

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

GLORY C. HOSSOU AND LANDRY A. ADELAKOUN

V.

REPUBLIC OF BENIN

APPLICATION NO. 016/2020

RULING
2 DECEMBER 2021



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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 BENSAOULA, Stella I. ANUKAM, Dumisa B. NTSEBEZA, Modibo SACKO – Judges, and Robert ENO, Registrar.

In the Matter of:

Glory C. HOSSOU and LANDRY A. ADELAKOUN
Self-represented

Versus

REPUBLIC OF BENIN

Represented by:

Iréné ACLOMBESSI, the Judicial Officer of the Treasury Headquarters of the General Directorate of Treasury and Public Accounting.

after deliberation,

Renders the following Ruling:

I. THE PARTIES

1. Glory C. Hossou and Landry A. Adalakoun (hereinafter referred to as “the Applicants”) are nationals of the Republic of Benin, jurists by profession and residents of Abomey-Calavi in Benin. They challenge the Republic of Benin's withdrawal of the Declaration deposited under Article 34(6) of the Protocol to the African Charter on Human and Peoples’ Rights on the Establishment of an African Court (hereinafter “the Protocol”).

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 on 22 August 2014. On 8 February 2016, the Respondent State deposited the Declaration prescribed under Article 34(6) of the Protocol (hereinafter referred to as "the Declaration") through which it accepted the jurisdiction of the Court to receive applications from individuals and Non-Governmental Organizations. On 25 March 2020, the Respondent State deposited with the Chairperson of the African Union Commission (hereinafter referred to as "the Commission") an instrument withdrawing the said Declaration. The Court held that this withdrawal has no bearing, on the one hand, on pending cases, and on the other hand, on new cases filed before the withdrawal came into effect, that is, on 26 March 2021.¹

II. SUBJECT OF THE APPLICATION

A. Facts of the matter

3. On 7 May 2020, the Applicants filed an Application before this Court to challenge the Respondent State's withdrawal of its Declaration accepting the jurisdiction of the Court to receive applications from individuals and NGOs having observer status before the African Commission on Human and Peoples' Rights. In the Application, the Applicants also pray the Court to order provisional measures.
4. The Applicants state that on 8 February 2016, the Respondent State deposited the Declaration provided for in Article 34(6) of the Protocol allowing individuals and NGOs having observer status before the African Commission on Human

¹ *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.

and Peoples' Rights to seize the Court directly after exhausting local remedies. The Applicants aver that the Respondent State withdrew the Declaration following a written notice to the African Union Commission dated 25 March 2020.

B. Alleged violations

5. The Applicants allege that, in withdrawing the Declaration, the Respondent State:
 - i. Violates the Charter and international human rights standards.
 - ii. Prevents its citizens from directly accessing the regional judicial system to initiate proceedings and seek redress for the prejudice they have suffered within their domestic system, which constitutes a regression of rights.

III. SUMMARY OF THE PROCEDURE BEFORE THE COURT

6. The Application instituting proceedings, together with the request for provisional measures, were received at the Registry on 7 May 2020 and served on the Respondent State on 8 July 2020.
7. The Respondent State was given fifteen (15) days, from the date of receipt, to respond to the request for provisional measures and sixty (60) days, from 1 August 2020, to file its Response to the main Application.²
8. On 26 August 2020, the Respondent State responded to the request for provisional measures.

² By a Press Release issued on 20 May 2020, in response to the COVID -19 Pandemic, the Court had suspended the computation of time limits for all matters, except provisional measures, from 1 May to 31 July 2020.

9. On 25 September 2020, the Court issued a ruling dismissing the request for provisional measures.
10. On 8 October 2020, the Respondent State filed its Response to the main Application and this was served on the Applicants on 19 October 2020 to file the Reply within thirty (30) days of receipt. On 25 November 2020 the Applicants were given an extension of thirty (30) days to file the Reply but they did not do so.
11. Pleadings were closed on 30 March 2021 and the Parties were duly notified.

