


AFRICAN UNION		UNION AFRICAINE
الاتحاد الأفريقي		UNIÃO AFRICANA
AFRICAN COURT ON HUMAN AND PEOPLES' RIGHTS COUR AFRICAINE DES DROITS DE L'HOMME ET DES PEUPLES		

**THE MATTER OF
BOUKARY WALISS**

V.

REPUBLIC OF BENIN

APPLICATION NO. 021/2018

JUDGMENT

3 SEPTEMBER 2024



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

In the Matter of:

Boukary WALISS

Self-represented

Versus

REPUBLIC OF BENIN

Represented by:

Mr Iréné ACOMBLESSI, Judicial Agent of the Treasury.

After deliberation,

Renders this Judgment:

I. THE PARTIES

1. Boukary WALISS (hereinafter referred to as “the Applicant”), is a Beninese national who, at the time of filing this Application, was a staff representative at Bank of Africa, Benin (hereinafter “BOA”). He alleges violation of his right to a fair trial and the right to property in connection with proceedings before domestic 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. 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 Organizations having observer status before the African Commission on Human and People’s Rights. On 25 March 2020, the Respondent State deposited with the African Union Commission (hereinafter referred to as “the AU Commission”) the instrument of withdrawal of the said Declaration. The Court has held that this withdrawal has no bearing on pending cases and new cases filed before the withdrawal came into effect one year after the date of its deposit with the AU Commission, in this case, on 26 March 2021.¹

II. SUBJECT OF THE APPLICATION

A. Facts of the matter

3. It emerges from the Application that following his dismissal, the Applicant referred the matter to the Cotonou Labour Inspectorate which, on 8 May 2007, released a report of non-conciliation. Following these proceedings, the Applicant brought an action before the Cotonou Court of First Instance (the Cotonou Court), which dismissed the case by judgment of 29 July 2011. The Applicant further avers that in May 2013, he appealed the said judgment to the Cotonou Court of Appeal, which did not hear the matter.

¹ *XYZ v. Benin* (provisional measures) (3 April 2020) 4 AfCLR 49, § 2.

4. The Applicant avers that Advocates AHOMENOU Michel and BALOGOUN Christel, whom he hired to represent him in these various proceedings, failed in their duty of probity, loyalty and diligence, for which reason he petitioned the Constitutional Court against them for violation of Article 35 of the Respondent State's Constitution (the Constitution) and Article 7 of the Charter. He avers that by decision DCC 2016-02 of 2 November 2016, the Constitutional Court declined jurisdiction.
5. The Applicant further avers that on 29 December 2015, he lodged a complaint at the Cotonou Central Police Station against his driver, Mr Zounaïdou GARBA GADO, for the wrongful detention of his vehicle. According to the Applicant, despite an unsuccessful attempt to reach an amicable settlement, the police officer in charge of the docket did not refer the complaint to the Cotonou public prosecutor. In this regard, he maintains that he sought the intervention of the Minister of the Interior and Public Security (hereinafter "the Minister of the Interior"), but to no avail.
6. The Applicant avers that dissatisfied with the handling of this other case, he filed two petitions with the Constitutional Court, one against the Commissioner of the Cotonou Central Police Station and the Director General of Police, and the other against the Minister of the Interior for violation of his right to a remedy. By decision DCC 16 - 121 of 4 August 2016,² the Constitutional Court declined jurisdiction to hear the first petition and dismissed the Applicant's second petition by decision DCC 17-092 of 4 May 2017.
7. Lastly, the Applicant states that in a third set of proceedings, he filed a complaint with the Public Prosecutor's Office of the Cotonou Court against the former President of the Republic for the attempted assassination of his father, which was not heard. He further avers that the current President of the Republic having failed to take up the matter, he filed a petition against him with the Constitutional Court for perjury and violation of Articles 35 and

² Constitutional Court of the Republic of Benin, DECISION DCC 16 - 121 of 4 August 2016, Petitioner: Boukary Waliss, the Constitutional Court, Decides, Article 1: - The Court lacks jurisdiction.

59 of the Constitution. By decision DCC 18-090 of 12 April 2018, the Constitutional Court dismissed the Applicant's petition.³

B. Alleged violations

8. The Applicant alleges violation of his rights in connection with the handling of all the cases referred to above before the domestic courts, in particular, the right to a fair trial, protected by Article 7(1)(a) of the Charter and the right to property, protected by Article 14 of the International Covenant on Civil and Political Rights (ICCPR).

III. SUMMARY OF THE PROCEDURE BEFORE THE COURT

9. On 4 September 2018, the Registry received the Application, which was served on the Respondent State for its Response within sixty (60) days, a time-limit that was extended by forty-five (45) days.
10. All pleadings and procedural documents were filed within the time-limits set by the Court.
11. Pleadings were closed on 15 October 2019 and the parties were duly notified.

IV. PRAYERS OF THE PARTIES

12. The Applicant prays the Court to:
 - i. Find that in the first case relating to dismissal, as the petition filed with the Constitutional Court on 26 January 2016 proved to be futile and ineffective in terms of remedying the harm suffered, the Beninese State

³ Constitutional Court of the Republic of Benin, DECISION DCC 18- 090 of 12 APRIL 2018, Petitioner: Boukary WALISS, the Constitutional Court,Decides, Article 1 : - The Court lacks jurisdiction.

failed to honour its commitment under Article 2(3) to ensure that its citizens, whose rights and freedoms were violated, including the right to a fair trial and the right to reparation as protected in the ICCPR, are afforded an effective remedy to redress the harm suffered, and that the matter be brought before a competent authority to rule thereon.

