


AFRICAN UNION		UNION AFRICAINE
الاتحاد الأفريقي		UNIÃO AFRICANA
<p style="text-align: center;">AFRICAN COURT ON HUMAN AND PEOPLES' RIGHTS COUR AFRICAINE DES DROITS DE L'HOMME ET DES PEUPLES</p>		

IN THE MATTER OF

ROMARIC JESUKPEGO ZINSOU AND OTHERS

V.

REPUBLIC OF BENIN

APPLICATION NO. 008/2021

**ORDER
(PROVISIONAL MEASURES)**

10 APRIL 2021



The Court composed of: Sylvain ORÉ, President; Ben KIOKO, Vice-President; Rafaâ BEN ACHOUR, Ângelo V. MATUSSE, Suzanne MENGUE, Marie-Thérèse MUKAMULISA, Tujilane R. CHIZUMILA, Chafika BENSAOULA, Blaise TCHIKAYA, Stella I. ANUKAM, Imani D. ABOUD, Judges; and Robert ENO, Registrar.

In the matter of:

Romaric Jesukpego ZINSOU and Others

Versus

REPUBLIC OF BENIN

Represented by M. Iréné ACOMBLESSI, Judicial Officer of the Treasury

After deliberation,

Issues this Order:

I. THE PARTIES

1. Romaric Jesukpego ZINSOU, Landry Angelo ADELAKOUN and Fifamin Miguèle HOUETO (hereinafter referred to as “the Applicants”) are **nationals** of Benin. They invoke the non-enforcement by the Republic of Benin of decisions rendered by this Court.
2. The Application is filed against the Republic of Benin (hereinafter referred to as “the Respondent State”), which became a Party to the African Charter on Human and Peoples' Rights (hereinafter “the Charter”) on 21 October 1986 and to the Protocol to the African Charter on Human and Peoples' Rights on

the Establishment of an African Court on Human and Peoples' Rights (hereinafter "the Protocol") and on 22 August 2014. On 8 February 2016, the Respondent State further deposited the Declaration provided for in Article 34(6) of the said Protocol (hereinafter referred to as "the Declaration") by virtue of which it accepts the jurisdiction of the Court to receive applications from individuals and Non-Governmental Organisations having observer status with the African Commission on Human and Peoples' Rights. On 25 March 2020, the Respondent State deposited with the African Union Commission the instrument of withdrawal of its Declaration. The Court ruled that this withdrawal has no bearing on pending cases and on new cases filed before the withdrawal comes into effect, one year after its deposit, that is, on 26 March 2021¹.

II. SUBJECT OF THE APPLICATION

3. In their Application, the Applicants submit that the Respondent State did not execute the decisions of this Court rendered against it, in favour of Sébastien Germain Marie Aïkoué Ajavon and Applicant XYZ, who has obtained anonymity.
4. They point out that this non-compliance violates Article 30 of the Protocol.

III. ALLEGED VIOLATIONS

5. The Applicants allege the violation of the obligation to comply with the decisions of the Court under Article 30 of the Protocol.

¹ *Ingabire Victoire Umuhoza v. Republic of Rwanda* (jurisdiction) (Order of 3 June 2016) 1 AfCLR 540 § 67; *Hongue Eric Noudehouenou v. Republic of Benin* ACHPR, Application No. 003/2020 Order of 5 May 2020 (provisional measures), §§ 4- 5 and *Corrigendum* of 29 July 2020.

IV. SUMMARY OF THE PROCEDURE BEFORE THE COURT

6. The main Application containing a request for provisional measures was filed on 11 March 2021. It was served on the Respondent State on 2 April 2021 for its response to the request for provisional measures and the request on the merits within three (3) and ninety (90), respectively.
7. At the expiration of this time-limit on 14 January 2021, the Registry did not receive the Respondent's response.

V. PRIMA FACIE JURISDICTION

8. Article 3(1) of the Protocol provides that:

The jurisdiction of the Court shall extend to all cases and disputes submitted to it concerning the interpretation and application of the Charter, the Protocol and any other relevant human rights instrument ratified by the States concerned.
9. Furthermore, Rule 49(1) of the Rules “(t)he Court shall ascertain its jurisdiction...”. However, with respect to provisional measures, the Court need not satisfy itself that it has jurisdiction on the merits of the case, only that it has *prima facie* jurisdiction.²
10. In the instant case, the obligation of which the Applicants allege a violation is provided for in Article 30 of the Protocol, an instrument that the Court may interpret or apply³ by virtue of Article 3 referred to above.