IV. PRAYERS OF THE PARTIES

12. The Applicant prays the Court to:
 - i. Declare the Application admissible;
 - ii. Find that the decision of the Respondent State withdrawing the Declaration violates the Charter and international human rights standards.
 - iii. Declare that the Respondent State violated the right of the citizens to access justice due to its decision to withdraw the Declaration.
13. The Respondent State prays the Court to:
 - i. Find that that the Applicants are attempting, on the basis of their Application, to contest the right of the Republic of Benin to withdraw its Declaration of recognition of the Court's jurisdiction.
 - ii. Declare and rule that the Republic of Benin is a sovereign State with power to enter into or withdraw from any convention.
 - iii. Find that the Court lacks material jurisdiction to consider the matter;
 - iv. Verify that the Applicants did not sign the Application filed before this Court.
 - v. Find that the lack of signature is a reason for inadmissibility, and consequently declare the Application inadmissible.
 - vi. Find that the Applicants have not established how the withdrawal of the said

Declaration by the Republic of Benin constitutes a human rights violation.

- vii. Find that the Declaration of jurisdiction is not mandatory and therefore cannot be adhered to.
- viii. Consequently, dismiss the Application.

V. JURISDICTION

14. Article 3 of the Protocol provides:

1. 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
2. In the event of a dispute as to whether the Court has jurisdiction, the Court shall decide.

15. The Court notes that in terms of Rule 49(1) of the Rules; “[t]he Court shall conduct preliminary examination of its jurisdiction ... in accordance with the Charter, the Protocol and these Rules”.

16. Based on the above-mentioned provisions, the Court must, for each application, conduct an assessment of its jurisdiction and dispose of objections thereto, if any.

17. The Court notes that in the instant case the Respondent State raises an objection based on the Court's lack of material jurisdiction.

18. The Respondent State argues that it is a sovereign entity as can be inferred from basic principles of international law.

19. The Respondent State avers that in international law, and particularly in the area of accepting the jurisdiction of an international court, sovereignty is manifested in the principle of consent. The consent of a State is thus "a sine

qua non of the jurisdiction of any international court, regardless of the time and the manner in which such consent is expressed."³

20. The Respondent State affirms that it is clear from the instruments governing this Court, as well as its jurisprudence, that States are free to decide whether or not to accept the jurisdiction of the Court.
21. The Respondent State further affirms that the Declaration is optional and not binding on any State. Consequently, it cannot be imposed on those States that have recognised its jurisdiction to remain under it, otherwise such act would be an infringement of their sovereignty.
22. The Respondent State further asserts that while the Court, through its jurisprudence, has clarified its jurisdiction with regard to the question of the legal effects of the Respondent State's withdrawal of the Declaration on the ongoing proceedings, it cannot admit the present application as this would be tantamount to rejecting the sovereign right of the Respondent State to withdraw its Declaration.
23. The Respondent State also submits that the subject matter of this Application falls outside the jurisdiction of the Court which, for the time being, can only decide the legal effects of the withdrawal. It is also the Respondent State's submission that the Court is fully aware of this position as it has never prevented any State from withdrawing its Declaration.
24. The Applicants did not respond to the Respondent State's objection based on the lack of material jurisdiction.

³ Individual Opinion of Judge Fatsah OUGUERGOUZ, *Michelot Yogogombaye v. Senegal* (Jurisdiction) (15 December 2009)1 AfCLR 1.

25. The Court notes that, in accordance with Article 3 of the Protocol, its jurisdiction “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”.
26. The Court also notes that to establish that it has material jurisdiction it suffices that the rights of which a violation is alleged are protected by the Charter or any other human rights instrument ratified by the Respondent State.⁴
27. In the instant case, the Applicants allege that the withdrawal by the State of Benin of the declaration deposited under Article 34 (6) of the Protocol constitutes a violation of human rights protected by the Charter. The Court will examine whether it has jurisdiction to decide if the withdrawal of the declaration constitutes a violation of human rights.
28. In determining the validity of the withdrawal of the declaration by the Respondent State, the Court will be guided by the relevant rules governing declarations accepting jurisdictions as well as by the principle of State sovereignty in international law, in addition to the relevant rules of the law of treaties contained in the Vienna Convention on the Law of Treaties of 23 May 1969 (hereafter The Vienna Convention).
29. As regards the application of the Vienna Convention, the Court notes that while the declaration made under Article 34 (6) is provided for in the Protocol, which is governed by the law of treaties, the declaration in itself, is a unilateral act of the State not backed by the law of treaties.

⁴ See, for example, *Kalebi Elisamehe v United Republic of Tanzania*, ACtHPR, Application No. 028/2015, Judgment of 26 June 2020 (merits and reparations) § 18, *Armand Guehi v. United Republic of Tanzania* (merits and reparations) (7 December 2018) 2 AfCLR 477, § 33; *Nguza Viking (Babu Seya) and Johnson Nguza (Papi Kocha) v. United Republic of Tanzania* (merits) (23 March 2018) 2 AfCLR 287, § 35.

