Ajavon v Benin (judgment) (2021) 5 AfCLR 94

Application 065/2019, *Sébastein Germain Marie Aïkoue Ajavon v Republic of Benin*

Judgment, 29 March 2021. 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 Applicant, a national of the Respondent State who resides outside its territory, brought this Application alleging that the failure of the Respondent State to execute judgments and rulings entered in his favour by this Court were a violation of his Charter protected rights. The Court held that the Respondent State had violated the Charter by failing to implement the decisions.

Jurisdiction (material jurisdiction, 26-28)

Admissibility (premature claim, 40-42; victim requirement, 47-48, 60; *res judicata*, 68-70; exhaustion of local remedies, 75-79, 84; reasonable time, 85-87)

Execution of judgment (decisions and judgments, 101; binding nature of decisions, 102-106; link between articles 1 and 30 of the Court Protocol, 121-125)

Reparations (external expert, 134-136; reparation measures, 138-140; material prejudice, 160-166; moral prejudice, 168, 169; non-pecuniary reparations, 171-174)

I. The Parties

1. Mr. Sébastien Germain Marie Aïkoué Ajavon, (hereinafter referred to as "the Applicant"), a national of Benin, is a businessman, residing in Paris, France, as a political refugee. He alleges the violation of various human rights resulting, especially, from the failure to execute the decisions rendered by this Court.

2. The Application is brought 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. It further deposited, on 8 February 2016, 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 African Union Commission (hereinafter referred to as "AUC"), the instrument of withdrawal of its Declaration. The Court has held that this withdrawal has no bearing on pending cases or on new cases filed before the withdrawal comes into effect, one year after its deposit, that is, on 26 March 2021.[1]

II. Subject of the Application

A. Facts of the matter

3. The Applicant contends that in a matter between him and the Respondent State, this Court issued, all in his favour, a Ruling on Provisional Measures of 7 December 2018, a Judgment on Merits of 29 March 2019 and a Judgment on Reparations of 28 November 2019.

4. He stresses that the failure of the Respondent State to execute the decisions has resulted in several violations of his human rights.

B. Alleged violations

5. The Applicant alleges the violation of the following rights and obligations:

i. The rights to non-discrimination and to equal protection of the law, as enshrined in Articles 2 and 3(2) of the Charter;

ii. The right to a fair trial, provided for under Article 7 of the Charter;

iii. The right to property, as guaranteed under Article 14 of the Charter;

iv. The rights to participate freely in the government of his country and to have the right of equal access to the public service, protected by Article 13(1) and (2) of the Charter,

v. The obligation to comply with the decisions rendered by this Court, provided for under Article 30 of the Protocol;

vi. The obligation to ensure that the process for revising its Constitution based on national consensus, obtained if need be, through referendum as stipulated under Article 10(2) of the African

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.

Charter on Democracy, Elections and Governance (hereafter referred to as "the ACDEG");

vii. The obligation to adopt legislative or other measures for the implementation of the rights, duties and freedoms enshrined in the Charter provided for in Article 1 of the said Charter.

III. Summary of the Procedure before the Court

6. The Initial Application was filed at the Registry on 29 November 2019.

7. On 14 January 2020, the Applicant filed an Additional application. On 17 January 2020, the Registry served the two Applications on the Respondent State and requested it to file its Response within sixty (60) days.

8. The Parties filed their submissions, on merits and reparations, within the time-limits prescribed by the Court. These were duly exchanged.

9. On 18 October 2020, the Registry informed the Parties that the pleadings were closed.

IV. Prayers of the Parties

10. The Applicant prays the Court to:

i. Find that it has jurisdiction to hear the matter;

ii. Find the Application admissible;

iii. Establish failure to comply with the decisions of the African Court delivered on 7 December 2018 and 29 March 2019;

iv. Find the violation of the Applicant's rights to non-discrimination and equal protection of the law;

v. Find the violation of the Applicant's right to a fair trial;

vi. Find the violation of the Applicant's right to property;

vii. Find the violation of the Applicant's right to participate freely in the government of his country and the right of equal access to the public service in his country;

viii. Find the violation by the State of Benin of its obligation to guarantee the effective enjoyment of the rights enshrined in the Charter;

ix. Accordingly, adjudge and determine that the Applicant's fundamental rights have been violated.

11. With regard to reparations, the Applicant prays the Court to:

i. Find and rule that the Applicant's fundamental rights have been violated;

ii. Find and rule that the violations committed against the Applicant have caused him immeasurable harm which merits reparation;

iii. Order the State of Benin to compensate the Applicant for the prejudice suffered and award him the sum of three hundred billion (300,000,000,000) CFA francs as damages;

iv. Order the Respondent State to remove obstacles to the execution of the decisions of the African Court.

v. Assess the Court costs and charge the same to the State of Benin.

12. In his additional Application, the Applicant prays the Court to:

i. Order, an assessment by a leading firm, at his own expense, in advance, of the prejudice suffered by the Applicant due to non-compliance with the African Court's Order for Provisional Measures of 7 December 2018 and Judgment on Merits delivered on 29 March 2019;

ii. Find and rule that the advance payment made by the Applicant be borne by the Respondent State.

13. For its part, the Respondent State prays the Court to:

i. Find that the African Court is not the judge of the execution of its own decisions;

ii. Note that, in a similar case, the European Court of Human Rights (hereinafter referred to as "ECHR") held that it lacked jurisdiction to determine whether a Contracting Party has complied with the obligations imposed on it by one of its judgments;

iii. Consequently, rule that it lacks the jurisdiction to hear the matter;

iv. Note that the Applicant seeks to ensure compliance with the Court's decisions of 29 March 2019 and 28 November 2019;

v. Find that in the final judgment of 28 November 2019, the Court allowed six (6) months for the Respondent State to comply with the decisions;

vi. Note that the instant matter was filed on 29 November 2019;

vii. Note that between the date on which the decision was delivered and the Application for compliance therewith, a period of six (6) months had not elapsed;

viii. Consequently, find the Application inadmissible because it is filed prematurely;

ix. Note that the Applicant is praying the Court to rule against the State of Benin on account of facts pertaining to Application No. 013/2017 that was examined by this Court;

x. Note that the Court's judgments on merits of 29 March and 28 November 2019 are final (*res judicata*);

xi. Consequently, declare the Application inadmissible;

xii. Find that the complainant is bringing multiple proceedings as political propaganda;

xiii. Rule the Application inadmissible for abuse of rights;

xiv. Find that the ECHR has ruled that an application is abusive when an applicant files multiple frivolous applications;

xv. Find that, as stated by the ECHR, any conduct by an applicant which is manifestly contrary to the purpose of the right of appeal established by the Convention (the Charter, in this case) is abusive;

xvi. Find that the ECHR stated that the Court may also declare that an application that is manifestly devoid of any real substance and/or (...) generally speaking, is irrelevant to the objective legitimate interests of the Applicant is abusive (*Bock v Germany*; *SAS v France* [GC] §§ 62 and 68);

xvii. Find that the Applicant is not a victim within the meaning of the Charter;

xviii. Find that the application is abusive and disputatious;

xix. Consequently, rule the application inadmissible;

xx. Find that a legal claim must be based on a personal interest;

xxi. Find that the Applicant is not a victim within the meaning of the Rules of Court and the Charter;

xxii. Find that the Applicant is bringing infringement proceedings;

xxiii. Rule that the application is inadmissible.

