

Ajavon v Benin (re-opening of proceedings) (2018) 2 AfCLR 466

Application 013/2017, *Sebastien Germain Ajavon v Republic of Benin*

Order, 5 December 2018. Done in English and French, the French text being authoritative.

Judges: ORE, KIOKO, NIYUNGEKO, GUISSSE, BEN ACHOUR, MATUSSE, MENGUE, MUKAMULISA, CHIZUMILA and BENSAOULA

The applicant, a politician, alleged the violation of many provisions of the African Charter, including those relating to the right to a fair trial, following his sentencing to 20 years' imprisonment for drug trafficking. Having already begun its deliberations, the Court ordered the closure of the deliberations and the reopening of the proceedings to consider further submissions and requests from the applicant.

Procedure (closure of the deliberations, reopening of the proceedings, 25, 26)

I. The Parties

1. The Applicant Mr Sébastien Germain Ajavon (hereinafter referred to as "the Applicant") a businessman and politician, is a national of Benin.

2. The Respondent State is 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. The Respondent State, on 8 February 2016, also deposited the declaration prescribed under Article 34(6) of the Protocol accepting the jurisdiction of the Court to receive cases directly from individuals and Non-Governmental Organisations.

II. Subject of the Application

3. The Court was seized of the Application on 27 February 2017. The Applicant submits that, between 26 and 27 October 2016, the *gendarmérie* of the Autonomous Port of Cotonou and the Benin Customs Department were alerted to the presence of a large quantity of cocaine in a container aboard the ship "MSC Sophie" transporting frozen goods.

4. Based on the information given by the Intelligence and Documentation Department of the Office of the President of the Republic

of Benin, the Public Prosecutor's Office and the Benin Customs, as of 28 October 2016, initiated legal proceedings against the Applicant and his three employees for trafficking eighteen (18) kilograms of pure cocaine found in a container of frozen goods imported by *Société Comptoir Mondial de Négoce* (COMON SA) of which he is the Chief Executive Officer.

5. On 4 November 2016, the Criminal Chamber of Cotonou First Class Court of First Instance Court, by Judgment No. 262/IFD-16, acquitted the Applicant and one of his employees for lack of evidence and for the benefit of the doubt. The other two employees were also released without being charged.

6. The Applicant also alleges that, in the process, the Customs Administration suspended the container terminal of the *Transit and Consignment Brokerage Company* (SOCOTRAC) and withdrew its customs brokerage license. The High Authority for Audiovisual and Communication (HAAC), by two decisions both dated 28 November 2016, disconnected the signals of the radio station SOLEIL FM and the TV channel SIKKA TV. The Applicant alleged that he is the majority shareholder in all these companies.

7. In his application of 27 February 2017, the Applicant indicated that he brought the matter before this Court in the belief that the international drug trafficking case and the subsequent proceedings were part of a conspiracy orchestrated against him and violated his human rights guaranteed and protected by international human rights instruments.

8. Moreover, in October 2018, the Applicant reported the creation by the Respondent State, in July 2018, of a special court to try him once again for the same case of drug trafficking, and actually sentenced him to twenty years in prison.

III. Summary of procedure before the Court

9. The Application was filed on 27 February 2017 and served on the Respondent State on 31 March 2017. The Respondent State filed its Brief on Preliminary Objections on 1 June 2017.

10. In a letter dated 17 July 2017 and received at the Registry on 19 July 2017, the Applicant filed his Reply to the Respondent State's preliminary objections; and on 29 August 2017, the Respondent State submitted its Rejoinder on the Applicant's Reply to the preliminary objections.

11. On 9 October 2017, the Applicant replied to the Rejoinder, and on 14 November 2017, the Respondent State submitted its Response to the Applicant's observations on its Rejoinder.

12. On 27 November 2017, the Registry notified the Parties that the

written proceedings in this case were closed.

