UGANDA / JUDGMENT

Noudehouenou v Republic of Benin (Application No. 028/2020) [2022] AfCHPR 39 (1 December 2022)

[2022] AfCHPR 39

COURT
African Court on Human and Peoples Rights

BEFORE
Aboud P, Anukam J, Ben Achour J, Bensaoula J, Chizumila J, Kioko J, Mengue J, Ntsebeza J, Sacko J, Tchikaya VP

CASE / FILE NUMBER
Application No. 028/2020

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| **AFRICAN COURT ON HUMAN AND PEOPLES' RIGHTS COUR AFRICAINE DES DROITS DE L'HOMME ET DES PEUPLES** | | |

THE MATTER OF

HOUNGUE ÉRIC NOUDEHOUENOU

V.

REPUBLIC OF BENIN

APPLICATION NO. 028/2020

JUDGMENT

1st DECEMBER 2022

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

In the Matter of:

Houngue Éric NOUDEHOUENOU

Represented by Mrs. Nadine DOSSOU SOKPONOU, Lawyer of the Benin Bar, Member of *Société Civile Professionnelle d'Avocats* (SCPA) Robert M. DOSSOU.

Versus

REPUBLIC OF BENIN

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

After deliberation,

renders this judgment

THE PARTIES

Mr. Houngue Éric Noudehouenou, (hereinafter referred to as “the Applicant”) is a politician and a national of Benin. He challenges the law of 2 July 2018[[1]](#footnote-1) amending and supplementing the organic law of 18 March 1999[[2]](#footnote-2) pertaining to the High Judicial Council (hereinafter “HJC”) and its constitutionality. He also challenges the eligibility criteria for contesting elections in his country.

The Application is filed against the Republic of Benin (hereinafter referred to as “the Respondent State”), which became a party to the African Charter on Human and Peoples' Rights (hereinafter referred to “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 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 held that this withdrawal has no effect on pending cases and on new cases filed before the entry into force of the said withdrawal, that is, one year after its deposit, which is on 26 March 2021.[[3]](#footnote-3)

SUBJECT OF THE APPLICATION

Facts of the matter

It emerges from the Application that on 2 July 2018, the Respondent State passed Law No. 2018-02 amending and supplementing Organic Law No. 94-027 of 18 March 1999 relating to the HJC. He avers that the said law contains provisions that violate the principle of independence of the judiciary. He claims that the executive wields undue influence over the HJC and that judges have no remedy against sanctions pronounced against them by the HJC.

He also challenges Law No. 2018-16 of 4 January 2018 pertaining to the status of the judiciary, which bars judges from going on strike. He notes that although the said law was declared unconstitutional by the Constitutional Court by Decision No. DCC 18-003 of 22 January 2018, the same Court, by Decision DCC 18-141 of 28 June 2018, reversed the earlier decision by declaring the same law consistent with the Constitution.

The Applicant also challenges Law No. 2019-40 of 7 November 2019 amending the Respondent State’s Constitution of 11 December 1990 (hereinafter referred to as “the Constitutional amendment”) and Law No. 2019-43 of 15 November 2019 pertaining to the Electoral Code (hereinafter referred to as “the Electoral Code”), which were ruled constitutional by the

Constitutional Court in Decisions Nos. DCC 19-504 of 6 November 2019 and DCC 19-525 of 14 November 2019 respectively. Finally, he challenges Memorandum No. 914/MEF/DC//SGM/DGI of 13 December 2017 issued by the Director General of Taxes.

Alleged violations

The Applicant alleges a violation of the following rights:

the right to judicial independence protected by Article 26 of the Charter, Articles 2 and 14(1) of the International Covenant on Civil and Political Rights (ICCPR), Articles 10 and 30 of the Universal Declaration of Human Rights (UDHR), Article 1(h) and 33 of the ECOWAS Protocol on Democracy;

the right of judges to strike protected by Article 8 of the Charter, and consequently the violation of their right to information, freedom of opinion and expression, their right to form associations freely, and their right to freedom of assembly, protected respectively by Articles 9, 10 and 11 of the Charter;

the right to a remedy enshrined in Article 56(5) of the Charter, Article 8 of the UDHR, Article 1(h) of the ECOWAS Protocol on Democracy, Article 7(1) of the Charter, and Articles 2(3), 14(1-3) and 19 of the ICCPR;

the right to freedom of the media protected by Article 19(2) of the ICCPR;

the right to freedom of religion protected by Article 18 of the ICCPR;

the obligation to ensure that the competent authorities respond appropriately to any remedy found to be well-founded, protected by Article 2(3)(c) of the ICCPR, and of the right to reparation protected by Articles 27 and 30 of the Protocol;

the right to the effective guarantee, protection and enjoyment of fundamental rights protected by Article 1 of the Charter, Article 2(1) and (2) of the ICCPR and Article 1(h) of the ECOWAS Protocol on Democracy;

the obligation to establish and strengthen independent and impartial national electoral management bodies protected by Article 17(1) of the African Charter on Democracy, Elections and Governance (ACDEG);

the right to participate freely in the conduct of the public affairs of one's country protected by Article 13(1) of the Charter and Article 21 of the UDHR;

the right to vote and to be elected at genuine periodic elections based on universal and equal suffrage and secret ballot, ensuring the free expression of the will of the electorate as protected by Article 25(b) of the ICCPR;

the right of defence, protected by Article 7(1)(c) of the Charter;

the right to associate freely with others protected by Article 22(1) of the ICCPR;

the right to non-discrimination protected by Article 2 of the Charter;

the obligation to reject and condemn unconstitutional changes of government protected by Article 3(10) of the ACDEG;

the obligation to sanction any amendment or review of constitutions or legal instruments that undermines the principle of democratic change of government protected by Article 23(5) of the ACDEG;

the right to privacy protected by Article 17 of the ICCPR;

the obligation to ensure the effectiveness of the rights guaranteed by the Covenant protected by Article 2 of the ICCPR.

SUMMARY OF THE PROCEDURE BEFORE THE COURT

The Applicant filed the Application on 17 September 2020 followed by a request for provisional measures on 28 September 2020. These were served on the Respondent State on 16 October 2020 for its Response within ninety (90) and fifteen (15) days, respectively. On 30 October 2020, the Respondent State filed its Response to the request for provisional measures.

On 27 November 2020, the Court issued a ruling dismissing the request for provisional measures. It was served on the Parties on 28 November 2020.

On 4 January 2021, the Applicant filed with the Registry supplementary pleadings to the Application and another request for provisional measures which were notified to the Respondent State on 14 January 2021 for its Response within 30 days of receipt. The Respondent State did not file a Response to the request for provisional measures.

On 1 February 2021, the Applicant filed a second supplementary submission in support of the Application, which was notified to the Respondent State on 22 February 2021 for its Response within 15 days of receipt.

On 29 March 2021, the Court issued a Ruling dismissing the request for provisional measures filed on 4 January 2021. The Ruling was served on the Parties on 9 April 2021.

On 30 June 2021, the Registry reminded the Respondent State that it had not filed its Response either to the Application or to the supplementary pleadings of the Applicant. The Registry notified the Respondent State that it had been granted an additional 30 days' extension to file its Response and drew its attention to the provisions of Rule 63 of the Rules. However, the Respondent State did not file any Response to the main Application or to the said supplementary pleadings.

On 14 July 2022, the Applicant filed a third request for provisional measures which was notified to the Respondent State on 25 July 2022 for its Response within fifteen (15) days from receipt.

On 2 August 2022, the Respondent State filed its Response to the said request for provisional measures. On the same day, the said Response was notified to the Applicant, who filed his Reply.

On 15 September 2022, the Applicant filed a fourth request for provisional measures. It was notified to the Respondent State on 10 October 2022 for information as the Court decided to examine the said request as well as the request filed on 14 July 2022at the same time as the Application on the merits.

Pleadings were closed on 7 November 2022 and the Parties were duly informed.

PRAYERS OF THE PARTIES

In the Application and the supplementary pleadings, the Applicant prays the Court to:

Declare that it has jurisdiction;

Declare the Application admissible;

Declare that he has the right to have effect given to the rights protected by the instruments to which the Respondent State is a party within the meaning of Article 1(h) of the ECOWAS Protocol on Democracy and Article 1 of the Charter;

Find that the allegations of violations of the Applicant's human rights are founded and that the Respondent State indeed violated the human rights protected by Articles 1, 2, 3, 7(1), 9, 10, 11, 26 and 56(5) of the Charter, Articles 2, 5(2), 14(1), 19 and 26 of the ICCPR, Articles 8, 10, 19 and 30 of the UDHR, Article 10(1) of the ACDEG, Article 1(h) and 33 of the ECOWAS Democracy Protocol;

Order all necessary measures for the Respondent State to execute diligently the decisions of the Court rendered in Applications Nos. 013/2017, 059/2019, 062/2019, 003/2020, 004/2020, 008/2020, 010/2020;

Order the Respondent to take all measures to vacate and erase all the effects and consequences of the violations for which it was found responsible by the Court in the present Application;

Order the Respondent State to bring its domestic legislation into compliance with Article 26 of the Charter, by removing from the HJC all members of the executive branch and by instituting the election of the members of the HJC by an absolute majority in free and transparent elections within the body of professional judges democratically elected by their peers;

Order the Respondent State to ensure that Article 20 of the Organic Law on the HJC complies with Articles 7(1) and 26 of the Charter and 26 of the ICCPR by affording judges an effective and satisfactory remedy against any decision taken against them by the HJC;

