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

SÉBASTIEN GERMAIN MARIE AÏKOUE AJAVON

V.

REPUBLIC OF BENIN

APPLICATION No. 062/2019

JUDGMENT

4 DECEMBER 2020

TABLE OF CONTENTS

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

In the Matter of

Sébastien Germain Marie Aïkoue AJAVON
Represented by Issiaka MOUSTAFA, Advocate at the Benin Bar.

Versus

REPUBLIC OF BENIN
Represented by Mr. Iréné ACOMBLESSI, Judicial Agent of the Treasury.

After deliberation,
Renders the following Judgment:

I. THE PARTIES

1. Mr. Sébastien Germain Marie Aïkoué AJAVON, (hereinafter referred to as "the Applicant"), of Beninese nationality, is a businessman residing in Paris, France, as a political refugee. He alleges the violation of various civil and political rights relating to recently promulgated laws, in particular electoral laws, in the Republic 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. The Respondent State further deposited the Declaration provided for in Article 34(6) of the said Protocol (hereinafter referred to as "the Declaration") on 8 February 2016, by accepting the jurisdiction of the Court to receive Applications from individuals and non-governmental organisations. On 25 March 2020, the Respondent State deposited with the African Union Commission the instrument of withdrawal of its Declaration. The Court has held that this withdrawal has no bearing on pending cases nor on new cases filed before the withdrawal comes into effect, that is, one year after its filing, on 26 March 2021.[1]

[1] *Ingabire Victoire Umuhoza v. Republic of Rwanda (*jurisdiction*)* (03 June 2016) 1 AfCLR 540, § 69; *Houngue Eric Noudehouenou v. Republic of Benin* ACHPR, Application No. 003/2020 Ruling of 5 May 2020 (provisional measures), §§ 4- 5 and *Corrigendum* of 29 July 2020.

II. SUBJECT OF THE APPLICATION

A. Facts of the case

3. The Applicant claims that the Beninese parliamentary elections of 28 April 2019 were irregular and that the resulting National Assembly was established based on a series of electoral laws that are not consistent with international conventions.

4. The Applicant further claims that on the night of 31 October to 1 November 2019, this Parliament unanimously adopted a law revising the Constitution which, after review by the Constitutional Court of its conformity with the said Constitution, was promulgated by the President of the Republic and published in the Official Gazette. The Applicant asserts that this law and subsequent laws have been the cause of several human rights violations.

B. Alleged violations

5. The Applicant alleges violation of the following rights and freedoms:

   i. Freedom of opinion and expression, guaranteed by Articles 9(2) of the Charter and 19(3) of the International Covenant on Civil and Political Rights (hereinafter referred to as "the ICCPR");
   ii. Violation of the right to strike, guaranteed by Article 8(1)(d)(2) of the International Covenant on Economic, Social and Cultural Rights (hereinafter referred to as the "ICESCR");
   iii. Freedom of assembly, guaranteed by Article 11 of the Charter;
   iv. The right to liberty and security, guaranteed by Article 6 of the Charter;
   v. The right to life and to physical and moral integrity and the right not to be subjected to torture, guaranteed by Articles 4 and 5 of the Charter respectively;

vi. The right to have one's cause heard, guaranteed by Article 7 (1) of the Charter;
vii. freedom of association, guaranteed by Article 10 of the Charter and Article 22(1) of the ICCPR;
viii. The right to non-discrimination and the right to participate freely in the government of one's country, guaranteed respectively by Articles 2 and 13(1) of the Charter;
ix. The right to have one's cause heard, guaranteed by Article 7(1) of the Charter;
x. The right of political parties to carry out their activities freely, guaranteed by Article 1(i)(2) of the Economic Community of West African States (ECOWAS) Protocol A/SP1/12/01 on Democracy and Good Governance, Additional Protocol to the Protocol Relating to the Mechanism for Conflict Prevention, Management, Resolution, Peacekeeping and Security (hereinafter referred to as "the ECOWAS Protocol on Democracy").

6. The Applicant also claimed violation of the:
i. obligation to establish independent and impartial electoral bodies, enshrined in Articles 17(1) of the African Charter on Democracy, Elections and Governance, (hereinafter referred to as “the ACDEG”) and 3 of the ECOWAS Protocol on Democracy;
ii. obligation not to unilaterally amend electoral laws less than six (6) months prior to elections, enshrined in Article 2 of the ECOWAS Protocol on Democracy;
iii. obligation to establish independent courts, enshrined in Article 26 of the Charter;
iv. obligation to establish the rule of law;
v. obligation to adopt a constitutional revision based on national consensus, enshrined in Article 10(2) of the ACDEG;

vi. obligation not to undertake an unconstitutional change of Government and the obligation not to effect a constitutional review that violates the principles of democratic change of government, enshrined respectively in Articles 1(c) of the ECOWAS Protocol on Democracy and 23(5) of ACDEG.

III. SUMMARY OF THE PROCEDURE BEFORE THE COURT

7. The Application was received at the Registry on 29 November 2019.

8. Following a Application for Provisional Measures dated 9 January 2020, the Court issued on 17 April 2020 a Ruling on Provisional Measures, the operative part of which reads as follows:

"THE COURT,
Unanimously,

i. Dismisses the preliminary objection of lack of jurisdiction;
ii. Finds that it has *prima facie* jurisdiction;
iii. Dismisses the preliminary objection of inadmissibility;
iv. Orders the Respondent State to suspend the election of municipal and commune councillors scheduled for 17 May 2020 until the Court renders a ruling on the merits;
v. Dismisses the request to stay the Application of the laws voted by the National Assembly, namely, Organic Law No. 2018 - 02 of 4 January 2018 amending and supplementing organic law No. 4 - 027 of 18 March 1999 relating to the *Conseil supérieur de la Magistrature* [Higher Judicial Council], Law No. 2017 - 20 of 20 April 2018 on the Digital Code in the Republic of Benin, Law No. 2018 - 34 of 5 October 2018 amending and supplementing Law No. 2001 - 09 of 21 June 2002 on the exercise of the right to strike, Law No. 2018 - 016 on the Criminal Code, Law No. 2019 -

40 of 7 November 2019 revising Law 90 - 032 of 11 December 1990 on the Constitution of the Republic of Benin and the municipal orders referred to by the Applicant;

vi. Orders the Respondent State to report back to it on the enforcement of the provisional measures within one month of notification of this decision.

9. With regard to the merits and reparations, the parties filed their submissions within the time limits set by the Court. These were duly served on the other party.

10. On 12 October 2020, pleadings were closed, and the Registry duly informed the parties.

11. On 15 October 2020, the Applicant filed a second Application for provisional measures praying the Court to order the Respondent State to take the necessary measures to remove all obstacles preventing him from participating effectively in the presidential election of 2021 as an independent candidate.

12. On 12 November 2020, the Registry received the Response from the Respondent State on the Application for provisional measures.

13. The Court found that since the subject of the Application for provisional measures is similar to that of the prayers on the merits, it would dispose of the matter at the stage of merits.

IV. PRAYERS OF THE PARTIES

14. The Applicant prays the Court to:

i. note the unconventional nature of the laws that led to the installation of the National Assembly during the legislative elections of 28 April 2019;

ii. note the lack of independence and impartiality of the Constitutional Court;

iii. note the violation by the Republic of Benin of the preamble, Articles 2(2), 3(2), 4(1), 10(2), 17(1), 23(5) and 32(8) of the ACDEG and 1(i)(2) of Protocol A/SP1/12/01 on Democracy and Good Governance, Additional to the Protocol relating to the Mechanism for Conflict Prevention, Management, Resolution, Peacekeeping and Security;

iv. order the State of Benin to pay the costs of the case.

15. For its part, the Respondent State prays the Court to:

i. find that the Application is inconsistent with the Constitutive Act of the African Union and the Charter;

ii. note the absurdity of the requests for annulment of Benin's fundamental law;

iii. note that the Court (...) is not an appellate instance against decisions of domestic courts;

iv. find that the Applicant is seeking an abstract review of the consistency of Benin's domestic laws with international conventions;

v. rule that the Court has no jurisdiction;

vi. find that the Applicant is bringing multiple proceedings as political propaganda;

vii. rule the Application inadmissible for abuse of process;

viii. find that the European Court of Human Rights (hereinafter referred to as "ECHR") has held that an Application is abusive when an Applicant files multiple pointless Applications;

ix. find that, as stated by the ECHR, any conduct by an Applicant which is manifestly contrary to the purpose of the right of appeal established by the Convention (here the Charter) is abusive;

x. find that the ECHR has stated that the Court may also declare that an Application which is manifestly devoid of any real substance and/or (...) generally speaking, is irrelevant to the objective legitimate interests of the Applicant is abusive [*Bock v. Germany*; *SAS v. France* [GC] paras 62 and 68];

xi. find that the Applicant is not a victim within the meaning of the Charter;

xii. find that the Application is abusive and frivolous;

xiii. consequently, rule the Application inadmissible;

xiv. find that a legal claim must be based on a personal interest;

xv. note that in an opinion, Judge Ouguergouz Vice President of the Court stressed that the Applicant must show how he is a victim of what he attributes to the State as a wrongful act under the Charter;

xvi. find that the Applicant does not show *locus standi*;

xvii. find that the Applicant is not a victim within the meaning of the Rules of the Court and the Charter;

xviii. find that the Applicant did not exhaust local remedies;

xix. find that the Application was not filed within a reasonable time that should have started to run after the exhaustion of local remedies;

xx. find that there was an intent of chicanery and an abuse of rights;

xxi. find that the Applicant is bringing infringement proceedings;

xxii. find that the Applicant has no *locus standi*;

xxiii. rule the Application inadmissible.

16. In the alternative, the Respondent State requests the Court to:

i. find that the Applicant does not raise any dispute relating to a case of violation;

ii. find that the law establishing the political parties charter does not breach the Applicant's human rights;

iii. find that the law on the electoral code in the Republic of Benin does not breach the human rights of the Applicant;

iv. find that the law on the exercise of the right to strike does not breach the human rights of the Applicant;

v. find that the law on the criminal procedure in the Republic of Benin is consistent with the international commitments of the Beninese state;

vi. find that the Respondent State has not violated its international obligations under the ECOWAS community instruments;

vii. find that the fundamental law is legal and constitutional;

Consequently

viii. find that the Application is unfounded.

17. With respect to reparations, the Applicant seeks the following measures:

i. order the invalidation of the 8th legislature following the elections of 28 April 2019;

ii. order the invalidation of the Constitutional Court due to the President's lack of impartiality and independence;

iii. order outright annulment of Law No. 2019 - 40 of 7 November 2019 amending the Constitution of the Republic of Benin and all laws derived from it (Political Parties' Charter, electoral code, status of the opposition, financing of political parties ...);

iv. cause the Peace and Security Council (PSC) of the African Union to prosecute the perpetrators and accomplices of this unconstitutional (...) change of Government;

V. JURISDICTION

18. The Court notes that Article 3 of the Protocol provides as follows:

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 States concerned.

2. In the event of a dispute as to whether the Court has jurisdiction, the Court shall decide.

19. Pursuant to Rule 49(1) of the Rules[2] (hereinafter referred to as “the Rules”), " [t]he Court shall ascertain its jurisdiction […] of an Application in accordance with the Charter, the Protocol and these Rules”.

[2] Formerly Rule 39(1) of the Rules of Court of 2 June 2010.

20. On the basis of the above-cited provisions, the Court must, in every Application, preliminarily ascertain its jurisdiction and rule on the objections to its jurisdiction, if any.

21. The Court notes that the Respondent State raises several objections to its material jurisdiction.

A. Objections to lack of material jurisdiction

22. The Respondent State raises five (5) objections to the Court's material jurisdiction based on the (i) absence of human rights violations; (ii) the incompatibility of the Application with the Constitutive Act of the African Union and the Charter; (iii) the unreasonable nature of the measures sought; (iv) review of decisions of domestic courts; and, (v) requests for a review *in abstracto of* the consistency of domestic laws with international conventions.

i) Objection based on the absence of human rights violations

23. The Respondent State submits, on the basis of Article 34 of the Rules of Court[3] (hereinafter referred to as "the Rules") that the Court may exercise its jurisdiction only if a case of human rights violation is brought before it. The Respondent State avers that the Applicant must clearly indicate the alleged violations and must not merely rely on abstract hypotheses or circumstances.

24. The Applicant prays the Court to dismiss the objection, pointing out that Rule 34 (4) of the Rules concerns auxiliary conditions for the admissibility of the Application and that material jurisdiction should instead be assessed by reading Article 3(1) of the Protocol together with Rule 26(1) of the Rules.[4]

[3] Corresponding to Rule 40(2) of the Rules entered in force on 25 September 2020 (new Rules).
[4] Corresponding *to* Rule 29 of the new Rules.

25. The Applicant claims to have clearly indicated the violations of personal, concrete and current human rights by citing the articles that protect them.

***

26. The Court emphasises that it has consistently held that Article 3(1) of the Protocol confers on it the capacity to consider any Application which contains allegations of violations of human rights guaranteed by the Charter or by any other relevant human rights instrument ratified by the Respondent State.[5]

27. In the instant case, the Applicant alleges violations of human rights guaranteed by a set of human rights instruments, namely, the Charter, the ACDEG, the ICCPR, the ICESCR and the ECOWAS Protocol on Democracy to which the Respondent State is a party.[6]

28. Consequently, the Court dismisses this objection of lack of material jurisdiction.

ii) Objection based on the inconsistency of the Application with the Constitutive Act of the African Union or the Charter

29. The Respondent State notes that an Application that does not contain allegations of human rights violations must be found to be incompatible with the Constitutive Act of the African Union or the Charter.

30. The Respondent State stresses that, in asserting that the Beninese Parliament is illegitimate, that the Constitutional Court is neither independent nor impartial and that the constitutional revision took place late at night, the Applicant does not accuse the State of having disregarded his human rights.

[5] *Yacouba Traoré v. Republic of Mali,* ACtHPR, Application No. 010/2018, Judgment of 25 September 2020 (jurisdiction and admissibility), § 20.
[6] The Respondent State became a party to the ICCPR and to the ICESCR on 12 March 1992. It became a party to the ACDEG on 11 July 2012 and to the ECOWAS Protocol on Democracy on 20 February 2008.

31. According to the Applicant, this objection must be dismissed because the inconsistency of the Application with the Constitutive Act of the African Union or with the Charter is not a ground for lack of jurisdiction but rather a ground for inadmissibility of the Application.

***

32. The Court notes that within the meaning of Article 56(2) of the Charter, which is restated in Rule 50(2)(b) of the Rules,[7] the consistency of the Application with the Constitutive Act of the African Union or the Charter is a condition of admissibility and not a question relating to the material jurisdiction of the Court.

33. Accordingly, the Court will deal with this question at the admissibility stage.

iii) Objection based on the unreasonable nature of the applications

34. The Respondent State argues on the basis of Rule 26 of the Rules[8] that the Applications are unreasonable because the Court has neither jurisdiction to annul a domestic law, including the Constitution, as this would lead to a legal vacuum, nor can the Court declare the dissolution of Parliament.

35. The Applicant for his part submits that the Court has jurisdiction to examine whether the legislative elections were held in conformity with the Charter and whether the Constitution and the Constitutional Court are consistent with the Charter.

36. He stresses that the annulment of the law revising the Constitution would not lead to a legal vacuum since the Constitution of 11 December 1990 would be reinstated,

[7] Formerly Rule 40 of Rules of 2 June 2010.
[8] Corresponding to Rule 29 of the new Rules.

and the annulment of the legislative elections would result in their reorganisation and the rectification of the laws annulled by the new Parliament.

***

37. The Court notes that the Court's lack of material jurisdiction is not dependent on the qualification by any of the parties of the legal facts alleged in the Application.

