


AFRICAN UNION		AFRICAN UNION
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AFRICAN COURT ON HUMAN AND PEOPLES' RIGHTS AFRICAN COURT FOR HUMAN RIGHTS AND PEOPLES		

IN THE MATTER OF

004/2020

06/05/2020

(000269-000251)Y

HOUNGUE ERIC NOUDEHOUENOU

v.

REPUBLIC OF BENIN

APPLICATION NO.004/2020

ORDER ON PROVISIONAL MEASURES

MAY 06, 2020



The Court, composed of: Sylvain ORÉ, President, Ben KIOKO, Vice-President, Rafa BEN ACHOUR, Angelo V. MATUSSE, Suzanne MENGUE, Marie-Thérèse MUKAMULISA, Tujilane R. CHIZUMILA, Chafika BENSOUOLA, Blaise TCHIKAYA, Stella I. ANUKAM, Imani D. ABOUD: Judges AND Robert ENO REGISTRAR;

IN THE MATTER OF:

HOUNGUE ERIC NOUDEHOUENOU

Represented by SCPA Robert M. Dossou and Barrister Laurent Bognon, Lawyers at the Benin Bar,

v.

The Republic of BENIN

Represented by the Treasury Solicitor,

After deliberating,
Issues the following order:

I. THE PARTIES

1. Mr. Houngue Eric Noudehouenou (hereinafter referred to as the "Applicant") is a Beninese citizen, economist and tax specialist by training.
2. The Respondent State is the Republic of Benin (hereinafter referred to as the "Respondent State"). It became a party to the African Charter on Human and Peoples' Rights (hereinafter referred to as the "Charter") on 21 October 1986 and to the Protocol to the African Charter of Human and Peoples' Rights on the establishment of an African Court of Human and Peoples' Rights on 22 August 2014. The Respondent State also filed on 8 February 2016 the Declaration required in Article 34(6) of the Protocol accepting the jurisdiction of the Court to receive applications from individuals and non-governmental organizations.¹
3. On 25 March 2020, the Respondent State deposited, with the African Union Commission, an instrument withdrawing its Declaration under Article 34(6) of the Protocol.

I. EFFECT OF RESPONDENT STATE'S WITHDRAWAL OF THE ARTICLE 34(6) DECLARATION

4. The Court recalls that in *Ingabire Victoire Umuhoza v Rwanda*,² it held that the withdrawal of a Declaration deposited pursuant to Article 34(6) of the Protocol does not have any retroactive effect and it also has no bearing on matters pending prior to the filing of the Declaration, as is the case of the present Application. The Court also confirmed that any withdrawal of the

¹ - The Respondent State also ratified the International Covenant on Civil and Political Rights on 12 March 1992 and the African Charter of Democracy, elections and governance on 28 June 2012 and the Protocol A/SP1/12/01 of the Economic Community of West African States (ECOWAS) on democracy and good governance, in addition to the protocol on the Mechanism for Prevention, Management, Conflict Resolution, Peacekeeping and Security on 21 December 2001. The Respondent state is also a party to the African Charter of Democracy, Elections and Governance, ratified by Law No. 2011-18 of September 05, 2011.

Application n°003/2014. Ruling of 03/06/2016 on the withdrawal of the declaration, *Ingabire Victoire Umuhoza c. Republic of Rwanda*, § 67

Declaration takes effect twelve (12) months after the instrument of withdrawal is deposited.

5. In respect of the Respondent State, therefore, having deposited its instrument of withdrawal on 25 March 2019, its withdrawal of the Article 34(6) Declaration will take effect on 25 March 2021.

II. SUBJECT MATTER OF THE APPLICATION

6. In his Application, the Applicant alleges that he was arrested on 20 February 2018 by unidentified individuals who led him to the Cotonou police station. He was subsequently informed of the charges, namely, embezzlement of public funds.
7. By Decision No. 001/CRIET/COM-I/2019 of 20 March 2019, the Applicant avers that the Investigating Committee of the Court for the Repression of Economic Crimes and Terrorism (CRIET) referred him to the Correctional Chamber of that Court, including with a new charge, notably that of complicity in the abuse of office, even though he has never been privy to any information on the proceedings.
8. By judgment of 25 July 2019, he was tried in absentia by CRIET, convicted and sentenced to ten (10) year imprisonment for abuse of office and usurpation of title and an arrest warrant was issued against him. In addition, he was ordered to pay the sum of one billion two hundred and seventy-seven million nine hundred and ninety-five thousand four hundred and seventy-four (1,277,995,474) CFA francs to the CNCB as compensation for the damage suffered.
9. On 26 July 2019, the Applicant states that he lodged an appeal against that judgment which he claims, is in violation of Article 14 of the Charter. However, he contends that was prohibited from filing an appeal under Article 19 of the 2018-13 Act of 2 July 2018 establishing CRIET.