Order the Respondent State to repeal Article 20 of Law No. 2018-01 on the status of the judiciary to comply with Articles 1, 9, 10, 11 and 26 of the Charter, Article 1(h) of the ECOWAS Protocol on Democracy, and Article 10(1) of the ACDEG, and thereby cease the violations of the Applicant's rights to judicial independence and protection against arbitrariness;

Order the Respondent State to take appropriate measures to remove all impediments to the Applicant's right to an effective remedy provided for and protected by Article 1(h) of the ECOWAS Protocol on Democracy and Article 8 of the UDHR;

Order the Respondent State to publish the decision of this Court on the official website of the Ministry of Justice continuously for two years, in the Official Gazette of the Republic of Benin and at the Tribunals and Courts of the Respondent State;

Order the Respondent State to bring Article 410 paragraph 3 of the Beninese penal code in compliance with Article 19(2) of the ICCPR by deleting the expressions "specialized journals" and "purely" so as to recognize the right to freedom of choice of means of communication as well as the right to make technical comments against court decisions, the word "purely" being a source of arbitrariness;

Order such measures as the Court may deem necessary to ensure non-repetition, as well as measures ensuring compliance with the decision, including a prohibition on the Respondent State's agents taking reprisal actions against the Applicant and/or his family and Counsel in relation to this case, in accordance with Article 2(3) of the ICCPR and paragraph 12(b) of United Nations Resolution 60/147 of 16 December 2005;

Order that all Member States of the African Union take all necessary measures to neutralise the effects and consequences of the Respondent State's failure to comply with the decisions of this Court;

Order the Respondent State to bring Article 53 of Law No. 90-32 of 11 December 1990 on the Constitution of the Respondent State in line with Article 18 of the ICCPR by deleting the expression "before the spirits of the ancestors" within three months of the Court's decision;

Order the Respondent State to repeal Memorandum No. 914/MEF/DC/SGM/DGI of 13 December 2017 on the issuance of tax clearance, within one month of notification of this decision and before any election in the Republic of Benin;

Order the Respondent State to vacate the following Decisions of the Constitutional Court of the Respondent State, DCC 20-641 of 19 November 2020, DCC 021-008, DCC 021-010 and DCC 011-021 of 7 January 2021 and Decision DCC 18-141 of 28 June 2018;

Order the Respondent State to restore his rights as a candidate;

Order the Respondent State to have the parliament of the Respondent State recomposed by virtue of the judgments of 27 September 2020 - Application Nos. 059/2020 and 010/2020, and judgment of 4 December 2020 - Application Nos.062/2019 and 003/2020;

Order the Respondent State to pay interest for the non-execution of the Rulings of 5 May 2020 and 25 September 2020 and by the judgment of 4 December 2020 delivered in Application No. 003/2020, to the tune of Five Hundred Million (500,000,000) CFA francs for each month of delayed execution until the full and perfect execution of the said judgment of 4 December 20202 in Application No. 003/2020;

Order the Respondent State to bear all costs in respect of these proceedings to the tune of Fifteen Million (15,000,000) CFA francs for the lawyer's fees and Five Hundred Thousand (500,000) CFA francs for the costs of mail and communication, as well as Five Hundred Million (500,000,000 CFA francs for the moral prejudice that he suffered owing to the failure of the Respondent State to execute the decisions rendered by this Court in favour of the Applicant;

Order the Respondent State, in view of its failure to comply with previous decisions of this Court, to pay lump sum interest on the award in the amount of One Billion (1.000.000.000) CFA per month for failure to comply with the decision of the Court, from the date of notification of the decision of this Court until the Respondent State has fully and completely implemented the said decision;

Order the Respondent State to publish the Court's decision in the official gazette of the Respondent State on the websites of the Constitutional Court of Benin (CCB), the National Independent Electoral Commission (CENA) and the *France-Soir* newspaper, for an uninterrupted period of two years from the date of notification of this Court's decision.

The Respondent State did not submit any prayers in response tothe Application on the merits. It however requested the Court to decline jurisdiction in respect of the request for provisional measures of 14 July 2022.

JURISDICTION

Article 3 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.

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

Furthermore, under Rule 49(1) of the Rules of Court, “[t]he Court shall conduct a preliminary examination of its jurisdiction (...) in accordance with the Charter, the Protocol and these Rules.”[[4]](#footnote-4)

Based on the above provisions, the Court must, in each application, ascertain its jurisdiction and rule on objections to its jurisdiction, if any.

In its Response to the request for provisional measures of 14 July 2022, the Respondent State raises an objection to the personal jurisdiction of the Court.

Objection to the personal jurisdiction of the Court

The Respondent State submits that the Court no longer has jurisdiction to entertain new applications from individuals or non-governmental organisations. It further submits that although the request for provisional measures is based on an application submitted before the withdrawal of the Declaration took effect, the Court has no jurisdiction to consider the said request.

The Applicant submits in reply that by virtue of Article 27(2) of the Protocol and Article 59(1)[[5]](#footnote-5) of the Rules of Court, the Court is empowered to adopt provisional measures in cases of urgency, the existence of irreparable harm, or imminent violations of fundamental rights, or to preserve the interests of justice and/or the parties, or to preserve the effectiveness of the judgment on the merits.

He further contends that, in any event, the Court does not have to be satisfied that it has jurisdiction as regards the merits of the matter but merely that it has *prima facie* jurisdiction.

Furthermore, referring to Article 3(1) of the Protocol, the Applicant considers that the Court has jurisdiction insofar as the Respondent State has ratified the African Charter, the Protocol, deposited the Declaration, and insofar as the Application contains alleged violations of rights protected under human rights instruments.

He avers that although the Respondent State deposited the instrument of withdrawal of the Declaration on 25 March 2020, the withdrawal only took effect from 26 March 2021 and therefore has no bearing on his Application, which was filed before that date.

***

The Court notes that the Respondent State is a party to the Charter, the Protocol and has deposited the Declaration. The Court recalls, as indicated in paragraph 2 of this Judgment, that on 25 March 2020, the Respondent State deposited the instrument of withdrawal of its Declaration. According to the Court's jurisprudence, the withdrawal by the Respondent State of its Declaration has no retroactive effect, nor does it affect cases pending at the time of the said withdrawal or new cases brought before it prior to its entry into force. Since the withdrawal of the Declaration takes effect twelve (12) months after the deposition of the instrument relating thereto, that is, on 26 March 2021, it has no bearing on the Application, which was filed on 17 September 2020.[[6]](#footnote-6)

The Court further notes that although the request for provisional measures was filed after the withdrawal of the Declaration took effect on 26 March 2021, its personal jurisdiction in the present case is not affected, since the said request relates and is subsidiary, to the initial Application filed on 17 September 2020, that is, before the said withdrawal took effect. Consequently, the said withdrawal does not affect the personal jurisdiction of the Court.

In view of the foregoing, the Court dismisses the objection to jurisdiction and finds that it has personal jurisdiction to hear the present Application.

Other aspects of the Court's jurisdiction

The Court notes that it has material jurisdiction, insofar as the Applicant alleges violations of the Charter, the ACDEG, the ICCPR and the ECOWAS Protocol on Democracy, to which the Respondent State is a Party.[[7]](#footnote-7)

The Court considers that it has temporal jurisdiction insofar as the alleged violations occurred after the Respondent State became a party to the Charter and the Protocol and deposited the Declaration.

As regards its territorial jurisdiction the Court finds that it has temporal jurisdiction insofar as the alleged violations occurred on the territory of the Respondent State.

Accordingly, the Court finds that it has jurisdiction to consider the Application.

ADMISSIBILITY

Article 6(2) of the Protocol provides that "the Court shall rule on the admissibility of cases taking into account the provisions of Article of the Charter ".

In accordance with Rule 50(1) the Rules of Court,[[8]](#footnote-8) "the Court shall ascertain the admissibility of an Application filed before it in accordance with Article 56 of the Charter, Article 6(2) of the Protocol and these Rules".

Rule 50(2) of the Rules of Procedure, which in substance reproduces Article 56 of the Charter, provides that:

Applications to the Court must meet all of the following requirements:

Indicate their authors even if the latter request anonymity;

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

Are not written in disparaging or insulting language directed against the State concerned and its institutions or the African Union;

Are 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;

Are submitted within a reasonable time from the date local remedies were exhausted or from the date the Commission is seized with the matter, and;

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 Charter of the Organization of African Unity or the provisions of the Charter.

The Respondent State does not raise any objection to the admissibility of the Application on the merits. Nonetheless, the Court must examine whether the requirements of the above-mentioned provisions have been met.

On the requirement relating to the identity of the Applicant

In this regard, it notes that in accordance with Rule 50(2)(a) the Applicant has clearly indicated his identity.

On the requirement relating to the compatibility of the application with the Constitutive Act of the African Union

The Court also notes that the Applicant's requests seek to protect his rights under the Charter. Furthermore, one of the objectives of the Constitutive Act of the African Union, as set out in Article 3(h), is the promotion and protection of human and peoples' rights. Furthermore, there is nothing on record to show that the Application is incompatible with any provision of the Constitutive Act. The Court therefore considers that the Application is compatible with the Constitutive Act of the African Union and the Charter, and therefore finds that it meets the requirement of Rule 50(2)(b) of the Rules.

On the requirement relating to the use of disparaging or insulting language

The Court further notes that the Application does not contain any language that is disparaging or insulting to the Respondent State, its institutions or the African Union, as required under Rule 50(2)(c).

On the requirement relating to news disseminated through the mass media

The Court further finds that the Application meets the requirement of Rule 50(2)(d) of the Rules since it is not based on news disseminated through the mass media, but rather relates to decisions, laws and regulations of the Respondent State.

