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

In the Matter of

Laurent MÉTONGNON AND OTHERS
Represented by Lionel AGBO, Advocate at the Bar of Benin;

Versus

REPUBLIC OF BENIN
Represented by

i. Cyrille Y. DJIKUI,
ii. Elie N. VLAVONOU-KPONOU,
iii. Charles BADOU;

Advocates at the Bar of Benin

after deliberation,

renders the following Ruling:

I. THE PARTIES

1. Laurent MÉTONGNON, Coovi Célestin AHONON, Alabi Edouard ADEGOKE and Aboubou Saliou YOUSSOA, (hereinafter referred to as "the Executives"), all nationals of Benin, were Executives of the National Social Security Fund

(NSSF), at the time of filing this Application. They allege human rights violations in connection with criminal proceedings brought against them.

2. The Application is filed against the Republic of Benin (hereinafter "the Respondent State"), which became a party to the African Charter on Human and Peoples' Rights (hereinafter "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 (hereinafter "the Protocol") on 22 August 2014. On 8 February 2016, the Respondent State deposited the Declaration provided for in Article 34(6) of the said 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 Organisations. On 25 March 2020, the Respondent State deposited with the Chairperson of the African Union Commission the instrument of withdrawal of the said Declaration. The Court ruled that this withdrawal has no effect on pending cases and on new cases, filed before the entry into force of the withdrawal, that is, 26 March 2021.[1]

II. SUBJECT OF THE APPLICATION

A. Facts of the matter

3. It emerges from the record 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, of NSSF.

[1] *Houngue Éric Noudehouenou v. Republic of Benin*, ACtHPR, Application No. 003/2020, Order of 5 May 2020 (provisional measures), §§ 4- 5 and corrigendum of 29 July 2020.

4. The Applicants further aver 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. These kickbacks were allegedly in return for deposits (DAT) totalling more than Seventeen Billion, Five Hundred Million (17,500,000,000) CFA francs that they made from April 2014 to October 2015.

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

6. The Applicants aver that based on these unproven facts, criminal proceedings were brought against them.

7. Following their detention by the Cotonou Public Prosecutor, the Applicants and twelve (12) other persons prosecuted for the same or related facts filed separate Applications before the Constitutional Court alleging violations of their rights in relation to their arrest and detention, the unconstitutional nature of the Cabinet minutes, and the fact that the Public Prosecutor flouted Article 35 of the Code of Criminal Procedure.

8. They allege that by Decision DCC-18-098 of 19 April 2018, the Constitutional Court of the Respondent State ruled that their arrest and detention was not unconstitutional and that the Cabinet minutes were contrary to the Constitution and that the Public Prosecutor flouted Article 35 of the Constitution[2].

[2] This article provides: "Citizens holding public position or elected to a political office have the duty to perform it with conscience, competence, probity, dedication and loyalty in the interest and respect of the common good.

9. By Judgment No. 258/1FR-18 of 31 July 2018. the Court of First Instance of Cotonou (hereinafter referred to as "CFI abuse of office and corruption and sentenced each of them to five (5) years imprisonment. They state that despite having appealed the judgment, they were arraigned before the Court of Repression of Economic Offences and Terrorism (CRIET).

B. Alleged violations

10. The Applicants allege violation of the following rights:
    i. The right to liberty and security of the person, protected by Article 6 of the Charter;
    ii. The right to have their cause heard, protected by Article 7(1)(a)(b)(c) and (d) of the Charter and Articles 8 and 10 of the Universal Declaration of Human Rights;
    iii. The right not to be convicted for an act or omission which was not a legally punishable offence at the time it was committed, protected by Article 7(2) of the Charter.

III. SUMMARY OF THE PROCEDURE BEFORE THE COURT

11. The Application was received at the Registry on 6 December 2018. The Application was served on the Respondent State on 12 December 2018 for it to file its Response within Sixty (60) days of receipt.

12. Pleadings were filed within the time stipulated by the Court. Pleadings were closed on 15 March 2022 and the Parties were duly notified.

