

## SUMMARY OF THE JUDGMENT

### HOUNGUE ERIC NOUDEHOUEYOU V. REPUBLIC OF BENIN

#### APPLICATION NO. 004/2020

#### RULING ON JURISDICTION AND ADMISSIBILITY

#### A DECISION OF THE AFRICAN COURT ON HUMAN AND PEOPLES' RIGHTS

**Arusha, 22 September 2022:** The African Court on Human and Peoples' Rights ("the Court") issued a Ruling in the Matter of Application No. 004/2020 - *Houngue Eric Noudehouenou v. Republic of Benin*.

On 21 January 2020, Mr Houngue Eric Noudehouenou (hereinafter "the Applicant"), a Beninese national, filed an Application with the African Court on Human and Peoples' Rights ("the Court") against the Republic of Benin ("the Respondent State").

The Applicant averred in the Application that on 20 February 2018, he was arrested without a warrant by unidentified individuals and taken to a police station where he was informed of the reason for his arrest, in particular, misappropriation of public funds through over-invoicing by personally clearing two cheques issued by *Conseil national des chargeurs du Bénin* (CNCB), on behalf of the Fisc Consult Sarl company.

He averred that on 26 February 2018, he was brought before the public prosecutor, who requested the opening of a judicial investigation before an investigative judge of the Trial Court of Cotonou. The latter charged him with abetment of misappropriation of public funds and placed him under a detention order on 27 February 2018 at the Cotonou civil prison. Pursuant to the law establishing the Court for the Repression of Economic and Terrorist Offences (CRIET), the case was subsequently referred to the investigating committee of the said court in view of the charges brought against him. It emerged from the records that the Applicant escaped from custody on 31 October 2018.

The Applicant contended that the charges brought against him are totally fictional and that during the preliminary investigation, he explained that he did not submit any invoices in his personal name to the CNCB. He emphasised that all the invoices submitted by Fisc Consult Sarl to the CNCB mentioned all the services provided and the modalities used to determine the fees. He stated that he provided evidence

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during the investigation that Fisc Consult fulfilled its obligations to the CNCB to the letter and was partially and regularly paid by the said entity.

He pointed out that these facts notwithstanding, the CRIET Investigation Committee, by Judgment No. 001/CRIET/COM-I/2019 of 20 March 2019, committed him to trial before the Correctional Chamber of the CRIET and that, on 15 June 2019, he filed a cassation appeal against this decision.

The Applicant further averred that the Correctional Chamber of the CRIET by judgment of 25 July 2019, found him guilty of the offences of misappropriation of public funds, abetment of abuse of office and usurpation of title and sentenced him to ten (10) years' imprisonment. The court also ordered him to pay an amount of One Billion Two Hundred and Seventy-Seven Million Nine Hundred and Ninety-Five Thousand Four Hundred and Seventy-Four (1,277,995,474) CFA francs to the CNCB, as reparation for damages caused. He averred that on 26 July 2019, he filed a cassation appeal against the said judgment and that as at the date of filing the Application, the Supreme Court had not ruled on the said appeal.