- ii. Find that the procedure initiated in 2001 to recover his rights following a labour dispute is unduly prolonged and that it is therefore difficult to obtain a final judgment in the case in 2018 and, similarly, it is unlikely that a final judgment will be obtained in 2019;
- iii. Find that the Respondent State violated Articles 14(1) of the ICCPR;
- iv. Hold that by virtue of Article 2(3) of the ICCPR, the Respondent State is under an obligation to provide an effective and enforceable remedy for violations of the provisions of the Covenant and, therefore, that the Respondent State is under an obligation to provide full reparation and adequate compensation for the harm suffered as a result of the violation of Articles 2(3) and 14(1) of the ICCPR;
- v. Find that in the second case relating to the complaint regarding the seizure of his vehicle, there was a plethora of remedies that were not effective and constitute a violation of Article 8 of the Universal Declaration of Human Rights (UDHR) and that by refusing to hear his petition against the Director General of National Police, the Constitutional Court of Benin also violated Article 8 of the UDHR;
- vi. Hold that by refusing to refer the complaint to the public prosecutor in the second case, officers of the Cotonou central police station violated Article 10 of the UDHR and Article 7 of the Charter;
- vii. Hold that, as the leased vehicle is his property and the driver never exercised the purchase option, he was arbitrarily deprived of it and that the responsibility thereof lies with the State which, despite having received his complaints, failed to afford him any effective remedy;
- viii. Hold that the Respondent State violated Article 17 of the UDHR and Article 14 of the Charter as regards his commercial vehicle;
- ix. Find that as regards the third petition relating to the attempted murder of his father, he filed a complaint with the public prosecutor in June 2006 after the armed attack on his father in 2004 and that he sent a copy of the complaint to the sitting President of the Republic of Benin in June 2006;

- x. Hold that his appeal to the public prosecutor was not effective and that his case was not heard insofar as the trial never took place and insofar as to date, the judiciary and the Presidency of the Republic have not written to inform him of the course of action to be taken, and insofar as no tangible action was taken on the matter.
- xi. Hold that in the third case, the Beninese courts violated Articles 8 and 10 of the Universal Declaration of Human Rights and Article 7 of the African Charter on Human and Peoples' Rights.
- xii. Find that the Respondent State is responsible for many internationally wrongful acts.
- xiii. Hold that the Beninese State is under obligation to pay him full reparation for the harm it caused him, with each of the violations giving the right to compensation.
- xiv. Order the Respondent State to pay him an amount of One Million (1,000,000) CFA Francs as reparation for material harm;
- xv. Order the Beninese State to pay him an amount of Five Billion (5,000,000,000) CFA Francs as moral reparation;
- xvi. Order the State of Benin to pay, within six (6) months of delivery of the judgment, all amounts awarded in the judgment to be delivered, failing which the Beninese State shall pay default interest calculated on the basis of the applicable rate of the Central Bank of West African States (BCEAO) throughout the period of delay and until full payment of the sums due.

13. The Respondent State prays the Court to:

- i. Find that the case relates to a private legal dispute between individuals;
- ii. Find that the Application does not seek to challenge the violation of rights guaranteed by the Charter and other international legal instruments;
- iii. Find that the Application was not filed after exhaustion of local remedies;
- iv. Find that the Application was not filed within a reasonable time after exhaustion of local remedies;
- v. Find that the Applicant alleges that his various lawyers wasted his time;
- vi. Find that the Respondent State did not in any way encumber the Applicant's right to a fair trial;

- vii. Find that the Respondent State did not intervene in the settlement of the contractual dispute between the Applicant and his lawyers;
- viii. Find that the Respondent State did not cause the Applicant any harm;
- ix. Find that the Application does not seek to review the Respondent State's obligations under international human rights legal instruments;
- x. Find that the Application does not relate to any violation by the Respondent State of its obligations under international human rights legal instruments;
- xi. Find that the Application was not filed after exhaustion of local remedies;
- xii. Find that the Application was not filed within a reasonable time after exhaustion of local remedies;
- xiii. Find that the Applicant had avenues to bring an action before criminal courts if he disagreed with the police authorities as to whether or not his was a civil case;
- xiv. Find that the Applicant did not take any action to summon his adversaries before court;
- xv. Find that the Constitutional Court seized by the Applicant delivered two (2) judgments;
- xvi. Find that police officers returned to the Applicant the sums they held on the Applicant's behalf;
- xvii. Find that the Respondent State is a third party to the contract between the Applicant and his driver;
- xviii. Find that the Respondent State did not commit any fault that could give rise to liability;
- xix. Find that the Respondent State is not responsible for the Applicant's procedural choices;
- xx. Find that the case has nothing to do with the Applicant;
- xxi. Find that the Applicant affirms that he is not a direct victim;
- xxii. Accordingly, find the Application inadmissible for lack of standing;
- xxiii. Find that the Applicant states that prejudice is not obvious;
- xxiv. Find that the Respondent State did not commit any fault.
- xxv. Declare that it lacks jurisdiction and consequently dismiss the request for compensation.

