AFRICAN UNION		UNION AFRICAINE
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UNIÓN AFRICANA		UMOJA WA AFRIKA
AFRICAN COURT ON HUMAN AND PEOPLES' RIGHTS COUR AFRICAINE DES DROITS DE L'HOMME ET DES PEUPLES		

IN THE MATTER OF

MRS IDA AFIAVI AJAVON, *NEE* GOUDJO, AND OTHERS

V.

REPUBLIC OF BENIN

APPLICATION NO. 063/2019

RULING

13 NOVEMBER 2026



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

In the Matter of:

Ms Ida Afiavi AJAVON née GOUDJO, Ms Ludmila Isis Ayelé AJAVON and Ms Evaëlle Jonella Noémie Ayoko AJAVON, and Mr Ronald K. Steeven Karen Ayité AJAVON

Represented by

Mr Issiaka MOUSTAFA, an advocate and member of the Benin Bar

Versus:

REPUBLIC OF BENIN,

Represented by

Mr. Iréné ACLOMBESSI, Judicial Agent of the Treasury.

After deliberation,

Renders this Ruling:

I. THE PARTIES

1. Mrs Ida Afiavi AJAVON, Nee GOUDJO, Ms Ludmila Isis Ayelé AJAVON and Ms Evaëlle Jonella Noémie Ayoko AJAVON, and Mr Ronald K. Steeven Karen Ayité AJAVON (hereinafter referred to as “the Applicants”), are all nationals of Benin, residing in Paris, France, and are political refugees. They

allege the violation of their right to property and the right to have their cause heard.

2. 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 as "the Charter") on 21 October 1986 and to the Protocol to the African Charter on Human and Peoples' Rights establishing an African Court on Human and Peoples' Rights (hereinafter referred to as "the Protocol") on 22 August 2014. Furthermore, on 8 February 2016, the Respondent State deposited the Declaration under Article 34(6) of the Protocol (hereinafter referred to as "the Declaration"), by virtue of which it accepted the Court's jurisdiction to receive applications from individuals and Non-Governmental Organisations. On 25 March 2020, the Respondent State deposited with the African Union Commission (AUC) an instrument of withdrawal of its Declaration. The Court has held that the withdrawal of the Declaration has no effect either on pending cases or new cases brought before the Court prior to its entry into force one year after the deposit of the relevant instrument, in this case, on 26 March 2021.[1]

II. SUBJECT OF THE APPLICATION

A. Facts of the matter

3. The Applicants allege that the Respondent State violated their property rights in connection with the conviction of Mr. Sébastien Germain Marie Aikoué Ajavon, director and shareholder of the company COMON SA, for drug trafficking offenses by judgment dated 18 October 2018, of the Court for the Suppression of Economic Offenses and Terrorism (CRIET).

[1] *Houngue Éric Noudehouenou v. Republic of Benin* (provisional measures) (5 May 2020) 4 AfCLR 701, §§ 4-5 and Corrigendum of 29 July 2020.

4. In this regard, they aver that their personal bank accounts were unlawfully seized; as shareholders of COMON SA, they were adversely affected by abusive acts and measures taken by the Respondent State against the said company. They also allege that the Respondent State deliberately refused to implement the decisions of this Court rendered in Application No. 013/2017.

B. Alleged violations

5. The Applicants allege violation of their right to property and the right to have their cause heard, as protected by Articles 14 and 7 of the Charter respectively.

III. SUMMARY OF THE PROCEDURE BEFORE THE COURT

6. The Application was filed on 29 November 2019. On 14 January 2020, the Registry received a supplementary amended Application. On 17 January 2020, the two Applications were served on the Respondent State, with a request to submit the names and addresses of its representative and its Response on the applications within 30 and 60 days respectively.[2]

7. On 16 March 2020, the Respondent State submitted the name and address of its representative. On 7 May 2020, after a 60-day extension of time, the Respondent State filed its Responses, which were transmitted to the Applicants on 20 May 2020 for their Replies within 30 days of notification.

8. On 28 May 2020, the Applicants filed their Reply, which was transmitted to the Respondent State on 8 June 2020 for its observations within 30 days of receipt. The Respondent State did not respond.

[2] Rules of the Court of 2 June 2010.