10. The Applicant alleges violations by the Respondent State of the following rights:
- i. "His right to be tried by a competent court, equality of all before the law, to be tried by an impartial tribunal, a reasoned judgment guided by the adversarial principle, protection from arbitrariness and judicial security, all protected by the Charter and Articles 10 of the Universal Declaration of Human Rights (hereinafter referred to as "UDHR") and 14(1) of the Covenant;
 - ii. His rights to defence, the equality of arms, to be defended by Counsel, to the facilities necessary to organize his defence, to be notified of the indictment and charges, to be present at his trial, the adversarial principle, to adduce evidence and present his arguments, to question the prosecution witnesses, to be protected by Articles 14(3) of the Covenant and 7(1) (c) of the Charter;
 - iii. His right to appeal the judgments protected under Articles 10 of the UDHR, 7(1) (a) of the charter and 2(3) of the Covenant;
 - iv. his right to have his conviction and sentence reviewed by Article 14(5) of the Covenant;
 - v. His right to the presumption of innocence protected under Article 7(1) of the Charter;
 - vi. His rights to paid work, property and an adequate standard of living, protected by Articles 6 of the ICESCR, 15 and 14 of the Charter and 23 of the UDHR.
 - vii. His right to reputation and dignity, not to be subjected to inhuman and degrading treatment protected under Articles 7 of the Covenant and 5 of the Charter and his right to freedom of movement, protected under Articles 12, 14(5) and 17 of the Covenant."

11. The Applicant sought from the Court the following reliefs:

- i) "A decision stating that there is merit in his allegation of the violation of his human rights and that the Respondent State violated each of the Applicant's human rights stated;
- ii) A decision condemning the Respondent State on each violation of the Applicant's human rights in this motion;
- iii) A decision that the unrealistic facts referred to in the 20 March 2019 CRIET judgment against the Applicant leading to his 10-year prison sentence constitutes a serious breach on his honour, dignity, reputation, health and right to protection from arbitrariness;
- iv) A decision that the Applicant has been subject to arbitrary judicial practices and persecution for having ensured the exercise of the right to defence in Benin in his capacity as manager of the company Fisc Consult Sarl;
- v) A decision that the Applicant is being persecuted for having ensured the exercise of tax defence rights for the benefit of political opponent Sébastien Germain Ajavon and companies in which he has interests;
- vi) A decision that as long as the CRIET judgments were appealed, the arrest warrant issued by the Respondent State against the Applicant is a violation of the right to freedom of movement guaranteed under Article 12 of the Covenant, the right to suspend the execution of the sentence imposed by Article 15(5) of the Covenant and Chapter N, 10 (a) point (2) of the Guidelines and Principles on the Right to a Fair Trial and Legal Aid in Africa;
- vii) The Respondent State to take all necessary measures to quash the judgment of 25 July 2019 and judgment No. 001/CRIET/COM-I/2019 of 20 March 2019 issued by CRIET against the Applicant, and in order to erase all the effects of these two judgments within one month of the judgment of this High Court in accordance with the requirements of Chapter IX of United Nations Resolution 60/147 of 16 December 2005 and the jurisprudence of this High Court and the Permanent Court of International Justice which recalls that "the State responsible for the violation must

endeavour to erase all the consequences of the unlawful act and restore the state that would likely have existed had that act not been committed";

