013/2017
29/03/2019
(004035 – 004033) ML

African Court on Human and Peoples' Rights

In the Matter of Sébastien Germain Ajavon

V

Republic of Benin

Dissenting Opinion attached to the judgement of 29/03/2019

I concur with the opinion of the majority of judges in regard to the admissibility of the Application, the jurisdiction of the Court and the operative part of the judgement.

However, I am of the view that the manner in which the Court dealt with the admissibility of the Application is not in tandem with the provisions of Articles 6 (2) of the Protocol, 50 and 56 of the Charter, and Rules 39 and 40 of the Rules of Court.

In terms of Rule 39 (1) of the Rules, "the Court shall conduct a preliminary examination of its jurisdiction and the admissibility of the Application in accordance with Articles 50 and 56 of the Charter and Rule 40 of the Rules".

This clearly implies as follows:

- **If the parties raised objections to the jurisdiction of the Court and the admissibility of the Application,** the Court shall decide.

    - If one of the objections is founded the Court shall deal with it .... Because they are cumulative.
    - If on the contrary neither of the objections is founded the Court will be obliged to discuss the other issues on admissibility not discussed by the Parties and will conclude.

- **Where the Parties do not raise any objection.**

The Court has the obligation to analyse all of them and to do so in the order in which they are presented. It indeed seems to me to be illogical that the Court should select one of the conditions... (reasonable time) for instance... whereas the identity of the Applicant may pose problems and therefore not covered ; or any other condition enumerated earlier.

It emerges from the judgement which is the subject of this dissenting opinion, that after discussing the objections raised by the Respondent State to the admissibility of the Application and after finding that the objections were unfounded (objection to the use of disparaging language in the Application and that of failure to exhaust local remedies) the Court limited itself in paragraph 112 to citing the other conditions stating that it was not in contention between the Parties.

And in paragraph 113 the Court notes, "That nothing in the file indicates that any of the conditions had not been met in the instant case". "And that consequently the Court finds that the above mentioned conditions have been entirely met".

In my view this expedite approach of discussing the other conditions of admissibility not in contention between the Parties goes contrary to the spirit of Articles 56 of the Charter, 6 the Protocol and Rule 40 of the Rules which require the Court to discuss those conditions.

Especially because after having discussed the objection to the exhaustion of local remedies and found in paragraph 110 "that the chances of success of all cases for reparation of damages resulting from the alleged violations are negligible" and that "even where the local remedies to be exhausted exist the particular circumstances surrounding the case make them inaccessible and inefficient....."

The Court invariably should have focused on the condition of reasonable time linked to the above mentioned objection pursuant to paragraph 6 of Article 56 of the Charter and Rule 40 of the Rules.

And that declaring as we see in paragraph 113 that "the Court notes that nothing in the file indicates that any of the conditions have not been met ....." has as a consequence, making the operative part of the judgement on admissibility baseless at least in relation to the conditions which were not in discussion between the Parties and consequently the Court.

- **Provisions of Article 56 of the Charter, 6 (2) the Protocol and Rules 39 and 40 of the Rules**

It should be noted that with regard to the objection raised by the Respondent State on the failure to exhaust local remedies the Court found that the particular circumstances surrounding this case made the said remedies inaccessible and ineffective for the Applicant who is therefore not required to exhaust the local remedies.

Meanwhile, the Court should also have determined on the issue of reasonable time of the filing of the Application, because in terms of Article 56 of the Charter paragraph 6 and Rule 40 of the Rules, applications must be filed "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 is shall be seized of the matter".

Having found grounds for failure to exhaust local remedies and having excused the Applicant for failing to exhaust them, the Court should have, pursuant to the above-mentioned article, **retained a date as the beginning of its own seizure**....such as the date of the of CRIET judgement 18/01/2018.... for instance.

In my opinion, by failing to deal with this condition the Court weakened its finding on the admissibility of the Application.

Thus, if in the Court's jurisprudence it interpreted "**local remedies**" which are binding to the Applicant such as **ordinary remedies,** this jurisprudence is not binding to the Applicant in determining reasonable time because in my opinion the Court could compute reasonable time as from the date an extraordinary remedy is filed or on the date the judgement is rendered. And that in this way the Court could have applied the second rule enshrined in **Articles 56 (6) of the Charter, 6 (2) the Protocol and Rules 39 and 40 (6) of the Rules**.

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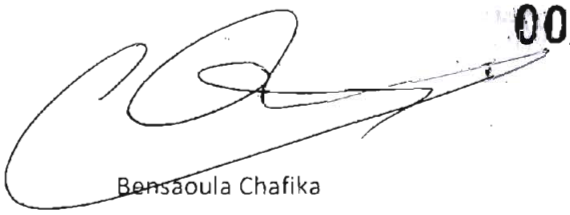

Bensaoula Chafika

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