001/2017
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005043

African Court on Human and Peoples' Rights

Application 001/2017

The Matter of Alfred Agbesi Woyome

v.

Republic of Ghana

Separate Opinion of Justice Bensaoula attached to the Judgment of 28 June 2019

I share the opinion of the majority of the judges regarding the admissibility of the Application, the Court's jurisdiction and the Operative Part.

I believe, however, that the way in which the Court dealt with the admissibility of the Application runs counter to:

- **the provisions of Articles 56 of the Charter, 6(2) of the Protocol and Rules 39 and 40 of the Rules**

It is noteworthy that, after discussing the Respondent State's objections to the admissibility of the Application (non-exhaustion of local remedies and the filing of the Application within a unreasonable time), the Court held in conclusion in its paragraph 89, that all the other conditions are not in contention between parties and "that the court finds that nothing on the record indicates that any of these conditions has not been fulfilled in this case."

And for that, the Court only reiterated the conditions listed in Articles 56 of the Charter, 6(2) of the Protocol and in Rule 40(6) of the Rules without any discussion or analysis which, in my opinion, is contrary to the very spirit of the afore-cited texts.

In effect, under Rule 39 of the Rules, the Court is required to conduct preliminary examination of its jurisdiction and the conditions of admissibility laid down in Articles 50 and 56 of the Charter and Rule 40 of the Rules.

This clearly implies that:

• **If the parties raise objections concerning the conditions governing jurisdiction and admissibility**, the Court must examine the same.

- ✓ if it turns out that one of them is founded, the Court will so declare, because the said conditions are cumulative.

- ✓ if, on the other hand, none is founded, **the Court has the obligation to discuss** the other elements of admissibility not contested by the parties and adjudicate accordingly.

  • **if the parties do not discuss the conditions**, the court is obliged to do so, and in the order set out in Article 56 of the Charter and Rule 40 of the Rules.

Indeed, it seems to me illogical that the court should select one of the conditions such as reasonable time, for example, whereas identity or any other condition afore-listed may be problematic and therefore not covered.

In the present case, subject of separate opinion, it is clear that if the Respondent State raised objection in respect to local remedies and reasonable time, which the Court considered unfounded, the latter did not analyze the other conditions, limiting itself to a quick response, because the said conditions have not been discussed, and nothing on file shows that there are issues regarding compliance therewith.

In my opinion, this quick response in regard to the other conditions not discussed by the parties and the Court, has weakened the Court's decision in respect of the admissibility of the Application

- ❖ **And as regards assessment of reasonable time**

The Court found that the local remedies were exhausted when the Review Bench of the Supreme Court issued its judgment on 29/07/2014 and that as at the date of filing the Application on 5/01/2017, the period of seizure was reasonable.

It is however apparent that in reaching this conclusion, the Court took into consideration the facts which occurred subsequent to the date considered as evidence of the exhaustion of local remedies (2014), the criminal proceedings brought against the Applicant, the report of the commission of inquiry ...

In Rule 40(6) of the Rules, it is clearly stipulated that for an application to be admissible, it must "be filed within a reasonable time **from the date local remedies were exhausted** or from the **date set by the Court** as being the commencement of the time limit within which it shall be seized with the matter."

It is clear that the legislator has set down two options as to how to define the commencement of reasonable time.

• **date of exhaustion of the local remedies** which the Court has set as the date of the judgment of the Review Bench of the Supreme Court, that is, 29/07/2014, the Application having been filed on 5/01/2017.

• **the date set by the Court as the commencement of the period within which it shall be seized with the matter**. Although the Court set the date of commencement of the referral (date of the judgment of the Review Chamber) **it has taken into account the facts that occurred** after that date (2014/2017) as "factors that could be taken into account in assessing the reasonableness of the referral period..."

I believe that this way of interpreting the Article referred to above is erroneous and does not respond to the spirit of the text, because the Articles of the Charter and the Rules clearly **stipulate the date chosen by the Court and not the facts retained** ..... to set the time limit for referral.

In my opinion, in retaining the date of the judgment of the Review Bench (2014) and the date of filing the Application (2017) and taking into account the facts that occurred after the date of the judgment of the Review Bench, the Court departed from the very meaning of the Article **because, by this way of doing things, it has not determined any date as commencement of the time limit for its own referral and has, rather, mixed up the two options offered by the afore-cited Articles.** And since the legislator recognizes this option for the court, it would have been more logical to consider the date of the judgments rendered between 2014 and 2017 or the date of submission of the report of the commission (2015), and a timeframe of less than 3 years for seizure would have been more reasonable, by so doing.

Thus, if the Court in its jurisprudence interpreted the **local remedies** binding on the Applicant as **ordinary remedies**, that jurisprudence does not bind it in determining reasonable of time since it can, in my opinion, calculate the said reasonable time as from the date on which an extraordinary remedy was exercised or a decision was received or other proceedings instituted in close connection with the facts of the Application before the court and that, by so doing, the court would have applied the second rule set forth in **Articles 56 of the Charter, 6(2) of the Protocol and Rules 39 and 40(6) of the Rules.**

Bensaoula Chafika
Judge at the African Court on Human and Peoples' Rights

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