Cour africaine
des droits de l'homme et des peuples

Arusha, Tanzania
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Telephone: +255-27-970-430

PRESS RELEASE
SUMMARY OF JUDGMENT

LAURENT MÉTONGNON AND OTHERS V. REPUBLIC OF BENIN

APPLICATION NO. 031/2018

JUDGMENT (JURISDICTION AND ADMISSIBILITY)

A DECISION OF THE AFRICAN COURT ON HUMAN AND PEOPLES' RIGHTS

Date of Press Release: 24 March 2021

Arusha, 24 March 2021: The African Court on Human and Peoples' Rights (the Court) has rendered a judgment in the matter of *Laurent MÉTONGNON and Others v. Republic of Benin*.

On 6 December 2018, Laurent MÉTONGNON, Célestin AHONON, Edouard ADEGOKE and Saliou Aboubou YOUSSOA (hereinafter referred to as, "the Applicants") filed an Application with the African Court on Human and Peoples' Rights (hereinafter referred to as, "the Court") against the Republic of Benin (hereinafter referred to as "Respondent State").

In their Application, they alleged the violation of the following rights, namely, the right to liberty and security, protected under Article 6 of the African Charter on Human and Peoples' Rights (the Charter), the right to have their cause heard, protected under Article 7(1)(a)(b)(c) of the Charter, Articles 8 and 10 of the Universal Declaration of Human Rights (UDHR), the right not to be convicted of an act or omission which did not constitute a legally punishable offence at the time it was committed, protected under Article 7(2) of the Charter. The Applicants contend that these alleged violations are in connection with criminal proceedings initiated against them.

As reparations, the Applicants requested the Court to "*annul the sentence pronounced against them by the judges of the Respondent State*" and "*any future politically-motivated sentences by*

judges of CRIET appointed and manipulated by the executive in violation of the laws in force," to order their automatic release under irrevocable and liquidated penalty of Ten Million (10,000,000) CFA francs per day, starting as from the date of the Judgment and to order the Respondent State to pay them various amounts of money.

It emerges from the records that, on 2 November 2017, the Minister of Economy and Finance presented to the Cabinet of the Respondent State the report of a fact-finding audit mission carried out by the West African Monetary Union (WAMU) from 13 June to 1 July 2016 at the International Bank of Benin (IBBE). This was in connection with kickbacks allegedly received by the Applicants, who at the time, were executives of the National Social Security Fund (NSSF).

The Applicants further averred that according to the findings of the complementary investigation carried out by the General Inspectorate of Finance (GIF), the kickbacks estimated at Seventy-one Million Nine Hundred and Ninety-nine Thousand Seven Hundred and Thirty-seven (71,994,737) francs CFA were in return for term deposits (DAT) totalling more than Seventeen Billion, Five Hundred Million (17,500,000,000) CFA francs from April 2014 to October 2015.

The Applicants further alleged that according to GIF these risky investments in a bank declared by the WAMU Banking Commission to be in distress were made in the sole interest of the NSSF executives, thereby putting the savings of NSSF contributors at risk by jeopardising pension payments to thousands of pensioners.

The Applicants aver that based on these unproven facts criminal proceedings were brought against them. By Judgment No. 258/1FR-18 of 31 July 2018, the Court of First Instance of Cotonou (hereinafter referred to as "CFI of Cotonou") found them guilty of abuse of office and corruption and sentenced each of them to five (5) years imprisonment. They averred that despite having appealed the judgment, they were arraigned before the Court of Repression of Economic Offences and Terrorism (hereafter, "CRIET").

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The Respondent State raised an objection based on the Court's material jurisdiction on the ground that the Court cannot substitute itself for the domestic courts to annul Judgment No. 258/1FD-18 of 31 July 2018, as requested by the Applicants.

For their part, the Applicants submit that the objection be dismissed, arguing that under Article 3 of the Protocol, the Court may be seized of all cases of violations of human rights protected by the Charter or by other human rights instruments whenever such violations are committed by State Parties to the Protocol.

Ruling on the objection based on jurisdiction, the Court noted that under Article 3(1) of the Protocol, it has jurisdiction over "all cases and disputes submitted to it concerning the interpretation and application of the Charter, the Protocol and any other relevant human rights instrument ratified by the States concerned." The Court emphasised that for it to have material jurisdiction, it is sufficient that the Applicant alleges violations of human rights protected by the Charter or by any other human rights instrument ratified by the Respondent State. The Court noted that the Applicant had alleged the violation of the right to liberty and security of person and the right to a fair trial, protected under Articles 6 and 7 of the Charter, ratified by the Respondent State. Furthermore, the Court emphasises, in line with its jurisprudence, that it is not an appellate court of decisions rendered by domestic courts. However, that does not preclude it from assessing whether domestic proceedings were conducted in accordance with international standards set out in the Charter and other international human rights instruments ratified by the State concerned. Accordingly, the Court concluded that it has jurisdiction to hear the Application.

