

**PRESS RELEASE
JUDGMENT SUMMARY**

XYZ V. REPUBLIC OF BENIN

APPLICATION N° 010/2020

JUDGMENT ON THE MERITS AND REPARATIONS

27 NOVEMBER 2020

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

Date of Press Release: 27 November 2020

Arusha, 27 November 2020: The African Court on Human and Peoples' Rights (the Court) delivered judgment in the case of *XYZ v. Republic of Benin*.

The Applicant sought and was granted anonymity under the name XYZ. He is a national of the Republic of Benin, (Respondent State). On 14 November 2017, the Applicant lodged an application with the Court whereby he challenged Law No. 2019-40 of 7 November 2019 revising Law No. 90-032 of 11 December 1990 on the Constitution of the Republic of Benin.

The record showed that the Beninese Parliament adopted Law n°2019-40 of 7 November 2019 revising the Constitution. This law was declared to be consistent with the Constitution by Decision DCC 19-504 of 6 November 2019 of the Constitutional Court of Benin.

In his Application, the Applicant contended that the Respondent State violated (i) the obligation to guarantee the independence and impartiality of courts and tribunals; (iii) national consensus; (iv) the right to information; (v) the right to economic, social and cultural development and to peace and national security.

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The Applicant requested the Court to:

- find that the relevant human rights instruments had been violated, and that the Republic of Benin committed the crime of unconstitutional change by revising the Constitution and by monopolising the legislative powers, and that the State also manipulated the rules on vacancy of power without seeking consensus or holding a referendum, using the nine members of the Committee of Experts, the ten MPs who had initiated the revision of the Constitution and the four Constitutional Court counsellors;
- Order the Republic of Benin to annul Decision DCC 2019-504 of 6 November 2019 and Law n°2019-40 revising Law n°90-032 of 11 December 1990 on the Constitution of the Republic of Benin and all laws derived therefrom, and subsequently reinstate Law n°90-032 of 11 December 1990 as a matter of urgency;
- Refer the matter to the Peace and Security Council of the African Union through the Chairperson of the African Union Commission so that appropriate sanctions are imposed on the Respondent State, the MPs who initiated the revision and the four Counsellors of the Constitutional Court;
- Order the Respondent State to pay the Applicant one billion (1,000,000,000) CFA francs in damages.

The Respondent State raised an objection as to the Court's lack of subject-matter jurisdiction. The Court noted in this regard that the Application contained allegations pertaining to the rights guaranteed by Articles 26, 7, 22(1) 23(1) of the Charter and Article 10(2) of the African Charter on Democracy, Elections and Good Governance. The Court therefore concluded that it had subject-matter jurisdiction and dismissed the objection on the lack of subject-matter jurisdiction.

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Although the Respondent State had not challenged the other aspects of the Court's jurisdiction, the Court examined them nevertheless and established that it had temporal and territorial jurisdiction.

The Respondent State also raised preliminary objections based on the lack of connection between the Application under review and the Joint Applications 021/2019 and 022/2019, the Applicant's abuse of the right to bring proceedings and the Applicant's lack of locus standi.

Regarding the first preliminary objection, the Court stated that it had used its discretion in deciding to deal with this Application in its own right and to record it as such, since there was no connection between Joint Applications 021/2019 and 022/2019 and the present Application.

Regarding the second preliminary objection, the Court concluded that this was a matter that involved an examination of the merits.

With respect to the third objection, the Court ruled that as a citizen of Benin, the Applicant had an interest in challenging a constitutional revision which had a potential impact on the rights of every citizen.

The Court therefore dismissed the preliminary objections raised.

None of the conditions of admissibility set out in section 56 of the Charter had been challenged. However, in accordance with the Protocol and the Rules of Court, the Court ascertained that these conditions had been met. It therefore declared the Application admissible insofar as it complied with the requirements of the said Article.