On the requirement relating to the exhaustion of local remedies

The Court notes, with regard to the exhaustion of local remedies under Rule 50(2)(e), that the Application is based on allegations of human rights violations in relation to Law No. 2018-02 amending and supplementing Organic Law No. 94-027 of 18 March 1999 on the HJC, Memorandum No. 914/MEF/DC//SGM/DGI of 13 December 2017 on the issuance of tax clearance, Law No. 2019-40 of 1 November 2019 on constitutional amendment and Law No. 2019-43 of 15 November 2019 on the Electoral Code.

The Court recalls that the local remedies to be exhausted must be available, effective and satisfactory. The Court has held that it is not sufficient for a remedy to exist in order to meet the rule of exhaustion of remedies; an Applicant is, in fact, required to exhaust a remedy only to the extent that it offers prospects of success.[[9]](#footnote-9)

As regards Memorandum No. 914/MEF/DC//SGM/DGI of 13 December 2017, the Court recalls that the Applicant contests the said Memorandum on the ground that it vests exclusive jurisdiction with the Director General of Taxes to issue tax clearance, which is a requirement for running in elections. The Court notes that under Article 53[[10]](#footnote-10) of Law No. 2001-37 of 27 August 2002 on the organisation of the judiciary, the courts of first instance have jurisdiction to hear disputes over administrative acts, in particular, by way of a remedy for excess of power or that of full litigation.

It follows that a local remedy against the Memorandum of 13 December 2017 was available. This remedy is also effective since it allows the contentious acts to be annulled.

The Court notes that the Applicant does not provide evidence that he pursued this administrative remedy, let alone that he exhausted it before the courts of the Respondent State. It follows, with regard to Memorandum No. 914/MEF/DC//SGM/DGI of 13 December 2017, that local remedies were not exhausted. Consequently, the Court declares all the allegations relating to the said Memorandum inadmissible.

With regard to the contested legislative provisions, the Court underlines that under Articles 114[[11]](#footnote-11) and 122[[12]](#footnote-12) of the Constitution of the Respondent State, the Constitutional Court is the judge of the constitutionality of laws and guarantees the fundamental rights of the human person and public freedoms and mandatorily rules on the constitutionality of organic laws and laws in general prior to promulgation. It hears in first and last instance any action concerning a violation of human rights brought by any citizen of the Respondent State. Consequently, a local remedy exists and is available.

The Court further notes that Article 1121 of the Constitution[[13]](#footnote-13) stipulates thatthe Constitutional Court rules on the constitutionality of laws prior to promulgation, and at the request of the President of the Republic or any member of the National Assembly.

In this respect, the Court underlines that the Charter is an integral part of the Constitution of the Respondent State.[[14]](#footnote-14) As a result, the constitutionality review, which relates to both the procedure followed for the adoption of the law and its content[[15]](#footnote-15) , is carried out in relation to “the constitutional bloc that constitutes the Constitution and the Charter”[[16]](#footnote-16). Through this procedure, the Constitutional Court of the Respondent State is required to verify that the laws are consistent with human rights instruments[[17]] (#footnote-17).

In the present case, the Applicant alleges human rights violations that derive from Law No. 2018-16 of 4 January 2018 on the status of the judiciary, Law No. 2018-02 of 2 July 2018 of the Supreme Council of the Judiciary, Law No. 2019-40 of 7 November 2019 amending the Constitution and Law No.2019-43 of 15 November 2019 on the Electoral Code. All of these laws were, at the behest of the President of the Republic pursuant to Article 121 of the Constitution, reviewed by the Constitutional Court *a priori* and were declared constitutional, respectively, by the Constitutional Court’s Decisions Nos. DCC 18-141 of 18 June 2018, DCC 18-142 of 18 June 2018, DCC 19-504 of 6 November 2019 and DCC 19-525 of 14 November 2019.

In view of the foregoing, the Court considers that it would not be reasonable to direct the Applicant to submit to the Constitutional Court issues on which the same court has already ruled.

Accordingly, the Court finds that the Applicant exhausted local remedies in respect of the alleged violations in relation to the impugned legislation and that in this respect the Application meets the requirement of Rule 50(2)(e).

On the requirement to file the Application within a reasonable time

With regard to the requirement under Rule 50(2)(f) that the application should be filed within a reasonable time, the Court recalls that it has taken a case-by-case approach to assessing what constitutes reasonable time, taking into account the particular circumstances of each case.[[18]](#footnote-18) The Court has taken into consideration the following circumstances, *inter alia,* that impact on the reasonable time within which to file an application with the Court: the incarceration of the Applicant, the fact that the Applicant is lay, does not have legal aid,[[19]](#footnote-19) is indigent, illiterate, is not aware of the existence of the Court, was being intimidated and fearing reprisals[[20]](#footnote-20) as well as the exhaustion of extraordinary remedies.[[21]](#footnote-21)

The Court recalls that it has held that local remedies were exhausted as regards the alleged human rights violations relating to Laws No.2018-16 of 04 January 2018 on the status of the judiciary, Law No.2018-02 of 2 July 2018 of the HJC, Law No.2019-40 of 7 November 2019 on the revision of the Constitution and Law No. 2019-43 of 15 November 2019 on the Electoral Code, which were declared to be constitutional, respectively by Decisions DCC 18-141 of 18 June 2018, DCC 18-142 of 18 June 2018, DCC 19-504 of 6 November 2019 and DCC 19-525 of 14 November 2019 of the Constitutional Court.

The Court considers that the count of a reasonable time for its seizure starts from the dates the Constitutional Court issued its decisions, that is, 18 June 2018, 6 November 2019 and 14 November 2019. Between these dates and that of the filing of the Application, that is, 17 September 2020, two (2) years, two (2) months, twenty-nine (29) days, ten (10) months and ten (10) days and ten (10) months and three (3) days elapsed respectively. The issue to be determined is whether these periods of time are reasonable within the meaning of Article 56(6) of the Charter and Rule 50(2)(f) of the Rules.

The Court notes that to justify the length of time it took him to file the Application, the Applicant asserts that he was deprived of his right to information as a result of his detention from 20 February 2018 to 31 October 2018, as he did not have free access to general information websites and the official newspaper of the Respondent State. In this regard, the Court finds in particular that the failure to file an application within a reasonable time due to incarceration cannot be justified by general assertions or assumptions but must be proven with evidence.

The Court notes that it emerges from the records that the Applicant, who was detained on 20 February 2018, escaped on 31 October 2018. The Court considers that as a result of this detention, the Applicant's access to information was significantly reduced so that he could not be aware of legislative and regulatory developments and decisions made in this regard. The Court also notes that owing to his escape, access to information and documents for the purpose of initiating actions before the Court of Appeal became more difficult.

In the circumstances of this case, the Court considers that the time taken to bring the case before it is reasonable. Accordingly, the requirement of Rule 50(2)(f) is met.

On the requirement relating to cases which have been settled by the Parties

Finally, the Court notes that, pursuant to Rule 50(2)(g) of the Rules, there is no indication that the present Application relates to a matter already settled by the parties in accordance with either the principles of the Charter of the United Nations or the Constitutive Act of the African Union, or the provisions of the Charter.

In view of the foregoing, the Court finds that the Application meets all the requirements of Article 56 of the Charter and of Rule 50(2) of the Rules. Accordingly, the Court declares it admissible.

MERITS

The Applicant alleges human rights violations in relation to (A) the subservience of the HJC, (B) the right of judges to strike, (C) the non-execution of the decisions of this Court, (D) Article 401(3) of the Criminal Code, (D) the remedy before the Constitutional Court, and (E) the constitutional amendment and the Electoral Codee and the COS-LEPI.

On the allegations relating to the subservience of the High Judicial Council

The Applicant alleges a violation of the independence of the judiciary due to the massive interference of the executive power in the composition of the.

He asserts that the independence of the judiciary, protected by Article 26 of the Charter, is violated due to the lack of separation of powers insofar as the executive branch influences the judiciary through the composition of the HJC and that, consequently, the Constitutional Court, by Decision DCC 18 - 142 of 28 June 2018, could not declare to be constitutional Law 2018 - 02 of 02 July 2018 amending and supplementing Organic Law No. 94 - 027 of 18 March 1999 relating to the HJC.

He submits that it emerges from the (new) Article 1 of the law of 2 July 2018 on the HJC that the latter is mostly composed of members of the executive, including the President of the Republic who is the President, the Minister of Justice, the Minister of Economy and Finance and the Minister of Public Service.

He further contends that the President of the Republic holds sway in the deliberations of the HJC and that the executive appoints fourteen (14) out of its seventeen (17) members. He further submits that of the nine (9) judges who are members of the HJC, only two are elected by the general assembly of judges, the others being appointed by the executive. He concludes that in view of this composition, which speaks to the control of the executive power over the HJC, the Respondent State violated Article 26 of the Charter.

The Respondent State did not submit on this allegation.

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The Court recalls that Article 26 of the Charter provides that "States [...] have the duty to guarantee the independence of the Courts [...]".

The Court notes that this provision does not only enshrine the independence of courts, as judicial bodies, but also that of the judiciary as a whole, similar to that of the executive power and the legislative power.[[22]](#footnote-22)

In this regard, the Court endorses the Commission's position that "[...] the doctrine of separation of powers requires the three (3) pillars of the state to exercise powers independently. The executive branch must be seen to be separate from the judiciary, and parliament. Likewise in order to guarantee its independence, the judiciary, must be seen to be independent from the executive and parliament"[[23]](#footnote-23).

