

AFRICAN UNION		UNION AFRICAINE
الاتحاد الأفريقي		UNIÃO AFRICANA
UNIÓN AFRICANA		UMOJA WA AFRIKA
AFRICAN COURT ON HUMAN AND PEOPLES' RIGHTS COUR AFRICAINE DES DROITS DE L'HOMME ET DES PEUPLES		

THE MATTER OF

XYZ

V.

REPUBLIC OF BENIN

APPLICATION NO. 058/2019

RULING

26 JUNE 2025



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

In the matter of:

XYZ

Self-represented,

Versus

Republic of Benin

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

After deliberation,

Renders this Ruling:

I. THE PARTIES

1. XYZ (hereinafter referred to as “the Applicant”) is a national of Benin. He requested, and obtained anonymity from the Court, for reasons of personal safety. He is challenging an inter-ministerial order¹ issued by the Minister of Justice and Legislation and the Minister of Interior and Public Security (hereinafter “the Order of 22 July 2019) prohibiting the issuance of official documents to persons wanted by the courts 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 “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”) on 22 August 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”) by virtue of which it accepted the jurisdiction 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 the instrument of withdrawal of the said Declaration. The Court has ruled that this withdrawal has no effect on pending cases and on new cases brought before it before the withdrawal takes effect one year after the deposit of the instrument relating thereto, in this case, on 26 March 2021.²

II. SUBJECT OF THE APPLICATION

A. Facts of the matter

3. It emerges from the Application that Article 3 of the Order of 22 July 2019, prohibits the issuance of official documents to persons wanted by the Respondent State’s courts.³ Some of these official documents are listed under Article 4 of the said Order.⁴

² *Houngue Éric Noudehouenou v. Republic of Benin*, (2020) 4 AfCLR 701, §§ 4-5 and Corrigendum of 29 July 2020.

³ Article 2 of the Order of 22 July 2019 provides: “A person sought by the justice system is any person whose appearance, hearing or questioning is required by the needs of a criminal investigation, preparatory investigation, trial proceedings or who is the subject of an enforceable conviction decision and who fails to comply with the Authority’s summons and injunction”.

⁴ Article 4 of the Order of 22 July 2019 provides: “The following are considered to be official documents: extracts from civil status certificates, birth certificates, national identity cards, passports, laissez-passer, safe-conduct cards, residence permits, consular cards, bulletin number 3 of the criminal record, residence certificates or attestations, certificates of living and working conditions, attestations or certificates of possession, driving licences, electoral cards and tax receipts. The above list is not exhaustive”.

4. The Applicant avers that the Order of 22 July 2019, which in fact targets certain politicians, seriously violates the Respondent State's international commitments.

B. Alleged violations

5. The Applicant alleges violation of the following rights and obligations:
 - i. The right to privacy, protected by Article 4 of the Charter, Article 12 of the Universal Declaration of Human Rights (UDHR) and Article 17 of the International Covenant on Civil and Political Rights (ICCPR);
 - ii. The right to non-discrimination, protected by Article 2 of the Charter;
 - iii. The right to equality before the law, protected by Article 3(1) of the Charter;
 - iv. The right to the respect of the dignity inherent in a human being and to the recognition of his legal status protected by Article 5 of the Charter;
 - v. The right to be presumed innocent, protected by Article 7(1)(b) of the Charter;
 - vi. The right of persons to freedom of movement and residence within the borders of a State provided they abide by the law, protected by Article 12(1) and (2) of the Charter;
 - vii. The right to participate freely in the government of one's country, protected by Article 13(1) of the Charter;
 - viii. The right to dignity, protected by Article 14 of the Charter;
 - ix. The right to work, protected by Article 15 of the Charter;
 - x. The right to protect the family and to take care of its physical and moral health, ensure the elimination of discrimination against women, and to ensure the protection of children, protected by Article 18(1)(2)(3) of the Charter;
 - xi. The right to economic, social and cultural development, protected by Article 22(1) of the Charter;
 - xii. The right to the independence of the courts and the separation of powers, protected by Articles 10 and 11 of the UDHR, Article 14 of the ICCPR, Article 26 of the Charter, Article 1(a) of the ECOWAS Protocol on Democracy and Good Governance (the ECOWAS Protocol),

Articles 2(5) and 3(5) of the African Charter on Democracy, Good Governance and Elections (the African Charter on Democracy);

- xiii. The obligation to recognize the rights, duties and freedoms enshrined in the Charter and to undertake to adopt legislative or other measures to give effect to them, provided for under Article 1 of the Charter.

