

African Court on Human and Peoples' Rights

The Matter of:

Lompo Bahanla

V.

Burkina Fasso

Application No. 016/2019

Ruling of 3 September 2024

Declaration by Judge Bensaoula Chafika

1. I do not share the Court's holding in the above-mentioned Ruling, and neither do I subscribe to its reasoning in declaring the Application inadmissible for non-exhaustion of local remedies.
2. I have therefore decided to pen this Declaration, convinced, as I am, that the Court should have declared the Application admissible on account of the same particulars it relied on to declare it inadmissible.
3. In its Judgment of 21 June 2013 in *Beneficiaries of Late Zongo and others v. Burkina Faso*, preliminary objections, and concerning the reasonableness of the time frame for seizure of the Court, it expressly stated that "*the reasonableness of a time limit of seizure will depend on the particular circumstances of each case and should be determined on a case-by-case basis*".
4. It emerges from the Ruling that is the subject of this Declaration that the Respondent State raised an objection to admissibility based on non-exhaustion of local remedies, on the sole ground that the Applicant's cassation appeal was pending on the date of filing the Application.

5. The Respondent State further contends that the cassation remedy is effective in its judicial system and that the Applicant does not show that it is unduly prolonged.
6. In reply, the Applicant points out that five years elapsed between the lodging of his cassation appeal and the filing of the Application, which is an unreasonable length of time.
7. In its reasoning in paragraph 40 of the Ruling, the Court merely noted that the cassation appeal was filed on 5 July 2015 and was pending, and that it has consistently held that in the Burkina Faso judicial system, the cassation appeal is an available, effective, and satisfactory remedy. It therefore held that the Applicant did not exhaust local remedies.
8. In my opinion, the Court had a duty, as it has done in previous judgments and in line with its settled jurisprudence, to specify the determinant elements of the reasonableness of time, specifically:
 - The complexity of the case,
 - The conduct of the parties themselves or that of the judicial authorities, in order to determine whether they showed lack of interest or
 - Manifest negligence.
9. By failing to do so, the Court deviated, firstly, from its jurisprudence and secondly, from the rule.

Judge Bensaoula Chafika



Done at Arusha, this Third day of September in the year Two Thousand and Twenty-Four, in English and French, the French version being authoritative.

