

**AFRICAN COURT ON HUMAN AND PEOPLES' RIGHTS**  
**YAHAYA ZUMO MAKAME AND THREE OTHERS V. UNITED REPUBLIC OF**  
**TANZANIA**

**APPLICATION NO. 023/2016 JUDGMENT OF 25/06/2016**

**STATEMENT BY JUDGE BENSAOULA CHAFIKA**

I agree with the Operative Part of the decision rendered today regarding the majority of the allegations deemed unfounded by the Court. However, I make this statement because I am not convinced of the manner in which the allegation by the fourth Applicant that “he did not benefit from the assistance of an Interpreter” was dealt with.

Indeed, it appears from the facts, as related by the Applicants, that Mr. Mohamedi Gholimgader Pourdard, a national of the Islamic Republic of Iran whose mother tongue Persian, had his right to a fair trial violated by the fact that he was not provided an Interpreter when the Court of Appeal heard his Appeal.

In its response, the Respondent State merely argued that the above-mentioned Applicant did not make it known that he needed the assistance of an Interpreter, otherwise he would have been provided one at his own expense.

Paragraph 7 (1) (c) of the Charter states very clearly that “the right to defence including the right to be defended by a counsel of one’s choice”.

The right to defence is often defined as “the prerogatives that a person has to defend himself in a trial”.

This right apply to the phase of investigation, instruction or judgement as well.

I conclude from the reading of the above mentioned Article of the Charter, that although the Court concluded that the article does not expressly mention the right to an Interpreter (see paragraph 90 of the Judgement), it seems to me that the Legislator makes it clear that “the right to a defence” is in a broad sense a term that includes all the mechanisms

that enable the accused person and his interlocutors to understand each other, and this, in all the phases of the procedure to defend oneself. The above-mentioned Article 1 well implies the right to an interpreter when it provides for “the right to defence” even if it does not expressly mention it. The principle is that every Applicant has the choice to defend himself first or to have recourse to a defence counsel. To defend himself he can either ask for the help of an Interpreter or the Court itself appoints one if the situation of the accused so requires, either because he is not a resident of the country where the trial takes place, or a national of another country, as in the instant case!

The Court subsequently referred to Article 14/3C of the International Covenant on Civil and Political Rights which expressly provides for the right to an interpreter.

However, on reading this Article, it is clear that the Legislator first requires the accused to be informed in a language he understands and in detail, of the nature and cause for the accusation against him, and also be informed that he can have to have the free assistance of an interpreter if he cannot understand or speak the language used in court.

Therefore, the first obligation of the interlocutors, in this case the Judges, is to inform the accused of the nature and cause for the accusation against him, in his language.

The second obligation is to appoint an Interpreter.

However, at no point, whether in the allegations of the Applicant or in the responses of the Respondent State, does it appear that the Judges on Appeal were concerned about this obligation, and in no paragraph of the Judgement does the Court consider this obligation of the Judges.

The first obligation of the interlocutors confirms that at any stage of the proceedings the interlocutor of the accused must by himself ensure that the accused understands the language used in court. The interlocutor then enforces the right to an Interpreter if he establishes that the accused does not understand the language used in court.

From the reading of paragraph 93 of the Judgement, it appears that the Court emphasized the fact that the Applicant was provided the services of a defence counsel and that the

need for the assistance of an Interpreter was not communicated to the Court, based on which it therefore concludes that the allegation is unfounded.

In my opinion it is imperative that the Court imposes through its jurisprudence rules regarding the necessity of an Interpreter and the conditions thereof.

It is important that the accused knows that he has the right to an interpreter and he must be informed about it! This information must be communicated to him in a language he understands. The accused must be provided information on the assistance of the interpreter the same way as that of information on a Lawyer!

This is because in the absence of an interpreter it is doubtful that the accused could have made an informed choice in his answers to all the questions he was asked, which could be prejudicial to the fairness of the procedure as a whole.

Moreover, I think that the fact that the accused has a rudimentary knowledge of the language of the proceedings can in no way be an obstacle to providing him/her with interpretation into a language that he/she understands sufficiently so that the rights of the defence can be fully exercised.

I also think that even when the accused is represented by a Lawyer, it is not enough that the Lawyer, and not his client, knows the language used in the hearing.

Hence the unconvincing ground of paragraph 93 of the Judgement!

It is clear that the right to a fair trial includes "the right to participate in the hearing" which requires that the accused be able to understand the pleadings and inform his lawyer of any element that should be raised in his defence.

This leads me to say that providing interpretation at a trial is primordial because it does not only concern the relations between the accused and his Lawyer but also those between the accused and those who judge him.

I will conclude by saying that as guarantors of the rights of the accused and the fairness of proceedings, both domestic and international jurisdictions must impose the obligation of the judge to identify the needs in terms of interpretation in consultation with the accused, and to ensure that the absence of an interpreter does not jeopardise his full

participation in the proceedings. It is of particular importance that courts take note of this, especially when the accused is a foreigner!

**JUDGE BENSAOULA CHAFIKA**

**JUDGE AT THE COURT**

