

**BOUKARY WALISS**

**V.**

**REPUBLIC OF BENIN**

**APPLICATION NO. 021/2018**

**JUDGMENT ON THE MERITS AND REPARATIONS**

**3 SEPTEMBER 2024**

**A DECISION OF THE AFRICAN COURT ON HUMAN AND PEOPLES' RIGHTS**

**Arusha, 3 September 2024:** the African Court on Human and Peoples' Rights (herein after referred to as ('the Court')) delivered a judgment in the matter of *Boukary WALISS v Republic of Benin*.

On 4 September 2018, *Mr Boukary WALISS* (hereinafter referred to as ('the Applicant')) filed an application with the Court against the *Republic of Benin* (hereinafter referred to as ('the Respondent State')).

In his Application, the Applicant alleged a violation of his right to a fair trial protected by Article 7(1)(a) of the African Charter on Human and Peoples' Rights (hereinafter referred to as ('the Charter')) and his right to property guaranteed by Article 14 of the International Covenant on Civil and Political Rights (hereinafter referred to as ('the ICCPR')).

By way of compensation, the Applicant sought payment by the Respondent State of the sum of one million (1,000,000) CFA francs for the material damage he suffered and the sum of five billion (5,000,000,000) CFA francs by way of compensation for the moral damage he suffered, subject to a fine.

It emerges from the application that following his dismissal by the Bank of Africa, the Applicant lodged several applications before the national courts, some of which were against his lawyers for lack of probity and diligence; his driver for withholding his vehicle and others against the Central Commissioner of Cotonou, the Director General of the Police and the Minister of the Interior for violating his right of appeal. The Applicant also brought a claim against the then Head of State for the murder of his father and for perjury.

The Respondent State raised an objection to the material jurisdiction of the Court on the grounds that the application did not seek to establish a violation of rights guaranteed by the Charter and other international legal instruments or to secure compliance by the Respondent State with its obligations under those instruments.

The Applicant submitted that this objection should be dismissed.

On this issue, the Court found that the objection could not be upheld since, in accordance with Article 3 of the Protocol to the African Charter on Human and Peoples' Rights on the Establishment of the Court (the Protocol), the Applicant alleged a violation of his right to a fair trial, protected by Articles 7 of the Charter and 2(3) of the ICCPR, and of his right to property, protected by Articles 14 of the Charter, 14(1) of the ICCPR and 17 of the Universal Declaration of Human Rights (UDHR).

The Court also examined the personal, temporal and territorial aspects of its jurisdiction and found that it had jurisdiction.

On admissibility of the application, the Respondent State raised three objections to admissibility based respectively on the incompatibility of the application with the Constitutive Act of the African Union (hereinafter referred to as ('the Constitutive Act'), the non-exhaustion of local remedies and the failure to file the application within a reasonable time.

With regard to the objection that the application was incompatible with the Constitution, the Respondent State contend, firstly, that the application did not indicate the provisions of the international legal instruments that had allegedly been violated by the Respondent State and, secondly, that the alleged violation of the right to a fair trial is related to a private law dispute between the Applicant and his employer that had been the subject of proceedings in which no grievance had been raised against the Respondent State.

The Applicant did not make any submissions on this objection.

On the said objection, the Court considered that insofar as the requests made by the Applicant were intended to protect his right to a fair trial guaranteed by the Charter, the application was compatible with the Constitution and therefore met the requirement of Rule 50(2)(b) of the Rules of Court.

With regard to the objection based on non-exhaustion of local remedies, the Respondent State argued on the first limb that the Applicant had not proved that he had effectively brought proceedings before the national courts against the persons responsible for the complaints he had raised. According to the Respondent State, the Applicant had not proved that local remedies were ineffective or unnecessary. On a second point, with regard to the Applicant's assertion that his application to the Constitutional Court concerning his lawyers had remained unanswered, the Respondent State pointed out that the Constitutional Court had jurisdiction to hear disputes between citizens and the State

and not private-law disputes between lawyers and their clients. The Respondent State maintained that local remedies had therefore not been exhausted.

The Applicant submitted that the objection should be dismissed. He argued that the rule of exhaustion of local remedies could not be invoked against him in the present case in so far as the remedies available had been abnormally prolonged and were therefore ineffective.

The Court noted that, in the present case, the local remedies exercised by the Applicant related to four proceedings, namely those concerning: (i) his dismissal; (ii) the complaint against his lawyers; (iii) the complaints against the Cotonou Central Commissioner, the Director General of the National Police and the Minister of the Interior; and (iv) the complaint of attempted murder of his father. The Court examined the condition of exhaustion of local remedies in relation to each of these proceedings.

With regard to the proceedings for the dismissal of the Applicant, the Court noted that the Applicant himself did not deny having been aware that, having appealed against the judgment of the Cotonou Court to the Cotonou Court of Appeal, he had not filed his appeal submissions, which had prevented the Court of Appeal from disposing of its case.

The Court found that the Applicant had not exhausted local remedies due to a lack of due diligence on his part. In conclusion, the Court upheld the objection on this point and declared the Applicant's complaints relating to his dismissal inadmissible.

As regards the proceedings against the Applicant's lawyers before the Constitutional Court, the Court noted that as the Constitutional Court's decisions were not subject to appeal, the Applicant had exhausted local remedies and rejected the objection raised by the Respondent State on this point.