14. Alternatively, the Respondent State prays the Court to:

i. Find that the Applicant does not complain about any case of human rights violation;

ii. Conclude that the Application is based on a wrong premise.

15. In response to the Applicant's prayers in the additional Application, the Respondent State prays the Court to:

i. Find that the Respondent State has not committed any fault that would cause prejudice to the Applicant;

ii. Find that the Applicant fails to prove the material damage purportedly caused by the State;

iii. Find that the State has not committed any fault that led to the purported damage that would warrant any compensation;

iv. Dismiss the claim for reparation.

v. Find that the action brought by the Applicant is abusive and disputatious;

vi. Find that the Applicant cannot disregard the principle of res judicata with which this case is confronted;

vii. Find that the Applicant subjected the State to the risk of conviction;

viii. Order the Applicant to pay the State an amount of one billion (1,000,000,000) CFA by way of counterclaim.

V. Jurisdiction

16. The Court observes that Article 3 (1) of the Protocol provides 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.

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

18. On the basis of the above-cited provisions, the Court must, first of all, conduct a preliminary assessment of its jurisdiction and dispose of objections thereto, if any.

19. In the instant Application, the Respondent State raises an objection to the material jurisdiction of the Court on which it will first rule, before pronouncing itself on the other aspects of its jurisdiction**.**

A. Objection to material jurisdiction

20. The Respondent State avers that this Court lacks material jurisdiction because there is no provision in the AU Constitutive Act, the Charter, or even the Rules, which makes the Court a judge of its own decisions. This means that the Court cannot settle disputes arising from the execution of its decisions.

21. The Respondent State notes that according to the jurisprudence of the ECHR,[2] a human rights court has no jurisdiction to determine whether a State Party has complied with the obligations imposed on it by one of its judgments.

22. The Applicant retorts that he is not asking the Court to monitor the execution of its decisions of 7 December 2018 and 29 March 2019. Rather, he is praying the Court to note that the Respondent State has failed to honour its undertaking to comply with such decisions in accordance with Article 30 of the Protocol.

23. In his opinion, this matter concerns the application or interpretation of the Protocol which falls within the remit of the Court and, thus, its jurisdiction cannot be challenged.

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2 ECHR, *Mehemi v France* (N°2), Application No.53470/99; *Oberschlick v Austria*, Application No.19255/92 and 21655/93.

24. The Court notes that the Applicant alleges violations of human rights protected by the Charter and the Protocol to which the Respondent State is a Party.

25. Furthermore, the Court recalls that it has previously held that:

> The Protocol does not make a distinction between the type of cases or disputes submitted to the Court, as long as it concerns the application and interpretation of any of the instruments listed in Article 3 of the Protocol[3] [namely, the Charter, the Protocol and any other instrument on human rights and ratified by the States concerned].

26. It is not disputed that the instant case concerns alleged human rights violations due to non-compliance with the decisions delivered by this Court. This case therefore concerns the interpretation or application of Article 30 of the Protocol, under which States commit to comply with the decisions of the Court on any case in which they are a party and to guarantee their execution.

27. The jurisdiction of the Court in relation to such a dispute is exercised without prejudice to the prerogative conferred by Article 29(2) of the Protocol on the Executive Council of the African Union to monitor the execution of decisions rendered by the Court, on behalf of the Assembly of Heads of State and Government.

28. The Court underlines that this jurisdiction is based on Article 3 of the Protocol which confers on it the ability to apply or interpret all the provisions of the Protocol, including Article 30.

29. Consequently, the Court dismisses the objection regarding lack of material jurisdiction.

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B. Other aspects of jurisdiction

30. Having found that there is nothing on the record to indicate that it does not have jurisdiction with respect to the other aspects of jurisdiction, the Court concludes that it has:

i. Personal jurisdiction, insofar as the Respondent State is a Party to the Charter, the Protocol and has deposited the Declaration. In this regard, the Court recalls its previous decision that the fact that the Respondent State withdrew its Declaration on 25 March 2020 has

3 *Suy Bi Gohore Emile and others v Republic of Côte d'Ivoire*, ACtHPR, Application No. 044/2019, Judgment of 15 July 2020 (merits), § 57.

no effect on the present Application as it was already pending at the time of the withdrawal.[4]

ii. Temporal jurisdiction, insofar as the alleged violations were committed, in respect of the Respondent State, after the entry into force of the Charter and the Protocol to which the Respondent State is a party.[5]

iii. Territorial jurisdiction, in so far as the facts of the case and the alleged violations took place on the territory of the Respondent State.

31. Accordingly, the Court declares that it has jurisdiction to examine the instant Application.

VI. Admissibility

32. The Court will first examine the preliminary objections relating to inadmissibility conditions not provided for in Article 56 of the Charter and will then consider the admissibility conditions provided for in Article 56 of the Charter.

A. Preliminary Objections based on inadmissibility conditions not provided for under Article 56 of the Charter

33. The Respondent State raises a number of preliminary objections. They raise an objection based on the fact that (i) the action was brought prematurely and objections based on (ii) the Applicant's lack of victim status (iii) the abuse of the right to bring proceedings, and (iv) lack of personal interest in bringing proceedings.

i. Objection based on the premature nature of the action

34. The Respondent State avers that the Application should be declared inadmissible on the ground that the Applicant, who alleges the failure to execute the Court's decisions, brought the matter before the Court prematurely.

35. The Respondent State points out that, in the proceedings initiated by the Application on 27 February 2017, the Court delivered the final judgment on reparations on 28 November 2019 and gave the Respondent State a time-limit of six (6) months to submit a report on the execution of the judgment.

4 See § 2 of this Judgment.

5 See § 25 of this Judgment.

36. The Respondent State claims that the Applicant did not wait for this deadline to expire, but instead, he filed the instant Application the next day, that is, on 29 November 2019.

