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

In the Matter of:

Lehady Vinagnon SOGLO,

Represented by
Barrister Yaya Pognon, Member of the Benin Bar

Versus

REPUBLIC OF BENIN

Represented by
Mr. Iréné ACOMBLESSI, Judicial Agent of the Treasury

After deliberation,

Renders this Ruling:

I. THE PARTIES

1. Lehady Vinagnon Soglo (hereinafter referred to as "the Applicant") is a national of Benin. He alleges violation of his rights as a result of his removal from office as Mayor of Cotonou and the legal proceedings brought against him.

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 referred to

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") on 22 August 2014. In addition, on 8 February 2016, the Respondent State made the Declaration provided for in Article 34(6) of the said Protocol (hereinafter referred to as "the Declaration") by which it accepts the Court's jurisdiction to receive applications from individuals and non-governmental organizations. On 25 March 2020, the Respondent State deposited with the African Union Commission the instrument of withdrawal of its Declaration. The Court has ruled that this withdrawal had no effect either on pending cases or new cases filed before the withdrawal took effect one year after its filing, in this case, on 26 March 2021.[1]

II. SUBJECT OF THE APPLICATION

A. Facts of the matter

3. It emerges from the Application that the Applicant was elected Mayor of Cotonou Municipality in August 2015. On 28 July 2017, he was summoned by the Consultative and Coordination Council of the Littoral Region (hereinafter referred to as "the Council") chaired by the Prefect of the Littoral Region for a hearing on the management of the said municipality.

4. The Applicant avers that on the same day**,** after the said hearing, he was suspended as mayor by an order of 28 July 2017[2] issued by the Respondent State's Minister of Decentralisation (hereinafter referred to as " Suspension order of 28 July 2017"), which was notified to him. Subsequently, he was dismissed from office by Decree No. 2017-380 of 2 August 2017 (hereinafter referred to as "Dismissal Decree of 2 August 2017").

[1] *Houngue Éric Noudehouenou v. Republic of Benin* (provisional measures) (5 May 2020) 4 AfCLR 701, §§ 4-5 and Corrigendum of 29 July 2020.
[2] Ministerial Order No. 26/MDGL/DC/SGM/DGCL/SA/011 SSG17 of 28 July 2017.

5. The Applicant submits that he seized the Administrative Chamber of the Supreme Court, seeking annulment of his suspension and dismissal. He avers that despite having provided evidence of violations of his right to defence and of the laws on decentralisation**,** his appeal was dismissed.

6. He further avers that the Respondent State continued to persecute him not only by attempting to kidnap him but also by initiating criminal proceedings against him and twenty-eight (28) of his former associates before the Court for the Repression of Economic Offences and Terrorism (CRIET) for abuse of office, misappropriation of public funds and money laundering. He states that, on 29 June 2020, the CRIET found him guilty of abuse of office and sentenced to ten (10) years' imprisonment, together with a warrant issued for his arrest, and ordered to pay Two Hundred and Sixty-Seven Million Five Thousand (267,005,000) Francs CFA in damages to the Respondent State**.**

7. The Applicant further avers that, for security reasons and because of the fate reserved for certain political opponents, he and his wife have been in exile in France since August 2017.

B. Alleged violations

8. The Applicant alleges violation of the following rights:

   i. The right to have one's cause heard, protected by Article 7 of the Charter;
   ii. The right to life and to physical and moral integrity, protected by Article 4 of the Charter; and
   iii. The right to participate freely in the government of his country, protected by Article 13(1) of the Charter.

III. SUMMARY OF THE PROCEDURE BEFORE THE COURT

9. The Application together with a request for provisional measures was filed on 25 March 2021. It was served on the Respondent State on 12 May 2021 for its responses within respectively ninety (90) and fifteen (15) days of receipt.

10. On 3 June and 23 August 2021, the Respondent State filed its submissions respectively on provisional measures and the merits which were notified to the Applicant on 11 February 2022. The Applicant did not file a Reply despite reminders sent to him on 11 February and 11 November 2022, and 10 July 2023.