IV. PRAYERS OF THE PARTIES

13. In their Application, the Applicants request the Court to:
    i. Find that they were convicted of offence**s** they never committed;

ii. Find that the Respondent State has violated Articles 6 and 7of the Charter and Articles 8 and 10 of the Universal Declaration of Human Rights (UDHR);

14. In their additional submission, the Applicants request the Court to find that the Respondent state violated:

i. Article 6 of the Charter (the right to liberty and security of the person and the prohibition of arbitrary arrest or detention) insofar as Court of First Instance of Cotonou convicted them despite Decision 18-098 of 19 April 2018 by which the Constitutional Court (Constitutional Court Decision) declared their detention arbitrary;

ii. Article 7(1)(a)(b)(c) and (d) of the Charter, insofar as the Cotonou Court of First Instance convicted them despite the decision of the Constitutional Court finding that the Cabinet had not respected their rights of defence, no complied with the principle of adversarial proceedings and the right of defence;

iii. Articles 8 and 10 of the UDHR, insofar as their appeal was rendered ineffective, or even impossible, by the Respondent State which, despite the said remedy, referred the case to CRIET, thereby infringing the principle of double jurisdiction and the principle of *non bis in idem.*

15. Regarding reparations, the Applicants pray the Court to:

i. Annul their conviction by the judges of the Respondent State and *"any future conviction by CRIET judges appointed and manipulated by the Executive in violation of legislation in force;";*

ii. Order their immediate release under irrevocable and liquidated penalty of Ten Million (10,000,000) CFA francs per day, starting as from the date of the Judgment;

iii. Order the Respondent State to pay all costs, including the fees of Advocate Lionel AGBO.

16. The Applicants further request the Court to order the Respondent State to pay them the following amounts for all prejudice suffered:

i. Five Billion (5,000,000,000) CFA francs to Laurent MÉTOGNON;

ii. Three Billion (3,000,000,000) CFA francs to Célestin AHONON;
iii. Two Billion (2,000,000,000) CFA francs to Edouard ADEGOKE;
iv. Two Billion (2,000,000,000) CFA francs to Saliou Aboudou YOUSSOA.

17. On its part, the Respondent State prays the Court to:

i. Find that in their Application of 5 December 2018, the Applicants seek the annulment of Judgment No. 258/1FD-18 of 31 July 2018;
ii. Find that the procedure relating to the appeal lodged on 2 August 2018 by the Applicants against Judgment No. 258/1FD-18 of 31 July 2018 is pending before Beninese courts;
iii. Find that it was heard for the first time on 15 November 2018, that is, three (3) months and thirteen (13) days after the Applicants lodged appeal;
iv. Find that at that hearing, the case was adjourned to 20 December 2018, owing to the formal opening of the Benin Bar Association legal year, and then to 21 February 2019;
v. Find that the case will again be heard on Thursday, 7 March 2019;
vi. Find that the Application contains clearly disparaging language directed against the Beninese executive and judicial authorities, without providing the slightest proof;

Accordingly,

vii. Hold that regional courts lack jurisdiction to annul domestic laws or court decisions;
viii. Hold that regional courts lack jurisdiction to issue orders to Member States in respect of their domestic laws and procedures;
ix. Rule that the African Court cannot substitute itself for the domestic courts to take measures falling within their prerogatives in a case pending before them;
x. Hold that the African Court cannot grant the Application of 5 December 2018 without interfering in the Beninese internal judicial system, thereby seriously departing from the scope of its jurisdiction;
xi. Therefore, the African Court must declare that it lacks jurisdiction to hear the Application filed by the Applicants;
xii. Hold that filing an Application before the African Court is subject to the exhaustion of local remedies;

xiii. Find that the Applicants have not exhausted local remedies;

xiv. Consequently, and pursuant to Articles 56(5) of the Charter and Rule 40(5) of the Rules of Court, find the Application of 5 December 2018 inadmissible for failure to exhaust local remedies;

xv. Rule that the Applicants shall not, in their Application, use any insulting or disparaging language against the Respondent State and its institutions;

xvi. Therefore, pursuant to Articles 56(3) of the Charter and Rule 40(3) of the Rules of Court, find the Application of 5 December 2018 inadmissible insofar as it contains disparaging and insulting language directed against the Beninese Executive and Judicial authorities;

xvii. Reserve costs.