37. For his part, the Applicant asserts that he does not challenge the non-execution of the judgment on reparations of 28 November 2019, but rather that of the Order on Provisional Measures of 7 December 2018 and of the Judgment of 29 March 2019, whose time limits for execution set by the Court have long expired.

38. He concludes that this preliminary objection must be dismissed.

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39. The Court notes that, in Application No. 013/2017 involving the same parties, it issued an Order on Provisional Measures on 7 December 2018 and, subsequently, a judgment on merits on 29 March 2019, giving time limits of (15) days and six (6) months, respectively, to execute the decisions.

40. The Court emphasises that it cannot be disputed that the said time limits have expired, which means that the preliminary objection regarding the alleged violations with respect to these two decisions must be dismissed.

41. In any event, the Court notes, in his latest submissions, the Applicant claims that he made reference only to the non-execution of the order on provisional measures of 7 December 2018, and to the judgment on merits of 29 March 2019, and not to the non-execution of the judgment on reparations delivered on 28 November 2019. This statement renders the Respondent State's objection moot.

42. Consequently, the Court will only examine the allegations regarding the failure to execute the Order on Provisional Measures of 7 December 2018 and the Judgment on merits of 29 March 2019, thereby excluding the claim relating to the right to property with regard to the non-execution of the judgment on reparations of 28 November 2019.

ii. Objection relating to lack of victim status

43. The Respondent State contends that the Application must be declared inadmissible on the ground that the Applicant is not a victim of human rights violations, given that he does not cite any

act by the administration that has infringed on his civil rights.

44. The Respondent State notes that the ECOWAS Court of Justice dismissed an Applicant who could not claim to be a victim of rights violations on the ground that he was unable to stand as a candidate in his country's presidential elections.

45. On his part, the Applicant prays the Court to dismiss the objection, stressing that he has previously established that he is a victim of human rights violations.

46. To buttress his argument, he points out that the refusal by the Ministry of the Interior and Public Security to issue a certificate of compliance to his party *Union Sociale Libérale* (USL) on the ground that he had been sentenced to a degrading punishment, is a refusal to execute this Court's decisions and therefore a measure that violates his rights.

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47. The Court notes that neither the Charter, the Protocol, much less the Rules require that an Applicant be a victim of the violations alleged.

48. The Court stresses that this is due to a particularity of the African regional human rights system. It notes, however, that in any case, the failure to comply with the Order on Provisional Measures of 7 December 2018 and the Judgment on Merits of 29 March 2019 is prejudicial to the Applicant and his ability to enjoy his rights of which the Court had established their violation.

49. Accordingly, the Court dismisses this objection.

iii. Objection based on abuse of the right to file legal proceedings

50. The Respondent State points out that the Applicant has engaged in a vexatious and abusive exercise by submitting, in less than one month, six (6) applications which cannot be of any interest to him owing to their manifest disparities.

51. The Respondent State further notes that, in the circumstances, the abuse of rights is manifest, and that this notion must be understood in its ordinary meaning, namely the fact that the person entitled to a right has exercised it in a prejudicial manner, in disregard of its purpose.

52. For his part, the Applicant submits that he has not brought all the proceedings listed by the Respondent State, and has, therefore, not abused his right to file proceedings. He points out that the proceedings mentioned by the Respondent State do not concern the same violations and that, moreover, some of them were brought by third parties.

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53. The Court points out that the Applicant has filed three (3)[6] applications to initiate proceedings before this Court, not six (6).

54. In line with its jurisprudence, the Court recalls that:

> An Application is said to be abusive if, among others, it is manifestly frivolous or if […] an Applicant filed it in bad faith contrary to the general principles of law and the established procedures of judicial practice. [T]he mere fact that an Applicant files several Applications against the same Respondent State does not necessarily show a lack of good faith.[7]

55. The Court notes that this objection cannot be dealt with at this stage of the procedure, given that the abuse cited by the Respondent State can only be established after examination of the merits.[8] The Court will therefore determine this issue after examining the violations alleged by the Applicant.

iv Objection based on lack of interest in filing proceedings

56. The Respondent State submits that the Applicant does not make any attempt to cite any personal violation of his rights. The Respondent State further submits that according to the jurisprudence of the ECOWAS Court of Justice based on Article 10 of the Additional Protocol establishing the said Court, only

6 Application 013/2017 filed on 27 February 2017 resulting in a Ruling on Provisional Measures of 7 December 2018, a Judgment on merits of 29 March 2019, and a Judgment on Reparations of 28 November 2019; Applications 062/2019 and 065/2019 filed on 29 November 2019.

7 *XYZ v Republic of Benin*, ACtHPR, Application No. 059/2020, Judgment of 27 November 2020 (merits and reparations), § 44.

8 *Ibid*. § 45.

direct victims of human rights violations may refer a case to it.

57. The Respondent State explains that the admissibility of an action is conditional on the alleged violations being linked to the Applicant.

58. The Applicant requests that the objection be dismissed, arguing that his status as a victim is clear from the documents in the case file, which according to him shows that he has a direct, concrete and current interest.

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59. The Court notes that although human rights courts have a common mission to protect human rights**,** they do not necessarily share the same rules of procedure, particularly with respect to questions of admissibility.

60. The Court emphasises that in the instant case, the Respondent State bases its objection on the victim status of the Applicant, which is a procedural requirement of having an interest in proceedings, provided for in Article 10(d) of the 2005 Protocol on the ECOWAS Court of Justice. However, the Court finds that neither the Charter, the Protocol, nor the Rules, contain a similar provision.

61. The Court notes that, in any case, the failure to comply with the Order of 7 December 2018 and the Judgment of 29 March 2019, is a sufficient ground for the Applicant's interest in bringing the instant Application.

62. Accordingly, the Court dismisses the objection of the Respondent State based on lack of interest in filing proceedings.

v Objection based on *res judicata*

63. The Respondent State argues that the principle of *res judicata* is a legal and irrebuttable presumption of judicial truth by which parties are prevented from going to the same court again with the same case.

64. The Respondent State maintains, however, that the Applicant is inviting the Court, through these proceedings, to rule on the same violations alleged in the proceedings relating to Application No. 013/2017, which culminated in 'three (3) decisions, including two

(2) on merits.

65. The Respondent State stresses that once this Court has irrevocably ruled on the Applicant's claims, it can no longer hear the same again on account of the principle of *non bis in idem*, a consequence of *res judicata*.

66. The Applicant prays the Court to dismiss this preliminary objection, explaining that *res judicata* requires three conditions, namely, the identity of the parties, the prayers and the existence of a previous decision on merits.

