Ajavon v Benin (admissibility) (2021) 5 AfCLR 623

Application 027/2020, *Sébastien Germain Marie Aikoue v Republic of Benin*

Ruling, 2 December 2021. Done in English and French, the French text being authoritative.

Judges: ABOUD, TCHIKAYA, KIOKO, BEN ACHOUR, MENGUE, MUKAMULISA, CHIZUMILA, BENSAOULA, ANUKAM, NTSEBEZA and SACKO

The Applicant claimed that the proceedings and decisions of the domestic courts of the Respondent State in tax and criminal matters involving him were in violation of his human rights. In his Application before the Court, he also requested for provisional measures, *inter alia,* to stay execution of the judgment of the domestic courts. The Court held that the Application was inadmissible for failure to exhaust local remedies.

Jurisdiction (material jurisdiction, 37-39; exercise of appellate jurisdiction, 46-49)

Admissibility (exhaustion of local remedies, 73-82; admissibility requirements are cumulative, 84)

I. The Parties

1. Sébastien Germain Marie Aîkoué Ajavon (hereinafter referred to as "the Applicant") is a national of Benin, a politician and a company director. He challenges the tax and criminal procedures initiated against him and against his company.

2. The Application is filed against the Republic of Benin (hereinafter referred to as "the Respondent State"), 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 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. On 8 February 2016, the Respondent State deposited the Declaration provided for in Article 34(6) of the said Protocol (hereinafter referred to as "the Declaration") by virtue of which it accepts the jurisdiction of the Court to receive applications from individuals and Non-Governmental Organisations. On 25 March 2020, the Respondent State deposited with the Chairperson of the African Union Commission the instrument of withdrawal of the said Declaration. The Court has ruled that this withdrawal has no bearing, on the one hand, on pending cases and, on the other

hand, new cases filed before the entry into force of the withdrawal on 26 March 2021.[1]

II. Subject of the Application

A. Facts of the matter

3. It emerges from the Application that the Applicant is the managing director and sole shareholder of the company COMON SA which is specialised in the import and export of food products. The Applicant states that this company imports these products from Europe and Asia and, in accordance with domestic regulations, exports them mostly to the countries bordering the Respondent State, namely Nigeria and Niger. The Applicant affirms that he benefits from value added tax (VAT) refund.

4. He states that by a letter dated 20 June 2011,[2] the Respondent State notified COMON SA of its refusal to refund VAT credits for the 3rd to 6th bimester of 2009 and the 1st to 6th bimester of 2010, in the amount of Thirteen Billion Four Hundred and Eighty-Seven Million Two Hundred and Forty-Six Thousand Eight Hundred and Ninety-Three (13,487,246,893) CFA francs, on the basis of the measure prohibiting exportation of goods to Nigeria and the fact that the Ambassador of the Respondent State did not sign the certificate of entry of goods.

5. In reaction, COMON SA appealed to the Administrative Chamber of the Supreme Court against the said letter of 20 June 2011. Additionally, on 14 October 2011, he sued, the Respondent State before the Cotonou Court of First Instance for the payment of the above-mentioned amount and Fifty Billion (50,000,000,000) CFA francs as damages before the Court of First Instance of Cotonou.

6. By a judgment of 8 February 2013,[3] the said Court of First Instance of Cotonou ordered the Respondent State to reimburse COMON SA the sum of Thirteen Billion Four Hundred and Eighty-Seven Million Two Hundred and Forty-Six Thousand Eight Hundred and Ninety-Three (13,487,246,893) CFA francs, a decision against

1 *Houngue Eric Noudehouenou v Republic of Benin*, ACtHPR, Application No. 003/2020, Ruling of 5 May 2020 (Provisional measures), §§ 4- 5 and corrigendum of 29 July 2020.

2 Letter No. 488/MEF/DG/SGM/DGID/DGE/SA-1 of 20 June 2011.

3 Judgment No. 16/13/1st - CCM of 8 February 2013 of the Court of First Instance of Cotonou.

which both parties appealed.

