



AFRICAN COURT ON HUMAN AND PEOPLES' RIGHTS
COUR AFRICAINE DES DROITS DE L'HOMME ET DES PEUPLES

IN THE MATTER OF SEBASTIEN GERMAIN AJAVON V. THE REPUBLIC OF
BENIN

APPLICATION NO. 013/2017

JUDGMENT OF 29 MARCH 2019

SEPARATE OPINION OF JUDGE GERARD NIYUNGEKO

1. I concur with the findings and the decisions of the Court, as seen in the operative part of the judgment [paragraph 292]. However, I am of the view that on certain issues, the reasoning in the judgment could have been strengthened (I). Furthermore, I find that the Court failed to draw a clear conclusion on one issue (II). Again, it failed to reflect in the operative part some findings made in the body of the judgment (III). Lastly, it also included in the operative part measures which were not specifically analysed in the body of the judgment (IV).

I. On certain issues, the reasoning of the judgment could have been stronger

2. As we are all aware, the 10 June 1988 Protocol establishing the Court obliges the latter in its Article 28 (6), to give reasons for all its judgements without exception¹. In my opinion, on certain issues, the reasoning of the Court is either incomplete or insufficient.

3. This is the case with the allegation made by the Applicant that the procedure of immediate appearance to which he was subjected in 2016 was a violation of his right to defence [paragraph 143].

4. On this allegation, the Court responded in one paragraph as follows:

"Regarding the argument according to which the summons to appear immediately would have been a violation of the right to defence of the Applicant, *the Court notes [that] immediate appearance in itself is not a violation of the right to defence*" [paragraph 151. Italics added].

5. In doing so, the Court did not at all explain the finding it made. The Court ought to have indicated, based on the information contained in the file on the legislation of the Respondent State, that the procedure of immediate appearance is simply an expedited

¹ This article has: "the judgment of the Court is motivated". See also Article 61 (1) of the Rules of Procedure of the Court