11. At its 69th Ordinary session, the Court decided to consider the request for provisional measures together with the Application on the merits. The decision was notified to the Parties on 30 June 2023.

12. Pleadings were closed on 1 August 2023 and the Parties duly notified.

IV. PRAYERS OF THE PARTIES

13. The Applicant prays the Court:

On the merits, to:

i. Find that the Respondent State violated Articles 4, 7, 13(1) and 26 of the Charter.

As to provisional measures, to:

ii. Order the Respondent State to publicly acknowledge and accept its responsibility as alleged in the present Application, and to restore his civil and civic rights; and

iii. Order the Respondent State to guarantee him the freedom to come and go in his country, and to see and succour his aged and ailing parents.

14. The Respondent State prays the Court to:

On admissibility,

i. Find that at the time the Application was heard, local remedies had not been exhausted before the Applicant filed his Application with the Court;
ii. Find that local remedies are available and effective;
iii. Consequently, declare the Application inadmissible;
iv. Find that the Applicant allowed more than three (3) years to elapse before bringing the case before the Court;
v. Declare that the Application was not filed within a reasonable time; and
vi. Consequently, dismiss the Applicant's Application for being filed out of time.

On the merits:

i. Find that the procedure followed in issuing Order No. 26/MDGL/DC/SGM/DGCL/SA/011 SSG17 of 28 July 2017 suspending the Mayor of Cotonou complies with the laws governing decentralisation in the Republic of Benin;
ii. Find that the procedure followed in the dismissal by Decree N°2017-380 of 2 August 2017 is regular and compliant with the laws in force;
iii. Find and rule that the Applicant's suspension and removal from office as Mayor of the City of Cotonou does not constitute a violation of his right to free and fair justice;
iv. Find that the Applicant left Benin without being forced to do so;
v. Find that the Respondent State cannot be held to have violated the right of all citizens to participate freely in the government of their country;
vi. Find that the Applicant was not the victim of an attempted abduction by the State of Benin;
vii. Find that the State did not violate Article 4 of the Charter; and
viii. Consequently, dismiss all of the Applicant's requests.

On the request for provisional measures:

i. Find that there is no urgency or extreme gravity;
ii. Find that there is no risk of irreparable harm;

iii. Consequently, declare all of the Applicant's requests unfounded; and
iv. Dismiss the Applicant's request for provisional measures in all respects.

V. JURISDICTION

15. The Court recalls that Article 3 of the Protocol provides:

> 1. The Court shall have jurisdiction over 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.

16. Under Rule 49(1) of the Rules of Court, "the Court shall make a preliminary examination of its jurisdiction [...] in accordance with the Charter, the Protocol and the [...] Rules of Court".

17. Based on the aforementioned provisions, the Court must, in each Application, conduct a preliminary assessment of its jurisdiction and rule on any objections thereto, if necessary.

18. The Court notes that the Respondent State does not raise any objection to jurisdiction. Nonetheless, it must satisfy itself that it has jurisdiction to hear the present Application. Accordingly, it finds, based on the record, that it has:

i. Material jurisdiction, insofar as the Applicant alleges violation of the right to defence, the right to life and to physical and moral integrity and the right to participate freely in the government of his country, protected respectively by Articles 7, 4 and 13(1) of the Charter, an instrument ratified by the Respondent State.

ii. Personal jurisdiction, insofar as the Respondent State is a Party to the Charter, the Protocol and has deposited the Declaration. The Court recalls, as indicated in paragraph 2 of this Judgment, that on 25 March 2020, the Respondent State deposited the instrument of withdrawal of the Declaration. In this regard, the Court reiterates its position that the withdrawal of the Declaration has no retroactive effect and has no bearing on cases pending at the time of the deposit of the instrument of withdrawal, or on new cases brought before it prior to the said effective date of the withdrawal. As the said withdrawal of the Declaration took effect one year after the deposit of the instrument relating thereto, that is, on 26 March 2021, it has no effect on the present Application, which was filed on 25 March 2021.

iii. Temporal jurisdiction, insofar as the alleged violations were committed after the entry into force of the above-mentioned instruments, with regard to the Respondent State.

iv. Territorial jurisdiction, insofar as the facts of the matter and the alleged violations took place on the territory of the Respondent State.

