

UGANDA / JUDGMENT

XYZ v Republic of Benin
(Application No. 003/2021) [2023]
AfCHPR 50 (18 December 2023)
[2023] AfCHPR 50

COURT

African Court on Human and Peoples Rights

BEFORE

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

CASE / FILE NUMBER

Application No. 003/2021

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THE MATTER OF

XYZ

v.

REPUBLIC OF BENIN

APPLICATION NO. 003/2021

RULING

PROVISIONAL MEASURES

18 DECEMBER 2023

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

In the matter of:

XYZ

Self-represented.

Versus

REPUBLIC OF BENIN

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

After deliberation,

renders this Ruling:

THE PARTIES

Mr. XYZ (hereinafter referred to as “the Applicant”) is a national of Benin. He has been granted anonymity at his request. The Applicant seeks provisional measures to stay all measures taken by the Republic of Benin (hereinafter “the Respondent State”) against the Republic of Niger in line with the Decisions taken on 30 July and 10 August 2023 by the Conference of Heads of State and Government of the Economic Community of West African States (hereinafter “ECOWAS”).

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 also deposited the Declaration provided for in Article 34(6) of the said Protocol (hereinafter referred to as “the Declaration”) by virtue of which it accepted the jurisdiction of the Court to receive applications from individuals and Non-Governmental Organisations. On 25 March 2020, the Respondent State deposited with the African Union Commission the instrument of withdrawal of the said Declaration. The Court has held that the withdrawal has no effect on pending cases and on new cases filed before the entry into force of the said withdrawal one year after its deposit, in the present case, on 26 March 2021. ^{[[1]]}(#footnote-1)

SUBJECT OF THE APPLICATION

On 18 January 2021, the Applicant filed an Application alleging violation by the Respondent State of his rights as a result of Law No. 2019-40 of 07 November 2019 amending the Constitution (hereinafter referred to as “the Amended Constitution”) and all subsequent laws, including Law No. 2019-43 of 15 November 2019 on the Electoral Code (hereinafter referred to as the “Electoral Code”) in connection with the presidential election of 11 April 2021.

The present request for provisional measures relates to the change of government that occurred in Niger on 26 July 2023, against which the Conference of Heads of State and Government of ECOWAS and the West African Economic and Monetary Union (WAEMU) adopted economic, political and military sanctions on 30 July 2023 in Abuja, Nigeria, and issued the threat of armed intervention in that country. The Applicant avers that the Respondent State has taken measures against Niger to enforce the said decisions.

The Applicant maintains that it is necessary to adopt provisional measures in view of the harmful consequences of the sanctions.

THE PROCEDURE BEFORE THE COURT

The Application, together with a request for provisional measures and a request for anonymity, was filed on 18 January 2021. The Applicant was granted anonymity by the Court in February 2021. On 8 April 2021, the Court issued a Ruling dismissing the request for provisional measures.

On 13 September 2023, the Applicant filed a new request for provisional measures. On 2 October 2023, the request was notified to the Respondent State for its Response within fifteen (15) days of receipt. On 27 October 2023, the Respondent State filed its Response, which was notified to the Applicant.

PRIMA FACIE JURISDICTION

The Respondent State raises an objection to the jurisdiction of the Court. It submits that it has withdrawn the Declaration provided for in Article 34(6) of the Protocol and that the withdrawal took effect on 26 March 2021. The Respondent State submits that the Court no longer has jurisdiction to entertain new applications filed against it by individuals or Non-Governmental Organisations.

It asserts that the request for provisional measures, which is maliciously based on an old Application, was lodged on 13 September 2023, after the withdrawal of the Declaration had taken effect.

It concludes that the Court lacks jurisdiction to hear the request for provisional measures.

The Applicant did not respond to this objection.

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The Court notes in line with its jurisprudence relating to the provisional measures, it does not have to ensure that it has jurisdiction on the merits of the case, but simply that it has prima facie jurisdiction.^{[[2]](#footnote-2)} The also Court notes, in this respect, that its *prima facie* jurisdiction is engaged where the Application alleges violations of human rights protected by one or more human rights instruments ratified by the Respondent State^{[[3]](#footnote-3)}

In this respect, the Court underscores that the request for provisional measures must be ancillary to an application on the merits, so that there must necessarily be a sufficient link between them. In other words, the request for provisional measures must relate to the merits of the main Application. It follows that the Court cannot assume prima facie jurisdiction if the purpose of the request for provisional measures differs materially from the merit of the substantive application.

The Court notes, in the present case, that in his Application, the Applicant alleges violation of his rights in connection with the Beninese presidential election of 11 April 2021. In the present request for provisional measures, he cites the sanctions taken by the Respondent State against Niger in accordance with decisions taken on 30 July 2023 by the Conference of Heads of State and

Government of the Economic Community of West African States (ECOWAS) and those of the West African Economic and Monetary Union (UEMOA) in response to the change of government in that country on 26 July 2023.

The Court notes that there is clearly no link between these two requests. Consequently, it upholds the Respondent State's objection and declares that it has no **prima facie** jurisdiction to hear the present request for provisional measures.

OPERATIVE PART

For these reasons,

THE COURT

Unanimously,

**Upholds* the objection to jurisdiction.*

**Declares* that it lacks jurisdiction to consider the request for provisional measures.*

Signed:

Imani D. ABOUD, President;

And Robert ENO, Registrar.

Done at Arusha, this Eighteenth day of December in the year two thousand and twenty-three, in French and English, the French text being authoritative.

1. **Ingabire Victoire Umuhoza v. Republic of Rwanda**, (jurisdiction) (3 June 2016) 1 AfCLR 540 § 67; **Houngue Éric Noudehouenou v. Republic of Benin**, ACtHPR, Application No. 003/2020 Order of 5 May 2020 (provisional measures), §§ 4- 5 and corrigendum of 29 July 2020. [↑] (#footnote-ref-1)
2. **Komi Koutche v Republic of Benin** (provisional measures) (4 December 2020 2019) 3 AfCLR 725, § 14, **Ayadi Fathi and others v. Republic of Tunisia**, ACtHPR, Application No. 001/2023 Order of 17 March 2023 (provisional measures), §11. [↑] (#footnote-ref-2)
3. **Ayadi Fathi and others v. Republic of Tunisia**, supra, §12 [↑] (#footnote-ref-3)

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