7. The Applicant states that there followed a series of reactions by the Respondent State, including:

- Letter No. 260/MEF/DC/SGM/DGID/DGE/SA-1 of 30 December 2011, that deals with tax adjustments of VAT and the advanced payment of tax on profits, for a total amount of Thirty-Five Billion Two Hundred and Twenty-Five Million One Hundred and Thirty-Three Thousand Six Hundred and Thirty (35,225,133,630) CFA francs which was confirmed by Letter No.026/MEF/DC/SGM/DGID/DGE/SA-1 of 29 February 2012. COMON SA responded by filing a hierarchical appeal with the Minister of Economy and Finance against the said letter.
- Letter No.133/MEF/DC/SGM/DGID/DGE/SA-1 of 27 July 2012, that reduces the amount of tax adjustments to the sum of Thirty-Two Billion Seven Hundred and Twenty-Five Million Sixteen Thousand One Hundred and Thirty - Three (32,725,016,133) FCFA and a tax notice of 27 August 2012 of this amount. Again, COMON SA filed a hierarchical appeal to the Minister of Economy and Finance.
- Complaint No.149-c/MEF/DC/SGM/DGID of 4 March 2013, addressed to the Public Prosecutor at the Court of First Instance of Cotonou, against Mr. Sébastien Ajavon, in his capacity as General Director of COMON SA, for attempted VAT fraud, forgery and use of forgery.

8. The Applicant adds that the parties subsequently settled their differences amicably by a memorandum of understanding of 31 October 2014, approved by judgment n° 007/ UD-PD / 15 of 9 February 2015 of the Court of First Instance of Cotonou. He avers that this judgment, which has not been appealed against, has become final.

9. The Applicant further submits that in accordance with their commitments, COMON SA withdrew its case from the Supreme Court, which confirmed the same through a judgment of 19 November 2015. He notes that the Judicial Officer of the Treasury notified the memorandum of understanding to the Public Prosecutor, who, having given due notice on 24 March 2015, closed the criminal proceedings opened against the Applicant. He further avers that the State of Benin had even started refunding the VAT credits.

10. The Applicant asserts that, against all expectations, the Respondent State ceased to honour its pecuniary commitments resulting from the memorandum of understanding with COMON SA. He believes that the Respondent State's refusal to pay was due to the contentious political relations between him and President Patrice Talon arising from the so-called "18 kg of

cocaine" case.

11. He affirms that COMON SA was compelled to send a notice dated 16 May 2017 to the Respondent State demanding the payment of the sum of Two Billion Four Hundred Thirteen Million Eight Hundred Forty-Nine Thousand Two Hundred Twenty-Three (2,413,849,223) CFA francs, being the tax refund in respect of the 6th bimester of 2009 and the 6th bimester of 2010.

12. The Applicant further states that in November 2017, the Respondent State, based on facts that led to the judgment of approval rendered on 9 February 2015 by the Cotonou Court of First Instance, filed a complaint against him, with civil party status, for forgery of an authentic or public document by forged signature, complicity and fraud, before the 1st Investigating Chamber of the Cotonou Court of First Instance.

13. Subsequently, he indicates that in 2018 the criminal proceedings were transferred to the Investigation Commission of the CRIET, which changed the charge to "forgery of public documents, complicity in forgery of public documents and fraud".

14. The Applicant asserts that without any examination on the merits or confrontation, and without his counsel having appraised the evidence in the proceedings, the Public Prosecutor's Office issued a final indictment on 27 May 2020, following which the CRIET Investigating Committee issued the judgment of 29 May 2020, partially dismissing the case in part and referring it to the CRIET Judicial Chamber.[4] This judgment was upheld by the judgment of 18 June 2020[5] rendered by the Investigating Division of the Appeals Chamber of the CRIET, against which he filed a cassation appeal on 18 June 2020.

15. Finally, the Applicant states that the proceedings initiated against him is an illegal resumption of a case that was the subject of a memorandum of understanding that was duly approved by a court decision that has become final. According to him, the proceedings against him are proof of the Respondent State relentlessly persecuting him and violating his fundamental rights, which has caused him material and moral harm.

