

UGANDA / JUDGMENT

Ali and Another v Republic of
Tunisia (Application No. 009/2023)
[2024] AfCHPR 16 (3 September 2024)
[2024] AfCHPR 16

COURT
African Court on Human and Peoples Rights

BEFORE
Adjei J, Anukam J, Bensaoula J, Chizumila J, Eno R,
Kioko J, Mengue J, Ntsebeza J, Sacko VP, Tchikaya
J

CASE / FILE NUMBER
Application No. 009/2023

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| AFRICAN COURT ON HUMAN AND PEOPLES' RIGHTS | | |

| COUR AFRICAINE DES DROITS DE L'HOMME ET DES PEUPLES | | |

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THE MATTER

OF

SAFINAZ BEN ALI AND LAMIA JENDOUBI

V.

REPUBLIC OF TUNISIA

APPLICATION NO. 009/2023

JUDGMENT

3 SEPTEMBER 2024

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

In accordance with Article 22 of 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") and Rule 9 (2) of the Rules of Court (hereinafter referred to as "the Rules"), Justice Rafaâ BEN ACHOUR, member of the Court and a national of Tunisia, did not hear the Application.

The Matter of:

Safinaz Ben Ali and Lamia Jendoubi

Represented by

Ridha Ajmi, Member of the Bar of Fribourg, Switzerland

Versus

Republic of Tunisia

Represented by:

General Directorate of State Litigation

*After deliberation, *

Delivers this judgment:

THE PARTIES

Ms. Safinaz Ben Ali and Ms. Lamya Jendoubi (hereinafter “the Applicants”), a civil servant and a housewife respectively, are Tunisian nationals who, at the time of filing the Application, had been in preventive detention, the former, since 21 June and the latter, since 5 July 2022. They allege violation of their rights to liberty and security in connection with proceedings in domestic courts.

The Respondent State is the Republic of Tunisia (hereinafter referred to as “the Respondent State”), which 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 on 5 October 2007. Furthermore, on 2 June 2017, the Respondent State deposited the Declaration provided for under Article 34(6) of the Protocol (hereafter referred to as “the Declaration”) by virtue of which it accepts the jurisdiction of the Court to receive applications from individuals and Non-Governmental Organisations having observer status with the African Commission on Human and Peoples’ Rights.

SUBJECT OF THE APPLICATION

Facts of the matter

It emerges from the record that in September 2021, an investigation was opened into digital content creation, which is the area of activity of the firm Instalingo. The investigation revealed that to protect its interests more effectively, the said firm, in collusion with senior officials of the Ministry of the Interior and former state security operatives, infiltrated state institutions, in particular with regard to appointments to certain positions and securing the support of people linked to the Ennahdha party. Subsequently, a judicial investigation was opened against a number of people by the investigating judge of the Sousse II Court of First Instance on charges of undermining State security, offence to the Head of State and money laundering.

Having been indicted, Safinaz Ben Ali and Lamia Jendoubi were remanded in custody by the investigating judge of the Sousse II Court of First Instance, on 21 June and 5 July 2022, respectively. They filed several applications for bail which were dismissed.

Alleged violations

The Applicants allege violation of the following rights:

The right to liberty and to security, protected by Article 6 of the Charter, read in conjunction with Article 9 of the International Convention on Civil and Political Rights (ICCPR)[[1]](#footnote-1) and the Universal Declaration of Human Rights (UDHR);

The right to have one's cause heard, in particular the right to have recourse to national courts against any act violating one's fundamental rights, protected by Article 7(1)(a) of the Charter, the right to be presumed innocent, protected by Article 7(1)(b) of the Charter, the right to defence, protected by Article 7(1)(c) of the Charter and the right to be tried within a reasonable time, protected by Article 7(1)(d) of the Charter; and

The right to information and the right to express and disseminate one's opinion within the law, protected by Article 9 of the Charter.

SUMMARY OF THE PROCEDURE BEFORE THE COURT

On 25 September 2023, the Registry received the Application and a request for provisional measures, which were served on the Respondent State on 25 October 2023 for its Response to the request for provisional measures and the Application within fifteen (15) and ninety (90) days, respectively.

At its 71st Ordinary Session held from 12 February to 8 March 2024, the Court decided that the request for provisional measures would be examined together with the merits of the Application.

The Parties filed their pleadings and submissions within the time-limit set by the Court.