67. He notes, with regard to the prayers, that the violations alleged in this Application arise from non-compliance with the decisions of 7 December 2018 and of 29 March 2019 and are different from those presented in Application No. 013/2017 which gave rise to the said decisions.

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68. The Court reiterates that it has consistently[9] found that the principle of *res judicata* presupposes the existence of three cumulative conditions, namely the identity of the parties, identity of the prayers or their supplementary or alternative nature, and the existence of a first decision on merits.

69. In the instant case, the Court notes that while the identity of the parties is established, the prayers are not identical. Indeed, in Application No. 013/2017 which led to the decisions of 7 December 2018 and 29 March 2019, the Applicant alleged the violation of his human rights in connection with criminal proceedings instituted against him before the Court for the Repression of Economic Offences and Terrorism (CRIET) of the Respondent State. However**,** in the present Application, the alleged violations are related to the failure to comply with the decisions issued by this Court.

70. Consequently, in view of the cumulative nature of the requirements, and without having to examine the aspect relating to the existence of a first decision on merits, the Court dismisses the objection to admissibility based on the *res judicata* rule.

9 *Jean Claude Roger Gombert v Republic of Côte d'Ivoire*, (jurisdiction and admissibility) (22 March 2018) 2 AfCLR 270, § 45; *Dexter Eddie Johnson v Republic of Ghana*, ACtHPR, Application No. 016/2017, Ruling (jurisdiction and admissibility) (28 March 2019), § 48.

B. Admissibility conditions stipulated under Article 56 of the Charter

71. 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.

72. Rule 50 of the Rules, which essentially reiterates Article 56 of the Charter, provides as follows:

1. 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.
2. Applications filed before the Court shall comply with all of the following conditions:

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. Are submitted 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; and

g. Do not deal with cases which have been settled by those States involved in accordance with the principles of the Charter of the United Nations, or the Constitutive Act of African Union or the provisions of the Charter.

73. The Court notes that although the Respondent State has not raised any objection to inadmissibility based on Article 56 of the Charter, it is obliged, under Rule 49 of the Rules of Court, to ascertain whether the conditions of admissibility are met.

74. The Court notes that it will first examine (i) the condition relating to the exhaustion of local remedies, then (ii) the condition relating to the filing of the Application within a reasonable time, and, finally, (iii) the other conditions of admissibility provided for by Article 56 of the Charter, reiterated in Rule 50 of the Rules.

i. Exhaustion of local remedies provided for under Article 50(2)(e)

75. The Court emphasises that the local remedies required to be

exhausted must be available, effective and adequate.

76. The Court further notes that under Articles 114[10] and of 122[11] the Beninese Constitution, the Constitutional Court is the judge of the constitutionality of laws and it is the guarantor of the fundamental rights of the human person and public freedoms. It hears, in the first and last instance, any action related to the violation of human rights.

77. Consequently, a local remedy exists and is available.

78. Regarding effectiveness and adequacy, the Court emphasises that it is not sufficient that a remedy exists to satisfy the exhaustion rule. An Applicant is only required to exhaust a remedy to the extent that the remedy is effective, useful and offers prospects of success.[12]

79. The Court recalls that the analysis of the usefulness of a remedy does not lend itself to automatic application and is not absolute.[13] It also recalls that the interpretation of the rule of exhaustion of local remedies must realistically take into account the context of the case as well as the personal situation of the Applicant.[14]

80. The Court notes that Article 117 of the Constitution of Benin[15] provides that every law shall be subject to constitutional review prior to enactment.

81. The Court thus stresses that the Charter is an integral part of the Constitution of Benin[16] as is the preamble to the said Constitution

10 Constitution of 11 December 1990.

11 Article 122 of the Constitution stipulates that: "*Any citizen may submit a case to the Constitutional Court on the constitutionality of laws, either directly or through an exceptional procedure of unconstitutionality invoked in a matter concerning them before a court*".

12 *Beneficiaries of late Norbert Zongo, Abdoulaye Nikiema aka Ablasse, Ernest Zongo and Blaise Ilboudo and Burkinabè Human and Peoples' Rights Movement v Burkina Faso*, Judgment (merits) (5 December 2014), 1 AfCLR 219 § 68; *Ibid. Konaté v Burkina Faso* (merits) §108.

13 *Tanganyika Law Society, the Legal and Human Rights Centre and Reverend Christopher R. Mtikila v Tanzania*, Judgment (merits) (14 June 2013) 1 AfCLR 34 § 82.1.

14 *Sébastien Germain Ajavon v Republic of Benin*, ACtHPR, Application No. 013/2017, Judgment of 29 March 2019 (merits), §110; ECHR, Application No. 21893/93, *Akdivar and Others v Turkey*, Judgment of 16 September 1996, §50; Also see ECHR Application No. 25803/94, *Selmouni v France*, Judgment of 28 July 1999, § 74.

15 See also Article 19 of Law No. 91-009 of 4 March 1991 on the Organic Law of the Constitutional Court, as amended by the Law of 31 May 2001.

16 Article 7 of the Constitution of Benin provides that: "The rights and duties proclaimed and guaranteed by the African Charter on Human and Peoples' Rights adopted in 1981 by the Organization of African Unity and ratified by Benin on 20 January 1986, are an integral part of the (…) Constitution and the law"; See

which makes mention of "attachment to the principles of democracy and human rights as defined by the Charter of the United Nations of 1945 and the Universal Declaration of Human Rights (UDHR) of 1948".[17]

82. It follows that constitutional review, which covers both the procedure followed for the adoption of the law and its content,[18] is exercised in relation to the "*constitutional corpus ["bloc de constitutionnalité"] comprising the Constitution and the African Charter on Human and Peoples Rights*".[19] Through this procedure, the Constitutional Court of Benin is required to ascertain the compliance of the law with human rights instruments, notably, the Charter and the UDHR.

83. In the instant case, the Applicant alleges human rights violations based on the failure to comply with decisions issued by this Court.

84. The Court has already ruled, in a judgment concerning the same parties and of which the non-execution is presently claimed, that given the particular context surrounding the matter and the personal situation of the Applicant, he should be exempted from the obligation to exhaust local remedies,[20] notably that of filing an appeal before the Constitutional Court. Consequently, the Applicant should not be required to seize that Court. Therefore, the condition relating to the exhaustion of local remedies is deemed to have been met.

ii. Filing of the Application within a reasonable time provided for under Rule 50(2)(f)

85. The Court emphasises, with regard to this condition, that the date to be taken into consideration is that on which the Respondent State was required to file the execution report in respect of the latest judgment of which the non-execution is alleged by the Applicant.

also the Decision of the Constitutional Court of Benin, Decision DCC No. 34-94 of 23 December 1994.

