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The Court composed of: Imani D. ABOUD, President; Blaise TCHIKAYA, Vice President, Ben KIOKO, Rafaậ BEN ACHOUR, Suzanne MENGUE, Tujilane R. CHIZUMILA, Chafika BENSAOULA, Stella I. ANUKAM, Dumisa B. NTSEBEZA, Modibo SACKO – Judges, and Robert ENO, Registrar.

In the Matter of:

Conaïde Togla Latondji AKOUEDENOUDJE

Self-represented

Versus

REPUBLIC OF BENIN

Represented by

Mr. Iréné ACLOMBESSI, Judicial Agent of the Treasury

After deliberation,

Renders the following judgment:

I. THE PARTIES

1. Mr Conaïde Togla Latondji Akouedenoudje (hereinafter referred to as "the Applicant") is a national of Benin. He challenges Inter-Ministerial Order[1] prohibiting the issuance of official documents to persons wanted by the judicial authorities of Benin.

[1] Inter-Ministerial Order No. 023/MJL/DC/SGM/DAPCG/SA/023SGG19 of 22 July 2019.

2. The Application is filed against the Republic of Benin (hereinafter referred to as "the Respondent State"), which be on Human and Peoples' Rights (hereinafter referred 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 referred to as "the Protocol") 2014. On 8 February 2016, the Respondent State also deposited the Declaration provided for in Article 34(6) of the said Protocol (hereinafter referred to as "the Declaration")n by vi of the Court to receive applications from individuals and Non-Governmental Organisations. On 25 March 2020, the Respondent State deposited with the African Union Commission (hereinafter referred to as the instrument of withdrawal of the said Declaration. The Court has held that this withdrawal has no bearing on pending cases and new cases filed before the withdrawal came into effect one year after the date of its deposit with the AU Commission, that is, on 26 March 2021.[2]

II. SUBJECT OF THE APPLICATION

A. Facts of the matter

3. It emerges from the Application that on 22 July 2019, the Minister of Justice and Legislation and the Minister of the Interior and Public Security of the Respondent State issued an inter-ministerial Order (hereinafter referred to as the "Order of 22 July 2019") which prohibits the issuance of 3 of official documents, including some of the documents listed in Article 4 of the said Order,[3] to persons wanted by the Beninese judicial authorities.[4]

[2] *Houngue Éric Noudehouenou v. Republic of Benin*, ACtHPR, Application No. 003/2020, Order of 5 May 2020 (provisional measures), §§ 4-5 and corrigendum of 29 July 2020.

[3] Pursuant to Article 4 of the Order of 22 July 2019, "The following are considered as official documents: Extracts from civil status documents, birth certificates, national identity cards, passports, laissez-passer, safe conduct, residence permits, consular cards, criminal record number 3, certificate of residence, certificate of living and expenses, attestation or ce card, tax receipt. The above list of documents is not exhaustive."

[4] Pursuant to Article 2 of the Order of 22 July 2019, "A person wanted person whose appearance, hearing or interrogation is required for the purposes of a criminal

4. The Applicant contends that the said Order violates the right to the presumption of innocence and the right to nationality, which compelled him to file an application before the Constitutional Court of the Respondent State on 16 August 2019 challenging the constitutionality of the said Order. The said application was dismissed by decision DCC 20-512 of 18 June 2020 (hereinafter referred to as "the decision of 2020")[5].

B. Alleged violations

5. The Applicant alleges the violation of the following rights:

   i. The right to the presumption of innocence, protected by Article 7(1)(b) of the Charter; and
   ii. The right to nationality, protected by Article 15 of the Universal Declaration of Human Rights (UDHR).

III. SUMMARY OF THE PROCEDURE BEFORE THE COURT

6. The Applicant filed the Application on 4 August 2020 together with a request for provisional measures. The Application was served on the Respondent State on 17 August 2020 with a request to file its response on the merits and to the request for provisional measures within sixty (60) and fifteen (15) days respectively, from receipt of notification.

7. On 25 September 2020, the Court issued a Ruling dismissing the provisional measures requested, which was served on the Parties on 12 October 2020.

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investigation, preparatory inquiry, trial or who is the subject of an enforceable conviction and who fails to comply with the Authority's summons and injunction

[5] The operative part of the decision reads as follows: "Declares Ministerial Order No. 023/MJL/DC/SGM/DAPCG/SA/023SGG19 of July 22, 2019, prohibiting the issuance of official documents to persons sought by the courts in the Republic of Benin is not contrary to the Constitution (…)".

8. The Parties filed their pleadings on the merits and on reparations within the time-limits set by the Court.

9. Pleadings were closed on 14 March 2022 and the Parties were duly notified.

IV. PRAYERS OF THE PARTIES

10. The Applicant prays the Court to:

    i. Note the violation by the State of Benin of human rights set out in the Charter due to the Inter-ministerial Order No. 023/MJL/SGM/DACPG/SA/023SGG19 prohibiting the issuance of official documents to wanted persons.
    ii. Order the State of Benin to bring the said inter-ministerial Order in line with international human rights requirements.

