AFRICAN COURT ON HUMAN AND PEOPLES' RIGHTS

Application 013/2015

Robert John Penessis

v.

United Republic of Tanzania

Separate Opinion appended to the Judgment of 28/11/2019

1. I share the opinion of the majority of the Judges as regards the admissibility of the Application and the jurisdiction of the Court.

2. However, in my opinion, the manner in which the Court treated admissibility with regard to the objection raised by the Respondent State on the filing the Application within a reasonable time, runs counter to the provisions of Article 56 of the Charter, Article 6(2) of the Protocol and Rules 39 and 40 of the Rules.

3. Under Article 56 of the Charter and Rule 40 of the Rules in their respective paragraph 6, it is clearly stated that applications must be "*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*".

4. It is clear from the aforesaid that the legislator laid down two (2) options as to how to determine the starting point of reasonable period:

i. **the date** of exhaustion of local remedies: in the instant case, this date was set by the Court at 04/06/2012 - date of the judgment of the Court of Appeal. Between this date and that of referral of the matter to the Court, there was a time lapse of two (2) years, eight (8) months and twenty-eight (28) days.

ii. **the date** set by the Court as being the commencement of the time limit within which it shall be seized with the matter: it is noteworthy in this regard that although the Court took into account the date of exhaustion of local remedies to determine the reasonableness of the time limit[1], the Court nevertheless noted that between 2013 and

[1] Paragraph 67 of the Judgment

2015, the Applicant filed four (4) *habeas corpus* applications to challenge the lawfulness of his detention. The Court also noted that the Applicant could not be penalized for attempting these remedies and that, besides, he was under detention. It held in conclusion that the period cited above was reasonable.

5. This reasoning on the part of the Court runs counter to the very logic of the exception made by the legislator as to the second prerogative conferred on the Court to set a date as being the commencement of the time limit within which it shall be seized with a matter.

6.Indeed, whereas with regard to local remedies, the Court has held that Applicants are obliged to exercise only ordinary remedies, there would be no contradiction with this position had the Court, based on the fact that the Applicant filed for extraordinary remedies or "*habeas corpus*" as in the present case, retained the date of these remedies as being the commencement of the time limit within which it shall be seized with the matter, instead of determining the reasonable period relying on these remedies as facts.

7. The Court should have justified this option in the following manner:

"Notwithstanding the fact that it has considered that local remedies have been exhausted as evidenced by the Court of Appeal Judgment of 04/06/2012, the Court, in the spirit of fairness and justice, would take as element of assessment, the date on which the *habeas corpus* application was filed, that is 2015", which would have given a more reasonable time as it is shorter.

8. By ignoring the aforesaid date and simply citing additional elements such as the Applicant's detention to justify reasonable time[2], the Court failed to correctly apply Rule 40(6) of the Rules.

Bensaoula Chafika

Judge at the African Court on Human and Peoples' Rights

[2] Paragraph 67 of the Judgment