19. Consequently, the Court finds that it has jurisdiction to hear the present Application.

VI. ADMISSIBILITY

20. Under Article 6(2) of the Protocol: “The Court shall rule on the admissibility of applications having regard to the provisions of Article 56 of the Charter”.

21. Rule 50(1) of the Rules of Court provides: “The Court shall proceed to an examination of admissibility [...] in accordance with Article 56 of the Charter and Article 6(2) of the Protocol and the [...] Rules of Court”.

22. Rule 50(2) of the Rules, which reproduces in substance the provisions of Article 56 of the Charter, reads as follows:

> Applications lodged with the Court must satisfy the following conditions:
>
> a. The identity of the applicant must be stated, even if the applicant asks the Court to remain anonymous;
> b. Be compatible with the Constitutive Act of the African Union and the Charter;
> c. Not be written in terms that are outrageous or insulting to the State concerned, its institutions or the African Union;
> d. Not be limited exclusively to news broadcast by the mass media;
> e. Be subsequent to the exhaustion of domestic remedies, if any, unless it is clear to the Court that the proceedings in respect of such remedies are being unduly prolonged;
> f. Be lodged within a reasonable time after the exhaustion of local remedies or after the date specified by the Court as the date on which the time limit for bringing the case before it begins to run;
> g. Not concern matters which have been settled by the States concerned, in accordance with the principles of the Charter of the United Nations, the Constitutive Act of the African Union or the provisions of the Charter.

23. The Court notes that the Respondent State raises two (2) objections to the admissibility of the Application, one based on non-exhaustion of local remedies and the other on failure to file the Application within a reasonable time. The Court will consider the said objections before examining other conditions of admissibility, if necessary.

A. Objection based on non-exhaustion of local remedies

24. Citing the decision of the African Commission on Human and Peoples' Rights (hereinafter referred to as "the Commission") in the joined cases of *Free Legal Assistance Group and others v. Zaire*, the Respondent State

contends that the exhaustion of local remedies is a fundamental principle of international law which requires that a Government be informed of alleged human rights violations in order to have the opportunity to remedy them before being brought before an international body such as this Court.

25. The Respondent State maintains that, in violation of Rule 40(5) of the Rules[3] which essentially restates the provisions of Article 56(5) of the Charter, the Application was filed prematurely. It asserts that the Applicant had the opportunity to bring his grievances concerning human rights violations before the Constitutional Court, in accordance with Article 117 of Law No. 2019-40 of 7 November 2019 amending Law No. 90-32 of 11 December 1990 on the Constitution of the Respondent State.

26. It argues that the Applicant did not fulfil the condition of prior exhaustion of local remedies and therefore his Application must be declared inadmissible.

27. Without specifically replying to the Respondent State's arguments, the Applicant avers in the Application that he brought a case before the Administrative Chamber of the Supreme Court seeking to vacate both the Suspension Order and Dismissal Decree. Furthermore, he concedes that he did not appeal against the CRIET's judgment, since a warrant had been issued against him.

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28. The Court notes that in accordance with Rule 50(2)(e) of the Rules of Court and Article 56(5) of the Charter, applications must be filed after exhaustion of local remedies, if any, unless the procedure in respect of such remedies is unduly prolonged.[4]

[3] Rule 50(2)(e) of the Rules of Court of 1 September 2020.
[4] *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.

29. The Court underscores that the local remedies to be exhausted are those of a judicial nature. They must be available, in the sense that they can be used without hindrance by the Applicant, and effective in the sense that they are "capable of giving satisfaction to the Applicant or of remedying the situation in dispute".[5]

30. The Court underlines that it is not enough for an Applicant to cast doubt on the availability or effectiveness of local remedies. Rather, it is up to him to take all necessary steps to exhaust, or at least attempt to exhaust, local remedies.[6]

31. In the instant case, the Court notes from the record, that the violations alleged by the Applicant result, from the Suspension Order of 28 July 2017 and the Dismissal Decree of 2 August 2017, as well as from the criminal proceedings initiated against him before the CRIET. The Court will determine whether local remedies were exhausted with regard to these two aspects.

