance Judgment No. 21/CRIET/COM-I/2020 of 29 May 2020, dismissing part of the case against him and referring him to the CRIET’s trial chamber. This decision was confirmed by the investigation chamber’s Judgment on appeal, No.003/CRIET/CA/SI of 18 June 2020. The Applicant claims to have lodged an appeal in cassation on 18 June 2020 against the judgment confirming the investigation chamber’s first Instance judgment.
5. It is against this background that the Applicant seeks a stay of the judgments delivered against him by CRIET and any subsequent convictions, pending a decision by this Court, on his Application on the merits.

## III. Alleged violations

6. In the Application, the Applicant alleges:
  - i. Violation of the right to a fair trial protected by Articles 7(1), 7(1)(a), 7(1)(c) of the Charter;
  - ii. Violation of the right to property protected by Article 14 of the Charter; and
  - iii. Violation of the right to adequate housing enshrined in Articles 14, 16 and 18 of the Charter.

## IV. Summary of the Procedure before the Court

7. On 22 June 2020, the Applicant filed the Application together with a request for provisional measures.
8. The Application and the request were served on the Respondent State on 22 September 2020 for its Response on the merits within

1 *Hongue Eric Noudehouenou v Republic of Benin*, ACTHPR, Application 003/2020 Ruling of 5 May 2020 (provisional measures), §§ 4- 5 and corrigendum of 29 July 2020.

sixty (60) days and observations on the request for provisional measures within fifteen (15) days of receipt of the notification. The documents were also transmitted to the other entities provided for in Rule 42(4) of the Rules.

9. The Respondent State submitted its observations on the request for provisional measures on 7 October 2020.

## V. *Prima facie* jurisdiction

10. The Applicant asserts, pursuant to Articles 27(2) of the Protocol and Rule 51 of the Rules,<sup>2</sup> that in matters of provisional measures, the Court need not be satisfied that it has jurisdiction on the merits of the case but merely that it has *prima facie* jurisdiction.
11. Referring further to Article 3(1) of the Protocol, the Applicant asserts that the Court has jurisdiction in so far as he alleges violations of rights protected by human rights instruments and as the Republic of Benin has ratified the Charter and the Protocol and made the Declaration provided for under Article 34(6).
12. The Respondent State has not made any observations on this point.

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13. Article 3(1) of the Protocol provides that “the jurisdiction of the Court shall extend to all cases and disputes submitted to it concerning the interpretation and application of the Charter, the Protocol and any other relevant human rights instrument ratified by the States concerned”.
14. Rule 49(1) of the Rules<sup>3</sup> provides that “the Court shall ascertain its jurisdiction ... in accordance with the Charter, the Protocol and these Rules”. However, with respect to provisional measures, the Court need not ensure that it has jurisdiction on the merits of the case, but only that it has *prima facie* jurisdiction.<sup>4</sup>
15. In the instant case, the rights alleged to have been violated by the Applicant are all protected under Articles 7(1), 7(1)(a), 7(1)(c), 14,

2 Rules of 2 June 2010 (rule 59 of the rules of 25 September 2020).

3 Formerly, Rule 39(1) of the Rules of Court, 2 June 2010.

4 *Komi Koutche v République of Benin*, ACTHPR, Application 020/2019, Order of 2 December 2019 (provisional measures).

16 and 18 of the Charter, an instrument to which the Respondent State is a party.

16. The Court further notes that the Respondent State has ratified the Protocol. It has also made the Declaration by which it accepted the Court's jurisdiction to receive applications from individuals and Non-Governmental Organisations in accordance with Articles 34(6) and 5(3) of the Protocol read jointly.
17. The Court observes, as stated in paragraph 2 of this Ruling, that on 25 March 2020 the Respondent State deposited the instrument of withdrawal of its Declaration made in accordance with Article 34(6) of the Protocol. The Court has held that the withdrawal of a Declaration has no retroactive effect<sup>5</sup> and has no bearing on pending cases and new cases filed before the withdrawal comes into effect, as is the case in the present matter. The Court reiterated this position in *Houngue Eric Noudehouenou v Republic of Benin*, and held that the Respondent State's withdrawal of the Declaration will take effect on 26 March 2021. Accordingly, the Court concludes that said withdrawal does not affect its personal jurisdiction in the present case.<sup>6</sup>
18. From the foregoing, the Court finds that it has *prima facie* jurisdiction to hear the present Application.