38. The Court recalls that its jurisdiction is based on Article 3(1) of the Protocol. It follows that the Respondent State's description of the claims as unreasonable cannot, therefore, preclude the exercise of the Court's material jurisdiction. Consequently, the Court dismisses this objection of lack of material jurisdiction.

iv) Objection based on the review of decisions of domestic courts

39. The Respondent State argues that the Court's case law shows that the Court is not a court of appeal with regard to decisions of national courts.

40. The Respondent State avers that the Court cannot hear the Application for review of decision DCC 18 - 270 issued on 28 December 2018 by the Constitutional Court of Benin, which found Law No. 2018 - 16 of 28 December 2018 on the Penal Code to be in conformity with the Constitution.

41. The Applicant considers that the Court has jurisdiction to assess whether the said ruling of the Constitutional Court was issued in accordance with the principles set out in the Charter and any other applicable international human rights instruments.

42. The Applicant explains that he is not requesting the Court to review the legality of a domestic ruling but rather to find a manifest violation of human rights contained in a judicial act. This Court would only have acted as a court of appeal if it had

applied the same texts as the Constitutional Court of the Respondent State, which is not the case here.

***

43. The Court notes that while it is established that it is not an appellate court,[9] it can, nonetheless, validly examine the relevant domestic proceedings to determine whether they comply with the international human rights standards it is mandated to interpret and apply.[10]

44. The Court holds that a determination whether a domestic court's decision violates human rights does not make the African Court an appellate court with respect to domestic courts. Therefore, this objection is dismissed.

v) Objection based on the lack of jurisdiction to review *in abstracto* the conformity of domestic laws with international conventions

45. The Respondent State argues that the Court lacks jurisdiction, on the ground that no provision confers on it the power to review *in abstracto* the conformity of domestic legislation with international conventions. In particular this excludes the possibility to review Law No. 2018 - 23 of 17 September 2018 on the Charter of Political Parties (hereinafter referred to as the "Charter of Political Parties "), which the Applicant considers not to be in conformity with international conventions.

46. The Respondent State explains that the Applicant, can, as a first resort, refer the violations to the national court, since the African Court may only be seized of the matter in a subsidiary manner and *in concreto.*

[9] *Ernest Francis Mtingwi v. Republic of Malawi* (jurisdiction) (15 March 2013) 1 AfCLR, 190, §14.
[10] *Alex Thomas v. United Republic of Tanzania* (merits) (20 November 2015) 1 AfCLR 465, §130.

47. The Applicant, for his part, seeks the dismissal of the objection, arguing that he is not asking the Court to review *in abstracto* the conformity of Charter of Political Parties with international conventions, but rather the provisions of specific laws which violate his right to participate in the government of his country.

48. He alleges the existence of a concrete violation because, in the middle of the electoral process, the Constitutional Court demanded from the candidates in the parliamentary elections of 28 April 2019 a certificate of conformity with the Charter of Political Parties (hereinafter referred to as “certificate of conformity”) with the intention of illegally excluding political parties.

***

49. The Court emphasises that under Article 3(1) of the Protocol, the Court is mandated to interpret and apply the Charter and any other relevant instrument ratified by the Respondent State, and to determine the existence or otherwise of violations of human rights, including where such violations result from the Application of a national law. In this regard, the Court notes that international conventions take precedence over domestic laws.

50. In the instant case, the Applicant alleges violations of human rights, in particular the violation of the right to participate in the government of his country, resulting from the adoption and Application of certain laws which he has specified and which are allegedly not in conformity with international instruments ratified by the Respondent State.

51. The Court considers that it has the power to review whether such laws comply with international human rights instruments ratified by the Respondent State. Therefore, this objection of lack of material jurisdiction is dismissed

B. Other aspects of jurisdiction

52. Having found that there is nothing on the record to indicate that it does not have jurisdiction with respect to the other aspects of jurisdiction, the Court concludes that it has:

(i) Personal jurisdiction, in so far as the Respondent State is a party to the Charter, the Protocol and has deposited the Declaration. In this vein, the Court recalls its earlier position that the Respondent State's withdrawal of its Declaration on 25 March 2020 does not have effect on the instant Application, as the withdrawal was made after the Application was filed before the Court.[11]

(ii) Temporal jurisdiction, in so far as the alleged violations were committed after the entry into force with respect of the Respondent State of the human rights instruments referred to in paragraph 27 of this Judgment.

(iii) Territorial jurisdiction, in so far as the facts of the case and the alleged violations took place on the territory of the Respondent State.

53. Accordingly, the Court declares that it has jurisdiction to examine the instant Application.

VI. PRELIMINARY OBJECTIONS RELATING TO ADMISSIBILITY

54. The Respondent State raises a number of preliminary objections relating to the admissibility of this Application. They are based on (i) the Applicant's lack of standing as a victim, (ii) the abuse of the right to file an Application, (iii) lack of standing to lodge infringement proceedings and (iv) lack of interest.

[11]See paragraph 2 above.

55. The Court notes that even if these objections are not specifically grounded in the Protocol and the Rules, the Court is required to examine them.

i) Objection based on lack of victim status of the Applicant

56. The Respondent State submits that the Applicant does not claim to be a victim of human rights violations and that it cannot be otherwise, since there was no interference with his civil rights. Moreover, he is not affected by any administrative measures.

57. The Applicant requests the dismissal of this preliminary objection and submits that it is established that the Respondent State interfered with his civil and political rights. According to him, the refusal by the Minister of the Interior and Public Security (hereinafter referred to as the "Minister of the Interior") to issue a certificate of compliance to his political party attests to the failure by the Respondent State to comply with the order for provisional measures issued by the Court on 7 December 2018 in Application 013-2017 *Sebastien Ajavon v. Republic of Benin*.

***

58. The Court points out that neither the Charter, nor the Protocol, nor do the Rules require that the Applicant and the victim have to be the same.

59. This is a peculiarity of the African regional human rights system characterised by the objective nature of human rights litigation. Consequently, the Court dismisses the preliminary objection based on lack of victim's status.

ii) Objection based on the abuse of the right to file an Application

60. The Respondent State submits that in less than one month, the Applicant has taken a vexatious and abusive approach by filing nine Applications which cannot be of any interest to him because of their manifest disparities.

61. The Respondent State points out that this is a case of manifest abuse of the right to file an Application, and that this notion must be understood in its ordinary meaning as defined by the general theory of law, namely, the fact that the holder of the right has exercised it in a prejudicial manner, without regard for its ultimate purpose.

62. The Applicant, for his part, prays the Court to dismiss this claim and maintains that the proceedings indicated by the Respondent State do not concern the same violations and that, moreover, some of them were brought by third parties.

***

63. The Court notes that the Applicant has filed three (3), and not nine (9) Applications initiating proceedings.

64. The Court notes that an Application is said to be abusive if, among others, it is manifestly frivolous or if it can be discerned that an Applicant filed it in bad faith contrary to the general principles of law and the established procedures of judicial practice. In this regard, it should be noted that the mere fact that an Applicant files several Applications against the same Respondent State does not necessarily show a lack of good faith. More substantiation is required to establish the Applicant's abusive intention.

65. Therefore, the Court dismisses this objection.

iii) Objection based on lack of standing to lodge infringement proceedings

66. The Respondent State argues that by invoking the violation of obligations under the ECOWAS Protocol on Democracy, including those relating to electoral bodies, the Applicant is in fact lodging infringement proceedings under Article 10(a) of Additional Protocol A/SP.1/01/05 of 19 January 2005 amending Protocol A/P.1/7/91 on the ECOWAS Court of Justice.[12]

67. The Respondent State further argues that the Applicant does not have *locus standi* to submit such a request, hence the inadmissibility of the Application for lack of standing.

68. The Applicant, for his part, seeks dismissal of this preliminary objection on the ground that infringement proceedings are special proceedings before the ECOWAS Court of Justice. He stresses that each human rights court has its own protocol, and that the Protocol of the Court indicates that individuals can bring cases before it.

69. According to the Applicant, the question that arises is whether the ECOWAS Protocol on Democracy under which States are required to set up national independent and impartial election management bodies is an instrument for the protection of human rights within the meaning of Article 3(1) of the Protocol, a question which the Court has answered in the affirmative.

***

[12]This Article provides: "Access to the Court is open to the following: a) Member States, and unless otherwise provided in a Protocol, the Executive Secretary, where action is brought for failure by a Member state to fulfil an obligation;"

70. The Court notes that in the light of Article 10-a Additional Protocol relating to the ECOWAS Court of Justice,[13] lodging of infringement proceedings falls within the jurisdiction of that Court of Justice.

71. The Court further recalls that the ECOWAS Protocol on Democracy is a human rights instrument to the extent that it enunciates human rights for the benefit of individuals or groups of individuals and prescribes obligations on State Parties to ensure the fulfilment of those rights.[14] Consequently, the violation of the rights and obligations deriving from it can validly be invoked before the Court under Article 7 of the Protocol.

72. In any event, neither the lodging of infringement proceedings nor the lack of standing to do so can justify the inadmissibility of an Application brought before this Court. Consequently, the Court dismisses this preliminary issue.

iv) Objection based on lack of interest

73. The Respondent State contends that the Applicant fails to give reasons for his personal, current, direct and concrete interest, whereas the ECOWAS Court of Justice has held that *locus standi* is subject to the status of victim of human rights violation.

74. The Respondent State further asserts that the Applicant had articulated claims which could only be of benefit to political parties and did not prove that he had personally suffered human rights violations.

[13] Supplementary Protocol A/SP.1/05 of 19 January 2005 amending Protocol A/P.1/7/91 on the ECOWAS Court of Justice.
[14] *Actions pour la protection des droits de l'homme v. Côte d'Ivoire*, (merits and reparations) (18 November 2016), 1 AfCLR 668, §§ 57 - 65.

75. The Applicant requests the dismissal of this preliminary objection on the basis that the case files, particularly the Application initiating proceedings, clearly show that he alleges violation of a number of his fundamental rights.

***

76. The Court notes that, although human rights courts have a common mission to protect human rights, they do not share the same requirements, particularly with respect to questions of admissibility.

77. In the instant case, the Respondent State bases its preliminary objection on the requirement of victim status, a procedural expression of the interest to act, provided for in Article 10(d) of the Protocol of 2005 relating to the ECOWAS Court of Justice[15]. However, neither the Charter nor the Protocol, let alone the Rules, contain a similar provision. Consequently, the Court dismisses this preliminary objection.

VII. ADMISSIBILITY OF THE APPLICATION

78. Article 6(2) of the Protocol provides:

> The Court shall rule on the admissibility of cases taking into account the provisions of Article 56 of the Charter.

79. In addition, Rule 50 of the Rules provides:

> The Court shall ascertain the admissibility […] in accordance with Article 56 of the Charter, Article 6(2) of the Protocol and these Rules.

[15] Article 10 of Supplementary Protocol A / SP / 01.05 of 19 January 2005 to amend Protocol A / P1 / 7/91 provides: "Access to the Court is open to the following: […] Individuals on Application for relief for violation of their human rights".

80. Rule 50(2) of the Rules, which essentially restates Article 56 of the Charter, reads as follows:

> Applications filed before the Court shall comply with all the following conditions:
>
> a) Indicate their authors even if the latter request anonymity,
> b) Are compatible with the Constitutive Act of the African Union and with the Charter,
> c) Are not written in disparaging or insulting language directed against the State concerned and its institutions or the African Union,
> d) Are 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) Are submitted within a reasonable time from the date local remedies were exhausted or from the date the Commission is seized with the matter, and
> 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 Charter of the Organization of African Unity or the provisions of the Charter.

A. Conditions of admissibility in contention between the parties

81. The Respondent State raises objections of inadmissibility on the ground of non-exhaustion of local remedies and the fact that the Application was not submitted within a reasonable period of time with regard to the orders issued by the mayors of Parakou and Abomey – Calavi.

i) Objections based on the non-exhaustion of local remedies and the filing of the Application within an unreasonable time, related to the orders issued by the mayors of Parakou and Abomey - Calavi

82. The Respondent State raises the inadmissibility of the Application for non-exhaustion of local remedies, with respect to the orders issued by the mayors of Parakou[16] and Abomey Calavi[17] and which, for the Applicant, violate Articles 3 and 11 of the Charter. According to him, these orders are administrative acts that may be reversed by administrative courts.

83. The Applicant submits that this objection must be dismissed because the judicial remedies that should be exhausted must be available, effective and capable of resolving disputes within a reasonable time. He asserts that appeals relating to pre-electoral disputes ensuing from the legislative elections of 28 April 2019, when these orders were issued, are still being examined before the Administrative Chamber of the Cotonou Court of Appeal. This failure by the judiciary to deal with the appeals expeditiously is symptomatic of undue prolongation and ineffectiveness of local remedies.

84. In the alternative, the Applicant requests a joinder of this objection to the merits since the Court cannot rule on the effectiveness of local remedies without prejudging its position on the merits of the case as regards the alleged right to independence of the judiciary.

***

[16] This order prohibited public protests "considering the social climate (...) and for the sake of preserving peace".

[17] This decree reads as follows: "In order to prevent possible disturbances to public order, and in accordance with the radio press release dated in Abomey - Calavi 25 February 2019 prohibiting any public protest, I have the honour to notify you that the peaceful protest march you are planning to organize in Abomey - Calavi, on Friday 25 March 2019 has been banned.

85. Based on its case-law, 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.[18]

86. The Court adds that the local remedies to be exhausted are judicial remedies. They must be available, that is, they must be capable of being used by the Applicant without hindrance;[19] they must also be effective and sufficient, in the sense that they are ["capable of satisfying the complainant"] or of remedying the situation at issue.[20]

87. The Court underlines that the courts of first instance have jurisdiction to entertain litigation pertaining to the said acts pursuant to article 53[21] of Law No. 2001 - 37 of 27 August 2002[22], including by way of appeal for abuse of authority or by a full jurisdiction appeal.

88. Thus, with respect to the municipal orders applicable to Parakou and Abomey – Calavi, a local remedy is available. This remedy is also effective in that it allows for the annulment of the disputed acts.

89. In an attempt to justify his failure to bring proceedings before the relevant court, the Applicant invoked the abnormally lengthy delays of proceedings relating to pre-electoral appeals. In the Court's opinion, this allegation is futile, as the Application does not provide evidence for this allegation.

90. Thus, the local remedies were not exhausted with respect to the Orders issued by the Mayors of Parakou and Abomey - Calavi which took effect from 25 February

[18] *Diakite v. Republic of Mali,* (jurisdiction and admissibility) (28 September 2017) 2 AfCLR 118, § 41; *Lohé Issa Konaté v. Burkina Faso*, (merits) (5 December 2014), 1 AfCLR 314, § 41.
[19]*Lohé Issa Konaté v. Burkina Faso,* (merits) (5 December 2014), 1 AfCLR 314, § 96.
[20] *Ibid. Konaté v. Burkina Faso §* 108.
[21] Article 53 of Law No. 2001-37 of 27 August 2002 provides: "*In administrative matters, they (the courts of first instance) shall entertain, in the first instance, disputes relating to all acts emanating from the administrative authorities within their jurisdiction*".
[22] Law on the organisation of the judiciary in the Republic of Benin.

2019. Therefore, the Court rules that any allegation relating to the said Orders is inadmissible for non-exhaustion of local remedies.

91. In view of the foregoing, the Court considers that it becomes superfluous to rule on the objection of inadmissibility based on the alleged failure to file the Application within a reasonable time regarding those Orders.

B. Other conditions of admissibility

92. The Court notes that, in the present case, the parties are not challenging compliance with Rule 50(2)(a)(b)(c)(d)(f)(g) of the Rules.[23] However, the Court must examine whether these conditions have been met.

93. In the opinion of the Court, it is apparent from the records that the condition set out in Rule 50(2)(a) of the Rules has been satisfied, as the Applicant has clearly indicated his identity.

94. Moreover, the condition laid down in paragraph 2(b) of the same Rule has also been fulfilled, since the Application is in no way inconsistent with the Constitutive Act of the African Union, or with the Charter.