The Applicant alleged a violation of the following rights by the Respondent State: i) The rights to be tried by a competent court, to equality of all before the courts, to an impartial tribunal, to a reasoned decision in line with the adversarial principle, to protection against arbitrariness and to legal certainty, all protected by the African Charter on Human and Peoples' Rights ("the Charter"), Article 10 of the Universal Declaration of Human Rights ("the UDHR") and Article 14 (1) of the International Covenant on Civil and Political Rights ("the ICCPR"); ii) The right to defence, including equality of arms, representation by a lawyer, facilities required for the organisation of one's defence, notification of the indictment and the charges, participation in the trial, respect for the adversarial principle, presentation of evidence and arguments, and cross-examination of prosecution witnesses, protected by Article 14 (3) of the ICCPR and Article 7 (1) (c) of the Charter; iii) The right to appeal against judgments, protected by Article 10 of the UDHR, Article 7 (1) (a) of the Charter and Article 2 (3) of the ICCPR; iv) The right to have judicial decisions of conviction and sentence reviewed, protected by Article 14 (5) ICCPR; v) The right to the presumption of innocence, protected by Article 7 (1) of the Charter; vi) The rights to gainful employment, property and an adequate standard of living, protected by Articles 6 of the International Covenant on Economic, Social and Cultural Rights, 15 and 14 of the Charter, and 23 of the UDHR; (vii) The rights to reputation, dignity, health and freedom from inhuman and degrading treatment, protected by Article 7 of the ICCPR and Article 5 of the Charter and the right to freedom of movement, protected by Articles 12, 14 (5) and 17 of the ICCPR; viii) The right to suspension of enforcement of the sentence, guaranteed by Article 15 (5) of the ICCPR and



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Chapter N § 10(a).2 of the Guidelines and Principles on the Right to a Fair Trial and Legal Assistance in Africa.

The Applicant requested the Court to:

- (i) Find that it has jurisdiction,
- (ii) Declare the Application admissible,
- (iii) Find that the Respondent State violated Articles 2, 11, 12, 14, 15, 16, 17 and 26 of the ICCPR; Articles 1, 2, 3, 7, 12, 14 and 26 of the Charter; Articles 1, 3, 6, 7, 8, 10, 11, 14, 17, 19, 20 and 23 of the UDHR; Articles 2, 6 and 7 of the ICESCR,
- (iv) Find that the facts referred to in the judgment of 20 March 2019 are false, and that he is a victim of arbitrary judicial practices and persecution. He therefore requested that the judgments of 20 March 2019 and 25 July 2019 rendered by the CRIET be vacated and all their subsequent effects and acts erased, and that the Respondent State be ordered to amend Articles 189, 190, 481 and 594 of the Criminal Procedure Code to bring same in compliance with Article 7 (1) (c) of the Charter and Articles 14 (5) and 9 (1) of the ICCPR; order measures to avoid reprisals against him, his family and his counsel; order the Respondent State to pay him a monthly amount of Three Hundred Million (300,000,000) FCFA for failure to comply with the measures of satisfaction, restitution and guarantee of non-repetition pronounced by the Court, Four Hundred and Fourteen Billion, Seven Hundred and Seventy-Seven Million, Eight Hundred and Thirteen Thousand, Four Hundred and Fifty (414,770,813,450) FCFA as reparation for losses incurred and loss of future earnings; Thirty-Three Million, Seven Hundred and Eighty-Four Thousand, Three Hundred and Sixty-Three (33,784,363) FCFA as reparation for loss of salaries and benefits from 2018 to 2022; Three Hundred and Eighty-Five Million, One Hundred and Twenty-Four Thousand, One Hundred and Ninety (385,124,190) FCFA as reparation for actual loss incurred in dividends by Fisc Consult Sarl; Twenty-Three Billion, Four Hundred and Sixteen Million, Five Hundred and Sixty-Two Thousand, Eight Hundred and Fifty-Four (23,416,562,854) FCFA, as reparation for loss of income accruing from fees in relation to the companies COMON SA, JLR SAU, SCI L'ELITE, MAERS BENIN SA, CMA-CGM BENIN SA, MSC BENIN SA, EREVAN, ECOBANK, Three Hundred and Seventy-Six Billion, Eight-Hundred and Forty Seven Million, Three Hundred and Forty-two thousand and Forty-Three (376,847,342,043) FCFA as reparation for the loss of dividends in the company HEMOS SA; Twelve Billion (12,000,000,000) FCFA for lost earnings opportunities for activities as teachers, trainers and experts; Seventy-Nine Million (79,000,000) FCFA for lawyers' fees and legal advice; Two Billion (2,000,000,000) FCFA as reparation for all other moral prejudices suffered, and One Billion Seven Hundred Million (1,700,000,000) FCFA, of which Four

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Hundred Million (400,000,000) FCFA for his adoptive mother, Four Hundred Million (400,000,000) FCFA for his wife and Three Hundred Million (300,000,000) FCFA for each of his three children for material and moral damages. Finally, he prayed the Court to order the Respondent State to pay costs.