- viii) A decision ordering the Respondent State to take all measures to restore the reputation of the Applicant tainted by the CRIET judgments, proceedings conducted in violation of human rights, as well as charges brought against him in the absence of evidence of personal guilt and to stop any prejudice against the Applicant;
- ix) Order that the Respondent State to pay the Applicant the pecuniary damages of 20,701,312,046 CFA francs for losses incurred and loss in income not including that relating to all other companies in which he is a shareholder and has shares that have suffered losses in value, and which can be presented as follows:
 - 21,016,320 FCFA for wage losses and wage benefits from 2018 to 2022 taking into account the likely date of the Court's judgment;
 - 366,784,794 FCFA for the Applicant's real losses in dividend;
 - 20,088,510,933 FCFA for the loss in income suffered by the Applicant in COMON, JLR SAU, SCI L'ELITE, MAERSK BENIN, CMA-CGM BENIN, MSC BENIN, EREVAN, ECOBANK;
 - 150,000,000 CFA francs for losses in the tax education and tax training markets of the World Bank and the European Union;
 - 75,000,000 FCFA for legal fees, assistance and legal advice due to the violations which led to this Application;
- x) Order the Respondent State to pay the Applicant moral damages of two billion CFA francs (2,000,000,000) and for any other moral damages to which he has been subjected;
- xi) Order the Respondent State to pay for the property and moral damages amounting to 1,000,000 CFA francs, including 400,000,000 CFA francs for his wife and 300,000 000 FCFA for each of his three children for the inhuman and degrading treatment and other moral harm to the Applicant's family as a

result of CRIET's judgments and the legal proceedings that violated his human rights;

- xii) Order the Respondent State to bear the cost of this action;
- xiii) Order the Respondent State to bear the full costs"

12. In a separate Application, the Applicant also seeks the following provisional measures:

- i) "Order the Respondent State to stay the execution of the sentence of 25 July 2019 rendered by CRIET until the final judgment of this Court is rendered;
- ii) Order the Respondent State to take all appropriate measures to ensure that his life, physical and moral integrity and health are not harmed;
- iii) Order the Respondent State to take all appropriate measures so as not to subject him to any inhuman, degrading or demeaning treatment;
- iv) Order the Respondent State to take all appropriate measures to ensure that the freedom, security and physical and moral integrity of his family members are not infringed upon."
- v) Under his arguments and additional evidence, the Applicant further seeks, as a provisional measure, that the Court order, seek or obtain from any Member State of the African Union asylum and the legal protection of his wife and children, on the one hand, pursuant to the right to protection of the victims and their families, and on the other, in accordance with Articles 12(3) of the Charter and 23 of the Covenant in order to protect them from the judicial, economic and moral persecution they face.

III. SUMMARY OF THE PROCEDURE BEFORE THE COURT

13. The Application together with a request for provisional measures was filed in the Registry on January 21, 2020.

14. In accordance with Rule 36 of the Rules of Court (hereinafter referred to as 'the Rules'), on February 18, 2020, the Registry notified the Respondent State of the Request to submit its response on the provisional measures within fifteen (15) days and on the merits within sixty (6) days.
15. On 28 February 2020, the Registry received additional evidence and arguments from the Applicant concerning the provisional measures and this was notified to the Respondent State on 5 March 2020, with a request that the latter should submit its Response within eight (8) days from the date of receipt.
16. On 4 March 2020, the Registry also received a letter from the Respondent State requesting for an extension of time by fifteen (15) days from 3 March 2020 for it file its Response on the request for provisional measures. This was transmitted to the Applicant on 5 March 2020 for his comments within three (3) days of receipt.
17. On 10 March 2020 the Registry sent a letter granting an extension of eight (8) days for the Respondent State to file its Response on the provisional measures sought.
18. On 18 March 2020, the Registry received the Response from the Respondent State and notified the Applicant for his comments.

IV. JURISDICTION OF THE COURT

19. In support of the jurisdiction of its Application, the Applicant asserts, on the basis of Article 27(2) of the Protocol and Rule 51 of the Rules, that to make determination on requests for provisional measures, the Court does not have to satisfy itself that it has jurisdiction over the merits of the case but simply that it has *prima facie* jurisdiction.

20. Referring further to Article 3(1) of the Protocol, the Applicant argues that the Court has jurisdiction insofar as, on the one hand, the Respondent State has ratified the Charter and the Protocol and that it made the Declaration provided under Article 34 (6). He also alleges the Respondent State has violated rights protected by other human rights instruments.

