

JUDGEMENT SUMMARY

GLORY CYRIAQUE HOSSOU V. REPUBLIC OF BENIN

APPLICATION NO. 012/2018

JUDGMENT ON MERITS AND REPARATIONS

13 NOVEMBER 2024

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

Arusha, 13 November 2024, the African Court on Human and Peoples' Rights (hereinafter referred to as ('the Court')) delivered a judgment in the matter of *Glory Cyriaque Hossou v Republic of Benin*.

On 10 May 2018, Glory Cyriaque Hossou (the Applicant) filed an Application with the Court against the Republic of Benin (the Respondent State). He alleged that Article 6(1)(3) and (4) of the Law of 24 August 2004 on the Personal and Family Code of the Respondent State violates the right to equality between men and women protected by Articles 3 and 18(3) of the African Charter on Human and Peoples' Rights (the Charter), Article 2 of the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (the Maputo Protocol), Article 3 of the International Covenant on Civil and Political Rights (ICCPR), and Articles 2 and 16(1) of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW).

The Applicant prayed the Court to: declare the Application admissible; declare that Article 6 of the Respondent State's Personal and Family Code violates equality between men and women established under the Charter, the Maputo Protocol, CEDAW and the ICCPR; enjoin the Respondent State to review its legislation on the protection and promotion of women, in this case, Article 6 of the Law of 24 August 2004, in order to restore the rights of Beninese women and order the Respondent State to reimburse him for the expenses incurred by this litigation.

For its part, the Respondent State prayed the Court to: declare the Application inadmissible; find that the child is entitled to one or more first names but only one surname; find that the choice of surname depends on the social order established in each country; find that filiation is patrilineal in the Respondent State; find that this filiation does not violate the rights of women; and consequently, dismiss the Application made by the Applicant.

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On jurisdiction, the Respondent State raised the objection that the Court did not have material jurisdiction, alleging that its Constitutional Court had declared the provisions of Article 6(1)(3) and (4) of the Law of 24 August 2004 to be in tandem with its Constitution. The Respondent State argued that by referring the same provisions to the Court, the Applicant had in effect brought the decisions handed down by the Constitutional Court of the Respondent State before this Court for censure. It averred that this Court is not an appellate court to review the decisions of the Constitutional Court. The Respondent State deduced from this that the Court can therefore not hear the present Application.

The Applicant submitted that the objection raised by the Respondent State should be dismissed, arguing that he was not appealing against the Constitutional Court's decision but was seeking a declaration by the Court that there had been a breach of the principle of equality between men and women guaranteed by the international instruments ratified by the Respondent State.

The Court considered that if it were to examine the Applicant's allegations in the instant case, it would not be ruling as a court reviewing the Constitutional Court's decision but within its own material jurisdiction. It therefore dismissed the Respondent State's objection of lack of material jurisdiction. The Court also found that it had personal, temporal and territorial jurisdiction, and considered that it had jurisdiction to hear the present Application.

On admissibility, no objections were raised. However, the Court satisfied itself that the conditions of admissibility were met. In this regard, it assessed the application's compliance with the conditions set out in Rules 50(2)(a), 50(2)(b), 50(2)(c), 50(2)(d), 50(2)(e), 50(2)(f) and 50(2)(f) of the Rules of Court and found that they had been met. The Court accordingly declared the Application admissible.

On the merits, the Applicant contended that the provisions of Article 6(1)(3) and (4) of the Law of 24 August 2004 violate the right to equality between men and women in that they give only the father the right to give his surname to the child, excluding that of the mother. He argued that by legislating in this way, the Respondent State had violated Articles 3 and 18(3) of the Charter, Article 2 of the Maputo Protocol, Article 3 of the ICCPR, and 2 and 16(1) of the CEDAW. The Applicant added that the amendment of Article 6 of the Law of 24 August 2004 by Law 2021-13 of 20 December 2021 did not resolve all the human rights issues raised in the Application.

The Respondent State for its part argued that the choice of surname depends on the social order of each State. It explained that the social, cultural, political and legal order in the Respondent State was based on

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patrilineal descent, and that in such a system the father was the repository of authority within the family. It added that the perpetuation of that authority is based on descent through males, and therefore the transmission of the surname through the father. The Respondent State further asserted that this traditional method of transmission was recognised in the law regularly adopted by the National Assembly as being the expression of the will of the sovereign people. It concluded that Article 6 of the Law of 24 August 2004 was consistent with the social order and did not infringe on women's rights.

The Court noted that Law 2021-13 of 20 December 2021 amended and supplemented Law 2002-07 of 24 August 2004 on the Personal and Family Code. It also noted that the new Article 6 of the Law of 30 December 2021 enshrines equality between men and women with regard to the child's surname in that both parents choose the child's surname, which may be the father's surname, the mother's surname or both surnames in the order they choose. The Court thus considered that the Applicant's objective of granting women the same right as men to choose the child's surname had been achieved. Consequently, the Court considered that the Application had become moot.

On reparations, the Applicant prayed the Court to order the Respondent State to revise Article 6 of the Law of 24 August 2004 to restore the rights of Beninese women. The Respondent State made no submission on this issue. Having found that the Applicant's allegation of violation had become moot, the Court considered that there were no grounds for ordering reparation.

On costs, the Applicant prayed that the Respondent State be ordered to bear the costs it incurred in the present proceedings. The Respondent State did not file any arguments on this issue. Having found that the Application had become moot, the Court decided that each Party shall bear its own costs.

The Partial Dissenting Opinion of Justices Suzanne Mengue, Chafika Bensaoula, Dennis D. Adjei and Duncan Gaswaga was appended to the judgment.

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/0122018>

If you have any further questions, please contact the Registry by email at registrar@african-court.org.

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