For its part, the Respondent State prayed the Court to declare that it lacked jurisdiction, the Application was inadmissible and, in the alternative, to declare it ill-founded.

*As regards jurisdiction*, the Respondent State raised an objection to the Court's material jurisdiction, arguing that the Applicant sought the annulment of CRIET's judgments of 25 July 2019 and 20 March 2019 and that this request amounts to requesting the Court to question decisions rendered by its domestic courts, thereby exercising appellate jurisdiction. The Applicant submitted that the Court had jurisdiction insofar as he alleged the violation by the Respondent State of the Charter and other applicable international human rights instruments, and that it is not a question of reviewing the legality of a decision issued by a domestic court but of finding a manifest violation of human rights contained in a judicial act.

The Court recalled that its material jurisdiction is established whenever it has to examine whether the relevant proceedings before the domestic courts comply with the standards prescribed by the Charter. As the Applicant alleged the violation of rights protected by the Charter, the Court found that it has material jurisdiction. The Respondent State did not contest the other aspects of the Court's jurisdiction. Nonetheless, the Court examined them and found that its personal, temporal and territorial jurisdiction was established.

*Regarding admissibility*, the Respondent State raised an objection based on non-exhaustion of local remedies. It argued that the Applicant did not exhaust the available local remedies insofar as he brought the matter before this Court on 21 January 2020, that is, before the Supreme Court ruled on the cassation appeal of 26 July 2019 that he lodged against the CRIET's judgment of 25 July 2019. In reply, the Applicant submitted that he was not required to exhaust local remedies as the said appeal procedure was ineffective and unduly prolonged. The Court examined these arguments and rejected them.

The Court recalled that the requirement of exhaustion of local remedies is assessed, in principle, at the date on which the proceedings are brought before it. It further specified that compliance with this requirement presupposes that the applicant not only initiates local remedies but also awaits their outcome

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before filing his application with the Court. The Court recalled that the Applicant lodged his application with it on 21 January 2020 while the cassation appeal of 26 July 2019 was pending. With regard to the Applicant's argument that the cassation appeal was ineffective, the Court, referring to the texts governing this remedy and its constant jurisprudence, underscored the Supreme Court's ultimate capacity to bring about a change in the Applicant's situation. It found that the cassation appeal is an effective remedy. As regards the argument that the cassation appeal filed by the Applicant was unduly prolonged, the Court noted that between the date of the said appeal, that is, 26 July 2019, and 21 January 2020, the date of the filing of the Application before it, five (5) months and twenty-five (25) days elapsed. The Court considered that, in view of the procedures relating to the processing of the cassation appeal by the Supreme Court, the Applicant's appeal could reasonably not have taken less than six (6) months. The Court therefore found that the cassation appeal procedure was not unduly prolonged.

The Court found that in such circumstances, the Applicant had to await the outcome of the cassation appeal before filing the Application with the Court so as to comply with the rule of exhaustion of local remedies.

The Court found that the Applicant did not exhaust local remedies and, accordingly, declared the Application inadmissible. In view of the cumulative nature of the admissibility requirements under Article 56 of the Charter and Rule 50(2) of the Rules, the Court deemed it unnecessary to examine the other admissibility requirements.

The Court decide that each Party bear its own costs.

### **Further information**

**Further information on this case, including the full text of the African Court's ruling, is available at:** <https://www.african-court.org/cpmt/details-case/0042020>

**For any further inquiries, please contact the Registry by email: [registrar@african-court.org](mailto:registrar@african-court.org)**

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