30. Accordingly, the Court finds that the Vienna Convention does not apply to the declaration made under Article 34 (6) of the Protocol.
31. Concerning the rules governing the acceptance of the jurisdiction of international courts, the Court notes that similar declarations are optional. This is true for the provisions on the recognition of the jurisdiction of the International Court of Justice⁵, the European Court of Human Rights prior to the coming into force of Protocol No. 11⁶ and the Inter-American Court of Human Rights⁷.
32. The Court notes that, by its nature, the declaration provided for in Article 34 (6) is similar to those mentioned above. The reason is that although the Declaration is provided for under Article 34 (6) of the Protocol, it is optional. Thus, as a unilateral act, the declaration is an act separable from the Protocol and can, therefore, be withdrawn without leading to a withdrawal or a denunciation of the Protocol.
33. The Court further considers that the optional nature of the declaration and its unilateral character derive from a basic principle of international law, that is, the principle of sovereignty of the States. Indeed, the latter prescribes that States are free to make commitments and that they retain the power to withdraw their commitments in accordance with the relevant rules of each treaty⁸.
34. The Court considers that the matter being discussed before it pertains to the a right accorded the States. This right is the very one by which the States ensure the establishment of mechanisms that complement their domestic human rights implementation mechanisms.

⁵ See Article 36 (2) of the Statute of the International Court of Justice.

⁶ See Article 46 of the 1950 European Convention for the Protection of Human Rights and Fundamental Freedoms and, before its entry into force, Protocol No. 11 to the Convention for the Protection of Human Rights and Fundamental Freedoms, which restructured the control mechanism established for this purpose.

⁷ See Article 62 (1) of the American Convention on Human Rights.

⁸ *Ingabire Victoire Umuhoza v. Rwanda* (Jurisdiction) (3 June 2016) 1 RJCA 540, § 54-59.

35. The Court finds that the Respondent State is entitled to withdraw the declaration that it deposited under Article 34 (6).
36. Consequently, the Court upholds the objection based on lack of material jurisdiction raised by the Respondent State and declares that it has no material jurisdiction to hear the instant case.

VI. COSTS

37. None of the Parties made any prayer in respect of costs.
38. According to Article 32(2) of the Rules⁹, "Unless otherwise decided by the Court, each party shall bear its own costs".
39. The Court notes that there is nothing in the circumstances of this case that warrants it to depart from this provision. The Court, therefore, decides that each party should bear its own costs.

VII. OPERATIVE PART

40. For these reasons:

THE COURT

By a majority of ten (10) to one (1), Judge *Chafika BENSAOULA dissenting*:

On jurisdiction

- i. *Upholds* the objection to its material jurisdiction;
- ii. *Declares* that it lacks jurisdiction.

⁹ Formerly Rule 30(2) of the Rules of 2 June 2010.

On costs

- iii. *Orders each party to bear its own costs.*

Signed:

Imani D. ABOUD, President;



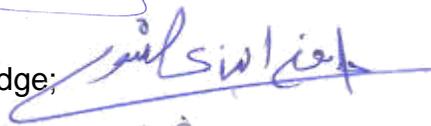
Blaise TCHIKAYA, Vice-President;



Ben KIOKO, Judge;



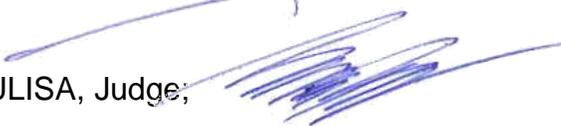
Rafaâ BEN ACHOUR, Judge;



Suzanne MENGUE, Judge;



M-Thérèse MUKAMULISA, Judge;



Tujilane R. CHIZUMILA, Judge;



Chafika BENSAOULA, Judge;



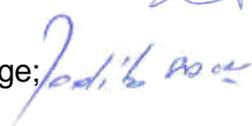
Stella I. ANUKAM, Judge;



Dumisa B. NTSEBEZA, Judge;



Modibo SACKO, Judge;



and Robert ENO, Registrar.



In accordance with Article 28(7) of the Protocol and Rule 70(1) of the Rules of Procedure, the dissenting opinion of Judge Chafika Bensaoula is attached to this ruling.

Done at Dar es Salaam, this Second Day of December in the Year Two Thousand and Twenty-One in Arabic, English and French, the French text being authoritative.