11. The Respondent State prays the Court to:

    i. Find that the Applicant does not allege any situation of human rights violation;
    ii. Find that the Applicant seeks to challenge an internal administrative act;
    iii. Find that the Application falls outside the jurisdiction of the Court;
    iv. Declare that it lacks jurisdiction.
    v. Note that administrative acts are subject to judicial review in Benin;
    vi. Note that local remedies are available and effective;
    vii. Find that the Applicant did not pursue any legal remedies;
    viii. Find that local remedies were not exhausted;
    ix. Declare the Application inadmissible;
    x. Find that the contested Order does not result in a conviction;
    xi. Find that the said Order does not infringe the right to the presumption of innocence;
    xii. Declare that the said Order is not contrary to the Charter;
    xiii. Note that nationality is a legal relationship of belonging to a state;
    xiv. Note that Beninese nationality is governed by law;
    xv. Note that the contested decree does not relate to nationality;

xvi. Note that Beninese nationality can be proven by any national; and
xvii. Declare that the said Order is not contrary to the Charter.

V. JURISDICTION

12. Article 3 of the Protocol provides:

> 1. The jurisdiction of the Court shall extend to all cases and disputes submitted to it concerning the interpretation and application of the Charter, this Protocol and any other relevant human rights instrument ratified by the States concerned.
> 2. In the event of a dispute as to whether the Court has jurisdiction, the Court shall decide.

13. Furthermore, according to Rule 49(1) of the Rules of Court,[6] " The Court shall ascertain its jurisdiction and the admissibility of an Application in accordance with the Charter, the Protoc

14. Based on the above-mentioned provisions, the Court must conduct a preliminary assessment of its jurisdiction and dispose of objections thereto, if any.

15. The Court notes that in the instant case, the Respondent State raises an objection to its material jurisdiction, on which the Court will rule before considering the other aspects of its jurisdiction, if necessary.

A. Objection to material jurisdiction

16. The Respondent State submits that the Applicant does not refer any dispute to the Court but merely resorts to the Court as a forum to challenge the Order of 22 July 2019.

[6] Rule 39(1) of the Rules of 2 June 2010.

17. It argues that the jurisdiction requirements under Article 3(1) of the Protocol make no room for calling into question domestic laws or judicial decisions, so that this Court cannot deliver a judgment calling into question an administrative decision of a State. According to the Respondent State, the Applicant's requests fall outside the jurisdiction of the Court.

18. It concludes that the Court should decline jurisdiction.

19. The Applicant, without directly replying to the Respondent State's submission, affirms that Benin has ratified the Charter, the Protocol and has deposited the Declaration. He considers that the Court has jurisdiction.

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20. The Court notes that pursuant to Article 3(1) of the Protocol, it has jurisdiction over "all cases and the dispu
interpretation and application of the Charter, the Protocol and any other relevant human rights instrument ratified by the States concerned".

21. The Court recalls that for it to assume material jurisdiction, it is sufficient that the Applicant alleges violations of human rights protected under the Charter or any other human rights instrument ratified by the Respondent State.[7]

22. The Court notes that in the present case, the Applicant alleges a violation of the right to the presumption of innocence and the right to nationality, which are protected by Article 7(1)(b) of the Charter and Article 15 of the UDHR respectively. Therefore, the Court acts within the purview of its jurisdiction.

[7] *Franck David Omary and Others v. United Republic of Tanzania* (admissibility) (28 March 2014) 1 AfCLR 358, § 74*; Peter Chacha v. United Republic of Tanzania* (admissibility) (28 March 2014) 1 AfCLR 398, § 118.

23. Consequently, the Court dismisses the Respondent State's objection to its material jurisdiction and holds that it has material jurisdiction to hear this Application.

B. Other aspects of jurisdiction

24. The Court notes that no objection has been raised to its personal, temporal and territorial jurisdiction.

25. Having noted that nothing on record indicates that it lacks jurisdiction in respect of these aspects:

i. The Court observes, as regards personal jurisdiction, as indicated in paragraph 2 of this Judgment, that on 25 March 2020, the Respondent State deposited the instrument of withdrawal of its Declaration. In this regard, the Court recalls its jurisprudence that the withdrawal by the Respondent State of its Declaration has no retroactive effect, nor does it affect cases pending at the time of the said withdrawal or new cases brought before it prior to its entry into force 12 months after its deposition, that is, on 26 March 2021. As the Application was filed on 4 August 2020, that is, before the withdrawal of the Declaration took effect, it is not affected by the said withdrawal. Consequently, the Court finds that it has personal jurisdiction.

ii. The Court further notes, as regards temporal jurisdiction, that all the alleged violations occurred after the Respondent State became a party to the Charter and to the Protocol as mentioned in paragraph 2 of this Judgment. Consequently, the Court holds that it has temporal jurisdiction in the instant Application.

iii. Finally, as regards territorial jurisdiction, the Court observes that the violations alleged by the Applicant occurred in the territory of the

Respondent State. Accordingly, the Court holds that it has territorial jurisdiction.