18. In their Reply to the preliminary objections raised by the Respondent State, the Applicants request the Court to:

i. Find that the Respondent State's objection based on jurisdiction cannot succeed in law;

ii. Find that the Respondent State's objections based on admissibility are unfounded;

Accordingly,

iii. Declare that it has jurisdiction;

iv. Dismiss the Respondent State's objection based on jurisdiction;

v. Dismiss the Respondent State's objection based

vi. Declare the Application of 5 December 2018 admissible;

vii. Join all objections on the merits and order the parties to submit on the merits.

19. In its submission on the merits, the Respondent State prays the Court to:

i. Sustain the Respondent State's preliminary objections in their entirety;

ii. Find that the violations alleged by the Applicants are non-existent;

iii. Find that the Applicants' claims are untimely;

iv. Find and rule that the alleged violations are pure inventions;

v. Find that the Respondent State has not violated any of the Applicants' rights;

vi. Find that the Respondent State has not violated Articles 6 and 7 of the Charter and Articles 8 and 10 of the UDHR;

vii. Find and rule that Judgment No. 258/1FR-18 of 31 July 2018 was rendered in accordance with the laws in force in Benin;

viii. Find that the Applicants have appealed Judgment No. 258/1FR-18 of 31 July 2018;

ix. Find that CRIET is the competent court to hear the Applicants' appeal;

x. Hold that the African Court cannot issue orders to a State to overturn a court decision or an administrative act that is allegedly contrary to the Charter;

xi. Hold that Community Courts lack jurisdiction to issue orders to Member States in respect of their domestic laws and procedures;

xii. Find that the Applicants' requests to annul the judgment and release are untimely and unfounded;

xiii. Hold that the African Court cannot annul the conviction of the Applicants as it is not an appellate court of decisions rendered by domestic courts;

xiv. Dismiss outright the Applicants' requests for annulment of the judgment and for release from detention;

xv. Subsequently, dismiss all their requests, claims and submissions;

xvi. Order the Applicants to pay all costs, including the fees of Cyrille Y. DJIKUI, Elie N. VLANOVOU-KPONOU and Charles BADOU, lawyers, who made the required legal representations;

V. JURISDICTION

20. The Court notes that Article 3 of the Protocol reads as follows

> 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.

21. Under Rule 49 (1) of the Rules of Court,[3] "[t]he Court shall ascertain its jurisdiction and the admissibility … in a and these Rules. "

22. Based on the above-mentioned provisions, the Court must, in each application, ascertain its jurisdiction and rule on objections to its jurisdiction, if any.

23. The Court notes that the Respondent State has raised an objection based on material jurisdiction. The Court will rule on the objection before considering the other aspects of its jurisdiction.

A. Objection based on material jurisdiction

24. The Respondent State contends that the Court lacks material jurisdiction on the ground that it cannot substitute itself for the domestic courts to annul Judgment No. 258/1FD-18 of 31 July 2018, as requested by the Applicants, who were duly convicted at trial, in strict compliance with the procedure and laws.

25. The Respondent State notes that international human rights courts lack jurisdiction to "annul laws or judicial decisions", as confirmed by the Economic Community of West African States Court of Justice in its Judgment No. ECW/CCJ/JUG/04/013 of 22 February 2013 - *Karim M. WADE v. Republic of Senegal*.

26. For their part, the Applicants submit that the objection be overruled, 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 and by other human rights instruments whenever such violations are committed by State Parties to the Protocol.

[3] Rule 39(1) of the Rules of Court of 2 June 2010.

27. The Applicants further contend that, in this context, the Court has double adjudicative jurisdiction when seized, namely, to interpret or apply the provisions of these instruments.