9. Pleadings were closed on 21 August 2026, and the Parties were duly informed.

IV. PRAYERS OF THE PARTIES

10. In their Application, the Applicants pray the Court to:

    i. Declare that it has jurisdiction;
    ii. Declare the Application admissible;
    iii. Find that the Respondent State violated their right to property protected by Article 14 of the Charter;
    iv. Hold that the Respondent State violated their fundamental rights;
    v. Rule that the said violations committed against them caused them irreparable prejudice warranting reparation;
    vi. Order the Respondent State to pay each of them the sum of One Hundred and Seventy Million (170,000,000) CFA francs as damages;
    vii. Order the Respondent State to bear costs;

11. In their amended and supplementary Application of 7 January 2020, the Applicants pray the Court to:

    i. Order the Respondent State to pay each of them compensation proportionate to their shareholdings in COMON SA, in respect of the loss of opportunity arising from the partnership with PHILIA;
    ii. Order the Respondent State to pay to Ronald K. Steeven, Karen Ayité Ajavon and Ludima Isis Ayélé Ajavon the sums of:
        - 2,928,285,906 CFA francs in respect of loss of profits as COMON SA shareholders ;
        - 1,214,037,112 CFA francs in respect of the depreciation of their shares in COMON SA;
        - 209,206,534 CFA francs in respect of the depreciation of their shares in SOCOTRAC;
        - 20,000,000,000 CFA francs for loss of business opportunities in relation to the oil project.

12. The Respondent State prays the Court to:

i. Find that the Applicants do not allege any specific violation of the right to property;
ii. Find that the Application is incompatible with the Constitutive Act of the African Union and the African Charter;
iii. Consequently, to declare that it lacks jurisdiction;
iv. Note that there are available and effective remedies in Benin against acts constituting human rights violations;
v. Note that the Applicants did not bring their cases before the domestic courts;
vi. Consequently, declare the Application inadmissible for non-exhaustion of local remedies;
vii. Note that the judgment on reparations of 28 November 2019 (Application No. 013/2017) addressed all the requests in the present case;
viii. Find, therefore, that the Application is moot;
ix. Consequently, declare it inadmissible ;
x. Note that the decisions in Application No. 013/2017 are binding on the Parties and cannot inure to the benefit of the applicants;
xi. Find that the Applicants' requests are unfounded and, consequently, dismiss them;
xii. Find that the Respondent State did not commit any violation causing the Applicants prejudice;
xiii. Find that the Applicants fail to prove the alleged prejudice suffered as a result of the Respondent State's actions;
xiv. Rule that there is no basis for reparation;
xv. Declare that the Application lacks merit.

V. JURISDICTION

13. Article 3(1) of the Protocol provides that:

1. 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.

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

14. In accordance with Rule 49(1) of the Rules of Court, "the Court shall conduct a preliminary examination of its jurisdiction […]". Based on the aforementioned provisions, the Court must, in every application, conduct a preliminary examination of its jurisdiction and rule on objections thereto, if any.

15. The Court notes that the Respondent State raises (A) an objection to the Court's material jurisdiction, which it will examine before ruling, if necessary (B) on the other aspects of its jurisdiction which are not in contention.

A. Objection to the Court's material jurisdiction

16. The Respondent State raises an objection to Court's material jurisdiction based on two grounds, firstly, (i) on the Application being incompatible with the Constitutive Act of the African Union and the Charter and, secondly, (ii) on the absence of any human rights violation.

i. On the incompatibility of the Application with the Constitutive Act of the African Union and the Charter

17. The Court recalls that, within the meaning of Article 56(2) of the Charter, as restated in Rule 50(2)(b) of the Rules of Court, the compatibility of the Application with the Constitutive Act of the African Union or with the Charter is an admissibility requirement, not a matter related to the Court's material jurisdiction. The Court will therefore address this objection at the admissibility stage.

18. Consequently, the Court will rule at this stage solely on the ground relating to the absence of allegations of human rights violations.

ii. On the failure to indicate any human rights violations

19. The Respondent State draws attention to Rule 34(4) of the Rules of Court, which provides that *"*[t]he application shall specify the alleged violation".[3] It contends that the exercise of the Court's material jurisdiction is predicated on a specific and well-founded case of human rights violation being brought before it.

20. The Respondent State contends that the Applicants claim to have suffered violation of their right to property based solely on their status as shareholders of COMON SA.

21. The Respondent State argues that the mere fact of natural persons holding shares in a commercial company does not constitute a human rights violation attributable to a State. It concludes that the Court lacks material jurisdiction, as there has been no substantive violation of human rights.