95. The Court further notes that the Application does not contain any abusive or insulting language with respect to the State concerned, and is thus consistent with Rule 50(2)(c) of the Rules.

96. As regards the condition laid down in paragraph 2(d) of the same Rule, the Court notes that it has not been established that the arguments of fact and law developed in the Application are based exclusively on information disseminated through the mass media.

[23] Formerly Rule 40 of the Rules of 2 June 2010.

97. Regarding the requirement of exhaustion of local remedies, provided under Rule 50(2)(e), the Court recalls that it was only raised in relation to the alleged violation of Articles 3 and 11 of the Charter as a result of the municipal orders applicable in Parakou and Abomey-Calavi. The objection raised by the Respondent State on this point was dismissed. The Court will therefore examine this condition regarding the other alleged violations. The Court recalls that the local remedies to be exhausted must be available, effective and sufficient.

98. With regard to the availability of remedies, the Court notes that under Articles 114[24] and 122[25] of the Constitution of the Respondent State, the Constitutional Court of the Respondent State determines the constitutionality of laws and guarantees fundamental human rights and public freedoms. It is the first and last resort in any proceedings pertaining to violation of human rights brought by any citizen in the Respondent State. Consequently, a local remedy exists and is available.

99. With regard to the effectiveness of the remedy the Court stresses that the existence of a remedy is not in itself sufficient to conclude that the remedies should have been exhausted. In fact, an Applicant is required to exhaust a remedy only to the extent that it is effective, efficient and is likely to succeed.[26]

100. The Court observes that the analysis of the usefulness of a remedy cannot be automatically applied, and is not absolute in nature.[27] In addition, the interpretation of the rule on the exhaustion of local remedies must realistically take into account

[24] Article 114 of the Constitution of Benin stipulates that: "The Constitutional Court shall be the highest court of the State in constitutional matters. It shall be the judge of the constitutionality of laws and it shall guarantee the fundamental rights of the human person and public freedoms (…)"
[25] *Under* Article 122 of the Constitution: ["*Any citizen may complain to the Constitutional Court about the constitutionality of laws, either directly or by raising before a court of law an objection of unconstitutionality with respect to a matter which concerns him*"]
[26] *The Beneficiaries of the late Norbert Zongo, Aboulaye Nikiema, Alias Ablasse, Ernest Zongo and Blaise Ilboudo and Mouvement burkinabé des droits de l'homme et des peuples v. Burkina Faso,* (merits) (28 March 2014), 1 AfCLR 219, § 68; *Ibid. Konaté v. Burkina Faso* (merits) 314, § 92 and 108.
[27] *Tanganyika Law Society, The Legal and Human Rights Centre and Reverend Christopher R. Mtikila v. Tanzania,* Judgment (merits) (14 June 2013) 1 AfCLR 34, § 82.1.

the legal and political context of the case and the Applicant's personal circumstances.[28]

101. Regarding the legal context, the Court notes that under Article 117 of the Benin Constitution[29], all laws are subject to constitutional review before promulgation at the request of the President of the Republic or any member of the National Assembly.[30]

102. The Court thus stresses that the Charter is an integral part of the Constitution of Benin.[31] It follows that constitutional review, which covers both the procedure followed for the adoption of the law as well as its content[32] is exercised in relation to the "*constitutional corpus [“bloc de constitutionnalité”] comprising the Constitution and the African Charter on Human and Peoples Rights*."[33] Through this procedure, the Constitutional Court of Benin is required to ascertain the compliance of the law with Human Rights instruments.

103. In the instant case, the Applicant alleges human rights violations which are based on laws that were subject to prior (*ex ante*) constitutional review.

104. The Court emphasises that in such a case, there is very little likelihood that any case submitted *ex post* relating to human rights violations based on the laws

---

[28] *Sébastien Germain Ajavon v. Republic of Benin,* ACtHPR, Application No. 013/2017, Judgment of 29 March 2019 (Merits), § 110; ECHR, Application No. 21893/93, *Akdivar and Others v. Turkey,* Judgment of 16 September 1996, § 50. See also ECHR Application No. 25803/94, *Selmouni v. France,* Judgment of 28 July 1999, § 74.

[29] See also Article 19 of Law No. 91-009 of 4 March 1991 relating to the Organic Law on the Constitutional Court as amended by the law of 31 May 2001.

[30] Article 121 of the Benin Constitution.

[31] Article 7 of the Constitution of Benin provides: "The rights and duties proclaimed and guaranteed by the African Charter on Human and Peoples' Rights adopted in 1981 by the Organization of African Unity and ratified by Benin on 20 January 1986 shall be an integral part of the (…) Constitution and the law"; See also Constitutional Court of Benin, Decision DCC No. 34-94 of 23 December 1994, 1994 Report, p. 159 et seq.; and Decision DCC No. 09-016 of 19 February 2009.

[32] Article 35 of the Rules of Procedure of the Constitutional Court provides, as part of the review of conformity with the Constitution, that: "The Constitutional Court shall review and rule on the full text of the law, both on its content and on the procedure followed for its adoption".

[33] High Council of the Republic (HCR) of Benin sitting as a Constitutional Court, Decision of 3 DC of 2 July 1991.

mentioned by the Applicant would succeed before the same Constitutional Court,[34] considering that the court has already decided on the constitutionality of those laws.

105. In any event, the Court had already ruled, in a matter between the same parties, that given the political context and the personal situation of the Applicant, the requirement to exhaust local remedies has to be waived because “the prospects of success of all the proceedings for reparation of the damages resulting from the alleged violations were negligible.”[35]

106. Thus, the Application cannot be ruled inadmissible for failure to exhaust local remedies due to the ineffectiveness of the available remedies.

107. With regard to the requirement of filing the Application within a reasonable time limit, provided under Rule 50(2)(f), the Court recalls that it had ruled on this issue in the matter concerning the Municipal Orders (*Arrêtés*) of Parakou and Abomey-Calavi.[36]

108. Concerning the other facts alleged in support of the Application, that is, those that are not related to these Municipal Orders, the Court notes that they are related to the legislative elections of 28 April 2019, to the Constitutional Court and to the constitutional revision of 7 November 2019.

109. The Court considers the date of the legislative elections, that is 28 April 2019, is the relevant date to compute the starting date of the period for its seizure. Between that date and that of the filing of the Application, that is, on 29 November 2019,

[34] Article 33 of the Rules of Procedure of the Constitutional Court provides: "Referral to the Constitutional Court before the enactment of a law shall lead to the suspension of the period for enactment". Article 36 of the said Rules of Procedure stipulates that: "Where the Court confirms compliance with the Constitution, the publication of its decision puts an end to the suspension of the enactment period”.
[35] *Sébastien Ajavon v. Republic of Benin*, ACHPR, Application No. 013/2017, Judgement of 29 March 2019 (merits), §116.
[36] § 91 of this Judgment.

seven (7) months passed. The Court considers this period to be reasonable. Accordingly, the condition set out in Rule 50 (2)(f) has been met.

110. Finally, pursuant to Rule 50(2)(g), the Court notes that nothing shows that this Application raises any matter previously settled by the Parties in accordance with the principles of the Charter of the United Nations, the Constitutive Act of the African Union or the provisions of the Charter.

111. Based on the foregoing, the Court finds the Application admissible.

VIII. MERITS

112. The Applicant alleges (A) human rights violations relating to or preceding the legislative elections of 28 April 2019, (B) human rights violations relating to the independence and impartiality of the courts, and (C) human rights violations in relation to the constitutional review process related to the adoption of Law No. 2019-40 of 7 November 2019 and subsequent laws.

A. Alleged violations relating to the legislative elections of 28 April 2019

i) Alleged violation of the right to freedom of opinion and expression

113. The Applicant maintains that Articles 551, 552 and 553 of Law No. 2018-20 of 20 April 2018 on the Digital Code of Benin violates Article 19(3) of ICCPR which guarantees the right to freedom of opinion and expression.

114. To support this, he argues that the punishment for freedom of expression offences is disproportionate and stifles public debate on matters of general interest. He underscores that these provisions do not meet the requirement of the "law" and that the purpose of such penalty is neither legitimate, necessary, nor proportional.

115. For its part, the Respondent State considers that there is no human rights violation in this case. The Respondent State maintains that the provisions that are being challenged are in conformity with Article 27 of the Charter.

116. The Respondent State notes that in the instant case the purpose of criminalising freedom of expression offences is not to restrict freedoms but to regulate them in the event of an offence.

***

117. Article 9 (2) of the Charter provides that:

> Every individual shall have the right to express and disseminate his opinions within the law[(s) and regulations.

118. In addition, Article 19 of the ICCPR provides that “everyone shall have the right to hold opinions without interference” and that “everyone shall have the right to freedom of expression” subject to certain restrictions provided by law and which are necessary “for respect of the rights or reputations of others, for the protection of national security or of public order, or of public health or morals”.

119. It follows from these provisions that on the one hand, freedom of opinion and freedom of expression, the foundation of any democratic society, are closely linked, freedom of expression being the vehicle for the exchange and development of opinions.[37] The provisions also show that freedom of expression is not absolute[38] since it must be exercised "within the framework of laws". It may, therefore, be subject to certain restrictions provided for by law, which must, moreover, have a legitimate purpose, be necessary and proportional. These

[37] UN Human Rights Committee, General Comment No. 34, § 2.
[38] *Ingabire Victoire Umuhoza v. Rwanda,* (merits) (24 November 2017), 2 AfCLR 165, §132; *Ibid. Konaté v. Burkina Faso*, (Merits) (5 December 2014), 1 AfCLR 314, § 145 to 166.

elements must be assessed on a case-by-case basis and within the context of a democratic society.[39]

120. The issue is to determine whether the restrictions in question are prescribed by law and, if so, whether they are necessary, legitimate and proportional.

121. In the instant case, Articles 551, 552 and 553 of the Digital Code punish the offences of racially motivated and xenophobic insults using a computer system and that of incitement to hatred and violence on such grounds as race, colour, national or ethnic origin, or religion.

122. Firstly, the Court notes that the restrictions are provided for by law, within the meaning of international human rights standards, which actually require that national laws that restrict freedom of expression be clear, predictable and consistent with the purpose of the Charter and international human rights instruments. They must, moreover, be of general Application[40], which is the case in this matter.

123. Secondly, with regard to the legitimacy of the purpose of the restriction, the Court notes that the general limitation clause, which is Article 27(2) of the Charter, makes mention of "regard to the rights of others, collective security, morality and common interest". The Court has previously concluded that national security, public order and public morals are legitimate restrictions.[41]

124. The Court is of the opinion that the acts that have been criminalised fall under the limitations set forth in Article 20 of the ICCPR and thus constitute incitement to discrimination prohibited by Article 7 of the UDHR.[42]

---

[39] *Ibid. Konaté v. Burkina Faso*, (merits) (5 December 2014), 1 AfCLR 314, § 145.
[40] *Ibid. Umuhoza v. Rwanda*, § 135.
[41] *Op. cit*. *Konaté v. Burkina Faso*, § 134 and 135.
[42] This article provides that: "(…) All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination".

125. In light of the foregoing, the Court concludes that the restriction imposed pursues a legitimate purpose since it seeks to combat any form of incitement to hatred or discrimination.

126. Lastly, the Court notes with regard to the criteria of necessity and proportionality, that in the instant case, the forms of expression that have been criminalised, are those which incite hatred, racism, xenophobia, discrimination and violence, which are all prohibited under international human rights law.

127. In view of the harmful consequences such rhetoric can engender, the Court finds that the penalties are not disproportionate given their deterrent function.

128. Consequently, based on the foregoing, the Court concludes that the Respondent State has not violated the right to freedom of opinion and expression protected by Article 9(2) of the Charter.

ii) On the alleged violation of the right to strike

129. The Applicant states that Articles 2[43], 14[44] and 17[45] of Law No. 2018-34 of 5 October 2018 to amend and supplement Law No. 2001-09 of 21 June 2002 on the

[43] This article reads thus:
"The provisions of this law shall apply to civilian personnel of the State and local governments as well as to staff of public, semi-public or private establishments, with the exception of workers who are explicitly prohibited by law to exercise the right to strike.
Due to the peculiar nature of their missions, military personnel, paramilitary personnel (police, customs, forestry and wildlife, etc.), health personnel shall not exercise the right to strike. Sympathy strike is prohibited."

[44] This article provides that:
"public service personnel and staff of essential public, semi-public or private establishments, who are not prohibited by law to exercise the right to strike and whose total cessation of work could seriously jeopardize the peace, security, justice, and health of the population or the public finances of the State, are required to provide minimum services in the event of a strike.
Such workers include judges, staff of judicial and penitentiary services and the State employees working in courts, the staff of power supply, water supply, revenue agencies, air and maritime transport and telecommunications services, with the exception of private radio and television".

[45] This article provides that "Civil servants and workers of essential public, semi-public or private establishments whose cessation of work could seriously jeopardize the peace, security, justice, and health of the population or the public finances of the State may be requisitioned in the event of a strike".

exercise of the right to strike violate the right to strike, more specifically Article 15 of the Charter and Convention No. 87 of the International Labour Organization (ILO). He adds that workers who are deprived of the right to strike should be awarded compensatory guarantees.

130. In response, the Respondent State maintains that the law being challenged has simply reorganised the procedures for initiating strike actions in accordance with its international commitments. The Respondent State explains that it is the wanton misuse of the said right that led the Government to make some adjustments, and that the major innovation on the right to strike has to do with the exceptions and derogations granted some professional groups which do not have the right to strike.

131. Regarding compensatory guarantees, the Respondent State points out that the ILO did not dictate their content but simply suggested a few. The Respondent State adds that in any event such guarantees are provided for in Articles 25[46], 33[47] to 42[48] of Law No. 2015-20 of 19 June 2015 to lay down special regulations governing the personnel of public security forces and the like, as well as Articles 18 and 19 of the law governing the judiciary.

***

132. The Court notes that the right to strike is not explicitly provided for in the Charter. It is, however, a corollary of the right to work provided for in Article 15 of the Charter. The right to strike is explicitly protected by Article 8(1)(d) and (2) of the ICESCR which provides that:

> 1. States Parties to the present Covenant undertake to ensure …

[46] This article stipulates that: "Civil servants of the public security forces and the like shall be required to perform their duties in all circumstances and shall not exercise the right to strike".
[47] This article stipulates that: "Civil servants of the public security forces and the like may join groups formed to push for professional demands or social and cultural actions".
[48] This article stipulates that: "Civil servants of the public security forces and the like who die in the line of duty shall be admitted exceptionally and posthumously into the National Order of Benin".

d) The right to strike, provided that it is exercised in conformity with the laws of the particular country

2. This article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces or of the police or of the administration of the State.

133. It follows from this provision that this right is not absolute since it must be exercised "in accordance with the laws of each country" and may be subject "to legal restrictions [...]".

134. In the instant case, the Court notes that by virtue of Article 31 of its Constitution[49], the Respondent State has recognised the right to strike, a collective right *par excellence* which is exercised through trade union action.

135. The Court notes that the fact that the right to strike is not absolute must be combined with the principle of non-regressive measures, founded on Article 5 of both the ICCPR and the ICESR and which, moreover, and permeates all of International Human Rights Law. This article provides that:

> There shall be no restriction upon or derogation from any of the fundamental human rights recognized or existing in any State Party to the present Covenant [ICCPR and ICESCR] pursuant to law, conventions, regulations or custom on the pretext that the present Covenant [ICCPR and ICESCR] does not recognize such rights or that it recognizes them to a lesser extent.