² *Ghati Mwita v. United Republic of Tanzania*, ACtHPR, Application No. 012/2019, Order of 9 April 2020 (provisional measures), § 13.

³ *Sébastien Germain Marie Aïkoué Ajavon v. Republic of Benin*, Application No.065/2019, Judgement of 29 March 2021 (merits and reparations, § 28).

11. The Court further notes that the Respondent State has ratified the Protocol. It has also deposited the Declaration.
12. The Court notes, as mentioned in paragraph 2 of this Ruling, that on 25 March 2020 the Respondent State deposited the instrument of withdrawal of its Declaration deposited under Article 34(6) of the Protocol.
13. The Court recalls its decision that the withdrawal of the Declaration has no retroactive effect on pending cases, nor does it have any bearing on cases filed before the withdrawal takes effect,⁴ as in the instant case. The Court reiterated its position in its Ruling of 5 May 2020 *Houngue Eric Noudehouenou v. Republic of Benin*⁵ that the withdrawal of the Respondent State's Declaration takes effect on 26 March 2021. Consequently, the said withdrawal has no bearing on the personal jurisdiction of the Court in the instant case.
14. The Court finds that it has prima facie jurisdiction to entertain the request for provisional measures.

VI. PROVISIONAL MEASURES REQUESTED

15. The Applicants request the Court to order the suspension of the current electoral process which, in their view, is clearly being undertaken in complete disregard for the Court's decisions.
16. The Respondent State did not file any submission in response.

⁴ *Ingabire Victoire Umuhiza v. Republic of Rwanda*, ACtHPR, (jurisdiction) (Judgement of 3 June 2016) 1 AfCLR 585, § 67.

⁵ *Houngue Eric Noudehouenou v. Republic of Benin*, ACtHPR, Application N0 003/2020, Order (provisional measures), (5 May 2020), § 4-5 and Corrigendum of 29 July 2020.

17. The Court notes that Article 27(2) of the Protocol provides: “In cases of extreme gravity and urgency and when necessary to avoid irreparable harm to persons, the Court shall adopt such provisional measures as it deems necessary”.
18. The Court recalls that urgency, which is consubstantial with extreme gravity, means that there is an “irreparable and imminent risk of irreparable harm being caused before the Court renders its final decision”.⁶ The risk in question must be real, which excludes the purely hypothetical risk and explains the need to remedy it immediately.⁷
19. As regards irreparable harm, the Court considers that there must be a “reasonable probability of occurrence” having regard to the context and the Applicant’s personal situation⁸.
20. The Court emphasises that it is up to the Applicant seeking provisional measures to prove the existence of urgency or extreme gravity as well as that of irreparable harm.
21. The Court notes that in the instant case, the Applicants have merely requested a provisional measure without demonstrating the existence of the conditions required under Article 27(2) of the Protocol.
22. The Court further notes that the Applicants rely on decisions of this Court in favour of third-party Applicants as the basis for the instant Application and that, consequently, it cannot grant their request for provisional measures.

⁶ *Sébastien Ajavon v. Republic of Benin*, ACtHPR, Application No. 062/2019, Order (provisional measures), 17 April 2020, § 61

⁷ *Ibid*, § 62.

⁸ *Ibid*, § 63

23. Consequently, the Court dismisses the request for provisional measures.
24. For the avoidance of doubt, the Court recalls that this Ruling is provisional in nature and in no way prejudices the Court's decision on its jurisdiction, on the admissibility of the case and on the merits thereof.

VII. OPERATIVE PART

25. For these reasons

THE COURT

By a majority of ten (10) to one (1), Judge Chafika BENSOUOLA dissenting,

Dismisses the request for provisional measures.

Signed:

Sylvain ORÉ, President;

And Robert ENO, Registrar;



Pursuant to Article 28(7) of the Protocol and Rule 70 of the Rules, the dissenting opinion of Judge Chafika BENSOUALA is attached to this Ruling.

Done at Arusha, this tenth day of April in the year Two Thousand and Twenty-One, in the English and French languages, the French version being authoritative.