


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		

APPLICATION FOR PROVISIONAL MEASURES NO. 004/2019

IN

MATTER OF

XYZ

V.

REPUBLIC OF BENIN

APPLICATION 059/2019

RULING ON PROVISIONAL MEASURES

2 DECEMBER 2019

The Court composed of: Sylvain ORÉ, President; Ben KIOKO, Vice President; Rafaâ BEN ACHOUR, Ângelo V. MATUSSE, Suzanne MENGUE, M-Thérèse MUKAMULISA, Tujilane R. CHIZUMILA, Chafika BENSOUOLA, Blaise TCHIKAYA, Stella I. ANUKAM, Imani D. ABOUD – Judges; and Robert ENO, Registrar,

In the matter of:

XYZ

Self represented

versus

REPUBLIC OF BENIN

Represented by Mr. Iréné ACLOMBESSI, Legal Representative of the Treasury

after deliberation,

Makes the following Ruling:

I. THE PARTIES

1. On 2 September 2019, the Applicant (hereinafter referred to as “XYZ”) a national of Benin having requested anonymity, seized the Court with an application against the Republic of Benin.
2. On 26 September 2019, the Applicant submitted an application for provisional measures.
3. During its 53th Ordinary session, the Court granted the Applicant request for anonymity.

4. The Republic of Benin (hereinafter referred to as "the Respondent State") 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 filed the Declaration provided for in Article 34(6) of the Protocol whereby it accepts the jurisdiction of the Court to receive applications from individuals and Non-Governmental Organizations.

II. SUBJECT OF THE APPLICATION

5. The Applicant alleges that as part of the preparations for the organization of elections, the Respondent State set up an administrative structure called the Orientation and Supervisory Council (COS). This body is responsible for the implementation of Law No. 2009-10 of 13 May 2009 to organize the in-depth national electoral census and the establishment of the permanent computerized electoral roll.
6. The Applicant questions the neutrality of COS because, according to him, its members represent only the political parties of the presidential majority, no political party of the opposition being a member.
7. The Applicant states that because of this situation, the last parliamentary elections took place without the participation of the opposition parties, which for him is in violation of the Constitution and international instruments on democracy and elections. He believes that the biased nature of this structure also means that the local elections scheduled to be held early in 2019, cannot be free and democratic and thus a threat to the Republic of Benin's democracy.

III. ALLEGED VIOLATIONS

8. The Applicant alleges the following violations:
 - i. obligation by the State of Benin to establish independent and neutral electoral organs;
 - ii. the right to participate freely in the management of public affairs of his country;
 - iii. the right to equal protection of the law;
 - iv. the right to peace and national and international security;
 - v. the African Charter on Democracy, Elections and Governance.

IV. SUMMARY OF THE PROCEEDINGS BEFORE THIS COURT

9. On 02 September 2019, the Court received an Application concerning the functioning of the independent administrative structure in charge of the management of the national electoral register and the establishment of the permanent electronic electoral roll called the Orientation and Supervisory Council. (COS).
10. On 26 September 2019, the Applicant submitted an application for provisional measures concerning the operation of this administrative structure.
11. The application for provisional measures was served on the Respondent State on 4 October 2019 which was granted fifteen (15) days in which to respond.

The Respondent State requested for additional time which was granted until 24 November 2019 but it did not yet submit its Response.

V. JURISDICTION OF THE COURT

12. When considering an application, the Court conducts a preliminary examination of its jurisdiction on the basis of Articles 3, 5(3) and 34(6) of the Protocol.
13. However, with regard to provisional measures, in conformity with its constant jurisprudence, the Court does not have to ensure that it has jurisdiction on the merits of the case, but simply that it has *prima facie* jurisdiction.
14. Pursuant to Article 5 (3) of the Protocol, "The Court may entitle relevant Non-Governmental Organizations (NGOs) with observer status before the Commission, and individuals to institute cases directly before it, in accordance with Article 34(6) of this Protocol".
15. As mentioned in paragraph 2 of this Ruling, the Respondent State is a Party to the Charter, to the Protocol and has also made the Declaration accepting the jurisdiction of the Court to receive applications from individuals and Non-Governmental Organizations in accordance with Article 34(6) of the Protocol read together with Article 5(3) of the Protocol.
16. On the merits, the rights claimed by the Applicant as having been violated are protected by the Charter, the Protocol of the Economic Community of West Africa (ECOWAS) on Democracy and Good Governance in addition to the Protocol on the Mechanism for Conflict Prevention, Management, Resolution, Peacekeeping and Security and the African Charter on Democracy, Elections and Governance

(ACDEG), which are instruments that the Court is empowered to interpret and apply under Article 3(1) of the Protocol.

17. In light of the foregoing, the Court concludes that it has *prima facie* jurisdiction to consider the application.

VI. PROVISIONAL MEASURES REQUESTED

18. The Applicant prays the Court to order the Respondent State:

to suspend the work of the administrative structure called Orientation and Supervisory Council (COS) established by the Constitutional Court on 06 September 2019 and the holding of municipal and local elections pending the decision on the merits of the main application.

- i. to refrain from any act or action which could cause irreparable damage and which could irreparably prejudice the main application before the Court until it has decided on the said application.
- ii. to send a report to the Court within a time period that the Court may decide to set.

19. The Court notes that Article 27(2) of the Protocol provides as follows:

“In cases of extreme gravity and urgency, and when necessary to avoid irreparable harm to persons, the Court shall adopt such provisional measures as it deems necessary”.

20. Furthermore Rule 51(1) of the Rules of Court states that:

“The Court may, at the request of a party, the Commission or on its own accord, prescribe to the parties any interim measure which it deems necessary to adopt in the interest of the parties or of justice”.

21. Based on the foregoing provisions, the Court will take into account the law applicable to provisional measures, which are of a preventive nature and do not prejudge the merits of the application. The Court may order them *pendente lite* only when the basic conditions are met: extreme gravity, urgency and the prevention of irreparable harm to persons.
22. The Court notes that the Applicant questions the functioning of the administrative structure (COS) which, because of its imbalanced composition between the ruling party and the opposition parties, would not be neutral and would cast doubts on the smooth organization of future elections.
23. The Court observes that the application for provisional measures to suspend the functioning of the administrative structure, the COS in question also touches on the question of the merits on which the Court is called upon to rule in due course.
24. The Court also observes that the Applicant does not provide evidence of the nature of the urgent and serious risk of irreparable damage that this administrative structure could cause him, as required by Article 27 of the Protocol.
25. In view of the foregoing, the request for provisional measures is rejected.

VII. OPERATIVE PART

26. For these reasons,

THE COURT,

By a majority of 9 for and 2 against, Justices Rafaâ Benachour and Chafika Bensaoula voted against,

Dismisses the application for provisional measures.

Signed:

Sylvain ORE, President;

Robert ENO, Registrar.

Done in Zanzibar this Second Day of December, in the year Twenty Nineteen in English and French, the French text being authoritative.

In conformity with article 27 of the Protocol, the dissenting opinions of Justices Benachour and Bensaoula are attached to the present Order.