26. Consequently, the Court finds that it has jurisdiction to consider the instant Application.

VI. ADMISSIBILITY

27. The Court notes that under Article 6(2) of the Prot
on the admissibility of cases taking into account the provisions of Article 56 of the Charter".

28. The Court further notes that under Rule 5
ascertain the admissibility of an Application filed before it in accordance with Article 56 of the Charter.[8], the Protocol

29. Rule 50(2) of the Rules, which in substance restates Article 56 of the Charter, provides that:

> Applications filed before the Court shall comply with all of the following conditions:
>
> a) Indicate their authors, even if the latter request anonymity;
> b) Are compatible with the Constitutive Act of the African Union (hereinafter "the Constitutive Act"
> c) Are not written in disparaging or insulting language directed against the State concerned and its institutions or the African Union;
> d) Are not based exclusively on news disseminated through the mass media;
> e) Are sent after exhausting local remedies, if any, unless it is obvious that this procedure is unduly prolonged;

[8] Rule 40 of the Rules of 2 June 2010.

f) Are submitted 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; and

g) Do not deal with cases which have been settled by those States involved in accordance with the principles of the Charter of the United Nations, or the Constitutive Act of African Union or the provisions of the Charter.

30. The Court notes that the Respondent State raises an objection to the admissibility of the Application based on non-exhaustion of local remedies, on which the Court will rule before examining other admissibility requirements, if necessary.

A. Objection based on non-exhaustion of local remedies

31. The Respondent State contends that an individual may bring a dispute against their State before an international court only after having submitted the same to the judicial authorities of that State with a view to giving them the opportunity to redress the effects of the disputed decision or act of the State.

32. It submits that local judicial remedies are available to anyone who feels aggrieved to seek redress for any violations of their fundamental rights. To this end, it cites Article 827 of Law No. 2008-07 of 28 February 2011 on the Civil, Commercial, Social, Administrative and Accounting Procedure Code (hereinafter "the Code"). In the same vein, the Respondent State asserts that the Applicant did not lodge a complaint with any authority and did not exercise any contentious remedy in accordance with the above-mentioned article.

33. It further contends that the fact that the Applicant seized the Constitutional Court does not mean that he exhausted local remedies insofar as this avenue is open to all Beninese citizens to undertake an objective review without having to raise personal grievances.

34. It therefore considers that the Applicant did not exhaust local remedies and therefore the Application is inadmissible.

35. The Applicant did not make any submission regarding the remedies provided for by Article 827 of the Code of Civil Procedure mentioned by the Respondent State. He contends, however, that he exhausted local remedies insofar as the Constitutional Court of Benin, which is the organ that protects fundamental rights and whose decisions are not subject to appeal, rendered the decision of 18 June 2020 dismissing his action challenging the constitutionality of the inter-ministerial Order of 22 July 2019 which, he had alleged, violates the Charter and the UDHR.

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36. The Court recalls that in accordance with Article 56(5) of the Charter and Rule 50(2) of its Rules of Court, applications must be filed after the exhaustion of local remedies, if any, unless it is clear that the proceedings in respect of such remedies have been unduly prolonged.[9]

37. The Court notes that the requirement of exhaustion of local remedies prior to bringing a case before an international human rights court is an internationally recognised and accepted rule.[10]

[9] *Ghaby Kodeih and Nabih Kodeih v. Republic of Benin*, ACtHPR, Application No. 008/2020, Judgment of 23 June 2022 (jurisdiction and admissibility), § 49; *Houngue Éric Noudehouenou v. Republic of Benin*, ACtHPR, Application No. 032/2020, Judgment of 22 September 2022 (jurisdiction and admissibility), § 38.

[10] *Yacouba Traoré v. Republic of Mali*, ACtHPR, Application No. 010/2018, Judgment of 25 September 2020 (jurisdiction and admissibility), § 39.

38. The Court recalls, in line with its established jurisprudence, that the local remedies to be exhausted must be available, effective and satisfactory. Moreover, the mere fact that a remedy exists does not satisfy the rule of exhaustion of remedies, since an applicant is only required to exhaust a remedy insofar as it offers prospects of success.[11]

39. The Court notes that the Constitutional Court of the Respondent State has jurisdiction to hear allegations of human rights violations.[12] In line with its jurisprudence, the Court recalls that the remedy before the Respondent State Constitutional Court is an available, effective and satisfactory remedy.[13]

40. The Court also notes that, in accordance with Article 124 paragraphs 1 and 3[14] of the Constitution of the Respondent State (hereinafter referred to as "the Constitution"), the decisions of the Constitutional Court are not subject to appeal. They are binding on all civil, military and judicial authorities.