4 Judgment No. 21/CRIET/COM-I/2020.

5 Judgment No. 003/CRIET/CA/SI.

B. Alleged violations

16. The Applicant alleges the violation of the following rights:

i. The right to a fair trial by infringement of the principle of "*electa una via*" protected by Article 7(1)(a) of the Charter.

ii. The right to a fair trial due to the inadmissibility of the civil procedure by virtue of a *res judicata* settlement protected by Article 7(1)(a) of the Charter.

iii. The right to a fair trial due to the impossibility for the plaintiff to initiate a criminal procedure, protected by Article 7(1) of the Charter.

iv. The right to a fair trial by violation of the rights of defence protected by Article 7(1)(c) of the Charter.

v. The right to property protected by Article 14 of the Charter.

vi. The right to adequate housing protected by Articles 14, 16 and 18 of the Charter.

III. Summary of the Procedure before the Court

17. On 22 June 2020, the Applicant filed the main Application together with a request for provisional measures. These were notified to the Respondent State on 22 September 2020 as well as to other entities provided for in Rule 42(4) of the Rules.

18. On 27 November 2020, the Court issued a Ruling declaring the Request for provisional measures moot. The Ruling was notified to the Parties on 11 December 2020.

19. On 4 February 2021, the Applicant filed a second request for provisional measures, which was notified to the Respondent State on 17 February 2021, with a request to submit its response within fifteen 15 days of receipt. On 29 March 2021, the Court ruled that the request was moot. The Ruling was served on the Parties on 9 April 2021.

20. On 5 March 2021, the Applicant filed a third request for provisional measures, which was notified to the Respondent State on 9 March 2021, for its response within fifteen (15) days from the date of receipt. On 1 April 2021, the Court "ordered a stay of execution of Judgment No. 41/CRIET/CJ/1S. Cor of 1 March 2021, rendered by the First Section of the CRIET's Judgment Chamber, pending consideration of the Application on the merits". The Ruling was served on the Parties on 16 April 2021.

21. The Parties filed their submissions within the stipulated timelines.

22. Pleadings were closed on 27 September 2021 and the Parties were duly notified.

IV. Prayers of the Parties

23. The Applicant requests the Court to:

i. Declare that it has jurisdiction;

ii. Declare the Application admissible;

iii. Find that the Republic of Benin has violated Articles 7(1)(a), 7(1)(c), 14, 16 and 18 of the Charter;

iv. Order the annulment of Judgment No. 021/CRIET/COM/2020 of 29 May 2020, partially dismissing the case and referring it back to the CRIET's Judgment Chamber ruling on criminal matters, and any act, be it a judicial decision or a conviction that is the direct consequence thereof

v. Order the State of Benin to pay the following amounts

- Three Billion Eight Hundred and Sixty-Nine Million Seventy-One Thousand Two Hundred and Twenty-Four (3,869,071,224) CFA francs in respect of funds blocked by the State of Benin, together with interest at the discounted rate of the Central Bank of West African States (BCEAO)
- 1,500,000,000 CFA francs for the moral harm suffered by the Applicant;

vi. Order the Republic of Benin to report to the Court within a time limit to be set by the Court on the implementation of the decision to be handed down;

vii. Order the State of Benin to pay the costs.;

24. On its part, the Respondent State prays the Court to:

i. Find that no situation of human rights violation has been invoked;

ii. Find that the African Court cannot challenge the decision of a domestic court;

iii. Find that the Court is not a judge of appeal of decisions of domestic courts;

iv. Find that the Court lacks jurisdiction;

v. Find that local remedies have not been exhausted and to declare that the request is inadmissible;

vi. Find that the Judicial Officer of the Treasury is not a party to the civil proceedings with respect to the facts in issue in casu;

vii. Find that the principle of electa una via cannot be invoked against him;

viii. Declare that the Judicial Officer of the Treasury bringing a civil lawsuit before a criminal judge is regular;

