

Konaté & Doumbia v Côte d'Ivoire (provisional measures) (2020) 4 AfCLR 455

Application 036/2019 & 037/2019, *Konaté Kalilou & Doumbia Ibrahim v Republic of Côte d'Ivoire*

Ruling (provisional measures), 15 July 2020. Done in English and French, the French text being authoritative.

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

Recused under Article 22: ORÉ

The Applicants, each convicted and serving sentences for armed robbery, brought an action alleging a violation of their rights protected under the Charter and other international human rights instruments. Pending the Court's decision on the merits, the Applicants brought this application for provisional measures. The Court dismissed the application for provisional measures.

Jurisdiction (*prima facie*, 16; effect of withdrawal of Declaration 19,20)

Provisional measures (similarity to prayers on the merits, 27; evidence in support, 28)

I. The Parties

1. Messrs Konaté Kalilou and Doumbia Ibrahim (hereinafter referred to as “the Applicants”), are nationals of the Republic of Cote d'Ivoire who are each currently serving a twenty (20) year sentence at the Maca Prison in Abidjan.
2. The Application is filed against the Republic of Cote 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 May 2004. On 23 July 2013, the Respondent State deposited the Declaration prescribed under Article 34(6) of the Protocol through which it accepted the jurisdiction of the Court to receive cases from individuals and non-Governmental organisations (hereinafter referred to as “the Declaration”). On 29 April 2020, the Respondent State deposited, with the Chairperson of the African Union Commission, an instrument withdrawing its Declaration.

II. Subject of the Application

3. On 12 July 2019, the Applicants filed an application on the merits

before the Court alleging that the Respondent State violated their rights under Articles 5 and 7 of the Charter, Article 10(1) of the International Covenant on Civil and Political Rights (hereinafter referred to as “the ICCPR”) and Articles 8 and 10 of the Universal Declaration of Human Rights.

4. On 27 August 2019, the Applicants filed requests for provisional measures asking the Court to order the Respondent State to:
 - i. Take all necessary measures to end the psychological pressure exerted on them by the prison staff.
 - ii. Take urgent measures to avoid irreparable harm on them resulting from a violation of the Charter, which provides that everyone shall have the right to defence.
 - iii. Take all urgent measures to ensure their safety.
5. It emerges from the Application that on 14 June 2012, in Case No. 342 before the Court of First Instance of Divo, the Applicants were convicted and sentenced to twenty (20) years imprisonment for having committed armed robbery.
6. The Applicants filed an appeal against this judgment before the Court of Appeal in Daloa. On 21 March 2013, the Court of Appeal issued its decision No. 141, in which it upheld the Applicants’ conviction but reduced the sentence to fifteen (15) years imprisonment.
7. On 26 March 2013, the Applicants appealed the decision of the Court of Appeal before the Supreme Court, which dismissed the appeal on 24 February 2014.

III. Summary of the Procedure before the Court

8. On 12 July 2019, the Registry received two separate Applications filed by each of the Applicants. The Application by Mr. Konaté Kalilou was registered as No. 036/2019, while that by Mr. Doumbia Ibrahim was registered as No. 037/2019.
9. On 27 August 2019, the Registry received two additional submissions from each of the Applicants praying the Court to issue orders for provisional measures and compensation for the moral damages suffered by each of them.
10. On 10 September 2019, the Registry served the Applications on the Respondent State requesting to the latter to file its response to the request for provisional measures within fifteen (15) days and the response to the main Applications within sixty (60) days of receipt of the notification, in accordance with Rule 36 (1) of the Rules.
11. On 26 September 2019, the Court issued an Order for Joinder of Applications No. 36/2019 and 037/2019 as they are based on the

same facts, make similar prayers and are filed against the same Respondent State.