With regard to other aspects of jurisdiction, the Court found that it had personal, temporal, and territorial jurisdiction. In view of the foregoing, the Court found that it has jurisdiction.

The Respondent State raised two objections to the Court's jurisdiction, one based non-exhaustion of local remedies and the other on the use of offensive or disparaging language in the Application.

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Regarding the first objection, the Respondent State contended that the Applicants did not exhaust local remedies insofar as they should have seised the Judicial Chamber of the Supreme Court and the Constitutional Court. It further averred that the exhaustion of local remedies implies that all the claims have been heard at all levels of domestic courts. The Respondent State noted that in the instant case, the criminal proceedings initiated against the Applicants were pending before CRIET sitting as an appellate court, pursuant to Article 20 of Law 2018-13 of 02 July 2018.

The Applicants prayed the Court to dismiss the objection based on admissibility, arguing that they exhausted some remedies, while others proved to be ineffective. In support, they stated that they brought the matter before the Constitutional Court, which, by Decision DCC No. 18-098 of 19 April 2018, declared their detention arbitrary insofar as the public Prosecutor had kept them in custody beyond the legal time limit. The Applicants further submit they appealed Judgment No. 258/1FD-18 rendered on 31 July 2018 by the Cotonou First Instance Court and that the case was referred to CRIET, which deprived them of a double level of jurisdiction.

With regard to the objection based on admissibility, the Court notes that in accordance with Article 56(5) of the Charter and Rule 50(2) of the Rules of Court, that Applications must be filed after the exhaustion of local remedies, if any, unless it is obvious that the proceedings in respect of such remedies have been unduly prolonged. These remedies are those of a judicial nature, which must be available, effective and satisfactory. The Court emphasised that in order to determine **if** the requirement to exhaust local remedies has been met, it is necessary that the proceedings to which the Applicant was a party should have been completed by the time the Application was filed before the Court. The Court also considered that this requirement is assessed, in principle, as at the date of filing the Application before it.

The Court notes that in the Respondent State's judicial system, depending on the existing remedies, a criminal case ends with the judgment of the Judicial Chamber of the Supreme Court

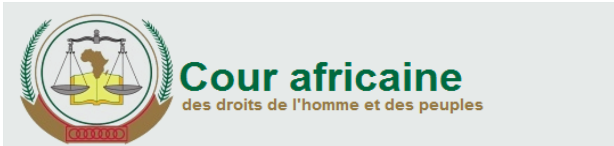
The Court notes that in the instant case, as of the date of filing the instant Application, that is, 6 December 2018, the criminal proceedings initiated against the Applicants were pending before the domestic courts. The Court recalls, in this regard, that by Judgment No. 258/1FD-18 rendered on 31 July 2018 by the Cotonou Court of First Instance, the Applicants were found guilty of the offences of corruption and abuse of office and were each sentenced to five (5) years in prison and a fine of One Million (1,000,000) CFA francs. The Applicants appealed this judgment on 2 August 2018. The Court noted that at the time of filing the Application before it, the appeal proceedings were pending. The noted that the Applicants should have awaited the end of the criminal proceedings to which they were parties before bringing their case before it, unless the said proceedings had been unduly prolonged. In this respect, the Court notes that, on the one hand, the Applicants brought the case before it four (4) months and two (2) days after filing their appeal and, on the other hand, the appeal decision was handed down on 24 June 2019, that is, six (6) months and eighteen (18) days after the procedure this Court. The Court considers that the appeal proceedings were not unduly prolonged, given the complexity of the case, which can be inferred from the nature of the offences being prosecuted[1] and the number of persons involved.

The Court further observed that even after the appeal decision, the Applicants could, if necessary, file a cassation appeal before the Judicial Chamber of the Respondent State's Supreme Court.

The Court further notes that the question of whether or not CRIET is an appellate court and, by extension, whether it can hear the Applicants' appeal is a matter of the merits insofar as it could determine the answer to the alleged violation of the right to a second hearing.

The Court considered that, in any event, the Applicants had the possibility of bringing a case before the Constitutional Court of the Respondent State, which had jurisdiction to hear any "complaint of violation of human rights and public freedoms." In this respect, the Court considers

[1] The Applicants were prosecuted for the offences of corruption and abuse of power.



that the allegations of the Applicants that were the subject of the Constitutional Court's Decision DCC 18-098 of 19 April 1998 are not the same as those raised before this Court.

In view of the foregoing, the Court considers that the Applicants did not exhaust local remedies.

Based on the foregoing, the Court considered that it was superfluous to rule on the second objection based on admissibility in relation to the use of insulting or disparaging language in the Application.

Consequently, the Court declared the Application inadmissible.

Finally, the Court ruled that each Party shall bear its own costs.

Further information

Further information on this case, including the full text of the African Court's judgment, is available at: https://www.african-court.org/cpmt/details-case/0312018

For any other enquiries, please contact the Registry by email at: registrar@african-court.org

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