V. JURISDICTION

14. Article 3 of the Protocol provides:

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 instruments ratified by the State concerned.
2. In the event of a dispute as to whether the Court has jurisdiction, the Court shall decide.

15. Furthermore, under Rule 49(1) of the Rules,⁴ “the Court shall conduct a preliminary examination of its jurisdiction (...) in accordance with the Charter, the Protocol and these Rules.”

16. Based on the above-cited provisions, the Court must conduct a preliminary assessment of its jurisdiction and dispose of objections thereto, if any.

17. The Court notes that in the instant case, the Respondent State raises an objection to its material jurisdiction, on which the Court will rule before considering other aspects of its jurisdiction, if necessary.

A. Objection based on material jurisdiction

18. The Respondent State raises an objection to the jurisdiction of the Court on the ground that the Application does not seek to challenge the violation of rights guaranteed by the Charter and other international legal instruments, or the Respondent State’s compliance with its obligations under the said instruments.

19. The Applicant submits that the objection should be dismissed, on the ground that his Application relates to violations of human rights protected by

⁴ Rule 39(1) of the Rules of 2 June 2010.

instruments ratified by the Respondent State, namely, the Charter, the ICCPR and the UDHR.

20. The Court notes that pursuant to Article 3(1) of the Protocol, it has jurisdiction over “all cases and disputes submitted to it concerning the interpretation and application of the Charter, the [...] Protocol and any other relevant human rights instrument ratified by the States concerned”.
21. The Court recalls its settled jurisprudence that for it to assume material jurisdiction, it is sufficient that the Applicant alleges violation of human rights protected under the Charter or any other human rights instrument ratified by the Respondent State.⁵
22. The Court notes that, in the present case, the Applicant alleges violation of the right to a fair trial, protected by Article 7 of the Charter and Article 2(3) of the ICCPR; and of the right to property, protected by Article 14 of the Charter, Article 14(1) of the ICCPR and Article 17 of the UDHR.
23. Consequently, the Court dismisses the objection based on material jurisdiction and declares that it has jurisdiction in this respect.

B. Other jurisdiction requirements

24. The Court notes that no objection has been raised to its personal, temporal or territorial jurisdiction. Nevertheless, it must ensure that its jurisdiction is established in these areas. To this end, the Court notes that it has :
 - i. Personal jurisdiction insofar as, as indicated in paragraph 2 of this Judgment, the Respondent State deposited the instrument of withdrawal of the Declaration on 25 March 2020. In this regard, the

⁵ *Franck David Omary and Others v. United Republic of Tanzania* (admissibility) (28 March 2014) 1 AfCLR 358, § 74; *Peter Chacha v. United Republic of Tanzania* (admissibility) (28 March 2014) 1 AfCLR 398, § 118.

Court recalls its jurisprudence that the withdrawal by the Respondent State of its Declaration has no retroactive effect, neither does it affect cases pending at the time of the said withdrawal or new cases brought before it prior to its entry into force 12 months after its deposition, in this case, on 26 March 2021. As the Application was filed on 4 September 2018, that is, before the withdrawal took effect, it is not affected by the said withdrawal.

- ii. Temporal jurisdiction, insofar as all the alleged violations occurred after the Respondent State became a Party to the Charter and to the Protocol, as mentioned in paragraph 2 of this Judgment.
- iii. Territorial jurisdiction, insofar as the violations alleged by the Applicant occurred in the territory of the Respondent State.

25. Consequently, the Court holds that it has jurisdiction to hear the instant Application.

VI. ADMISSIBILITY

26. Under Article 6(2) of the Protocol, “the Court shall rule on the admissibility of cases taking into account the provisions of Article 56 of the Charter”.

27. The Court further notes that under Rule 50(1) of the Rules “The Court shall ascertain the admissibility of an Application filed before it in accordance with Article 56 of the Charter, the Protocol and these Rules”.⁶

28. Rule 50(2) of the Rules, which in substance restates Article 56 of the Charter, provides :

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 (hereinafter “the Constitutive Act”) and with the Charter;

⁶ Rule 40 of the Rules of Court of 2 June 2010.

- c. Not contain any disparaging or insulting language;
- d. 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. Be filed 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;
- 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 Constitutive Act of African Union or the provisions of the Charter

29. The Court notes that the Respondent State raises three objections to the admissibility of the Application, based on incompatibility of the Application with the Constitutive Act of the African Union (the Constitutive Act), non-exhaustion of local remedies and failure to file the Application within a reasonable time. The Court will first consider these objections before examining other admissibility requirements, if necessary.

A. Objection to the admissibility of the Application based on incompatibility with the Constitutive Act of the African Union

30. The Respondent State contends that in order to be admissible, an application must indicate the provisions of international legal instruments violated by the Respondent State. It cites a decision in which the African Commission on Human and Peoples' Rights declared a communication inadmissible on the grounds that the allegations of human rights violations were vague.⁷

31. It submits that the alleged violation of the right to a fair trial related to a private law dispute between the Applicant and his employer, which was the

⁷ African Commission on Human and Peoples' Rights, Communication *Frédéric Korvan v. Liberia*, Application No. /88, 26 October 1988, § 4.

subject of proceedings that were allegedly unduly prolonged, in which no grievance was raised against it.