ix. Find that the transaction was based on fraudulent grounds;

x. Find that fraud corrupts everything;

xi. Find that new charges call into question the agreement reached;

xii. Declare that a fraudulent transaction is deprived of its effects;

xiii. Find that the Applicant claims to have been unable to access the trial docket;

xiv. Note that he does not prove this allegation;

xv. Note that according to Articles 187 and 478 of the Code of Penal Procedure (CPP), such a situation can be brought before a trial judgment;

xvi. Note that the trial judge may request additional information;

xvii. Find that there is no violation of human rights;

xviii. Find that the right "to be heard" guaranteed by Article 7(1) of the Charter is distinct from a litigation in respect of enforcement;

xix. Declare that there is no violation of the right "to be heard";

xx. Find that the Applicant does not characterize any actual violation of the right to property;

xxi. Find that the Applicant submits that there are potential violations of the right of property;

xxii. Find that there is no violation of the right of property;

xxiii. Find that the State has committed no misconduct causing harm to Applicant;

xxiv. Find that the Applicant does not prove the alleged harm suffered owing to the actions of the Respondent State;

xxv. Accordingly, find that the Application is unfounded and that there is no ground for reparation.

V. Jurisdiction

25. The Court notes that Article 3 of the Protocol reads as follows:

1. The jurisdiction of the Court shall extend to all cases and disputes submitted to it concerning the interpretation and application of the Charter, the Protocol and any other relevant human rights instrument ratified by the States concerned.
2. In the event of a dispute as to whether the Court has jurisdiction, the Court shall decide.

26. Under Rule 49(1) of the Rules,[6] "The Court shall preliminarily ascertain its jurisdiction … in accordance with the Charter, the Protocol and these Rules".

27. On the basis of the above-mentioned provisions, the Court must, in each application, make a preliminary examination of its jurisdiction and rule on objections to its jurisdiction, if any.

6 Rule 39(1) of the former Rules of the Court of 2 June 2010.

28. The Court notes that the Respondent State raises an objection based on lack of material jurisdiction.

A. Objection based on lack of material jurisdiction

29. In support of its objection, the Respondent State alleges, on the one hand, that the Applicant merely refers to articles of the Charter without linking them to facts of violation and, on the other hand, that the Court is called upon to act as a court of appeal and judge of execution of domestic decisions.

i. Argument based on the mere mention of articles of the Charter without connecting them to any facts of the violation

30. The Respondent State submits that under Article 3(1) of the Protocol, the Applicant must refer a dispute that has to do with the Court's instruments. The mechanical invocation of the articles of the Charter is not sufficient to establish the Court's jurisdiction. To establish the Court's jurisdiction, the statement of facts must refer to actual instances of human rights violations.

31. The Respondent State alleges that the Applicant merely invokes the alleged violation of Article 7(1)(a); 7(1)(c), 14, 16, and 18 of the Charter. It submits that the Applicant must set out an actual factual situation of human rights violation in order for the Court to perform its function. The Respondent State further contends that nothing in the Applicant's submission shows that the State of Benin has taken any measures restricting the latter's rights.

32. The Respondent State further avers that in any case, referring cases to criminal courts for investigation of offences cannot be interpreted as a case of violation of human rights.

33. The Respondent State concludes that the Court lacks jurisdiction.

34. In reply, the Applicant submits that the Court's jurisprudence has consistently held that Article 3(1) of the Protocol confers upon it the prerogative to consider any application that contains allegations of violations of human rights protected by the Charter or any other relevant human rights instrument ratified by the Respondent State.

35. He asserts that he has expressly cited, in detail, the articles of the Charter that have been violated by the Respondent State.

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36. The Court notes that under Article 3(1) of the Protocol, it has jurisdiction over "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".

37. It considers that for it to have material jurisdiction, it is sufficient that the rights allegedly violated are protected by the Charter or by any other human rights instrument ratified by the State concerned.[7]

38. It notes in the instant case that the application contains allegations of violations of rights protected by Article 7(1)(a); 7(1)(c), 14, 16, and 18 of the Charter.