41. The Court emphasizes, with regard to the specific court system of the Respondent State, that when an applicant has several parallel remedies at his disposal, including filing an application to the Constitutional Court, he is entitled to make a choice. However, when he chooses the avenue of filing

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[11] *Beneficiaries of late Norbert Zongo, Abdoulaye Nikiema alias Ablasse, Ernest Zongo, Blaise Ilboudo and Mouvement Burkinabé des Droits de l'Homme et des Peuples v. Burkina Faso* (merits) (28 March 2014) 1 AfCLR 219 § 68; *Lohé Issa Konaté v. Burkina Faso* (merits) 1 AfCLR 324, §§ 92 and 108; *Sébastien Germain Marie Aikoué Ajavon v. Republic of Benin* (merits and reparations) (4 December 2020) 4 AfCLR 133, § 99.

[12] Article 114 of the Beninese Constitution states: "The Constitutional Court is the jurisdiction of the State in constitutional matters. It is the judge of the constitutionality of the law and guarantees fundamental human rights and public freedoms (...)"; Art may refer to the Constitutional Court the constitutionality of laws, either directly or by the procedure of the objection based on constitutionality raised in a Article 22. Law No. 91-009 of March 4, 1991, amended by the law of May 31, 2001 provides: "Likewise laws and regulatory acts alleged to infringe on fundamental human rights and public freedoms, and in general, on the violation of human rights, shall be referred to the Constitutional Court, either by the President of the Republic or by any citizen, association or non-governmental organization for the defence of human rights." See, *Houngue Eric Noudehouenou v. Republic of Benin*, ACtHPR, Application No. 028/2020, Judgment of 1 December 2022 (merits and reparations), § 50.

[13] *Laurent Mètognon and Others v. Republic of Benin*, ACtHPR, Application No. 031/2018, Judgment of 24 March 2022, § 63.

[14] Article 124 paragraphs 1 and 2 of the Constitution: "...The decisions of th not subject to any appeal.
They are binding on public authorities and on all civil, m

an application to the Constitutional Court, he cannot be required, after the decision of the said Court, to exercise or attempt to exercise other remedies, insofar as the said decision has an *erga omnes* effect.

42. The Court notes that in the present case, on 16 August 2019, the Applicant filed an application with the Constitutional Court challenging the constitutionality of the Order of July 22, 2019, in which he alleged the violation of Articles 7(1)(b) of the Charter and Article 15 of the UDHR, as he does in the instant Application. The Court notes that on 18 June 2020, the Constitutional Court dismissed the application.[15]

43. The Court emphasizes that, pursuant to Article 124 of the said Constitution, the said decision is not subject to appeal and is binding on all civil, military and judicial authorities, including a trial court having administrative jurisdiction to hear the matter relating to the misuse of power invoked by the Respondent State.

44. It follows that it is unreasonable to require the Applicant to exercise the remedy in relation to abuse of power by seizing the administrative court, since in any case, the said court cannot render a decision that is contrary to that of the Constitutional Court.

45. In light of the foregoing, the Court dismisses the Respondent State's objection based on non-exhaustion of local remedies and finds that the Application meets this admissibility requirement.

[15] The operative part of the decision reads as follows: "Finds that the Ministerial Order No 023/MJL/DC/SGM/DAPCG/SA/023SGG19 of 22 July 2019, prohibiting the issuance of official documents to persons wanted by the law in the Republic of Benin is unconstitutional; The Charter is an integral part of the Constitution, in accordance with which the rights and duties proclaimed and guaranteed by the African Charter on Human and Peoples' Rights, adopted in 1981 by the Organization of African Unity and ratified by Benin on January 20, 1986, are an integral part of the Constitution and of Beninese law".

B. Other admissibility requirements

46. The Court notes from the records that the Parties do not dispute that the Application complies with the requirements of Article 56 (1), (2), (3), (4) and (7) of the Charter, which are restated in Rule 50(2)(a), (b), (c), (d), and (g) of the Rules. Nevertheless, the Court must ensure that these requirements are met.

47. The Court notes that it emerges from the records that the requirement under Rule 50(2)(a) of the Rules is met insofar as the Applicant has clearly indicated his identity.

48. The Court notes that the Applicant's requests seek to protect his rights guaranteed under the Charter. It further notes that one of the objectives of the Constitutive Act as stated in Article 3(h) thereof is the promotion and protection of human and peoples' rights. Furthermore, the Application does not contain any request that is incompatible with the Constitutive Act. The Court therefore considers that the Application is compatible with the Constitutive Act of the African Union and the Charter, and that it meets the requirement of Rule 50(2)(b) of the Rules.

49. The Court further notes that the Application does not contain disparaging or insulting language against the Respondent State, which makes it compatible with the requirement contained in Rule 50(2)(c) of the Rules.