32. It concludes that the Application is incompatible with the Constitutive Act of the African Union. Accordingly, it prays the Court to declare the Application inadmissible in line with its jurisprudence.
33. The Applicant did not submit on this point.

34. The Court notes that the Applicant's requests seek to protect his rights guaranteed by the Charter, in particular his right to a fair trial. It further notes that one of the objectives of the Constitutive Act of the African Union as stated 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 any provision of the said Act.
35. Consequently, the Court dismisses the objection and holds that the Application is compatible with the Constitutive Act and therefore satisfies the requirement of Rule 50(2)(b) of the Rules.

B. Objection to admissibility based on non-exhaustion of local remedies

36. The Respondent State submits that the Applicant does not prove that he actually brought proceedings before domestic courts against the persons responsible for the violations he alleges. According to the Respondent State, the Applicant also fails to prove that local remedies are ineffective or unnecessary.
37. Furthermore, as regards the Applicant's assertion that no action was taken on his petition before the Constitutional Court, the Respondent State pointed out that the Constitutional Court has jurisdiction over disputes

between citizens and the State and not over private law disputes between lawyers and their clients.

38. The Respondent State concludes that local remedies were not exhausted so that the Application must be declared inadmissible.

39. The Applicant prays that the objection be dismissed. He submits that the requirement of exhaustion of local cannot apply against him in the present case insofar as the remedies available are unduly prolonged and therefore ineffective.
40. He maintains that the Constitutional Court, guarantor of respect for human rights, handed down a decision on 26 January 2016, in the matter between him and his two lawyers, a decision that violates Article 2(3) of the ICCPR. In his view, the remedy is not of a nature to redress the harm suffered in the event of a human rights violation and is therefore ineffective.
41. The Applicant further alleges that in his quest to bring an end to the violation of his fundamental rights by the Beninese police, he exercised several remedies before ordinary courts and before the Constitutional Court.
42. On the one hand, he points out that following his dismissal, he referred the matter to the Labour Inspectorate on 6 November 2001, but it was only on 8 May 2007, that is, six (6) years later, that the said Inspectorate released a report of non-conciliation.⁸
43. The Applicant further avers that on 31 July 2007, he brought the same case before the Cotonou Court, which dismissed it on 29 July 2011. According to

⁸ The dispute relates to the following claims: compensation for paid holidays in the amount of Four Hundred and Eighty-Eight Thousand Seven Hundred and Thirty-Eight Thousand CFA francs (488,738), compensation for dismissal of the union leader in the amount of Ten Million CFA francs (10,000,000), damages in the amount of Three Hundred Million CFA francs (300,000,000) as well as issuance of a pay slip and an employment certificate.

the Applicant, the Cotonou Court of Appeal was unable to adjudicate his appeal against the aforementioned judgment for lack of appeal submissions.

44. The Applicant further states that he brought various actions before the Constitutional Court on the following dates: 30 January 2016 and 4 August 2016 against the Commissioner of Cotonou Central Police Station and the Director General of the Police; 26 January 2016 against Mr AHOUMEHOU Michel and Mr BALOGOUN Christel, both lawyers; 12 December 2016, against the Minister of the Interior; 14 February 2017, against the President of the Republic.
45. The Applicant further avers that the Constitutional Court declined jurisdiction to hear the petition against Mr AHOUMEHOU Michel and Mr BALOGOUN Christel, both lawyers, and those against the Commissioner of Police and the Director General of National Police.⁹
46. He concludes that local remedies were exhausted.

47. The Court recalls that in accordance with Article 56(5) of the Charter and Rule 50(2)(e) of its Rules of Court, applications must be filed after exhaustion of local remedies, if any, unless it is clear that the proceedings in respect of such remedies are unduly prolonged.¹⁰
48. The Court notes that the requirement of exhaustion of local remedies prior to bringing a case before an international human rights court is an internationally recognised and accepted rule.¹¹

⁹ Constitutional Court of the Republic of Benin, decisions DCC 16 - 121 of 4 August 2016 and DCC 16-164 of 2 November 2016.

¹⁰ *Andrew Ambrose Cheusi v. United Republic of Tanzania* (merits and reparations) (26 June 2020) 4 AfCLR 219, §52.

¹¹ *Yacouba Traoré v. Republic of Mali* (admissibility) (25 September 2020) 4 AfCLR 665, § 39.

49. The Court further recalls, in line with its settled jurisprudence, that the local remedies to be exhausted must be available, effective and satisfactory. Moreover, the mere fact that a remedy exists does not satisfy the rule of exhaustion of remedies since an applicant is only required to exhaust a remedy insofar as it offers prospects of success.¹²
50. As it also emerges from the Court's jurisprudence, the Applicant must not merely claim to have exhausted local remedies, but must have actually taken the steps provided for by domestic procedures in this regard.¹³
51. The Court notes that, in the present case, the local remedies exercised by the Applicant relate to four proceedings, namely those concerning: i) his dismissal; ii) the complaint against his lawyers; iii) the complaints against the Commissioner of the Cotonou Central Police, the Director General of National Police and the Minister of the Interior; and iv) the complaint relating to the attempted murder of his father. The Court will determine if the Application complies with the requirement of exhaustion of local remedies in relation to these proceedings.

i. Proceedings in respect of dismissal

52. As regards the proceedings in respect of the Applicant's dismissal, the Court notes that the Respondent State argues that the Applicant did not exhaust available remedies. The Court also notes that the Applicant himself does not deny knowing that, having appealed the Cotonou Court's judgment before the Cotonou Court of Appeal, he failed to file his appeal submissions, which prevented the Court of Appeal from disposing of his case.