12. Following the Applicants' request, on 17 October 2019, the Court granted them legal assistance under its legal aid scheme.
13. On 21 October 2019 the Court directed the Applicants to file relevant documents in support of their request for provisional measures and granted them an additional period of thirty (30) days to do so. The Registry sent the Applicants a reminder in that regard on 11 February 2020, but the latter failed to respond.
14. On 27 January 2020, the Respondent State requested the Court for an additional thirty (30) days to file its Response to the request for Provisional Measures. The Court granted the same on 11 February 2020 but till date, the Respondent State has failed to file any response.

IV. Jurisdiction

15. In dealing with any Application filed before it, the Court must conduct a preliminary examination of its jurisdiction pursuant to Articles 3 and 5 of the Protocol.
16. Nevertheless, for the purpose of issuing a Ruling on Provisional Measures, the Court need not establish that it has jurisdiction on the merits of the Application but must simply satisfy itself that it has *prima facie* jurisdiction.¹
17. 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."
18. The Court notes that the alleged violations, subject of the present Application are in respect of the rights protected under the Charter and the ICCPR to which the Respondent State is a Party.² The Court therefore holds that it has material jurisdiction to hear the Application.

1 *Amini Juma v United Republic of Tanzania* (provisional measures) (2016) 1 AfCLR 687, § 8 *African Commission on Human and Peoples' Rights v Libya* (provisional measures) (2013) 1 AfCLR 149 §10. *Komi Koutché v Republic of Benin*, AfCHPR, Application No.020/2019, Order of 2 December 2019 § 14

2 The Respondent State became a Party to the ICCPR on 26 March 1992.

V. Effect of the Respondent State's withdrawal of the declaration

19. The Court recalls that in the matter of *Ingabire Victoire Umuhoza v Republic of Rwanda*,³ it held that the withdrawal of the Declaration does not have any retroactive effect and it also has no bearing on matters pending prior to the filing of the withdrawal of Declaration as is the case with the present Application. The Court also held that any withdrawal of the Declaration shall take effect twelve (12) months after the instrument of withdrawal is deposited.
20. In respect of the Respondent State, therefore, having deposited its instrument of withdrawal on 29 April 2020, the said withdrawal of the Article 34(6) Declaration will take effect as from 30 April 2021 and will in no way affect the personal jurisdiction of the Court in the instant case.

VI. On the provisional measures requested

21. The Applicants allege that because the officials of the Respondent State did not provide them legal counsel during their interrogation, they suffered mental torture.
22. The Applicants submit that they require adequate medical treatment as their mental health is constantly deteriorating. Accordingly, they request appropriate medical intervention, to be ordered by the Court as an urgent matter, in accordance with Article 27 (2) of the Protocol.
23. The Applicants further aver that their mental health condition and the absence of adequate medical treatment could have negative repercussions on their children's educational prospects and the emotional state of their families for whom they are financially responsible.

24. The Court notes that Article 27 (2) of the Protocol states that "in cases of extreme gravity and urgency, and when necessary to avoid irreparable harm to persons, the Court shall adopt such

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

- provisional measures as it deems necessary.”
25. Furthermore, in terms of Rule 51(1) of the Rules, “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”.
 26. It, therefore, lies with the Court to decide in each case whether, in the light of the particular circumstances of each case, it must exercise the jurisdiction conferred upon it by the afore-cited provisions.
 27. In the present case, the Court notes that the prayers contained in the Applicants’ request for provisional measures are closely related to the Applicants’ prayers on the merits, especially the request concerning the refusal of legal assistance during their interrogation, which affected their morale.
 28. Furthermore, the Applicants failed to provide evidence in support of their request for the Court to order provisional measures. Even though the Court requested them to do so on two occasions and accorded them additional time, the Applicants did not respond to these requests.
 29. The Court, accordingly, dismisses the request for provisional measures filed by the Applicants.
 30. For the avoidance of doubt, this Ruling is necessarily provisional in nature and in no way prejudices the findings the Court might make as regards its jurisdiction, admissibility and the merits of the Application.

VII. Operative part

31. For these reasons:

The Court,

Unanimously

- i. *Dismisses* the request for Provisional Measures.