Pleadings were closed on 23 August 2024 and the Parties were duly informed.

PRAYERS OF THE PARTIES

As regards provisional measures, the Applicants pray the Court to:

Order the Respondent State to release them immediately;

Order the Respondent State to process without delay the requests for release submitted to the judicial authorities by their counsel.

On the merits, the Applicants pray the Court to:

Hold that their continued detention after the expiry of the legal time limits is a serious violation of their fundamental rights, in particular as protected by Articles 6, 7 and 9 of the Charter and Article 9 of the UDHR as well as the ICCPR;

Hold that the Respondent State violated its Code of Criminal Procedure (CCP) and the right to justice;

Hold that the Respondent State violated their right to freedom of opinion and expression;

Hold that they are entitled to effective access to justice and, accordingly, order the Respondent State to submit a report on the measures taken within such reasonable time as the Court may deem; and

Hold that they are entitled to fair compensation for their arbitrary detention, in accordance with international human rights standards.

For its part, the Respondent State prays the Court to:

On procedure:

Primarily, declare that it lacks jurisdiction;

In the alternative, declare the Application inadmissible.

On the merits, in the alternative, :

Dismiss the Application for lack of violation of the Applicants' rights.

Jurisdiction

The Court notes that Article 3 of the Protocol provides:

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.

In the event of a dispute as to whether the Court has jurisdiction, the Court shall decide.

Under Rule 49(1) of the Rules of Court "The Court shall ascertain its jurisdiction [...] in accordance with the Charter, the Protocol and these Rules".

Based on the above-cited provisions, the Court, in every application, must conduct a preliminary assessment of its jurisdiction and dispose of objections thereto, if any.

The Court notes that the Respondent State raises an objection to its material jurisdiction on the ground that the Application infringes its national sovereignty. The Court will rule on this objection before deciding on the other jurisdictional requirements.

Objection alleging that the Application infringes national sovereignty

The Respondent State maintains that the present Application violates its sovereignty, as provided for in Article 1 of its Constitution.^{[[2]]}(#footnote-2) According to the Respondent State, the principle of sovereignty is embodied in its exclusive freedom to manage internal and external affairs.

The Respondent State further contends that this sovereignty enshrines the three functions of State authority, namely the executive, legislative and judicial functions, endowed with a presumption of legitimacy which empowers it to take all necessary decisions in accordance with the laws and provisions in force.

The Respondent State also points out that non-interference is held to be one of the cardinal principles of public international law on which the functioning of international bodies and tribunals is based, as set out in Article 2(7) of the Charter of the United Nations,[[3]](#footnote-3) which is one of the Court's legal sources, alongside the UDHR and the Charter.

According to the Respondent State, any interference in its internal affairs will result in total or partial loss of its sovereignty over its nationals, its political choices, including the promulgation of laws, the sanctions for violations thereof and the freedom to exploit its natural resources.

Finally, the Respondent State asserts that the judiciary's core function is to ensure compliance with national laws and international treaties to which it is a party in accordance with Article 117 of its Constitution. It further submits that these functions are at the heart of the internal authority of the State and that no one has the right to intervene in this area.

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In reply, the Applicants submit that the objection should be dismissed, arguing that sovereignty and adherence to international instruments are subject to the fundamental principle of the supremacy of international law, which requires that the provisions of international instruments ratified by a State be adopted into its domestic legal system, so that they prevail over any domestic laws that might be contrary, ambiguous or incomplete. The Applicants conclude that the Charter must be adopted in the domestic legal system of the Respondent State, thereby ensuring the pre-eminence of international human rights standards in the domestic legal system.

The Applicants further affirm that sovereignty must not be a basis to evade international obligations since the Respondent State is duty-bound to respect and promote human rights.

The Applicants further contend that under the Vienna Convention on the Law of Treaties, each State must perform its international obligations in good faith. In this regard, they recall the maxim **nemo ex propria turpitudine commodum capere potest,** to wit, no one may profit from his own wrongdoing. The Applicants contend that invoking sovereignty was in itself a flagrant violation of the international trust placed in the institutions of the Respondent State, especially as the Respondent State's 2014 Constitution underscores the State's obligation to respect human rights.