¹² *Beneficiaries of late Norbert Zongo, Abdoulaye Nikiema alias Ablasse, Ernest Zongo, Blaise Ilboudo and Mouvement Burkinabé des Droits de l'Homme et des Peuples v. Burkina Faso* (merits) 28 March 2014) 1 AfCLR 219 § 68; *Lohé Issa Konaté v. Burkina Faso* (merits) 1 AfCLR 314, §§ 92 and 108; *Sébastien Germain Marie Akoué Ajavon v. Republic of Benin* (merits and reparations) (4 December 2020) 4 AfCLR 133, § 99.

¹³ *Aminata Soumare v. Republic of Mali*, ACtHPR, Application No. 038/2019, Judgment of 5 September 2023, § 45.

53. The Court notes that Article 817 of the Respondent State's Code¹⁴ of Civil, Commercial, Social, Administrative and Auditing Procedure provides:

The appeal is lodged with the Court of Appeal and is judged on its own merits.

54. The Court further notes that evidence is a written document produced before the courts by the parties in support of their claims¹⁵ and emphasises that the appeal submissions constitute a procedural document as set out in Article 896,¹⁶ which provides:

The appeal submissions must expressly state the party's claims and the grounds on which those claims are based.

55. The Court observes that it emerges from the Applicant's procedural filing before it that he did not file the appeal submissions allowing the Respondent State's Court of Appeal to investigate and judge his case before it.
56. Accordingly, it holds that the Applicant did not exhaust the said remedy as he failed to take the necessary steps to do so.
57. Accordingly, the Court upholds the Respondent State's objection on this point and declares the Applicant's complaints relating to his dismissal inadmissible.

ii. Proceedings against the Applicant's lawyers

58. The Court notes that the Applicant's action before the Respondent State's Constitutional Court was against the two lawyers breach of the duty of probity imposed by the Constitution and their professional ethics by not following his instructions as regards the content of their submissions and by

¹⁴ Act No. 2008-07 of 28 February 2011 on the Code of Civil, Commercial, Social, Administrative and Audit Procedure

¹⁵ Gérard Cornu, Vocabulaire juridique, 12th updated edition, Quadriga, PUF, January 2018, p. 1617.

¹⁶ Law No. 2008-07 of 28 February 2011 on the Code of Civil, Commercial, Social, Administrative and Auditing Procedure.

refusing to return the fees paid to them after their relations had soured. According to the Applicant, the lawyers' conduct prevented him from acting effectively before the domestic courts against the judgment of 29 July 2011 handed down by the Cotonou Court, thereby violating his right to a fair trial protected by Article 7 of the Charter.

59. The Court notes that the Respondent State's Constitutional Court has jurisdiction to hear allegations of human rights violations.¹⁷ In accordance with its jurisdiction, the Court notes that a petition to the Constitutional Court of the Respondent State is an available, effective and satisfactory remedy.
60. The Court also notes that, in accordance with Article 124(1) and (3)¹⁸ of the Respondent State's Constitution (hereinafter referred to as "the Constitution"), the decisions of the Constitutional Court are not subject to appeal. They are binding on all civil, military and judicial authorities.
61. The Court notes that in the present case, in relation to his dispute with his lawyers, the Applicant brought an action before the Constitutional Court of the Respondent State for breach of Article 7 of the Charter. However, by Decision DCC 16-164 of 2 November 2016, the said Court declined jurisdiction on the ground that "the Applicant's requests, in fact, seek to have the Court assess the conditions of application of the rules governing the legal profession, in particular Regulation No 05/CM/UEMOA of 25 September 2014 on the harmonisation of the rules governing the legal profession in the UEMOA zone (...) that such an assessment relates to ascertaining legality (which) the Constitutional Court cannot know".
62. The Court emphasises that the Constitutional Court declining jurisdiction is therefore based on the fact that it had been requested to review the legality of a Community law for which there was no available domestic remedy.

¹⁷ Article 114 of the Constitution of 11 December 1990 reads as follows: "The Constitutional Court (...) shall guarantee fundamental human rights and public freedoms. (...)".

¹⁸ Article 124(1) and (3) of the Constitution states: "The decisions of the Constitutional Court are not subject to appeal. They are binding on public authorities and on all civil, military and jurisdictional authorities".

63. The Court therefore holds that the Applicant exhausted local remedies and dismisses the Respondent State's objection on this point.

iii. Proceedings against the Commissioner of the Cotonou Central Police Station, the Director General of Police and the Minister of the Interior

64. The Court notes that, as it emerges from the record, the Applicant filed a complaint against his driver for withholding his vehicle. Having considered that the Cotonou Central Commissioner did not forward his case to the Cotonou public prosecutor, he contacted the Director General of Police and the Minister of the Interior seeking their intervention in order to forward the case.