III. SUMMARY OF THE PROCEDURE BEFORE THE COURT

6. On 6 August 2019, the Applicant filed this Application together with a request for provisional measures. This was in addition to Consolidated Applications Nos. 021/2019 and 022/2019.⁵ The Court decided to treat this Application as a separate one and registered it as such, under reference No. 058/2019. The Applicant was duly informed by the Registry.
7. The Application was served on the Respondent State on 20 August 2019 for its observations on the merits of the Application and the request for provisional measures within, respectively, 60 days and 15 days of receipt.
8. On 2 December 2019, the Court issued an order dismissing the Applicant's request for provisional measures seeking to put on hold the enforcement of the order prohibiting the issuance of authority documents to persons wanted by the courts. The ruling was served on the Applicant and the Respondent State on 6 and 18 December 2019, respectively.
9. After extensions of time, the Parties filed their submissions.
10. Pleadings were closed on 1 November 2023 and the Parties were duly informed.

⁵ Consolidated Applications Nos. 021/2019 and 022/2019 are pending before the Court. They were consolidated by order of 4 July 2019.

IV. PRAYERS OF THE PARTIES

11. The Applicant prays the Court to:

- i. Dismiss the Respondent State's objection;
- ii. Grant all the requests contained in his written submissions;
- iii. Order the Respondent State to make its legislation on wanted persons compliant with the provisions of the African Charter and the relevant provisions of the United Nations Conventions on statelessness, in strict compliance with the relevant international guidelines;
- iv. Order the Respondent State to pay him the sum of One Hundred Million (100,000,000) CFA francs by way of damages for moral prejudice;
- v. Order the Respondent State to pay costs.

12. The Respondent State prays the Court to:

- i. Find that the Applicant brought the case before the Court prematurely as he did not exhaust local remedies;
- ii. Find that local remedies exist, are available and effective;
- iii. Declare that the Applicant did not exhaust local remedies;
- iv. Consequently, declare the Application inadmissible.

V. JURISDICTION

13. Article 3 of the Protocol provides that:

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.

14. Rule 49(1) of the Rules of Court (hereinafter “the Rules”) states that “the Court shall conduct preliminary examination of its jurisdiction [...] in accordance with the Charter, the Protocol and these Rules”.⁶
15. Based on the aforementioned provisions, the Court must, in each application, examine its jurisdiction and rule on any objections thereto, if necessary.
16. The Court notes that no objection has been raised to its material, personal, temporal or territorial jurisdiction. Nevertheless, in accordance with Article 49(1) of the Rules, it must ensure that all aspects of its jurisdiction are fulfilled. To this end, the Court notes that it has:
 - i. Material jurisdiction, insofar as the Applicant alleges a violation of rights protected by the Charter and other human rights instruments ratified by the Respondent State.⁷
 - ii. Personal jurisdiction, insofar as the Respondent State is a party to the Charter, the Protocol and deposited the Declaration. On 25 March 2020, the Respondent State deposited the instrument of withdrawal of its Declaration. In this respect and in line with the Court’s jurisdiction, the withdrawal by the Respondent State of its Declaration has no retroactive effect and has no bearing either on cases pending at the time of the withdrawal or on new cases brought before the Court before the withdrawal takes effect one year after the deposit of the instrument relating thereto, which in this case was on 26 March 2021. As the present Application was filed on 6 August 2019, that is, before the withdrawal of the Declaration took effect, it is therefore not affected.

