

AFRICAN UNION		UNION AFRICAINE
الاتحاد الأفريقي		UNIÃO AFRICANA
AFRICAN COURT ON HUMAN AND PEOPLES' RIGHTS COUR AFRICAINE DES DROITS DE L'HOMME ET DES PEUPLES		

THE MATTER OF

SEBASTIEN GERMAIN MARIE AIKOUÉ AJAVON

V

REPUBLIC OF BENIN

APPLICATION No. 027/2020

**RULING
(PROVISIONAL MEASURES)**

29 MARCH 2021



The Court composed of: Sylvain ORÉ, President, Ben KIOKO, Vice-President, Rafaâ BEN ACHOUR, Ângelo V. MATUSSE, Suzanne MENGUE, M-Thérèse MUKAMULISA, Tujilane R. CHIZUMILA, Chafika BENSAOULA, Blaise TCHIKAYA, Stella I. ANUKAM, Imani D. ABOUD - Judges; and Robert ENO, Registrar.

In the Matter of:

Sébastien Germain Marie Aïkoué AJAVON

Represented by Mr. Issiaka MOUSTAFA, Advocate at the Bar of Benin

Versus

REPUBLIC OF BENIN

Represented by Mr. Iréné ACOMBLESSI, Judicial Agent of the Treasury

after deliberation,

Issues the following Ruling:

I. THE PARTIES

1. Mr Sébastien Germain Marie Aïkoué AJAVON (hereinafter referred to as "the Applicant "), is a Beninese national. He challenges the criminal proceedings brought against him before the Court for the Suppression of Economic Offences and Terrorism (hereinafter referred to as "the CRIET").
2. The Application is filed against the Republic of Benin (hereinafter referred to as "the Respondent State"), which became a party to the African Charter on Human and Peoples' Rights (hereinafter referred to as "the Charter") on 21 October 1986 and 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

referred to as "the Protocol") on 22 August 2014. Further, on 8 February 2016, the Respondent State deposited the Declaration provided for in Article 34(6) of the said Protocol (hereinafter referred to as "the Declaration"), by virtue of which it accepted 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 an instrument of withdrawal of its Declaration. The Court has held that this withdrawal has no bearing on pending cases or new cases filed before the withdrawal comes into effect, that is, on 26 March 2021, one year after the deposit of the Declaration¹.

II. SUBJECT OF THE APPLICATION

3. In the Application filed on 11 June 2020, the Applicant prayed the Court to find the violation of his fundamental rights by the Respondent State for initiating investigations against him for "forgery of a public document, abetment of forgery of a public document and fraud" before the CRIET.
4. The Applicant asserts in the instant request for provisional measures that the Investigation Chamber of the CRIET issued Judgment No. 21/CRIET/COM-I/2020 of 29 May 2020, against him which partially dismissed his appeal and referred the case to the Appeals Chamber of the CRIET. This judgment was upheld by Judgment No. 003/CRIET/CA/SI of 18 June 2020 of the Appeals Chamber of the CRIET. He filed an appeal in cassation before the Supreme Court which was dismissed by a judgment of 29 January 2021.

¹ *Houngue Eric Noudehouenou v. Republic of Benin*, ACtHPR, Application No. 003/2020, Order of 5 May 2020 (provisional measures), §§ 4- 5 and corrigendum of 29 July 2020.

5. It is in this context that the Applicant prays the stay of the execution of the judgments rendered against him by the CRIET and the Supreme Court, pending a judgment by this Court on the merits of the case.

III. ALLEGED VIOLATIONS

6. The Applicant alleges the violation of the following:
 - i. The right to a fair trial protected under Articles 7(1), 7(1)(a), 7(1)(c) of the Charter;
 - ii. The right to property protected under Article 14 of the Charter; and
 - iii. The right to adequate housing enshrined in Articles 14, 16 and 18 of the Charter.

IV. SUMMARY OF PROCEDURE BEFORE THE COURT

7. On 22 June 2020, the Applicant filed the Application together with a request for provisional measures. On 27 November 2020, the Court issued a Ruling dismissing the said request. The Ruling was duly transmitted to the Parties on 02 December 2020.
8. On 4 February 2021, the Applicant filed this request for provisional measures which was served on the Respondent State on 17 February 2021 for its observations within fifteen (15) days from the date of receipt.
9. The Respondent State has not made any submission on this request for provisional measures.

V. *PRIMA FACIE* JURISDICTION

10. The Applicant avers that, pursuant to Article 27(2) of the Protocol and Rule 59 of the Rules of Court, in the matters of provisional measures, the Court need not be satisfied that it has jurisdiction on the merits of the case but merely that it has *prima facie* jurisdiction.

11. The Applicant further submits that the Court has jurisdiction to the extent that he alleges violations of rights protected by human rights instruments and that the Republic of Benin has ratified the African Charter, the Protocol and deposited the Declaration under Article 34 (6).