136. The corollary of the principle of non-regressive measures is for States Parties to the ICESR to act to "progressively ensure the full realization of rights."[50] The corollary of the principle of non-regression is the idea that States Parties to the Covenant must take steps with a view to "achieving progressively the full

[49] This article stipulates that: “The State shall recognize the right to strike. Every worker may defend, under the conditions provided for by law, his rights and interests, either individually, collectively or through trade union action. The right to strike shall be exercised under the conditions laid down by law".
[50]Article 2(1) of the ICESCR.

realization of the rights". The concept of progressive realisation implies that full realisation of rights will generally not be achieved in a short period of time but "should not be misinterpreted as depriving the obligation of all meaningful content."[51]

137. The Court considers that once a State Party recognises a basic right, any regressive measure, that is to say "any measure which directly or indirectly marks a step backwards with regard to the rights recognized in the Covenant"[52] is a violation of the ICESR itself.

138. The Court notes that once it has recognised the right to strike, the Respondent State can only provide a framework for its realisation. Therefore, any act aimed at prohibiting or suppressing it is a breach of the principle of non-regression and constitutes a violation of Article 8 of the ICESCR.

139. Moreover, the Constitutional Court of the Respondent State, guarantor of the *constitutional corpus* [“*bloc de constitutionnalité*”], has in several instances[53] recalled that the prohibition of the right to strike in Article 31 of its Constitution is at variance with relevant instruments. In particular, the Constitutional Court underscored that:

---

[51] Committee on Economic, Social and Cultural Rights, General Comment No. 3, 1990, §9.
[52] Economic, Social and Cultural rights, Handbook for National Human Rights Institutions, United Nations, New York and Geneva, 2004.
[53] Constitutional Court of Benin, Decision DCC No. 06-034 of 6 April 2006, Decision DCC No. 17-087 of 20 April 2017, Decision DCC No. 2018-01 of 18 January 2018, Decision DCC No. 13-099 of 29 August 2013, DCC No. 18-003 of 22 January 2018. The only decision that runs contrary to this consistent case-law is Decision DCC No. 18-141 of 28 June 2018 in *Nathaniel BA v. President of the Republic*, delivered following a petition for “interpretation and review” of Decisions DCC Nos. 18-001 of 18 January 2018, 18-003 of 22 January 2018 (in which the Constitutional Court declared that Article 20 *in fine* of Law No. 2018-01 to lay down regulations governing the Judiciary, which prohibits the right to strike, is contrary to the Constitution) and DCC No. 18-004 of 23 January 2018 (in which the Constitutional Court declared that Article 71 of Law No. 2017-42 to lay down regulations governing the personnel of the Republican Police is contrary to the Constitution). However, on the one hand, an interpretative decision cannot be contrary to the decision being interpreted and, on the other hand, the decisions of the Constitutional Court are not subject to any appeal (Articles 124 of the Constitution and 34 of Organic Law No. 91-009 of 4 March 1991 on the organic law of the Constitutional Court, as amended by the law of 31 May 2001) and therefore cannot be subject to review. It is therefore clear that the Constitutional Court of Benin overstepped its prerogatives.

> Article 8(2) of the International Covenant on Economic, Social and Cultural Rights, which is part of the *constitutional corpus* ["*bloc de constitutionnalité*"], stipulates that the constitutional guarantee of the right to strike "does not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces or of the police or of the administration of the State". (...) Only the constituent body can prohibit trade union action and the right to strike, the lawmaker being empowered only to provide a framework for the exercise of such rights.

140. However, the Respondent State has prohibited the exercise of the right to strike, through several laws, in particular Law No. 2018-34 of 5 October 2018 to amend and supplement Law No. 2001-09 of 21 June 2001 on the exercise of the right to strike[54], Law No. 2017-43 of 2 July 2018 amending and supplementing Law No. 2015-18 of 13 July 2017 which lays down general rules and regulations governing the public service[55], Law No. 2017-42 of 28 December 2017 laying down rules and regulations governing the republican police personnel.[56]

141. In doing so, the Respondent State deprived these workers of the exercise of a right recognised to them, thereby lowering the level of human rights protection they are entitled to; which is a breach of the principle of non-regression.

142. Accordingly, the Court concludes that by prohibiting the right to strike, the Respondent State has violated Article 8(1)(d)(2) of the ICESCR.

---

[54] Article 2 of this law provides: "The provisions of this law apply to civilian staff of the State and local authorities as well as to staff of public, semi - public or private establishments, with the exception of officials to whom the law expressly prohibits the exercise of the right to strike.
Due to the specific nature of their missions, military personnel, paramilitary personnel (police, customs, water, forests and hunting, etc.), health service personnel cannot exercise the right to strike."

[55] Article 50, paragraph 5, provides: "Are excluded from the right to strike, the military, officials of the public security forces and similar organisations (gendarmes, police officers, customs officers, agents of water-forests and hunting, fire-fighters); health service personnel; justice personnel; the staff of prison administration services; the staff of the prison administration services; transmission staff operating in the field of state safety and security

[56] Article 71 provides: "Republican police officials are required to perform their duties in all circumstances and may not exercise the right to strike".

iii) Alleged violation of the right to freedom of assembly

143. The Applicant maintains that the Respondent State has violated the right to freedom of assembly through Law No. 2018-016 of 2 July 2018 on the Penal Code, in particular in its Article 237(1)[57] and Article 240(1).[58]

144. With regard to Article 237(1) of the said Penal Code, the Applicant maintains that the ban on assembly results from an administrative decision whereas individual freedoms can only be curtailed by a judge. With regard to Article 240(1) of the Penal Code, the Applicant underscores that the organisers of a public assembly or their supporters should not be punished for acts committed by other people.

145. In response, the Respondent State maintains that in this case, the right to freedom of assembly has not been violated, contending that Article 237(1) of the Penal Code does not prohibit public demonstrations but rather sanctions those which are held, despite a ban issued due to the risks they pose. According to the Respondent State, the freedom to demonstrate has to be exercised in a manner compatible with the protection of public order.

146. The Respondent State stresses that Article 240(1) of the Penal Code does not limit the right to public protests and that it is necessary to make a distinction between organising a protest in a public place and provoking the start of a protest without due observance of the relevant legal framework.

[57] This article states: "Any unarmed gathering on a public road (...) that may disturb public peace shall be banned."

[58] This article provides: "Any direct provocation to start an unarmed gathering, either by a speech made in public, or by written or printed material displayed or distributed, shall be punishable with imprisonment for one (1) year if it was adhered to and, otherwise, with imprisonment for two (2) months to six (6) months and a fine of one hundred thousand (100,000) CFA francs to two hundred and fifty thousand (250,000) CFA francs or only one of such penalties."

147. The Respondent State notes that the Penal Code does not restrict any public freedom but lays down penalties which courts may apply to persons who decide not to observe the rules necessary to protect the public order.

***

148. The Court notes that Article 11 of the Charter provides:

> Every individual shall have the right to assemble freely with others. The exercise of this right shall be subject only to necessary restrictions provided for by law [and regulation] in particular those enacted in the interest of national security, the safety, health, ethics and rights and freedoms of others.

149. It follows from this provision that although the right to freedom of assembly is a fundamental right, it is not an absolute right since it may be subject to certain restrictions, especially in the interests of national security. These limitations must be prescribed by law. They must be legitimate and necessary. They must, moreover, be proportional to the intended objective.[59]

150. The Court notes that in the present case that the limitation of the right to freedom of assembly is provided for by law. To the extent that the limitations appear to be a preventive ban, this does not in itself infringe the right to freedom of assembly.

151. The Court further notes that the right to freedom of assembly must be exercised in a manner compatible with the preservation of public order and national security. Such preservation justifies the need for reasonable and proportionate sanctions for violations. Lastly, it is not demonstrated that that these limitations on the right to freedom of assembly are, in the present case, disproportionate.

[59] *Lohé Issa Konaté v. Burkina Faso*, (merits) (5 December 2014), 1 AfCLR, 314, §§ 125 – 138.

152. In light of the foregoing, the Court holds that the Respondent State did not violate the right to freedom of assembly, protected by Article 11 of the Charter.

iv) Alleged violation of the right to liberty and security

153. The Applicant submits that the arrest of spontaneous protesters is unjustified. He stresses that the non-arbitrary nature of detention is simply about determining whether such detention is based on a determination of guilt.

154. In response, the Respondent State notes that the Applicant fails to specify which arrests he is talking about, neither does he identify the persons arrested.

***

155. The Court emphasises that the right to liberty and security is guaranteed by Article 6 of the Charter as follows:

> Every individual shall have the right to liberty and to the security of his person. No one may be deprived of his freedom except for reasons and conditions previously laid down by law. In particular, no one may be arbitrarily arrested or detained.

156. The Court notes that although the Applicant alleged the violation of the right to liberty and security, he does not adduce any specific fact which would enable the Court to examine it. Indeed, he simply mentions the arrests without providing any further details. In such a case, the Court cannot establish a violation of human rights.

157. Consequently, the Court finds that the Respondent State has not violated the right to liberty and security protected under Article 6 of the Charter.

v) Alleged violation of the right to life, the right not to be subjected to torture and the right to the respect of the dignity inherent in a human being

158. The Applicant maintains that the Respondent State violated the right to life because on 1 May 2019, in Kilibo (Cadjèhoun) and on 2 May 2019 in Tchaourou (Savé) and in Banté, the army fired live rounds at protesters, killing dozens.

159. The Applicant adds that it is established that two unidentified people went to hospitals to collect the medical records of the victims and prevent postoperative follow-up. Yet, it is the duty of the State to take measures to stop the continuing nature of these alleged acts.

160. The Respondent State did not respond to this point.

***

161. The Court stresses that Article 4 of the Charter provides that:

> Human beings are inviolable. Every human being shall be entitled to respect for his life and the [physical and moral] integrity of his person. No one may be arbitrarily deprived of this right.

162. This provision highlights the principle of the inviolability of the human person which encompasses the right to life "an inalienable attribute of the human person"[60] and the basis of the other rights and freedoms protected by the Charter[61].

163. The Court has consistently held that:

> Unlike other human rights instruments, the Charter establishes a relationship between the right to life and the inviolability and integrity of the

[60] ECtHR, *Streletz Kessler and Krenz*, Judgment of 22 March 2001, § 94.
[61] *African Commission on Human and Peoples' Rights v. Kenya* (merits) (26 May 2017), 2 AfCLR 9, § 152.

human person (…) This wording reflects the indispensable correlation existing between these two rights.[62.]

164. As for Article 5 of the Charter, it reads as follows:

> Every individual shall have the right to the respect of the dignity inherent in a human being and to the recognition of his legal status. All forms of exploitation and degradation of man particularly (…) physical or moral torture and cruel, inhuman or degrading punishment and treatment shall be prohibited.

165. The Court underscores that these provisions enshrine the respect for human dignity, a corollary of the absolute prohibition of torture and of any cruel, inhuman or degrading treatment which may be in several forms.[63]

166. The Court notes that Articles 4 and 5 of the Charter are inextricably related and protect the rights relating to the integrity of human beings, the purpose of which is to protect his life, integrity and dignity. They enshrine the "*protection of the principle of life*"[64].

167. Furthermore, the Court notes that it has the latitude to use any reliable source of evidence to establish the veracity of the allegations of the parties. Thus, the "Court may, of its own accord (…) obtain any evidence which in its opinion may provide clarification of the facts of a case"[65].

168. The Court considers, just like other international jurisdictions, notably the International Court of Justice (hereinafter referred to as the "ICJ") and the ECtHR,

---

[62]*Ibid.* ACHPR v. Kenya, § 152;
[63]*Armand Guehi v. United Republic of Tanzania*, (merits and reparations) (7 December 2018), 2 AfCLR 477, § 132.
[64]ACHPR, *Noah Kazingachire, John Chitsenga, Elias Chemvura and Batanai Hadzisi v. Zimbabwe*, Decision of 2 May 2012, §122.
[65] Rule 45 of the Rules of 2 June 2010, which is the current Rule 55 of the Rules of 1 September 2020;

that the pluralism of probative sources, deemed “reliable and objective”, includes data “obtained from United Nations agencies”[66] and extends to “facts of common knowledge”[67].

169. In the instant case, the Court recalls that the facts alleged and not disputed by the Respondent State concern the violence that erupted after the legislative elections of 28 April 2019. In this regard, the Court notes that the issue of the said acts of violence came under review on the occasion of the review of the Respondent State’s third periodic report before the United Nations Committee against Torture[68] on 2 and 3 May 2019.

170. More specifically, it was revealed that after the proclamation of the results of the legislative elections, the police used excessive force, including firing live ammunition against hundreds of protesters. The Committee made it "a matter of top priority" by giving the Respondent State a period of one year, to *inter alia*, open investigations.[69]

171. These facts relating to violation of the right to life; torture; cruel, inhuman and degrading treatment, which featured in releases issued by the United Nations Committee against Torture and the statements of one of the Committee experts are accessible to all[70] and are, so to speak, in the public domain.

172. In any case, the fact that Law No. 2019 - 39 of 7 November 2019 was passed to grant amnesty for crimes, misdemeanours, and felonies committed in the context

[66] ECtHR, *Rahimi v. Greece*, Judgement of 5 April 2011, § 65.
[67] ICJ, *Military and paramilitary activities in Nicaragua and against the latter, (Nicaragua v. United States)*, Judgements of 27 June 1986, Rec. 1986, pp 39 – 44, §§ 59 – 73; IACHR, *Velasquez Rodriguez v. Honduras*, Judgment of 29 July 1998, merits, series C No. 4, § 146 ; IACHR *Espinoza Gonzales v. Peru*, Judgment of 20 November 2014, Series C, No. 289, § 41 *et seq*.
[68] The Committee against Torture is the body responsible for monitoring the Convention against torture and other cruel, inhuman or degrading punishments or treatment.
[69] UN News, “Bénin: des experts de l'ONU s’inquiètent de la répression post-électorale” (17 May 2019) available at https://news.un.org/fr/story/2019/05/1043671.
[70] *Ibid*.

of the legislative elections, attests to the fact that these violations were truly committed in May 2019.

173. Therefore, it is established that the right to life, the right not to be subjected to torture and the right to the respect of the dignity inherent in a human being were violated, protected by Articles 4 and 5 of the Charter.

174. In view of the foregoing, the Court holds that the Respondent State has violated the right to life, the right not to be subjected to torture and the right to the respect of the dignity inherent in a human being.

vi) Alleged violation of the right to have one's cause heard

175. The Court notes that the Applicant raises questions relating to the impartiality of the Constitutional Court of the Respondent State.

176. The Court notes that there is a close link between this alleged violation and the alleged violation relating to duty to guarantee the independence of the courts, protected by Article 26 of the Charter. Therefore, it is more appropriate to handle these questions together in section (B) of this Judgment.

vii) Alleged violation of the right to freedom of association

177. The Applicant alleges that Articles 16[71] and 48[72] of the Charter of Political Parties violate the right to freedom of association that is protected under Article 10(1) of the Charter. According to him, the Respondent State claims that the abovementioned Article 16 is intended to prevent the creation and participation in

[71] This Article provides that: "The number of founding members of a political party must not be less than fifteen (15) per municipality".
[72] This Article provides that: "Where a political party violates the provisions of this law, the Minister in charge of the Interior may report the facts to the Public Prosecutor to seek the suspension or dissolution of the political party concerned. To this end, the public prosecutor shall, in urgency procedure, refer the matter to the competent court, which shall decide without delay."

elections of regional parties, which constitute a threat to the country's national unity. However, the Applicant adds that no such threat has been demonstrated.

178. In addition, pursuant to the aforementioned Article 48, the Minister of the Interior is empowered, where a political party violates the provisions of the Charter of Political Parties, to report the facts to the Public Prosecutor who shall refer the matter to the competent court, in an urgent procedure, to seek the suspension or dissolution of the political party concerned. However, according to him, a political party cannot be dissolved for just any kind of violation.

179. In response, the Respondent State maintains that the aforementioned Article 16 does not conflict with any treaty provision since it helps to give political parties a national base given that it had decided to put an end to the micro-party system.

180. The Respondent State further notes that Article 48 of the said law in no way infringes the freedom of association which is the possibility to form or join a group for an extended period. It is the right to form, join or refuse to join an association. For the Respondent State, possible sanctions are left to the sovereign appreciation of the judiciary.

