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AFRICAN COURT ON HUMAN AND PEOPLES' RIGHTS
COUR AFRICAINE DES DROITS DE L'HOMME ET DES PEUPLES

THE MATTER OF

CONAIDE TOGIA LATONDJI AKOUEDENOUDJE

V.

REPUBLIC OF BENIN

APPLICATION No. 024/2020

RULING
(PROVISIONAL MEASURES)

25 SEPTEMBER 2020

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

In the Matter of:

Conaide Togia Latondji AKOUEDENOUDJE

*Self-represented*

Versus

REPUBLIC OF BENIN

*Represented by* Mr Iréné ACLOMBESI, Judicial Agent of the Treasury.

*After deliberation,*

*renders the following Ruling:*

## I. THE PARTIES

1. Mr Conaïde Togia Latondji AKOUEDENOUDJE, (hereinafter referred to as "the Applicant") is a citizen of Benin. He challenges an inter-ministerial order prohibiting the issuance of acts of authority to people wanted by the judicial authorities of Benin.

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. In addition, on 8 February 2016, it made the Declaration provided for in Article 34(6) of the said Protocol (hereinafter referred to as "the Declaration") by virtue of which it accepts the jurisdiction of the Court to receive applications from individuals and non-governmental organizations having observer status with the African Commission on Human and Peoples' Rights (hereinafter referred to as "the Commission"). However, on 25 March 2020, the Respondent State deposited with the African Union Commission an instrument withdrawing its Declaration.

## II. SUBJECT OF THE APPLICATION

3. An application instituting proceedings was filed on 4 August 2020, together with a request for provisional measures. The Applicant states in the Application that on 22 July 2019, the Ministry of Justice and the Ministry of the Interior of Benin issued inter-ministerial Order No. 023/MJL/DC/SGM/DACPG/SA 023SGGG19 (hereinafter referred to as "Inter-Ministerial Order") stating in Article 3 a ban on issuance of acts of authority to persons wanted by the judicial authorities of Benin. Such acts are listed in a non-exhaustive manner in Article 4 of the said Order.

4. He considers that the Inter-Ministerial Order is inconsistent with principles relating to the protection of fundamental human rights, notably the presumption of innocence and the right to nationality.

5. Accordingly, the Applicant prays the Court to order a provisional measure for a stay of execution of the abovementioned Inter-Ministerial Order, pending delivery of the judgment on the merits.

## III. ALLEGED VIOLATIONS

6. In the principal Application, the Applicant alleges the violation of the following rights:
    i. Right to be presumed innocent, enshrined in Article 7(1)(b) of the Charter; and

ii. Right to nationality, protected by Article 15 of the Universal Declaration of Human Rights (UDHR).

## IV. SUMMARY OF PROCEDURE BEFORE THE COURT

7. On 4 August 2020, the Applicant filed the Application on the merits together with a request for provisional measures. The Application and the request for provisional measures were served on the Respondent State on 17 August 2020. The Respondent State was allowed 60 days from the date of receipt of the notice to submit its response on the merits, and 15 days to submit its response on provisional measures.

8. The Registry received the observations of the Respondent State on the provisional measures on 9 September 2020.

## V. PRIMA FACIE JURISDICTION

9. The Respondent State and the Applicant have not submitted on this point.

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10. Article 3(1) of the Protocol provides that "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 instrument ratified by the States concerned".

11. Rule 39(1) of the Rules stipulates that "the court shall conduct preliminary examination of its jurisdiction..." However, with regard to provisional measures, the Court does not have to ensure that it has jurisdiction over the merits of the case, but simply has *prima facie* jurisdiction.[1]

12. In the instant case, the Applicant's allegedly violated rights that are all protected by Articles 7(1)(b) of the Charter and 17 of the UDHR, which were ratified by the

[1] *Komi Koutche v. Republic of Benin*, ACtHPR, Application No. 020/2019, Ruling of 2 December 2019 (provisional measures).

Respondent State and which the Court is empowered to interpret and apply under Articles 3(1) and 7 of the Protocol.

13. The Court notes, as recalled in paragraph 2 above, that on 25 March 2020, the Respondent State filed an instrument of withdrawal of its Declaration deposited under Article 34(6) of the Protocol. The Court recalls, however, in reference to its ruling on provisional measures of 5 May 2020 and the corrigendum thereto of 29 July 2020, that withdrawal of the Declaration does not have any retroactive effect and has no bearing on cases pending before it, as it only takes effect on 26 March 2021.[2] Consequently, the Court finds that the said withdrawal will, in no way, affect the personal jurisdiction of the Court in the instant case.

14. The Court therefore concludes that it has *prima facie* jurisdiction to hear the request for provisional measure.

## VI. PROVISIONAL MEASURES REQUESTED

15. The Applicant requests a stay of execution of the Inter-Ministerial Order of 22 July 2019, on the grounds that the persons cited are suffering or could suffer prejudice.

16. In response, the Respondent State argues that the requested measure does not meet the conditions laid down in Article 27 of the Protocol, namely urgency and the existence of irreparable damage.

17. The Respondent State further asserts that the Applicant does not show evidence of any urgency, or any damage concerning him directly, insofar as he admits that he is not personally concerned by the implementation of the Inter-Ministerial Order, since he was not refused issuance of any of the acts by the authority. It asserts that the Applicant alleges a purely hypothetical grievance.

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[2] *Houngue Eric Noudehouenou v. Republic of Benin*, ACtHPR, Application No.003/2020, Ruling of provisional measures of 05 May 2020 and corrigendum of 29 July 2020.

18. The Court notes that Article 27(2) of the Protocol provides that: "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".

19. The Court observes that it has the discretion to decide in each individual case whether, in the light of the particular circumstances of the case, it should exercise the jurisdiction conferred on it by the above provisions.

20. The Court reiterates that urgency, consubstantial with extreme gravity, implies a "real and imminent risk being caused before it renders its final decision".[3]

21. The Court emphasizes that the risk in question must be real, which excludes purely hypothetical risks, and explains the need to remedy it forthwith.[4]

22. With regard to the irreparable damage, the Court considers that there must exist a "reasonable probability of materialization" having regard to the context and the personal situation of the Applicant.[5]

23. The Court finds, in the present case, that the Applicant does not provide any evidence that he or any other specifically designated person is in a situation of urgency to which the provisions of the Inter-Ministerial Order must be applied.

24. The Court further observes that the Applicant does not provide evidence as to the reality and the imminence of the irreparable damage he will suffer as a result of implementation of the Inter-Ministerial Order.

25. Accordingly, the Court does not see the need to order the measures requested and therefore dismisses the request.

26. For the avoidance of doubt, this Ruling is provisional in nature and in no way prejudges the decision the Court might take regarding its jurisdiction, the admissibility and the merits of the Application.

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[3] *Ajavon Sébastien v. Republic of Benin*, ACtHPR, Application N°062/2019, Ruling on provisional measures of 17 April 2020.
[4] *Ibid.*
[5] *Ibid.*

## VII. OPERATIVE PART

27. For these reasons

THE COURT,

Unanimously,

*Dismisses* the Applicant's request for provisional measures.

**Signed:**

Ben KIOKO, Vice-President;

Robert ENO, Registrar;

Done at Arusha, on the Twenty - Fifth Day of September in the Year Two Thousand and Twenty, in English and French, the French text being authoritative.