The Court notes that in the instant case, it emerges from Articles 125[[24]](#footnote-24) and 127 of the Respondent State's Constitution that judicial power, exercised by the Supreme Court, the courts and tribunals, is independent of the legislative and executive powers. The Court further notes that the President of the Republic is the sole guarantor of the said independence by virtue of Article 127 of the said Constitution[[25]](#footnote-25), that is, he must ensure that this independence of the judiciary is given force and substance both in law and in fact.

The Court therefore considers that the judiciary should not be subordinate to any other authority. It follows that neither the executive power nor the legislative power should interfere, directly or indirectly, in all matters relating to the organisation and functioning of the judiciary, including those of the entities that manage the careers of judges.

The Court underlines that it emerges from Article 11 of the organic law relating to the HJC that the latter is the body that manages the career of judges from the day they take their oath until they retire. The Court observes that this ensures discipline within the judiciary. The HJC is therefore the guarantor of the independence of the judiciary and also a bulwark against interference by other powers. In the Court's opinion, such a body, in order to support the independence of the judiciary, must be statutorily and functionally independent of the other branches of government.

It is therefore for the Court to assess whether such guarantees exist within the HJC.

The Court notes that the (new) Article 1 of its parent law, the HJC comprises fifteen (15) members including four (4) ex officio members coming directly from the executive branch, namely, the President of the Republic, the Minister of Justice, the Minister of Civil Service and the Minister of Finance. The President of the Republic appoints four (4) other members selected from outside the judiciary[[26]](#footnote-26). It should be noted that these persons appointed from outside the judiciary and their alternates are appointed from a list of seven (7) full members and seven (7) alternates designated by the Bureau of the Respondent State's National Assembly.

It also notes that the President of the Republic is the President of the HJC while the Keeper of the Seals is the second vice-President. The Court also notes that the President of the HJC has the casting vote in the deliberations.[[27]](#footnote-27)

Moreover, according to Article 127 of the Constitution[[28]](#footnote-28) and Article 11 of the law on the HJC[[29]](#footnote-29), the HJC assists the president of the Republic in his mission as guardian of the independence of the judiciary. For the Court, requiring the HJC to assist the President of the Republic clearly puts it under the control and tutelage of the latter.

The Court notes that the Constitutional Court has addressed the constitutionality of the HJC law on two occasions, first, by Decision DCC 18 - 005 of 23 January 2018 which declared the said law consistent with the Constitution and, secondly, by Decision DCC 18 - 142 of 28 June 2018 which reversed the first decision.

The Court holds the same view as the Constitutional Court's initial interpretation which declared that Article 1 of the said law was contrary to the Constitution insofar as "The composition of this council must reflect the concern for the independence of the judiciary. By retaining as ex officio members, in addition to the President of the Republic, guarantor of the independence of the judiciary and the Keeper of the Seals, minister in charge of managing the careers of magistrates, the minister in charge of the Civil Service and the Minister of Finance, Article 1 of the law is contrary to the Constitution."

On that same occasion, the Constitutional Court further held that "the legislator, in the interests of the independence of the judiciary, must provide for a certain balance in the composition of the HJC [...] It is important to specify that the external persons likely to be appointed by the Bureau of the National Assembly must be appointed on an equal basis on account of proposals emanating from the parliamentary minority and majority".

Furthermore, the Court notes that the Minister of Justice, who is responsible for the administrative management of the judiciary, exercises direct and sometimes discretionary authority over the careers of judges. He is the main person responsible for the planning and management of resources in the judiciary. As such, he determines the human resources needs in the judicial sector and it is on his proposals that magistrates are presented for appointment by the President of the Republic.

In the light of the above, the Court finds that the appointment procedure and the composition of the HJC are skewed in favour of the executive power and that, consequently, the conditions for the independence of the HJC are not met.

Consequently, the Court considers that the Respondent State violated Article 26 of the Charter.

On the alleged violation of the right of judges to strike

The Applicant asserts that the prohibition of judges from striking by Article 20 of Law No. 2018-01 of 4 January 2018 on the status of the judiciary, is arbitrary insofar as it is not justified in terms of compliance with Article 27(2) of the Charter and does not respect the fair balance between the requirements of the general interest of the community and the imperatives of protecting fundamental individual rights.

He states that the withdrawal of this right is illegal and violates international human rights instruments in particular Article 8 of the Charter as well as the principle of the supremacy of the Constitution since Article 31 of the Respondent State's Constitution expressly guarantees the right to strike of all persons. According to him, what is guaranteed cannot be withdrawn but only regulated.

He further contends that the violation of the judges' right to strike consequently leads to the violation of their right to information, freedom of opinion and of expression, their right to free association, and their right to assemble freely, protected respectively by Articles 9, 10 and 11 of the Charter.

The Respondent State did not submit on this allegation.

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The Court notes that Law No. 2018-01 of 4 January 2018 on the status of the judiciary was repealed by Law No.2018-33 of 5 October 2018, thereby preserving judges' right to strike.

It follows, that the allegations of violation of the judges' right to strike and the violation of related rights made by the Applicant are moot.

On the alleged violation of Article 30 of the Protocol for non-execution of the decisions of the Court.

The Applicant submits that the Court has rendered several decisions against the Respondent State, namely, the Ruling of 9 December 2018 and the judgments of 29 March and 29 November 2019 in Application No. 013/2017 *Sébastien Ajavon v. Benin*; the judgment of 27 November 2020 in Application No. 059/2019 *XYZ v. Benin*; the Ruling of 17 April 2020 and the judgment of 4 December 2020 in Application No. 062/2019 *Sébastien Germain Ajavon v. Benin*; the Rulings of 5 May and 25 September 2020, the judgment of 4 December 2020 in Application No. 003/2020 *Houngue Eric Noudéhouenou v. Benin*; the judgment of 27 November 2020 in Application No. 010/2020 *XYZ v. Benin*.

He asserts that by these decisions, the Court had ordered the Respondent State to take the necessary measures, among others, to repeal the Electoral Code and subsequent laws before any election; to suspend the effects of the 25 July 2019 ruling of the CRIET; and to remove all impediments to his participation in presidential, municipal and communal elections.

He contends that the Respondent State did not implement any of these decisions and did not submit any report showing that it did.

The Applicant considers that, by failing to comply with these decisions, the Respondent State violated Article 30 of the Protocol.

The Respondent State did not submit on this allegation.

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Article 30 of the Protocol provides that:

The States parties to the present Protocol undertake to with the judgment in any case to which they are parties within the time stipulated by the Court and to guarantee its execution.

The Court notes that the term “judgment” includes both its judgments and its rulings, the binding nature of which is confirmed by Rule 72 (2) of the Rules, which provides that “The decisions shall be binding on the parties and are enforceable as provided under Article 30 of the Protocol”.

The Court observes that the fact that the Applicant refers to the non-execution of several decisions it has rendered notwithstanding, it considers that it must take into account only the decisions in which the Applicant was a party, in particular the rulings on provisional measures of 5 May and 25 September 2020, and the judgment of 4 December 2020 – Application No. 003/2020 - *Houngue Eric Noudéhouenou v. Benin.*

In this regard, the Court notes that all the violations alleged by the Applicant relate in one way or another, directly or indirectly, to the non-execution of the aforementioned decisions.

The Court also notes that it has not received any report from the Respondent State on the execution of the said decisions, nor does the Respondent State dispute that it has not executed them.

In view of the foregoing, the Court considers that the Respondent State violated Article 30 of the Protocol.

On the alleged violation of the right to freedom of opinion and expression

The Applicant points out that Article 410(1)(3) of the Respondent State's Penal Code provides that:

Any person who, by acts, speech or writings, publicly seeks to discredit a judicial act or decision, under conditions likely to undermine the authority of the judiciary or its independence, shall be liable to one (1) month to six (06) months' imprisonment and a fine of One Hundred Thousand (100,000) to One Million (1,000,000) CFA francs, or to one of these two penalties only.

... The foregoing provisions shall in no case be applied to purely technical comments in specialized journals, nor to acts, speech or writings calling for the revision of a conviction.

He alleges that these provisions infringe the freedom of opinion and expression protected by Article 19 of the ICCPR by restricting the right to freedom of the media to specialized journals and by granting the freedom to criticize a court decision only in respect of the review of a conviction, rather than in respect of the exercise of all remedies.

The Respondent State did not submit on this allegation.

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Article 9(2) of the Charter states that " [e]very individual shall have the right to express and disseminate his opinions within the law."

Article 19 of the ICCPR provides that "[e]veryone shall have the right to hold opinions without interference" and that "everyone shall have the right to freedom of expression", subject to such restrictions as are prescribed by law and are necessary "for respect of the rights or reputations of others, for the protection of national security or of public order, or of public health or morals".

It follows from these texts that, on the one hand, freedom of opinion and freedom of expression are the foundation of any democratic society, and are closely linked, freedom of expression being the vehicle for the exchange and development of opinions. The two freedoms will therefore be examined together. On the other hand, freedom of expression is not absolute since it must be exercised "within the framework of the law". It may therefore be subject to restrictions provided for by law, which must, moreover, be for legitimate purposes and be necessary and proportionate. These elements are assessed on a case-by-case basis and in the context of a democratic society.

The Court considers that the issue in the instant case is whether the restrictions on the rights to freedom of opinion and of expression, of which the Applicant alleges a violation, are prescribed by law and, if so, whether they are necessary, legitimate and proportionate.

