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<p style="text-align: center;">AFRICAN COURT ON HUMAN AND PEOPLES' RIGHTS COUR AFRICAINE DES DROITS DE L'HOMME ET DES PEUPLES P.O Box 6274 ARUSHA, TANZANIA – TEL.: +255732979506/9; FAX: +255732979503</p>		

THE MATTER OF

HOUNGUE ÉRIC NOUDEHOUEYOU

V.

REPUBLIC OF BÉNIN

APPLICATION No. 020/2020

ORDER

(REQUEST TO RE-OPEN PLEADINGS AND TO HOLD A HEARING)

6 JUNE 2024



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

In the matter of:

Houngue Éric NOUDEHOUENOU,

Represented by Ms Nadine DOSSOU SOKPONOU, Advocate of the Bénin Bar and Robert M. DOSSOU, *Société civile professionnelle d’avocats (SCPA)*.

Versus

REPUBLIC OF BÉNIN

Represented by

Mr Gilbert Ulrich TOGBONON, Judicial Officer of the Treasury

After deliberation,

Issues the following Order:

I. THE PARTIES

1. Mr Houngue Éric Noudéhouénou, (hereinafter referred to as “the Applicant”) is a national of Benin, an economist and tax expert by training, sole shareholder and manager of a firm called *Tax Expertise Sarl unipersonnelle* (hereinafter

referred to as « *Tax Expertise* »). He alleges a violation of his rights before the national courts.

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 on the Establishment of an African Court on Human and Peoples’ Rights (hereinafter referred to as “the Protocol”) on 22 August 2014. It further deposited, on 8 February 2016, 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 an instrument of withdrawal of its Declaration. The Court has previously held that this withdrawal has no bearing on pending cases and new cases filed before the withdrawal comes into effect one year after its deposit, in this case on 26 March 2021.¹

II. SUBJECT OF THE APPLICATION

3. It emerges from the Application that in 2014, the state-owned *Société béninoise d’Energie électrique* (hereinafter referred to as ‘SBEE’), sought, tax assistance from Tax Expertise to enable it make savings of Seven Billion Three Hundred and Thirty-Four Thousand Million One Hundred and Eighty-Two Thousand Five Hundred and Ninety-Six (7,334,182,596) CFA francs on its 2013 tax liability.

¹ *Houngue Éric Noudehouenou v. Republic of Benin*, AfCHPR, Application No. 003/2020, Order of 5 May 2020 (provisional measures), §§ 4 – 5, and *Corrigendum* of 29 July 2020.

4. The Applicant aver that Tax Expertise entered into a Tax Assistance Contract No. 961/14/SBEE/DG/CCMP/PRMP/DCB/SA (hereinafter referred to as the “Tax Assistance Contract”) in which it agreed to be remunerated at 1.5% instead of 20% of the profits earned, on account of SBEE’s commitment to award it other contracts.
5. Believing that SBEE did not comply with the terms of the contract, the Applicant sued it before the Cotonou Court of First Instance, which dismissed the suit by Judgment No. 070/17/3e of 22 December 2017. He subsequently appealed the said judgment before the Cotonou Court of Appeal.
6. The Applicant asserts that his rights were violated in connection with this litigation before the Court of First Instance and the Court of Appeal of Cotonou.

III. SUMMARY OF THE PROCEDURE BEFORE THE COURT

7. The Applicant filed the Application on 4 June 2020 and it was served on the Respondent State on 14 July 2020 with a request to submit the names and addresses of its representatives and to file its Response within thirty (30) and sixty (60) days respectively from the end of the suspension of time limits due to Covid 19 on 31 July 2020. The Respondent State submitted the names and addresses of its representatives and filed its Response on 11 August and 18 September 2020, respectively.
8. On 29 September 2020, Registry notified the Respondent State’s Response to the Applicant, who filed his Reply on 2 November 2020.
9. The Parties filed their submissions on the merits and on reparations within the prescribed time limits.

10. Pleadings were closed on 10 September 2023 and the Parties were duly notified.
11. On 15 December 2023, the Applicant filed a request to reopen pleadings and to hold a hearing, which was notified on 26 December 2023 to the Respondent State for its observations within fifteen (15) days. On 9 January 2024, the Respondent State filed its observations.

