

Gbagbo v Côte d'Ivoire (provisional measures) (2020) 4 AfCLR 529

Application 025/2020, *Laurent Gbagbo v Republic of Côte d'Ivoire*

Order (provisional measures), 25 September 2020. Done in English and French, the French text being authoritative.

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

Recused under Article 22: ORÉ

The Applicant, a former President of the Respondent State, brought this action alleging that the removal of his name from the voter's register on the basis of a conviction following a trial in absentia was a violation of his Charter rights. This application for provisional measures was filed along with the main action. The Court granted the provisional measures sought.

Jurisdiction (*prima facie* 14, effect of withdrawal of Article 34(6) Declaration, 16)

Provisional measures (extreme gravity, 22; duty to report back 34)

I. The Parties

1. Mr. Laurent Gbagbo (hereinafter referred to as "the Applicant") is an Ivorian national, university professor, and former President of the Republic of Côte d'Ivoire. He challenges various measures relating to his civil and political rights.
2. The Application is filed against the Republic of Côte d'Ivoire (hereinafter referred to as "the Respondent State"). The Respondent State became a party to the African Charter on Human and Peoples' Rights (hereinafter referred to as "the Charter") on 31 March 1992 and to the Protocol on 25 January 2004. On 23 July 2013, the Respondent State deposited the Declaration under Article 34(6) of the Protocol, by which it accepted the jurisdiction of the Court to receive cases from individuals and Non-Governmental Organisations (hereinafter referred to as "the Declaration"). However, on 29 April 2020, the Respondent State deposited with the African Union Commission an instrument of withdrawal of the Declaration.

II. Subject of the Application

3. The Application for provisional measures dated 4 September 2020

was filed with the Registry of the Court on 7 September 2020, together with the Application instituting proceedings. It emerges from the said Application instituting proceedings that, following his removal from the voters' register noted on 4 August 2020, the Applicant, who was already enrolled in the voters' register reviewed in 2018, referred the matter to the Independent Electoral Commission (IEC) on 5 August 2020, to request for enrolment in the voters' register. On 18 August 2020, the IEC dismissed his request on grounds of inadmissibility.

4. The Applicant states that he then appealed against the said decision before the Abidjan Court of First Instance which, by Order No. RG 3505/2020 of 25 August 2020, ruled that the said appeal was unfounded. That Court had taken such decision on the grounds that by default Judgment No. 52002019 of 29 October 2019, the Applicant had been sentenced by the Abidjan Criminal Court to twenty (20) years of imprisonment and payment of a fine of ten million (10,000,000) CFA francs for aiding and abetting armed robbery and embezzlement of public funds. Thus, the Court held that he was incapacitated and unworthy within the meaning of Article 4 of Ordinance No. 2020-356 of 8 April 2020 to amend the Electoral Code and therefore considered that he had lost his status as a voter and could not enroll in the 2020 voters' register established by the IEC.
5. The Applicant further states that during a televised statement on 16 August 2020, the President of the Independent Electoral Commission (IEC) affirmed that the Applicant had been convicted *in absentia* of a criminal offence in a judgment rendered by the Abidjan Court of First Instance for aiding and abetting theft. The President of the IEC also affirmed that following an application to set aside, given that the judgment by default had given rise to a judgment of iterative default, became irreversible, following the refusal of Counsel for the Applicant to receive service thereof at the elected domicile, on his behalf, in their capacity as lawyers, so much so that the period for appeal having largely expired, the temporary removal of the Applicant's name from the voters' register became legally established.
6. The Applicant alleges that these acts pose a threat to the enjoyment of his rights which should be prevented by an order for provisional measures pending examination of his Application on the merits. He therefore prays the Court to order the following provisional measures on the Respondent State:
 - i. stay execution of Order No. RG 3505/2020 of 25 August 2020 issued by the presidential jurisdiction of the Abidjan-Plateau Court of First Instance confirming removal of Mr Laurent Gbagbo from the voters'

register, the delisting decision taken by the Independent Electoral Commission and the decision of the same Commission dismissing his application for enrolment dated 18 August 2020;

- ii. clear the Applicant's criminal record, or as appropriate, stay inclusion of the non-irrevocable criminal conviction obtained under the terms of the iterative default criminal Judgment No. 5200/2019 of 29 October 2019;
- iii. pending a decision on the merits, report to the Court on the measures taken to enforce the order, within fifteen (15) days from the date of receipt of the order.

