

Soro v Côte d'Ivoire (provisional measures) (2020) 4 AfCLR 516

Application 012/2020, *Guillaume Kigbafori Soro v Republic of Côte d'Ivoire*

Order (provisional measures), 15 September 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

In an earlier action, the Applicant, along with 19 others, had seized the Court alleging a violation of their Charter protected rights. The Court had, in that earlier application, *inter alia*, ordered a stay of an arrest warrant issued against the present Applicant. Arising from a failure of the Respondent State to comply with the measures previously ordered, the Applicant was tried and convicted by the domestic courts. The Applicant therefore faced a risk of exclusion from the voters register and disqualification from contesting as a candidate in the general elections. He brought this request for provisional measures, seeking the removal of all obstacles to his participation as a candidate in the forthcoming elections or a suspension of the elections. The Court ordered the provisional measures requested.

Jurisdiction (*prima facie*, 17; withdrawal of Art 34(6) declaration, 19)

Provisional measures (risk of non-participation in elections, 30; non implementation of earlier order, 32)

I. The Parties

1. Mr Guillaume Kigbafori Soro (hereafter “the Applicant”) is an Ivorian national and politician who has served as Prime Minister and Head of Government as well as Speaker of the National Assembly and leader of a political party.
2. The Application was brought against the Republic of Côte d'Ivoire (hereinafter “Respondent State”) which became 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. Also, on 23 July 2013, the Respondent State made the Declaration provided for in Article 34(6) of the Protocol accepting the jurisdiction of the Court to receive applications from individuals and non-governmental organizations. However, on 29 April 2020, the Respondent State filed with the African Union Commission the instrument of withdrawal of its Declaration.

II. Subject of the Application

3. In the main Application filed on 2 March 2020, the Applicant and nineteen (19) others seized the Court alleging the violation of their rights protected by Articles 7, 12 and 18 of the Charter and 13 and 24 of the International Covenant on Civil and Political Rights (hereinafter referred to as "ICCPR"). In the said main Application, the Applicant submits with respect to his particular situation that he was the subject of an arrest warrant issued by the Ivorian judicial authorities as part of criminal proceedings initiated on 20 December 2019, for misappropriation of public funds, concealment of public property and conspiracy against the authority of the State and the integrity of the national territory.
4. On 22 April 2020, following a request from the Applicants, the Court ordered the Respondent State to implement the following provisional measures with regard to the Applicant:
 - i. Stay execution of the arrest warrant issued against Guillaume Kigbafori Soro;
 - ii. Report to the Court within thirty (30) days from the date of receipt, on the implementation of the interim measures ordered in this decision.
5. The present request for provisional measures filed on 7 August 2020 is ancillary to the afore mentioned main Application. In support of this new request, the Applicant submits that, in defiance of the Ruling on provisional measures rendered by the Court on 22 April 2020 and which has not yet been executed, the Respondent State had him tried and convicted on 28 April 2020, by the First Criminal Chamber of the Abidjan Court of First Instance, without previously serving him the act of referral to the court and the charges levelled against him.
6. According to the Applicant, at the end of the said procedure, he was found guilty of money laundering, concealment and misappropriation of public funds and sentenced to twenty (20) years of imprisonment. He was also sentenced to a fine of four billion five hundred million (4,500,000,000) CFA francs and five (5) years of deprivation of civil and political rights, which according to the Applicant amounts to a ban from being registered as a voter and stand as a candidate in the October 2020 presidential election. A new arrest warrant was thus issued against him.
7. The Applicant submits that the criminal conviction entered in his criminal record and the source of which is the failure to comply with the Ruling of 22 April 2020 issued by this Court, resulted in the following:
 - i. His removal from the electoral register, thus stripping him of the capacity of voter which should also allow him to be eligible;