## VI. Provisional measures requested

19. The Applicant seeks a stay of execution of Judgment No. 21/ CRIET/COM-II/2020 of 29 May 2020 of the CRIET Investigating Chamber, confirmed by Judgment No. 003/CRIET/CA/SI of 18 June 2020 of the CRIET Appeals Chamber's Investigating Chamber and of any subsequent conviction pending examination of the Application on the merits.
20. The Applicant submits that he is in a situation of extreme urgency, the consequences of which cannot not be erased, repaired or compensated for, not even by pecuniary reparations.
21. The Applicant further submits that, despite the suspensive effect of the appeal in the cassation Court brought against the above-mentioned confirming judgment, he fears that the proceedings brought against him may quickly lead to his conviction, confiscation and sale of his property, part of which has already been seized

5 *Ingabire Victoire Umuhoza v Rwanda* (jurisdiction) (3 June 2016) 1 AfCLR, 562 § 67.

6 *Houngue Eric Noudehouenou v Republic of Benin*, ACtHPR, Application 003/2020 Ruling of 5 May 2020 (provisional measures), §§ 4- 5 and corrigendum of 29 July 2020.

- by the Respondent State, which refuses to release it despite the judgments of 29 March 2019 and 28 November 2019 on the merits by this Court, which have been handed down in his favour.
22. The Applicant adds that, if the CRIET were to convict him, it would be difficult for him to have the conviction quashed as long as President Patrice Talon's regime remains in power. He points to the failure of the Respondent State to comply with previous decisions handed down by the Court in his favour.
  23. Lastly, the Applicant claims that the conviction could serve as a basis of a new arrest warrant to be issued against him, which would cause further harassment and risk extradition to his country, and he would automatically lose his civil and political rights, which would prevent him from standing as a candidate in the forthcoming presidential election of 2021.
  24. The Respondent State submits that the provisional measures requested by the Applicant do not meet the requirements of Article 27 of the Protocol.
  25. The Respondent State further submits that there is no urgency, as the Applicant has lodged an appeal in cassation which has not been exhausted and does not show that irreparable harm, in particular to his life, is imminent or that there are any concrete restrictions in connection with the proceedings against him.

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26. The Court notes that Article 27(2) of the Protocol provides that "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".
27. Furthermore, Rule 59(1) of the Rules<sup>7</sup> provides that:  
Pursuant to Article 27(2) of the Protocol, the Court may, at the request of a party, or on its own accord, in case of extreme gravity and urgency and where necessary to avoid irreparable harm to persons, adopt such provisional measures as it deems necessary, pending determination of the main Application.

7 Formerly Rule 51 of the Rules of Court, 2 June 2010.

28. The Court notes that it is for it to decide on a case by case basis whether, in light of the particular circumstances of the case, it should exercise the jurisdiction conferred on it under the above provisions.
29. The Court notes in the instant case, the Applicant had lodged an appeal in cassation challenging the confirmatory judgment delivered by the Investigation Section of the Appeals Chamber of the CRIET.
30. It also notes that pursuant to Article 578 of the Code of Criminal Procedure of Benin, the appeal in cassation has a suspensive effect,<sup>8</sup> so that the Applicant cannot be tried before the CRIET until the Supreme Court has ruled on the referral.
31. The Court therefore notes that the request to stay Judgment No. 21/CRIET/COM-I/2020 convicting him in part and upholding the judgment No. 003/CRIET/CA/SI, is baseless.
32. Consequently, the Court dismisses the request.
33. To avoid any doubt, this Ruling is provisional in nature and does not in any way prejudge the findings of the Court on its jurisdiction, on the admissibility of the Application and the merits thereof.

## VII. Operative part

34. For these reasons.

The Court

*Unanimously,*

- i. *Dismisses* the Applicant's request for provisional measures.

8 Article 578: During the time limits for the appeal in cassation and if there has been an appeal, until the delivery of the judgment of the Supreme Court, execution of the judgment is suspended, except for civil convictions.