

## Zinsou & Ors v Benin (provisional measures) (2021) 5 AfCLR 327

Application 007/2021, *Romarc Jesukpego Zinsou & 2 Others v Republic of Benin*

Ruling, 2 September 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

Following a students' demonstration that resulted in the death of one student, the Applicants brought this Application against the Respondent State, along with a request for provisional measures for an independent investigation into the alleged violations that took place at the University of Abomey Calavi. The Court declined to grant the provisional measures sought on the grounds that doing so would require it to prejudge the merits of the Application.

**Jurisdiction** (*prima facie*, 11, 12, 14; effect of withdrawal of article 34(6) declaration, 13)

**Provisional measures** (basic conditions for order, 18; urgency, 19; irreparable harm, 20; prejudging merit, 21)

### I. The Parties

1. Romarc Jésuskégo Zinsou, Landry Adélakoun and Angelo Fifamin Miguèle Houeto (hereinafter, referred to as “the Applicants”) are nationals of the Republic of Benin currently residing in Cotonou. They filed an Application together with a request for provisional measures to *inter alia*, seek an independent and impartial investigation of the human rights violations which allegedly took place at the University of Abomey Calavi on 24 March 2020.
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 (Herein after 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 Protocol by virtue of which it accepted the jurisdiction of the Court to receive applications from individuals and Non-Governmental Organisations having observer status with the African Commission on Human and

Peoples' Rights. On 25 March 2020, the Respondent State deposited with the African Union Commission an instrument of withdrawal of the said Declaration. The Court has ruled that this withdrawal has no bearing on pending cases and on new cases filed prior to the entry into force of the withdrawal, one year after its deposit, that is, on 26 March 2021.<sup>1</sup>

## II. Subject of the Application

3. It emerges from the Application that, during the meeting of the Council of Ministers of 17 March 2020, the Respondent State took a series of measures to prevent the spread of the Coronavirus disease (hereinafter referred to as "Covid-19") in the country. The Applicants submit that, in the implementation of the said measures, "the Rector of the University of Abomey-Calavi (hereinafter referred to as "UAC") also issued Memorandum No. 340-2020/UAC/SG/SA dated 18 March 2020 prohibiting demonstrations of more than 50 people on the Abomey-Calavi University campus".
4. Following the Rector's decision, "*Fédération Nationale des Étudiants du Bénin* (National Federation of Students of Benin), by memo dated 20 March 2020, decided to suspend classes at the UAC as a preventive measure against the spread of Covid-19. Awareness and information sessions on the measures taken were held on Monday 23 and Tuesday 24 March 2020".
5. The Applicants contend that on 24 March 2020, "while awareness-raising on the measures was on-going and as the students were being encouraged to stay home, the police arrested some student leaders. A demonstration for their release then ensued. The demonstrations lasted several hours and resulted in the shooting to death of Théophile Dieudonné DJAHO, a first-year Geography student at the Faculty of Arts, Humanities and Social Sciences... The police officers who used disproportionate force were never identified and sanctioned by the courts. "

## III. Alleged violations

6. The Applicants allege the violation of Articles 4 and 7 of the Charter as a result of the death of a student and the failure of the Respondent State to take steps to prosecute and hold accountable

<sup>1</sup> *Ingabire Victoire Umuhoza v Republic of Rwanda* (jurisdiction) (Order of 3 June 2016) 1 AfCLR 562, § 67; *Hongue Eric Noudehouenou v Republic of Benin*, ACtHPR, Application No. 003/2020 Ruling of 5 May 2020 (provisional measures), §§ 4 and 5 and *Corrigendum* of 29 July 2020.

the perpetrators of the crime.

#### **IV. Summary of the Procedure before the Court**

7. The Application together with a request for provisional measures, was filed at the Registry on 10 March 2021.
8. On 1 April 2021, the Application on the merits and the request for provisional measures were served on the Respondent State, which was granted ninety (90) days and fifteen (15) days, within which to respond on the merits and the request for provisional measures, respectively, from the date of receipt of service.
9. The Respondent State has not filed any submissions.