***

28. The Court notes 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."

29. The Court emphasises 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.[4]

30. In the instant case, the Court notes that the Applicant alleges violation of the right to liberty and security of the person and the right to a fair trial, protected, respectively, by Articles 6 and 7 of the Charter ratified by the Respondent State.[5]

31. Furthermore, the Court emphasises, in line with its jurisprudence, that it is not an appellate court of decisions delivered 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. [6]"

32. In view of the foregoing, the Court dismisses the objection based on material jurisdiction and declares that it has the material jurisdiction to hear the Application.

[4] *Sébastien Germain Marie Aïkoué Ajavon v. Republic of Benin*, ACtHPR, Application No. 027/2020, Judgment of 2 December 2021, § 37.
[5] The Respondent State became a party to the Charter on 21 October 1986.
[6] *Ibid.* Footnote *3*, § 46.

B. Other aspects of jurisdiction

33. The Court notes that no objection has been raised to its personal, temporal and territorial jurisdiction.

34. Having found that there was no indication on record that it lacks jurisdiction in these respects, the Court concludes that it has:

    i) Personal jurisdiction, insofar as the Respondent State is a party to the Charter, the Protocol and has deposited the Declaration. The Court recalls, as stated in paragraph 2 of this Ruling, that on 25 March 2020 the Respondent State deposited the instrument of withdrawal of its Declaration. In this respect, the Court reiterates its position that the withdrawal of the Declaration has no retroactive effect and has no bearing on cases filed before the deposition of the instrument of withdrawal or on new cases filed before it comes into effect on 26 March 2021. As the present Application was filed on 6 December 2018, that is, prior to the withdrawal of the Declaration, the said withdrawal has no bearing on it.

    ii) Temporal jurisdiction, insofar as the alleged violations were committed after the entry into force of the above-mentioned instruments in relation to the Respondent State

    iii) Territorial jurisdiction, insofar as the facts of the case and the alleged violations took place in the territory of the Respondent State.

35. Accordingly, the Court considers that it has jurisdiction to hear the instant Application.

VI. ADMISSIBILITY

36. Under Article 6(2) of the Protocol:

> The Court shall rule on the admissibility of cases taking into account the provisions of Article 56 of the Charter.

37. Rule 50 (1) of the Rules[7] provides that:

> The Court shall ascertain the admissibility of an Application filed before it in accordance with Article 56 of the Charter, Article 6 (2) of the Protocol and these Rules.

38. Rule 50(2), which essentially restates Article 56 of the Charter, reads as follows:

> Applications filed before the Court shall comply with all the following conditions:
>
> a) Indicate their authors even if the latter request anonymity,
> b) Are compatible with the Constitutive Act of the African Union and with the Charter,
> c) Are not written in disparaging or insulting language directed against the State concerned and its institutions or the African Union,
> d) Are not based exclusively on news disseminated through the mass media,
> e) Are sent after exhausting local remedies, if any, unless it is obvious that this procedure is unduly prolonged,
> f) Are submitted within a reasonable time from the date local remedies were exhausted or from the date the Commission is seized with the matter, and
> g) Do not deal with cases which have been settled by those States involved in accordance with the principles of the Charter of the United Nations, or the Constitutive Act of the African Union or the provisions of the Charter.

[7] Rule 39 of the Rules of 2 June 2010.

39. The Court notes that the Respondent State has raised two objections on admissibility, first, based on non-exhaustion of local remedies and second, based on the use of insulting or disparaging language directed against the Respondent State and its institutions**.**

A. Objection based on non-exhaustion of local remedies

40. The Respondent State submits that the Applicants have not exhausted local remedies since there are domestic courts that they could have seized. The Respondent State further submits that exhaustion of local remedies implies that all the claims have been heard at all levels of domestic courts.

41. With regard to domestic courts, the Respondent State emphasises that the Applicants could have brought a case not only before the Constitutional Court pursuant to Articles 114[8], 121[9] and 122[10] of the Constitution, but also before ordinary courts, in particular the Judicial Chamber of the Supreme Court, pursuant to Articles 580 and following of Law 2012-15 of 18 March 2013 on the Code of Criminal Procedure.