50. Regarding the requirement contained in Rule 50(2)(d) of the Rules, the Court notes that the Application is not based exclusively on news disseminated through the mass media but rather relates to an Order of the Respondent State dated 22 July 2019.

51. With regard to the requirement of a reasonable time for filing an application under Rule 50(2)(f), the Court recalls that the reasonableness of the time-limit for bringing a case before it depends on the particular circumstances

of each case and must be determined on a case-by-case basis.[16] In the instant case, the Court considers that the assessment of a reasonable time for its seizure starts from the date the Constitutional Court issued its decision, that is, 18 June 2020. Between this date and the date of referral to the Court on 4 August 2020, two (2) months and fifteen (15) days elapsed. This time-limit indicates that the Applicant acted with diligence. The Court therefore notes that the period of two (2) months and fifteen (15) days is reasonable. The Court therefore considers that the requirement of Rule 50(2)(f) is met.

52. Finally, with respect to the requirement under Rule 50(2)(g) of the Rules, the Court finds that the present case does not concern a matter which has already been settled by the Parties in accordance with the principles of the United Nations Charter, the Constitutive Act of the African Union or the provisions of the Charter.

53. In view of the foregoing, the Court finds that the Application meets all the admissibility requirements under Article 56 of the Charter, as restated in Rule 50(2) of the Rules. Accordingly, the Court declares the Application admissible.

VII. MERITS

54. The Applicant alleges the violation of the right to the presumption of innocence and of the right to nationality.

[16] *Beneficiaries of the late Norbert Zongo and Others v. Burkina Faso* (preliminary objections) (21 June 2013) 1 AfCLR 195, § 121; *Alex Thomas v. United Republic of Tanzania* (merits) (20 November 2015) 1 AfCLR 465, § 73.

A. Alleged violation of the right to the presumption of innocence

55. The Applicant asserts that the presumption of innocence is a fundamental human right, enshrined in Article 7(1)(b) of the Charter and Article 17 of the Respondent State's Constitution.

56. He contends that by deciding not to issue official documents to persons sought by the courts, in accordance with the inter-ministerial Order of 22 July 2019 while the said persons have not been convicted, the Respondent State violated the principle of presumption of innocence.

57. The Applicant further asserts that the non-issuance of official documents to convicted persons is the consequence of an offence having been committed, since this punitive measure constitutes a sanction taken after due process in line with the tenets of Beninese positive law.

58. In reply, the Respondent State contends that presumption of innocence implies that any person accused of an offence is deemed innocent until proven guilty.

59. It further submits that this principle does not preclude the accused being deprived of liberty in Order to ensure the effectiveness of investigations, nor does it preclude him being subjected to measures of restraint, in particular preventive detention or police custody, for the purpose of establishing the truth.

60. Finally, the Respondent State maintains that the prohibition on issuing official documents is in no way a declaration of guilt but is intended to prevent persons intending to evade justice from absconding. It avers that the contested decree contributes to the respect of the presumption of innocence insofar as it ensures that defendants appear in court to be proven either guilty or innocent.

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61. Article 7(1)(b) of the Charter provides:

> "Every individual shall have the right to have his cause heard. This comprises ...the right to be presumed innocent until proved guilty by a competent court or tribunal."

62. The Court emphasises that presumption of innocence means that any person suspected or accused of an offence is, *a priori*, presumed not to have committed it, until found guilty by an irrevocable judicial decision.[17] It follows that the scope of the right to the presumption of innocence covers the entire procedure from arrest to the delivery of the decision.[18]

63. The Court has held that respect for the presumption of innocence is not only binding on the criminal court, but also on all other judicial, quasi-judicial and administrative authorities.[19]

64. The Court considers that presumption of innocence is violated if, without establishing the judicial guilt of an individual, a judicial or administrative decision suggests that they are guilty. In the same vein, presumption of innocence is violated when authorities, including judicial authorities, undertake acts that lead the public to believe in the guilt of accused persons.

65. The Court recalls that in the present case, the Order of 22 July 2019 relates to two categories of persons, namely, persons whose appearance, hearing or interrogation is required at the preparatory or trial stage of criminal proceedings initiated against them, and persons who have been the subject of an enforceable conviction. In sum, the Order concerns persons against whom there is no irrevocable criminal judgment, meaning that the said

[17] An irrevocable decision is a "decision that cannot judgment, which is a "judgment that settles a main or incidenta jurisdiction and having the authority of *res judicata*. It remains subject to appeal. (Lexique des termes juridiques, 25th edition, 2017-2018, Serge Guinchard, Dalloz (edit).
[18] *Sébastien Germain Ajavon v. Republic of Benin* (29 March 2019) (merits) 3 AfCLR 130, § 190; *Houngue Eric Noudéhouenou v. Republic of Benin*, Application No. 003/2020, Judgment of 4 December 2020 (merits), § 100.
[19] *Ajavon*, *ibid*, § 192; *Noudéhouenou*, *ibid*, § 101.

decision may still be appealed. As such, the persons concerned are presumed innocent until decisions rendered against them become final.