65. When this did not produce the desired result, he brought an action before the Constitutional Court against these authorities on the grounds that they violated the duty of conscience, competence, probity, devotion and loyalty in the interest of, and respect for, the common good, as set out in Article 35 of the Constitution, and for violation of his right to a fair trial, as guaranteed by Article 7 of the Charter.

66. The Court notes in relation to the said proceedings that in its decisions DCC 16- 121 of 4 August 2016 and DCC17-092 of 4 May 2017, the Constitutional Court noted that the Applicant failed to comply with the procedure before the Commissioner of Police, which prevented the latter from forwarding the file for purposes of prosecution; and that neither the Director General of Police nor the Minister of the Interior had the power to interfere in these judicial proceedings. The Constitutional Court declined jurisdiction with regard to the action against the Commissioner of the Cotonou Central Police Station for violation of Article 35 of the Constitution and Article 7 of the African Charter on Human and Peoples' Rights; and dismissed the Applicant's action against the Minister of the Interior on the grounds that the Applicant's petition sought to have the Minister of the Interior intervene in legal proceedings that were still pending.

67. The Court emphasises that the pending proceedings related to the complaint lodged against the Applicant's driver with the Cotonou Central Commissioner. In this respect, the Court notes that, following the failure of the Police Commissioner to forward the docket to the public prosecutor, the Applicant had the avenue of lodging three appeals. Firstly, under Article 38 of the Respondent State's Code of Criminal Procedure (CCP),¹⁹ he could file a complaint directly to the public prosecutor for the same purpose. He could then file a civil party suit under Article 90 of the Criminal Procedure Code.²⁰ Lastly, the Applicant could, pursuant to Article 400 of the CCP,²¹ bring a case before the court of first instance by way of direct summons.
68. The Court finds that these remedies were available, effective and satisfactory.²² However, the Applicant does not show that he exercised any of these remedies. The Court therefore considers that the Applicant did not exhaust local remedies in relation to the proceedings against the Commissioner of the Cotonou Central Police Station, the Director General of Police and the Minister of the Interior.

iv. Proceedings in respect of the attempted murder of the Applicant's father

69. The Court notes that in connection with these proceedings, faced with the inaction of the public prosecutor to whom he had referred the matter, the Applicant sent a letter to the sitting President of the Republic unsuccessfully soliciting his intervention before seizing the Constitutional Court. The Applicant's action before the Constitutional Court against the President of the Republic sought a ruling from the high court to the effect that the President of the Republic's failure to intervene to have the Public Prosecutor

¹⁹ Article 38 of the Respondent State's Code of Criminal Procedure (CCP) provides: "The public prosecutor receives complaints and reports and decides on the action to take".

²⁰ Article 90 of the Code of Criminal Procedure states: "Any person claiming to have been injured by a crime or offence may submit a civil party complaint to the president of the court, who shall refer the matter to the investigating judge."

²¹ Article 400 of the Code of Civil Procedure states: "A civil party who summons an accused person directly to appear before a court of first instance shall, in the summons, elect domicile in the locality where that court sits, on pain of nullity, unless he is domiciled there".

²² *Kambole v. Tanzania, supra*, § 37.

take action violated Articles 35²³ and 59²⁴ of the Constitution and, by extension, his right to a fair trial guaranteed by Article 7 of the Charter.

70. In its decision DCC18-090 of 12 April 2018 in this regard, the Constitutional Court dismissed the Applicant's case on the grounds that the Applicant's request sought to have the President of the Republic intervene in an ongoing court case. According to the high court, such intervention would have violated the principle of separation of powers entrenched in Article 125 of the Constitution.²⁵ In any event, the Court notes that in the judicial system of the Respondent State, when the prosecutor in charge of a case fails to act, individuals may bring an action before the investigating judge. It follows that in the present case, the Applicant could have leveraged this remedy to overcome the prosecutor's inaction, but failed to do so.
71. Consequently, the Court holds that the Applicant did not exhaust the remedies in respect of the latter proceedings either and therefore upholds the Respondent State's objection in that regard.
72. In light of the foregoing, the Court holds that the present Application does not satisfy the requirement of exhaustion of local remedies under Article 56(5) of the Charter in respect of all the allegations except that relating to the Applicant's complaint against his lawyers.²⁶

²³ *Ibid.*

²⁴ Article 59 of the Constitution states: "The President of the Republic ensures the enforcement of laws and guarantees the execution of court decisions".

²⁵ Article 125 provides: "Judiciary power is independent of the legislature and the executive " powers".

²⁶ *Goh Taudier et Autres v. Republic of Côte d'Ivoire*, ACtHPR, joinder of cases, Applications Nos. 017/2019, 018/2019 and 019/2019, Judgment of 4 June 2024, § 39.

C. Objection to admissibility based on failure to file the Application within a reasonable time in relation to the proceedings against the Applicant's lawyers

73. The Respondent State argues that the Applicant is responsible for the length of the proceedings, as it is his case that this failure results from the lack of diligence on the part of his lawyers.
74. It notes that haphazard management, poorly organised procedural strategies and the Applicant's inconsistencies proved counter-productive. It follows that the Applicant only has himself to blame.
75. The Applicant submits that in line with his procedural approach, there is no need to assess whether the Application was filed within a reasonable time due to the non-exhaustion of local remedies; on the other hand, he points out that the last decision was handed down on 2 November 2016 and the instant Application was filed with this Court on 4 September 2018.
76. He concludes that this period does not constitute unreasonable time, so that the Court should declare the Application admissible.

