

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:

Romarc Jesukpego ZINSOU
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. Romarc Jésuskégo Zinsou (hereinafter, referred to as "the Applicant") is a national of the Republic of Benin currently residing in Cotonou. He filed the Application together with a request for provisional measures seeking an order retroceding Covid-19 quarantine fees to all persons who have been victims of discrimination.
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

(Here i n a f t e r r e f e r r e d August 2014. On 8 February 2016, the Respondent State deposited the Declaration provided for in Article 34(6) of the Protocol by virtue of which it accepted the jurisdiction of the Court to receive applications from individuals and Non-Governmental Organisations 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 an instrument of withdrawal of the said Declaration. The Court has ruled that this withdrawal has no bearing on pending cases and on new cases filed prior to the entry into force of the withdrawal, one year after its deposit, that is, on 26 March 2021.¹

II. SUBJECT OF THE APPLICATION

3. It appears from the Application that, following the Council of Ministers meeting of 17 March 2020, the Respondent State took a series of measures to prevent the spread of the Covid-19 pandemic in the country, in particular, the systematic and compulsory quarantine of all persons arriving in Benin by air and requisitioning one thousand hotel rooms to accommodate passengers in quarantine.
4. The Applicant submits that the Government decided that "the cost of quarantining nationals will be borne by the State while non-nationals will bear their own costs ". This measure is challenged by the Applicant before this Court as being discriminatory against non-nationals of Benin.
5. It is against this background the Applicant is requesting provisional measures from the Court ordering the Respondent State to retrocede the costs of quarantine for all victims of discrimination.

¹ *Ingabire Victoire Umuhoza v. Republic of Rwanda* (jurisdiction) (Order of 3 June 2016) 1 AfCLR 562, § 67; *Hongue Eric Noudehouenou v. Republic of Benin*, ACTHPR, Application No. 003/2020 Ruling of 5 May 2020 (provisional measures), §§ 4 and 5 and *Corrigendum* of 29 July 2020.

III. ALLEGED VIOLATIONS

6. The Applicant alleges violations of Articles 2 and 3 of the Charter and 26 of the International Covenant on Civil and Political Rights (ICCPR).

IV. SUMMARY OF THE PROCEDURE BEFORE THE COURT

7. The Application was filed on 3 March 2021, together with a request for provisional measures.
8. On 9 March 2021, the Application together with the request for provisional measures were served on the Respondent State, which was granted ninety (90) days and fifteen (15) days, within which to respond on the merits and on the request for provisional measures, respectively, from the date of receipt of service.
9. On 28 April 2021, the Respondent State filed its Response to the request for Provisional Measures, which was transmitted to the Applicant on 4 May 2021 for information.

V. PRIMA FACIE JURISDICTION

10. 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.”

11. Rule 49(1) of the Rules of Court² provides “[t]he Court shall preliminarily ascertain its jurisdiction...”³ al measures, there, wi
Court need not satisfy itself that it has jurisdiction on the merits of the case, only that it has *prima facie* jurisdiction³.

² Rules of 25 September 2020.

³ *Komi Koutche v. Republic of Benin*, ACtHPR, Application No. 020/2019, Ruling of 2 December 2019 (provisional measures), § 11.

12. In the instant case, the rights allegedly violated by the Applicants are all protected by the Charter to which the Respondent State is a Party. The Court further notes that the Respondent State is a Party to the Protocol and deposited the Declaration under Article 34(6) of the Protocol.

13. The Court further recalls that, as it has held that the withdrawal of the Declaration under Article 34(6) of the Protocol has no retroactive effect and has no bearing on new cases filed before the effective date of the withdrawal⁴ as in the instant case. The Court reiterates its position that the withdrawal of the Respondent State's Declaration which took effect on 26 March 2021⁵, does not in any way affect its personal jurisdiction in the instant case, since the Application was filed on 3 March 2021.

14. The Court concludes that it has *prima facie* jurisdiction to hear the Request for provisional measures.

VI. ON THE PROVISIONAL MEASURES REQUESTED

15. The Applicant asks the Court to "order a provisional measure retroceding the quarantine costs to all persons who have been victims" of discrimination.

16. The Respondent State submits that, in accordance with Article 27(2) of the Protocol and Rule 51 of the Rules, provisional measures may only be ordered in cases of urgency or extreme gravity and where the damage is irreparable.

17. Referring to the Court's jurisprudence, the Respondent State alleges that "extreme urgency" exists when the Applicant is sentenced to death⁶ or "when

⁴ *Ingabire Victoire Umuhoza v. Rwanda* (jurisdiction), § 67.

⁵ *Houngue Éric Noudéhouenou v. Benin* (provisional measures), §§ 4 and 5.

⁶ *Dexter Eddie Johnson v. Republic of Ghana* (provisional measures) (27 September 2017) 2 AfCLR 155.

he is detained in deplorable conditions, subjected to all kinds of torture..."⁷ He asserts that in the instant case, not only is there no urgency or extreme gravity in the prayers requested, but also that the Applicant, who is not one of the alleged victims, does not explain how an urgent measure is sought one (1) year after the contested decisions were taken.

18. With regard to the irreparable nature of the damage, the Respondent State maintains that harm is irreparable only when "the consequences cannot be erased, repaired or compensated for by any means, even by way of compensation". It argues that, in the instant case, the alleged harm does not result from the measures taken by the Government, and that the alleged victims were informed of the measure before they boarded to plane to travel to Benin.

19. Finally, the Respondent State alleges that "the retrocession of costs requested by the Applicant prejudices the merits of the case insofar as it "should be the consequence of the recognition of the alleged violation", which, according to the Respondent, is contrary to the jurisprudence of the Court.

20. It follows, according to the Respondent State, that the measure requested does not meet the requirements of urgency or extreme gravity, nor is the nature of the damage irreparable. The prayer must therefore be dismissed by the Court.

21. Article 27(2) of the Protocol provides that "in cases of extreme gravity and urgency and when necessary to avoid irreparable harm to persons, the Court shall adopt such provisional measures as it deems necessary".

22. The Court observes that from this provision, it may only order provisional measures if the conditions of extreme gravity or urgency and the prevention of irreparable harm to persons are met.

⁷ *Léon Mugesera v. Rwanda* (provisional measures) (27 September 2017) 2 AfCLR 149.