***

181. The Court notes that Article 10 of the Charter provides that:

> 1. Every individual shall have the right to free association provided that he abides by the law.
> 2. Subject to the obligation of solidarity provided for in Article 29 no one may be compelled to join an association.

182. The Court further observes that the relevant provision is Article 29(4) of the Charter which requires individuals "to preserve and strengthen social and national solidarity [...]."

183. The Court considers that this Article must be read together with the general limitation clause of the Charter, that is Article 27(2), according to which "[t]he rights and freedoms of each individual shall be exercised with due regard to the rights of others, collective security, morality and common interest."

184. The Court further notes, as it has already held in the case of *Reverend Christopher Mtikila et al. v. Tanzania*, that: "[t]his provision means that State Parties to the Charter are allowed some measure of discretion [to restrict] the freedom of association in the interest of collective security, morality, common interest and the rights and freedoms of others."[73]

185. In view of the foregoing, the Court is not convinced that the requirement relating to the number of founding members to constitute a political party, corroborated by the social necessities invoked by the Respondent State, is contrary to the requirements of Articles 27(2) and 29(4) of the Charter.

186. Accordingly, the Court finds that the Respondent State has not violated the right to freedom of association guaranteed under Article 10 of the Charter.

187. Furthermore, the Court finds that the opportunity granted to the Minister of the Interior to report to the Public Prosecutor any act that is inconsistent with the Charter of Political Parties to seek the dissolution of a political party, does not, in itself, constitute a violation of the right to freedom of association.

188. Although it is not prohibited, the dissolution of a political party should be the exception and be based on reasonable and objective grounds. Indeed, it is necessary to establish the existence of a real threat to national security and

[73] *Tanganyika Law Society, The Legal and Human Rights Centre and Reverend Christopher R. Mtikila v. Tanzania,* Judgment (merits) (14 June 2013) 1 AfCLR 34, § 112.

democratic order which other measures could not stop.[74] In any case, it will be up to a court of law, and not the Minister of the Interior, to assess the gravity of the breach of the law and draw conclusions once a matter has been referred to it by the Public Prosecutor.

189. Consequently, the Respondent State has not violated the right to the freedom of association, protected under Article 10 of the Charter, by giving the Minister of the Interior the mere opportunity to report to the Public Prosecutor any act which could constitute an infringement of the Charter of Political Parties.

viii) Alleged violation of the right to freedom of association, right to free participation in the government of one's country and the right to non-discrimination, in connection with the provisions of Law No. 2018-31 of 9 October 2018 on the Electoral Code

190. The Applicant alleges that through provisions of the 2018 electoral code, the Respondent State has violated the right to the freedom of association, the right to participate freely in the government of his country and the right to non - discrimination.

191. He argues that the ban on political alliances for the purpose of nominating candidates violates the right to freedom of association. Likewise, the ban on independent candidatures is contrary to both the right to freedom of association, the right to non-discrimination and the right to participate freely in the government of one's country.

192. The Applicant adds that the last cited right has also been violated due the fact that certain eligibility conditions provided for by the Electoral Code need to be met,

[74] UN Human Rights Committee, Jeong- Eun Lee v. Republic of Korea, conclusions of 20 July 2005, Communication No. 1119/2002, §§7.2; 7.3; ECtHR, Case *Vona v. Hungary*, Application No. 35943/10, Judgement (merits) of 9 July 2013, §§ 57 – 58.

these are: a tax clearance, a bond, age requirement, residence requirement of one year for native Beninese and ten (10) years for naturalised persons.

193. For its part, the Respondent State notes that nothing in the 2018 Electoral Code compels a candidate to associate or not to associate.

194. The Respondent State maintains the Applicant does not demonstrate how Articles 44 al. 2, 46, 233, 242 al. 4, 249 al. 1, 269, 272 al. 1 of the Electoral Code violates several of his rights. It asserts that the provisions in question do not limit the human rights concerned but merely organises the modalities for their exercise.

***

195. The Court notes that the articles in dispute are the following: 44 al. 2[75], 46 paragraph 1[76], 233[77], 242 al. 4[78], 249 al. 1[79], 269[80], 272 al. 1[81] of the electoral code of 2018.

[75] Article 44 paragraph 2 states: "electoral alliances are not authorized to present lists of candidates"
[76] Article 46 states: "The declaration of candidacy must include the surname, first names, profession, date and place of birth and full address of the candidate (s). It must be accompanied by: a receipt for payment to the Public Treasury, the deposit provided for the election concerned, a certificate of nationality, a bulletin n ° 3 of the criminal record dated less than three (3) months, an extract of birth certificate or any document in lieu thereof, a residence certificate, a tax discharge from the last three (3) years preceding the year of the election attesting that the candidate is up to date with the payment of his taxes "
[77] Article 233 states: "The amount of the deposit to be paid by the presidential candidate is 10% of the maximum amount authorized for the electoral campaign"
[78] Article 242 paragraph 4 provides: "Only the lists having received at least 10% of the valid votes cast nationally are allocated seats, without the number of eligible lists being less than four (04). However, if the number of lists in competition is less than four (04), all lists are eligible for the allocation of seats "
[79] Article 249 paragraph 1 provides: "No one may be a candidate unless he is at least twenty-five (25) years old in the year of the election, if Beninese by birth, he has not been domiciled for a (01) year at least, in the Republic of Benin, if, a naturalized Beninese foreigner, he is not domiciled in the Republic of Benin and has lived there continuously for at least ten (10) years. "
[80] Article 269 states: "The declaration (of candidacy for legislative elections) must mention: the name of the party, the name, first names, profession, domicile, date and place of birth of the candidates; the colour, emblem, sign, logo that the party chooses for printing ballots "
[81] Article 272 states: "The amount of the deposit to be paid per incumbent candidate in the legislative elections is 10% of the maximum amount authorized for the electoral campaign"

196. The Court will examine both the alleged violations in connection with Articles 46, 249(1) and 269(1) of the electoral code of 2018 as well as those in connection with the other provisions which lay down more general conditions of eligibility.

197. The Court also notes that it will examine the alleged violations of these electoral rights in light of the principles according to which the right to stand for election is "inherent in the concept of a truly democratic regime"[82] and that any restriction on these rights must be justified, that is, it must be necessary, legitimate and proportionate.[83]

viii (a) On the alleged violations in connection with articles 44(2), 249(1) and 269(1) of the 2018 electoral code

viii a) i. Right to freedom of Association

198. The Court notes that Article 10 of the Charter provides:

1. Every individual shall have the right to free association provided that he abides by the law.
2. Subject to the obligation of solidarity provided for in Article 29, no one may be compelled to join an association.

199. The Court recalls that, in accordance with its case-law

> [F]reedom of association is negated if an individual is forced to associate with others […] freedom of association implies freedom to associate and freedom not to associate.[84]

200. The Court notes that the contested provisions are articles 44 (2) of the Electoral Code under the terms of which “electoral alliances are not authorized to present

[82] ECtHR, *Podkolzina v. Latvia*, Application n°46726/99, Judgment of 09 April 2002, § 35.
[83] *Tanganyika Law Society, The Legal and Human Rights Centre and Reverend Christopher R. Mtikila v. Tanzania,* Judgment (merits) (14 June 2013) 1 AfCLR 34 § 107.1 and 107.2.
[84] Idem § 113.

lists of candidates" and article 269 of the same code which requires that the declaration of candidacy must mention the name of the party to which the candidate belongs.

201. The Court notes that the first of these provisions prohibit electoral alliances with a view to the submission of candidacy and prohibits citizens from associating with one another, while the second provision obliges any individual who wishes to apply to be a member of a political party to associate with other citizens.

202. The Court emphasizes that the Respondent State has given no justification for these restrictions other than to argue that the provisions in question do not limit the human rights concerned but merely organize the modalities for their exercise.

203. The Court considers that this simple assertion is not sufficient, and the limitations imposed are not justified. The Court therefore holds that the Respondent State has violated the right to freedom of association, protected under Article 10 of the Charter.

viii a) ii. Right to participate freely in the government of one's country

204. The Court notes that Article 13 (1) of the Charter provides:

> Every citizen shall have the right to participate freely in the government of his country, either directly or through freely chosen representatives in accordance with the provisions of the law.

205. The Court recalls that article 44(2) of the electoral code prohibits electoral alliances, while article 269(1) of the same code obliges any candidate to be a member of a political party, which constitutes a ban on independent candidates.

206. The Court emphasises, in accordance with its jurisprudence,[85] that making membership of a political party a requirement for standing as a candidate in presidential, legislative or local elections, and therefore prohibiting independent candidates, amounts to a violation of the right to participate freely in the government of one's country. Likewise, prohibiting electoral alliances with a view to running a candidacy violates this right.

207. The Court notes General Comment No. 25 of the UN Human Rights Committee on the right to participate in the conduct of public affairs, the right to vote and the right of access, under general conditions of equality, to public functions which provides in paragraph 17 that:

> The right of persons to stand for election should not be limited unreasonably by requiring candidates to be members of parties or of specific parties. If a candidate is required to have a minimum number of supporters for nomination this requirement should be reasonable and not act as a barrier to candidacy. Without prejudice to paragraph (1) of article 5 of the Covenant, political opinion may not be used as a ground to deprive any person of the right to stand for election.

208. The Court further notes that the Respondent State has given no justification for these limitations. Therefore, the Court considers that by prohibiting independent candidates as well as electoral alliances, the Respondent State has violated the right to participate freely in the government of one's country, protected under Article 13 of the Charter.

209. The Court notes, moreover, that within the meaning of Article 249(1) of the Electoral Code of 2018, any candidate for legislative elections must, if he is of Beninese origin, reside in the territory of the Respondent State one (1) year before the elections. If he is a naturalised Beninese, this period is increased to ten (10) uninterrupted years.

[85] Ibid. § 111.

210. The Court recognises that the distinction between resident and non-resident is based on the presumption that the non-resident citizen is concerned less directly or less continuously with the daily problems of his country or is less familiar with them.[86]

211. The Court emphasises, however, that this is only a simple presumption, especially since in the African context, many exiled opponents due to justified fears, continue, even from afar, to be interested in the situation in their countries of origin and were able, upon their return from exile, to stand for election.

212. The Court considers, for this reason, that in assessing the legitimate, necessary and proportional nature of such a requirement, it cannot disregard the reasons for which the person who wishes to be a candidate has not resided in the territory of the Respondent State within the prescribed period. A distinction must be made between those who voluntarily left their country and those who did so under duress.

213. More specifically, the Court considers that such a condition cannot be applied to those who are forced to leave the territory of their country. In this regard, the Court notes that in 2018 the Applicant was forced to leave the territory of the Respondent State to go into exile in France because of fears of human rights violations against him.

214. No one can dispute that the reasons for such a fear have been confirmed, since not only has this Court found that the Respondent State had committed such violations,[87] but also the Applicant obtained the political refugee status in his

[86] European Commission of Human Rights*, Nicoletta Polacco and Alessandro Garofalo v. Italy*, Application n°23450/94, Decision of 15 September 1997 on the Admissibility of the Application.
[87] *Sébastien Germain Ajavon v. Republic of Benin*, ACHPR, Judgment of 29 March 2019 (merits), § 292.

country of exile. Moreover, it is presented as such in the present Application, which the Respondent State does not dispute.

215. The Court considers that remaining in his country of origin would have been perilous for the Applicant and would have made it impossible to exercise his political rights.[88] It follows that such a residency requirement, as eligibility condition of those who have been forced to leave their country, is not justified.

216. Accordingly, the Court considers that the Respondent State has violated the right to participate freely in the government of his country, protected by Article 13 of the Charter.

viii a) iii. Right to non-discrimination

217. The Court observes that Article 2 of the Charter provides:

> Every individual shall be entitled to the enjoyment of the rights and freedoms recognized and guaranteed in the present Charter without distinction of any kind such as race, ethnic group, colour, sex, language, religion, political or any other opinion, national and social origin, fortune, birth or other status.

218. The Court emphasises that by prohibiting independent candidates, the Respondent State created a difference in treatment between Beninese citizens who are members of a political party who may be candidates for election and those who do not belong to any political party and who are excluded.

219. The Court notes, as already pointed out, that the Respondent State has not justified this difference in treatment. Therefore, the Court considers that the Respondent State has violated the right to non – discrimination, protected by Article 2 of the Charter.

[88] See, similarly, ECHR, Melnichenko v. Ukraine, Application n ° 17707/02, Judgment of 19 October 2004, § 65.

220. The Court notes that this violation also extends to the residency requirement systematically imposed on any candidate for election.

viii (b) On the alleged violations in connection with articles 46, 233[89], 242(4)[90], 272(1)[91] of the Electoral Code of 2018

221. With regard to the other conditions relating to the elections provided for in Articles 46, 233, 242(4) and 272(1) of the electoral code of 2018, in particular, the bond, the tax discharge and age, the Court considers that it has not been demonstrated how they are unreasonable.

222. Accordingly, the Court considers, with regard to the said conditions, that the Respondent State has not violated the right to participate freely in the government of one's country, nor the right to non – discrimination, protected, respectively, under Articles 13(1) and 2 of the Charter.

ix) Alleged violation of the right of post-election violence victims to have their causes heard

223. The Applicant maintains by adopting Law No. 2019-39 of 7 November 2019 to grant amnesty for crimes committed in the violence that erupted after the legislative elections of 28 April 2019, the Respondent State violated Articles 1 and 7(1) of the Charter.

[89] Article 233 states: "The amount of the deposit to be paid by the presidential candidate is 10% of the maximum amount authorized for the electoral campaign".
[90] Article 242 paragraph 4 provides: "Only the lists which have obtained at least 10% of the valid votes cast nationally are allocated seats, without the number of eligible lists being less than four (04). However, if the number of lists in competition is less than four (04), all lists are eligible for the allocation of seats".
[91] Article 272 states: "The amount of the deposit to be paid per incumbent candidate in the legislative elections is 10% of the maximum amount authorized for the electoral campaign".

224. He underscores that the UN Human Rights Committee, the UN Sub-Commission on the Prevention of Discrimination and Protection of Minorities as well as the African Commission on Human and Peoples' Rights found that amnesty laws were an impediment for victims to obtain justice and are inconsistent with human rights.

225. For its part, the Respondent State prays the Court to dismiss this allegation, noting that the violence that broke out in Benin during the legislative election of 28 April 2019 was caused by a few people.

226. The Respondent State contends that the Republican forces contained the violence and restored public order, with several people arrested. The Respondent State adds that at the political dialogue of October 2019, it was recommended that all perpetrators of violence be pardoned. The Respondent State therefore concludes that there is no violation of human rights because the decision to grant amnesty was taken by Parliament in a bid to preserve social cohesion.

***

227. Article 7 (1) of the Charter provides that:

    i. Every individual shall have the right to have his cause heard. This comprises:
        1. the right to an appeal to competent national organs against acts of violating his basic rights as recognized and guaranteed by conventions, laws, regulations and customs in force (…)

228. It follows from this provision that the right to have one's case heard corresponds to the right to an effective remedy. It is the prerogative of anyone who claims to be a victim of violation of their basic rights to go to court.

229. At the same time, the right to an effective remedy entails on the one hand an obligation for the State to investigate and punish violations of human rights while

securing fair redress[92] for the victims, and on the other hand, an obligation not to impede the exercise of the remedy.

230. The Court further underscores that 'amnesty', cause of extinction of public action,[93] is "the act by which the legislator decides not to prosecute the perpetrators of certain offences."[94]

231. Amnesty therefore constitutes a major obstacle to the referral to criminal courts or to the continuation of an action brought before criminal courts which, adjudicate on the criminal proceedings, and at the same time, rule on civil reparations.

232. In the instant case, on 7 November 2019, the Respondent State promulgated Law No. 2019-39[95] "to grant amnesty for crimes, misdemeanours and felonies committed in the context of the legislative elections of April 2019".