⁶ Article 39(1) of the Rules of Court of 2 June 2010.

⁷ The Respondent State affirmed its commitment to the UDHR in the preamble to its Constitution. See Law No. 90-32 of 11 December 1990 on the Constitution of the Republic of Benin.

- iii. Temporal jurisdiction, insofar as the alleged violations occurred after the Respondent State became a party to the Charter and to the Protocol, as indicated in paragraph 2 of this Judgment.
 - iv. Territorial jurisdiction, insofar as the violations alleged by the Applicant occurred on the territory of the Respondent State.
17. Consequently, the Court holds that it has jurisdiction to hear the present Application.

VI. ADMISSIBILITY

18. Under Article 6(2) of the Protocol “the Court shall decide on the admissibility of applications taking into account the provisions of Article 56 of the Charter”.
19. In accordance with Rule 50(1) of the Rules, “the Court shall examine the admissibility of the application in accordance with Article 56 of the Charter, the Protocol and these Rules”.
20. Rule 50(2) of the Rules, which reproduces the substance of Article 56 of the Charter, provides as follows:

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 and with the Charter;
- 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,
- f. Are submitted within a reasonable time from the date local remedies were exhausted or from the date the Court is seized with the matter;
- 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.

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

A. Objection based on non-exhaustion of local remedies

22. 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 affording them the opportunity to redress the effects of the impugned decision or act of the State.

23. The Respondent State asserts that there were satisfactory local judicial remedies that the Applicant could have pursued against the inter-ministerial order he contests, before bringing the matter before this Court. To this end, it maintains that, in accordance with Article 117 of its Constitution,⁸ its Constitutional Court has jurisdiction to hear allegations of human rights violations. It considers that the Applicant could have laid before the said court the allegations he raises before this Court.

⁸ Article 117 of the Constitution : “The Constitutional Court shall rule mandatorily on [...] the constitutionality of laws and regulatory acts allegedly infringing fundamental human rights and public freedoms in general, in relation to human rights violation [...]”.

24. The Respondent State further submits that the persecution alleged by the Applicant is a figment of his imagination and that, in any event, the Applicant was aware of the existence of available local remedies but knowingly side-stepped them and brought the matter directly before this Court.
25. The Respondent State concludes that the Applicant did not exhaust the available local remedies and that, consequently, referral to the Court is premature. It, therefore, prays the Court to uphold its objection and declare the Application inadmissible.
26. In response, the Applicant prays the Court to dismiss the objection. He argues that the prevailing environment of persecution and the Constitutional Court's lack of independence and impartiality makes recourse to it impossible *de facto*.
27. The Applicant further submits that his appeal to the Constitutional Court would be ineffective since one Conaïde Akouedenoudje, a national of the Respondent State, filed a petition with the Respondent State's Constitutional Court on 16 August 2019 challenging the constitutionality of the impugned inter-ministerial order, and that the petition was dismissed by decision DCC 20-512 of 18 June 2020 which, according to him, is binding on all civil, military and jurisdictional authorities in accordance with Article 124 of the Constitution.⁹
28. The Applicant concludes that the Application complies with Rule 50(2)(e) of the Rules and must be declared admissible.

29. The Court recalls that, in accordance with Rule 50(2)(e) of the Rules and Article 56(5) of the Charter, applications must be filed after exhaustion of

⁹ Article 124 paragraphs 1 and 2 of the Constitution: "... The decisions of the Constitutional Court are not subject to appeal. They are binding on the public authorities and on all civil, military and judicial authorities".

local remedies, if any, unless it is clear that the procedure in respect of such remedies is unduly prolonged.¹⁰