- ii. Entering of his conviction in the criminal record, thus rendering him ineligible to stand as a candidate; and
 - iii. The difficulty to receive the endorsement of voters and obtain the nomination needed for submission of his candidacy, the deadline of which is set for 1 September 2020.
- 8.** The Applicant alleges that these acts of the Respondent State put him at real and serious risk of his candidacy being rejected for non-compliance with the legal and regulatory conditions, reason why the Court should order the required provisional measures.
- 9.** Accordingly, the Applicant prays the Court to order the following provisional measures:
- i. remove all legal acts and obstacles preventing the Applicant full enjoyment of the right to vote and the right to be elected, in particular, the rights compromised by the non-execution of the Ruling issued by this Court on 22 April 2020, until this Court rules on the merits of the dispute before it in the instant case;
 - ii. in the alternative, suspend the organization of the 31 October 2020 presidential election, pending a decision on the merits of the main dispute brought before the Court in the instant case; and
 - iii. report to the Court, within 15 days of service, on the execution of the measures ordered.

III. Alleged violations

- 10.** In the main Application, the Applicant alleges a violation of his rights under Articles 7, 12 and 18 of the Charter, as well as 14 and 23 of the ICCPR. However, in the present request for provisional measures, the Applicant alleges that the failure to comply with the Court's Order of 22 April 2020 compromised the enjoyment of his right to vote and to be elected as guaranteed under Article 25 of the ICCPR.

IV. Summary of the Procedure before the Court

- 11.** On 7 August 2020, the Applicant filed with the Registry of the Court a request for provisional measures.
- 12.** On 18 August 2020, the Registry served the said request on the Respondent State for response within ten (10) days of service.
- 13.** At the expiry of the said time limit, the Respondent State had not submitted any observations on the request for provisional measures.

V. Jurisdiction of the Court

14. The Applicant alleges that the Court has jurisdiction to order the measures requested insofar as the Respondent State is party to the Charter and to the other human rights instruments invoked in the main Application as well as to the Protocol. Referring to the Respondent State's withdrawal of its declaration of recognition of jurisdiction, the Applicant maintains that the Court nonetheless has jurisdiction since, according to its case law, the one-year notice applies to withdrawal.
15. The Respondent State did not comment on this point.

16. Under Article 3(1) of the Protocol
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.
17. Rule 39(1) of the Rules stipulates that "the 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.¹
18. In the instant case, the Applicant's rights allegedly violated are protected by the Charter and the ICCPR, to which the Respondent State is a party.²
19. The Court notes, as indicated in paragraph 2 of this Order, that the Respondent State, on 29 April 2020, withdrew its Declaration deposited on 23 July 2013 in accordance with Article 34(6) of the Protocol. However, the Court recalls, with reference to its Judgement of 15 July 2020 on the merits in the case of *Suy Bi Gohoré Emile & ors v Republic of Côte d'Ivoire*, that the withdrawal of the Declaration has no retroactive effect, has no bearing on the

1 *Komi Koutche v Republic of Benin*, AfCHPR, Request No. 020/2019, Ruling of 2 December 2019 (provisional measures), § 14; *Amini Juma v United Republic of Tanzania* (provisional measures) (2016) 1 RJCA 687, § 8; *African Commission on Human and People's Rights v Libya* (provisional measures) (2013) 1 RJCA 149, § 10.

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

cases pending before it and takes effect on 30 April 2021.³

20. Accordingly, the Court concludes that the said withdrawal in no way affects its personal jurisdiction in the instant case.⁴
21. From the foregoing, the Court concludes that it has *prima facie* jurisdiction to hear the present Application.

