

Hossou & anor v Benin (provisional measures) (2020) 4 AfCLR 538

Application 016/2020, *Glory Cyriaque Hossou & anor v Republic of Benin*
 Ruling (provisional measures), 25 September 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 Applicants challenged the Respondent State's withdrawal of its article 34(6) Declaration on grounds that it amounted to a violation of the Charter and international human rights standards and sought provisional measures to revoke the withdrawal. The Court dismissed the application for provisional measures.

Jurisdiction (*prima facie*, 12-14, effect of withdrawal of Art 34(6) declaration, 15)

Procedure (flexible approach to seizure, 20-21)

Provisional measures (gravity and urgency, 27, request pre-empting merits, 28)

I. The Parties

1. Glory Cyriaque Hossou and Angelo Adalakoun (hereinafter referred to as “the Applicants”), are nationals of the Republic of Benin who are lawyers by profession. They challenge the Respondent State's withdrawal of the Declaration deposited under Article 34(6) of the Protocol.
2. The Respondent State is the Republic of Benin, which became a 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 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, it also deposited the Declaration provided for under Article 34(6) of the Protocol by which it accepted the jurisdiction of the Court to receive applications from individuals and Non-Governmental Organisations (NGOs). On 25 March 2020, the Respondent State deposited with the African Union Commission an instrument of withdrawal of the said Declaration.

II. Subject of the Application

3. On 7 May 2020, the Applicants filed an Application before this Court complaining about the Respondent State's withdrawal of the Declaration filed under Article 34(6) of the Protocol. In the same Application, the Applicants also prayed the Court to order provisional measures.
4. The Applicants state that on 8 February 2016, the Respondent State deposited the Declaration provided for in Article 34(6) of the Protocol which allows individuals and NGOs to directly seize the Court after exhausting local remedies. The Applicants aver that the Respondent State withdrew the Declaration pursuant to a written notice dated 25 March 2020.
5. In so doing, the Applicants allege that the Respondent State violated the Charter and international human rights standards. It is also the Applicants' contention that by withdrawing its Declaration, the Respondent State has deprived its citizens from directly accessing the regional judicial system to litigate and seek redress for the prejudice they have suffered within their domestic system, which constitutes a regression of rights.
6. With regard to the provisional measures, the Applicants pray the Court "to revoke, as a matter of urgency and in accordance with the provisions of the Protocol on the Establishment of the Court, Benin's decision to withdraw the Declaration filed under Article 34(6), pending a ruling on the principal Application."

III. Summary of the Procedure before the Court

7. The Application instituting proceedings, together with the request for provisional measures, was served on the Respondent State on 8 July 2020. The Respondent State was given fifteen (15) days, from the date of receipt, to respond to the request for provisional measures and sixty (60) days, from 1 August 2020, to file its Response to the main Application.
8. On 5 August 2020, the Court granted the Respondent State an additional fifteen (15) days to respond to the request for provisional measures.
9. On 26 August 2020, the Court received the response of the Respondent State to the request for provisional measures.

IV. *Prima facie* jurisdiction

10. 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”.

11. Rule 39(1) of the Rules of Court (hereinafter referred to as “the Rules”) stipulates that “the Court shall conduct preliminary examination of its jurisdiction...”. However, with regard to provisional measures, the Court need only ensure that it has jurisdiction over the merits of the case, but simply that it has *prima facie* jurisdiction.¹
12. Accordingly, the Court will ascertain whether it has *prima facie* jurisdiction.
13. The Court notes that the Respondent State is a Party to the Charter and the Protocol, and it also accepted the Court’s jurisdiction to receive applications from individuals and NGOs by virtue of Article 34(6) of the Protocol read together with Article 5(3) thereof.
14. The Court also notes that the violations alleged by the Applicants relate to rights protected in instruments to which the Respondent State is a Party. The Applicants specifically allege that the withdrawal is a violation of the Charter and international human rights instruments and also that it amounts to depriving citizens from accessing regional judicial mechanisms. The Applicants’ allegations, therefore, cover instruments over which the Court has jurisdiction under Article 3(1) of the Protocol. Accordingly, the Court concludes that it has jurisdiction to consider the Application.
15. The Court also recalls that it has held that the withdrawal of a Declaration filed in accordance with Article 34(6) of the Protocol has no retroactive effect on cases under consideration at the time of the deposit of the instrument of withdrawal,² as is the case in the present matter. The Court reiterated this position in *Hongue Eric Noudehouenou v Republic of Benin*,³ 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 in any way affect its personal jurisdiction in the present case.

1 *Komi Koutche v Republic of Benin*, ACtHPR Application 020/2019, Ruling 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 People’s Rights v Libya* (provisional measures) (15 March 2013) 1 AfCLR 193 § 21.

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

3 *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.

16. From the foregoing, the Court concludes that it has *prima facie* jurisdiction to hear the present Application.

V. Admissibility of the request for provisional measures

17. The Respondent State raises a preliminary objection to the admissibility of the request based on the Applicants' failure to sign the request for provisional measures.
18. The Respondent State contests the admissibility of the request for provisional measures based on Rule 34(1) of the Rules which requires that an Application should be signed by the Applicant. The Respondent State submits that the request filed by the Applicants in the instant matter is not signed.