32. With regard to the Suspension Order and the Dismissal Decree, the Court observes, in light of the Respondent State's laws, that Article 827 of the Code of Civil Procedure[7] governs cases brought before the Administrative Chamber of the Supreme Court for annulment on grounds of abuse of power by administrative authorities.[8] It follows that actions seeking annulment of the Suspension Order of 28 July 2017 and the Dismissal Decree of 2 August

[5] *Norbert Zongo and Others 'v. Burkina Faso* (merits) (5 December 2014) 1 AfCLR 226, § 68; *Konaté v. Burkina Faso* (merits), *supra*, §108.
[6] *Noudehouenou v. Benin* (jurisdiction and admissibility), *supra*, §40.
[7] Law No. 2008-07 of February 28, 2011, Article 827: *"The time limit for appealing on grounds of ultra vires is two (2) months. This period runs from the date of publication or notification of the contested decision. Before appealing against an individual decision, the applicant must submit a hierarchical or gracious appeal to have the said decision rescinded. If the competent authority remains silent for more than two (2) months, the application is deemed to have been rejected. The applicant has a period of two (2) months from the date of expiry of the above-mentioned two (2) months to appeal against this implicit decision. However, if an explicit rejection decision is made within this two (2) month period, the time limit for appeal starts running again. The time limits for lodging appeals do not start to run until the day of notification of the decision rejecting the appeal or the expiry of the two (2)-month period referred to in the previous paragraph. In tax matters, the applicable time limits are set by the General Tax Code and the tax laws in force".*
[8] *Ibid*, Article 818 paragraph 1: "The court ruling on administrative matters is competent to hear disputes concerning all acts emanating from all administrative authorities within its jurisdiction"

2017 issued by administrative authorities of the Respondent State must be brought before the Administrative Chamber of the Supreme Court.

33. The Court notes that although the Applicant asserts that he pursued a remedy before the said Chamber of the Supreme Court seeking annulment of the Suspension Order and the Dismissal Decree, he does not provide any evidence to prove the existence of the said procedure or the outcome thereof**,** despite the fact that the Court, on 10 July 2023, requested him to do so. The Court therefore considers that the Applicant did not exhaust local remedies in respect of the violations resulting from the Suspension Order and the Dismissal Decree.

34. With regard to the criminal proceedings before the CRIET, the Court recalls the Applicant's assertion that the said Court convicted him on 29 June 2020, which the Respondent State confirms. The Court notes in this respect that Law No. 2020-07 of 17 February 2020, amending and supplementing the CRIET Act, established an Appeals Chamber to hear appeals against judgments handed down by the CRIET Trial Chamber.[9]

35. The Court notes that in the present case, the Applicant himself concedes that he did not appeal against the CRIET's judgment. He avers that he was unable to pursue this remedy since he was in exile owing to the arrest warrant that had been issued against him.

36. With regard to this argument, the Court notes that the laws of the Respondent State do not compel an accused person to be present in court when filing an appeal against a conviction. The appeal may thus be filed by the accused or by any other person duly empowered to do so.[10] It follows

[9] Law No. 2020-07 of 17 February 2020 amending and supplementing the law on the CRIET, Article 6 new: "the Court for the Repression of Economic Offences and Terrorism is composed of: a judgment chamber, an appeal chamber ...
All judgments handed down by the trial chamber may be appealed in accordance with the conditions, procedures, forms and deadlines set out in the Code of Criminal Procedure...
Decisions handed down by the Appeals Chamber may be appealed to the Supreme Court by the convicted person, the Public Prosecutor and the civil parties, in accordance with the conditions, procedures, forms and deadlines laid down in the Code of Criminal Procedure".
[10] Law No. 2012-15 of 30 March 2012 on the code of criminal procedure, article 519: *"... the declaration*

that just as he did before this Court, the Applicant had the possibility of hiring a lawyer to appeal against the CRIET's judgment of conviction, the latter having the obligation to perform all the necessary procedural acts and to inform him of the progress of the proceedings.