66. The Court notes in the present case, that the refusal to issue official documents arising from the Order of 22 July 2019, is in fact a measure of compulsion taken against a wanted person in Order to compel them to comply with court summons.

67. The Court noted that by this Order, whose citations are unrelated to judicial matters,[20] the Ministers of Justice and Interior, who belong to the executive branch, are encroaching on powers that are the preserve of the judicial branch.[21/22] Indeed, according to paragraph iii (3) of the preamble of the

[20] The citations of the Order are as follows: Law No. 90-32 of 11 December 1990 on the Constitution of the Republic of Benin; the proclamation, on March 30, 2016, by the Constitutional Court of the final results of the presidential election of 20 March 2016; Decree 2018-198 of 5 June 2018, on the composition of the Government; Decree No. 425 of 20 July 2016, on the attribution, organization and functioning of the Ministry of Justice and Legislation; In view of Decree No. 2016 - 416 of 20 July 2016, on the attribution, organization and functioning of the Ministry of the Interior and Public Security; In view of the needs of the service.

[21] Decree No. 425 of 20 July 2016 on the attributions, organization and functioning of the Ministry of Justice and Legislation, Article 3 "The mission of the Ministry of implement, conduct, monitor and evaluate the State's prison services, supervised education, legislation and human rights, and the promotion of a dynamic strengthening of relations between the government, republican institutions and civil society organizations. In this respect, it is responsible for : - contributing to the promotion of respect for the independence of the judiciary and the consolidation of the rule of law; - organizing the proper functioning of the judiciary, penitentiary institutions and supervised education establishments; - monitoring the consistency of the legality and application of all texts containing provisions on criminal, civil, administrative and accounting matters; - ensuring the judicial protection of children; monitoring the re-education of minors and adolescents in conflict with the law or in moral danger; without prejudice to the powers of the Judicial Agent of the Treasury, to give legal advice on any action that the State wishes to bring before the judicial and administrative courts, as well as on the defence that the State may bring before the same courts; to investigate and follow up on appeals for pardon, amnesty, and applications for parole and rehabilitation; to advise the State on legal matters; - to organize and supervise the exercise of jurisdictional functions; participate in the control and monitoring of websites and all means of information and communication technology; ensure compliance with the regulations on freedom of the press; - design, lead and coordinate all government activities aimed at promoting, protecting and defending human rights to establish and implement mechanisms for the protection and defence of individual and collective freedoms; to implement international conventions on mutual legal assistance; - to ensure the promotion and facilitation of relations with civil society organizations; to ensure, in collaboration with the structures concerned, the follow-up of the cooperation of Benin's technical and financial partners with civil society organizations; to manage the government's relations with constitutional institutions and non-State organizations".

[22] Decree No. 416 of 20 July 2016 on the attributions, organization and functioning of the Ministry of the Interior and Public Security, Article 3: "The mission of the Ministry of the the definition, implementation and monitoring-evaluation of State policy on security, counter-terrorism, civil protection, preservation of public freedoms and participation of citizens in ensuring the of security property and persons throughout the national territory. As such, it is responsible for : - ensuring public Order, in particular the internal and external security of the State; - taking all measures to ensure the prevention, investigation and repression of all acts likely to disturb public Order; - managing migration

Code of Criminal Procedure, “The measures of compulsion to which a suspect or an accused person may be subjected are taken by decision, or under the effective control, of the judicial authority. They must be strictly limited to the needs of the proceedings, proportionate to the seriousness of the offence charged and not inimical to the dignity of persons”.[23]

68. The Court notes, however, that the Respondent State has not provided evidence of any search notice or warrant issued by the judicial authorities, let alone a court decision prohibiting the issuance of the documents in question to wanted persons.