42. Regarding the exhaustion of complaints, the Respondent State notes that, the Applicants did not raise before the Beninese courts the complaints brought before this Court, namely, the alleged violations of Articles 6 and 7 of the Charter and Articles 8 and 10 of the UDHR.

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[8] This article provides: "The Constitutional Court is the highest court of the State in constitutional matters. It shall be the judge of the constitutionality of laws and it shall guarantee the fundamental human rights and the public liberties. It shall regulate the functioning of institutions and the activity of public authorities."

[9] This article provides: "The Constitutional Court, at the request of the President of the Republic, of the President of the National Assembly, of one third of the members of the National Assembly, shall rule on the constitutionality of laws prior to their promulgation.regulatory text deemed to infringe on the fundamental human rights and on the public liberties. It shall decide more generally on the violations of the rights of the individual and its decision must be reached within a period of eight days."

[10] This article provides: "Any citizen may petition the Constitutional Court on the constitutionality of laws, either directly or by means of a procedure objecting to the unconstitutionality of a matter which concerns him before a court of law. The said court must stay proceedings until the decision of the Constitutional Court, which must be issued within a period of thirty days."

43. Regarding the exhaustion of local remedies, the Respondent State states that this presupposes that *"all possible levels of appeal have been exhausted or a final judgment has been delivered."* It submits, in this regard, that the criminal procedure brought against the Applicants is pending[11] before CRIET sitting as an appellate court, pursuant to Article 20 of Law 2018-13 of 2 July 2018[12]and was first heard on 15 November 2018, and subsequently adjourned to 20 December 2018, 21 February 2019 and 7 March 2019.

44. The Applicants pray the Court to dismiss the objection based on admissibility, arguing that they have exhausted some remedies, while others proved to be ineffective. They state, in fact, that they brought the matter before the Constitutional Court, which, by Decision DCC No. 18-098 of 19 April 2018, ruled that their detention was arbitrary, so that by keeping them in pre-trial detention beyond the period provided for by law, the Public Prosecutor flouted Article 35 of the Constitution[13] of 11 December 1991.

45. The Applicants further submit that on 2 August 2018, 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.

[11] At the time the instant case was brought before the African Court.

[12] Article 20 of Law 2018 - 13 of 2 July 2018 amending and supplementing Law 2001 - 37 of 27 August 2002, as amended, on the organisation of the judiciary in the Republic of Benin and the establishment of the Court for the Repression of Economic Offences and Terrorism provides: "As soon as the Court for the Repression of Economic Offences and Terrorism is set up, the proceedings falling within the area assigned to its jurisdiction, the investigation and inquiry of which would be in progress, are, at the request of the representatives of the competent public prosecutor's office, transferred to the special prosecutor of the Court for continuation, as the case may be, of the investigation by the special prosecutor's office, of the inquiry by the Investigation Commission, of the settlement of the litigation of liberties and detention by the Chamber of Liberties and Detention of the judgment by the Court."

[13] Article 35 of the Constitution states: "*Citizens holding with a public position or elected to political office have the obligation to discharge their duties with conscience, competence, probity, dedication and loyalty in the interest and respect of the common good*".

46. They further point out that, in line with the Court's consistent jurisprudence, the Application remains admissible even if all remedies have not been exhausted. In their view, this is the case when local remedies are inapplicable or ineffective, that is, when they do not offer any prospect of success, or if they are unavailable or if they are discretionary. In this respect, they refer to the Commission's Recommendation in Communication 71/92, *Rencontre africaine pour la défense des droits de l'homme v. Zambia*, and *Rights International v. Nigeria*.

47. The Applicants point out that the Respondent State's Constitutional Court issued a similar ruling, by affirming in its Decision DCC-19-055 of 31 January 2019 that *"Article 12[14] of the law referred to (law on CRIET) is contrary to the Constitution"* insofar as *" it creates an appellate proce of a dismissal in favour of a person prosecuted (and) breaches the equality of arms which is an essential component of the equality of all before the law, protected by Article 3 of the Charter (…). "*

48. Finally, the Applicants submit that contrary to the affirmations of the Respondent State, CRIET is not an appellate court and that, in any case, local remedies are ineffective and unavailable, since the judiciary, being totally controlled by the Executive, has taken the decision to have the Applicants retried by CRIET.