On the proceedings against the Central Commissioner of Cotonou, the Director General of Police and the Minister of the Interior, the Court noted 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 found that the Applicant had not complied with the procedure before the Commissioner of Police, which prevented the latter from transmitting the file to justice.

The Court also noted that in the absence of transmission of the file by the Police Commissioner to the Public Prosecutor, the Applicant had the possibility of exercising three other remedies that were available, effective and satisfactory, namely: lodging a complaint directly with the Public Prosecutor on the same subject; lodging a complaint with civil party status; or lodging a direct summons with the Court of First Instance. Having made these findings, the Court concluded that the Applicant had not exhausted the remedies on this point.

On the proceedings relating to the attempted murder of his father, the Applicant alleged that, faced with the inaction of the public prosecutor whom he had referred to the Court, he had sent a letter to the President of the Republic in office requesting his intervention without success before referring the matter to the Constitutional Court. He added that his appeal to the Constitutional Court against the President of the Republic was intended to have the Constitutional Court rule that the fact that the President of the Republic had not intervened to have the Public Prosecutor take action constituted a violation of Articles 35 and 59 of the Constitution and, by extension, of his right to a fair trial guaranteed by Article 7 of the Charter.

The Court noted that in the judicial system of the Respondent State, where the public prosecutor who is seised of a case fails to act, individuals have the possibility of bringing an action before the investigating judge. It follows that in the present case; in order to overcome the prosecutor's inaction, the Applicant could have used this remedy, which he

did not. Thus, the Court concluded that the remedies had not been exhausted in the latter proceedings either.

On the objection to inadmissibility based on the inordinate delay in filing the application in relation to the proceedings against his lawyers, the Respondent State argued that the Applicant was responsible for the duration of these proceedings. It alleged that this failure resulted from the Applicant's lack of diligence and that the Applicant should bear his own responsibility.

The Applicant argued that following its procedural approach, the application before the Court was filed within a reasonable time. He affirmed that the last decision in this case was rendered on 02 November 2016 and his application was filed on 04 September 2018 before the Court of Appeal. He therefore prayed the Court to reject the objection to admissibility raised by the Respondent State.

The Court noted that a period of one (1) year and ten (10) months had elapsed between the decision of the Respondent State's Constitutional Court on the proceedings against the lawyers and the lodging of the application before it, which it considered to be reasonable within the meaning of Article 56(6) of the Charter and rejected the objection raised by the Respondent State on this point.

The Court recalled, moreover, that the conditions for admissibility of an application are cumulative and that, having found that local remedies had not been exhausted in the context of the dismissal proceedings, the proceedings against the Central Commissioner of the City of Cotonou, the Director General of the National Police, the Minister of the Interior and the proceedings relating to the attempted murder of his father, there was no need for it to rule on the other conditions of admissibility concerning those remedies.

However, having decided that the Applicant had exhausted domestic remedies in relation to the proceedings concerning his complaint against his lawyers, the Court also found that the application complied with the other conditions set out in paragraphs (1), (2), (3), (4) and (7) of Article 56 of the Charter, as reproduced in Rule 50(2)(a), (b), (c), (d) and (g) of the Rules. Consequently, the Court declared the application admissible on this point.

On the merits, the Applicant alleged two (2) violations of his rights: his right to a fair trial and his right to property. However, the Court examined the only violation alleged by the Applicant, for which local remedies had been exhausted, namely that relating to the proceedings against his lawyers, namely his right to a fair trial.

On the violation of the right to a fair trial, the Applicant pointed out, on the one hand, that the Constitutional Court of the Respondent State had examined his appeals without gathering all the information raised and deduced from this that the said Court had not sufficiently implemented the means invoked and denounced the means of action used by the Constitutional Court and, on the other hand, that the Constitutional Court had minimised its means of investigation before rendering its decision.

For its part, the Respondent State argued that the allegations of refusal to investigate and to receive the Applicant's appeals were unfounded.

The Court noted that the Constitutional Court, which had been seised of the case, had rendered its decision on the basis of the documents submitted by the parties. The Court therefore concluded that there had been no violation of the Applicant's right to a fair trial.

On reparations, the Applicant prayed the Court to order the Respondent State to pay him the sum of one million (1,000,000) CFAF for the material prejudice he suffered and the sum of five billion (5,000,000,000) FCFA by way of compensation for the moral prejudice he suffered.

The Respondent State contend that the Claimant had not suffered any damage and consequently requested that his claim for compensation be rejected.

Noting that it had not found any violation of the Applicant's rights, the Court found that his claims for compensation were not justified and accordingly dismissed them.

Finally, the Court decided that each Party shall bear its own costs.

Further information

Further information on this case, including the full text of the African Court's judgment, is available on the website: <https://www.african-court.org/cpmt/fr/details-case/0212018>

For any other questions, please contact the Registry at the following e-mail address: [registrar@african-court.org](mailto:registrar@african-court.org) or [registry@african-court.org](mailto:registry@african-court.org)

*The African Court on Human and Peoples' Rights is a continental court established by African countries to ensure the protection of human and peoples' rights in Africa. The Court has jurisdiction over all cases and disputes brought before it concerning the interpretation and application of the African Charter on Human and Peoples' Rights and any other relevant human rights instrument ratified by the State concerned. For more information, please visit our website: [www.african-court.org](http://www.african-court.org)*