77. The Court notes that a period of one (1) year and ten (10) months elapsed between the decision of the Respondent State's Constitutional Court on the action against the lawyers and the filing of the present Application. The issue for determination is whether the said period constitutes a reasonable time within the meaning of Article 56(6) of the Charter.
78. The Court has consistently held that "[...] reasonableness of the time frame for seizure depends on the specific circumstances of the case and should be determined on a case-by-case basis".²⁷ In this regard, the Court took into account, among other factors, the time it took the Applicant to consider

²⁷ *Zongo and others v. Burkina Faso* (merits), *supra*, § 92. See *Thomas v. Tanzania* (merits), *supra*, § 73.

whether to prepare and file his Application.²⁸ Moreover, it emerges from the Court's jurisprudence that in circumstances where the time-limit in question is relatively short, it must be deemed to be manifestly reasonable.²⁹

79. In view of the circumstances of the case, the Court holds that the period of one (1) year and ten (10) months taken by the Applicant to seize the Court is reasonable within the meaning of Article 56(6) of the Charter.
80. Consequently, the Court dismisses the Respondent State's objection on this point.
81. The Court also recalls that the admissibility requirements of an application are cumulative, so that if one of them is not met, the entire application is inadmissible.³⁰
82. The Court considers that, having found that local remedies were not exhausted in connection with the dismissal proceedings, the Central Commissioner of the City of Cotonou, the Director General of National Police and the Minister of the Interior, as well as the proceedings relating to the attempted murder of his father, there is no need for it to rule on the other admissibility requirements in respect of those proceedings, with the exception of the proceedings against the lawyers.

²⁸ *Igola Iguna v. United Republic of Tanzania*, ACtHPR, Application No. 020/2017 Judgment of 1 December 2022 (merits and reparations), § 35; and *Zongo and Others v. Burkina Faso* (preliminary objections), *supra*, § 122.

²⁹ *Jackson Godwin v. United Republic of Tanzania*, ACtHPR, Application No. 037/2016, Judgment of 5 September 2023 (merits and reparations), § 48; *Niyonzima Augustine v. United Republic of Tanzania*, ACtHPR, Application No. 058/2016, Judgment of 13 June 2023 (merits and reparations), §§ 56 to 58.

³⁰ *Aminata Soumaré v. Republic of Mali*, ACtHPR, Application No. 038/2019, Judgment of 5 September 2023 (jurisdiction and admissibility), § 47; *Yacouba Traoré v. Republic of Mali*, ACtHPR, Application No. 002/2019, Judgment of 22 September 2022 (jurisdiction and admissibility), § 49; *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.

D. Other admissibility requirements in relation to proceedings against the lawyers

83. The Court notes from the records that the Parties do not dispute that the Application complies with the requirements of Article 56 (1), (2), (3), and (7) of the Charter, as restated in Rule 50(2) (a), (c), (b), (d), and (g) of the Rules. Nevertheless, the Court must ensure that these requirements are met.
84. The Court notes that it emerges from the record that the requirement under Rule 50(2)(a) of the Rules is met insofar as the Applicant has clearly indicated his identity.
85. The Court further notes that the Application does not contain disparaging or insulting language against the Respondent State, which makes it compatible with the requirement contained in Rule 50(2)(c) of the Rules.
86. Regarding the requirement contained in Rule 50(2)(d) of the Rules, the Court notes that the Application is not based exclusively on news disseminated through the mass media but on judicial documents. The Court therefore finds that the Application complies with the aforementioned provision.
87. Finally, as regards the requirement of Rule 50(2)(g) of the Rules, the Court finds that the present case does not concern a matter which has already been settled by the Parties in accordance with the principles of the United Nations Charter, the Constitutive Act of the African Union or the provisions of the Charter.
88. In view of the foregoing, the Court holds that with regard to the complaints against the Applicant's lawyers before the Constitutional Court, the Application meets all the admissibility requirements in Article 56 of the Charter as restated in Rule 50(2) of the Rules and thus declares the Application admissible.

VII. MERITS

89. The Court will examine the only violation alleged by the Applicant in relation to the proceedings against his lawyers, namely, violation of his right to a fair trial.
90. The Applicant maintains that the Respondent State's Constitutional Court examined his petitions without taking due cognisance of all the issues raised. He concludes that the said Court did not sufficiently rely on the arguments advanced and denounces the approach of the Respondent State's Constitutional Court.
91. He points out that the Constitutional Court minimised its investigative resources prior to handing down its decision in the following terms:

The applicant's requests, in fact, seeks to have the Court ascertain the conditions of application of the rules governing the legal profession, in particular Regulation No 05/CM/WAEMU of 25 September 2014 on the harmonisation of the rules governing the legal profession in the WAEMU area and Law No 65-6 of 20 April 1965 establishing the Benin Bar; that such an assessment falls within the scope of the review of legality; that the Court, determines constitutionality and not legality.