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The Court notes that under Article 26 of the Vienna Convention on the Law of Treaties "Every treaty in force is binding upon the parties to it and must be performed by them in good faith".[[4]](#footnote-4)

The court notes, as indicated in paragraph 2 of this Judgment, that the Respondent State has ratified the Charter and the Protocol. It also deposited the Declaration. Consequently, it cannot invoke its sovereignty to evade compliance with these instruments and all other human rights instruments that it has ratified.

The Court considers that, in any event, it has material jurisdiction where the Application before it alleges violations of human rights protected by human rights instruments ratified by the Respondent State. ^{[[5]](#footnote-5)}

In the present case, the Court notes that, as indicated in paragraph 5 of this judgment, the Applicants allege violation of several human rights, namely, the rights to liberty and security, the right to have their cause heard, the right to information and the right to express and disseminate their opinions, protected by Articles 7 and 9 of the Charter, and Article 9 of the ICCPR, human rights instruments ratified by the Respondent. ^{[[6]](#footnote-6)}

In light of the above, the Court dismisses the Respondent State's objection on this issue and holds that it has material jurisdiction to hear the present Application.

Other aspects of jurisdiction

The Court notes that the Respondent State does not raise any objections to its personal, temporal or territorial jurisdiction. Nonetheless, pursuant to Rule 49(1) of the Rules, it must ensure that all admissibility requirements are met.

Having noted that nothing on record indicates that it lacks jurisdiction, the Court holds that it has:

Personal jurisdiction, insofar as the Respondent State has deposited the Declaration.

Temporal jurisdiction, insofar as the alleged violations occurred after the entry into force of the Protocol in relation to the Respondent State.

Territorial jurisdiction insofar as the facts of the matter and the alleged violations occurred in the territory of the Respondent State.

In the light of the foregoing, the Court declares that it has jurisdiction to hear the instant Application.

ADMISSIBILITY

Article 6(2) of the Protocol provides:

The Court shall rule on the admissibility of cases taking into account the provisions of Article 56 of the Charter.

Article 50(1) of the Protocol provides:

The Court shall rule on the admissibility of cases taking into account the provisions of Article 56 of the Charter and Article 6(2) of the Protocol and these Rules”.

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

Applications filed before the Court shall comply with all of the following conditions:

Indicate their authors even if the latter request anonymity;

Are compatible with the Constitutive Act of the African Union and with the Charter;

Not contain any disparaging or insulting language directed against the State concerned and its institutions of the African Union;

Not based exclusively on news disseminated through the mass media;

Are sent after exhausting local remedies, if any, unless it is obvious that this procedure is unduly prolonged,

Be filed within a reasonable time from the date local remedies were exhausted or from the date set by the Court as being the commencement of the time limit within which it shall be seized with the matter;

Do not deal with cases which have been settled 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.

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 first consider this objection before examining other admissibility requirements, if necessary.

Objection based on non-exhaustion of local remedies

The Respondent State submits that that an Applicant can bring a case before the Court only after having seized domestic courts with the same grievances and utilised all possible remedies.

According to the Respondent State, pre-trial detention is controlled by Article 85 of its CCP, which provides that the measure may only be enforced in cases of serious crimes or offences and at all times on the basis of plausible presumptions, when detention appears necessary as a security measure to prevent further offences, as a guarantee for the enforcement of a sentence or as a means of securing information.

The Respondent State further submits that the investigating judge is the judicial authority of first instance empowered to issue a committal order while the court of second instance is the indictment division. It points out that in examining an application for bail, the judicial authority takes into account the gravity of the facts, the circumstances of the case and the interest of justice.

The Respondent State affirms that, in the present case, it emerges from the investigation report that the Applicants were being prosecuted for serious offences and that releasing them posed a direct threat to the integrity of the investigation. According to the Respondent State, the investigating judge dismissed the Applicants' applications for bail on the grounds that such a

measure would affect the proper conduct of the case, especially as the charges against them were established. The Respondent State further submits that, contrary to the allegations contained in the Application, the 20 July 2023 decision of the Sousse Court of Appeal Indictment Division (the Indictment Division) came after the renewal of the committal order issued against the Applicants and before the end of the fourteen- (14) month period, as by law required.