39. The Court therefore dismisses the Applicant's argument based on the mere mention of the articles of the Charter without connection to facts of violation.

ii. Argument based on the Court being called upon to act as an appellate court and judge of execution of decisions of domestic courts

40. The Respondent State asserts that the Applicant seeks the annulment of the dismissal Judgment No. 021/CRIET/COM/2020 of 29 May 2020 and the mandatory execution of Judgment No. 16/13/1st -CCM of 8 February 2013, the memorandum of understanding of 31 December 2014 and its approval Judgment No. 007/AUD-PD of 9 February 2015. According to the Respondent State, these requests do not fall within the jurisdiction of the Court**.**

41. To this end, the Respondent State argues that the Court is not the judge of the execution of domestic decisions and titles, and it cannot guarantee the execution of a fraudulent agreement which is subject to the appreciation of the domestic criminal courts.

42. The Respondent State further submits that the application to set aside the judgment of dismissal seeks to challenge a decision of the domestic court. It submits the Court has recalled in its jurisprudence that it is not a court of appeal against decisions rendered by the domestic courts.

43. The Applicant, for his part, asserts that the Court cannot remain inert in the face of a flagrant violation of human rights, regardless

7 *Franck David Omary and Others v United Republic of Tanzania,* (admissibility) (28 March 2014) 1 AfCLR 358, § 74*; Peter Chacha v United Republic of Tanzania,* (admissibility) (28 March 2014) 1 AfCLR 398, § 118.

of the act which gave rise to this violation.

44. He adds that it is not a question of reviewing the legality of a decision rendered by a national court but of finding the manifest violation of human rights contained in a judicial act.

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45. The Court notes that the objection raised by the Respondent State relates to the fact that the Applicant requests it to sit as an appellate court and as a judge for the enforcement of domestic decisions and titles.

46. Regarding the argument that the Court is being asked to sit as an appellate court, the Court notes that, according to its established jurisprudence, it does not have appellate jurisdiction to consider appeals in respect of cases already determined by domestic or regional and similar Courts".[8] However, "... that does not preclude it from assessing whether domestic proceedings were conducted in accordance with international standards set out in the Charter and other international human rights instruments ratified by the State concerned.[9]

47. The Court also notes, with regard to the second argument, that the Applicant's request is in line with the jurisdiction that has arisen, since it is being called upon to determine whether the refusal to enforce final court decisions and the acts and new criminal proceedings before the CRIET comply with the international norms indicated in the Charter or other human rights instruments ratified by the State of Benin.

48. The Court does not accept the argument that it would be acting as an enforcement and appellate court if it were to rule in the instant case.

49. Accordingly, the Court dismisses the objection against its jurisdiction and finds that it has material jurisdiction to hear the instant Application.

B. Other aspects of jurisdiction

8 *Ernest Francis Mtingwi v Malawi* (jurisdiction) (15 March 2013) 1 AfCLR 190 § 14.

9 *Alex Thomas v United Republic of Tanzania* (merits) (20 November 2015) 1 AfCLR 482, §130.

50. The Court notes that no objection has been raised to its personal, temporal or territorial jurisdiction. However, in accordance with Rule 49(1) of the Rules, the Court must ensure that all aspects of its jurisdiction are satisfied before proceeding to hear the Application.

51. With regard to its personal jurisdiction, the Court recalls, as already indicated in paragraph 2 of this Ruling, that on 25 March 2020, the Respondent State deposited the instrument of withdrawal of the Declaration provided for in Article 34(6) of the Protocol.

52. The Court reiterates its position that the withdrawal of the Declaration has no retroactive effect and has no bearing on any cases pending at the time of filing the instrument of withdrawal or on any new cases filed before the withdrawal of the Declaration takes effect on 26 March 2021. Given that the Application was filed prior to the withdrawal of the Declaration taking effect, it is not affected by the withdrawal. The Court therefore finds that it has personal jurisdiction over this Application.

