

HOUNGUE ERIC NOUDEHOUEOU

V

REPUBLIC OF BENIN

APPLICATION NO. 028/2020

JUDGMENT OF 1 DECEMBER 2022

(MERITS AND REPARATIONS)

Dissenting opinion: **Adjei**

1. I agree with almost every part of the judgment except the request by the Applicant for lump sum interest for the enforcement of decisions, in which the majority found violation and awarded reparation. The violations alleged by the Applicant against the State includes articles 27 and 30 of the Protocol which I find to be procedural protocol and does not provide for violation of human and peoples' rights but rather a vehicle within which to enforce human rights provided in human rights instruments including the African Charter on Human and Peoples' Rights, and the International Covenant on Civil and Political Rights (ICCPR) whose violations require the Court to make appropriate orders.
2. I note that the Protocol provides for procedural rules to regulate the Court, and non-compliance with any of its provisions does not amount to a violation of human or peoples' rights but rather a non-compliance with procedural rules, which attracts sanctions of different forms but cannot be construed as a violation of human rights provisions, which attracts appropriate orders to remedy same, including payment of reparation.

3. Article 27 of the Protocol requires the Court to make appropriate orders to remedy a violation of a human or people's rights whenever it finds same. Article 30 of the Protocol enjoins State Parties to comply with the judgment given against them by the Court within the time specified by the Court and to guarantee its execution.
4. The Applicant contends that the Court granted him decisions in his favour in the Application No. 003/2020 Houngue Eric Noudehouenou v. Benin, including two rulings for provisional measures and one judgment on merits and reparations, on 5 May 2020, on 25 September 2020 and on 4 December 2020, respectively. The Court notes that the decisions were delivered against the Respondent State and which was ordered to comply with the orders made therein within the time specified in the decisions, but the Respondent has refused to comply with the decisions despite its obligation under Article 30 of the Protocol to comply with the decisions delivered against him by the Court.
5. It is clear from the pleadings that the Respondent State has refused to comply with its obligations under the Protocol, and the majority is of the opinion that the failure of the Respondent State to comply with the decisions amount to a violation of a human or peoples' rights, and reparation is an appropriate remedy to grant to compensate the Applicant.
6. Article 27 (1) of the Protocol which the Respondent has been found by the majority to have violated states:

If the Court finds that there has been violation of a human or peoples' rights, it shall make appropriate orders to remedy the violation, including the payment of fair compensation or reparation.

7. I am of the considered opinion that the Court decides on human or peoples' rights and gives judgment to remedy a violation where the Court so finds against a State. Whenever the Court finds a violation, it is required to make appropriate orders to remedy same, including the payment of fair compensation or reparation. There is no jurisprudence to support the proposition that a State which fails to comply with a judgment delivered against it shall be deemed to have violated the human rights of the applicant in whose favour the judgment was delivered.

8. I note that Article 30 of the Protocol which the Respondent State is alleged to have violated states:

The States parties to the present Protocol undertake to comply with the judgment in any case to which they are parties within the time stipulated by the Court and to guarantee its execution.

9. The Court determines or finds human or people's rights violations and delivers judgment; immediately after judgment is rendered, the Court is mandated to notify the Council of Ministers of the judgment, and the latter is required to monitor its execution on behalf of the Assembly. The trite position of law is that where a law prescribes a particular procedure, it is that procedure alone which shall be used. The procedure prescribed by Protocol is to request the Council of Ministers monitor the execution, and there is no provision to the contrary that it shall amount to a violation of human or people's rights, which entitles the Court to award reparations against the State for failing to comply with the judgment.

10. Rule 80 of the Rules of Court reiterates the provision in Article 30 of the Protocol, and it requires State Parties to the Protocol to fully comply with the decisions rendered by the Court and guarantee their execution within the time specified by

the Court. Furthermore, Rule 81 of the Rules of the Court provides the procedure to monitor compliance with the decisions of the Court and does not give such power to the Court to enforce its own judgments by treating the compliance of its decisions as human rights violations.

11. I note that execution of the Court's decision is the sole prerogative of the Council of Ministers, and the Court cannot usurp the powers conferred on them where decisions rendered by the Court are not being complied with by the State concerned. Where a State Party fails to comply with a decision of the Court, the only duty imposed on the Court is to report the non-compliance to the Assembly.¹

12. I state unambiguously that the Protocol, which is procedural law, does not create human rights provisions whose violations attract sanctions, including the award of fair compensation or reparations. The non-compliance with any provisions of the Protocol, from articles 1 to 35, cannot be said to amount to a violation of human rights provisions, as they are meant to regulate the hearings of the Court, and I am of the considered opinion that the Respondent State's refusal to comply with the decisions of the Court is not a violation of human rights or people's rights but a non-compliance with a procedural protocol.

13. I note that Articles 1-35 deal principally with the establishment of the Court, relationship between the Court and the Commission, jurisdiction of the Court, request opinions by the Court at the request of African Union or any of its organs, access to the Court, admissibility of cases instituted before the Court, sources of law for the Court, consideration of cases filed before the Court and the requirement

¹ Article 31 of the Protocol and Rule 81(4) of the Rules.

for detailed rules to govern the practice of the Court, amicable settlement, hearings before the Court and representations, composition of the Court, nominations of judges for the Court, list of candidates to be presented by member States to be considered as judges, elections of judges, term of office of judges, oath of office by judges, independence of the judges, incompatibility of the work judges do elsewhere, cessation of office of judges, vacancies occurring as a result of death or resignation of judges, presidency of the Court, exclusion of a judge in a matter involving his or her State, quorum for the Court, Registry of the Court, seal of the Court, evidence by the Court, findings by the Court that a violation has been made, judgment of the Court, notification of judgment, execution of judgment, the Court to submit report to the Assembly, budget of the Court, Rules of practice to be determined by the Court, ratification or accession of the Charter, and amendments to the Protocol. I hold that none of the provisions in the Protocol by itself constitutes a human right and whose non - compliance would amount to human rights violations.

14. An example is where the Court fails to submit a report to each regular session of the Assembly as required by Article 31 of the Protocol or fails to notify the appropriate bodies of a judgment it has delivered. This would amount to non-compliance with the Protocol and not a violation of human or people's rights.

15. I find that the Respondent State has not violated Article 30 of the Protocol within the context of human or people's rights, and the Applicant is not entitled to the payment of the sum of one billion (1,000,000,000) CFA francs as flat-rate monthly interest until it complies with the present decision. Furthermore, the Applicant is

not entitled to a lump -sum interest of Five Hundred Million (500,000,000) CFA francs per month until full compliance of the judgment rendered in favour of the Applicant against the Respondent State. I accordingly dismiss relief (§ 167) of the Applicant's prayer as without merits. Subject to the above, I am in agreement with all the findings made on merits by the Court.

Judge Dennis D. ADJEI

