

Baguian v Burkina Faso (ruling) (2022) 6 AfCLR 405

Application 014/2019, *Gérémy Baguian v Burkina Faso*

Ruling, 22 September 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 Applicant is a citizen of the Respondent State who had been tried, convicted, and sentenced to life imprisonment for murder. In this Application, he alleged that his human rights were violated in the proceedings leading to his conviction and sentencing before the domestic courts. In a default ruling, following the Respondent State's failure to file the relevant pleadings, the Court held that the Applicant had not exhausted the available local remedies. The Court thus declared the Application inadmissible.

Procedure (conditions for default ruling, 14-17)

Admissibility (exhaustion of local remedies, 28-34)

I. The Parties

1. Mr. Gérémy Baguian (hereinafter, "the Applicant") is a national of Burkina Faso. He was sentenced to life imprisonment for murder. He alleges a violation of his rights to a fair trial during proceedings before the domestic courts.
2. The Application is filed against Burkina Faso (hereinafter, "the Respondent State") which became a Party to the African Charter on Human and Peoples' Rights (hereinafter, "the Charter") on 21 October 1986 and to the Protocol to the Charter on the Establishment of an African Court on Human and Peoples' Rights (hereinafter, "the Protocol") on 25 January 2004. On 28 July 1998, the Respondent State deposited the Declaration provided for in Article 34(6) of the Protocol (hereinafter, "the Declaration"), by which it accepted the jurisdiction of the Court to receive applications from individuals and non-governmental organisations.

II. Subject of the Application

A. Facts of the matter

3. It emerges from the Application that on 31 July 2006, the judicial

authorities of the Respondent State issued an arrest warrant for the Applicant in connection with investigations into the murder of Mr. Nikiema Michel. The Applicant has since been incarcerated in prison in Ouagadougou.

4. On 17 January 2012, by Judgment No 62 of the Criminal Chamber of the Ouagadougou Appeal Court, the Applicant was sentenced in default, to life imprisonment for murder. According to Counsel for the Applicant, while the latter was in detention at the Ouagadougou prison, he was not conveyed from his cell to take part in the hearing at which he was convicted.
5. On 4 May 2018, he filed a cassation appeal. To date, the said appeal is pending before the Cassation Court.

B. Alleged violations

6. The Applicant alleges:
 - i. A violation of the right to a fair trial;
 - ii. A violation of the right to an effective remedy guaranteed by Article 8 of the Universal Declaration of Human Rights (UDHR);
 - iii. A violation of the right of access to the judge and to justice protected by Article 10 of the UDHR and Article 7 of the Charter;
 - iv. A violation of the duty to state the grounds of a judgment in criminal proceedings;
 - v. A violation of the right to protection of the dignity of a person imprisoned as provided for in Article 10(1) of the International Covenant on Civil and Political Rights (ICCPR);
 - vi. A violation of the right to equality of arms;
 - vii. A violation of the adversarial principle; and
 - viii. A violation of the principle of proportionality of punishment.

III. Summary of the Procedure before the Court

7. The Application was received at the Registry on 28 May 2019.
8. The Application was served on the Respondent State, which did not file its submissions and did not request for additional time to file its Response.
9. On 30 June 2022, the Registry informed the Parties that the Court would render judgment in default if the Respondent State did not file a response within forty-five (45) days. At the expiration of the said period, the Respondent State had still not filed the required submissions.

10. Pleadings were closed on 16 August 2022 and the Parties were duly notified.

IV. Prayers of the Parties

11. The Applicant prays the Court to order the following measures:
 - i. Order the President of the Republic to grant him a presidential pardon;
 - ii. Order the due and proper commutation of the life sentence to a shorter term of imprisonment;
 - iii. Order parole;
 - iv. Order an out-of-court settlement;
 - v. Order financial compensation for the damage suffered as a result of the unfair court decisions against him.
12. As noted earlier, the Respondent State did not respond to the Application.

V. On the default of the Respondent State

13. Rule 63(1) of the Rules provides:

Whenever a party does not appear before the Court or fails to defend its case within the period prescribed by the Court, the Court may, on the Application of the other party, or on its own motion, enter judgment in default after it has satisfied itself that the defaulting party has been duly served with the Application and all other documents pertinent to the proceedings.
14. The Court notes that Rule 63(1) sets out three requirements for a judgment in default, namely, (i) notification to the defaulting party; (ii) the default of one of the Parties; and (iii) Application by the other Party or the Court acting on its own motion.
15. With regard to the first requirement, that is, notification to the defaulting party, the Court notes that the Application together with relevant all documents were served on the Respondent State as stated earlier under the section on the procedure before the Court. The Court thus finds that the Respondent State was duly notified of the Application and the relevant documents.
16. As regards the second requirement, namely, default by one of the Parties, the Court notes that despite being served with the Application, being provided time to file its Response and further being notified that the Court would render a judgment in default pursuant to Rule 63 of the Rules, the Respondent State failed to file a Response. Therefore, the Respondent State has failed to defend its case within the prescribed time.

17. Finally, with respect to the third requirement relating to the request by the other party or to its inherent power, the Court notes that in the instant case, the Applicant did not request for a default decision. Accordingly, and by virtue of its inherent power, the Court decides, in the interest of the proper administration of justice to issue a decision in default.¹
18. The requirements of Rule 63(1) of the Rules having been met, the Court enters this judgment in default.

