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

THE MATTER OF

HOUNGUE ÉRIC NOUDEHOUENOU

V.

REPUBLIC OF BENIN

APPLICATION NO. 004/2020

RULING

22 SEPTEMBER 2022

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The Court, composed of: Imani D. ABOUD, President; Blaise TCHIKAYA, Vice-President, Ben KIOKO, Rafaâ BEN ACHOUR, Suzanne MENGUE, Tujilane R. CHIZUMILA, Chafika BENSAOULA, Stella I. ANUKAM, Dumisa B. NTSEBEZA, Modibo SACKO, Dennis D. ADJEI - Judges; and Robert ENO, Registrar.

In the Matter of:

Houngue Éric NOUDEHOUENOU
Represented by Advocate Nadine DOSSOU SAKPONOU, Attorney at Law, Benin

Versus

Republic of BENIN
Represented by Mr. Iréné ACLOMBESSI, Judicial Agent of the Treasury.

after deliberation,

renders this Ruling:

I. THE PARTIES

1. Mr. Houngue Éric Noudehouenou, (hereinafter "the Applicant") is a national of Benin and manager of \ Fisc Consult Sarl. He alleges a violation of his rights in connection with criminal proceedings initiated against him before the Court for the Repression of Economic and Terrorist Offences (hereinafter "CRIET").

2. The Application is filed against the Republic of Benin (hereinafter "the Respondent State"), which became a party to the African Charter on Human and Peoples' Rights (hereinafter "the Charter") on 21 October 1986 and the Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights

(hereinafter "the Protocol") on 22 August 2014. On 8 February 2016, the Respondent State deposited the Declaration provided for in Article 34(6) of the said Protocol (hereinafter "the Declaration") by virtue of which it accepted 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, an instrument of withdrawal of the said Declaration. The Court has held that this withdrawal has no bearing on any pending and new cases filed before the withdrawal came into effect, that is, one year after the deposit of the instrument of withdrawal, which is, on 26 March 2021.[1]

II. SUBJECT OF THE APPLICATION

A. Facts of the matter

3. The Applicant avers in the Application that on 20 February 2018, he was arrested by unidentified individuals without a warrant and taken by force , to a police station where he was informed of the reason for his arrest, namely, embezzlement of public funds by producing inflated invoices to *Conseil National des Chargeurs du Bénin* (hereinafter referred to as the "CNCB"), an entity of the Respondent State and by subsequently cashing, two cheques drawn by CNCB, in the name of the company *Fisc Consult Sarl*.

4. He submits that on 26 February 2018, he was presented before the public prosecutor**,** who charged him with abetment of misappropriation of public funds and placed him under a detention order on 27 February 2018 in the Cotonou prison. Pursuant to the law establishing the CRIET, the case was subsequently referred to the investigating committee of the CRIET in view

[1] *Houngue Eric Noudehouenou v. Republic of Benin*, ACtHPR, Application No. 003/2020, Order (Provisional Measures), 5 May 2020, §§ 4-5 and Corrigendum of 29 July 2020.

of the preferred charge. It emerges from the records that the Applicant escaped from detention on 31 October 2018.

5. He contends that the alleged facts of which he is accused are totally fictional and that during the preliminary investigation he explained that he had not submitted any invoice in his personal name to the CNCB and that all the invoices submitted by Fisc Consult Sarl to the CNCB mention all the services provided and the methods of determining the fees.

6. He further avers that, during the investigation, he provided evidence that Fisc Consult Sarl faithfully fulfilled its obligations to the CNCB and was partially and regularly paid by the latter.

7. He avers that despite these facts, the CRIET Investigating Committee, by Judgment No. 001/CRIET/COM-I/2019 of 20 March 2019 (hereinafter referred to as "the judgment of 20 March 2019") committed him to the CRIET Correctional Chamber for trial. He states that on 15 June 2019 he filed a cassation appeal against the CRIET's decision.