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49. The Court notes that in accordance with Article 56(5) of the Charter and Rule 50(2) of the Rules of Court, 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.

[14] This article provides: "*The decisions of the investigating committee are not subject to ordinary appeal. However, the decision dismissing the case may be appealed to the Court of Repression of Economic Offences and Terrorism by the special prosecutor or the civil party*."

50. The Court emphasises that the local remedies to be exhausted are those of a judicial nature, which must be available, that is, they can be used without hindrance by the Applicant, be effective and satisfactory in the sense that they are "capable of satisfying the complainant or of remedying the situation in dispute"[15].

51. The Court also notes that exhaustion of local remedies implies not only that the Applicant utilises local remedies, but also that the Applicant awaits the outcome thereof.[16] In the same vein, the Court notes that in order to determine if the requirement to exhaust local remedies has been met, it is necessary that the domestic proceedings to which the Applicant was a party should have been completed by the time the Application was filed before the Court, unless the proceedings are unduly prolonged.[17]

52. The Court also emphasises that the requirement to exhaust local remedies is assessed, in principle, as at the date of filing the Application before it[18].

53. The Court recalls that to justify bringing this Application before the Court while the criminal proceedings brought against them were still pending, the Applicants argue, on the one hand, that CRIET, before which the appeal was brought, is not an appellate court and that the law establishing it contains clauses that render local remedies non-existent, ineffective or illegal. On the other hand, the state that they seized the Constitutional Court which issued Decision No. DCC 18-098 of 19 April 2018.

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[15] *Beneficiaries of Late Norbert Zongo, Abdoulaye Nikiema dit Ablassé, Ernest Zongo, Blaise Ibouldo and Mouvement Burkinabè des droits de l'homme et des peuples vs Burkina Faso*, Judgment (Merits) (5 December 2014), 1 AfCLR 219. § 68; Ibid. *Konaté v. Burkina Faso* (Merits), § 108; *Sébastien Germain Marie Ajavon v. Republic of Benin, AfCHPR*, Application 027/2020, § 73.

[16] *Sébastien Germain Marie Ajavon v. Republic of Benin,* ACtHPR, Application 027/2020, § 74; *Yacouba Traoré v. Republic of Mali*, ACtHP, Application No. 010/2018, Judgment of 25 September 2020, § 41.

[17] *Komi Koutché v. Republic of Benin,* ACtHPR, Application No. 020/2019, Judgment of 25 June 2021, § 61; *Sébastien Germain Marie Aïkoué Ajavon v. Republic of Benin, ACtHPR*, Application 027/2020, § 74.

[18] *Yacouba Traoré v. Republic of Mali*, ACtHPR, Application No. 010/2018, Judgment of 25 September 2020, § 41.

54. The Court notes that in this system, Respondent State has the existing remedies, a criminal case ends with the judgment of the Judicial Chamber of the Supreme Court.

55. The Court notes that in the present 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, they 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, in addition to damages. The Applicants appealed this judgment on 2 August 2018. The appeal case was heard for the first time on 15 November 2018 and then adjourned to 20 December 2018.

56. The Court observes that the Applicants therefore brought their case before this Court between two adjournments of their case, that is, after a first adjournment of their case on appeal and, with full knowledge that it would be heard again fourteen (14) days later, that is, on 20 December 2018.

57. The Court considers that in such a case, the Applicants should have waited until 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[19]. 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 before it was instituted and eleven (11) months and twenty-four (24) days after the first instance decision. The Court considers that the appeal proceedings were not unduly prolonged, given the complexity of the case,

[19] *Sébastien Germain Marie Aïkoué Ajavon v. Republic of Benin, ACtHPR, Application 027/2020*, § 82.

which in this case can be inferred from the nature of the offences being prosecuted[20] and the number of persons involved.[21]

58. The Court further observes that even after the appeal decision, the Applicants could, if necessary, file a cassation appeal before the Judicial Chamber of the Respondent Supreme Court, pursuant to Article 19 of the law on CRIET[22], 577 of the Code of Criminal Procedure[23] and Article 55 of Law No. 2004-20 of 17 August 2007 on the rules of procedure applicable before the judicial chambers of the Supreme Court[24].