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22. The Applicants aver that Rule 34(4) of the Rules does not lay out criteria for material jurisdiction but rather sets out other ancillary admissibility requirements. They emphasise that material jurisdiction is assessed in the light of Article 3(1) of the Protocol, read in conjunction with Rule 26(1) of the Rules,[4] which confers on the Court jurisdiction to hear all cases and disputes relating to the interpretation or application of the Charter, the Protocol and any relevant instrument ratified by the States concerned.

23. The Applicants further assert that they expressly stated and characterised the violation of their right to property guaranteed under Article 14 of the

[3] The Rules of 2 June 2010. Article 41(1) (f) of the Rules of 1 September 2020 provides that: "An Application shall be made on the Application Form provided by the Registry, unless the Court decides otherwise. It shall contain all of the information requested in the relevant parts of the Application form and set out: a concise and legible statement of the alleged violation(s) of specific human rights instruments, and the relevant arguments".
[4] The Rules of 2 June 2010.

Charter, through personal, concrete and ongoing violations. They therefore submit that the Court has material jurisdiction, and that the objection be dismissed.

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24. The Court emphasises, first of all, that Rule 34(4) of the Rules – now Rule 41(1)(f)[5] of the Rules – relied upon by the Respondent State, is a requirement relating to the form and content of the Application. It does not require the applicant to fully demonstrate the merits of their claims at this stage of the proceedings, but merely requires that the alleged violations be set out with sufficient clarity to enable the Respondent State to understand the nature of the complaints raised and to respond to them effectively.

25. The Court emphasises that its material jurisdiction is assessed in the light of the provisions of Articles 3 and 7 of the Protocol, and Rule 29(1)(a) of the Rules of Court.

26. Recalling its established jurisprudence, the Court reaffirms that it has material jurisdiction, provided that the application before it concerns allegations of human rights violations and that, in such cases, it is sufficient that the application alleges violation of the rights guaranteed by the Charter or by any other relevant human rights instrument ratified by the States concerned.[6]

27. In the present case, the Court notes that the Applicants allege violation of their right to property and the right to have their cause heard, protected by Articles 14 and 7 of the Charter respectively.

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[5] The Rules of 1 September 2020

[6] *Alex Thomas v. United Republic of Tanzania* (merits) (20 November 2015) 1 AfCLR 465, § 45; *Frank David Omary and Others v. United Republic of Tanzania* (admissibility) (28 March 2014) 1 AfCLR 358, § 115; *Peter Joseph Chacha v. United Republic of Tanzania* (admissibility) (28 March 2014) 1 AfCLR 398, § 114; *Anaclet Paulo v. United Republic of Tanzania* (merits and reparations) (21 September 2018) 2 AfCLR 446, § 25; *Armand Guéhi v. United Republic of Tanzania* (merits and reparations) (7 December 2018) 2 AfCLR 477, § 31; *Werema Wangoko Werema and another v. United Republic of Tanzania* (merits and reparations) (7 December 2018) 2 AfCLR 520, § 29.

28. In view of the foregoing, the Court finds that the Respondent State's objection lacks merit.

29. Consequently, the Court dismisses the objection and declares that it has material jurisdiction in the present case.

B. On the other uncontested aspects of jurisdiction

30. There is no contention regarding the Court's personal, temporal, and territorial jurisdiction. Nevertheless, in accordance with Rule 49(1) of the Rules, the Court must satisfy itself that all requirements relating to these aspects of its jurisdiction are met.

31. The Court confirms that the requirement relating to personal jurisdiction is met insofar as the Respondent State is a Party to the Protocol and had deposited the Declaration at the time the Application was filed. In this regard, the Court reiterates its previous holding that the Respondent State's withdrawal of its Declaration on 25 March 2020 has no effect on the present Application, insofar as the said withdrawal took effect after the Application had been filed with the Court.

32. The Court finds that it has temporal jurisdiction, insofar as the alleged violations were committed after the Respondent State had become a Party to the Protocol.

33. The Court declares that it has territorial jurisdiction insofar as the facts of the case and the alleged violations took place on the Respondent State's territory.

34. In view of the foregoing, the Court finds that it has jurisdiction to hear the present Application.

VI. ADMISSIBILITY

35. The Respondent State raises (A) objections to admissibility not provided for either in the Charter or the Rules, and (B) objections based on admissibility requirements provided for by the instruments referenced. In line with its jurisprudence,[7] the Court will examine the said objections sequentially, if necessary.