8. The Applicant submits that the Correctional Chamber of the CRIET rendered a judgment on 25 July 2019 (hereinafter referred to as "the judgment of 25 July 2019"), which found him guilty of the offences of misappropriation of public funds, abetment of abuse of office as well as usurpation of title and sentenced him to ten (10) years' imprisonment and ordered him to pay an amount of One Billion, Two Hundred and Seventy-Seven Million, Nine Hundred and Ninety-Five Thousand, Four Hundred and Seventy-Four (1,277,995,474) CFA francs to CNCB as compensation for the damage caused. He further avers that on 26 July 2019, he filed a cassation appeal against the said judgment and as at the date of filing the Application, the Supreme Court had not ruled on the said appeal.

B. Alleged violations

9. The Applicant alleges a violation of the following rights:

i. The rights to be tried by a competent court, to equality of all before the courts, to an impartial tribunal, to a reasoned decision in line with the adversarial principle, to protection against arbitrariness and to legal certainty, all protected by the purpose of the Charter and Article 10 of the Universal Declaration of Human Rights (hereinafter referred to as the "UDHR") and Article 14 (1) of the International Covenant on Civil and Political Rights (hereinafter referred to as the "ICCPR"); the principle of legality of offences and penalties and the prohibition of retroactive application of criminal laws and penalties;

ii. The right to defence, including equality of arms, representation by a lawyer, the facilities necessary for the organisation of one's defence, notification of the indictment and the charges, participation in one's trial, respect for the adversarial principle, presentation of evidence and arguments, and cross-examination of prosecution witnesses, protected by Article 14 (3) of the ICCPR and Article 7 (1) (c) of the Charter;

iii. The right to appeal against judgments, protected by Article 10 of the UDHR, Article 7 (1) (a) of the Charter and Article 2-3 of the Covenant;

iv. The right to have one's conviction and sentence reviewed, protected by article 14 (5) of the ICCPR;

v. The right to the presumption of innocence, protected by Article 7(1) of the Charter;

vi. The right to gainful employment, the right to property and the right to an adequate standard of living, protected by Articles 6 of the International Covenant on Economic, Social and Cultural Rights (ICESCR), 15 and 14 of the Charter, and 23 of the UDHR;

vii. The right to reputation and dignity, the right to health, to be free from inhuman and degrading treatment, protected by Article 7 of the ICCPR and Article 5 of the Charter, and the right to freedom of movement, protected by Articles 12, 14 (5) and 17 of the ICCPR.

viii. The right to suspension of enforcement of the sentence as guaranteed by Article 15 § 5 of the ICCPR and Chapter N § 10 (a) point (2) of the Guidelines and Principles on the Right to a Fair Trial and Legal Assistance in Africa.

III. SUMMARY OF THE PROCEDURE BEFORE THE COURT

10. On 21 January 2020, the Applicant filed the Application together with a request for provisional measures. These were served on the Respondent State on 18 February 2020.

11. On 6 May 2020, the Court issued a Ruling for provisional measures ordering the Respondent State to "… to stay the execution of the judgment of 25 July 2019 of the CRIET against the Applicant, Houngue Eric Noudehouenou, until the final judgment of this Court is rendered on the merits". The Order was served on the Parties on 6 May 2020.

12. On 20 July 2021 and 10 August 2021, the Applicant filed two additional requests for provisional measures, on which the Court ruled by a single ruling, the operative part of which reads:
    i. Dismisses the requests for provisional measure relating to obstacles to medical care and protection;
    ii. Dismisses the requested provisional measures to unfreeze the Applicant's bank account and to remove obstacles to his presence before the Cotonou Court;
    iii. Dismisses the request to stay execution of the arrest warrant pursuant to the CRIET's judgment of 25 July 2019;
    iv. Dismisses the request for a public apology;
    v. Dismisses the request regarding observance of the Applicant's rights by the Cotonou Court;
    vi. Orders the Respondent State to disclose to the Applicant or his Counsel the expert report referred to in the CRIET judgment of 25 July 2019',
    vii. Orders the Respondent State to take all measures to issue a valid national identity card to the Applicant;
    viii. Orders the Respondent State to report to the Court on the implementation of the measures ordered in (vi) and (vii) above, within fifteen (15) days of notification of this Ruling.