92. In reply, the Respondent State submits that the alleged refusal to investigate and receive the Applicant's petitions is unfounded and unsubstantiated.
93. It argues that the Constitutional Court petitioned by the Applicant ruled on the matter, so that there was no violation of the right to a fair trial.

94. The Court notes that Article 7(1)(a) of the Charter provides:

"Everyone shall have the right to have his cause heard. This comprises... the right to an appeal to competent national organs against acts violating his fundamental rights as recognized and guaranteed by conventions, laws, regulations and customs in force.

95. The Court also emphasises that Article 2(3) of the ICCPR provides:

States Parties to the present Covenant undertake to:

- a. “ [...] ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that that the violation has been committed by persons acting in an official capacity;
- b. ensure that any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy;
- c. ensure that the competent authorities shall enforce such remedies when granted

96. The Court emphasises that in the judicial system of the Respondent State, any citizen may bring a case before the Constitutional Court if he considers that his fundamental rights have been violated.³¹ The Court further notes that any citizen of the Respondent State has the right to directly petition the Constitutional Court, which is the guarantor of fundamental human rights.

97. Lastly, the Court notes that it emerges from the Applicant’s written submissions that he petitioned the Constitutional Court, and copies of the said court’s decisions are available in the record.

98. The Court finds that the Applicant’s right to fair trial were not violated.

99. In view of the foregoing, the Court dismisses this allegation and holds that the Respondent State did not violated Article 7(1)(a) of the Charter read in conjunction with Article 14 of the ICCPR.

³¹ Article 35 of Law 2022-09 of 27 June 2022 on the Organic Law of the Constitutional Court states: Likewise, laws and regulatory acts which may infringe fundamental human rights and public freedoms, and violate human rights in general are referred to the Constitutional Court is seized by the President of the Republic, or by any citizen, association or human rights organisation.

VIII. REPARATIONS

100. The Applicant prays the Court to restore his right to a fair trial and his right to property. He further prays the Court to order the Respondent State to:

- a. Pecuniary reparation:
 - i. Pay him the sum of CFAF One Million (1,000,000) as reparation for material prejudice.
 - ii. Pay him the sum of CFAF Five Billion (5,000,000,000) as reparation for moral prejudice.
- b. Order the Respondent State to pay all the amounts awarded in the judgment within six (6) months of delivery, failing which the Respondent State shall pay default interest based on the applicable rate of the Central Bank of West African States (BCEAO), throughout the period of delay and until full payment of the sums due.

101. The Respondent State emphasises that it did not cause the Applicant any harm.

102. It therefore prays the Court to dismiss the Applicant's prayer for reparation.

103. Article 27(1) of the Protocol provides:

“[i]f the Court finds that there has been a violation of a human or peoples' right, it shall make appropriate orders to remedy the violation, including the payment of fair compensation or reparation”.

104. The Court recalls that it has found no violation of the Applicant's right to a fair trial. His requests for reparations are therefore unwarranted, and the Court accordingly dismisses them.

IX. COSTS

105. Neither party submitted on costs.

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

107. The Court notes that nothing in the circumstances of the instant case warrants a departure from this rule. Accordingly, the Court decides that each Party shall bear its own costs.

X. OPERATIVE PART

108. For these reasons,

THE COURT

Unanimously,

Jurisdiction

- i. *Dismisses* the objection based on material jurisdiction;
- ii. *Declares* that it has jurisdiction.

Admissibility

- iii. *Upholds* the objection based on non-exhaustion of local remedies in respect of the proceedings relating to the Applicant’s dismissal, the complaint against the Applicant's driver and the complaint relating to the attempted murder of his father;

³² Rule 30(2) of the Rules of 2010.

- iv. *Holds* that local remedies were not exhausted on this point;
- v. *Dismisses* the objection based on incompatibility of the Application with the Constitutive Act of the African Union;
- vi. *Dismisses* the objection based on non-exhaustion of local remedies in respect of the proceedings against the Applicant's lawyers;
- vii. *Holds* that local remedies were not exhausted on these points;
- viii. *Dismisses* the objection to admissibility based on failure to file the Application within a reasonable time as regards the proceedings against the two lawyers;
- ix. *Declares* the Application admissible as regards the claim against the Applicant's lawyers.

Merits

- x. *Holds* that the Respondent State did not violate the Applicant's right to a fair trial, protected under Article 7(1)(a) of the Charter read in conjunction with Article 14 of the ICCPR as regards the claim against the Applicant's lawyers.

Reparations

- xi. *Dismisses* the Applicant's request for reparations.


Costs

- xii. *Orders* each Party to bear its own costs.


Signed by:


Modibo SACKO, Vice-President;

Ben KIOKO, Judge


Rafaâ BEN ACHOUR, Judge; 


Suzanne MENGUE, Judge; 


Tujilane R. CHIZUMILA, Judge; 


Chafika BENSAOULA, Judge; 

Blaise TCHIKAYA, Juge 

Stella I. ANUKAM, Judge; 

Dumisa B. NTSEBEZA, Judge; 

Dennis D. ADJEI, Judge; 

and Robert ENO, Registrar. 

Done at Arusha, this third day of September in the Year Two Thousand and four in English and French, the French text being authoritative.