A. On the objections based on admissibility requirements not provided for by the Charter and the Rules

36. The Respondent State contends that the Application is (i) moot and (ii) that it is, furthermore, foreclosed by the principle of *res judicata*.

i. On the Application being moot

37. The Respondent State contends that, by its judgment on reparations of 28 November 2019 in Application No. 013/2017 – *Sébastien Germain Ajavon v. Republic of Benin*, the Court already fully redressed the prejudice allegedly suffered by COMON SA, of which the Applicants are shareholders.

38. It argues that, in that judgment, the Court, *inter alia*, awarded the Applicants the sum of 4,359,661,765 CFA francs as reparation for the loss of profits suffered by COMON SA, 1,960,526,692 CFA francs for the depreciation of the Applicant's shares in COMON SA and SOCOTRAC SARL, and 30,000,000,000 CFA francs for the loss of investment opportunities in the oil sector.

39. The Respondent State contends that the Court also expressly awarded the Applicants reparation for moral prejudice.

[7] *Sébastien Ajavon v. Republic of Benin* (merits and reparations) (17 April 2020) 4 AfCLR 133, § 54*; XYZ v. Benin* (merits) (27 November 2020) 4 AfCLR 49, § 41*; Houngue Noudéhouenou v. Benin* (merits) (4 December 2020) 4 AfCLR 749, § 32.

40. It considers that the Applicants have therefore already been ‘compensated’ by the Court in respect of their relationship with COMON SA and Mr AJAVON, such that a separate action seeking reparation for prejudice arising from the same situation lacks merit.

41. Consequently, the Respondent State prays the Court to declare the present Application moot and dismiss it.

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42. The Applicants aver that the judgment of 28 November 2019 redressed the prejudice suffered by Mr Sébastien Germain AJAVON, in particular in respect of loss of profits and the depreciation of his shares in COMON SA and SOCOTRAC SARL.

43. They aver that the said judgment did not take into account the full extent of the prejudice suffered by COMON SA, given that this Court, as a human and peoples’ rights court, can in principle only hear cases concerning violations of the rights of individuals, groups of individuals or peoples, upon referral by the entities and persons enumerated under Article 5 of the Protocol. Therefore, it cannot adjudicate violations of the rights of other legal persons governed by private or public law.

44. The Applicants allege that the Court has yet to award them reparation for the loss of profits and the depreciation of the shares in COMON SA and SOCOTRAC Sarl, companies of which they are shareholders. They aver that the Court instead awarded them reparation for moral prejudice.

45. The Applicants argue that, under international law, the term “moral prejudice” encompasses the suffering and prejudice caused to the direct victim, the distress caused to their relatives, and the change in the living conditions of the victim and their family, whilst the victim is still alive.

46. They assert that moral prejudice does not include prejudice resulting in financial loss, so that the present Application is fully meritorious. They therefore argue that the objection be dismissed.

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47. The Court recalls that in its judgment on reparations of 28 November 2019 in Application No. 013/2017 – *Sébastien Germain Ajavon v. Republic of Benin*, it found several violations of Mr. Sébastien Germain Ajavon's rights, whereupon it awarded him reparation for loss of profits and the depreciation of shares personally, in his capacity as the applicant in Application No. 013/2017.[8] The said compensation cannot be interpreted as having remedied the financial losses specific to all other COMON SA shareholders.

48. The Court notes in the present case that the Applicants, in their individual capacities, contend that their rights guaranteed by Articles 7 and 14 of the Charter were violated, due in particular to the depreciation of their own shares in COMON SA, the alleged loss of profits by that company, the seizure of their personal bank accounts, and the failure to implement the judgment in question.

49. The instant Application therefore raises a separate issue concerning the possible existence of specific financial harm suffered by persons other than Mr. Sébastien Ajavon, who allege a separate violation of their property rights resulting from measures taken by the Respondent State.

50. The Court therefore finds that the Applicants have a legal interest to have their claims based on the alleged violations examined and, if necessary, to seek reparation for any financial harm that they may have personally suffered.

[8] *Sébastien Germain Ajavon v. Republic of Benin* (reparation) (28 November 2019) 3 AfCLR 196, § 144 (iii) (v) (vi).

51. Consequently, the Court finds that the judgment of 28 November 2019 in *Sébastien Germain Ajavon v. the Republic of Benin* neither exhausted the autonomous property rights invoked by the Applicants nor repaired the full extent of the prejudice they claim to have personally suffered.