VI. Jurisdiction

19. The Court notes that Article 3 of the Protocol provides:
 1. 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.
 2. In the event of a dispute as to whether the Court has jurisdiction, the Court shall decide.
20. Under Rule 49(1) of the Rules of Court, “[T]he Court shall conduct preliminary examination of its jurisdiction [...] in accordance with the Charter, the Protocol and these Rules “.
21. Based on the above-mentioned provisions, the Court must, in each application, make a preliminary examination of its jurisdiction and rule on objections thereto, if any. In the instant case, the Court must satisfy itself that it has jurisdiction to entertain the Application.
22. Having found that its jurisdiction is not in contention, the Court finds that it has:
 - i. Material jurisdiction insofar as the Applicant alleges violation of rights guaranteed by the Charter, the ICCPR² and the UDHR, instruments to which the Respondent State is party.
 - ii. Personal jurisdiction insofar as the Respondent State is a party to the Charter, the Protocol and has deposited the Declaration which allows individuals and non-governmental organisations to bring cases directly before the Court.

1 *Robert Richard v United Republic of Tanzania*, ACtHPR, Application No 035/2016, Judgment of 2 December 2021 (merits and reparations) §§ 17-18; *Fidele Mulindahabi v Republic of Rwanda*, ACtHPR, Application No 010/2017, Ruling of 26 June 2020 (jurisdiction and admissibility) § 30.

2 The Republic of Mali ratified the two United Nations International Covenants of 1966 (International Covenant on Civil and Political Rights and International Covenant on Economic, Social and Cultural Rights) on 16 July 1974.

- iii. Temporal jurisdiction insofar as the alleged violations were committed, in relation to the Respondent State, after the entry into force of the instruments in question.
 - iv. Territorial jurisdiction, insofar as the alleged violations were perpetrated in the territory of the Respondent State.
- 23.** In view of the foregoing, the Court finds that it has jurisdiction to consider the Application.

VII. Admissibility

- 24.** Article 6(2) of the Protocol provides that “[t]he Court shall decide on the admissibility of applications taking into account the provisions of Article 56 of the Charter”.
- 25.** Pursuant to Rule 50(1) of the Rules, “[t]he Court shall proceed to an examination of the admissibility of the Application in accordance with the Charter, the Protocol and these Rules”.
- 26.** Rule 50(2) of the Rules of Procedure, which in substance restates Article 56 of the Charter, provides:
- 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 seised 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.
- 27.** The Court notes that it must, in accordance with the provisions of Rule 50(1) of its Rules, the Court must proceed to examine the admissibility conditions provided for in Rule 50(2) of the Rules of Court to ensure that they are met.
- 28.** The Court observes that, as the records show, the appeal lodged on 4 May 2018 before the Respondent State’s Cassation Court was still pending at the date of the filing of the present Application

on 28 May 2019. It is therefore appropriate for the Court to rule, as a preliminary matter, on the question whether the requirement to exhaust local remedies under Article 56(5) of the Charter has been met.

29. The Court recalls that, in accordance with Article 56(5) of the Charter, applications must be filed after exhaustion of local remedies, if any, unless it is clear that the procedure in respect of such remedies is being unduly prolonged.³
30. It emerges from these provisions that the Applicant is not only required to initiate local remedies, but also to await their outcome unless it can be shown that the related proceedings are unduly prolonged.⁴
31. The Court notes that in the instant case, the Applicant filed the Application on 29 May 2019, while the Court of Cassation, seized on 4 May 2018, had not yet ruled on his appeal. The Court notes that it is not the Applicant's case, nor is it the Court's position, that the said procedure was unduly prolonged. In any event, the Court observes that between the referral of the case to the Cassation Court and the filing of the present Application, a period of eleven (11) months and twenty-five (25) days elapsed. The Court considers that in view of the circumstances of the case, it cannot be considered that the cassation remedy was unduly prolonged within the meaning of Article 56(5) of the Charter.
32. From the foregoing, it follows that the present Application is premature, as it was not filed after exhaustion of local remedies as required by Article 56(5) of the Charter as reflected in Rule 50(2)(e) of the Rules.
33. The Court, therefore, finds that local remedies were not exhausted in the instant case.
34. Having concluded that the Application does not meet the requirement of Rule 50(2)(e) of the Rules, the Court does not have to rule on the admissibility conditions under Article 56(1), (2), (4), (6), and (7) of the Charter as restated in Rule 50(2)(a)(b) (d)(f) and (g) of the Rules, insofar as the admissibility conditions are cumulative. Therefore, if one condition is not met, the entire Application is inadmissible.

3 *Lohé Issa Konaté v Republic of Faso* (merits) (5 December 2014) 1 RJCA 314, § 77; see also *Godfred Anthony and Ifunda Kisite v United Republic of Tanzania* (Jurisdiction and Admissibility) (26 September 2019) 3 RJCA 470, § 12.

4 *Komi Koutché v Republic of Benin*, ACtHPR, Application No 020/2019, Judgment of 25 June 2021 (jurisdiction and admissibility), § 61; *Sébastien Marie Aikoué Ajavon v Republic of Benin*, ACtHPR, Application No 027/2020, Judgment of 2 December 2021 (jurisdiction and admissibility), § 74.

- 35.** In view of the foregoing, the Court declares the Application inadmissible and dismisses it.

VIII. Costs

- 36.** None of the Parties made any submission on costs.

- 37.** Rule 32(2) of the Rules provides that “[u]nless otherwise decided by the Court, each party shall bear its own costs, if any “.

- 38.** In view of the circumstances of the case, the Court decides that each Party shall bear its own costs.

IX. Operative part

- 39.** For these reasons,

The Court

Unanimously,

On jurisdiction

- i. Declares* that it has jurisdiction.

On admissibility

- ii. Declares* the Application inadmissible for non-exhaustion of local remedies.

On costs

- iii. Orders* that each Party shall bear its own costs.