The Court notes in the instant case that Article 410 of the Criminal Code punishes anyone who publicly seeks to discredit a judicial act or decision, by acts, speech or writing, under conditions likely to undermine the authority of the judiciary or its independence. Excluded from criminal liability (or incrimination) are purely technical comments in specialised journals as well as acts, speech or writings calling for the review of a conviction.

The Court notes, first, that the restrictions on certain rights and freedoms must be prescribed by law, and be consistent with international human rights standards and that domestic laws restricting freedom of expression be clear, foreseeable and consistent with the purpose of the Charter and international human rights instruments. They must also apply to all persons, which is the case here.[[30]](#footnote-30)

Second, regarding the legitimacy of the purpose of the restriction, the Court underlines that the general restriction clause under Article 27(2) of the Charter refers to respect for the rights of others, collective security, morality and the common good. The Court also considers that national security, public order and public morality are legitimate restrictions.[[31]](#footnote-31)

In the instant case, the Court notes that the Respondent State restricted comments to specialised journals only. However, the Court is of the opinion that specialised journals are not the only means of communication for the dissemination of technical opinions on court decisions. These means of communication may also be the Internet, newspapers, radio or television broadcasts, or courses developed by teachers, etc.

The Court also notes in the present case that the restrictions provided for in paragraph 3 of Article 410 of the Criminal Code are vague and do not pursue a legitimate aim, since there is no compelling need to restrict citizens to certain means of communication thereby depriving them of having recourse to others which are available to them to make technical comments on court decisions and thus to exercise their right to freedom of expression.

The Court also considers that there are no national security, public order or public morality considerations for such a restriction since paragraph 1 of the Article already punishes the discrediting of a judicial decision with the aim of undermining the authority or independence of the judiciary.

In view of the foregoing, the Court considers that the Respondent State violated the right to freedom of opinion and expression protected by Article 9 (2) of the Charter read together with Article 19 of the ICCPR.

On the alleged violation of the right to an effective remedy for the protection of human rights

The Applicant asserts that citizens have no remedy to contest laws passed by parliament prior to promulgation. He avers that the same is true for judges with regard to measures taken by the HJC against them.

As regards citizens, he submits that according to Article 97(3) of the Constitution, organic laws may be promulgated only after the Constitutional Court has declared them consistent with the Constitution. He avers that Article 121 of the Constitution bars citizens from pursuing this remedy to challenge the constitutionality of bills prior to promulgation by conferring this jurisdiction solely on the President of the Republic and the members of the National Assembly.

He further contends that under Article 121 of the Constitution, a citizen may contest the constitutionality of a law before the Constitutional Court only after the said law has been passed.

He further contends that the Respondent State violates the right of judges by not affording them any remedy against the decisions of the HJC.

He avers that the fact that the Respondent State prevents citizens from intervening prior to the law being passed and does not afford judges a remedy to challenge the decisions of the HJC constitutes a violation of Article 1(h) of the ECOWAS Protocol on Democracy and Article 8 of the UDHR.

The Respondent State did not submit on this allegation.

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Article 7(1)(a) of the Charter provides that:

> *"Everyone shall have the right to have his cause heard. This comprises (a) the right to an appeal to competent national organs against any act violating his fundamental rights recognized and guaranteed to him by conventions, laws, regulations and customs in force";*

This Article will be read together with Article 2(3)(a) of the ACDEG, Article 1(h) of the ECOWAS Protocol on Democracy and Article 8 of the UDHR Article which respectively provides:

> *"Each State Party to the present Covenant undertakes [...]to ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity",*

*"*Each individual or organisation shall be free to have recourse to the common or civil law courts, a court of special jurisdiction, or any other national institution established within the framework of an international instrument on Human Rights, to ensure the protection of his/her rights*"*

*"*Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law*".*

The Court recalls that the right to an effective remedy has three (3) components. Firstly, the remedy must be effective. This means that it must not be formal but must be of a nature to redress violations of fundamental rights. This implies that the person concerned has effective access to a court. Secondly, the scope of the provision must relate to laws, conventions, regulations and customs. Thirdly, the competent body to deal with allegations of violations of fundamental rights must be a judicial body.

Therefore, the Court considers that it is important to know whether the Respondent State's legislation allows citizens and judges to assert their rights in court in the event of human rights violations.

Citizens

The Court notes that Article 117 of the 11 December 1990 Constitution of the Respondent State provides that:

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*.*

The Court further observes that in accordance with Articles 122[[32]](#footnote-32) of the Constitution, 22[[33]](#footnote-33) and 24[[34]](#footnote-34) of Law No. 91-009 of 4 March 1991 pertaining to the Organic Law on the Constitutional Court, the President of the Republic, any member of the National Assembly, any citizen, any association or non-governmental organisation for the defence of human rights may initiate proceedings before the said Court against all laws and regulatory acts alleged to infringe on fundamental human rights and public freedoms and, in general, against the violation of human rights.

The Court notes that the *a posteriori* power conferred by these articles on ordinary citizens to bring cases before the Constitutional Court is perfectly understandable insofar as the law has been promulgated and has entered into force and therefore applies to everyone. It follows that citizens have the avenue and the right to challenge this law if they consider that it infringes their fundamental rights.

As regards the restriction of referral provided for in Article 121 of the Constitution, the Court notes that the said referral relates to a law that has not yet been promulgated and therefore does not affect the rights of citizens. The Court therefore considers that the said restriction of referral is justified insofar as it allows those entitled to lay the bill or draft law before the National Assembly (the deputies and the executive)[[35]](#footnote-35) with a view to amend or delete the provision of the law which would possibly be declared unconstitutional by the Constitutional Court.

In any case, the Court notes that in accordance with Article 44 of Law No. 2022-9 of 27 June 2022 on the Organic Law on the Constitutional Court, laws which are ruled unconstitutional upon referral pursuant to either Article 121 or Article 122 of the Constitution, have similar consequences since, in the case of the first referral, the draft law cannot be passed and, in the case of the second referral, the impugned provision is null and void[[36]](#footnote-36). In both cases, therefore, the censured provision is of no effect.

The Court therefore considers that the citizens of the Respondent State have an effective and efficient remedy for the protection of their human rights.

Judges

The Court recalls that under Article 17 of the Organic Law on the HJC, the HJC has the status of a judges' disciplinary council and that the applicable sanctions and disciplinary procedure are spelt out in the Law pertaining to the status of the judiciary.

The Court also notes that it emerges from Article 20(3) of the HJC Act and Article 68 of Act No. 2001-35 of 21 February 2003 pertaining to the status of judges that the decisions of the HJC are not subject to a remedy, except in cases of violation of human rights and public freedoms, in which case the remedy is pursued before the Constitutional Court.

The Court notes, however, that notwithstanding that judges have a remedy only in cases of violation of fundamental human rights and freedoms, it considers that a decision in this ambit by the Constitutional Court in favour of judges may ultimately have an impact on the decision taken by the HJC so much so that it amends the said decision.

The Court notes in this respect that the decisions of the Constitutional Court are enforceable and are binding on public authorities, on all civil, military and judicial authorities and on all natural or legal persons who must diligently comply.[[37]](#footnote-37)

The Court therefore considers that judges have an effective remedy as regards sanctions pronounced against them by the HJC.

In the light of all the foregoing, the Court finds that the Respondent State did not violate Article 7(1) of the Charter read together with Article 2(3)(a) of the ICCPR, Article 1(h) of the ECOWAS Protocol on Democracy and Article 8 of the UDHR.

On the alleged violations of the right to independent candidacy, and to the composition of the COS-LEPI

The Applicant argues that Article 153-1[[38]](#footnote-38) of the amended Constitution, prohibits any citizen of the Respondent State who is not a member of a political party or who is not running on the ticket of a political party from participating in the conduct of public affairs, including legislative, municipal, village and city neighbourhood elections.

He further argues that this provision violates the right to freedom of association, the rights to equality and non-discrimination, and the right to freedom to participate in the public affairs of his country.

He submits that by compelling Beninese citizens to vote only for candidates chosen and nominated by political parties, Article 153-1, violates the right to freedom of expression enshrined in Article 19 (2) of the ICCPR.

The Applicant further submits that Article 44 of the said amended Constitution requires aspiring candidates to obtain sponsorship in order to run in presidential elections. Under Article 138 of the Electoral Code, only deputies and mayors are empowered to sponsor candidates, whereas all the deputies as well as nearly all mayors are members of the ruling government.

To this effect, he submits that the mayors are illegitimate insofar as they were elected in the communal and municipal elections of 2020 which were held in violation of the decisions of this Court rendered on 17 April 2020 in Application No. 062/2019 and 5 May 2020 in Application No. 003/2020.

He further contends that as elections go, the mayor does not represent the entire population of the commune that elected him, since he is the political representative of a single political party. Therefore, according to him, the power to sponsor candidates can therefore not be vested in mayors in place of the population of the commune or of all local elected officials who represent the entire population.

He further argues that the mayor is only the executive agent of the municipality and therefore does not represent the political choice of the entire municipality. For the Applicant, therefore, vesting the power to sponsor a candidate violates the principle of democratic change of power in that it excludes all other representatives chosen by the people from participation in the conduct of public affairs.

He further states that there is no opposition in the parliament of the Respondent State, as all deputies are affiliated to the president's camp. He explains that these deputies not only illegally impede his candidacy and that of several other citizens of the Respondent State but also compel the citizens to pledge their allegiance to them in order to be sponsored. He therefore believes that the sponsorship system precludes any guarantee of democratic change of government in Benin protected by Article 23(5) of ACDEG.