52. The present Application therefore has its own distinct subject-matter, separate from the subject-matter of the judgment on reparations in Application No. 013/2017 – *Sébastien Germain Ajavon v. Republic of Benin*.

53. Accordingly, the Court dismisses the objection to admissibility based on the Application being moot.

ii. On the relative effect of *res judicata*

54. The Respondent State contends that the Applicants request the Court to also grant them reparation for the prejudice allegedly suffered by Mr Sébastien Ajavon, so that the effects of the decisions rendered in that case inure to their benefit.

55. It contends that, under international law, judicial decisions carry the authority of *res judicata,* which, however, is relative. *Res judicata* authority means that states are obliged to comply with final judgments delivered in disputes to which they were parties, and only in respect of matters that have actually been decided. Citing the judgment of the European Court of Human Rights of 8 July 1980 in *X v. Switzerland*, the Respondent State contends that the Court's decisions, although rendered as a court of last resort, only affect the parties to the proceedings.

56. The Respondent State argues that in the present case, the Applicants seek to rely on the Court's judgment of 28 November 2019 on the Application No. 013/2017 – *Ajavon v. Benin*. However, that judgment, which is subject to *relative res judicata*, cannot benefit them as they were not parties to the proceedings. It concludes that the Application is inadmissible.

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57. The Applicants aver that they do not request the Court to automatically accord them the benefits accruing from the operative part of the judgment *in Ajavon v. Benin*, nor to make them beneficiaries of the reparations awarded in 2019 in lieu of Mr Ajavon.

58. They assert that the human rights violations committed against Mr Ajavon, as established by the judgment on the merits of 29 March 2019 and the judgment on reparations of 28 November 2019, led to the demise of COMON SA.

59. They submit that COMON SA's bankruptcy affected their own economic interests as shareholders. They therefore rely on the judgments handed down in Application 013/2017 – *Sébastien Germain Ajavon v. Republic of Benin* as factual and legal particulars establishing the international liability of the Respondent State and the causal link between the violations already found and the financial losses inflicted on them.

60. They aver that whilst *res judicata* effect is relative as regards the obligation to implement the operative part of the judgment, the interpretative and normative scope of the Court's judgments may nevertheless be taken into account in other cases involving the same State, provided that the applicant establishes direct and personal prejudice.

61. Finally, they contend that the Respondent State's failure to implement the judgments rendered in favour of Mr Ajavon exacerbated COMON SA's situation and, consequently, their own situation, so that they were entitled to file a separate application with the Court for violation of their rights.

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62. The Court recalls its settled jurisprudence that the principle of *res judicata* is predicated on the fulfilment of three cumulative requirements, namely,

identity of the parties, identity of claims, and the existence of a prior decision on the merits.[9]

63. In the present case, the Court notes that the Applicants in the present Application and those in Application 013/2017 are not the same.

64. In view of the cumulative nature of the requirements, and without it being necessary to examine the requirements relating to the identity requests and the existence of a prior decision on the merits, the Court finds that the objection lacks merit. Consequently, the Court dismisses it.

B. Admissibility requirements under the Charter and the Rules

65. Article 6(2) of the Protocol provides that "the Court shall rule on the admissibility of cases, taking into account the provisions of Article 56 of the Charter".

66. Rule 50(1) of the Rules provides, "the Court shall ascertain the admissibility of an application filed before it in accordance with the Charter, […] the Protocol and these Rules".[10]

67. Rule 50(2) of the Rules, which essentially restates Article 56 of the Charter, provides that:

> Applications filed before the Court shall comply with all of the following conditions:
>
> a. Indicate their authors even if the latter request anonymity,
> b. Are compatible with the Constitutive Act of the African Union and with the Charter,

[9] *Jean Claude Gombert v. Republic of Côte d'Ivoire* (jurisdiction and admissibility) (22 March 2018), 2 AfCLR 270, § 45; *Sébastien Germain Ajavon v. Republic of Benin* (merits and reparations) (29 March 2021) 5 AfCLR 94, § 68.
[10] Rule 40 of the Rules of 2 June 2010.

c. Are not written in disparaging or insulting language directed against the State concerned and its institutions or the African Union,
d. Are not based exclusively on news disseminated through the mass media,
e. Are sent after exhausting local remedies, if any, unless it is obvious that this procedure is unduly prolonged,
f. Are submitted within a reasonable time from the date local remedies were exhausted or from the date set by the Court as being the commencement of the time limit within which it shall be seized with the matter, and
g. 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.