30. The Court notes that the remedies to be exhausted are those of a judicial nature. These must be available to the Applicant without hindrance and be effective, in the sense that they are “capable of satisfying the complainant or of remedying the situation in question.”¹¹
31. As regards the effectiveness of the remedies, the Court reiterates that it has consistently held that it is not sufficient for the applicant to cast doubt on the effectiveness of the State’s local remedies. Furthermore, it is for the Applicant to take all necessary steps to exhaust, or at least attempt to exhaust, local remedies.¹²
32. The Court further notes that the determination of whether local remedies have been exhausted is made on a case-by-case basis, having regard to the circumstances of each case.
33. The Court observes that the Respondent State’s Constitutional Court has jurisdiction to hear allegations of human rights violations.¹³ In this regard,

¹⁰ *Ghaby Kodeih and Nabih Kodeih v. Republic of Benin*, AfCHPR, Application No. 008/2020, Judgment of 23 June 2022 (jurisdiction and admissibility), § 49; *Houngue Éric Noudehouenou v. Republic of Benin*, AfCHPR, Application No. 032/2020, judgment of 22 September 2022 (jurisdiction and admissibility), § 38.

¹¹ *Beneficiaries of the late Norbert Zongo, Aboulaye Nikiema dit Ablassé, Ernest Zongo and Blaise Ilboudo and Mouvement Burkinabè des droits de l’homme et des peuples Burkina Faso*, Judgment (5 December 2014) (merits) 1 AfCLR 219, § 68 ; *Konaté v. Burkina Faso* (merits), § 108.

¹² *Peter Joseph Chacha v. United Republic of Tanzania* (admissibility) (28 March 2014), 1 AfCLR 398, § 143; *Diakité Couple v. Republic of Mali* (jurisdiction and admissibility) (28 September 2017) 2 AfCLR 118; *Komi Koutché v. Republic of Benin*, AfCHPR, Application No. 020/2019, Judgment (admissibility) of 25 June 2021 § 92.

¹³ Article 114 of the Constitution of Benin stipulates that: “The Constitutional Court shall be the highest court of the State in constitutional matters. It shall be the judge of the constitutionality of laws and it shall guarantee the fundamental rights of the human person and public freedoms (...)” Under Article 122 of the Constitution: [“Any citizen may complain to the Constitutional Court about the constitutionality of laws, either directly or by raising before a court of law an objection of unconstitutionality with respect to a matter which concerns him”]

Article 22 of Law no. 91-009 of 04 March 1991 on the Organic Law on the Constitutional Court, as amended by the Law of 31 May 2001, states: “Similarly, laws and regulatory acts alleged to infringe fundamental human rights and public freedoms, and in general the violation of human rights, may be referred to the Constitutional Court either by the President of the Republic or by any citizen, association or non-governmental organisation for the defence of human rights. See, in the same vein, *Houngue Éric*

the Court reiterates its jurisprudence that a constitutional challenge before the Respondent State's Constitutional Court is an available, effective and satisfactory remedy.¹⁴

34. In the present case, the Court notes that the Applicant acknowledges that he did not pursue any local remedies. However, he advances three arguments in support of this omission: firstly, the environment of persecution; secondly, the lack of independence and impartiality on the part of the Constitutional Court; and thirdly, the fact that the said Court, previously seized by a citizen, declared the inter-ministerial decree to be consistent with the Constitution. The Court will examine these arguments successively.
35. With regard to the first argument relating to the environment of persecution, the Court notes that the Applicant does not adduce any evidence of persecution specifically targeted him that would have prevented him from exhausting local remedies. The Court, therefore, dismisses this allegation.
36. With regard to the second argument relative to the Constitutional Court's lack of independence and impartiality, the Court emphasises that independence and impartiality of judges is presumed, such that any party alleging a violation thereof must prove the same beyond any shadow of doubt.¹⁵ The Court observes that the Applicant does not prove his allegations and confines himself to mere assertions. The Court, therefore, dismisses this contention.
37. Finally, with regard to the third argument that the Respondent State's Constitutional Court, seized by one Conaïde Akouedjenoudje, had already ruled on the constitutionality of the impugned interministerial order, the

Noudehouenou v. Republic of Benin, AfCHPR, Application No. 028/2020, Judgment of 1 December 2022 (merits and remedies), § 50.