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flows; - promote the quality of security governance throughout the hierarchy of the security forces, including improving the quality of recruitment, training and living and working conditions of security personnel; - develop and implement the national policy for the integrated management of border areas; enhance the professionalism and rationalization of intelligence services and their orientation towards territorial and sectoral intelligence; - organize and coordinate the fight against terrorism; -cooperate with other ministries in terms of accompanying measures to strengthen the effectiveness of systemic security actions on the territory; - ensure that security units throughout the national territory are up to standard and functioning properly; - strengthen inter-body cooperation throughout the pyramid of the national security system by means of synergistic actions at the central, deconcentrated and decentralized levels; - strengthen security cooperation with neighbouring countries and friendly countries in Africa and the world. The Minister of the Interior and Public Security is responsible for - ensuring the peaceful coexistence of traditional and modern religions; directing the practice of religion towards the promotion of moral and ethical values and human development, in particular the development and emancipation of followers; provide each commune with an integrated local security plan to strengthen inter-corps cooperation, collaboration with local authorities and the promotion of a culture of law and Order and peace among the population; - ensure, in collaboration with the ministry in charge of decentralization, the training of village, neighbourhood, city, district and commune councils in territorial intelligence; - contribute to the prevention and management of social conflicts arising from the succession to the thrones of traditional chieftaincies, and intra- and inter-religious conflicts. Facilitate a strategic security analysis framework that serves as an annual assessment of Benin's security profile and the rapid reaction capacity of its forces in the face of any threat factor; develop and periodically update in a database the geo-referenced mapping of places of worship with an assessment of their contribution to peace and security in each commune; - develop and institutionalise tools for the strategic assessment of the security implications of major investments on the national territory; - contribute to the modernization of civil status by creating a national central civil status file using appropriate technologies, and networking civil status managers with the competent administrations of the security forces, the justice system, foreign affairs, health units, prefectures and local authorities - ensuring the quality of training in police, gendarmerie, water and forestry schools and in private security training schools; - ensuring the regulation of bars, restaurants and similar establishments. As part of its civil protection responsibilities, the Ministry of the Interior and Public Security is responsible for - elaborating and enhancing the mapping of systemic risks and developing the strategy for their management in collaboration with the ministries in charge of decentralization, living environment and higher education; - implementing civil protection and defence; - organizing relief in case of disasters or catastrophes; - to ensure the protection of people and property throughout the national territory, the security of facilities of general interest and the nation's natural resources in collaboration with other ministerial departments, in particular those in charge of decentralization, the living environment, health, agriculture and defence; -to develop a civil protection education program in p

[23] Law No. 2012-15 of March 30, 2012 on the Code of Criminal Procedure, Preamble (iii)(3).

69. The Court considers that the refusal to issue the said documents, which is not based on any judicial decision, suggests that persons “wanted by the judicial authorities” are. This perception is exacerbated by the fact that, according to Article 3 of the aforementioned Order, the list of persons “wanted by the judicial authorities” can be consulted by everyone on the website of the Ministry of Justice and Legislation, whose address is stated therein.

70. The Court notes, in this regard, that under the name of each person “wanted by the judicial authorities” is mentioned an offence and, next to it, a court. These mentions alone suffice to lead the public to believe that these persons are guilty.

71. In view of the foregoing, the Court finds that the Respondent State violated the right to the presumption of innocence under Article 7(1)(b) of the Charter.

B. Alleged violation of the right to nationality

72. The Applicant submits that the right to nationality must be assessed in relation to the effective enjoyment of all the benefits thereof, including the right to be issued all civil and administrative documents.

73. He considers that the contested Order restricts the right to the effective enjoyment of nationality insofar as some of these documents serve as proof of nationality, so that it violates Article 15 of the UDHR, which protects the right to nationality.

74. According to the Applicant, the existence of a right is assessed in relation to the benefit that accrues to its hol
nationality cannot be declared effective based exclusively on absence of abuse, restriction or deprivation”.

75. In reply, the Respondent State contends that nationality is the legal affiliation of a person to the State and that the law of the Respondent State spells out the modalities of its attribution, loss and forfeiture.

76. The Respondent State affirms that the contested Order does not relate to nationality and does not restrict proof of nationality. It concludes that there is no impediment to the right to nationality.

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77. The Court notes that Article 15 of the UDHR provides:

> "1. Every individual has the right to a nationality…
> 2. No one shall be arbitrarily deprived of his nationality, nor denied the right to change his nationality…" .

78. The Court reiterates, as stated in *Anudo Ochieng Anudo v. Tanzania*[24] and *Robert John Penessis v. Tanzania,*[25] that the right to nationality under the UDHR applies as a binding norm to the extent that the instrument has acquired the status of a customary international law.

79. The Court also indicated in *Robert John Penessis v. Tanzania* that although the Charter does not contain an express provision on the right to nationality, Article 5 thereof provides that "Every individual respect of the dignity inherent in a human being and to the recognition of his legal status …". In this regard, the Court found that the term "legal status" in this article includes the right to nationality.[26]

80. The Court recalls that the granting of nationality is a matter of State sovereignty and therefore each State determines the requirements for the granting, enjoyment and withdrawal of nationality in line with relevant

[24] *Anudo Ocheng Anudo v. United Republic of Tanzania* (merits) (28 March 2018) 2 RJCA 248, §76.
[25] *Robert John Penessis v. United Republic of Tanzania* (merits and reparations) (28 November 2019) 3 RJCA 593, § 85.
[26] *Ibid*, § 89.

international law. The Court also held that every individual has the right to the recognition of their legal status[27] everywhere, so that nationality not only defines the identity of each individual but also grants them the protection of the state and confers on them many civil and political rights.