68. The Respondent State raises three objections to the admissibility of the Application based on the Application being incompatible with the Constitutive Act of the African Union and the Charter (i), the failure to exhaust local remedies (ii), and failure to file the Application within a reasonable time (iii). The Court will examine these objections successively before ruling on the other admissibility requirements, if necessary.

i. On the Application being incompatible with the Constitutive Act of the African Union and the Charter

69. The Respondent State submits that the Court has jurisdiction to hear only applications that clearly allege violations of the rights enshrined in the Charter. It considers that an application which fails to do so is incompatible with the Charter, having regard to the African Commission's Communication No. 13/88 of 7 April 1994 and Communication No. 35/89 of 27 April 1994.

70. It contends that, in the present case, the Applicants merely hold themselves out as shareholders of a company of which Mr Sébastien Ajavon was the managing director and seek to be accorded the benefits of a decision made

in favour of the latter. They do not in any way allege violation of their human rights by the Respondent State.

71. The Respondent State asserts that the present Application does not contain any specific allegations of human rights violations attributable to the Respondent State, but rather concerns a mere private dispute between shareholders, so that the Court should decline jurisdiction.

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72. The Applicants pray the Court to dismiss the objection, seeing as, in their Application, they allege violation of their rights protected by the Charter.

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73. The Court notes that the Respondent State's objection to jurisdiction based on the Application being incompatible with the African Charter and the Constitutive Act of the African Union suggests that the Application concerns claims, rights or situations that are not covered by the Charter and the mechanisms under the Constitutive Act of the African Union.

74. The Court notes in the present case that the Applicants' requests seek to protect their rights guaranteed by the Charter. Furthermore, one of the objectives of the Constitutive Act of the African Union, as set out in Article 3(h) thereof, is the promotion and protection of human and peoples' rights. Furthermore, the Application does not contain any request that is incompatible with the Constitutive Act.

75. The Court therefore considers that the Application is consistent with the Constitutive Act and the Charter and that it meets the requirement of Rule 50(2)(b) of the Rules.

ii. On the objection to admissibility based on non-exhaustion of local remedies

76. The Respondent State contends that, in line with the principle of subsidiarity, an applicant must have exhausted available local remedies before bringing a case before an international human rights court, by first raising, in substance, before domestic courts the complaints which he intends to bring before an international court. In this regard, it cites the jurisprudence of the European Court of Human Rights in *Guzzardi v. Italy, Azinas v. Cyprus, Selmouni v. France, Kudła v. Poland*.

77. The Respondent State argues that this requirement seeks to afford the sovereign state the opportunity to prevent or remedy the violations alleged within its domestic legal system, before being called to account at the international level.

78. The Respondent State contends that the Commission has already clarified the scope of the rule of exhaustion of local remedies, which applies where judicial remedies exist, are effective and are not subject to the discretion of public authorities. It emphasises, in this regard, that in the case of *Malawi African Association and Others v. Mauritania*, the Commission clarified that this requirement is intended, in particular, to apprise the State concerned of the violations alleged so that it may remedy them.

79. The Respondent State further submits that, in line with the jurisprudence of the European Court of Human Rights, in particular in the case of *Portu Juanenea and Sarasola Yarzabal v. Spain* of 13 February 2018, applicants must make normal use of the available and sufficient legal remedies to obtain redress.

80. The Respondent State asserts that, in the present case, the Applicants merely claim that the Respondent State's failure to implement the judgments delivered by the African Court in Application No. 013/2017 –

Sébastien Germain Ajavon v. Republic of Benin constitutes irrefutable proof that there is no available and effective local remedy capable of redress.

81. In its view, article 114 of the Benin Constitution establishes the Constitutional Court as the highest court in matters of fundamental rights and civil liberties, such that it is a relevant, accessible and effective local remedy for human rights protection.

82. The Respondent State observes, however, that the Applicants did not bring any of the complaints they now raise before this Court before any Beninese court.

83. Consequently, the Respondent State prays the Court to declare the Application inadmissible.

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84. The Applicants aver that the exhaustion of local remedies implies, in particular, that the available legal remedies must be effective.

85. The Applicants assert that the Respondent State's persistent failure to comply with this Court's judgments in Application No. 013/2017 – *Sébastien Germain Ajavon v. Republic of Benin* is a perfect illustration that an appeal to the Constitutional Court stands no chance of affording them redress for the prejudice suffered.

