

African Court of Human and Peoples' Rights
Case of Rajabu Yusuph vs United Republic of Tanzania.

Application No. 036/2017

Judgment of March 25, 2022,



STATEMENT

1. I do not share the conclusions reached by the Court in its judgment referred to above and the provided grounds as to the inadmissibility of the application on the basis of its filing within an unreasonable time.
2. I wished to write this statement because I am convinced that the Court had to declare the application admissible on the basis of the same elements on which it relied to declare it inadmissible.
3. **In fact**, in its judgment in the case of "rightful claimants of the late Norbertzongo and others" v. Burkina Faso rendered on 21/06/2013 ruling on the preliminary objections and with regard to the reasonable time for its referral, the Court expressly declared that "the reasonableness of the time limit for its referral depends on the particular circumstances of each case and must be assessed on a case-by-case basis".
4. In its judgment on the merits of 24/06/2014 the Court also considered and with regard to prior local remedies that "the assessment of the normal or abnormal nature of the procedure duration relating to local remedies must be carried out at "case by case" according to the specific circumstances of each case".
5. **This principle of "case by case"** with regard to the reasonable time, the Court has applied it in many cases and to name but a few:

- The Sadik Marwakisase v. United Republic of Tanzania judgment of December 2, 2021 when the Court declared the exception raised by the defendant state, as to the reasonable delay, dismissed for the simple reason that the applicant was detained, had no representative before national courts or before this Court (paragraphs 51 and 52) and therefore considered the period of 16 months reasonable.
 - The Christopher Jonas judgment against the United Republic of Tanzania of 28/09/2017 and Amiri Ramadhani against the same State, where the Court considered that the applicants being imprisoned, restricted in their movements, laymen in law, indigent, having no access to information, nor benefiting from the assistance of a lawyer during the trial, illiterate and not having knowledge of the existence of the Court made the delay of 5 years and one month reasonable.
 - And finally in its judgment 013/2016, Stephen John Rutakikirwa v. United Republic of Tanzania of 24/03/2022 rendered on the same day when the Court reiterated this principle in its paragraph 45 and in its paragraph 48 when it declared the application filed within a reasonable period of 4 years and 4 months because the applicant is imprisoned and restricted in his movements with limited access to information and has not benefited from legal aid!
6. **In the judgment which is the subject of the statement**, the facts show that the Court reiterated in its paragraphs 70 the fact that the applicant, imprisoned since 2005, was a minor then aged 17 and that he was convicted to life imprisonment on November 1st of the same year ! and then see his conviction confirmed by the High court in 2007 then in 2009 by the Court of appeal! ...
7. It is obvious from the same facts, taken up by the Court in its grounds, that the applicant, although a minor, did not benefit from legal aid before the national courts and I would add before this Court as well!

8. In my opinion, the case-by-case principle in the present case was absolutely to be applied because the essential element which holds the attention is the age of the applicant at the time of the facts of his arrest and his conviction first and then the fact that he did not benefit from legal aid for such serious acts and such a heavy punishment!
9. Moreover, it appears from the rolls of the Court, that the first case enrolled before it, on June 13, 2017 by a prisoner of the same penitentiary establishment where the applicant is imprisoned and this since the creation of the Court, was 4 months and 26 days before that filed by the applicant.
10. What seems to me to be irrefutable proof that the applicant was not really aware of the existence of the Court, especially since respondent state made its statement on 29/03/2010, i.e. 7 months after the decision rendered by the Court of Appeal on 28/10/2009 and that therefore it would have taken time for the applicant to be aware of the existence of the Court and the terms of its referral!
11. And that it also remains undeniable that, for a minor prisoner who, until the decision of the national courts was pronounced, was defenseless, a period of 7 years could not and in no case be considered unreasonable because the primordial and crucial element on which the Court had to apply the principle of the case by case was this new element concerning the age of the applicant!
12. As for the grounds of the Court in paragraphs 70 and 71 of the judgment, that at the time of the filing of the application the applicant was 29 years old! It has been set aside the fact that this applicant reached that age in prison in the life sentence cell and all that time without a lawyer!
13. Which makes me say that expecting this applicant to provide evidence that the elements on which the Court relied in its previous judgments in application of the "case by case" principle are met, remains unthinkable! "Demonstrating that his personal situation prevented him from submitting the application in a timelier manner" as stated in paragraph 72 of the judgment suggests that the applicant

has been free to move and not depending on prison rules since the age of 17 and that he is assisted by a lawyer for the trial purpose!


14. With this very significant detail, because of case law reversal is that in the cited above Marwa case against the same defendant (paragraph 52) the Court indeed stated that “.... The applicant was imprisoned, did not benefit from legal assistance during the proceedings before the domestic courts and is defending himself before the present Court. **More specifically, the facts of the case occurred between 2007 and 2013, that is to say during the first years of the Court's activities at a time when the general public and a fortiori people in the situation of the applicant in the present case could not necessarily be expected to have sufficient knowledge of the requirements governing the proceedings before this Court, finally the Respondent State filed its statement in 2010. In these circumstances, the Court considers that the time which elapsed before the applicant lodged his application must be considered reasonable**”.

15. Applied, this conclusion in the Marwa judgment, to the judgment object of the statement would have been fair and logical and would have led to the admissibility of the application because responding to the same facts and elements with this essential detail the age of the applicant at the time of the facts of his indictment and incarceration!

16. **I will therefore conclude** that for a minor imprisoned at the age of 17, reaching 29 years in prison is not and cannot be a sound ground to declare the application filed within an unreasonable time, especially if in the judgment the years of existence of the Court have been highlighted , so in the present issue the Court had to consider in the same way because the key element remains the minority of the applicant and the non-assistance of a lawyer first and then that it is the same respondent State that is involved and therefore the same date of the statement and a fortiori the same period announced by the Court to prove his knowledge or not of the existence of the Court! paragraph 69)

17. **As regards legal certainty** referred to in paragraph 71, I do not think that applying it at the expense of human rights is in itself a certainty! In the present case, it is not about acquired rights nor about stability of situations that have generated rights but of a minor judged in the non respect of the elementary rules concerning the juvenile delinquency!

18. **I will conclude** by saying that the Court in its grounds completely set aside the element of the lack of legal assistance both before the national courts and this Court, which seems to me to be a lack of grounds because a minor detained at the age of 17 convicted to life imprisonment without the assistance of a lawyer, can only be an element in his favor to explain the relatively long delay in filing the application.


Judge Bensaoula Chafika
Judge at Court