17 See Decisions of the Constitutional Court of Benin: Decision DCC No. 34-94 of 22 and 22 December 1994, 1994 Law Report, p. 159 ***et seq***; Decision DCC No. 09-016 of 19 February 2009.

18 Article 35 of the Rules of Procedure of the Constitutional Court provides, with respect to review of compliance with the Constitution, that: "*The Constitutional Court shall rule on the full text of the law, in terms of both its content and the procedure followed for its adoption*".

19 High Council of the Republic (HCR) of Benin sitting *in lieu* and place of the Constitutional Court, Decision No. 3DC of 2 July 1991.

20 *Sébastien Ajavon v Republic of Benin*, ACtHPR, Application No. 013/2017, Judgment of 29 March 2019 (merits), § 110 and 116.

86. The Court notes that this decision is the Judgment of 29 March 2019 ordering the Respondent State to "take all the necessary measures to annul judgment No.007/3C.COR delivered on 18 October 2018 by the CRIET in a way that erases all its effects and to report thereon to the Court within six (6) months from the date of notification of this Judgment ".

87. The Court notes that this notification was made on 29 March 2019 to the Respondent State, so that the time-limit to be taken into consideration is 30 September 2019. Between that date and 29 November 2019, one month and twenty-nine (29) days have elapsed. The Court considers this period to be reasonable.

iii. Other admissibility conditions provided for under Rule 50(2)(a), (b), (c), (d) and (g)

88. The Court notes that the condition set out in Rule 50 (2) (a) of the Rules has been met insofar as the Applicant clearly stated his identity.

89. The Court further finds that the condition set out in Rule 50(2)(b) is also met, insofar as the Application is in no way inconsistent with the Constitutive Act of the Union or the Charter.

90. Furthermore, the Court notes that the Application does not contain any disparaging or insulting language directed against the Respondent State, its institutions or the African Union, which brings it into compliance with Rule 50 (2) (c) of the Rules.

91. With regard to the condition set out in Rule 50 (2) (d) of the Rules, the Court notes that it is not established that the arguments of fact and law developed in the Application are based exclusively on information disseminated by the media.

92. Finally, the Court notes that the requirement of Rule 50 (2) (g) of the Rules of Procedure is met insofar as there is no indication that the instant case has already been settled in accordance with the principles of the Charter of the United Nations, the Constitutive Act of the African Union or the Charter.

93. Based on the foregoing, the Court finds the Application admissible.

VII. Merits

94. The Applicant alleges a violation of the rights to non-discrimination and equal protection of the law, the right to a fair trial and the right to participate in the government of his country. All these allegations arise from (A) the alleged violation of Article 30 of the Protocol. He further alleges (B) a violation of the obligation to adopt a constitutional revision on the basis of a national

consensus. Finally, the Applicant alleges (C) a violation of the rights enumerated in the Charter.

A. Violation of Article 30 of the Protocol

95. The Applicant prays the Court to find that the Order for Provisional Measures of 7 December 2018 and the Judgment on Merits of 29 March 2019 have not been executed.

96. He further submits that, by failing to execute these decisions, the Respondent State violated his right to non-discrimination, his right to equal protection of the law, his right to a fair trial, his right to participate freely in the government of his country and his right of equal access to the public service of his country.

97. The Respondent State responded only in respect of the alleged violation of the right to participate in the government of his country and to have equal access to the public service of his country. The Respondent State argues that the Applicant does not show how it prevented him from voting, being elected and accessing the public service.

98. For the Respondent State, the Applicant chose not to return to his country but rather to go to international courts. In its view, no violation of Articles 13 (1) and (2) of the Charter exists in the present case.

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99. Article 30 of the Protocol provides that:

> The States Parties to the present Protocol undertake to comply with the judgment in any case to which they are parties within the time stipulated by the Court and to guarantee its execution.

100. The Court notes that the French version of the Protocol reads as follows:

> Les Etats parties au présent Protocole s'engagent à se conformer aux décisions rendues par la Cour dans tout litige où ils sont en cause et à en assurer l'exécution dans le délai fixé par la Cour.

101. The Court therefore considers that the terms "*décisions*" and "judgment" refer to any act of a judicial nature.

102. The Court emphasises that judicial acts include, in particular, orders for provisional measures, the binding nature of which is

unanimously recognised by international jurisprudence.

103. In this respect, in the *Lagrand case* (*Germany v United States of America*), the International Court of Justice reached "the conclusion that orders indicating provisional measures (...) have a binding character".[21]

104. Similarly, the United Nations Human Rights Committee,[22] the European Court of Human Rights[23] and the Inter-American Court of Human Rights[24] have recognised this principle.

105. The Court further notes that the term "judgment" includes all judgments rendered by the Court, the binding nature of which is confirmed by Rule 72 (2) of the Rules of Court, which states that: "The judgment shall be binding on the parties and is enforceable as provided under Article 30 of the Protocol".

106. The Court finds, in the present case, that all the violations alleged by the Applicant relate in one way or another, directly or indirectly, to the non-enforcement of the Order for provisional measures of 7 December 2018[25] and the Judgment of 29 March 2019.[26]

107. The Court notes that the Respondent State has not filed any report, nor does it dispute that it has not executed the relevant decisions.

108. In view of the foregoing, the Court finds that the Respondent State has violated Article 30 of the Protocol.

B. On the violation of the obligation to adopt a constitutional revision on the basis of national consensus

109. The Applicant contends that the constitutional revision was carried out following a parliamentary vote, but the national

21 ICJ, Lagrand (*Germany v United States of America*) (Judgment of June 27, 2001), § 109.

22 UN Human Rights Committee, Case of *Glen Ashby v Trinidad and Tobago*, (Communication No. 580/1994) (Decision of 26 July 1994) § 10.9.

23 ECtHR, *Mamatkulov and Askarov v Turkey*, Applications No. 46827/99 and 49951/99), ECHR, GC (Judgment of 04 February 2005) §§ 128-129, Reports of Judgments and Decisions 2005 - 1.

24 IACtHR, *Loayza Tamayo v Peru*, Judgment of 17 September 1997, § 80.

25 The Court had ordered the Respondent State to "i. stay execution of Judgment No. 007/3C.COR of 18 October 2018 delivered by the Economic Crimes and Terrorism Court established by Law No. 2018/13 of 2 July 2018, pending this Court's final decision of this Court; and ii. Report to this Court within fifteen (15) days from the date of receipt of this Order on the measures taken to implement the same".