86. They pray the Court to dismiss the objection.

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87. The Court recalls that, under Article 56(5) of the Charter, applications are admissible provided that they "are sent after exhaustion of local remedies, if any, unless it is obvious that this procedure is unduly prolonged". Rule 50(2)(e) of the Rules of Court restates this requirement.

88. The Court has held, with regard to the exhaustion of local remedies, that the mere existence of a remedy does not automatically meet the requirements of the rule; the remedy must also be effective, sufficient and offer prospects of success or be capable of remedying the situation in dispute.[11]

89. The Court also emphasizes, with regard to the effectiveness of local remedies, that it is the Applicant's responsibility to take all necessary steps to exhaust, or at least attempt to exhaust, local remedies. It is not sufficient for an applicant, without evidence, to merely cast doubt on the effectiveness of such remedies.[12]

90. The Court further notes that the determination of whether all remedies were exhausted is made on a case-by-case basis, taking into account the circumstances of each case.

91. In the present case, the Court notes that the Applicants allege violation of their property rights as a result of, on the one hand, their status as COMON SA shareholders and, on the other hand, the seizure of their personal bank accounts.

92. The Court will determine whether local remedies were available and effective with respect to these two aspects.

93. With regard, first, to the harm that the Applicants claim to have personally suffered as a result of the Respondent State's actions against COMON SA, the Court observes that the Respondent State's domestic law on liability, specifically Articles 1382[13] and 1383[14] of the Civil Code as applicable to the facts of the case, avails persons who consider themselves injured by the

[11] *Sébastien Germain Ajavon v. the Republic of Benin* (merits) (29 March 2019), 3 AfCLR 130, § 109.
[12] *Komi Koutché v. Republic of Benin* (merits) (25 June 2021), § 92*; Houngue Éric Noudehouenou v. Republic of Benin* (jurisdiction and admissibility) (22 September 2022) 6 AfCLR 507, § 40.
[13] Article 1382 "Any act by a person that causes harm to another obligates the person at fault to make reparation".
[14] Article 1383: "Everyone shall be liable for damage caused by their negligence or recklessness."

acts of a third party, whether a private individual or the State, an avenue to bring an action for reparations before a competent civil court.

94. The Court further notes that, from a procedural standpoint, Law No. 2008-07 of 28 February 2011, establishing the Code of Civil, Commercial, Social, Administrative, and Accounting Procedure, which was applicable at the time of the events, expressly provides for such an action in article 48,[15] which stipulates that a claim for reparations for damages may be brought before the court of the jurisdiction where the harmful incident occurred.

95. The Court observes that such a remedy, available to any natural or legal person who claims to have suffered harm, including in his or her capacity as a shareholder of a company whose interests may have been affected by the actions of the Respondent State, is an ordinary judicial remedy capable, if successful, of repairing the alleged harm.

96. The Court finds that it was therefore incumbent upon the Applicants to bring such an action before the competent court of first instance, which they do not show that they did, or even attempted to do.

97. Second, with regard to the seizure of their personal bank accounts, the Court notes that the Uniform Act on the Organization of Simplified Collection Procedures and Enforcement Measures of 10 April 1998 (AUPSRVE), which is binding on the Respondent State as a State Party to the Treaty on the Harmonization of Business Law in Africa (OHADA Treaty), establishes a specific remedy available to any person who considers that his/her assets have been unlawfully seized.

98. The Court notes that, under Article 49 of the said Uniform Act, any dispute concerning an enforcement measure or a provisional seizure falls within the jurisdiction of a judge hearing emergency matters, or a judge delegated by

[15] "A claim for damages resulting from a tort, quasi-tort, or misdemeanour may be brought before the court of the place where the harmful event occurred".

the same for that purpose, whose decision is itself subject to appeal within fifteen days.[16]

99. With regard more specifically to the seizure of bank accounts, the Court notes that article 170(1) entitles a debtor whose assets have been seized to contest the seizure, by way of a summons, before a competent court within one month of being notified of the seizure; such an objection may specifically seek to have the contested measure lifted by a judge.[17]

100. The Court considers that the procedures set forth in the OHADA Uniform Act are integrated in the judicial system of the Respondent State and therefore constitute local remedies.[18]

101. The Court notes that this remedy seeking to lift the seizure, which is automatically available to any individual whose bank accounts have been seized, is both available and accessible and, if successful, is likely to vacate the disputed measure.