53. With regard to its temporal jurisdiction, the Court notes that all the violations alleged by the Applicant occurred after the Respondent State became a party to the Charter and filed the Declaration. Accordingly, it finds that it has temporal jurisdiction in the instant case.

54. As to its territorial jurisdiction, the Court notes that the violations alleged by the Applicant occurred in the territory of the Respondent State. It therefore concludes that its territorial jurisdiction is established.

55. Accordingly, the Court finds that it has jurisdiction in the instant case.

VI. Admissibility

56. Article 6(2) of the Protocol provides: "The Court shall rule on the admissibility of cases taking into account the provisions of Article 56 of the Charter".

57. In line with Rule 50(1) of the Rules of Court, "The Court shall ascertain the admissibility of an Application filed before it in accordance with Article 56 of the Charter, Article 6(2) of the Protocol and these Rules".[10]

10 Rule 40 of the former Rules of the Court of 2 June 2010.

58. Rule 50(2) of the Rules of Court, which restates the provisions of Article 56 of the Charter, provides:

> Applications filed before the Court shall comply with all of the following conditions:
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> a. Indicate their authors even if the latter request anonymity;
>
> b. Are compatible with the Constitutive Act of the African Union and with the Charter,
>
> c. Are not written in disparaging or insulting language directed against the State concerned and its institutions or the African Union,
>
> d. Are not based exclusively on news disseminated through the mass media,
>
> e. Are sent after exhausting local remedies, if any, unless it is obvious that this procedure is unduly prolonged,
>
> f. Be filed within a reasonable time from the date local remedies were exhausted or from the date set by the Court as being the commencement of the time limit within which it shall be seized with the Matter;
>
> g. Not raise any matter or issues previously settled by the parties in accordance with the principles of the Charter of the United Nations, the Constitutive Act of the African Union or the provisions of the Charter.

59. The Court notes that the Respondent State has raised an objection to the admissibility of the Application based on non-exhaustion of local remedies.

A. Objection based on non-exhaustion of local remedies

60. The Respondent State, relying on the jurisdiction of the European Court of Human Rights of the 10 March 1977, *Guzzardi v Italia*, submits that an individual can bring a case against a State before an international court only after providing the judicial authorities of that State the opportunity to address the effects of the impugned decision or the dispute State fact. The Respondent State contends that this is a requirement which derives from the sovereignty of the State.

61. It further submits that the Applicant must have invoked "in substance" before domestic courts the complaint he or she is making before this Court.

62. The Respondent State points out, in the instant case, that on June 18, 2020 the Applicant filed a cassation appeal before the Respondent State's Supreme Court against Judgment No. 003/CRIET/CA-S1 of 18 June 2020, and that he referred the matter to this Court on 22 June 2020. The Respondent State concludes that as at the date of filing the application with the Court, the

Applicant has not met the requirement to exhaust local remedies.

63. The Respondent State therefore prays that the Application be declared inadmissible.

64. The Applicant states in response that the issue of exhaustion of local remedies requires that the available judicial remedies be both effective and capable of resolving disputes in a timely manner. He argues that the Supreme Court does not meet the requirements of effectiveness.

65. He contends to this effect that the Supreme Court is dysfunctional since it has been unable to implement the judgment of the African Court of 29 March 2019 rendered between the same parties, which overturned the judgment of 4 October 2018 rendered by the CRIET sentencing him to 20 years imprisonment.

66. He further asserts that the Supreme Court lacks independence from the executive branch since the president of the Judicial Chamber, who was due for retirement on January 1, 2019, has had his term of office exceptionally extended under Law No. 2019-12 of 25 February 2019, amending and supplementing Law No. 2001-35 of 21 February 2003 on the status of the judiciary. He states that this law empowers the President of the Republic to extend the term of office of a magistrate due for retirement at age sixty (60) up to age sixty-five (65).

67. The Applicant contends that, in any event, the Court stated in the judgment in Application No. 062/2019, *Sébastien Ajavon v Republic of Benin*, that the judiciary of the Respondent State is not independent.