13. The ruling was served on the Parties on 30 November 2021.

14. On 14 May 2022, the Applicant filed a fourth request for provisional measures on which the Court issued, on 15 August 2022, a Ruling served on the Parties on 16 August 2022, the operative part of which reads as follows:

    i. Orders the Respondent State to take all measures to remove all impediments to the Applicant's access to medical care and to provide him with a copy of his medical file held by the *Centre National Hospitalier Universitaire de Cotonou*;
    ii. Orders the Respondent State to report to the Court on the implementation of the measures ordered above, within fifteen (15) days of the service of this Order.
    iii. Dismisses the other measures requested.

15. The Parties filed their submissions on the merits and reparations within the time limits stipulated by the Court.

16. Pleadings were closed on 15 July 2022 and the Parties were duly notified.

17. On 12 August 2022 the Applicant filed a request for reopening of pleadings and for a public hearing, which was served on the Respondent State for its observations within fifteen (15) days of receipt. The Respondent State did not submit any observations. After examining the request, the Court rejected it.

18. On 5 September 2022, the Applicant filed another request for provisional measures. It was served on the Respondent State for information purposes, as the Court had decided to deal with the request together with the merits.

IV. PRAYERS OF THE PARTIES

19. The Applicant prays the Court to:
    i) Find that it has jurisdiction;
    ii) Declare the application admissible;

iii) Find that the violations of his human rights protected by Articles 2, 11, 14, 15, 16, 17 and 26 of the ICCPR; articles 1, 2, 3, 7, 12, 14 and 26 of the Charter; articles 1, 3, 6, 7, 8, 10, 11, 14, 17, 19, 20 and 23 of the UDHR; and articles 2, 6 and 7 of the ICESCR are well-founded, and that the Respondent State is responsible for these violations;

iv) Declare that the fact that the CRIET convicted him by judgment of 20 March 2019, based on false charges, constitutes a serious attack on his honour, dignity, reputation, health and his right to protection against arbitrariness;

v) Declare that he is subject to arbitrary judicial practices and persecution within the meaning of Articles 12 of the Charter and 14 of the UDHR, for having ensured the exercise of the rights of defence in tax matters in Benin in his capacity as manager of Fisc Consult Sarl and for having ensured the exercise of the rights of defence in tax matters for the benefit of Sébastien Germain Ajavon and the companies in which he has interests;

vi) Declare that the arrest warrants issued against him constitute a violation of the right to freedom of movement guaranteed by Article 12 of the ICCPR, of the right to stay the execution of the sentence guaranteed by Article 15(5) of the ICCPR;

vii) Order the Respondent State to take all appropriate measures to annul the judgment of 25 July 2019 and the judgment of referral to the correctional chamber of 20 March 2019 rendered by the CRIET against him and erase all the effects of the two judgments and their subsequent acts within one month of the delivery of the judgment;

viii) Order the Respondent State to take all steps to restore his reputation damaged as a result of the decisions rendered against him;

ix) Order the Respondent State to amend Articles 189 and 190 of the Criminal Procedure Code so as to be in compliance with Article 7(1)(c) of the Charter with regard to the rights of the defence and equality of arms, within three months; to amend Articles 481 and 594 of the Criminal Procedure Code so as to be in compliance with Articles 14(5) and 9(1) of the ICCPR without delay by removing the requirement of detention prior to the exercise of the right of appeal;

x) Order the Respondent State to take all measures to avoid any form of reprisal against him, his family and his counsel in relation to this case and/or the persons involved;

xi) Order the Respondent State to pay a monthly sum of Three Hundred Million (300,000,000) CFA francs for failure to comply with the measures

