



**The Court composed of:** Imani D Aboud, President, Blaise TCHIKAYA, Vice President, Ben KIOKO, Rafaâ BEN ACHOUR, Suzanne MENGUE, M-Thérèse MUKAMULISA, Tujilane R. CHIZUMILA, Chafika BENSOUOLA, Stella I. ANUKAM, Dumisa B. NTSEBEZA, Modibo SACKO - Judges; and Robert ENO, Registrar.

In the Matter of:

Landry Angelo ADELAKOUN and OTHERS

Self-represented

Versus

REPUBLIC OF BENIN

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

*after deliberation,*

Renders the following Ruling:

## **I. THE PARTIES**

1. Landy Angelo ADELAKOUN, Romaric Jesukpego ZINSOU and Fifamin Miguèle HOUETO (hereinafter referred to as "the Applicants") are nationals of Benin. They allege the violation of the right of access to community justice and of the principle of non-regression, as a result of Decision N0. 20-434 of 30 April 2020 rendered by the Constitutional Court of Benin (hereinafter, referred to as "Decision No. 20-343 of 30 April 2020").
2. The Application is filed against the Republic of Benin (hereinafter referred to as "the Respondent State"), which became a party, on 21 October 1986, to the African Charter on Human and Peoples' Rights (hereinafter referred to as "the Charter") and on 22 August 2014 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"). The Respondent State further made, on 8 February 2016, the Declaration provided for in Article 34(6) of the Protocol (hereinafter referred to as "the Declaration") by virtue of which it accepts the jurisdiction of the Court to receive applications from individuals and Non-Governmental Organizations having observer status with the African Commission on Human and Peoples' Rights. On 25 March 2020, the Respondent State deposited with the African Union Commission the instrument of withdrawal of its Declaration. The Court has ruled that this withdrawal has no effect on pending cases and also on new cases filed before the entry into force of the withdrawal, on 26 March 2021, that is one year after its deposit.<sup>1</sup>

## II. SUBJECT OF THE APPLICATION

3. In the main Application, the Applicants submit that on 30 April 2020, the Constitutional Court of Benin issued decision DCC 20-434, by which it declared Additional Protocol A/SP.1 /01/05 revising the preamble and Articles 1, 2, 9, 22 and 30 of Protocol A/P1/7/91 on the ECOWAS Court of Justice (hereinafter referred to as "the 2005 Protocol on the ECOWAS Court of Justice") null and void, with retroactive effect. The same effect was extended to all decisions rendered by the ECOWAS Court of Justice pursuant to the implementation of the Protocol.
4. They contend that in support of its decision, the Constitutional Court found that the procedure for ratification of the 2005 Protocol on the ECOWAS Court of Justice was flawed under Article 145 of the Constitution of the Respondent State.

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<sup>1</sup> *Ingabire Victoire Umuhoza v. Republic of Rwanda*, Judgment (jurisdiction) (3 June 2016) 1 AfCLR 540 § 67; *Houngue Eric Noudehouenou v. Republic of Benin*, ACtHPR, Application No. 003/2020, Ruling (provisional measures) (5 May 2020) §§ 4-5 and Corrigendum of 29 July 2020.

5. According to the Applicants, this decision is contrary not only to Article 11 of the 2005 Protocol on the ECOWAS Court of Justice<sup>2</sup>, by virtue of which the ECOWAS Member States accepted its provisional entry into force, but also to Article 46 (1) of the Vienna Convention on the Law of Treaties.<sup>3</sup>
6. As provisional measures, the Applicants request the suspension of the effects of Decision DCC 20-434 of 30 April 2020.

### III. ALLEGED VIOLATIONS

7. The Applicants allege a violation of:
  - i. The right of access to justice, guaranteed by Article 7 of the Charter;
  - ii. The principle of non-regression, enshrined in Article 5 common to the International Covenant on Economic, Social and Cultural Rights (hereinafter referred to as "the ICESCR") and the International Covenant on Civil and Political Rights (hereinafter referred to as "the ICCPR");

### IV. SUMMARY OF THE PROCEDURE BEFORE THE COURT

8. The main Application filed together with a Request for provisional measures was received at the Registry on 11 March 2021.
9. On 16 March 2021, the Registry acknowledged receipt and requested the Applicants to provide information regarding their address and the relief sought.

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<sup>2</sup> This articles provides: " The s u p p l e m e n t e n t e r i n t o f o r p r o v i s i o n a l l y u p o n s i g n a t u r e by the Heads of State and Government. Accordingly, signatory Member States and ECOWAS hereby undertake to start implement all provisions of t h i s S

<sup>3</sup> This article provides: "The fact that the consent of a State to be bound by a treaty has been expressed in violation of a provision of its internal law concerning competence to conclude treaties may not be invoked by that State as vitiating its consent, unless the violation was manifest and concerned a rule of its internal law of fundamental importance.