68. Finally, relying on the judgment in Application No. 013/2017, *Sébastien Ajavon v Republic of Benin*, the Applicant submits that, given the political context and his personal situation, he should be exempted from exhausting local remedies since the prospects of success were negligible. He states that the dismissal of his cassation appeal of 18 June 2020 by Supreme Court judgment of 29 January 2021 confirms his fears.

69. In response, the Respondent State asserts, with regard to the implementation of the Court's judgment of 29 March 2019, that it is not for the judge of cassation to rule on such an aspect when it has not been seized with such a remedy, and the supposed failure to enforce a foreign decision rendered by an external court is not sufficient to invoke the malfunctioning of a domestic court.

70. The Respondent State also points out that the extension of a judge's term of office, which is organised by law, is not abnormal and meets a need for justice as a public service. It further submits that this extension cannot be interpreted as a situation of

dependence on the executive power.

71. Finally, the Respondent State asserts, with regard to the judgments referred to by the Applicant in Application No. 013/2017 and Application No. 062/2019, that the authority of *res judicata* applies to those cases only and not to any other.

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72. The Court recalls that in accordance with Article 56(5) of the Charter and Rule 50(2)(e) of the Rules of Procedure, applications must be filed after the exhaustion of local remedies, if any, unless it is clear that the procedure for such remedies is being unduly prolonged.

73. The Court emphasizes that the local remedies to be exhausted are judicial in nature. These must be available, that is, they must be available to the Applicant without let or hindrance, and effective in the sense that they are "capable of satisfying the complainant" or of remedying the situation at issue".[11]

74. The Court also pointed out that compliance with the requirement of Article 56(5) of the Charter and Rule 50(2)(e) implies that the Applicant must not only initiate the local remedies, but also await their outcome.[12] The Court further emphasises that the requirement to exhaust local remedies is assessed, in principle, as at the date of filing the Application before it.[13]

75. In the instant case, the Court notes that on 18 June 2020, the Applicant lodged a cassation appeal with the Respondent State's Supreme Court against Judgment No. 000/CRIET/CA-S1 of 18 June 2020 and filed the instant Application without awaiting the outcome of the appeal.

76. The Court further observes that to justify this referral to the Court without awaiting the decision of the Supreme Court, the Applicant advances three (3) arguments, namely, the dysfunction of the

11 *Beneficiaries of the late Norbert Zongo, Aboulaye Nikiema alias Ablasse, Ernest Zongo and Blaise Ilboudo and Mouvement Burkinabè des droits de l'homme et des peuples v Burkina Faso*, Judgment (merits) (5 December 2014), 1 AfCLR 219, § 68; *Ibid*. *Konaté v Burkina Faso* (merits) §108.

12 *Yacouba Traoré v Republic of Mali*, ACtHPR, Application No. 010/2018, Judgment of 25 September 2020 (jurisdiction and admissibility) §§ 46 et 47.

13 *Komi Koutché v République du Bénin*, ACtHPR, Application No. 020/2019, Judgment of 25 June 2021, §61.

Supreme Court, the alleged lack of independence of the Supreme Court and, finally, the political context and his personal situation. The Court will examine these claims one by one.

77. With regard to the dysfunction of the Supreme Court due to the non-execution of the Court's judgment of 29 March 2019, the Court notes that no provision of Law No. 2004-07 of 23 October 2007[14] grants the Supreme Court jurisdiction over the execution of decisions of the African Court. Therefore, the Court cannot find in this case that the Supreme Court is dysfunctional.

78. Regarding the arguments of the lack of independence of the Supreme Court, the Court notes, in relation to the first aspect of the said argument, that the retirement age of the President of the Judicial Chamber of the Supreme Court was extended in January 2019, that is, seventeen (17) months before the Applicant filed the cassation appeal before the said Court on 18 June 2020. Furthermore, the Applicant does not demonstrate that this fact, based on a law[15] that, by nature, is general and impersonal, constitutes an infringement of the independence of the Respondent State's Supreme Court.