12. Article 3(1) of the Protocol provides that "[t]he 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."

13. Rule 49(1) of the Rules provides that "[t]he Court shall preliminarily ascertain its jurisdiction...in accordance with the Charter, the Protocol and these Rules". However, with respect to provisional measures, the Court need not be satisfied, that it has jurisdiction on the merits of the case, but only *prima facie* jurisdiction.²

14. In the instant case, the rights alleged by the Applicant to have been violated are all protected by Articles 7(1), 7(1)(a), 7(1)(c), 14, 16 and 18 of the Charter, an instrument to which the Respondent State is a party.

² *Komi Koutche v. Republic of Benin*, ACtHPR, Application No 020/2019, Order of 2 December 2019 (provisional measures) §11.

15. The Court further notes that the Respondent State has ratified the Protocol. It also deposited the Declaration accepting the Court's jurisdiction to receive applications from individuals and Non-Governmental Organisations pursuant to Articles 34(6) and 5(3) of the Protocol read together.
16. The Court also recalls that it has previously held that the Respondent State's withdrawal of the Declaration deposited pursuant to Article 34(6) of the Protocol, has no retroactive effect or impact on new cases brought before the effective date of the withdrawal³ as in the instant case. The Court reiterated its position in its Ruling of 5 May 2020 *Houngue Eric v. Republic of Benin*⁴, that the withdrawal of the Declaration by the Respondent State shall take effect from 26 March 2021.
17. The Court therefore finds that it has *prima facie* jurisdiction to hear the request for provisional measures.

IV. PROVISIONAL MEASURES REQUESTED

18. The Applicant requests a stay of execution of judgment No. 21/CRIET/COM-I/2020 handed down on 29 May 2020 by the CRIET Investigating Commission which partially dismissed his appeal and referred the case to the Appeals Chamber of the CRIET, the confirmation judgment No. 003/CRIET/CA/SI of 18 June 2020 of the CRIET Appeals Chamber and the judgment of 29 January 2021 of the Supreme Court rejecting his appeal, and of any subsequent conviction, pending the examination of the application on the merits.
19. He contends that he is in a situation of extreme urgency whose consequences cannot be erased, repaired or compensated, even by reparations.

³ *Ingabire Victoire Umuhoza v. Republic of Rwanda*, (jurisdiction) (3 June 2016) 1 AfCLR 585 § 67.

⁴ *Houngue Eric Noudéhouenou v. Republic of Benin*, ACTHPR, Application No. 003/2020, Order of 5 May 2020 (provisional measures), §§ 4-5 and corrigendum of 29 July 2020.

20. He further avers that the proceedings brought against him will quickly lead to his conviction, confiscation and sale of his property, part of which has already been confiscated by the Respondent State, which refuses to release it despite the Judgments on the merits of 29 March 2019 and 28 November 2019 rendered by this Court in his favour.

21. He argues, that in the event of a conviction by the CRIET, it would be difficult for him to obtain the annulment of the said conviction as long as the current regime is in place. He cites as evidence the non-enforcement by the Respondent State of previous decisions rendered in his favour by this Court. Further, that this conviction would allow the Respondent State to confiscate and sell all his assets in spite of the fact that he benefits from supranational court judgments to the contrary.

22. Finally, he states that this conviction could serve as the basis of a new arrest warrant against him, which would cause him further harassment and put him at risk of being extradited to his country. He states further, that he will automatically lose his civil and political rights, which will prevent him from running in the next presidential election in 2021.

23. The Court notes in the instant case that by Judgment No. 41/CRIET/CJ/1S of 1 March 2021, the first instance Chamber of the CRIET found the Applicant guilty of using false certificates and fraud, sentenced him to five (5) years imprisonment and a fine of four hundred thousand (400,000) francs, issued an arrest warrant against him, and ordered him to pay as damages to the Beninese State the sums of Eighty Billion, Nine Hundred and Fifty Eight million, Two Hundred and Fifty Four Thousand, Eight Hundred and Sixty Three (80,958,254,863) FCFA for the prejudice suffered by the tax authorities and Sixty-Billion (60,000,000,000) FCFA for other non-tax prejudice⁵.

⁵ Extract from Judgement No.41/CRIET/CJ/1S of 1 March 2021 of CRIET.

24. The Court considers that as a result of this decision the request for provisional measures has become moot.

25. For the avoidance of doubt, this Ruling is provisional in nature and does not in any way prejudice the findings of the Court on its jurisdiction, the admissibility of the Application and the merits thereof.

VI. OPERATIVE PART

26. For these reasons

THE COURT
Unanimously,

Declares that the request for provisional measures is moot.

Signed:

Sylvain ORE, President; 

Robert ENO, Registrar; 

In accordance with Article 28(7) of the Protocol and Rule 70(1) of the Rules, the Separate Opinion of Justice Rafaâ Ben Achour is attached to this Ruling.

Dated at Arusha, this Twenty Ninth Day of March in the year Two Thousand and Twenty-One, in English and French, the French text being authoritative.