#### **V. *Prima facie* jurisdiction**

10. Article 3(1) of the Protocol provides that “[t]he jurisdiction of the Court shall extend to all cases and disputes submitted to it concerning the interpretation and application of the Charter, this Protocol and any other relevant human rights instrument ratified by the States concerned.”
11. Rule 49(1) of the Rules of Court<sup>2</sup> provides “[t]he Court shall preliminarily ascertain its jurisdiction...”. However, with respect to provisional measures, the Court need not satisfy itself that it has jurisdiction on the merits of the case, only that it has *prima facie* jurisdiction.<sup>3</sup>
12. In the instant case, the rights allegedly violated by the Applicants are all protected by the Charter to which the Respondent State is a party. The Court further notes that the Respondent State is a party to the Protocol and deposited the Declaration under Article 34(6) of the Protocol.
13. The Court further recalls its decision that the withdrawal of the Declaration under Article 34(6) of the Protocol has no retroactive effect and has no bearing on new cases filed before the effective date of the withdrawal.<sup>4</sup> The Court reiterates its position that the withdrawal of the Respondent State’s Declaration, which took effect on 26 March 2021,<sup>5</sup> does not in any way affect its personal jurisdiction in the instant case, since the Application was filed on

2 Rules of 25 September 2020.

3 *Komi Koutche v Republic of Benin*, ACTHPR, Application No. 020/2019, Ruling of 2 December 2019 (provisional measures), § 11.

4 *Ingabire Victoire Umuhoza v Rwanda* (jurisdiction), § 67.

5 *Houngue Éric Noudéhouenou v Benin*, (provisional measures), §§ 4 and 5.

10 March 2021.

14. The Court concludes that it has *prima facie* jurisdiction to hear the Request for provisional Measures.

## VI. Provisional measures requested

15. The Applicants pray the Court to order the Respondent State to conduct an “independent and impartial investigation into the human rights violations that occurred at the University of Abomey Calavi on 24 March 2020.”
16. The Respondent State has not filed any submissions.

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17. The Court notes that Article 27(2) of the Protocol provides that “[i]n cases of extreme gravity and urgency and when necessary to avoid irreparable harm to persons, the Court shall adopt such provisional measures as it deems necessary.”
18. In view of the above, the Court may only order provisional measures *pendente lite* if the basic conditions of extreme gravity or urgency and the prevention of irreparable harm to persons are met.
19. The Court recalls that “urgency, which is consubstantial with extreme gravity, means that an “irreparable and imminent harm will occur before it renders its final judgment”.<sup>6</sup> The risk in question must be real and explains the need to remedy it in the immediate future.<sup>7</sup>
20. With respect to irreparable harm, the Court considers that there must be a “reasonable probability of occurrence having regard to the context and the Applicant’s/Applicants’ personal situation.”<sup>8</sup> It is for the Applicant seeking provisional measures to prove

6 *Sébastien Ajavon v Republic of Benin*, ACtHPR, Application No. 062/2019, Ruling of 17 April 2020 (provisional measures), § 61.

7 *Ibid*, § 62.

8 *Ibid*, § 63.

urgency or extreme gravity as well as irreparable harm.<sup>9</sup>

21. The Court recalls its case-law according to which “it is only required to ascertain the existence of these basic conditions if it is established that the measures sought do not prejudice the merits of the Application(s).”<sup>10</sup> In this respect, the Court has held that “a request for provisional measures prejudices the merits of the Application when it is identical to it, when it seeks to achieve the same result or, in any event, when it touches on an issue on which the Court will necessarily have to rule on, when it addresses the merits of the case.”<sup>11</sup>
22. The Court recalls that on the merits of the case, the Applicant is requesting it to find the violation of Articles 4 and 7 of the Charter as a result of the death of a student and the Respondent State’s failure to take measures to hold accountable the perpetrators of the alleged crime.
23. The Court considers that, in order to order an independent and impartial investigation about the events of 24 March 2020, it must first confirm that a student died and that the Respondent State failed to take adequate measures to remedy the situation. It follows that, the Court cannot rule on the request for provisional measures without prejudging the merits of the case.
24. The Court concludes, therefore, that there are no grounds for ordering the provisional measures requested.
25. For the avoidance of any doubt, this Ruling is provisional in nature and does not in any way prejudice the findings of the Court on its jurisdiction, the admissibility of the Application and the merits thereof.

## VII. Operative part

For these reasons,

The Court

*Unanimously,*

- i. *Dismisses* the request for provisional measures.

9 *Romarc Jesukpego Zinsou and Others v Benin*, ACTHPR, Application No. 008/2021, Ruling of 10 April 2021 (provisional measures), § 20.

10 *Elie Sandiwidi and Mouvement Burkinabe des droits de l’homme et des peuples v Republic of Benin*, ACTHPR, Application No. 014 and 017/2020, Ruling of 25 September 2020 (provisional measures), § 65.

11 *Elie Sandiwidi and Mouvement Burkinabe des droits de l’homme et des peuples v Benin* (provisional measures), § 66; See also *Jean de Dieu Ngajigimana v United Republic of Tanzania* ACTHPR, Application No. 024/2019, Order of 26 September 2019 (provisional measures), § 25.