79. The Court further emphasizes, regarding the second aspect, that the requirement to exhaust local remedies is assessed, in principle, in relation to the date the Application is filed before it, so that an Applicant cannot rely on circumstances subsequent to the filing of the Application in order to be exempted from exhausting local remedies. Therefore, the Court's judgment of 4 December 2020, on which the Applicant relies, being subsequent to the filing of his Application on 22 June 2020, cannot be considered a circumstance of such nature to support his allegations.

80. Finally, with regard to the argument on to the political context and his personal situation, the Court notes that the Applicant relies on the Court's judgment of 29 March 2019 in Application 013/2017 *Sébastien Germain Ajavon v Benin*. The Court notes that in the said judgment it only examined a procedural impediment that rendered the cassation appeal before the Supreme Court ineffective.[16]

14 Law on the organization, functioning and powers of the Supreme Court of the Respondent State.

15 This is Law No. 2019-12 of 25 February 2019 amending and supplementing Law No. 2001-35 of 21 February 2003 on the status of the judiciary in the Republic of Benin, in its new Article 36.

16 *Sébastien Germain Ajavon v Republic of Benin*, Judgment (merits) (29 March 2019) 3 AfCLR 130, §115.

81. The Court observes that in the instant case, the Applicant does not indicate any procedural impediment, or any other impediment for that matter, in relation to the cassation appeal before the Supreme Court. Moreover, the Court notes that the Supreme Court decided his appeal by a decision rendered on 29 January 2021, that is, seven (7) months after the date on which the Application filed his cassation appeal.

82. In light of the above, the Court finds that the Applicant's arguments are unfounded and that he prematurely lodged his appeal before this Court. The Court holds that the Applicant should have awaited the outcome of his cassation appeal, unless the procedure of this appeal was unduly prolonged, that this is not the case, given that he seized this Court only four (4) days after he filed his cassation appeal.

83. The Court therefore finds merit in the objection based on the non-exhaustion of local remedies and concludes that the Application does not meet the requirement of Rule 50(2)(e) of the Rules.

B. Other admissibility requirements

84. Having concluded that the Application does not meet the requirement of Rule 50(2)(e) of the Rules, the Court need not rule on the admissibility requirements set out in paragraphs 1, 2, 4, 6, and 7 of Article 56 of the Charter as restated in Rule 50(2)(a)(b)(d)(f) and (g) of the Rules, insofar as the admissibility requirements are cumulative and, as such, when one of them is not fulfilled, the Application cannot be admissible.[17]

85. In view of the foregoing, the Court declares the Application inadmissible.

VII. Costs

86. The Applicant did not submit on this point.

87. The Respondent State requests that the Court order the Applicant to pay costs.

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17 *Mariam Kouma and Ousmane Diabaté v Republic of Mali (*jurisdiction and admissibility) (21 March 2018) 2 AfCLR 237, § 63; ***Rutabingwa Chrysanthe v Republic of Rwanda*** (jurisdiction and admissibility) (11 May 2018) 2 AfCLR 361, § 48; *Collectif des anciens travailleurs ALS v Republic of Mali*, ACtHPR, Application No. 042/2015, Judgment of 28 March 2019 (jurisdiction and admissibility), § 39.

88. Rule 32(2) of the Rules[18] provides that "unless the Court decides otherwise, each party shall bear its own costs, if any".

89. In view of the foregoing, the Court decides that each Party shall bear its own costs of the proceedings.

VIII. Operative part

90. For these reasons,

The Court,

Unanimously,

On jurisdiction

i. *Dismisses* the objections to its material jurisdiction;

ii. *Declares* that it has jurisdiction.

On admissibility

iii. *Upholds* the objection to the admissibility of the Application based on non-exhaustion of local remedies;

iv. *Declares* the Application inadmissible.

On costs

v. *Orders* each Party to bear its own costs.

18 Rule 30(2) of the former Rules of the Court of 2 June 2010.