

Adelakoun & Ors v Benin (provisional measures) (2022) 6 AfCLR 59

Application 012/2021, *Landry Angelo Adelakoun, Romaric Jesukpego Zinsou and Fifamin Miguele Houeto v Republic of Benin*

Ruling, 24 March 2022. 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 Applicants, who are citizens of the Respondent State, brought this Application alleging that some of their human rights were violated when the Respondent State shut down the internet on a day fixed for legislative elections in that State. Together with the main Application, the Applicant filed a request for provisional measures. The Court held that the Applicants did not clearly state the measures they sought and failed to provide proof of urgency or extreme gravity to warrant issuance of provisional measures. Accordingly, the Court dismissed the request for provisional measures.

Jurisdiction (*prima facie*, 11-15)

Provisional measures (extreme gravity and urgency, 19-20; irreparable harm, 19, 21; clarity of measures sought, 22; burden of proof, 22; proof of urgency and extreme gravity, 22)

I. The Parties

1. Landry Angelo Adelakoun, Romaric Jesukpego Zinsou and Fifamin Miguele Houeto (hereinafter, the “Applicants”) are nationals of Benin, residing in Cotonou. They allege human rights violations owing to the shutdown of the internet on the day of legislative elections on 28 April 2019.
2. The Application is filed against the Republic of Benin (hereinafter “the Respondent State”), which on 21 October 1986 became a Party to the African Charter on Human and Peoples’ Rights (hereinafter “the Charter”) and on 22 August 2014 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 “the Protocol”). On 8 February 2016, the Respondent State also deposited the Declaration provided for in Article 34(6) of the Protocol (hereinafter “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 (AUC) the instrument of withdrawal of its Declaration. The Court has previously ruled that this withdrawal has no effect on pending cases and on new cases filed before the withdrawal of the Declaration comes into force one year after its deposit, that is, on 26 March 2021.¹

II. Subject of the Application

3. It emerges from the Application, that, on 28 April 2019, in “an atmosphere of heightened tension”, the Republic of Benin organised legislative elections in which only two political parties supporting the ruling party participated.
4. They aver that it is in this atmosphere, “and to the surprise of everyone”, that the Beninese people woke up to a nation-wide shutdown of the internet on the day of the said elections.
5. The Applicants submit that at no time were Beninese citizens given advance notice of internet shutdown in order for them to take the necessary measures.

III. Alleged violations

6. The Applicants allege a violation of the right to freedom of opinion and expression, which entails the right to hold opinions without interference and the right to seek, receive and disseminate, regardless of borders, information and ideas through any media, as protected by Article 19 of the Universal Declaration of Human Rights (UDHR).

IV. Summary of the Procedure before the Court

7. The Application was filed at the Registry on 22 March 2021 together with a request for a provisional measure, which he did not specify.
8. On 28 September 2021, the Application on the merits together with the request for a provisional measure were served on the Respondent State for its Response on the merits and on the request for provisional measures within ninety (90) days and fifteen (15) days, respectively from the date of receipt.

¹ *Houngue Éric 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.

9. On 20 October 2021, the Respondent State filed its response to the request for a provisional measure.

V. *Prima facie* jurisdiction

10. Article 3(1) of the Protocol provides that:
The jurisdiction of the Court shall extend to all cases and disputes submitted to it concerning the interpretation and application of the Charter, this Protocol and any other relevant Human Rights instrument ratified by the States concerned.
11. Under Rule 49(1) of the Rules² “the Court shall ascertain its jurisdiction ...”. However, in the case of provisional measures, the Court does not have to ensure that it has jurisdiction on the merits of the case, but only that it has *prima facie* jurisdiction.³
12. In the instant case, the rights alleged by the Applicants to have been violated are protected by the UDHR, a human rights instrument to which the Respondent State is bound.⁴ The Court further recalls that the Respondent State has ratified the Protocol and deposited the Declaration under Article 34(6) of the Protocol as stated in paragraph 2 of this Ruling.
13. The Court recalls that it has held that the withdrawal of the Declaration deposited under Article 34(6) of the Protocol has no retroactive effect, nor does it affect new cases brought before the withdrawal came into effect⁵ as in the instant case. The Court reiterates its position that the withdrawal of the Respondent State's Declaration took effect on 26 March 2021.⁶
14. The Court notes that in the instant case, the Application was filed on 22 March 2021, before the effective date of withdrawal of the Declaration. Accordingly, the said withdrawal does not affect its personal jurisdiction.
15. The Court concludes that it has *prima facie* jurisdiction to hear the Application for a provisional measure.

2 Rules of Court, 25 September 2020.

3 *Komi Koutche v Republic of Benin* (provisional measures) (2 December 2019) 3 AfCLR 725 § 14.

4 Constitution of Benin of 11 December 1990.

5 *Ingabire Victoire Umuhoza v Republic of Rwanda* (Jurisdiction) (3 June 2016) 1 AfCLR 540, § 67.

6 *Houngue Éric Noudéhouenou v Republic of Benin*, ACtHPR, Application No 003/2020, Ruling of 5 May 2020 (provisional measures), §§ 4-5 and corrigendum of 29 July 2020.

VI. Provisional measure requested

16. The Applicants pray “the Court to order a provisional measure”.
17. The Respondent State challenges the Applicants’ request, arguing that the Applicants neither demonstrate that the requirements of extreme gravity, urgency or irreparable harm have been met, nor do they specify the provisional measure requested from the Court.

18. The Court notes that Article 27(2) of the Protocol provides that “in cases of extreme gravity and urgency, and when necessary to avoid irreparable harm to persons, the Court shall adopt such provisional measures as it deems necessary”.
19. In view of the foregoing, the Court may only order provisional measures in cases of extreme gravity and urgency, aimed at preventing irreparable harm to persons.
20. The Court recalls that urgency, which is consubstantial with extreme gravity, means that “an irreparable and imminent risk is caused before the Court renders its ruling”.⁷ The risk in question must be real, which excludes supposed or abstract risk. There should be a serious risk that requires immediate remedial action.⁸
21. The Court notes that for irreparable harm, there must be a “reasonable likelihood of occurrence” in the context and personal circumstances of the Applicant(s).⁹
22. The Court emphasises that it is for the Applicant seeking provisional measures to state them clearly and to provide proof of urgency or extreme gravity as well as proof of the irreparable nature of the harm.¹⁰ It notes that, in the instant case, the Applicants have not met these requirements.

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

8 *Ibid*, § 62.

9 *Ibid*, § 63.

10 *Romarc Jesukpego Zinsou and others*, ACtHPR, Application No 008/2021, Ruling of 10 April 2021 (provisional measures) § 20.

23. Accordingly, the Court dismisses the request for a provisional measure.
24. For the avoidance of doubt, the Court recalls that this Ruling is provisional in nature and in no way prejudices the Court's findings on its jurisdiction, on the admissibility of the Application and the merits thereof.

VII. Operative part

25. For these reasons,
The Court
Unanimously,

- i. *Dismisses* the request for a provisional measure.