

UGANDA / JUDGMENT

# Noudehouenou v Republic of Benin (Application 001/2022) [2023] AfCHPR 32 (5 September 2023)

[2023] AfCHPR 32

## COURT

African Court on Human and Peoples Rights

## BEFORE

Aboud P, Adjei J, Anukam J, Ben Achour J,  
Bensaoula J, Chizumila J, Eno R, Kioko J, Mengue J,  
Ntsebeza J, Sacko VP, Tchikaya J

## CASE / FILE NUMBER

Application 001/2022

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||| | --- | --- | --- | | AFRICAN UNION | ![Description: Description: Description: Description: AU Court logo](data:image/jpeg;base64...) | AFRICAN UNION | |  | UNIÃO AFRICANA | | AFRICAN COURT ON HUMAN AND PEOPLES' RIGHTS COURS AFRICAINE DES DROITS DE L'HOMME ET DES PEUPLES | |

APPLICATION No. 001/2022

INTERPRETATION OF THE RULING OF 22 SEPTEMBER 2022

THE MATTER OF

HOUNGUE ÉRIC NOUDEHOUEYOU

V.

REPUBLIC OF BENIN

## JUDGMENT

5 SEPTEMBER 2023

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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:

HOUNGUE ÉRIC NOUDEHOUE NOU

Represented by Nadine DOSSOU SAKPONOU, Advocate at the Benin Bar

versus

REPUBLIC OF BENIN

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

\*After deliberation,\*

\*Renders the following judgment:\*

#### APPLICATION AND SUMMARY OF THE PROCEDURE BEFORE THE COURT

On 3 October 2022, Houngue Éric NOUDEHOUE NOU (hereinafter referred to as “the Applicant”) filed an Application with the Court seeking interpretation of the Court’s ruling on admissibility of 22 September 2022 in the matter of \*Houngue Eric Noudéhouenou v. Republic of Benin\* (Application No. 004/2020).

On 16 November 2022, the Application for Interpretation was notified to the Republic of Benin (hereinafter referred to as “the Respondent State”) for its Response within thirty (30) days of receipt.

On 1 February 2023, the Applicant filed supplementary pleadings in support of the Application, which was notified to the Respondent State on 3 April 2023 for its Response within 30 days of receipt.

The Respondent State did not file its Response despite several reminders to that effect.

Pleadings were closed on 29 May 2023 and the Parties were duly notified.

#### ON THE REQUEST FOR INTERPRETATION

The Applicant submits that in the Ruling of 22 September 2022, whose interpretation is sought, the Court upheld the objection based on non-exhaustion of local remedies and declared the Application inadmissible on the grounds set out in paragraphs 53[[1]](#footnote-1), 60[[2]](#footnote-2), 62[[3]](#footnote-3) and 63[[4]](#footnote-4) of the said Ruling.

In this respect, he submits that his Application raises the following eight (8) issues:

Does the Court require him to wait until the Court of Cassation issues a decision contrary to the compliance decisions DCC 18-130 of 21 June 2018 and DCC 12-153 of 4 August 2012 rendered by the Constitutional Court in respect of Articles 12 and 19 § 2 of the law on CRIET, 189, 190, 428, and 594 of the Beninese Code of Criminal Procedure which were challenged in Application No. 004/2020 for violation of Article 14 § 1, § 3 and § 5 of the International Covenant on Civil and Political Rights (hereinafter referred to as “ICCPR”) committed against him?

If the answer to this question is in the affirmative, how would such a cassation appeal be satisfactory if the Court of Cassation were to issue a ruling contrary to the application of the above provisions insofar as, on the one hand, the said provisions have already been declared to be constitutional and, on the other hand, Decision DCC 09-087 of 13 August 2009 of the Constitutional Court and Article 124 of the Constitution give precedence to the decisions of the said Court over those of all other courts of the Respondent State in respect of human rights matters?

In dismissing the main Application, is the Court requesting the Respondent State to deprive him of his liberty in violation of Articles 9, 12, 14 (1) and (5) of the ICCPR in order for him to be deemed to have exhausted local remedies, or is the Court simply requesting him to await the outcome of the cassation appeal, and if so, must he wait indefinitely for the ruling given that the Court has not set any time limit?

Since the Court requests him to await the outcome of proceedings in which the Respondent State is not disclosing the particulars of the proceedings record, is the Court requesting him to wait indefinitely while these impediments to the rights to be availed evidence persist without any real outcome?

Should he interpret paragraph 60 of the Ruling as the Court requesting him to file pleadings before the Court of Cassation without having received the case file, whereas in this case, the substantive issue of the domestic proceedings revolves around the examination of the evidence against him, the indictment and the judgment of 25 July 2019, which the Respondent State is under the obligation to communicate.

Is the Court requesting him to exhaust an ineffective remedy since the Court of Cassation has recognised in its case law that it is neither a judge of the facts nor a judge of the evidence nor a judge of compensation?

Does the Court annul the right to lodge an objection prescribed by Article 593(2)(3) of the Code of Criminal Procedure and Article 56(2)(3) of Law No. 2004-20 of 17 August 2007 on the rules of procedure applicable before the judicial panels of the Supreme Court (hereinafter referred to as the “Law of 17 August 2007”), which proscribe appeals in the event of a decision *\*in absentia\**?; and

Does the Court nullify Articles 593(2)(3) and 594 of the Code of Criminal Procedure and 56(2)(3) of the Law of 17 August 2007?