102. The Court notes, however, that the Applicants neither demonstrate that they filed cases before the competent court to have the seizure of their personal bank accounts lifted, nor do they provide specific reasons that prevented them from doing so.

103. It follows from the foregoing that the Applicants were afforded available and effective local remedies—both with regard to the violations related to their status as COMON SA shareholders and with regard to the seizure of their personal bank accounts, which remedies they neither exhausted nor even attempted to exhaust.

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[16] Article 49 “The court with jurisdiction to rule on any dispute or request relating to an enforcement measure or a provisional attachment is the presiding judge of the court hearing the matter on an emergency basis or the judge delegated by him or her. His or her decision may be appealed within fifteen days of its issuance. Neither the time limit for filing an appeal nor the exercise of this right of appeal has suspensive effect, unless the president of the competent court issues a specifically reasoned decision to the contrary”.

[17] Article 170 « Unless they are deemed inadmissible, objections must be filed with the competent court by way of a summons within one month of the debtor being notified of the seizure”.

[18] *Ghaby Kodeih v. Republic of Benin* (admissibility) (30 September 2021) 5 AfCLR 492, §§ 54–60

104. In light of the foregoing, the Court finds it unnecessary to examine the Respondent State's objection to admissibility based on non-exhaustion of local remedies, in particular, the remedy before the Constitutional Court.

105. Consequently, the Court finds that the Applicants did not exhaust the available local remedies, so that the Application does not meet the requirement of Rule 50(2)(e) of the Rules.

106. Having found that the Application does not comply with Article 56(5) of the Charter restated in Rule 50(2)(e) of the Rules, and recalling that the admissibility requirements are cumulative, the Court finds that there is no need to rule on the other admissibility requirements under Article 56 of the Charter, as restated in Rule 50(2) (a), (c), (d), (f), and (g) of the Rules.[19]

107. Accordingly, the Court declares the Application inadmissible.

VII. COSTS

108. The Applicants pray the Court to order the Respondent State to bear the costs.

*

109. The Respondent State does not submit on costs.

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110. Under Rule 32(2) of the Rules, "[u]nless otherwise decided by the Court, each party shall bear its own costs, if any".

[19] *Mariam Kouma and Ousmane Diabaté v. Republic of Mali* (jurisdiction and admissibility) (21 March 2018) 2 AfCLR 237, § 63*; Rutabingwa Chrysanthe v. Republic of Rwanda* (jurisdiction and admissibility) (11 May 2018) 2 AfCLR 361, § 48; *Collectif des Anciens Travailleurs du Laboratoire ALS v. Republic of Mali* (jurisdiction and admissibility) (28 March 2019) 3 AfCLR 73, § 39.

111. In the present case, the Court notes that proceedings before it are free of charge.

112. Furthermore, the Applicants do not produce proof in support of the costs they claim to have incurred in the present proceedings. The cheques and flight tickets in the name of Moustafa Issiaka, their Counsel, that were submitted do not conclusively establish a link with the present case.

113. In the circumstances, the Court considers that there is no reason to depart from the principle laid down in the aforementioned provision and therefore orders that each Party shall bear its own costs.

VIII. OPERATIVE PART

114. For these reasons:

THE COURT,

Unanimously,

On jurisdiction:

i. *Dismisses* the objection to material jurisdiction;
ii. *Declares* that it has jurisdiction.

On admissibility:

iii. *Upholds* the objection to admissibility and finds that the Application does not meet the requirement of exhaustion of local remedies under Rule 50(2)(e) of the Rules**;**
iv. *Declares* the Application inadmissible.

On costs:

v. *Declares* that each Party shall bear its own costs.

Signed:

Blaise TCHIKAYA, President;

Chafika BENSAOULA, Vice-President;

Rafaâ BEN ACHOUR, Judge;

Suzanne MENGUE, Judge;

Tujilane R. CHIZUMILA, Judge;

Stella I. ANUKAM, Judge;

Imani D. ABOUD, Judge;

Dumisa B. NTSEBEZA, Judge;

Modibo SACKO, Judge;

Dennis D. ADJEI, Judge;

Duncan GASWAGA, Judge;

and Robert ENO, Registrar.

Done at Arusha, on the Thirteenth Day of November in the year Two Thousand and Twenty-Six, in French and English, the French authoritative.