26 The Court had ordered the Respondent State to "xxii. […] take all necessary measures to annul Judgment No. 007/3C.COR of October 18, 2018 by CRIET in a way that erases all its effects and to report thereon to the Court within six (6) months from the date of notification of this Judgment".

consensus, which was established by the Constitutional Court of the Respondent State as a principle with constitutional value, is not limited to the National Assembly.

110. He notes that it should not be up to a group of militants from two political parties to rewrite nearly fifty (50) articles of the Constitution without any debate, thereby excluding the people and distancing them from the procedure and by debating with no one.

111. He further emphasises the fact that because Parliament has no opposition in its midst able to open the debate, attests that it in no way can be considered to represent the people in all their political diversity.

112. According to the Respondent State the case should be dismissed, arguing that a referendum is merely one option for revising the Constitution, as is a parliamentary vote by qualified majority, as provided for in the Constitution.

113. The Respondent State points out that Article 155 of the Constitution provides that:

> [The constitutional] revision is achieved only after having been approved by referendum, unless the bill or proposal in question has been approved by a four-fifths majority of the members of the National Assembly.

114. From this it concluded that, since the constitutional revision was the result of a parliamentary vote, it is legal, constitutional and consensual.

115. The Court emphasises that the issue at stake here is not for it to determine whether or not it can call into question the constitutional order of a State. Rather, it has been requested to determine whether the constitutional revision of 7 November 2019 reposes on a national consensus, as provided for in Article 10(2) of the ACDEG.[27]

116. This Article provides that:

> State Parties shall ensure that the process of amendment or revision of their Constitution reposes on national consensus, obtained if need be, through referendum

117. The Court recalls that in its judgment rendered on 4 December 2020 relating to the same parties, in Application No. 062/2019, it ruled, in relation to the constitutional revision of 7 November 2019, that the Respondent State had violated its obligation to ensure that the process of constitutional revision is conducted

27 In its decision *APDH v Republic of Côte d'Ivoire*, the Court held that "the African Charter on Democracy and the ECOWAS Protocol on Democracy and Governance are human rights instruments within the meaning of Article 3 of the Protocol, and therefore that it has jurisdiction to interpret and apply the same".

on the basis of a national consensus, in accordance with Article 10(2) of the ACDEG.[28]

118. The Court adopted the same position in the judgment of 4 December 2020 in Application No. 003/2020 *Houngue Eric Noudehouenou v Republic of Benin.*[29]

119. Accordingly, the Court finds that this request is moot.

C. Alleged violation of Article 1 of the Charter

120. The Applicant claims that any infringement of the rights provided for and protected by the Charter can be attributed to the actions or omissions of a public authority and can be attributable to the State.

121. He submits that in the instant case, the Respondent State has not taken any steps with regard to the human rights violations established by the decisions of this Court, and thus violates Article 1 of the Charter.

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122. Article 1 of the Charter provides that:

> The Member States of the Organization of African Unity [now African Union], parties to the present Charter shall recognize the rights, duties and freedoms enshrined in the Charter and shall undertake to adopt legislative or other measures to give effect to them.

123. The Court notes that Article 66 of the Charter provides: "Special protocols or agreements may, if necessary, supplement the provisions of the present Charter".

124. The Court considers that, within the meaning of this text, there exists, between the protocols and agreements adopted to complement the Charter, a legal complementarity.

125. It follows that the violation of rights, duties and freedoms set out in any protocol or instrument adopted to supplement the Charter implies a violation of Article 1 of the Charter**.**

28 *Sebastien Ajavon v Republic of Benin*, ACtHPR, Application 013/2017, Judgment of 29 November 2019 (reparations), § 40.

29 *Houngue Eric Noudehouenou v Republic of Benin*, ACtHPR, Application No. 003/2020 – Judgment (merits and reparations) (4 December 2020), §§ 60-67; 123-viii.

126. Consequently, the Court considers that the violation of Article 30 of the Protocol implies the violation of Article 1 of the Charter**.**

VIII. Reparations

127. The Applicant has (A) requested various reparations measures. For its part, the Respondent State (B) submits a counterclaim for the sum of one billion (1,000,000,000) CFA francs as damages for abuse of process.

A. Applicant's Prayers

128. The Applicant prays for (i) an expert appraisal, (ii) a pecuniary reparation of three Hundred Billion (300,000,000,000) CFA Francs, and (iii) a non-pecuniary reparation.

i. Expert appraisal

129. The Applicant prays, on the basis of Rule 45 of the Rules, for an expert appraisal for the purpose of establishing the extent of the damages he has suffered due to the Respondent State's failure to execute the decisions of the Court. To this effect, he requests the appointment of an international firm of experts.

130. To buttress his point, he states that the expert appraisal will help quantify the prejudice resulting from the failure to execute this Court's Order for Provisional Measures of 7 December 2018 and the Judgment on Merits of 29 March 2019.

131. Thus, he would be restored to the situation he would have been in, had the Respondent State implemented these decisions, and would thus benefit from full reparation. This is in accordance with the United Nations Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, Article 34 of the ILC Draft Articles and the principles set out in the judgment of the Permanent Court of International Justice in the *Chorzów Factory* case.[30]

132. In response, the Respondent State argues that the case should be dismissed, arguing that an expert opinion is requested to enlighten the judge when he or she does not have sufficient information to make a decision. However, it points out that this Court has

30 ICJ, ***Case concerning the factory at Chorzów*** (Claim for indemnity) (merits), (13 September 1928), Publications of the PCIJ, Série A – n°17.

amply examined the Applicant's claims for compensation in these proceedings and awarded him the sum of thirty-nine billion (39,000,000,000) CFA francs, without resorting to an expert opinion, as the pleadings had been sufficient to enlighten the Court.

133. The Respondent State concludes that his prayer has therefore become moot, as the damages related to the proceedings in Application No. 013/2017 have already been examined.

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134. The Court notes that based on Rule 55 of the Rules, it may, of its own accord or at the request of a party, obtain any evidence which in its opinion may provide any necessary clarification, including through the appointment of an expert.

135. The Court emphasises that, although it does not follow from the letter of the above-mentioned Rule, the decision to resort to an expert opinion presupposes the existence of a technical issue[31] for which the Court needs to obtain further information before making a decision.

136. The Court finds that the Applicant has not demonstrated that there is an issue of such a technical nature as to warrant the appointment of an expert.