of satisfaction, restitution and guarantee of non-repetition pronounced by the Court;

xii) Order the Respondent State to pay him the following sums: Four Hundred And Fourteen Billion, Seven Hundred and Seventy-Seven Million, Eight Hundred and Thirteen Thousand, Four Hundred and Fifty (414,770,813,450) FCFA for losses incurred and loss of future earnings; Thirty-Three Million, Seven Hundred and Eighty-Four Thousand, Three Hundred and Sixty-Three (33,784,363) FCFA for loss of salaries and salary benefits from 2018 to 2022; Three Hundred And Four Million, One Hundred And Twenty-Four Thousand, One Hundred And Ninety (385,124,190) FCFA for actual loss of dividends incurred at the level of the Fisc Consult Sarl; Twenty-Three Billion, Four Hundred And Sixteen Million, Five Hundred And Sixty-Two Thousand, Eight Hundred And Fifty-Four (23 416 562 854) FCFA with respect to loss of income accruing from fees in respect of the companies COMON SA, JLR SAU, SCI L'ELITE, MAERS BENIN SA, CMA-CGM BENIN SA, MSC BENIN SA, EREVAN, ECOBANK, Three Hundred and Seventy-Six Billion, Eight-Hundred and Forty Seven Million, Three Hundred and Forty-two thousand and Forty-Three (376, 847, 342, 043) FCFA in respect of loss of dividends in the company HEMOS SA; Twelve Billion (12,000,000,000) FCFA for lost earnings opportunities for activities as a teacher, trainer and consultant; Seventy-Nine Million (79,000,000) FCFA for lawyers' fees and legal advice; Two billion (2,000,000,000) FCFA for all other moral prejudices;

xiii) Order the Respondent State to pay the material and moral damages of One Billion Seven Hundred Million (1,700,000,000) FCFA, including Four Hundred Million (400,000,000) FCFA for his adoptive mother, Four Hundred Million (400,000,000) FCFA for his wife and Three Hundred Million (300,000,000) FCFA for each of his three children;

xiv) Order the Respondent State to pay the costs of these proceedings.

20. The Respondent State prays the Court to:

i) Declare that it lacks jurisdiction to order the necessary measures to annul the CRIET's judgment of 25 July 2019 and judgment No. 001/CRIET/COM-I/2019 of March 2019;

ii) Declare the application inadmissible for failure to exhaust local remedies;

iii) Find that the State of Benin did not violate the Applicant’s human rights;

iv) Dismiss all the Applicant's claims and order him to pay the costs.

V. JURISDICTION

21. Article 3 of the Protocol provides:

> 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 instrument ratified by the States concerned.
> 2. In the event of a dispute as to whether the Court has jurisdiction, the Court shall decide.

22. Furthermore, under Rule 49(1) of the Rules of Court, "The Court shall conduct preliminary examination of its jurisdiction … in accordance with the Charter, the Protocol and these Rules"[2] .

23. Based on the above provisions, the Court must conduct an assessment of its jurisdiction and dispose of objections thereto, if any.

24. The Court notes that the Respondent State raises an objection to its material jurisdiction.

A. Objection to the material jurisdiction of the Court

25. The Respondent State notes that the Applicant seeks the annulment of the CRIET's judgment of 25 July 2019 and that of 20 March 2019. It submits that the Court is not an appellate court of the decisions of domestic courts. The Respondent State therefore prays the Court to declare that it lacks jurisdiction.

26. The Applicant, referring to the case of *Abubakari v. the Republic of Tanzania*, submits that the Court has jurisdiction to examine whether the determination of a case by the domestic courts was consistent with the

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

requirements of the Charter and any other applicable international human rights instruments.

27. He contends that he sought the annulment of the judgments rendered by the CRIET against him, for violation of the rights protected by Articles 2, 11, 14, 15, 16, 17 and 26 of the ICCPR; Articles 1, 2, 3, 7, 12, 14 and 26 of the Charter; Articles 1, 3, 6, 7, 8, 10, 11, 14, 17, 19, 20 and 23 of the UDHR; and Articles 2, 6 and 7 of the ICESCR.