233. The Court notes, on the one hand, that the title of the law is indicative of the existence of acts of criminality, tort or other offences which were committed on the occasion of the legislative elections of 28 April 2019 and on the other hand, that its content demonstrates that no measures have been taken in favour of the victims of these acts.

234. The Court recalls that the African Commission on Human and Peoples' Rights has previously stated that:

---

[92] IACHR, *Barrios Altos v. Peru* (Merits), 14 March 2001, Series C No.15.
[93] Article 7 of the Beninese Code of Criminal Procedure provides: "Public action for the Application of the sentence is extinguished by (...) amnesty (...)"
[94] J. Salmon (dir.), *Dictionnaire de Droit International Public*, 2001, Brussels, Pub. Bruylant, p. 63.
[95] This law is made up of three articles. Article 1 reads: "Are hereby pardoned, all acts constituting crimes, misdemeanours or felonies committed during the months of February, March, April, May and June 2019 during the legislative election process of 28 April, 2019"; Article 2 reads: "By Application of the provisions of Article 1 above, all proceedings initiated shall be baseless, the judgements or rulings delivered shall be null and void and persons remanded in custody or held in the enforcement of the Judgements or rulings delivered shall be released, where they are not held for other charges"; Article 3 stipulates: "This amnesty law shall be published in the Official Gazette and enforced as State law".

> Amnesty laws cannot exempt the State which adopts them from its international obligations (…) the prohibition of the prosecution of perpetrators of serious human rights violations through amnesties would lead States not only to promote impunity, but remove any possibility of investigating these abuses and deprive victims of these crimes of an effective remedy for the purpose of obtaining reparations.[96]

235. The Court further notes that the UN Human Rights Committee stated that:

> [A]mnesties for gross violations of human rights […] are incompatible with the obligations of the State party under the [ICCPR] [That is Article 2(3)(a) To ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity;][97]

236. As for the Inter-American Court of Human Rights, it has ruled that:

> [a]ll amnesty provisions, provisions on prescription and the establishment of measures designed to eliminate responsibility are inadmissible, because they are intended to prevent the investigation and punishment of those responsible for serious human rights violations such as torture […] because they violate non-derogable rights recognized by international human rights law. […] This type of law […] prevents the victims and their next of kin from knowing the truth and receiving the corresponding reparation.[98]

237. Likewise, the European Court of Human Rights has held that:

> A growing tendency in international law is to see such amnesties as unacceptable […] because they are incompatible with the unanimously

---

[96] ACHPR, *54/91: Malawi African Association v. Mauritania; 61/91: Amnesty International v. Mauritania; 98/93: Ms. Sarr Diop, Union Interafricaine des Droits de l'Homme and RADDHO v. Mauritania; 164/97 à 196/97: Collectif des Veuves et Ayants-droit v. Mauritania; 210/98: Association Mauritanienne des Droits de l'Homme v. Mauritania,* 11 May 2000, § 83.
[97] UN Human Rights Committee, *Rodriguez v. Uruguay*, Communication No. 322/1988, § 12.4.
[98] IACtHR, *Barrios Altos v Peru*, Judgment of 14 March 2001 § 41 – 43, See also IACHR *Gelman v. Urugay*, § 195; IACHR *Gomes Lund and others v. Brazil* § 171.

recognised obligation of States to prosecute and punish grave breaches of fundamental human rights. Even if it were to be accepted that amnesties are possible where there are some particular circumstances, such as a reconciliation process and/or a form of compensation to the victims, the amnesty granted to the Applicant in the instant case would still not be acceptable since there is nothing to indicate that there were any such circumstances.[99]

238. In view of the foregoing, the Court considers that an amnesty law is compatible with human rights only if it is accompanied by restorative measures for the benefit of the victims. However, in this case, the Respondent State, which maintains that "it was through the political dialogue of October 2019" that the amnesty law was passed, provides no proof of such measures.

239. The Court considers, therefore, that by enacting Amnesty Law No. 2019 - 39 of 7 November 2019, the Respondent State violated the right to have the case of each victim of the 28 April 2019 legislative elections violence heard, protected by Article 7 of the Charter.

x) Alleged violation of Article 1(i) of the ECOWAS Supplementary Protocol A/SP1/12/01 on Democracy and Good Governance

240. The Applicant submits that Article 27(2) of the Charter of Political Parties violates Article 1(i) of the ECOWAS Protocol on Democracy which gives political parties the right to participate freely and without hindrance or discrimination in any electoral process.

241. In response, the Respondent State submits that the provision relied on by the Applicant does not in any manner impede the recognised right of political parties to participate freely in elections, because it does not impose any prohibition or restriction on the rights of political parties. According to the Respondent State, the

[99] ECHR, *Margus v. Croatie* (2014), § 139.

cited provision provides for conditions under which a political party loses the rights which it had forfeited.

***

242. The Court observes that under Article 1.i of the ECOWAS Protocol on Democracy:

> (Political parties) participate freely and without hindrance or discrimination in any electoral process.

243. The Court notes that under Article 27 of the Charter of Political Parties:

> Any political party loses its legal status if it does not present candidates for two parliamentary elections.

244. The Court is of the opinion that the issue relates to the loss of legal status of a political party which should be approached not from the aspect of the electoral process but from the causes for dissolution or suspension of the political party in relation to the right of freedom of association.

245. The Court recalls that the dissolution or suspension of a political party must be exceptional and be based on reasonable and objective grounds[100], such as the existence of a real danger to national security and democratic order which other measures could not put a stop to.

246. The Court considers that the mere fact of not standing as a candidate in two consecutive legislative elections does not fall within this context and therefore does not constitute reasonable and objective grounds for suspension or dissolution a political party.

[100] See, similarly, § 197 of this Judgment.

247. Accordingly, by making the loss of political party status possible for such a ground, the Respondent State violated the right to freedom of association, protected under Article 10 of the Charter.

xi) Alleged violation of the duty to establish independent and impartial electoral bodies

248. The Applicant submits that the Respondent State has violated the duty to establish and strengthen independent and impartial electoral bodies, as provided under Article 17(1) of the ACDEG and Article 3 of the ECOWAS Protocol on Democracy.

249. The Applicant maintains that as a result of decision EL-19-001 of 1 February 2019 of the Constitutional Court of the Respondent State, the Minister of the Interior, who was a candidate in the legislative elections, appears to be the real electoral body. He avers that this decision empowered this Minister to issue certificates of conformity for submission of candidates for the legislative elections.

250. For the Respondent State, the issue before the Court is whether it is sufficient to conclude that the services a member of the Government performs are biased because he has a political affiliation. The Respondent State points out that, in response to that question, the Applicant merely refers to the concept of “legitimate fear,” which cannot be equated to the said violation.

251. According to the Respondent State, the verification of the files led not only to the rejection of candidates of all political stripes, but also to the delivery of certificates of conformity both to the candidates of the presidential camp as well as those belonging to the opposition.

252. The Respondent State further submits that, in this matter, it is possible to appeal the decision of the Minister of the Interior and that the electoral body is the Independent National Electoral Commission (CENA).

***

253. The Court notes that Article 17(1) of ACDEG provides that:

> […] State Parties shall:
>
> 1. Establish and strengthen independent and impartial national electoral bodies responsible for the management of elections (…)

254. Article 3 of the ECOWAS Protocol on Democracy provides as follows:

> The bodies responsible for organizing the elections shall be independent or neutral and shall have the confidence of all the political actors. […]

255. The Court notes that the mere fact that the issuance of the certificate of conformity is exercised by the Minister of the Interior does not make it an electoral body. The Court further notes that the electoral body of the Respondent State is constituted by the "*Conseil d'orientation et de supervision de la Liste électorale permanent informatisée*" [*Guidance and Supervision Council of the Permanent Computerised Electoral List*] (hereinafter referred to as "the COS-LEPI") and the "*Commission électorale nationale autonome"* [*Independent National Electoral Commission*] (hereinafter referred to as "the CENA").

256. In this regard, the Court recalls its jurisprudence in the matter *XYZ v. Republic of Benin (Application No. 059/2019),* relating to the independence and impartiality of the electoral body of the Respondent State, that is the COS-LEPI and the CENA. In that matter, the Court found that the COS-LEPI does not offer sufficient guarantees of independence and impartiality, and cannot therefore be perceived as providing such guarantees.[101]

[101] *XYZ v. Bénin*, ACHPR, Application 059/2019, Judgment (merits and reparations), (27 November 2020) § 123.

257. Accordingly, the Court finds that the Respondent State has violated the duty to establish independent and impartial electoral bodies, provided under Articles 17 of the ACDEG and 3 of the ECOWAS Protocol on Democracy.

xii) Alleged violation of the duty not to unilaterally amend electoral laws within the last six (6) months before the elections

258. The Applicant submits that the requirement to produce a compliance certificate is not provided for either in the Charter of Political Parties nor in the Electoral Code as a condition to participate in elections. It is rather based on Decision EL - 19 - 001 of 1 February 2019 delivered by the Constitutional Court, less than six (6) months before the legislative elections of 28 April 2019, which is a violation of Article 2(1) of the ECOWAS Protocol on Democracy.

259. The Applicant further submits that the same Constitutional Court, in its Decision DCC 15-086 of 14 April 2015, reaffirmed that the Respondent State was compliant with Article 2.1 of the ECOWAS Protocol on Democracy.

260. In response, the Respondent State asserts that the Applicant misinterpreted the decision of the Constitutional Court with regard to the certificate of conformity.

261. The Respondent State points out that the Charter of Political Parties empowers the Minister of the Interior to verify compliance with the said Charter and to issue a compliance certificate or not, the decision being open to appeal.

***

262. The Court notes that Article 2 of the ECOWAS Protocol on Democracy provides:

> No substantial modification shall be made to the electoral laws in the last six (6) months before the elections, except with the consent of a majority of Political actors.

263. The Court underlines on the one hand that the law to be taken into account here is the Charter of Political Parties, which entered into force on 20 September 2018. It therefore cannot base its assessment on decision EL - 19 - 001 of February 1, 2019 of the Constitutional Court of Benin, invoked by the Applicant. On the other hand, the election referred to are the legislative elections of 28 April 2019.

264. The Court notes that between the entry into force of the Charter of Political Parties and the legislative elections of 28 April 2019, clearly more than six months had elapsed.

265. Accordingly, the Court considers that the Respondent State did not violate its obligation not to modify the electoral law less than six (6) months preceding the said election.

B. Alleged violation relating to the Respondent State's failure to create independent and impartial courts

266. The Applicant alleges (i) that the Constitutional Court of the Respondent State is neither independent nor impartial. Furthermore, he argues that (ii) the judiciary is not independent.

i) Alleged violation of the independence and impartiality of the Constitutional Court

267. The Applicant submits that the Constitutional Court is not independent nor impartial since its President, Mr. Joseph Djogbenou, is also an adviser to the Head of State who has been his client for fifteen (15) years, which presupposes that a close relationship exists between the two of them.

268. The Applicant submits that the partiality of the President of the Constitutional Court has been established since he was part of the Court which declared the law on the right to strike and the law on the Penal Code to be in conformity with the Constitution. When he was Minister of Justice and Legislation, Mr. Joseph Djogbenou not only held several conferences on the legality of the right to strike but also actively participated in the drafting and presentation of the draft laws (bills) on the exercise of the right to strike and on the Penal Code.

269. He adds that the law firm of Mr. Joseph Djogbenou, the current President of the Constitutional Court, advises the Government and represents the Respondent State in legal proceedings. According to the Applicant, there are concerns about the Constitutional Court's lack of impartiality.

270. In response, the Respondent State asserts that the current members of the Constitutional Court were appointed before the current Head of State came to power, by a Parliament which opposed various government bills, including the revision of the Constitution and the waiver of the immunity of a former minister.

271. For the Respondent State, the fact that a former Minister of Justice happens to become a judge at the Constitutional Court is neither unprecedented nor irregular. Such situation has existed in other countries. Therefore, the independence and impartiality of the Constitutional Court cannot be challenged on such grounds. Furthermore, the Respondent State asserts that the independence of judges is assessed on the basis of institutional criteria and not on the basis of the appointing authority.

272. The Respondent State avers that just because a Minister of Justice holds an opinion on the legality of a law initiated by the Government, should not be interpreted as bias when the latter becomes judge since in that capacity, he is guided by a different set of principles.

273. The Respondent State adds that impartiality is assessed following a two-pronged process which entails determining the personal conviction of the judge and ensuring that he offers sufficient guarantees to exclude any legitimate doubt about him. However, in this case, constitutional review is conducted by a collegial court which has not been found to be partial.

***

274. Article 26 of the Charter provides that "The States parties to the present Charter shall have the duty to guarantee the independence of the Courts (...)."

275. In this respect, the Court notes that the term "independence" must be understood together with the term "impartiality" and the term "court," like any judicial body.

276. The issue that this Court is called upon to rule on is, on the one hand, whether the Respondent State's Constitutional Court, as a collegiate court, enjoys all guarantees of independence and impartiality and, on the other hand, whether the partiality of the President of the Court, if it is established, is such that it affects the impartiality of the Constitutional Court as a whole.

i (a) Independence of the Respondent State's Constitutional Court

277. The Court notes that the independence of the judiciary is one of the fundamental pillars of a democratic society. The notion of judicial independence essentially implies the ability of courts to discharge their functions free from external interference and without depending on any other authority.[102]

[102] *Action pour la protection des droits de l'homme v. Côte d'Ivoire*, (merits and reparations) (18 November 2016) 1 AfCLR 697, § 117. See also Dictionary of international public Law, Jean Salmon, Brulyant, Bruxelles, 2001, p. 562 and 570.

278. It should be noted that judicial independence has two main limbs: institutional and individual. Whereas institutional independence connotes the status and relationship of the judiciary with the executive and legislative branches of the government, individual independence pertains to the personal independence of judges and their ability to perform their functions without fear of reprisal.[103] The obligation to guarantee the independence of courts in Article 26 thus includes both the institutional and individual aspects of independence.

279. The Court observes that institutional independence is determined by reference to factors such as: the statutory establishment of judiciary as a distinct organ from the executive and the legislative branches with exclusive jurisdiction on judicial matters, its administrative independence in running its day to day function without inappropriate and unwarranted interference, and provision of adequate resources to enable the judiciary to properly perform its functions.[104]

280. On the other hand, individual independence is primarily reflected in the manner of appointment and tenure security of judges, specifically the existence of clear criteria of selection, appointment, duration of term of office, and the availability of adequate safeguards against external pressure. Individual Independence further requires that States must ensure that judges are not transferred or dismissed from their job at the whim or discretion of the executive or any other government authority[105] or private institutions.

281. The Court notes that the Constitutional Court, which in countries with Francophone tradition, is not part of the judiciary but is placed outside the judicial power as a constitutional body,[106] is created pursuant to Article 114 of the Constitution as a

[103] African Commission on Human and Peoples' Rights, *Guidelines and principles on the right to fair trial in Africa*, § 4 (h) (i)., See also Principles 1-7, UN Basic Principles on the Independence of the Judiciary, General Assembly resolutions 40/32 of 29 November 1985 and 40/146 of 13 December 1985.
[104] Ibid.
[105] Ibid. See also ECHR, *Campbell and Fell,* §78, Judgment of 28 June 1984; *Incal v. Turkey*, Judgment of 9 June 1998, Reports 1998-IV, p. 1571, §65.
[106] L Favoreu *Les Cours constitutionnelles* (1986) Paris, PUF, Collection que Sais-je ? 18-19.

regulatory body of all other public institutions with the highest jurisdiction on constitutional matters.[107]

282. The Court observes that in addition to the Constitution, the Respondent State's Law No. 91-009 of 4 March 1991 on the Organic Law on the Constitutional Court contains provisions that ensure administrative and financial autonomy of the Constitutional Court.108

283. As far as its institutional independence is concerned, it is thus not apparent either from the Constitution or from the organic law of the Constitutional Court that it may be subject to direct or indirect interference or that it is under the subordination of any power or parties when exercising its jurisdictional function.