VI. Provisional measures requested

22. The Applicant maintains that his conviction is clear proof of the existence of a real risk of proven infringement of the rights for which he seeks protection in the main Application. He alleges that the non-compliance with the 22 April 2020 Ruling on provisional measures issued by this Court gives rise to prejudice against him insofar as, without a clean criminal record and without being entered on the electoral register, it is impossible for him to submit his candidacy in the forthcoming presidential election in Côte d'Ivoire.
23. He further alleges that since almost all the members of his political party's leadership are in detention, despite the 22 April 2020 Ruling, it is difficult for him to obtain the nomination letter to complete his candidacy file. The Applicant also argues that the impossibility of being physically present on the national territory prevents him from obtaining the endorsements needed for his candidacy and from fulfilling other related formalities.
24. The Applicant concludes that there is therefore unquestionable real risk for him not being able to stand for the 31 October 2020 presidential election, so much so that the irreparable nature of the damage which will result therefrom is indisputable.
25. The Applicant therefore prays the Court to consider that in order to prevent the occurrence of irreparable damage in the instant case, all legal acts and obstacles preventing him from enjoying his right to vote and to be elected should be lifted or, failing that, order the Respondent State to suspend the organization of the 31 October 2020 presidential election, pending a ruling on the merits.

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

4 *Ibid*, § 67.

26. The Respondent State did not make any submission on the measures sought.

27. 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”.
28. Rule 51(1) of the Rules of Court also 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.
29. The Court recalls that, in deciding whether it should exercise the jurisdiction conferred on it by these provisions, it takes into account the criteria applicable to provisional measures that are only ordered where there are conditions of extreme gravity, urgency and prevention of irreparable damage. In this regard, the Court considers 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.⁵
30. In the instant case, with reference to the first Ruling on provisional measures rendered on 22 April 2020, the Court observes that the foreseen harm was established insofar as the execution of the arrest warrant issued against Applicant Guillaume Kigbafori Soro risked seriously compromising the enjoyment of his political freedoms and rights whereas Mr Soro had already anticipated the electoral competition.⁶ The Court further recalls that the circumstances of the case reveal a situation of urgency given that the elections are imminent, in particular the October 2020 presidential election.⁷

5 *XYX v Republic of Benin*, AfCHPR, Application 057/2019, Ruling of 2 December 2019 (provisional measures), § 24; *Komi Koutche v Benin* (provisional measures) § 31.

6 *Guillaume Kigbafori Soro v Republic of Côte d'Ivoire*, AfCHPR, Application 012/2020, Ruling of 22 April 2020 (provisional measures), § 35.

7 *Idem*.

31. The Court notes that the Respondent State has not given effect to the 22 April 2020 Ruling on Provisional Measures and that it has not reported to it on the measures taken in this regard. The Court further notes that, as inferred from the Applicant's submissions in support of the present request for provisional measures, his trial and conviction as well as all the subsequent acts taken by the competent authorities of the Respondent State, particularly the election authorities, subsequent to the Ruling of 22 April 2020, were in violation of the said Ruling.
32. The Court further observes, and in the light of the foregoing, that the situation subject of the present Order for provisional measures is new and different from the one covered by the Order dated 22 April 2020. As such, the second situation is the consequence of the first one. It follows that the acts which are the subject of the present Order for provisional measures are likely to cause irreparable damage and reveal an urgent situation relating to the acts covered by the Ruling of 22 April 2020 and by the very fact of the non-compliance with the said Ruling.
33. In view of the foregoing and considering the circumstances of the case, the Court deems it necessary to order that all acts adopted subsequent to the Ruling of 22 April 2020 be stayed and all the obstacles preventing Applicant Guillaume Kigbafori Soro from enjoying his rights to vote and to be elected be removed.
34. Accordingly, 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 preserve the *status quo ante* pending its decision on the merits of the case.
35. For the avoidance of doubt, this Order is provisional and does not in any way prejudice the conclusions that the Court might draw regarding its jurisdiction, the admissibility and the merits of the Application instituting proceedings.

VII. Operative part

36. For these reasons,
The Court

Unanimously

Orders the Respondent State to:

- i. *stay* all acts taken against Applicant Guillaume Kigbafori Soro subsequent to the Ruling of 22 April 2020, until the Court's decision on the merits of the case;
- ii. *take* all necessary measures to immediately remove all obstacles preventing the Applicant Guillaume Kigbafori Soro from enjoying his rights to vote and be elected, in particular during the October

- 2020 presidential election; and
- iii. *report* to the Court within fifteen (15) days from the date of receipt of this decision, on the implementation of the provisional measures ordered.