37. The Court notes, specifically, that in accordance with article 519 of the Code of Criminal Procedure, the execution of the judgment is stayed both during the appeal period and during the appeal proceedings.[11] It follows that, pursuant to the provisions, the arrest warrant issued in the judgment of 29 June 2020 could not have been enforced and therefore, the Applicant could have appeared in person to appeal the CRIET's judgment.

38. The Court therefore holds that the Applicant's argument justifying his failure to exercise of his right to appeal the criminal proceedings is untenable, and that he could have exercised it and awaited its outcome before seizing this Court, unless the proceedings were unduly prolonged. The Court therefore finds that the Applicant did not exhaust local remedies in respect of the alleged violations in relation to the criminal proceedings instituted against him.

39. Having found that the Applicant did not exhaust local remedies in respect of his suspension and dismissal as well as in respect of the criminal proceedings, the Court considers it unnecessary to rule on the Respondent State's claim that the Applicant was required to exercise and exhaust the remedy before the Constitutional Court**.**

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of appeal must be made at the registry of the court which handed down the contested decision. It must be signed by the clerk and by the appellant himself, or by a defender or by a special proxy; in the latter case, the proxy is appended to the document drawn up by the clerk. If the appellant is unable to sign, this is noted by the clerk. It is entered in a public register for this purpose, and any person has the right to obtain a copy".

[11] Article 519 of Law No. 2012-15 establishing the code of criminal procedure in the Republic of Benin: " During the appeal periods and during the appeal pr suspended …" .

40. Consequently, the Court finds that the objection based on non-exhaustion of local remedies is well-founded and holds that the Application does not satisfy the requirement of Rule 50(2)(e) of the Rules.

B. Other conditions of admissibility

41. Having concluded that the present Application does not satisfy the requirement of Article 56(5) of the Charter and Rule 50(2)(e) of the Rules of Court, and having regard to the cumulative nature of the conditions of admissibility,[12] the Court considers that it is superfluous to rule on the objection to admissibility based on failure to file the Application within a reasonable time, and on the other conditions of admissibility.

42. Consequently, the Court declares the Application inadmissible.

VII. ON THE REQUEST FOR PROVISIONAL MEASURES

43. The Court recalls that in his Application on the merits, the Applicant requested for provisional measures. The Court decided to consider the request together with the merits.

44. Having found that the Application is inadmissible for non-exhaustion of local remedies, the Court holds that the request for provisional measures is moot.

VIII. COSTS

45. The Parties did not submit any observations on costs.

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[12] *Mariam Kouma and Ousmane Diabaté v. Republic of Mali* (jurisdiction and admissibility) (21 March 2018) 2 AfCLR 237, § 63*; Rutabingwa Chrysanthe v. Republic of Rwanda* (jurisdiction and admissibility) (11 May 2018) 2 AfCLR 361, § 48*; Collectif des anciens travailleurs ALS v. Republic of Mali* (jurisdiction and admissibility) (28 March 2019) 3 AfCLR 73, § 39.

46. The Court notes that under Rule 32(2) of its Rules, “[u]nless the Court decides otherwise, each party shall bear its own costs”.

47. The Court considers that there is no reason in the present case to depart from the principle laid down by this provision. The Court therefore orders that each party shall bear its own costs.

IX. OPERATIVE PART

48. For these reasons,

THE COURT

Unanimously

On jurisdiction

i. *Declares* that it has jurisdiction.

On admissibility

ii. *Upholds* the objection to admissibility based on non-exhaustion of local remedies;

iii. *Declares* the Application inadmissible.

On the request for provisional measures

iv. *Decides* that the request for provisional measures is moot.

On costs

v. *Orders* that each party shall bear its own costs.