¹⁴ *Laurent Mètognon et autres v. République du Bénin*, AfCHPR, Application No. 031/2018, Judgment of 24 March 2022, § 63; *Conaïde Akouedjenoudje v. République du Bénin*, AfCHPR, Application No. 024/2020, Judgment of 13 June 2023, § 39.

¹⁵ *Fidèle Mulindahabi v. Rwanda* (merits and reparations) (26 June 2020) 4 AfCLR 291, § 69.

Court points out that the requirement of exhaustion of local remedies is assessed as at the date on which the Application is lodged with it.¹⁶ Consequently, an applicant cannot rely on circumstances arising after that date as a valid justification for dispensing with the requirement of exhaustion of local remedies.

38. In this regard, the Court notes that one Conaïde Akouedjenoudje seized the Constitutional Court on 16 August 2019, which court rendered its decision on 18 June 2020. As this decision, invoked by the Applicant in support of his arguments came after the filing of the present Application on 6 August 2019, the Applicant cannot rely on it to justify his failure to exhaust local remedies in the present case. Accordingly, the Court also dismisses this contention.
39. In the light of the foregoing, the Court considers that the Applicant's arguments lack merit, and that he should have exhausted local remedies before seizing it.
40. Accordingly, the Court upholds the objection based on non-exhaustion of local remedies and considers that the Application fails to comply with the requirement of Rule 50(2)(e) of the Rules.

B. Other admissibility requirements

41. Having found that the Application does not satisfy Rule 50(2)(e) of the Rules, and since the admissibility requirements are cumulative,¹⁷ the Court does not need to rule on the other admissibility requirements.¹⁸
42. Consequently, the Court holds that the Application is inadmissible.

¹⁶ *Sébastien Germain Marie Aikoue v. Republic of Benin* (jurisdiction and admissibility) (2 December 2021) 5 AfCLR 623, § 79.

¹⁷ *Mariam Kouma and Ousmane Diabaté Republic of Mali* (jurisdiction and admissibility) (21 March 2018) 2 AfCLR 237, § 63; *Rutabingwa Chrysanthé Republic of Rwanda* (jurisdiction and admissibility) (11 May 2018) 2 AfCLR 361, § 48; *Collectif des anciens travailleurs ALS Republic of Mali*, AfCHPR, Application No 042/2015, Judgment of 28 March 2019 (jurisdiction and admissibility), § 39.

¹⁸ *Ibid.*

VII. COSTS

43. The Applicant prays that the Respondent State be ordered to pay costs.

44. The Respondent State did not submit on costs.

45. Under Article 32(2) of the Rules, “[u]nless otherwise decided by the Court, each party shall bear its own costs, if any”.

46. The Court notes that nothing in the circumstances of the instant case warrants a departure from this provision.

47. Consequently, the Court orders that each party shall bear its own costs.

VIII. OPERATIVE PART

48. For these reasons;

THE COURT,

Unanimously,

On jurisdiction

i. *Declares* that it has jurisdiction.

On admissibility


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

iii. *Declares* the Application inadmissible.


On Costs

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


Signed:

Modibo SACKO, President ; 


Chafika BENSAOULA, Vice-President; 


Rafaâ BEN ACHOUR, Judge; 


Suzanne MENGUE, Judge; 


Tujilane R. CHIZUMILA, Judge; 

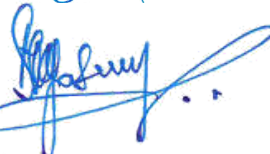
Blaise TCHIKAYA, Judge 


Stella I. ANUKAM, Judge; 

Imani D. ABOUD, Judge; 

Dumisa B. NTSEBEZA, Judge; 

Dennis D. ADJEI, Judge; 

Duncan GASWAGA, Judge, 

and Robert ENO, Registrar. 

Done at Arusha, this Twenty-Sixth Day of June in the Year Two Thousand and Twenty-five, in French and English, the French text being authoritative.