21. When seized of an Application, the Court shall conduct a preliminary examination of its jurisdiction, under Articles 3 and 5 (3) of the Protocol and Rule 39 of the Rules.
22. Article 3(1) of the Protocol *provides that "the jurisdiction of the Court shall extend to all cases and disputes submitted to it concerning the interpretation and application of the Charter, this Protocol and any other relevant human rights instrument ratified by the States concerned."* ».
23. Under Article 5(3) of the Protocol, *"the Court may entitle relevant Non-Governmental organisations (NGOs) with observer status before the Commission, and individuals to institute cases directly before it, in accordance with Article 34(6) of this Protocol."*
24. The Court notes that the Respondent State has ratified the Charter and Protocol. It has also made the Declaration accepting the jurisdiction of the Court to receive applications from individuals and non-governmental organizations in accordance with Articles 34(6) and 5(3) of the Protocol jointly read.
25. The rights alleged by the Applicant to have been violated are all protected by the Charter, ICCPR, the ECOWAS Protocol, and UDHR, all of which are instruments which the Court is entitled to interpret and apply under Article 3(1) of the Protocol.³.

³ AboutDHP, Stop at the bottom, *Action for the Protection of Human Rights v. Republic of Côte d'Ivoire*, November 18, 2016.

26. In light of the above, the Court recalls its established jurisprudence that in determining requests for provisional measures, it does not have to ensure that it has jurisdiction over the merits of the case, but that it has *prima facie* jurisdiction⁴.

V. ON THE ADMISSIBILITY

27. The Respondent State raised an objection to the admissibility based on the absence of urgency or extreme gravity and irreparable harm on the basis of the provisions of Article 27 (2) of the Protocol. The Respondent State contends that the Court lacks jurisdiction to consider the measures requested.
28. The Court notes that in the case of provisional measures, neither the Charter nor the Protocol provided for conditions of admissibility, the examination of those measures being subject only to *prima facie* jurisdiction.
29. Accordingly, the Court dismisses the objection to the admissibility of the Application.

VI. PROVISIONAL MEASURES REQUESTED

30. The Applicant considers that the judgments dated 25 July 2019 and 20 March 2019 of CRIET put him in a precarious situation, of unbearable extreme gravity. They have unpredictable and irreparable consequences due to impunity for the human rights violations in question.

⁴ See Application 058/2019 *XYZ v. Republic of Benin* (order on Interim measures of 2 December 2019); query No.020/2019 *Komi Koutche v. Republic of Benin* (provisional order of measure of 02 December 2019; application No. 002/2013 *African Commission on Human rights and peoples v. Libya* (order with interim measures dated March 15, 2013); Application No.006/2012 *African Commission on Human rights and peoples v. Kenya* (Order for interim measures of March 15, 2013) and request No.004/2011 *African Commission on Human rights and peoples v. Libya* (Order on interim measures of 25 March 2011).

31. Pursuant to Article 27 of the Protocol and Rule 51 of the Rules, the Applicant prays the Court to issue an order of the provisional measures he requested in paragraph 9 above.
32. The Respondent State contends that, in terms of Article 27 of the Protocol, urgency means "the character of a state of *affairs that, if not repaired, could cause irreparable harm*" while extreme gravity is a situation of increased violence and of an exceptional nature justifying an end to it. The Respondent State therefore concludes that the provisional measures sought do not result from any finding of urgency and any situation of extreme gravity.
33. With regard to irreparable harm, the Respondent State notes that it differs from the harm that is difficult to repair and refers to the action whose consequences cannot be erased, repaired or compensated, even by compensation.
34. According to the Respondent State, interim measures are only possible on an exceptional basis, when an Applicant is exposed to a real risk of irreparable harm. This would not be the case in this Application because these measures hinge on consideration of the case on the merits.

35. The Court notes that Article 27 (2) of the Protocol states that: "*In cases of extreme gravity and urgency and when necessary to avoid irreparable harm to persons, the Court shall adopt such provisional measures as it deems necessary.*"
36. The Court notes that an order for provisional measures is of a preventive nature and does not prejudge the merits of the Application. It can only be an order for provisional measure *pendente lite* and if the basic conditions are met, namely, extreme gravity or urgency and the prevention of irreparable harm to persons.