Finally, the Applicant submits that Article 53[[39]](#footnote-39) of the amended Constitution violates the right to freedom of religion protected by Article 8 of the Charter and Article 18 of the ICCPR insofar as it provides that: "Before taking office, the President of the Republic shall take the following oath: before God, the spirits of the ancestors, the Nation and the Beninese people, the sole repository of sovereignty ...."

According to the Applicant, by using the phrase "spirits of the ancestors" in the text of the presidential oath, the Respondent State expressed its view which considers as legitimate the belief in ancestral spirits. He contends that as a citizen, he cannot be compelled to take an oath based on such a belief, which is contrary to his own religious convictions and beliefs.

The Applicant finally submits that the election of Mr. Patrice Talon as President of the Respondent State in 2021 constitutes an unconstitutional change of government by virtue of the composition of the *Conseil d'orientation et supervision de la liste électorale permanente informatisée* (COS-LEPI), the body in charge of compiling the electoral register, given that this Court had ordered the reconstitution of the said body before the holding of any election.

Finally, the Applicant asserts that despite the decisions of the Court ordering the Respondent State to repeal the provisions resulting from the constitutional amendment and the Electoral Code, the Constitutional Court of the Respondent State, by Decision DCC 21-011, Decision DC 21-008, and Decision DCC 21-010 of 7 January 2021, rejected requests by citizens of the Respondent State to that effect.

He concludes that the Respondent State violated Articles 19(2) and 25(b) of the ICCPR, Article 13(1) of the Charter, Articles 3(10)(11) and 23(5) of the ACDEG and Article 1(i) of the ECOWAS Protocol.

The Respondent State did not submit on this allegation.

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The Court has already ruled[[40]](#footnote-40) that the constitutional amendment of 7 November 2019 violates Articles 9(1), 22(1) and 23(1) of the Charter and Article 10(2) of the ACDEG and ordered its repeal as well as that of subsequent laws including the Electoral Code of 15 November 2019.

The Court also ruled that the COS-LEPI, by virtue of its composition, does not offer sufficient guarantees of independence and impartiality under Article 17(2) of the ACDEG and Article 3 of the ECOWAS Protocol on Democracy.[[41]](#footnote-41)

The Court finds that there is nothing in the circumstances of the case that warrants a Ruling otherwise.

The Court therefore considers it unnecessary to rule on the violations that would result from composition of the COS-LEPI as well as the constitutional amendment and the Electoral Code, with regard to the criteria for candidacy, freedom of electoral expression and freedom of religion.

Accordingly, the Court finds that the Applicant's prayer that the Court find a violation of the said rights is moot.

REPARATIONS

Article 27(1) of the Protocol provides that: “If the Court finds that there has been violation of a human or peoples’ right, it shall make appropriate orders to remedy the violation, including the payment of fair compensation”.

The Court recalls its previous judgments on reparation[[42]](#footnote-42) and reaffirms that, in considering claims for reparation for damage resulting from human rights violations, it takes into account the principle according to which the State found guilty of an internationally wrongful act is required to make full reparation for the damage caused to the victim.

The Court also takes into account the principle that there must be a causal link between the violation alleged and the alleged injury and puts the burden of proof on the Applicant who must provide evidence to justify his request.[[43]](#footnote-43)

The Court recalls that it has also established that “reparation must, as far as possible, erase all the consequences of the wrongful act and restore the state which would presumably have existed if that act had not been committed”. Moreover, depending on the particular circumstances of each case, reparation measures must include restitution, compensation, rehabilitation of the victim and measures to ensure the non-repetition of violations, taking into account the circumstances of each case.[[44]](#footnote-44)

Furthermore, the Court reiterates that it has established already that reparation measures for damage resulting from human rights violations must take account of the circumstances of each case and the Court's assessment is made on a case-by-case basis.[[45]](#footnote-45)

The Court will consider requests for reparations bearing in mind that it cannot order reparations measures based on allegations for which no human rights violations have been found.

In the instant case, the Court notes that it has found that the law on the HJC violates Article 26 of the Charter; that Article 413(3) of the criminal code violates Article 9(2) of the Charter and Article 19 of the ICCPR. It also found a violation of Article 30 of the Protocol by virtue of the Respondent's failure to comply with the Court's decisions.

The Court recalls that the Applicant seeks (A) pecuniary reparation and (B) non-pecuniary reparation.

On pecuniary reparations

The Applicant prays the Court to order the Respondent State to pay him the sum of One Billion (1,000,000,000) CFA francs as monthly flat-rate interest until full compliance with the present decision. He also claims a lump-sum interest of Five Hundred Million (500,000,000) CFA francs per month until full compliance with the Rulings of 5 May and 25 September 2020, and the judgment of 4 December 2020-Application *No. 003/2020-Houngue Eric Noudéhouenou v Benin*.

He further requests that the Respondent State be ordered to pay him Fifteen Million (15,000,000) CFA francs in respect of legal fees and procedural costs, Five Hundred Thousand (500,000) CFA francs in respect of mailing costs and Five Hundred Million (500,000,000) CFA francs for the moral damage he suffered as a result of the violations found.

The Respondent State did not submit on these requests.

Monthly lump sum interest.

The Court notes that the Applicant requests it to impose on the Respondent State the payment of monthly lump sums of One Billion (1,000,000,000) CFA francs and Five Hundred Million (500,000,000) CFA francs, respectively, to comply with the judgment to be rendered in the present case, and for not complying of the judgment of 4 December 2020 as well as the Rulings of provisional measures of 05 May and 25 September 2020 rendered in Application 003/2020-Houngué *Eric Noudéhouenou v Republic of Benin.*

The Court considers that such requests are tantamount to requests for coercive measures compelling the Respondent State to enforce the decisions, which would make it an enforcement judge of its own decisions, contrary to Articles 29(2)[[46]](#footnote-46) and 30[[47]](#footnote-47) of the Protocol on the requirements for enforcing the Court's decisions.

The Court notes that under the latter provision the Respondent State must comply with the Court's decisions without the need for further coercive measures.

The Court therefore dismisses the requests for lump sum interest.

Legal, mailing, communication and procedural costs

The Court notes that the Applicant does not produce evidence in support of the costs he incurred in respect of legal representation, nor those in respect of mailing and communication. Moreover, the Court recalls that proceedings before it are free of charge in line with Rule 32 of its Rules of Procedure.

Consequently, the Court dismisses the requests for restitution in the sums of Fifteen Million (15,000,000) CFA francs in respect of legal and procedural costs, and Five Hundred Thousand (500,000) CFA francs in respect of mailing and communications claimed by the Applicant.

Moral prejudice

The Court recalls its jurisprudence that moral prejudice suffered by the Applicant is presumed once the Court has found a violation of his rights, such that it is no longer necessary to seek evidence to establish the link between the violation and the damage in cases of human rights violations. The Court has also held that the assessment of the amounts to be awarded for moral damage should be made on the basis of equity, taking into account the circumstances of each case.[[48]](#footnote-48)

In the instant case, the Court finds that the moral prejudice suffered by the Applicant emanates from the violation of his rights in connection with the Penal Code and the non-enforcement of the Court's decisions.

The Court observes that the quantum of reparation to be awarded to the Applicant in the present case must be assessed in the light of the degree of mental anguish he must have suffered as a result of the violation of his rights by the above-mentioned laws as well as the failure by the Respondent State to comply with the Court's decisions concerning him.

It notes that as result of the failure to comply with the judgment delivered on 4 December 2020, in Application *No. 003/2020 - Houngué Eric Noudéhouenou v. Benin*, the Applicant was unable to contest this country's parliamentary and presidential elections.[[49]](#footnote-49) It considers that this situation was the cause of moral prejudice for the Applicant.

For all these considerations, the Court, using its discretionary appreciation, awards the Applicant reparation for the moral damage he personally suffered, in the amount of Five Million (5,000,000) CFA.

On non-pecuniary remedies

The Court recalls that the Applicant seeks measures to erase all effects and all consequences arising from the violations of which the Respondent State was found guilty, in particular in relation to the composition of the HJC, Article 20 of Law No. 2018-01 on the status of the judiciary, Article 410(3) of the Penal Code, the annulment of the decisions of the Constitutional Court, the failure to execute the decisions of the Court, and the reconstitution of the National Assembly.

The Respondent State did not submit on these requests.

***

The Court will proceed to consider the orders for reparations bearing in mind that it cannot order reparations measures based on allegations for which no human rights violation has been established.

The composition of the HJC

The Court recalls that the Applicant seeks measures to remove all members of the executive branch from the HJC, by instituting the election by an absolute majority of its members, with the Chair of the HJC being a democratically elected magistrate.

The Court notes that it has found a violation of Article 26 of the Charter by virtue of the executive's massive control over the HJC.

Consequently, it orders the Respondent State to take all necessary measures to redress this situation and to make the structure of HJC statutorily and functionally consistent with Article 26 of the Charter,on the one hand, by repealing the following provisions of the HJC organic law: those that make the President of the Republic a member of the HJC and Chair of the HJC, those that entitle the President of the Republic to appoint members of the HJC, and those that make other members of the executive members of the HJC and, on the other hand, by making the President of the Supreme Court Chair of the HJC.

Article 410(3) of the Penal Code

The Court found that the Respondent State violated the right to freedom of opinion and expression protected by Article 9 (2) of the Charter and Article 19 of the ICCPR, by virtue of Article 410 (3) of its Criminal Code.

The Court therefore orders the Respondent State to take all measures to bring Article 410(3) of the Penal Code in line with Article 9(2) of the Charter and Article 19 of the ICCPR which guarantee freedom of opinion and expression with regard to technical comments on judicial decisions.