137. Accordingly, the Court dismisses the Applicant's request for expert appraisal.

ii. Reparation measures

138. Article 27(1) of the Protocol provides that "[i]f the Court finds that there has been violation of a human or peoples' rights, it shall make appropriate orders to remedy the violation, including the payment of fair compensation or reparation**".**

139. The Court has consistently held that reparation is only awarded when the responsibility of the Respondent State for an internationally wrongful act is established and the causal link

31 ICJ, Military activities on Congolese territory, (***Democratic Republic of Congo v Uganda***) – Order of 8 September 2020, § 13.

between the wrongful act and the alleged injury is established.[32]

140. The Court emphasises that the burden of proof of this causal link rests, in principle, on the Applicant, who must therefore provide the evidence to support his claims.[33]

141. The Court recalls that it has already found that the Respondent State violated Article 30 of the Protocol and Article 1 of the Charter.

iii. Pecuniary reparations

142. The Applicant seeks the sum of three hundred billion (300,000,000,000) CFA francs as compensation for the damage suffered as a result of the failure to implement the Order for Provisional Measures of 7 December 2018 and the judgment of 29 March 2019.

143. According to him, this damage has a political dimension as well as an economic and social dimension.

144. Regarding the political dimension, he emphasises that due to the conviction handed down by the CRIET, he was unable to stand for the legislative elections of 28 April 2019 owing to the fact that he could not produce a certificate of a clean criminal record. He adds that the deposit of two hundred and forty-nine million (249,000,000) CFA francs made for the Liberal Social Union (USL) political party, of which he is Honorary Chair, to participate in the legislative elections of 28 April 2019 has been confiscated.

145. Regarding the economic and social dimension, he stresses that as of April 2019, the Respondent State has refused to lift the assets freeze, including of all his shares, buildings and all his bank accounts. In this regard, he maintains that the value of his frozen assets is two hundred billion (200,000,000,000) francs CFA corresponding to the tax adjustment to which he was subjected to.

32 *Houngue Eric Noudehouenou v Republic of Benin*, ACtHPR, Application No. 003/2020 Judgment of 4 May 2020 (merits and reparations), §§ 4- 5 4 December 2020 §117.

33 *Reverend Christopher R. Mtikila v Tanzania*, Judgment, (reparations) (2014) 1 AfCLR 74, § 40 ; *Sébastien Ajavon v Republc of Benin*, ACtHPR, Application No.013/2017, Judgment (reparations) (29 November 2019), § 17 ; *Leon Mugesera v Republic of Rwanda*, ACtHPR, Application No. 012/2017, Judgment (merits and reparations) 27 November 2020, § 125.

146. In addition, he points out that the Ministers of the Interior and of Justice issued an order prohibiting any public servant from issuing "official documents"[34] to persons against whom there is an arrest warrant.[35] In July 2019, he tried to have some public documents issued, but the various officials refused to do so, citing the CRIET judgment against him.

147. He also avers that, since July 2019, his name has been published on the website of the Ministry of Justice as someone who has been sentenced to twenty (20) years in prison and against whom there is an arrest warrant.

148. The Applicant further asserts that he is thus forced to live in exile, which is a source of moral prejudice. He claims that in addition to his companies having been blacklisted, he is now also seen by his business partners as a drug trafficker. He further alleges that the Respondent State has refused to reinstate the licences of his companies.[36]

149. For its part, the Respondent State prays the Court to dismiss that prayer, noting that damages constitute financial compensation and can be claimed only by a person who has suffered moral prejudice and/or property damage.

150. The Respondent State stresses that in order to warrant compensation, three cumulative conditions are required: fault, damage and a causal link between the fault and the prejudice resulting from the damage. The Respondent State submits that these conditions have not been met in this case.

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151. The Court emphasises that it is true the obligation to execute its decisions lies with the Respondent State concerned. Nonetheless, it is incumbent on the Applicant to prove the damage he claims to

34 These are the documents: extracts of civil status certificates, certificate of nationality, national identity card, passport, laissez - passer, sauf-conduit, residence permit, consular card, Bulletin No. 3 of the criminal record, certificate of life and duties, certificate or attestation of residence, attestation or certificate of possession of state, driver's license, voter's card and tax receipt.

35 These are persons "whose appearance, hearing or interrogation is required for the purposes of a judicial police investigation, preparatory investigation, trial proceedings or who are the subject of an enforceable conviction decision and who do not comply with the summons and injunction of the authority".

36 Comon SA, Socotrac SA and Sikka TV.

have suffered as a result of the violations found.

152. The Court notes that it has found the violation of Article 30 of the Protocol and Article 1 of the Charter by the Respondent State.

153. The Court notes that in order to prove the prejudice resulting from the violation by the Respondent State of Article 30 of the Protocol, the Applicant has submitted several documents. The Applicant has submitted a certificate of a criminal record of 17 January 2019 mentioning the Applicant's conviction by the CRIET; a bailiff's report dated 12 February 2019, stating that he was unable, through one of his Counsel, to obtain a certificate of a clean criminal record; and a bailiff's report dated 4 October 2019, indicating that the Applicant's name appears on the "list of wanted persons" posted on the website of the Ministry of Justice and Legislation of the Respondent State. The Applicant also submitted three airline tickets issued in the name of his Advocate for travel during the months of September, October and November 2019 and a hotel reservation in the name of the Applicant's Advocate.

154. The Court notes that the Applicant sought (a) restitution of the sum of Two Hundred and Forty-Nine million (249,000,000) CFA francs. The Court notes, moreover, that he did not specify the nature of the loss claimed in support of the Three Hundred billion (300,000,000,000) CFA Francs. Consequently, both (b) material loss and (c) moral loss must be taken into account.

a. Restitution of the sum of two hundred forty-nine million (249,000,000) CFA francs

155. The Court recalls that the Applicant contends that this sum was paid as a deposit for participation in the legislative elections of 28 April 2019 of the USL party, of which he is the honorary president.

156. The court considers that the restitution of this sum of money can only be considered if it is established that it was actually paid into the coffers of the Respondent State.

157. In the instant case however, none of the exhibits produced relates to the payment of this deposit. Even if this money was paid, the Applicant does not show that it is his, since it was intended for the payment of a political party's guarantee and not for the Applicant himself.

158. More decisively, the Applicant has not established any possible link between this deposit that was paid and the failure to execute the Order for provisional measure of 7 December 2018 or the judgment of 29 March 2019.

159. Consequently, the Court dismisses the Applicant's prayer for restitution of the sum of Two Hundred and Forty-Nine Million

(249,000,000) CFA francs.

b. Material prejudice

160. The Court emphasises that the Applicant's allegations that the Respondent State refused to lift the seizures made on his assets and to restore the licenses of his companies do not stand.

161. Indeed, these allegations are unrelated to the measures ordered in the two decisions that this Court has found not to have been executed.