The Respondent State did not file a response to the Applicant’s submissions.

## JURISDICTION

Under Article 28(2) of the Protocol “The judgment of the Court [...] shall be final and not subject to appeal”.

In the instant case, the present Request for Interpretation concerns the Court’s final Ruling of 22 September 2022 in the matter of *\*Houngue Eric Noudéhouenou v. Republic of Benin\** (Application No. 004/2020).

In view of Article 28(2) and (4) of the Protocol, the Court has jurisdiction to interpret the said judgment, provided that the application satisfies the requirements laid down in Rule 77 of the Rules of Court.

## ADMISSIBILITY

Rule 77(1) and (2) of the Rules provides as follows:

*“1. Pursuant to Article 28(4) of the Protocol, any party may, for the purpose of executing a judgment, apply to the Court for an interpretation of the judgment within twelve months from the date of notification of the judgment, unless the Court, in the interest of justice, decides otherwise.*

2. The Application shall state the point(s) in the operative provisions of the decision on which interpretation is sought.

It emerges from the above-cited provisions that an application for interpretation shall be declared admissible only if it meets the following cumulative requirements:

Be filed within twelve (12) months of the date of notification of the judgment;

Indicate precisely the point(s) of the operative part of which interpretation is requested; and

Be aimed at facilitating the implementation of the decision.

With regard to the requirement relating to the time limit, the Court notes in the instant case that the Ruling whose interpretation is sought was served on the Parties on 29 September 2022. On 3 October 2022, that is, four (4) days later, the Applicant filed the present Application for Interpretation. It follows that the Application was filed within the prescribed period of twelve (12) months.

As regards the statement of the point(s) of the operative part in respect of which interpretation is sought, the Court notes, as indicated in the first paragraph of this judgment, that the Applicant seeks interpretation of the inadmissibility decision in the operative part of the impugned judgment, which is in line with the requirement laid down in Rule 77(2) of the Rules. The Court, therefore, considers that the second requirement is met.

Finally, as regards the third requirement, the Court underscores that a request for interpretation must seek to ensure a better enforcement of the Court's judgment.

The Court notes, in the present case, that the judgment of 22 September 2022, the interpretation of which is sought, is a decision dismissing the Application for failure to exhaust local remedies. The Court considers that the operative part of the judgment is clear and that there is no difficulty in understanding it. It, therefore, follows that the third requirement has not been met.

The Court recalls that the admissibility requirements are cumulative. Thus, if one requirement is not met, the Application for interpretation is inadmissible.

The Court, therefore, finds that the Application for interpretation is inadmissible.

## COSTS

The Parties did not make any submission on costs.

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Pursuant to Article 32(2) of the Rules[[5]](#footnote-5), “[u]nless otherwise decided by the Court, each party shall bear its own costs, if any.”

The Court finds that there is nothing in the circumstances of the present case to warrant a departure from that principle.

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

## OPERATIVE PART

For these reasons,

THE COURT,

\*Unanimously:\*

\*Jurisdiction\*

\*Declares\* that it has jurisdiction to hear this Application for Interpretation;

\*Admissibility\*

\*Declares\* the Application for Interpretation inadmissible;

\*Costs\*

Orders that each Party shall bear its own costs.

Signed:

Imani D. ABOUD, President;

Modibo SACKO, Vice-President;

Ben KIOKO, Judge;

Rafaâ BEN ACHOUR, Judge;

Suzanne MENGUE, Judge;

Tujilane R. CHIZUMILA, Judge;

Chafika BENSAOULA, Judge;

Blaise TCHIKAYA, Judge;

Stella I. ANUKAM, Judge;

Dumisa B. NTSEBEZA, Judge;

Dennis D. ADJEI, Judge;

And Robert ENO, Registrar.

Done in Arusha, this Fifth Day of September in the year two thousand and twenty-three, in French and English, the French text being authoritative.

1. It notes that in order to justify the submission of the present Application before the Court without awaiting the decision of the Supreme Court, the Applicant advances two arguments, namely, that the procedure in respect of the cassation appeal before the Supreme Court was ineffective and unduly prolonged. [<sup>↑</sup>](#footnote-ref-1)
2. The Court notes, finally, that during the cassation proceedings before the Supreme Court, the parties not only receive copies of exhibits and pleadings for the purpose of making their submissions, but they are also heard by the Judicial Chamber, which may take some time. In addition, when the case is ready, the Judge-Rapporteur writes his report and draft judgment, and then sends the docket to the Public Prosecutor's Office, which must in turn produce a report. The Court notes, moreover, that it is not disputed that the case is very complex with regard to the nature of the offences prosecuted, in particular, the misappropriation of public funds, abetment of abuse of office and usurpation of title. [<sup>↑</sup>](#footnote-ref-2)
3. In view of the foregoing, the Court finds that the Applicant's arguments are unfounded and that he should therefore have awaited the outcome of his appeal in cassation before filing the Application before the Court. The Court therefore finds that the Applicant filed the Application prematurely. [<sup>↑</sup>](#footnote-ref-3)

4. Accordingly, the Court finds that the objection based on non-exhaustion of local remedies is well founded and that the Application does not meet the requirement of Rule 50(2)(e) of the Rules. [↑](#footnote-ref-4)
  5. Rule 30(2) of the Rules of 2 June 2010. [↑](#footnote-ref-5)
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