37. The Court notes that the urgency, consubstantial to extreme gravity, means a *"real and imminent risk that irreparable harm will be caused before it renders its final judgment."*⁵.
38. There is an urgency whenever acts likely to cause irreparable harm can *"occur at any time"* before the Court renders a final judgment in the case.⁶.
39. The Applicant's various requests for interim measures will be considered in light of the above.

i) Request for a stay of execution of the sentence of 25 July 2019 of the CRIET

40. The Applicant seeks a stay of execution of CRIET's 25 July 2019 conviction for putting him in a precarious, extremely serious and unsustainable situation with unpredictable consequences and also because of irreparable consequences due to the impunity of the human rights violations at stake before this Court.
41. With regard to the unforeseeable consequences, the Applicant alleges that, following the 10-year prison sentence imposed by the above judgment, he appealed against that judgment.
42. According to the Applicant, despite this appeal, the Respondent State may enforce the judgment at any time because the CRIET law removed the right to appeal and Article 594 of the Criminal Procedure Code requires the execution of the sentence before the exercise of the right protected under the Charter.

⁵CU, *Implementation of the Convention for the Prevention and Punishment of genocide Crime* (Gambia v Myanmar), January 23, 2020, § 65 ; *Alleged violations of the 1955 Treaty of Friendship, Trade and Consular Rights* (Islamic Republic of Iran v. United States of America), 3 October 2018; And *Immunity and criminal proceedings* (Equatorial Guinea v France), 7 December 2016 § 78.

⁶ - *Infrastructure*, note 2.

43. He asserts that the Respondent State is obliged to automatically suspend the execution of the CRIET judgment under Articles 14 and 2 (1)(2) of the Covenant.
44. In these circumstances, according to the Applicant, the execution of the CRIET judgment prior to the Court's decision on the alleged violations will have unforeseeable consequences for him.
45. With regard to irreparable harm, the Applicant contends that if the CRIET decision of 25 July 2019 is implemented and the Court subsequently established the alleged violations that execution would therefore be arbitrary and the perpetrators of that execution would never be punished.

46. The Court notes that even though, under Article 19 (2) of the law establishing THE CRIET, the judgments of that Court are subject to appeal,⁷ Article 594 of the Benin Criminal Procedure Code declares that appeals of convicts who are not in detention or who have not obtained exemption from serving their sentence are void⁸.
47. In the circumstances of this case where the Applicant is not in detention and has not been granted an exemption from the execution of his ten-year prison sentence, the Court considers that there is still a risk that the sentence of imprisonment will be executed, notwithstanding the appeal, especially since he is the subject of an international arrest warrant.
48. From the foregoing, the Court considers that the circumstances of this case reveal a situation of extreme gravity and present a risk of irreparable harm to the Applicant, should the CRIET judgment of 25 July 2019 be carried out before the Court's decision in the case pending before it.

⁷ It is noted that "The judgments of the court of repression of economic crimes and terrorism are justified. They are delivered in open court. They are subject to appeal of the convicted, the Public Prosecutor's office and the civil parties."

⁸ "Those Sentenced to a custodial sentence who are not in detention or who have not obtained the sentence from the court that pronounced the conviction, with or without bail, from the court that pronounced the sentence, dispensing with or without bail, is declared to carry out the sentence."

49. The Court recalls that in a previous case, presenting similar circumstances, it had ordered⁹a stay of execution of a CRIET judgment. The Court finds that there is no reason in the instant case for it to depart from its jurisprudence.
50. Accordingly, the Court orders a stay of execution of the 25th 2019 judgment rendered by CRIET.

ii) Provisional measure not to impair the liberty, security, physical and moral integrity of the Applicant.

51. The Applicant recalls that on 31 October 2018, three unidentified armed persons entered his home, without notifying him of any warrant, arrested him and *took him manu militari* to a police station.
52. He further alleges that while he was in his hospital bed following his arrest, he was persecuted and assaulted by a Bailiff acting in the name and on behalf of the Respondent State to discharge acts addressed to the company Fisc Consult, of which he is no longer the manager.
53. Therefore, in view of these events, he fears, not only to be subjected to inhuman and degrading treatment, but also fears for his life.
54. The Applicant adds to the additional arguments and evidence he adduced as a result of his request on provisional measures, that the threats have persisted. According to him, they are aimed at killing him.