13. In a letter dated 6 November 2017, received on 11 December 2017, the Applicant alleged further attacks against his person and the use of new methods by the Respondent State to stifle his companies and as such requested a public hearing of the case. The Applicant reiterated this request on 26 March 2018.

14. On 9 May 2018, the Court held a public hearing, and granted the Respondent State leave to file its Response to the Applicant's further submissions within thirty (30) days. This Response was filed at the Registry on 13 May 2018.

15. In a letter dated 15 October 2018, received on 16 October 2018, the Applicant brought before the Court new allegations in respect of the case in which he indicated that while the judgment of the Court was being awaited by the Parties, the Respondent State, by a Law dated 2 July 2018, established a special court named "Economic Crimes and Terrorism Court (hereinafter referred to as "CRIET") to once again hear the case of international drug trafficking which involves him. He also alleged that the new proceedings involves fresh violations of his rights for which he solicits the Court to issue an order requesting the Respondent State to stay its proceedings before CRIET.

16. On 24 October 2018, the Registry notified the Respondent State of the new allegations tendered by the Applicant.

17. On 26 October 2018, the Applicant submitted another letter in which he referred to the CRIET judgment convicting him and requested the Court to issue, as a provisional measure, an order for a stay of execution of that judgment. This letter was registered in the Registry on 31 October 2018.

18. On 31 October 2018, the Registry received from the Applicant a letter dated the same day. In that letter, the Applicant referred to the record of proceedings of the General Assembly of Cotonou Magistrates highlighting the illegality of CRIET and requesting this Court to take all appropriate measures, including a stay of execution of the judgment delivered by CRIET, until consideration of the cassation appeal.

19. On 5 November 2018, the Applicant addressed to the Court a *corrigendum* to the letter dated 31 October 2018, and requested the Court to consider a stay of execution of the CRIET judgment up to the date of its decision rather than until consideration of the cassation appeal. This letter was received at the Registry on 20 November 2018 and served on the Respondent State on the same day.

20. On 7 November 2018, the Registry notified the Respondent State of the Applicant's letters dated 26 and 31 October 2018, respectively.

21. On 12 November 2018, the Applicant reiterated his request for a stay of execution of the CRIET judgment. This letter was received at the Registry on 19 November 2018 and served on the Respondent

State on 20 November 2018.

22. On 13 November 2018, the Respondent State filed its observations on the admissibility of the new allegations submitted by the Applicant. The Respondent State's submissions were received on 14 November 2018 at the Registry, which transmitted the same to the Applicant on the same day.

23. On 20 November 2018, the Registry received the Respondent State's observations as contained in the latter's letter dated 19 November 2018, on the prayer for a stay of execution of CRIET judgment. On the same day, the Registry transmitted the said observations to the Applicant.

24. On 21 November 2018, the Applicant submitted to the Court a set of documents in support of the allegations of violation of his rights, consisting of a study report conducted by the Benin Bar Association on CRIET, the transcript of the statement of the President of the National Union of Magistrates of Benin and a copy of the judgment delivered by CRIET. The said documents were served on the Respondent State on the same day.

IV. Position of the Court

25. The Court notes that the developments that occurred after the matter was placed on the deliberations are linked to the facts alleged in the Application filed on 27 February 2017 and represent an obvious continuity with the facts in question.

26. In this regard, the Court holds that in the interest of proper administration of justice, it has the inherent power to decide to set aside the deliberation, reopen the pleadings and admit the new evidence filed by the Parties after the matter has been placed under deliberation.

V. Operative part

27. For these reasons:

The Court

unanimously,

i. *sets aside* the deliberation on Application No. 013/2017 - *Sébastien Germain Ajavon v Republic of Benin*, and decides to reopen written pleadings.

ii. *admits* the new evidence filed by the Parties after the matter was placed under deliberation;

iii. *allows* the Applicant thirty (30) days from the date of notification of this Order to submit on all aspects of the case, his Reply to the Respondent State's Response.