28. The Applicant therefore asserts that the Court has material jurisdiction in the instant case and requests that the Respondent State's objection be dismissed.

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29. The Court considers that, under Article 3(1) of the Protocol, it has jurisdiction to hear all cases brought before it which relate to alleged violations of the Charter, the Protocol and any other human rights instrument ratified by the Respondent State.[3]

30. The Court underscores, in line with its jurisdiction, that it is not an appellate court in relation to the decisions given by domestic courts. However, "that does not preclude it from assessing whether domestic proceedings were conducted in accordance with international standards set out in the Charter and other international human rights instruments ratified by the State concerned." [4]

31. The Court notes, in the present case, that the Applicant alleges violation of rights protected by the Charter, the ICCPR, the ICESCR and the UDHR,

[3] *Alex Thomas v. United Republic of Tanzania* (merits) (20 November 2015), 1 AfCLR 465, § 45; *Kennedy Owino Onyachi and another v. United Republic of Tanzania* (merits) (28 September 2017), 2 AfCLR 65, § 34-36; *Jibu Amir aka Mussa and another v. United Republic of Tanzania* (merits and reparations) (28 November 2019), 3 AfCLR 629, § 18; *Masoud Rajabu v. United Republic of Tanzania*, ACtHPR, Application No. 008/2016, Judgment of 25 June 2021 (merits and reparations), § 21;

[4] *Kenedy Ivan v. United Republic of Tanzania* (merits) (March 2019), 3 AfCLR 48, § 26; *Armand Guéhi v. United Republic of Tanzania* (merits and reparations) (7 December 2018), 2 AfCLR 477, § 33; *Nguza Viking (Babu Seya) and Johnson Nguza (Papi Kocha) v. United Republic of Tanzania* (merits) (23 March 2018), 2 AfCLR 287, § 35; *Sébastien Ajavon v. Republic of Benin*, ACtHPR, Application No. 027/2020 (jurisdiction and admissibility), § 46.

the interpretation and application of which fall within its material jurisdiction. It further observes that the Applicant requests it to examine whether the criminal proceedings against him before the CRIET are compatible with the above-mentioned human rights instruments ratified by the Respondent State.

32. Accordingly, the Court is not called upon to sit as an appellate or cassation court but rather to act within the limits of its material jurisdiction. It follows that the objection raised by the Respondent State is untenable.

33. Accordingly, the Court finds that it has material jurisdiction.

B. Other aspects of jurisdiction

34. The Court notes that no objections have been raised to its personal, temporal and territorial jurisdiction. Nevertheless, in accordance with Rule 49(1) of the Rules, it must ensure that the requirements relating to all aspects of its jurisdiction are met before proceeding to examine the application.

35. With regard to personal jurisdiction, the Court notes that the Respondent State is a party to the Charter, the Protocol and has deposited the Declaration. The Court recalls, as stated in paragraph 2 of this Judgment, that on 25 March 2020 the Respondent State deposited the instrument of withdrawal of the Declaration. In this respect, the Court recalls its jurisprudence that the withdrawal by the Respondent State of its Declaration has no retroactive effect, nor does it affect either cases pending at the time of the said withdrawal or new cases brought before it before the entry into force of the withdrawal, one (1) year after the deposit of the instrument, that is, on 26 March 2021. The present Application, which was filed before the instrument of withdrawal was deposited by the Respondent State, is therefore not affected by it.[5]

[5] See paragraph 2 of this Ruling.

36. With regard to temporal jurisdiction, the Court considers that it is established as the alleged violations occurred after the Respondent State became a party to the Charter, the Protocol and had deposited the Declaration.

37. As regards its territorial jurisdiction, the Court finds that it is also established since the facts of the case and the alleged violations took place in the territory of the Respondent State.