IV. ON THE REQUEST TO REOPEN THE PLEADINGS AND TO HOLD A HEARING

12. In support of his request to reopen pleadings, the Applicant advances six (6) grounds which he claims to have omitted or forgotten to present in his pleadings, namely:
 - i) Requests for material and moral reparation for alleged violation of his rights;
 - ii) The fact that the remedy before the Constitutional Court is not satisfactory insofar as it does not grant any reparation;
 - iii) The request for legal interests on the alleged sum of Ten Million (10,000,000) FCFA that Mr Edouard OUIN OUROU owed him;
 - iv) The Respondent State has continued to commit multiple violations against him;
 - v) His unlawful detention from 2017 to 2018, during which he was subjected to inhuman and degrading treatment;
 - vi) The Respondent State has violated his rights since the advent of the current government, in particular, by failing to execute the Court's decisions in his favour, which has worsened his state of health and robbed him of his resources, thus preventing him from conferring regularly and promptly with his counsel.

13. The Applicant further submits that a public hearing is necessary in order for the parties to submit on the performance of the tax assistance contract and on the debt owed by Mr Edouard OUIN OUROU.
14. In response, the Respondent State submits that reopening of pleadings is ordered only for consideration of facts that are relevant to the Application. It further avers that the Applicant's arguments seek to apprise the Court of facts or arguments that he omitted or forgot when he filed his initial Application. The Respondent State asserts that the Applicant's request to reopen pleadings is an afterthought in the attempt to remedy the flaws or loopholes of his line of attack.
15. Lastly, with regard to the Constitutional Court, the Respondent State points out that, contrary to the Applicant's perception, several decisions of the said court have recognised the right to reparation for loss or damage suffered. The Respondent State submits that the Application to reopen pleadings be dismissed and, by extension, that a hearing should be held.

16. The Court observes that, under Rule 46(3) of the Rules of Court, “ [it] has the discretion to determine whether or not to reopen pleadings”. However, the arguments in support of such a measure must be sufficiently relevant to the subject of the Application.²
17. The Court notes that the first three grounds relating to material and moral reparation for the alleged violations, the effectiveness of the appeal before the Constitutional Court and the request for legal interest on the alleged amount of Ten Million (10,000,000) FCFA that Mr Edouard OUIN OUROU owed him,

² *Sébastien Germain AJAVON v. Republic of Bénin*, Order (Reopening of pleadings), 5 December 2018, 2 AfCLR, 466, § 25.

have already been presented and developed in the Applicant Application and his Reply.³ Furthermore, the Applicant does not indicate what new relevant evidence he intends to adduce in support of the said arguments.

18. The Court further recalls, as indicated in paragraph 6 of this Order, that the Application concerns the alleged violation of the right to a fair trial before domestic courts in connection with proceedings relating to the performance of a tax assistance contract.
19. The Court notes, in this respect, that the other arguments proffered by the Applicant in support of his request relate to repeated violations committed by the Respondent State against him, the inhuman and degrading treatment to which he was subjected during his detention in 2017 and that of 2018, and the worsening of his health condition, the deprivation of his resources and the lack of regular and prompt exchanges with his counsel. The Court finds that these arguments are irrelevant to the facts and violations alleged in the initial Application.
20. In the light of the foregoing, the Court considers that the request to reopen pleadings is ill-founded and, accordingly, dismisses it.
21. The Court considers, ensuing, that it is superfluous to rule on the request to hold a hearing.

V. OPERATIVE PART

22. For these reasons:

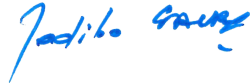
³ Initial Application, §§ 229 and 230, Applicant's Reply of 2 November 2020, §§ 56 – 61 and 285

THE COURT,

Unanimously

- i. *Dismisses* the request to reopen pleadings and the ensuing request to hold a hearing;

Signed:

Modibo SACKO, Vice-president 

Robert ENO, Registrar.



Done at Arusha, this sixth day of the month of June in the Year 2024, in English and French, the French version being authoritative.