284. Consequently, the institutional independence of the Constitutional Court of the Respondent State is guaranteed.

285. As regards individual independence, Article 115 of the Constitution of the Respondent State stipulates that the Constitutional Court shall be composed of seven (7) judges appointed for a period of five (5) years renewable once, four of whom shall be appointed by the Office of the National Assembly and three by the President of the Republic. The provision demands that the Judges must have the required professional competence, good morality and great probity. The Constitution also provides that judges are irremovable for the duration of their term of office and may not be prosecuted or arrested without the authorisation of the Constitutional Court itself and the Office of the Supreme Court sitting in joint session except in cases of flagrant offence.

[107] Article 114 of the Constitution of Benin of 11 December 1990.
[108] Article 18 of the same law, for example, stipulates that: "On the proposal of the President of the Constitutional Court, the appropriations necessary for the functioning of the said Court shall be entered in the National Budget. The President of the Court shall be the Authorising Officer for expenditure".

286. The Court observes that while it is true that the prohibitions in Article 115 of the Constitution against removability and unwarranted prosecution and the requirements of professional and ethical qualifications of members of the Constitutional Court, to some extent, guarantee individual independence, the same cannot be said about the renewable nature of their term. This is exacerbated by the fact that there is no provision in the Constitution nor in the Organic Law that stipulates the criteria for renewal or refusal to renew the term of office of the judges of the Constitutional Court. The President of the Republic and the Bureau of the National Assembly retain the discretion to renew their mandate.

287. For judges who are appointed, the renewal of the term of office, which depends on the discretion of the President of the Republic and the Bureau of the National Assembly, does not guarantee their independence[109], especially as the President is empowered by law to seize the Constitutional Court.[110]

288. The Court emphasises that the renewable nature of the term of office of the members of the Constitutional Court is likely to weaken their independence, particularly of those judges seeking reappointment. In this regard, it is important to note that the appearance is as important as the actual fact of judicial independence.

289. In view of the foregoing, the Court is of the opinion that the renewable nature of the mandate of the Judges of the Constitutional Court of the Respondent State does not guarantee their independence.

290. The Court concludes that the independence of the Constitutional Court is not guaranteed and, therefore, the Respondent State violated Article 26 of the Charter.

---

[109] D. Rousseau, la Justice constitutionnelle en Europe, Paris, Montchrétien, 1992, “The non-renewable nature of a term of office is a guarantee of independence because the appointing authorities cannot exchange a good decision for appointments and the judges themselves have no interest in seeking favours from these authorities”.

[110] Article 121 allows the President of the Republic refer cases to the Constitutional Court.

ii. (b) Impartiality of the Respondent State's Constitutional Court

291. According to the Dictionary of Public International Law, impartiality is the "absence of party bias, prejudice and conflict of interest on the part of a judge […] in relation to the parties appearing before it"[111]

292. The Court notes that according to the Commentary on the Bangalore Principles on Judicial Ethics:

> A judge's personal values, philosophy, or beliefs about the law may not constitute bias. The fact that a judge has a general opinion about a legal or social matter directly related to the case does not disqualify the judge from presiding. Opinion, which is acceptable, should be distinguished from bias, which is unacceptable.[112]

293. The Court considers that, in order to ensure impartiality, the tribunal must offer sufficient guarantees to exclude any legitimate doubt in this regard. It notes, however, that the impartiality of a judge is presumed, and that compelling evidence is needed to rebut this presumption.

294. In this regard, the Court is of the opinion that this presumption of impartiality is of considerable importance, and allegations relating to partiality of a judge must be carefully considered. Whenever an allegation of bias is made or a reasonable concern of bias is raised, the decision-making integrity, not only of an individual judge, but of the judicial administration as a whole is called into question.[113]

295. In the present case, the Court notes that the Respondent State has not contested the Applicant's allegations that before being appointed to the Constitutional Court,

---

[111] Dictionary of international public Law, Jean Salmon, Brulyant, Bruxelles, 2001, p. 562.
[112] Commentary on the Bangalore Principles on Judicial Ethics, § 60.
[113] *Alfred Agbesi Woyome v Republic of Ghana*, ACHPR, Application No. 001/2017, Judgment (merits and reparations) (28 June 2019), § 128.

the current President of the said Constitutional Court, Mr. Joseph Djogbenou, publicly spoke in favour of banning the right to strike. In addition, in his capacity as Minister of Justice and Legislation, he presented and followed the preparation of the draft laws in question relating to the exercise of the right to strike and of the law establishing the penal code.

296. Having become president of the Constitutional Court, he sat on the bench when these laws were declared to be in conformity with the Constitution.[114]

297. It is therefore undeniable that he had a preconceived opinion and should, for that reason, have recused himself, in accordance with the Guidelines and Principles on the Right to a Fair Trial and Legal Assistance in Africa.[115] Not doing so, is deeply troubling and demonstrates an attitude symptomatic of a disregard for the principles of proper administration of justice.

298. However, the Court notes, as these Guidelines and Principles on the Right to a Fair Trial and Legal Assistance in Africa suggest:

> The impartiality of a judicial body could be determined on the basis of three relevant facts:
>
> (i) that the position of the judicial officer allows him or her to play a crucial role in the proceedings;
>
> (ii) the judicial officer may have expressed an opinion which would influence the decision-making;
>
> (iii) the judicial official would have to rule on an action taken in a prior capacity.[116]

299. The Court underlines, however, that none of these conditions is, fulfilled in the present case. In any event, the Court considers that the remarks or opinion of a

[114] Decision DCC 18 - 141 of January 28, 2018 on the constitution-compliant law on the exercise of the right to strike adopted on January 4, 2018.
[115] Guidelines and Principles on the Right to a Fair Trial and Legal Assistance in Africa, § 5(4).
[116] Ibid.

single judge out of a bench of seven (7) judges cannot, objectively, be considered sufficient to influence the entire Constitutional Court. Furthermore, the Applicant has not shown how the comments made by the President of the Constitutional Court, when he was Minister of Justice and Legislation, could have influenced the Court's decision.

300. Consequently, the Court considers that it has not been proven that the Constitutional Court of Benin is not impartial.

ii) Alleged violation of the independence of the judiciary

301. The Applicant alleges that based on Articles 1[117] and 2[118] of Organic Law No. 2018-02 of 4 January 2018 to amend and supplement Organic Law No. 94-027 of 18 March 1999 relating to the Higher Judicial Council (hereinafter referred to as the "Organic Law relating to the CSM" or “impugned law”), the Respondent State violates the independence of the judiciary.

302. According to him, these Articles reveal that the Higher Judicial Council (hereinafter referred to as the “CSM”) which is composed of three (3) Supreme Court judges, one (1) parliamentarian elected by the National Assembly, one (1) personality not belonging to any of the three powers, chosen by the President of the Republic by virtue of his competence**,** now includes two (2) other members, the Minister of Economy and the Minister of the Public Service.

---

[117] Article 1 stipulates as follows: Established by Article 127(2) of the Constitution of 11 December 1990, the Higher Judicial Council shall comprise: (a) ex officio members: 1. the President of the Republic, 2. the President of the Supreme Court, 1st Vice-President, 3. the Minister of Justice, 2nd Vice-President, 4. the presidents of chambers of the Supreme Court, members, 5. the Public Prosecutor at the said Court, 6. a president of the Court of Appeal, member, 7. a Public Prosecutor of the Court of Appeal, member, 8. the minister in charge of the public service, member, 9. the minister in charge of finance, member; (b) other members: 10. four (4) personalities from outside the judiciary known for their intellectual and moral qualities, members, 11. two (02) magistrates including one (1) from the Public Prosecutor's Office. Apart from the ex officio members, the other members shall be appointed by decree of the President of the Republic. The President of the Court of Appeal and the Public Prosecutor, as provided for under points 6 and 7, shall be designated by drawing lots.

[118] This article provides that persons from outside the judiciary and their alternates shall be appointed (...) by the Bureau of the National Assembly.

303. He points out that through Decision No. DCC 18-005 of 23 January 2018, the Constitutional Court declared Organic Law No. 2018-02 of 4 January 2018 modifying and supplementing the Organic Law relating to the CSM, partly inconsistent with the Constitution.

304. The Applicant submits, however, that following the renewal of its members, the Constitutional Court, by Decision No. DCC 18-142 of 28 June 2018, found the law to be in conformity with the Constitution.

305. The Applicant observes that the invasion of the CSM by persons appointed by the President of the Republic as well as by members of Government affects the criterion of the separation of powers and hence the independence of the judiciary.

306. In response, the Respondent State argues that the impugned law does not violate human rights and that Benin's judiciary is independent, as evidenced by Article 125 of the Constitution.[119] It adds that magistrates on the Bench are not to be removed or transferred and that the Respondent State had even been convicted by the national judiciary.

307. For the Respondent State, the amendment of the Law to institute the CSM is intended to ensure the effectiveness of this body, given that when it was dominated by representatives of the judiciary, it created mistrust suggesting that possible abuses by judges were covered up by a body made up of their peers.

308. Furthermore, the Respondent State argues that the fact that members of the executive (which pays the magistrates' salaries, promotes them, organizes their careers, ensures their security and advancement and protects their retirement) are present in the body responsible for magistrates' discipline is not at variance with Article 26 of the Charter.

[119] The Article provides that "The Judiciary shall be independent from the legislative power and of the executive power.

***

309. The Court recalls that Article 26 of the Charter provides that: “State Parties […] shall have the duty to guarantee the independence of the Court […]”.

310. The Court notes that this provision does not only enshrine the independence of courts, as judicial bodies, but also that of the judiciary as a whole, similar to that of the executive power and the legislative power.

311. The Court notes that it follows from Articles 125 and 127 of the Respondent State’s Constitution that the judicial power, exercised by the Supreme Court, courts and tribunals, is independent of the legislative and executive powers and that the President of the Republic is guarantor of the independence of the judiciary.

312. The Court therefore considers that judicial power should not depend on any other authority. It follows that neither the executive nor the legislative should interfere, directly or indirectly, in the making of decisions that fall within the competence of the judiciary, including those decisions concerning the management of the career of the members of the judiciary.

313. In this regard, the Court endorses the Commission's position which held that:

> [T]he doctrine of separation of powers requires the three pillars of the state to exercise powers independently. The executive branch must be seen to be separate from the judiciary, and parliament. Likewise, in order to guarantee its independence, the judiciary, must be seen to be independent from the executive and parliament.[120]

314. The Court emphasizes, in the present case, that it follows from Article 11 of the Organic Law relating to the CSM, that the CSM is the body responsible for

[120] ACHPR, *Kevin Mgwanga Gunme et al v. Cameroon*, Communication 266/03, § 211, 45th Ordinary Session, 13 – 27 May 2009.

managing the careers of magistrates from the day they are sworn in until they retire.

315. The Court notes that according to Article 1 of the impugned law, the CSM is composed of three categories of members: ex officio members including the President of the Republic, the Keeper of the Seals, the Minister of Justice, the Minister of Public Service and the Minister of Finance, members other than the ex officio members and external personalities.

316. The Court further notes that ruling on the conformity with the Constitution of Law No. 2018-02 amending and supplementing Organic Law No. 94-027 of 18 March 1999 to institute CSM, the Respondent State's Constitutional Court, by Decision No. DCC 18-005 of 23 January 2018, declared Article 1 of the said Law inconsistent with the Constitution for the following reason:

> The composition of this council must reflect the concern for the independence of the Judiciary. By retaining the minister in charge of the public service and the minister in charge of finance as ex officio members, in addition to the President of the Republic, guarantor of the independence of the judiciary and the Minister of Justice, responsible for the management of the careers of magistrates, Article 1 of the Law is inconsistent with the Constitution.

317. With regard to Article 2 of the same Law, the same Constitutional Court held that:

> In the interests of the independence of the judiciary, the legislator must provide for some balance in the composition of the CSM (...). It is important to specify that the external personalities likely to be appointed by the Bureau of the National Assembly must be appointed equally on the basis of proposals from the parliamentary minority and majority.

318. The Court notes that the fact that the impugned law was subsequently declared to be in conformity with the Constitution by the reconstituted constitutional Court *vide*

Decision No. DCC 18-142 of 28 June 2018 following an interpretation procedure is ineffective. Indeed, an interpretation decision cannot call into question the merits of the interpreted decision. This is all the more true since the decisions of the Respondent State's Constitutional Court are binding on public authorities and all authorities by virtue of Article 124(2) of the Constitution.

319. The Court observes that on the one hand it follows from Article 1 of the impugned law that the President of the Republic is the president of the CSM and on the other hand that the role of the CSM consists of assisting[121] the President of the Republic.

320. The Court considers that making the CSM an assistance body of the President of the Republic is diminishing and that, by providing such assistance, this body can only be under the control of the executive power.

321. Such dependence is exacerbated not only by the fact that members of Government are ex officio members of the CSM, but also since members, other than ex officio members, are appointed by the President of the Republic.

322. The Court considers, just like the Commission[122], the presence within the CSM of the President of the Republic as President of the CSM and that of the Minister of Justice constitutes clear proof that the judiciary is not independent.

323. Furthermore, the Court is of the opinion that the power of appointment of external personalities who are not part of the executive nor to the legislative branch, should not belong to any other branch of government, but the judiciary.

324. In view of the above, the Court considers that there is an interference of the executive power of the Respondent State in the CSM.

[121] The instrument reveals that the CSM assists the President of the Republic in his duties as guarantor of the independence of the judiciary.
[122] ACHPR, *Kevin Mgwanga Gunme et al v. Cameroon*, Communication 266/03, § 212, 45th Ordinary Session, 13 – 27 May 2009.

325. Consequently, the Court considers that the Respondent State has violated Article 26 of the Charter.

C. Alleged violation of the obligation to adopt a constitutional amendment on the basis of a national consensus

326. The Applicant submits that the National Assembly which emerged from the legislative elections of 28 April 2019 and affiliated to the Head of State had neither legitimacy nor a mandate to revise the Constitution. This revision was made without national consensus and should have been made by referendum instead.

327. He explains that the opposition was excluded from the parliamentary elections and that only two components of the single party that had the support of the Head of State were allowed to participate in the elections. Therefore, the election was not democratic since it was neither free nor open.

328. The Applicant asserts that this constitutional revision introduced a new system of general elections, instituted the post of Vice-President, elected in tandem with the President, and set up a system of sponsorship for any presidential candidate. According to him, the general election system extends the mandate of the President of the Republic by fifty (50) days.

329. The Applicant further argues that the revision of the Constitution is contrary to the principle of the rule of law which implies, not only good legislation in accordance with the requirements of human rights, but also proper administration of justice.

330. The Applicant alleges that there is seizure of power, which simply amounts to an unconstitutional change of government prohibited in Article 25 of the ACDEG.

331. In response, the Respondent State argues that the mere fact that a law was passed after public debates were extended does not amount to a violation of human rights. The Respondent State further asserts that the Court cannot question the constitutional order of a State.

332. Moreover, with regard to the alleged extension of the presidential term by fifty (50) days, the Respondent State asserts that referendum is merely a means of revising the Constitution in the same way as the parliamentary vote by qualified majority provided for in Article 155 of the Constitution.

333. In this regard, the Respondent State insists that Article 155 of the Constitution provides that: "revision shall be done only after it has been approved through a referendum, unless the bill or proposal in question has been approved by a majority of four fifths of the members of the National Assembly".

***

334. The Court considers that the issues relating to the violation of the rule of law and unconstitutional change of government are underlying the issue of the constitutional revision.

335. The Court underlines that the issue is not whether or not it can call into question the constitutional order of a State. Rather, it is called upon to consider whether the constitutional revision of 7 November 2019 reposes on a national consensus, as provided for in Article 10(2) of the ACDEG.[123]

336. The Article provides that:

[123] In its decision *APDH v. Republic of Côte d'Ivoire*, this Court held that "the African Charter on Democracy, Elections and Good Governance and the ECOWAS Protocol on Democracy are human rights instruments, within the meaning of Article 3 of the Protocol and that it therefore has jurisdiction to interpret and apply the same."