Annulment of the decisions of the Constitutional Court

The Applicant states that despite this Court's decisions ordering the repeal of the constitutional amendment and the Electoral Code, the Constitutional Court of the Respondent State, by Decisions DCC 21-011, DC 21-008, DCC 21-010 of 7 January 2021, rejected the requests of Beninese citizens to declare the impugned provisions of these laws unconstitutional. The Applicant requests the Court to annul these decisions of the Constitutional Court.

The Court recalls its jurisprudence that it is not an appellate court with the power to reverse or vacate the decisions of domestic courts.[[50]](#footnote-50)

Accordingly, the Court dismisses the request.

Enforcement of the Court's decisions

The Court orders the Respondent State to take all measures to comply with Article 30 of the Protocol by implementing the Ruling on provisional measures of 5 May and 25 September 2020, and the Judgment of 4 December 2020 in Application No. 003/2020 - *Houngue Eric Noudéhouenou v. Republic of Benin*.

Reconstitution of the National Assembly

The Court recalls that the Applicant prays it to reconstitute the National Assembly since the deputies of the legislative body were elected in elections organised by partial and non-independent electoral bodies, notably the COS-LEPI and under the amended provisions of the Constitution and the Electoral Code of 7 and 15 November 2019, which had to be repealed before any election per the decisions of this Court.

The Court however notes that the request for the reconstitution of the National Assembly implies that it must first be dissolved.

The Court notes that it has found in the present case that the alleged violations relating to the constitutional amendment, the Electoral Code and COS-LEPI are moot. The Court further observes that it has not ruled on the legitimacy of the National Assembly, or established its illegitimacy.

The Court observes that Article 27(1) of the Protocol adequately empowers it to order a Respondent State to take measures to annul an election if it so deems fit in order to remedy the situation. In doing so, it takes into account the gravity of the violations found, their implication on the credibility of the entire electoral process and the impact of such a measure on the security and stability of the country.

The Court notes that in the present case, the Applicant does not demonstrate the substantial impact of the violations found on the credibility of the entire electoral process. There is nothing on record to indicate that the parliamentary elections were impacted by the violations found to such an extent that the dissolution of the National Assembly is the most appropriate remedy.

Accordingly, the Court dismisses this request.

ON THE REQUEST FOR PROVISIONAL MEASURES

The Court recalls that on 14 July and 15 September 2022, the Applicant filed two requests for provisional measures, which the court has joined to the Application on the merits.

The Court however notes that the present decision on the merits renders the said requests moot.

COSTS

The Applicant requests that the Respondent State bear the costs of the proceedings.

The Respondent State did not submiton this request.

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Under Article 32(2) of the Rules,[[51]](#footnote-51) "[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.

The Court therefore orders that that each Party bear its own costs.

OPERATIVE PART

For these reasons,

THE COURT,

*Unanimously**,*

On jurisdiction

Declares that it has jurisdiction.

On admissibility

Declares the Application admissible.

On merits

Finds that the alleged violation of judges' right to strike, their right to information, freedom of opinion and expression, their right to form associations freely, and their right to freedom to assemble, protected respectively by Articles 8, 9, 10 and 11 of the Charter, is moot;

Finds that the Respondent State did not violate the right of citizens and judges to an effective remedy for the protection of their rights, protected by Article 7(1) of the Charter read together with Article 2(3)(a) of the ACDEG, Article 1(h) of the ECOWAS Protocol on Democracy and Article 8 of the UDHR;

Finds that the alleged violations in connection with the constitutional amendment and with the Electoral Code are moot;

Finds that the alleged violations in connection with the COS-LEPI are moot.

Finds that the Respondent State violated Article 26 of the Charter in relation to the composition and functioning of the HJC;

By a majority of Ten (10) for, and One (1) against, Justice Dennis D. ADJEI Dissenting,

Finds that the Respondent State violated Article 30 of the Protocol by failing to comply with the Court's decisions;

Unanimously,

Finds that the Respondent State violated the right to freedom of opinion and expression in relation to Article 410(3) of the Criminal Code;

On reparations

Pecuniary reparations

By a majority of Ten (10) for, and One (1) against, Justice Chafika BENSAOULA Dissenting,

Dismisses the request for the payment of Five Hundred Million (500,000,000) CFA francs as monthly lump sum interest for the enforcement of the Ruling on provisional measures of the 5 May and 25 September 2020, and the judgment on 4 December 2020 rendered in Application No. 003/2020-*Houngue Eric Noudehouenou v. Republic of Benin.*

Unanimously,

Dismisses the request for the payment of One Billion (1,000, 000, 000) CFA francs as monthly lump sum interest for non-enforcement of the judgment delivered in the instant case;

Dismisses the requests for reimbursement of the sums of Fifteen Million (15,000,000) CFA francs in respect of legal and procedural costs, and Five Hundred Thousand (500,000) CFA francs in respect of mailing and communication costs;

Orders the Respondent State to pay the Applicant the sum of Five Million (5,000,000) CFA francs as reparation for moral damage within six (6) months of notification of this judgment, failing which it will have to pay default interest calculated on the basis of the applicable rate of *Banque centrale des Etats de l'Afrique de l'Ouest* (BCEAO) for the entire period of delay until full payment of the amount due.

Non-pecuniary reparations

Dismisses the request for the reconstitution of Parliament;

Dismisses the request for annulment of the decisions of the Constitutional Court;

Orders the Respondent State to take, within six (6) months of the notification of this judgment, all measures to make the structure of the HJC statutorily and functionally consistent with Article 26 of the Charter, on the one hand, by repealing the following provisions of the HJC organic law: those that make the President of the Republic a member of the HJC and Chair of the HJC, those that entitle the President of the Republic to appoint members of the HJC, and those that make other members of the executive members of the HJC and, on the other hand, by making the President of the Supreme Court Chair of the HJC.

Orders the Respondent State to take, within six (6) months of the date of notification of this judgment, all measures to make Article 410(3) of the Criminal Code consistent with Article 9(2) of the Charter and Article 19 of the ICCPR, by guaranteeing freedom of opinion and expression in relation to criticism of judicial decisions;

Orders the Respondent State to take all measures to comply with Article 30 of the Protocol by implementing the decisions rendered in Application No. 003/2020-*Houngue Eric Noudéhouenou v Benin*.

Orders the Respondent State to publish the operative part of this judgment within one (1) month of the date of its notification on the websites of the Government, the Ministry of Foreign Affairs, the Ministry of Justice, and in the official gazette of the Respondent State for a period of twelve (12) months.

On implementation and reporting

Orders the Respondent State to submit to the Court, within six (6) months a report on the implementation of paragraphs (xiii), (xvi), (xvii), (xviii) and (xix) of this operative part. These timelines shall run from the date of notification of this judgment.

On the request for provisional measures

Finds that the requests for provisional measures are moot.

On costs

Orders that each Party shall bear its own costs.

Signed by:

Imani D. ABOUD, President;

Blaise TCHIKAYA, Vice President;

Ben KIOKO, Judge;

Rafaâ BEN ACHOUR, Judge;

Suzanne MENGUE, Judge;

Tujilane R. CHIZUMILA, Judge;

Chafika BENSAOULA, Judge;

Stella I. ANUKAM, Judge;

Dumisa B. NTSEBEZA, Judge;

Modibo SACKO, 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, the Dissenting Opinions of Justice Chafika BENSAOULA and Justice Dennis D. ADJEI are appended to this Judgment.

Done at Arusha, this First Day of December in the year Two Thousand and Twenty-Two, in the English and French languages, the French text being authoritative.

1. Law No. 2018-02 of 2 July 2018. [↑](#footnote-ref-1)
2. Law No. 94-027 of 18 March 1999. [↑](#footnote-ref-2)
3. *Houngue Éric Noudehouenou v. Republic of Benin*, ACtHPR, Application No. 004/2020, Ruling of 6 May 2020 (provisional measures), §§ 4-5 and corrigendum of 29 July 2020. [↑](#footnote-ref-3)
4. Rule 39(1) of the Rules of 2 June 2010. [↑](#footnote-ref-4)
5. Rule of 25 September 2020. [↑](#footnote-ref-5)
6. See paragraph 2 of this judgment. [↑](#footnote-ref-6)
7. The Respondent State ratified the ICCPR on 12 March 1992, the ACDEG on 11 July 2012, and the ECOWAS Protocol on 21 December 2001. [↑](#footnote-ref-7)
8. Rule 40 of the Rules of 2 June 2010. [↑](#footnote-ref-8)
9. *Beneficiaries of the late Norbert Zongo, Aboulaye Nikiema dit Ablasse, Ernest Zongo and Blaise Ilboudo and Mouvement Burkinabè des droits de l'homme et des peuples v. Burkina Faso*, Judgment (Merits) (28 March 2014), 1 AfCLR 219 § 68; Ibid. Konaté v. Burkina Faso (Merits) 31 § 92 and 108; *Sébastien Germain Marie Aikoué Ajavon v. Republic of Benin*, ACtHPR, Application No. 062/2019, Judgment of 4 December 2020, §§ 99. [↑](#footnote-ref-9)

10. Article 53 "In administrative matters, they shall have first instance jurisdiction to hear disputes concerning all acts issued by the administrative authorities within their jurisdiction. The following shall fall within the scope of this litigation: (www.droit-afrique.com Benin Judicial organisation 15 1) appeals for annulment on the grounds of excess of decision-making power of the administrative authorities; 2) appeals for interpretation of the acts of the said authorities on referral from the judicial authorities; 3) full litigation involving a legal person under public law, except for the exceptions provided for by law; 4) claims by private individuals for damage caused by the personal acts of contractors holding concessions and administrators of the administration; 5) tax litigation. [↑](#footnote-ref-10)

