

STATEMENT BY JUDGE RAFAA BEN ACHOUR

ORDER ON PROVISIONAL MEASURES

THE MATTER OF

HOUNGUE ÉRIC NOUDEHOUEYOU V. REPUBLIC OF BENIN

APPLICATION NO. 004/2020

1. Pursuant to Rule 70(3) of the Rules of Procedure of the Court, I hereby declare that I do not agree with the decisions of the majority of the Court dismissing the Applicant's first two requests for provisional measures, namely,

- (i) Request for the removal of impediments to medical and protective care, and
- (ii) Request for the unfreezing of bank accounts and removal of impediments to the Applicant's presence at the hearing scheduled for December 2021.

2. I hereby declare that I fully share the dissenting opinion of the Honourable Justice Ben Kioko in respect of the above order. I agree with the arguments he develops and express the same reservation with regard to the findings of the Court on the dismissal of the two requests mentioned above.

I. Dismissal of the request to remove impediments to medical care and protection

3. As a ground for its refusal to order the removal of impediments to medical care, the Court finds that the Applicant has not provided the Court with any evidence of his poor health other than mere assertions:

The Court notes that the Applicant alleges that he is currently suffering from serious health problems requiring urgent treatment and that he is under the care of a personal physician. However, the Applicant has not provided the Court with any evidence of his poor health other than mere

assertions. He therefore has not sufficiently demonstrated the urgency and irreparable harm he faces, as required by Article 27 of the Protocol.

4. In fact, the Court discounted the personal situation of the Applicant, his detailed submissions and the reasons given by him for his inability to submit medical reports. The Court also failed to take into account previous orders of the Court in the same case.
5. In his dissenting opinion, which I join, Judge Ben Kioko, sufficiently developed the arguments advanced by the Applicant and which the Court should have upheld to order the requested measure based on the personal situation of the Applicant¹, his poor health² and the fact that it was materially impossible for him to produce the medical reports³.
6. It emerges from the voluminous records that the Applicant not only provided a detailed account of his personal situation, but also a precise description of his current state of health as well as the reasons for his inability to provide copies of medical reports.

II. Dismissal of the request for the unfreezing of bank accounts and the removal of impediments to appearing at the hearing of 2 December 2021 before the Cotonou Tribunal

7. Ruling on the request for the unfreezing of bank accounts and the removal of impediments to the presence of the Applicant before the Cotonou Tribunal, the Court recalls that it had issued an order on May 2020 in relation to the same Application No. 004/2020, ordering the stay of execution of the judgment of July 25, 2019 of the Court of Repression of Economic Offences and Terrorism (CRIET), which had, inter alia, frozen the Applicant's bank accounts. To this effect, the Court observes:

The Court observes that the CRIET Judgment issued an order to freeze the Applicant's bank accounts. It further notes that the Applicant

¹ See in particular: § 12 and 13 of the Opinion of Judge Kioko.

² See in particular: § 16, 18, 19 and 20 of the Opinion of Judge Kioko.

³ See in particular: § 24, 25, 26, 27 of the Opinion of Judge Kioko.

did not provide evidence that his bank account was blocked in execution of the CRIET judgment.

Regarding the obstacles to his presence in court as a result of the CRIET judgment, the Court notes that since the stay of execution of the 10-year sentence ordered by the Ruling of 6 May 2020 remains effective, the Court considers that there is no need to issue the same order again

Accordingly, the Court dismisses this request.

8. The above ground for dismissing the request is surprising, since the Court explicitly admits that "the CRIET's judgment issued an order to freeze the Applicant's bank accounts", only to make a U-turn one sentence later, and state that " the Applicant did not provide evidence that his bank account was frozen in execution of the CRIET judgment." (!)
9. The fact of the matter, though, is that the Applicant provided the Court with all the necessary evidence to convince it of the hard times he was going through due to the lack of resources. The Court decided otherwise even though urgency and irreparable harm were amply proven.



Done in French on November 22, 2021

A handwritten signature in blue ink, appearing to read "Rafaâ Ben Achour", is written over a light yellow rectangular background.

Judge Rafaâ Ben Achour