55. The Court finds that the Applicant has failed to provide direct and accurate information to demonstrate the extreme gravity or urgency and the risk of

⁹ AfCHPR, *Sébastien Germain Ajavon v. Republic of Benin*The Order on interim measures, 7 December 2017

serious and irreparable harm to him. The Court cannot rely on mere assertions to grant his request.

56. The Court therefore decides to dismiss the request for interim measures.

iii) On the provisional measure relating to the Applicant's right to defence before this Court

57. The Applicant asserts that without the suspension of the execution of the CRIET judgment, he will be in a weaker position in regard to his rights to defence before this Court *vis-a-a-vis* the Respondent State.

58. In this regard, the Applicant states that he cannot mobilize the financial resources necessary to cover travel and accommodation costs for even one of its Counsel in the context of the referral to the Court.

59. On the other hand, he cannot appear before this Court to answer all the questions and refute the arguments of the Respondent State that would require comments on his part.

60. The Court notes that the Applicant argues that THE CRIET conviction is an obstacle to the exercise of his right to defence before it.

61. The Court notes that the interim measures sought in connection with his right to defence are, in this case, moot, to the extent that the Court has ordered a stay of execution of the CRIET judgment.

iv) Provisional measure for the rights to liberty and security of the Applicant's family.

62. The Applicant alleges that following his arrest in February 2019, his wife, carrying their 8-year-old child, and his adopted mother, who arrived two hours after the incident and wished to see him, were remanded in custody

for eight (8) days on the pretext that he had escaped. He contends that this situation can have psychological consequences on family members and can even be fatal for some of them.

63. The Applicant therefore considers that his family is being persecuted and this justifies the need to issue interim measures for their protection.

64. The Court recalls that the urgency, consubstantial to extreme gravity, means a "real and imminent risk that *irreparable harm will be caused before it makes its final decision*."¹⁰.

65. The Court finds that the deprivation of liberty of the Applicant's family members took place in February 2019 following his arrest. It further notes that since that time, the Applicant has not made mention of any threat to his family members.

66. The Court notes that the Applicant fails to provide evidence as to the reality and imminent threats to the health, liberty and safety of his family to justify interim measures. Nor does he establish the urgency of such measures.

67. The Court therefore considers that it does not see the need to order the interim measures.

v) **On the provisional measure to obtain asylums and legal protection from all African Unions member states.**

68. The Applicant maintains that his entire family is subjected to persecution and ill-treatment that warrants the benefit of asylum and legal protection from African Union Member States.

¹⁰ - International Court of Justice: Implementation of the Convention for the Prevention and Punishment of genocide Crime (*Gambia v Myanmar*), para 65, 23 January 2020; Alleged violations of the 1955 Treaty of Friendship, Trade and Consular Rights (*Islamic Republic of Iran v. United States of America*), 3 October 2018; Immunity and criminal proceedings (*Equatorial Guinea v France*), 7 December 2016, para 78.

69. The Court recalls, as the Applicant contends, that Article 12(3) of the Charter states that "every individual shall have the right, when persecuted, to seek and obtain asylum in other countries in accordance with the laws of those countries and international conventions." Nevertheless, the provisional measure requested must meet the conditions of Article 27(2) of the Protocol.
70. The Court notes that the Applicant fails to adduce evidence as to the direct and current existence of persecution of his family, nor does he show proof of urgency and the need to order the provisional measure requested.
71. The Court therefore finds that this request for provisional measure should not be granted.
72. Finally, the Court underscores that this order does not prejudice its findings on the jurisdiction, admissibility and merits of the Application.

VII. OPERATIVE PART

73. For these reasons

THE COURT

Unanimously,


- i. *Orders* the Respondent State to stay the execution of the judgment of 25 July 2019 of the Court for Repression of Economic Crimes and Terrorism against the Applicant, Houngue Eric Noudehouenou, until the final judgment of this Court is rendered on the merits;

ii. *Requests* the Respondent State to report on the implementation of this Order within 15 days of receipt.

iii. Dismisses all other prayers made.

Signed:

Sylvain ORE, President;



Robert ENO, Registrar;



Done in Arusha, this Sixth Day of May 2020, in English and French, the French text being authoritative.