11. "The Constitutional Court is the highest court of the State in constitutional matters. It rules on the constitutionality of laws and guarantees the fundamental rights of the human person and public freedoms (...)" [↑](#footnote-ref-11)

12. "Any citizen may refer to the Constitutional Court the constitutionality of laws, either directly or through the exceptional procedure based on unconstitutionality invoked in a case that concerns him before a court. [↑](#footnote-ref-12)

13. See also Article 19 of Law No. 91 - 009 of 4 March 1991 on the organic law on the Constitutional Court, as amended by the Law of 31 May 2001 [↑](#footnote-ref-13)

14. Article 7 of the Constitution of Benin provides: "The rights and duties proclaimed and guaranteed by the African Charter on Human and Peoples' Rights, adopted in 1981 by the Organization of African Unity and ratified by Benin on 20 January 1986, are an integral part of the (...) Constitution and of the law". [↑](#footnote-ref-14)

15. Article 35 of the Rules of Procedure of the Constitution provides, in the context of the review of constitutionality: "The Constitutional Court shall rule on the law as a whole, both on its content and on the procedure for its drafting" [↑](#footnote-ref-15)

16. High Council of the Republic (HCR) of Benin sitting as Constitutional Court, Decision 3DC of 2 July 1991. [↑](#footnote-ref-16)

17. Sébastien Germain Marie Aikoué Ajavon v. Republic of Benin, ACtHPR, Application No. 062/2019, Judgment of 4 December 2020, §§ 102. [↑](#footnote-ref-17)

18. *Beneficiaries of the late Norbert Zongo and Others v Burkina Faso*, (21 June 2013) (Preliminary Objections) 1 AfCLR 195, § 121; *Alex Thomas v United Republic of Tanzania* (20 November 2015),(Merits), 1 AfCLR482, § 73. [↑](#footnote-ref-18)

19. *Alex Thomas v. Tanzania* (Merits), *op.cit.* § 73; *Christopher Jonas v. Tanzania* (Merits) *op.cit.* , § 54, *Ramadhani v. Tanzania,* (11 May 2018), (Merits), 2 AfCLR 344, § 83. [↑](#footnote-ref-19)

20. *Association pour le progrès et la défense des droits des femmes maliennes et Institute for Human Rights and Development in Africa v Republic of Mali* (11 May 2018) (Merits)) 2 AfCLR 380, § 54. [↑](#footnote-ref-20)

21. *Armand Guéhi v. Tanzania* (Merits and Reparations) *op.cit,* § 56; *Werema Wangoko v. United Republic of Tanzania* (Merits) (7 December 2018), 2 AfCLR 520, § 49; *Alfred Agbesi Woyome v. Republic of Ghana,* (Merits and Reparations) (28 June 2019), 3 AfCLR 235*,* §§ 83-86. [↑](#footnote-ref-21)

22. *Sébastien Germain Marie Aikoué Ajavon v. Republic of Benin*, ACtHPR, Application No. 062/2019, Judgment of 4 December 2020, § 310. [↑](#footnote-ref-22)

23. ACHPR, *Kevin Mgwanga Gunme and others v. Cameroon*, Communication 266/03, § 211 and 212, 45th ordinary session, 13-27 May 2009. [↑](#footnote-ref-23)

24. "The judiciary power is independent of the legislature and the executive powers. It shall be exercised by the Supreme Court, the courts and tribunals established in accordance with this Constitution". [↑](#footnote-ref-24)

25. “The President of the Republic is the guarantor of the independence of the judiciary. He is assisted by the High Judicial Council” [↑](#footnote-ref-25)

26. Ex-officio members by right: The President of the Republic, President; The President of the Supreme Court, First Vice President; The Keeper of the Seals, Minister of Justice, Second Vice President; The Presidents of the Chambers of the Supreme Court, members; The Prosecutor General of the Supreme Court, member; A President of a Court of Appeal, member; A Public Prosecutor of a Court of Appeal, member; The Minister of Public Service, member; The Minister of Finance, member; The other members: Four (4) personalities from outside the judiciary, two (2) magistrates including one (1) from the public prosecutor's office. Non-ex-officio members are appointed by decree of the President of the Republic. [↑](#footnote-ref-26)

27. Article 13 of the law on the HJC Act: "In the event of a tie, the President shall have the casting vote". [↑](#footnote-ref-27)

28. Constitution of 2 December 1990, Article 127(2): "The President of the Republic shall guarantee the independence of the judiciary. He is assisted by the High Judicial Council " [↑](#footnote-ref-28)

29. Article 11 of the law on the HJC "the High Judicial Council assists the President of the Republic in his mission as guarantor of the independence of the judiciary; to this end, it is consulted on any question concerning the independence of the judiciary and the security of judges. [↑](#footnote-ref-29)

30. *Sébastien Germain Marie Aikoué Ajavon v. Republic of Benin,* ACtHPR, Application No. 062/2019, Judgment of 4 December 2020, § 122. [↑](#footnote-ref-30)

31. Idem, § 123. [↑](#footnote-ref-31)

32. Article 122 "Any citizen may refer to the Constitutional Court the constitutionality of laws, either directly or by the exceptional procedure based on unconstitutionality invoked in a case which concerns him before a court. The latter shall stay proceedings until the Constitutional Court has issued its decision, which must be issued within thirty days. [↑](#footnote-ref-32)

33. Article 22 "Similarly, laws and regulatory acts that are alleged to infringe on fundamental human rights and public freedoms, and in general, on the violation of human rights, shall 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" [↑](#footnote-ref-33)

34. Article 24 "Any citizen may, by a letter stating his name, surname and precise address, bring a case directly to the Constitutional Court on the constitutionality of laws.

He may also, in a case which concerns him, raise the objection based on unconstitutionality before a court.

The latter, following the exceptional procedure of unconstitutionality, must immediately and at the latest within eight days refer the matter to the Constitutional Court and suspend the ruling until the decision of the Constitutional Court. [↑](#footnote-ref-34)

35. Article 105 of the Constitution " Laws shall be jointly initiated by the President of the Republic and the members of the National Assembly ...” [↑](#footnote-ref-35)

36. Article 44 "In the event that the Constitutional Court declares the law before it to contain a provision contrary to the Constitution without at the same time noting that it is inseparable from the law as a whole, the President of the Republic may either promulgate the law with the exception of this provision or ask the National Assembly for a new deliberation.

In the same way, when the Court is seized by a citizen declares that a law, a regulatory text or an administrative act is contrary to the provisions of the Constitution, these laws, texts or acts are null and void.” [↑](#footnote-ref-36)

37. Article 20(2)(3) of Law No.2022-09 of 27 June 2022. [↑](#footnote-ref-37)

38. Resulting from the constitutional amendment of 7 November 2019. [↑](#footnote-ref-38)

39. Resulting from the constitutional amendment of 7 November 2019. [↑](#footnote-ref-39)

40. *Houngue Éric Noudehouenou v. Republic of Benin*, ACtHPR, Application No. 003/2020, Judgment of 04 December 2020 (Merits and reparations), §§ 66 and 77- 79, 123(xii), *XYZ v. Republic of Benin*, ACtHPR, Application No. 059/2019, Judgment of 27 November 2020 (merits and reparations), §§ 124-125, 179(xii). [↑](#footnote-ref-40)

41. Ibid, *XYZ v. Republic of Benin*, § 148. [↑](#footnote-ref-41)

42. *Beneficiaries of the late Norbert Zongo, Abdoulaye Nikiema dit Ablassé, Ernest Zongo and Blaise Ilboudo and Mouvement Burkinabé des droits de l'homme et des peuples v. Burkina Faso*, (Reparations) (5 June 2015) 1 AfCLR 265, § 22; *XYZ* *v. Republic of Benin*, ACtHPR, Application No. 010/2020, Judgment of 27 November 2020 (Merits and Reparations), § 139. [↑](#footnote-ref-42)

43. Ibid, *XYZ* *v. Republic of Benin,* § 140. [↑](#footnote-ref-43)

44. Ibid, § 141. [↑](#footnote-ref-44)

45. Ibid, § 142. [↑](#footnote-ref-45)

46. Article 29(2) of the Protocol provides: “The Council of Ministers shall also be notified of the judgment and shall monitor its execution on behalf of the Assembly” [↑](#footnote-ref-46)

47. Article 30 of the Protocol provides: “The States parties to the [...] Protocol undertake to comply with the judgment in any case to which they are parties within the time stipulated by the Court and to guarantee its execution”. [↑](#footnote-ref-47)

48. Ibid, § 146. [↑](#footnote-ref-48)

49. *Houngue Éric Noudehouenou v. Republic of Benin*, ACtHPR, Application No. 003/2020, judgment of 4 December 2020 (Merits and reparations), §§ 123(xii): the court had ordered the Respondent State to take all measures to repeal Law No. 2019-40 of 1 November 2019 amending Law No. 90-032 of 11 December 1990 on the Constitution of the Republic of Benin and all subsequent laws in order to ensure that its citizens participate freely and directly, without any political, administrative or judicial impediments, prior to any election [↑](#footnote-ref-49)

50. *Kijiji isiaga v United Republic of Tanzania,* (21 March 2018) *(*Merits and Reparations) 2 AfCLR 218 § 94; *Ramadhani v United Republic of Tanzania,* (11 May 2018),(Merits and Reparations) 2 AfCLR 344 § 84. [↑](#footnote-ref-50)

51. Rule 30(2) of the Rules of 2 June 2010. [↑](#footnote-ref-51)

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