10. On 2 April 2021, the Applicants responded to the above request.
11. On 9 May 2021, the main Application, together with the request for provisional measures, as well as the additional information on the Applicants' address and their request for reparations, were transmitted to the Respondent State, with deadlines of fifteen (15) days and ninety (90) days being set, respectively, for its response to the request for provisional measures and the main Application.
12. The Respondent State did not file any response to the request for provisional measures until the expiration of the time limit given to it.

## V. **PRIMA FACIE JURISDICTION**

13. Article 3(1) of the Protocol provides that:

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.

14. Furthermore, under Rule 49(1) of the Rules, "the Court shall conduct a preliminary examination of its jurisdiction...". However, in the case of interim measures, the Court need not satisfy itself that it has jurisdiction on the merits, but merely that it has *prima facie* jurisdiction.<sup>4</sup>
15. In this case, the Applicants allege a violation of Article 7 of the Charter and Article 5 of the ICESCR and the ICCPR, which the Court may interpret or apply under Article 3 of the Protocol.<sup>5</sup>

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<sup>4</sup> *Ghati Mwita v. United Republic of Tanzania*, ACtHPR, Application No. 012/2019, Ruling of 9 April 2020 (provisional measures) § 13.

<sup>5</sup> *Sébastien Germain Marie Aïkoué Ajavon v. Republic of Benin*, ACtHPR, Application No. 065/2019, Judgment (merits and reparations) of 29 March 2021 § 28.

16. The Court notes that the Respondent State has ratified the Charter, the ICESCR and the ICCPR.<sup>6</sup> It has also made the Declaration under Article 34(6) of the Protocol.
17. The Court observes, as mentioned in paragraph 2 of this Ruling, that on 25 March 2020, the Respondent State deposited the instrument of withdrawal of its Declaration made pursuant to Article 34(6) of the Protocol.
18. The Court recalls that it has held that the withdrawal of the Declaration had no retroactive effect on pending cases, nor did it have any effect on cases instituted prior to the withdrawal taking effect<sup>7</sup>, as is the case in the present application. The Court reiterated its position in its Ruling of 5 May 2020 in *Houngue Eric Noudehouenou v. Republic of Benin*<sup>8</sup> where it held that the withdrawal of the Respondent State's Declaration would take effect on 26 March 2021. Consequently, the said withdrawal has no bearing on the personal jurisdiction of the Court in this Application.
19. The Court concludes, therefore, that it has *prima facie* jurisdiction to entertain the request for provisional measures.

## VI. PROVISIONAL MEASURES REQUESTED

20. The Applicants request that the Court order the suspension of the Decision DCC 20-434 of 30 April 2020, such suspension to allow the Respondent State's citizens to continue to benefit from access to ECOWAS Court of Justice.

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<sup>6</sup> The Respondent State became a party to the ICESCR and the ICCPR on March 12, 1992.

<sup>7</sup> *Ingabire Victoire Umuhoza v. Republic of Rwanda*, ACtHPR, Judgment (jurisdiction) (3 June 2016) 1 AfCLR 540 § 67.

<sup>8</sup> *Houngue Eric Noudehouenou v. Republic of Benin*, ACtHPR, Application No. 003/2020, Ruling (provisional measures) of 5 May 2020 § 4-5 and Corrigendum of 29 July 2020.

21. According to them, the Respondent State' citizens will thus be able to continue to sue it before the ECOWAS Court of Justice, since with the effectiveness of the withdrawal of the Declaration, their access to supranational courts will be almost impossible.

22. The Respondent State did not file any Response to the Applicants' averments.

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23. The Court notes that under Article 27(2) of the Protocol: "In cases of extreme gravity and urgency, and where necessary to avoid irreparable harm to persons, the Court shall order such provisional measures as it deems necessary".

24. The Court recalls that urgency, which is consubstantial with extreme gravity, means that there is an "irreparable and imminent risk of irreparable harm being caused before the Court renders its final decision".<sup>9</sup> The risk in question must be real, which excludes the purely hypothetical risk and explains the need to remedy it immediately.<sup>10</sup>

25. With regard to irreparable harm, the Court considers that there must be a "reasonable likelihood of its occurrence" in view of the context and the personal situation of the Applicant"<sup>11</sup>

26. The Court underscores that it is up to the Applicants seeking provisional measures to prove urgency or extreme gravity and irreparable harm.

27. The Court notes that in the present case, in support of their request for provisional measures, the Applicants have not presented any argument or produced any evidence of urgency or extreme gravity and of irreparable harm. In fact, they have merely made the said request without

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<sup>9</sup> *Sébastien Ajavon v. Republic of Benin*, ACtHPR, Application No. 062/2019, Ruling (provisional measures) of 17 April 2020 § 61.

<sup>10</sup> *Ibid* § 62.

<sup>11</sup> *Ibid* § 63.