38. Accordingly, the Court finds that it has jurisdiction to consider the Application.

VI. ADMISSIBILITY

39. Article 6(2) of the Protocol provides that "The Court shall rule on the admissibility of cases taking into account the provisions of Article 56 of the Charter ".

40. In accordance with Rule 50(1) of the Rules of Court,[6] “The Court shall proceed to an examination of admissibility (...) in accordance with Article 56 of the Charter and Article 6(2) of the Protocol and the (...) Rules of Court”.

41. Rule 50(2) of the Rules, which in substance restates Article 56 of the Charter, provides:

> Applications filed before the Court shall comply with all of 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;

[6] Rule 40 of the Rules of 2 June 2010.

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 set by the Court as being the commencement of the time limit within which it shall be seised 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 Constitutive Act of the African Union or the provisions of the Charter.

42. The Court notes that the Respondent State raises an objection to the admissibility of the Application based on non-exhaustion of local remedies.

A. Objection based on non-exhaustion of local remedies

43. The Respondent State submits that the Applicant filed a cassation appeal against the judgment of the Correctional Division of the CRIET of 25 July 2019, and that the case is pending before the Supreme Court, which must rule on the merits of this appeal and decide whether the CRIET applied the law correctly or made an error in its application of the law.

44. The Respondent State avers that without awaiting the Supreme Court's decision, the Applicant filed the matter before this Court on 21 January 2020. It therefore argues that the Applicant did not exhaust local remedies under Article 56(5) of the Charter.

45. The Respondent State therefore prays the Court to declare the Application inadmissible.

46. In his reply, the Applicant submits that he is not required to exhaust local remedies since the judicial remedy available in this case is ineffective. He

explains that, as the Supreme Court is the judge of the law and not of the facts, it is impossible for it to establish the veracity of the facts.

47. He further submits that the cassation appeal procedure before the Supreme Court is unduly prolonged.

48. The Applicant therefore prays the Court to dismiss the objection to the admissibility of the Application.

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49. The Court recalls that, in accordance with Article 56(5) of the Charter and Rule 50(2)(e) of the Rules of Court, applications can only be filed after the exhaustion of local remedies, if any, unless it is clear that the proceedings in respect of those remedies are unduly prolonged.

50. The Court underscores that the local remedies to be exhausted are those of a judicial nature, which must be available, that is, they must be available to the Applicant without hindrance, effective and satisfactory in the sense that they are "found satisfactory by the complainant or is capable of redressing the complaint"[7].

51. In any case, the Court notes that compliance with the requirement of Article 56(5) of the Charter and Rule 50(2)(e) implies that the Applicant not only initiates local remedies, but also that he awaits their outcome.[8] In the same vein, the Court also notes that in order to determine whether the requirement of exhaustion of local remedies has been met, it is necessary

[7] *Ayants - droit de feu Norbert Zongo, Aboulaye Nikiema dit Ablassé, Ernest Zongo and Blaise Ilboudo and Mouvement Burkinabè des droits de l'homme et des peuples v. Burkina Faso*, Judgment (5 December 2014), (merits),1 AfCLR 219, § 68 ; *Ibid.* Konaté v. Burkina Faso (merits) §108.
[8] *Yacouba Traoré v. Republic of Mali*, ACtHPR, Application No. 010/2018, judgment of 25 September 2020 (jurisdiction and admissibility) §§ 46 and 47.

that the domestic proceedings to which the Applicant was a party be completed at the time of filing the Application before the Court.[9]

52. The Court notes, in the present case, that it is not disputed that on 26 July 2019, the Applicant filed a cassation appeal before the Supreme Court of the Respondent State against the judgment rendered on 25 July 2019 by the Correctional Chamber of the CRIET and filed the present Application, on 21 January 2020, while the appeal proceedings were pending.

