

African Court on Human and Peoples' Rights

Judgment of 1st December 2022

Houngue Éric Noudéhouenou

v.

Republic of Benin

Application No. 028/2020

Dissenting Opinion

I concur with the decisions arrived at by the Court in its operative part in regard to the different violations it deemed founded. Conversely, I disagree with the opinion of the majority regarding the dismissal of the Applicant's prayer for the payment of five hundred million CFA francs as lump sum interest for failure to implement the Court's Rulings rendered on 5 May and 25 September 2020 and the Judgment of 4 December 2020 in his favour.

In paragraphs 168 and 169 of its judgment, the Court responded clearly to this prayer by stating as follows: « The Court notes that the Applicant requests it to impose on the Respondent State the payment of monthly lump sums of one billion (1000 000 000) CFA francs and five hundred million (500 000 000) CFA francs respectively. Such requests are tantamount to coercive measures compelling the Respondent State to enforce decisions, which would make it an enforcement judge of its own decisions, contrary to Articles 29(2) and 30 – of the Protocol – on the requirements on the enforcing of the Court's decisions » and « The Court notes that pursuant to the last provision, the Respondent State has to comply with the decisions of the Court without necessarily resolving to any other measures. »

In my opinion, this argument is inconsistent with Article 27 of the Protocol, the jurisprudence of the Court and Rules 80 and 81 of the Rules of Court.

1) Article 27 of the Protocol

This article clearly provides that « If the Court finds that there has been violation of a human or peoples' right, it shall make appropriate orders to remedy the violation, including the payment of fair compensation or reparation ».

It emerges clearly from paragraphs 99 and 100 of the judgment that the Court has no doubt as to the failure of the Respondent State to implement the decisions rendered in favor of the Applicant prior to the application which is the subject of this opinion. It did not receive any report from the state in question on the implementation of these decisions. The latter does not contend the fact that it has not implemented the decisions and on the contrary, the Court finds that the Respondent State violated Article 30 of the Protocol.

Based on the foregoing, having found the violation of Article 30, the Court, pursuant to Article 27 herein above had to order the Respondent State to pay fair compensation or reparations.

By failing to do so, the Court failed to apply the above-mentioned article on the one hand and on the other, because without doubt, it involved the responsibility of the Respondent State!

2) Its jurisprudence

As regards the lump sum interest requested by the Applicant for failure to to enforce the rulings rendered in his favour on 5 May and 25 September 2020 as well as the judgment of 4 December 2020 considered by the Court as « coercive measures to compel the Respondent State to enforce decisions, which would make it an enforcement judge of its own decisions and that this is contrary to Articles 29(2) et 30 of the Protocol on the requirements for enforcing the Court's decisions », It should be recalled that in many of the operative parts of its judgments and just to name a few, - *Ibrahim ben Mohamed ben Ibrahim Belghit v. The Republic of Tunisia* Application 017/2021, *Kouassi Kouamé Patrice and Baba Sylla v. The Republic of Côte d' Ivoire* Application 015/2021, *Joseph John v. The United Republic of Tanzania* - Application 005/2018, *Sébastien Germain N. Ajavon v. The Republic of Benin* - Application 013/2017. The Court explicitly ordered the Respondent State to implement some of its decisions failing which it would pay lump sum interests, though the Applicants did not make any prayers in this regard and this was long before making the finding of failure to enforce the decisions!

Doing so in the present application therefore would have been just a matter of consistency with its jurisprudence, especially with this very important detail that the Applicant made a clear prayer after finding that decisions rendered in his favour had

not been implemented and holding the Respondent State liable to enforce these final decisions would have been subject to lump sum interest. This would have only been a proper application of Article 27 of the Protocol !

3) Considering the Court as an enforcement judge of its own decisions, contrary to Articles 29(2) and 30 of the Protocol

It should be noted that the new Rules of Court enshrined and enhanced the jurisdiction of the Court on the enforcement of its decisions and chapter 6 of the Rules is a legal base and accordingly, the basis for cases on the enforcement of its decisions.

The title of this chapter « Enforcement of the decisions of the Court » followed by its Rules 80 and Rule 81 provide for and confirm the jurisdiction of the Court over control of the enforcement of its decisions.

Though Rule 80 provides that « State parties shall fully comply with the decisions of the Court and guarantee their execution within the time limits set by the Court » Rule 81 also provides that « State parties concerned shall submit reports on compliance with the decisions of the Court and these reports shall, unless otherwise stated by the Court, be transmitted to the Applicants for their observation. ».

Furthermore, in case of any dispute relating to the implementation of its decisions, the Court may organise a hearing to assess the level of implementation. At the end of the hearing the Court shall decide and if necessary, issue a ruling to guarantee the enforcement of its decisions, pursuant to Article 31 of the Protocol. In case of non-compliance with its decisions by a State party, the Court shall submit a report to the Assembly of Heads of State and Government of the African Union.

In terms of the combined provisions of the Protocol on the implementation of the judgments of the Court, The Executive Council (Ministers of foreign Affairs) of the African Union is charged with ensuring the enforcement of these judgments. In its daily practice, it is required to inquire about the execution of the judgments of the Court contained in its annual report and to decide whether or not to discuss with the States concerned. In its 2017 report, it is stated that the Executive Council ensures compliance as follows:

« [...] The Executive Council expresses satisfaction with measures taken by Burkina Faso and Tanzania to comply with the judgments of the Court [...] and calls on both

States to continue in their efforts to implement the decisions of the Court and to report on the same¹ ».

On a closer look, it is not a dispute over the enforcement of the Court's judgments but rather a political stop gap measure of a diplomatic nature which falls within the monitoring mechanism of the commitments of states towards the African Union. Respect for judgments of the Court is part of the commitment of states, it is appropriate for the Executive Council to ensure enforcement through diplomacy: A measure of satisfaction or through a diplomatic call to order. The report to the Executive Council of the African Union is therefore a further means of calling on State parties to fulfil their international obligations comprising the enforcement of the decisions of the African Court. Decisions rendered by the African Court fall within the framework of decisions of the African Union and are subject to monitoring through reports submitted to the Executive Council.

With the entry into force of the Rules of Court, there has been a remarkable change in the implementation of the decisions of the African Court. There is no further debate on the jurisdiction of the African Court on the enforcement of its decisions. The dispute over the implementation of the decisions of the African Court stemmed from the jurisdiction of the African Court in the new Rules of Court. Compliance hearings are purely judicial and the call from the executive Council is quite different from the terms of an executive Ruling or non enforcement from a compliance hearing.

The political control by the Executive Council does not replace the Court's judicial control over its decisions.

To conclude, the African Court on Human and Peoples' Rights, is the presiding judge on cases and enforcement judge of its decisions and cannot decide *infra petita* when it is requested to decide on the non-enforcement of its decisions. The jurisdiction of the Court on the enforcement of its decisions is clearly enshrined and affirmed. It is the main jurisdiction which has as a complementary and support jurisdiction, that of the Executive Council of the African Union. The accessory jurisdiction comes after the main jurisdiction. ».


Judge Bensaoula Chafika



¹ Executive Council of the African Union, *Decisions*, 31st Ordinary session, 27 June - 1st July 2017.