The Respondent State further avers that on 16 June 2023, the investigating judge issued an order referring the Applicants to the Indictment Division. It further notes that, by Decision No. 46375 of 20 July 2023, the Sousse Court of Appeal referred the Applicants to the Criminal Division of the Sousse Court of Appeal. The aforementioned decision was the subject of a cassation appeal filed by the Public Prosecutor and several defendants, including the Applicants in the present case. The Respondent State further avers that the case was sent to the Public Prosecutor's Office of the Cassation Court, whose President was requested to set a date for the hearing. According to the Respondent State, the case is still pending before the Cassation Court, with registration number 10049.

*

In their Reply, the Applicants pray that the objection be dismissed. To this effect, they submit that in accordance with Article 85 of the CCP, pre-trial detention may not exceed fourteen (14) months, that is, four hundred and twenty (420) days. They maintain that they were placed in detention on 21 June 2022 in the case of Safinaz Ben Ali and on 5 July 2022 in the case of Lamia Jendoubi, so that they should have been automatically released on 13 and 25 August 2023, respectively.

They aver that, before filing the instant Application, they filed several applications for bail with the Indictments Division but were not even issued a receipt.

In the Applicants' view, the failure of the Respondent State's judicial authorities to respond to the bail applications, which suggests that those authorities are under no obligation to respond, constitutes an implicit dismissal of the bail application, within the meaning of Articles 80 to 87 of the CCP. They further contend that accused persons may be kept in detention after the close of the investigation, pending trial, in accordance with articles 107, 109 and 110 of the CCP. However, they emphasise that the lack of response to their applications for bail must be seen as a denial of justice that jeopardises guaranteed fundamental freedoms.

The Applicants further contend that their pre-trial detention was extended indefinitely in violation of the provisions of Article 29 of the 2014 Constitution and Article 35 of the 25 July 2022 Constitution^[7] and that, contrary to the Respondent State's allegations, the determination of the length of pre-trial detention is not a matter for the investigating judge.

The Applicants further point out that Article 533 of the Code of Obligations and Contracts provides: “Where the law is crafted in general terms, it must be understood in the same sense”. Thus, the fourteen- (14) month time limit set out in Article 85 of the CPP applies to all judicial authorities without exception. Article 541 of the Code of Obligations and Contracts underlines this: “Interpretation may, where necessary, moderate the rigour of the law; it must never aggravate it”.

The Applicants contend that even if Article 85 of the CCP is ambiguous, it can only be interpreted in the sense of reducing the period of detention. In their view, this provision also takes into account the possibility that the legal period may expire before the end of the investigation or without an indictment. In their view, it is necessary to strike a balance between the accused person’s right to liberty and the requirements of a fair trial, thereby allowing the judicial authorities to take measures likely to ensure the presence of the accused and compliance with the principles of proportionality and legality.

Finally, the Applicants assert that by keeping them in detention, the Respondent State ignored the meaning of the provisions of national and international law, since at the time of their arrest, they were merely exercising their functions in a commercial enterprise under an employment contract. They underscore that they are victims of ill-treatment, against a backdrop of tension between the government and the opposition. They further contend that they are also victims of political blackmail by the Respondent State with the complicity of the judiciary as a tool of repression.

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The Court recalls that, in accordance with Article 56(5) of the Charter and Rule 50(2)(e) of the Rules, applications must be filed after exhaustion of local remedies, if any, unless it is clear that the proceedings in respect of such remedies are unduly prolonged. [[8]](#footnote-8)

The Court notes that the local remedies to be exhausted are judicial remedies. They must be available, in the sense that they can be used without impediment by the applicant, but also effective and satisfactory, meaning that they must be “of such a nature as to satisfy the complainant or redress the situation in dispute”. [[9]](#footnote-9)

The Court further notes that exhaustion of local remedies presupposes not only that the Applicant initiates domestic remedies, but also that he awaits the outcome thereof. [[10]](#footnote-10) In the same vein, the Court notes that, in order to determine whether the requirement of exhaustion of local remedies has been met, the domestic proceedings to which the Applicant was a party must have been concluded at the time of filing the Application with it. [[11]](#footnote-11)

Furthermore, the Court has consistently held that the requirement of exhaustion of local remedies is assessed, in principle, at the date on which the Application is brought before it. [[12]](#footnote-12)

In the present case, the Court observes that, from the record, the present Application was lodged on 25 September 2023. On that date, as they themselves state, the Applicants were in detention, pursuant to the investigating judge's committal orders of 21 June 2022 for Safinaz Ben Ali and 5 July 2022 for Lamya Jenboudi, following their indictment by the investigating judge of the Sousse II court for, **inter alia**, undermining the external security of the State, attempted change of form of government, offence to the Head of State and money laundering.