III. Alleged violations

7. In the Application to institute proceedings, the Applicant alleges violation of his rights guaranteed in Articles 3, 7, 13(1)(2) of the Charter, Articles 14(1)(2), 25(a)(b)(c) of the International Covenant on Civil and Political Rights (ICCPR),¹ Articles 2(3), 3(7) of the African Charter on Democracy, Elections and Governance (ACDEG),² Article 1 of the ECOWAS Protocol on Democracy and Good Governance Supplementary to the Protocol Relating to the Mechanism for Conflict Prevention, Management, Resolution, Peacekeeping and Security (ECOWAS Protocol on Democracy),³ Articles 11 and 21 of the Universal Declaration of Human Rights, item i of resolution A/RES/55/96 of the United Nations General Assembly on Promotion and Consolidation of Democracy, and Part IV 2 and 3 entitled "Elections: rights and obligations" of the OAU/AU Declaration on the Principles Governing Democratic Elections in Africa (2002).

IV. Summary of the Procedure before the Court

8. On 7 September 2020, the Court received two Applications filed by the Applicant: the main Application alleging violation of the Applicant's fundamental rights within the context of the general election litigation in Côte d'Ivoire, and attached to which was a request for provisional measures.
9. On 9 September 2020, the Court transmitted to the Respondent State the Application instituting proceedings as well as the request for provisional measures, and invited it to file its response to the

1 The Respondent State became a party on 26 March 1992.

2 The Respondent State became a party on 28 November 2013.

3 The Respondent State became a party on 31 July 2013.

latter request for provisional measures within seventy-two (72) hours.

10. At the expiry of the said period, the Respondent State had not responded to the Applicant's request for provisional measures.

V. *Prima facie* jurisdiction

11. The Applicant alleges that the Court has jurisdiction to order the measures sought insofar as the Respondent State is a party to the Charter, the Protocol, as well as to the other human rights instruments referred to in the main Application. Referring to the Respondent State's withdrawal of its Declaration, the Applicant maintains that the Court nonetheless has jurisdiction since, under the Court's case law, the withdrawal will only take effect one year from the date of deposit of the withdrawal, that is, in the present case, from 28 April 2021.
12. The Respondent State did not make any submission on this point.

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, this Protocol and any other relevant Human Rights instrument ratified by the States concerned.
14. Rule 39(1) of the Rules stipulates that: "[T]he Court shall conduct preliminary examination of its jurisdiction ...". However, with regard to provisional measures, the Court does not have to ensure that it has jurisdiction over the merits of the case, but simply that it has *prima facie* jurisdiction.⁴
15. In the instant case, the Applicant's rights allegedly violated are protected by the Charter, the ACDEG, the ICCPR, and the ECOWAS Protocol on Democracy, to which the Respondent State is a party.

4 *Komi Koutche v Republic of Benin*, ACtHPR, Application 020/2019, Order of 2 December 2019 (provisional measures), § 14; *Amini Juma v United Republic of Tanzania* (provisional measures) (3 June 2016) 1 AfCLR 658, § 8; *African Commission on Human and Peoples' Rights v Libya* (provisional measures) (25 March 2011) 1 AfCLR 149, § 10.