53. It notes that to file this Application before the Court without having awaited the decision of the Supreme Court, the Applicant advances two arguments, namely the ineffectiveness and the undue prolongation of the cassation appeal before the Supreme Court.

54. Regarding the Applicant's first argument, namely, the ineffectiveness of the cassation remedy, the Court observes that in the Beninese legal system, a cassation appeal is a remedy which seeks to have a final judgment or ruling set aside on the grounds of a breach of the law[10] . Thus, in the present case, there is no doubt, *a priori*, that the Supreme Court has the ultimate capacity to bring about a change in the Applicant's situation, on the merits of the case, if it finds that the correction chamber of the CRIET erred in law in relation to the way in which the case was handled by the CRIET.

55. In this regard, the Court notes that under Article 41 of Law No. 2004-20 of 17 August 2007 on the rules of procedure applicable before the judicial panels of the Supreme Court (hereinafter referred to as the "Law of 17 August 2007"), the Judicial Division, should it set aside the judgments or rulings submitted to it, shall refer the merits of the case to another court of the same order or to the same court otherwise composed. Furthermore, in

[9] *Komi Koutché v. Republic of Benin*, ACtHPR, Application 020/2019, Judgment of 25 June 2021, §61; *Sébastien Marie Aikoué Ajavon v. Republic of Benin*, ACtHPR, Application 027/2020, Judgment of 2 December 2021, §74

[10] Article 577 of Law No. 2012-15 on the Code of Criminal Procedure.

accordance with Article 42 of the said law, the judgments delivered by the Judicial Division of the Supreme Court are binding on the referring court.

56. The Court therefore finds that the cassation appeal is not an ineffective remedy, as the Cassation Court can lead to the reversal of the contested decision.

57. With regard to the second argument, namely, the undue prolongation of proceedings before the Supreme Court, the Court recalls its jurisprudence that assessing whether or not the duration of the proceedings relating to local remedies is unduly prolonged must be made on a case-by-case basis, taking into account the circumstances of each case[11]. In its analysis, the Court "takes into account, in particular, the complexity of the case or of the procedure relating to it, the conduct of the parties themselves and that of the judicial authorities in determining whether the latter have shown a degree of passivity or clear negligence".[12]

58. The Court observes in the present case that the Applicant filed the cassation appeal by letter of 26 July 2019 pursuant to Article 581[13] of Law No. 2012-15 on the Criminal Procedure Code.

59. The Court also notes that, in accordance with Article 14 of the Law of 17 August 2007, the proceedings before the Judicial Chamber are deemed to be in progress when the pleadings and documents have been submitted, or when the time-limits for submitting them have elapsed. It further notes that Article 52 of the said law provides that the appellant must file, in support of the said appeal, an amplifying memorandum containing the legal

[11] *Beneficiaries of Norbert Zongo, Abdoulaye Nikiema dit 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 226, § 92.
[12] See *Mariam Kouma and Ousmane Diabaté v. Republic of Mali* (Merits) (21 March 2018) 2 AfCLR 237, § 38; *Wilfred Onyango Nganyi and 9 others v Tanzania* (Merits), § 136.
[13] Article 47 of Act No. 2004-20 of 17 August 2007 on the rules of procedure applicable before the judicial panels of the Supreme Court: "The appeal shall be lodged by means of a written or oral statement which the appellant himself or herself, or a lawyer or any agent with special authority, shall have delivered or sent to the registry of the court which handed down the decision...".

arguments relied on against the contested decision, thereby enabling the Supreme Court to initiate the determination of the case.

60. Finally, the Court notes that in cassation proceedings before the Supreme Court, the parties receive copies of documents and pleadings in order to make their observations. However, they are also heard by the Judicial Chamber, which may take some time. Moreover, when the case is ready, the Judge-Rapporteur drafts his report and his draft judgment, and then sends the docket to the Public Prosecutor's Office[14] , which must in turn produce a report. The Court notes, moreover, that the complexity of the case is not in dispute with regard to the nature of the offences being prosecuted, in particular, embezzlement of public funds, abetment, abuse of office and usurpation of title.