The Court notes that on 16 June 2023, the investigating judge, in accordance with Article 107 of the CCP,[[13]](#footnote-13) issued an order referring the defendants to the indictment division, including the Applicants. The Court further notes that, under this provision, when the investigating judge refers defendants charged with a crime to the indictment division, which is the case here, the committal order issued against the defendants remains in effect.

The Court emphasises that owing to the devolutive effect of the appeal, the entire case, including the committal order, was before the Indictment Division. On 20 July 2023, the Indictments Division ordered that the Applicants be referred to the Criminal Division of the Sousse Court of Appeal, pursuant to Articles 116 and 119 of the Respondent State's CCP (Decision No. 46375). This decision was appealed before the Cassation Court by the Public Prosecutor and several defendants, including the Applicants in accordance with the provisions of Article 120 of the CCP. In the present case, it is not in dispute that the Applicants' appeal concerns their committal for trial, including their committal order.

The Court notes that this cassation remedy was brought before the Criminal Division of the Cassation Court. As part of these proceedings, the Public Prosecutor of the Cassation Court[[14]](#footnote-14) referred the case to the First President of the said court for purposes of setting a hearing date.

The Court notes that at the time of filing the present Application, that is, on 25 September 2023, the cassation appeal against the decision of 20 July 2023 was pending.

In the light of the foregoing, the Court upholds the Respondent State's objection and holds that the Applicants did not exhaust local remedies as required by Article 56(5) of the Charter and Rule 50(2)(e) of the Rules.

Other admissibility requirements

Having found that the present Application does not satisfy the requirements of Article 56(5) of the Charter and Rule 50(2)(e) of the Rules, and having regard to the cumulative nature of the admissibility requirements, the Court considers it superfluous to rule on the other admissibility requirements.

Accordingly, it declares the Application inadmissible.

ON THE REQUEST FOR PROVISIONAL MEASURES

In their request for provisional measures, the Applicants pray the Court to:

Order the Respondent State to release the Applicants immediately;

Order the Respondent State to process without delay the requests for release submitted by the Applicants' defence to its judicial authorities;

**

The Court notes that Article 27(2) of the Protocol provides:

"In cases of extreme gravity or urgency and where it is necessary to avoid irreparable damage to persons, the Court shall adopt such interim measures as it deems appropriate".

The Court recalls that it has found the present Application inadmissible in paragraph 56 of this judgment, and further notes that the Applicants' trial is ongoing in domestic courts. In addition, the refusal of the competent authorities of the Respondent State to release them is a matter pending before domestic courts.

Having declared the present Application inadmissible for failure to exhaust local remedies, the Court considers that there is no reason to order the provisional measures sought especially since the said requests are similar to the merits in the dismissed Application.

Costs

None of the Parties made submissions on costs.

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The Court notes that Rule 32(2) of the Rules of Court provides: "unless otherwise decided by the Court, each party shall bear its own costs, if any".

In the circumstances of the case, the Court considers that there is no reason to depart from this principle and therefore decides that each party shall bear its own costs.

OPERATIVE PART

For these reasons,

THE COURT

Unanimously,

Jurisdiction

Dismisses the objection based on material jurisdiction;

Declares that it has jurisdiction.

Admissibility

By a majority of eight (8) votes to one (1), Judge Ben Kioko dissenting;

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

Declares the Application inadmissible.

On the request for provisional measures

By a majority of seven (7) votes to one (2), Judge Ben Kioko and Chafika Bensaoula dissenting;

Declares that there are no grounds for ordering the provisional measures requested.

Costs

Decides that each Party shall bear its own costs.

Signed by:

Modibo SACKO, Vice-President;

Ben KIOKO, Judge;

Suzanne MENGUE, Judge;

Tujilane R. CHIZUMILA, Judge;

Chafika BENSAOULA, Judge;

Blaise TCHIKAYA, Juge,

Stella I. ANUKAM, Judge;

Dumisa B. NTSEBEZA, Judge;

Dennis D. ADJEI, Judge

and Robert ENO, Registrar.

In accordance with Article 28(7) of the Protocol and Rule 70(1) of the Rules of Court, the Dissenting opinion of Judges Ben Kioko and Chafika Bensaoula are appended to this judgment.