16. The Court notes, as indicated in paragraph 2 of this Ruling, that on 29 April 2020, the Respondent State deposited an instrument withdrawing its Declaration filed on 23 July 2013, in accordance with Article 34(6) of the Protocol. The Court has held that the withdrawal of a Declaration has no retroactive effect and has no impact on cases under consideration before the Court prior to deposit of the instrument of withdrawal of the Declaration,⁵ as is the case in the present matter. The Court has reiterated this position in its Judgement in *Suy Bi Gohoré Emile & ors v Republic of Côte d'Ivoire*, and held that the withdrawal of the Declaration will take effect on 30 April 2021.⁶ Accordingly, the Court concludes that said withdrawal does not in any way affect its personal jurisdiction in the present case.⁷
17. From the foregoing, the Court holds that it has *prima facie* jurisdiction to hear the present Application.

VI. Provisional measures requested

18. The Applicant prays the Court to take the following provisional measures:
 - i. stay execution of Order No. RG 3505/2020 of 25 August 2020 issued by the presidential jurisdiction of the Abidjan-Plateau Court of First Instance confirming the removal of Mr. Laurent Gbagbo from the voters' register, the delisting decision taken by the Independent Electoral Commission and the decision of the same Commission rejecting his application for enrolment on 18 August 2020.
 - ii. clear the Applicant's criminal record, or as appropriate, stay inclusion of the non-irrevocable criminal conviction obtained under the terms of the iterative default criminal Judgment No. 5200/2019 of 29 October 2019.
 - iii. pending a decision on the merits, report to the Court on the measures taken to enforce the order, within fifteen (15) days from the date of receipt.
19. The Respondent State did not respond to the request for provisional measures.

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

6 *Suy Bi Gohoré Emile & ors v Republic of Côte d'Ivoire*, ACtHPR, Application 044/2019, Judgment of 15 July 2020 (merits), § 66.

7 *Ibid*, § 67.

20. Article 27(2) of the Protocol provides as follows: “[I]n cases of extreme gravity or urgency, and when necessary to avoid irreparable harm to persons, the Court shall adopt such provisional measures as it deems necessary”.
21. Rule 51(1) of the Rules provides, moreover, that:
... The Court may, at the request of a party, the Commission or of 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. In deciding whether it should exercise the jurisdiction, the Court takes into account the extreme gravity and urgency of the situation and the need to prevent irreparable harm to any of the parties. The Court has held in this regard that extreme gravity presupposes that there is a real and imminent risk that irreparable damage will be caused before it renders its final decision. As such, there is urgency whenever acts likely to cause irreparable harm may occur at any time before the Court makes a final decision in the case at hand.⁸

A. Request for stay of execution of the Order confirming the removal of the Applicant from the voters’ register

23. The Applicant argues that it is highly probable that the general elections will indeed be held on 31 October 2020, whereas the Applicant is denied the enjoyment of his civil and political rights.
24. He avers that this request is based on the extreme gravity of the situation which is likely to cause him irreparable or even unforeseeable harm, in compliance with the case law of the Court, especially in previous ones.⁹
25. The Applicant further states that in any case, suspension of the administrative and judicial decisions to remove him from the voters’ register will, in no way, prejudice the merits of this Application, since what is at issue in the present case is protection of his rights and freedoms which are at risk, while reserving judgment to be

8 *XYZ v Republic of Benin*, ACtHPR, Application 057/2019, Order of 2 December 2019 (provisional measures), § 24; *Komi Koutche v Benin*, Order of 2 December 2019, (provisional measures) §§ 31-32.

9 *Sebastien Germain Ajavon v Republic of Benin* (provisional measures) (5 December 2018) 2 AfCLR 470, § 45; *Houngue Eric Noudehouenou v Republic of Benin*, ACtHPR, Application 003/2020, Order of 5 May 2020 (provisional measures), § 54.

made on the substance of the case. According to the Applicant, failing to do so would very likely render any judgment pointless after the 31 October 2020.