19. The Court notes that Rule 34(1) of the Rules provides that:
 - The Applicant shall file in the Court Registry, one (1) copy of the Application containing a summary of the facts of the case and of the evidence intended to be adduced.
 - The said Application shall be signed by the Applicant or by his/her representative.
 - The Registrar shall acknowledge receipt of the application.
20. The Court recalls that with regard to the form and modality of seizure, it has always adopted a flexible approach.⁴ Overall, the Court always takes into account the specific conditions of each Applicant and the circumstances of each application in determining the validity of the application.
21. In the present case, the Court notes that the Application containing the request for provisional measures was filed via email. The Court also notes that although no signature was included at the end of the Application, the Applicants duly endorsed their names to the Application. Further, the Applicants have fully disclosed their particulars in the Application and have been able to maintain contact with the Registry of the Court through their email addresses. In the circumstances, the Court holds that the identity of the Applicants is well established notwithstanding the lack of

⁴ *Robert John Penessis v United Republic of Tanzania*, ACtHPR, Application 012/2015, Judgment of 28 November 2019 (merits and reparations), §§ 44-46.

signatures on their Application. The Court, therefore, dismisses the Respondent State's objection on this point.

VI. Provisional measures requested

22. In their request for provisional measures, the Applicants pray the Court to: "revoke Benin's decision to withdraw the Declaration deposited under Article 34(6) of the Protocol, pending the determination of the principal Application by the Court." Furthermore, the Applicants submit that the Respondent State's decision to withdraw the Declaration constitutes a claw-back of rights and a deprivation of its citizens' right to access the regional judicial mechanism to litigate and seek redress for the damage they suffered within their domestic system.
23. In its Response, the Respondent State submits that the issue of suspending the decision to withdraw the Declaration filed in accordance with Article 34(6) of the Protocol had previously been decided by the Court in the case of *Ingabire Victoire Umuhoza v Rwanda*, as well as in the order issued by the Court on 5 May 2020 in the matter of *Houngue Eric Noudehouenou v Republic of Benin*. The Respondent State further submits that according to the jurisprudence of the Court a State's decision to withdraw its Declaration does not take effect until 12 months after the date of the deposit of the instrument of withdrawal. According to the Respondent State, the requested procedure in the present case is inappropriate and baseless, and the Court must dismiss it.
24. Specifically, the Respondent State prays the Court to:
 - i. Find that the two Applicants did not sign the Application filed before it;
 - ii. Declare that the failure to sign is reason for inadmissibility of the Application;
 - iii. State that this inadmissibility also affects the admissibility of the requested provisional measures;
 - iv. Accordingly, declare the request for provisional measures inadmissible.
25. The Respondent State additionally, prays the Court to:
 - i. Note that the issue of revoking the State of Benin's decision to withdraw the declaration deposited in accordance with Article 34(6) of the Protocol has been decided by the Court on 5 May 2020 in the Order on request for provisional measures in the matter of *Houngue Eric Noudehouenou v Republic of Benin*;
 - ii. Find that the provisional measures requested by the Applicants in the present case are aimed at the same issue;

- iii. Rule that the subject matter of the request is immaterial since it has been voided of its content;
- iv. Consequently, the request for provisional measures is dismissed.

- 26. The Court recalls that in accordance with Article 27(2) of the Protocol and Rule 51(1) of the Rules, it is empowered:
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.
- 27. It thus always lies with the Court to decide, given the specific circumstances of each case,⁵ where the alleged situation of extreme gravity and urgency necessitates the exercise of the jurisdiction conferred upon it under the earlier-mentioned provisions. Nevertheless, the Court must always be convinced of the existence of a very serious situation before it orders provisional measures.
- 28. In the present case, the Court observes that the request for provisional measures touches on the merits of the Application. Issuing an order for provisional measures at this stage, especially given the manner in which the Applicants have formulated the request, would, in principle, grant the very reliefs that the Applicants are seeking in their main Application.
- 29. The Court also notes that the Applicants did not present evidence of the extreme gravity or urgency in this case to support the request for provisional measures.
- 30. The Court considers, therefore, that the circumstances of this case do not reveal a situation of extreme gravity or urgency, which could cause irreparable harm to the Applicants and, consequently, dismisses the request for provisional measures.
- 31. For the avoidance of doubt, this Ruling is provisional in nature and in no way prejudices the decision the Court might take regarding its jurisdiction, the admissibility and the merits of the Application.

5 *Armand Guéhi v United Republic of Tanzania* (provisional measures) (18 March 2016), 1 AfCLR, 587, §17.

VII. Operative part

32. For these reasons,
The Court:

Unanimously,

- i. *Dismisses* the Respondent State's objection to the admissibility of the Application.
- ii. *Dismisses* the Applicants' request for provisional measures.