81. In this regard, the Court considers that the violation of the right to nationality does not only mean, *stricto sensu,* the withdrawal or forfeiture of nationality through an official act. The Court considers that this violation may also entail arbitrary refusal to issue documents that serve as proof of nationality or the arbitrary cancellation thereof**.**

82. The Court notes that the ability to produce or obtain proof of one's nationality can be essential to being, and continuing to be, considered a national of the State concerned. Moreover, in some national contexts, the inability to access certain identity documents that the State issues exclusively to its nationals may mean that the person is not considered a national and therefore not entitled to the rights and obligations attached to nationality. This may lead to situations of statelessness of the person concerned. The Court has already ruled that "Everyone has the legal right to a nationality and shall not be arbitrarily deprived of his nationality" and that "States shall take all necessary measures to avoid situations of statelessness".[28]

83. The Court therefore agrees with the African Commission on Human and Peoples' Rights that "African States should ensure that all documents used to prove nationality, particularly passports, identity documents and birth and marriage certificates …".[29]

[27] *Ibid*, § 88.
[28] *Idem*.
[29] ACHPR, The Right to Nationality in Africa, Study carried out by the Special Rapporteur on Refugees, Asylum Seekers, Internally Displaced Persons and Migrants in Africa, pursuant to Resolution 234 of 23 April 2013, with the approval of the Commission granted in its 55th ordinary session held in May 2014.

84. The Court therefore considers that the question of proof of nationality is a corollary of the right to nationality and cannot be discounted, so that the citizen cannot be arbitrarily deprived of it as laid down in Article 15 of the UDHR and Article 5 of the Charter.

85. Thus, the Court considers that in order to avoid arbitrariness, such measures depriving individuals of the enjoyment of the right to nationality must have a clear legal basis, must serve a legitimate purpose in line with international law, must be proportionate to the interest they seek to protect, and there must be procedural safeguards entitling the person concerned to defend his case before an independent body.

86. The Court notes in the instant case that, although the Respondent State's legislation provides that issues of nationality, personal status,[30] proof of nationality and its effects[31] are matters of law, the refusal to issue a certificate of nationality in the instant case resulted from an inter-ministerial Order intervening in an area that is the preserve of the law. Furthermore, the Court has established in the present judgment that the objective of the contested Order, namely, to ensure that persons claimed by the Respondent State to be wanted do not abscond, is inconsistent with international law insofar as it violates the right to the presumption of innocence.

87. The Court further considers that the measure prohibiting the issuance of certificates of nationality or cancelling[32] the same as laid out in the Order of 22 July 2019 are of a nature to negate the legal status of wanted persons and to lead to statelessness, which is clearly disproportionate with the purpose of the law.

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[30] *Article 98 of Law No. 90-32 of December 11, 1990, establishing the concerning: […] the nationality, status and capacity of lawyers*

[31] Article 95 of Law No. 65-17 of June 23, 1965, on the Dahomean Nationality Code (Benin), applicable at the time of the institution of proceedings, provides that "… until proven otherwise. This text is also taken up by article 76 paragraph 2 of law No. 2022-32 of 20 December 2022 on the nationality code repealing law No. 065-17 of 23 June 1965.

[32] Article 5 of the decree states: "Any act of the aut decree (…) is null and void.

88. The Court considers that in these circumstances, by prohibiting the establishment and issuance of the certificate of nationality to persons simply because they are wanted by the law, or by declaring such a certificate null and void, the Order of 22 July 2019 arbitrarily deprives them of the enjoyment of nationality.

89. The Court therefore finds that by virtue of the Order of 22 July 2019, the Respondent State violated the right to nationality under Article 5 of the Charter and Article 15 of the UDHR.

VIII. REPARATIONS

90. The Applicant requests the Court to Order the Respondent State to bring the Inter-ministerial Order of 22 July 2019 in compliance with international human rights standards.

91. The Respondent State submits that the Court should declare the alleged violations unfounded and consequently dismiss the Applicant's request for reparation.

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92. Article 27(1) of the Protocol provides been violation of a human or peoples' right, it shall make appropriate Orders to remedy the violation, including the payment of fair

93. The Court notes that it has found that the inter-ministerial Order of 22 July 2019 violates the right to be presumed innocent and the right to nationality protected by Article 7(1)(b) of the Charter, and Articles 5 of the Charter and 15 of the UDHR respectively.

94. Consequently, the Court orders the Respondent State to take all measures to revoke the inter-ministerial Order of 22 July 2019.

IX. COSTS

95. None of the Parties submitted on costs.

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96. Rule 32(2) of the Rules[33] provides that "unless otherwise decided by the Court, each party shall bear its own costs."

97. In the circumstances of the present Application, the Court does not deem it necessary to depart from the above provisions. The Court therefore decides that each party shall bear its own costs.

X. OPERATIVE PART

98. For these reasons,

The COURT,

Unanimously,

On jurisdiction

i. *Dismisses the objection to material jurisdiction;*
ii. *Declares* that it has jurisdiction.

On admissibility

iii. *Dismisses* the objection to admissibility based on non-exhaustion of local remedies;
iv. *Declares* the Application admissible.

[33] Rule 30(2) of the Rules of 2 June 2010.