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In the examination of the merits and with respect to the alleged violation of the obligation to guarantee the independence of the Constitutional Court, the Court noted the Applicant's submission regarding the judges' lack of independence as evidenced by the fact that their term of office was renewable and the lack of financial independence.

The Court considered that, while Organic Law No. 91-009 of 4 March 1991 on the Constitutional Court contains operative parts guaranteeing the administrative and financial independence of the Constitutional Court, the renewable nature of the term of office of the members of the Constitutional Court was likely to undermine their independence, particularly in the case of judges who wished to be reappointed. The Court found that the Respondent State violated Article 26 of the Charter.

With regard to the alleged violation of the obligation to guarantee the impartiality of the Constitutional Court, the Applicant submitted that the friendship between its President, Mr Joseph Djogbeno, and the President of the Republic was conducive to the impartiality of the Constitutional Court, given that, in his capacity as Minister of Justice and Legislation, Mr Djogbena was involved in the approval of previous attempts to draft constitutional amendments. The Court considered that the Applicant had failed to demonstrate that Mr Djogbenou had been biased, prejudiced or in any way imposed his views on other members of the Court. The Court therefore concluded that the Respondent State did not violate the obligation to ensure an impartial court, as guaranteed by Article 7 of the Charter.

With regard to the alleged violation of the national consensus provided for in Article 10(2) of the ACDEG, the Applicant submitted that Law No. 2019-40 of 7 November 2019 revising the Constitution did win the support of a significant part of the population, since it was adopted secretly and urgently by a Parliament that was not representative of the Beninese population. The Court observed that the disputed law was adopted under the emergency procedure and that a consensual revision could only have been achieved had the exercise been preceded by a consultation of all

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stakeholders and people with different perceptions, or had it been followed by a referendum, if necessary, in accordance with the "ideals that prevailed when the Constitution of 11 December 1990 was adopted" and Article 10(2) of the ACDEG.

Consequently, the Court concluded that the constitutional revision was adopted in violation of the principle of national consensus.

Regarding the allegation of violation of the right to information, the Applicant submitted that the proposed constitutional revision bill was not disclosed prior to its adoption. The Court noted that it is the responsibility of the Respondent State to ensure publication of the National Assembly debates concerning proposed bills, in accordance with its legislation. The Court further observed that the Respondent State did not challenge the allegation that the draft revision of the fundamental law was not disseminated to the people to enable them to form an opinion and participate in the debate on the proposed amendments. The Court therefore found that the Respondent State violated the right to information under Article 9(1) of the Charter.

Lastly, as regards the alleged violation of the right to peace and security and the right to economic, social and cultural development, the Applicant submitted that the impugned constitutional revision was a threat to peace and security in Benin and, hence, to economic, social and cultural development, given that a large part of the population did not identify with the exercise.

The Court found that the Respondent State violated these rights as guaranteed by Articles 22(1) and 23(1) of the Charter, since the non-consensual revision of the fundamental law was in breach of the social covenant and raised fears of a real threat to peace in Benin.

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Concerning the request for pecuniary reparation, the Court ordered the Respondent State to pay the Applicant a symbolic sum of 1 CFA franc for the moral damage suffered.

With regard to non-pecuniary measures, the Court ordered the Respondent State: (i) to take all legislative and regulatory measures to guarantee the independence of the Constitutional Court, particularly with respect to the process of renewal of the **judges' term of office** and (ii) to take all necessary measures to repeal Law No. 2019-40 of 1 November 2019 amending Law No. 90-032 of 11 December 1990 on the Constitution of the Republic of Benin and to comply with the principle of national consensus in all other constitutional revisions, as set out in Article 10(2) of the ACDEG and (iii) to take these measures before any election.

The Court ordered each Party to bear its own costs of the proceedings.

Further information

Further information about this case, including the full text of the decision of the African Court can be found on the website at: <https://www.african-court.org/cpmt/details-case/0102020>

For any other queries, please contact the Registry by email: registrar@african-court.org

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