59. 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 a matter of the merits insofar as it could determine the answer to the alleged violation of the right to a second hearing[25].

60. The Court emphasises that, in any event, if the Applicants consider that their rights were violated as a result of judgment No. 258/1FD-18 rendered on 31 July 2018 by the Cotonou Court of First Instance and during the appeal proceedings, there was a remedy available to them before the Respondent State Constitutional Court to raise the complaints they have brought before this Court.

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[20] The Applicants were prosecuted for the offences of corruption and abuse of power.
[21] Twelve (12) people were prosecuted.
[22] This article states: "The procedure applicable before the Court for the Repression of Economic Offences is that provided for by the Code of Criminal Procedure in both criminal and penal matters before the criminal courts.
The judgments of the Court for the Repression of Economic Offences and Terrorism shall be reasoned. They are pronounced in open court. They may be appealed by the convicted person, the Public Prosecutor and the civil parties.
[23] This Article provides: "*Except in disciplinary or extradition matters, the judgments of the Indictment Division and the final decisions of the trial courts may be set aside on appeal to the Cassation Court by the Public Prosecutor's Office or the party against whom the complaint is made* (...)".
[24] This provision states: "*The appeal (in criminal matters) is open to the public prosecutor, the convicted person, the civil party and the civilly liable person*."
[25] § 11.iii of this Judgment.

61. It follows from Articles 114, 119 and 122 of the Constitution that the constitutional court "guarantees the fundamental rights of the human person" and may, in this sense, be seized by any person “with a complaint of violation of human rights and public freedoms”.

62. In this respect, the Court considers that the allegations of the Applicants that were the subject of the Constitutional Court’ Decision DCC 18-098 of 19 April 1998 are not the same as those raised before this Court.

63. The Court states that this remedy is available and effective, insofar as Beninese citizens can exercise it without hindrance and that the decisions of the Constitutional Court “are binding on the public authorities and on all civil, military and judicial authorities”[26]

64. The Court considers, in this respect, that the violations alleged by the Applicants in the remedy before the Constitutional Court, which gave rise to decision DCC-18-098 of 19 April 1998, are not the same as those alleged before this Court.

65. In view of the foregoing, the Court considers that the Applicants have not exhausted local remedies and have therefore filed their Application prematurely.

B. Objection based on the use of insulting language

66. Having concluded that the instant Application does not meet the requirements of Article 56(5) of the Charter and Rule 50(2)(e) of the Rules, and in view of the cumulative nature of the admissibility requirements[27], the Court considers it

[26] Article 124 *in fine* of the Constitution of the Respondent State.
[27] *Mariam Kouma and Ousmane Diabaté v. Republic of Mali* (Jurisdiction and admissibility) (21 March 2018) 2 AfCLR 247, § 63; *Rutabingwa Chrysanthe v. Republic of Rwanda* (Jurisdiction and admissibility) (11 May 2018) 2 AfCLR 361, § 48; *Collectif des anciens travailleurs ALS v. Republic of Mali*, ACtHPR, Application No. 042/2015**,** (Jurisdiction and admissibility) (28 March 2019), 3 AfCLR 73 § 39**.**

superfluous to rule on the objection based on admissibility in relation to the use of offensive or insulting language.

67. Consequently, the Court finds that the Application is inadmissible.

VII. COSTS

68. Both parties prayed the Court to order the other party to pay costs.

* * *

69. According to Article 32(2) of the Rules of Court, "unless the Court, each party shall bear its own

70. The Court notes that in the instant case there is no reason to depart from the requirement of this provision. Accordingly, the Court decides that each party shall bear its own costs.

VIII. OPERATIVE PART

71. For these reasons,

THE COURT

Unanimously

Jurisdiction

i. Dismisses the objection based on material jurisdiction**;**
ii. *Declares* that it has jurisdiction.