> State Parties shall ensure that the process of amendment or revision of their constitution reposes on national consensus, obtained if need be, through referendum.

337. The Court notes that prior to the ratification of the ACDEG, the Respondent State had established the national consensus as a principle of constitutional value through the decision of the Constitutional Court DCC 06 - 74 of 08 July 2006, in the following terms:

> Even if the Constitution has provided for the modalities of its own revision, the determination of the Beninese people to create a state based on the rule of law and pluralist democracy, the safeguarding of legal security and national cohesion require that any revision take into account the ideals that presided over the adoption of the Constitution of 11 December 1990, particularly the national consensus, a principle with constitutional value.

338. Furthermore, the same Constitutional Court has given a precise definition of the term "consensus" through its decisions DCC 10 - 049 of 05 April 2010 and DCC 10 - 117 of 08 September 2010. It states that:

> Consensus, a principle with constitutional value, as affirmed by Decision DCC 06 - 074 of 08 July 2006 (...) far from signifying unanimity, is first and foremost a process of choice or decision without going through a vote; (...) it allows, on a given question, to find, through an appropriate path, the solution that satisfies the greatest number of people.

339. The Court observes that the expression "greatest number of people" associated with the concept of "national consensus" requires that the Beninese people be consulted either directly or through opinion makers and stakeholders including the representatives of the people if they truly represent the various forces or sections of the society. This is however not the case in the instant Application, since all the deputies of the National Assembly belong to the presidential camp.

340. From the record, it is apparent that Law No. 2019-40 of 7 November 2019 on constitutional revision was adopted under summary procedure. A consensual revision could only have been achieved if it had been preceded by a consultation of all actors and different opinions with a view to reaching national consensus or followed, if need be, by a referendum.

341. The fact that this law was adopted unanimously cannot overshadow the need for national consensus driven by "the ideals that prevailed when the Constitution of 11 December 1990 was adopted"[124] and as provided under Article 10(2) of the ACDEG.

342. Therefore, the constitutional revision[125] was adopted in violation of the principle of national consensus.

343. Consequently, the Court declares that the constitutional revision, which is the subject of Law No. 2019-40 of 7 November 2019, is contrary to the principle of consensus as set out in Article 10(2) of the ACDEG.

344. The Court therefore concludes that the Respondent state violated Article 10(2) of the ACDEG.

IX. REPARATIONS

345. The Applicant prays the Court to find that the laws which facilitated the installation of the National Assembly are not in compliance with international conventions. He also requests the dissolution of the 8th legislature as a result of the 28 April 2019 elections as well as the dissolution of the Constitutional Court. The Applicant

[124] These include the advent of an era of democratic renewal, the determination to create a rule of law and democracy and the defence of human rights, as mentioned in the preamble to the Constitution.
[125] The following articles have been deleted: 46 and 47. The following articles have been amended or created: 46 and 47: 5, 15, 26, 41, 42, 43, 44, 45, 48, 49, 50, 52, 53, 54, 54-1, 56, 62, 62-1, 62-3, 62-4, 80, 81, 82, 92, 99, 112, 117, 119, 131, 132, 134-1, 134-2, 132, 134-1, 134-2, 134-3, 134-4, 134-5, 134-6, 143, 145, 151, 151-1, 153-1, 153-2, 153-3, 157-1, 157-2, 157-3, Title VI (I-1 and I-2).

further prays the Court to annul Law 2019 - 40 of 7 November 2019 revising the Constitution and all the laws resulting from it. Lastly, the Applicant requests the Court to refer to the Peace and Security Council of the African Union, the perpetrators and accomplices of what the Applicant describes as an unconstitutional change of Government.

346. Furthermore, the Applicant states that he has waived his request for pecuniary reparation of one hundred billion (100,000,000,000) CFA francs.

347. For its part, the Respondent State submits that the Applicant's requests be dismissed in their entirety.

***

348. The Court notes that Article 27 of the Protocol provides that:

> If the Court finds that there has been violation of a human or peoples' right, it shall make appropriate orders to remedy the violation, including the payment of fair compensation or reparation.

349. The Court recalls its previous judgments on reparation[126] and reaffirms that, in considering claims for compensation for damage resulting from human rights violations, it takes into account the principle that the State found to be the author of an internationally wrongful act is under an obligation to make full reparation for the consequences so as to cover all the damage suffered by the victim.

[126] *Beneficiaries of late Norbert Zongo, Abdoulaye Nikiema alias Ablassé, Ernest Zongo and Blaise Ilboudo and Mouvement Burkinabé des droits de l'homme et des peuples v. Burkina Faso*, (reparations) (5 June 2015) 1 AfCLR 265, § 22; *Lohé Issa Konaté v. Burkina Faso*, (reparations) (3 June 2016) 1 AfCLR 359, § 15.

350. The Court also takes into account the principle that there must be a causal link between the violation and the alleged harm and that the burden of proof rests with the Applicant, who must provide the information to justify his or her claim[127].

351. The Court also established that "reparation must, as far as possible, erase all the consequences of the unlawful act and re-establish the state that would probably have existed had the unlawful act not been committed". In addition, reparation measures must, depending on the particular circumstances of each case, include restitution, compensation, rehabilitation of the victim and measures to ensure that the violations are not repeated, taking into account the circumstances of each case[128].

352. Furthermore, the Court reiterates that it has already established that reparation measures for harm resulting from human rights violations must take into account the circumstances of each case and the Court's assessment is made on a case-by-case basis.[129]

353. In the present case, the Court notes that the Applicant has waived his claim for pecuniary reparation.

354. The Court further underlines that it cannot order reparation measures based on claims where no human rights violation have been established.

355. With regard to the request to “refer to the Peace and Security Council of the African Union the perpetrators and accomplices” of what the Applicant describes as an unconstitutional change of Government, the Court emphasizes that this body can directly receive information from all sources, including the Applicant himself. The Court therefore need not make an order to that effect.

---

[127] *Reverend Christopher Mtikila v. Tanzania*, (reparations) (13 June 2014) 1 AfCLR 74, § 31.
[128] *Ingabire Victoire Umuhoza v. Republic of Rwanda*, (reparations) (7 December 2018) 2 AfCLR 202, § 20.
[129] Ibid, §22.

356. Regarding the request to strike down the laws, the Court considers that it cannot take the place of the legislature of the Respondent State. The Court underlines that it may, however, order measures with a view to repealing such laws or amending them so as to make them compliant with international human rights standards.

357. In the present case, the Court holds that such measures, which can be considered as guarantees of non-repetition, are the most appropriate.

358. Accordingly, the Court orders the Respondent State to repeal within three (3) months from date of notification of the present Judgment, and in any case before any election, the following provisions:

i. Article 27 paragraph 2 of Law No. 2018 - 23 of September 18, 2018 on the Charter of Political Parties;

ii. Articles 1 and 2 of Organic Law No. 2018-02 of 4 January 2018 amending and supplementing Organic Law No. 94-027 of 18 March 1999 relating to the Higher Judicial Council;

iii. Law No. 2019 - 39 of 31 July 2019 granting amnesty for criminal acts, misdemeanours and offences committed during the legislative elections of 28 April 2019, and to conduct all necessary investigations to enable victims to obtain recognition of their rights and reparation;

iv. Constitutional Law No. 2019 - 40 of 07 November 2019 revising the Constitution and all subsequent laws, in particular Law 2019 - 43 of 15 November 2019 on the electoral code.

359. Furthermore, the Court orders the Respondent State to repeal, within six (6) months from the date of notification of the present Judgment, all the provisions prohibiting the right to strike. These include, in particular, Article 50(5) of Law No. 2017 - 43 of 02 July 2018 amending and supplementing Law No. 2015 - 18 of 13 July 2017 on the general statute of the public service, Article 2 of Law No. 2018 -

34 of 05 October 2018 amending and supplementing Law No. 2001 - 09 of 21 June 2001 on the exercise of the right to strike, Article 71 of Law No. 2017 - 42 of 28 December 2017 on the status of the personnel of the republican police, within six (6) months from the notification of this Judgment.

360. Furthermore, the Court considers that the Applicant does not provide any justification for the request for the dissolution of the Constitutional Court. In addition, the provisions governing this Constitutional Court are not part of those revised by Constitutional Law No. 2019 - 40 of 7 November 2019. Consequently, the Court dismisses this request.

361. On the other hand, it is established that the Respondent State has violated its obligation to ensure the independence of the Constitutional Court. Therefore, the Court orders the Respondent State to take all necessary measures to ensure that the mandate of the judges of the Constitutional Court is marked by guarantees of independence in accordance with international human rights standards.

X. REQUEST FOR PROVISIONAL MEASURES

362. The Court recalls that on 20 October 2020, the Applicant filed a second request for provisional measures.

363. The Court recalls that it did not rule on the request for provisional measures as it was considered similar to that of the prayers on the merits.

364. However, in the present case, the Court has issued a decision on the merits, which renders the requested provisional measures moot. Consequently, it is no longer necessary to rule on the request for provisional measures.

XI. COSTS

365. The Applicant requested that the Respondent State be ordered to pay costs.

366. For its part, the Respondent State submitted that the Application be dismissed.

***

367. The Court notes that under Rule 32 (2) that "[u]nless otherwise decided by the Court, each party shall bear its own costs, if any." In the present case, the Court considers that there is no reason to depart from the principle laid down in that provision.

368. Accordingly, each party must bear its own costs.

XII. OPERATIVE PART

369. For these reasons,

The COURT

Unanimously,

On Jurisdiction

i. *Dismisses* the objection on jurisdiction of the Court;
ii. *Declares* that it has jurisdiction;

On preliminary objections relating to admissibility

iii. *Dismisses* the preliminary objections;

On Admissibility

iv. *Dismisses* the objection on the admissibility of the Application;

v. *Declares* the Application admissible;

On Merits

vi. *Finds* that the Respondent State has not violated the right to freedom of opinion and expression, as provided under Article 9(2) of the Charter;

vii. *Finds* that the Respondent State has not violated the right to freedom of assembly, protected by Article 11 of the Charter;

viii. *Finds* that the Respondent State has not violated the right to freedom and security of the person, as provided under Article 6 of the Charter;

ix. *Finds* that the Respondent State did not violate the obligation not to modify the electoral law within the six (6) months preceding the legislative elections of April 28, 2018, as provided for in Article 2 of the ECOWAS Protocol on Democracy;

x. *Finds* that the Respondent State has not violated the right to non-discrimination and the right to participate freely in the government of one's country, protected, respectively, under Articles 2 and 13(1) of the Charter, by reason of the eligibility conditions relating to bond, tax clearance and age;

xi. *Finds* that the Respondent State has not violated the obligation to guarantee the impartiality of the Constitutional Court;

xii. *Finds* that the Respondent State has violated the right to strike, protected by Article 8 (1) (d) (2) of the International Covenant on Economic, Social and Cultural Rights;

xiii. *Finds* that the Respondent State has violated the right to life, right to physical and moral integrity as well as the right not to be subjected to torture, protected by Articles 4 and 5 of the Charter, respectively;

xiv. *Finds* that the Respondent State has violated the right of victims of post - electoral violence to have their causes heard, protected by Article 7(1) of the Charter;

xv. *Finds* that the Respondent State has violated the right to freedom of association, protected under Article 10 of the Charter, due to the possibility of dissolution of a

political party that did not participate in two successive legislative elections and the ban on electoral alliances and independent candidacies;

xvi. *Finds* that the Respondent State has violated the right to non-discrimination and the right to participate freely in the government of one's country, protected by Articles 2 and 13(1) of the Charter, respectively, as a result of the ban on independent candidates and the residency requirement imposed on all candidates;

xvii. *Finds* that the Respondent State has violated the obligation to establish independent and impartial electoral bodies, provided for in Article 17(1) of the African Charter on Democracy, Elections and Governance and in Article 3 of the ECOWAS Protocol on Democracy and Good Governance;

xviii. *Finds* that the Respondent State has violated the duty to guarantee the independence of its Constitutional Court and of the judiciary, as provided under Article 26 of the Charter;

xix. *Finds* that the Respondent State has violated the duty to ensure a constitutional revision based on national consensus, as provided under Article 10(2) of the African Charter on Democracy, Elections and Governance;

On Reparations

Pecuniary reparations

xx. *Acknowledges* the Applicant's waiver of his claim for pecuniary reparations.

Non-pecuniary reparations

xxi. *Dismisses the* Applicant's request for referral to the Peace and Security Council of the African Union;

xxii. *Dismisses* the Applicant's request for dissolution of the Constitutional Court;

xxiii. *Dismisses* the Applicant's request to invalidate the legislative elections of 28 April 2019;

xxiv. *Orders* the Respondent State to take all necessary measures, within three (3) months from date of notification of the present Judgment, and in any case before any election to repeal:

1. Article 27 paragraph 2 of Law No. 2018 - 23 of 18 September 2018 on the Charter of Political Parties;
2. Articles 1 and 2 of Organic Law No. 2018-02 of 4 January 2018 to amend and supplement Organic Law No. 94-027 of 18 March 1999 relating to the Higher Judicial Council
3. Law No. 2019 - 39 of 31 July 2019 on amnesty for criminal, tort and offences committed during the legislative elections of 28 April 2019 and to carry out all the necessary investigations that may allow victims to obtain recognition of their rights and reparation;
4. Constitutional law No. 2019 - 40 of 07 November 2019 revising the Constitution of the Republic of Benin and all subsequent laws, in particular Law No. 2019 - 43 of 15 November 2019 relating to the Electoral Code, and to comply with the principle of national consensus set forth in Article 10(2) of the African Charter on Democracy, Elections and Governance for all other constitutional revisions;

xxv. *Orders* the Respondent State to take all necessary measures, within six (6) months from the date of notification of the present Judgment, to repeal all the provisions prohibiting the right to strike, in particular, Article 50 paragraph 5 of Law No. 2017 - 43 of 02 July 2018 amending and supplementing Law No. 2015 - 18 of 13 July 2017 on the general statute of the public service, Article 2 of Law No. 2018 - 34 of 05 October 2018 amending and supplementing Law No. 2001 - 09 of 21 June 2001 on the exercise of the right to strike, Article 71 of Law No. 2017 - 42 of 28 December 2017 on the status of the personnel of the republican police, within six (6) months from the notification of this Judgment.

xxvi. *Orders* the Respondent State to take all necessary measures to fulfill its duty to guarantee the independence of the Constitutional Court and of the judiciary.

xxvii. *Orders* the Respondent State to publish the operative part of the present Judgment within a period of one (1) month from the date of notification of the present Judgment, on the websites of the Government, the Ministry of Foreign Affairs, the Ministry of Justice and the Constitutional Court, and for six (6) months.

On implementation and reporting

xxviii. Orders the Respondent State to submit to the Court a report on the measures taken to implement the orders in paragraph xxiv within three (3) months and the orders in paragraph xxv, xxvi and xxvii within six months from the date of notification of this Judgment.

On the request for provisional measures

xxix. *Finds* that the request for provisional measures is moot.

On the Costs

xxx. *Orders* that each party shall bear its own costs.

Signed:

Sylvain ORÉ, President

Ben KIOKO, Vice-President;

Rafaâ BEN ACHOUR, Judge;

Ângelo V. MATUSSE, Judge;

Suzanne MENGUE, Judge;

M-Thérèse MUKAMULISA, Judge;

Tujilane R. CHIZUMILA, Judge;

Chafika BENSAOULA, Judge;

Blaise TCHIKAYA, Judge;

Stella I. ANUKAM, Judge;

Imani D. ABOUD, Judge;

and Robert ENO, Registrar.

Done at Arusha, this Fourth Day of December in the year Two Thousand and Twenty, in English and French, the French text being authoritative.