Done at Arusha, this third day of September in the year Two Thousand and Twenty-Four, in Arabic, English and French, the Arabic text being authoritative.

1. The Respondent State became a Party to the ICCPR on 18 March 1969. [[↑](#)](#footnote-ref-1)
2. Article 1 of the Respondent State's Constitution: "Tunisia is a free, independent and sovereign State". [[↑](#)](#footnote-ref-2)
3. Article 2(7) of the United Nations Charter provides: "Nothing contained in the present Charter shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any state or shall require the Members to submit such matters to settlement under the present Charter; [...]". [[↑](#)](#footnote-ref-3)
4. This is a fundamental general principle of law, both in international law and in international human rights law. The Respondent State became a Party to the Vienna Convention on the Law of Treaties on 23 June 1971. [[↑](#)](#footnote-ref-4)

5. *Hongue Éric Noudehouenou v. Republic of Benin* (merits) (2020) 4 AfCLR 749, § 26; *Alex Thomas v. United Republic of Tanzania* (merits) (2015) 1 AfCLR 465, § 45. [[↑](#)](#footnote-ref-5)
6. See paragraph 2 above. [[↑](#)](#footnote-ref-6)
7. Article 35 of the Constitution of 2022: “No one may be arrested or detained except in cases of flagrante delicto or by virtue of a court order. They shall be immediately informed of their rights and of the charge against them. They shall have the right to be represented by a lawyer. The duration of arrest and detention must be by law determined”. [[↑](#)](#footnote-ref-7)
8. *Oulaï Marius v. Republic of Côte d’Ivoire*, ACtHPR, Application No. 032/2019, Judgment of 4 December 2023 (jurisdiction and admissibility), § 32; *Crospéry Gabriel and Ernest Mutakyawa v. United Republic of Tanzania*, ACtHPR, Application No. 050/2016, Judgment of 13 February 2024 (merits and reparations), §40; *Peter Joseph Chacha v. United Republic of Tanzania* (admissibility) (28 March 2014) 1 AfCLR 398, §§ 142 to 144; *Almas Mohamed Muwinda et al. v. United Republic of Tanzania*, ACtHPR, Application No. 030/2017, Judgment of 24 March, 2022 (merits and reparations), § 43. [[↑](#)](#footnote-ref-8)
9. *Houngue Eric Noudehouenou v. Republic of Benin*, ACtHPR, Application No. 032/2020, Judgment of 22 September 2022, (jurisdiction and admissibility), § 39. [[↑](#)](#footnote-ref-9)
10. *Komi Koutché v. Republic of Benin*, Application 013/2020 - ACtHPR, Judgment 22 September 2022 (admissibility and jurisdiction), § 40; *Sébastien Germain Marie Ajavon v. Republic of Benin* (jurisdiction and admissibility) (2 December 2021), 5 AfCLR 623, §74; *Yacouba Traoré v. Republic of Mali* (jurisdiction and admissibility) (25 September 2020), 4 AfCLR 665, § 41; [[↑](#)](#footnote-ref-10)
11. *Koutché v. Benin*, *ibid**, § 40; *Traoré v. Mali*, *ibid**, § 41. [[↑](#)](#footnote-ref-11)
12. *Komi Koutché v. Republic of Benin*, (admissibility) (25 June 2021), 5 AfCLR 231, § 61; *Ajavon v. Benin*, Application No. 027/2020, *supra*, § 74. [[↑](#)](#footnote-ref-12)
13. Article 107(1) of the Respondent State’s Code of Criminal Procedure states: “If the investigating judge considers that the facts constitute a crime, he shall order the accused to be referred to the indictment division with a detailed statement of the proceedings and a list of the documents seized. The committal order issued against the accused shall continue to have effect, as shall the order prescribing the measure, until such time as the indictment division has ruled, unless the examining magistrate decides otherwise”. [[↑](#)](#footnote-ref-13)

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14. The dates do not appear in the reply from the Respondent State, which gave this information in its reply to the main Application. The Applicant does not deny the veracity of this information. See also article 120 of the CCP: “The decisions of the Indictment Division are communicated or notified in accordance with the provisions of article 109. They may be appealed to the Supreme Court under the conditions set out in articles 258 et seq. of this Code.” [↑](#footnote-ref-14)
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