61. The Court recalls that between 26 July 2019, the date of the appeal in cassation filed by the Applicant, and 21 January 2020, the date of the filing of the Application before this Court, five (5) months and twenty-five (25) days elapsed. The Court considers, with regard to the formalities relating to the processing of the appeal in cassation by the Supreme Court, that the Applicant's case could not reasonably have taken less than six (6) months and that therefore the procedure was not unduly prolonged.

62. Based on the above, the Court finds that the Applicant's arguments are not well-founded and that he should have awaited the outcome of his cassation appeal before filing the instant Application before this Court. The Court therefore finds that the Applicant filed the Application prematurely.

63. Accordingly, the Court upholds the objection based on non-exhaustion of local remedies and finds that the Application does not meet the requirement of Rule 50(2)(e) of the Rules.

[14] Article 16 of Law No. 2004-20 of 17 August 2007 on the rules of procedure applicable before the judicial panels of the Supreme Court.

B. Other admissibility requirements

64. Having concluded that the Application does not meet the requirement of Rule 50(2)(e) of the Rules and that the admissibility requirements are cumulative[15] , the Court does not need to rule on the admissibility requirements set out in paragraphs 1, 2, 3, 4, 6, and 7 of Article 56 of the Charter as restated in Rule 50(2)(a)(b)(c)(d)(f) and (g) of the Rules.[16]

65. Based on the foregoing, the Court declares the Application inadmissible and dismisses it.

VII. REQUEST FOR PROVISIONAL MEASURES

66. The Court recalls that on 5 September 2022, the Applicant filed a request for provisional measures.

67. However, in the present case, the Court has declared that the objection based on non-exhaustion of local remedies is founded and find that the Application does not meet the requirements of rule 52(2)(e) of the Rules, which renders the provisional measures requested moot.

VIII. COSTS

68. Each Party prays the Court that the other party bear the costs.

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[15]*Mariam Kouma and Ousmane Diabaté v. Republic of Mali (*jurisdiction and admissibility) (21 March 2018), 2 AfCLR 237, § 63; *Rutabingwa Chrysanthe v. Republic of Rwanda* (jurisdiction and admissibility) (11 May 2018), 2 AfCLR 361, § 48*; Collectif des anciens travailleurs ALS v. Republic of Mali*, ACtHPR, Application No. 042/2015, Judgment of 28 March 2019 (jurisdiction and admissibility), § 39.
[16]Ibid.

69. Under Article 32(2) of the Rules,[17] "[u]nless otherwise decided by the Court, each party shall bear its own costs, if any".

70. The Court finds that nothing in the circumstances of the present case warrants a departure from that provision.

71. The Court therefore declares that each Party shall bear its own costs.

IX. OPERATIVE PART

72. For these reasons

THE COURT,

*Unanimously***,**

On Jurisdiction

i. *Dismisses* the objection to its jurisdiction;
ii. *Declares* that it has jurisdiction.

On Admissibility

iii. *Upholds* the objection based on non-exhaustion of local remedies;
iv. *Declares* the Application inadmissible.

On Costs

v. *Orders* that each Party shall bear its own costs.

[17] Rule 30(2) of the Rules of 2 June 2010**.**

Signed by:

Imani D. ABOUD, President;

Blaise TCHIKAYA, Vice President;

Ben KIOKO, Judge;

Rafaâ BEN ACHOUR, Judge;

Suzanne MENGUE, Judge;

Tujilane R. CHIZUMILA, Judge;

Chafika BENSAOULA, Judge;

Stella I. ANUKAM, Judge;

Dumisa B. NTSEBEZA, Judge;

Modibo SACKO, Judge;

Dennis D. ADJEI, Judge;

and Robert ENO, Registrar.

Done at Arusha, this Twenty-Second Day of September in the year Two Thousand and Twenty-Two, in the English and French languages, the French text being authoritative.