26. The Applicant further submits that the circumstances of the case are of extreme gravity, and present a risk of irreparable or clearly excessive harm to him, in particular, if the measure to remove him from the voters' register is not suspended in view of the forthcoming general elections of 31 October 2020.
27. He points out that on 21 August 2020, he filed an appeal before the Abidjan Court of Appeal, Court of First Instance against the decision of the local Electoral Commission of Cocody Riviera III dated 18 August 2020 rejecting his enrolment in the voters' register. The Applicant had been previously enrolled in the revised voters' register of 2018, in the Cocody Commune. He noted that he was not in the voters' register.
28. Lastly, the Applicant maintains that the Court of First Instance upheld the decision of the Electoral Commission by stating that the Applicant was incapacitated and unworthy within the meaning of Article 4 of Ordinance No. 2020-356 of 8 April 2020 to amend the Electoral Code. He had thus lost his capacity as a voter and cannot, therefore, be enrolled in the 2020 voters' register by the Independent Electoral Commission.

29. The Court observes that the decision of the Electoral Commission, upheld by the Court of First Instance ruling as a Court of last resort in disputes relating to the voters' register is likely to prejudice the Applicant at the dawn of the elections slated for 31 October 2020. As such, it is clear that, as it stands, he may not be able to exercise his right in the forthcoming election.
30. In view of the foregoing, the Court considers that the circumstances of the case require the adoption of provisional measures pursuant to Article 27(2) of the Protocol and Rule 51 of the Rules, to avoid irreparable harm to the Applicant. Accordingly, the Court finds it necessary to adopt provisional measures in order to allow the Applicant to enjoy his right to enroll in the voters' register.

B. Request to clear the Applicant's criminal record or suspend any mention of the criminal conviction therein

31. The Court observes that the Applicant was extradited in 2011 to the International Criminal Court in The Hague, Netherlands, to face charges of crimes against humanity and war crimes which he allegedly committed during the post-election crisis of 2010 in Côte d'Ivoire.
32. Concurrently, with the Applicant's proceedings before the International Criminal Court, the Public Prosecutor at the Abidjan-Plateau Court of First Instance had issued a summons dated 2 November 2017, for the Applicant to appear before the Abidjan-Plateau Criminal Court on 21 November 2017, to face charges of armed robbery in the case of burglary at the Central Bank of West African States (BCEAO), where he allegedly misappropriated the assets to deal with the economic blockade imposed at the time by the Economic Community of West African States (ECOWAS) and the West African Economic and Monetary Union (WAEMU).
33. In view of the circumstances of the case, there is a criminal aspect to this case. The Applicant is involved in various domestic and international proceedings. The Court notes that the rights he is claiming are essential civil and political human rights, which the Court is competent to protect. The criminal convictions have a definite impact on the rights in question. The Court considers that it is necessary to order that measures be taken to preserve his rights guaranteed in the cited human rights instruments in order to avoid irreparable harm to the Applicant by expunging his criminal record of irrevocable criminal conviction.

C. Request to report to the Court on the implementation of the measures taken with a view to its execution

34. The Court notes that it is now established practice to require the Respondent State to report, within a time limit to be determined, on the measures taken to ensure the enforcement of its decisions, including orders for provisional measures.¹⁰
35. The Court orders the Respondent State to report to the Court on the measures taken to enforce this order within fifteen (15) days from the date of notification.
36. For the avoidance of doubt, this Ruling is provisional and does not prejudice in any way the decisions that the Court may take on its

¹⁰ *Houngue Eric Noudehouenou v Benin*, (provisional measures) 5 May 2020, § 60.

jurisdiction, on admissibility of the Application and on the merits.

VII. Operative part

37. For these reasons,

The Court,

Unanimously,

Orders the Respondent State to:

- i. *Stay* inclusion of the Applicant's criminal conviction and sentence in the criminal record until the Court decides on the merits of the main Application;
- ii. *Take* all necessary steps to immediately remove all obstacles preventing the Applicant from enrolling in the voters' register;
- iii. *Report* to the Court within fifteen (15) days from the date of notification of this Ruling on the implementation of the provisional measures ordered.