162. The Court further considers that the documents submitted by the Applicant in support of his claim for reparation can be classified in two categories: those that tend to establish a given situation and those that relate to the travels of the Applicant's Advocate.

163. The first category of documents, consisting of bailiff's reports, show that the Applicant was unable to obtain a certificate of clean criminal record or that his name is listed on the website of the Ministry of Justice as a wanted person.

164. They show that the Respondent State did not implement the decisions of this Court. However, they do not constitute evidence of any material prejudice, not does it show a causal link with the non-enforcement of the said decisions.

165. With respect to the documents in the second category, consisting of airline tickets, their probative value is limited to evidence of the fact that the Applicant's Advocate made a hotel reservation for 22 November 2019 in Zanzibar and made trips on the following routes : Cotonou - Paris, 23 September 2019, Paris - Addis Ababa - Arusha, outbound on 23 September 2019 and return on 26 September 2019, Paris - Cotonou, 4 October 2019, Cotonou - Addis Ababa - Zanzibar, outbound and return on 25 and 29 November 2019. The Court notes that the Applicant does not state the purpose of these travels.

166. The Court considers that they are not of such a nature as to constitute evidence of any prejudice that would have arisen from the failure to comply with the Order of 7 December 2018 and the Judgment of 29 March 2019.

167. Based on the foregoing, the Court dismisses the request for reparation for material prejudice.

c. Moral prejudice

168. The Court recalls its jurisprudence according to which, in case

of violation of human rights, moral prejudice is presumed.[37] Moral prejudice can, in fact, be considered as an automatic consequence of the violation, without the need to establish it by any other means.[38]

169. The Court also points out that the determination of the amount to be awarded for moral damage is made on the basis of equity, taking into account the circumstances of each case.[39]

170. In the instant case, the Court considers that awarding the Applicant a symbolic amount of 1 franc CFA is sufficient reparation.

iv Non-pecuniary reparations

171. The Court recalls that the Applicant requested that it order the Respondent State to remove all obstacles to the enforcement of its decisions.

172. The Court emphasises that under Article 30 of the Protocol, the Respondent State is obligated to ensure such enforcement.

173. The Court notes that this provision alone is sufficient for the Respondent State to remove all obstacles to the execution of the Judgment on Merits of 29 March 2019.

174. Accordingly, the Court orders the Respondent State to comply with Article 30 of the Protocol by executing the Judgment on Merits of 29 March 2019, that is, by taking all necessary measures to annul the judgment No. 007/3C/COR delivered on 18 October 2018 by the CRIET, so as to erase its effects.

B. Respondent State's counterclaim

175. The Respondent State contends that the Applicant, assisted by a lawyer, cannot be unaware of the fact that he brought an action in connection with the decisions rendered in the case - *Application No. 013/2017 Sebastien Ajavon v Republic of Benin.*

176. The Respondent State affirms that he deliberately chose to initiate vexatious proceedings with a view to having the same claims tried on several occasions, thereby exposing it to the risk of a decision

37 *Ibid. Guehi v United Republic of Tanzania* (merits and reparation) § 55 ; ***Konaté v Burkina Faso*** (reparations) §58.

38 ***Beneficiaries of late Norbert Zongo, Abdoulaye Nikiema aka Ablasse, Ernest Zongo and Blaise Ilboudo and Burkinabè Human and Peoples' Rights Movement v Burkina Faso***, Judgment (merits) (5 December 2014), 1 AfCLR 219 § 68; ***Ibid. Konaté v Burkina Faso*** (merits) §108.

39 ***Ibid. Zongo v Burkina Faso*** (merits) § 55; ***Konaté v Burkina Faso*** (merits) § 58; ***Guehi v United Republic of Tanzania*** (merits) § 55; ***Ibid***.

that is harmful to its image, for abusive procedure.

177. The Respondent State concludes that it is therefore entitled to seek, by way of counterclaim, the sum of One Billion (1,000,000,000) CFA francs as damages for abuse of process.

178. The Applicant has not responded to this counterclaim.

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179. The Court notes that the counterclaim for damages made by the Respondent State is based on the abuse of the right to bring proceedings before a court.

180. The Court finds that the Applicant did not abuse this right,[40] especially since not all of the allegations he made were dismissed. In any event, the Court considers, after having examined his allegations, that they are not frivolous, nor motivated by malicious intent**.** Accordingly, the Respondent State's counterclaim is dismissed.

IX. Costs

181. The Applicant prays the Court to order the Respondent State to bear the costs of the proceedings.

182. For its part, the Respondent State submits that Applicant's prayer on costs be dismissed.

183. Article 32 (2) of the Rules[41] provides:

> Unless otherwise decided by the Court, each party shall bear its own costs, if any.

184. In the instant case, the Court considers that there is no reason to depart from the principle laid down in that provision. Consequently, each party bears its own costs of the proceedings.

X. Operative part

185. For these reasons,
The Court

40 See §§ 54-56 of this Judgment.

41 Formerly Rule 30(2) of the Rules of Court of 2 June 2010.

Unanimously,
On jurisdiction
i. *Dismisses* the objection based on the lack of material jurisdiction;
ii. *Finds* that it has jurisdiction.

On admissibility
iii. *Dismisses* the objections based on inadmissibility;
iv. *Finds* the Application admissible.

On merits
v. *Finds* that the Respondent State has violated Article 30 of the Protocol;
vi. *Finds* that the Respondent State has violated Article 1 of the Charter.

On reparations
Pecuniary reparations
vii. *Dismisses* the Applicant's prayer for an expert appraisal of the damages resulting from the failure to execute the Order for Provisional Measures of 7 December 2018 and the Judgment on Merits of 29 March 2019 in Application 013/2017 with respect to the same parties;
viii. *Dismisses* the request for payment of the amount of Three Hundred Billion (300, 000, 000, 000) francs CFA;
ix. *Dismisses* the Respondent State's counterclaim for payment of the amount of One Billion (1,000,000,000) CFA Francs as damages for abuse of process initiated by the Applicant;
x. *Awards* the Applicant a symbolic amount of 1 CFA francs as reparation for moral prejudice.

Non-pecuniary reparations
xi. *Orders* the Respondent State to comply with Article 30 of the Protocol by executing the Judgment of 29 March 2019, that is, by taking all necessary measures to annul the judgment N° 007/3C. COR delivered on 18 October 2018 by the CRIET in a way to erase all its effects;
xii. *Orders* the Respondent State to report to the Court within seven (7) days from the notification of this Judgment.

Costs
xiii. *Orders* each party to bear its own costs.